FINAL ENVIRONMENTAL IMPACT STATEMENT
PROPOSED RESIDENTIAL SUBDIVISION
MILL RIVER ROAD
INCORPORATED VILLAGE OF UPPER BROOKVILLE, NASSAU COUNTY

PROJECT LOCATION:

45 and 57 Mill River Road
Incorporated Village of Upper Brookville
Nassau County

TAX LOT NUMBERS:

Section 24 - Block E - Lots 6, 11, 12 A-C, 16, 25 and 1060

APPLICANT:

Oaks at Mill River, LLC
1600 Old Country Road, Suite 101
Plainview, New York 11803

Contact: Michael Menchise, Esq.
(516) 622-8226

LEAD AGENCY:

Planning Board of the
Incorporated Village of Upper Brookville
Village Hall
1395 Planting Fields Road
P.O. Box 548
Oyster Bay, New York 11771-1302

Contact: William Quinn, Chairman
(516) 624-7715

PREPARER & CONTACT:

This Final Environmental Impact Statement was Prepared by:

VHB Engineering, Surveying and
Landscape Architecture, P.C.
2150 Joshua's Path, Suite 300
Hauppauge, New York 11788

Contact: Theresa Elkowitz, Principal
Gail A. Pesner, AICP, Senior Project Manager
(631) 234-3444

With technical input from:

Joseph E. Dioguardi, Jr., P.E., L.S.
(Site Engineering)
110 Bayville Avenue
Bayville, New York 11709

Contact: Joseph Dioguardi, Jr., P.E.
(516) 628-9291

DATE OF PREPARATION: August 2012

AVAILABILITY OF DOCUMENT: This document is a Final Environmental Impact Statement ("FEIS"). Copies are available for public review and comment at the offices of the lead agency and the following website:
http://www.upperbrookville.org/www.upperbrookville.org

A copy is also available at the Oyster Bay – East Norwich Public Library.

DATE OF FILING: November 14, 2012

Table of Contents

List of Appendices

List of Tables

This document is a Final Environmental Impact Statement for the proposed Residential Subdivision, Mill River Road.
This FEIS incorporates, by reference, the Draft Environmental Impact Statement for this proposed action, dated August 2009. The above-referenced Draft Environmental Impact Statement was the subject of a Incorporated Village of Upper Brookville Public Hearing on October 6, 2009, and written comments were accepted until October 23, 2009.

The Written Correspondence and Public Hearing Transcript are provided in Appendices A and B of this FEIS, respectively.

1.0
Introduction

This document is a Final Environmental Impact Statement (FEIS) prepared in response to comments received by the Village of Upper Brookville Planning Board (Planning Board) during the public comment period on the Draft Environmental Impact Statement (DEIS) for a proposed 14-lot residential subdivision situated on 97.16 acres and located at 45 and 57 Mill River Road in the Incorporated Village of Upper Brookville, Nassau County. As explained in greater detail below, in order to address various comments received on the DEIS, the proposed subdivision plan has been modified, such that 13 lots are proposed in a conservation subdivision configuration.

Pursuant to 6 NYCRR §617.9(b)(8) of the State Environmental Quality Review Act (SEQRA):

> *"A final EIS must consist of: the draft EIS, including any revisions or supplements to it; copies or a summary of the substantive comments received and their source (whether or not the comments were received in the context of a hearing); and the lead agency's responses to all substantive comments. The draft EIS may be directly incorporated into the final EIS or may be incorporated by reference. The lead agency is responsible for the adequacy and accuracy of the final EIS, regardless of who prepares it. All revisions and supplements to the draft EIS must be specifically indicated and identified as such in the final EIS."*

Thus, the FEIS incorporates the DEIS by reference and identifies and responds to substantive public and involved agency comments on the DEIS. Revisions to the DEIS are also incorporated into the FEIS, as applicable.

All written correspondence is included in Appendix A of this FEIS. The Public Hearing Transcript is included in Appendix B of this FEIS. The comments included in this FEIS are those that were made at the Planning Board public hearing October 6, 2009 and in written correspondence to the Planning Board during the comment period that ended October 23, 2009. All of the written correspondence received during the comment period was assigned a code that begins with "C." All comments made at the public hearing held on October 6, 2009 were assigned a code that begins with "H."

This FEIS includes four sections -- Section 1.0, of which this is a part, is the introduction to the document, which describes the purpose of the FEIS as well as the information included in the document.

Section 2.0 provides a list of revisions to the DEIS. In this case, the revisions include changes to text related to soil and material removal and the capacity of truck used in soils and material removal related to the 14-lot conventional subdivision. For the purposes of this FEIS, "soil" includes all excavated earth, with the exception of topsoil, which is proposed to remain on the site. The Applicant's project engineer has

determined that approximately 25 percent of the overall soils (including topsoil and subsoil, etc.) is topsoil, which would not be removed from the site. "Material" includes organic material (e.g., tree stumps) and construction and demolition (C&D) debris associated with the removal of buildings, driveways, etc. It is expected that the remainder of the organic material (e.g., tree branches, leaves) would be mulched on-site for use on-site.

In addition, it is assumed that heavy-duty, tri-axle, single-unit dump trucks would be used for soil and material removal. The effective capacity of such trucks was assumed to be 14 cubic yards for soil and 10 cubic yards for material. Calculations of soil and material removal are based upon these assumptions.

These revisions are necessary as there were changes to the amount of soil and material removal and the size of the trucks to be used for soil and material removal due to comments issued on the DEIS during the public comment period.

Section 3.0 presents a revised yield plan of 13 lots (as a conventional subdivision) and a conservation subdivision of 13 lots. This section also compares the environmental impacts among the 14-unit subdivision plans presented in the DEIS, the revised 13-lot yield plan (conventional subdivision), and the 13-lot conservation subdivision.

Finally, Section 4.0 includes the lead agency's responses to all substantive comments made at the public hearing and the written correspondence received during the comment period, which extended from September 8, 2009 to October 23, 2009.

2.0

Revisions to DEIS

The proposed revisions to the DEIS are related to the amount of soil removal (excluding topsoil) and material removal associated with the 14-lot conventional subdivision and the number of truckloads and trips related to such removal. The revisions to the DEIS are necessary as the soil removal numbers for the 14-lot conventional subdivision have been recalculated using the same methodology used in calculating the 13-lot conventional and 13-lot conservation subdivisions, and the size of the trucks to be used for soil removal has been adjusted. In addition, 520 truckloads have been added for material removal (projected to be approximately 5,200 cubic yards) associated with the 14-lot subdivision, which was not originally calculated in the DEIS. The new numbers and language are shown in bold and italics (in parentheses), and language to be removed is shown with a strikethrough.

Page iii
However, it is expected that approximately ~~106,232~~ ***(127,163)*** cubic yards of excess ~~material~~ ***(soil)*** would have to be removed from the site to develop ***(the infrastructure associated with)*** the ~~***proposed***~~ ***(14-lot conventional)*** subdivision. ***(In addition, approximately 5,200 cubic yards of material are projected to be removed from the site.)***

Page vii
As provided by the project engineer, due to the presence of steep and severely-sloped areas at the subject property, the development of the proposed roadways will require the removal of approximately ~~106,232~~ ***(127,163)*** cubic yards of soil from the site to ensure the appropriate road gradient (i.e., between one and eight percent) in accordance with Village Code.

Page xviii
For the construction of the infrastructure, it will be necessary to excavate and remove approximately ~~106,~~ ***(127,163)*** cubic yards of ~~material~~ ***soil (and 5,200 cubic yards of other material from the site for a 14-lot conventional subdivision).*** Conservatively estimating that the removal of the ***soil and*** material will be done using ~~15-cubic-yard earth removing~~ ***(heavy-duty, tri-axle, single-unit)*** dump trucks ***(having an effective capacity of 14 cubic yards for soil and 10 cubic yards for other materials)***, this will require a total of approximately ~~7,066~~ ***(9,600)*** truckloads or approximately ~~14,032±~~ ***(19,200)*** total truck trips (one truck entering the site and one truck exiting the site). ~~It is also estimated that approximately 50 percent of the excavation will take place in the first year of the project, which would equate to 7,066 truck trips in the first year.~~ Since removal activities would occur Monday through Friday, ~~during the hours of 8:00 AM to 6:00 PM,~~ this would result in approximately ~~27~~ ***(45-to-50)*** truck***(loads)*** ~~trips~~ per day or about one truck trip every ~~22~~ ***(10)*** minutes. ***(Based upon this***

figure, the exportation of material from the 14-lot conventional subdivision is expected to take approximately 200 working days to complete.)

Page 12
However, it is expected that approximately ~~106,232~~ *(127,163)* cubic yards of excess ~~material~~ *(soil)* would have to be removed from the site to develop the infrastructure associated with the proposed subdivision. *(In addition, approximately 5,200 cubic yards of other materials are also projected to be removed.)*

Page 112
As provided by the project engineer, the development of the proposed infrastructure will require the removal of approximately ~~106,232~~ *(127,163)* cubic yards of soil from the site.

Page 167
For the construction of the infrastructure, it will be necessary to excavate and remove approximately ~~106,~~ *(127,163)* cubic yards of ~~material~~ *soil (and 5,200 cubic yards of other material from the site for a 14-lot conventional subdivision).* Conservatively estimating that the removal of the *soil and* material will be done using ~~15 cubic yard earth removing~~ *(heavy-duty, tri-axle, single-unit)* dump trucks *(having an effective capacity of 14 cubic yards for soil and 10 cubic yards for other materials)*, this will require a total of approximately ~~7,066~~ *(9,600)* truckloads or approximately ~~14,032±~~ *(19,200)* total truck trips (one truck entering the site and one truck exiting the site). ~~It is also estimated that approximately 50 percent of the excavation will take place in the first year of the project, which would equate to 7,066 truck trips in the first year.~~ Since removal activities would occur Monday through Friday, ~~during the hours of 8:00 AM to 6:00 PM,~~ this would result in approximately ~~27~~ *(45-to-50)* truck*(loads)* ~~trips~~ per day or about one truck trip every ~~22~~ *(10)* minutes. *(Based upon this figure, the exportation of material from the 14-lot conventional subdivision is expected to take approximately 200 working days to complete.)*

3.0

Revised Subdivision Plans

3.1 Introduction

In order to address various comments received during the public comment period on the originally-proposed 14-lot conventional subdivision, which was the proposed action described in the DEIS (see Appendix C of this FEIS), the Applicant has modified its plan to reduce the density, and to preserve greater contiguous natural areas.

Specifically, the Applicant, based upon comments received on the DEIS and input from the Village and its consultants, prepared a revised yield plan, which yields 13 lots and conforms to the zoning requirements of the Suburban Estate (OP1) Zoning District in which the subject property is situated (i.e., a 13-lot conventional subdivision), a copy of which is included in Appendix D of this FEIS.

In order to further protect natural resources (e.g., to avoid steep slopes, preserve trees, and provide contiguous wildlife corridors), the Applicant has prepared a conservation subdivision, which clusters development on a portion of the property and provides a 52.95±-acre substantially contiguous natural area (with the exception of a portion of the subdivision roadway) that will be preserved (see Appendix E of this FEIS). According to New York State Village Law §7-738, cluster development is defined as "a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands" (see Appendix F of this FEIS).

The proposed 13-lot conservation subdivision achieves these goals, as it allows for (1) protection of the steepest slopes on the property; (2) maintenance of a significant amount of contiguous open space, (3) retention of numerous identified trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and virtually continuous wildlife corridor.

In order for the Planning Board to approve the conservation subdivision, the Board of Trustees of the Village of Upper Brookville would be required to enact enabling legislation, pursuant to New York State Village Law §7-738 (see Appendix F), which states, in pertinent part,

"The village board of trustees may, by local law, authorize the planning board to approve a cluster development simultaneously with the approval of a plat or plats pursuant to the provisions of this article. Approval of a cluster development shall be subject to the conditions set forth in this section and in such local law. Such local law shall also specify the zoning districts in which cluster development may be applicable."

It is evident from the comparison table below (see Table 1) that the environmental impacts associated with the 13-lot conservation subdivision are far less than those associated with both the 13-lot conventional subdivision and the originally-proposed 14-lot conventional subdivision (which was fully evaluated in the DEIS), and the 13-lot conservation subdivision allows for the preservation of a substantial amount of contiguous natural area.

Table 1 reflects the revised soil removal figure and the addition of the material removal figure associated with the 14-lot conventional subdivision analyzed in the DEIS, and provides similar comparisons for all the alternative subdivisions examined. All of the alternatives analyzed in this environmental review contemplate the preservation of the Monday House and the removal of the Arthur Dean Estate (or "Dean House"), except for the 13-lot conventional subdivision, which examines potential retention of the Dean House.

A more detailed discussion of the impacts of the 13-lot conventional subdivision and the 13-lot conservation subdivision follows the table.

Table 1 – Comparison of Subdivision Plans

PARAMETER	14-LOT CONVENTIONAL SUBDIVISION (FROM DEIS)	14-LOT ALTERNATE ACCESS PLAN (FROM DEIS)	13-LOT CONVENTIONAL SUBDIVISION	13-LOT CONSERVATION SUBDIVISION
Zoning	OP1	OP1	OP1	OP1 (conservation)
Number of Residential Lots	14 lots	14 lots	13 lots	13 lots
Development Density	0.14 units/acre	0.14 units/acre	0.13 units /acre	0.13 units/acre
Residential Lot Size Range	5.04 acres – 8.37 acres	5.04 acres – 8.43 acres	5.00 acres – 8.51 acres	2.23 acres –4.38 acres
Total Impervious Surface • Building Area • Other Impervious Areas	8.62 acres (8.9 percent) • 3.78 acres (3.9 percent) • 4.84 acres (5.0 percent)	8.24 acres (8.5 percent) • 3.60 acres (3.7 percent) • 4.64 acres (4.8 percent)	8.08 acres (8.3 percent) • 2.89 acres (3.0 percent) • 5.19 acres (5.13 percent)	6.46 acres (6.8 percent) • 2.68 acres (2.8 percent) • 3.78 acres (3.9 percent)
Total Pervious Surface • Area to Remain Natural o Within Residential Lots o Within Conservation Areas • Landscaping/Lawn • Other Pervious Surfaces	88.54 ac res (91.1 percent) • 71.89 acres (74.0 percent) o 39.32 acres (40.5 percent) o 32.57 acres (33.5 percent) • 16.65 acres (17.1 percent) • 0.00 acres (0.0 percent)	88.92 acres (91.5 percent) • 64.97 acres (66.9 percent) o 35.49 acres (36.6 percent) o 29.48 acres (30.3 percent) • 23.95 acres (24.6 percent) • 0.00 acres (0.0 percent)	89.08 ac (91.7 percent) • 78.75 acres (81.0 percent) o 63.17 acres (65.0 percent) o 15.58 acres (16.0 percent) • 6.39 acres (6.6 percent) • 3.94 acres (4.1 percent)	90.70 acres (93.4 percent) • 74.36 acres (76.5 percent) o 19.37 acres (19.9 percent) o 54.99 acres (56.6 percent) • 13.24 acres (13.6 percent) • 3.10 acres (3.2 percent)
Total Soil (excluding topsoil) to be Removed from Site • Subdivision Roads • Recharge (Stormwater) Basins/Leaching Pools	127,163 cubic yards • 90,320 cubic yards* • 36,843 cubic yards	131,741 cubic yards • 94,898 cubic yards* • 36,843 cubic yards	170,127 cubic yards • 143,723 cubic yards* • 26,404 cubic yards	117,886 cubic yards • 104,213 cubic yards* • 13,673 cubic yards
Total Material to be Removed from Site	5,200 cubic yards	6,100 cubic yards	1,200 cubic yards**	4,000 cubic yards
Total Area of Clearing	21.49 acres (22.1 percent)	26.76 acres (27.5 percent)	18.45 acres (19.0 percent)	21.80 acres (22.4 percent)
Linear Feet of Roadway	3,950 linear feet	3,850 linear feet	4,270 linear feet	3,100 linear feet
Sewage	12,600 gallons per day	12,600 gallons per day	11,700 gallons per day	11,700 gallons per day
Water (average over year, including irrigation)	48,422 gallons per day	48,582 gallons per day	24,134 gallons per day	28,770 gallons per day
Stormwater Runoff	593,129 cubic feet	592,254 cubic feet	581,916 cubic feet	430,430 cubic feet
Method of Stormwater Collection	Drywells Drainage Reserve Areas (DRAs) Drainage Easement	Drywells DRAs Drainage Easement	Stormwater Basins Drywells in Lots DRAs Drainage Easement	Stormwater Basin Drywells in Lots DRA Drainage Easement
Total Population	45 – 60 persons	45 – 60 persons	42 – 55 persons	42 – 55 persons
Public School-Aged Children	5 – 15 children	5 – 15 children	4 – 14 children	4 – 14 children
Solid Waste	2.43 – 3.35 tons/month	2.43 – 3.35 tons/month	2.24 – 2.93 tons/month	2.24 – 2.93 tons/month
AM Peak Hour	11 trips	11 trips	10 trips	10 trips
PM Peak Hour	14 trips	14 trips	13 trips	13 trips
Saturday Peak Hour	13 trips	13 trips	12 trips	12 trips
Number of Access Points on Mill River Road	1	2	2	1

*Based upon a roadway pavement width of 22 feet, with two five-foot shoulder areas.
**Contemplates potential retention of the Dean House.

3.2 13-Lot Conventional Subdivision

The 13-residential lot conventional subdivision, last dated November 14, 2011, is similar to the originally-proposed 14-lot subdivision, last dated March 5, 2009 and included as part of the August 2009 DEIS submission, with one lot fewer. Also, the 13-lot conventional subdivision has two separate subdivision roadways, whereas the originally-proposed 14-lot subdivision studied in the DEIS has one roadway (at Mohawk Drive) serving 13 lots and one existing driveway serving one new lot (see Appendix C of this FEIS). The 14-lot alternate access plan examined in the DEIS has two separate subdivision roadways, similar to the 13-lot conventional subdivision (see Appendix C of this FEIS). Furthermore, whereas the 14-lot subdivision included the preservation and renovation of the existing Monday House (45 Mill River Road) (also called the "Warren House"), the 13-lot conventional subdivision includes the potential preservation and renovation of both the Monday House and the Dean House (57 Mill River Road). The existing driveway that served the Dean House would be incorporated into the southernmost subdivision road. The lots within the 13-lot conventional subdivision would range in size from 5.00 acres (gross)/5.00 acres (net) to 8.51 acres (gross)/6.99 acres (net).

The following is a summary of the impacts associated with the 13-lot conventional subdivision, as compared to the 14-lot subdivision evaluated in the DEIS.

Soils and Topography

According to the *Soil Survey of Nassau County, New York* (hereinafter "the *Soil Survey*"), review of the relevant soil map for the subject property indicates that the soils on the subject property consist of Montauk silt loam, zero to three percent slopes (MkA) and three to eight percent slopes (MkB); Plymouth Riverhead complex, 15 to 35 percent slopes (PrD); and Riverhead sandy loam, three to eight percent slopes (RdB) and eight to 15 percent slopes (RdC). The Soil Survey indicates that, for the mapping units at the subject property, limitations are generally slight or moderate, and relate to slope, wetness or frost action. In general, these limitations can be overcome with careful design and siting of structures as well as by the installation of erosion and sedimentation control measures, all of which are proposed as part of this action.

For areas of PrD soils, severe limitations are indicated, relative to slope. Based on the overall subdivision and roadway design depicted by the 13-lot conventional subdivision, development will be concentrated away from severely-sloped areas. Development of home sites will be concentrated outside the severely sloped areas. The existence of steep to severe slope areas along the easterly 1,000± feet of the project area requires disturbance of up to 200 feet of existing cover to meet maximum roadway slopes in conformance with Village and NCDPW design parameters. Where the proposed roadways transect areas of this mapping unit, or other severely-sloped areas, careful grading would overcome the existing slope limitations of the soils.

Moderate limitations are indicated for the development of local roads at MkA, MkB, RdB and RdC soils on the basis of seasonal wetness and/or frost action. Roadway drainage and the use of coarse sub-base material are proposed to overcome such limitations.

Site-specific test holes were performed throughout the subject property to provide a cross-section of soil conditions across the site. As indicated by the project engineer, the results of the test holes throughout the subject property demonstrate that the material below the topsoil is mainly well-drained, and is expected to allow for the proper functioning of all proposed drainage and sanitary leaching structures.

Within the proposed residential lots, the typical home sites depicted on the 13-lot conventional subdivision are located in areas where slopes are less than 15 percent. As such, cut and fill of soils in these areas is generally limited to the excavation of foundations. Due to the presence of steep and severely-sloped areas at the subject property, the development of the proposed Mohawk Drive and South Drive roadways will require significant grading to ensure the appropriate road gradient in accordance with Village Code (up to eight percent), and 10 percent in existing steep slope areas with the approval of a waiver by the Planning Board, upon recommendation by the Village Engineer. The eastern portion of Mohawk Drive and the easterly end of South Drive will generally follow the existing roadways and driveways. This would somewhat reduce the required extent of cut and fill in these areas. However, a portion of the proposed South Drive currently has a slope of 15 percent, and grading of this area is required. As provided by the project engineer, the development of the proposed roadways will require the removal of approximately 170,127 cubic yards of soil from the site, including soils associated with the proposed recharge (stormwater) basin excavation. In addition, approximately 1,200 cubic yards of other materials are expected to be removed from the site. Potential additional cut or fill within the proposed residential lots is dependent upon the final custom design by future homeowners. However, it is expected that cut and fill will be balanced on individual residential lots, eliminating the need for exportation of material.

Based upon the USGS Topographic Map, Hicksville Quadrangle and site-specific topographic information provided by the project engineer, elevations at the subject property range between 70± feet above mean sea level, along Mill River Road and 240± feet above mean sea level, to the north/northeast.

The proposed Mohawk Drive and South Drive will follow portions of the existing road and driveways, where possible, to limit the required extent of grading. However, significant grading associated with the development of the proposed roadways would be required in order to provide acceptable gradient. The amount of soil removal associated with construction of the roadways in the 13-lot conventional subdivision is estimated at 143,723 cubic feet. As provided by the project engineer, any areas of the proposed roadway with cuts in excess of five feet and fill in excess of four feet will require disturbance of site area outside the 50 foot right-of-way area. The extent of disturbance into the adjacent lot areas will be detailed on final grading plans and will include 1-on-2 to 1-on-3 stabilized slopes with hydroseeding, and landscape planting consistent with existing ground cover at the site. This is consistent with Village and NCDPW design standards. It remains to be determined, based on completion of the tree survey and final drainage plans, as to whether the use of retaining walls would have any significant remedial benefit in the roadway slope areas. For every foot of cut in excess of five feet, two feet of disturbance will be required within lot areas. For every foot of fill in excess of four feet, three feet of disturbance would take place within lot areas.

The use of structural walls or stepped drywall systems, in contrast to the proposed stabilization of landscaped sloped areas, tends to create a "canyon" effect that would adversely impact the aesthetics of the existing groundcover. However, use of retaining walls would be considered based upon minimizing land disturbance as well as aesthetic concerns, at the discretion of the Planning Board.

Typical homesites depicted on the 13-lot conventional subdivision are proposed to be located in areas where the existing slope is less than 15 percent, demonstrating that future residences can be sited to minimize the extent of grading associated with their development.

Tax Lot 7 (which is not part of the subdivision) and the lot currently containing the Monday House will continue to use the existing 16 foot wide driveway right of way. One additional building lot (Parcel 9) will also make use of the right of way. The existing driveway which has a paved width of approximately 12 feet proceeds off the proposed centerline of Mohawk Drive at Station 7 + 50.

As demonstrated above, land development activities will disturb on-site soils and topography, and thus, such activities will increase the potential for soil erosion at the subject property. Prior to the commencement of construction activity at the subject property, a Stormwater Pollution Prevention Plan (SWPPP) detailing all erosion and sedimentation control measures to be implemented during and beyond construction and

prepared in accordance with Incorporated Village of Upper Brookville requirements, will be developed and submitted to both the Village and the NYSDEC. Monitoring and enforcement of erosion and sediment control measures would be handled by the Village of Upper Brookville Stormwater Management Officer.

Water Resources

The subject site is situated within the Oyster Bay Special Groundwater Protection Area (SGPA). The recommendation for such area is low-density residential development. Therefore, 13-lot conventional subdivision would comply with this recommendation. Also, as with the 14-lot subdivision, the 13-lot conventional plan would comply with the recommendations of the *Long Island Comprehensive Waste Treatment Management Plan (208 Study).*

As with the 14-lot subdivision, wastewater discharge for the proposed development is proposed to be accommodated on-site via individual sewage disposal systems. The proposed use of individual on-site sanitary systems to serve the proposed subdivision is consistent with the provisions of Section 5 of Article X of the Nassau County Public Health Ordinance. It is anticipated that the 13 single-family homes on the site will generate approximately 11,700 gpd in sewage effluent (based upon six-bedroom residences) that would be handled by on-site sanitary disposal systems in accordance with prevailing Nassau County Department of Health standards.

Based on a factor of 150 gpd per bedroom, as promulgated by the NCDH, and an assumed number of six bedrooms per home, the proposed 13-lot conventional subdivision is expected to use approximately 11,700 gpd of potable water. According to the project engineer, based upon the amount of turf anticipated for the subdivision and a rate of irrigation over the irrigation season (26 weeks), it is expected that total water for irrigation would average approximately 12,434 gpd over the year. Therefore, total water use is expected to be approximately 24,134 gpd.

The subject property is located within two water districts. The southerly two-thirds of the site are situated within the service area of the Jericho Water District, and the northerly one-third of the site is within the service area of the Oyster Bay Water District. The Applicant met jointly with both water districts, which determined and agreed that the Jericho Water District would provide service to the entire subdivision. In addition, as discussed in the DEIS for the originally-proposed 14-lot subdivision (see Sections 2.3 and 4.2.3), a water booster pump station (to amplify pressure for domestic use and fire protection), would be constructed on the site by the water district, and the site and associated facility would be dedicated to the Jericho Water District.

With respect to stormwater collection and recharge, whereas the 14-lot subdivision plan incorporated the use of drywells and a drainage easement along Mill River Road to handle stormwater runoff, the 13-lot conventional subdivision incorporates two stormwater basins (1.69 acres and 2.25 acres) as well as drywells associated with individual residences, drainage reserve areas (DRAs) on a limited number of individual lots, and a conservation drainage easement along Mill River Road. According to the project engineer, these stormwater facilities would accommodate the anticipated 581,916 cubic feet of stormwater generated by this layout.

Ecology

The impacts to ecological resources associated with the 13-lot conventional subdivision would be similar to those associated with the 14-lot subdivision discussed in the DEIS. Similar to the 14-lot subdivision, the largest change on the site will be the increase of the landscaped areas from existing conditions. The largest loss to a specific habitat with respect to the 13-lot conventional subdivision would be the Coastal Oak-Laurel

habitat. Loss of trees across the site would be similar to the 14-lot subdivision as discussed in Section 4.3 of the DEIS.

Although the overall acreage of natural habitats would decrease from existing conditions, the 13-lot conventional subdivision would not result in a major shift of the ecological communities over the long term. The existing wooded habitats (Coastal-Oak Laurel Forest and Successional Southern Hardwoods) as well as the Old Landscaping/Field habitat would continue to be represented and protected on-site within the proposed conservation easement areas. However, these conservation areas would be generally fragmented across the site. Individual tree species within these ecological communities would continue to be present on the subject property.

With respect to resident wildlife, the 13-lot conventional subdivision would remove some of the Coastal Oak – Laurel Forest and Successional Southern Hardwood habitats from the site, as well as some Old Landscaping/Field habitat. Accordingly, as with the 14-lot subdivision, some of the wildlife species that are supported by these habitats would be affected. However, as noted in the Section 3.3 of the DEIS, most of the wildlife found and expected to be found on site are species that are tolerant of human activity. Therefore, as the 13-lot conventional subdivision would leave buffers and separation between the residences and would potentially provide conservation areas at the southeastern portion of the site, most existing tolerant forest and edge wildlife species would still be provided with habitat, thereby minimizing overall impacts. Overall, as with the originally-proposed 14-lot conventional subdivision, it is anticipated that the habitats found on the project site after development of the 13-lot conventional subdivision would continue to provide suitable habitat for a variety of wildlife.

The reconfiguration of the proposed site roadways under the 13-lot conventional subdivision (i.e., two separate roadways vs. one roadway) would provide somewhat less internal habitat fragmentation, as there would be no roadway dividing the northern portion of the site from the southern portion of the site. Specifically, the separation of South and Mohawk Drives would remove the roadway from the central portion of the site and thereby provide increased connectivity across site buffers and separations between individual lots in this area. For this same reason, the 13-lot conventional subdivision would also provide a somewhat greater degree of habitat connectivity between the site and the Planting Fields Arboretum State Historic Park (hereinafter "the Planting Fields Arboretum"). Furthermore, the elimination of roadway surfaces from the central portion of the site would also remove paved surfaces from crossing the steep contours that currently exist in this area, and would eliminate the need for tree removal in this area.

As indicated in Section 3.3 of the DEIS, no endangered, threatened or rare plant or wildlife species were observed on the site during several site inspections. In addition, the NYNHP report dated September 12, 2008 indicated that no records exist for such species on the site or the immediate vicinity. Thus, no impacts to endangered, threatened or rare species are anticipated as a result of the 13-lot conventional subdivision.

Zoning and Land Use

The subject property is situated within the OP1 Zoning District of the Incorporated Village of Upper Brookville. In accordance with the prevailing regulations of that district, the 13-lot conventional subdivision includes the subdivision of the 97.16±-acre subject property into 13 residential lots, for future development with single-family homes and appurtenances.

The Incorporated Village of Upper Brookville requires a minimum lot area of five acres within the OP1 Zoning District. Portions of a proposed lot with a width less than 300 feet may not be counted toward the minimum lot area requirement. Additionally, for portions of parcels having slopes greater than 25 percent, a 65 percent deduction is applied, and for portions of parcels having slopes between 15 and 25 percent, a 30 percent deduction is applied when calculating the net lot area. Pursuant to §205-10.E of the Village Code, in the OP1 Zoning District, the above shall apply, however "...in no case shall such lot be required to exceed

seven acres in gross area." As provided by the project engineer, Table 2 describes the gross and net areas of each of the 13 proposed residential lots. All of the proposed lots will meet the minimum lot area standards of the OP1 Zoning District. According to the project engineer, the proposed lots also conform to the applicable minimum lot width and minimum frontage requirements of the OP1 Zoning District. These lots are similar in size to those of the originally-proposed 14-lot conventional subdivision.

Table 2 – Proposed Gross and Net Lot Areas

PARCEL NUMBER	13-LOT CONVENTIONAL SUBDIVISION	
	PROPOSED GROSS LOT AREA	PROPOSED NET LOT AREA*
1	6.02 acres	5.00 acres
2	5.00 acres	N/A
3	5.09 acres	5.00 acres
4	5.04 acres	5.00 acres
5	5.00 acres	N/A
6 (Monday House)	6.49 acres	5.68 acres
7	5.00 acres	N/A
8 (Dean House)	7.00 acres	N/A
9	7.09 acres	7.01 acres
10	7.40 acres	7.04 acres
11	7.42 acres	6.75 acres
12	8.51 acres	6.99 acres
13	6.06 acres	N/A

*Net area excludes those portions of a residential lot that are less than 300 feet in width, and deductions for areas containing steep or severe slopes. A value of "N/A" is provided for proposed lots where gross and net lot areas are equal.

As the proposed action includes the development of the subject property that is consistent with the requirements of the OP1 Zoning District and no variances are requested, no significant adverse zoning-related impacts are anticipated.

Land use and lot coverage for the 13-lot conventional subdivision are also similar to the 14-lot conventional subdivision analyzed in the DEIS (see Table 2, below). As opposed to 14 single-family homes (13 of which would be new), the 13-lot conventional subdivision would contain 13 single-family homes, 11 of which would be new. Whereas the 14-lot subdivision analyzed in the DEIS contemplated the renovation of the Monday House, the 13-lot conventional subdivision includes the renovation of both the Monday House and the Dean House, as noted above. In addition, the 13-lot conventional subdivision contains two stormwater basins and two access roadways, whereas the 14-lot subdivision included catch basins and drywells and one access roadway. Lot coverages for the 13-lot conventional subdivision are shown in Table 1 and compared to the originally-proposed 14-lot conventional subdivision (and the 13-lot conservation subdivision).

The proposed roadway lengths within the 13-lot conventional subdivision are as follows:

South Drive:	2,184 linear feet
North Drive:	477 linear feet
Mohawk Drive:	1,109 linear feet
Lots 11-13 Driveway:	500 linear feet
Total Length:	**4,270 linear feet**

As with the originally-proposed 14-lot subdivision, the 13-lot conventional subdivision is generally consistent with the goals and objectives of *The Master Plan of the Village of Upper Brookville, New York: Addendum*

September 27, 2005. Specifically, the proposed 13-lot conventional subdivision would be consistent with the *Master Plan* as follows: when possible, steep slopes will be maintained on the individual lots as well as along the Mill River Road corridor; development would be "open," with individual parcels ranging in size from 5.0 acres to 8.51-acres, preservation of the natural environment would be encouraged with the establishment of conservation areas on the overall subject property; and development within the 13-lot conventional subdivision would be single-family residential structures with appurtenances (i.e., pools, cabanas, etc.), consistent with the Village's rural residential character.

In addition, similar to the 14-lot conventional subdivision evaluated in the DEIS, the 13-lot conventional subdivision is also consistent with the current *Nassau County Comprehensive Plan,* as the recommended land use pattern is "low density" residential for the subject property. It is expected that the floor area ratio of the future residential development would be less than the recommended 0.05. In addition, the subdivision would protect aquifers, water bodies, and groundwater and surface water resources, and with the inclusion of conservation areas of specific lots, the conventional subdivision would protect some of the vegetation on the site. Provision of new, as well as preservation of existing housing stock are two goals of the *Nassau County Comprehensive Plan.*

Similar to the 14-lot conventional subdivision evaluated in the DEIS, the 13-lot conventional subdivision would comply with these recommendations by providing new housing stock as well as potentially preserving the existing estate residences on the property. The new residences would retain the estate-style character of the existing property, which conforms to another recommendation offered within the *Nassau County Comprehensive Plan.* Section VI of *the Nassau County Open Space Plan,* which identifies and discusses techniques for open space preservation and identifies the use of conservation easements as a means for protecting open space resources. The 13-lot conventional subdivision meets the objectives of the Applicant to subdivide the subject property into 13 single-family residential lots. Approximately 78.75 acres of the site would remain natural with 15.58 acres specifically included within conservation areas. This would facilitate the preservation of existing habitat and wildlife corridors. Therefore, the 13-lot conventional subdivision meets the objectives of the *Nassau County Open Space Plan* for the protection of open space resources.

The Arthur Dean Estate, which is a part of the subject property, is identified as potential open space by reference to *the New York State Open Space Conservation Plan,* wherein the Arthur Dean Estate is identified as a priority open space area. The Arthur Dean Estate potentially may be preserved as part of the 13-lot conventional subdivision. As demonstrated above, the 13-lot conventional subdivision is consistent with the *Nassau County Open Space Plan.*

Finally, to the extent applicable, the 13-lot conventional subdivision (like the originally-proposed 14-lot subdivision) is consistent with the goals and intent of the *New York State Open Space Conservation Plan* and the *Long Island North Shore Heritage Area Management Plan,* as analyzed in the DEIS. The Arthur Dean Estate was identified as a priority open space parcel, and, as noted above, the estate house is proposed to be preserved and incorporated into the 13-lot conventional subdivision. As discussed above, approximately 16 percent of the site would be protected as open space via conservation areas, consistent with the tools described within the *New York State Open Space Conservation Plan.* It should also be noted that the proposed action is consistent with the land use regulations of the prevailing OP1 zoning district of the Incorporated Village of Upper Brookville, as well as the subdivision regulations of the Village, which afford control over open space resources. Overall, the 13-lot conventional subdivision is consistent with the *New York State Open Space Conservation Plan.*

With respect to the *Long Island North Shore Heritage Area Management Plan,* the subject property does not contain historic resources of the Heritage Area, nor will the proposed development adversely affect the partially-adjacent Planting Fields Arboretum, listed on the National Register of Historic Places, as the proposed subdivision would be consistent in appearance and character with existing development adjacent to and in the area surrounding this resource, and the proposed subdivision would be consistent with prevailing

zoning. Based on the above, to the extent applicable, the proposed action is consistent with the goals and intent of the *LINSHA Management Plan.*

Traffic Access

Traffic access for the 13-lot conventional subdivision would be similar to the 14-lot Alternate Access Plan examined in Section 7.2 of the DEIS (see Appendix C of this FEIS). The proposed access driveway to lots 1 through 8 of the 13-lot conventional subdivision would be located approximately 60 feet to the south of the existing driveway serving 57 Mill River Road. This driveway would accommodate a single lane for entering vehicles and a single lane for exiting vehicles. The proposed access road would continue in a westerly direction from Mill River Road and terminate at a cul-de-sac serving various lots in the southern portion of the property. Approximately 1,500 feet from Mill River Road, the proposed North Drive would branch-off and extend northerly to serve lots 5, 6 and 7 in the north central portion of the property. Lots 9 through 13 would be served via the existing Mohawk Drive access driveway. This driveway would be reconfigured to meet Village roadway standards. It is proposed to extend the existing Mohawk driveway at its first bend to provide a cul-de-sac, which would serve lots 11, 12 and 13. The remainder of Mohawk Drive would continue to provide access to Tax Lot 7 (the Schwerin out-parcel). Tax Lot 7 is a landlocked parcel located within the proposed subdivision.

According to the sight distance recommendations from the NYSDOT's *Policy and Standards of the Design of Entrances to State Highways*, which refers to *Geometric Design of Highways and Streets*, published by the American Association of State Highway and Transportation Officials (AASHTO), the recommended sight distances to the left and right for vehicles exiting driveways onto two lane roads with design speeds of 35 MPH, (Case B1 and Case B3) are 390 feet and 335 feet, respectively. As field-measured, the sight distances for stopped passenger vehicles from the approximate proposed access driveway location were 525 feet and 535 feet to the left and right, respectively. Therefore the recommended intersection sight distance requirements have been achieved, and no additional clearing in the area of the proposed access would be required. Lots 9 through 13 would continue to be accessed via Mohawk Drive and would have limited sight distance for exiting vehicles as previously described in the DEIS.

Based on exportation numbers received from the project engineer, infrastructure construction will require that 170,127 cubic yards of soil be removed from the site for purposes of constructing South Drive, North Drive, Mohawk Drive and the recharge basins. Final grading plans for each of the individual lots have not been developed; however, the project engineer is proposing to grade the lots in an effort to balance the site so no further exportation is required. It is anticipated that both the easterly extent of South Drive and all of Mohawk Drive would be constructed simultaneously; one construction crew assigned to each of the roadways. Upon completion of Mohawk Drive, it is anticipated that only the terminus of South Drive, all of North Drive and the recharge basin will be left to construct and the same two crews will be utilized to finish the aforementioned work.

It is anticipated that heavy-duty, tri-axle, single-unit dump trucks (with an effective capacity of 14 cubic yards for soil) will be utilized to remove soil from the site. The removal of soil will require a total of approximately 12,150 truckloads. Other material removal under the 13-lot conventional subdivision is estimated at approximately 1,200 cubic yards. Based upon a reduced effective capacity of approximately 10 cubic yards per truck for other material such as stumps and C&D debris, an additional 120 truckloads will be required to be removed. Therefore, the total number of truckloads required for removal of soil and material is projected to be 12,270. Over the duration of an eight-hour working day, there will be approximately one truck trip every ten minutes. The exportation of material is expected to take approximately 255 working days to complete. The duration of work will also be further dependent on the contractor's schedule and weather. Construction vehicles will primarily access the site from the south and leave to the south, since this route will provide access to both Northern Boulevard and the Long Island Expressway, which are the primary east-west travel routes proximate to the site.

As previously stated, it is anticipated that heavy-duty, tri-axle, single-unit dump trucks will be utilized to haul soil and material from the site during construction activities. These trucks are of similar size and characteristics to other vehicles currently using Mill River Road, such as garbage trucks, construction vehicles, and delivery trucks. A review of the accident data from the past three years for Mill River Road does not indicate any accidents, which occurred due to the presence of heavy vehicles. Based on a review of the roadway geometry, field observations along Mill River Road, and the review of the accident data, it is the opinion of the Applicant that the roadway will be able to adequately service the additional construction traffic associated with the development.

The number of trips generated by construction workers during the AM and PM peak periods is expected to be similar to the number of trips generated by the future residential homes. Construction workers generally arrive and leave before the AM and PM peak hours experienced on the roads. It is estimated that the number of AM and PM peak hour trips associated with construction workers would be ten and 13 trips, respectively.

Community Facilities and Services

There would be minimal change in the impacts to community services based upon the 13-lot conventional subdivision. With respect to emergency services, it would be similar in roadway layout to the of the 14-lot Alternate Access Plan examined in the DEIS as there would be two full access points on Mill River Road (see Section 7.2 and Appendix G of the DEIS and Appendix C of this FEIS). With respect to education, the 13-lot conventional subdivision would be expected to generate between 4 and 14 school-aged children as compared to the 5 – 15 school-aged children generated by the 14-lot subdivisions. As with the proposed action, the addition of these school-aged children is not expected to have a significant impact on existing educational facilities.

Correspondence from the Fire Chief of the East Norwich Fire Company No. 1 (see Appendix E of the DEIS) indicated that the proposed residential lots (14) would not create a unique service demand upon the Fire Company. Therefore, one less lot would have less of an impact on fire protection services. With respect to police protection, while the proposed residential development would not be gated, it is expected that the future residences would be equipped with centrally-monitored security systems. Chief Maurice T. Sullivan of the Old Brookville Police Department indicated in correspondence contained in Appendix E of the DEIS, that the Department would provide exclusive police protection to the subject property. He also indicated that the two-access-point alternative would be safer for the proposed development, in order to limit the amount of vehicles having to use the Mohawk Drive entrance, which has limited sight distance. Therefore, the two access points shown in the 13-lot conventional subdivision are preferable to the Police Department.

The 13-lot conventional subdivision would be expected to generate 2.24-to-2.93 tons per month of solid waste. No adverse impacts to regional solid waste management facilities or practices are expected.

Finally, it is expected that the 13-lot conventional subdivision would require 24,134 gpd of water, as indicated above. As noted in the DEIS and above, the subject property is located within two water districts – Jericho and Oyster Bay. The Applicant met with both water districts, both of which agreed that the Jericho Water District would provide service to the entire subdivision. As indicated above, a water booster pump station is proposed to be built within a parcel situated along Mill River Road (see Appendix E). Construction of this building would be subject to Village of Upper Brookville requirements for, a special use permit architectural review and receipt of a building permit.

Overall, implementation of the 13-lot conventional subdivision would not have a significant adverse impact upon community facilities and services.

Aesthetics and Cultural Resources

The views from Mill River Road for the 13-lot conventional subdivision would be similar to those of the originally-proposed 14-lot subdivision. With respect to views into the subject property, whereas there would only be a driveway serving one lot in the 14-lot subdivision, the 13-lot conventional subdivision contains a 22-foot-wide roadway within a 50-foot-wide right-of-way. However, no existing or proposed structures are expected to be visible from Mill River Road with either subdivision plan. The 13-lot conventional subdivision plan depicts a stormwater basin along Mill River Road and Mohawk Drive, whereas this area in the 14-lot subdivision contains a residential lot. It is expected that the vegetation surrounding this stormwater basin would obscure most, if not all, of this feature from the adjacent roadway.

As noted in the DEIS, views of the subject property from surrounding areas generally include only vegetated areas. As with the 14-lot subdivision analyzed in the DEIS, much of the existing vegetation would remain (especially around the perimeter of the site) with the 13-lot conservation subdivision, and thus, views of the subject property are not expected to be significantly altered. Components of the subdivision that would reduce the potential for aesthetic impacts upon surrounding properties include the creation of a 100-foot-wide drainage easement, conservation area and stormwater basin (noted above) along Mill River Road and the retention of significant additional areas of natural vegetation within each of the building lots.

As indicated in the DEIS, the subject property is partially-adjacent to the Planting Fields Arboretum, listed on the National Register of Historic Places (90NR01949). The 13-lot conventional subdivision is consistent with prevailing zoning regulations, and would be similar or equivalent in character to the several developed residential properties that exist adjacent to, and in the area surrounding, the Planting Fields Arboretum. Therefore, there would be no significant adverse impact upon the Planting Fields Arboretum.

As such, overall, the 13-lot conventional subdivision is not expected to result in significant adverse impacts to cultural or historic resources.

3.3 13-Lot Conservation Subdivision

Based upon comments received during the public comment period on the DEIS for the originally-proposed 14-lot conventional subdivision and subsequent discussions between the Applicant and the Village Planning Board and its consultants, the Applicant has prepared a 13-lot conservation subdivision (in a cluster configuration) to address the environmental issues that were raised (see Appendix E).

According to New York State Village Law §7-738 (see Appendix F),

> *"A cluster development shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning local law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements."*

According to Village Law §7-738, "the purpose of a cluster development shall be to enable and encourage flexibility in design and development of land in such a manner as to preserve the natural and scenic qualities of open lands." As explained in greater detail below, in this case, permitting the proposed lots to be clustered on the western-southwestern portion of the subject property would allow the steepest slopes and the more desirable vegetation habitat (Coastal Oak – Laurel Forest) to be preserved in a large contiguous area, which would also provide a significant wildlife corridor.

Pursuant to Village Law §7-738, the procedure for the clustering of lots on a property may be followed at the discretion of the Planning Board, should it, in its opinion, benefit the Village. However, in order for the Planning Board to approve a conservation (or cluster) subdivision, the Village Board of Trustees would, by local law, have to enact enabling legislation to permit the Planning Board authorize clustering in conjunction with the approval of the subdivision plat. Currently, the Village of Upper Brookville does not contain a provision to allow the Board of Trustees to grant the Planning Board the authority to approve a conservation subdivision within the OP1 zoning district, or any other residential district within the Village. Therefore, the Board of Trustees would have to approve such legislation prior to the Planning Board acting upon the conservation subdivision.

The 13-lot conventional subdivision (discussed in Section 3.2) is a zoning-compliant plan that serves as the "yield" map for the conservation subdivision, as it depicts a subdivision containing lots conforming to the bulk and dimensional requirements of the OP1 zoning district, as well as other applicable Village Code requirements. An analysis of the conservation subdivision with 13 residential lots is provided below.

The lots within the 13-lot conservation subdivision would range in size from 2.23 acres to 4.38 acres (the latter containing the Monday House and its appurtenances), with an average lot size of 2.91 acres. However, the overall yield of the site would be 7.47 acres per lot, which conforms to the requirements of the prevailing OP-1 Zoning District. The conservation subdivision contains mostly contiguous conservation areas (outside of individual lots) of 56.83 acres (58.5 percent of the overall site). These conservation areas comprise the majority of the northern and eastern portions of the subject property, which are the portions of the subject property that contain the steepest slopes. With the exception of the subdivision roadway (and the existing Mohawk Drive paved right-of-way), the conservation areas are contiguous. The only improvement proposed within the conservation area is a DRA that is proposed to capture stormwater runoff from a portion of the subdivision roadway. A 100-foot-wide drainage conservation easement is proposed to be located along Mill River Road, and the water booster pump station site of 0.18 acre situated along this roadway is proposed to be dedicated to the Jericho Water District. In addition to the conservation areas, another 22.91 acres of area within the residential lots is proposed to remain natural. Therefore, overall, approximately 76.5 percent of the site would remain natural as part of the 13-lot conservation subdivision.

The 13-lot conservation subdivision considers potential preservation of the Monday House, whereas the Dean House and its appurtenances would be removed. The decision to remove the Dean House (which was mutually agreed upon by the Village and the Applicant) was made in order to relocate the proposed subdivision roadway in order to minimize the impacts to the slopes in that area of the site. A large portion of the Dean property would be contained within the proposed conservation area and would include a DRA, while the existing driveway that served the Dean House would be incorporated into the proposed subdivision road. It is anticipated that Mohawk Drive would be left in its present condition, although it would not be used for access for the proposed subdivision. The subdivision road is proposed to intersect Mill River Road approximately 260 feet from the southern property line and approximately 930 feet from Mohawk Drive. Just past the midway point of this subdivision road, an access easement roadway is proposed to extend north to serve Parcels 11, 12, and 13 as well as provide access to Tax Lot 7 (the Schwerin out-parcel). This would be the only access for the out-parcel, as the westernmost portion of Mohawk Drive is expected to be abandoned in place. Specific details of such abandonment will be determined through consultations between the Applicant and the Village. A stormwater recharge basin of approximately 1.69 acres in size, located adjacent to Parcel 11 and 12, is proposed to be constructed, along with a 20-foot-wide drainage easement located adjacent to Parcels 8 through 12. The drainage pipes have been relocated within this 20-foot-wide drainage easement.

The future residences within the conservation subdivision would be situated on the flattest portion of the subject property, while the most steeply sloped areas would be preserved. A legal instrument will be developed by the Applicant, in cooperation with the Village, to ensure that no disturbance will occur within the conservation areas. Such instrument will also outline maintenance and protection responsibilities as well as permitted/ prohibited activities within these areas.

Soils and Topography

As discussed in Section 3.2, the *Soil Survey* indicates that, for the mapping units at the subject property, limitations are generally slight or moderate, and relate to slope, wetness or frost action. In general, these limitations can be overcome with careful design and siting of structures as well as by the installation of erosion and sedimentation control measures, all of which are proposed as part of this action. This is discussed later in this section.

For areas of PrD soils, noted above, severe limitations are indicated, relative to slope. Based on the overall subdivision and roadway design depicted by the 13-lot conservation subdivision, development of the overall subdivision and the future home sites will be concentrated in the western and southwestern portions of the site, outside the severely sloped areas. However, as discussed in Section 3.2, the existence of steep to severe slopes along the easterly 1,000± feet of the project area requires disturbance of up to 200 feet of existing cover to meet maximum roadway slopes in conformance with Village and NCDPW design parameters. Where the proposed roadway transects areas of this mapping unit, or other severely-sloped areas, careful grading would overcome the existing slope limitations of the soils. However, the potential disturbance to the steepest on-site slopes would be far less than in the 13-lot conventional subdivision, as the northern and eastern portions of the subject site would be essentially left in their natural condition.
As discussed in Section 3.2, site-specific test holes were performed and the results of the test holes throughout the subject property demonstrate that the material below the topsoil is mainly well-drained, and is expected to allow for the proper functioning of all proposed drainage and sanitary leaching structures.

Within the proposed residential lots, the typical home sites depicted on the 13-lot conservation subdivision are located in westerly portion of the site areas where slopes are less than 15 percent. As such, cut and fill of soils in these areas is generally limited to the excavation of foundations and driveway areas. The easterly 1,000± foot portion of the project area contains slopes generally in excess of 15 percent and significant areas in excess of 25 percent. Due to this site condition, construction of proposed South Drive and the southerly portion of the proposed Access Easement roadways will require significant grading to ensure the appropriate road gradient in accordance with Village Code (up to eight percent), and 10 percent in existing steep slope areas, with the approval of the Planning Board, upon recommendation by the Village Engineer. The easterly end of South Drive will generally follow the existing driveway and improved portion of the former Dean Estate. While significant cut (21 feet) will be required in a portion of this area, the impact will be to already disturbed and improved areas. The development of the proposed roadways (South Drive and the Access Easement) will require the removal of approximately 117,886 cubic yards of soil from the site, including soils associated with the proposed recharge (stormwater) basin excavation, but excluding topsoil, which will remain on-site. As with the 13-lot conventional subdivision, potential additional cut or fill within the proposed residential lots is dependent upon the final custom design by future homeowners. However, it is anticipated that cut and fill will be balanced on individual residential lots, eliminating the need for exportation of material. In addition, the conservation subdivision is projected to require the removal of approximately 4,000 cubic yards of other materials, including organic materials and C & D debris, mainly associated with the Dean House. Based upon these figures, total soil and material removal would be almost 50,000 cubic yards less than for the 13-lot conventional subdivision.

The proposed South Drive will follow in part portions of the existing driveway and improved area of the former Dean Estate, to limit the required extent of grading and ground cover impact. However, significant grading associated with the development of the proposed roadway driveway access easement would be required in order to provide acceptable gradient. The amount of soil removal associated with construction of the roadway and driveway access easement in the 13-lot conservation subdivision alternative is estimated at 104,213 cubic feet of the total 117,886 cubic feet of soil removal associated with the infrastructure installation. As with the 13-lot conventional subdivision, areas of the proposed roadway with cuts in excess of five feet and fill in excess of four feet will require disturbance of site area outside the 50 foot right-of-way area. The extent of disturbance into the adjacent lot areas will be detailed on final grading plans and will include 1-on-2 to 1-on-3 slopes stabilized with erosion control mats (or similar), hydroseeding, and landscape planting

consistent with existing ground cover (i.e., native vegetation) in order to assist in naturalizing the area. This is consistent with Village and NCDPW design standards. It remains to be determined, based on completion of the tree survey and final drainage plans, as to whether the use of retaining walls would have any significant remedial benefit in the roadway slope areas. However, at this time, it is proposed that no retaining wall be installed within the 13-lot conservation subdivision. For every foot of cut in excess of five feet, two feet of disturbance will be required within lot areas. For every foot of fill in excess of four feet, three feet of disturbance would take place within lot areas. Typical homesites depicted on the 13-lot conservation subdivision are proposed to be located in areas where the existing slope is less than 15 percent, demonstrating that future residences can be sited to minimize the extent of grading associated with their development.

Land development activities will disturb on-site soils and topography, and thus, such activities will increase the potential for soil erosion at the subject property. As with the conventional subdivision, prior to the commencement of construction activity, a stormwater pollution prevention plan detailing all erosion and sedimentation control measures will be prepared and implemented in accordance with Incorporated Village of Upper Brookville requirements. It will be submitted to both the Village and the NYSDEC. Monitoring and enforcement of erosion and sediment control measures would be handled by the Village of Upper Brookville Stormwater Management Officer.

Water Resources

Wastewater discharge for the conservation subdivision is proposed to be accommodated on-site via individual sewage disposal systems. The proposed use of individual on-site sanitary systems to serve the proposed subdivision is consistent with the provisions of Section 5 of Article X of the Nassau County Public Health Ordinance. It is anticipated that the 13 single-family homes within the conservation subdivision would generate approximately 11,700 gpd in sewage effluent (based upon six-bedroom residences) that would be handled by on-site sanitary disposal systems in accordance with NCDH standards.

Based on a factor of 150 gpd per bedroom, as promulgated by the NCDH, and an assumed number of six bedrooms per home, the proposed 13-lot conventional subdivision is expected to use approximately 11,700 gpd of potable water. According to the project engineer, based upon the amount of turf anticipated for the subdivision and a rate of irrigation over the irrigation season (26 weeks), it is expected that total water for irrigation would average approximately 17,070 gpd over the year. Therefore, total water use is expected to be approximately 28,770 gpd.

Similar to the other subdivision designs, the Jericho Water District would provide service to the entire subdivision. In addition, as with the other subdivision designs, the water booster pump station, which is required to amplify pressure for domestic use and fire protection, would be constructed on the site and dedicated to the Jericho Water District. This facility is proposed to be located along Mill River Road, adjacent to the southernmost conservation area (see Appendix E of this FEIS).

With respect to stormwater, whereas the 14-lot subdivision plan and the alternate access plan incorporate the use of drywells and a drainage easement along Mill River Road to handle stormwater runoff, similar to the 13-lot conventional subdivision, the 13-lot conservation subdivision incorporates one stormwater basin (1.69 acres) as well as drywells associated with individual residences, a DRA (located within the southernmost conservation area), and a drainage easement along Mill River Road. According to the project engineer, these stormwater facilities would have the capacity to handle the projected 430,430 cubic feet of stormwater generated by the conservation subdivision. The amount of stormwater generated by the conservation subdivision is significantly less than the conventional subdivision due to the considerable reduction in impervious surfaces. As previously noted, the proposed drainage pipes have been relocated to a 20-foot-wide drainage easement adjacent to the 50-foot conservation easement shown on Lots 8 through 12 of the 13-lot conservation plan (see Appendix E of this FEIS).

Ecology

As shown in Table 1, the conservation subdivision would preserve significant area of natural vegetation (74.36± acres), as compared to 78.75± acres under the 13-lot conventional subdivision. By comparison, the amount of lawn and landscaped areas would be 13.24± acres under the 13-lot conservation subdivision versus the 13-lot conventional subdivision (6.39± acres) and the 14-lot conventional subdivision (16.65± acres). With the exception of two roadways (the existing Mohawk Drive and the eastern section of the proposed South Drive), the northern and eastern portions of the site would be preserved.

By locating the residential development on the western and southwestern portions of the site, overall impacts to ecological resources would be significantly reduced under the 13-lot conservation subdivision. The preservation of contiguous existing habitat on the northern and eastern portions of the site would also preserve the majority of Coastal Oak – Laurel Forest habitat on the subject property. As detailed in the DEIS, Coastal Oak – Laurel Forest is the only existing ecological community on the site that is not ranked as "secure" both globally and in New York State. According to the -New York Natural Heritage Program, Coastal Oak – Laurel Forest is defined as rare and local throughout its range, found locally in a restricted range, or vulnerable to extinction throughout its range because of other factors. Therefore, the conservation subdivision would result in the preservation of the majority of "rare/vulnerable" habitat on the subject property. Furthermore, all other existing ecological habitats, including Successional Southern Hardwoods and Old Landscaping/Field, would continue to be represented and protected on-site.

As the majority of steep slopes on the site are found within the northern and eastern areas to be preserved under the conservation subdivision, it is anticipated that erosion and sedimentation impacts to habitats, vegetation and wildlife resulting from the grading of steep contours would be minimized, as compared to the 13-lot and 14-lot conventional subdivisions.

With respect to trees, as the 13-lot conservation subdivision would result in preservation of the majority of Coastal Oak – Laurel Forest on the site, most individuals of the representative tree species of this ecological community would also be preserved. These include scarlet oak, white oak, black oak and chestnut oak trees, as well as mountain laurel and blueberry shrubs. As significant areas of Successional Southern Hardwoods (the only other existing wooded habitat type on the site) would also be preserved within the proposed buffer areas and separations between individual lots, it is anticipated that the individual tree species comprising this ecological community would continue to be present on the site. As a result, it is expected that individuals of most, if not all, existing tree species would continue to exist on the subject property

Regarding wildlife, the arrangement of the residential development on the western and southwestern portions of the site would result in a large, nearly contiguous block of preserved habitat on the northern and eastern portions of the site. It is anticipated that this habitat block would continue to support representatives of all existing wildlife species, including those less tolerant of human activity that might otherwise be displaced from the site under the 13-lot and 14-lot conventional subdivisions. Furthermore, the undeveloped habitat block on the northern and eastern portions of the subject property would provide significant connectivity and serve as a wildlife corridor among the site and adjacent properties, including the Planting Fields Arboretum.

As indicated in Section 3.3 of the DEIS, no endangered, threatened or rare plant or wildlife species were observed on the site during several site inspections. In addition, the NYNHP report dated September 12, 2008 indicated that no records exist for such species on the site or the immediate vicinity. Thus, no impacts to endangered, threatened or rare species are anticipated as a result of the conservation subdivision.

With respect to exploitably vulnerable plants, as indicated in the DEIS, the majority of exploitably vulnerable species identified on the site were observed within Coastal Oak – Laurel Forest and steep slope areas on the northern and eastern portion of the site. Under the conservation subdivision, the majority of Coastal Oak –

Laurel Forest and steep slope areas would be preserved. As such, the majority of existing habitat for the exploitably vulnerable plants on the site would be preserved as well.

Overall, no significant adverse impacts to local or regional plants, wildlife or ecological communities are anticipated as a result of the conservation subdivision.

Zoning and Land Use

Zoning of the subject property would remain OP1 and the maximum number of lots permitted on the site would not exceed the 13-lot yield plan, discussed above. However, should the Board of Trustees grant the Planning Board the authority to cluster the lots within the property (in order to, among other thing, preserve the steep slopes and natural vegetation), the 13 residential lots would range in size from 2.23 acres to 4.38 acres, with an average lot size of 2.91 acres. The overall yield on the property would be 7.47 acres per lot, in accordance with the requirements of the OP1 Zoning District (5.0 acres per lot). In addition, no lot within the proposed conservation subdivision would be smaller than any lot that is currently permitted in the Village (the Residence R1 District permits a minimum lot size of two acres). Further, the proposed lots have been designed to generally adhere to the bulk and dimensional regulations of the R-1 zoning district. As provided by the project engineer, Table 3 indicates the size of each of the 13 proposed residential lots for the conservation subdivision.

Table 3 – Proposed Lot Areas

CONSERVATION SUBDIVISION	
PARCEL NUMBER	PROPOSED LOT AREA
1	2.39 acres
2	2.23 acres
3	2.92 acres
4	3.60 acres
5	3.13 acres
6	3.05 acres
7	2.25 acres
8	2.87 acres
9	2.62 acres
10	3.28 acres
11	2.56 acres
12	2.57 acres
13 (Monday House)	4.38 acres

Land use for the 13-lot conservation subdivision is similar to the 14-lot and 13-lot conventional subdivisions; however, total impervious coverage is significantly different (8.62 acres in the 14-lot conventional subdivision, 8.08 acres in the 13-lot conventional subdivision and 6.46 acres in the 13-lot conservation subdivision). Also, as opposed to 14 single-family homes (13 of which would be new), the conservation subdivision would contain 13 single-family homes, 12 of which would be new (the Monday House would be preserved and renovated).

The proposed roadway lengths within the conservation subdivision are as follows:

South Drive:	2,600 linear feet
Access Easement:	500 linear feet
Total Length:	**3,100 linear feet**

South Drive would require a relaxation of the 900 foot length of roadway requirement set forth in Section 180-17.H(2) of the Village's Subdivision Regulations. Although North Drive/Access Easement is slightly longer in the conservation subdivision (500 linear feet v. 477 linear feet), the removal of the use of Mohawk Drive in the conservation subdivision would significantly reduce the total length of roadway within the subdivision (from 4,270 linear feet to 3,100 linear feet. The use of Mohawk Drive would be eliminated or limited to emergency access use, based upon the decision of the Planning Board, and the out-parcel would obtain access through the proposed subdivision. Mohawk Drive would continue to serve the existing residences located to the northeast, but the area beyond that would be closed to public access. See previous discussion in Section 3.3.

The 13-lot conservation subdivision is consistent with the goals and objectives of the *Plan of the Village of Upper Brookville, New York: Addendum September 27, 2005.* Specifically, the proposed conservation subdivision would be consistent with the *Master Plan* as follows: the subdivision and associated development would be clustered on the overall subject property such that large tracts of woodlands (48±-acres) would be established as conservation areas; the majority of development would be outside the areas with the steepest slopes on-site, development would be "open," with individual parcels ranging in size from 2.23 acres to 4.38-acres; and development within the conservation subdivision would be single-family residential structures with appurtenances (i.e., pools, cabanas, etc.), consistent with the Village's rural residential character.

In addition, the conservation subdivision is also consistent with the current *Nassau County Comprehensive Plan*, as the density and use are the same as the 13-lot conventional subdivision, discussed in Section 3.2. *The Nassau County Comprehensive Plan* notes the designation of SGPAs and their need to be minimally developed or carefully managed to protect the quantity and quality of the water recharging the aquifer system (Page III-2). Like the 14-lot conventional subdivision analyzed in the DEIS, the conservation subdivision would comply with the relevant provisions of the SGPA Plan, as discussed in Section 4.2 of the DEIS. The conservation subdivision also provides a large contiguous open space resource for recharge purposes.

The conservation subdivision would protect aquifers, water bodies, and groundwater and surface water resources, and with the inclusion of two conservation areas, the conservation subdivision would protect steep slopes and vegetation on a large portion of the site. Provision of new housing and the preservation of existing housing are two goals of the *Nassau County Comprehensive Plan.* Similar to the 14-lot subdivision analyzed in the DEIS, the 13-lot conservation subdivision would comply with these recommendations by providing new housing stock as well as preserving one of the existing estate residences on the property. The new residences would retain the estate-style character of the existing property, which conforms to another recommendation offered within the *Nassau County Comprehensive Plan.* Overall, the conservation subdivision is consistent with the *Nassau County Comprehensive Plan.*

The conservation subdivision is also consistent with the *Nassau County Open Space Plan,* which identifies the subject property as potential open space. Section VI of the *Nassau County Open Space Plan,* which identifies and discusses techniques for open space preservation, identifies the use of conservation easements as a means for protecting open space resources. The conservation subdivision would result in 13 single-family residential lots on the 44.33± acre western and southwestern portions of the subject property,[1] a 1.7± acre recharge basin and 51.13± acres of conservation easement area (on the northern and eastern portions of the property). The proposed conservation easement areas in the northern and eastern portion of the site and the stormwater basin would account for approximately 54.4 percent (.52.83± acres) of the overall subject property

[1] These lots contain approximately 3.86 acres of conservation easement areas.

(97.16± acres) and would allow for the preservation of existing habitat and wildlife corridors, which meets the objectives of the Nassau County Open Space Plan for the protection of open space resources.

As indicated in the DEIS, the subject property contains the Arthur Dean Estate, which it is specifically identified within the *New York State Open Space Conservation Plan* as a priority open space parcel. Additionally, the Arthur Dean Estate (which constitutes a portion of the subject property) is recommended by the New York State Open Space Region 1 Regional Advisory Council for inclusion in the lists of priority open space parcels in the 2006 New York State Open Space Conservation Plan and the 2009 New York State Open Space Conservation Plan among various other parcels referred to therein as the "Planting Fields State Park Additions" (under Special Groundwater Protection Areas). As indicated above, the 13-lot conservation subdivision would utilize conservation easements to protect a total of 54.99± acres (56.6± percent) of the overall 97.16±-acre subject property, at no expense to the taxpayers. In addition, another 19.37 acres within individual residential lots would remain natural. Therefore, a total of approximately 76.5 percent of the site would remain in its natural condition.

The *Long Island North Shore Heritage Area (LINSHA) Management Plan* presents a number of implementation strategies, many of which are not relevant to the proposed action, which is a private subdivision. Of those strategies that apply to the subject property, the use of conservation easements to preserve approximately 56.6 percent of the subject property under the conservation subdivision plan is consistent with the *LINSHA Management Plan* goal to preserve open space. There are two estate properties on the overall subject site, the Arthur Dean Estate and the Monday House. The Monday House is being considered for preservation as part of the conservation subdivision; however, the Arthur Dean Estate structures would be removed. However, the recommendations set forth in the LINSHA Management Plan are voluntary and non-binding on the Applicant.

Traffic Access

Access to the site would be handled by one subdivision road (South Drive). The access point would be located on Mill River Road approximately 60 feet south of the driveway currently serving 57 Mill River Road. The access to Mill River Road will provide one lane for entering vehicles and one lane for exiting vehicles. South Drive would extend in a westerly direction from Mill River Road and terminate at a cul-de-sac serving various lots in the southern portion of the property. Approximately 1,300 feet from Mill River Road, the proposed Easement Access would branch-off and extend northerly to serve proposed Parcels 11, 12 and 13 and Tax Lot 7 in the north central portion of the property.

According to the sight distance recommendations from the NYSDOT's *Policy and Standards of the Design of Entrances to State Highways*, which refers to *Geometric Design of Highways and Streets*, published by AASHTO, the recommended sight distances to the left and right for vehicles exiting driveways onto two lane roads with design speeds of 35 MPH, (Case B1 and Case B3) are 390 feet and 335 feet, respectively. As field-measured, the sight distances for stopped passenger vehicles from the approximate subdivision road access (South Drive) were 525 feet and 535 feet to the left and right, respectively. Therefore the recommended intersection sight distance requirements have been achieved, and no additional clearing in the area of the proposed access is required.

The 13-lot conservation subdivision would generate fewer trips than the 14-lot subdivision evaluated in the DEIS (see Table 1).

Based on exportation numbers prepared by the Applicant's project engineer, infrastructure construction will require that 117,886 cubic yards of soil be removed from the site for purposes of constructing South Drive, the Access Easement road and the recharge basin. In addition, approximately 4,000 cubic yards of material are expected to be removed from the site. Final grading plans for each of the individual lots have not been developed; however, as with the 13-lot conventional subdivision, the project engineer expects to balance cut

and fill on each lot so that no further exportation of material is required. It is anticipated that one crew will be utilized to construct the first portion of South Drive up to the Access Easement road and once this segment of South Drive is completed, two crews will be utilized to construct the remaining Access Easement Road, the recharge basin and the terminus of South Drive.

Using heavy-duty dump trucks (with an effective capacity of 14 cubic yards for soil and 10 cubic yards for other material), removal of soil and material will require a total of approximately 8,820 truckloads (approximately 3,450 fewer truckloads [28 percent less] than for the 13-lot conventional subdivision). Over the duration of an eight-hour working day, there will be approximately one truck trip every 10 minutes. Therefore, exportation of soil and material, as defined in this FEIS, is expected to take approximately 185 working days to complete, as compared to the approximately 255 days associated with the 13-lot conventional subdivision. The duration of work will also be further dependent on the contractor's schedule and weather. Construction vehicles will primarily access the site from the south and leave to the south, since this route will provide access to both Northern Boulevard and the Long Island Expressway, the primary east-west travel routes proximate to the site.

It is anticipated that heavy-duty, tri-axle, single-unit dump trucks will be utilized to haul material from the site during construction activities. These trucks are of similar size and characteristics to other vehicles currently using Mill River Road, such as garbage trucks, construction vehicles, and delivery trucks. A review of the accident data from the past three years for Mill River Road does not indicate any accidents occurred due to the presence of heavy vehicles. Based on a review of the roadway geometry, field observations along Mill River Road, and the review of the accident data, it is the opinion of the Applicant's traffic consultant that the roadway will be able to adequately service the additional construction traffic associated with the development.

The number of trips generated by construction workers during the AM and PM peak periods is expected to be similar to the number of trips generated by the future residential homes. Construction workers generally arrive and leave before the AM and PM peak hours experienced on the roads. Therefore, it is estimated that the number of AM and PM peak hour trips associated with the construction workers would be ten and 13 trips, respectively.

Community Facilities and Services

There would be minimal change in the impacts to community services from those discussed in the DEIS, based upon the 13-lot conservation subdivision, with the exception of the roadway layout (discussed below). With respect to education, the conservation subdivision would be expected to generate between 4 and 14 school-aged children, slightly fewer than the 14-lot conventional subdivision evaluated in the DEIS. The addition of these school-aged children is not expected to have a significant impact on existing educational facilities.

Correspondence from the Fire Chief of the East Norwich Fire Company No. 1 (see Appendix E of the DEIS) indicated that the proposed residential lots (14) would not create a unique service demand upon the Fire Company. Therefore, one fewer lot would have even less of an impact on fire protection services.

With respect to police protection, while the proposed residential development would not be gated, it is expected that the future residences would be equipped with centrally-monitored security systems. Chief Maurice T. Sullivan of the Old Brookville Police Department indicated in correspondence contained in Appendix E of the DEIS, that the Department would provide exclusive police protection to the subject property. Based upon the original site layout shown in the 14-lot conventional subdivision evaluated in the DEIS, the Chief indicated that two access points would be preferable to one, especially due to the limited sight distance at Mohawk Drive. However, since the lots are now located on one portion of the site, it is not appropriate or possible to provide two separate access points. Furthermore, the one access point in the

conservation subdivision is located near the existing driveway currently serving 57 Mill River Road and is not at Mohawk Drive. The new location of the site access exceeds the intersection sight distance requirements outlined in the NYSDOT's *Policy and Standards of the Design of Entrances to State Highways*, which refers to *Geometric Design of Highways and Streets*, published by AASHTO.

It is not anticipated that the Mohawk Drive access will be incorporated into the design of the proposed conservation subdivision. The Applicant proposes that Mohawk Drive be eliminated or limited to emergency access use, and the out-parcel would obtain access through the proposed subdivision. Mohawk Drive would continue to serve the existing residence located to the northeast, but the area beyond that would be closed to public access.

The conservation subdivision would be expected to generate 2.24-to-2.93 tons per month of solid waste, slightly less than the solid waste projection for the 14-lot conventional subdivision evaluated in the DEIS. No adverse impacts to regional solid waste management facilities or practices are expected.

Finally, the conservation subdivision would require 28,770 gpd of water, slightly less than that associated with the 14-lot conventional subdivision evaluated in the DEIS. As noted in the DEIS and above, the subject property is located within two water districts – Jericho and Oyster Bay. The Applicant met with both water districts, both of which agreed that the Jericho Water District would provide service to the entire subdivision (see Appendix G). As with the 13-lot conventional subdivision, a water booster pump station site (to be dedicated to the Jericho Water District) would be located on the subject property along Mill River Road. Construction of this building would be subject to Village of Upper Brookville requirements for architectural review and receipt of a building permit.

Overall, implementation of the conservation subdivision would not have a significant adverse impact upon community facilities and services.

Aesthetics and Cultural Resources

The aesthetics of the site under the 13-lot conservation subdivision would be different than the 14-lot conventional subdivision or any of the other alternatives examined in the DEIS, as more houses would be visible from Mill River Road with implementation of the 14-lot conventional subdivision. While views of the eastern, northern and southern portions of the site would remain as they currently exist, views from the western, northwestern and southwestern portions of the site could potentially change. All of the proposed lots would be located on western and southwestern portions of the site. However, it is likely that the future residences would be considerably set back from the property lines, and future structures would be significantly screened by both existing vegetation and new landscaping.

As indicated above, the portion of the site to be developed with residences adjoins the Planting Fields Arboretum property. Nine of the 13 proposed residential lots and the proposed stormwater basin within the conservation subdivision are adjacent to the property line of the Planting Fields Arboretum, one more than in the 13-lot conventional subdivision and the same as in the originally-proposed 14-lot subdivision. Views to and from the Planting Fields Arboretum would, for the most part, be screened by existing vegetation on both properties. Where such views are not currently screened, in the area of the Arboretum's maintenance area, it is expected that additional landscaping would be installed in the future within the individual lots.

No residences would be located directly along Mill River Road. The closest residences to this roadway would be potentially located on Parcels 1, 2 and 13 (the existing Monday House). The existing house and its accessory structures are not currently visible from Mill River Road, and it unlikely that the proposed houses on Parcels 1 and 2 would be visible from this roadway. The only proposed structure to be located along this roadway, which would potentially be visible, is a small water booster pump station. However, it would likely

be screened by vegetation, and the design of the booster station would be reviewed by the Village's Architectural Review Board, prior to approval and construction.

As indicated in the DEIS, and as discussed above, the subject property is partially-adjacent to the Planting Fields Arboretum, listed on the National Register of Historic Places (90NR01949). However, the use of the site for single-family residences is permitted under existing zoning, and the maximum number of lots does not exceed that permitted by the OP1 zoning district. Furthermore, the conservation subdivision would preserve open space adjacent to the Planting Fields Arboretum. Therefore, no significant adverse impact upon the Planting Fields Arboretum would be expected.

As such, overall, the 13-lot conservation subdivision is not expected to result in adverse impacts upon cultural or historic resources.

4.0

Comments and Responses

Sidney B. Bowne & Son, LLP
Village Engineer
May 26, 2009

Comment No. C1:

The Required Permits section should indicate that the NYSDEC requires written permission for disturbances of greater than 5 acres of disturbance, as part of the SPDES Stormwater review.

Response No. C1:

The New York State Department of Environmental Conservation (NYSDEC) requires written permission for disturbances greater than five acres as part of the SPDES stormwater review.

The list of permits/approvals required has been modified accordingly and is reproduced below. In addition, the list below now reflects: (a) the requirement for the Board of Trustees to enact enabling legislation to permit the Planning Board to authorize Conservation Subdivisions within the Village; (b) required approval by the Jericho and the Oyster Bay Water Districts to allow the Jericho Water District to serve the entire subdivision without modification of water district boundaries,[2] (c) required approval from the Nassau County Department of Public Works (NCDPW) for the proposed stormwater basin, and (d) required approval from the Nassau County Department of Health (NCDH) of the sewage disposal method.

[2] The subject property is located within two water districts. The southerly two-thirds of the site are within the service area of the Jericho Water District, and the northerly one-third of the site is within the service area of the Oyster Bay Water District. The Applicant had met jointly with both water districts, which had determined and agreed that the Jericho Water District would provide service to the entire subdivision. In addition, as with the originally-proposed 14-lot conventional subdivision, a water booster station (to amplify pressure for domestic use and fire protection) would be constructed on the site and dedicated to the Jericho Water District. If the water booster station is to be constructed, the issuance of a Conditional Use Certificate and Architectural Review would be required from the Board of Trustees, and a building permit would be required from the Building Department.

Agency	Permits/Approvals Required
Planning Board of the Incorporated Village of Upper Brookville	Subdivision Approval Roadway Length/Cul-de-Sac Waiver
Board of Trustees of the Incorporated Village of Upper Brookville	Adoption of New York State Village Law §7-738 through Local Law to allow the Planning Board the Authority to approve Conservation Subdivisions
	Special Use Permit or Conditional Use Certificate for Water Booster Pump Station
	Architectural Review of Water Booster Pump Station
Building Department of the Incorporated Village of Upper Brookville	Building Permits for Water Booster Pump Station and Future Residences/Structures
Nassau County Planning Commission	239-m Review (in connection with Subdivision Approval)
Storm Water Management Officer of the Incorporated Village of Upper Brookville	Stormwater Pollution Prevention Plan (SWPPP) Approval
Nassau County Department of Health[3]	Water Supply – Main Extension
	Sewage Disposal
Nassau County Department of Public Works	Stormwater Management System
Jericho Water District	Public Water Availability
Nassau County Department of Public Works and Incorporated Village of Upper Brookville Village Engineer	Curb Cut(s) and Street Grading and Drainage Plan
New York State Department of Environmental Conservation	SPDES General Permit for Stormwater Discharges for Construction Activities (GP-0-10-001) and Notice of Intent

Comment No. C2:

The northern portion of the property, where parcels 11, 12, 13 and 14 are proposed, is an area of steeper land and larger trees, and is a mature forest with no evidence of prior disturbance or clearing like the remainder of the site to the west and south. Based on our site investigations and observations, this is an area of more significant habitat and is a regionally significant natural area. The DEIS should specifically note this and the plans should maximize the protection of these natural areas.

[3]Based upon a conversation with Salvatore Caruso of the NCDH, if lots are under 5.0 acres in gross lot area and there are five or more lots (which is the case with the 13-lot conservation subdivision, but not the 13-lot conventional subdivision), NCDH has jurisdiction over both the on-site sanitary system design and water main extension approval. The NCDH will request soil tests and then review the design.

Response No. C2:

As demonstrated on the 13-lot conservation subdivision in Appendix E, a substantial portion of the area where parcels 11, 12, 13, and 14 were formerly proposed (i.e., as part of the originally-proposed 14-lot subdivision contained in the DEIS) is now being preserved. This area is included in the 46.73-acre conservation area identified on the north/northeastern portion of the subject property.

As discussed Section 3.3 of the DEIS, the area of Lots 11 through 14 that the commentator is referring to is included in the habitat identified as "Coastal Oak – Laurel Forest." In general, the northeastern half of the subject property contains this habitat, as well as steep slopes and large trees. The New York Natural Heritage Program (NYNHP) ranks the "Coastal Oak – Laurel Forest" habitat as G3 G4 S3, where "G" refers to the "Global" ranking and "S" refers to the New York State ranking. "G3" is defined as rare and local throughout its range (21 to 100 occurrences), or found locally (even abundantly at some of its locations) in a restricted range (e.g., a physiographic region), or vulnerable to extinction throughout its range because of other factors. "G4" refers to the habitat apparently being secure globally, though it may be quite rare in parts of its range, especially at the periphery. The "S3" rank is typically 21 to 100 occurrences, limited acreage, or miles of stream in New York State. The NYNHP was also contacted directly with regard to this site and, as provided in Appendix C of the DEIS, NYNHP responded on September 18, 2008 that there are no records of any "significant natural communities, or other significant habitats, on or in the immediate vicinity" of the site.

Nevertheless, maintaining as much desirable habitat and steep slopes as possible will also maintain the character of the area of the property. Under the conservation subdivision, virtually the entire northern and eastern portions of the site would remain undisturbed. Thus, the majority of the Coastal Oak – Laurel Forest habitat and steep slopes on the site would be preserved.

Comment No. C3:

Area residents have reported box turtles in the neighborhood, but they are not included in the list of reptiles found or expected to be found on the site.

Response No. C3:

On Long Island, the eastern box turtle (*Terrapene c. carolina*) inhabits a variety of habitats, including open woodlands with loamy or sandy, well-drained soils. The northern and eastern portions of the site support open woodland habitat (Coastal Oak – Laurel Forest) as well as loamy soils, as indicated by the soil profiles for Test Hole Nos. 1 through 3 (see the conservation subdivision map in Appendix E of this FEIS). As such, these portions of the site support potentially suitable habitat for eastern box turtle, although this species was not observed during the site inspections conducted (see Section 3.3 of the DEIS).

Nevertheless, with implementation of the conservation subdivision, virtually the entire northern and eastern portions of the site would remain undisturbed. Thus, the majority of the Coastal Oak – Laurel Forest habitat and loamy soils on the site, which are preferred by the eastern box turtle, would be preserved.

Comment No. C4:

The discussion of tree removal on pages 122 and 123 does not give an indication of the tree sizes of the trees to be removed. The DEIS addresses the issue of tree removal in terms of the percentage of site clearing and the total number of trees (20 inches in circumference or greater) to be removed for various site activities and improvements. Although the Village Code regulates trees 20 inches in circumference or greater, there is no indication of the number of larger trees or specimen trees to be removed other than what is contained in the lengthy tree listing on the tree location plan (3 sheets) attached to the DEIS. Since the tree inventory is in random order, it is difficult to concentrate on a specific area of the site and look up the tree sizes. The DEIS should mention the number of trees larger than 18-inches (in diameter) that would be removed.

Response No. C4:

The Tree Location Plan, contained in Appendix N of this FEIS, divides the site into six areas, with an index sheet showing the specific locations. The cover sheet indicates which parcels and which common areas are covered by each sheet. The last two sheets of the set provide a listing of all the trees, by number, as well as their elevation, diameter and species. The revised Tree Location Plan provides a dashed line indicating the theoretical limit of disturbance for the proposed South Drive and Access Easement. All trees located on the plan that are 18 inches or larger in caliper have been provided with a separate symbol in the tree legend (see Appendix N). A count of trees 18 inches or larger based on the Tree Location Plan indicates the 18-inch trees that are proposed to be removed, as follows:

South Drive & Access Easement:	65 trees
Recharge Basin:	34 trees
Drainage Easement Areas:[4]	21 trees

Comment No. C5:

The tree inventory indicates a number of "deciduous" trees. This is too general for the Planning Board to make an informed decision regarding planning issues such as road locations and the location of other improvements.

Response No. C5:

Joseph Piscitelli, Landscape Architect, was retained to clarify the identity of trees listed as "deciduous" in the tree listing that are located within the disturbance area and that are proposed to be removed (see letter in Appendix N). As noted in Response No. C4, a revised Tree Location Plan with specific tree identifications is included in Appendix N of this FEIS.

According to Mr. Piscitelli, most of the trees located on the site are second growth trees, predominantly Oak, Locust, Maple and Birch. The trees of greater value to the site are the large specimen Oaks and Beeches, which are not found in the proposed rights-of-way or disturbance areas. In other words, the larger, more significant trees are located in the proposed conservation areas. The trees that were identified are generally healthy and in a satisfactory condition. Those trees that are located within the rights-of-way and disturbance areas are proposed to be removed.

Comment No. C6:

The Applicant should classify the condition of the trees within the areas of proposed disturbance for road construction.

Response No. C6:

It is assumed that by "the condition of trees" the commentator is referring to the health of the species located within the proposed roadway and other disturbance areas. Trees on the site are in a generally healthy condition, and no observations of significantly diseased or blighted trees were noted during the field inspections of the site.

With respect to disturbance in proposed roadway areas, The *Tree Location Plan* identifies the trees that are expected to be removed from the site as a result of the construction of roadways. As the proposed roadways for the conservation subdivision would traverse areas of Coastal Oak – Laurel Forest and Successional

[4] Includes the drainage reserve areas as well as areas for the piping going to the recharge basin.

Southern Hardwoods, the majority of the trees to be removed would include species typical of these habitats, as noted in Section 3.3 of the DEIS. Significant areas of both habitats will continue to be represented and protected on-site within the proposed conservation areas. As a result, individual tree species within these ecological communities will continue to be present on the subject property. Furthermore, no endangered, threatened or rare tree species were observed on the site during several site inspections. In addition, the New York Natural Heritage Program report dated September 12, 2008 indicated that no records exist for such species on the site or the immediate vicinity.

Also, see Response No. C5, which, in part, indicates that the Landscape Architect who performed the tree survey noted that most of the trees located on the site are second growth trees, predominantly Oak, Locust, Maple and Birch. The trees of greater value to the site are the large specimen Oaks and Beeches, which are not found in the proposed rights-of-way or disturbance areas. In other words, the larger, more significant trees are located in the proposed conservation areas. The Landscape Architect noted that identified trees are generally healthy and in a satisfactory condition.

Comment No. C7:

As stated on page 141 of the DEIS, the existing sight distances for the proposed subdivision access road are inadequate to the left (north). As a mitigation measure, the applicant proposes to remove some vegetation within the Villages right-of-way of Mill River Road, including "limbing-up" trees along roadside, as well as signage. The applicant should include an alternate roadway access plan that provides acceptable site distances at the entrance to the development (if feasible).

Response No. C7:

The 13-lot conservation subdivision (Appendix E of this FEIS) proposes a single access generally located at the existing driveway serving 57 Mill River Road. According to the sight distance recommendations from the NYSDOT's *Policy and Standards of the Design of Entrances to State Highways*, which refers to *Geometric Design of Highways and Streets*, published by AASHTO, the recommended sight distances to the left and right for vehicles exiting driveways onto two lane roads with design speeds of 35 MPH, (Case B1 and Case B3) are 390 feet and 335 feet, respectively. As field-measured, the sight distances for stopped passenger vehicles from the approximate access driveway location were 525 feet and 535 feet to the left and right, respectively. Therefore the recommended intersection sight distance requirements have been met and exceeded under the conservation subdivision.

Comment No. C8:

The section of fire and ambulance services on page 145 should include a provision for emergency access. Due to the size of the development and length of the proposed cul-de-sac, it is good planning to provide a second means of access to the site, even if it is for emergency use only.

Response No. C8:

The Applicant proposes that Mohawk Drive be kept in its existing condition. It is proposed that Mr. Schwerin (Tax Lot 7 out-parcel) obtain access to Mill River Road through the new subdivision roadway. Access along Mohawk Drive to the existing off-site residences to the northeast would remain, as it is the sole access for these lots. However, Mohawk Drive would be abandoned to the west of such properties. Therefore, no public use of Mohawk Drive, beyond the existing lots, would be permitted. Although the specific means of abandonment has not yet been determined, it is proposed that this roadway could be kept in its existing condition (and blocked off by some type of removable barrier), but would be accessible for use by emergency service vehicles should the need arise. The final decision as to the disposition of Mohawk Drive would be made by the Village Planning Board and any property owners with access rights.

Comment No. C9:

There are several groupings of existing buildings on the property, but the subdivision plan indicates that proposed new home locations are not shown within the previously disturbed areas. The plan as presented would cause the disturbance of additional steep wooded areas on proposed parcels 2 and 3, beyond the areas currently cleared. The applicant should review alternative lot layouts that would better utilize previously disturbed areas.

Response No. C9:

Based upon this comment and other similar comments made on the DEIS, the Applicant has prepared a 13-lot conservation subdivision plan that specifically addresses the issues of steep slopes and disturbance. The conservation subdivision plan (see Appendix E) locates the proposed residences and their appurtenances on the flattest portion of the property. None of the proposed principal and accessory structures shown on the subdivision plan are located within areas containing steep slopes (15 percent or greater). Specifically, building envelopes on individual lots would be situated in either already-disturbed areas, or on more level sections of the particular parcel, to reduce the need for extensive grading and clearing. The Monday House and its appurtenances will most likely be retained and renovated as part of the subdivision. However, the Dean House and its appurtenances would be removed in order to position the new subdivision roadway in such a manner as to minimize impacts to steep slopes, to the maximum extent practicable.

The majority of the remainder of the property would not been disturbed, with the exception of the existing Mohawk Drive and a proposed DRA, near the site entrance. The areas proposed to remain undisturbed would be included within conservation areas, which would be protected from disturbance. A legal instrument will be developed by the Applicant, in cooperation with the Village, to ensure that no disturbance will occur within the conservation areas. Such instrument will also outline maintenance and protection responsibilities as well as permitted/ prohibited activities within these areas.

Comment No. C10:

Pools, tennis courts and other accessory structures must not be shown in the steep slope areas because they are prohibited by Village Code, unless variances are obtained from the Village.

Response No. C10:

The Applicant acknowledges that Board of Zoning Appeals (BZA) approval would be required for accessory structures in steep slope areas. Such structures were depicted on the 14-lot subdivision analyzed in the DEIS for illustrative purposes only.

The 14-lot conventional subdivision plan analyzed in the DEIS has been modified to reduce the subdivision by one lot and concentrate the proposed lots on the western, flatter portion of the subject property. See the discussion of the proposed 13-lot conservation subdivision in Section 3.3 of this FEIS. Furthermore, each lot is expected to undergo individual site plan review. At such time, the location of accessory structures would be reviewed by the Planning Board, and, if necessary, a request for variance would be made to the BZA. However, it should be noted that the 13-lot conservation subdivision contained in this FEIS does not show accessory structures within steep slope areas.

Comment No. C11:

The trees to be removed shown on the Tree Location Plan appears to be underestimated, based on the width of disturbance shown through the deep cut locations according to the Slope Analysis Post Roadway Construction plan.

Response No. C11:

The revised Tree Location Plan (see Appendix N) indicates the currently-proposed limits of disturbance for South Drive and the Access Easement as well as the proposed recharge basin and proposed drainage easement areas. The limits of disturbance for the roadway areas are based on a 22-foot roadway section with five-foot shoulder areas (for a total horizontal distance of 32 feet)and a 1-on-2 slope back to existing grade in "cut" areas and a 1-on-3 slope to existing grade in "fill" areas. The slope parameters are consistent with Village and NCDPW standards. See Response No. C4 regarding tree removal and Appendix N, which contains the tree survey.

Comment No. C12:

Details are required for the reconstruction of sluiceways on Mill River Road.

Response No. C12:

See the typical detail figure in Appendix H of this FEIS for the details regarding the reconstruction of the sluiceways on Mill River Road. The final *Street Grading & Drainage Plan* will include not only this detail, but details for all proposed construction.

Comment No. C13:

A concrete gutter should be added along the edge of Mill River Road to contain runoff and protect the edge or road from erosion.

Response No. C13:

Presently there is no concrete gutter along the length of Mill River Road within the Village. According to the Applicant's engineer, should improvements along the Mill River Road frontage require stabilization of the edge of pavement, gutter or curb details will be included in the final construction plans.

Comment No. C14:

On the alternative subdivision plan, the applicant should consider an alternative access between proposed parcels 9 and 10 to the out-parcel and adjoining proposed lots in order to disturb less sloped land.

Response No. C14:

The 14-lot subdivision plan (identified as the proposed action in the DEIS) and the Alternate Subdivision Study (evaluated in Section 7.2 of the DEIS) have been revised to concentrate the residential lots on the flattest portion of the property, in order to disturb less sloped land and contiguously preserve more natural areas. With regard to the 13-lot conservation subdivision, the Applicant has had recent discussions with the owner of the out-parcel (Tax Lot 7), Mr. Schwerin, and is in the process of entering into a successor right-of-way agreement with the owner of Tax Lot 7 so that access to such lot via Mohawk Drive will be eliminated, and future access would be obtained through the proposed subdivision roadway included in the 13-lot conservation subdivision. See Response No. C8 with respect to the disposition of Mohawk Drive.

Comment No. C15:

Road length exceeds the 900-foot limit, which will possibly require the installation of a midpoint circle to provide access for emergency vehicles.

Response No. C15:

The DEIS acknowledged the 900-foot road length limit (see §180-17.H(2) of the Village Code) and requested a waiver of this planning requirement, based upon the length of existing roadways within the Village, as follows.

> *"Although no formal variances are being requested as part of the proposed action, the applicant is respectfully requesting that the Planning Board waive its strict application of the 900-foot limitation on the length of cul-de-sacs in approving the proposed Mohawk Drive and South Drive, as permitted by §180-17.H(2) of the Village Code. The lengths of the proposed Mohawk Drive and South Drive cul-de-sacs are 1,103± feet and 2,352± feet, respectively. The applicant respectfully asserts that the proposed roadways are consistent with several such roadways in the surrounding area (e.g., West View Drive [2,679± feet], Centre View Drive [3,180± feet], Pine Valley Road [2,977± feet], Donna Drive [2,828± feet], etc.),[5] that the permitted alternative of 70-foot rights-of-way with center malls along these drives, pursuant to §180-17.H(2), is not environmentally-efficient, particularly in existing wooded and sloped areas; and that such rights-of-way and center malls are not necessary in order to provide adequate access to emergency response personnel and vehicles."* (Page 147)

The proposed 13- lot conservation subdivision also contains a roadway that is longer than 900 feet (see Appendix E of this FEIS). Specifically, as discussed in more detail in Section 3.3, South Drive is proposed to be approximately 2,600 feet in length. This is shorter than some of the other roadways that have been approved in the Village (see paragraph above). The Applicant is requesting a waiver of this requirement based upon the proposed conservation subdivision.

Comment No. C16:

The declaration of covenants and restrictions for the mentioned drainage reserve area will have to be very specific to ensure that no undesirable activity will occur.

Response No. C16:

The Village will work with the Applicant on mutually-agreeable covenants and restrictions.

Comment No. C17:

It is claimed that there are no endangered or threatened or rare tree species. Nevertheless, this should be checked by someone representing the Village, such as the Village Arborist to ensure such is the case.

[5] Roadway length measurements based on aerial photography. West View Drive includes a turnaround circle, 1,468± feet from Mill River Road.

Response No. C17:

As indicated in the DEIS, no endangered, threatened or rare tree species were observed on the site during several site inspections. In addition, the New York Natural Heritage Program report dated September 12, 2008 indicated that no records exist for such species on the site or the immediate vicinity. With respect to Village confirmation, a representative of the office of the Village Engineer, Carole Neidich-Ryder, who is a qualified biologist, reviewed the DEIS and participated in site walks, which included a discussion of the floral species on the site. The Village Engineer's office did not note the existence of endangered, threatened or rare tree species.

Comment No. C18:

As to site access, consideration must be given to the discontinuance of right of access to the property via Wash Hollow Road to the West.

Response No. C18:

During the review of the DEIS, a question was raised as to the feasibility of accessing the property from Wash Hollow Road, based upon the configuration of the 14-lot subdivision presented in the DEIS, and the need to disturb areas of steeply-sloped property to access and develop that subdivision design. The comment above appears to indicate that the Applicant should consider discontinuance of the right of access to the subject property from Wash Hollow Road.

Based upon the comments received, the Village and the Applicant have both evaluated the use of the Wash Hollow Road right-of-way for ingress and egress to the subdivision. There are various legal and practical impediments to the use of Wash Hollow Road to access the subject property. First, there does not appear to be any document that sets forth the specific metes and bounds of the right-of-way for Wash Hollow Road. Moreover, the area is overgrown, so there is no clear delineation of Wash Hollow Road in the field. Second, there is evidence, through aerial photographs, that there is an assemblage of infrastructure in the area of Wash Hollow Road within the Planting Fields Arboretum. Finally, from a practical perspective, it would be necessary to disturb land within the Planting Fields Arboretum to construct the road (including the disturbance of infrastructure), if the legal impediments could be overcome.

As explained in Section 3.3 of this FEIS, the 13-lot conservation subdivision (Appendix E of this FEIS) substantially reduces the area of steeply-sloped property that would be disturbed to access and develop the subdivision. Thus, the conservation subdivision significantly reduces the attractiveness of access from Wash Hollow Road, especially given that the road would have to traverse the Planting Fields Arboretum, as explained above.

Comment No. C19:

Will there be enough water pressure in the north portion of the subdivision being served by the Oyster Bay Water District for fire protection in view of the fact that it is anticipated that each house will require a booster pump to ensure adequate water pressure for domestic use?

Response No. C19:

The proposed subdivision will be serviced by the Jericho Water District. While the overall property is located within both the Jericho Water District and the Oyster Bay Water District, all 13 residential lots within the conservation subdivision are located either wholly or partially within the Jericho Water District. The Oyster Bay Water District has agreed that the entire subdivision would be serviced by the Jericho Water District (see Appendix G). Should it be required by the Jericho Water District, a booster pumping station, proposed to be

located along Mill River Road, would adequately serve the entire subdivision, as well as Tax Lot 7, with respect to water pressure for domestic use.

Comment No. C20:

Significant stormwater and erosion occurs near Mill River Road. During storm of violence how will this condition be exacerbated by the new subdivision roads?

Response No. C20:

The condition regarding stormwater and erosion near Mill River Road will not be exacerbated, and the 13-lot conservation subdivision plan has been designed to address the issues of stormwater management.

First, approval of any new subdivision road(s) will require preparation of a stormwater pollution prevention plan (SWPPP) that will detail the specific erosion and sediment controls to be implemented during construction that will obviate any disturbance within the project area and along Mill River Road. Approval of the SWPPP will be required by the Village Stormwater Management Officer and by the NYSDEC, as noted in the list of approvals required for this subdivision (see Response No. C1).

In addition, the stormwater management system, including the recharge basin, proposed as part of the 13-lot conservation subdivision (see Appendix E of this FEIS) would capture and recharge 430,430 cubic feet of runoff. Individual drywells associated with the residences would also capture and recharge runoff from the individual parcels. A common area DRA is proposed to be situated adjacent to the southernmost conservation area. This DRA would collect stormwater runoff from the subdivision roadway. Finally, the 100-foot-wide drainage conservation easement located along the west side of Mill River Road would capture runoff from the steeply-sloped northern and eastern portions of the site, which are proposed to be preserved within conservation areas, as well as the runoff from Mill River Road.

This drainage conservation easement will preserve the existing vegetated retention area, slowing down the northward flow of surface runoff and permitting silt settlement and directing the flow into a positive piped system that connects to the existing Sagamore Woods subdivision recharge basin.

Comment No. C21:

Does the existence of Facultative Wetland Plants justify any special protection of the area where they exist along Mill River Road?

Response No. C21:

As discussed in Section 3.3 of the DEIS (pp. 63-64) the "facultative wetland" (FACW) plants referenced in the comment were observed within and proximate to a drainage ditch located along the southeastern boundary of the site, adjacent to Mill River Road. Under the implementation of the 13-lot conservation subdivision, this entire area would be preserved as part of the 100-foot drainage conservation easement proposed for the area along Mill River Road. This drainage conservation easement is part of the overall 52.95±-acre conservation area proposed for this portion of the site. Moreover, as discussed below, the area is not regulated by the NYSDEC as freshwater wetlands.

According to the United States Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI), FACW status is assigned to those plant species that usually occur in wetlands (estimated probability 67-99%), but are also found in uplands. Accordingly, pursuant to Article 24 of the Environmental Conservation Law (ECL), commonly referred to as the "Freshwater Wetlands Act", the presence of FACW plants alone does not necessarily indicate the existence of NYSDEC-regulated wetlands on this or other portions of the site. In fact, as discussed in Section 3.2.5 of the DEIS (pp. 53-54), the NYSDEC Freshwater Wetland Maps of Nassau

County, Map No. 6 of 15 (Hicksville Quadrangle) indicate that there are no NYSDEC-regulated freshwater wetlands located on or adjacent to the subject property. The nearest NYSDEC-regulated freshwater wetland ("HV-3"), is situated approximately 1,000 feet north of the subject site, on the west side of Mill River Road. Furthermore, based upon a field inspection of the subject property, NYSDEC Bureau of Habitat biologist Kevin Jennings indicated that the aforementioned drainage area is not a NYSDEC-regulated wetland. Further, Mr. Jennings indicated that this area is not connected to NYSDEC Wetland HV-3 (see correspondence dated October 8, 2008 in Appendix C of the DEIS).

With respect to individual plant species, the three FACW plants that were identified in the drainage area along Mill River Road are spicebush (*Lindera benzoin*), jewelweed (*Impatiens capensis*) and highbush blueberry (*Vaccinium corymbosum*). It is important to note that, pursuant to Environmental Conservation Law (ECL) Article 24, no special protection is given to individual plants species based solely upon their wetland indicator status. Furthermore, the three aforementioned plants all are common to the general surrounding area of the site and the Long Island region, in general. Moreover, the three species do not have a NYS Legal Status (e.g., Endangered, Threatened, Rare or Exploitably Vulnerable) under 6 NYCRR 193.3 (see Appendix I of this FEIS), and, therefore, do not have protected status in New York State. Finally, as discussed above, the 13-lot conservation subdivision would preserve the habitat of these and other plants located within the drainage area.

Comment No. C22:

I would recommend that the specific locations of the "exploitably vulnerable" (EV) plants be specifically located so that attention could be drawn to their existence to avoid their unnecessary removal or destruction.

Response No. C22:

The exploitably vulnerable category of plants contains plants that are likely to be picked for commercial and personal purposes, and the designation affords the landowner extra protection ability. Exploitably vulnerable species and all other protected plant species (i.e., endangered, threatened, rare), are given the same protection under New York State Conservation Law. 6 NYCRR Part 193.3(f) states that:

> *"It is a violation for any person, anywhere in the state, to pick, pluck, sever, remove, damage by the application of herbicides or defoliants, or carry away, without the consent of the owner, any protected plant. Each protected plant so picked, plucked, severed, removed, damaged or carried away shall constitute a separate violation."* (emphasis added)

Since the owners of the property are proposing the subdivision there would be no violation of Part 193.3 if the owners were to pick, pluck, sever, remove, etc. any exploitably vulnerable plants.

As part of the 13-lot conservation subdivision, the majority of exploitably vulnerable plants would be protected. Most of the exploitably vulnerable plants were observed within the Coastal Oak – Laurel Forest and steep slope areas on the northern and eastern portions of the site (see Section 3.3 of DEIS). Under the conservation subdivision, the majority of Coastal Oak-Laurel Forest and steep slope areas would be preserved. Consequently, the majority of existing habitat for exploitably vulnerable plants would be preserved upon implementation of the 13-lot conservation subdivision.

Comment No. C23:

It appears to be stated that the exploitably vulnerable plants are permitted to be removed from the premises because of the proposed subdivision. It is my recommendation that such plants be protected.

Response No. C23:

See Response to Comment No. 22.

Comment No. C24:

The zoning section should make mention of "Special Use" resulting from recent amendment of zoning code.

Response No. C24:

Conditional uses are specifically listed in the district regulations for which the Board of Appeals, pursuant to Article IV of the Village Code, may grant a *conditional use* permit indicating the circumstances under which such conditional use may receive a zoning or building permit. Special uses are specifically listed in the district regulations for which the Board of Trustees may grant such *special use* permit.

Comment No. C25:

This [stormwater] will become one of the most serious problems relating to the development of the premises. The recommendations to control stormwater runoff and to prevent illegal discharges will be difficult to implement and enforce on individual property owners. This is especially true because there is a proposal to use a series of drywells rather than a standard recharge basin.

Response No. C25:

The 14-lot conventional subdivision, as explained in Sections 3.1 and 3.3 of this FEIS, has been redesigned and reconfigured to address various comments received, including those relating to stormwater. As shown on the 13-lot conservation subdivision (see Appendix E of this FEIS), many of the stormwater management features are no longer proposed to be situated on the lots of individual property owners. The 13-lot conservation subdivision incorporates a number of stormwater management facilities, including a recharge basin, a common area DRA, a drainage conservation easement and leaching pools/drywells and DRAs within individual lots. The majority of the stormwater generated by impervious surfaces will be captured by the recharge basin and the common area DRA. The responsibility for enforcing regulations and undertaking maintenance on the recharge basin and common area DRA will lie with the entities having jurisdiction over them.

According to Village requirements, the post-construction maintenance of drywells and individual DRAs within private lots will rest with the individual homeowners. Covenants will be established that permit neglected maintenance by individual homeowners to be performed by a homeowners' association (HOA). In addition, covenants will be further provided that will permit the Village to perform maintenance that has been neglected by a HOA with a back charge (lien) to such HOA.

Comment No. C26:

Although there are no officially designated wetlands on the premises there exists certain vegetation in the wet areas on the west side of Mill River Road that should be reasonably protected by having such areas designated and protected by conservation easements.

Response No. C26:

There are no Freshwater Wetlands located on the subject property. As shown in the 13-lot conservation subdivision (see Appendix E of this FEIS), the areas on the west side of Mill River Road, along the frontage of the property, will be designated as a conservation area and protected and preserved.

Comment No. C27:

The Ecology section proposes that the project will have insignificant effect on wildlife which is expected to adapt to the new environment of structures in human activity. Nevertheless, an educational effort should be made for the purchasers of all undeveloped lots in the subdivision to encourage them to leave as much of property in its natural state so that animal habitat is protected.

Response No. C27:

Based upon the proposed 13-lot conservation subdivision, a total of 54.99± acres of the subdivision are proposed to be placed within designated conservation areas. Of these 54.99± acres, approximately 3.86 acres will be on individual lots, with the remainder in two large blocks of approximately 45.10 and 6.03 acres. A legal instrument will be developed by the Applicant, in cooperation with the Village, to ensure that no disturbance will occur within the conservation areas. Such instrument will also outline maintenance and protection responsibilities as well as permitted/prohibited activities within these areas.

Any conservation easement imposed upon any approved lot will (i) recite the need to keep as pristine as possible the areas burdened by the covenant (conservation easement), and (ii) be subject to the approval of the Planning Board.

With respect to wildlife, the proposed conservation areas outside of the individual lots will provide (with the exception of a portion of the subdivision road) a substantially contiguous wildlife corridor from the Planting Fields Arboretum through the subject property. In addition to the 54.99± acres within conservation areas, an additional 19.37± acres of the site are shown as natural areas within the individual lots. Therefore, it is expected that approximately 74.36 ± acres of the property (76.5± percent) will remain in its natural state so that habitat is protected.

Comment No. C28:

The Tree Location Plan in Appendix B does not seem to properly describe all of the trees sufficiently by using the term "deciduous" too frequently. Other varieties of trees such as oak, cedar, maple, and birch are mentioned. Am I to conclude that the term "deciduous" only indicates invasive type trees such as Norway maples and the like that are sometime called "weed trees"? Furthermore, should some "deciduous" trees be saved by relocating proposed roads, driveways and structures?

Response No. C28:

The term deciduous is not synonymous with "invasive" or "weed" trees. Deciduous trees are those that shed their leaves at the end of a growing period.[6]

The existing conditions of the site make it impossible to retain all of the trees. Therefore, the purpose of providing a tree plan is to understand the location of specific trees and to allow for the selection of the best location for proposed improvements such as roadways, driveways, dwellings and drainage structures to minimize impact to trees, to the extent practicable. Furthermore, the implementation of the 13-lot conservation subdivision would preserve approximately 74.36 acres (76.5 percent) of the overall site, of which 54.99 acres would be within conservation areas. Within the conservation area, approximately 600 identified trees (trees at least 18 inches in diameter), located on the steepest slopes on the property, will be preserved.

A revised Tree Location Plan, with specific tree identifications, is included in Appendix N of this FEIS.

[6] According to *Webster's Third New International Dictionary*, the definition of deciduous is "falling off or shedding at the end of a growing period < ~ leaves>..." This is opposed to "evergreen," which is defined as "remaining verdant < an ~ coniferous tree>."

Also, see Response to Comment No. C5.

Comment No. C29:

The Drainage Analysis Plan shows so many drywells on the lots that I question whether the Village can ensure diligent maintenance of the dry wells regardless of the provisions of any Declaration of Covenants and Restrictions affecting each lot. Will a lot owner diligently maintain the structures that are on steep slopes in remote portions of the lot? There appears to be over 200 drywells on the lots shown on the plan. I believe there would be considerable destruction of trees and ground cover to install these dry wells by reason of regarding and allowing access for the machinery necessary for their installation.

Response No. C29:

The stormwater management system has been redesigned as part of the 13-lot conservation subdivision (see Appendix E) to incorporate the use of a recharge basin, a common area DRA, drywells and DRAs within individual lots, and a drainage conservation easement along Mill River Road instead of the extensive use of drywells throughout the site, as was previously proposed. The maintenance for the recharge basin and the common area DRA would be the responsibility of the organization or agency that has jurisdiction over them. With respect to the drywells, while they have not historically required intensive maintenance, a HOA would be responsible for such maintenance, with Village back-up in the case such maintenance is not performed.

Comment No. C30:

Will the present users of Mohawk Drive agree to the diversion of their present right-of-way into the new subdivision road at its intersection with Mill River Road?

Response No. C30:

As part of the 13-lot conservation subdivision, the present users, with the exception of those associated with the out-parcel (Tax Lot 7) will not suffer any diversion of their present right-of-way. The entire subdivision will have a separate access for ingress and egress thereto. The Applicant has had recent discussions with the owner of Tax Lot 7, and is in the process of entering into a successor right-of-way agreement with the owner of such lot so that access to Tax Lot 7 via Mohawk Drive will be eliminated, and access to Tax Lot 7 will be via the proposed subdivision roadway.

Comment No. C31:

Apparently, based on comments by Michael Schwerin, the road profiles do not adequately show the transition to access the common driveway for his property and Lot 10 on the map. This problem must be resolved.

Response No. C31:

The comment is no longer relevant, as the 13-lot conservation subdivision (see Appendix E of this FEIS), has been designed to conserve the northern and eastern portions of the property. The proposed access easement, depicted on the conservation subdivision, will eliminate disturbance to the existing access to Tax Lot 7 and Parcel 13 (the Monday House). It has been proposed that Tax Lot 7 obtain access through the access easement shown on the proposed conservation subdivision plan. The access easement profile demonstrates that the existing slope can be preserved, obviating the need for the current 16-foot-wide right-of-way to Mohawk Drive, and providing flexibility for Tax Lot 7 and Parcel 13 to realign the current driveway access, if desired.

Comment No. C32:

The Alternate Subdivision Study Drainage Analysis Plan, as in the single road layout, has an extraordinary number of drywells as a substitute for a recharge basin. I question whether such a plan is reasonably feasible to ensure future functionality over the years without a failsafe program to ensure that all structures will be properly maintained by the homeowners/homeowners association.

Response No. C32:

See Response Nos. C25 and C29, above.

Sidney B. Bowne & Son, LLP
Village Engineer
October 12, 2009

Comment No. C33:

There is an easement over the property for access to the Schwerin property, which is an out-parcel in the center of the property to be subdivided. Easements and rights-of-way must be maintained for continued use after development, and access, as well as utilities within the easement must be maintained during construction.

Response No. C33:

Under the 13-lot conservation subdivision (Appendix E), the Schwerin property will have an easement for ingress and egress through the proposed subdivision. To that end, the Applicant and Mr. Schwerin have agreed, in substance, to terminate the existing easements that benefit the Schwerin property. To the Applicant's knowledge, there are no other enforceable rights-of-way benefiting any other lands. The existing utility easements shall remain in place so that their purpose will not be frustrated by the subdivision, until successor easements can be instituted.

Comment No. C34:

The plan entitled "Alternate Subdivision Study Slope Analysis Post Roadway Construction" indicates no slope disturbance for the existing driveway which is proposed to serve four homes. Access ways that serve more than one residence shall be a minimum of 18 feet wide, and be limited to a maximum grade of 10%. Therefore, the existing driveway area and adjacent areas would have to be disturbed and must be shown on the plans.

Response No. C34:

Based upon the 13-lot conservation subdivision design, use of the 16-foot-wide driveway easement is no longer proposed. Under the conservation subdivision, which serves multiple residences, the roadway is proposed to be 22 feet, with a maximum grade of 10 percent. This would require the approval of a waiver by the Planning Board, upon recommendation by the Village Engineer. See the Road Profiles in Appendix E of this FEIS.

Comment No. C35:

According to the Village's Master Plan, the Village envisioned an "open" development master plan that stresses the importance of preserving the natural environment and open space. Although the proposed plan offers 5-acre and 7-acre wooded lots, the overall development plan of the infrastructure on very steep slopes would cause a significant amount of disturbance to the natural environment, including wooded areas and sloped land that are in some ways unique to the Village and therefore is contrary to the Master Plan. The proposed plan should be modified to show less impact to the natural environment and to comply with the intent of the Master Plan.

Response No. C35:

As explained in Sections 3.1 and 3.3 of this FEIS, in order to address various comments received during the public comment period on the originally-proposed 14-lot conventional subdivision, the Applicant has modified its plan and developed a 13-lot conservation subdivision to reduce the density and to preserve greater natural areas. Based upon the 13-lot yield map discussed in Section 3.2 of this FEIS, the proposed

subdivision plan has been modified, such that the 13 lots are proposed to be arranged in such a manner to allow the preservation of significant contiguous natural areas of steeply-sloped property.

The overall lot yield within the 13-lot conservation subdivision is calculated at 7.47 acres per lot, which, on an overall density basis, conforms to the requirements of the prevailing OP1 zoning district (minimum of five acres per lot). However, in order to protect significant natural areas, this subdivision has been configured to arrange the residential lots so that they would range in size from 2.23 acres to 4.38 acres (the latter containing the Monday House and its appurtenances), with an average lot size of 2.91 acres. As explained in Section 3.3 of this FEIS, the conservation subdivision contains conservation areas (outside of individual lots) of approximately 51.13 acres (52.6 percent of the overall site), most of which are substantially contiguous, with the exception of the subdivision road. An additional 3.86± acres of conservation area are located within individual lots (see Appendix E). These conservation areas comprise the majority of the northern and eastern segments of the subject property, which is the portion that contains the steepest slopes on the property. The future residences would be situated on the flattest portion of the subject property, while the most steeply sloped areas, with the largest and most dense area of trees, would be preserved from development.

Therefore, as discussed in Section 3.3 and as shown on Table 1, it is the Applicant's opinion that the proposed conservation plan would have less of an impact on the natural environment than the 14-lot subdivision plan presented in the DEIS, and would comply with the goals of the Village Master Plan.

Comment No. C36:

According to the plans submitted, including the Subdivision Plan and the Alternate Subdivision Plan, proposed lot numbers 1, 2, 3, 11 and 13 indicate future houses within the regulated slope areas. We realize the house locations are conceptual at this stage, but it appears that houses on these lots would have to be constructed in the regulated slope areas due to the way the property is subdivided which would require a variance from the Village Board of Zoning Appeals. A plan should be proposed that is compliant and does not require variances from the Village Board of Zoning Appeals.

Response No. C36:

The area where parcels 1, 2, 3, 11 and 13 were located is now included within the proposed conservation areas, situated in the northern and eastern segments of the site (see conservation subdivision plan in Appendix E of this FEIS). The proposed 13-lot conservation subdivision includes the development of lots on the westernmost, flattest portion of the property. As described in Section 3.3 of this FEIS, the conservation subdivision was developed in order to minimize, to the maximum extent practicable, the disturbance to the steepest slopes on the property. Although building envelopes have been placed on the proposed subdivision plan, specific building placement has not yet been determined. This will occur as part of site plan review.

With respect to the potential need for variances for individual residential parcels, the Applicant acknowledges that Board of Zoning Appeals (BZA) approval would be required for accessory structures in steep slope areas. Each lot is expected to undergo individual site plan review. At such time, the location of accessory structures would be reviewed by the Planning Board, and, if necessary, a request for variance would be made to the BZA.

Comment No. C37:

There are several groupings of existing buildings on the property, but the subdivision plan indicates that proposed new home locations are not shown within the previously disturbed areas. The plan as presented would cause the disturbance of additional steep wooded areas on proposed parcels 2 and 3, beyond the areas currently cleared. The applicant should consider alternative lot layouts that would better utilize previously disturbed areas.

Response No. C37:

See discussion in Section 3.3 and Response No. C9 of this FEIS. Implementation of the 13-lot conservation subdivision plan (see Appendix E) would locate the residential lots on the flattest portion of the subject property, in areas that have been previously disturbed.

Comment No. C38:

Pools, tennis courts and other accessory structures must not be shown in the steep slope areas because they are prohibited by Village Code, unless variances are obtained from the Village.

Response No. C38:

The Applicant acknowledges that Board of Zoning Appeals (BZA) approval would be required for accessory structures in steep slope areas. Such structures were depicted on the 14-lot subdivision analyzed in the DEIS for illustrative purposes only.

The 14-lot conventional subdivision plan analyzed in the DEIS has been modified to reduce the subdivision by one lot and concentrate the proposed lots on the western, flatter portion of the subject property. See the discussion of the proposed 13-lot conservation subdivision in Section 3.3 of this FEIS. Furthermore, each lot is expected to undergo individual site plan review. At such time, the location of accessory structures would be reviewed by the Planning Board, and, if necessary, a request for variance would be made to the BZA. However, it should be noted that the 13-lot conservation subdivision contained in this FEIS does not show accessory structures within steep slope areas.

Comment No. C39:

The DEIS indicates that more than 106,000 cubic yards of material would be removed from the site for construction of the roads. We estimate that this would be 7,000 truckloads of material. A review and calculation of cut and fill volumes by our office indicates that the volume of soil to be removed may be double when consideration is given to all areas of required excavation. The number of trucks required would also double and the impacts to the road and neighborhood would be significantly more than what is present. Present in a comparison table of all earthwork (including drainage) for the following, so that alternatives may be evaluated.

- Mohawk Drive;
- Roadway Access to Parcels 12, 13 and 14;
- Roadway access to parcels 1, 10, 11 and existing tax lot 7;
- South Drive; and
- Individual lots 1 through 14.

Response No. C39:

The 13-lot conservation subdivision eliminates the need for the use of Mohawk Drive and reduces the amount of common infrastructure soil to be removed from 127,163 cubic yards in the originally-proposed 14-lot subdivision and 170,127 cubic yards in the 13-lot conventional subdivision to 117,886 cubic yards, inclusive of the excavation of the recharge basin (13,673 cubic yards) in the 13-lot conservation subdivision. This would reduce the number of truckloads associated with the removal of the soil from approximately 9,080 for the 14-lot subdivision and 12,150 truckloads in the 13-lot conventional subdivision to approximately 8,420 truckloads in the 13-lot conservation subdivision. In addition, the amount of material to be removed from the site is approximately 5,200 cubic yards for the 14-lot conventional subdivision (520 truckloads). This figure has been reduced to approximately 4,000 cubic yards (400 truckloads) for the 13-lot conservation subdivision.

See Table 1 for a comparison of the soil and material to be removed from the site for each of the subdivision plans analyzed.

Comment No. C40:

Both plans presented in the application show proposed deep "cut" areas where there would be extreme grade changes to the natural topography. The road profiles included in the plans attached to the DEIS indicate that South Drive, as proposed, requires a 50-foot deep cut in a steep slope area. The DEIS should indicate how the resultant side slopes would be maintained and stabilized until construction occurs on the lots. Similarly, the alternative plan indicates a maximum of a 45-foot deep cut in order to construct the subdivision road.

Response No. C40:

The easterly 1,000± feet of the subject property, west of Mill River Road, consists of steeply-sloped to severely-sloped areas (15 – 25 percent or greater). Any access into the proposed subdivision from Mill River Road would impact this area. The 13-lot conservation subdivision, while still proposing cut in this area (42 feet STA 11 + 50 – 12 + 0), as shown on the Sheet 5 of the profile sheets contained in Appendix E, would, for the most part, be in the steep slope area that is located in the previously-disturbed area of the existing driveway and house site of the former Arthur Dean Estate (STA 0 + 0 to STA 9 + 0). The maximum proposed slope in the cut area back to existing grade would be at a stabilized grade of 1 on 2, consistent with Village and NCDPW standards. The slope areas within the roadway right-of-way (first 14 feet and additional sloped area within the conservation areas) would be stabilized with erosion control mats (or similar), hydroseeding, and landscape planting consistent with existing ground cover (i.e., native vegetation) in order to assist in naturalizing the area, and would be maintained by the HOA for the subdivision. The balance of the slope area, where applicable, would be maintained/stabilized by the landscaping associated with each individual parcel.

Comment No. C41:

A detail of the new road and its transition to the existing driveway to the out-parcel should be provided because there appears to be a 45 foot difference in elevation, according to the proposed road profile sheets. A temporary access to the existing driveway should be indicated and would have to be maintained as mentioned in item number 1 above.

Response No. C41:

The 13-lot conservation subdivision eliminates disturbance to the 16-foot driveway right-of-way (Mohawk Drive), and provides an alternate access to both Tax Lot 7 (the out-parcel) and the Monday House. Therefore, the need for the transition to the existing driveways would be eliminated. Access to these two lots would be provided by the access easement roadway, as depicted on the conservation subdivision (see Appendix E).

Comment No. C42:

The plans should indicate whether retaining walls would be used in the deep cut areas to limit the extent of disturbance for road construction. If this is the case, the location, length and height should be shown and the visual impact of retaining walls must be considered by the Village, and details of the visual impact should be provided for review.

Response No. C42:

The current design of the 13-lot conservation subdivision does not propose the use of any retaining walls. A stabilized 1-on-2 slope is proposed from the five-foot-wide shoulder area, adjacent to the Village standard

paved roadway (22 feet), back to the existing natural grade. See the Conservation Subdivision Alternative in Appendix E for a typical road half section.

Comment No. C43:

The discussion of the potential impacts of the truck traffic must include impacts to Mill River Road and its residents, as well as neighboring communities, either along Northern Boulevard and possibly NYS Route 106. The number of trucks may be significantly more than what was originally estimated based on the amount of excavation provided in the DEIS, which is for roads only. It is likely that the amount of earthwork required would be more than what was given in the DEIS, considering the additional earthwork for the construction of homes and other improvements on each lot, including drainage structures. The specific proposed truck routes should be assessed in detail as to the ability of the roadways to safely handle the truck traffic, in terms of road width, pavement condition, curves, signage, truck size, etc.

Response No. C43:

Based on the exportation estimates and anticipated phasing of the roadway construction associated with the 13-lot conservation subdivision it is estimated that there will be approximately 12 truck trips per hour (6 entering and 6 exiting) throughout the course of a typical working day. Based on this level of activity, it is anticipated that 45-to-50 truckloads of material per day will be removed from the site and the overall soil and material removal operation is expected to take place over a nine-to-ten month period (approximately 185 working days, in comparison to the 200 working days for the 14-lot conventional subdivision and 255 working days for the 13-lot conventional subdivision). It is also anticipated that there will be an additional ten and 13 construction worker trips, at the peak of activity, in the AM and PM peak hours, respectively.

In order to facilitate on-site infrastructure improvements, at least two building lot sites (proposed Parcels 1 and 11) will be cleared and temporarily stripped of topsoil (see Appendix E). The cleared areas will be used to stockpile excavated material with "spoil" piles for topsoil, mixed non-organic materials that are to be removed from the site to accommodate cut and slope areas for the proposed roadways and recharge basin areas, tree mulch, etc. The staging areas will also be provided with stabilized areas to provide parking for off-road construction equipment storage and construction worker parking.

Staging areas will be active (temporary stockpiling of material prior to off-site removal) and will also allow for extended stockpiling of topsoil, sand and gravel and mulch for future on-site use during the individual home site development. Proposed stormwater basin areas and drainage reserve areas will also be cleared and stripped and utilized in a similar fashion for temporary "spoil" storage.

Utilization of these site areas will provide up to 15,000 cubic yards of "spoil" volume storage and approximately 7,000 SF to 9,000 SF of stabilized area for off-road equipment and employee parking as well as maneuvering area for the off-site trucking vehicles (see typical staging areas noted on Conservation Subdivision Alternative in Appendix E of this FEIS).

Trucks used to collect soil and material for removal will enter the site through the construction access driveway and be directed to one or the other of the temporary stockpiling areas (proposed Parcel 1 or Parcel 11 - at the intersection of proposed South Drive and the Access Easement), where they will collect soil and/or material to be removed, turn around and leave the site via the construction access driveway.

A review of the accident data from the past three years for Mill River Road does not indicate any accidents that occurred due to the presence of heavy vehicles. Mill River Road is classified as a collector road and is the shortest and most direct route from the site to the arterial highway network. The feasibility of requiring construction-related trucks to proceed north was considered. Upon reviewing the existing street network, it is obvious that the only viable northerly truck route alternative is to proceed north on Mill River Road to Lexington Avenue, through the hamlet of Oyster Bay and then reverse direction onto southbound Lexington

Avenue to NYS Route 106 southbound. While the distance of travel along Mill River Road would be shortened from 1.3 miles to 1.1 miles, the total length of this alternative route from the site to Route 25A is more than double the length of the more direct route to the south. Safety is a significant consideration regardless of which route the trucks travel. However, the route to the north presents additional concerns, which are not prevalent on the southerly route (from Mill River Road, south to Route 25A). For example, the northbound route runs through a more densely populated area, and along the north section of Mill River Road, there are numerous homes within approximately 25-to-30 feet of the edge of the pavement. Along this section, parked cars were observed on both sides of the street, and pedestrian activity was also observed. Conversely, there are far fewer homes and driveways along the southerly route, and the homes are generally off-set at a greater distance from the roadway. When these factors are taken into consideration, the northerly route is less preferable from an overall safety viewpoint. It should also be noted that the majority of the trips due to construction activities will take place during off-peak hours, when vehicle volumes on Mill River Road are typically lower.

With respect to the pavement condition on Mill River Road, visual inspection reveals the pavement to be in reasonably good condition for most of its length. In order to minimize the impact of the construction vehicles on the structural integrity of the existing pavement, the size and type of vehicle can be regulated. Although the DEIS anticipated the use of 15-cubic yard trucks, during the course of developing the FEIS, the use of 30-cubic-yard trucks was contemplated for potentially transporting excess material from the site. These are typically 18-wheel tractor-trailer type vehicles. However, in response to comments concerning overall safety, roadway geometry and narrow pavement widths, it is now proposed to that 10-wheel, single-unit dump trucks be used for soils and material removal. These vehicles can typically transport up to 15 yards of material (by weight) while remaining well within the total gross vehicle weight (GVW) set by New York State legal limits. They are of similar size and characteristics to other vehicles which have been observed using Mill River Road, such as garbage trucks, construction vehicles, and delivery trucks.

While there are many variables that can affect the actual volume of material that can be transported by each truck, it is realistic to expect that every effort will be made to maximize the efficiency of the operation and minimize the number of truck trips. Therefore, it is assumed that an average of 14 cubic yards of soil per truckload will be removed. For other types of excess material, such as tree stumps and miscellaneous C&D debris, a lesser amount of approximately 10 cubic yards per truck is more realistic. For the 13-lot conservation subdivision, based on an average payload of 14 cubic yards per truck, approximately 8,420 truckloads will be required to remove 117,886 cubic yards of soil. At 10 cubic yards per truck, approximately 400 truckloads will be required for removal 4,000 cubic yards of other material. Thus, the total number of truckloads, including soils and other material will be approximately 8,820.

It is projected that the operation will generate one truck in each direction approximately every 10 minutes, with an estimated 45-to-50 truckloads of material transported from the site per day. Thus, the total duration of the soil and removal operation will be approximately 185 working days. Taking into account scheduling issues and weather conditions, it is anticipated that the entire operation will take approximately nine-to-ten months to complete.

Because the historical composition of the roadways in the area is unknown, it is not possible to accurately predict what impact the additional truck traffic would have on the structural integrity of the road and/or the wearing surface. In order to address concerns related to potential damage to the roadway resulting from this level of truck activity, a pavement condition survey could be conducted by a qualified expert prior to commencement of the trucking operation and pavement condition should be monitored on a continual basis for the duration of the soil removal phase of the project. Depending upon the composition of the existing roadbed, there are methods of conducting non-destructive pavement testing before the project begins and again upon completion of the project in order to estimate the theoretical reduction in service life that has actually occurred, as compared to that which would be expected under normal traffic conditions over the same period of time. There are firms that specialize in pavement condition evaluation and pavement management principles. Such firms are best qualified to determine the most appropriate testing methods and

to monitor conditions on an on-going basis for the duration of construction. The Village should retain the services of such a firm in order to obtain an independent, professional evaluation of the project impacts on the local roadways. There are provisions in the Village Code by which the developer can be required to pay a deposit to the Village to recover the cost of potential damages to the roadway. Accordingly, the cost of hiring a pavement specialist to assess the actual damage could potentially be included in the fee paid by the Applicant.

With respect to potential similar concerns for the neighboring Village of Muttontown, since construction vehicles may travel over a portion of a local Muttontown Road, the Applicant acknowledges that a heavy trucking permit may be required and a cash deposit may be required to be made to the Village to cover the cost of potential roadway damage within the Village limits, based upon Chapter 178, Section 178-7 of the Muttontown Village Code.

Route 25A (Northern Boulevard) and NYS Route 106 currently serve vehicles with the aforementioned characteristics and are designed to accommodate vehicles such as these as well as those that are much larger. The relatively low vehicle volumes generated by construction are not expected to adversely impact these roadways.

Comment No. C44:

The trees to be removed shown on the Tree Location Plan appears to be underestimated, based on the width of disturbance shown through the deep cut locations according to the Slope Analysis Post Roadway Construction plan. There are other areas of the site beyond the right-of-way that will have to be cleared to construct the roads on the steep terrain. For example, the road in the vicinity of station 700 of South Drive is an area where a 50 foot cut is proposed, and the area of disturbance in this vicinity would extend far beyond the proposed road right-of-way, even if retaining walls are used. Additionally, areas to be disturbed for construction on the lots must be analyzed for the Planning Board to make an informed decision on the plan.

Response No. C44:

See Response Nos. 4 and 11. A breakdown of trees 18 inches or greater in diameter has been provided for the roadway areas, access easement area, recharge basin area and drainage area shown on the 13-lot conservation subdivision. Trees to be disturbed on individual lots will be provided at time of submission of individual site plans for proposed individual lots as well as any additional easement areas that may be required as part of final design plans.

Comment No. C45:

The discussion of tree removal in the DEIS indicates that more than 25% of the total number of regulated trees (20 inches in circumference or greater) would be removed for various site activities and improvements. The FEIS should include the number of specimen trees (larger than 18-inches in diameter) that would be removed, including those to be removed for the construction on the lots in the development. A comparison chart of alternative plans should be provided.

Response No. C45:

See Response No. C4 for a discussion of the trees 18 inches or greater that would be removed in specific areas of the subject property. The revised Tree Location Plan for the 13-lot conservation subdivision shows, by symbol, trees that are 18 inches or larger (see Appendix N). No plans have been developed as to the size or location of any new dwelling on the proposed individual lots. Tree removal as well as proposed replacement on individual lots will be provided at time of individual site plan review. As discussed in Response No. C28, the 13-lot conservation subdivision would preserve most, if not all, of the trees within the northern and eastern portions of the site as well as those within the proposed conservation easements situated around the

perimeter of the property. Of all the alternatives examined in the DEIS and FEIS, the 13-lot conservation subdivision would preserve, by far, the most trees. Furthermore, the majority of trees to be preserved are situated within the Coastal Oak-Laurel Forest, generally located within the northern and northeastern portions of the site. As discussed in Section 3.3 of this FEIS, the Coastal Oak – Laurel Forest is the only existing ecological community on the site that is not ranked as "secure" both globally and in New York State. According to the New York Natural Heritage Program, Coastal Oak-Laurel Forest is defined as rare and local throughout its range, found locally in a restricted range, or vulnerable to extinction throughout its range because of other factors. Therefore, the conservation subdivision would result in the preservation of the majority of "rare/vulnerable" habitat on the subject property, whereas the other alternatives would not specifically protect this habitat. In addition, the proposed subdivision roadway within the 13-lot conservation subdivision has been carefully located to minimize the impacts to both slopes and trees, and to generally preserve the mountain laurel situated in the western-southwestern portion of the property.

Comment No. C46:

The condition of the trees within the areas of proposed disturbance for road construction should be taken into consideration when comparing alternative plans.

Response No. C46:

As discussed in more detail in Response No. C6, observation of the condition of the existing trees was conducted as part of both the tree location effort and the general ecological analysis. While there are some dead, dying and diseased trees scattered throughout the property, trees on the site are in a generally healthy and satisfactory condition, and no observations of significantly diseased or blighted trees or areas of trees were noted during the field inspections.

Comment No. C47:

The tree inventory indicates a number of "deciduous" trees. This is too general for the Planning Board to make an informed decision regarding planning issues such as road locations and the location of other improvements.

Response No. C47:

Joseph Piscitelli, Landscape Architect, was retained to clarify the identity of trees listed as "deciduous" in the tree listing that are located within the disturbance area and that are proposed to be removed (see letter in Appendix N). A revised Tree Location Plan with specific tree identifications is included in Appendix N of this FEIS.

According to Mr. Piscitelli, most of the trees located on the site are second growth trees, predominantly Oak, Locust, Maple and Birch. The trees of greater value to the site are the large specimen Oaks and Beeches, which are not found in the proposed rights-of-way or disturbance areas. In other words, the larger, more significant trees are located in the proposed conservation areas. The trees that were identified are generally healthy and in a satisfactory condition. Those trees that are located within the rights-of-way and disturbance areas are proposed to be removed.

Comment No. C48:

The stormwater storage for Mohawk Drive should include a significant amount of runoff from large areas of proposed parcels 1, 11 12 and 14.

Response No. C48:

This comment is not applicable to the 13-lot conservation subdivision. The northern and eastern portions of the subject property are proposed to be preserved within a conservation area. With respect to drainage, surface water runoff consists of three areas, as outlined below.

Drainage Area A consists of the northerly side of Parcels 1 to 6 and all of Parcels 7 – 13 and westerly end of proposed South Drive. Stormwater is proposed to be conveyed northerly and westerly from these sites by surface water runoff and a positive piped system to be located within drainage easements to a proposed storm water basin located in the north westerly portion of the site between Parcels 11 and 12.

An eight-inch design criterion is to be used to design and determine the required retention capacity. Preliminary calculations indicate that for this area, 232,000± cubic feet of retention would be required for this area. The proposed recharge basin, as presently designed, will provide just over 300,000 cubic feet of retention capacity with an average water depth of nine feet.

A subsection of Drainage Area A (proposed Parcels 3 – 5) tends to slope to the south toward the present Mill River Club driving range. These lots will be provided with DRAs and drywells that will retain surface water runoff that is not directed to the proposed recharge basin.

Drainage Area B consists of the easterly portion of South Drive, from the proposed turning area at the access easement in the vicinity of Parcels 1, 11 and 13 and the swale areas from the adjacent conservation areas. An eight-inch design is also proposed to be utilized for the tributary area. Stormwater will be collected in a series of drywells along the roadway shoulder area as well as a DRA located adjacent to the proposed South Drive in the mid-section of the proposed southernmost conservation area. Runoff capacity for this area, on a preliminary basis, is estimated to be approximately 55,000 cubic feet. Retention is estimated to be 35,000 cubic feet in the DRA and approximately 20 – ten-foot-diameter drywells, with a capacity of 18,000 cubic feet for a total retention to be provided of 53,000 cubic feet.

Drainage Area C consists of the proposed conservation areas, which will remain in their existing undisturbed condition without improvement for drainage structures.

The proposed water booster station site, located along Mill River Road, would contain one or more drywells to capture runoff from the proposed facility.

Comment No. C49:

Dry wells are proposed within steep areas throughout the plans. The installation of these dry wells would cause additional disturbance within the wooded areas. The DEIS should address constructability of the dry wells in steep areas, or the dry wells should be relocated.

Response No. C49:

The stormwater management system has been redesigned as part of the 13-lot conservation subdivision to incorporate the use of a recharge basin, a common area DRA, drywells and DRAs within individual lots, and a drainage conservation easement along Mill River Road instead of the extensive use of drywells throughout the site, as was previously proposed in the 14-lot conventional subdivision. The maintenance for the recharge basin and the common area DRA would be the responsibility of the organization (e.g. HOA) or agency that has jurisdiction over them. With respect to the drywells, while they have not historically required intensive maintenance, a homeowners association would be responsible for such maintenance, with Village back-up in the case such maintenance is not performed.

Comment No. C50:

Dry wells are shown on a number of lots beyond the conceptual limits of clearing shown on the plans. The plans should be clarified to indicate what is meant by "natural" areas shown and why drywells would be needed in these areas.

Response No. C50:

The conservation subdivision plan has been designed to address this comment. With respect to the redesign of the stormwater management system, it has been redesigned as described in Response C49. The term "natural area" has been removed from the proposed 13-lot conservation subdivision (see Appendix E of this FEIS).

Comment No. C51:

The edge of dry well walls should be placed a minimum of 10 feet from the edge of the road to preclude settlement. A ten foot drainage easement is necessary, and should be shown on the plans.

Response No. C51:

Other than in areas specifically set aside for drainage purposes (recharge basin, common area DRA, etc.), drywells will maintain a separation distance of 10 feet from property lines and as much as 20 feet from excavations, such as foundations or other drywells or leaching pools. Details of drainage structure placement relative to roadways, property lines and other areas will be shown on the final subdivision plan.

Comment No. C52:

Details are required for the reconstruction of sluiceways on Mill River Road.

Response No. C52:

See the typical detail figure in Appendix H of this FEIS for the details regarding the reconstruction of the sluiceways on Mill River Road. The final *Street Grading & Drainage Plan* will include not only this detail, but details for all proposed construction.

Comment No. C53:

We are aware that in order to service the project, a booster station would be required, regardless of which water districts provide water supply. The location of the booster station should be shown on the subdivision plans, with modifications to the adjacent lot as required.

Response No. C53:

A water booster pump station is proposed to be built within a 0.18-acre parcel situated along Mill River Road (see Appendix E). Construction of this building is subject to Village of Upper Brookville requirements for architectural review and receipt of a building permit. The Jericho Water District will supply water to the entire subdivision (see Appendix G).

Comment No. C54:

In order to service the project, the Jericho Water District franchise area would have to be expanded. The DEIS should discuss the process of expanding the franchise area, within the NYSDEC guidelines, and the DEIS must indicate that a NYSDEC approval is required.

Response No. C54:

The entire proposed subdivision will be serviced by the Jericho Water District. While the overall property is located within both the Jericho Water District and the Oyster Bay Water District, all 13 residential lots within the conservation subdivision are located either wholly or partially within the Jericho Water District. The Oyster Bay Water District has agreed that the entire subdivision, as well as Tax Lot 7, would be serviced by the Jericho Water District (see Appendix G).

Comment No. C55:

On the alternative subdivision plan, the applicant should consider an alternative access between proposed Parcels 9 and 10, to the out-parcel and adjoining proposed lots in order to disturb less sloped land.

Response No. C55:

The proposed 13-lot conservation subdivision (see Appendix E) obviates the need for the alternative access between former parcels 9 and 10, since the internal roadway configuration has been revised and the northern and eastern portions of the property are proposed to be preserved. The Applicant has had recent discussions with the owner of the out-parcel (Tax Lot 7), Mr. Schwerin, and is in the process of entering into a successor right-of-way agreement with the owner of Tax Lot 7 so that access to such lot via Mohawk Drive will be eliminated, and future access would be obtained through the proposed subdivision roadway.

Comment No. C56:

As stated in the DEIS, the existing sight distances for the proposed subdivision access road are inadequate to the left (north). As a mitigation measure, the applicant proposes to remove some vegetation within the Villages right-of-way of Mill River Road, including "limbing-up" trees along roadside, as well as signage. The applicant should include an alternate roadway access plan that provides acceptable sight distances at the entrance to the development.

Response No. C56:

The 13-lot conservation subdivision proposes a single access generally located at the existing driveway serving 57 Mill River Road. According to the sight distance recommendations from the NYSDOT's Policy and Standards of the Design of Entrances to State Highways, which refers to Geometric Design of Highways and Streets, published by AASHTO, the recommended sight distances to the left and right for vehicles exiting driveways onto two lane roads with design speeds of 35 MPH (Case B1 and Case B3), are 390 feet and 335 feet, respectively. As field-measured, the sight distances for stopped passenger vehicles from the approximate access driveway location were 525 feet and 535 feet to the left and right, respectively. Therefore the recommended intersection sight distance requirements have been met and exceeded under the conservation subdivision.

Comment No. C57:

Due to the size of the development and length of the proposed cul-de-sac, it is good planning to provide a second means of access to the site, even if it is for emergency use only.

Response No. C57:

Access along Mohawk Drive to the existing off-site residence to the northeast (i.e., Section 24 – Block E - Lot 1031) would remain, as it is the sole access for this lot. However, Mohawk Drive would be abandoned to the west of such properties. The use of Mohawk Drive beyond this area would be eliminated or limited to emergency access use, and the out-parcel (Section 24 – Block E – Lot 7) would obtain access through the

proposed subdivision. Therefore, no public use of Mohawk Drive, beyond the existing lot, would be permitted. However, the final decision as to the disposition of Mohawk Drive would be made by the Village Planning Board and any property owners with access rights (also see Response No. C8).

Comment No. C58:

The three main environmental issues for this project are significant tree removal, the volume of earthwork during construction (including construction truck traffic) and the disturbance of regulated sloped land. The applicant should prepare an alternate subdivision layout that would minimize impacts to all three.

Response No. C58:

Based upon comments received during the public comment period associated with the environmental review of the proposed action and subsequent discussions with the Village Planning Board and its consultants, the Applicant has prepared a 13-lot conservation subdivision (see Appendix E). As discussed in Section 3.3 of this FEIS, there would be significantly less tree removal, slope disturbance and earthwork associated with the proposed conservation subdivision in comparison to the 14-lot conventional subdivision presented in the DEIS (see Appendix C of this FEIS), since over one half of the site would become part of a conservation area. More specifically, whereas the 14-lot former proposed action required 127,163 cubic yards of soil and approximately 5,200 cubic yards of material to be removed from the site (9,600 truckloads), the 13-lot conservation subdivision requires removal of approximately 117,886 cubic yards of soil and approximately 4,000 cubic yards of material (8,820 truckloads), resulting in an overall reduction in truck traffic of approximately 8.1 percent. When compared with the 13-lot conventional subdivision, the overall reduction in truck loads is even higher (28.1± percent). Finally, with respect to slopes, the majority of the steep slopes located on the subject property would be preserved through implementation of the conservation subdivision, and the proposed disturbance in the steep slope area, for the most part, would be in areas that were previously disturbed by the construction of the Arthur Dean Estate and driveway.

Michael F. Schwerin
Oral Remarks and Written Submission
October 6, 2009

Comment No. C59:

As is evident from the plans submitted by the Applicant, our property is completely surrounded by the proposed subdivision. We are the "hole in the doughnut." In addition to ownership of this lot, we enjoy and are burdened by various deeded rights of way and utility maintenance agreements relating to the lands proposed for development. For these reasons, we are likely to be uniquely impacted by this subdivision, should it proceed.

Response No. C59:

The proposed 13-lot conservation subdivision locates the lots on the western and southwestern portions of the site. Thus, the commentator's parcel is no longer surrounded by residential lots. While the commentator's lot and residence are not part of the proposed subdivision, the majority of the lot would now be surrounded by conservation area. The commentator's residence is located on the northerly portion of Tax Lot 7, approximately 60 feet from the proposed conservation easement on the north and 70 feet from the conservation area on the east (see Appendix E of this FEIS). In the locations that the commentator's parcel is not adjacent to the conservation areas, such parcel would be adjacent to two residential lots of at least 2.5 acres. However, only one of these residential lots would be new, as the parcel containing the existing Monday House (directly across from the commentator's parcel), is proposed to be preserved. In addition, the Applicant has incorporated access to the commentator's parcel into the subdivision roadway network (instead of maintaining such access from Mohawk Drive), and the Applicant (or subsequent homeowners association) would be responsible for the care and maintenance of this roadway.

Comment No. C60:

As evident to anyone who has visited the property, and as is shown on the topographic maps submitted, the property in question is very hilly, with extensive areas of "steep" (>15%) and "severe" (>25%) slopes, particularly in the front (eastern and northern) two thirds of the property. To create access to the several lots proposed for the back (western) portion of the property, a new road (South Drive) is anticipated. For about ½ of its length, this new road follows the existing driveway serving both my house and the former Warren house (Parcel 10). However, to accommodate the elevation gains necessary to serve the back lots, significant regrading is needed.

Focusing on the point where the proposed South Drive would veer off the existing driveway in a southerly direction, the current elevation is about 190'. The Road Profile submission shows that this point will lowered by as much as 45' under the proposed regrading, giving the new South Drive an elevation of about 145' here.

The problem is that the driveway serving my house and the former Warren house will need to connect to the new road at this point, which will now be as much as 45' below where it stands today. The driveway enters my property at an elevation of about 220'. The current rise of 30' (from 190' to 220' elevation) across a run of about 300' is already steep. The proposed regrading of the existing lower driveway to accommodate the new access road would require a rise over the same run of about 75' (from 145' to 220').

This would result in a dangerously steep driveway for the two existing residences, as well as for the proposed Parcel 11 shown on the subdivision plan. This problem is acknowledged in the DEIS under 4.1.2 Topography (pp. 114-115), but is not resolved. The DEIS states: "[i]t should be noted that the Village engineer has raised concerns regarding these road width and gradient issues."

Response No. C60:

The Applicant understands the need to provide an adequate and safe transition to the existing driveway at the site, should there be a need to modify the existing right-of-way. However, under the 13-lot conservation subdivision, there would be no alteration to the existing 16-foot-wide driveway right-of-way (Mohawk Drive) that presently serves Tax Lot 7 and the Monday House. Use of the proposed access easement, as shown on the conservation subdivision (see Appendix E) with a proposed width of 18 feet and grades of 2.0 to 4.6 percent terminating at the existing grade of the 16-foot right-of-way, would permit the elimination of use of the 16-foot driveway (which is 14 feet in width with extended grading of 15 percent slope) and its incorporation into the proposed conservation area.

Comment No. C61:

Furthermore, although the extensive grading that would be necessary to tie the existing driveway to the proposed new road is shown on a 1"/40' scale mini-map titled Driveway Detail Tax Lot 7 (p. 115), this work (as the associated environmental impact) is not included on the larger Subdivision Study Slope Analysis Post Road Construction.

Response No. C61:

The comment is no longer applicable. See Response No. C60.

Comment No. C62:

Also, the DEIS fails to include the excess material resulting from a regrading of this portion of the driveway in the cubic yard totals and truck hauling calculations mentioned below.

Response No. C62:

The comment is no longer applicable, as the 13-lot conservation subdivision does not propose the use of this driveway (see Appendix E of this FEIS). With respect to Tax Lot 7, the portion of the driveway noted in the comment no longer requires significant disturbance and soil removal. Also, see Response No. C60.

Comment No. C63:

The DEIS makes no mention of what measures the Applicant will need to take to ensure that my family and I have safe and suitable opportunities for ingress to and egress from our property during the construction phase of the proposed development.

Response No. C63:

The commentator's ingress to and egress from his property would not be impacted during the construction phase of the development with development of the 13-lot conservation subdivision (see Appendix E). Mohawk Drive will not be used for access to or in connection with construction of the subdivision. It is contemplated that the commentator's access via Mohawk Drive would be eliminated upon completion of the subdivision roadways. The commentator will have full access via the subdivision's new roadways. Specifically, as noted in Response Nos. C8 and C30, the Applicant has had recent discussions with the commentator, and is in the process of entering into a successor right-of-way agreement with the commentator so that access to the commentator's lot via Mohawk Drive will be replaced with a new access, via the proposed subdivision roadway. See Appendix E, which shows the proposed new roadways within the 13-lot conservation subdivision.

Comment No. C64:

According to the DEIS notes (p. 24): "During construction, heavy vehicles, primarily large trucks (three axles or more) making deliveries of building materials and equipment, dump trucks, earth moving dump trucks, equipment trucks, and asphalt and concrete trucks, will be traveling to and from the site." All of this heavy equipment will be using the Right of Way that currently serves as my driveway.

The DEIS goes on to say (also p. 24) that as much as 106,000 cubic yards of earth will be removed from the site during infrastructure development, that this work will extend over two or more years, that approximately 14,000 truck trips will be necessary to transport the excess material, that assuming a Monday through Friday schedule, during the hours of 8:00 AM to 6:00 PM, this would result in approximately 27 truck trips per day or about one truck trip every 22 minutes for an entire year, after which about ½ of the total amount of excess material would remain to be moved in subsequent years. This calculation only includes the truck traffic necessary to remove excess material. All of the other traffic mentioned above (for building materials, equipment, asphalt and concrete) would be in addition. Also, consider the traffic necessary to bring workmen and supervisors to and from the site.

Putting aside the legal issue of whether all of this traffic defeats the purpose and thereby violates the terms of the right of way for my driveway, it certainly raises the question: How will my family and I safely enter and leave our home during this multi-year construction project? The DEIS needs to answer this question.

Response No. C64:

See Response No. C63.

Comment No. C65:

In addition to the question of personal use of my driveway, the DEIS also fails to demonstrate how the Applicant will ensure that suitable access to my home and property will be continuously provided during the construction phase for heavy vehicles, such as oil delivery trucks, and for emergency vehicles such as fire trucks.

Response No. C65:

See Response Nos. C63 and C64.

Comment No. C66:

The only viable solution to the Second and Third points above might well be the construction of a temporary driveway, connecting my property to Mill River Road during the construction phase. If the Applicant intends to construct such a temporary driveway, it should be detailed in the DEIS.

Response No. C66:

See Response Nos. C63 through C65.

Comment No. C67:

The water main which currently provides service to my home runs along the existing driveway. The Applicant proposes to significantly regrade and modify this driveway. The DEIS fails to show how the Applicant intends to provide, during the construction phase, continuous, suitable, and safe supplies of potable water to our home as well as water of sufficient capacity and pressure for fire protection to the

Response No. C67:

See Response Nos. C63 through C66. Furthermore, the obligation to supply water to the Schwerin residence will at all times remain the responsibility of the Jericho Water District. The location of all known water utility easements will be made known to all of the Applicant's contractors and the Applicant will meet with all of its contractors to ensure that all appropriate measures are undertaken minimize the potential for disruption of the utilities.

Comment No. C68:

Other utilities such as power, telephone, and television cable are supplied across the development site to our home. The DEIS fails to detail how these services will be maintained during the construction phase.

Response No. C68:

See Response Nos. C62 through C67.

Comment No. C69:

Regarding water, power, telephone and other utility services beyond the construction phase, the DEIS mentions (p. 17) that the Applicant's property is a party to a deeded water and utility easement agreement which includes my property, but the DEIS does not detail with appropriate specificity how the rights and obligations of this agreement will be permanently preserved. It says merely that: "The respective rights of the Applicant and the other remaining parties to the Agreement will be dealt with in connection with the extension of water service to the subdivision and through a Homeowner's Association to be created." This is insufficient disclosure. It is entirely written in the future tense ("will be dealt with", "to be created").

Response No. C69:

The Applicant is aware of the existence of a four party agreement dated May 25, 1983 among the former owners of Tax Lots 6, 7, 1031, 12A and 12C as well as the first and second mortgagees of Tax Lot 1031. The Agreement pertains to the maintenance of a private water line and to the future installation of electric and telephone lines and poles. The Applicant acknowledges that the Agreement, by its terms, runs with the land and remains binding on the successors and assigns of the original parties thereto unless said successors and assigns mutually agree to a new arrangement.

Comment No. C70:

Specifically focusing on one aspect of this issue, water service, the DEIS raises the question of adequate water pressure (p. 122): "The Jericho Water District has indicated that, since the project site is located near to the outer limits of the District, pressure for domestic use and fire protection will have to be amplified with the use of a booster pump station." If the Applicant plans to replace our existing water service with a new service, it will be necessary to give credible assurances that continuous and adequate pressure and supply will be provided. If the new water service, including whatever ancillary support is necessary, such as the operation of a booster pump, were to cost more than the current service, the Applicant will need to cover this cost in some manner or seek our agreement to contribute to it.

Response No. C70:

The Applicant intends to follow the recommendations of the Jericho Water District and the Oyster Bay Water District to the effect that the Jericho Water District would be designated as the only water district responsible to serve the subject property as well as continuing to serve Tax Lot 7. A water booster pump station is proposed to be built within a parcel situated along Mill River Road (see Appendix E). Construction of this

building is subject to Village of Upper Brookville requirements for architectural review and receipt of a building permit. The pump station and any and all required water mains would be installed by the Jericho Water District in accordance with applicable codes and regulations and pursuant to plans and specifications prepared by its engineers. The Applicant acknowledges that it may be proportionately responsible for the expenses associated with bringing water service to the commentator's property.

Comment No. C71:

The DEIS language in Table 2 (p. 16) regarding my deeded right of way across proposed Parcels 10, 9, 8 and 4 (Liber 1593 Page 140) is misleading. It suggests that: "This easement may no longer [be] enforceable due to the merger of the benefited and burdened parcels involved." This is incorrect. The burdened properties (those formerly belonging to Warren and to Dean) have been merged, but the benefitted property (mine) has not.

Response No. C71:

The Applicant acknowledges the commentator (the owner of Tax Lot 7) has the benefitted property, and is in the process of reaching a mutually-beneficial successor easement agreement with the commentator.

Comment No. C72:

The DEIS goes on to say that: "In any event, it will be the subject of affirmative insurance from Applicant's title insurer." Such insurance, should it be available, which seems unlikely under the circumstances given the clear 78 year trail of deeds which record the right of way, would in any event protect the Applicant and subsequent buyers of his property. Title insurance would not protect me, the beneficiary. The DEIS needs to spell out how the Applicant intends to protect me from possible impairment of the rights conveyed by this easement.

Response No. C72:

See Response No. C71.

Comment No. C73:

Although the Applicant purports to satisfy the Village's Zoning Code with respect to steep slopes by complying with the minimum acreage requirements for each lot, it should be noted that several of the proposed parcels to do not contain "Potential Building Sites" as defined by the Code §205-7, comprised of at least 30,000 sq. ft. of contiguous land with slopes less than 15%. Also, the main building and accessory building sites indicated on these lots, although presumably only schematic at this time, show construction on areas of severe slopes, in violation of §205-10 (F)(1). In situations such as this, §205-10 (F)(3) would presumably apply, such that no development shall be permitted unless a variance is obtained from the Board of Appeals.

The Village should please confirm that variances from the Board of Appeals will be required for the location of building sites on Parcels # 1, 2, 3, and 11. Also, given my unmitigated exposure to the environmental impact of this development, I formally request that I be notified directly of any and all Village hearings to consider possible building sites for this project.

Response No. C73:

The subdivision plan has been revised as a conservation subdivision to configure the lots on the flattest portion of the property (see Appendix E of this FEIS). The southern and a portion of the western sides of the commentator's property are bounded by two proposed lots and an access easement roadway that would also serve his site. The remainder (and majority) of the commentator's property would be surrounded by land to be included within a conservation area. A legal instrument will be developed by the Applicant, in cooperation with the Village, to ensure that no disturbance will occur within the conservation areas.

All affected property owners are required to be notified of Village hearings. Also see Response No. C10, which indicates that other public hearings may be held with respect to development on the subject property.

Comment No. C74:

Given the vast amount of material proposed to be removed from this site, and the fact that much of it is likely to be commercial grade sand, it is important that the Village protect itself against the possibility that this project could fall into the hands of a developer whose primary purpose is to mine and sell sand. As far-fetched as this notion sounds, many of us remember that the Village previously encountered this exact problem at a site on neighboring property at Wash Hollow Road. This does not seem to be a risk with the current owner, but somewhere in the future we don't want to find that 106,000 cubic yards of sand have been removed from this site and sold with no roads built. Such protection conceivably could take the form of a large performance bond.

Response No. C74:

The concerns raised by the commentator are addressed in Section 108, *Excavating and Filling*, of the Code of the Incorporated Village of Upper Brookville, to which the proposed development will adhere. Specifically, §108-5.B(8) requires that:

> *"The applicant shall deposit or file with the Village an appropriate amount of cash or, if said Board permits, a performance bond or other adequate security in form and with surety acceptable to the Board, in such amount as the Board shall deem sufficient, to insure the faithful performance of the work to be undertaken pursuant to the conditions of approval and to insure repairs to any streets (public or private) or any public property damaged by trucks or other machinery using the same for access to and from the premises being dredged, filled or excavated."*

Comment No. C75:

Three of the most mature trees on or near this site stand at the intersection of our existing driveway and Mill River Road. Tree tagged #507 (42" diam.) and tree tagged #502 (32") are apparently the two largest evergreens on the entire site, but they are marked for removal. In addition, a massive deciduous tree (not tagged; ~44") stands on the north side and partly within the existing driveway. Steps should be taken to preserve these ancient trees. If necessary, the entrance of the new road should be relocated southward on Mill River Road to avoid destroying them.

Response No. C75:

Tree Nos. 502 and 507 (both pine trees) are located immediately adjacent to the south side of the existing Mohawk Drive. The 44-inch deciduous tree noted in the comment is located on the northerly side of Mohawk Drive. The 13-lot conservation subdivision does not propose any improvement to Mohawk Drive; it would not be used as a subdivision roadway. Therefore, these trees would not be impacted.

Comment No. C76:

Nothing in this statement should be construed as waiving any of my rights with respect to my property, including rights established under associated, pre-existing agreements. These comments are based on a preliminary study of the DEIS and other issues may surface upon closer inspection and consideration. Also, I have not, as yet, hired professional counsel to advise me on these matters and nothing here is intended to foreclose any avenue to protect my rights available to me once so advised.

Response No. C76:

The comment is noted.

Michael F. Schwerin
Second Written Submission
October 7, 2009

Comment No. C77:

"The existing driveway at Mill River Road (Mohawk Drive) would be improved, and would serve as access for the proposed subdivision. The proposed internal roadways would be improved with a 22-foot-wide paved area within a 50-foot right-of-way, in accordance with Village Standards."

This statement is not entirely true. The term "Village standards" presumably refers to our Village Code. Under our Code at Paragraph 180-17 (I)(2), local and marginal streets should have a grade not greater than 8%, "unless warranted by extenuating circumstances." For most of its ~3,000' length, the proposed Mohawk Drive continuing as South Drive is engineered to a grade of 10%.

Perhaps I overlooked it somewhere else in the document, but I could not find where the Applicant notes that the proposed grade exceeds Village standards. Not doing so is a deficiency in the DEIS. Further, the Applicant should demonstrate why he feels "extenuating circumstances" prevail in this case.

Response No. C77:

Current Village road grading requirements specify eight percent maximum grade. The Village Engineer, with approval from the Planning Board, has, in the past, accepted 10+ percent grading in areas of steep slope as a mitigation measure to the creation of even more severe cutting and slope disturbance. For example, in the Map of Sagamore Woods, which contains 36 lots, the maximum grade is 11.34 percent. In addition, in the Map of Chestnut Hill Estates, which contains 24 lots, the maximum grade is 11.76 percent and in the Map of Planting Fields Estates, which contains 13 lots, the maximum grade is 12 percent. The Planning Board does not wish to replicate these situations. However, use of 10 percent grade mitigates additional disturbance to existing steep slope areas on the easterly portion of the site. Much of the disturbance associated with the roadways shown in the 13-lot conservation subdivision (see Appendix E of this FEIS) is proposed to occur in areas previously disturbed by the Dean House and driveway. Use of the 10 percent gradient also meets NCDPW and Town of Oyster Bay standards, and use of such gradient will obviate, to the maximum extent practicable, disturbance of existing side slopes.

The Road Profiles specifically depict the extent of all road grades, including the proposed 10 percent grades. Appendix E of this FEIS includes the updated Road Profiles (original Road Profiles are found in Appendix B of the DEIS) based upon the conservation subdivision design.

Comment No. C78:

There is a policy trade-off between limiting maximum grades as a safety matter and avoiding switchbacks and other means of extending run as an aesthetic and environmental matter.

Personally, in this case, I would argue that the circumstances warrant an accommodation by the Village allowing 10% grades. A lower limit would force the developer to extend his roads and thereby worsen the aesthetic and environmental impact of the project. However, for safety reasons I would be very concerned if the Applicant were to request any further latitude to exceed our Village standards.

Response No. C78:

The maximum roadway grade is not proposed to exceed 10 percent. Also, see Response No. C77.

North Shore Land Alliance Inc.
October 6, 2009

Comment No. C79:

While we recognize that the owner of the property has a right to develop it, we hope that with a little creative thinking on the part of both the village planners and the developer that the developer's goals and objectives can be realized with as little impact to the environment as possible. The kind of creative thinking that we are proposing would allow development of the site while protecting its slopes and trees to a much greater extent than what is currently proposed in this application while still allowing the developer to realize its development rights.

Response No. C79:

Based upon the comments made during the SEQRA process, the Village has worked with the Applicant to develop a plan that meets the Applicant's goals, while protecting the environment and character of the Village. Accordingly, the Applicant has redesigned the subdivision based upon the yield from a conventional subdivision plan, as described in Section 3.2 of this FEIS. This 13-lot conservation subdivision has been designed to protect the steepest slopes and much of the Coastal Oak-Laurel Forest found on the subject property. The 13-lot conservation subdivision is described in detail in Section 3.3 and is shown in Appendix E of this FEIS.

The 13-lot conservation subdivision configures the residential lots on the flattest portion of the subject property while preserving the steepest slopes on the northern and eastern portions of the site. Locating the lots on one portion of the property allows for (1) protection of the steepest slopes on the property; (2) maintenance of a significant amount of open space, (3) retention of numerous trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and continuous wildlife corridor that is only interrupted by the existing Mohawk Drive and a small portion of the proposed subdivision road.

The North Shore Land Alliance, upon review of the conservation subdivision, has provided a letter of support for the conservation subdivision (see Appendix J of this FEIS).

Comment No. C80:

The applicant states that the proposed subdivision has been designed to preserve the natural slopes to the maximum extent practicable, but because the parcel includes over 41 acres of steep or very steep slopes, it will be impossible to construct roads and build homes on this site without a huge negative impact to the natural environment. The applicant further states that the proposed subdivision conforms to existing zoning laws. Even accepting this statement at face value, it is clear that subdividing this parcel as proposed does not conform to the stated goal of the Village's *Master Plan* which is to preserve natural vegetation and slopes, protect trees, and other natural resources. The Village has laws that regulate disturbing steep slopes, yet eight of the fourteen lots on the proposed plan site structures on steep slopes, but conform to existing zoning in that they are seven acres or more.

Response No. C80:

See Response No. C79, as well as the discussion of the conservation subdivision in Section 3.3 of this FEIS, with respect to the preservation of natural resources.

Moreover, the goals of the Village's *Master Plan* for the "Natural Environment" are to:

- Continue the conservation and enhancement of natural features which are the basic assets of the community and which, when taken together, constitute the environmental setting of the "open" development areas envisioned by the Regional Plan of New York and Its Environs...;
- Maintain the integrity of the natural plant and animal habitats that are the very essence of such an "open" development area by protecting the continuity of wooded areas and also the balance between such wooded areas, open fields and other cultivated parcels, and the man-made environment;
- Preserve the natural environment and plant communities that exist in the Village;
- Realize that over development of lots and increased impervious surface contribute to increased stormwater runoff and pollutants;
- Conserve soils and natural topography of the Village through careful planning for regrading, stormwater drainage and plant cover designed to minimize erosion and sedimentation;
- Encourage effective groundwater recharge and protection of groundwater and surface water quality;
- Preserve scenic features of country roadsides and hedgerows to conserve the community character;
- Recognize that steeply sloping land are highly visible from roadways and are an attractive visual characteristic and that these lands are environmentally sensitive;
- Understand that conservation of woodlands prevent erosion and provide natural habitat for a variety of wildlife species; and
- Recognize that the watershed valleys are important for conveyance of stormwater runoff within defined channels and stable contributing areas.

The Village's goals for the "Man-Made Environment" are to:

- Guide the location and type of land use in accordance with the well-established "open" estate-style residential community character;
- Discourage replacement of native vegetation with nursery stock in order to preserve wildlife habitat;
- Maintain a compatible relationship between various land use and both a physical and fiscal balance between the intensity of such uses and available community services;
- Implement the limitation and eventual elimination of non-conforming uses;
- Provide for effective transitional development;
- Establish policies to provide for proper balance of size of dwellings relative to size of lots;
- Recognize that compatible architecture for new construction and renovation may help preserve the character of the Village; and
- Minimize light pollution and keep night skies free of urban sky glow.

The Applicant respectfully submits that the proposed 13-lot conservation subdivision would meet the goals of the Village Master Plan in that approximately 56.6 percent of the subject property would be preserved as open space through the establishment of conservation areas. This would preserve natural woodlands and animal habitat as well as the natural topography of the site to the maximum extent practicable. Given that the development associated with the 13-lot conservation subdivision would be concentrated in the western and southwestern portions of the subject site, scenic features of Mill River Road would be preserved. Additionally, the preservation of sloped areas along Mill River Road helps to maintain the attractive visual character of such topographic areas. In addition to the conservation of 54.99± acres of land (including a drainage conservation easement along Mill River Road), the 13-lot conservation subdivision also includes the construction of a stormwater basin and drainage reserve areas, which is in keeping with the goal of encouraging effective groundwater recharge. Although the proposed lots within the 13-lot conservation subdivision are smaller than the minimum five-acre requirement of the OP1 zoning district, the overall residential density would be 7.47 acres per lot, which would exceed the minimum five-acre lot size of the OP1 zoning district. The size and configuration of the proposed residential lots would maintain the "open" estate-style residential community character. Finally, given the size of the overall subject property, the development of 13 residential lots, one of which already exists, would not be a significant increase in the intensity of land use, and thus, would not require significantly increased access to available community services.

Comment No. C81:

A few years ago, NSLA had a seminar featuring Randall Arendt as the featured speaker. Mr. Arendt is a nationally recognized authority on conservation planning. Mr. Arendt points out that in many cases conventional zoning ordinances work at cross purposes with the Master Plan, and can be destructive of the very natural resources that they are meant to protect. In short, there are often gaps between the stated goals of the Master Plan and existing laws. His idea is that the residential subdivision design process can be reformed so that such developments become a major tool to achieve a community's conservation objectives, at no additional cost to developers.

Conservation subdivision design requires consideration and preservation of natural and cultural resources as part of the design process of a development. Studies have shown that they save money on expensive site grading and road construction, and that the lots sell more quickly and a premium prices. Local subdivisions that have used similar conservation planning include Cherrywood on Piping Rock Road and Matinecock Farms on Duck Pond Road. Both feature well designed homes on smaller lots than required under existing zoning in order to preserve more trees and natural features with more open space under common ownership.

Response No. C81:

Based upon comments received during the public comment period associated with the environmental review of the proposed action and subsequent discussions with the Village Planning Board and its consultants, the Applicant has prepared a 13-lot conservation subdivision to address the environmental issues that were raised (see Appendix E of this FEIS). The 13-lot conservation subdivision configures the residential lots on the flattest portion of the subject property while preserving the steepest slopes on the northern and eastern portions of the site. The benefits associated with implementing the 13-lot conservation subdivision and locating the lots on one portion of the property include, (1) protection of the steepest slopes on the property, (2) maintenance of a significant amount of open space, (3) retention of numerous trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and continuous wildlife corridor that is only interrupted by the existing Mohawk Drive and a small portion of the proposed subdivision road. The NSLA has written a letter of support for the conservation subdivision (see Appendix J of this FEIS).

Comment No. C82:

Although the applicant proposes a conservation easement on 29.7 acres, the 29.7 acres is highly fragmented and includes buffers between individual lots which would not do much to protect the natural resources of the property. Nor is it clear how this proposed conservation area would be protected. NSLA works with private landowners and local governments to protect open space and would be happy to work with the developer to place a conservation easement on the property to ensure its permanent protection.

Response No. C82:

A 13-lot conservation subdivision has been prepared that provides approximately 56.83 acres within conservation areas (see Appendix E). Approximately 45.10 acres would be located in the northern and eastern portions of the site and 6.03± acres would be located in the southeastern portion of the site. The remainder of the conservation area (3.86± acres) would be located within individual residential lots, along the perimeter of the property. The two larger conservation areas would be substantially contiguous, with the exception of the presence of a portion of the subdivision roadway and the existing Mohawk Drive, which use within the conservation area is proposed to be discontinued. The approximately 54.99 acres within the two larger conservation areas and in the perimeter area of the individual residential lots do not include any natural areas that may be incorporated into individual residential lots. It is expected that an additional 19.37± acres of natural vegetation (not considered conservation area) would be retained within individual lots.

A legal instrument will be developed by the Applicant, in cooperation with the Village, to ensure that no disturbance will occur within the conservation areas. Such instrument will also outline maintenance and protection responsibilities as well as permitted/ prohibited activities within these areas.

Comment No. C83:

NSLA has examples of Conservation Subdivision ordinances which have been adopted and successfully implemented in many New York and Long Island villages which illustrate how such laws can help to protect natural resources. We also have examples of very well designed conservation subdivisions which also show how such designs can really benefit a community which we would be happy to share.

Response No. C83:

Based upon comments received during the public comment period associated with the environmental review of the proposed action and subsequent discussions with the Village Planning Board and its consultants, the Applicant has prepared a 13-lot conservation subdivision to address the environmental issues that were raised (see Appendix E of this FEIS). The 13-lot conservation subdivision configures the residential lots on the flattest portion of the subject property while preserving the steepest slopes on the northern and eastern portions of the site. The benefits associated with implementing the 13-lot conservation subdivision and locating the lots on one portion of the property include, (1) protection of the steepest slopes on the property, (2) maintenance of a significant amount of open space, (3) retention of numerous trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and continuous wildlife corridor that is only interrupted by the existing Mohawk Drive and a small portion of the proposed subdivision road.

The NSLA has written a letter of support for the proposed conservation subdivision (see Appendix J).

North Shore Land Alliance Inc.
October 23, 2009

Comment No. C84:

NSLA believes that this project, as proposed, will have a negative impact on the village's environmental resources and in particular, on the Mill River Watershed. The projected residential subdivision of 97.16± acres with the destruction of over 2000 trees and construction on steep slopes which drain directly into Mill River cannot help but negatively impact the Mill River Watershed.

Response No. C84:

Based upon comments received during the public comment period associated with the environmental review of the proposed action and subsequent discussions with the Village Planning Board and its consultants, the Applicant has prepared a 13-lot conservation subdivision that minimizes the impacts to natural resources to the maximum extent practicable, while allowing the Applicant to develop the property based upon the yield of the prevailing zoning (see Appendix E). The proposed residential lots have been located on the flatter, western portion of the property. The northern and eastern portions of the property, containing the steepest slopes, would be preserved within conservation areas. As over half the site would be preserved within conservation areas, the number of trees to be removed would be significantly reduced from the proposed action. See the description of the conservation subdivision in Section 3.3 of this FEIS and Response No. C79.

In addition, while any improvement of the subject site would create disturbance, preparation and enforcement of a stormwater pollution prevention plan, together with individual site plan review by the Planning Board, will obviate to the greatest extent possible significant adverse impacts to the Mill River Watershed area. See the discussion of the *Mill River Watershed Study* in Response No. C85, below.

The Applicant believes that the proposed 13-lot conservation subdivision achieves the objectives set forth by the North Shore Land Alliance, including the protection of the Mill River Watershed. Moreover, the North Shore Land Alliance submitted a letter to the Planning Board indicating its support of the 13-lot conservation subdivision (see Appendix J).

Comment No. C85:

Although the DEIS is thorough with analysis of many of the significant environmental impacts of the proposed subdivision, there are a few areas with which we disagree, or that omitted relevant facts or available research, which should be taken into account in any decision on this application. In particular, the DEIS did not reference the Mill River Watershed Study which recommends actions to protect the watershed from further degradation.

Response No. C85:

The Final Scope, provided by the Village of Upper Brookville, did not require the Applicant to review the *Mill River Watershed Study and Public Stewardship Plan* (hereinafter referred to as the "*Watershed Study*"), dated October 2008, indicated in the comment, as the Final Scope (April 2008) was issued prior to the completion of the *Watershed Study*. Nevertheless, the following provides a brief synopsis of the *Watershed Study* as it relates to the subject property and 13-lot conservation subdivision.

Mill River is a tributary to the Oyster Bay Harbor/Cold Spring Harbor Complex that is located in the northeastern portion of Nassau County, New York. The goals of the *Watershed Study* are as follows:

- Delineate the watershed area that delivers surface drainage to Oyster Bay Harbor via Mill River.

- Define the land uses within the watershed, in order to identify those uses which may be contributing to the contaminant loads in the Mill River drainage system.
- Describe the existing drainage system in the watershed including drainage areas, drainage structures, recharge basins, piping connections, etc.
- Develop feasible strategies to mitigate stormwater quality within the watershed by means of soft and hard methods including: soft methods such as municipal programs, public education, and stewardship; and hard methods including construction of filtering and infiltration systems.

For purposes of the *Watershed Study*, the geographic limitation of the Mill River watershed is defined as that portion of the watershed from which surface runoff potentially enters Mill River. The watershed area encompasses a total of 1,857 acres, and has been divided into five "reaches." The subject property is situated within Reach 2 (Mill Pond Inflow), which includes properties within the Villages of Muttontown and Upper Brookville and the Town of Oyster Bay, extending from New York State Route 25A to Glen Cove Road. Reach 2 is predominantly characterized by low-density residential use. Outfall infrastructure within Reach 2 includes the following:

- CA99 (inlet structures on NYS Route 25A, west of Mill River Hollow Road)
- CA93 (curb inlet at the northwest corner of Mill River Hollow Road and Route 25A)
- CA 61, 62, 66-74, 80, 83, 85 and 87 (outfalls from residences and drives on NYS Route 25A to West View Drive)
- CA 71 (concrete pipe that caries runoff from Lawn Lane)
- CA66 (outfall proximate to the Mill River Club entrance road)
- CA47 (overflow pipe from Center View Drive recharge basin)

Per the *Watershed Study*, stormwater runoff is a major pollutant source linked to the degradation of water quality in Mill River and Oyster Bay Harbor. In general, the major pollution sources identified in the watershed road surfaces, cultivated landscapes of residential properties and golf courses, older and improperly functioning sanitary systems, horse wastes, waterfowl populations and individual hot spots.

The *Watershed Study* presents general management strategies, actions specific to the watershed, public education efforts that can reduce the impact of pollutant load generation. General management strategies include a drainage structure maintenance program; drainage structure investigations; shoreline filter restoration; modification of existing laws and regulations; approval process modifications; water quality storm event control; tidal restriction removal and tidal flow improvements; invasive species removal; riprarian buffer improvements; pond and river clean-up events; fish passage improvement; instream habitat improvements; streambank stabilization; trout population research and improvement projects. Pollution management and educational recommendations include water quality sampling and monitoring programs; municipal personnel stormwater and non-point source education; illicit discharge detection and elimination programs; inter-municipal environmental management and implementation coordination; integrated pest management programs; sanitary system function review and public education programs.

The *Watershed Study* also presents implementation actions and target mitigation projects specific to each of the five watershed reaches. There are no specific measures presented for the subject property. However, presented herein are the measures recommended for Reach 2.

- Assessment of outfall CA93 on NYS Route 25A to determine if collection system construction is warranted.
- Assessment of inlet structures CA99 to determine actual piping and potential mitigation measures.
- Assessment of CA66, Mill River Golf Clubs' overflow drainage system, and encouragement of golf course to adopt best management practices (BMP) and IMP methodologies to reduce pollutant sources.

- Maintain or increase vegetation along Mill River swale sideslopes to reduce erosion and filter surface runoff.
- Provide homeowners with educational materials for BMPs for cultivated areas and septic systems.
- Work with adjacent property owners to ensure that a vegetated buffer is maintained along the river streambank or to the pond shoreline.
- Investigate the potential to install leaching structures or small detention areas along Mill River from NYS Route 25A to West View Drive. Revegetate eroded sections of swale, install weirs to encourage infiltration of small storm event runoff and reduce erosion.
- Assess the configuration of overflow piping at all recharge basins. If necessary, reconfigure piping to provide extended retention.
- CA93 – Coordinate with NYSDOT to determine appropriate measures for the complete drainage infrastructure system to mitigate the pollutant loads entering the Mill River from this outfall.
- CA99 – Coordinate with NYSDOT to determine appropriate measures to mitigate the pollutant loads entering the Mill River from these outfalls.
- Revegetate eroded segments of swale to filter sediments and install leaching basins at intervals to capture and infiltrate the WQSE volume.

There are no specific recommendations for the subject property in the *Watershed Study*. However, the Applicant respectfully submits that the configuration of the proposed conservation subdivision is such that stormwater runoff would be largely, if not entirely, contained on the subject property. The proposed layout provides approximately 51.13 acres of conservation area between Mill River Road and the proposed subdivision itself (not including the conservation areas within the residential lots). As such, impervious areas proximate to Mill River Road would be minimized. Additionally, recharge would occur on-site through the use of a recharge basin, individual drywells associated with each residence, a DRA and a drainage easement along Mill River Road. On-site retention and recharge of stormwater would be maximized to extent practicable. Overall, it is anticipated that the proposed conservation subdivision would not have a significant adverse impact on the Mill River Watershed through stormwater runoff via Mill River Road.

Comment No. C86:

The Mill River Watershed Study and Public Stewardship Program, ("Mill River Study") a recent study commissioned by the Town of Oyster Bay in conjunction with Friends of the Bay, makes abundantly clear that the health of Oyster Bay harbor depends on proper management of the human impact on the watershed. The Mill River Study points out that:

> *Land development alters stormwater drainage characteristics within a watershed, which can have a profound effect on water quality of adjacent waterbodies. Development results in the replacement of permeable natural land surfaces (i.e., woodlands, meadows, etc.) with impervious surfaces such as roadways, buildings, walkways and pavements. Even in areas cleared for development that are subsequently replaced with landscaping, the planted vegetation generally has a lower capacity for absorbing rainwater than the original vegetation; this is especially true with respect to turf areas. The overall consequence of these conditions is that development generally increases the amount of runoff generated on a given parcel of land. The augmented volume of runoff from developed properties can result in an increase of pathogens and other deleterious substances carried from the land surface to receiving waters.*

Response No. C86:

As shown on Table 1 and explained in Section 3.3 and Response No. 20 of this FEIS, the proposed 13- lot conservation subdivision, when compared to the 14-lot conventional subdivision presented in the DEIS, reduces the amount of impervious surface on the subject property from 8.62 acres to 7.43 acres, thus lowering the amount of stormwater runoff generated from 593,129 cubic feet to 430,430 cubic feet.
Stormwater runoff for the conservation subdivision is proposed to be collected and handled via the construction of a recharge basin, installation of drywells and a common DRA, the creation of a drainage

easement along Mill River Road, and drywells and DRAs in individual lots (see Appendix E). Stormwater runoff would be contained on-site, in accordance with local and County requirements. Therefore, stormwater runoff is not expected to impact surrounding properties as virtually all stormwater runoff generated by the proposed development will be captured and recharged on-site. Stormwater runoff that is not recharged into the underlying groundwater system may leave the site and would be conveyed to the Sagamore Woods recharge basin to the north of this site, obviating any direct surface discharge to the Mill Pond drainage system. See Response No. C85.

Comment No. C87:

The Mill River Study notes that the Mill River watershed encompasses two Important Bird Areas (IBAs). IBAs are identified as key sites for birds as designated by the National Audubon Society and the American Bird Conservancy. In the 1980s, Bird Life International, "a global alliance of conservation organizations working for the world's birds and people" (Bird Life International, 2005), began designating IBAs, which are sites that provide habitat for breeding, wintering, or migrating birds, shorebirds, and waterfowl.

Response No. C87:

According to the Audubon Website (http://www.audubon.org/bird/iba/index.html), Important Bird Areas, or IBAs, are sites that provide essential habitat for one or more species of bird. IBAs include sites for breeding, wintering, and/or migrating birds. IBAs may be a few acres or thousands of acres, but usually they are discrete sites that stand out from the surrounding landscape. IBAs may include public or private lands, or both, and they may be protected or unprotected.

The two areas referred to by the commentator are the Oyster Bay Area IBA, located 1.10 miles north of the site, and the Muttontown Preserve IBA, which is located 1.30 miles northeast of the site.

To qualify as an IBA, sites must satisfy at least one of the following criteria. The site must support:

- Species of conservation concern (e.g. threatened and endangered species);
- Restricted-ranges species (species vulnerable because they are not widely distributed);
- Species that are vulnerable because their populations are concentrated in one general habitat type or biome; or
- Species, or groups of similar species (such as waterfowl or shorebirds), that are vulnerable because they occur at high densities due to their congregatory behavior.

Identification of a site as an IBA indicates its unique importance for birds. Nonetheless, some IBAs are of greater significance than others. A site may be important at the global, continental, or state level. Both the Oyster Bay Area and the Muttontown Preserve are identified as state level of significance. The complete results of the Audubon Society's IBA search of the Oyster Bay Area and the Muttontown Preserve are found in Appendix K.

Both of the IBAs are significantly removed from the subject site. In addition, the 13-lot conservation plan provides for the preservation of substantial acreage of the site in its natural state (see Appendix E). Therefore, the proposed action is not expected to have significant adverse impacts on either of the IBAs.

Comment No. C88:

As noted in our earlier submission, the loss of wildlife and bird habitat due to the development of this property can - to the extent it is practicable - be minimized by use of a conservation subdivision design which maximizes preservation of natural features and minimizes fragmentation of woodlands, meadows and other open space.

Response No. C88:

As explained in Section 3.3 of this FEIS, the Applicant has prepared a 13-lot conservation subdivision design to maximize preservation of natural features and minimize habitat fragmentation. Particularly, the benefits associated with implementing the 13-lot conservation subdivision and locating the lots on one portion of the property include, (1) protection of the steepest slopes on the property, (2) maintenance of a significant amount of open space, (3) retention of numerous trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and continuous wildlife corridor that is only interrupted by the existing Mohawk Drive and a small portion of the proposed subdivision road. See Appendix E for a copy of the proposed conservation subdivision plan.

Comment No. C89:

The applicant offers as mitigation for the negative impact of the proposed development that 29 acres of the combined parcels would be conserved through conservation easements. This 29 acre figure is misleading as it combines fragmented buffers around individual lots which would be very difficult to monitor. Moreover, a conservation easement affords no permanent protection of property unless it is donated to an entity that will monitor and enforce the restrictions on the property. The village should insist that the conservation easements so proposed be held by a responsible entity which can insure the permanent protection of the eased property.

Response No. C89:

As explained in Section 3.3 and throughout this FEIS, the 13-lot conservation subdivision has been designed to preserve substantial contiguous areas of open space. Specifically, approximately 45.10 acres would be located in the northern and eastern portions of the site and 6.03± acres would be located in the southeastern portion of the site. The remainder of the conservation area (3.86± acres) would be located within individual residential lots, along the perimeter of the property. The only interruption between the two larger conservation areas is a small portion of the subdivision roadway and the existing Mohawk Drive, which use within the conservation area is proposed to be discontinued. The approximately 54.99 acres within the two larger conservation areas and in the perimeter area of the lots do not include any natural areas that may be incorporated into individual residential lots. It is expected that another 19.37± acres of natural vegetation (not considered conservation area) would be retained within individual lots.

A legal instrument will be developed by the Applicant, in cooperation with the Village, to ensure that no disturbance will occur within the conservation areas. Such instrument will also outline maintenance and protection responsibilities as well as permitted/ prohibited activities within these areas.

Comment No. C90:

Despite its extensive volume, NSLA maintains that the DEIS report did not thoroughly evaluate the project's impact on the Mill River watershed.

Response No. C90:

The DEIS discusses this issue on page 156 thereof. Moreover, as explained in Section 3.3 of this FEIS and in many of the responses, the 13-lot conservation subdivision has been designed to preserve substantial contiguous areas of open space, which will afford greater protection of the watershed by minimizing impervious surface through, for example, the significant reduction in the amount of roadway associated with the conservation subdivision, and by providing large undeveloped areas for recharge. Also, see Response Nos. C84 through 86, and C92, below.

Comment No. C91:

According to the DEIS, "[T]he proposed subdivision has been designed to preserve the natural slopes of the site to the maximum extent practicable. However, it is expected that approximately 106,232 cubic yards of excess material would have to be removed from the site to develop the infrastructure associated with the proposed subdivision." To the extent that the proposed lots include very steep slopes which are projected to eventually have built upon them tennis courts, swimming pools and cabanas, it is unrealistic to aver that the construction anticipated for each lot will not result in severe destruction of the steep slopes and loss of protective natural vegetation, resulting in erosion and sedimentation of the watershed.

Response No. C91:

As described in Section 3.3 of this FEIS, the subdivision plan has been redesigned to locate the proposed residential lots on the flattest portion of the property. By configuring the lots in this manner, the steepest slopes of the site would be preserved and the majority of the Coastal Oak-Laurel Forest would be maintained.

Comment No. C92:

As the DEIS correctly notes, the subject property is located within the state- designated Oyster Bay Special Groundwater Protection SGPA ("SGPA"). The DEIS discussion of the Long Island Special Groundwater Protection Area Plan ("SGPA Plan") is deficient. The DEIS states that development of the subject property would be consistent with the intent of the SGPA Plan. The Plan calls for concerted actions by municipalities to guide and manage development to prevent or minimize groundwater degradation in the SGPAs. The SGPA Plan notes as a concern for the Oyster Bay SGPA that:

> *"Many of the existing estates could be re-subdivided, thus freeing up additional acreage for future development of land uses." It further states that these as yet un-subdivided estate lands provide opportunities for the reservation of new well sites.*
>
> *There is an urgent need to preserve existing and potential watershed protection areas as infilling of already subdivided properties adds to the population and water usage in the SGPA. The possible development of...lands within the environmentally stream corridors...constitute a major concern."*

While the subject parcel was not specifically named for acquisition, it is clear that the subdivision and development of estates within the SGPAs does not comport with the intent of the SGPA Plan, but instead is a major concern and cause of loss of crucial aquifer recharge.

Response No. C92:

As indicated in the comment, the subject property is located within the Oyster Bay SGPA. Furthermore, several of the recommendations in the *SGPA Plan* involve the acquisition or rezoning of specific parcels. The subject site is not specifically designated for acquisition or rezoning. The *SGPA Plan* does recommend that the County and the Towns preserve the open space character within the SGPA and preserve parcels that maintain the recharge potential within the SGPA. The *SGPA Plan* also notes that most of the development in the SGPA is low-density residential in character.

Objective review of the subject property indicates that it possesses open space and recharge potential. However, the property is privately owned and residentially zoned. While the Applicant proposes to develop the subject property, in order to address various comments received during the public comment period on the originally-proposed 14-lot conventional subdivision, which was the proposed action described in the DEIS (see Appendix C of this FEIS), the Applicant has modified its plan to reduce the density (from 14 to 13 lots), and to preserve greater contiguous natural areas. In order to further protect natural resources (e.g., to avoid steep slopes, preserve trees, provide contiguous wildlife corridors and maximize undisturbed open

space), the Applicant has prepared a conservation subdivision, which locates the residential development on a portion of the property and provides a 51.13±-acre substantially contiguous natural area (with the exception of a portion of the subdivision roadway) that will be preserved (see Appendix E of this FEIS). Preserving over half the site within conservation areas, will not only achieve the protection of the natural resources mentioned above, it will also protect the watershed by minimizing impervious surface and providing large undeveloped areas for recharge. In addition, the 13-lot conservation subdivision incorporates a number of stormwater management facilities, including a recharge basin, a common DRA, a drainage conservation easement and drywells and DRAs on individual lots, all of which will assist in recharging stormwater on-site.

The Applicant respectfully asserts that the proposed 13-lot conservation subdivision has been designed to preserve open space character and recharge potential as (a) the property would be developed in accordance with an approved yield plan, with a density of 0.13 units per acre (or one unit for every 7.47 acres), thus maintaining the low-density residential character, (b) development has been located on one portion of the site, allowing for preservation of over half the site (approximately 56.83 acres) and (c) recharge would occur on-site through the use of a stormwater basin, individual drywells associated with each residence, several individual DRAs, a common area DRA and a drainage easement along Mill River Road.

Comment No. C93:

The DEIS further states, incorrectly, that "To the applicant's knowledge, no governmental or not-for-profit entity has contacted the applicant regarding acquisition of this property for open space purposes." To the contrary, NSLA has contacted representatives of the Town of Oyster Bay, on more than one occasion, but the owner was only interested in selling-at a very steep price- the entire property, which was more than the Town could afford.

Response No. C93:

To the best of Applicant's knowledge, there were no discussions with any governmental or not-for-profit entity prior to the instant application.

Comment No. C94:

While the project's DEIS report enumerates several remediation plans to mitigate impact, mitigation- to have any real value- must be monitored and enforced to ensure that it is actually carried out as promised.

Response No. C94:

Based upon the comments made during the SEQRA process and to minimize environmental impacts to the maximum extent practicable, the Village has worked with the Applicant to develop a plan that meets the Applicant's goals, while protecting the environment and character of the Village. Accordingly, the Applicant has redesigned the subdivision based upon the yield from a conventional subdivision plan, as described in Section 3.2 of this FEIS (see Appendix D). This 13-lot conservation subdivision has been designed to protect the steepest slopes and much of the Coastal Oak-Laurel Forest found on the subject property. The 13-lot conservation subdivision is described in detail in Section 3.3 and is shown in Appendix E of this FEIS.

As indicated in Response No. 79, the 13-lot conservation subdivision configures the residential lots on the flattest portion of the subject property while preserving the steepest slopes on the northern and eastern portions of the site. Locating the lots on one portion of the property allows for (1) protection of the steepest slopes on the property, (2) maintenance of a significant amount of open space, (3) retention of numerous trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and continuous wildlife corridor that minimizes habitat fragmentation.

The creation of the 13-lot conservation subdivision is the largest and most effective mitigation measure that would allow development of the property, while protecting its natural features.

Specifically, with respect to stormwater runoff and potential impacts on the Mill River watershed, acceptance and approval of the stormwater pollution prevention plan will be undertaken by the Village of Upper Brookville Stormwater Management Officer (SMO) with notice to the NYSDEC.

Monitoring and enforcement of erosion and sediment control measures contained in the SWPPP would be handled by the Village of Upper Brookville and any other agency that may have jurisdiction over certain aspects of the development (e.g. the Village SMO and NYSDEC with respect to stormwater management during the construction period). According to Chapter 175 *Stormwater Management and Erosion and Sediment Control* of the Village Code, the "SMO shall require such inspections as deemed necessary to determine compliance with this chapter..." Although no mention is made of NYSDEC in this ordinance, discussions with the Village Engineer's office indicate that the NYSDEC is to be kept advised of the permitted activity.

Comment No. C95:

We ask that this application be painstakingly reviewed. The site where the project would be situated lies within a Special Groundwater Protection Area, and has been identified as a Priority Open Space by New York State and Nassau County. According to Friends of the Bay's recently completed State of the Watershed Report, "ongoing development, intensification of land use, and everyday activities within the watershed has the potential to adversely impact groundwater and public drinking water supplies." Stormwater runoff from the project will flow through the Mill River to the Mill Pond and onto Oyster Bay Harbor and the Oyster Bay National Wildlife Refuge. The outflow of the Mill Pond into Oyster Bay Harbor has been identified as an area where water quality is strongly influenced by freshwater sources and activities on the land and as a significant contributor of pollutants to the harbor complex. In 2005, the Defenders of Wildlife identified the Oyster Bay National Wildlife Refuge as one of the Ten Most Endangered Refuges in the United States. Polluted stormwater runoff, habitat destruction, non-sustainable development, and inadequate on-site septic systems were among the reasons cited. Human-induced impacts adversely affect the entire Oyster Bay/Cold Spring Harbor Complex.

Response No. C95:

See Response No. C85, which discusses the *Watershed Study* in detail and C92, which discusses the SGPA. In addition, as indicated in Response No. C92, although the subject property is zoned for residential development and will be developed in such a manner, the conservation subdivision configuration will allow the preservation of approximately 54.99 acres of on-site woodlands and other vegetation, thus maintaining its open space and wildlife habitat character to the maximum extent practicable (see Appendix E).

Friends of the Bay both testified and submitted correspondence at the Village of Upper Brookville public meeting of October 4, 2011 in support of the 13-lot conservation subdivision (see Appendix J).

Comment No. C96:

Stormwater runoff from the Mill Pond would also contribute to siltation in the harbor complex. This, combined with additional stormwater runoff, would have a potentially adverse impact on the shellfish population (the harvest of which contributes $7 million yearly to the local economy, without including revenues due to tourism and recreational boating, or property values) and could interfere with shellfish reproduction and setting.

Response No. C96:

The proposed stormwater system is described in Section 3.3 and Response Nos. C25 and C29 of this FEIS. Further, the potential impacts associated with stormwater are thoroughly discussed in Section 4.2.4 of the DEIS.

The stormwater management system has been designed such that most of the stormwater generated on the site would be collected and recharged on site. It would capture an eight-inch, 100-year storm, as required by Nassau County. However, stormwater runoff that is not recharged into the underlying groundwater system may leave the site and would be conveyed to the Sagamore Woods recharge basin to the north of this site, obviating any direct surface discharge to the Mill Pond drainage system.

Moreover, before commencing any construction activity associated with the proposed project, the owner will be required to obtain coverage under the State Pollutant Discharge Elimination System (SPDES) General

Permit for Stormwater Discharges from Construction Activity, as included on the list of permits and approvals in Response No. C1. Any owner or operator of a construction project that will involve soil disturbance of one or more acres must fulfill the requirements of SPDES permit number GP-0-10-001.

Part I.B of General Permit GP-0-10-001 states that water quality must be maintained and it shall be a violation of this general permit and the Environmental Conservation Law ("ECL") for any discharge to either cause or contribute to a violation of water quality standards as contained in Parts 700 through 705 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York including, but not limited to:

1. There shall be no increase in turbidity that will cause a substantial visible contrast to natural conditions;
2. There shall be no increase in suspended, colloidal and settleable solids that will cause deposition or impair the waters for their best usages; and
3. There shall be no residue from oil and floating substances, nor visible oil film, nor globules of grease.

In order to gain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity, the owner will have to:

- Develop a stormwater pollution prevention plan (SWPPP) in accordance with the requirements in the General Permit for Stormwater Discharges from Construction Activity.
- Submit a completed NOI to the New York State Department of Environmental Conservation.
- Since the site is within the boundaries of a Municipal Separate Storm Sewer (MS4), Upper Brookville, regulations require that the owner must submit a signed SWPPP Acceptance Form along with their NOI. The owner is required to have the SWPPP reviewed and accepted by the MS4 prior to submitting the NOI to the NYSDEC.

The SWPPP describes the erosion and sediment control practices that will be used during construction. In addition, post-construction stormwater management practices that will be used and/or constructed to reduce the pollutants in stormwater discharges will also be provided. During the entire construction period, until the entire site is stabilized, there will be regular monitoring by qualified professionals, as defined in the General Permit. The monitoring includes weekly inspections, or after every rain event of one-half-inch or greater.

The project has been designed to control erosion and sedimentation and to maintain stormwater runoff on site. However, stormwater overflow, in times of significant storm events, would flow to a nearby recharge basin.

The implementation of this stormwater system and the development of the site as a conservation subdivision would serve to mitigate impacts to the Oyster Bay "harbor complex."

Comment No. C97:

Of particular concern is the fact that the topography of this site consists of 19.3% Steep slopes and 23.4% severe slopes. As proposed, the partitioning of this site creates several building lots that appear to be comprised entirely of steep slopes. Development of these sloped areas will result in accelerated runoff and increase erosion, both during and after construction, due to excavation and disturbance of the soil, loss of tree cover and vegetation, and increase impervious surfaces. This development will also disturb the natural contours and drainage patterns of the land and compromise the stormwater filtering capacity of a property that is located entirely in a Special Groundwater Protection Area.

Response No. C97:

Based upon comments received during the public comment period associated with the environmental review of the proposed action and subsequent discussions with the Village Planning Board and its consultants, the Applicant has prepared a 13-lot conservation subdivision (see Appendix E) that minimizes the impacts to natural resources to the maximum extent practicable, while allowing the Applicant to develop the property based upon the yield of the prevailing zoning (see Appendix D). The proposed residential lots would be located on the flatter, western portion of the property. The northern and eastern portion of the property, containing the steepest slopes, would be preserved within conservation areas. As over half the site would be preserved within conservation areas, the number of trees to be removed would be significantly reduced from the proposed action. See the description of the conservation subdivision and its potential benefits in Section 3.3 of this FEIS.

By retaining the steepest slopes (with its associated vegetation), the potential for erosion and sedimentation due to construction is significantly reduced. As shown in Table 1, the amount of impervious surface associated with the conservation subdivision is less than that associated with any of the conventional subdivisions analyzed in the DEIS or FEIS. Also, by configuring development on one portion of the site, drainage patterns would be retained on half the site. Furthermore, stormwater runoff would be collected and recharged on site via use of a stormwater basin, drywells, DRAs and a drainage easement along Mill River Road. Finally, by reducing impervious surfaces and retaining large areas of open space (including open space within the steeply-sloped areas of the site), the stormwater filtering capacity of the property would be maintained. These measures would assist in minimizing the impacts to the special groundwater protection area to the maximum extent practicable.

Comment No. C98:

In adding Section 205-10 (F) to the Village Code in January of 2006, it is apparent that the intent of the Board of Trustees was to preserve steep slopes from this type of development. Unfortunately, it is nearly impossible to predict how effective a new regulation will be under every varying circumstance. For this reason, new regulations are periodically reviewed after adoption to assess their effectiveness. In this case, it appears that limiting the maximum size of a building lot that the Village can require seven acres has inadvertently resulted in the creation of lots in excess of seven acres that are comprised almost completely of steep slopes.

Response No. C98:

As discussed in Section 3.3 and throughout Section 4.0 of this FEIS, the Applicant has designed a conservation subdivision (see Appendix E of this FEIS) that addresses the retention of the steepest slopes contained on the property. The overall lot yield within the 13-lot conservation subdivision is calculated at 7.47 acres per lot, which, on an overall density basis, conforms to the requirements of the prevailing OP1 zoning district (five acres per lot). However, in order to protect significant natural areas (including steeply-sloped areas), this subdivision has been configured to cluster the lots so that they would range in size from 2.23 acres to 4.38 acres (containing the Monday House and its appurtenances), with an average lot size of 2.91 acres.

Comment No. C99:

Friends of the Bay would like to formally request that the hearing be re-opened and the period for public input be extended, in order to:

- Allow Friends of the Bay and other interested parties to more thoroughly review the application and submit comments to assist the Planning Board in rendering a decision that will adequately protect the Oyster Bay National Wildlife Refuge and the Mill River Watershed.
- Allow the Incorporated Village of Upper Brookville Board of Trustees to review and consider amending the Village's steep slope regulations.

- Provide additional time for the Planning Board to investigate and consider less conventional ways to partition the land and concentrate development away from these slopes.
- Allow for the possibility of public acquisition of the property or a portion of the property.

Response No. C99:

The SEQRA regulations do not provide for the re-opening of the DEIS hearing. The DEIS was available for review beginning in September 2009. A public hearing was held on October 6, 2009 and comments were accepted until October 23, 2009. All written comments made during the comment period and all comments made at the public hearing have been responded to in this FEIS. Once accepted, the public will have an opportunity to review the FEIS and submit comments for the lead agency's consideration.

Notwithstanding the above, as explained in Section 3.1 hereof, the Applicant has considered the various comments made on the DEIS and the proposed action described therein (i.e., the 14-lot standard subdivision). Since the time the public comment period on the DEIS expired, the Applicant has also coordinated with the Village and with interested parties, including the Friends of the Bay. Based upon the review of the comments made and the aforesaid consultations, the Applicant has prepared a 13-lot conservation subdivision plan, which achieves the objectives set forth by the Friends of the Bay. Moreover, the Friends of the Bay testified at the Village meeting of October 4, 2011 and has submitted a letter to the Planning Board indicating its support of the 13-lot conservation subdivision (see Appendix E).

With respect to the Board of Trustees' review and amendment of the steep slope ordinance, that action would be separate from the one being considered as part of this environmental review process. Furthermore, the subdivision plan has been redesigned to avoid the most steeply-sloped portions of the subject property (see Appendix E).

With respect to providing "additional time for the Planning Board to investigate and consider less conventional ways to partition the land and concentrate development away from these slopes," the Village has worked with the Applicant to develop a plan that meets the Applicant's objectives, while protecting the environment. Accordingly, the Applicant has designed a conservation subdivision (see Appendix E of this FEIS) that addresses the retention of the steepest slopes contained on the property. See Section 3.3 of this FEIS for a detailed description of the conservation subdivision. Also see Response No. C79.

Finally, with regard to property acquisition, the Applicant intends to develop the subject property and, as such, has redesigned the subdivision to allow both development of residential lots and preservation of significant natural features.

A legal instrument will be developed by the Applicant, in cooperation with the Village, to ensure that no disturbance will occur within the conservation areas. Such instrument will also outline maintenance and protection responsibilities as well as permitted/prohibited activities within these areas.

Comment No. C100:

Section 2.3 *(Description of the Proposed Action: Project Description)*, page 13, 2nd ¶ - The DEIS states "A Homeowner's Association ('HOA') will be formed as part of the development of the subject property. The HOA will be responsible for...maintenance of the drainage systems." It is recommended that more detail be provided regarding the inspection and maintenance schedule for the proposed drainage structures (including regular clean-outs as needed) to ensure their proper functioning over the long term.

Response No. C100:

According to Village requirements, the post-construction maintenance of stormwater-related structures and areas, with the exception of the stormwater recharge basin, will rest with the individual homeowners. Covenants will be established that permit neglected maintenance by individual homeowners to be performed by a HOA. In addition, covenants will be further provided that will permit the Village to perform maintenance that has been neglected by a HOA with a back charge (lien) to such HOA. Maintenance will be performed in accordance with the requirements of Chapter 175, *Stormwater Management and Erosion and Sediment Control*, of the Village Code.

Comment No. C101:

The *Mill River Watershed Study and Public Stewardship Program*, dated October 2008, and prepared by Town of Oyster Bay in association with Friends of the Bay, recommends developing systematic maintenance programs to clean debris from all drainage structures in the watershed of the Mill River. The subject property is located within the Mill River watershed. Therefore, it is requested that the FEIS verify whether the Village of Upper Brookville has developed a drainage structure maintenance program; and if so, it is requested that the HOA apply the relevant Village regulations to the proposed drainage infrastructure on the subject property, even though the Village would not be responsible for maintenance of same.

Response No. C101:

See Response No. C100.

Comment No. C102:

Section 3.2.5 *(Existing Conditions: Water Resources: Surface Water, Wetlands and Floodplain)*, pages 53-57 – It is requested that FEIS analyze the consistency of the proposed development with the *Mill River Watershed Study and Public Stewardship Plan.*

Response No. C102:

Analysis of the *Watershed Study* is included in Response No. 85. The goals of the *Watershed Study* are as follows:

- Delineate the watershed area that delivers surface drainage to Oyster Bay Harbor via Mill River.
- Define the land uses within the watershed, in order to identify those uses which may be contributing to the contaminant loads in the Mill River drainage system.
- Describe the existing drainage system in the watershed including drainage areas, drainage structures, recharge basins, piping connections, etc.

- Develop feasible strategies to mitigate stormwater quality within the watershed by means of soft and hard methods including: soft methods such as municipal programs, public education, and stewardship; and hard methods including construction of filtering and infiltration systems.

There are no specific recommendations for the subject property in the *Watershed Study*. However, the Applicant respectfully submits that the configuration of the proposed conservation subdivision is such that stormwater runoff would be largely, if not entirely, contained on the subject property. The proposed layout provides approximately 51.13 acres of conservation areas between Mill River Road and the subdivision itself. As such, impervious areas proximate to Mill River Road would be minimized. Additionally, recharge would occur on-site through the use of a recharge basin, individual drywells associated with each residence, a DRA and a drainage easement along Mill River Road. On-site retention and recharge of stormwater would be maximized to extent practicable. Overall, it is anticipated that the proposed conservation subdivision would not have a significant adverse impact on the Mill River Watershed through stormwater runoff via Mill River Road.

Comment No. C103:

Section 4.1.1 (*Probable Impacts of the proposed Action: soils and Topography: Soils)*, page 111, last ¶ - §205-10(F)(1) of the Village Code states "no development shall be permitted on those portions of a lot which contain severe slopes (i.e., greater than 25%)" and §205-10(F)(2) of the Village Code states "no development shall be permitted on those portions of a lot which contain steep slopes (i.e., between 10% and 25%). The DEIS states "within the proposed residential lots, the typical homesites depicted on the *Subdivision Study* are located in areas where slopes are less than 15 percent." Several issues relating to slopes arise in regard to this statement:

The *Subdivision Study* and the *Slopes Analysis Map* appear to show that several proposed lots would involve development on slopes of 15 percent or greater in contravention to the Village Code, including:

- Lot 1 would contain development in areas with slope gradient of 25 percent or greater;
- Lot 2 would contain development in areas with slope gradient of 15 percent or greater;
- Lot 3 would contain development in areas with slope gradient of 25 percent or greater;
- Lot 11 would contain development in areas with slope gradient of 25 percent or greater; and
- Lot 12 would contain development in areas with slope gradient of 15 percent or greater.

Response No. C103:

The subdivision has been redesigned to locate the proposed residential development on the flattest portion of the subject property (see Appendix E). Implementation of the conservation subdivision does not involve development on slopes over 25 percent, and, in general, proposes only limited disturbance on slopes of 15 percent to 25 percent. Also, see Response No. C97. See Section 3.3 of this FEIS, which discusses the 13-lot conservation subdivision and its benefits, in detail.

Comment No. C104:

Section 4.1.2 *(Probable Impacts of the proposed Action: Soils and Topography: Topography)*, page 114, 1st ¶ - With respect to roadway construction, the DEIS states "It should be noted that the Village engineer has raised concerns regarding these road width and gradient issues." The precise concerns raised by the Village Engineer, and the applicant's proposed methods to resolve same, should be discussed in the FEIS. If the Village Engineer's concerns are set forth in a letter, memorandum or other written form, this document should be included in the FEIS appendix.

Response No. C104:

The conservation subdivision will meet or exceed the design parameters set forth in the Village Code with the exception of the maximum gradient, wherein the gradient is proposed to deviate from the required eight percent to up to 10 percent.

Comment No. C105:

Section 4.2.1 *(Probable Impacts of the proposed Action: Water Resources: Groundwater)*, page 117, 2nd bullet – One of the recommendations of the Long Island Comprehensive Waste Treatment Management Plans to "restrict the use of inorganic, fast-acting fertilizers. Promote the use of low-maintenance lawns." The DEIS's analysis of this recommendation, in part, states that "the use of low maintenance lawns will be encouraged within the individual proposed lots..." The FEIS should identify the specific, concrete actions that would be taken to advance this recommendation. If the use of low maintenance lawns for individual lots would be not required and enforced by the HOA, the FEIS should explain why this would be the case.

Response No. C105:

Based upon the comments made during the SEQRA process, the Village has worked with the Applicant to develop a plan that meets the Applicant's goals, while protecting the environment and character of the Village. Accordingly, the Applicant has redesigned the subdivision based upon the yield from a conventional subdivision plan, as described in Section 3.2 of this FEIS. This 13-lot conservation subdivision has been designed to protect the steepest slopes and much of the Coastal Oak-Laurel Forest found on the subject property. The 13-lot conservation subdivision is described in detail in Section 3.3 and is shown in Appendix E of this FEIS.

The 13-lot conservation subdivision configures the residential lots on the flattest portion of the subject property while preserving the steepest slopes on the northern and eastern portions of the site. The preservation, within conservation areas, of approximately 51.13 acres of substantially contiguous land within the northern and eastern area of the site and an additional 3.86± acres in individual residential lots will limit the amount of area that would require fertilization. It is also anticipated that an additional 19.37± acres of land within the residential lots would remain in their natural condition, further minimizing the need for fertilizer use.

Moreover, it is expected that the lots will be sold and developed on an individual basis, thus requiring individual site plan approval from the Village. Therefore, the Village will have control over the area within the individual lots that can be established in fertilizer-dependent vegetation.

Comment No. C106:

Section 4.2.3 *(Probable Impacts of the proposed Action: Water Resources: Water Supply)*, page 120, 1st ¶ - The subject property is split between the Oyster Bay and Jericho Water Districts. The DEIS indicates that both water districts are amenable to presenting a petition to the Town of Oyster Bay Town Board requesting an adjustment of the boundaries of the water districts, so that the Jericho Water District would be the sole water service provider to the subject property, in accordance with the requirements of the Nassau County Civil Divisions Act. Details of this procedure and the anticipated timing of the petition to the Town Board should be discussed in the FEIS.

Response No. C106:

The entire subdivision is proposed to be serviced by the Jericho Water District, without the need for any adjustment to the boundaries of the water districts (see Response No. C1 and Appendix G). The residential lots within the subdivision are situated in the western and southwestern portions of the premises, which are within the Jericho Water District. The northern and eastern portions of the premises, which will not be developed, are situated within the Oyster Bay Water District. See discussions in Sections 3.2 and 3.3 and Response No. C19 of this FEIS for additional information.

Comment No. C107:

Section 4.2.3 *(Probable Impacts of the proposed Action: Water Resources: Water Supply)*, page 122, 2nd ¶ - The DEIS states that "prior to the decision of the water districts to consolidate services to the subject property, the applicant had filed all required applications for a certificate of water availability from each district."

a. As it is proposed that water district boundaries be adjusted so that the Jericho Water District is the sole water service provided, it should be indicated whether the water availability request to the Jericho Water District (JWD) inquired as to whether the JWD would be able to provide water to the entire subdivision, or only that portion of the subdivision currently within JWD boundaries.

b. If available, responses from the water districts regarding their ability to provide water service to the proposed project should be included within the FEIS.

Response No. C107:

In response to part "a" of the comment, see Response No. C106.

In response to part "b" of the comment, the Certificate of Water Availability from the Jericho Water District is pending.

Comment No. C108:

Section 4.2.4 *(Probable Impacts of the proposed Action: Water Resources: Stormwater)*, page 126, Table 13 – The *Drainage Summary* table does not appear to include runoff from the proposed 1,000-square foot booster station and associated driveway/parking areas. Although the exact location of the station has yet to be determined, it should be indicated that proper drainage facilities will be provided at this location.

Response No. C108:

As indicated by the commentator, proper drainage facilities will be provided for the proposed water booster pump station and its appurtenances, as required by the Village Engineer and the Building Department. It is expected that this facility would require the installation of one or more drywells to capture runoff from the building and driveway.

Comment No. C109:

Section 4.2.4 *(Probable Impacts of the proposed Action: Water Resources: Stormwater)*, page 127, 2nd ¶ - The DEIS states "no drainage for surface water runoff will be required for areas to be left in a natural state and protected by 'Conservation Areas', as noted in Table 13..." However, the portions of the subject property to be left in a natural state are situated up-gradient from the proposed drainage structures, and stormwater runoff generated in these areas may flow into the drainage infrastructure, thereby decreasing the capacity of this infrastructure available to accommodate runoff from the portions of the site which are proposed for

development. On this basis, it is requested that the FEIS re-examine whether additional stormwater storage capacity should be provided to account for runoff from Conservation Areas during the design storm event.

Response No. C109:

The preservation of the existing steep slope areas in the northern and eastern portions of the site, as shown on the conservation subdivision (see Appendix E of this FEIS), would eliminate disturbance to these areas, resulting in "no change" in stormwater runoff from these areas. Significant improvement to the conservation drainage easement area along the west side of Mill River Road (such as a recharge basin) would create more of a negative impact since regrading and excavation of the existing natural low area along the westerly side of Mill River Road would require removal of the existing tree and groundcover thus requiring stabilization, and installation of erosion and sediment control measures. The existing groundcover that is in place provides for settlement of sediment, reduction of water flow velocity and limited recharge. Improvement of the natural areas with drainage structures such as sluiceways and drywells will preserve the existing groundcover, maintain the visual character of the area and permit recharge.

Comment No. C110:

Section 4.4.2 *(Probable Impacts of the proposed Action: Zoning and Land Use: Land Use)*, page 160, 2nd through 3rd ¶¶ - The subject property is identified as being "potential open space" in the *Nassau County Open Space Plan* and identifies the use of "conservation easements" as a tool to help maintain open space on the subject property.

The DEIS indicates that 29.7 acres will be placed under conservation easement and 21.89 acres will be undeveloped. However, the "conservation areas" are non-contiguous strips located along lot lines and at the boundaries of the subdivision, calling into question the value of the easement as it appears it will be fragmented.

The *Subdivision Study* reveals the conservation areas as being dark green, and other areas are shaded in light green. The fate of this light green area is unclear; however, page 162 states "additional portions of the individual proposed lots may be retained as undisturbed areas, at the discretion of the future landowner," indicating that these areas may be partially cleared. The FEIS should definitively indicate whether or not these areas are meant to be left in a natural state, or should recognize that future fragmentation of natural areas are possible in the event individual land owners decide to clear these areas.

Response No. C110:

As explained in Section 3.3 of this FEIS, the proposed development of the site involves configuring the residential lots on the western, flatter portion of the property and preserving the most steeply sloped areas (see Appendix E). A 13-lot conservation subdivision provides approximately 54.99 acres within conservation areas (see Appendix E). Approximately 45.10 acres would be located in the northern and eastern portions of the site and 6.03± acres would be located in the southeastern portion of the site. The remainder of the conservation area (3.86± acres) would be located within individual residential lots, along the perimeter of the property. The two larger conservation areas would be substantially contiguous, with the exception of the presence of a portion of the subdivision roadway and the existing Mohawk Drive, which use within the conservation area is proposed to be discontinued. The approximately 54.99 acres within the two larger conservation areas and in the perimeter area of the individual residential lots do not include any natural areas that may be incorporated into individual residential lots. It is expected that an additional 19.37± acres of natural vegetation (not considered conservation area) would be retained within individual lots.

A legal instrument will be developed by the Applicant, in cooperation with the Village, to ensure that no disturbance will occur within the conservation areas. Such instrument will also outline maintenance and protection responsibilities as well as permitted/ prohibited activities within these areas.

Comment No. C111:

Section 4.7 *(Probable Impacts of the proposed Action: Aesthetics and Cultural Resources)*, page 173 - 174 – Page 122 of the DEIS indicates that one possible location for the proposed booster station is on the east side of the subject property with direct driveway access to Mill River Road. The FEIS should describe the measures to be implemented to screen this facility from view, and to blend it in with the surrounding vegetation so as to maintain the existing viewshed along Mill River Road to the greatest extent practicable. If possible, a graphic depiction of how Mill River Road should be provided, taking into account this facility and screening methods of same [sic].

Response No. C111:

A water booster pump station is proposed to be constructed within a parcel situated along Mill River Road (see Appendix E). As shown on the conservation subdivision plan (see Appendix E), the booster station would be set back from Mill River Road, and is expected to have minimal effect on the viewshed along Mill River Road. However, construction of this building is subject to Village of Upper Brookville requirements for architectural review, special use permit and receipt of a building permit.

Cheryl DeGroat
Written Submission
October 23, 2009

Comment No. C112:

I strongly feel increased traffic will arise to access and develop this land. Upon moving here, I regrettably underestimated the amount of traffic that already exists on Mill River Road ("MRR"). What I had perceived to be a "cut through" road is really a major thorofare [sic]. The traffic and frequent presence of construction and service vehicles on this road is undeniably bothersome. Our house lies only 45 feet from the roadway, so I can personally attest to this.

Response No. C112:

The subject property is proposed to be developed to the density permitted by prevailing zoning, although the residential lots are proposed to be located on the western and southwestern portions of the property. Based upon the Institute of Transportation Engineers (ITE) publication *Trip Generation*, 8th Edition, the development, once completed, is estimated to generate an additional 10, 13 and 12 trips during the AM, PM, and Saturday peak hours, respectively. This number of vehicles will have an imperceptible impact on existing traffic conditions.

Construction traffic is a temporary unavoidable impact associated with any development project. Based on the exportation estimates and anticipated phasing of the roadway construction associated with the 13-lot conservation subdivision, it is estimated that there will be an approximately one truck entering and one truck exiting the site every 10 minutes. This equates to 12 truck trips per hour (6 entering and 6 exiting) throughout the course of a typical eight-hour working day. The soil and material removal operations are expected to take place over a nine-to-ten month period. At the peak of activity, it is further anticipated that there will be ten and 13 trips associated with construction worker vehicles arriving and leaving the site during the AM and PM peak hours, respectively.

Comment No. C113:

This road is not only congested, but dangerous as a result of constant speeding. In the few years I have lived here, there have been several fatal or near-fatal auto accidents that could have been viewed from my bedroom window. For example, on October 12th my mother and I were awakened at 4:40 am by a shocking head on collision; we called 911 immediately upon hearing someone screaming for help. It was very upsetting. Given this, I strongly feel that this road is a problem as it is and increased traffic will only make it worse. Personally, and as a resident, I cannot see how this wouldn't diminish the appeal of living here.

Response No. C113:

A review of the most recent three years of accident data from the Old Brookville Police Department revealed that there were a total of 35 accidents on Mill River Road between the limits of Northern Boulevard and Glen Cove Road. There were no fatalities, 12 personal injury accidents, 18 property damage accidents and three non-reportable accidents. An in-depth review of the accidents along Mill River Road showed there were nine personal injury accidents, six property damage accidents and three non-reportable accidents in a concentrated stretch of roadway between Lawn Lane and West View Drive. Therefore, approximately half of the accidents occurred within this stretch of roadway.

A review of the accident data in this stretch of roadway revealed many of the accidents involve vehicles leaving the roadway with the majority of accidents occurring during the nighttime hours. Based upon the

accident data review and a subsequent site visit, in order to address the existing safety concerns along Mill River Road, the Village should implement the following measures:

- It is recommended that white reflective edge lines be installed along the entire length of Mill River Road. These edge lines will not only identify the edge of the travel lane during both daytime and nighttime, they will also have a narrowing effect that will help reduce average travel speeds on the roadway.

- The existing warning signage in this area should be upgraded to Diamond Grade fluorescent yellow sheeting with a matching reflective U-Channel insert. The recommended sign size should be 36 inches for a roadway with this type of accident history.

- The existing curve warning sign (W1-2) approximately 600 feet south of the Mill River Club access should be replaced with a Reverse Curve (W1-4) sign and the primary warning sign size should be increased to 36 inches. With the existing display, the driver could be mislead since the roadway actually curves in the opposite direction. Consideration should also be given to installing chevrons (W1-8) on the existing guide posts. These chevrons will help to guide the driver through the curve.

Comment No. C114:

The trips generated by construction vehicles which will travel primarily from the south to the site, and when distributed over the course of a day, will not have any significant impact on traffic flow conditions during peak hours given the low volume of traffic which exists on MRR. I disagree with this statement. Low volume? For who?

Response No. C114:

See Response Nos. C43 and C112, which discuss vehicle trips during the construction period. A review of NYSDOT volume data, as well as visual observations of traffic flow on Mill River Road at various times, do not reveal any existing congestion-related issues. During the height of construction, it is estimated that there will be approximately 12 truck trips per hour (6 entering and 6 exiting) throughout the course of a typical eight-hour working day. It is also anticipated that there will be an additional ten and 13 construction worker trips in the AM and PM peak hours, respectively. This number of additional vehicles is not expected to have any measurable impact on roadway operations from a capacity standpoint.

Comment No. C115:

"According to NYSDOT traffic counts in 2003, the average annual daily traffic on MRR in the vicinity of Mohawk Drive is 1227 vehicles northbound and 1447 vehicles southbound." These traffic counts are outdated (2003) and I can say that I have seen a noticeable increase in the traffic since living at 69 Mill River Road.

Response No. C115:

Additional 2008 traffic count data (latest available) was obtained from the records of NYSDOT. The traffic counts were taken approximately 550 feet north of NYS Route 25A along Mill River Road. These counts were taken in May of 2008 and are assumed to be a relatively accurate reflection of the typical traffic volumes experienced on Mill River Road. The average annual daily traffic for northbound traffic and southbound traffic was recorded as 1,979 and 2,390 vehicles, respectively.

Comment No. C116:

MRR is a north-south collector roadway under the jurisdiction of the Village of Upper Brookville with one lane of traffic in each direction, and a posted speed limit of 35 mph. In the vicinity of the project site, the asphalt road is 22 feet wide. Although the posted speed limit is 35 mph, unfortunately many of the travelers on road **do not adhere to it**, as I have mentioned at a Village public hearing within the past year.

The distance from the double yellow line to the edge of the pavement at my driveway is on 120" with two other points even narrower at 113" and 118". Because the road is too narrow, it is unsafe to stand in front of my mailbox and retrieve my mail unless there are no cars on the road. I cannot imagine wide-load construction vehicles traversing it for years to come.

Response No. C116:

The roadway width was measured from edge of pavement to edge of pavement in the vicinity of the subject site. Additional measurements were taken in front of the proposed South Drive access, and the Mill River Road width was verified at 23 feet wide, with each individual lane measuring 11.5 feet wide. These are typical lane widths for collector roadways.

Additionally, as discussed in Response No. C113, it is recommended that white reflective edge lines be installed by the Village along the entire length of Mill River Road. These edge lines will not only identify the edge of the travel lane during both daytime and nighttime, they will also have a narrowing effect that will help reduce average travel speeds on the roadway.

Regular truck traffic associated with the exportation of soil and material from the site is estimated to take approximately 185 working days over a nine-to-ten-month period; this is dependent on the contractor's schedule and weather.

Comment No. C117:

The impacts associated with these construction activities would be intermittent and temporary, with no significant adverse impacts to traffic on MRR. As a resident on the street I do not believe this.

Response No. C117:

See Response No. C112.

Comment No. C118:

Generally, construction vehicles will be operating between the hours of 8:00 am and 6:00 pm, Monday through Friday, with various construction activities, mainly deliveries, occurring on Saturdays. Does that mean after working in NYC all week I can look forward to noisy construction trucks in my relax time? For several years? This qualifies as a declining quality of life issue which I am hoping the Planning Committee will weigh.

Response No. C118:

The subject property is proposed to be developed to the density permitted by prevailing zoning. Furthermore, development of this project is subject to the requirements of the Village Code with respect to construction hours and noise. The Applicant will comply with such requirements. According to §144-2.B(5) of the Village Code:

"The construction, excavation, demolition, alteration or repair of any building (except interior alterations or repairs to a building which is entirely enclosed) and the operation of construction machinery at any time on Saturday, Sunday and New York State legal holidays, and for all other days between the hours of 6:00 p.m. and 8:00 a.m. of the following morning, except pursuant to a permit issued by the Building Inspector or the Mayor in an emergency situation. Nothing herein shall be construed to prohibit minor alteration to a building which is entirely enclosed. The operation of a generator for emergency purposes shall not be prohibited under any provision of this chapter."

No construction would occur on weekdays between 6:00 p.m. and 8:00 a.m., on weekends or on legal holidays. It is expected that the infrastructure for this subdivision would be developed over a period of approximately 12 months. The timing of the construction of individual homes will vary, based upon the sale of the lots.

Comment No. C119:

During construction, heavy vehicles, primarily large trucks (three axles or more) making deliveries of building materials and equipment, dump trucks, earth moving dump trucks, equipment trucks and asphalt and concrete trucks will be traveling to and from the site using MRR as there are not other routes to and from the site. This would be a personal horror and a clear negative to my property value. As it is, cement trucks that often pass the house cause the windows to rattle.

Response No. C119:

Based on the exportation estimates and anticipated phasing of the roadway construction associated with the 13-lot conservation subdivision it is estimated that there will be an approximately 12 truck trips per hour throughout the course of a typical eight-hour working day. It is also anticipated that there will be an additional ten and 13 construction worker trips,[7] which will occur during the AM and PM peak hours, respectively.

As indicated in Response No. C43, it is anticipated that heavy-duty-tri-axle, single-unit dump trucks will be utilized to haul soil and material from the site during construction activities. These trucks are of similar size and characteristics to other vehicles currently using Mill River Road, such as garbage trucks, construction vehicles, and delivery trucks. A review of the accident data from the past three years for Mill River Road does not indicate any accidents that occurred due to the presence of heavy vehicles. Additionally, the majority of the trips due to construction activities will also take place during off-peak hours, when vehicle volumes Mill River Road are lower. These construction-related impacts are temporary and unavoidable.

Comment No. C120:

The truck traffic generated would tend to be spread throughout the workdays, while trips generated by workers would tend to peak in the early morning and late afternoon, depending on work and shift hours. This means that the occasional and rare still moment on the street in front of my house will now be gone. Long Island has no "peak" traffic period. It is congested more or less at all times.

Response No. C120:

Typically, work hours for employees in construction and building trades begin and end earlier than the normal morning and afternoon traffic peaks. The number of construction vehicles, when viewed in the context of existing traffic on Mill River Road, would not be expected to result in congestion-related problems. As stated in Response No. C112, construction traffic impacts are temporary and unavoidable. As

[7] Construction workers traveling to and from the site at the beginning and end of each working day.

demonstrated in Response No. C43 above, the proposed 13-lot conservation subdivision will generate less construction traffic than both the 14-lot conventional subdivision and the 13-lot conventional subdivision.

Comment No. C121:

All the traffic generated by the 14 proposed single family residences would enter and exit at the northern location. Why would residents use the northern access when there is a closer southern access also?

Response No. C121:

Under the 14-lot subdivision plan, 13 of the 14 lots were served by the northern access (Mohawk Drive). Under the proposed 13- lot conservation subdivision, all of the lots (as well as the out-parcel) will be served via the proposed access driveway, which situated at the approximate location of the existing driveway serving 57 Mill River Road (see Appendix E). The proposed access is located approximately 950 feet south of the Mohawk Drive access.

Comment No. C122:

The proposed 14 residences will generate minimal amounts of traffic during peak periods, as determined by trip rates provided by the ITE Publication, Trip Generation, 7th Edition, a nationally recognized and adopted publication for forecasting trip generation. The Highway Capacity Manual they refer to is outdated by a decade and I believe traffic on MRR has seriously increased since then. Not all 2-lane "highways" are the same.

Response No. C122:

Based upon the 13-lot conservation subdivision, trip generation from the proposed subdivision, based upon the updated version of *Trip Generation* (Eighth Edition [2008]), is expected to be 10 trips in the AM peak hour, 13 trips in the PM peak hour and 12 trips in the Saturday peak hour. See Response No. C112.

Furthermore, additional 2008 traffic volume count data was obtained from the records of the New York State Department of Transportation (NYSDOT). The traffic volume count data revealed the maximum number of vehicles in any one-hour period did not exceed 208 vehicles in the northbound direction and 254 in the southbound direction. Although the volumes along Mill River Road have increased as compared to the previously utilized 2003 traffic count data, the vehicular volumes experienced along the roadway are still well below the capacity of a two lane roadway. Based upon the *Highway Capacity Manual* (HCM 2000), published by the Transportation Research Board, the capacity of a two-lane highway, such as Mill River Road, is 1,700 passenger cars per hour (pc/h) for each direction of travel. The 2000 *Highway Capacity Manual* utilized is the latest edition and is still considered an acceptable method for quantifying the capacity and quality of service of a roadway, such as Mill River Road, in the transportation engineering field.

Comment No. C123:

Since MRR clearly operates at well below capacity, the low volume of traffic expected to be generated from the project will not significantly impact MRR. Additionally, the low volume of traffic on MRR will provide sufficient gaps in traffic to allow for turning movements into and out of the development. This is the most incorrect statement in the report – referring to MRR traffic as well below capacity and "low volume of traffic" on the road. This is just NOT the case.

Response No. C123:

See Response No. C122.

Comment No. C124:

It is only logical to conclude that most traffic coming and going from this developed area will be using the south access which is <500 feet from my driveway. This necessitates passing my house. This will have an important negative impact on me and my neighbors.

Response No. C124:

Based upon the 13-lot conservation subdivision, there is only one access point that is proposed to serve the proposed development (see Appendix E). This access point is generally situated at the location of the existing 57 Mill River Road Driveway. The position and location of the subdivision roadway was mutually agreed upon by the Applicant and the Village Engineer, as a location that minimizes grading and steep slope disturbance to the maximum extent practicable while permitting compliance with the Village's roadway design and bulk and dimensional requirements.

Comment No. C125:

I want to note the increase noise that will come with development of this land. More traffic means more **noise.** Construction means **noise.** Increased density means increased **noise.** My house is situated in a relative low point with elevated topography to the left and the right; because of this all noise tends to be amplified. The main appeal of living in Upper Brookville is the lack of congestion, and the relative peace and quiet. This is why I chose to live here and why I have been willing to pay such levels of property taxes. I hope and trust that the Village can protect this.

Response No. C125:

With respect to on-site construction noise, see Response No. C118. As much of the dense vegetation is proposed to remain on the northern and western portions of the subject property, some of the noise associated with construction activities on the site will be buffered by the existing vegetation. Furthermore, on-site construction noise would be subject to Chapter 144 of the Village Code, which limits construction noise to weekdays between the hours of 8:00 a.m. and 6:00 p.m. No construction is permitted on Saturdays, Sundays and New York State legal holidays. In addition, according to Chapter 144.B(6), "the operation of power equipment in residential zones outdoors between the hours of 7:00 p.m. and 8:00 a.m. the following day and on Saturday, Sunday and New York State legal holidays between 6:00 p.m. and 9:00 a.m." is prohibited. However, during the hours in which construction is permitted, there will be noise associated with on-site construction activities, including installation of roadways, drainage and other infrastructure, as well as residences and their appurtenances.

With respect to noise emanating from construction truck traffic on local roadways, as explained in Response No. C118 and above, on-site construction noise is governed by Chapter 144, Noise, of the Village Code. Therefore, the trucks associated with on-site construction would also be governed by the same chapter of the Village Code with respect to hours and days construction activities are permitted to occur.

With respect to noise after completion of development, the Applicant is not requesting an increase in density from what is permitted by zoning. In fact, the overall lot yield within the 13-lot conservation subdivision is calculated at 7.47 acres per lot, which, on an overall density basis, conforms to the requirements of the prevailing OP1 zoning district (minimum of five acres per lot). Therefore, noise associated with the operational aspects of the proposed subdivision would be typical of and similar to other residences and residential subdivisions within the Village. Furthermore, as with all development in the Village, noise levels

within the proposed subdivision would be subject to the Village's noise regulations (Chapter 144 of the Village Code).

Comment No. C126:

MRR already has a problem with water and drainage. There is either inadequate or non-existent storm drainage all along MRR in the Village and this has been a historic problem. Those of us who live close to the street witness significant stretches of the road underwater during heavy rainfalls or snow melts. These often turn into ice in the winter and I have literally slid out my driveway. Large portions of the former Dean Property, and nearby, absorb a great amount of runoff in "marsh-like" areas which parallel MRR. The street is notoriously narrow and curved along these specific stretches of the road and it becomes impassable for more than one car. With the addition of several driveways and other impervious surfaces and the disruption of sloped areas on some of these properties this can only mean a significant amount of additional run-off and disruption to the absorbent "marsh-like" areas running parallel with MRR. The problem with understanding the severity of this issue is that it is only apparent to residents whose driveways become flooded and others who venture down MRR during rain storms or snow melts. Without a complete and proper study and adequate engineering/construction allowances, this problem will go from bad to worse. When it rains heavily the gullies near the street swell but often the water backs up onto the street. I am concerned that runoff from those properties higher than mine could affect my land negatively. My assumption is the fewer the trees above me the higher the chance of runoff down at the bottom near the road.

Response No. C126:

Implementation of the conservation subdivision would limit disturbance to steep slopes and the removal of trees. Approximately 51.13 acres in the northern and eastern portions of the subject property, as well as 3.86 acres within the individual lots, would be retained within conservation areas. Furthermore, the amount of impervious surface created has been reduced from 8.62 acres in the originally-proposed 14-lot subdivision to 6.46 acres in the conservation subdivision, thus reducing the amount of stormwater runoff generated from 593,129 cubic feet to 430,430 cubic feet.

The drainage conservation easement located along the west side of Mill River Road is proposed to capture the runoff from the steep slopes located on the northern and eastern portions of the site, as well as runoff from Mill River Road. Overall, drainage improvements are proposed to be installed throughout the property in order to capture runoff from disturbed areas. Therefore, virtually all the runoff created due to the implementation of the proposed action would be recharged on site.

Comment No. C127:

Mill River Road is the preferred short-cut for most traffic where the residents live north and northwest of Oyster Bay, i.e., Bayville. With the growing volume of traffic using this road, the water run-off issue becomes more pronounced and hazardous to the Village residents living along MRR and other motorists traveling along MRR to points north from the Village, i.e., stalled cars, accidents, and road closures.

Response No. C127:

The runoff from the subject property to Mill River Road will not increase due to the use of conservation areas, which effectively limit the amount of impervious surface on the site. In addition, the installation of various drainage structures throughout the site to capture runoff from impervious surfaces will minimize, to the maximum extent practicable, stormwater runoff leaving the site. Therefore, stormwater runoff from the proposed development would not impact Village residents living along or motorists using Mill River Road.

Comment No. C128:

Next, I would voice concern about the protection of existing wildlife. My property is 5+ acres and most of it is wooded. I love to garden and spend a lot of time outdoors. I am always pleasantly surprised when I see a deer or a fox. I have rabbits and owls and more beautiful birds than I could have imagined. I can't see that developing this much land would not have a damaging impact on wildlife.

Response No. C128:

The commentator describes her property as supporting habitat that is very similar to some of the habitat found on the site. Thus, the species mentioned by the commentator have been observed or are expected to occur on the site. Under the 13-lot conventional subdivision, limited clearing would occur on the wooded areas of the northern and eastern portions of the site. Building envelopes for the parcels in these areas would occur in either already-disturbed areas, or on more level sections of the particular parcel, to reduce the need for extensive grading and clearing. At the time of site plan approval for each one of the proposed houses on these specific parcels, a detailed grading and tree preservation plan would be developed for the areas to be disturbed to assure that the maximum protection is afforded to trees on site. Furthermore, the 13-lot conventional subdivision also includes two conservation areas on the southeastern portion of the site which, if adopted, would preserve additional wooded habitat.

Furthermore, as discussed in the DEIS, the wildlife species mentioned by the commenter are species that are relatively tolerant of human activities. In addition, the habitats created by the project (limited clearing and landscaping, as well as large wooded areas) will create favorable conditions for certain species, including those mentioned in the comment. In particular, the "edge" habitats that exist where woodland areas meet cleared/landscaped areas are favored foraging habitats for white-tailed deer (*Odocoileus virginianus*) and eastern cottontail rabbit (*Sylvilagus floridanus*). Edge habitats also attracts some predatory animals, including red fox (*Vulpes vulpes*) and certain owl species, including the eastern screech owl (*Otus asio*), which is the most common owl species on Long Island. Some of these species, such as the white-tailed deer, are also typically considered "nuisance" by many homeowners because of the damage to landscaping they create. Based upon the foregoing, it is anticipated that that the species mentioned would continue to occur on the site based upon the conventional subdivision.

With respect to the conservation subdivision, the majority of the wooded habitat on the northern and eastern portions of the site would be preserved and extensive edge habitat between cleared/landscaped areas and woodlands would exist. As such, the conservation subdivision supports extensive wildlife habitat, including habitat for the species mentioned in the comment.

Comment No. C129:

I recognize that the owner of the property has a right to develop it, but I perceive the impact on my property value and quality of life to be radically negative, mostly because of the additional volume on the road and the noise that it will bring.

Response No. C129:

The comment is noted. With respect to the consideration of property values, *The SEQR Handbook* states that:

> *"... potential effects that a proposed project may have in drawing customers and profits away from established enterprises,* ***possible reduction of property values in a community****, or potential economic disadvantage caused by competition or speculative economic loss, are not environmental factors" (The SEQR Handbook,* 3rd Edition, 2010, Page 112) (Emphasis added).

The proposed conservation subdivision includes development of 13 single-family residences, in accordance with the density permitted under prevailing zoning. These residences would be configured on the western and southwestern portions of the property in order to minimize impact to steep slopes and to preserve vegetation, and one subdivision road would be created in the approximate location of the existing driveway serving 57 Mill River Road to serve all 13 residences.

See Response No. C112 with respect to peak-hour traffic. Further, see Response No. C118 with respect to construction noise.

Thomas B. Lyons
Written Submission
October 23, 2009

Comment No. C130:

We note the close proximity of some of the proposed homes to the Arboretum boundary. This is especially true for the northernmost units. We request greater consideration for creation of a minimum 100 foot buffer between any altered areas within the Mill River Road subdivision and the State Historic Park.

Response No. C130:

Based upon comments received during the public comment period associated with the environmental review of the proposed action and subsequent discussions with the Village Planning Board and its consultants, the Applicant has prepared a conservation subdivision (cluster development) to address the environmental issues that were raised. See the discussion of the conservation subdivision in Section 3.3 and the subdivision plan in Appendix E of this FEIS. As previously described, the northernmost and easternmost portions of the site, including 54.99± acres within two large conservation areas and the perimeter conservation areas within individual lots, will be preserved. Preservation within this area maintains the steepest slopes in their natural state, preserves the majority of the Coastal Oak-Laurel Forest habitat, and provides a mostly contiguous wildlife corridor from the Planting Fields Arboretum through the subject property.

The Planting Fields Arboretum abuts the subject property on the southerly, westerly and northwesterly portions of the site's perimeter. The northernmost units cited in the comment have been relocated to the western and southwestern portions of the site. Of the nine residential parcels that border the Planting Fields Arboretum, each contains a 50-foot-wide conservation strip along its adjoining border with the Planting Fields Arboretum. As disturbance is restricted within this conservation easement, existing vegetative cover will be maintained. Portions of the Arboretum site are presently improved with residential and maintenance structures (to the west) and the adjacent open fields (to the south) are, at various times, used for lawn parking during events occurring at the Arboretum (see Line of Sight Profile Sheets 1 and 3 in Appendix B of the DEIS for the potential views).[8]

While the disturbed areas shown on the subdivision map are conceptual, the building envelopes adhere to the setback requirements of the R-1 (two-acre) zoning district. All proposed residential improvements will be oriented toward the interior of the subject property, away from the Arboretum. The specific improvements and setbacks proposed on each residential lot will be subject to individual site plan review upon the request of a building permit.

Comment No. C131:

Fragmentation of habitat is an increasing concern with respect to protection of biodiversity. We ask that the Village consider use of modified cluster development to minimize fragmentation and increase the continuity with habitat within Planting Fields.

Response No. C131:

The arrangement of the residential development on the western and southwestern portions of the site in the 13-lot conservation subdivision would result in a large, nearly contiguous block of preserved habitat on the

[8] Please note that the line-of-sight drawings were prepared for the 14-lot conventional subdivision plan, which is no longer proposed.

northern and eastern portions of the site. It is anticipated that this habitat block would continue to support representatives of all existing wildlife species, including those less tolerant of human activity that might otherwise be displaced from the site under the 13-lot and 14-lot conventional subdivision designs. Furthermore, the undeveloped habitat block on the northern and eastern portions of the subject property would provide significant connectivity and serve as a wildlife corridor among the site and adjacent properties, including the Planting Fields Arboretum.

Comment No. C132:

As indicated in the DEIS this property is identified as a priority open space parcel with special importance attributed to groundwater protection. Buffers and use of cluster design will maximize protection of groundwater.

Response No. C132:

In response to many of the comments that were received by the Village with respect to the proposed conventional subdivision of the subject property, the Applicant has prepared a conservation subdivision, which is discussed in Section 3.3 and included in Appendix E of this FEIS. The 13-lot conservation subdivision configures the residential lots on the flattest portion of the subject property while preserving the steepest slopes on the northern and eastern portions of the site. Locating the lots on one portion of the property allows for (1) protection of the steepest slopes on the property, (2) maintenance of a significant amount of open space, (3) retention of numerous trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and continuous wildlife corridor that is only interrupted by the existing Mohawk Drive and a small portion of the proposed subdivision road. Furthermore, preserving over half the site within conservation areas will not only achieve the protection of the natural resources mentioned above, it will also protect the watershed by minimizing impervious surface and providing large undeveloped areas for recharge. In addition, the 13-lot conservation subdivision incorporates a number of stormwater management facilities, including a recharge basin, a common DRA, a drainage conservation easement and drywells and DRAs on individual lots, all of which will assist in recharging stormwater on-site.

Comment No. C133:

Please provide additional evaluation of the importance of the Coastal Oak - Laurel Forest within the property especially those areas contiguous to the same ecological community in Planting Fields. It seems very probable that this community has regional and local significance if not statewide when combined. Consideration should be given to clustering and/or decreasing the size of parcels in order to minimize the effects of fragmentation on this ecological community. The Coastal Oak - Laurel area is also within steeper areas of the park. Large slope cuts with concomitant concerns regrading erosion and drainage control could be limited with reduced development within this area.

Response No. C133:

The "Coastal Oak - Laurel Forest" habitat found on site is similar to habitat found along the entire North Shore of Long Island. It is, therefore, not considered of regional significance and there are similar habitats in the immediate area of the site. However, based upon the conservation subdivision prepared by the Applicant (see Appendix E of this FEIS), the majority of the "Coastal Oak - Laurel Forest" ecological community on the subject property would be retained as part of 54.99± acres of conservation areas. The largest of these areas is approximately 45.10 acres and is directly adjacent to the Planting Fields Arboretum. As noted in the comment, this ecological community is situated on the steepest slopes contained on the property and, as such, would be retained within the conservation subdivision design. Also, see Response No. C2 and discussion under *Ecology* in Section 3.3 of this FEIS, with regard to the Coastal-Oak-Laurel Forest. Further, with respect to the issue of fragmentation, see Response No. C131.

Comment No. C134:

The inclusion of conservation areas is commendable. However, some of the proposed conservation areas consist of portions of lots and, as a result, do not maximize contiguity. We note also that the Village's plan calls for preservation of natural forest cover in contiguous patterns. Clustering is one way to accomplish this.

Response No. C134:

Based upon comments received during the public comment period associated with the environmental review of the proposed action and subsequent discussions with the Village Planning Board and its consultants, the Applicant has prepared a 13-lot conservation subdivision to address the environmental issues that were raised, including the request for greater preservation of contiguous natural areas. See the discussion of the conservation subdivision in Section 3.3 and the subdivision plan in Appendix E of this FEIS. The 13-lot conservation subdivision configures the residential lots on the flattest portion of the subject property while preserving the steepest slopes on the northern and eastern portions of the site. Locating the lots on one portion of the property allows for (1) protection of the steepest slopes on the property, (2) maintenance of a significant amount of open space, (3) retention of numerous trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and continuous wildlife corridor that is only interrupted by the existing Mohawk Drive and a small portion of the proposed subdivision road.

Comment No. C135:

An emphasis should be placed on use of native species within the subdivision.

Response No. C135:

The 13-lot conservation subdivision will preserve approximately 54.99 acres of natural vegetation within conservation areas. In addition, it is expected that another 19.37± acres of vegetation within individual lots will be preserved in their natural condition.

Landscaping of the individual home sites, as well as the stabilization of the areas needed to be regraded adjacent to driveways, will not use the invasive plant species listed in Appendix L. At the time of site plan approval for each individual residential lot, the Planning Board will also review the proposed landscaping. In its review, the Planning Board can ensure that, to the maximum extent possible, native trees, shrubs, groundcover plants and flowers, or non-native plants that are non-invasive will be used within the individual residential lots.

Comment No. C136:

The DEIS should provide additional detail on how construction activities will be implemented in a manner that minimizes the spread of invasive species particularly adjacent to and within the "Coastal Oak - Laurel Forest" community. For the most current information on invasive plants please refer to Nassau County's list of invasive species at http://nyis.info/LIISMA/Legislation.aspx.

Response No. C136:

As discussed in the DEIS, the site supports a number of plants that appear on the Nassau County list of invasive species (see Appendix L). These species include, but are not limited to, privets (*Ligustrum spp.*), Japanese honeysuckle (*Lonicera japonica*), multiflora rose (*Rosa multiflora*), wineberry (*Rubus phoenicolasius*), Asiatic bittersweet (*Celastrus orbiculata*), porcelain berry (*Ampelopsis brevipedunculata*), English ivy (Hedera helix), winged euonymus (*Euonymus alata*), Norway maple (*Acer platanoides*), and black locust (*Robinia pseudoacacia*). These are, for the most part, associated with the areas that were previously developed or

disturbed on the site, or the Successional Southern Hardwood and the Old Landscaping/Field habitats, as identified and discussed in the DEIS.

The commentator is correct with regard to the potential of impacts from invasive species to the Coastal Oak - Laurel Forest habitat. Of the habitats found on site, this habitat is currently the least affected by invasive species. Under the conservation subdivision, the majority of Coastal Oak – Laurel Forest and steep slope areas would be preserved.

In addition to the preservation of 51.13± acres of virtually contiguous natural area, the following mitigation measures are proposed to be implemented during the construction and development phases of the conservation subdivision:

- During the construction phase of the project, topsoil must be removed from the areas to be re-graded for the individual house site. The topsoil from each individual house site will be stockpiled on that particular house site and properly contained and protected from erosion. It is within the topsoil layer that any invasive species will be contained. This will assure that invasive species will not be transported and allowed to be established in other portions of the site. Subsoils, from deeper excavations (sand & gravel), do not contain such a threat and would be able to be used throughout the site, as needed, for grading.

- Landscaping of the individual home sites, as well as the stabilization of the areas needed to be regraded adjacent to driveways, will not use the invasive plant species listed in Appendix L. At the time of site plan approval for each individual residential lot, the Planning Board will also review the proposed landscaping. In its review, the Planning Board can ensure that, to the maximum extent possible, native trees, shrubs, groundcover plants and flowers, or non-native plants that are non-invasive will be used within the individual residential lots.

Comment No. C137:

The plan should include consideration of the Town of Oyster Bay's Mill River Watershed Study and Public Stewardship Plan (2008), including an emphasis on non-structural drainage and erosion control methods.

Response No. C137:

Response No. C85 provides a detailed summary of the *Watershed Study*. Moreover, in addition to drainage and erosion control measures discussed in detail in Response No. C138, below, the proposed conservation subdivision layout would provide non-structural drainage control methods including a DRA on the southeastern portion of the property and a 100-foot-wide drainage conservation easement along Mill River Road. The development would be largely restricted to the western and southwestern portions of the property in order to provide almost 55 acres of conservation areas on-site. This would limit clearing of wooded areas on the overall property and minimize impacts upon the overall topography of the site, the steepest slopes of which are found on the northern and eastern portions of the property within the proposed conservation area (see the 13-lot conservation subdivision in Appendix E of this FEIS).

Comment No. C138:

Mitigation measures should include discussion of measures to minimize long term adverse impacts due to increased potential for erosion and sedimentation (not only measures during construction).

Response No. C138:

As discussed in detail in Section 4.1.1 of the DEIS, land development activities will disturb on-site soils, and thus, such activities will increase the potential for soil erosion at the subject property. Prior to the

commencement of construction activity at the subject property, a stormwater pollution prevention plan (SWPPP) detailing all erosion and sedimentation control measures to be implemented during and beyond construction, acceptable to the Incorporated Village of Upper Brookville, will be developed and submitted to both the Village and the NYSDEC.

As provided by the project engineer, and as depicted by the preliminary SWPPP developed, the erosion and sedimentation control measures to be implemented at the subject property include the following:

- Sediment barriers (silt fencing, hay bales or approved equivalent) would be installed as required along the down slope limits of disturbance for the duration of the construction period. No sediment from the site would be permitted to wash onto adjacent roadways or properties. Individual lot improvements will be similarly treated to prevent sediment wash between lots.

- Graded and stripped areas and stockpiles are to be minimized and kept stabilized through the use of temporary seeding or salt hay as needed. Seed mixtures would be in accordance with the National Resources Conservation Service recommendations.

- Drainage inlets will be protected from sediment build-up through the use of sediment barriers, sediment traps and/or check dams, as required.

- Trees that are to remain in the immediate area of any proposed improvements will be protected by fencing that would be placed around the existing trees.

- Proper maintenance of erosion and sediment control measures will be ensured by periodic inspection (once per week, minimum), and inspection after storm events of 0.5 inch of precipitation or greater. Maintenance measures include, but are not limited to, clearing of sediment basins or traps, cleaning or repair of sediment barriers, sediment traps, haybales, berms, diversions, check dams, and inlet protection measures. Accumulated sediment from the above structures will be removed, particularly following storm events.

- Appropriate means will be used to control dust during construction. Highly-traveled areas and perimeter areas may be treated with an adhesive consisting of acrylic polymer or resin in water.

- A stabilized construction entrance(s) and individual lot driveways will be maintained to prevent soil and loose debris from being tracked onto local roadways.

The final SWPPP to be implemented, generally consisting of the above measures, will be prepared in accordance with all Village and NYSDEC requirements, and must be submitted to and approved by the Village Stormwater Management Officer prior to the commencement of construction activity at the subject property. The final SWPPP will also be submitted to the NYSDEC.

The *Stormwater Pollution Prevention Plan* and *Erosion & Sediment Control Details* are included in Appendix B of the DEIS.

Comment No. C139:

Photographs (Appendix F [of the DEIS]) showed existing views only; no photo simulations were provided.

Response No. C139:

The commentator is correct. Existing site and surrounding area photographs are included in Appendix F of the DEIS. Line-of-sight profiles depicting post-development conditions are included in Appendix B of the DEIS, as discussed in Section 4.7 of the DEIS. As the residential lots will be sold on an individual basis, and

site plans will be designed subsequent to such sale (with review and approval by the Village), photosimulations could not accurately be prepared.

As indicated in Section 3.3 of this FEIS, as a 13-lot conservation subdivision is now being proposed, site modifications would not be noticeable from Mill River Road, the only public roadway adjacent to the property. Upon implementation of the conservation subdivision, the frontage of the site along Mill River Road would remain the same, with the exception of the creation of a wider subdivision roadway in the approximate location of the existing driveway that currently serves 57 Mill River Road. The remainder of the frontage would be preserved through the establishment of a conservation area and drainage conservation easement. No residences would be located directly along Mill River Road. The only potential structure to be located near this roadway, which would potentially be visible, is the small water booster pump station. The design of this building would be reviewed by the Village's Architectural Review Board, prior to receipt of a building permit.

As indicated in Section 3.3 of this FEIS, with the exception of one small area along the southwestern portion of the site, the surrounding individual private lot owners would adjoin the portion of the subdivision that is to be preserved within conservation areas. As indicated above, the portion of the site to be developed with residences adjoins the Planting Fields Arboretum property. Nine of the 13 proposed residential lots as well as the proposed stormwater basin within the conservation subdivision are adjacent to the property line of the Planting Fields Arboretum. Views to and from the Planting Fields Arboretum would, for the most part, be screened by existing vegetation on both properties. Where such views are not currently screened, it is expected that additional landscaping would be installed in the future within the individual lots.

Cathleen M. Colvin
Electronic Transmission
October 23, 2009

Comment No. C140:

I would like to make you aware of my strong objection to the proposed subdivision of The Oaks at Mill River. In particular, the failure by the Village to prohibit the destruction of the steep slopes on the site will undoubtedly have a devastating effect on nearby bodies of water. As I understand, a full 43% of the site consists of slopes, 23% of which have greater than 25% slope. The Oaks at Mill River is in the Mill River watershed, and drains into Mill River, through Mill Pond and onto Oyster Bay alongside the Waterfront Center. There is no doubt that if the slopes are not protected, the run-off created will severely impact the pristine waters of Oyster Bay that the whole community enjoys and has worked hard to protect. In addition, I have seen no meaningful consideration of the fact that the site falls within the Oyster Bay Special Groundwater Protection Area.

Response No. C140:

As explained Section 3.3 of this FEIS, based upon comments received during the public comment period associated with the environmental review of the proposed action and subsequent discussions with the Village Planning Board and its consultants, the Applicant has prepared a conservation subdivision to address the environmental issues (including steep slopes and vegetation preservation) that were raised (see Appendix E). See the discussion of the conservation subdivision Section 3.3 of this DEIS. The 13-lot conservation subdivision configures the residential lots on the flattest portion of the subject property while preserving the steepest slopes on the northern and eastern portions of the site. Locating the lots on one portion of the property allows for (1) protection of the steepest slopes on the property, (2) maintenance of a significant amount of open space, (3) retention of numerous trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and continuous wildlife corridor that is only interrupted by the existing Mohawk Drive and a small portion of the proposed subdivision road.

With respect to the impacts of the proposed development on the Mill River watershed, see Response No. C85.

With respect to the SGPA, the DEIS provided an analysis of the impacts to the SGPA in Section 4.2 of the DEIS. Also, see Response No. C92 in this FEIS.

With regard to the steep slopes on-site, the proposed conservation subdivision has been configured in a manner that will preserve steep slopes on the property within the 51.13± acres of proposed conservation areas along the northern and eastern portions of the property. Steep slopes and vegetation within this conservation area would not be disturbed, mitigating potential adverse impacts associated with erosion and drainage.

Comment No. C141:

I was shocked to learn, in view of current knowledge and learning regarding the importance of environmental protection, that the Village would even consider a subdivision plan that calls for such a significant amount of destruction of steep slopes and removal of 2000 trees. I urge you to prevent this subdivision from proceeding, without more carefully considering and the impact on the Bay, Upper Brookville, and the surrounding communities.

Response No. C141:

The subject property is privately owned, and an application has been submitted to the Village for the subdivision of that property in accordance with prevailing zoning. The Village Planning Board is legally required to review the subdivision application.

The commentator should note, as previously explained in Sections 3.1 and 3.3 of this FEIS, based upon comments received during the public comment period associated with the environmental review of the proposed action and subsequent discussions with the Village Planning Board and its consultants, the Applicant has prepared a conservation subdivision to address the environmental issues that were raised as part of the SEQRA process being conducted by the Planning Board.

Citizens Campaign for the Environment
Written Submission
October 23, 2009

Comment No. C142:

This development is located within the Oyster Bay Special Groundwater Protection Area. Special Groundwater Protection Areas (SGPAs) are critically important hydrologic areas that allow for deep flow recharge of rain water to our underground aquifer system. Long Island contains nine such areas and Nassau County contains only two SGPAs, making the Oyster Bay SGPA of vital importance to the quality and quantity of groundwater recharge for this region.

The Long Island Comprehensive Special Groundwater Area Protection Plan, published by the LI Regional Planning Board in 1992 states, "There is an urgent need to maintain them [SGPAs] as sources of high quality recharge. They represent a unique, final opportunity for comprehensive, preventive management to preclude or minimize land use activities that can have a deleterious impact on groundwater. Therefore, the protection of groundwater in these areas is a first-order priority." CCE believes the clearing of natural vegetation, the flattening of steep slopes, combined with the development footprint of 16,500 square feet threatens the quality and quantity of Nassau County's drinking water.

Response No. C142:

The subject property is located within the Oyster Bay SGPA. Several of the recommendations in the *SGPA Plan* involve the acquisition or rezoning of specific parcels. The subject site is not specifically designated for acquisition or rezoning. The *SGPA Plan* does recommend that the County and the Towns preserve the open space character within the SGPA and preserve parcels that maintain the recharge potential within the SGPA. The *SGPA Plan* also notes that most of the development in the SGPA is low-density residential in character, which is what is being proposed.

Objective review of the subject property indicates that it possesses open space and recharge potential. However, the property is privately owned and residentially zoned. While the Applicant proposes to develop the subject property, in order to address various comments received during the public comment period on the originally-proposed 14-lot conventional subdivision, which was the proposed action described in the DEIS (see Appendix C of this FEIS), the Applicant has modified its plan to reduce the density (from 14 to 13 lots), and to preserve greater contiguous natural areas. In order to further protect natural resources (e.g., to avoid steep slopes, preserve trees, provide contiguous wildlife corridors and maximize undisturbed open space), the Applicant has prepared a conservation subdivision, which locates the residential development on the flattest portion of the property and provides a 51.13±-acre substantially contiguous natural area (with the exception of a portion of the subdivision roadway) that will be preserved (see Appendix E of this FEIS). Preserving over half the site within conservation areas will not only achieve the protection of the natural resources mentioned above, it will also protect the watershed by minimizing impervious surface and providing large undeveloped areas for recharge. In addition, the 13-lot conservation subdivision incorporates a number of stormwater management facilities, including a recharge basin, a common DRA, a drainage conservation easement and drywells and DRAs on individual lots, all of which will assist in recharging stormwater on-site.

The Applicant respectfully submits that the proposed 13-lot conservation subdivision has been designed to preserve open space character and recharge potential as (a) the property would be developed in accordance with an approved yield plan, with a density of 0.13 unit per acre (or one unit for every 7.47 acres), thus maintaining the low-density residential character of the area, (b) development has been located on one portion of the site, allowing for preservation of over half the site (approximately 56.83 acres), and (c) recharge

would occur on-site through the use of a stormwater basin, individual drywells associated with each residence, several individual DRAs, a common area DRA and a drainage easement along Mill River Road.

Based upon the implementation of a conservation subdivision, which will preserve the steepest slopes on the site and over 58 percent of the site within conservation areas, implementation of the stormwater pollution prevention plan (SWPPP), adherence to the *Long Island Comprehensive Waste Treatment Management Plan* (*"208 Study"*) and adherence to Article X of the Nassau County Public Health Ordinance, the Applicant respectfully submits that the development of the subject property, which complies with the density permitted under the prevailing OP1 residential zoning, would be protective of the County's drinking water.

Comment No. C143:

The development should be conducive to the surrounding lands and should not include the degradation and flattening of steep slopes found on the property.

The proposal, in its current state, does not protect the 41 acres of steep slopes. Rather the development proposes to reduce the steepness of the slopes and projects that "approximately 106,232 cubic yards of excess material would have to be removed from the site to develop the infrastructure associated with the proposed subdivision" (page ES iii).

It is clear that subdividing this parcel as proposed does not conform to the stated goal of the Village Master Plan which is to preserve natural vegetation and slopes, protect trees, and other natural resources. The Village has laws that regulate disturbing steep slopes, yet eight of the fourteen lots on the proposed plan site structures on steep slopes. It is good planning practice to eliminate development activity on slopes that are 15% or greater. Many municipalities have strict zoning laws that prohibit development on these sensitive areas, including the town of Huntington and the Suffolk County Planning Commission. CCE would urge the Village to work with the developer to ensure that the steeps slopes are protected rather than flattened.

Response No. C143:

Based upon the comments made during the SEQRA process, the Village has worked with the Applicant to develop a plan that meets the Applicant's goals, while protecting the environment and character of the Village. The Applicant has redesigned the subdivision based upon the yield from a conventional subdivision plan, as described in Section 3.2 of this FEIS. This 13-lot conservation subdivision has been designed to protect the steepest slopes and much of the Coastal Oak-Laurel Forest found on the subject property. The 13-lot conservation subdivision is described in detail in Section 3.3 and is shown in Appendix E of this FEIS.

The 13-lot conservation subdivision configures the residential lots on the flattest portion of the subject property while preserving the steepest slopes on the northern and eastern portions of the site. Locating the lots on one portion of the property allows for (1) protection of the steepest slopes on the property, (2) maintenance of a significant amount of open space, (3) retention of numerous trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and continuous wildlife corridor that is only interrupted by the existing Mohawk Drive and a small portion of the proposed subdivision road.

Comment No. C144:

The current proposal disrupts 70% of the existing property, leaving the natural vegetated areas disjointed.

The DEIS states, "The areas of the most intensive human activities, the hard surfaces and landscaping are proposed to be distributed throughout the site, with natural habitats between them" (page ES xii). CCE is concerned that the proposed plan will leave the native habitats disjointed, this is type of development is unsuitable for wildlife. New roads and pavements will also act as anthropogenic borders prohibiting free migration of wildlife and changing the character of the existing estate.

In addition, the applicant proposes a conservation easement on 29.7 acres, however the 29.7 acres is highly fragmented and includes buffers between individual lots which would not do much to protect the natural resources of the property. It is also unclear how this proposed conservation area would be protected.

Response No. C144:

The Applicant has prepared a 13-lot conservation subdivision design to maximize preservation of natural features and minimize habitat fragmentation. Particularly, the benefits of implementing the 13-lot conservation subdivision and locating the lots on one portion of the property allows for (1) protection of the steepest slopes on the property, (2) maintenance of a significant amount of open space, (3) retention of numerous trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and continuous wildlife corridor that is only interrupted by the existing Mohawk Drive and a small portion of the proposed subdivision road.

A legal instrument will be developed by the Applicant, in cooperation with the Village, to ensure that no disturbance will occur within the conservation areas. Such instrument will also outline maintenance and protection responsibilities as well as permitted/ prohibited activities within these areas.

Comment No. C145:

Stormwater Management – The project should contain a plan for the installation of Green Infrastructure to manage wet weather flows and enhance water quality recharge into the Special Groundwater Protection Area as well as for the protection of the Long Island Sound (LIS).

The DEIS states "The proposed project will result in an increase in the quantity of stormwater run-off generated at the subject property due to an increase in the total area of impervious surfaces. However, all stormwater will be collected and recharged at the subject property will be filtered through the use of catch basins and drywells unless he Planning Board requires recharge basins or reserve areas" (page ES x).

This proposal woefully fails to capitalize on the benefit of creative stormwater management. Stormwater runoff has been traditionally treated as a by-product of development to be disposed of as quickly and efficiently as possible. The result has often been increased flooding, degradation of surface and subsurface water quality, and degradation of water quality in Long Island rivers, streams, tributaries and bays. In addition, stormwater runoff causes soil erosion and sedimentation. New planning tools and techniques, referred to as "Green Infrastructure" are emerging across the nation to better manage stormwater. These include Best Management Practices (BMPs) which are structural, vegetative, and managerial practices designed to treat, prevent, or reduce degradation of water quality due to stormwater runoff. CCE would encourage the developer to incorporate cutting edge green infrastructure into the proposal, including pervious pavement, and rain barrels.

Response No. C145:

Stormwater recharge has been an integral design concept for subdivisions in Nassau County for over 70 years. The recharge system has typically been by the use of stormwater recharge basins. In the last 50 years, the recharge basin (sump) has been augmented by the use of DRAs and diffusion wells (drywells). All three types of recharge systems require disturbance to the existing groundcover. The latter two (DRAs and drywells), permit restoration with grassy areas and selected landscaping.

The drainage design for the proposed 13-lot conservation subdivision includes not only collection and retention of stormwater, but also provides for the recharge to the underlying groundwater. The stormwater drainage system not only incorporates the use of the existing vegetated drainage swale along Mill River

Road, but involves the creation of a DRA, which can be considered a bioretention facility. According to the 2010 *New York State Stormwater Management Design Manual*:

> *"A vegetated swale is a maintained, turf-lined swale specifically designed to convey stormwater at a low velocity, promoting natural treatment and infiltration. A properly designed, constructed, and maintained channel (or, in some cases natural drainage path) can be used in both residential and non-residential areas as a runoff reduction practice. A vegetated swale can be an alternative to underground storm sewers or lined open channels. Where drainage area, topography, soils, slope and safety issues permit, vegetated swales can be used in the street right-of-way and on developed sites to convey and treat stormwater from roadways and other impervious surfaces."*

According to the NYSDEC publication entitled *Better Site Design* (April 2008), use of bioretention areas (including DRAs) "breaks up impervious cover, thus allowing for better infiltration and treatment from smaller drainage areas, combines landscaping with stormwater treatment, improves aesthetics and reduces thermal impacts."

The use of a DRA provides recharge capabilities while allowing for the restoration of vegetation. Preservation of existing groundcover with the use of the existing swale and restoration of vegetation within the DRA will allow for the natural recharge of groundwater into the soils.

In addition, implementation of the conservation subdivision would have several positive effects with respect to stormwater runoff and recharge: (1) 54.99± acres of the subject property would be incorporated into conservation areas, the largest block of which is 45.10± acres; (2) the amount of impervious surfaces on the site would be reduced from 8.62± acres in the originally-proposed 14-lot subdivision to 6.46± acres in the conservation subdivision; and (3) the reduction in impervious surfaces would result in a similar reduction in the amount of stormwater generated (from 593,129 cubic feet to 430,430 cubic feet).

Final design plans will provide details of the proposed drainage concepts, which will be implemented with a SWPPP that addresses construction and post-construction techniques for erosion and sediment control.

With respect to the use of green infrastructure such as pervious pavers and rain barrels, individual residential lot owners have the ability to incorporate these types of measures into the design lots. Each residential lot will undergo individual site plan review by the Planning Board prior to issuance of building permits.

The maintenance for the recharge basin and the DRA would be the responsibility of the organization or agency that has jurisdiction over them. With respect to the drywells, according to Village requirements, the post-construction maintenance of these facilities will rest with the individual homeowners. Covenants will be established that permit neglected maintenance by individual homeowners to be performed by a HOA. In addition, covenants will be further provided that will permit the Village to perform maintenance that has been neglected by such HOA with a back charge (lien) to such HOA.

Michael Schwerin
Public Hearing
October 6, 2009

Comment No. H1:

The property also includes roughly 40 contiguous acres of nearly flat, tabletop land at the highest elevation to the western section. So that's up here, where there are very few contour lines, because this is essential flat land. That's not from the DEIS, that's my own calculations, you've got 40 acres of quite flat land up there, which is largely surrounded by Planting Fields Arboretum. This is prime, buildable land, the development of which would have little impact, I submit, on neighboring property owners.

Response No. H1:

As explained in Section 3.3 of this FEIS and throughout this FEIS, based upon comments received during the public comment period for the DEIS, the Applicant has prepared a 13-lot conservation subdivision to address the environmental issues that were raised, including the preservation of the steepest slopes contained on the property (see Appendix E). The proposed conservation subdivision configures the residential development on the flattest, most buildable portion of the property. Furthermore, as noted in the discussion of the conservation subdivision in Section 3.3 of this FEIS, with the exception of one small area along the southwestern portion of the site, the surrounding individual private lot owners would adjoin the portion of the subdivision that is to be preserved within conservation areas. The portion of the site to be developed with residences adjoins the Planting Fields Arboretum property. Nine of the 13 proposed residential lots as well as the proposed stormwater basin within the conservation subdivision are adjacent to the property line of the Planting Fields Arboretum.

Mark Finkel
Public Hearing
October 6, 2009

Comment No. H2:

Has federal environmental and other standards been checked vis-a-vis this? Going to endangered species, EPA, etc.

Response No. H2:

With respect to federally-protected species, none of the plants or animals observed or expected on the subject property appears on the current United States Fish and Wildlife Service's *Federally Listed Endangered and Threatened Species and Candidate Species list for Nassau County* (Appendix M).

As detailed in Section 3.3 of the DEIS, no New York State rare, endangered or threatened plant or animal species or ecological communities were found at the site during several site inspections. In addition, the NYNHP was contacted to determine if any records for rare or state-listed animals or plants, significant natural communities, or other significant habitats in their database(s) for this site or in the immediate vicinity. In correspondence dated September 12, 2008 the New York Natural Heritage Program indicated that no such records existed (see Appendix C of the DEIS). In addition, a representative of the office of the Village Engineer, Carole Neidich-Ryder, who is a qualified biologist, reviewed the DEIS and participated in site walks, which included a discussion of the floral species on the site. The Village Engineer's office did not note the existence of endangered, threatened or rare tree species.

Comment No. H3:

I have nothing against the development of the project, I hope it goes through, people do need housing on Long Island, even if it's upper middle class or wealthy housing, it's a legitimate issue. We have a limited house stock.

Response No. H3:

The comment is noted.

Chairman Quinn
Public Hearing
October 6, 2009

Comment No. H4:

Has the applicant taken into account migratory animals in the DEIS?

Response No. H4:

Yes. Avian species are the only migratory animals expected to utilize the site. As detailed in Section 3.3, *Ecology*, of the DEIS, approximately 17 of the birds observed or expected on the subject property are considered to be migrants or "visitors," including, but not limited to, the hermit thrush (*Catharus guttatus*), warblers, dark-eyed junco (*Junco hyemalis*), vireos (*Vireo* spp.), kinglets (*Regulus* spp.) and the white-throated and white-crowned sparrows (*Zonotrichia* spp.).

All of the aforementioned bird species are adapted to woodland and/or developed suburban settings. Furthermore, under the 13-lot conservation subdivision, development would be configured on the western and southwestern portions of the site, with over 58 acres of woodland habitat to be preserved in two large blocks on the northern and eastern portions of the site. As such, habitat for migratory birds of both suburban habitats and woodlands would be preserved.

Judith Goldsborough
Public Hearing
October 6, 2009

Comment No. H5:

We recognize that the owner of the property has a right to develop it, but we think that with a little creative thinking on both the part of the developer and the Village, that the goal to develop it and the goal of the Village to protect the natural resources could be achieved.

Response No. H5:

In order to address various comments received during the public comment period on the originally-proposed 14-lot conventional subdivision, which was the proposed action described in the DEIS (see Appendix C of this FEIS), the Applicant has modified its plan to reduce the density, and to preserve greater contiguous natural areas.

Specifically, the Applicant, based upon comments received on the DEIS and input from the Village and its consultants, prepared a revised yield plan, which yields 13 lots and conforms to the zoning requirements of the Suburban Estate (OP1) Zoning District in which the subject property is situated (i.e., a 13-lot conventional subdivision), a copy of which is included in Appendix D of this FEIS.

In order to further protect natural resources (e.g., to avoid steep slopes, preserve trees, and provide contiguous wildlife corridors), the Applicant has prepared a conservation subdivision, which clusters development on a portion of the property and provides a 51.13±-acre substantially contiguous natural area (with the exception of a portion of the subdivision roadway) that will be preserved.

Both Friends of the Bay and the North Shore Land Alliance, among others, have testified before the Village Planning Board and submitted correspondence in support of the proposed 13-lot conservation subdivision.

Comment No. H6:

The applicant states that the proposed subdivision has been designed to preserve the natural slopes to the maximum extent practicable, but because the parcel includes over 41 acres of steep or very steep slopes, as Mr. Schwerin pointed out, it will be impossible to construct the roads and build homes on this site without a huge negative impact to the natural environment.

Response No. H6:

In order to address various comments received during the public comment period on the originally-proposed 14-lot conventional subdivision, which was the proposed action described in the DEIS, the Applicant has modified its plan to reduce the density, and to preserve greater contiguous natural areas.

Specifically, the Applicant, based upon comments received on the DEIS and input from the Village and its consultants, prepared a revised yield plan, which yields 13 lots and conforms to the zoning requirements of the Suburban Estate (OP1) Zoning District in which the subject property is situated (i.e., a 13-lot conventional subdivision).

In order to further protect natural resources (e.g., to avoid steep slopes, preserve trees, and provide contiguous wildlife corridors), the Applicant has prepared a conservation subdivision, which clusters development on a portion of the property and provides a 51.13±-acre substantially contiguous natural area

(with the exception of a portion of the subdivision roadway) that will be preserved. According to New York State Village Law §7-738, cluster development is defined as "a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands."

The proposed 13-lot conservation subdivision achieves these goals, as it allows for (1) protection of the steepest slopes on the property, (2) maintenance of a significant amount of contiguous open space, (3) retention of numerous identified trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and virtually continuous wildlife corridor.

Comment No. H7:

The applicant further states that the proposed subdivision conforms to existing zoning laws. Even accepting the statement at face value, it is clear that subdividing this parcel as proposed does not conform to the stated goals of the Village master plan, which is to preserve natural vegetation and slopes, to minimum the impact of stormwater runoff, to protect trees and other natural resources, and to preserve the natural vegetation on the slopes.

Response No. H7:

In order to address various comments received during the public comment period on the originally-proposed 14-lot conventional subdivision (see Appendix C), the Applicant has prepared a 13-lot conservation subdivision (see Appendix E), which reduced the density, and preserves greater natural areas (see the complete discussion of the conservation subdivision in Section 3.3 of this FEIS).

The overall lot yield within the 13-lot conservation subdivision is calculated at 7.47 acres per lot, which, on an overall density basis, conforms to the requirements of the prevailing OP1 zoning district (minimum of five acres per lot). However, in order to protect significant natural areas, this subdivision has been configured to arrange the residential lots so that they would range in size from 2.23 acres to 4.38 acres (containing the Monday House and its appurtenances), with an average lot size of 2.91 acres. As explained in Section 3.3 of this FEIS, the conservation subdivision contains conservation areas of approximately 54.99 acres (56.6 percent of the overall site), most of which are substantially contiguous, with the exception of the subdivision road (see Appendix E). These conservation areas comprise the majority of the northern and eastern segments of the subject property, which is the portion that contains the steepest slopes on the property. The future residences would be situated on the flattest portion of the subject property, while the most steeply sloped areas, with the largest and most dense area of trees, would be preserved from development.

The 13-lot conservation subdivision also provides for (1) protection of the steepest slopes on the property; (2) maintenance of a significant amount of open space, (3) retention of numerous identified trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and virtually contiguous wildlife corridor.

It is the Applicant's opinion that the proposed 13-lot conservation subdivision meets the goals of the Village of Upper Brookville Master Plan for both the "Natural Environment" and "Man-Made Environment," as explained in detail in Response No. C80.

Based upon implementation of the conservation subdivision, disturbance of steep slopes would be minimized to the maximum extent practicable.

Comment No. H8

The Village has laws that regulate disturbing steep slopes, yet eight of the 14 lots on the proposed plan site structures on very steep slopes. But as the proposal states, they do conform to existing zoning. So this is a bit of a conundrum.

Response No. H8:

See Response No. H7.

Comment No. H9:

But we propose that there's a way that, as was stated, the property can be developed and the slopes protected. This technique is called conservation subdivision. Conservation subdivision design requires consideration and preservation of natural and cultural resources as part of the design process.

Response No. H9:

In order to address various comments received during the public comment period on the originally-proposed 14-lot conventional subdivision, which was the proposed action described in the DEIS, the Applicant has modified its plan to reduce the density, and to preserve greater contiguous natural areas.

Specifically, the Applicant, based upon comments received on the DEIS and input from the Village and its consultants, prepared a revised yield plan, which yields 13 lots and conforms to the zoning requirements of the Suburban Estate (OP1) Zoning District in which the subject property is situated (i.e., a 13-lot conventional subdivision).

In order to further protect natural resources (e.g., to avoid steep slopes, preserve trees, and provide contiguous wildlife corridors), the Applicant has prepared a conservation subdivision, which clusters development on a portion of the property and provides a 54.99±-acre substantially contiguous natural area (with the exception of a portion of the subdivision roadway) that will be preserved. According to New York State Village Law §7-738, cluster development is defined as "a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands."

The proposed 13-lot conservation subdivision achieves these goals, as it allows for (1) protection of the steepest slopes on the property, (2) maintenance of a significant amount of contiguous open space, (3) retention of numerous identified trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and virtually continuous wildlife corridor. See Appendix E of this FEIS for a copy of the 13-lot conservation plan.

Comment No. H10:

I would also like to make one comment on the DEIS, where the applicant talks about the fact that potentially up to 30 acres of the property will be put under a conservation easement. If you look at the map that shows the conservation easement areas, they're highly fragmented, and a lot of that area includes buffers between each individual lot, which does really not do a whole lot to protect natural resources on the property.

Response No. H10:

Based upon the comments made during the SEQRA process, the Village has worked with the Applicant to develop a plan that meets the Applicant's goals, while protecting the environment and character of the Village. The Applicant has redesigned the subdivision based upon the yield from a conventional subdivision plan, as described in Section 3.2 of this FEIS. This 13-lot conservation subdivision has been designed to protect the steepest slopes and much of the Coastal Oak-Laurel Forest found on the subject property. The 13-lot conservation subdivision is described in detail in Section 3.3 and is shown in Appendix E of this FEIS.

The 13-lot conservation subdivision configures the residential lots on the flattest portion of the subject property while preserving the steepest slopes on the northern and eastern portions of the site. Locating the lots on one portion of the property allows for (1) protection of the steepest slopes on the property, (2) maintenance of a significant amount of open space, (3) retention of numerous trees, (4) preservation of the majority of the "Coastal Oak-Laurel Forest," and (5) creation of a large and continuous wildlife corridor that is only interrupted by the existing Mohawk Drive and a small portion of the proposed subdivision road.

Comment No. H11:

We would be happy to talk to the Village or the developer about that, because unless a conservation easement is properly constructed there's no permanent protection on the property. So I think it's a great idea that the developer is proposing conservation easements on up to 30 acres, and we would, as I said, be happy to help achieve that.

Response No. H11:

Based upon the proposed 13-lot conservation subdivision, a total of 53.98± acres of the subdivision are proposed to be placed within designated conservation areas. Of these 54.99± acres, 3.86± acres will be on individual lots, with the remainder in two large blocks of approximately 45.10 and 6.03 acres. A legal instrument will be developed by the Applicant, in cooperation with the Village, to ensure that no disturbance will occur within the conservation areas. Such instrument will also outline maintenance and protection responsibilities as well as permitted/ prohibited activities within these areas.

Any conservation easement imposed upon any approved lot will (i) recite the need to keep as pristine as possible the areas burdened by the covenant (conservation easement), and (ii) be subject to the approval of the Planning Board.

S.S. Sabharwal
Public Hearing
October 6, 2009

Comment No. H12:

Whatever I studied about it, I really like this project, and I think this will make this neighborhood even more beautiful. So I definitely feel that it should pass as easy as possible.

Response No. H12:

The comment is noted.

Joseph Burns
Public Hearing
October 6, 2009

Comment No. H13:

So we're very concerned about any possible damage that may occur to our property and devaluation as a result of any change in status of the water or the drainage situation, and we're very concerned about the drainage consequences of this project.

Response No. H13:

The amount of impervious surface has decreased from the originally-proposed 14-lot conventional subdivision (8.62± acres) to the proposed 13-lot conservation subdivision (6.46± acres). This results in a commensurate reduction in the amount of stormwater generated on the property. The proposed stormwater management system has been designed to capture and recharge runoff based upon an eight-inch requirement. Also, see Response No. C48, which discusses the drainage areas, the proposed method of capture and recharge and amount of stormwater to be recharged within each drainage area.

Stormwater runoff is not expected to impact surrounding properties as virtually all stormwater runoff generated by the proposed development will be captured and recharged on-site.
Since stormwater runoff would be contained on-site in accordance with local and County requirements, no significant on-site or off-site environmental impacts associated with drainage and stormwater runoff are expected to occur. Further, the proposed conservation subdivision will provide a conservation area adjacent to the commentator's common frontage with the subject site, at the northeastern portion of the property. Stormwater drainage is and will continue to be directed to a positive piped system under Mill River Road to convey stormwater by Tax Lot 1031 to the north, along the easterly side of Mill River Road. Thus, there would be no change in the status of the commentator's property, due to potential drainage/stormwater issues.

Comment No. H14:

And with all due respect to the gentleman who just spoke, he's not going to be impacted by the 14,000 truck trips that go up and down the road. It's going to significantly reduce our quality of life for the several years that this is going on.

Response No. H14:

Based on the exportation estimates and anticipated phasing of the roadway construction associated with the 13-lot conservation subdivision, it is estimated that there will be an approximately 12 truck trips per hour (six entering and six exiting) throughout the course of a typical eight-hour workday. This truck activity is expected to take between nine and ten months to complete (approximately 185 working days). It is further anticipated that there will be 10 and 13 vehicle trips associated with construction worker vehicles arriving and leaving the site during the AM and PM peak hours, respectively.

With respect to on-site construction noise, see Response No. C118. As much of the dense vegetation is proposed to remain on the northern and western portions of the subject property, some of the noise associated with construction activities on the site will be buffered by the existing vegetation. Furthermore, on-site construction noise would be subject to Chapter 144 of the Village Code, which limits construction noise to weekdays between the hours of 8:00 a.m. and 6:00 p.m. No construction is permitted on Saturdays, Sundays and New York State legal holidays. In addition, according to Chapter 144.B(6), "the operation of power equipment in residential zones outdoors between the hours of 7:00 p.m. and 8:00 a.m. the following day and on Saturday, Sunday and New York State legal holidays between 6:00 p.m. and 9:00 a.m." is prohibited. However, during the hours in which construction is permitted, there will be typical noise

associated with on-site construction activities, including installation of roadways, drainage and other infrastructure, as well as residences and their appurtenances.

With respect to noise emanating from construction truck traffic on local roadways, as explained in Response No. C118 and above, on-site construction noise is governed by Chapter 144, Noise, of the Village Code. Therefore, the trucks associated with on-site construction would also be governed by the same chapter of the Village Code with respect to hours and days construction activities are permitted to occur.

Cheryl DeGroat
Public Hearing
October 6, 2009

Comment No. H15:

There's much traffic on Mill River Road, more than I would like, and I can't see how this is going to help, having all of the traffic that would come from the building and from making more residences in that area. I'm very close to the entranceways that are suggested, and it's a concern, traffic is a concern. It's very narrow where I live to come out of [the] driveway, very narrow. I don't even know if it's the 22 feet that's mentioned in the report, but I can't picture much more traffic. It's increased considerably, even in the three years that we've lived there.

Response No. H15:

Mill River Road is classified as a collector road and the traffic volume data obtained from NYSDOT indicate that existing volumes are far below the roadway's theoretical capacity. As indicated in Section 4.5.1 of the DEIS, the addition of 13 single-family homes (which is the permitted density) would add, at a maximum, 13 vehicle trips in the PM peak hour, upon completion of the project. It is reasonable to conclude that, after completion, the addition of one vehicle every four–to-five minutes on Mill River Road, during the peak hour, would not have a measurable impact upon residents exiting from their driveways. It is acknowledged that, during construction, there will be additional truck traffic as described more fully in Response No. C43. Construction traffic is a temporary, unavoidable impact that occurs with any development project.