



July 26, 2016

Ms. Maria Coplit Alfaro, P.E.
Divney Tung Schwalbe, LLP
One North Broadway
White Plains, NY 10601

Via email: malfaro@divneytungschwalbe.com

Vincent Sapienza
Acting Commissioner

Re: Chappaqua Crossing Variance
Roaring Brook and Bedford Roads
(T) New Castle, Westchester County, New York
New Croton Reservoir Basin
DEP Log# 2006-CNC-0689-V.1

Paul V. Rush, P.E.
Deputy Commissioner
Bureau of Water Supply
prush@dep.nyc.gov

Dear Ms. Alfaro:

465 Columbus Avenue
Valhalla, NY 10595
T: (914) 742-2001
F: (914) 742-2027

Thank you for meeting with representatives of the New York City Department of Environmental Protection (DEP) on July 12, 2016 to discuss design issues related the Chappaqua Crossing review process and the round-about proposed at the intersection of Route 117 and Roaring Brook Road as part of that project. You have proposed to locate a round-about within the 100-foot limiting distance of an existing watercourse.

This issue has been thoroughly vetted by DEP legal and technical staff in collaboration with our Assistant Commissioner and the New York City Law Department. For the following reasons, your proposal to eliminate the existing watercourse by filling it in is not permissible.

New impervious surfaces within 100 feet of a watercourse- Section 18-39(a)(1) prohibits constructing new impervious surfaces within 100 feet of watercourses and wetlands. Thus, your proposal to locate a new round-about within 100 feet of an existing watercourse would require a variance from Section 18-39(a)(1).

In an effort to minimize or eliminate the need for a variance, the applicant proposes, among other things, to fill the existing watercourse so that the new impervious surfaces are not within 100 feet of a watercourse. However, the watercourse currently exists. Therefore, Section 18-39(a)(1) applies and new impervious surfaces within limiting distances are prohibited. DEP cannot approve a SWPPP that includes new impervious surfaces that are prohibited by the Watershed Regulations unless a variance allowing these impervious surfaces is first approved.

Elimination of a watercourse using fill -The proposal to fill the watercourse in an effort to eliminate it is coupled with a proposal to expand the associated local wetlands by excavating the adjacent area. An outlet structure proposed for this expanded wetland is set about two feet above the base elevation of the wetlands in an attempt to ensure that the watercourse will not re-establish itself by flowing

through the wetlands and discharging through the outlet structure. Based on topography and soil testing results, both surface runoff and groundwater are likely to dictate the water surface elevation within the wetlands. The very real possibility that the water surface will be at or above the outlet elevation at least seasonally must be considered unless a low flow mechanism is used to control ponding depth so that the created wetlands mimics the existing wetlands hydrologically. Either way, discharge from the wetlands is likely to occur at least seasonally. This would in fact, be a watercourse.

In addition, Section 18-21(a)(1) of the Watershed Regulations states that all regulated activities shall be planned, designed, scheduled, and conducted in such a manner as to not constitute a source of contamination to or degradation of the water supply. Chappaqua Crossing includes several regulated activities, two of which are a) discharge of stormwater and sediment and preparation and implementation of stormwater pollution prevention plans (SWPPPs), and b) construction of impervious surfaces. Generally, filling of a watercourse may be a source of degradation to the water supply as this alters hydrologic and biological conditions and may lead to turbid laden discharges should the watercourse daylight in another location. For these reasons and based on information reviewed to date for this proposal, DEP is likely to consider the proposal to fill the watercourse to be a violation of Section 18-21(a)(1) and would not approve associated applications.


Demonstration of substantial hardship due to site conditions or limitations as required to support an application for a variance from the Watershed Regulations- Demonstration of substantial hardship is required by Section 18-61(a)(1)(iv) of the Watershed Regulations. The materials submitted to date do not demonstrate that compliance with the Watershed Regulations would create a substantial hardship. In fact, most project information received indicates otherwise. Throughout the State Environmental Quality Review (SEQR) process, in which DEP participated as an involved agency, traffic studies concluded that minor modifications to the existing "T" intersections of both Roaring Brook Road and the east entrance to Chappaqua Crossing were all that were necessary to avoid or mitigate traffic impacts generated by the action. These modifications included road widening to accommodate turning lanes and signalization modifications. Widening of existing roads is allowed by the Watershed Regulations and therefore does not require a variance. If there are traffic concerns substantial enough to negate the conclusions of the study, these should properly be addressed under SEQR where alternatives can be considered along with their associated impacts to water quality and other environmental concerns.

Demonstration that the proposal is the minimum necessary to afford relief as required to support an application for a variance from the Watershed Regulations Section 18-61(a)(1)(ii)- In addition to demonstrating substantial hardship, applications for variances from the Watershed Regulations require that the applicants demonstrate that the proposal is the minimum variance necessary to afford relief. Documentation presented thus far has minimized the need for variances for impervious surfaces within the limiting distance to watercourses along Route 117 in several locations by shifting the location of the round-about further west of the current location of Route 117. However, the round-about is still proposed on top of an existing watercourse. No information has been presented to demonstrate that this intersection configuration at this location is the minimum variance necessary. DEP encourages the applicant to pursue intersection configurations or signalization modifications, including the T-configuration that was evaluated during the SEQR process, that will either further minimize the amount of new impervious surface proposed within

the limiting distance or eliminate the need for new impervious surface within the limiting distance entirely, thereby eliminating the need for a variance. A preference for the round-about over another intersection configuration does not support a demonstration that the proposed round-about is the minimum necessary to afford relief.

In summary, inclusion of a round-about intersection in the location proposed still requires a variance from the Watershed Regulations. This application for a variance from the Watershed Regulations is not supported by SEQR documentation or by the materials received to date associated with both the SWPPP and variance applications. If you would like to schedule a meeting to further discuss the matter, please do not hesitate to call or email me at (914) 773-4440 mgalasso@dep.nyc.gov. Thank you.

The logo for McCreery features the name "McCreery" in a blue, serif font. The letter "f" is significantly larger and more stylized than the other letters, extending further to the right.

 alasso
Supervisor
Stormwater programs EOH

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