New York State Environmental Quality Review Act

Final Environmental Impact Statement

A.L. Asphalt - Proposed Hot Mix Asphalt Plant

5690 Camp Road
Town of Hamburg
Erie County New York

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The FEIS was accepted as complete by resolution adopted at the Board's October 18, 2023 meeting, and is issued by the Town of Hamburg Planning Board as Lead Agency by the Notice of Completion dated October 20, 2023. The statutory ten day period is complete on October 30, 2023.

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FEIS Executive Summary

Introduction

This Final Environmental Impact Statement ("**FEIS**") is issued by the Town of Hamburg Planning Board ("**Board**" or "**Planning Board**")) as Lead Agency for the proposal by A.L. Asphalt Corporation ("**Applicant**" or "**Project Sponsor**") to construct and operate a Hot Mix Asphalt Plant ("**Plant**" or "**Project**") at 5690 Camp Road ("**Site**") in the Town of Hamburg ("**Town**"). The FEIS was prepared by the Board as Lead Agency pursuant to and in compliance with Article 8 of the New York State Environmental Conservation Law and its implementing regulations, commonly known as the State Environmental Quality Review Act ("**SEQR**"). The Board retained expert consultants to aid its review of the Project and prepare this FEIS. Wendel Companies provided planning expertise; GHD Consulting Services, Inc. ("**GHD**") provided expert review of the Project's noise, traffic, and stormwater impacts (see Appendix 6 ("**GHD Report**")); and EA Engineering, P.C. and Its Affiliate EA Science and Technology ("**EA**") provided expert review of the Project's air, odor and emissions impacts (see Appendix 7 ("**EA Engineering Technical Memo**")).

Proposed Action & Description

The Project Sponsor proposes the construction and operation of a counter flow drum mix hot mix asphalt plant on an approximately 46-acre Site in the Town at 5690 Camp Road. The proposed Plant consists of: aggregate stockpiles, aggregate bins, conveyor belts, a drag slat conveyor to move bulk materials, a burner/dryer drum, bulk material storage hoppers and storage silos, a baghouse, liquid asphalt cement storage tank and heater, and a batching office. There are some existing bulk material stockpile bins and access ways on Site that the proposed Project would repurpose, but the Plant's primary prefabricated components would be constructed at the Site on a footprint of 160 ft. x 200 ft.

Project Site & Description

The Site consists of approximately 46-acres at 5690 Camp Road. The proposed Plant would be on a portion of the Site that is in the M-3 Zoning District ("M-3 District") and in the Camp Road Overlay District pursuant to the Town of Hamburg Zoning Code ("**Zoning Code**"). The M-3 District allows a variety of industrial uses on the Site pursuant to Zoning Code Section 280-133(A), but all uses are subject to the specific limitations at Zoning Code Section 280-133(C), which prohibits uses in the M-3 District that would normally result in the dissemination an atmospheric pollutant, noise or odor into any R, C, M-1 or M-2 District. Several of these other zoning districts immediately

adjoin the Site. Bituminous processing facilities, like the proposed Plant, are not permitted at the Site, (see Zoning Code Section 280-415).

The Town of Hamburg 2022 Comprehensive Plan as adopted by the Town Board in January 2023 ("**Comprehensive Plan**") recommends that industrial zoning along Camp Road be removed from the Town's Zoning Map particularly near the Village and the Site. See Comp. Plan, p. 28.

SEQR Process to Date

The Board received an application for Site Plan Approval for the Project in June of 2019 ("**Application**"). Thereafter the Board requested the Applicant prepare a Part 1 of the Full Environmental Assessment Form, which the Applicant prepared and submitted on September 6, 2019. *See* DEIS, Appendix A. At its September 28, 2019 meeting the Board classified the Project as an Unlisted Action. The Board determined that the Project may include the potential for at least one significant adverse environmental impact and issued a Positive Declaration pursuant to SEQR on November 4, 2019. *See* DEIS, Appendix B.

In December 2019 the Applicant brought a formal legal challenge to the Board's classification of the Project as an Unlisted Action (NYSCEF Index No. 0001117/2019) arguing that it was instead a Type II action and therefore not subject to SEQR review. The Town filed a motion to dismiss the Petition, which the Court granted by decision filed January 21, 2020 stating "[t]his Court is not persuaded by [Applicant's] argument that its project is not subject to SEQRA, because it should have been classified as a Type II action. The Court declined to accept the Applicant's arguments, dismissed the legal challenge, and the Project's SEQR review continued on. The Project Sponsor submitted a draft scope to the Board on March 6, 2020 and the Board issued a final scoping document on April 29, 2020 ("**Final Scope**" or "**Final Scoping Document**"). *See* DEIS, Appendix C.

Then, nothing happened for more than two years as the Project Sponsor declined to proceed with the Project in the Town of Hamburg, and instead pursued an alternate location for the Plant in the Town of Niagara ("**Alternate Niagara Site**"). After more than two years of declining to move forward with the Application, the Applicant submitted a proposed Draft Environmental Impact Statement on August 5, 2022 to move forward with the Project on the Site (the August 5, 2022 Draft Environmental Impact Statement is the "**Initial DEIS**"). By the time the Applicant submitted the Initial DEIS after the two year delay, the Town was well underway with a wholescale update of the Town's land use plans. Beginning in 2019 the Town had formed a Comprehensive Plan Committee and Subcommittees to develop working drafts of an updated Comprehensive Plan (the Town-wide land use plan had not been updated since adoption of the prior 2007 Plan (defined below)). During the Fall of 2022 the Town

issued an updated Draft Comprehensive Plan and made it available for public review. The updated Comprehensive Plan was adopted by the Town Board in January 2023 (the "Comprehensive Plan") and includes specific recommendations for the Site and surrounding area.

The Board, as Lead Agency in a coordinated SEQR review, determined the Initial DEIS was incomplete for commencing public review. The Board requested revisions to the Initial DEIS as detailed in a September 2022 Deficiency Determination that listed 19 material deficiencies (the "**Listed Deficiencies**") in the Initial DEIS. *See* Appendix 3. Each of the Listed Deficiencies as identified by the Board is described completely in Section 3.0 below. For each Listed Deficiency, Section 3.0 provides an analysis of the deficiency as identified by the Board prior to the Public Comment Period, the Final Scope's applicable requirements for the information that should have been included in the DEIS to allow an assessment of each area of potential impact, a summary of the relevant content (or lack of content) in the DEIS, an additional which outlines how the DEIS is deficient in a particular area of potential impact, and describes any further deficiencies on each area of impact that may have been identified during the Public Comment Period.

Through correspondence with the Applicant between October 2022 and February 2023 (which is described more fully in Section 1.3 below), the Board repeatedly requested that the Project Sponsor submit revisions and supplements to the Initial DEIS to resolve the Listed Deficiencies and allow the Project's SEQR review to move forward, and the Project Sponsor continually refused to do so.

In response to the Board's extensive and good faith efforts to engage the Applicant in the SEQR process over more than eight months, and following an in person meeting in March 2023 attended by representatives of the Board and the Applicant (also described in Section 1.3 below), the Applicant made superficial revisions to the Initial DEIS and submitted a revised Draft Environmental Impact Statement to the Board on April 5, 2023 (the "**DEIS**"). The DEIS (just like the Initial DEIS) simply repurposed certain air quality modeling and odor analyses that had been prepared for the Project Sponsor's potential asphalt operation at the Alternate Niagara Site. In addition to inappropriately repurposing documentation prepared for a different site and facility, the DEIS lacked information about the Project at the Site that would be necessary to allow the Board to conduct a meaningful review of the Project's environmental impacts, particularly with regard to impacts from stormwater, air, noise, odor, traffic and consistency with community plans.

Though the Board found the DEIS still suffered from each of the Listed Deficiencies, the Board accepted the DEIS subject to the Listed Deficiencies as defined in the Notice of Completion issued on May 4, 2023. See Appendix 4. The Notice of Completion set a public comment period that would close on July 28, 2023 (the "**Public Comment**

Period"). The Board held two SEQR Hearings during the Public Comment Period on June 14, 2023 and July 12, 2023, and received more than 150 comments on the DEIS and the Listed Deficiencies (the verbal comments at the SEQR Hearings and all written comments received during the Public Comment Period are the "**Public Comments**").

Public Comments & Responses

The Board received comments from interested and involved agencies, including the New York State Department of Environmental Conservation ("**NYSDEC**") and the Erie County Department of Environmental Planning ("**ECDEP**"), that raised concerns similar to the Board's requests as specified in the Listed Deficiencies. Notably, the NYSDEC Comments on the DEIS request that the Project Sponsor remove any materials, permit applications, air/odor modelling etc. in the DEIS that were prepared for the Alternate Niagara Site. In their place the NYSDEC Comments on the DEIS request the Project Sponsor provide appropriate Site-specific analyses and materials prepared for the Plant in the Town of Hamburg. The Board also received verbal and written comments from dozens of community members and Village and Town residents who opposed the Project due to its intense industrial use and potential for environmental impacts to the vibrant Town and Village communities around the Site.

Substantive public comments were received, summarized, and responded to on the following areas of potential impact:

- air quality,
- Project alternatives,
- consistency with community plans,
- cultural resources,
- cumulative impacts,
- environmental setting,
- human health,
- noise & odor,
- lack of available information about the Project,
- the Project Sponsor's resistance to engagement in the SEQR process,
- stormwater and surface water impacts; and
- potential impacts from increased truck traffic on Camp Road nearby the Town's gateway to the Village.

To date, the Project Sponsor has not responded substantively to the Listed Deficiencies, nor any Public Comments. The Applicant's refusal to respond to substantive Public Comments on the DEIS comes even despite an August 9, 2023 letter and a September 21, 2023 letter from the Board to request the Applicant's responses and Site-specific supplemental analyses to aid the Board in its preparation of this Final EIS. Though the Board would have preferred to have the benefit of the Applicant's responses to all

substantive Public Comments, in Section 5.0 of this FEIS the Board reviews, groups, summarizes and responds to all substantive Public Comments.

Corrections, Revisions & Supplements to the DEIS

Section 4.0 of the FEIS provides the corrections, revisions, and supplements to the DEIS that the Board determined were necessary to complete an accurate and adequate environmental impact statement for the Project.

The FEIS Section 4.0 revisions and supplements to the DEIS include significant revisions and in some cases outright replace the DEIS's analyses of areas of potential impact. Section 4.0 includes the revisions and supplements the Board found were necessary to:

- Accurately analyze the Site's location in a transitional area of the Town surrounded by a mix of residential and commercial uses and a variety of sensitive receptors (homes, schools, parks, outdoor gathering areas).

- Assess the Project's consistency with the Town's and Village's long range land use plans, and the Town's Zoning Code and its important recommendations and requirements for uses in the M3 District and the Camp Road Overlay District.

- Correct for the DEIS's reliance on air and odor analyses prepared for a separate plant previously proposed by the Project Sponsor at a different site in the Town of Niagara.

- Address the errors and omissions in DEIS's technical analyses and related conclusions on the Project's potential for impacts to stormwater, air quality, traffic, odor and noise, based on the GHD Report and EA Engineering Technical Memo attached as FEIS Appendix 6 and 7 respectively. Based on the GHD Report and the EA Engineering Technical Memo, many of these revisions note that the Project Sponsor has not established that atmospheric pollutants will not be disseminated into adjoining R, C, M-1 or M-2 zoning districts.

- Recognize that the Project Sponsor has refused to evaluate reasonable mitigation measures that would be required to avoid or minimize to the maximum extent practicable any significant adverse environmental impacts from the Project.

As detailed in Section 1.3 and Section 3.0, the Planning Board has made numerous good faith efforts to rectify the inadequacy of the information provided by the Applicant throughout the SEQRA review of the Project. Despite these good faith efforts, the Applicant has substantively declined to provide further information necessary for the Planning Board to fulfill its obligations under SEQRA. As a result, the DEIS remains critically deficient, and the FEIS can now only function as a summary of these

deficiencies. Furthermore, the Board' experts, NYSDEC, and ECDEP have clarified that the number of deficiencies is large and the data gaps are significant. Whether intentionally or not, the Project Sponsor has basically abdicated responsibility for the SEQRA review of the Project, and the Planning Board lacks the information needed to fill the critical gaps in information which have been identified by the Board's experts, NYSDEC and ECDEP as detailed in Section 3.0 and Section 4.0.

Ultimately the Planning Board lacks necessary information to assume the burden to rectify the deficiencies in the DEIS, and accordingly Section 4.0 provides the following critical conclusions:

- As to potential impacts from Stormwater, based on the GHD Report attached as Appendix 6, the DEIS "does not contain sufficient information to support the conclusion that stormwater impacts have been mitigated to the maximum extent practicable."

- As to potential impacts to air, the EA Engineering Technical Memo determined that "there are various inconsistencies in the DEIS and supporting documents . . . a number of technical issues must be addressed more completely and in greater detail to allow the [Lead Agency] to conduct a complete analysis under SEQRA and to determine what conditions and mitigation measures are appropriate for the Project." Many of the DEIS's analyses and conclusions are drawn from Appendix F to the DEIS and its supporting air modelling for the Alternate Niagara Facility, which is not representative of the proposed Plant.

- The DEIS fails to adequately address the potential emissions of "blue haze" from the proposed Plant, including an assessment of how the potential off-Site impacts of blue haze and other atmospheric pollutants from the Project would comply with the Code § 280-133(C)(1)(b), which limits uses in the M-3 District from disseminating atmospheric pollutants, noise, or odor into any R, C, M-1 or M-2 District in the Town.

- As to potential impacts to transportation, the GHD Report states that the DEIS's Appendix L Traffic Impact Study ("TIS") does not include any analysis for road segments to meet the requirements of the Final Scoping Document, including existing traffic counts, forecasted traffic or truck volumes, volume-to-capacity ratios, or any operational or level of service calculations for any of the road segments in the study area that would typically be provided to analyze the Project's impacts on the road segments in the study area. Further, the TIS uses a flawed trip generation calculation, fails to account for delivery of raw materials to the Plant, and contains other errors and omissions pursuant to generally accepted traffic impact study guidelines. Accordingly the DEIS's conclusion that

the Project would not impact transportation is unreliable.

- As to potential impacts from noise, the GHD Report established that the DEIS's noise analysis and related conclusions are "fundamentally flawed and cannot be relied upon to adequately assess the Project's noise impacts" due to improper acoustical modeling, failure to evaluate Site-specific truck volumes, and limited evaluation of existing noise levels from a single source measurement at a surrogate plant.

- EA's comprehensive review of the DEIS's Appendix O Odor Report concluded that the DEIS does not adequately account for all odor emission sources or use appropriate assumptions because it fails to account for odor emissions from daily filling of a 25,000 gallon liquid asphalt storage tank and uses unsubstantiated emission rates. EA performed an independent odor analysis based on an appropriate reference source which indicates that the Project's potential odorous hydrogen sulfide emissions would actually exceed allowable thresholds.

- The air, odor and noise analyses performed by the Planning Board's consultants EA and GHD establish that the Project as proposed has not been shown by the Applicant to comply with the Zoning Code's limitations on uses in the M-3 District to only those uses that do not normally disseminate atmospheric pollutants, noise, and odor to R, C, M-1, or M-2 Districts.

- Consistent with the NYSDEC Comments on the DEIS, the DEIS's Appendix O Odor Report and related conclusions cannot be relied upon to assess the Project's potential for impacts from odor because they are based on materials prepared for the Alternate Niagara Site and based on a lower annual production rate than the Project proposes. Furthermore, consistent with the NYSDEC Comments on the DEIS, the DEIS's odor analysis would need to be revised to consider the potential impacts of additional constituent asphalt chemicals as well as analyze odor from all aspects of the Project, and would need to recognize the presence of nearby sensitive receptors around the Site.

- Based on the Zoning Code's prohibition on bituminous processing facilities anywhere in the Town, the Project is not a permitted use at the Site. The Board concludes that the Project is not consistent with the general purpose of the Camp Road Overlay District and its "gateway" principles; nor is the Project consistent with the Town's Comprehensive Plan or the Village's Comprehensive Plan and the goals and objectives stated there to eliminate heavy industrial uses (such as the Plant) in the Camp Road corridor.

Conclusion

As detailed in Section 1.0 and Section 3.0, the Applicant's participation in the SEQR review of the Project, or lack thereof, has circumvented the intent of the EIS process. The Applicant has abandoned its responsibility to be a meaningful participant in the SEQR process for the Project. By providing insufficient, often outdated or inapplicable information, and refusing to comply with the Final Scoping Document and address the Listed Deficiencies, Applicant has made it impossible for the Planning Board to take a hard look at the potential environmental impacts of the Project as required by SEQR.

The Planning Board has in good faith attempted to resolve the Listed Deficiencies, but the Applicant has declined to provide further information necessary for the Planning Board to fulfill its obligations under SEQR. As a result, the DEIS remains critically deficient and the Board ultimately concludes that it cannot certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

Section 1.0

Introduction and Project Background

This FEIS is issued by the Town of Hamburg Planning Board as Lead Agency for the proposal by the Applicant to construct and operate a Hot Mix Asphalt Plant at 5690 Camp Road in the Town. The FEIS was prepared by the Board as Lead Agency pursuant to and in compliance with Article 8 of the New York State Environmental Conservation Law and its implementing regulations, commonly known as SEQR

After the issuance of this FEIS, the Project Sponsor, the public and Interested and Involved agencies will be afforded the required reasonable time period, of not less than 10 calendar days, in which to consider the FEIS. After this reasonable period of time has passed, the Board as Lead Agency will issue a Findings Statement prior to making a determination whether to approve, approve with conditions or deny the Project Sponsor's site plan application. The Findings Statement will consider the relevant environmental impacts, facts and analysis contained in this FEIS, weigh and balance relevant environmental impacts with social, economic and other essential considerations; provide a rationale for the Lead Agency's decision; and certify that the requirements of SEQR have been met.

Section 1.1: Proposed Action & Description

The Project Sponsor proposes the construction and operation of a counter flow drum mix hot mix asphalt plant with a primary Plant footprint of 160 ft. by 200 ft. on a portion of the approximately 46-acre Site at 5690 Camp Road in the Town. The Plant would be designed to produce 300 tons of hot asphalt per hour of operation and average 100,000 tons of hot asphalt per construction season (April-November) but not to exceed 150,000 tons per year.[1]

The Project Sponsor indicates that the main components of the Plant would typically be prefabricated and include: aggregate stockpiles, aggregate bins, conveyor belts, drag slat conveyor to move bulk materials, burner/dryer drum, bulk material storage hoppers and storage silos, a baghouse, liquid asphalt cement storage tank and heater,

[1] The Lead Agency notes, however, that although the DEIS states that the Plant will not produce more than 150,000 tons per year, this is noted as a limit in connection with a New York State Department of Environmental Conservation Air State Facility permit that has not yet been issued for the proposed Plant. As there is no current permit limitation on the proposed Plant, it is important to note that information provided in the DEIS indicates that the Plant has the potential to produce significantly more than 150,000 tons per year per its hours of operation and noted production of 300 tons per hour.

and a batching office, as indicated in the Site Plan provided by the Project Sponsor. There are some existing bulk material stockpile bins on Site that the proposed Project would repurpose, but otherwise the Plant would be largely comprised of those prefabricated components that would be added to the Site.

The silos proposed for the Plant operations reach 70 ft. in height, and the Plant equipment reported by the Project Sponsor would occupy a ground footprint of approximately 160 ft. x 200 ft.. The Plant equipment is proposed just north of the railroad tracks on Site and behind buildings associated with the concrete and bulk material supply operations that have historically been conducted on Site. Though the primary components of the proposed Plant would be new to the Site, the Project Sponsor reports that proposed Plant truck traffic would utilize existing roadways on Site, and the Plant's potential six employees would use existing office parking available on the Site.

Hot mix asphalt is used primarily as a paving material to construct and repair roads and parking lots by customers such as local and state highway departments (*e.g.* NYSDOT) and construction contractors. The Project Sponsor estimates that annual customer demand could include up to 30,000 tons by the Erie County Highway Department, 50,000 tons by NYSDOT and its local paving contractors, 20,000 tons for municipal roadways by local highway departments, 15,000 tons for use by private/residential paving contractors, and 15,000 tons for use in commercial developments.

Hot mix asphalt consists of a mixture of two components: aggregate and liquid asphalt cement. The aggregate is typically comprised of crushed stone, gravel, sand and similar materials. Liquid asphalt cement, or bitumen, is a black, sticky byproduct of petroleum.

To produce hot mix asphalt, the aggregate and the liquid asphalt cement are heated and mixed in measured quantities to create a final product. *See* Appendix 11: Hot Mix Asphalt Plants, Emission Assessment Report, EPA 454/R-00-019, December 2000 (hereinafter "EPA Emission Assessment"). A counterflow drum mix hot mix asphalt plant, like the Plant proposed here, uses a rotary dryer to dry the aggregate and mix it with the liquid asphalt cement in the heated drum mixer. Once thoroughly combined, the finished asphalt is discharged at the end of the drum. The finished asphalt product is transferred to a storage silo or bin for temporary staging, prior to load out of the hot asphalt material into third-party haul trucks for transport to a designated job off-Site.

Potential emissions sources associated with the production of hot mix asphalt include the dryer, hot bins, and drum mixer, storage silos, and haul trucks, all of which emit particulate matter and a variety of gaseous pollutants. *See* EPA Emission Assessment. The typical drum mix hot mix asphalt plant includes emissions from the dryer/mixer, load out operations, asphalt storage, yard (fugitive emissions from loaded trucks),

diesel exhaust, paved and unpaved road dust, and aggregate processing (screening, conveyor, transfer and reclaimed asphalt crushing), and silo filling. The EPA presents estimates of the typical emissions rates for certain criteria pollutants (*i.e.* pollutants for which national ambient air quality standards have been established) and for certain hazardous air pollutants("HAPs"), including: PM-10, volatile organic compounds ("VOC"), carbon monoxide ("CO"), sulfur dioxide ("SO_2"), and nitrous oxide ("NOx"). Based on an annual production rate of 200,000 tons per year, a typical drum mix plant using a natural gas-fired dryer emits around 75,000 lb/yr of criteria pollutants, of which approximately 28,000 lb/yr are CO, about 10,000 lb/yr are VOC, and around 31,000 lb/yr are PM-10. A typical drum mix plant emits from 1,300 to 2,000 lb/yr of HAPs, depending on the fuel used in the dryer. *See* EPA Emissions Assessment.
The Project Sponsor provided a description of the typical manufacturing process in six steps:

1. Various aggregates would be stored on Site in stockpiles according to their size, depending on the type of asphalt product ordered, also known as the "mix." Aggregate feeder bins would be filled with the appropriate aggregate depending on the mix ordered by the customer. As the aggregate feed bins get low on material, more stock would be retrieved from the stockpiles on the ground by use of a front-end loader. These materials would then be transferred directly from the loader bucket into the aggregate feed bins to replenish used materials.

2. Material from the aggregate feed bins would be blended onto the conveyor belt underneath the bins. The blended aggregate mixture would then be transported by conveyor belt across the belt scale where it is weighed and then conveyed into the counter flow drum.

3. As the aggregate mixture flows through the mixing drum, it is heated and dried by air drawn from the burner/heater up to 300 degrees Fahrenheit. The drying process would create particulate matter, so the hot air used to dry the aggregate material would then be directed through an exhaust fan to a baghouse. A baghouse is a structure with filters used to remove particulate matter from the air before the air would be piped out through an exhaust stack. Under its regulatory authority to administer Air Sate Facility Permits, the NYSDEC can impose certain efficiency standards that require an asphalt plant to maintain a baghouse filter method that removes at least 98% of PM-10 particulate matter generated by this process. *See* DEIS, Appendix E (NYSDEC Draft Air State Facility Permit).

4. After the aggregate is dried within the drum mixer, the liquid asphalt cement would be added to the drum. The heated and dried aggregate would be proportioned according to the mix design requested by a customer and blended with the liquid asphalt cement until the correct consistency is reached. Then the finished asphalt product would exit the end of the drum into a drag slat material conveyor to transport

the finished product up approximately 70 feet above ground level to fill a storage silo. The finished material would remain there awaiting load out through the bottom of the silo into an open haul truck bed.

5. A plant using the counter flow drum mix hot asphalt method accommodates the use of Recycled Asphalt Pavement (RAP), which is crushed and re-used asphalt incorporated into the dried aggregate mix and introduced to the drum along with liquid asphalt cement. RAP is used to in select proportions to maximize recycling capability and preserve finished product quality.

6. The final step in the manufacture of hot mix asphalt is customer load out. The Project Sponsor does not own or operate its own trucks to deliver material from the Plant to job sites. Accordingly third-party trucks operated by or on behalf of the Plant's customers would arrive underneath the elevated storage silos and park atop a scale. Then, a measured load out of finished material would be dispensed from the bottom of the silo into the open back haul trucks. The loaded trucks would drive away from the silo load out position, receive a loading ticket from a plant operator, and exit the Site. The Project would require six employees on that seasonal basis to operate.

The Project Sponsor reports that the proposed Plant would operate at variable times, but typically between 7 a.m. to 4 p.m., Monday through Friday, seasonally during the WNY construction season April - November. The Project Sponsor also indicated that the Project would operate between 7 a.m. to 3 p.m., and in other cases reported that the Project would operate for up to 12 hours daily. To the extent this FEIS refers to variable hours of operation, it reflects the inconsistent description of Project operations provided by the Project Sponsor in the DEIS, and does not indicate an oversight or error by the Board in the preparation of the FEIS.

The Project also includes the potential for weekend and evening/overnight hours depending on the needs of a particular customer. Overnight paving operations are often required to repair roads or parking lots. For example, in order to avoid peak hours on heavily travelled roadways, NYSDOT and other projects make repairs overnight and therefore demand a supply of hot mix asphalt throughout the evening and overnight.. Repairs and maintenance of the proposed Plant and preparation for the following week's jobs may also take place during weekend hours.

Section 1.2: Project Site & Description

<u>Site:</u> The approximately 46-acre Site is located at 5690 Camp Road, just south of the intersection with Elmview Avenue, and is comprised of several tax parcels (SBLs 182.16-7-3.1; 182.16-3-21.11; 182.20-10-7.21) all owned by Cheektowaga Concrete LLC. At this time, the Site is predominately used for bulk material supply and has historically been used for specialty manufacture of concrete products including forms, hardscaping,

precast concrete, and ready-mix concrete. The Project Sponsor notes that the exterior cement plant and concrete block plant no longer operate, manufacturing of concrete masonry and hardscape products no longer occurs on Site, and the remaining interior cement plant operates "based on market demand".

Railroad tracks run through the Site dividing it into a northern portion and southern portion. The Site straddles a Zoning District boundary, such that the northern portion of the Site (SBLs 182.16-7-3.1; 182.16-3-21.11) is in an M-3 General Industrial District ("M-3 District") and the southernmost portion of the Site (SBL 182.20-10-7.21) is in the Town's M-2 Light Industrial District. The existing structures and infrastructure at the Site are on the northern portion of the Site in the M-3 District. The Project's proposed 160 ft. x 200 ft. footprint would also be located north of the railroad tracks in the M-3 District, upon SBL 182.16-7-3.1. *See* DEIS, Figure 1. The portion of the Site that is zoned M-2 District (SBL 182.20-10-7.21) is approximately 0.05 mile (or 264 ft.) south of the Plant's proposed footprint. *See* Appendix 12 (Adjoining Zoning Map). It is largely vacant, though previously disturbed and is covered in old aggregate material, with remnants of rail operations such as old cars and containers, as well as a small segment of non-contiguous, undisturbed federal wetlands.

Permitted Uses at the Site: The M-3 District allows a variety of industrial uses on the Site pursuant to Zoning Code Section 280-133(A), such as: lumber and coal yards, railroad freight yards, concrete and cement operations, storage of petroleum, manufacture of abrasives, automobile assembly and fabrication, storage yards, adult uses. All uses are subject to the specific limitations pursuant to Zoning Code Section 280-133(C), which prohibits (among other things) a use in the M-3 District that would normally result in the dissemination an atmospheric pollutant, noise or odor into any R, M-1 or M-1 District.

Zoning Code Section 280-133(C) means that no use on Site (including the Plant) may normally cause a pollutant, odor, or noise, from entering the M-2 portion of the Site approximately 0.05 mile (or 264 ft.) south; the adjoining C-2 General Commercial District approximately 0.09 mile (or 475 ft.) to the east; the R1 Residential District 0.16 mile (or 844 ft.).
In addition to those M-3 District regulations, by amendment to the Zoning Code effective January 23, 2023, bituminous processing facilities, like the Plant, are not permitted in any district in the Town. *See* Zoning Code Section 280-409.

Other Land Uses Within ½ Mile: The Site is surrounded by Zoning Districts of lesser intensity pursuant to the Town's Zoning Code. An M-2 District is approximately 0.05 mile (or 264 ft.) south; a C-2 General Commercial District is approximately 0.09 mile (or 475 ft.) to the east; an R1 Residential District is 0.16 mile (or 844 ft.) to the southeast. *See* Appendix 12 (Adjoining Zoning Map).

The proposed Plant would be within approximately 0.27 mile (or 1,424 ft.) of Village of Hamburg residential district designations (Limited Commercial Residential and Single Family Residential) to the west and southwest. *See* Appendix 12 (Adjoining Zoning Map). The Village's Mixed Use Industrial District ("MU-I District") adjoins the Site to the west, and would be within 0.06 mile (or 316 ft.) of the proposed Plant. Also in the Village, approximately 0.25 mile (or 1,320 ft.) north of the Site, sits Elmview Avenue in the Village's MU-I District. *See* Appendix 12 (Adjoining Zoning Map).

Land uses north of the Site in the Village's MU-I District along Elmview Avenue include a variety of consumer-focused commercial uses such as auto sales/repair, a dry-cleaners, a local bank branch, an indoor performance and sports training facility, a martial arts academy, and a manufacturing and warehouse use for the local division of a company that makes stationary, planners and notebooks. The land use that adjoins the Site to the West is an enclosed advanced manufacturing use by Staub Precision Machine approximately 0.2 mile from the Site in the Village's MU-I District. A well-developed residential neighborhood along Sunset Drive in the Village is approximately 0.35 miles from the Site. *See* Appendix 12 (Adjoining Land Use Map).

Approximately 0.3 mile to the Site's south is the seasonal outdoor Hamburg Farmer's Market; a VFW post and Moose Lodge 992, a butcher shop, candy store, art studio, and residential neighborhoods.

Within approximately 0.3 mile (or 1,500 ft.) east of the Site are uses such as Elderwood at Hamburg (senior care, skilled-nursing, long term & subacute rehab), commercial businesses (auto glass repair, watch/clock repair etc.), a gymnastics club facility, and several neighborhoods with townhomes and single family homes. *See* Appendix 12 (Adjoining Land Use Map).

Hamburg Middle School and Hamburg High School and the associated Howe Field and outdoor athletic complex are within 0.4 mile of the Site to the South/Southeast across Camp Road. *See* Appendix 12 (Adjoining Land Use Map). Howe Field was recently refurbished by the Hamburg Central School District. The improvements to Howe Field are part of the District's multi-million dollar capital improvement plan to create a state-of-the-art outdoor athletic field to serve as a regional destination for interscholastic athletics.

<u>Comprehensive Plan Recommendations for the Site:</u> The Town's Comprehensive Plan acknowledges the Town's strong industrial base and recommends development and investment in industrial uses in areas appropriate for such uses. The Comprehensive Plan's Economic Development Map and Summary describe the Town's industrial uses as centered in the northwest and northeast corners of the Town, with the largest section of M3 zoning found on the east side of Lake Shore Road/Route 5 running from the City of Lackawanna to Big Tree Road. *See* Comp. Plan Economic Development Map and

Summary and p. 18. The Comprehensive Plan Economic Development Map is attached as Appendix 2.

Approximately three miles further south in the Town, where the Site is located, the Comprehensive Plan identifies the Camp Road Overlay District and recommends the consideration of new mixed use zoning designations and the elimination of the industrial zoning within the area. *See* Comp. Plan p. 25. For the area of the Town where the Site is located the Comprehensive Plan recommends that "transition/border areas with the Village need proper planning. Old industrial areas need to be targeted for new and appropriate development," and further recommends that industrial zoning along Camp Road be removed from the Zoning Map particularly near the Village. *See* Comp. Plan, p. 28.

The Site is contiguous to the Village. The Site is an example of an isolated portion of the M-3 District. This is in contrast to other examples of the M-3 District in the Town, which tend to be more concentrated in the northwest portion of the Town, away from the Village, along the traditional industrial corridor on Route 5. *See* Zoning Map. As such, the Comprehensive Plan's recommendations as applicable to the Site include specific directions to evaluate alternative and lesser intensive zoning district designations in place of heavy industrial uses such as the proposed Plant.

<u>Camp Road Overlay District:</u> The entire portion of the 46 acre Site that lies in the Town is within the Camp Road Overlay District, and is intended to "encourage the development of uses that are in harmony with the surrounding area, improve the visible character of the area, protect adjoining residential uses and enhance the character of the area as an important gateway to the Town and Village of Hamburg." *See* Zoning Code Section 280-18(A). The Camp Road Overlay District includes all parcels with frontage and corner lots on Camp Road between Oeckler Avenue and extending north/northwest to Camp's intersection with Sunset Drive. *See* Zoning Code Section 280-186. The Camp Road Overlay District regulations apply to the Site in addition to the underlying M-3 District regulations. *See* Zoning Code 280-185(C).

Section 1.3: Chronology of SEQR Process to Date

The Board received an application for Site Plan Approval in June of 2019 ("Application") submitted by A.L. Asphalt Corporation for the proposed development and operation of the Plant at 5690 Camp Road. The Application included a Part 1 of the Short Environmental Assessment Form prepared by the Applicant. The Board requested the Applicant prepare a Part 1 of the Full Environmental Assessment Form, which the Applicant prepared and submitted on September 6, 2019. *See* DEIS, Appendix A.

At the Board's meeting on September 28, 2019 the Board classified the Project as an Unlisted Action. The Board determined that the Project may include the potential for at least one significant adverse environmental impact and issued a Positive Declaration pursuant to SEQR on November 4, 2019. *See* DEIS, Appendix B.

On December 5, 2019 the Applicant filed an Article 78 Petition ("Petition") in New York State Supreme Court in Erie County to challenge the Board's classification of the Project as an Unlisted Action (NYSCEF Index No. 0001117/2019). The Applicant argued that the Town, among other things, erred in classifying the Project as Unlisted and then in issuing the Positive Declaration. The Applicant asked the court to declare the Project a Type II action and, therefore not subject to SEQR review. The Town filed a motion to dismiss the Petition, which the Court granted by decision filed January 21, 2020 (the "Decision"). The Court's Decision stated "[t]his Court is not persuaded by [Applicant's] argument that its project is not subject to SEQRA, because it should have been classified as a Type II action.

Once the Petition was dismissed, the Applicant prepared and submitted a Draft Scope to the Board on March 6, 2020 ("Draft Scope"). The Board reviewed the Draft Scope, received input from other Involved and Interested Agencies, its consultants and Town departments, and issued a final scoping document on April 29, 2020 ("Final Scope" or "Final Scoping Document"). *See* DEIS, Appendix C. For more than two years thereafter, the Project Sponsor declined to proceed with the Project in the Town of Hamburg, and instead pursued an alternate location for the Plant in the Town of Niagara.

In the two years that followed the Board's issuance of the Final Scope, the Town proceeded with an ongoing wholescale examination of its land use polices. Beginning in 2019 the Town had formed a Comprehensive Plan Committee and Subcommittees to compile input from the Town's residents on key issues and concerns about the future land uses in the Town, and to develop working drafts of an updated Comprehensive Plan. During the Fall of 2022 the Town issued an updated Draft Comprehensive Plan and made it available for public review. Ultimately, the updated Comprehensive Plan was adopted by the Town Board in January 2023 to serve as a guide for the Town's land use policies for the future. It includes specific recommendations for the Site and includes recommendations for the boundaries of the Camp Road Overlay District to serve as a "gateway" area in the vicinity of the Site.

Near the final stages of the Town's review and adoption of the Comprehensive Plan, and after more than two years of declining to move forward with the Application in the Town, the Applicant submitted a proposed Draft Environmental Impact Statement (" Initial DEIS") to the Board on August 5, 2022 to move forward with the Project on the Site in the Town.

The Board, with assistance from its consultants and other Town departments, determined at a Board meeting on September 21, 2022, in accordance with Section 617.9 of the SEQRA regulations, that the proposed Initial DEIS was incomplete for commencing public review. Accordingly the Board requested that the Applicant revise the Initial DEIS as detailed in the document titled "Inadequacies/Deficiencies of the AL Asphalt DEIS" (the "Deficiency Determination"), provided to the Applicant at the Board's September 21, 2022 meeting. The Deficiency Determination is included in Appendix 3.

The Deficiency Determination detailed nineteen deficiencies that the Planning Board identified in the Draft EIS (the "Listed Deficiencies"). For a full description of the Listed Deficiencies, see Section 3.0.

In response to its receipt of the Listed Deficiencies the Project Sponsor did not revise or supplement the Initial DEIS but rather submitted a Deficiency Response Letter dated October 11, 2022 ("Project Sponsor's October Letter") that asserted the Planning Board acted improperly in rejecting the DEIS *See* Appendix 3.

By correspondence to the Applicant dated November 10, 2022 ("Board's November Letter"), the Board responded to the Applicant's refusal to revise the rejected August 5, 2022 draft of the Initial DEIS. The November Letter clarified several items for the Applicant. First, it established that the deficiencies identified in the September Deficiency Determination were, in fact, contemplated within the Final Scope. See Appendix 3, November Letter, Attachment A; *see also* Section 3.0 below.

In addition, as provided in 6 NYCRR 617.9(a)(2), the November Letter clarified that compliance with the Final Scope is only one requirement that a Lead Agency must consider when accepting a DEIS as complete for public review. Pursuant to 6 NYCRR 617.8(f) a lead agency may raise issues after the issuance of the Final Scope when it identifies the nature of the information sought, the importance and relevance of the information to a potential significant impact, and explains the reasons why the information was not identified during scoping and why it should be included in the review at a later stage. Given the meaningful developments in the Town's land use policies in the intervening two years that had passed between issuance of the Final Scope and the Board's first receipt of the Initial DEIS from the Applicant, the November Letter explained the Board's specific request that the Applicant revise the DEIS to analyze the Project's consistency with the Town's Draft Comprehensive Plan, which was then before the public and Town Board for review and approval.

The Board's November Letter to the Applicant explained that SEQR permitted the Board to continue to reject the DEIS indefinitely, upon the Applicant's refusal to revise the document in response to the Lead Agency's requests, but also outlined another process expressly permitted by SEQR whereby the Board could choose to accept the

DEIS for public review "even though the lead agency believes that the draft EIS still contains deficiencies." *See* Appendix 3, citing The SEQR Handbook. In an effort to move the Project and the DEIS forward to public review, despite the Applicant's refusal to revise the DEIS in response to the Deficiency Determination, the Board issued the November Letter. That correspondence significantly reduced the number of deficiencies which the Board asked the Applicant to address to move forward to public review. Specifically, the Board requested the Applicant address only those Listed Deficiencies the Board believed were most critical to assist public review and ensure the DEIS "contains an accurate description of the proposed action, plus reasonably supported discussions of significant impacts, alternatives, and mitigation measures requested by the lead agency." *See* Appendix 3, citing The SEQR Handbook, p. 129.

The November Letter reduced the number of items to be addressed before public review to only the following sections of the DEIS:

- Section 4.2 Executive Summary
- Section 4.3 Introduction Description of Action
- Section 4.4 Environmental Setting/Existing Conditions
- Section 4.5.1 Impact on Surface Water, Groundwater Resources, and Flooding
- Section 4.5.6 Impact on Transportation, and
- Section 4.5.10 Consistency with Community Plans.

Considering the reduced set of issues to be addressed prior to public review, and the Board's earnest belief that the DEIS contained the larger set of Listed Deficiencies, the Board expressly reserved its rights (as allowed by SEQR) to raise any and all of the Listed Deficiencies as the Board's public comments on the DEIS that it ultimately accepted for public review. *See* Appendix 3, citing SEQR Handbook, p. 129. The November Letter stated that the "lead agency may explain the disagreement in its notice of completion and invite public comment related to the disagreement, in addition to comments on the draft EIS itself." *See* Appendix 3, citing SEQR Handbook at p. 127.

The Board outlined this process in its November Letter as an alternative to its continual rejection of the DEIS because it would allow the DEIS to proceed to public review and would allow the disagreement between the Board and the Applicant over the EIS's ultimate content to be resolved via the lead agency's responses to comments in the final EIS. *See* Appendix 3, citing The SEQR Handbook at p. 127. The Board's November letter stated that if the Applicant would provide a revised DEIS to the Town by December 7, 2022 that in good faith addressed the reduced set of deficiencies, the Board would be in a position to accept the DEIS as complete for public review at a Planning Board meeting on December 21, 2022.

By letter dated December 6, 2022 ("Project Sponsor's December Letter") the Applicant refused to revise the Draft EIS in response to even the reduced set of Listed Deficiencies described in the Board's November Letter (*See* Appendix 3).

By letter to the Applicant dated January 5, 2023 ("Board's January Letter"), the Planning Board reiterated that to assist public review of the document, the Project Sponsor should revise the Draft EIS to address the Listed Deficiencies, specifically as reduced in the November Letter. The Board's January Letter outlined the simple changes to the document that the Board had requested in the Deficiency Determination and as reduced in the November Letter, and again requested the Applicant make the necessary revisions to the DEIS because the Board was eager to move the DEIS forward to public review. The January Letter promised that if the Applicant submitted a revised DEIS that in good faith addressed the deficiencies by February 1, 2023, then the Board would work to review and accept the document for public review at its February 15, 2023 meeting.

The Applicant replied by letter dated January 31, 2023 ("Project Sponsor's January Response") and again refused to make any revisions to the Draft EIS, not even minor revisions to include existing documents in the Applicant's possession, not simple revisions to the executive summary, nor even straightforward revisions to the Project description, nor any other revisions in response to the Board's repeated and earnest requests for basic information typically included in a DEIS prepared by an applicant. The Project Sponsor's January Response threatened litigation against the Town and Board if the Board would not move the DEIS forward to public review at its February 15, 2023 meeting.

By letter dated February 21, 2023 ("Board's February Letter") the Board wrote the Applicant to assert its continued disappointment at the Applicant's refusal to submit a revised DEIS, and to note that the Board was perplexed that the Applicant would simply refuse to revise the DEIS and threaten litigation against the Board rather than revise the DEIS in response to the Board's reasonable requests. To honor the collaborative process that SEQR intends for the EIS process, the Board requested a meeting with the Applicant to discuss the Listed Deficiencies and the ongoing disagreement between the parties and to seek a good faith resolution of the dispute.

Following a meeting between representatives of the Lead Agency and the Project Sponsor on March 17, 2023 (the "March Meeting"), the Project Sponsor agreed to make certain revisions to the DEIS with the understanding that any items that the Board felt had not been sufficiently addressed would be included as identified deficiencies for public review and comment. Though at the March Meeting the Project Sponsor indicated that it would be willing to revise whole sections of the DEIS and that it would submit a letter to the Planning Board to detail which specific sections would be revised, instead the Project Sponsor prepared and submitted a revised Draft EIS dated April 5,

2023 (the "DEIS") with limited and minor changes that included the addition of a single aerial view of aggregate stockpiles (DEIS, Figure 3), a purported stormwater pollution prevention plan map (DEIS, Figure 4), additional narrative discussion of aggregate use and storage in Section 4.5.1, and additional narrative discussion of the Project's consistency with the Town's Comprehensive Plan as adopted in January 2023 in Section 4.5.10. Despite repeated attempts by the Planning Board to resolve good faith differences with regard to which information and analysis should be included in the Environmental Impact Statement for the Project, the Applicant continually refused to revise the Draft EIS to address the Listed Deficiencies, but for these minor changes that followed no fewer than 5 written requests by or on behalf of the Board over several months and the March Meeting.

Upon its review of the Draft EIS as revised April 5, 2023, the Board found it still suffered from each of the Listed Deficiencies previously identified in the Deficiency Determination and subsequent correspondence, but that the DEIS did contain a sufficient description of the proposed Action, plus some reasonably supported discussions of significant impacts, references to alternatives, and cursory review of mitigation measures requested by the lead agency. Therefore the Board could conclude that the DEIS met SEQR's bare minimum requirements to assist public review. However, because the Board believed that the DEIS still contained those Listed Deficiencies, the Board wrote the Applicant on May 1, 2023 ("Board's May Letter") to advise the Applicant that the Board was considering a path forward where it would accept the DEIS as revised April 5, 2023 for public comment to invite public comment on the DEIS in addition to the Listed Deficiencies, and to propose a reimbursement agreement whereby the Applicant would reimburse the Town for the Board's costs in preparation of the Final EIS (which the Board anticipated would be considerable in light of the many repeatedly asserted deficiencies in the DEIS). The Applicant did not respond to the Board's May Letter.

Ultimately the Board accepted the DEIS subject to the Listed Deficiencies as described in the Notice of Completion issued on May 4, 2023. *See* Appendix 4. The Notice of Completion invited public comment on the DEIS itself and the dispute regarding the Listed Deficiencies through the comment period ending July 28, 2023 ("DEIS Comment Period"). Copies of the DEIS were made available for public review at the Town Hall, and a copy was posted on the Town's website. The Notice of Completion appeared in the Environmental Notice Bulletin ("ENB") on May 17, 2023.

During the DEIS Comment Period, the Board held two SEQR Hearings on June 14, 2023 and July 12, 2023 ("SEQR Hearings") to receive comments directly from the public, and received more than 150 individual comments on the DEIS (the "Public Comments"). A Notice of Hearings for the SEQR Hearings was published in The Hamburg Sun on May 26, 2023The Public Comments contained written letters with comments from Interested/Involved agencies, such as NYSDEC and the Erie County Department of

Environmental Planning, which requested additional information and analysis with regard to the Project similar to the Board's requests as specified in the Listed Deficiencies. In light of the fundamental disagreement between the Lead Agency and the Project Sponsor about the inclusion of necessary information in the DEIS, the Board repeated its criticisms of the DEIS and reiterated the Listed Deficiencies as the Board's public comment on the DEIS by resolution adopted at the Board's July 19, 2023 meeting. *See* Appendix 5.

Particularly the NYSDEC submitted a letter dated July 26, 2023 with its comments on the DEIS ("NYSDEC Comments on the DEIS") that echoed the Board's requests for additional Site-specific and Project-specific information in the Listed Deficiencies. Specifically the NYSDEC Comments on the DEIS noted that though there is a pending Air State Facility Permit Application ("ASF Application") for the Project, that ASF Application was determined to be incomplete by a letter to the Applicant dated November 5, 2019. The NYSDEC Comments on the DEIS further note that the Applicant had inadequately included in the DEIS a draft Air State Facility Permit and accompanying air and odor analysis prepared for an alternate facility at an alternate site in the Town of Niagara on Whitmer Road. The NYSDEC's Comments on the DEIS requested that the DEIS and its analyses be supplemented with current emissions factors, additional stormwater information, and a Site-specific air and odor analysis of the Camp Road location in the Town of Hamburg. The NYSDEC's Comments on the DEIS explained that in support of its request to construct and operate the Plant in the Town of Hamburg, the Applicant improperly submitted air and odor analyses that evaluated a separate project that the Applicant had previously pursued in 2021at a different location in the Town of Niagara on Whitmer Road. The NYSDEC Comments on the DEIS also noted that the DEIS should be revised to consider a variety of mitigation measures that had not been evaluated by the Project Sponsor, such as:

- Mitigations for emissions from the liquid asphalt storage tank proposed by the Project.
- Mitigations for the Plant's drum mixer and heating system, burner and storage silos, conveyors and load-out operations.
- Mitigations for trucks leaving the Site loaded with hot mix asphalt and associated emissions.
- Recommendations for annual tune-ups, daily record keeping and monitoring, temperature limitations.
- Requirements for reclaimed/recycled asphalt pavement to be used in Plant materials.

See Appendix 5.

The Board wrote the Applicant on August 9, 2023 ("Board's August Letter") to provide the Applicant with copies of all Public Comments (including the complete transcripts of

the SEQR Hearings) and to request that the Applicant summarize all substantive Public Comments and provide the Applicant's responses thereto, including supplemental analyses and revisions to the DEIS language as would be necessary to accurately and adequately assess the Project's environmental impacts. The August Letter also formally provided the Board's notice to the Project Sponsor that the Board would take additional time to prepare the FEIS than typically allotted in the SEQR process. The August letter explained that though SEQR's regulations at 6 NYCRR 617.9(a)(5) generally contemplate that a final EIS be filed by the lead agency within 45 calendar days from the close of any hearing on the DEIS, the Board in this case would require additional time to prepare the final EIS in light of the many deficiencies as described in the Listed Deficiencies and as raised in the Public Comments., and as permitted by 6 NYCRR 617.9(a)(5)(ii)

In an effort to complete the FEIS in as timely a manner as possible even with the many deficiencies in the DEIS, the August Letter requested the Applicant provide the Board with responses to all Public Comments, including supplemental analyses and revisions to the DEIS language as would be necessary to adequately and accurately assess the Project's impacts under SEQR, on or before September 15, 2023. That timing would allow the Board an opportunity to review and incorporate Applicant's responses and issue a final EIS on or before the Board's October 18, 2023 meeting. On September 6, 2023 the Board's legal counsel telephoned the Project Sponsor's counsel to generally discuss the status of the Project Sponsor's preparation of responses to Public Comments and additional analyses as necessary to assist the Board in its completion of the FEIS as requested in the August Letter. There was no response to that telephone inquiry.

By letter dated September 15, 2023 the Project Sponsor replied to the Board's August Letter ("Project Sponsor's September Response"), but did not summarize the substantive Public Comments received by the Board, nor respond to the Board's other requests for assistance or supplemental analyses to aid the preparation of an adequate and accurate FEIS for the Project in the Town. Instead, in what appears to be a complete misunderstanding of the SEQR process, the Project Sponsor's September Response simply attached the NYSDEC Comments on the DEIS and incredibly asked the Town to make a request of the NYSDEC that that Department first complete its review and approval process to issue the Air State Facility Permit that will ultimately be required for the Applicant to conduct Project operations. The Project Sponsor's September Response explained (incorrectly) that the Town must make that request of the NYSDEC in order to allow the Project Sponsor to resolve the issues raised in the NYSDEC Comments on the DEIS.

Instead, SEQR requires the Board as Lead Agency in a coordinated review of the Project to conduct a single, integrated environmental review. Where, as here, there are multiple involved agencies, the Lead Agency has the responsibility to complete the SEQR process and cannot delegate that role. Though the Board is ultimately responsible for

the preparation of an adequate and accurate environmental impact statement for the Project, other involved agencies are encouraged to assist the lead agency by providing information and comments. Accordingly, in the ordinary course, the Project Sponsor would respond to and resolve the NYSDEC Comments on the DEIS as part of the SEQR process through the preparation of responses and additional analysis to address all substantive public comments. Any request to resolve the NYSDEC Comments on the DEIS apart from the Board's SEQR review and preparation of the final EIS is inconsistent with SEQR's basic process.

By letter dated September 21, 2023 ("Board's September Letter") the Board's counsel responded to the Project Sponsor's September Response to reiterate SEQR's basic requirements and procedures (which are at odds with the Project Sponsor's requests). The Board's September Letter confirmed that the Board would continue to finalize the FEIS and that in doing so it would prefer to have the benefit of the Project Sponsor's responses to the NYSDEC Comment Letter, and other substantive Public Comments, including the expert reports prepared by EA and GHD. In light of the many substantive Public Comments that raised similar concerns about the sufficiency of the information provided in the DEIS as those raised by the Board consistently with the Listed Deficiencies, the Board made its final request that the Applicant cooperate in the SEQR process by submitting responsive Site-specific information and analyses that it would like the Planning Board to consider as it finalized the FEIS.

On October 18, 2023 the Board received correspondence from the Applicant ("Applicant's October 18, 2023 Letter," attached as Appendix 13) to provide some cursory responses and a letter from the Applicant's traffic engineer to confirm the DEIS's conclusion that the Project would not have significant adverse impacts to traffic. The Applicant's October 18, 2023 Letter restated the Applicant's position that the "DEIS is complete, accurate and responsive," and declared that any assertion that the DEIS suffers from gaps or deficiencies is "simply inaccurate and false."

Throughout the SEQR process for the Project, the Applicant has consistently abandoned its responsibility to participate meaningfully.

As referenced above, the Deficiency Determination, Project Sponsor's October Letter, Board's November Letter, Project Sponsor's December Letter, Board's January Letter, Project Sponsor's January Response, Board's February Letter, Board's May Letter, Board's August Letter, Project Sponsor's September Response, and the Board's September Letter are hereinafter collectively the "Deficiency Correspondence" and are attached to this FEIS as Appendix 3.

Section 1.4: Interested and Involved Agencies

1. New York State Department of Environmental Conservation

2. New York State Department of Transportation (NYSDOT)
3. Erie County Department of Environment and Planning
4. Erie County Division of Sewerage Management
5. Erie County Water Authority
6. The Village of Hamburg

Section 2.0

Summary of The DEIS

Section 2.1: Incorporated by Reference

This FEIS incorporates, by reference, the DEIS for the Project, as modified herein. SEQR and its implementing regulations require that the FEIS include the DEIS, including any revisions or supplements to it, copies or a summary of the substantive comments received and their source, and the Lead Agency's responses to all substantive comments. Therefore in accordance with SEQR, the DEIS as accepted by the Planning Board for public review on May 4, 2023 is incorporated herein by reference in its entirety. A complete copy of the DEIS is attached hereto as Appendix 1 and is available on the Town's website at

https://www.townofhamburgny.gov/DocumentCenter/View/12747/DEIS-Revised-PDF.

Section 2.2: Summary

As discussed in Section 3.1 of the FEIS, the Project Sponsor failed to include a precise summary which adequately and accurately summarizes the DEIS. Instead, the Executive Summary of the DEIS functions like a table of contents because it merely provides a chart listing potential adverse impacts and a list of mitigation considerations as identified by the Board. A complete summary of the DEIS has been prepared by the Board and is included in Section 4.1 of the FEIS.

Section 3.0

Deficiencies in the DEIS

As detailed in Section 1.3 of the FEIS, the DEIS was accepted by the Board subject to the Listed Deficiencies as defined in the Notice of Completion, which invited public comment on the DEIS and the Listed Deficiencies. The Board reiterated its position that the DEIS was fundamentally flawed and suffered from each of the Listed Deficiencies via resolution adopted at its July 19, 2023 meeting during the public comment period.

The Project Sponsor did not respond substantively to repeated attempts by the Board in the Deficiency Correspondence to resolve its differences with the Applicant regarding the content of the Project's Environmental Impact Statement
The purpose of an EIS is to form the basis for a decision whether to undertake or approve a proposed action by providing detailed information about impacts a proposed action may have on the environment, listing ways such impacts might be minimized, and providing possible alternatives. ECL § 8-0109(2); *see also* Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400, 415 [1986] ("[t]he heart of SEQRA is the Environmental Impact Statement (EIS) process") (citing Town of Henrietta v Dept. of Envtl. Conservation of New York, 76 AD2d 215, 220 [4th Dept 1980] (stating an EIS is "an environmental 'alarm bell' whose purpose is to alert responsible public officials to environmental changes before they have reached ecological points of no return").

Under SEQR, the Board is required to evaluate the DEIS completeness against the Final Scoping Document. 6 NYCRR 617.9(a)(2). A DEIS may be accepted as complete where it meets the requirements of the final scope ***and*** "provides the public and involved agencies with the necessary information to evaluate project impacts, alternatives, and mitigation measures." *Id.* Where it does not meet these requirements, a lead agency is required to provide the project sponsor with a written description of the deficiencies. *Id.*

Despite repeated attempts by the Board to resolve the DEIS deficiencies, the Applicant largely declined to revise the DEIS arguing repeatedly that the Listed Deficiencies went beyond the requirements of the Final Scope. As repeatedly noted by the Board in response (and as set out in detail in this FEIS Section 3.0), 1) the Listed Deficiencies were consistent with the requirements of the Final Scope and 2) the criteria for accepting the DEIS goes beyond the Final Scoping Document. Pursuant to 6 NYCRR § 617.9(a)(2), "[t]he lead agency will use the final written scope and the standards contained in this section to determine whether to accept the draft EIS as adequate with respect to its scope and content for the purpose of commencing public review." The DEIS is only adequate for the purpose of commencing public review if it meets the requirements of the Final Scoping Document, 6 NYCRR § 617.8(g), and 6 NYCRR § 617.9(b), "and

provides the public and involved agencies with the necessary information to evaluate project impacts, alternatives, and mitigation measures." 6 NYCRR § 617.9(a)(2).

In issuing the Notice of Completion, the Board did not waive, but reasserted, the Listed Deficiencies and noted that despite the extensive Deficiency Correspondence between May 2022 and September 2023, those deficiencies had not yet been addressed by the Project Sponsor. Each of the Listed Deficiencies as identified by the Board is provided below for reference, along with the corresponding requirements from the Final Scoping Document, and a description of how the DEIS failed to meet the requirements of the Final Scoping Document and the requirements of SEQR.

Section 3.1: Executive Summary

3.1.1 Deficiency as Identified by the Board

The Executive Summary does not provide a complete summary of the DEIS.

3.1.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated that the "Executive Summary should provide a precise summary of the Draft Environmental Impact Statement."

3.1.3 Summary of Relevant Content in the DEIS

The DEIS includes a Section 4.2 entitled Executive Summary. However, rather than provide a summary of the DEIS, the Project Sponsor presents a chart that purportedly summarizes the potential environmental impacts and possible mitigation measures as identified by the Board.

3.1.4 Analysis of DEIS Deficiency

An executive summary is a critical feature of an EIS. SEQR specifically requires that the DEIS should provide a precise summary which adequately and accurately summarizes the DEIS. 6 NYCRR § 617.9(b)(4). Typically, an executive summary in a DEIS includes a brief project description, a summary of each of the potentially significant adverse impacts (including a discussion of the magnitude of such impacts), a summary of mitigation measures to be implemented to reduce adverse impacts, a summary of unavoidable adverse impacts, and a summary of alternatives considered. As explained in the SEQR Handbook:

> The Summary (617.9(b)(4)) may be a narrative statement that summarizes the main points of the EIS. It should contain a brief description of the overall proposed action, and list the following:

- Purpose of and need for the project;
- Description of the environmental setting;
- Significant beneficial and adverse impacts;
- Alternatives considered;
- Mitigation measures proposed;
- and Issues of controversy (if any).

SEQR Handbook p 113.

The Executive Summary provided by the Project Sponsor does not offer any summary of significant issues analyzed in the DEIS, nor a summary of the DEIS's ultimate conclusions. Instead of offering the required full summary of the document, the Executive Summary of the DEIS functions like a table of contents because it merely provides a chart listing potential adverse impacts and a list of mitigation considerations as identified by the Board.[2] Accordingly, the DEIS Executive Summary is not an adequate or accurate summary of the document. An appropriate summary of the DEIS has been prepared by the Board and is included in Section 4.1 of the FEIS.

3.1.5 Further Deficiencies Identified During the DEIS Public Comment Period

No further deficiencies were identified during the DEIS Public Comment Period.

Section 3.2: Description of Action

3.2.1 Deficiency as Identified by the Board

Section 4.3 of the DEIS, Description of the Action: Certain components listed in the corresponding portion of the Final Scope are not addressed, including:

- purpose and objectives of the Hot Mix Asphalt Plant
- public need and benefits (as those terms are used in the NYSDEC SEQR Handbook)
- on-site traffic circulation
- hours of operation for workers and contractors and deliveries
- proposed site access

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[2] Despite the listing of mitigation measures in the Executive Summary, most of the mitigation measures identified by the Board were not actually considered in the DEIS as the Project Sponsor repeatedly took the position throughout the DEIS that the Project would not have any adverse impacts and that mitigation measures were not necessary.

3.2.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

The Introduction/Description of the action should provide a brief summary of the proposed project, including the following topics:

- Project location and setting;
- Project description (including proposed actions, changes to the site, acreage to be developed, etc.);
- Purpose and objectives of the proposed project;
- Public need and benefits (see the NYSDEC Handbook for a clarification of these terms);
- Social and economic considerations;
- Project history, including environmental review pursuant to SEQR;
- Site layout and design;
- On-site traffic circulation;
- Hours of operation for the workers;
- Hours of operation for contractors;
- Hours of deliveries to the site;
- Hours of shipments from and to the site;
- Site access (existing and proposed); and
- Regulatory compliance, including zoning and required project approvals and permits.

3.2.3 Summary of Relevant Content in the DEIS

The DEIS provides a Description of Project which generally describes the location of the Project, an overview of proposed asphalt plant and its various components, potential access points to the Site, and an analysis of its compliance with zoning restrictions in place at the time of application in 2019. The Description of the Proposed Action indicates that the objective of the Project is to supply construction materials for road and parking lot construction and provides a table of potential customers. Seasonal hours of potential operation are described as April-November and weekdays 7AM to 4PM. (Note that elsewhere in the DEIS the Project Sponsor inconsistently describes hours of operation that range from 7AM to 3PM, or describes up to 12 hours of daily operations). Also described, but not elaborated on, is that the Plant may operate infrequently in evenings and weekends "as needed."

3.2.4 Analysis of DEIS Deficiency

The DEIS fails to adequately address the public need and benefits of the Project in its Description of Proposed Action as required under SEQR. Specifically, the Project

Sponsor failed to identify with any sufficient degree of clarity: (1) the existing asphalt market in Western New York; and (2) the need for a new asphalt plant in Western New York in general and the Town of Hamburg in particular. The Project Sponsor also fails to describe the public benefit of the Project other than summarily asserting it will result in increased tax revenue to the Town. This missing information makes it difficult for the Board to "balance social and economic considerations against environmental impacts that cannot be avoided or mitigated." SEQR Handbook p. 85. Because this balancing process must be documented in the written SEQR findings ultimately issued by the Board, the failure of the Project Sponsor to provide any meaningful analysis of the public need and benefits of the Project severely hinders the ability of the Board to "certify that ***consistent with the social, economic and other essential considerations*** from among the reasonable alternatives available, the action remains one which avoids or minimizes adverse environmental effects to the maximum extent practicable . . ." (emphasis added).

The Project Sponsor's description of the Project also limits the ability of the Board to take a hard look at the potential adverse environmental impacts of the Project. For example, the description of the action in the DEIS fails to provide any information regarding stormwater management or on-site traffic circulation for the proposed Plant. This, in turn, limits the Board's ability to analyze the Plant's operation and its potential impacts on surface waters or traffic. In addition, the Project Sponsor's description of the Project fails to sufficiently describe the hours of operation of the Plant. A statement is made that the Plant will operate infrequently in evenings and on weekends, but no further detail is given. This lack of specificity makes it difficult for the Board to sufficiently mitigate potential impacts from Project operation's in evenings and on weekends. Furthermore, no information is provided regarding timing of deliveries to and from the Plant except that they will likely occur during work hours. Without the ability to analyze these potential impacts with any degree of certainty, the Board is significantly hindered in its ability to carry out its SEQR obligations.

Lastly, the Description of Proposed Action fails to sufficiently describe the proposed access to the Site, as it provides two potential access points along two different roads but makes no attempt to indicate the likely primary access. This is significant in that it injects uncertainty with respect to impacts on transportation as variations in frequency of use of either access will necessarily have different impacts on traffic. This deficiency limits a fulsome analysis of the potential impacts of the Project.

3.2.5 Further Deficiencies Identified During the DEIS Public Comment Period

No further deficiencies were identified during the DEIS Public Comment Period.

Section 3.3: Environmental Setting/Existing Conditions

3.3.1 Deficiency as Identified by the Board

Section 4.4 of the DEIS, Environmental Setting/Existing Conditions: The Board strongly believes that maps and visual exhibits would aid the Board, the public and interested and involved agencies in understanding the existing conditions, including the addition of a topographic map, wetlands map (a large 26.38 acre freshwater wetland is identified as abutting the Site), and other items identified in the Final Scope. The Board further believes that the discussion in Section 4.4 regarding the existing NYSDEC State Pollutant Discharge Elimination System multi-sector general permit ("**SPDES MSGP**") is confusing. Specifically, explanation from the Project Sponsor is required to clarify whether the existing MSGP is applicable to the Hot Mix Asphalt Plant, and to justify the Project Sponsor's statements throughout the DEIS that the Site contains existing concrete product manufacturing operations although such activity does not appear to be presently occurring at the Site. Other items missing from the Environmental Setting section include a description of downstream waters, a description of existing noise and air conditions.

3.3.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

The Environmental Setting/Existing Conditions section of the DEIS should present a narrative discussion of each subject area to provide for a sufficient understanding of potential impacts of the proposed action and how they may affect the environment, such as:

- Topographic setting of the project site;
- Documentation on wetlands and waters of the United States subject to the jurisdiction of the United States Army Corps of Engineers (on site and adjacent to the site);
- Documentation on existing terrestrial and aquatic ecology, including any endangered, threatened, or species of special concern;
- Existing surface and ground water resources on the site and downstream of the site;
- Existing mapped floodway and floodplain boundaries;
- Existing means of site drainage and storm water management (existing discharges);
- Existing land uses (which are currently in operation and which are not) on the project site and in the vicinity of the project site (within ½ mile, including the Village). Include identification of recreation sites, parks, schools, daycares, doctors' offices, and other sensitive receptors;
- Existing zoning of the site and surrounding area – including the Village (within ½ mile of site);

- Land use regulations governing the use of the project site (Zoning District, Overlay District, other applicable sections of the Code);
- Land Use regulations of the Village of Hamburg that impact those properties in the Village that are adjacent to this site;
- Existing utilities (water, sewer, electric, natural gas, telecommunications);
- Existing solid waste disposal services;
- Existing air quality, noise, and lighting levels that presently exist on the project site and in the area. For air quality, see requirements of air quality study;
- Existing traffic patterns and conditions in the vicinity of the project site (those required for completion of a Traffic Impact Study);
- Existing community and emergency services for the project site;
- Existing historical, archaeological, or cultural resources on the project site and within one half mile of the project site; and
- Existing neighborhood character and setting (photographs taken at locations, as illustrated in the attachment to this scope);
- Description of Community Plans affecting this site and area (Town of Hamburg and
- Village of Hamburg Comprehensive Plans, and other local planning documents)
- Note: For the existing conditions section, the narrative should describe the site as it is now and not what happened at the site in the past during active operations of the concrete facility.

3.3.3 Summary of Relevant Content in the DEIS

The DEIS in its Environmental Setting/Existing Conditions provides the following:

- A general description of the Site, including acreage, topography, existing structures, and vegetation;
- An explanation that the a NYSDEC General Permit No. GP-0-17-004 is required for stormwater discharges from construction activity disturbing more than 1 acre;[3]
- A statement that there are no state or federal wetlands or terrestrial or aquatic resources on the Site according to the NYSDEC wetland mapping website;
- A general description of an abutting federal wetland;
- A statement that no floodway or floodplain boundaries exist on the Site;

[3] It is noted that at the time the DEIS was accepted by the Board, the NYSDEC General Permit in effect is GP-0-20-001, effective January 29, 2020 and expiring on January 28, 2025.

- A statement that NYSDEC resource mapping website confirms no threatened or endangered species on the Site;
- A description of the zoning of the Site at the time of the Application and a description of zoning districts within .5 miles of the Site as well as sensitive receptors;
- A description of existing utilities serving the Site;
- A description of an existing NYSDEC Air State Facility Registration permit;
- A general description of lighting at the Site;
- A description of existing traffic patterns on Camp Road;
- Description of community and emergency services serving the Site;
- A general description of existing community character adjacent to the Site; and
- An explanation of the recent update to the Village Comprehensive Plan and a statement that the Town has not updated its comprehensive plan since 2010.

3.3.4 Analysis of DEIS Deficiency

The DEIS in its Environmental Setting/Existing Conditions section fails to provide sufficient description or detail regarding the environmental setting to help the reader understand the Project Sponsor's analysis of potential adverse impacts in the remainder of the DEIS. As an example, the description of existing drainage provides uncertainty with regard to the NYSDEC State Pollutant Discharge Elimination System compliance of the Site or the Project. It states there is a current SPDES MSGP for the stormwater discharges from construction activities but qualifies that one is only required for activities disturbing more than one acre. It goes on to state that "[d]uring operations, the property will maintain an existing SPDES, Multi-sector General Permit for stormwater discharges associated with Industrial activity for the property as a whole." Despite citing to only a single permit for construction activities, the Project Sponsor goes on to state that "[a]s noted above the existing drainage and stormwater management is facilitated by an existing MSGP permit . . . [t]his permit currently covers the entire property, therefore there is no additional permitting necessary." Further, despite reference to an existing SPDES MSGP, no copy of the same was provided in the DEIS which would permit vetting of its applicability and adequacy, nor were any testing results provided to give the Board an understanding of the scope and frequency of outfall testing. Furthermore, there is no description of the quality or quantity of the discharge, its location, or the waterbody affected by such discharge or any waterbodies downstream from the Site, as required under the Final Scoping Document and requested by the Board. Without a sufficient description of the water pollutant discharge mechanisms currently in place, the Board is significantly hindered in its ability to assess the potential water quality impacts resulting from the Project.

As another example, the description of the current status of the existing industrial facility on the Site states that "[t]he existing property is industrial manufacturing of concrete and concrete related products" and states these operations as "current".

However, it is understood by the Board that concrete manufacturing at the Site is not occurring, and has not occurred on the Site for a significant period of time., though the Applicant notes that one of the redi-mix concrete plants "operates based upon market demand" In addition, there is reference elsewhere in the description to an existing tenant - Brenner Oil Company which has an Air Registration Permit from NYSDEC. No further details on Brenner Oil's operations are provided. The Final Scoping Document specifically required a description of the setting and conditions of the Project, as they currently exist. The Board requested clarification on this description on multiple occasions but no further information was provided by the Project Sponsor.

Other deficiencies in the Environmental Setting/Existing Conditions section include the Project Sponsor's failure to provide any information as to existing air quality (even though there is reference to air emissions from Brenner Oil) and noise levels as required by the Final Scoping Document and as requested by the Board. Additionally, as requested by the Board and detailed as requirements in the Final Scope, the description of the setting and existing conditions of the Site should have included the use of visual exhibits such as photographs, aerials maps and site plans to provide a full understanding of the context of the Project. This lack of sufficiently detailed information prevents the Board from taking a hard look at the environmental impacts of the Project and has significantly hindered the Board's ability to carry out its SEQR obligations.

3.3.5 Further Deficiencies Identified During the DEIS Public Comment Period

In its comments to the DEIS, the Erie County Department of Environment and Planning ("ECDEP") noted that the Project proposes the storage of liquid asphalt cement in a storage tank but the DEIS fails to provide any information about the storage tank location (*i.e.*, elevation, grade, slope) that would assist the Board is evaluating the potential environmental risks associated with a tank spill or failure (possible spread, in size and direction.). In addition, commenters on the DEIS described the land uses within an approximately half mile radius of the Site, and noted that such uses include: single family residences, townhomes and communities for the elderly, Elderwood, the Middle and High Schools, Howe Field, daycare centers, pediatricians, and the seasonal Farmer's Market on Church Street.

Section 3.4: DEIS Deficiency: Impacts on surface water, groundwater, and flooding

3.4.1 Deficiency as Identified by the Board

Section 4.5.1 of the DEIS, Impacts on Surface Water, Groundwater, and Flooding: The DEIS lacks a meaningful discussion of materials stored on-Site associated with the Plant and any run-off that may be associated with such material storage. Further discussion or clarification of asphalt production materials and proposed means of storage should

be provided by the Project Sponsor so that the Board can assess impacts on surface water. A specific analysis of run-off from the Hot Mix Asphalt Plant to those culverts specifically identified in the Final Scoping Document and as further clarified in the Deficiency Correspondence is required to fully assess environmental impacts associated with surface water and establish appropriate mitigation. The DEIS also lacks information with regard to management or mitigation of surface flows from the Hot Mix Asphalt Plant, such as discussion of any stormwater management systems or containment systems to improve stormwater runoff quality and to prevent pollutants from the Site from entering downstream waterbodies or culverts.

3.4.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

A. Potential Impacts

1. Document that no regulated water bodies will be impacted. If this is not the case, provide how these impacts will be avoided.
2. Document that this type of Asphalt production plant does not utilize any surface or groundwater resources and discharges no wastewaters.
3. Analyze any downstream waterbody identified in the environmental setting to determine if that water body will be impacted by any discharges or by-products of the operation of this plant. Particular attention needs to be taken with the run-off from the Site that goes through the culvert on Sunset Drive and into the Forest Glen neighborhood.
4. Document that the project will not be impacted by floodwaters (or drainage patterns) that could cause the discharge of materials to downstream waterbodies.

B. Potential Mitigations to Be Analyzed

1. Stormwater and containment systems to keep any materials from getting into downstream waterbodies.

3.4.3 Summary of Relevant Content in the DEIS

The DEIS in Section 4.5.1 describes a federal wetland adjacent to the Site with regard to size and vegetation. It explains that the U.S. Army Corps of Engineers ("**USACE**") issued a determination that the Project would not involve construction within a federal wetland and therefore no permit would be required from USACE. Section 4.5.1 goes on to describe that the Project will not impact water resources because no water is utilized in the asphalt manufacturing process and because heated asphalt cement is stored in enclosed tanks and upon contact with temperatures below 100 degrees, it "will solidify and not penetrate groundwater. " The DEIS goes on to state that because of the enclosed tank storage and temperature sensitive nature of asphalt cement, if any release were to occur, "the material could simply be cleaned up." This section further states

that a SPDES MSGP is in place for the existing operations at the Site which will ensure adequate water quality in the Town. Furthermore, the FEMA Flood Map Service Center was reviewed and no flood hazard areas were identified within the Site.

Section 4.5.1 contains a revision dated April 4, 2023 which begins by stating, "Under protest that this was not included in the original Scoping Document, refer to letter by the Law Offices of Ralph Lorigo dated April 4, 2023, notwithstanding, materials are discussed in section 1.0, 4.3, and 6.0 of the original DEIS." Thereafter, it explains that the Project will use existing aggregate stored at the Site for operation of the Plant which have been stored on Site since 2006. The DEIS states the location of these stockpiles will remain the same to ensure compliance with the SPDES MSGP. It then explains that drainage from the Site will be accomplished from two outfalls, one reaching a storm water sewer and the other through a maintained swale but, rather than provide information on these discharges, states that information on discharges from these outfalls is available from NYSDEC.

Section 4.5.1 concludes by stating that impacts to water quality are not anticipated from the Site and therefore, no mitigation is necessary beyond the SPDES permit maintained to mitigate sediment.

3.4.4 Analysis of DEIS Deficiency

Section 4.5.1 fails to provide meaningful analysis of the Project's potential impacts to regulated water bodies as required under the Final Scoping Document and as requested by the Board. The DEIS simply asserts that regulated waterbodies are not located on the Site and that the existing SPDES MSGP ensures that no impacts will occur off-site. The DEIS summarily dismisses impacts that may occur from asphalt cement spills and provides no analysis or information on the potential for contamination to stormwater runoff from exposure to asphalt production raw materials and/or asphalt cement spills.

Furthermore, contrary to the requirements of the Final Scoping Document, and numerous requests by the Board, the DEIS fails to provide any analysis of potential impacts to downstream waterbodies. The Final Scoping Document specifically states that "particular attention needs to be taken with the run-off from the Site that goes through the culvert on Sunset Drive and into the Forest Glen neighborhood." The DEIS does not discuss potential impacts to that culvert, other than directing the Board, and the reader, to "refer to the NYSDEC. They have readily available material of the drainage system under their jurisdiction after it leaves the property that this project is located on."

Lastly, the DEIS asserts that a SPDES MSGP has been obtained for the Site "to ensure adequate water quality in the Town of Hamburg" and that "water runoff from this site is monitored, approved, and protected by the NYSDEC Division of Water through a

SPDES permit." The DEIS fails to provide any documentation on such a SPDES MSGP aside from the general assertion that it exists. Failure to provide a detailed description of water quality protection under the permit's terms and/or to analyze the effectiveness of the current permit terms for a hot mix asphalt plant significantly interferes with the Board's obligation to take a hard look at the water quality impacts of the Project or to analyze and develop appropriate mitigation.

3.4.5 Further Deficiencies Identified During the DEIS Public Comment Period

The Board retained GHD Consulting Services Inc. ("**GHD**") to analyze Section 4.5.1 of the DEIS = As explained in its Report on the DEIS ("**GHD Report**" attached as Appendix 6) GHD found significant deficiencies with regard to the Project Sponsor's analysis of stormwater impacts from the Project. First, GHD noted that the Stormwater Pollution Prevention Map as labeled in DEIS, Figure 4, was not, in fact, a Stormwater Pollution Prevention Map for the Project, but rather, was a site plan for Great Lakes Concrete Products, LLC and does not show the proposed Project at all. Further, GHD found that DEIS, Figure 4 contained several unlabeled storm system inlets and a drainage swale but no silt fence or other erosion controls were shown. Such features must be shown to qualify as a pollution prevention plan.

GHD further observed that the DEIS fails to provide any information regarding downstream connections to the Project's stormwater system. GHD notes that typical information regarding downstream connections consist of information such as the receiving water body that the stormwater feature ultimately drains to, the stormwater flow quantity before and after the Project, duration of flow, and type and size of the conveyance facility. GHD concludes that the existing conditions of downstream connections must be incorporated into in development of a reasonable stormwater management plan and identification of appropriate mitigation measures.

GHD also points to several other flaws in the DEIS analysis of impacts to surface waters. GHD notes that Figure 4 identifies a stormwater retention basin which is not explained or described. In addition, the DEIS states that material stockpiles will be located to prevent runoff but no further discussion is provided. As such, GHD concludes that the DEIS does not contain sufficient analysis to support its conclusion that there will be no changes to discharges from the Site.

The GHD Report also discusses discrepancies relative to the DEIS discussion of the SPDES MSGP. GHD explains that the DEIS states in Section 4.5.1 that the SPDES MSGP has been obtained for the Site, but in Section 4.5.9 it states the property owner will obtain a SPDES permit. GHD states that no details were provided in the DEIS regarding SPDES MSGP and that such information is typically provided by an applicant and is necessary to accurately assess the Project's impact to stormwater.

The GHD Report then identified the existing SPDES MSGP for the Site through an independent record search which was issued to Cheektowaga Concrete LLC, and was issued for Sector E: Glass, Clay, Cement, Concrete and Gypsum products and with a Standard Industrial Classification ("**SIC**") Code of: 3241 - Cement, Hydraulic, 3273 - Ready Mixed Concrete, and 3275 - Gypsum Products. GHD explains that while no additional permit would be necessary, the existing SPDES MSGP will require revisions to permit the Project which falls under a different industrial sector (Sector D, Asphalt Paving & Roofing Materials & Lubricant Manufacturers) and different SIC code (2951 for Asphalt Paving Mixtures and Blocks).

GHD explains further that the existing SPDES MSGP would have required the implementation of a Stormwater Pollution Prevention Plan ("**SWPPP**") but none was included in the DEIS for evaluation. The DEIS does state that the existing SPDES MSGP requires testing of stormwater leaving the site for compliance, but as pointed out by GHD, no testing data was provided. GHD states that submission of the existing SPDES MSGP and SWPPP for the Site should have been provided in the DEIS to allow the Board to conduct a thorough and meaningful review of the Project's stormwater features and potential impacts and, impose appropriate mitigation as necessary. Therefore, GHD concludes, the DEIS "does not contain sufficient information to support the conclusion that stormwater impacts have been mitigated to the maximum extent practicable."

The NYSDEC also commented in the July 26, 2023 NYSDEC Comments on the DEIS that the failure to provide information on any SPDES permit proposed for the site is an aberration of the important principle of SEQR that the Lead Agency review the whole action proposed before approving any specific phase or element of the action.

Section 3.5: DEIS Deficiency: Impacts on Air

3.5.1 Deficiency as Identified by the Board

Section 4.5.2 of the DEIS, Impacts on Air: The DEIS contains references to a separate proposed Hot Asphalt Mix Plant at a proposed but unbuilt location in Niagara County (the "Alternate **Niagara Facility**") and uses that proposed project's design and siting details for purposes of attempting to analyze the air emission impacts associated with the Project. The Board believes that it is highly inappropriate to base the analysis of air impacts from the Project based on the design of a different facility in a different county. Further, the Board believes the DEIS inadequately addresses those issues identified in the NYSDEC Notice of Incomplete Application, dated November 5, 2019, and fails to fully discuss potential mitigation measures to reduce Project impacts on air quality.

3.5.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

A. Potential Impacts

1. Document that air emissions from Hot Mix Asphalt (HMA) production, including point source and fugitive emissions, will not adversely affect ambient air quality as measured against the New York State Ambient Air Quality Standards (NYSAAQS) under 6 NYCRR Part 257, which are equivalent to the National Ambient Air Quality Standards (NAAQS). Although, the applicant projected potential emissions of hazardous air pollutants (HAPs) to be below the regulatory threshold 100 lbs/yr for Highly Toxic Air Compounds (HTACs) and Persistent Bioaccumulative Toxic (PBT) compounds established in Part 212 and Table 201-9.1, impacts of these pollutants should be compared with and short-term and annual guideline concentrations for toxic air contaminants under 6 NYCRR Part 212 and Part 257-10 for hydrogen sulfide.
2. Potential to emit (PTE) estimates of air emissions from HMA Plant emission points should be based on process equipment vendor commercial emissions performance guarantees being made to the applicant by the vendor.
3. Airborne emission of particulate and gaseous pollutants from mobile sources associated with the project must be quantified, including criteria and hazardous air pollutants. Mobile Sources include trucks delivering raw materials and other commodities to the HMA Plant, trucks hauling HMA product to construction projects, and personally owned vehicles of HMA Plant employees. Emission estimates should include average and peak daily, weekly, monthly, and annual emissions.
4. Fugitive Dust emissions as PM10 and PM2.5 from truck traffic to and from the facility and solid material stockpiling and transfer operations at the facility must be quantified. Emission estimates should include average and peak daily, weekly, monthly and annual emissions.
5. The DEIS must address the issues identified in the NYSDEC Notice of Incomplete application dated November 5, 2019.

B. Potential Mitigations to Be Analyzed

1. Reduction of emission rates through decreases in plant processing rates and/or implementation of more effective emission control equipment;
1. Enhancement of atmospheric dispersion of pollutants by modifying release points and exhaust flow rates;
2. Reduction in emissions through use of more efficient plant technology;
3. Reduction in emissions through the use alternative production methods, and
4. Other potential mitigation technologies which may be considered include: Low-NOx burners on the aggregate dryer; collection and control of emissions (including blue smoke) from enclosed HMA conveyors, HMA storage silos and

truck load out stations; emission control on the liquid asphalt storage tanks; site dust mitigation plans; and route HMA traffic away from residential locations.

5. Reduction of mobile source emissions through retrofit of diesel fleet vehicles with and diesel oxidation catalysts (DOC) and/or diesel particulate filters (DPF).
6. Reduction of fugitive dust emissions from truck traffic by dust suppression techniques. Reduction of fugitive dust emissions from solid material stockpiling and transfer operations using conveyor covers, transfer point chutes and other feasible means of limiting fugitive dust.
   Refer to the NYSDEC Notice of Incomplete Application ("**NOIA**") for other mitigations.

3.5.3 Summary of Relevant Content in the DEIS

Section 4.5.2 Impacts on Air of the DEIS starts initially by providing the general components of the Project. It goes on to state that the NYSDEC and the EPA have standards and policies in place, compliance with which will prevent or minimize significant air impacts from the Project. It states that prior to operation, calculations of air emissions will be provided to NYSDEC to ensure the Project meets permit limits provided by the EPA as modeled on a production limit of 150,000 tons per year (tpy) of asphalt.

This section goes on to explain that air emissions come from two sources, point source and fugitive sources, the latter which includes material stockpiles, liquid asphalt system, customer load out, and filling of storage silos. It further explains that measures have been adopted to limit and prevent fugitive sources including a moisture control plan. Section 4.5.2 goes on to state that the Project will utilize a baghouse filter system to eliminate 98% of PM10 particulate matter emissions, which are the primary point source emissions from the Project.

Section 4.5.2 goes on to provide the EPA regulations applicable to the Project regarding air emissions and discusses the draft Air State Facility permit issued by the NYSDEC for the Niagara County Facility (the "**Niagara Facility Draft ASF Permit**"). These requirements as referenced in the Niagara Facility Draft ASF Permit include maintenance of emissions records, hot mix asphalt production, equipment tune-ups, and visual inspections of the baghouse.

The DEIS explains that the Niagara Facility Draft ASF Permit was applied for in 2020 and accepted by the NYSDEC on February 2, 2021. It asserts that the details of the Niagara Facility Draft ASF Permit are applicable to the Project because the setbacks of the Project are greater than that analyzed under the Niagara Facility Draft ASF Permit. It further states that the attributes of the Project are the same as those under the Niagara Facility Draft ASF Permit except location and that the greater setbacks of the Site will

lessen off-Site air impacts.[4] The DEIS goes on to explain that the NYSDEC issued the Niagara Facility Draft ASF Permit based on the air calculations provided, the site plan, and the property location. It asserts that the Project Sponsor will seek approval of the Project from NYSDEC by resubmitting the Niagara County Facility application and changing the site plan and property location. It concludes that because the same equipment will be used, and the setbacks will be farther than in the Niagara Facility Draft ASF Permit, the Project will have even less of an impact then what was previously approved by NYSDEC in Niagara County.

Section 4.5.2 then goes on to describe the components of the Niagara Facility Draft ASF Permit, including

- Calculations of emissions of criteria pollutants (carbon monoxide (CO), nitrogen oxides (NOx), particulate matter (PM), sulfur dioxide (SOx), and hazardous air pollutants (HAP)),
- Calculations of Volatile Organic Compounds (VOC), an ozone precursor, and carbon dioxide equivalents (CO2e), and
- A table summarizing proposed emissions and their comparison to regulatory thresholds.

Section 4.5.2 also provides updates to NYSDEC DAR-1 emission regulations and provides modeling to demonstrate compliance of the Project. It then goes on to discuss compliance with regulations of hydrogen sulfide, providing modeling to demonstrate such compliance. It also discusses NYSDEC regulations on emissions of particulate and gaseous pollutants from mobile sources and provides figures on expected emissions from the same. Expected upstream emissions from mobile sources is also provided as well as figures on expected fugitive dust emissions. This section of the DEIS concludes with the statement that fugitive dust emissions from the Project will not have an adverse impact because, at 78.3 lbs/year, it is under the 100lbs/ year NYSDEC threshold.

For analysis of potential mitigation measures, Section 4.5.2 provides that the conditions attached to the Niagara Facility Draft ASF Permit will suffice as appropriate mitigation measures. These conditions include the following:

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[4] Section 4.5.2 goes on to explain that a Notice of Incomplete Application ("**NOIA**") was issued by NYSDEC prior to the issuance of the Niagara Draft Air Permit in 2019 because the application was based on batch mix production rather than the drum mix system proposed for the Project. A revised application was submitted and the NYSDEC then issued the Niagara Facility Draft ASF Permit. A copy of the Project Sponsor's application and air modeling in support of its request for the Niagara Facility Draft ASF Permit was provided in DEIS Appendix F, and the Niagara Facility Draft ASF Permit was provided in Appendix E to the DEIS. It is noted that the NOIA was not provided in the DEIS. There is also reference to an updated odor analysis but does not detail why an updated odor analysis was prepared.

- Stack testing to verify mass emission rates and concentrations;
- Operation and maintenance of air pollution control in accordance with the manufacturer's instructions and good engineering practice at all times;
- Compliance with the Moisture Mitigation Plan, which includes paving of main roadway within the property site and watering of aggregate stockpiles to control fugitive dust.

3.5.4 Analysis of DEIS Deficiency

The Project Sponsor's reliance on the Niagara Facility Draft ASF Permit as the basis for its air impact analysis is inappropriate given that the Niagara Facility Draft ASF Permit was issued for an entirely different facility in an entirely different county. Further, the air regulations have been updated since the Niagara Facility Draft ASF Permit was issued. For instance, page 2 of the Niagara Facility Draft ASF Permit (which was included as an appendix to the DEIS), states that permit exempt emission sources include the Project's 25,000 gallon liquid asphalt storage tank. NYSDEC Regulations in 6 NYCRR 201-3.2 (effective February 25, 2021) have since removed the blanket exception of liquid asphalt storage tanks, instead limiting the exception to tanks under 10,000 gallons. As the storage tank exceeds such limit by 15,000 gallons, it is not exempt and Project emission calculations now must include emissions from the storage tank.

Furthermore, the DEIS provides no significant information or evidence that would allow a reasonable determination that the Niagara County Facility was substantially similar in operation to the Project such that impacts would be analogous. It similarly provides inadequate information regarding the NOIA as required under the Final Scoping Document. Without specifically identifying the issues presented in the NOIA, it is unclear as to whether they may remain applicable to the Project. A general statement with regard to the batch/drum mix issue is insufficient. Further, the DEIS alludes to an updated odor analysis submitted in response to the NOIA but provides no further information.

Overall, the Project Sponsor's premise that the Alternate Niagara County Facility is sufficiently analogous to the Project for evaluation of air impacts from the Project lacks sufficient support in the record to be relied on by the Board. Moreover, reliance on the fact that NYSDEC previously issued the Niagara Facility Draft ASF Permit in no way obviates the Board's obligation pursuant to SEQR to take a hard look at the air impacts of the Project. Simply stated, the DEIS lacks adequate information on the Project's impacts to air quality to allow the Board to take a hard look at the air quality impacts of the Project or to analyze and develop appropriate mitigation.

3.5.5 Further Deficiencies Identified During the DEIS Public Comment Period

The Board retained EA Engineering, P.C. and its affiliate EA Science and Technology ("**EA**") to perform an independent review of the DEIS. EA, in its report to the Board ("**EA Engineering Technical Memo**") (see Appendix 7) determined after analysis of the DEIS that, "there are various inconsistencies in the DEIS and supporting documents . . . a number of technical issues must be addressed more completely and in greater detail to allow the [Lead Agency] to conduct a complete analysis under SEQRA and to determine what conditions and mitigation measures are appropriate for the Project." The following summarizes EA's findings:

- Many of the DEIS's analyses and conclusions are drawn from Appendix F to the DEIS, which is a NYSDEC Air State Facility Permit Application and supporting air modeling data that is not representative nor sufficiently applicable to the proposed Facility because it was originally prepared by the Project Sponsor for another hot mix asphalt plant proposed in Niagara County New York.

- The Niagara Facility Draft ASF Permit attached as Appendix E to the DEIS contains material discrepancies in the description of the proposed Plant and improperly excludes a significant source of air emissions, a 25,000 gallon liquid asphalt storage tank that must be accounted for under current NYSDEC regulations.

- The Applicant's air emission calculations do not account for all the potential emission sources, which means that the completeness and accuracy of the air quality impact analysis, air toxics analysis and odor analysis in the DEIS, cannot be relied upon.

- The DEIS fails to adequately address the potential emissions of "blue haze" from the proposed Plant, including an assessment of how the potential off-Site impacts of blue haze and other atmospheric pollutants from the Project would comply with the Code § 280-133(C)(1)(b), which limits uses in the M-3 District from disseminating atmospheric pollutants, noise, or odor into any R, C, M-1 or M-2 District in the Town.

- A complete SEQRA analysis must assess how blue haze and other atmospheric pollutants from the Project could be mitigated to the maximum extent practicable, including an analysis from the Project Sponsor of the feasibility of utilizing, a blue haze control system for the Project.

EA indicates that the DEIS analysis of air impacts was based upon the Niagara Facility Draft ASF Permit issued for a different facility with a materially different location in lieu of generating calculations which reflect the actual proposed operations of the

Project. After review of the Niagara Facility Draft ASF Permit and the calculations it was based upon, the EA Engineering Technical Memo concluded that "it is not typical nor appropriate to assess air quality impacts for the Project based on the information provided for the Niagara Facility." NYSDEC similarly commented that the DEIS "should contain the ASF Permit application for the Camp Road site" and stated that assertions in the DEIS that the Project has a valid permit "may be misleading to the reader. As explained by NYSDEC, "no DEC [Air State Facility Permit] exists for this site."

In reaching its conclusions, the EA Engineering Technical Memo explained that the Niagara Draft Facility ASF Permit was issued by the NYSDEC pursuant to a now outdated regulation that previously would have exempted certain liquid asphalt storage tanks from consideration as air emissions sources. Specifically, the Niagara Facility Draft ASF Permit did not include emissions from the proposed 25,000 gallon liquid asphalt storage tank for the Project because the same was exempt under previous regulations. However, since February 2021, when the Niagara Facility Draft ASF Permit was issued, the NYSDEC revised Part 201-3.2(c)(21) so that liquid asphalt storage tanks in excess of 10,000 gallons are no longer a permit exempt source. EA concludes that "[w]ithout such an analysis of the 25,000 gallon liquid asphalt storage tank, the Project's air emissions are underestimated and the DEIS's conclusions regarding Project impacts to air quality are, therefore, inaccurate." NYSDEC also commented on the outdated status of the Niagara Facility Draft ASF Permit. Explaining that ambient air contaminant regulations have subsequently been revised, NYSDEC asserted that air permit applications contained in the DEIS "should reflect current regulatory requirements."

EA also noted that the Niagara Facility Draft ASF Permit contains material inconsistencies with regard to the equipment to be utilized which render the permit calculations unreliable. As an example, the EA Engineering Technical Memo explains that page 1 of the Niagara Facility Draft ASF Permit states that the "dryer is fired by a Hauck Eco-Star II model 75 *liquid propane burner*" with a maximum heat input capacity of *83 MMBtu/hr*. Whereas page 17 of the Niagara Facility Draft ASF Permit, under the Item 13.1, states that the dryer is fired by a Hauck Eco-Star II *natural gas burner* with a burner heat input rating of 0.25-MMBtu/ton aggregate (*75-MMBtu/hr*). Due to the DEIS reliance on the Niagara Facility Draft ASF Permit and these unresolved discrepancies, EA concludes that "the DEIS's conclusions with regard to air impacts are based on inaccurate and incomplete data associated with an analysis of a separate facility under outdated NYSDEC regulations."

EA further reviewed and analyzed the emission calculations in the DEIS and found that they underestimate the Project's potential to emit ("**PTE**"). EA identified the following errors which must be corrected to accurately account for the Project's air emissions:

- The manufacturer's specification sheet including guaranteed emissions performance data, must be included to verify NOx, CO, and VOC emission factors.

- Correct for PM10 emissions that were underestimated in the DEIS's air emissions calculations. PM10 emission factor of 0.0039 lb/ton used in the calculation is only for filterable PM10. AP-42 Table 11. 1-3 also provides emissions factors for condensable inorganic PM and condensable organic PM. The correct analysis for the Project must use PM10 emission factor of 0.023 lb/ton as total PM including filterable PM10, condensable inorganic PM and condensable organic PM (Particulate matters released from bituminous processing facility include both filterable PM and condensable PM)

- Include an assessment of vapors from the Plant operations that load material into transport trucks that continue to release vapor from loaded material for a period of time following load-out operations, including the potential for off-Site impacts on transport routes away from the Site. The total organic carbon (TOC) emissions for the 8-minute period immediately following load-out (yard emissions) can be estimated using an emission factor of 0.0011 lb/ton of asphalt loaded as provided in AP-42 Section 11.1, page 11.1-9. These fugitive yard emissions need to be included to develop an accurate PTE calculation.

- Recalculation of load-out/yard emissions and silo filling/asphalt storage tank emissions which were mis-calculated or omitted from the calculations in the DEIS. Total PM, Organic PM, TOC and CO were calculated in the DEIS based on the emissions factors at Table 11.1-14 which are representative of drum mix plant load-out and silo filling. However, those calculations are flawed because they do not include fugitive yard emissions or emissions from the proposed 25,000 gallon asphalt storage tank as described above.

- Confirm the maximum capacity of the asphalt storage tank of 25,000 gallons since DEIS Appendix F Process Flow Diagram shows the asphalt storage tank as 30,000 gallons and include emissions from the asphalt storage tank using the procedures described in AP-42 Section 7.1, Organic Liquid Storage Tanks.

In addition, EA found that the failure of the DEIS to accurately estimate the PTE for the Project results in compounding discrepancies regarding analysis of air emissions because the calculated PTE serves as a basis for air toxics analysis and odor analysis. Therefore, EA concludes, because the PTE for the Project was underestimated, the "Project impacts on air will be greater than estimated by the air toxics analysis and odor analysis in the DEIS."

Further, the EA Engineering Technical Memo details that the DEIS wholly fails to account for "blue haze" which is emitted by HMA plants from silo vents and truck load out stations and is composed of volatile organic compounds and toxic and odorous compounds. EA states blue haze is regulated under NYSDEC regulation 6 NYCRR 211.11 and Town Code § 280-133(C)(1)(b) and must be accounted for in the DEIS including mitigation of such impacts therefrom.

EA performed an independent air quality analysis to assess fugitive dust/particulate Project impacts on air quality. This included analysis of fugitive particulate emissions and dust emissions from non-road mobile sources, truck traffic, solid material stockpiles, and transfer operations in order to evaluate fugitive particulates impacts at the Site boundary line. The results of the analysis indicated that fugitive particulate emission from the Project will have a significant impact to nearby M-2 district receptors which would not comply with the Code requirements in § 280-133(C)(1)(b) prohibiting dissemination of atmospheric pollutants into M-2 districts. EA noted that actual emissions from the Project are likely to exceed these results because EA was unable to include emissions from the proposed 25,000 gallon liquid asphalt storage tank due to a lack of information from the Project Sponsor on the tank. Notwithstanding, the conservative estimates provided in EA's air modeling analysis indicate fugitive dust/particulate emissions from the Project will have "problematic impacts to the nearby M-2 District."

Additionally, the NYSDEC Comments on the DEIS commented that the Climate Leadership and Community Protection Act ("**CLCPA**") analysis contained in Appendix P of the DEIS ("**CLCPA Analysis**") was completed for the previously proposed Alternate Niagara County Facility. The CLCPA imposes broad carbon emission reduction mandates and requires NYSDEC to analyze whether a proposed action such as a permit approval will contribute to meeting the mandates of the CLCPA. The NYSDEC stated that the CLCPA Analysis in DEIS should be replaced with a new CLCPA analysis for the current proposed Project and should utilize the most current emission factors. Without a Site-specific and Project-specific analysis, the DEIS does not establish whether or not the Project would meet the CLCPA's mandates.

Section 3.6: DEIS Deficiency: Impacts on Plants and Animals

3.6.1 Deficiency as Identified by the Board

Section 4.5.3 of the DEIS, Impact on Plants and Animals: A United States Fish and Wildlife Survey ("**USFWS**") project planning tool indicates that a proposed candidate species, the Monarch Butterfly, is in the vicinity of the Site, though the DEIS does not assess Project impacts to same. Additionally, while the DEIS includes a limited analysis of endangered, threatened or special concern species on the Site, it does not include any species that are not endangered, threatened or of special concern. Finally, the Board

notes that the DEIS lacks a robust discussion of the Project's impacts on adjacent undeveloped areas (Section 4.5.1 describes a 26.38 acre federal freshwater wetland adjacent to the Site) including plants and animals on adjacent undeveloped areas.

3.6.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

A. Potential Impacts

1. Document and provide a detailed discussion of the potential impacts of the proposed project on plants and animals, including any endangered, threatened, or special concern species identified in the Environmental Settings section. Impacts considered must include the analysis of impacts from noise, light, and activity at the project site on adjacent areas.

B. Potential Mitigations to Be Analyzed

1. None, unless specific species or habitats are identified at or adjacent to the project site. If potential impacts are identified, provide mitigations to reduce these impacts; lighting and noise reductions, siting of equipment on the site, etc.

3.6.3 Summary of Relevant Content in the DEIS

Section 4.5.3 Impact on Plants and Animals in the DEIS states that due to the historical industrial uses of the Site, there is little greenspace available for plants or animals. Furthermore it describes the use of the USFWS IPAC mapping tool which determined that the federally threatened Northern Long-eared Bat (*Myotis septentrionalis*) may be present on the Site. The DEIS then states that the NYSDEC Environmental Resource Mapper provides that there are "no rare, endangered, or threatened plants and animals within the proposed project site, nor surrounding areas" including the Northern Long-eared Bat.

3.6.4 Analysis of DEIS Deficiency

The DEIS in Section 4.5.3 fails to comply with the requirements of the Final Scoping Document because it limits study of impacts on plants and animals to only those listed as federal or state rare, threatened, or endangered species. The Final Scoping Document requires "a detailed discussion of the potential impacts of the proposed project on plants and animals" which includes ***but is not limited*** to those federally or state listed rare, threatened, or endangered species. The DEIS is wholly devoid of any information regarding the potential for impacts to non-listed plants or animals, including as identified by the Board, the Monarch Butterfly. The Board, in its Listed Deficiencies, explained that the Monarch Butterfly is a candidate species for federal listing and has been identified as being in the vicinity of the project by the USFWS mapping resources.

Furthermore, the DEIS states as evidence that no impacts to plants or animals will occur because the Site has a history of industrial use which has eliminated greenspace. However, the limited current usage of the site coupled with its size certainly create the possibility of the presence of plants and animals at the Site. Moreover, the Final Scoping Document requires the analysis of impacts associated with the Project from "noise, light, and activity at the project site on adjacent areas." The DEIS makes no mention or analysis of potential impacts from noise, light, or activities resulting from the Project that may impact species offsite. The lack of adequate baseline information about plants and animals currently present of the Site, the failure to address the potential presence of the Monarch Butterfly and the failure to address potential impacts to plants and animals on-Site or an adjacent undeveloped sites makes it impossible for the Board to take a hard look at the impacts of the Project on plants and animals or to analyze and develop appropriate mitigation.

3.6.5 Further Deficiencies Identified During the DEIS Public Comment Period

No further deficiencies were identified during the DEIS Public Comment Period.

Section 3.7: DEIS Deficiency: Impacts on Aesthetic Resources

3.7.1 Deficiency as Identified by the Board

Section 4.5.4 of the DEIS, Impact on Aesthetic Resources: The Project Sponsor did not contact Town of Hamburg or Village of Hamburg representatives with respect to identifying locally significant aesthetic resources in the vicinity of the Project in connection with the Project Sponsor's preparation of the DEIS and its assessment of impacts to aesthetic resources. Further, the Board notes that the DEIS inadequately addresses visual impacts to aesthetic resources from water-based vapors emitted from the concentrated source of emissions at the Hot Mix Asphalt Plant-specifically, the fabric filter baghouse stack. Even where such emissions may not constitute a "plume" and are water-based, the impacts to aesthetic resources from such Project related activities should be evaluated.

3.7.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

A. Potential Impacts

1. Document that the area contains no federal, state or local scenic or aesthetic resources.
2. Provide a visualization of how the project will appear from Camp Road, Elmview Avenue, and the residential areas in the Village.

3. Document whether there will be a plume generated from the Plant and if it will be seen from surrounding areas.

B. Potential Mitigations to Be Analyzed

1. Vegetative screening
2. Camouflage paint colors
3. Location and type of equipment on the site

3.7.3 Summary of Relevant Content in the DEIS

The DEIS states "the project site does not contain any federal or state aesthetic resources" and that "the proposed action will not be visible from any official designated federal, state, or local scenic or aesthetic resource." It further states that "[t]he height of existing structures and significant elevation changes from the property line to public roadways will make the proposed facility difficult to perceive." The DEIS did include visualizations from five locations, which illustrated areas where the Project could be seen. It discounts the "plume" as being a water-based steam and therefore not needing evaluation. Finally, it offers as mitigation, painting of the asphalt plant components and additional foliage screening along the "main road."

3.7.4 Analysis of DEIS Deficiency

The DEIS states that there will be no adverse impacts to aesthetic resources because "[t]he height of existing structures and significant elevation changes from the property line to public roadways will make the proposed facility difficult to perceive." There is inadequate documentation to confirm same (visualizations from only five locations was provided). Further, the DEIS fails to adequately identify whether any local aesthetic resources would be impacted by the Project as the Project Sponsor declined to consult with the Town an Village regarding the presence of such local resources. The lack of this information makes it impossible for the Board to take a hard look at the aesthetic impacts of the Project or to analyze and develop appropriate mitigation.

3.7.5 Further Deficiencies Identified During the DEIS Public Comment Period

No further deficiencies were identified during the DEIS Public Comment Period.

Section 3.8: DEIS Deficiency: Impacts on Historic and Archeological Resources

3.8.1 Deficiency as Identified by the Board

Section 4.5.5 of the DEIS, Impact on Historic and Archeological Resources: The Final Scoping Document required an analysis of the need for potential mitigation measures as determined in consultation with the Village of Hamburg Historic Preservation

Commission (among others). A March 16, 2022 letter from the Village of Hamburg Historic Preservation Commission to the Project Sponsor alerted the Applicant of historical and archeological resources that may be eligible for listing with the State or National Registers and which are within 0.5 miles of the Site, and further requested a detailed map of the targeted area of potential Project activity for assessment, including the Site and off-site locations to be impacted by truck traffic from the Project. The DEIS was submitted by the Applicant without further consultation with the Village of Hamburg Historic Preservation Commission in response to the March 16, 2022 letter.

3.8.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

A. Potential Impacts

1. The project has the potential to adversely affect historic and archaeological resources. The DEIS should document any historic and archaeological resources location within 0.50 mile of the project site that are:
   i. Listed on the State or National Register of Historic Places (S/NRHP);
   ii. Determined eligible for listing on the S/NRHP by the Commissioner of the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) or his/her designee;
2. The project will be reviewed not only under SEQR, also under Section 14.09 of the State Historic Preservation Act (SHPA). Please consult with the OPRHP and provide documentation from the OPRHP that the project will have no adverse effect on historic or archaeological resources.

B. Potential Mitigations to Be Analyzed

1. As determined by the SHPO;
2. As determined by the Hamburg Historical Society; and
3. As determined by the Village of Hamburg Historic Preservation Commission.

3.8.3 Summary of Relevant Content in the DEIS

Section 4.5.5 of the DEIS explains that a search was conducted of the New York State Division for Historic Preservation's Cultural Resource Information System ("**CRIS**"). The CRIS search indicated there were no historic buildings, sites or districts located on or within ½ mile of the Site. Furthermore, the DEIS cites a letter from the New York State Office of Parks, Recreation, and Historic Preservation ("**OPRHP**") dated February 3, 2022 which declared the Project will not impact archaeological and/or historical resources listed or eligible for listing on the New York or National Register of Historic Places. This section of the DEIS goes on to state that by letter dated February 16, 2022, the Hamburg Historical Society concurred that no impacts would occur. Lastly, the DEIS cites a letter dated March 16, 2022 from the Village of Hamburg Historical

Preservation ("**Village Historical Preservation Commission Letter**") stating it could not concur that no impacts would occur as they believe there are, in fact, historical and archaeological resources within a half mile of the Project which may be eligible for state and/or federal listing. Based on the conclusions of OPRHP and the Hamburg Historical Society and simply choosing to ignore the Village Historical Preservation Commission Letter, Section 4.5.5 concludes by stating that no mitigation is necessary because the Project will not impact listed or eligible historical or archeological resources.

3.8.4 Analysis of DEIS Deficiency

As stated in the Listed Deficiencies, the Draft Scoping Document requires the analysis of possible mitigation measures determined by OPRHP, the Hamburg Historical Society **and** the Village of Hamburg Historic Preservation Commission. The DEIS omits any discussion of the same apart from acknowledging the Village Historical Preservation Commission Letter. As explained by the Board in the Deficiency Letters, the Village Historical Preservation Commission Letter described a list of historical and archeological resources that may be eligible for listing with the State or National Registers and which are within 0.5 miles of the Site, and further requested a detailed map of the targeted area of potential Project activity for assessment, including off-site locations to be impacted by truck traffic from the Project. The DEIS utterly ignores these identified sites, let alone analyzes potential impacts or potential mitigation that may be necessary. As such, Section 4.5.5 of the DEIS fails to fulfill the requirements of the Final Scoping Document. This, in turn, makes it impossible for the Board to take a hard look at the cultural resource impacts of the Project or to analyze and develop appropriate mitigation.

3.8.5 Further Deficiencies Identified During the DEIS Public Comment Period

No further deficiencies were identified during the DEIS Public Comment Period.

Section 3.9: DEIS Deficiency: Impacts on Transportation

3.9.1 Deficiency as Identified by the Board

Section 4.5.6 of the DEIS, Impact on Transportation: The DEIS does not adequately identify truck routes, or provide visuals of same, nor does it evaluate whether certain route control measures could function to mitigate Project impacts, nor does the DEIS evaluate the feasibility of avoiding bicycle routes, addition/relocation of sidewalks on proposed routes, improvements to reduce crashes, timing/scheduling of truck traffic, and the utilization of certain road use agreements, all of which are identified as relevant for evaluation in the Final Scoping Document.

3.9.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

1. The project has the potential to adversely impact the transportation system in the area: the applicant will complete a Full Traffic Impact Study ("**TIS**"), completed to NYSDOT standards (See NYSDOT Guidelines on TIS's in support of SEQR Actions). The Traffic Impact Study will include the identified roads, intersections and required information as outlined below. Impacts will be determined based on existing conditions (little to no traffic currently being generated) and not compared to past conditions and uses at the site. At this time, due to the NYS PAUSE, it will not be possible to take existing traffic counts. These figures will need to be obtained from the most recent counts taken for these roads and intersections.
2. We have identified the following roads and intersections for analysis:
3. Roads: Elmview Avenue, Legion Drive, Sunset Drive and Camp Road.
4. Intersections: Elmview Avenue at Camp Road, Elmview Avenue at Sunset Drive, Legion Drive at Camp Road, Sunset Drive at Camp Road, Scranton at Camp, and at all access driveways onto their respective roads.
5. In completing this analysis, the DEIS/TIS must illustrate the routes that will be taken by the vehicles (asphalt trucks, material delivery trucks, employees, etc.) for ingress and egress from the site. The TIS should reference any appropriate standards for calculating traffic generation (Institute of Transportation Engineers Manual, studies, etc.) and utilize the maximum vehicles that could be generated at the site (describing how this figure was developed).
6. In addition, this section will review all potential impacts that the Project will have on the transportation system including but not limited to:
   - Existing crash history for the most recent three years compared to the Statewide crash history for similar roads and intersections;
   - Existing pedestrian and bicycle accommodations;
   - Public transportation and bus traffic;
   - Present pattern of movement of people or goods;
   - Hours of deliveries and shipments to and from the site; and
   - Conditions of roads, especially Elmview Avenue.

B. Potential Mitigations to be Analyzed

1. Those as identified in the TIS (signalization, signal timing, turn lanes, restricted access, specific truck routes, etc.).
2. Control of the routing of trucks/vehicles (and how it can be enforced).
3. Avoidance of bicycle routes, addition/relocation of sidewalks/walkways.
4. Improvements to reduce crashes.
5. Timing/scheduling of trucks.
6. Road Use Agreements.

3.9.3 Summary of Relevant Content in the DEIS

The DEIS in Section 4.5.6 Impact on Transportation, provides information on a TIS completed in furtherance of the Project which studied the following intersections:

- Camp Road/Sunset Drive
- Camp Road/Scranton Road
- Camp Road/Elmview Avenue
- Camp Road/Legion Drive
- Sunset Drive/Elmview Avenue

and the following roads:

- Elmview Avenue
- Legion Drive
- Sunset Drive
- Camp Road

The TIS was based on the assumption the Project would employ six (6) people arriving at the Site between 6-7AM and leaving around 4PM on weekdays and occasional Saturdays. Trip generation for the Project was determined by the TIS to be 11 entering and exiting trips during the peak hour, which it analyzed as if it occurred during peak commuter times.

The TIS analyzed intersection capacity impacts based on Level of Service ("**LOS**"). The DEIS explains that the TIS indicated there would be no changes to LOS at full build out and therefore, the section concludes that no impacts to traffic would result and thus no mitigation is required. The DEIS further explained that there are existing sidewalks along the roads studied except along the front and through the Site, that no bicycle lanes exist in the study area, and that public transportation service is provided within the study area. However, the section concludes that because the TIS indicates no impacts to the existing roadway system, there will be no impacts on pedestrian, bicycle, or transit facilities and no mitigation measures are required.

3.9.4 Analysis of DEIS Deficiency

The DEIS in Section 4.5.6 fails to provide any information, or visualization of truck routes as required by the Final Scoping Document and requested by the Board. Instead, the DEIS only provides that access will be routed through Camp Road and that access to the site from Elm Road will be prohibited. Furthermore, the section contains no discussion of the type of vehicles entering and exiting the Site or the times in which customers or deliveries are expected beyond generally stating employees will arrive

between 6-7 AM and the Project will be operating between 7AM-4PM. It should be noted that the TIS also states the Project's hours of operation as 7AM to 4PM but also states the Project will operate twelve (12) hours per day.

Furthermore, Section 4.5.6 provides no information regarding crash data or potential impacts as required under the Final Scoping Document. The TIS attached to the DEIS does discuss crash data, stating that three of the intersections studied have crash rates higher than the state average and that for one intersection, Camp Rd/ Sunset Dr, "NYSDOT may want to review signal timings and make adjustments to reduce the number of rear-end collisions." Despite this information in the TIS, the DEIS in Section 4.5.6 fails to provide any discussion of mitigation measures which could reduce impacts to traffic from the Project. This lack of information and analysis makes it impossible for the Board to take a hard look at the cultural resource impacts of the Project or to analyze and develop appropriate mitigation.

3.9.5 Further Deficiencies Identified During the DEIS Public Comment Period

GHD analyzed Section 4.5.6 of the DEIS and conducted a comprehensive review of the its analysis of impacts to traffic and the supporting TIS. After careful analysis of same, GHD identified the following deficiencies:

- The Project Sponsor's TIS does not include any analysis for road segments to meet the requirements of the Final Scoping Document, including existing traffic counts, forecasted traffic or truck volumes, volume-to-capacity ratios, or any operational or level of service calculations for any of the road segments in the study area that would typically be provided to analyze the project's impacts on the road segments in the study area.

- The Project Sponsor's TIS presents a discussion on the ITE Trip Generation Manual but does not describe why the ITE trip rates were not used, which gives the false impression that ITE was the source of the trip rates used, when in fact it was not the basis of the Applicant's calculations.

- The Project Sponsor's TIS utilizes a trip generation calculation for employees based on six employees, with six in and six out trips during both the AM and PM peak hours. It is unlikely all employees would enter and exit the site in the same hour, and accordingly the Applicant's TIS fundamentally relies on an inaccurate value, and results in unreliable conclusions regarding the Project's impacts to transportation.

- A complete evaluation of Project related impacts to transportation must include an estimation and evaluation of the daily trip generation for Projected related traffic to and from the Site, and not be confined to just the AM and PM peak

hours as in the Applicant's TIS. The Project's daily trip generation is typically in a TIS and is necessary to evaluate the Project's impact on the transportation system.

- Page iii of the Project Sponsor's TIS states the Plant will typically operate from 7:00 AM-3:00 PM (with certain instances of nighttime operation for overnight paving jobs). Meanwhile, page 6 states the plant will operate from 7:AM-3:00PM, but also states the Project will operate for 12 hours per day. These inconsistencies make it difficult to understand when the Project will be generating traffic and difficult to evaluate the analysis and recommendations presented in the Applicant's TIS.

- The Project Sponsor's TIS utilizes trip generation data for truck traffic to and from the Site that fails to include trucks delivering raw materials to the Site. Without this additional delivery data, the Applicant's TIS entirely discounts a source of traffic associated with the Project.

- The Project Sponsor's TIS states that the existing concrete facility on the Site generates 20 trucks per day and the Project's asphalt operation will generate 50 trucks per day, for a total of 70 trucks per day. The Project Sponsor's TIS should separate the existing Site traffic from the proposed Site traffic so that the impacts of the Project can be evaluated. The existing traffic counts presented in the Project Sponsor's TIS are inconclusive if the existing operation is currently generating 20 trucks per day.

- The Project Sponsor's TIS states: *The proposed Asphalt Plant Project will add approximately 50 truck trips per day resulting in a total of approximately 70 truck trips per day generated by the site. Given that the Project will operate 12 hours per day, approximately 4 to 5 truck trips per hour are anticipated.* This math is in error as five trucks per hour for 12 hours equals 60 trucks, which would result in a total of approximately 80 truck trips per day following the logic of the Applicant's TIS which combines the assumed existing and proposed trips per day. Accurate calculation of traffic generated by the Project is a foundational element of a TIS that any subsequent analysis is built from, and therefore these inaccuracies in the Project Sponsor's TIS with regard to calculation of the traffic generated by the Project render the conclusions in the Project Sponsor's TIS unreliable.

Furthermore, GHD stated that the DEIS fails to identify the types of vehicles that will enter/exit the Site, the proposed routes of these trucks, or any discussion on how trucks would be discouraged from utilizing nearby residential streets.

Lastly, GHD analyzed the TIS for errors and omissions pursuant to generally accepted traffic impact study guidelines and found 14 substantive deficiencies and

inconsistencies related to Project's trip generation estimates. GHD stated that certain critical inputs, summary sheets, and assumptions are absent, or unsupported in the TIS. Therefore, GHD determined, "the conclusion reached in the Project Sponsor's TIS—specifically that the Project will have no impacts on the existing transportation system lacks adequate analysis to support the conclusion and is therefore, not reliable."

Section 3.10: DEIS Deficiency: Impacts on Energy

3.10.1 Deficiency as Identified by the Board

Section 4.5.7 of the DEIS, Impact on Energy: The Final Scoping Document required the DEIS to assess potential mitigation measures associated with energy use such as: use of energy efficient equipment for Project related activity, timing of Project activities to coincide with off-peak energy demand, use of renewable sources of energy as alternatives to conventional fossil fuels. The DEIS does not address any of these items.

3.10.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

A. Potential Impacts

1. In accordance with the SEQR regulations discuss the project's impacts on the use and conservation of energy. Describe the types and quantities of energy to be utilized and the different types of equipment that could be used.

B. Potential Mitigations to Be Analyzed

1. The use of more energy efficient equipment.
2. Timing of use to avoid manufacture of asphalt at times of peak energy demand in the area
3. The use of renewable energy alternatives such as solar and wind.

3.10.3 Summary of Relevant Content in the DEIS

The DEIS in Section 4.5.7 Impact on Energy, provides that the Project will be powered by electricity provided by New York State Electric and Gas ("**NYSEG**") and will not have a significant impact on energy as documented in a letter provided by NYSEG dated May 23, 2022 ("**NYSEG Letter**") and attached as Appendix M. The NYSEG Letter in turn does not state there will be no significant impacts on energy usage but rather states that NYSEG has capacity to serve the Project at the proposed load of 350 kw, but that its ability to serve this load may be impacted by addition of other new electric loads. The section goes on to state that Part 2 of the FEAF completed by the Board for the Project concurred that there will be no impacts to energy.

Section 4.5.7 also provides that the Project's energy needs comprise of various compressors and motors which operate the asphalt plant. It also explains that the asphalt plant will not run continuously and will be operated seasonally, with no energy use occurring during the off-season. Therefore, the section concludes, no mitigation will be required.

3.10.4 Analysis of DEIS Deficiency

The Final Scoping Document required the DEIS to consider the use of energy efficient equipment for the Project, timing of Project activities to coincide with off-peak energy demand, and use of renewable sources of energy as alternatives to conventional fossil fuels. The DEIS provides no discussion of any mitigation whatsoever, instead resting on the assertion that the same is not required because there is existing capacity to serve the Project without requiring modifications to the energy supply system. However, regardless of available capacity to serve the Project, the DEIS was nonetheless required to consider ways to mitigate energy use by the Project. Particularly in light of the fact that the Plant's seasonal operations would coincide with typical high energy demand periods and peak energy usage during the summer air conditioning season. The Project Sponsor's failure to include this information in the DEIS makes it impossible for the Board to take a hard look at the impacts of the Project on energy sources or to analyze and develop appropriate mitigation.

3.10.5 Further Deficiencies Identified During the DEIS Public Comment Period

No further deficiencies were identified during the DEIS Public Comment Period.

Section 3.11: DEIS Deficiency: Impacts From Noise, Odor, and Light

3.11.1 Deficiency as Identified by the Board

3.11.1.1 Noise

Section 4.5.8 of the DEIS, Impact from Noise, Odor, and Light: The Final Scoping Document required analysis of all potential impacts to noise levels as a result of the Project. While the Project Sponsor submitted a noise analysis prepared by Neu-Velle, attached to the DEIS as Appendix N, the Neu-Velle Noise Report does not include the Project Sponsor's identification of all noise producing equipment and the level of sound (and other characteristics such as pitch, timing, duration) typically created by each item of noise producing equipment used at the Hot Mix Asphalt Plant. The Board believes that any noise analysis for the Project must include such information. Thus, the Board retained a third party expert to review the Neu-Velle Noise Report and the results of this third party review are included in FEIS Section 3.11.5.1 below. In addition, the Final Scoping Document required an analysis of potential mitigation efforts to reduce

Project impacts from noise, but the Project Sponsor took the position that the Project would have no adverse noise impacts. Thus, the DEIS does not identify or evaluate potential mitigation measures to reduce such impacts.

3.11.1.2 Odor

Section 4.5.8 of the DEIS, Impact from Noise, Odor, and Light: The Project Sponsor submitted an odor analysis. The Board has retained a third party expert to review this report and the results of this third party review are included in FEIS Section 3.11.5.2 below. In addition, the Final Scoping Document required an analysis of potential mitigation efforts to reduce Project impacts from odor, but the Project Sponsor took the position that the Project would have no adverse odor impacts. Thus, the DEIS does not identify or evaluate potential mitigation measures to reduce such impacts.

3.11.1.3 Light

Section 4.5.8 of the DEIS, Impact from Noise, Odor, and Light: The Project Sponsor states in the DEIS that lighting at the Site will not change as a result of the Project and therefore, there are no adverse lighting impacts. Nonetheless, the Final Scoping Document required certain baseline information about lighting including its location, size, wattage and hours of operation. In addition, the Final Scoping Document required a lighting plan illustrating the levels of light onto any adjoining sites. The Project Sponsor provided location information only in the DEIS. In addition, the Final Scoping Document required an analysis of potential mitigation efforts to reduce Project impacts from lighting, but the Project Sponsor took the position that the Project would have no adverse noise impacts. Thus, the DEIS does not identify or evaluate potential mitigation measures to reduce such impacts.

3.11.2 Final Scoping Document's Requirement for the DEIS

3.11.2.1 Noise

The Final Scoping Document stated:

A. Potential Impacts
NOISE: the project sponsor shall disclose any potential noise impacts the proposed project may have (during construction and during daily operations) on the project site and to adjacent businesses and residences. This shall be achieved by determining the existing noise decibel levels (at all hours of the day and night – operation time of the plant may occur into the night), and those that will occur during construction and during daily operations. The applicant will need to identify all of noise making equipment and the level of noise generated by that equipment – utilizing equipment specification documents. If using documentation from existing equipment operations,

verify that it is the same equipment and that it was operating at peak capacity and as this system would operate. Noise generating equipment also includes the operation of trucks at the site and on nearby roadways/neighborhoods (see transportation section for the identification of truck routes). In evaluating these noise impacts, it must be noted that it is our understanding that for certain projects it is anticipated that the equipment and trucks may operate into nighttime hours. Analyze these noise impacts for those extended time periods. This analysis will require consulting any applicable local or county noise ordinances and the NYSDEC recommended standards. Special consideration shall be given to the noise impacts experienced by non-industrial zoned properties located within a one half mile radius of the project site, including, but not limited to properties zoned R1, R2, R3, R4, RA, RE, C1, and C2. If noise is shown to be above ambient conditions at one half mile, continue the study further out (greater than one half mile).

B. Potential Mitigations to Be Analyzed

1. Use of acoustic engineering and barrier technologies to reduce noise impacts.
2. Proposed limitations on hours of operation and how they would be enforced.
3. Use of different equipment models or processing equipment to reduce noise and odor impacts.

3.11.2.2 Odor

The Final Scoping document stated:

A. Potential Impacts

ODOR: shall be assessed utilizing the dispersion modelling software in accordance with Policy DAR-10: NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis, May 2006. Substances to be modeled include naphthalene and hydrogen sulfide (H2S), since it has a low odor threshold in the general population. Special consideration shall be given to odor impacts experienced by non-industrial zoned properties located within a one half mile radius of the project site, including, but not limited to, properties zoned R1, R2, R3, R4, RA, RE, C1, and C2 (including properties in the Village and parks and recreational facilities). If odors are detected at one half mile from the facility, continue the study further out (greater than one half mile).

B. Potential Mitigations to Be Analyzed

1. Use of different equipment models or processing equipment to reduce noise and odor impacts.
2. Reduction of emission rates through decreases in plant processing rates and/or implementation of more effective emission control equipment or enhancement of atmospheric dispersion of odorous pollutants by modifying release points and exhaust flow rates to reduce odors.

3. Use of additives to reduce odor associated with emissions (e.g., Ecosorb or additives).

3.11.2.3 Light

The Final Scoping document stated:

A. Potential Impacts
LIGHT: The applicant shall discuss the lighting to be used on site, its location, size, wattage and hours of operation. Provide a lighting plan illustrating the levels of light onto any adjoining sites.

B. Potential Mitigations to Be Analyzed
1. The use of dark sky compliant lighting and refurbishment of existing lighting to dark sky compliant and/or relocation of existing lighting.

3.11.3 Summary of Relevant Content in the DEIS

3.11.3.1 Noise

The DEIS includes a noise analysis prepared by Neu-Velle ("**Neu-Velle Noise Report**"), attached to the DEIS as Appendix N. The Neu-Velle Noise Report included taking noise level measurements at various location and times throughout the month of June 2022 in order to establish baseline ambient noise levels in the vicinity of the Project. It explains that locations chosen were within ½ mile of the Site and are representative of the closest properties with non-industrial zoned sites. A table summary was provided in the DEIS of locations monitored and indicated that nine sites were sampled, with seven being measurements occurring on July 27, 2022, and two measurements being taken on September 17, 2019. All July 2022 measurements occurred between 8 PM and 9:39 PM with the exception of a single location which was measured between 7:50 AM to 8:09 AM. All July 2022 measurements lasted no longer than 19 minutes, with most lasting 15- 16 minutes in length. The September 2019 measurements were both taken from 1:40 PM to 2:50 PM. The Neu-Velle Noise Report in contrast provided only seven monitoring locations, as well as the surrogate facility, all of which it states were monitored on July 27, 2022.

The DEIS explains that the Neu-Velle Noise Report used an existing asphalt plant in Erie County (the "**Gernatt Plant**") as a surrogate for the study which had a larger output capacity of 234,000 tons/year. It stated that the Gernatt Plant was appropriate for comparison because it was located in a similar setting to the Project, being located on a state road serving a commercial corridor and proximate to a large expressway, and was bordered by commercial and industrial properties within 1,000 feet of residential property. No additional information regarding the setting of the Gernatt Plant was

provided. The DEIS asserted that the use of the Gernatt Plant provided a highly conservative noise analysis comparison given its larger output capacity. The Neu-Velle Noise Report utilized a single measurement of sound from the Gernatt Plant at one location approximately 500 feet north of the facility for approximately 15 minutes between 8:27 AM to 8:42 AM, in which the only noticeable sound was emanating from the facility and traffic. The Neu-Velle Noise Report also makes mention of a previous noise report performed by Encorus Group for the Project dated September 18, 2019 ("**Encorus Study**") and attached as an appendix to the Neu-Velle Noise Report. The Encorus Study analyzed potential impacts from noise associated with a proposed 135,000 ton/year HMA plant and included monitoring completed on September 17, 2019. However, the DEIS provides no other information, description, or analysis of the Encorus Study.

The DEIS explained that the results from the Neu-Velle Noise Report stated that operation of the Project is not expected to raise noise levels beyond 3 decibels at three out of the nine monitored locations and will raise the noise level by 2 dBA at two of the nine locations. The remaining locations in the studied area increase noise levels by 1 dBA or had no change. Based on this information, the DEIS concluded that the expected noise level from the proposed facility would not increase the decibel level to a point that requires mitigation and the surrounding receptors will not be impacted by noise from the Project. Furthermore, the DEIS concluded that, based on these results, the Project would not violate the Town Code noise ordinances, including Chapter 175-2 qualitative noise limits, and zoning prohibitions on the dissemination of noise into any R, C, M-1, or M-2 district.

3.11.3.2 Odor

The DEIS explained that odor from the Project is primarily derived from liquid asphalt used in manufacturing of HMA. It stated that naphthalene is the most odorous compound found in liquid asphalt and has a low odor detectability threshold. As such, naphthalene was used as a surrogate to analyze odor impacts from the Project. The DEIS stated that while naphthalene is not the only odorous compound associated with HMA, it was chosen as the compound for use in the odor analysis because other substances may not be detectable at lower concentrations or may disperse more rapidly.

The DEIS stated that odorous emission from HMA plants are typically associated with two activities: (1) filling the asphalt oil storage tank; and (2) loading hot mix asphalt into the storage silo and/or customer trucks. Respecting the filling of the asphalt oil storage tank, the DEIS states that the tank fill rate is low and thus the overall exhaust volume from the tank is low as it is only filled for short periods of time one or two times a day and not at a steady or continuous rate. The DEIS concluded, "it is difficult to quantify emissions and it is assumed that the emission rate is too low to result in any off-site impacts." DEIS at 63. Therefore, the DEIS did not analyze impacts from odorous

emissions from the asphalt oil storage tank but rather focused on emissions from the loading of HMA onto customer trucks which it described as "the second highest concentration of odorous compounds associated with facility operations." *Id.*

Furthermore, the DEIS stated that the storage silo for HMA exceeded the height of the asphalt oil storage tank and it was assumed that transfer of HMA into the silo presented a greater potential for off-site odor impacts. As such, analysis of odor from the Project was based on emissions emanating from the top of the storage silo. By analyzing odor from this location and assuming a constant rate of production of 300 tons per hour the DEIS asserts that a conservative approach to the odor analysis was achieved.

An odor analysis report ("**Odor Report**") was prepared and attached to the DEIS as Appendix O. The Odor Report is dated June 5, 2020, and was prepared for the Alternate Niagara Facility . The description of the facility in the Odor Report is of a hot mix asphalt plant producing 450,000 tons per year of HMA. Odor was modeled based on the location of the proposed silo to the Site fence line distance of 200 feet, and based off a prior location for the equipment which is at a distance shorter than the actual proposed distance. The DEIS asserts this as a conservative approach given the distance to the nearest residence is 650 feet away, and states that the Odor Report results indicated compliance with NYSDEC short term and annual guideline concentrations and the Agency for Toxic Substances and Disease Registry ("**ATSDR**") odor threshold. Based on these results, the DEIS concludes that "odors from the proposed hot mix asphalt plant will not be detectable beyond the boundary lines of 5690 Camp Road in the Town of Hamburg or at the nearest receptor." DEIS at 64.

The DEIS also included analysis of impacts from hydrogen sulfide ("**H2S**"). It references modeling completed ("**H2S Modeling**") attached to the DEIS in Appendix G. It states that the results of the H2S Modeling determined that H2S concentrations at 200 feet from the proposed location for the Project's drum dryer, storage silo, and customer load out are well below the ATSDR threshold and will not be detectable beyond the Site boundary.

3.11.3.3 Light

The DEIS describes existing lighting at the Site as including three parking lot lights at 20-30 feet high, and 11 commercial flood lights affixed to the industrial buildings within the Site. It explains that the Project includes no proposed additional installation of lighting and that the current on-Site lighting is sufficient to operate the Project while not impacting surrounding communities. Therefore, the section states that no mitigation measures would be required.

3.11.4 Analysis of DEIS Deficiency

3.11.4.1 Noise

The DEIS in Section 4.5.8 fails to provide information on the Project's noise generating equipment and the noise level generated from each type as required under the Final Scoping Document and as requested by the Board. Furthermore, where existing operations would be used to analyze potential noise impacts, the Final Scoping Document required verification that such operations used the same equipment and were operated in the same manner as proposed by the Project. Neither the DEIS or the accompanying Neu-Velle Noise Report provide any information on the existing Gernatt Plant used as a surrogate for the Project except to state that it was a larger operation located in a similar setting. Furthermore, despite repeated request by the Board, the Applicant never clarified whether or not the Gernatt Plant was actively producing asphalt at the time that Neu-Velle conducted the single sound measurement at that surrogate facility. Without understanding the nature of the Gernatt Plant, its operations, hours, the equipment used, the location and height of nearby buildings and uses, or topography and landscape composition, meaningful comparison with the Project is not possible and makes it impossible for the Board to take a hard look at the potential noise impacts of the Project.

Furthermore, there are notable discrepancies between the information contained in the DEIS, and that which is cited in the Neu-Velle Noise Report. Notably, the DEIS provides a table summarizing the number and location of noise monitoring sites around the Site, listing nine in total, and indicating two which were apparently recorded in 2019. However, the Neu-Velle Noise Report only cites seven location monitored during 2022. It appears that the DEIS is attempting to incorporate data recorded from the 2019 Encorus Study attached as an appendix to the Neu-Velle Noise Report. The Neu-Velle Noise Report makes a single mention of the Encorus Study, stating that "***based on the previous data obtained by Encorus Group in September 2019***, as well as the data presented in this report, the assessments indicate that the proposed facility will not violate this ordinance or have an impact in the sound levels of the area." Neu-Velle Noise Report at 7.

The Neu-Velle Noise Report provides no analysis of the methodology of the Encorus Study, which was completed one day after noise monitoring for the study was recorded. Nor does it account for the explicit discrepancy between the lower output (135,000 tons/year) analyzed in the Encorus Study in comparison to the current proposed Project as analyzed in the Neu-Velle Noise Report (150,000 tons/year). Furthermore, the DEIS makes no mention of the Encorus Study or attempt to clarify the above described discrepancies. As such, the Board is unable to determine the applicability of the Encorus Study at best, and the lack of explanation is misleading at

worst. Therefore, for the reasons cited above, the analysis of noise impacts in the DEIS is deficient.

3.11.4.2 Odor

The Final Scoping Document required the DEIS to analyze the use of specific mitigation measures to reduce odorous emissions from the Site. However, as accurately asserted by the Board in the Listed Deficiencies, the DEIS contains no such analysis. Furthermore, the Final Scoping Document required the DEIS to perform specific odor dispersion modeling to determine impacts from odor, with specific emphasis on impacts experienced by non-industrial zoned properties located within ½ mile of the Site. Upon review of the DEIS however, and in light of public comment and expert reports received by the Board as discussed below, the odor analysis provided has significant discrepancies and inaccuracies which render such analysis deficient.

While these deficiencies will be discussed further below, one example of such deficiency is the discrepancy contained within the Odor Report attached to the DEIS as Appendix O. Specifically, the 2020 Odor Report was drafted for the proposed Niagara County Facility which was subsequently abandoned. Furthermore, the description of the facility in the Odor Report is of an HMA plant that will produce 450,000 tons per year of HMA. The DEIS provides no discussion as to how the Odor Report conducted for a wholly different facility in a different location would be applicable to the Project. No information was provided on the equipment, operations, or build out of the proposed Niagara County Facility which would allow reasonable comparison with the Project to determine applicability. This dearth of necessary information, in concert with the above described discrepancy, prevents the Board from fulfilling its obligations to take a hard look at potential impacts and reasonably determine whether any adverse impacts may result from the Project. Therefore, the analysis of odor impacts in the DEIS is deficient.

3.11.4.3 Light

The Final Scoping Document requires that the DEIS discuss "the lighting to be used on site, its location, size, wattage, and hours of operation." The DEIS does provide that existing lighting at the Site will not change, and provides general, albeit limited, descriptions of the current lighting. However, there is no information provided in Section 4.5.8 regarding hours of operation of the lighting on the Site as proposed for the Project. What information that is provided regarding operation of the Project elsewhere in the DEIS is limited and contains discrepancies and uncertainties.

For example, in Section 2.0 Description of Proposed Action, the DEIS states that the Project "will operate within normal business hours of 7 AM to 4 PM, Monday through Friday . . . [and] [o]ccasional evening or weekend operations may commence depending on the customer." DEIS at 3. However, the TIS states that "the Project will operate 12

hours per day." TIS at 6. Without further information regarding the frequency with which the Project will operate during evenings, and given the apparent discrepancy in information, it is uncertain whether the use of existing lighting at the Site will increase and cause additional adverse impacts requiring mitigation. As such, the DEIS is deficient with regards to its analysis of impacts from lighting.

3.11.5 Further Deficiencies Identified During the DEIS Public Comment Period

3.11.5.1 Noise

The Board retained GHD to analyze Section 4.5.8 of the DEIS and the supporting documentation included by the Project Sponsor in the DEIS related to noise impacts from the Project (see GHD Report attached as Appendix 6). After careful analysis, GHD states that the Neu-Velle Noise Report attached as Appendix N to the DEIS does not adequately evaluate sensitive noise receptors within ½ mile of the Site as required by the Final Scoping Document. Furthermore, the Neu-Velle Noise Report is based on noise measurements which were collected over a period of only 15 minutes during a single day, which GHD explains is an inadequate amount of time to measure baseline noise. Additionally, the timing of these measurements, taken in the evening, is not representative of when the Project will operate, and provides a poor basis of comparison as noise levels may be elevated in the evening due to commercial traffic and extended peak traffic (this would make ambient noise levels appear much higher than they actually are). GHD states that this methodology does not provide information that is representative of the lowest, highest, or even the average noise produced during a typical day

GHD determined that the Neu-Velle Noise Report obtained only a single noise source measurement, rather than identifying and measuring primary noise sources. GHD explained that noise is very dependent on source height and location relative to off-site receptors, as well as site specific variables including lines of sight, distances, and reflection/absorption effects from different ground covering. The GHD Report indicates that use of a single point noise measurement is not an accurate way to evaluate off-site noise impacts of the Project with its numerous site-specific variables.

GHD evaluated the Neu-Velle Noise Report noise modeling methodology and determined that some components were consistent with common practices or were generally appropriate. However, the short, often 15 minute, noise measurements for background sampling, as well as the timing of those measurements (in the evening when background noise levels are higher and when the Project will not be in operation) fail to meet industry standards and do not provide a representative baseline for evaluation of potential noise impacts. Rather, GHD states, noise monitoring for baseline ambient noise should have been conducted at the time consistent with the operation of the Project and for the typical measurement duration of 24 hours or more. As such,

GHD concludes that the Neu-Velle Noise Report is not acceptable and cannot be relied upon to accurately evaluate Project impacts from noise.

The GHD Report also determined that the methodology regarding comparison of baseline noise measurements against the representative asphalt plant, the Gernatt Plant was deficient. The DEIS made no qualitative assessment of the Gernatt Plant's layout, operations, or equipment for comparison except to state it has a greater output than the Project. GHD characterized such methodology as a "high level-screening assessment" and concluded that by failing to account for location, height, intervening structures, line of sight, and ground absorption, the use of a single noise measurement from the Gernatt Plant was not suitable for a proper detailed study of the Project's potential noise impacts.

GHD also noted that the Neu-Velle Noise Report failed to evaluate noise from predicted heavy truck traffic to and from the Site. GHD states that based on the volume of trucks and their location to sensitive receptors, Project truck traffic could have a significant noise impacts to surrounding areas. Without such analysis, GHD concludes, the Project's impacts cannot be adequately evaluated.

GHD concluded that given the absence of proper acoustical modeling, failure to evaluate site specific truck volumes, and limited evaluation of existing noise levels, the Neu-Velle Noise Report, and the DEIS by extension, "is fundamentally flawed and cannot be relied upon to adequately assess the Project's noise impacts."

3.11.5.2 Odor

EA analyzed Section 4.5.8 of the DEIS and the supporting documentation included by the Project Sponsor in the DEIS related to odors and odor impacts from the Project. The EA Engineering Technical Memo provided a comprehensive review of the Odor Report included in the DEIS and concluded that the Odor Report does not adequately account for all odor emission sources or use appropriate assumptions. EA explains that the DEIS identified two sources of odor emissions from the Site: the daily filling of the asphalt oil storage tank, and the loading of hot mix asphalt into the storage silo and customer trucks. However, as the EA Engineering Technical Memo notes, the DEIS only analyzes impacts from the latter and wholly fails to account for odor emissions from the once or twice daily filling of the 25,000 gallon asphalt tank because such emissions are not "steady or continuous" and so are "difficult to quantify." EA indicates that emissions from the filling of the asphalt tank can be estimated and that such emissions are likely to be high on a mass rate basis. Therefore, EA concludes, failure to include this source renders the Odor Report, and by extension the DEIS's evaluation of odor impacts, unreliable.

EA also determined that the Odor Report did not use appropriate assumptions for modelling odor impacts. The EA Engineering Technical Memo explained that the Odor Report operated on the assumption that all odor would be emitted from the highest point of the asphalt storage silo, which EA determined was not appropriate because a higher release point would result in greater predicted dispersion of odor and result in modelling of less odor impacts. EA stated that the Odor Report must be updated to include facility wide emissions at lower elevations to provide an accurate analysis of potential odor impacts.

The EA Engineering Technical Memo further analyzed the H2S Modeling included in the DEIS. EA Found that the H2S Modeling, which presented emission rates from sources including the combustion dryer, silo, and load-out operations, provided no reference to verify emissions rates. To verify the same, EA completed an independent odor analysis ("**EA Odor Analysis**") based on the Health Consultation reference document and determined that H2S emissions from the Project presented problematic impacts. See Appendix 7. EA found that while the unsubstantiated emissions rates provided in the DEIS fell below applicable ambient air quality standards for H2S ("**NYSAAQS**"), the EA Odor Analysis, using substantiated emission rates based in the Health Consultation reference document, indicates that the Project's H2S emissions impact will actually exceed NYSAAQS. EA Engineering Technical Memo at 12.

NYSDEC also reviewed the Odor Report, noting that it was prepared for the planned Niagara County Facility, not the Project. NYSDEC states that the Project Sponsor actually prepared an odor analysis in 2019 for the Project which should have been included in the DEIS for public review. Furthermore, the NYSDEC Comments on the DEIS states that the Odor Report needs to be revised to consider the potential impacts of additional constituent asphalt chemicals as well as analyzing odor from all aspects of the Project. NYSDEC also recognized the presence of nearby sensitive receptors to the Project and stated that odor detection is subjective and can vary from person to person and based on the weather.

Section 3.12: DEIS Deficiency: Impacts to Human Health

3.12.1 Deficiency as Identified by the Board

Section 4.5.9 of the DEIS, Impact to Human Health: The Final Scoping Document required that the DEIS analyze potential human health impacts to nearby schools, recreation sites and parks, day cares, nursing homes and residential homes and potential mitigation measures to reduce impacts to human health from odorous pollutants, reduction of emission rates through limits on production, implementation of more effective emission control equipment, and diversion or restriction of run-off from the Hot Mix Asphalt Plant to downstream culverts (towards Sunset Drive and the

Forest Glen neighborhood as described in the Deficiency Correspondence). The DEIS does not address such mitigation measures.

3.12.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

A. Potential Impacts

1. Describe and analyze the potential human health impacts to nearby schools, recreation sites and parks, day cares, nursing homes and residential homes, relating to noise, odor, light, air quality, etc.
2. Describe and analyze how the project may impact any existing environmental conditions identified in the environmental settings section.
3. As identified in the "IMPACT ON SURFACE WATER, GROUND WATER RESOURCES, AND FLOODING" section, discuss and analyze any harmful materials that may enter the run- off heading towards the Forest Glen neighborhood.

B. Potential Mitigations to Be Analyzed

1. For human health impacts related to air and odorous pollutants, reduction of emission rates through decreases in plant processing rates and/or implementation of more effective emission control equipment or enhancement of atmospheric dispersion of pollutants by modifying release points and exhaust flow rates will be analyzed.
2. Diversion or restriction of run-off that heads towards the Sunset Drive culvert system and the Forest Glen neighborhood.

3.12.3 Summary of Relevant Content in the DEIS

Section 4.5.9 of the DEIS discusses potential impacts to human health from Project air emissions, odors, noise and water runoff. In terms of air emissions, the DEIS states that the Project will operate in compliance with U.S. Environmental Protection Agency air quality performance standards for hot mix asphalt plants. Furthermore, the section states that the Project will operate in compliance with NYSDEC air permitting requirements and as such, will meet or exceed all federal and state air quality standards. The section also explains that a low NOx burner will be utilized for the Project which will result in less emissions from the Project.

Section 4.5.9 also states that while odor may emanate from the Project, odors pose no dangers to "plant works or surrounding communities" and cites a 2000 report from the National Institute of Occupational Safety and Health ("**2000 NIOSH Report**") in which NIOSH determined there was insufficient evidence of an association between lung cancer and asphalt fumes while paving. The DEIS also states that "[b]y way of

example, there are many natural and man-made odors that are noticeable, such as skunks and dairy farms but neither are harmful." Furthermore, the DEIS states that according to modelling performed by Neu-Velle, odor from the Project would not be detectable beyond the property boundary.

With regard to noise, the DEIS states that, per NYSDEC guidelines and as indicated in Section 4.5.8, the noise generated from the Project would not impact human health.

Regarding impacts to human health from water, the section explains that water will not be used for the project except to mitigate dust at the Site. To ensure such water use will not have an impact, the DEIS states that a SPDES MSGP will be obtained for the Project. The conditions of such permit, the DEIS explains, will ensure that discharge from the site will not have a negative impact on the Site or nearby communities, including the Forest Glen neighborhood. As with many other sections of the DEIS, Section 4.5.9 of the DEIS asserts that because there are no adverse impacts to human health "[t]here are no mitigating measures necessary as the health of the surrounding communities will not be affected."

3.12.4 Analysis of DEIS Deficiency

The analysis of potential impacts to human health in the DEIS is extremely lacking. First, in terms of potential impacts from air emissions, the DEIS simply asserts that the Project will meet or exceed all federal and state air quality standards. As discussed above in Section 3.5.4 and 3.5.5, the DEIS analysis of the Project's impacts to air is fatally flawed and cannot be relied upon as a basis to impute a lack of impacts to human health. The Niagara Facility Draft ASF Permit cited in the DEIS as a demonstration of compliance was issued for a separate facility and is based on outdated regulations. As such, the air emissions calculations fail to include significant sources of emissions and provides no mitigation of the same. Furthermore, the Niagara Facility Draft ASF Permit contains material inconsistencies with regards to emissions from equipment to be utilized-and underestimates the Project's PTE which results in an underestimation of the Project's air impacts.

With regard to impacts to human health from odors, the DEIS relies both on the Neu-Velle Odor Study and on a twenty three year old NIOSH report which determined that there was insufficient evidence of an association between lung cancer and asphalt fumes while paving. Reliance on these documents cannot substantiate the assertion that the Project will not impact human health from odor emissions. As explained above in Sections 3.11.4.2 and 3.11.5.2, the Neu-Velle Odor Study is inapplicable to the proposed Project as it was drafted for the Niagara County Facility instead, as asserted in the NYSDEC Comments on the DEIS.

As to the 2000 NIOSH Report, the Board finds this study of limited relevance. First, it does not involve a study of residents who live in close proximity to an asphalt plant where exposure may, on one hand, be less direct, but on the other, may be longer (both in terms of hours exposed per day and number of years exposed). Second, this report does not conclude that exposure to asphalt fumes doesn't cause cancer but rather, that there was insufficient evidence to support a finding that exposure to asphalt fumes while paving does increase the risk of cancer. Finally, the potential uncertainty of the carcinogenic nature of asphalt fumes does not obviate all potential health impacts of asphalt fumes as the inhalation of asphalt fumes has been associate with nausea, dizziness, skin and eye irritation, and headaches. *See Asphalt (Bitumen) Fumes*, OSHA (https://www.osha.gov/asphalt-fumes).

With respect to the Project Sponsor's reliance on the Neu-Velle Noise Report study as definitive evidence that noise from the Project will not harm human health, see FEIS Section 3.11 above for a detailed explanation of the deficiencies with the Neu-Velle Noise Report .

In terms of potential impacts to human health from water runoff see Sections 3.4.4 and 3.4.5 above regarding the deficiencies of the DEIS's analysis of impacts to water. In summary, these deficiencies include a failure to provide meaningful analysis of potential impacts except to state that the Project will operate in compliance with a SPDES permit, the extent to which the same has been obtained cannot be reasonably inferred in the DEIS.

Furthermore, as required by the Final Scoping Document, the DEIS was required to analyze potential downstream affects from run-off flowing to, in particular, the Forest Glen Neighborhood. The DEIS is absent such analysis in aberration of the Final Scoping Document as required by SEQR. In its place, the DEIS only states that such information can be obtained from the NYSDEC as "[t]hey can also answer any question relative to the drainage and its effects on any body of water in NYS." *See* DEIS at p. 30. Given the dearth of information provided in the DEIS, the Lead Agency cannot reasonably conclude that the Project will not result in adverse impacts to human health from water runoff. Furthermore, unilateral jettison of the burden to provide any analysis or information of an issue explicitly identified in the Final Scoping Document is antithetical to SEQR and the hard look it requires.

Finally, Section 4.5.9 of the DEIS is also absent of any analysis of potential mitigation measures to reduce impacts to human health that may result from the Project, as was required under the Final Scoping Document. Instead, the DEIS rationalizes this absence based on the assertion that no impacts will occur. However, as explained above, the DEIS is deficient with regard to its analysis of impacts to noise, odor, air, and water and cannot serve as a basis to conclude that there are no potential adverse impacts to human health. As such, the analysis in DEIS Section 4.5.9 is deficient.

3.12.5 Further Deficiencies Identified During the DEIS Public Comment Period

Regarding impacts to human health from air emissions, as discussed in the EA Engineering Technical Memo, the DEIS analysis of the same is based on an inapplicable draft permit based on outdated regulations. As a result, the air emission impacts from the Project are significantly underestimated. Further, EA explains, the DEIS fails to account for blue haze emissions of volatile organic compounds regulated under NYSDEC regulations and the Town Code. Finally, the EA Engineering Technical Memo explains that, after properly accounting for all required emission sources from of fugitive particulate emissions and dust emissions from non-road mobile sources, truck traffic, solid material stockpiles, and transfer operations, the Project will likely have a significant impact to M-2 district receptors in derogation of the Town Code § 280-133(C)(1)(b). As such, the DEIS's analysis of potential impacts to human health from air emissions is deficient.

With respect to health impacts from odor, the EA Engineering Technical Memo explained that the Neu-Velle Odor Study relied on in the DEIS failed to use appropriately conservative assumptions and wholly failed to account for a significant portion of odor emissions emanating from the proposed 25,000 gallon asphalt storage tank, summarily dismissing the source because they are "difficult to quantify." However, as indicated in the EA Engineering Technical Memo, these emissions can be quantified and are likely to be high. Therefore, EA concluded, failure to account for these emissions renders any analysis of impacts from odor from the Neu-Velle Odor Study unreliable. Additionally, the EA Engineering Technical Memo explained that the H2S modeling cited in the DEIS provided no verifiable reference for its calculations and that once appropriate references were applied, the Project presented problematic impacts from H2S emissions. Therefore, failure to adequately model and analyze odor impacts renders the DEIS's analysis of health impacts from odor deficient and unreliable for the purpose of SEQR review of the Project.

Regarding noise, Section 3.11.5.1 further describes the significant deficiencies of the DEIS analysis of noise impacts which formed the basis of the conclusion in the DEIS that the Project would not adverse human health impacts from noise. Notably, the GHD Report determined that the Neu-Velle Noise Report utilized in the DEIS was unreliable because it failed to use adequate noise measurements in its analysis and failed to account for the site specific differences between the proposed Project and the surrogate facility used for comparison. Furthermore, GHD explained that the DEIS and concomitant reports failed to account for significant sources of noise including predicted heavy truck traffic to and from the Site. The DEIS is therefore deficient regarding its analysis of impacts to human health from noise due to the material failings of the DEIS's analysis of noise impacts as described above.

As to impacts to human health from water run-off, the GHD Report explained that what information that was provided in the DEIS regarding analysis of impacts to water is materially flawed. GHD found significant deficiencies with regard to the Project Sponsor's analysis of stormwater impacts from the Project including inadequacies in the Project's stormwater plan and design, and discrepancies in the SPDES MSG Permit it was able to unilaterally identify for the Site.

Lastly, though the DEIS refers to the NYSDEC for further information, the NYSDEC Comments on the DEIS noted certain discrepancies and inadequacies with regard to SPDES compliance which the DEIS appeared to defer for later consideration. The NYSDEC Comments on the DEIS stated::

> reviewing the 'whole action' is an important principle in SEQR; interrelated or phased decisions should not be made without consideration of their consequences for the whole action, even if several agencies are involved in such decisions. Each agency should consider the environmental impacts of the entire action before approving, funding, or undertaking any specific element of the action (see 617.3(g) regarding "Actions").

Thereafter, the NYSDEC requested that the Project Sponsor remedy the discrepancies. Furthermore, the NYSDEC suggested the following mitigation measures which are not discussed in the DEIS should be considered and/or adopted to reduce potential odor impacts from the Project:

- Use a masking agent to neutralize and mask odors to prevent potential odor complaints.
- When liquid asphalt cement is added to the storage tank, all vapors displaced from the tank should be ducted back into the delivery truck and returned to the asphalt supplier instead of releasing them into the environment. If this is not possible, then the displaced vapors should be captured and minimized, eliminated, or destroyed using a tank vent condenser, activated carbon filter, or suitable control device so there are no odors from liquid asphalt tank fillings.
- In light of those deficiencies as described in this section and those cited above, the DEIS and its analysis provided therein does not provide an adequate basis for concluding there will be no impacts to human health from water run-off.

Because of the above described failings, discrepancies, and the significant dearth of information required to be provided under the Final Scoping Document, the DEIS analysis of impacts to human health is deficient.

Section 3.13: DEIS Deficiency: Consistency with Community Plans

3.13.1 Deficiency as Identified by the Board

Section 4.5.10 of the DEIS, Consistency with Community Plans: The Board believes that the DEIS does not contain a sufficient analysis of how the Project would impact surrounding neighborhood developments. In the Board's opinion the DEIS does not adequately consider mitigation measures described in the Final Scoping Document to reduce the potential impact to community plans, such as common sense consideration of location and screening of equipment on site, methods to reduce noise/odor/air impacts to surrounding properties, and the potential for revisions to the Project to ensure greater consistency with the goals and objectives in the Town's Comprehensive Plan.

3.13.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

A. Potential Impacts

1. Consistency with Zoning regulations: based on the results of the air quality analysis (and additional study) and the analysis of noise and odor impacts, describe how the project meets the requirements of Section 280-133 (c)(1)(b) of the M-3 Zoning district. The project sponsor shall furnish studies, completed by technical experts, which demonstrate that no atmospheric pollutants, noise, and/or odor will be disseminated into adjacent R, C, M-1, and/or M-2 zoning districts. Note that the nearest such districts are located adjacent to the site.
2. Describe how the project meets or does not meet the requirements of the Camp Road Overlay district.
3. Describe how the project is consistent or inconsistent with the Town of Hamburg Comprehensive Plan. Consult with the Town of Hamburg Planning Department on the interpretation of the Plan recommendations. Both ways the project is consistent and ways it is inconsistent should be discussed.
4. Describe how the project will impact the "Goals and Objectives/Vision" of the Village of Hamburg's Comprehensive Plan.

B. Potential Mitigations to Be Analyzed

1. Location and screening of the equipment on the site.
2. Methodologies to reduce noise, odor, and air quality impacts to surrounding properties.
3. Revisions to the project to meet the Goals and Objectives/ Vision of the Town's and Village's Comprehensive Plans.

3.13.3 Summary of Relevant Content in the DEIS

DEIS Section 4.5.10, states that the M-3 district prohibits any use that "normally results" in dissemination of atmospheric pollutant, noise, odor into any R, C, M-1 or M-2 District. It goes on to state that studies illustrate the proposed Project will not "normally result" in the dissemination of atmospheric pollutants, noise, or odor into the adjacent properties and references the Niagara Facility Draft ASF Permit issued for the now abandoned Niagara County Facility.

The DEIS also states that the project meets the requirements of the Camp Road Overlay District, and that the district does not replace the use regulations in the underlying district. It references that it meets the underlying zoning but does not discuss the specific requirements or purpose of the overlay district.

The DEIS briefly discusses the 2007 Comprehensive Plan (the "**2007 Plan**") and references Map 2-2 (it must be noted that this is an existing conditions land use map and not a future zoning/use map) and the industrial goals of the 2007 Plan. It goes on further to reference the Village Comprehensive Plan, which includes light industrial mix use adjacent to the Site. The DEIS as revised August 2023 acknowledges the Town's updated Comprehensive Plan adopted in January 2023 and its recommendation to eliminate industrial zoning near the Village of Hamburg. The DEIS nevertheless concludes that the Town's Comprehensive Plan supports the Project, asserting that the existing concrete plant on the Site is a permitted non-conforming use.

The DEIS further states that "[i]t is interesting to note that while asphalt is used extensively throughout the Town, the Comprehensive Plan makes no provision for zoning within the Town to allow its production." The DEIS comments that "[t]he elimination of approved zoning throughout the Town for such a high use product is certainly questionable and not in conformance with the goals outlined in the Comprehensive Plan."

No revisions, mitigations or alternatives were provided in the DEIS, stating that none are necessary, but it does offer that the silos could be painted or additional vegetation could be added.

3.13.4 Analysis of DEIS Deficiency

The Final Scoping Document states that the DEIS must "[d]escribe how the project is consistent or inconsistent with the Town of Hamburg Comprehensive Plan" and that in doing so, the Town and Board must be consulted regarding interpretation of comprehensive plan recommendations. The DEIS in Section 4.5.10, fails to adequately analyze the Project's consistency with the Town's updated land use policies as

expressed in the Comprehensive Plan adopted in January 2023, and instead focuses the majority of its analysis on the outdated prior 2007 Plan.

The Board issued the Final Scoping Document on April 29, 2020.After a period of more than two years during which the Town was working on updates to its Comprehensive Plan (including a draft document completed and posted on the Town's website for public review during the summer of 2022) the Applicant submitted the Initial DEIS to the Board in August of 2022. Despite the Town's active process to evaluate its land use policies and the publicly available draft documents, the Initial DEIS offered only a cursory evaluation of the Project's consistency with the Town's Comprehensive Plan and made no reference to the Town's Comprehensive Plan update process or draft documents available for review. Though the Project Sponsor made minor revisions to the DEIS as submitted in April 2023 (*see* DEIS at pp. 74-76) to briefly mention the Town's adoption of the updated Comprehensive Plan in January 2023, the DEIS's analysis of the Project's consistency with that plan is conclusory. The DEIS simply lists relevant sections of the Comprehensive Plan, states that all sections were analyzed, and concludes the Project would not impact surrounding properties.

The Camp Road Overlay District recommendations applicable to the Site include the consideration of new mixed use zoning designations and the elimination of the industrial zoning in the areas along Camp Road. *See* Comp. Plan p. 25. The Comprehensive Plan's key recommendations for the area in the vicinity of the Site include "transition/border areas with the Village need proper planning. Old industrial areas need to be targeted for new and appropriate development," and further recommendations that industrial zoning along Camp Road be removed from the Zoning Map particularly near the Village. *See* Comp. Plan., p. 28.
The Town's Comprehensive Plan appends the "Hamburg Gateway Revitalization Design Project" which illustrates a specific plan to change the industrial areas formerly known as the Reifler Concrete Plant (*i.e.* the Site) and surrounding lands to a mixed-use development area. The DEIS does not evaluate the Project's consistency with such recommendations, nor does the DEIS address how the Project would match up with thosespecific directions to evaluate alternative and lesser intensive zoning district designations in place of heavy industrial uses on and around the Site.

Furthermore, the Town Board adopted Local Law 2-2023 on January 23, 2023 toexpressly prohibit bituminous processing facilities (like the Plant) at the Site (and anywhere else in the Town). The prohibition on bituminous processing facilities in the Town was adopted prior to Board's acceptance of the DEIS for public review in May 2023. Though the Project Sponsor contends that the Project is an expressly permitted use pursuant to the former Zoning Code Section 280-133(A)(10), that subsection regarding bituminous processing facilities was repealed by Local Law 2-2023. Therefore, under the Town's current Zoning Code, the Project's proposed use as a hot mix asphalt plant is prohibited at the Site.

Moreover, based on the Project's proposed use as a highly intensive industrial activity, with outdoor operations and the potential for air, odor, and noise impacts to surrounding areas, as described in Sections 3.11.4 & 3.11.5 above, the DEIS should have provided specific analysis of how the Project would meet the objectives of the Village's Comprehensive Plan and the kinds of enclosed, small-scale light industrial uses the Village envisions for the area. The DEIS's analysis of the Project's consistency with community plans is deficient because it fails to adequately address these land use plans and regulations or provide evaluation of potential mitigation measures. For additional discussion regarding the Project's inconsistency with community plans, see Section 4 of the FEIS, below.

3.13.5 Further Deficiencies Identified During the DEIS Public Comment Period

No further deficiencies were identified during the DEIS Public Comment Period.

Section 3.14: DEIS Deficiency: Evaluation of Mitigation Measures

3.14.1 Deficiency as Identified by the Board

Section 5.0 of the DEIS, Evaluation of Mitigation Measures: As a general matter with respect to the DEIS, the Board believes there is not a sufficient analysis of the mitigation measures as identified for analysis in the Final Scoping Document. In response to the Listed Deficiencies as further clarified by the Deficiency Correspondence, the Project Sponsor respectfully declined to include additional analysis of mitigation measures, and noted that its analysis in the DEIS as submitted has identified no impacts from the Project and as such no mitigation need be analyzed or required.

3.14.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

The DEIS should include a discussion of the identified potentially significant adverse environmental impacts and a description of the proposed mitigation measures to be implemented to minimize the identified potentially significant impacts to the maximum extent practicable. Since the mitigation measures are to be addressed in the discussion of the identified environmental impacts in Section 4 of the DEIS, this section can act as a summary of those results. This section also provides an opportunity to discuss all of the mitigations and how some may help to minimize the impacts in several environmental categories.

3.14.3 Summary of Relevant Content in the DEIS

Section 5.0 of the DEIS states that of the thirteen subsections of the DEIS analyzing potential environmental impacts, just two have identified necessary mitigation measures. The first, Section 4.5.2 regarding air quality identifies mitigation measures that are a requirement of the Niagara Facility Draft ASF Permit, including: maintenance of a high efficiency baghouse and low NOx burner, limitations on tonnage production per year, dust mitigation, paving truck traffic roadways on site for further dust mitigation. The second mitigation measures discussed regarded Section 4.5.4 Aesthetic Resources, wherein the DEIS stated that although there will be no significant impacts to aesthetic resources, practical considerations of mitigation measures could include additional vegetative screening and camouflage paint to enhance the Property and Project aesthetics. It further states that because there will be no other adverse impacts in any other category, no mitigation measures are required. The section then provides a table summarizing mitigation measures for each impact category.

3.14.4 Analysis of DEIS Deficiency

The Final Scoping Document requires Section 5.0 to be a summary discussion of the mitigation measures identified with regard to each environmental impact throughout the DEIS. However, as the Project Sponsor concluded that the Project would not have adverse environmental impacts (other than air quality as noted above), the DEIS is generally devoid of necessary mitigation measures. As demonstrated throughout this FEIS Section 3.0, however, the Project Sponsor's failure to comply with the Final Scoping Document throughout its analysis of potential impacts, coupled with limited and flawed analysis of critical areas of environmental concern, render this Section 5.0 of the DEIS deficient.

3.14.5 Further Deficiencies Identified During the DEIS Public Comment Period

3.14.5.1 Air & Odor

The DEIS contained minimal discussion of mitigation measures necessary to limit impacts from the Project to air quality and from odor. In its comments to the DEIS, NYSDEC provided a list of proposed air and odor mitigation measures it deemed appropriate for the Project upon reviewing the DEIS. These include the following:

- Find an alternate location for the proposed asphalt plant which is not located near sensitive receptors, such as long-term care facilities and schools, or population centers.
- Use a different plant technology with lower emissions.
- Require regularly scheduled maintenance of high-efficiency baghouse and low NOx burner.

- Establish a lower rate of production and/or limitations on tonnage of asphalt production per year.
- Limit the hours the plant can operate. Avoid overnight hours when wind conditions may be calm.
- Establish dust mitigation through a dust control plan.
- Pave truck traffic roadways on-site for further dust mitigation.
- Heat to the minimum necessary temperature to reduce air emissions.
- Emissions from heating each liquid asphalt cement storage tank should vent through a tank vent condenser, activated carbon filter, or suitable control device to reduce volatile organic compound (VOC) emissions.
- When liquid asphalt cement is added to the storage tank, all vapors displaced from the tank should be ducted back into the delivery truck and returned to the asphalt supplier instead of releasing them into the environment. If this is not possible, then the displaced vapors should be captured and minimized, eliminated, or destroyed using a tank vent condenser, activated carbon filter, or suitable control device so there are no odors from liquid asphalt tank fillings.
- Liquid asphalt should be loaded into the tank(s) at a rate that ensures proper operation of the pollution control equipment.
- Perform an annual tune-up of the liquid asphalt tank heating system and burner.
- Use electricity to heat the liquid asphalt instead of a combustion device.
- Perform an annual tune-up of the aggregate dryer/mixer burner.
- Perform a visual inspection of the baghouse tubesheet and internal structure within 30 calendar days after plant start-up and annually thereafter.
- Perform a black light inspection of the baghouse internals at the beginning of each operating season and within 30 calendar days after plant start-up. Record the inspection findings and any corrective actions taken. These records should be maintained for the life of the permit.
- Replacement bags, parts, and tools should be kept onsite, with the quantity adequate to replace at least 20% of the bags at a time.
- Inspect all ductwork for leaks and perform needed maintenance prior to operating during the asphalt pavement production season.
- The particulate matter (filterable, PM) plus condensable particulate matter (CPM) from the aggregate dryer emissions should not exceed 0.015 grains per dry standard cubic foot. This limit is achievable by new asphalt plants and would demonstrate that the facility is minimizing emissions from the aggregate dryer.
- The oxides of nitrogen (NOx) emissions from the aggregate dryer low NOx burner should not exceed 40 parts per million @ 3% O2 or 0.048 lbs/million Btu.
- PM, CPM, and NOx compliance testing should be conducted within 180 calendar days of commencing operations.
- Enclose aggregate and hot mix asphalt conveyors and silos.
- Emissions associated with the drag conveyor, and/or hot screens, pug mill, and hot mix asphalt storage silo filling operations should be captured and returned to

the drum mixer burner or controlled with coalescing filters or another acceptable method.

- The distance between hot mix asphalt and aggregate drop points should be minimized and/or shrouded.
- Collect and control blue smoke emissions from loading-out hot mix asphalt.
- Require all trucks loaded with hot mix asphalt to cover the hot mix asphalt with a cover rated for the high temperature of the asphalt to reduce emissions from the truck on-site and off-site.
- Control dust on the site roadways and plant property by applying water, calcium chloride, or other acceptable and approved fugitive dust control compounds. Dust suppressants should be applied often enough to prevent dust emissions from leaving the plant property. Tracking dust onto public roadways should be minimized using the same methods along with any other reasonably available methods.
- All paved areas should be swept and watered, as needed, to reduce emissions

3.14.5.2 Noise

Given the risk of potential noise impacts from the Project, GHD recommends the following noise mitigation measures:

- Administrative controls on hours of operation.
- Limitations on hourly volumes of heavy trucks during day and night periods.
- Utilizing stockpiles as noise barriers.
- Silencers on process stacks and emission points.
- Physical noise barriers such as engineered noise walls or concrete block ensuring that line of sight is blocked to the most sensitive receptor location.
- If any updated noise study recommends a proposed noise barrier it should evaluated for proper placement on site to determine the required height/length for optimal noise reduction and should be required as a condition of site plan approval with the planning authority along with a post construction clearance letter in which a qualified acoustical engineer has confirmed that it was constructed to the segment dimensions (length and height) as detailed in an updated Noise Impact Study.
- Enclosing processing equipment in buildings (example - enclosing noisy equipment could result in an 8-10 dB noise level reduction, a 9-inch brick wall can reduce SPL by 45-50 dB).
- Additional considerations could be made with respect to noise controls for back-up beepers ('shushing,' ambient sensing). GHD recommends that these controls be made a requirement for all applicable outdoor equipment/vehicles, to the extent feasible.

Section 3.15: DEIS Deficiency: Alternatives to be Evaluated

3.15.1 Deficiency as Identified by the Board

Section 6.0 of the DEIS, Alternatives to be Evaluated: The Board respectfully asserts that the DEIS as submitted does not sufficiently evaluate alternative technology or alternative layout for the Project, nor does it include a sufficient discussion of alternative sites considered--all as specified in the Final Scoping Document. In response to the Deficiency Correspondence, the Project Sponsor has indicated that the DEIS (on pages 79-84, 86, and 87) fully analyzes the foregoing and has declined to include additional analysis.

3.15.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

1. No Action Alternative: describe how the identified potential impacts would or would not be impacted by the project not occurring.
2. Alternative Technology: identify and describe how the use of alternative asphalt technology (such as warm asphalt) would change the potential impacts analyzed in the DEIS.
3. Alternative Layouts: identify and describe how alternative layouts/location of equipment on the site could change the impacts analyzed in the DEIS.
4. Alternative uses of the site; describe the impacts that could result if the site is developed for other allowable uses or the use previously proposed by the applicant.
5. Alternative Sites; In accordance with the restrictions/requirements of SEQR.

3.15.3 Summary of Relevant Content in the DEIS

The DEIS in Section 6.0 Analysis of Alternative to be Evaluated provides narrative explanations as to why there are no other viable alternatives for the Site or Project. In subsection 1. No Action Alternative, the DEIS explains that there are six hot mix asphalt manufacturing facilities within 30 miles of the Site, with the closest being 13 miles away. the subsection states that failure to approve the Project would result in increased GHG emissions from vehicle travel as demand for asphalt in the Town would continue to be served by the six facilities mentioned above rather than by a closer source.

In subsection 2. Alternative Technology, the use of warm mix asphalt is considered as an alternative to the proposed hot mix asphalt process. The DEIS explains that warm mix asphalt is a process that utilizes certain additives which allow manufacturing of asphalt at lower temperatures than hot mix asphalt, resulting in a decrease in fuel consumption. However, the subsection asserts without support, that demand is currently too low to support warm mix asphalt production.

In subsection 3. Alternative Layouts, the DEIS explains that the specific proposed layout was chosen because it minimizes Projects to surrounding receptors and tenants. It goes on to explain how the various attributes of the layout minimize impacts but does not provide any discussion on alternative layouts.

In subsection 4. Alternative Uses of the Site, the DEIS provides an overview of purported alternative uses the Site could be subject to in the alternative including use as a coal or lumber yard, concrete plants, storage of petroleum, industrial manufacturing, processing of bituminous products, and adult uses.

Lastly, in subsection 5. Alternative Sites, the DEIS states that alternative site analysis is not required under SEQR because the Project Sponsor does not own or control any alternative sites.

3.15.4 Analysis of DEIS Deficiency

The DEIS in Section 6.0 Alternatives to be Evaluated lacks adequate discussion of alternative technologies. The Final Scoping Document requires the DEIS to "identify and describe how the use of alternative asphalt technology (such as warm asphalt) would change the potential impacts analyzed in the [DEIS]." The DEIS provides a brief mention that WMA exists and then summarily dismisses the same as a viable alternative. It provides no actual evidence for its conclusions and provides no meaningful discussion on how the use of WMA would change the potential impacts analyzed by the DEIS. Failure to satisfy these requirements of the Final Scoping Document renders this subsection deficient under SEQR.

Furthermore, the DEIS fails to provide adequate analysis regarding potential alternative uses of the Site. The DEIS provides a brief analysis of potential uses of the Site as it was zoned and as it was envisioned under the prior 2007 Plan. It fails to mention potential uses of the property as envisioned under the new 2023 Plan and the Camp Road Gateway Area initiative. As a result, the DEIS is wanting with regard to adequate analysis of alternative uses of the Site in aberration of the Final Scoping Document, and as such, is deficient.

3.15.5 Further Deficiencies Identified During the DEIS Public Comment Period

In its comment letter on the DEIS, NYSDEC suggested that the Project Sponsor explore alternative locations for the Plant that are not located near sensitive receptors. While this does not rise to the level of a deficiency (since a private project sponsor cannot be required to explore alternative sites that it does not own or control), it is worth noting that NYSDEC believes this may be an inappropriate location for a Hot Mix Asphalt Plant.

Section 3.16: DEIS Deficiency: Cumulative Impacts

3.16.1 Deficiency as Identified by the Board

Section 7.0 Cumulative Impacts: The Board believes that the DEIS does not adequately consider cumulative impacts from the Project because the DEIS confines its analysis of cumulative impacts to only those actions occurring on the project parcel itself. In the Board's opinion as based on The SEQR Handbook's guidance, the DEIS ought to consider impacts from the Project taken together with other projects and initiatives on Site and on adjacent and nearby sites. In response to the Deficiency Correspondence the Project Sponsor declined to further assess cumulative impacts from the Project in relation to other adjacent or nearby developments. The Board invites comment on these different baselines for evaluating cumulative impacts, as well as more general comment on the Project's cumulative impacts.

3.16.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

The impacts of the proposed action in the context of other proposed projects (if any) in the vicinity of the project site. The Town of Hamburg Board, as well as Town of Hamburg Planning and Building Departments, should be consulted in identifying the list of proposed projects within the vicinity. Identify any proposed projects within the vicinity and discuss this projects impact on those projects and whether those project's impacts will exacerbate the impacts of this project.

The existing Burner Oil Company rail loading facility is adjacent to this site (has an Air Facility Registration) and should be addressed in cumulative impacts.

The project site currently consists of two concrete batch plants, concrete storage silos, and a concrete block plant. Concrete product manufacturing has not occurred on the project site recently and some of the concrete production equipment has been previously reported as being sold. The project sponsor needs to discuss whether or not this plant can still operate and whether or not it could operate in the future. If the Applicant states that these operations could re-occur, the applicant will need to analyze these cumulative impacts of operating both types of facilities.

3.16.3 Summary of Relevant Content in the DEIS

The DEIS in Section 7.0 Cumulative Impacts provides general information on past uses at the Site which include one exterior and one interior concrete cement plant, a concrete block plant, a concrete precast operation, and a concrete storage silos. It goes on to state

that of those uses, the interior concrete plant is still operational and that precast products can still be produced at the Site. It states that at the height of the uses of the Site, it generated 200 truck trips per day. Further, the Project and the existing operations at the Site will not need additional utilities, public services, or roadways because the Site was built for larger operations than currently existing or proposed. The DEIS goes on to state that based on the prior uses, the proposed and existing uses are a significant reduction and will not cause cumulative impacts.

Section 7.0 goes on to acknowledge the existing operation of Brenner Oil Company ("**Brenner**") at the Site and the concomitant NYSDEC Air Facility Registration for the Operation. The DEIS describes the Brenner operation as "simply a transfer operation" in which it transloads product from rail cars to 5-6 tanker trucks per day, which it asserts will have "little to no cumulative impact on the existing and past operations of the Project."

3.16.4 Analysis of DEIS Deficiency

The Final Scoping Document required the DEIS to analyze "impacts of the proposed action in the context of other proposed projects (if any) in the vicinity of the project site." As explained in the Listed Deficiencies, the DEIS fails to provide any analysis, or mention, of other existing or proposed projects in the vicinity of the Site. The DEIS considers cumulative impacts from those uses occurring wholly on-Site, and the evaluation of those uses is only in general terms, with no actual data or sources provided. The mere anecdotal analysis of existing on-Site uses, as well as the total lack of consideration or mention of nearby proposed or existing uses occurring off-site, render the DEIS deficient in its analysis of cumulative impacts.

3.16.5 Further Deficiencies Identified During the DEIS Public Comment Period

No further deficiencies were identified during the DEIS Public Comment Period.

Section 3.17: DEIS Deficiency: Growth Inducing Impacts

3.17.1 Deficiency as Identified by the Board

Section 8.0 Growth Inducing Impacts: The Final Scoping Document required an assessment of the Project's impacts on growth and the character of the surrounding neighborhood in the Town of Hamburg, including an analysis of whether the Project would encourage additional industrial uses in the vicinity of the Project site. The Board respectfully believes that the DEIS does not contain such an analysis. Though in response to the Deficiency Correspondence the Project Sponsor maintained that such an analysis is complete and declined to revise the DEIS in response. The Board invites comment on the differences between the Board's and the Project Sponsor's assessment

of the DEIS for inclusion of such analysis, as well as more general comment on the growth inducing impacts associated with the Project.

3.17.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

The proposed action could potentially result in significant impacts on the growth and character of the surrounding neighborhood and the Town of Hamburg. The project sponsor shall also demonstrate how the proposed action will not result in adverse growth inducing impacts. Will it encourage other similar uses on the site and in the area and potentially drive away other less impactful uses in the area (especially those zoned Residential and Commercial). Illustrate where there are any other heavy industrial users in the area.

3.17.3 Summary of Relevant Content in the DEIS

Section 8.0 of the DEIS, Growth Inducing Impacts, explains that the Site is located in an industrial developed portion of the Town which is served by all necessary utilities and does not anticipate requiring expansion or off-site infrastructure improvements. It further states that the Projected is being undertaken in response to demand as a result of increased growth, and therefore, is not anticipated to induce further growth.

The DEIS goes on to state that industrial land in the Town is limited and located in close proximity to the Site and therefore it is unlikely that the Project will induce industrial development because such needs are presently met. Lastly, the section states that the Project will not drive away businesses and residential owners in the area because it will not have environmental impacts as it determined in the DEIS.

3.17.4 Analysis of DEIS Deficiency

The Final Scoping Document requires the DEIS to analyze whether the Project would encourage similar uses on the Site and in the area, and to illustrate where there are other heavy industrial users. As the Listed Deficiencies explains, the DEIS contains no such analysis. The DEIS contains two sentences regarding the potential for the Project to encourage similar uses which state , in sum, that the because there is minimal industrial land in the Town, which is close in proximity to the Site, "it is unlikely the project will induce additional development." There is no detailed analysis to support this assertion and no study or data to obviate the anecdotal nature of the statement. SEQR requires lead agencies to take a hard look at potential environmental impacts prior to rendering a decision on a Project. The failure to provide any meaningful analysis renders the Section deficient.

3.17.5 Further Deficiencies Identified During the DEIS Public Comment Period

No further deficiencies were identified during the DEIS Public Comment Period.

Section 3.18: DEIS Deficiency: Appendices

3.18.1 Deficiency as Identified by the Board

Appendices: The Final Scoping Document suggested the DEIS include certain documents as appendices where such documents are site-specific and not readily available to the public. Upon the absence of such documentation from the DEIS as submitted by the Applicant, the Board requested specific documents as follows: Minutes of Meetings of the Town of Hamburg Board relative to the Project; Project Sponsors corrected Air Permit Application Materials; NYSDEC Notice of Incomplete Application for Air Permit; Current SPDES MSGP and other existing site specific permits; and an engineer's report of facility size and layout. In response to the Deficiency Correspondence the Project Sponsor declined to include such documents as appendices to the DEIS and asserted that where documents would be subject to a Freedom of Information Law request (e.g. board meeting minutes or NYSDEC permit information) they need not be provided with the DEIS.

3.18.2 Final Scoping Document's Requirement for the DEIS

The Final Scoping Document stated:

The DEIS shall provide enough detail to enable the reader to understand, interpret, and evaluate the existing conditions, potential impacts, mitigation measures, and alternative project scenarios. The appendices shall contain copies of studies and reports that supplement and support the narrative in the DEIS. The methodologies and results of the studies and technical reports shall be summarized and explained in the DEIS. Only site-specific documents that are not readily available to the public should be included as appendices to the DEIS. The following are examples of documents that could be included in the appendices:

- All Application Materials;
- Parts 1, 2 and 3 of the Full Environmental Assessment Form ("EAF");
- Positive Declaration;
- Final Scoping Document;
- Correspondence Related to the Project (Town, agency and applicant);
- Minutes of Meetings of the Town of Hamburg Board;
- Traffic Impact Study;
- Odor Study;
- Air Quality Study and the corrected Air Permit Application materials

- NYSDEC Notice of Incomplete Application (Air Permit)
- Noise Study;
- Current State Pollutant Discharge Elimination System (SPDES) Permit and any other
- existing permits;
- Engineer's Report of Facility Size and Layout; and
- Any other report prepared or referred to, related to any matter herein.

3.18.3 Summary of Relevant Content in the DEIS

The DEIS contains the following appendices:

- Appendix A Full Environmental Assessment Form (EAF)
- Appendix B SEQR Positive Declaration
- Appendix C Final Scoping Document
- Appendix D U.S. Army Corps of Engineers Federal Wetlands Correspondence
- Appendix E NYSDEC Draft Air State Facility Permit
- Appendix F NYSDEC Air State Facility Permit Application (Air Modeling)
- Appendix G Additional Air Modeling – Hydrogen Sulfide
- Appendix H NYSDEC Northern Long-Eared Bat Occurrences by Town
- Appendix I New York State Offices of Parks, Recreation, and Historic Preservation Findings Letter
- Appendix J Town of Hamburg Historical Society Letter
- Appendix K Village of Hamburg Historic Preservation Commission Letter
- Appendix L Traffic Impact Study
- Appendix M New York State Electric and Gas Letter
- Appendix N Noise Analysis
- Appendix O Odor Analysis
- Appendix P Climate Change Analysis

3.18.4 Analysis of DEIS Deficiency

The Final Scoping Document Stated that "[t]he appendices shall contain copies of studies and reports that supplement and support the narrative in the DEIS" and that "site-specific documents that are not readily available to the public should be included." It then provided a list of suggested documents to include as appendices, including:

- Minutes of relevant meetings of the Town of Hamburg Board;
- The NOIA;
- The current SPDES permit issued for the Project; and

- An Engineer's Report of Facility size and layout.

The DEIS fails to provide these documents, which were also requested by the Board in the Listed Deficiencies. These are critical documents needed to support assertions made in the DEIS with regard to potential impacts of the Project. They are also not readily available to the public as discussed in the Final Scoping Document. Without these documents, the Board is unable to verify conclusions of the DEIS which rest on the applicability or relevance of these documents. As such, the Appendices to the DEIS are deficient and not incompliance with SEQR requirements.

3.18.5 Further Deficiencies Identified During the DEIS Public Comment Period

No further deficiencies were identified during the DEIS Public Comment Period.

Section 4.0

Corrections, Revisions and Supplements to the DEIS

Section 4.1: Executive Summary

This FEIS Section 4.1 replaces Section 4.2 of the DEIS in its entirety.

The following serves as the Executive Summary of the DEIS. {Note: The claims of Project Sponsor made in the DEIS and summarized herein are intended as a summary of the DEIS only and do not represent the views of the Board or serve as a summary of the FEIS nor the FEIS's conclusions.}

4.1.1 DEIS Section 1.0 Introduction

The DEIS Section 1.0 Introduction identifies A.L. Asphalt Corporation as Project Sponsor for the proposed construction and operation of a hot mix asphalt plant at the Site on 5690 Camp Road. The Project Sponsor describes the Site as 53-acres in the Town of Hamburg, Erie County. The Project Sponsor's stated intention for the Plant is to supply construction materials to maintain local and state roads, private parking lots, and residential driveways within the Town of Hamburg and other surrounding areas within Erie County.

The DEIS states that the document evaluates concerns related to the Project's impacts to air quality, surface water, ground water plants and animals, aesthetic resources, historic and archeological resources, transportation, energy, noise, odor, and human health/safety, along with associated mitigation measures.

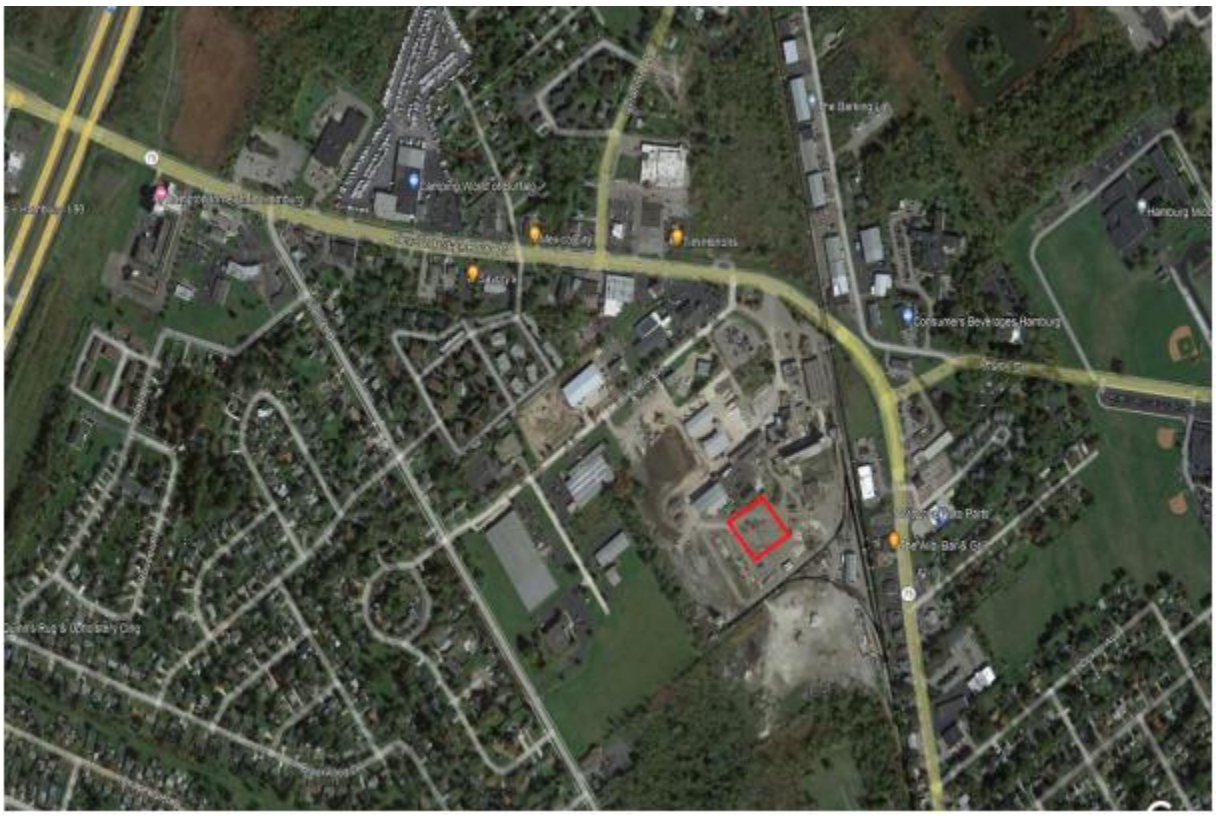
4.1.2 DEIS Section 2.0 Description of the Project & Environmental Setting

The DEIS Section 2.0 Description of the Proposed Action states that the current zoning district of 5690 Camp Road is M-3 District, which the Project Sponsor asserts is a zoning district that allows the processing or treatment of bituminous products. *Contra* Zoning Code Section 280-415 ("No Bituminous Mixing Plant or Bituminous Production Plant is permitted within the Town of Hamburg . . . .").

According to the Project Sponsor's description, the Site consists of office space, concrete redi-mix plant, block plant, precast redi-mix plant, truck repair facility, railroad freight, crude oil storage, and cement and other construction material storage and

manufacturing. There is also vacant land located south of existing industrial buildings on Site, which is previously disturbed with a layer of aggregate material as a base course. The DEIS also describes Brenner Oil Company as an existing tenant on Site.

The DEIS characterizes the Plant as located on the "posterior" portion of the property abutting a berm of trees and green space on the west, a railroad to the southeast and industrial buildings to the north. S*ee* DEIS Figure 1 below.



<u>DEIS Figure 1</u>

The Project Sponsor reports that the main components of the hot mix asphalt plant would utilize less than an acre of the Site with a footprint of 160 ft. x 200 ft. within the vacant land of the property for plant equipment. The proposed Plant would consist of the following various components as described by the Project Sponsor: aggregate piles, aggregate bins, conveyor belts, drag slat, burner/ dryer drum, batching office, storage hoppers/ silos, baghouse, liquid asphalt cement, asphalt storage tank, and heater, with proposed silos at 70 feet above ground level as the tallest component of the prefabricated equipment required for the Plant. The DEIS refers readers to DEIS Figure 2 (Site Plan) for the proposed Plant layout. The DEIS states that the Plant is partially screened from main roadways and completely screened from surrounding residential districts.

The Project is described in the DEIS as accessible by an entrance on Camp Road that is approximately 1,300 ft. from the intersection of Camp Road and Elmview Avenue. The DEIS describes an existing private roadway which runs throughout the Site that is 24 ft. wide and allows for one lane each way for traffic to and from the Site. Six seasonal employees would utilize existing office parking on Site. Material delivery trucks to supply Project operations as well as customer trucks to and from the Site would utilize existing Site roadways and be directed by Project signage to enter and exit the Site on Camp Road to avoid truck traffic on Elmview Avenue.

The DEIS indicates that the proposed Plant is designed to produce 300 tons of hot asphalt per hour and average 100,000 tons of hot asphalt per season but not to exceed 150,000 ton per year, based on seasonal operation from April through November. The Project Sponsor reports that the Plant would operate within normal business hours of 7 AM to 4 PM, Monday through Friday (though in contrast other portions of the DEIS describe up to 12 hours of operation daily), plus the potential for evening, overnight, and weekend operations depending on Plant customers' demands. For instance, New York State Department of Transportation (NYSDOT) and roadway repair projects may demand overnight and weekend operations to correspond to off peak hours when heavily travelled roadways can be cleared for repairs.

Below is a table of the Project Sponsor's anticipated customers:

Job Type	Customer	Approximate Time Frame	Average Tons Per
County Roadways	Erie County Highway Department	April – November	30,000
NYSDOT Roadways	Local Paving Contractor	April – November	50,000
Municipal Roadways	Various Local Town Highway Dept. and/or Paving Contractors	April - November	20,000
Private Residential/ Commercial	Local Paving Contractors	May - October	15,000
Commercial Developments	Local Paving Contractors	April - November	15,000

The DEIS describes surrounding land uses as consisting of various industrial and commercial developments (without regard to residential uses within one half mile of the Site in every direction). The DEIS notes that there are non-contiguous, undisturbed

federal wetlands to the south of the Site, which are meant to act as natural screening for surrounding uses. The Plant location will be within the M-3 Zoning District on Site.

4.1.3 DEIS Section 3.0 Review Pursuant to SEQR

Section 3.0 of the DEIS provides a chronology of the SEQR process from the Project Sponsor's submission of a Site Plan Application to the Board in June 2019, followed by the Board's adoption of the Final Scope on April 29, 2020, and up to and including the Project Sponsor's submission of its initial version of the DEIS on August 5, 2022.

The DEIS describes the Project's classification under SEQRA as an Unlisted Action and describes the Lead Agency notice process undertaken by the Board. In July 2019 the Board issued a notice of intent to act as Lead Agency for the Project's SEQR review to: Erie County Water, Erie County Health, NYS Department of Environmental Conservation, NYS Department of Transportation, and Erie County Department of Environment & Planning.

The DEIS notes that thereafter on August 27, 2019, AL Asphalt's counsel notified the Town that it had classified the Proposed Action improperly as Unlisted, stating the proposed action should be classified as Type II pursuant to 6NYCRR617.5(c)(9) because the Project Sponsor reasoned that under SEQR any structure or facility with less than 4,000 sq. ft. of gross floor area that does not involve a change in zone or a use variance is to be classified as Type II.

In November 2019 the Board prepared Parts 2 and 3 of the FEAF for the proposed Project (*see* DEIS Appendix A), and issued a Positive Declaration (*see* DEIS Appendix B) that identified the following potentially significant environmental impacts:

1. Transportation
2. Emissions and Human Health
3. Noise and Odor
4. Aesthetic and Community Character

4.1.4 DEIS Section 4.0 Content of the DEIS

The DEIS states that it presents detailed information about the proposed Plant and its effects within The Town of Hamburg, including studies and permit applications from various experts.

DEIS Section 4.2 provides a summary chart of the potential adverse impacts and associated mitigation considerations that are examined in the later subsections of the DEIS Section 4.5, as follows: impacts to surface water, groundwater resources, and flooding; air quality; plants and animals; aesthetic resources; historic and archeological resources; transportation; energy; noise; odor; human health/ safety; and consistency with community plans and character of the neighborhood, solid waste management, and climate change.

The DEIS Section 4.3 evaluates the community need and potential benefits associated with the Project. The DEIS notes that the Plant would meet a community need because 94% of paved roads in America use hot mix asphalt for construction and repairs. The Project's central location would provide a community benefit by reducing travel time to regional job sites to reduce emissions. Other benefits of the Project include: increased sales tax revenues from Plant sales to private customers; increased value of the Site to drive up property tax revenues for the Town and Hamburg School District; the creation of six seasonal jobs and additional subcontractor opportunities for trucking companies to transport material from the Plant to job sites. The DEIS states that there would "be little, if any, adverse impacts to the environment and public. There are no additional municipal services required but there will be increased tax revenue, reduced cost for local road construction for both public and private sector through decreased truck time and hauling distance, and employment opportunities both direct (6) and indirect through local subcontractors. In summary, the proposed Project will have more positive than negative general community impacts.

The DEIS Section 4.4 describes the environmental setting and existing conditions on the Site. The DEIS states that the Site is currently used for industrial manufacturing of concrete and concrete related products. The Project Sponsor indicates that "[t]he existing facility occupies approximately 53 acres of which 43 acres are disturbed and being utilized according to permitted land uses." Existing community and emergency services that serve the Site include Scranton Volunteer Fire Company, and the Hamburg Police Stations for both the Town and Village.

The DEIS states that the Site is already serviced by sufficient water, electric, natural gas and sewer connections. Solid waste disposal would occur as needed by the landowner, and office waste would be disposed of by agreement with a local dumpster company. The existing industrial buildings on Site are warehouses with approximately 30 industrial floodlights mounted around the buildings' exteriors (*c.f.* DEIS Section 4.5.8 describing 11 commercial floodlights on Site) and 4 freestanding parking lot lights.

The Site does contain any historical, archaeological, or cultural resources and there are no such resources within ½ mile of the Site. There are no federal or state wetlands on Site as indicated by a review of the NYSDEC's and the U.S. Army Corps of Engineers' wetlands mapping resources. A 26.38 acre freshwater federal wetland area abuts the Site. There are no mapped floodways or floodplain boundaries in the vicinity of the Site. The NYSDEC resource mapper indicates that there are no endangered, threatened or species of special concern within the property site.

The Site is previously disturbed, prepared to grade, and covered with aggregate. The DEIS states that therefore no further disturbance of grade is necessary to construct the Project. The Project does not involve construction activities that disturb more than one acre, and so would not require a General Permit (NYSDEC Permit No GP.-0-17-004) for the stormwater discharges from construction activities under the State Pollutant Discharge Elimination System ("SPDES").

The Project Sponsor reports that the Site as a whole would be covered by an existing SPDES Multi-Sector General Permit ("Existing MSGP") for stormwater discharges associated with industrial activity on the Site. The DEIS describes that there are current industrial concrete operations on the Site that are proceeding subject to the Existing MSGP as administered by the NYSDEC. The DEIS reasons that the Project's eventual operations would be required to comply with the rules and procedures identified in that Existing MSGP (*i.e.* water quality testing at discharge to identified outlets), and so the Project could proceed without any additional stormwater permitting. The DEIS notes that though some water sprinkling may occur to water down aggregate dust piles, any run off would be contained and routed into existing outlets and would be monitored under the existing MSGP.

The DEIS describes an existing NYSDEC Air Registration Permit # DEC -9-1448-00423/00002 as applicable to the Site for the current and operational Brenner Oil Company, an existing tenant on Site that engages in railyard transfer operations (e.g. moving material from rail care to tanker truck for distribution).

The Site is made up of multiple parcels in the Town of Hamburg in the M-3 General Industrial District and M-2 Light Industrial District under the Town's Zoning Code, and includes a parcel in the Village of Hamburg in a MU-I Mixed Use Industrial under the Zoning Law of the Village of Hamburg. The Plant footprint on Site would be within the M-3 District in the Town. The DEIS also notes that the Site is in the Town's Camp Road Overlay District, and is adjacent to the Village's Mixed Use Industrial District.

Below are the other land uses the DEIS identifies within ½ mile of the Project Site:

- M-2 Light Industrial District (Town of Hamburg)
- C-2 General Commercial District (Town of Hamburg)
- R-1 Single Family Residence District (Town of Hamburg)
- RA Residential- Agricultural District (Town of Hamburg)
- C-3 Office District (Town of Hamburg)
- R-3 Multifamily District (Town of Hamburg)
- LCR Limited Commercial Residential (Village of Hamburg)
- SFR Single-Family Residential (Village of Hamburg)

Below are sensitive receptors that the DEIS identifies within ½ mile of the Site, including, but not limited to, parks, schools, daycares, and doctor's offices:

- Hamburg Middle School Baseball Field
- Hamburg High School Baseball Field
- Elderwood at Hamburg
- Encompass Animal Care and Health
- Camp Road Animal Clinic
- Maureen Casey Pediatric Dentistry
- Woodbridge Learning Child Care
- Neighborhood Health Center – Southtowns
- Donald W. Robinson MD, Family Practice
- Hamburg Healing Center
- Melgar Luis MD, Asthma and Allergy Center
- Steven Herman MD, Family Practice

The DEIS characterizes the existing neighborhood character and environmental setting that immediately surrounds the project Site as industrial manufacturing, various commercial operations, including car repair/collision shops, railway facility, car washes, restaurants/ bars and various professional offices. The DEIS indicates there are residential neighborhoods in both the Town and Village.

The DEIS states that the Village of Hamburg Comprehensive Plan was adopted March 22, 2022 (see DEIS at p. 27) and further states that the Town of Hamburg has yet to adopt a new and updated comprehensive plan (apparently without regard to the Town's Comprehensive Plan adopted January 2023). The DEIS asserts that the Town's applicable M-3 Zoning regulations allow the processing and treatment of bituminous products as a principal permitted use on Site under Zoning Code 280-133(A)(10). *But see* Local Law No. 2-2023 adopted January 23, 2023 (repealing Zoning Code 280-133(A)(10)).

The DEIS identifies limitations on uses in the M-3 District identified at Zoning Code Section 280-133(C):

1. No use of land, building, or structure shall be permitted, the operation of which normally results in any:
    a. Fire or explosive hazard beyond the boundaries of the district in which such use is located. Any approved use shall conform with the New York State Uniform Fire Prevention and Building Code and the Town of Hamburg Fire Prevention Code, Chapter 113.
    b. Dissemination of atmospheric pollutant, noise, or odor into any R, C, M-1 or M-2 District.
    c. No vibration shall be registered beyond the property line.
2. No un-neutralized refuse material shall be discharged into sewers, streams, or ditches.
3. All sides and rear lot lines abutting any lot in any R District or a C-1 District shall be fenced or screened in the same manner as the prescribed in the M-2 District. All open storage yards not otherwise limited in this section, including junkyards, shall be fenced to a height of not less than eight feet nor more than 10 feet, as determined by the Planning Board, to screen such storage from adjacent views.
4. Unless otherwise provided, required side yards shall be used only for landscaping and/or the off-street parking of employees', customers', and visitors' cars.

The DEIS indicates that several key sections of the DEIS evaluate potentially significant environmental impacts:

- Air Emissions- Section 4.5.2
- Aesthetic Resources- Section 4.5.4
- Transportation- Section 4.5.6
- Noise and Odor- Section 4.5.8
- Human Health- Section 4.5.9
- Community Character- Section 4.5.11

The DEIS indicates that the Project would not likely impact all other areas of environmental concern, but that such areas would also be included in the DEIS and discussed, as follows:

- Surface Water, Ground Water Resources and Flooding- Section 4.5.1

- Plants and Animals- Section 4.5.3
- Historic and Archeological Resources- Section 4.5.5
- Energy- Section 4.5.7
- Community Plans- Section 4.5.10
- Waste Management- Section 4.5.12

The DEIS concludes that "there will be little, if any, adverse impacts to the environment or public."

Based on the Project description and environmental setting as described by the DEIS, the DEIS Sections 4.5.1 through 4.5.13 evaluate impacts to surface water, groundwater resources, and flooding; air quality; plants and animals; aesthetic resources; historic and archeological resources; transportation; energy; noise; odor; human health/ safety; and consistency with community plans and character of the neighborhood, solid waste management, and climate change as follows:

- DEIS Section 4.5.1 Impact on Surface Water, Ground Water Resources and Flooding concludes that the Project would not have the potential for significant adverse impact to surface water, ground water resources and flooding for two reason: (1) manufacture of hot mix asphalt does not utilize any water in the production process and therefore no water is discharged from the operations; and (2) asphalt cement cools and solidifies at temperatures below 100 degrees, such that it could not penetrate the groundwater. The DEIS states that the Project would utilize the existing aggregate material bins to stockpile materials on Site, and would not alter the grade, clear vegetation, or alter discharges or run off in any way compared to the Site's current uses. *See* DEIS Figure 3 (Aerial View of Aggregate Stockpiles); Figure 4 (Great Lakes Concrete Site Plan). Accordingly, the Project Sponsor states that the Existing MSGP applicable to current operations on the Site would cover the complete Site for Project operations. Thus, the DEIS reasons that the NYSDEC's SPDES authority and the Existing MSGP would ensure adequate water quality in the Town as governed by the NYSDEC to eliminate pollution to the waters of New York. Further, no floodway or floodplain boundaries exist on the Site according to FEMA mapping data. Section 4.5.1 concludes that impacts to water quality are not anticipated from the Site and therefore, no mitigation is necessary beyond compliance with the Site's SPDES permit.

  The DEIS also notes that a 26.38-acre federal wetland located outside of the property boundary with USACE jurisdiction determined wetlands will not be

impacted by the proposed project. Therefore, no wetland mitigation plans are necessary for the proposed project.

- DEIS Section 4.5.2 Impacts on Air concludes that air impacts may occur from point source emissions and/or fugitive source emissions at the Plant. Point source emissions include the dryer drum and the baghouse filter system. Fugitive source emission may occur at aggregate stockpiles, liquid asphalt system, the load out of customers, and filling of storage silos. The DEIS states that certain measures have been adopted in order to limit and prevent fugitive source emissions, such as: moisture control of aggregate stockpiles through a moisture control plan, paving of stone roadways within the Site, and watering any high traffic areas. Particulate matter (PM) are the point source emissions that are associated with the dryer drum. PM emissions are the primary source of emissions produced by hot mix asphalt plants. This proposed Plant would be equipped with a baghouse filter system that eliminates 98+% of PM-10 (particulate matter with aerodynamic diameter of 10-microns) emissions as stated in the working copy of a NYSDEC air permit provided as Appendix E to the DEIS. DEIS Appendix E is a NYSDEC Draft Air State Facility Permit issued for a different asphalt facility on Witmer Road in the Town of Niagara ("**Alternate Niagara Facility**" and "**Niagara Facility Draft ASF Permit**"). The Niagara Facility Draft ASF Permit is based on a 150,000-ton per year production rate for a separate location in Niagara County. For purposes of the Draft Environmental Impact Statement the same air calculations that were prepared in support of the Niagara Facility Draft ASF Permit are re-used in the DEIS's analysis of the Project's potential for air impacts. The Project Sponsor states that this method offers a conservatively high example of emissions since the calculations for the Alternate Niagara Facility are based on shorter setback distances from plant equipment there to the property lines of the Witmer Road site.

  The DEIS's air analysis also relies on DEIS Appendix F, which is an Air State Facility Permit Application and associated emissions calculations (*i.e.* air modeling) prepared for the Alternate Niagara Facility at the Witmer Road site. Appendix F is hereinafter the "Alternate Niagara Facility ASF Permit Application."

  The Alternate Niagara Facility ASF Permit Application prepared for the Alternate Niagara Site includes calculations of emissions of criteria pollutants (carbon monoxide (CO), nitrogen oxides (NOx), particulate matter (PM) (I.e. baghouse emissions), sulfur dioxide (SOx), and hazardous air pollutants (HAP),

Volatile Organic Compounds (an ozone precursor) and carbon dioxide equivalents (CO2e) representing greenhouse gas emissions. The Appendix F air modeling calculations were prepared for combustion of natural gas in the dryer drum and PM emissions from baghouse dust collector. In addition, fugitive source air calculations were also prepared for silo filling and customer load-out.

The DEIS states that although the Alternate Niagara Facility ASF Permit Application is based on the Alternate Niagara Site, the Applicant intends to revise and resubmit an application to the NYSDEC for an Air State Facility Permit based on the Project's proposed site plan and the Site location in the Town of Hamburg. All air calculations would reportedly remain the same despite the different locations because the Project Sponsor asserts that the proposed equipment is the same for both sites. All air calculations in support of the Niagara Facility Draft ASF Permit are modeled off shorter distances for the Witmer Road site because the proposed location in the Town of Hamburg has greater setback distances than the Witmer Road site in the Town of Niagara. The DEIS reasons that this makes for worst case scenario air calculations for the Plant in the Town because the air modeling for the Alternate Niagara Site is based off a smaller plot of land with shorter distances to the property lines. Therefore, the Plant in the Town of Hamburg would pose even less of an impact than what was submitted and accepted by the NYSDEC for the Alternate Niagara Facility.

The Appendix F Alternate Niagara Facility ASF Permit Application and the Appendix E Niagara Facility Draft ASF Permit impose enforceable permit conditions that can serve as air emissions mitigation measures for the Plant in the Town to ensure there are no significant impacts to air quality. Those mitigation measures include (1) stack testing to verify mass emission rates; (2) operation and maintenance of air pollution control in accordance with manufacturer's instructions and good engineering practices; and (3) implementation of a moisture mitigation plan to pave Site roadways and water down aggregate stockpiles to manage fugitive dust.

Based upon air dispersion calculations presented in the Appendix F Alternate Niagara Facility ASF Permit Application, off-Site impacts for the Plant proposed in the Town of Hamburg would not exceed any of the NYSDEC health- based concentrations limits. The proposed Plant would not pose any off-Site air impacts. The proposed Plant includes a high efficiency baghouse as Best Available Control Technology (BACT), with a particulate matter removal efficiency of 98+ percent (for PM 10). This removal efficiency ensures that the Plant will meet the federal standard for particulate matter under 40 CFR 60

Subpart I Standards of Performance for Hot Mix Asphalt Facilities. No other mitigation measures are required for the Plant's potential impacts to air.

- DEIS Section 4.5.3 Impact on Plants and Animals concludes there would not be any Project related impacts. The NYSDEC Resource Mapper indicates there are no threatened species on Site or in the surrounding area, and therefore there would be no impacts to plants and animals.

- DEIS Section 4.5.4 Impact on Aesthetic Resources concludes the Plant would be partially visible from main roadways, but any aesthetic impacts would be fully mitigated by Project design. The DEIS states that the Site does not contain any federal or state aesthetic resources. The proposed action would not be visible from any official designated federal, state, or local scenic or aesthetic resource. The Site also has wooded wetlands located to the west of property which act as a visual buffer to the residential and commercial properties. The DEIS offers a viewpoint analysis that was conducted using a balloon flown over the Site at 70 ft. above ground level to simulate the tallest aspect of the Plant (*i.e* the storage silos). Photographs and observations were made from the following locations: End of Grimsby Drive: Sunset Drive and Kenton Place; Camp Road and Legion Drive; Camp Road and Staley Drive. The Plant would be partially visible from the end of Grimsby Drive, Camp Road at Legion; and on Elmview Avenue directly across from the Site. To mitigate potential impacts and enhance Project aesthetics, the Plant components could be painted to blend with the background and additional vegetative screening could be added along Camp Road and Elmview Avenue.

- DEIS Section 4.5.5 Impact on Historic and Archeological Resources concludes that there would be no Project impacts to historical or archeological resources. There are no buildings, sites, or districts on the proposed Site or within a half mile based upon Cultural Resource Information System ("CRIS") search results from the New York State Parks, Recreation and Historic Preservation ("SHPO") website. on February 3, 2023 SHPO issued a findings letter that stated the Project would have no impact on archeological or historical resources listed in or eligible for the state or federal registers of historic places. *See* DEIS Appendix I. An opinion letter dated February 16, 2022, from the Hamburg Historical Society indicated the Site had no historical significance and there would be no impact from the proposed project (*see* DEIS Appendix J). An opinion letter dated March 16, 2022, from Village of Hamburg Historic Preservation Commission (the "Commission") states that the Commission cannot concur with the New York State Office of Parks, Recreation and Historic Preservation and the Hamburg

Historical Society since there may be historical and archaeological resources within 1/2 mile of the Site that are eligible for listing on the New York State or National Registers of Historic Places (*see* DEIS Appendix K). Without regard to the Commission's correspondence, the DEIS concludes that mitigation measures are not required based upon the findings letter from SHPO stating that the proposed Project would not impact historical or archaeological resources.

- DEIS Section 4.5.6 Impact on Transportation indicates that a fully Traffic Impact Study ("TIS") was prepared by SRF Associates, dated March 2022 (*see* DEIS Appendix L) to assess traffic impacts associated with the proposed Plant. The study area for the TIS included Camp Road at Sunset, Camp Road at Scranton. Camp Road at Elmview Avenue, Camp Road at Legion Drive. The Project would include signage to route customer truck traffic to exit the Site onto Camp Road (to avoid truck traffic on Elmview Avenue). The TIS assumes that existing operations at the Site include 20 truck trips per day for ongoing concrete operations, and estimates that the Plant would add 6 employee trips to enter and exit the Site each day, in addition to an increase of approximately 50 truck trips per day for Plant operations. The results of the TIS determine that the existing transportation network can adequately accommodate the Project's traffic volumes. The full build of the hot mix asphalt facility would not result in any potentially significant adverse traffic impact, and therefore no mitigation measures are required.

- DEIS Section 4.5.7 Impact on Energy indicates there would be no Project related impact to energy. The Site's electricity is supplied by NYSEG, which has capacity to serve the Project on Site (*see* DEIS Appendix M). Accordingly the DEIS concludes that the Project will not have an impact on energy use and no mitigation is required.

- DEIS Section 4.5.8 Impacts to Noise, Odor, and Light concludes that there would be no Project related impacts from noise, odor or light. As to noise, the DEIS relies on a Noise Survey & Assessment prepared by Neu-Velle (*see* DEIS Appendix N). The Noise Survey & Assessment includes background noise level measurements to establish ambient sound at the closest non industrial locations around the Site during June 2022. All background sound level measurements were taken within 1/2 mile of the Site, and because "the results concluded that ambient noise levels were not affected there is no need to monitor locations at a further distance." The Noise Survey & Assessment used noise levels from an existing hot mix asphalt plant elsewhere in Erie County as a surrogate to estimate the proposed Plant's noise levels. Based upon its comparison of

background noise levels to projected Plant noise levels, the Noise Survey & Assessment concludes that the Project would not be expected to raise noise levels beyond 3 decibels at three out of the nine monitored locations and would raise noise levels by 2 dBA at two of the nine locations. The remaining locations in the studied area would experience an increase in noise levels by 1 dBA or had no change. The DEIS, therefore, concludes that expected noise levels from the Plant would not increase the decibel level at surrounding receptors to a point that requires mitigation. Based upon the results of the Noise Survey & Assessment and NYSDEC guidelines, the surrounding receptors will not be impacted by the sound of the hot mix asphalt Plant because the highest increase in noise levels is 3 dBA based on daytime and nighttime monitoring. The DEIS also concludes that the proposed Plant would not violate the Town's Zoning Code limitations on dissemination of odor into any R, C, M1 or M2 District, nor would the Plant create any unnecessary or unreasonably loud noises in violation of the Town's general noise regulations at Town Code Section 175-2.

The DEIS's assessment of potential odor impacts relies on an odor assessment prepared by Neu-Velle dated June 5, 2020 (*see* DEIS Appendix O). Odors associated with hot mix asphalt plants are primarily associated with the oils mixed with aggregate to formulate the finished product. The most notable odorous compound found in the oils is naphthalene which has a strong odor that is often detectable at concentrations as low as 0.08 parts per million (ppm) or 440 micrograms per cubic meter. Odorous emissions of naphthalene from hot mix asphalt plants are typically associated with two activities: 1) daily filling of the on-site asphalt oil storage tank and 2) loading of finished hot mix asphalt product into trucks or silos.

Tank filling operations involve pumping asphalt pol from a tanker truck into a heated oil storage tank. The Appendix O odor analysis states that "tank filling is not a steady state operation as the tank will be filled only once or twice per day and the duration of the process will be relatively brief (less than 1-hour). Due to the intermittent and relatively brief duration of the process, it is assumed that odors from tank filling will be negligible."

The activity of loading finished hot mix asphalt product into trucks or silos produces the second highest concentration of odorous compounds at asphalt plants because "[a]t the point of loading, the [hot mix asphalt] is hot and the oil has just been mixed with the aggregate. The action of transferring the [hot mix asphalt] from the conveyor to the silo (or truck) tends to 'aerate' the [hot mix asphalt], which can result in release of odorous volatile compounds." The DEIS

states that "[d]ue to the very low odor threshold of naphthalene and significant presence in liquid asphalt, naphthalene was chosen as the surrogate best to represent odors from the proposed facility." But the DEIS also notes that the "use of naphthalene in the odor analysis does not imply that it is the only odorous compound associated with manufacturing of hot mix asphalt. Many other odor producing compounds associated with naphthalene do not have published odor thresholds, may only be detected at much higher concentrations in the air, or may disperse rapidly in the atmosphere and not work well in mathematical emission modeling." The DEIS Appendix O odor analysis concludes that the off Site concentration of naphthalene is below the NYSDEC's guideline concentrations and therefore "odors from the HMA Facility should not be detectable outside the AL Asphalt property boundary . . . ." Additionally, the DEIS includes as Appendix G air modeling for Hydrogen Sulfide that demonstrates associated odors will not be detectable beyond Site boundary lines. Accordingly, the DEIS concludes that the Project will not result in any impacts from odors and no mitigation measures need to be considered.

The DEIS's evaluation of potential Project impacts from lighting states that the Project Sponsor does not propose any additional lighting on the Site and that the landlord has granted the Plant permission to use existing lighting on an as needed basis. The current lighting system on the Site includes three parking lot lights approximately 20 ft. tall and an additional light pole towards the rear of the Site that is approximately 30 ft. tall, in addition to 11 commercial flood lights affixed to the perimeters of existing industrial buildings on Site. The DEIS concludes that existing Site lighting is sufficient to safely operate the Plant even within nighttime hours when appropriate and would not impact the surrounding community. Accordingly, no mitigation is considered for lighting.

- DEIS Section 4.5.9 Impact on Human Health states that it evaluates the potential human health impacts to nearby receptors such as, schools, recreation sites and parks, day cares, nursing homes, and residential homes, particularly with respect to the potential impacts to air quality, odor, noise, and water resources. The DEIS describes federal Environmental Protection Agency emissions standards applicable to all hot mix asphalt facilities nationwide to protect human health (including particulate matter concentration limits). The DEIS also reiterates the NYSDEC's applicable state limitations to control air contamination such as the monitoring, record keeping and reporting conditions to the Niagara Facility Draft Air State Facility Permit (DEIS Appendix E). The DEIS states that the air emissions modeling presented in the Alternate Niagara Facility ASF Permit Application (DEIS Appendix F) demonstrates that the proposed Plant in

Hamburg would be in compliance with all applicable state and federal limits for emissions. The DEIS states that its Appendix O odor modeling demonstrates that naphthalene would not be detectable off Site, nor would the odor of hydrogen sulfide be detectable (*see* DEIS Appendix G). Even if such odors were detectable, the DEIS reasons that "these odors pose no danger to plant works [sic] or surrounding communities. It has been proven that detection of odor does not presume such odor is hazardous. By way of example, there are many natural and man-made odors that are noticeable, such as skunks and dairy farms but neither are harmful."

Because the Exhibit N Noise Survey & Assessment establishes that the Plant's sound levels would not impact ambient sound levels at surrounding receptors, the DEIS concludes there would be no impact on human health in the area around the Site. Finally because the manufacture of asphalt material does not involve the use of water, and because the Project Sponsor would obtain a SPDES permit for the project prior to full build, the Plant would not have a negative effect on the Site or nearby communities. The DEIS concludes that the Plant would be compliant with all applicable federal and NYSDEC standards for hot mix asphalt plants, and accordingly no mitigation measures are necessary to protect human health.

- DEIS Section 4.5.10 Consistency with Community Plans acknowledges that the Zoning Code 280-133(c) prohibits any use in the M3 District which normally results in dissemination of atmospheric pollutant, noise, or odor into any R, C, M1, or M2 District. Based on the air and odor analysis in Appendices E, F, G, and O (which model air and odor impacts based on the Alternate Niagara Site and not based on the Plant proposed in the Town) and the Appendix N Noise Survey & Assessment (which also uses sound levels from a different asphalt facility in Erie County), the DEIS concludes that the Plant would not normally result in the dissemination of atmospheric pollutants, noise, or odor into adjacent properties (zoned M2 and C2 under the Town's Zoning Code). The Project Sponsor commits to updating the air and odor analysis to reflect the specifics of the Project proposed in the Town of Hamburg once the Board has approved a site plan for the Project.

  The DEIS states that the Project is consistent with the Camp Road Overlay District. The DEIS describes multiple M2 and C2 parcels within the Camp Road Overlay District, and notes that the Overlay includes numerous high impact uses. The DEIS notes that the Site has been used for concrete manufacturing for more than 80 years—long before the Camp Road Overlay District was

established in 2000—and that nothing in the Camp Road Overlay District's regulations specifically prohibits concrete manufacturing.

The DEIS states that the Project would occur entirely within the Town of Hamburg, and outside of the Village of Hamburg. The DEIS states that the Village of Hamburg Comprehensive Plan 2012 Update identifies the property adjacent to the Site for "light industrial mixed use," consistent with the Village's vision for "less intensive, smaller scale" industrial development. The DEIS reasons that the Project is consistent with the Village's vision because the Plant has a 160 ft. by 200 ft. footprint and would only operate for up to 2,500 hours per year and is smaller in scale than the historic operations on Site by Great Lakes Concrete. The DEIS concludes that "while the vision for the property is continued industrial use within the Town, the small footprint of the project provides additional opportunity for development/improvements that further Village goals of implementing a 'light industrial mixed use' area adjacent to the property."

The DEIS acknowledges that the Town adopted an updated Comprehensive Plan in January 2023 that includes a recommendation to "remove industrial zoning along Camp, especially near the Village." The DEIS further acknowledges that the Town's updated Comprehensive Plan "proposes developing a new zoning district that compliments the Village and provides opportunities to re-develop older industrial/commercial areas of the Town." The DEIS states that "the Comprehensive Plan recognizes that even with a change of zoning, the current industrial/commercial uses in situation, [sic] the Applicant continues to be allowed to operate the existing concrete plant and since no zoning change has yet been made, continue on its application for AL Asphalt Corporation, an acknowledged approved use within its current zoning district." *Contra* Zoning Code 280-415. The DEIS states that regardless of any amendment to applicable zoning laws, the concrete operations on Site would remain a non-conforming use. The DEIS states that the Plant's asphalt operations "will essentially be the same as it currently being operated by the concrete plant [sic] and therefore have no substantial change or impact on the surrounding areas and communities." The DEIS concludes that the Project is consistent with community plans because the Project meets the goals and objectives of both the Town's and Village's Comprehensive Plans, and would not have any noise, odor or air quality impacts to the surrounding area. Accordingly, no mitigation measures would be required.

- DEIS Section 4.5.11 Consistency with Character of Community or Neighborhood states that the Plant "is an expressly permitted use," (*contra* Zoning Code Section 280-415). Based on the Noise Survey & Assessment's conclusion that the Project would raise noise levels by up to several decibels at certain receptors around the Site (*see* DEIS Appendix N), and based upon the odor analysis prepared to assess odors from naphthalene and hydrogen sulfide (*see* DEIS Appendix G; Appendix O), the DEIS concludes that the Project would comply with the Zoning Code Section 280-133(c) prohibition on any use in the M3 District that normally results in the dissemination of atmospheric pollutant, noise or odor into any R, C, M1 or M2 District. The DEIS reasons that the Plant is consistent with the surrounding community character because it is located on a parcel that was used for concrete products manufacturing for more than 80 years, and because it is located on a heavily traveled state road (Camp Road is NY-75) in a commercial corridor surrounded by commercial properties to the north and east and industrial properties to the south and west. Further, the DEIS states that the Site's needs are met by existing community services, such as: Scranton Volunteer Fire Company and the Town and Village Police Departments. Accordingly, the DEIS concludes that the Project (an expressly permitted use) complies with the Zoning Code directive contained with Town Zoning Code § 280-133.C(1)(b) regarding dissemination, the Project poses no significant adverse environmental impact to community services or human health, and the Project does not negatively impact visual resources/aesthetic resources. The DEIS states that, therefore, no Project impacts to community character would occur and no modification or mitigation need be considered (though the DEIS states that the Project Sponsor could paint the Plant silos as directed by the Town or add additional vegetation to improve the Project aesthetic).

- DEIS Section 4.5.12 Impacts to Solid Waste Management states that "there is no solid waste generated from the proposed project." The DEIS reasons that the Plant would not produce any waste because it has the potential to use reclaimed asphalt product ("RAP"), which is made up of recycled bits of old asphalt roads and materials that can be re-used in the asphalt production process. Accordingly, the Plant would have no impact to solid waste and no associated mitigation measures would be required for the Project.

- DEIS Section 4.5.13 Impacts on Climate Change concludes that the Plant's design as a counterflow drum mix plant (as opposed to a batch mix plant), its limitations on operating hours, annual burner maintenance, and moisture mitigation plan, all work together to effectively manage the Plant's potential for greenhouse gas emissions that lead to climate change. To comply with the New York State

Climate Leadership and Community Protection Act's ('CLCPA") goals to reduce greenhouse gas emissions and protect against impacts from climate change, the DEIS attaches an independent analysis of the Project's potential for impacts on climate change prepared by Neu-Velle (*see* DEIS Appendix P). The DEIS indicates that the Plant is designed as a drum mix plant powered by natural gas to significantly limit the potential for greenhouse gas emissions. The DEIS states that the Plant would be subject to an annual 500-hour operating limit that would be imposed by any NYSDEC Air State Facility Permit that may eventually be obtained for the Plant at the Site, and the Plant is subject to seasonal limitations on operations due to the Western New York's cold winter temperatures (Plant would be shuttered from November through April). The DEIS reasons that such operating limitations inherently limit the Project's potential for greenhouse gas emissions.

Project operations would include regular maintenance of the Plant burner to increase the burner's efficiency by approximately 25% as compared to a burner without a regular maintenance protocol. And finally the DEIS explains that Plant operations will strategically monitor the moisture levels in aggregate piles to attempt to pull the driest materials from the top of the piles to be used in asphalt production first, which would limit the amount of time it takes to dry out the material in the drum before it can be used in finished product. "By reducing the percentage of moisture in the aggregate the amount of fuel used to dry the materials is reduced," which could lead to a reduction of 176 tons per year of CO2 emissions. *See* DEIS Appendix P. The DEIS concludes that impacts to climate change and greenhouse gas emissions from the Project are effectively mitigated by the Plant's design as a drum mix plant, the Plant's use of natural gas as a fuel source, and the Plant's regular maintenance and moisture mitigation protocols.

4.1.5 <u>DEIS Section 5.0 Evaluation of Mitigation Measures</u>

The DEIS states that of the 13 subsections identified in DEIS Section 4.5.1 through 4.5.13 "there are two sections with mitigating measures. First is for Section 4.5.2, air quality and the second is for section 4.5.4, aesthetic resources."

The DEIS does not identify any air quality impacts from the Project. Nevertheless, the DEIS concludes that the mitigation measures that would be enforced by the NYSDEC per the Appendix E Niagara Facility Draft ASF Permit would prevent any air impacts from the Project at the Site in the Town of Hamburg.

The DEIS notes that the Plant would be partially visible from the main roadway (as discussed in DEIS Section 4.5.4), but that the Site does not contain any federal, state, or local scenic resources. Therefore, any potential impacts from the Plant could be fully mitigated "by use of vegetative screening and/or camouflage paint colors."

There are no other mitigation measures described in the DEIS.

4.1.6 DEIS Section 6.0 Alternatives to be Evaluated

The DEIS describes a "No-Action Alternative" where the proposed facility would not be built and the land would remain in its current state where the current landlord or potential tenant could seek approval for a lumber yard, coal yard, rail yard, concrete plant, storage of petroleum products (*e.g.* existing Brenner Oil tenant), manufacture of abrasives, automobile assembly, heavy machinery manufacturing, processing or treatment of bituminous products (*contra* Zoning Code Section 280-415), metal casting and adult uses. Under the No-Action Alternative, the DEIS warns that the Town and surrounding municipalities would be required to obtain asphalt products from other local suppliers located 13-30 miles from the Site. Because there are no other asphalt plants within 10 miles of the Site, the DEIS reasons that the No Action Alternative would result in longer hauling distances and increased fuel consumption and greenhouse gas emissions.

The DEIS describes an "Alternative Technology Alternative" that evaluates the potential to produce warm mix asphalt, instead of hot mix asphalt, which would reduce fuel and energy consumption at the Plant. However, the DEIS notes that while warm mix asphalt is frequently used in European countries, warm mix asphalt is not widely used in the United States. Therefore, there is not a sufficient demand for warm mix asphalt products to justify a dedicated warm mix asphalt plant. The DEIS notes that if demand for warm mix asphalt grows, the Plant could be "easily modified" to accommodate the alternative technology for a warm mix process.

The DEIS considers and rejects the potential for an "Alternative Layout" because the Plant as designed is configured to minimize Project related impacts to surrounding receptors and other tenants on Site. "The current layout allows for the structure to be partially screened at all times by existing warehouse buildings and foliage surrounding the property. The location chosen within the site is also the most central location within the 53-acre parcel, thus ensuring the greatest distance between the proposed project and the boundary lines." The DEIS concludes that an Alternative Layout is not feasible because "[i]f the site plan of the proposed plant were to be moved, it would risk a

greater impact to aesthetics and air quality as the facility would be closer to boundary lines."

The DEIS considers and rejects the potential for alternative uses at the Site. The DEIS reasons that the production of asphalt is a permitted use in the M3 District (*contra* Zoning Code Section 280-415). The DEIS states that if this Plant were not built, then another asphalt plant could simply apply for and receive approval to operate there. Accordingly, the DEIS concludes that an alternative use at the Site is not feasible because "the applicant has not proposed any other use for this property other than the current site plan application at the Town of Hamburg Planning Board for approval of a hot mix asphalt facility."

The DEIS does not consider alternative sites. The DEIS states that "for alternative sites to be considered under SEQR, the applicant must own or own a right to use the alternative site. However, there are no alternate site locations that are owned or controlled by A.L. Asphalt Corporation." Therefore the DEIS concludes that "[n]o alternative sites are available for the relocation of this project."

4.1.7 DEIS Section 7.0 Cumulative Impacts

The DEIS notes that cumulative impacts occur when multiple actions affect the same resources, or where the incremental or increased impacts of an action are added to other past, present and reasonably foreseeable future actions. The DEIS notes that the Site was previously used for the following activities: two concrete cement plants (one exterior and one interior), concrete block plant, concrete precast operations, and concrete storage silos. The DEIS states that at the height of its prior operations, the Site generated approximately 200 truck trips per day for aggregate drop offs, cement tankers, concrete deliveries, precast deliveries, services trucks, employee vehicles and customer vehicles. The DEIS states that changes in the construction industry and shifting demand for building materials mean that "the exterior cement plant and the block plant operations do not exist" today and "manufacturing of the concrete masonry and hardscape products no longer occurs" on Site. "The remaining operations on site that are owned by the applicant, A.L. Asphalt Corporation, is [sic] the interior cement plant, and various concrete block inventory." The DEIS further states that "one of the redi-mix concrete plants is still in operation and operates based upon market demand. Precast concrete products can still be produced, again, based upon market demand." The DEIS explains that there would be no cumulative impact from the Plant's operations in combination with a potential re-introduction of the extensive concrete production uses that previously occurred on Site because: (1) concrete operations and asphalt operations

do not use the same types of resources; and, (2) the Plant would produce fewer truck trips and use fewer utilities (water, sewer, electric) as compared to the Site's prior uses. The DEIS concludes: "[b]ased upon the capacity that was once maintained at this property, lowering of the anticipated truck trips, and other resources (water, sewer, electricity etc.) on a cumulative basis is significantly less than previous operations at the project site, and its operations at that time were not a detriment to the community. Therefore, the future foreseeable actions with approval of the proposed project will not have any adverse cumulative impacts." And finally the DEIS notes that an existing tenant on Site is Brenner Oil Company which conducts transfer operations to unload materials from rail cars and into tanker trucks for distribution to customers. The Brenner Oil Company unloads a peak of 5-6 trucks per day. Given that limited volume, the DEIS concludes that the Brenner Oil Company's operations "would have little to no cumulative impact on the existing and past operation of the project."

4.1.8 DEIS Section 8.0 Growth-Inducing Impacts

The DEIS describes the Site as located within an industrial developed portion of the Town that is fully serviced by a full complement of utilities with adequate capacity to serve the Project at the Site. Therefore it is not anticipated that the Project would require the expansion or improvement of off-Site infrastructure. The DEIS indicates that the Project would not drive additional growth in and around the Town, but would meet the area's growing demand for asphalt to meet the needs of developers for parking lot and driveway materials. The Project would not induce additional industrial development because the Town's designated areas for industrial development are met by the M2 industrial zoning district across the street from the Site on Maelou Drive. The Project would not drive out residential or small businesses because (as demonstrated in the DEIS Section 4.5) there are no anticipated environmental impacts. The DEIS concludes that the Plant would "provide a necessary resource for both existing and future development, with less intense impacts on the environment due to expected decrease in mobile source impacts from utilizing a plant located closer in proximity."

4.1.9 DEIS Section 9.0 Potential Impacts Raised During Scoping Determined to be Insignificant

The DEIS states that the Lead Agency is responsible for eliminating consideration of concerns that have been identified during the scoping process as irrelevant or insignificant. The DEIS states that the following potential impacts have been deemed irrelevant or insignificant because they are not legally relevant to SEQR, they are not environmentally significant, or they were addressed prior to the scoping process:

- Agricultural Resources – The Site is not included in an Agricultural District in Erie County. This Site is zoned industrial and has not been used for agriculture in the recent past. There is not much green space or soil on Site, as most of the property has been disturbed. For these reasons, the Project would not have an impact on agriculture resources.
- Property Values – Surrounding property values near the Site is not a legally relevant aspect of an environmental review. However, the applicant had a property value analysis completed by GAR Associates in 2019 that resulted in no decrease in property values from the proposed Project, this analysis was turned over to the Lead Agency prior to the scoping process. Based upon the results, this Project would not impact the surrounding properties and their values.[5]
- Impacts to 18 Mile Creek CEA – The Project site is not located on or close in proximity to 18 Mile Creek which is designated a New York State Critical Environmental Area, therefore the Plant will not impact 18 Mile Creek.
- Land and Geological Features – The Project does not include aggregate blasting or mining. The Project consists of prefabricated components that come together to form the Plant. As stated, the land at this Site has previously been disturbed. The Project will not have an impact on land or geological features.

Section 4.2: Impacts on Surface Water, Groundwater, and Flooding

This FEIS Section 4.2 amends Section 4.5.1 of the DEIS by adding the following:

The Board retained GHD to analyze Section 4.5.1 of the DEIS (*see* GHD Report attached as Appendix 6). GHD found significant deficiencies with regard to the Project Sponsor's analysis of stormwater impacts from the Project. First, GHD noted that the Stormwater Pollution Prevention Map as labeled in Figure 4 of the DEIS, was not, in fact, a Stormwater Pollution Prevention Map for the Project, but rather, was a site plan for Great Lakes Concrete Products, LLC and does not show the proposed Project at all. Further, GHD found that DEIS, Figure 4 contained several unlabeled storm system inlets and a drainage swale but no silt fence or other erosion controls were shown. Such features which must be shown to qualify as a pollution prevention plan.

GHD further observed that the DEIS fails to provide any information regarding downstream connections to the Project's stormwater system. GHD notes that typical information regarding downstream connections consist of information such as the receiving water body that the stormwater feature ultimately drains to, the stormwater flow quantity before and after the Project, duration of flow, and type and size of the conveyance facility. GHD concludes that the existing conditions of downstream

[5] The Board does not consider impacts to property values in its evaluation of the Project pursuant to SEQR and the Board did not undertake any studies to verify this conclusion.

connections must be incorporated into in development of a reasonable stormwater management plan and identification of appropriate mitigation measures.

GHD also points to several other flaws in the DEIS analysis of impacts to surface waters. GHD notes that DEIS, Figure 4 identifies a stormwater retention basin which is not explained or described. In addition, the DEIS states that material stockpiles will be located to prevent runoff but no further discussion is provided. As such, GHD concludes that the DEIS does not contain sufficient analysis to support its conclusion that there will be no changes to discharges from the Site.

The GHD Report also discusses discrepancies relative to the DEIS discussion of the SPDES Multi-Sector Industrial Permit. GHD explains that the DEIS states in Section 4.5.1 that the SPDES Multi-Sector Industrial Permit has been obtained for the Site, but in Section 4.5.9 it states the property owner will obtain a SPDES permit. GHD states that no details were provided in the DEIS regarding SPDES Multi-Sector Industrial Permit and that such information is typically provided by an applicant and is necessary to accurately assess the Project's impact to stormwater.

The GHD Report then identified the existing SPDES Multi-Sector Industrial Permit for the Site through an independent record search which was issued for Cheektowaga Concrete LLC, and was issued for Sector E: Glass, Clay, Cement, Concrete and Gypsum products and with a Standard Industrial Classification ("SIC") Code of: 3241 - Cement, Hydraulic, 3273 - Ready Mixed Concrete, and 3275 - Gypsum Products. GHD explains that while no additional permit would be necessary, the existing SPDES Multi-Sector Industrial Permit will require revisions to permit the Project which falls under a different industrial sector (Sector D, Asphalt Paving & Roofing Materials & Lubricant Manufacturers) and different SIC code (2951 for Asphalt Paving Mixtures and Blocks).

GHD explains further that the existing SPDES Multi-Sector Industrial Permit would have required the implementation of a Stormwater Pollution Prevention Plan ("SWPPP") but none was included in the DEIS for evaluation. The DEIS does state that the existing SPDES Multi-Sector Industrial Permit requires testing of stormwater leaving the site for compliance, but as pointed out by GHD, no testing data was provided. GHD states that submission of the existing SPDES Multi-Sector Industrial Permit and SWPPP for the Site should have been provided in the DEIS to allow the Board to conduct a thorough and meaningful review of the Project's stormwater features and potential impacts and, impose appropriate mitigation as necessary. Therefore, GHD concludes, the DEIS "does not contain sufficient information to support the conclusion that stormwater impacts have been mitigated to the maximum extent practicable."

The NYSDEC also commented that the failure to provide information on any SPDES permit proposed for the Site violates SEQR's important principle that requires the Lead

Agency to review the whole action before approving any specific phase or element of the action.

Section 4.3: Impacts on Air

This FEIS Section 4.3 amends Section 4.5.2 of the DEIS by adding the following:

The Board retained EA to analyze Section 4.5.2 of the DEIS (*see* EA Engineering Technical Memo attached as Appendix 7). EA determined after analysis of the DEIS that, "there are various inconsistencies in the DEIS and supporting documents . . . a number of technical issues must be addressed more completely and in greater detail to allow the [Lead Agency] to conduct a complete analysis under SEQR and to determine what conditions and mitigation measures are appropriate for the Project." The following summarizes EA's findings:

- Many of the DEIS's analyses and conclusions are drawn from Appendix F to the DEIS, which is a NYSDEC Air State Facility Permit Application and supporting air modeling data that is not representative nor sufficiently applicable to the proposed Facility because it was originally prepared by the Project Sponsor for another hot mix asphalt plant proposed in Niagara County New York.

- The Niagara Facility DraftASF Permit attached as Appendix E to the DEIS contains material discrepancies in the description of the proposed Plant and improperly excludes a significant source of air emissions, a 25,000 gallon liquid asphalt storage tank that must be accounted for under current NYSDEC regulations.

- The Applicant's air emission calculations do not account for all the potential emission sources, which means that the completeness and accuracy of the air quality impact analysis, air toxics analysis and odor analysis in the DEIS, cannot be relied upon.

- The DEIS fails to adequately address the potential emissions of "blue haze" from the proposed Plant, including an assessment of how the potential off-Site impacts of blue haze and other atmospheric pollutants from the Project would comply with the Code § 280-133(C)(1)(b), which limits uses in the M-3 District from disseminating atmospheric pollutants, noise, or odor into any R, C, M-1 or M-2 District in the Town.

- A complete SEQRA analysis must assess how blue haze and other atmospheric pollutants from the Project could be mitigated to the maximum extent practicable, including an analysis from the Project Sponsor of the feasibility of utilizing, a blue haze control system for the Project.

EA indicates that the DEIS analysis of air impacts was based upon the Niagara Facility DraftASF Permit issued for a different facility with a materially different location in lieu of generating calculations which reflect the actual proposed operations of the Project. After review of the Niagara Facility DraftASF Permit and the calculations it was based upon, EA Engineering Technical Memo concluded that "it is not typical nor appropriate to assess air quality impacts for the Project based on the information provided for the Niagara Facility." NYSDEC similarly commented that the DEIS "should contain the ASF Permit application for the Camp Road site" and stated that assertions in the DEIS that the Project has a valid permit "may be misleading to the reader. As explained by NYSDEC, no NYSDEC [Air State Facility Permit] exists for this site."

In reaching its conclusions, EA explained that the Niagara Facility Draft ASF Permit was issued by the NYSDEC pursuant to a now outdated regulation that previously would have exempted certain liquid asphalt storage tanks from consideration as air emissions sources. Specifically, the Niagara Facility Draft ASF Permit and supporting application materials did not include emissions from the proposed 25,000 gallon liquid asphalt storage tank for the Project because the same was exempt under previous regulations. However, since February 2021, when the Niagara Draft Air Permit was issued, the NYSDEC revised Part 201-3.2(c)(21) so that liquid asphalt storage tanks in excess of 10,000 gallons are no longer permit exempt source. EA concludes that "[w]ithout such an analysis of the 25,000 gallon liquid asphalt storage tank, the Project's air emissions are underestimated and the DEIS's conclusions regarding Project impacts to air quality are, therefore, inaccurate." NYSDEC also commented on the outdated status of the Niagara Facility Draft ASF Permit. Explaining that ambient air contaminant regulations have subsequently been revised, NYSDEC asserted that air permit applications contained in the DEIS "should reflect current regulatory requirements."

EA also noted that the Niagara Facility Draft ASF Permit contains material inconsistencies with regard to the equipment to be utilized which render the permit calculations unreliable. As an example, EA explains that page 1 of the Niagara Facility Draft ASF Permit states that the "dryer is fired by a Hauck Eco-Star II model 75 liquid propane burner" with a maximum heat input capacity of 83 MMBtu/hr. Whereas page 17 of the Niagara Facility Draft ASF Permit, under the Item 13.1, states that the dryer is fired by a Hauck Eco-Star II natural gas burner with a burner heat input rating of 0.25-MMBtu/ton aggregate (75-MMBtu/hr). Due to the DEIS reliance on the Niagara Facility Draft ASF Permit and these unresolved discrepancies, EA concludes that "the DEIS's conclusions with regard to air impacts are based on inaccurate and incomplete data associated with an analysis of a separate facility under outdated NYSDEC regulations."

EA further reviewed and analyzed the emission calculations in the DEIS and found that they underestimate the Project's potential to emit ("PTE"). EA identified the following errors which must be corrected to accurately account for the Project's air emissions:

- The manufacturer's specification sheet including guaranteed emissions performance data, must be included to verify NOx, CO, and VOC emission factors.

- Correct for PM10 emissions that were underestimated in the DEIS's air emissions calculations. PM10 emission factor of 0.0039 lb/ton used in the calculation is only for filterable PM10. AP-42 Table 11. 1-3 also provides emissions factors for condensable inorganic PM and condensable organic PM. The correct analysis for the Project must use PM10 emission factor of 0.023 lb/ton as total PM including filterable PM10, condensable inorganic PM and condensable organic PM (Particulate matters released from bituminous processing facility include both filterable PM and condensable PM)

- Include an assessment of vapors from the Plant operations that load material into transport trucks that continue to release vapor from loaded material for a period of time following load-out operations, including the potential for off-Site impacts on transport routes away from the Site. The total organic carbon (TOC) emissions for the 8-minute period immediately following load-out (yard emissions) can be estimated using an emission factor of 0.0011 lb/ton of asphalt loaded as provided in AP-42 Section 11.1, page 11.1-9. These fugitive yard emissions need to be included to develop an accurate PTE calculation.

- Recalculation of load-out/yard emissions and silo filling/asphalt storage tank emissions which were mis-calculated or omitted from the calculations in the DEIS. Total PM, Organic PM, TOC and CO were calculated in the DEIS based on the emissions factors at Table 11.1-14 which are representative of drum mix plant load-out and silo filling. However, those calculations are flawed because they do not include fugitive yard emissions or emissions from the proposed 25,000 gallon asphalt storage tank as described above.

- Confirm the maximum capacity of the asphalt storage tank of 25,000 gallons since DEIS Appendix F Process Flow Diagram shows the asphalt storage tank as 30,000 gallons and include emissions from the asphalt storage tank using the procedures described in AP-42 Section 7.1, Organic Liquid Storage Tanks.

In addition, EA found that the failure of the DEIS to accurately estimate the PTE for the Project results in compounding discrepancies regarding analysis of air emissions because the calculated PTE serves as a basis for air toxics analysis and odor analysis. Therefore, EA concludes, because the PTE for the Project was underestimated, the

"Project impacts on air will be greater than estimated by the air toxics analysis and odor analysis in the DEIS."

Further, EA details that the DEIS wholly fails to account for "blue haze" which is emitted by hot mix asphalt plants from silo vents and truck load out stations and is composed of volatile organic compounds and toxic and odorous compounds. EA states blue haze is regulated under NYSDEC regulation 6 NYCRR 211.11 and Hamburg Town Code ("Code") § 280-133(C)(1)(b) and must be accounted for in the DEIS including mitigation of such impacts therefrom.

EA performed an independent air quality analysis to assess fugitive dust/particulate Project impacts on air quality. This included analysis of fugitive particulate emissions and dust emissions from non-road mobile sources, truck traffic, solid material stockpiles, and transfer operations in order to evaluate fugitive particulates impacts at the Site boundary line. The results of the analysis indicated that fugitive particulate emission from the Project will have a significant impact to nearby M-2 district receptors which would not comply with the Code requirements in § 280-133(C)(1)(b) prohibiting dissemination of atmospheric pollutants into M-2 districts. EA noted that actual emissions from the Project are likely to exceed these results, because EA was unable to include emissions from the proposed 25,000 gallon liquid asphalt storage tank due to a lack of information from the Project Sponsor on the tank. Notwithstanding, the conservative estimates provided in EA's air modeling analysis indicate fugitive dust/particulate emissions from the Project will have "problematic impacts to the nearby M-2 District."

Further, the CLCPA imposes broad carbon emission reduction mandates and requires an analysis of whether a proposed action such as a permit approval will contribute to meeting the mandates of the CLCPA. Consistent with the NYSDEC Comments on the DEIS the CLCPA Analysis in DEIS should be replaced with a new CLCPA analysis for the current proposed Project and should utilize the most current emission factors.

Section 4.4: Impacts on Transportation

This FEIS Section 4.4 amends Section 4.5.6 of the DEIS by adding the following:

The Board retained GHD to analyze Section 4.5.6 of the DEIS (see GHD Report attached as Appendix 6) GHD conducted a comprehensive review of the DEIS analysis of impacts to traffic and the supporting Traffic Impact Study ("TIS"). After careful analysis of same, GHD identified the following deficiencies:

- The Project Sponsor's TIS does not include any analysis for road segments to meet the requirements of the Final Scoping Document, including existing traffic counts, forecasted traffic or truck volumes, volume-to-capacity ratios, or any

operational or level of service calculations for any of the road segments in the study area that would typically be provided to analyze the project's impacts on the road segments in the study area.

- The Project Sponsor's TIS presents a discussion on the Institute of Transportation Engineers ("ITE") Trip Generation Manual but does not describe why the ITE trip rates were not used, which gives the false impression that ITE was the source of the trip rates used, when in fact it was not the basis of the Applicant's calculations

- The Project Sponsor's TIS utilizes a trip generation calculation for employees based on six employees, with six in and six out trips during both the AM and PM peak hours. It is unlikely all employees would enter and exit the site in the same hour, and accordingly the Applicant's TIS fundamentally relies on an inaccurate value, and results in unreliable conclusions regarding the Project's impacts to transportation.

- A complete evaluation of Project related impacts to transportation must include an estimation and evaluation of the daily trip generation for Projected related traffic to and from the Site, and not be confined to just the AM and PM peak hours as in the Applicant's TIS. The Project's daily trip generation is typically in a TIS and is necessary to evaluate the Project's impact on the transportation system.

- Page iii of the Project Sponsor's TIS states the Plant will typically operate from 7:00 AM-3:00 PM (with certain instances of nighttime operation for overnight paving jobs). Meanwhile, page 6 states the plant will operate from 7:AM-3:00PM, but also states the Project will operate for 12 hours per day. These inconsistencies make it difficult to understand when the Project will be generating traffic and difficult to evaluate the analysis and recommendations presented in the Applicant's TIS.

- The Project Sponsor's TIS utilizes trip generation data for truck traffic to and from the Site that fails to include trucks delivering raw materials to the Site. Without this additional delivery data, the Applicant's TIS entirely discounts a source of traffic associated with the Project.

- The Project Sponsor's TIS states that the existing concrete facility on the Site generates 20 trucks per day and the Project's asphalt operation will generate 50 trucks per day, for a total of 70 trucks per day. The Project Sponsor's TIS should separate the existing Site traffic from the proposed Site traffic so that the impacts of the Project can be evaluated. The existing traffic counts presented in the

Project Sponsor's TIS are inconclusive if the existing operation is currently generating 20 trucks per day.

- The Project Sponsor's TIS states: *The proposed Asphalt Plant Project will add approximately 50 truck trips per day resulting in a total of approximately 70 truck trips per day generated by the site. Given that the Project will operate 12 hours per day, approximately 4 to 5 truck trips per hour are anticipated.* This math is in error as five trucks per hour for 12 hours equals 60 trucks, which would result in a total of approximately 80 truck trips per day following the logic of the Applicant's TIS which combines the assumed existing and proposed trips per day. Accurate calculation of traffic generated by the Project is a foundational element of a TIS that any subsequent analysis is built from, and therefore these inaccuracies in the Project Sponsor's TIS with regard to calculation of the traffic generated by the Project render the conclusions in the Project Sponsor's TIS unreliable.

Furthermore, GHD stated that the DEIS fails to identify the types of vehicles that will enter/exit the Site, the proposed routes of these trucks, or any discussion on how trucks would be discouraged from utilizing nearby residential streets.

Lastly, GHD analyzed the TIS for errors and omissions pursuant to generally accepted traffic impact study guidelines and found 14 substantive deficiencies and inconsistencies related to Project's trip generation estimates. GHD stated that certain critical inputs, summary sheets, and assumptions are absent, or unsupported in the TIS. Therefore, GHD determined, "the conclusion reached in the Project Sponsor's TIS—specifically that the Project will have no impacts on the existing transportation system lacks adequate analysis to support the conclusion and is therefore, not reliable."

Section 4.5: Impacts From Noise, Odor, and Light

This FEIS Section 4.4 amends Section 4.5.8 of the DEIS by adding the following:

4.5.1 <u>Noise</u>

The Board retained GHD to analyze Section 4.5.8 of the DEIS and the supporting documentation included by the Project Sponsor in the DEIS related to noise and noise impacts from the Project (see GHD Report attached as Appendix 6). After careful analysis, GHD states that the Neu-Velle Noise Report attached as Appendix N to the DEIS does not adequately evaluate sensitive noise receptors within ½ mile of the Site as required by the Final Scoping Document. Furthermore, the Neu-Velle Noise Report is based on noise measurements which were collected over a period of only 15 minutes during a single day, which GHD explains is an inadequate amount of time to measure baseline noise. Additionally, the timing of these measurements, taken in the evening, is not representative of when the Project will operate, and provides a poor basis of

comparison as noise levels may be elevated in the evening due to commercial traffic and extended peak traffic (this would make ambient noise levels appear much higher than they actually are). GHD states that this methodology does not provide information that is representative of the lowest, highest, or even the average noise produced during a typical day

GHD determined that the Neu-Velle Noise Report obtained only a single noise source measurement, rather than identifying and measuring primary noise sources. GHD explained that noise is very dependent on source height and location relative to off-site receptors, as well as site specific variables including lines of sight, distances, and reflection/absorption effects from different ground covering. The GHD Report indicates that use of a single point noise measurement is not an accurate way to evaluate off-site noise impacts of the Project with its numerous site-specific variables.

GHD evaluated the Neu-Velle Noise Report noise modeling methodology and determined that while a number of component's were consistent with common practices or were generally appropriate, the short, often 15 minute, noise measurements for background sampling, as well as the timing of those measurements (in the evening when background noise levels are higher and when the Project will not be in operation) fail to meet industry standards and do not provide a representative baseline for evaluation of potential noise impacts. Rather, GHD states, noise monitoring for baseline ambient noise should have been conducted at the time consistent with the operation of the Project and for the typical measurement duration of 24 hours or more. As such, GHD concludes that the Neu-Velle Noise Report is not acceptable and cannot be relied upon to accurately evaluate Project impacts from noise.

The GHD Report also determined that the methodology regarding comparison of baseline noise measurements against the representative asphalt plant, the Gernatt Plant was deficient. The DEIS made no qualitative assessment of the Gernatt Plant's layout, operations, or equipment for comparison except to state it has a greater output than the Project. GHD characterized such methodology as a "high level-screening assessment" and concluded that by failing to account for location, height, intervening structures, line of sight, and ground absorption, the use of a single noise measurement from the Gernatt Plant was not suitable for a proper detailed study of the Project's potential noise impacts.

GHD also noted that the Neu-Velle Noise Report failed to evaluate noise from predicted heavy truck traffic to and from the Site. GHD states that based on the volume of trucks and their location to sensitive receptors, Project truck traffic could have a significant noise impacts to surrounding areas. Without such analysis, GHD concludes, the Project's impacts cannot be adequately evaluated.

GHD concluded that given the absence of proper acoustical modeling, failure to evaluate site specific truck volumes, and limited evaluation of existing noise levels, the Neu-Velle Noise Report, and the DEIS by extension, "is fundamentally flawed and cannot be relied upon to adequately assess the Project's noise impacts."

4.5.2 Odor

The Board retained EA to analyze Section 4.5.8 of the DEIS and the supporting documentation included by the Project Sponsor in the DEIS related to odors and odor impacts from the Project (see EA Engineering Technical Memo attached as Appendix 7). EA provided a comprehensive review of the Odor Report included in the DEIS and concluded that the Odor Report does not adequately account for all odor emission sources or use appropriate assumptions. EA explains that the DEIS identified two sources of odor emissions from the Site: the daily filling of the asphalt oil storage tank, and the loading of hot mix asphalt into the storage silo and customer trucks. However, EA notes, the DEIS only analyzes impacts from the latter and wholly fails to account for odor emissions from the once or twice daily filling of the 25,000 gallon asphalt tank because such emissions are not "steady or continuous" and so are "difficult to quantify." EA indicates that emissions from the filling of the asphalt tank can be estimated and that such emissions are likely to be high on a mass rate basis. Therefore, EA concludes, failure to include this source renders the Odor Report, and by extension the DEIS's evaluation of odor impacts, unreliable.

EA also determined that the Odor Analysis did not use an appropriate assumptions for modelling odor impacts. EA explained that the Odor Analysis operated on the assumption that all odor would be emitted from the highest point of the asphalt storage silo, which EA determined was not appropriate because a higher release point would result in greater predicted dispersion of odor and result in modelling of less odor impacts. EA stated that the Odor Analysis must be updated to include facility wide emissions at lower elevations to provide an accurate analysis of potential odor impacts.

The EA Engineering Technical Memo further analyzed the H2S Modeling included in the DEIS. EA Found that the H2S Modeling, which presented emission rates from sources including the combustion dryer, silo, and load-out operations, provided no reference to verify emissions rates. To verify the same, EA completed an independent odor analysis ("EA Odor Analysis") based on the Health Consultation reference document and determined that H2S emissions from the Project presented problematic impacts. EA found that while the unsubstantiated emissions rates provided in the DEIS fell below applicable ambient air quality standards for H2S ("NYSAAQS"), the EA Odor Analysis, using substantiated emission rates based in the Health Consultation reference document, indicates that the Project's H2S emissions impact will actually exceed NYSAAQS. EA Engineering Technical Memo at 12.

NYSDEC also reviewed the Odor Analysis, noting that it was prepared for the planned Niagara Facility, not the Project. NYSDEC states that the Project Sponsor actually prepared an odor analysis in 2019 for the Project which should have been included in the DEIS for public review. Furthermore, the NYSDEC Letter states that the Odor Analysis needs to be revised to consider the potential impacts of additional constituent asphalt chemicals as well as analyzing odor from all aspects of the Project. NYSDEC also recognized the presence of nearby sensitive receptors to the Project and stated that odor detection is subjective and can vary from person to person and based on the weather. Lastly, NYSDEC noted that the Odor Analysis appears to analyze impacts from the production of 135,000 tons of asphalt per year, while the Project proposes production of 150,000 tons per year.

Section 4.6: Impacts to Human Health

This FEIS Section 4.4 amends Section 4.5.9 of the DEIS by adding the following:

Regarding impacts to human health from air emissions, as discussed in the EA Engineering Technical Memo, the DEIS analysis is based on an inapplicable draft permit based on outdated regulations. As a result, the air emission impacts from the Project are significantly underestimated. Further, the Project fails to account for blue haze emissions of volatile organic compounds regulated under NYSDEC regulations and the Town Code. Finally, the EA Engineering Technical Memo explains that, after properly accounting for all required emission sources from of fugitive particulate emissions and dust emissions from non-road mobile sources, truck traffic, solid material stockpiles, and transfer operations, the Project will likely have a significant impact to M-2 district receptors in derogation of the Town Code § 280-133(C)(1)(b).

With respect to health impacts from odor, the EA Engineering Technical Memo explained that the Neu-Velle Odor Study relied on in the DEIS failed to use appropriately conservative assumptions and wholly failed to account for a significant portion of odor emissions emanating from the proposed 25,000 gallon asphalt storage tank, summarily dismissing the source because they are "difficult to quantify." However, as indicated in the EA Engineering Technical Memo, these emissions can be quantified and are likely to be high. Therefore, EA concluded, failure to account for these emissions renders any analysis of impacts from odor from the Neu-Velle Odor Study unreliable. Additionally, the EA Engineering Technical Memo explained that the H2S modeling cited in the DEIS provided no verifiable reference for its calculations and that once appropriate references were applied, the Project presented problematic impacts from H2S emissions. Therefore, failure to adequately model and analyze odor impacts renders the DEIS's analysis of health impacts from odor deficient and unreliable for the purpose of SEQR review of the Project.

The GHD Report determined that the Neu-Velle Noise Report utilized in the DEIS was unreliable because it failed to use adequate noise measurements in its analysis and failed to account for the site specific differences between the proposed Project and the surrogate facility used to establish prospective Plant sound levels for comparison to the background sound levels around the Site. Furthermore, GHD explained that the DEIS and its supporting reports fail to account for significant sources of Project noise, including predicted heavy truck traffic to and from the Site.

Section 4.7: Consistency with Community Plans

This FEIS Section 4.7 replaces Section 4.5.10 of the DEIS in its entirety.

While the Project's site plan (*see* DEIS, Figure 2)is not in conflict with the Zoning Code's bulk standards for the M-3 District established by Zoning Code Sections 280-134, 280-135, and 280-136, which set no minimum lot size, no maximum heights for structures, and sets certain front, rear and side yard setbacks, the Project's proposed use as a Hot Mix Asphalt Plant is not in compliance with all applicable provisions of the Town's Zoning Code, nor is it consistent with the Town's Comprehensive Plan and its recommendations for the area around the Site.

The Final Scope required the analysis of the Project's Consistency with Community Plans to address the following subjects:

- Potential Impacts
  - Consistency with Zoning regulations: based on the results of the air quality analysis (and additional study) and the analysis of noise and odor impacts, describe how the project meets the requirements of Section 280-133(c)(1)(b) of the M-3 Zoning district. The project sponsor shall furnish studies, completed by technical experts, which demonstrate that no atmospheric pollutants, noise, and/or odor will be disseminated into adjacent R, C, M-1, and/or M-2 zoning districts. Note that the nearest such districts are located adjacent to the site.
  - Describe how the project meets or does not meet the requirements of the Camp Road Overlay district.
  - Describe how the project is consistent or inconsistent with the Town of Hamburg Comprehensive Plan. Consult with the Town of Hamburg Planning Department on the interpretation of the Plan recommendations. Both ways the project is consistent and ways it is inconsistent should be discussed.
  - Describe how the project will impact the "Goals and Objectives/Vision" of the Village of Hamburg's Comprehensive Plan.

- Potential Mitigations to Be Analyzed

- Location and screening of the equipment on the site.
- Methodologies to reduce noise, odor, and air quality impacts to surrounding properties.
- Revisions to the project to meet the Goals and Objectives/ Vision of the Town's and Village's Comprehensive Plans.

Therefore this FEIS's analysis of the Project's consistency with community plans, will assess whether the Project meets the requirements of the following Zoning Code provisions:

Zoning Code Section 280-133(c)(1)(b) and its limitations on uses in the M-3 District which provide that "[n]o use of land, building or structure shall be permitted, the operation of which normally results in any: Dissemination of atmospheric pollutant, noise or odor into any R, C, M-1 or M-2 District.

Zoning Code Article XXVIII Camp Road/Village Overlay District ("Camp Road Overlay") regulations with particular emphasis on those provisions at Zoning Code Sections 280-185, 280-186, and 280-187 setting forth the Camp Road Overlay District's Purpose, Boundaries, and Objectives, and the Project's compliance with the Section 280-190(A) Site Design Conditions.

Zoning Code Article LVIII, which was added to the Zoning Code by Local Law No. 2-2023 as adopted by Town Board resolution on January 23, 2023, and which prohibits Bituminous Mixing Plants or Bituminous Production Plants anywhere in the Town of Hamburg. *See* Zoning Code Section 280-409.

Additionally, this FEIS section will analyze the Project's consistency with the Town's Comprehensive Plan, and its impact on the "Goals and Objectives/Vision" of the Village of Hamburg's Comprehensive Plan.

And finally this section will assess whether the Project avoids or mitigates--to the maximum extent practicable in consideration of social, economic, and environmental factors-- those significant adverse impacts to the surrounding environment caused by the Project's inconsistency with community plans through measures identified in the Final Scope, such as location and screening of the equipment on the Site, methodologies to reduce noise, odor, and air pollution, and revisions to the Project to align it with the Town's and Village's Comprehensive Plans. The Project does not do so.

4.7.1 <u>The Project is Inconsistent with the Zoning Code's Limitations on Uses at the Site</u>

Town-Wide Prohibition on Bituminous Processing Facilities.

The Town Board is authorized from time to time to amend, supplement or change the regulations, restrictions and boundaries established by the Zoning Code to meet the Town's dynamic needs. *See* Zoning Code Section 280-338. In 2019 the Town began a wholescale evaluation of its land use policies and drafted an updated Comprehensive Plan that was ultimately adopted in January 2023. Many of the issues that were raised by residents throughout the years'-long Comprehensive Plan update process revealed there was a growing concern about heavy industrial uses and Zoning Districts in the Town that were no longer compatible with other less intensive residential and smaller retail commercial enterprises that had taken root in the Town over the preceding decade since the Town had last evaluated its policies. Accordingly, in November 2022 Town Supervisor Randy Hoak, as member of the Town Board, introduced Local Law No. 2-2023 as a proposed amendment to add Article LVIII entitled "Bituminous Processing Facilities" to the Town's Zoning Code to prohibit asphalt plants and bituminous processing facilities in the Town.

The Town Board scheduled a public hearing on the Local Law 2-2023 for December 12, 2023 and held the hearing open until January 23, 2023. The Town's Code Review Committee recommended that the Town Board adopt Local Law 2-2023.
Local Law 2-2023 as filed with the New York state Department of State in January 2023 is attached to this FEIS as Appendix 8. The Town Board's resolution to adopt amendments to the Town's Zoning Code to prohibit hot asphalt production expressly acknowledges the Town's work to update its Comprehensive Plan, including evaluation of potential Zoning Code and Zoning Map amendments in areas of the Town determined to be improperly zoned in light of changes in the Town and region since the adoption of the prior 2007 Plan. The work the Town had done to update its Comprehensive Plan showed certain changes in the Town's land use and development patterns that revealed the need to completely eliminate certain uses that no longer fit in with the other land uses that predominate in the Town. In addition to bituminous processing facilities, the Comprehensive Plan suggests the elimination of lumber yards, coal yards, cement mixing plants, and storage of petroleum products as permitted uses throughout the Town because such uses cannot be conducted in harmony with the Town's other land uses.

The Town Board's resolution to approve Local Law 2-2023 noted that it was specifically intended to protect and enhance the Town's physical and visual environment , the Town's character, the Town's economic needs, and the health safety and general welfare of persons and property within the Town based on the following:

- Bituminous processing facilities typically process and store petroleum products and could cause the discharge of waste water and other by products from facility operations to downstream waterbodies if not properly managed, as such prohibition of such facilities would serve to protect against potential adverse impacts to groundwater.

- The prohibition of bituminous processing facilities would serve to prevent the emission of hazardous air pollutants from asphalt plants within the Town.

- The prohibition of bituminous processing facilities would protect and improve the Town's aesthetic resources because such facilities typically require the use of large structures for processing and storing asphalt material and have the potential to produce plumes or a "blue haze" visible from surrounding areas.

- Prohibition of bituminous processing facilities would protect transportation resources in the Town because such facilities typically involve the use of large open top asphalt trucks for frequent material deliveries and pick-ups that could impact traffic (including bicycle and pedestrian) in the Town.

- Prohibiting bituminous asphalt facilities would protect the Town from the odors typically associated with the manufacture of hot asphalt.

See Appendix 8 (January 23, 2023 Town Board Resolution adopting Local Law 2-2023).

The Town Board adopted Local Law 2-2023 on January 23, 2023, and the Town Clerk filed it with the Secretary of State on January 30, 2023. Accordingly, the Zoning Code expressly prohibits bituminous processing facilities (like the Plant) at the Site (and anywhere else in the Town).

Though the Project Sponsor contends that the Project is an expressly permitted use pursuant to the former Zoning Code Section 280-133(A)(10), that subsection regarding bituminous processing facilities was repealed by Local Law 2-2023. Therefore, under the Town's current and applicable Zoning Code, the Project's proposed use as a hot mix asphalt plant is prohibited throughout the Town, including at the Site.

M-3 District Use Limitations on Dissemination of Atmospheric Pollutants, Noise & Odor.

Even if the Zoning Code Section 280-409 prohibition on bituminous processing facilities were not applicable to the Project (though it is), any use at the Site (including the Plant) would be subject to the specific limitations on those uses pursuant to Zoning Code

Section 280-133(C), which prohibits (among other things) a use in the M-3 District that would normally result in the dissemination of an atmospheric pollutant, noise or odor into any R, C, M-1 or M-2 District. This provision is intended to steer more intense uses that are otherwise allowed in the M-3 District to more isolated areas deep in the M-3 District and set apart from other zoning districts and more sensitive receptors there.

As applicable to the Site, Zoning Code Section 280-133(C) applies to limit the Plant from causing any pollutant, odor, or noise, from entering the M-2 portion of the Site approximately 0.05 mile (or 264 ft.) south;, the adjoining C-2 General Commercial District approximately 0.09 mile (or 475 ft.) to the east; or the R1 Residential District 0.16 mile (or 844 ft.) *See* Appendix 12. Based upon the GHD Report (Appendix 6) and the EA Engineering Technical Memo (Appendix 7), the Project may disseminate noise, odors, and pollutants to adjoining uses and zoning districts in violation of Section 280-133(C).

4.7.2 Analysis of Project's Consistency With Camp Road Overlay District

The Project is Inconsistent with the Camp Road Overlay District's requirements. The Camp Road Overlay District was added to the Zoning Code to accommodate the increasing commercial growth that was occurring along the Camp Road corridor. It was meant to encourage the development of uses that are in harmony with the surrounding area, to improve the visible character of the area, protect adjoining residential uses and enhance the character of the area as an important gateway to the Town and Village of Hamburg.

The Camp Road Overlay District regulations were most recently updated in 2015 and are applicable to the Site.

Applicable Standards: The Camp Road Overlay District's "Purpose" as stated at Zoning Code Section 180-185 (A) through (C) is as follows:

A. In accordance with the recommendations and policies of the Town of Hamburg 2010 Comprehensive Plan, this overlay district is designed to better manage and accommodate increasing commercial growth along the Camp Road corridor through the implementation of guidelines to regulate traffic and transportation, signage, development and redevelopment and architectural design. This overlay is also intended to encourage the development of uses that are in harmony with the surrounding area, improve the visible character of the area, protect adjoining residential uses and enhance the character of the area as an important gateway to the Town and Village of Hamburg.

B. This overlay will act to regulate the Camp Road corridor as a growing commercial district and will provide a transition zone to the smaller retail businesses in the village.

C. The Camp Road/Village Overlay District regulations will supplement the underlying zoning restrictions and provide for safe and orderly development within the defined section of Camp Road.

The Camp Road Overlay District also includes the following Objectives at Zoning Code Section 280-187 (A) through (E):

A. Emphasis shall be placed upon redevelopment of existing developed properties.

B. This area is truly a transition area that includes a mixture of larger, more intense commercial businesses and typical, small "mom-and-pop"-type stores. It is not the intent of this overlay to convert these larger establishments to smaller village-type operations. Any redevelopment or changes on these sites must take into account the smaller uses in the area and attempt to blend with this atmosphere. *In no case, however, shall existing large lots be redeveloped with uses that are larger or more intense than the uses that currently exist on these properties.*

C. Projects should be "street and pedestrian friendly." Sites should accommodate parking at the sides or rear of the building, and pedestrian access should be an integral part of the plan.

D. Designs should take into consideration the character of the village and its existing businesses along Camp Road/Lake Street.

E. Architectural standards will complement the village-type scale and nature of the area, and chain (prototypical) buildings should be modified to reflect this character.

The Camp Road Overlay District also includes the following specific Site Design Conditions pursuant to Zoning Code Section 280-190, which may be modified or waived by the Planning Board but must not diminish the intent or purpose of the overlay district:

A. All landscaping design shall include the provision for pedestrian access to and from the site.

B. Blank walls and other dead or dull spaces at the street level shall be avoided. Visually interesting activities at the sidewalk edge shall be maintained and/or established to engage pedestrian interest.

C. Building frontages should be active, with large nonreflective, minimally tinted window openings at ground level.

D. New building forms and elevations should be detailed and articulated to create interesting rooflines and strong patterns of shade and shadow.

E. Large structures should be designed to reduce their perceived height and bulk by dividing the building mass into smaller-scale components. New buildings greater than 7,000 square feet (first-floor dimensions) shall be strongly discouraged in the Village area.

F. The rear of buildings (existing and proposed) shall be enhanced, where appropriate, to improve public access from parking lots and to improve views to surrounding residential properties.

Analysis of Project's Consistency with Camp Road Overlay District Purposes.

The Zoning Code Section 280-185(A) through (C) purposes referenced above set a clear purpose for the Camp Road Overlay District--it is meant to provide guidelines to proactively manage increasingly intense uses in the Camp Road corridor through supplemental regulations on development and architectural design to: (1) encourage the development of uses that are safe, orderly, and in harmony with the Camp Road corridor, (2) improve the visible character of the area, (3) protect adjoining residential uses and (4) enhance the character of the area as an important "gateway" or transitional area to the Village's smaller retail businesses.

According to the analysis presented in the FEIS Sections addressing air, noise and odor, and upon the GHD Report (Appendix 6) and the EA Engineering Technical Memo (Appendix 7), the Project is not in harmony with existing conditions because the Plant may disseminate noise, odors, and pollutants to adjoining uses and zoning districts in violation of Zoning Code Section 280-133(c)(1)(b). Accordingly, based on the Project's Sponsor's analyses in the DEIS, it is not apparent how the Project could proceed and achieve the Overlay's purpose to protect residential areas that surround the Site.

The general nature of the Project's use as a highly intensive industrial activity with seasonal potential for evening, overnight and weekend production of hot mix asphalt is inconsistent with Village's character and smaller retail businesses, which-- traveling north on Camp Road from the Town into the Village include: salon/spa, restaurants, Baptist church, apartments, real estate/ insurance offices, vehicle sales/repair shops, bank, and similar uses. *See* Appendix 12.

Analysis of Project's Consistency with Camp Road Overlay District Objectives.

Those objectives identified at Zoning Code Section 280-187 (A) through (E) emphasize development/redevelopment of existing industrial properties in the Camp Road corridor with uses *of lesser intensity than those currently in existence*. Accordingly, as applied to the Site, that would mean a project intended to develop or redevelop the Site in a manner that is no more intensive than, and indeed should be less intensive than, the concrete operation that has historically operated on Site. The Overlay is intended to promote well-designed, village-type, small-scale, street and pedestrian friendly development in and around the Camp Road corridor to create a charming "gateway" feeling in the area. The Project is expressly prohibited in the Town as a bituminous processing activity, a highly intensive industrial use with the potential for air, odor, and traffic impacts that is not in accord with these objectives of the Overlay district. See Appendix 6 (GHD Report); Appendix 7 (EA Engineering Technical Memo).

Analysis of Project's Consistency with Camp Road Overlay District Site Design Conditions

The specific Site Design Conditions at Zoning Code Section 280-190 promote pedestrian access, visually engaging sidewalk edges and building facades, and structures that encourage a village-feel with pleasant views for residential areas. The Project's highly intensive use as a hot mix asphalt plant is in conflict with each of these Site Design Conditions. The Project's Site Plan does not make any accommodation for appropriate design or pedestrian access consistent with these regulations. *See* DEIS, Figure 2 (Site Plan).

Based on the foregoing, the Project is not consistent with and does not meet the requirements of the Camp Road Overlay District.

4.7.3 Analysis of Project's Consistency with Town's Comprehensive Plan

The Town of Hamburg formed a Comprehensive Plan committee in 2019 to begin the process of updating the prior Comprehensive Plan. In 2020, the Town retained Wendel

as a planning consultant to assist with the development of an updated Comprehensive Plan. This development of the updated Comprehensive Plan involved numerous public outreach meetings over a two-year period and a working draft of the document was completed in the summer of 2022 and placed on the Town's website in August of 2022. A final draft of the updated Comprehensive Plan was completed in the Fall of 2022 and was adopted by the Town Board in January of 2023.

The Project is inconsistent with the Comprehensive Plan's recommendations for the Site. The Comprehensive Plan acknowledges the Town's strong industrial base and recommends development and investment in industrial uses in areas appropriate for such uses. The Comprehensive Plan's Economic Development Map and Summary describe the Town's industrial uses as centered in the northwest and northeast corners of the Town, with the largest section of M3 zoning found on the east side of Lake Shore Road/Route 5 running from the City of Lackawanna to Big Tree Road. *See* Comp. Plan Economic Development Map and Summary and p. 18.

Camp Road Corridor recommendations include the consideration of new mixed use zoning designations and the elimination of the industrial zoning in the areas along Camp Road. *See* Comp. Plan p. 25. The Comprehensive Plan's key recommendations for the area in the vicinity of the Site include "transition/border areas with the Village need proper planning. Old industrial areas need to be targeted for new and appropriate development," and further recommendations that industrial zoning along Camp Road be removed from the Zoning Map particularly near the Village. *See* Comp. Plan., p. 28.

The Site on Camp Road is contiguous to the Village and is an example of an isolated portion of the M-3 District set apart from other examples of the M-3 District in the Town, which tend to be more concentrated in the northwest portion of the Town along the traditional industrial corridor on Route 5. *See* Zoning Map; Appendix 2 (Comp. Plan Economic Development Map). As such, the Comprehensive Plan's recommendations as applicable to the Site include specific directions to evaluate alternative and lesser intensive zoning district designations in place of heavy industrial uses. The Town's updated Comprehensive Plan specifically recommends the transformation of this Camp Road area to a "Gateway area" between the Town of Hamburg and the Village of Hamburg. The Comprehensive Plan appends the "Hamburg Gateway Revitalization Design Project" report to the Comprehensive Plan. This Hamburg Gateway Revitalization Design Project illustrates a specific plan to change the industrial areas formerly known as the Reifler Concrete Plant on Site and surrounding lands to a mixed-use development area.

4.7.4 Analysis of Project's Impacts on Goals & Objectives of Village's Comprehensive Plan

The Village's Comprehensive Plan explains that the Village first saw the need for a comprehensive land use plan in the early 2000's when the Village's established residential neighborhoods began to feel the "unchecked spread of commercial uses [ ] eroding residential edges, threatening home values and diminishing the quality of life in vulnerable areas." *See* Village Comprehensive Plan, p. 7. Accordingly the Village's Comprehensive Plan was developed to emphasize traditional neighborhood planning tools to preserve, enhance, and restore the Village's livability and economic viability. *See* Village Comprehensive Plan, p. 7.

One of the principle issues identified in the Village's Comprehensive Plan is "Weak Village Gateways," with one of the primary gateways to the Village being identified as Camp Road itself. *See* Village Comprehensive Plan, p. 11. The Village set a general goal to strengthen its gateway areas for "obvious, pleasant and memorable" transition to and from the Village. The Village's Comprehensive Plan at p. 18 identifies the area in the immediate vicinity of the Site as an area marked for future land use in the light industrial category and the Village's Zoning Map designates the Village parcels just to the north and west of the Site as a Mixed Use-Industrial District ("MU-I District") pursuant to the Zoning Law of the Village of Hamburg ("Village Zoning Law").

The Village's MU-I District adjacent to the Site is intended to accommodate light industrial uses in the Village while "also providing for a mix of supporting low-intensity commercial and residential uses." *See* Village Zoning Law Section 250-22.2(B). The Village's MU-I District permits only select light industrial uses that are limited to the following: enclosed manufacturing and processing, enclosed packaging, and enclosed research & development facilities/laboratories.

Future investment should be compatible with and sensitive to the scale, form and level of intensity of nearby existing structures and uses." *See* Village Zoning Law Section 250-22.2(B). The Village Zoning Law further describes requirements for developments in the MU-I District: "Development within this district should be campus-style in design and layout and should facilitate internal pedestrian circulation systems that are linked to external walkways where practicable." *See* Village Zoning Law Section 250-22.2(B). And finally, though the Village Zoning Law acknowledges that certain light industrial uses will require architectural features that will necessarily differ from the traditional character of the Village, the general appearance of all buildings and grounds shall be a visual asset to the area in which they are located." *See* Village Zoning Law 250-22.2(B).

In addition to the foregoing specific limitations on industrial uses in the MU-I District in the Village, the Village's Comprehensive Plan calls for future land use decisions for parcels near the Site to follow certain policies, including:

- Removal of industrial uses where the introduction of such uses would create detrimental effects on adjacent neighborhoods. *See* Village Comp. Plan, p. 20.
- Establish and maintain logical boundaries between contrasting uses by providing adequate buffers to prevent nuisances and minimize conflicts in use
- Give consideration to how land use and roadway decisions impact the Village's pedestrian experiences, connectivity and walkability.

Particularly with regard to the Village's future land use plans for industrial uses, the Plan pp. 25-26 provides that market forces related to industrial development typically located those business in denser urban settings with access to transport networks for employees, but that those trends evolved based on the outward expansion of transit networks and expanded the industrial employee base to include suburban/rural employees such that large-scale industrial uses now tend to locate in outlying areas that have good access to highway based transport. The shift in those general industrial development preferences combined with "the Village's limited ability to accommodate large freight trucks, has diminished the Village's ability to . . . maintain traditional large-scale industrial businesses within its boundary."

Moreover, the Village's Plan notes that "the Village desires less intensive, smaller-scale industrial development than what was historically envisioned in the areas designated for industrial use." *See* Village Comp. Plan, p. 26. In response to the foregoing, "the Village determined a need to reposition its existing industrial facilities and consider creative new ways to redevelop these areas." *See* Village Comp. Plan, p. 26. The kinds of light industrial uses and industrial redevelopment projects envisioned by the Village's Comprehensive Plan include: shops/restaurants, galleries, loft housing, warehousing, live/work spaces, gymnasiums, dance studios and martial arts facilities, and "small-scale light industrial development." *See* Village Comp. Plan, p. 26.

The important "gateway" goals in the Village Comprehensive Plan emphasize cooperation between the Town and Village to enhance transition zones with land uses that improve the sense of arrival into the Hamburg community and notes that existing development in these areas lacks the character and design quality found elsewhere in the Village. *See* Village Comp. Plan, p.27. Appropriate land uses in gateway areas include small to mid-size retail, banks and professional offices, gas stations/convenience stores, grocery, pharmacy, multi-family residential development and townhomes, gymnasiums, dance studios or similar facilities. *See* Village Comp. Plan, p.27.

Specifically with respect to transportation, the Village Comprehensive Plan sets a key strategy to reduce the amount of pass-through, non-local truck traffic through the Village. The Village Comprehensive Plan determined that truck traffic through the Village along Route 75 (i.e. Camp Road) causes traffic congestion and compromises the quality of life in the "quaint rural Village," and further notes that the "negative impacts of truck traffic within the Village continues to be a concern." *See* Village Comp. Plan, p. 42. Where smaller trucks cannot be used for businesses in and around the Village, the Comprehensive Plan notes that "businesses should be encouraged to coordinate deliveries at off-peak times to lessen negative impacts on traffic conditions in the heart of the Village." *See* Village Comp. Plan, p. 42.

The Village Comprehensive Plan emphasizes the Village's historic resources. The Village of Hamburg Historic Preservation Commission (the "Commission") explained in a letter to the Applicant dated March 16, 2023 (*see* DEIS, Appendix K) that the Commission is responsible for promoting the general welfare of the Village by providing for the identification, protection, enhancement, and perpetuation and use of buildings, structures, signs, features, improvements, sites and areas within the Village that reflect special elements of the Village's historical, architectural, cultural, economic or aesthetic heritage. The Commission noted that the Project may have the potential for impacts to buildings and structures in the Village within ½ mile of the Site by way of truck traffic and certain growth inducing impacts from the Project.

Based on the Project's proposed use as a highly intensive industrial activity, with outdoor operations and the potential for air, odor, and noise impacts to surrounding areas, (see Appendix 6 (GHD Report); Appendix 7 (EA Engineering Technical Memo)), the Project is inconsistent with the Village's Comprehensive Plan and the kinds of enclosed, small-scale light industrial uses the Village's land use patterns envision for the area. Moreover, given the Village Plan's focus on limiting non-local, heavy truck traffic on Village roads and on the Route 75/Camp Road corridor, the Project's truck traffic for supplies and customer pick-up of the hot mix asphalt materials in large open back construction trucks (the DEIS estimates the Project would add 50 daily truck trips to the Site), is fundamentally incompatible with the Village's land use policies as embodied in its Comprehensive Plan.

4.7.5 Assessment of Proposed Mitigation Measure to Address Project's Inconsistency with Community Plans

Pursuant to the Final Scope the potential mitigation measures to be analyzed for the Project to help avoid or minimize inconsistency with community plans to the maximum

extent practicable would include strategic location and screening of the Plant equipment on the Site, consideration of methodologies to reduce noise, odor, and air quality impacts to surrounding zoning districts, and potential revisions to the Project to meet the Goals and Objectives/ Vision of the Town's and Village's Comprehensive Plans.

The Project Sponsor does not acknowledge the Project's inconsistency with community plans, it instead concludes that no mitigation measures are necessary, and therefore does not propose or even examine the feasibility of screening, or the implementation of noise/odor/air pollutant controls, nor any Project design revisions to bring the Project more in line with applicable community plans around the Site. *See* DEIS, p. 76. In fact the DEIS's entire analyses of potential mitigation measures to minimize the Project's inconsistency with Community Plans consists of the following three sentences:

> The proposed facility is as set forth above, the project meets the Goals and Objectives of both the Town and Village Comprehensive Plans [sic]. Based upon expert studies noise, odor and air quality will not impact surrounding properties. No mitigation measures are required.

See DEIS, p. 76.

Based on the EA and GHD expert reports prepared on behalf of the Lead Agency (see Appendix 6 (GHD Report); Appendix 7 (EA Engineering Technical Memo)) the Project Sponsor has not established that atmospheric pollutants will not be disseminated into adjoining R, C and M-2 zoning districts. Furthermore, the Project's intensive heavy industrial use as a Hot Mix Asphalt Plant is an expressly prohibited use in the Town, and is out of character with the smaller-scale, enclosed light industrial uses permitted in the MU-I District in the Village near the Site. Though the Project is in conflict with the Village's Comprehensive Plan and the Town's Comprehensive Plan and is expressly prohibited by the Town's Zoning Code, the Project Sponsor has declined to consider reasonable mitigation measures as described in the Final Scope. Therefore, the Project's inconsistency with community plans is not mitigated in any way.

4.7.6 Conclusion: The Project is Not Consistent with Community Plans

Based on the Zoning Code's prohibition on bituminous processing facilities anywhere in the Town, the Project is not a permitted use at the Site. Based on the air, odor and noise analysis performed by the Planning Board's consultant's EA and GHD, the Project as proposed has not been shown by the Applicant to comply with the Zoning Code's

limitations on uses in the M-3 District to only those uses that do not normally disseminate atmospheric pollutants, noise, and odor to R, C, or M-2 Districts. The Project is not consistent with the general purpose of the Camp Road Overlay District and its "gateway" principles. Nor is the Project consistent with the Town's Comprehensive Plan or the Village's Comprehensive Plans' goals and objectives to eliminate heavy industrial uses (such as the Plant) in the Camp Road corridor.

Section 5.0

Summary of Substantive Comments Received and Lead Agency Responses to Same

This Section 5.0 of the FEIS provides summaries and responses to the substantive comments received on the DEIS. As noted in Section 1.3, pursuant to the Notice of Completion, the Public Comment Period on the DEIS and the Listed Deficiencies commenced upon acceptance of the DEIS for public comment subject to the Listed Deficiencies on May 4, 2023. The Board conducted two Public Hearings on the DEIS and Listed Deficiencies on June 14, 2023 and July 12, 2023. The Public Comment Period closed on July 28, 2023. Many comments were received during the comment period including 137 written comments sent as emails or letters, as well as verbal comments from 24 speakers at the June 14, 2023 SEQR Hearing and 40 speakers at the July 12, 2023 SEQR Hearing. Copies of these emails, letters, and transcripts of the Public Hearings are included in Appendix 9.

In order to process and respond to the comments received during the Public Comment Period, each of the comments, including those made at the Public Hearings, were carefully reviewed. A unique identifier was assigned to each written comment received and to each person who testified at the Public Hearings based on the source of the comment (e.g. WC1 for Written Comment 1, or PH1.S1 for the first speaker at the first Public Hearing, or PH2.S2 for the second speaker at the second Public Hearing and so on). Then each Public Comment was reviewed and summarized, and further split to identify distinct substantive comments (there may be multiple distinct substantive comments offered by each written comment or individual speaker). Each distinct substantive comment was assigned a unique comment identifier based on the source of the comment (e.g. WC1 or PH1.S1) plus an additional number to correspond to each of the particular comments made within a larger writing or by a speaker during the Hearings. By way of example, Comment WC1.1 refers to the first distinct substantive comment made in the writing identified as WC1 in Appendix 10. Similarly WC80.4 refers to the fourth distinct comment made in the writing identified as WC80 in Appendix 10, and so on. Another example, PH2.S20.3, refers to the third distinct comment made by the twentieth speaker at the second Public Hearing on July 12, 2023, as identified in Appendix 10.

A total of 372 distinct substantive comments were received during the Public Comment Period. Many comments were provided by community members and Town residents. In addition, during the Public Comment Period the Board received comments from other agencies, such as the NYSDEC and the ECDEP; and from other agencies locally, such as a combined comment letter from the Town and Village of Orchard Park, and comment letters from the Village of Hamburg, and the Town of Hamburg Conservation

Advisory Board. Comments from other Interested and Involved Agencies are attached for convenience in Appendix 5. The Board also submitted its public comment on the DEIS by resolution adopted at its July 19, 2023 (*see* Appendix 5) meeting to reiterate its position that the DEIS was fundamentally flawed and suffered from each of the Listed Deficiencies.

A list of each distinct substantive comment has been prepared, and each distinct substantive comment is responded to below. In cases where distinct substantive comments were substantially similar, those comments were grouped together and assigned a unique identifier by category. By way of example, 21 distinct comments relating to the Project's consistency with community plans were grouped, summarized and responded to with Consistency with Community Plans Response 1; Consistency with Community Plans Response 2; Consistency with Community Plans Response 3.

Attached in Appendix 10 is a chart that includes each comment identification, the name of the person who made the comment (or organization as applicable) and the comment summary and response identification. In some case, more than one comment summary and response may have been relevant to a particular comment. In such cases, more than one comment summary and response may be identified in the chart as responsive to the comment. To assist the reader in correlating the comment summaries and responses to the text of the DEIS, the comment summaries and responses are presented in this Section in the general order of the presentation of information in the DEIS.

1 Summary: **SEQR 1:**

Many commenters noted that the Project Sponsor failed to revise the DEIS document to address the Listed Deficiencies as identified by the Board. Many commenters generally noted that the DEIS relies on information and analyses associated with a prior proposal by A.L. Asphalt to develop an asphalt plant at a different location in a different county with materially different surroundings and receptors than the Project's proposed location at the Site in the Town of Hamburg.

1 Response: **SEQR 1:**

Acknowledged. The Project Sponsor's refusal to revise the DEIS to resolve deficiencies has significantly impaired the ability of the Board to take a hard look at the potential adverse environmental impacts of the Project or to analyze and develop appropriate mitigation.

2 Summary: **SEQR 2:**

The Village noted that positive SEQR findings may not be issued because Applicant has not provided a DEIS or analyses with information to ensure the reasonably avoidable

adverse environmental impacts from the Project have been assessed, avoided and mitigated as required by SEQR.

2 Response: **SEQR 2:**

Acknowledged. The Board agrees that the DEIS fails to provide adequate analyses and information to allow the Board to certify that consistent with social, economic and other essential considerations, from among the reasonable alternatives available, the Project avoids or minimizes adverse environmental effects to the maximum extent practicable.

3 Summary: **SEQR 3:**

The Board submitted its public comment on the DEIS by resolution adopted at its July 19, 2023 (*see* Appendix 5) meeting to reiterate its position that the DEIS was fundamentally flawed and suffered from each of the Listed Deficiencies.

3 Response: **SEQR 3:**

The Board followed the SEQR Handbook's guidance, which recommends that in cases where there is a fundamental disagreement regarding the essential information and analyses that must be in the DEIS, the Lead Agency may accept the DEIS for public review though it believes that the DEIS still contains deficiencies, and may repeat its criticisms of the DEIS as written comments during the public review and comment period. See The SEQR Handbook at p. 129. "This process will allow the disagreement concerning EIS content to be resolved via the lead agency's responses to comments in the final EIS." The SEQR Handbook at p. 129. Accordingly, the Board refers to the description of the Listed Deficiencies in Section 3.0 and to Section 4.0 Corrections, Revisions, and Supplements to the DEIS.

4 Summary: **Project Description 1:**

Several commenters noted that the Project does not create meaningful employment opportunities in the Town because the Plant would only employ six people on a seasonal basis.

Response

4 Response: **Project Description 1:**

The Board acknowledges that the Project would create a very limited number of jobs.

5 Summary: **Project Description 2:**

Some commenters noted that the Project description in the DEIS does not sufficiently describe the details of the Plant or its operations. One commenter inquired about the potential height for aggregate material stockpiles on Site.

5 Response: **Project Description 2:**

The Board acknowledges and agrees that the Project Description provided by the Project Sponsor in the DEIS is inadequate. See Section 3.2 of the FEIS.

6 Summary: **Project Description 3:**

One commenter noted that there is a need for asphalt operations to pave roads and parking areas etc. (PH2.S18.1). However, comments from the community typically stated that there are other nearby asphalt plants to meet the WNY region's asphalt needs for road repair and construction. Many commenters wondered how the Project would benefit the health, safety, and welfare, of the community (e.g. PH1.S6.2).

6 Response: **Project Description 3:**

While the Board acknowledges, as a general matter, that asphalt operations are needed to pave roads and parking areas, as detailed in Section 3.2 of the FEIS, the Project Sponsor failed to identify with any sufficient degree of clarity: (1) the existing asphalt market in Western New York; and (2) the need for a new asphalt plant in Western New York in general and the Town of Hamburg in particular.

7 Summary: **Environmental Setting 1:**

ECDEP stated that the Town and Applicant should ensure the conditions of the Site and its location in a more urban area in the Town of Hamburg (as compared to Witmer Road facility) are used for any calculations in the DEIS and/or any permit references to account for differences in environmental conditions such as relative elevation between plant equipment and nearby uses, vegetative coverage/breaks, prevailing winds, neighboring uses and other sensitive receptors (residences, schools (not just athletic fields)), medical offices, etc.

7 Response: **Environmental Setting 1:**

Acknowledged.

8 Summary: **Environmental Setting 2:**

Community members and Town and Village residents commented that the Project is inconsistent with the surrounding community. Commenters described the land uses

within an approximately half mile radius of the Site, and noted that such uses include: single family residences, townhomes and communities for the elderly, Elderwood, the Middle and High Schools, Howe Field, daycare centers, pediatricians, and the seasonal Farmer's Market on Church Street. One comment (WC47.1) stated "[b]ituminous processing does not have a place in the Town of Hamburg. The pollution generated by these processes make them inappropriate for residential areas." Commenters generally repeated this theme and emphasized that the Plant's proposed use for asphalt production is better suited to an area with a low concentration of human residents. Another comment (WC88.1) describes millions of dollars of investment in recent years to revitalize the Town and Village, and notes that the Project at the Site would detract from efforts to build the community's "small town America" character. Comments in this category also emphasized that the Project and its potential for emissions and smells is out of character with the Hamburg School District's investments to upgrade the nearby outdoor Howe Field athletic complex that hosts visiting school districts, student athletes and spectators. And finally, comments in this category noted that the Project's potential for overnight operations would potentially interfere with nearby residents' sleeping rhythms and the community's quiet enjoyment of the residential and recreational areas around the Site.

8 Response: **Environmental Setting 2:**

Acknowledged. As detailed in Section 3.3 of the FEIS, the Project Sponsor has failed to provide adequate information about the environmental setting of the Site for the Board to evaluate the Project's impacts to or to analyze and develop appropriate mitigation.

9 Summary: **Environmental Setting 3:**

One commenter indicated that the Site's prior use as the Riefler Concrete Plant did not generate any negative impacts on the community (PH.2.S18.2). Though, as a general matter, the community's comments suggested that the Site's prior uses did, in fact, impact the surrounding neighborhoods as often residents reported that they used to find their cars and homes coated with dust from prior concrete operations conducted at the Site. Once comment (WC123.2) stated that concrete manufacturing is not currently occurring on Site and has not for many years, and inquired how current Site conditions would compare to active Plant operations.

9 Response: **Environmental Setting 3:**

Acknowledged.

10 Summary: **Surfacewater 1:**

ECDEP noted that the Project proposes the utilization of liquid asphalt cement with an associated storage tank. ECDEP commented that the Project Sponsor should explain the possible spread, in size and direction (due to slope), of a tank spill or other failure. ECDEP further stated that containment measures, such as concrete curbs or channels, may be warranted.

10 Response: **Surfacewater 1:**

Acknowledged. The lack of information provided by the Project Sponsor regarding site conditions around the storage tank and likely outcomes from a tank spill or failure make it impossible for the Board to determine whether mitigation such as containment measures, are required.

11 Summary: **Stormwater 1:**

NYSDEC commented on the DEIS's discussion of the SPDES permit that would ultimately be applicable to the Project. NYSDEC pointed out that the Project Sponsor must clarify the type of SPDES permit that it intends to apply for to authorize the Plant's operations and asked for details on which entity would be the applicant. The NYSDEC also noted that the DEIS page 70 indicates that the "property owner will obtain a State Pollutant Discharge Elimination System (SPDES) permit for this project prior to full build," and the NYSDEC asked for clarification regarding the potential discrepancies between "full build" and the earlier description of the Project offered on DEIS page 18.

11 Response: **Stormwater 1:**

Acknowledged. As detailed in Sections 3.3 and 3.4 of the FEIS, significant clarification regarding the current SPDES MSGP for the Site and necessary stormwater permitting for the Project is necessary for the Board to take a hard look at the impacts of the Project to surface waters or to analyze and develop appropriate mitigation.

12 Summary: **Stormwater 2:**

Several commenters noted that the DEIS Section 4.4 and 4.5.1 lacked a meaningful analysis of bulk storage and related issues. Many commenters expressed particular concern that the Project's run off and stormwater impacts had not been analyzed for a culvert that runs underneath Sunset Drive in the residential neighborhood just west of the Site. Other comments inquired how the Project would keep run off out of the creek that runs underneath Sunset Drive and through Forest Glen.

12 Response: **Stormwater 2:**

Acknowledged. As detailed in Section 3.4.5 of the FEIS, the expert retained by the Board to review the stormwater analysis in the DEIS found significant deficiencies with regard to the Project Sponsor's analysis of stormwater impacts from the Project.

13 Summary: **Air 1**:

NYSDEC raised numerous technical issues with regard to the analysis and mitigation measures presented in the DEIS to address the Project's potential impacts to air. In addition, NYSDEC commented that the Climate Leadership and Community Protection Act ("CLCPA") analysis contained in Appendix P of the DEIS ("CLCPA Analysis") was completed for a separate facility proposed elsewhere by A.L. Asphalt in Niagara County. CLCPA imposes broad carbon emission reduction mandates and requires NYSDEC to analyze whether a proposed action such as a permit approval will is consistent with the mandates of the CLCPA. NYSDEC stated that the CLCPA Analysis in DEIS must be replaced with a new CLCPA analysis for the current proposed Project and should utilize the most current NYSDEC emission factors.

13 Response: **Air 1:**

Acknowledged. The Board defers to NYSDEC's technical expertise on these issues and notes that any technical studies necessary for issuance of the Project's air permit must be considered as part of the environmental review process for the Project in order to allow the Board to take a hard look at the air quality impacts of the Project or to analyze and develop appropriate mitigation.

14 Summary: **Air 2:**

NYSDEC noted that the Draft ASF Permit in Appendix E of the DEIS includes a federally enforceable production limit to stay below the permitting requirements of a Title V permit and that the DEIS Appendix F contains an Air State Facility Permit Application and air modeling for the Niagara County Facility. Accordingly, NYSDEC offered these comments:

- the Air State Facility ("ASF") Permit Application provided was prepared for a different site at Witmer Road in Niagara County, but the DEIS should contain the ASF Permit Application for the Camp Road Site;
- the ASF permit application and DEIS should reflect current regulatory criteria (i.e. amendments to 6 NYCRR Part 212);
- revise and clarify the following statement from the DEIS: "proposed project is a hot mix asphalt plant that will produce up to 150,0000 tons per year based upon a NYSDEC Air State Facility Permit," because this statement may be a misleading since no such Air State Facility Permit exists for the Site.

14 Response: **Air 2:**

Acknowledged. As detailed in Section 3.5.4 of the FEIS, the Board agrees that the Project Sponsor's reliance on the Niagara Facility Draft ASF Permit as the basis for its air impact analysis is inappropriate given that the Niagara Facility Draft ASF Permit was issued for an entirely different facility in an entirely different county. Further, As detailed in Section 3.5.5 of the FEIS, the expert that the Board retained to review the DEIS noted various inconsistencies in the DEIS and supporting documents and that a number of technical issues must be addressed more completely and in greater detail to allow the Board to take a hard look at the air quality impacts of the Project.

15 Summary: **Air 3:**

NYSDEC also recommended that the Board consider certain air emissions daily record keeping and monitoring requirements, such as: tons of asphalt produced, hours of burner operation, type/amount of fuel consumed, baghouse differential pressure, daily opacity reading of visual stack emissions by an EPA Method 9 certified employee following observation methods and proper vantage points as prescribed in EPA Method 9, tons of Recycled Asphalt Pavement (RAP) used per tons of finished material.

15 Response: **Air 3:**

Acknowledged. The Board defers to NYSDEC's technical expertise on these issues and agrees that these issues would need to be considered before issuing any positive findings for the Project.

16 Summary: **Air 4:**

ECDEP offered specific comments on DEIS Section 4.5.2 Impact on Air and stated that the Project Sponsor should include information on how the baghouse particulate matter would be disposed of and/or how often the filters are replaced, and any concerns with fugitive emissions during such processes. ECDEP also noted that Project operations involve the filling of the asphalt oil tank and truck load out with finished material, and recommended the DEIS consider whether those processes should be enclosed in order to limit fugitive air emissions.

16 Response **Air 4:**

Acknowledged. The Board agrees that such information is necessary for the Board to take a hard look at the environmental impacts of the Project to air quality or to analyze and develop appropriate mitigation.

17 Summary **Air 5:**

Many members of the community commented that the Project had the potential to impact air quality around the Site. Comments often referred to the regional impacts to the Town from the Canadian wildfires the occurred during Summer 2023 to emphasize the importance of preserving the Town's air quality from industrial impacts. Commenters noted that air quality impacts from the Project would tend to drive residents indoors, behind closed windows, and away from outdoor activities in an effort to avoid particulate emissions and chemicals that commenters typically associated with the production of asphalt, such as: benzene, formaldehyde, and arsenic.

17 Response **Air 5:**

These comments are acknowledged.

18 Summary **Air 6:**

In addition to the technical comments from NYSDEC and ECDEP, several Town residents also commented that the DEIS attempted to re-use certain air analyses that A.L. Asphalt had prepared for a separate project that it proposed at a different site in the Town of Niagara, rather than developing an updated Site-specific air analyses for the Plant.

18 Response: **Air 6:**

See Response to comment Air 2 above.

19 Summary: **Plants & Animals 1:**

Some commenters expressed concern that the Project has the potential to impact wildlife, such as honeybees, the monarch butterfly, rabbits, fox, groundhogs, deer, and skunks that live in the vicinity of the Site.

19 Response: **Plants & Animals 1:**

Acknowledged. As detailed in Section 3.6 of the FEIS, the Project Sponsor has failed to provide adequate information for the Board to evaluate the Project's impacts to plants and animals or to analyze and develop appropriate mitigation.

20 Summary: **Plants & Animals 2:**

Some comments noted that the Site is adjacent to federally regulated wetlands and expressed concern for the Project's potential impacts to wetlands and to analyze and develop appropriate mitigation.

20 Response: **Plants & Animals 2:**

Acknowledged. As detailed in Section 3.6 of the FEIS, the Project Sponsor has failed to provide adequate information for the Board to evaluate the Project's impacts to plants and animals or to analyze and develop appropriate mitigation.

21 Summary: **Cultural Resources 1:**

The Village noted that the DEIS does not sufficiently assess potential impacts to historical or archeological resources as requested by prior correspondence from the Village to the Project Sponsor on March 16, 2022 and November 10, 2022.

21 Response: **Cultural Resources 1:**

Acknowledged. As detailed in Section 3.8.4 of the FEIS, the DEIS fails to fulfill the requirements of the Final Scoping Document and specifically, fails to consider impacts to historical and archeological resources that may be eligible for listing with the State or National Registers and which are within 0.5 miles of the Site as identified by the Village of Hamburg Historic Preservation Commission. This makes it impossible for the Board to take a hard look at the cultural resource impacts of the Project or to analyze and develop appropriate mitigation.

22 Summary: **Traffic 1:**

ECDEP stated that Project design should ensure clear, efficient, and safe access to and from Camp Road for both vehicular and non-vehicular traffic.

22 Response: **Traffic 1:**

This comment is acknowledged.

23 Summary: **Traffic 2:**

Community members generally stated that the Project required additional traffic analysis in order to determine if Camp Road's existing infrastructure has the capacity to support the increased truck traffic that would be associated with the Project. Commenters specifically noted that Camp Road does not have a left turning lane to facilitate Project traffic to access the Site, which would create congestion and traffic risks. Commenters also noted that the Project's potential to increase truck traffic on Camp Road would increase traffic on residential side streets in the area as drivers seek alternate routes to avoid congestion on Camp Road.

23 Response: **Traffic 2:**

Acknowledged. As detailed in Section 3.9.4, 3.9.5 and Section 4.4 of the FEIS, the DEIS fails to provide a sufficient analysis of Project's transportation impacts. This makes it impossible for the Board to take a hard look at the traffic impacts of the Project or to analyze and develop appropriate mitigation.

24 Summary: **Noise 1:**

Many comments from residents around the Site expressed concern that the Plant's proposed asphalt operations and associated trucks and equipment would produce noise levels that are out of character with the surrounding area. Some commenters (e.g. WC8.1 and PH2.S29.3) noted that the DEIS acknowledges the potential for noise impacts within a half mile of the Site. These comments noted that such noise impacts would be in violation of the M3 District's standards that prohibit uses in the M3 District from creating noise that travels to residential, commercial, or M2 light industrial districts that immediately surround the Site.

24 Response: **Noise 1:**

Acknowledged. As detailed in Section 3.11 of the FEIS, the DEIS fails to provide a sufficient analysis of Project's noise impacts. This makes it impossible for the Board to take a hard look at the noise impacts of the Project or to analyze and develop appropriate mitigation.

25 Summary: **Odor 1:**

NYSDEC made the following comments on the DEIS's narrative and analysis of the Project's potential impacts to odor and supporting documentation in Appendix O:

- The odor analysis for the Site in Hamburg analyzes impacts from the production of 135,000 tons of asphalt per year, yet the DEIS is largely based on the production of up to 150,000 tons annually. The discrepancy should be resolved and clarified throughout the DEIS.
- NYSDEC recognized the presence of sensitive receptors near the Site and noted odor detection is subjective, varies person to person, and is weather dependent (perceived odors may be intensified by heat and humidity).
- The odor narrative section of the DEIS on page 64 indicates that "odors from the proposed hot mix asphalt plant will not be detectable beyond the boundary lines of 5690 Camp Road in the Town of Hamburg or at the nearest receptor" and further states that "hydrogen sulfide odors will not be detectable beyond boundary lines." In contrast, Appendix O concludes that odors "should not" be detectable off-Site. Clarify or revise to resolve the discrepancy.

- The Appendix O Odor Analysis was prepared for the Witmer Road facility in Niagara County. The NYSDEC notes that the DEIS should instead provide an August 16, 2019 odor analysis that was prepared for the Site in the Town of Hamburg by Orion Environmental Solutions LLC and submitted by A.L Asphalt to the NYSDEC in support of an earlier application for an NYSDEC air state facility permit for the Project.
- The Project's odor analysis needs to be revised to consider the potential impacts of additional chemical constituents of asphalt, and not just limited to naphthalene
- The Project's odor analysis needs to be revised to consider all aspects of the Plant's operation, including the heating of asphalt products

25 Response: **Odor 1:**

Acknowledged. The Board defers to NYSDEC's technical expertise on these issues and notes that a revised odor study addressing the technical issues raised by NYSDEC (and by the Board's own expert) is necessary in order to allow the Board to take a hard look at the odor impacts of the Project or to analyze and develop appropriate mitigation.

26 Summary **Odor 2:**

In addition to the foregoing technical comments from NYSDEC on the DEIS's odor analysis, community members also commented that the DEIS does not adequately assess the Project's potential for odors and smells to travel from the Site to nearby homes, schools, the Howe Field Athletic Complex, and other inconsistent land uses. Commenters described such odor impacts as likely to reduce the Town's overall livability and the likelihood that residents will be able to take advantage of outdoor activities in proximity to the Site.

26 Response: **Odor 2:**

Acknowledged. As detailed in Section 3.11 of the FEIS, the DEIS fails to provide a sufficient analysis of Project's odor impacts. This makes it impossible for the Board to take a hard look at the noise impacts of the Project or to analyze and develop appropriate mitigation.

27 Summary: **Odor 3:**

Many commenters specifically described the limitations in the Town's Zoning Code Section 280-133(c)(1), which prohibits uses in the M3 District from disseminating odor into any R, C, M1 or M2 District. Commenters questioned the validity of the DEIS's conclusion that odors would not travel to other zoning districts in light of the proximity

of residences, schools, the farmer's market on Church St., and other inconsistent land uses within one half mile of the Site.

27 Response: **Odor 3:**

Acknowledged. Based on the information provided in the DEIS by the Project Sponsor, it is unclear if odor from the Plant would migrate into any adjacent R, C, M1 or M2 Districts.

28 Summary: **Odor 4:**

Many community members noted their personal experiences of driving or walking by an asphalt paving operation and those commenters noted how those activities are inherently smelly and unpleasant. Commenters described the Project as likely to create daily odors that would drive nearby residents indoors, student athletes and spectators off Howe Field, and visitors away from the Town. Commenters noted that the DEIS indicates odors from the Plant would be detectable within a half mile of the Site, which would amount to a violation of the Zoning Code Section 280-133 prohibition on the dissemination of odors from uses in the M3 District to any R, C or M-2 District.

28 Response: **Odor 4:**

Acknowledged.

29 Summary: **Human Health 1:**

ECDEP stated that the Project Sponsor should note that the Village of Hamburg's Mixed Use Industrial (MU- I) district that adjoins the Site allows residential and other sensitive receptors as-of-right.

29 Response: **Human Health 1:**

Acknowledged. The Site is zoned M3 under the Town of Hamburg Zoning Ordinance.

30 Summary: **Human Health 2:**

Many community members expressed concern about the potential fire and explosion hazards associated with asphalt production. Comments focused on two components of a potential emergency response. Commenters inquired whether the Town's volunteer fire department with its current staffing levels, resources, and equipment would have the capacity to respond to an asphalt related fire, explosion, or other emergency on Site. Given proximity of sensitive receptors to the Site, the comments also noted that in the event of fire or other emergency at the Plant, there is the potential to have to coordinate

evacuations at the High School and Middle School (~2,000 students/staff/faculty) and of Elderwood's senior residents (who may have limited mobility).

30 Response: **Human Health 2:**

Acknowledged. As detailed in Section 3.12 of the FEIS, the DEIS fails to provide a sufficient analysis of Project's impacts to human health. This makes it impossible for the Board to take a hard look at the human health impacts of the Project or to analyze and develop appropriate mitigation.

31 Summary: **Human Health 3:**

Comments from community members consistently expressed a concern that the nature of the Project's asphalt production operations was likely to adversely affect the health of Town residents in light of the Plant's proposed proximity to sensitive receptors. These comments typically described the Plant's proposed location as within 2,000 ft. of vulnerable populations, such as the elderly residents at the Elderwood care facility and the Franklin Park Townhome community, in addition to young students at the Middle and High Schools.

31 Response: **Human Health 3:**

See Response to comment Human Health 2 above.

32 Summary: **Consistency with Community Plans 1:**

Several comments directly noted that the Town has enacted legislation to prohibit bituminous processing facilities anywhere in the Town. For example, one comment (WC51.1) noted that although the Project Sponsor submitted its Application before the Town enacted an ordinance to prohibit bituminous processing plants in the Town, the commenter believed that a change in the Site's use from its prior use for concrete production to the Plant's proposed use for asphalt production would constitute a "new" use and would fall under the new regulations in the Zoning Code that prohibit such use.

32 Response: **Consistency with Community Plans 1:**

Acknowledged. As detailed in Section 3.13 of the FEIS, the DEIS fails to provide a sufficient analysis of Project's consistency with community plans. This makes it impossible for the Board to take a hard look at the impacts of the Project from the perspective of consistency with community plans or to analyze and develop appropriate mitigation. In addition, Section 4.7 addresses the proposed Project's inconsistency with the Code.

33 Summary: **Consistency with Community Plans 2:**

Several commenters noted that the Project is inconsistent with the Camp Road Overlay District pursuant to Zoning Code Article XXVIII. One comment described the Project layout and aesthetic as wholly unresponsive to the Site Design Conditions at Zoning Code Section 280- 196. Similarly, another comment noted that the Project is inconsistent with the Camp Road Overlay District's purpose to develop the area as a gateway from the Town to the Village.

33 Response: **Consistency with Community Plans 2:**

See Response to comment Consistency with Community Plans 1 above.

34 Summary: **Consistency with Community Plans 3:**

Many comments described the Town's Comprehensive Plan and its stated goal to protect residential areas from the potential adverse effects associated with industrial uses. Accordingly, those comments noted that the Project was inconsistent with the Comprehensive Plan because of the Project's proposed industrial use as an asphalt plant in proximity to residential and lesser intensity commercial uses.

34 Response: **Consistency with Community Plans 3:**

See Response to comment Consistency with Community Plans 1 above. Further, Section 4.7.2 of the FEIS outlines the proposed Project's inconsistency with the Town's Comprehensive Plan.

35 Summary: **Mitigation 1:**

NYSDEC stated that the following mitigation measures should be considered to reduce emissions:

- use a different plant technology with lower emissions; use a masking agent to neutralize and mask odors to prevent potential odor complaints;
- require regularly scheduled maintenance of high-efficiency baghouse and low NOx burner;
- establish a lower rate of production and/or limitations on tonnage of asphalt production per year;
- limit the hours the plant can operate; avoid overnight hours when wind conditions may be calm;
- establish dust mitigation through a dust control plan;

pave truck traffic roadways on-site for further dust mitigation.

35 Response: **Mitigation 1:**

Acknowledged. The Board defers to NYSDEC's technical expertise on these issues.

36 Summary: **Mitigation 2:**

NYSDEC also stated that the following mitigation measures should be considered to reduce emissions from the proposed liquid asphalt tank:

- heat to the minimum necessary temperature to reduce air emissions;
- emissions from heating each liquid asphalt cement storage tank should vent through a tank vent condenser, activated carbon filter, or suitable control device to reduce volatile organic compound (VOC) emissions;
- when liquid asphalt cement is added to the storage tank, all vapors displaced from the tank should be ducted back into the delivery truck and returned to the asphalt supplier instead of releasing them into the environment, or if not possible, then the displaced vapors should be captured and minimized, eliminated, or destroyed using a tank vent condenser, activated carbon filter, or suitable control device so there are no odors from liquid asphalt tank fillings;
- liquid asphalt should be loaded into the tank(s) at a rate that ensures proper operation of the pollution control equipment; perform an annual tune-up of the liquid asphalt tank heating system and burner;
- use electricity to heat the liquid asphalt instead of a combustion device.

36 Response: **Mitigation 2:**

Acknowledged. The Board defers to NYSDEC's technical expertise on these issues.

37 Summary: **Mitigation 3:**

NYSDEC also stated that the following mitigation measures should be considered for drum and burner, silos, pug mill, conveyors, and load out operations:

- perform an annual tune-up of the aggregate dryer/mixer burner
- perform a visual inspection of the baghouse tube sheet and internal structure within 30 calendar days after plant start-up and annually thereafter;
- perform a black light inspection of the baghouse internals at the beginning of each operating season and within 30 calendar days after plant start-up;
- record the inspection findings and any corrective actions taken. These records should be maintained for the life of the permit, Replacement bags, parts, and

tools should be kept onsite, with the quantity adequate to replace at least 20% of the bags at a time;

- inspect all ductwork for leaks and perform needed maintenance prior to operating during the asphalt pavement production season. The particulate matter (filterable, PM) plus condensable particulate matter (CPM) from the aggregate dryer emissions should not exceed 0.015 grains per dry standard cubic foot.
- the oxides of nitrogen (NOx) emissions from the aggregate dryer low NOx burner should not exceed 40 parts per million @ 3% O2 or 0.048 lbs/million Btu, PM, CPM, and NOx compliance testing should be conducted within 180 calendar days of commencing operations
- enclose aggregate and hot mix asphalt conveyors and silos
- emissions associated with the drag conveyor, and/or hot screens, pug mill, and hot mix asphalt storage silo filling operations should be captured and returned to the drum mixer burner or controlled with coalescing filters or another acceptable method.
- the distance between hot mix asphalt and aggregate drop points should be minimized and/or shrouded;
- collect and control blue smoke emissions from loading-out hot mix asphalt.

37 Response: **Mitigation 3:**

Acknowledged. The Board defers to NYSDEC's technical expertise on these issues.

38 Summary: **Mitigation 4:**

NYSDEC also stated that the following mitigation measures should be considered to reduce emissions for trucks leaving the Site loaded with hot mix asphalt:

- require all trucks loaded with hot mix asphalt to cover the hot mix asphalt with a cover rated for the high temperature of the asphalt to reduce emissions from the truck on-site and off-site;
- control dust on Site roadways and Plant property by applying water, calcium chloride, or other acceptable and approved fugitive dust control compounds to be applied often enough to prevent dust emissions from leaving the Site.

38 Response: **Mitigation 4:**

Acknowledged. The Board defers to NYSDEC's technical expertise on these issues.

39 Summary: **Mitigation 5:**

ECDEP recommended the preparation of a decommissioning plan for the Project.

39 Response: **Mitigation 5:**

Acknowledged.

40 Summary: **Mitigation 6:**

ECDEP stated that the Town and Project Sponsor should ensure the boundaries of the Site include abundant vegetative screening, including mature trees.

40 Response **Mitigation 6:**

Acknowledged.

41 Summary: **Mitigation 7:**

One comment from a Town resident asked who would be responsible for remediation at the Site in the event Project operations ceased.

41 Response: **Mitigation 7:**

Typically, the Site owner or operator is responsible for any remediation of a property.

42 Summary: **Alternatives 1:**

NYSDEC recommended consideration of an alternate location for the proposed asphalt plant which is not located near sensitive receptors like long-term care facilities and schools, or population centers.

42 Response: **Alternatives 1:**

While this does not rise to the level of a deficiency (since a private project sponsor cannot be required to explore alternative sites that it does not own or control), it is worth noting that NYSDEC believes this may be an inappropriate location for a Hot Mix Asphalt Plant.

43 Summary: **Alternatives 2:**

Several comments questioned whether alternative uses for the Site might be considered, such as potential hotel or residential projects that may have been proposed by the Site owner at an earlier time. Commenters generally recommended that the Town and Project Sponsor consider alternative developments on Site that would result in a greater

positive developments, and further recommended that the Plant be located at some alternative location in a less populated suburban environment.

43 Response: **Alternatives 2:**

Acknowledged. As detailed in Section 3.15 of the FEIS, the DEIS fails to provide adequate analysis regarding potential alternative uses of the Site.

44 Summary: **Cumulative Impacts 1:**

One comment (WC62.1) noted that the Project's proposed development on Camp Road in conjunction with a proposed Benderson development also under consideration in the area would have a negative cumulative impact.

44 Response: **Cumulative Impacts 1:**

Acknowledged.

45 Summary: **Miscellaneous 1:**

Some community members expressed a general concern that the Project's liquid asphalt production processes are not sustainable and are likely to negatively impact the environment.

45 Response: **Miscellaneous 1:**

Acknowledged.

46 Summary: **Miscellaneous 2:**

Many commenters stated that they believed the Board was not permitted to consider impacts to property values in its evaluation of the Project's environmental impacts. Nevertheless many commenters generally noted that they expected property values to decline if the Project proceeds because of associated noise, odor, and air impacts, and perceived health impacts and stigma associated with an industrial use so close to residential homes all around the Site.

46 Response: **Miscellaneous 2:**

Acknowledged. The commenters are correct that the Board does not consider impacts to property values in its evaluation of the Project pursuant to SEQR. The Board notes that in 2019 prior to the completion of the scoping process for the Project the applicant

had a property value analysis completed by GAR Associates to establish that there would be no decrease in property values from the proposed Project.

Section 6.0

Conclusion

The Applicant's participation in the SEQR review of the Project, or lack thereof, has circumvented the intent of the EIS process. The Applicant has abandoned its responsibility to be a meaningful participant in the SEQR process for the Project. Despite months of outreach and good faith efforts to address the Listed Deficiencies and move the process forward by the Board, the Applicant has provided insufficient, often outdated or inapplicable information, and refused to comply with the Final Scoping Document and/or address the Listed Deficiencies, , or provide any responses to the Board's expert reports, or public comments. As such, the Applicant has made it impossible for the Board to take a hard look at the potential environmental impacts of the Project as required by SEQR.

Based on the Zoning Code's prohibition on bituminous processing facilities anywhere in the Town, the Project is not a permitted use at the Site. The Board concludes that the Project is not consistent with the general purpose of the Camp Road Overlay District and its "gateway" principles; nor is the Project consistent with the Town's Comprehensive Plan or the Village's Comprehensive Plan and the goals and objectives stated there to eliminate heavy industrial uses (such as the Plant) in the Camp Road corridor.

The air, odor and noise analyses performed by the Planning Board's consultants EA and GHD establish that the Project as proposed has not been shown by the Applicant to comply with the Zoning Code's limitations on uses in the M-3 District to only those uses that do not normally disseminate atmospheric pollutants, noise, and odor to R, C, M-1, or M-2 Districts. Public Comments, particularly the NYSDEC Comments on the DEIS and the ECDEP Comments indicate that the DEIS and its conclusions are based on inapplicable air, odor and noise analyses prepared for the Alternate Niagara Site.

GHD also determined that the Project Sponsor's traffic analysis in support of the Project suffers from errors and omissions such that the Board could not reasonably conclude that there would be no impacts on the existing roadways.

GHD further established that the Project's stormwater analysis and the DEIS's related conclusions are not supported by sufficient information to conclude that stormwater impacts have been mitigated to the maximum extent practicable.

Because the DEIS summarily concludes that the Project is not likely to have any impacts to the environment, the DEIS does not meaningfully consider any mitigation measures,

apart from minor vegetative screening and camouflage paint to minimize its aesthetic impact.

For these reasons and based upon all the analyses in this FEIS, the Board ultimately concludes that it cannot certify that (i) consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and (i) that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.