

**FINAL ENVIRONMENTAL IMPACT STATEMENT**

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**WAL-MART SUPERCENTER  
STORE NO. 2043-04,  
WARSAW, NY**

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**2348 NYS Route 19  
Town of Warsaw  
Wyoming County, New York**

**Project Sponsor / Applicant:  
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**Date of Lead Agency Acceptance:**

**September 27, 2010**

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NYS Rte 19 Sewer District – Map  
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## I. INTRODUCTION

This Final Environmental Impact Statement (FEIS) is prepared pursuant to the New York State Environmental Quality Review Act “SEQRA,” Article 8 of the New York Environmental Conservation Law, and its implementing regulations - 6NYCRR Part 617. It has been prepared by the Town of Warsaw Planning Board, acting as Lead Agency, for the environmental review of the proposed Wal-Mart Store Expansion located at 2348 NYS Route 19 in the Town of Warsaw, Wyoming County, New York.

The 27.3 acre “Project Site” is located at 2348 NYS Route 19 in the Town of Warsaw, New York. The “Project” involves the expansion of an existing 76,800 ± square foot Wal-Mart into a 150,381 square foot Wal-Mart Supercenter. The “Supercenter” designation refers to the general merchandise and grocery components of the store. The store may include a food center, a garden center, retail merchandise sales, a vision center, bakery, deli, and recycling center. Proposed operating hours of the Wal-Mart Supercenter will be 24 hours. The building expansion will primarily occur on the south side and rear (west side) of the existing building, with some expansion of the vestibule on the front. Parking lot facilities will be expanded to the north and east of the building and new stormwater management ponds will be located to the rear (west side of the building). To reduce the amount of fill that must be brought to the site, there will also be excavation for a new soil “borrow area,” and excavated material from this borrow area will be used elsewhere on the site. The borrow area is expected to become a pond, similar to the existing pond on the site. Site development will include upgrades to the building, parking lots, on-site circulation, stormwater management area, underground utilities, landscaping, and light poles. Primary access to the Project Site will remain unchanged, except that the main entrance will be improved with a new traffic light and pedestrian improvements.

The applicant presented the proposed project to the Town of Warsaw, and the Town of Warsaw Planning Board established itself as Lead Agency under SEQRA. On March 26, 2007, the Town Planning Board determined that the project had the potential to result in negative environmental impacts, and issued a positive declaration for the project, requiring the preparation of an Environmental Impact Statement (EIS). The notification of the Positive Declaration was published in the Environmental Notice Bulletin on April 4, 2007.

The Town opted to conduct scoping for the project to identify the potentially significant impacts and set forth what issues must be address in the EIS. A public scoping session was held on April 19, 2007 and the Town issued a final written scope on May 17, 2007. The scope established the list of issues and concerns that had to be addressed in the Draft Environmental Impact Statement (DEIS).

A DEIS was prepared for this Project by Bergmann Associates on behalf of Wal-Mart Real Estate Business Trust, the Applicant. On June 30, 2008 the Applicant advised the Town of Warsaw Planning Board that the proposed action had been revised to reflect a change in the size of the building and number of parking spaces. The Applicant also requested that the scoping document approved by the Planning Board on May 17, 2007

be revised to reflect the amended action. Therefore, on July 28, 2008 the Planning Board passed a resolution adopting a revised DEIS scoping document to reflect the Applicant's changes to the project. Several months later, the Applicant again revised the project (building size and amount of parking). The Town was notified of this modification by means of a letter from Harter Secrest & Emery, LLP, on behalf of the Applicant on November 6, 2008.

The Applicant submitted the DEIS to the Town of Warsaw on January 8, 2009 and resubmitted it with additional changes on January 26, 2009. Upon receiving comments from the Town of Warsaw consultants', Wendel Duchscherer, the DEIS was revised again and resubmitted on February 17, 2009. Copies of the DEIS were provided to the Town for public review and comment.

The Town of Warsaw Planning Board accepted the DEIS as complete and acceptable for public review and issued a Notice of Completion on February 23, 2009. Copies of the DEIS and the Notice of Completion were provided to the SEQRA involved and interested agencies as required by 6 NYCRR 617.12. A copy of the DEIS was made available to the public at the Town of Warsaw, 27 North Main Street, Warsaw, NY 14569. The DEIS was posted on the Town of Warsaw consultant Wendel Duchscherer's website. The Notice of Completion and Notice of Public Hearing on the DEIS was posted in the Environmental Notice Bulletin on March 4, 2009. The Town of Warsaw Planning Board as lead agency held a duly noticed public hearing on April 30, 2009 to obtain comments from the public on the DEIS. The Town Planning Board accepted written comments on the DEIS until May 10, 2009. The FEIS addresses all substantive issues raised on the DEIS. All written and oral comments are contained in Appendices B and C of this FEIS.

## **II. DRAFT ENVIRONMENTAL IMPACT STATEMENT**

The Draft Environmental Impact Statement (DEIS) for the proposed Wal-Mart Supercenter was prepared and submitted by the applicant's consultant, Bergmann Associates, on behalf of Wal-Mart Real Estate Business Trust, to the Town of Warsaw Planning Board, as SEQR Lead Agency, on January 8, 2009. Due to changes made by the Applicant to the project, the DEIS was revised to more accurately represent the proposed project. Updated versions of the DEIS were submitted to the Town on January, 26, 2009 and again on February 17, 2009. The Town of Warsaw Planning Board accepted the updated DEIS as complete and acceptable for public review and issued a Notice of Completion on February 23, 2009. The Town held a public hearing on the DEIS on April 30, 2009. A copy of the Town of Warsaw Planning Board's official SEQRA Notice of Completion of Draft Environmental Impact Statement and Notice of Public Hearing sent to all SEQRA Involved and Interested Agencies is contained in Appendix A of the FEIS.

The DEIS shall form part of this FEIS and is incorporated by reference.

### **III. PROJECT CHANGES SINCE DEIS PUBLICATION**

Since the Town of Warsaw Planning Board accepted the DEIS as complete and made it available for public review and comment, the Applicant has made the following Project changes and revisions:

1. The figures contained in the November 20, 2008 Floodplain Evaluation Study contained in the Appendix F of the DEIS have been corrected. The elevation scales on Figures 1 through 4 were based on the NAVD 88 vertical datum. These scales were updated to reflect the NGVD 1929 vertical datum, the survey datum used at the Project. This correction eliminates any discontinuity between the text in the report and the figures. The data, findings, and conclusions in the Study have not changed. The revised Floodplain Evaluation Study is contained in Appendix D of this FEIS.
2. The proposed building elevation views and architectural styles contained in Figure IIIIF-1 and Figure IIIIF-3 of the DEIS have been revised as a result of comments received by the Town of Warsaw, the Town's consultant, the public, and further review by the Applicant. The revised building elevations and architectural styles are contained in Appendix E of this FEIS. The latest building elevations were last reviewed on June 28, 2010 at the Town of Warsaw Planning Board meeting.
3. The latest building footprint developed by Wal-Mart provides for a total building floor area of 150,031 square feet, which is slightly larger than the 147,956 square feet included in the DEIS (an additional 2,075 square feet). The traffic analyses included in the DEIS were based on a 155,000 square foot building size and therefore the increase in the size of the building does not affect the results of the traffic study. The stormwater management design also accounts for the increase in the size of the building. The stormwater management pond outflow weir calculations have been updated to address the revised peak inflow, and the revised calculations are provided in Appendix F. No additional impacts result from the change in building size.
4. The on-site intersection of the main site (south) access drive with the outer 'ring road' drive aisle between the Wal-Mart parking lot and the McDonald's site entrance has been revised to improve traffic movements at that intersection. Originally, the southernmost row of parking for the Wal-Mart store (the parking row closest to the McDonald's site entrance), allowed for traffic movements in and out of that row, creating potential traffic conflicts at this intersection. To increase safety and ensure efficient traffic flow, this intersection has been redesigned to restrict cars from exiting the Wal-Mart lot directly across from the McDonald's entrance by means of a landscaped traffic island placed in this location to control traffic flow. This change results in the loss of 13 parking spaces, but will improve the safety at this location. The change in traffic patterns at this intersection is shown in more detail in Figure 2. It is also shown on the

- revised Site Plan (C-2) in Appendix G. Proposed landscaping for the new traffic island is shown in the Xeriscape Plan (C-6) in Appendix G.
5. The DEIS included expanded parking north of the McDonald's site in a new lot that was setback approximately 30 feet from NYS Route 19. In the FEIS, the Site Plan has been revised to increase the setback from NYS Route 19 for the proposed Wal-Mart parking lot expansion to approximately 50 feet. Increasing the parking lot setback results in the loss of 16 parking spaces but increases the amount of green space and provides a more aesthetically pleasing visual experience for drivers along NYS Route 19 at the Project Site. A revised Site Plan (C-2) that shows the increased setback and increased green space is provided in Appendix G. Additional landscaping proposed for the increased green space is shown on the revised Xeriscape Plan (C-6) included in Appendix G.
  6. The Site Plan included in Appendix G has been revised to allow for a sidewalk to be provided from NYS Route 19 to the front of the Wal-Mart store. There are two alternatives for the sidewalk, which are shown in Figures 1 and 2. In the alternative shown in Figure 1, the sidewalk would run along the southern side of the main access road to the site, crossing the access road to the west of the intersection of the access road to the McDonald's site, minimizing conflicts between pedestrians and site traffic. While this is the preferred alternative from an operational point of view, it requires obtaining consent from the property owner of the adjacent parcel, and attempts at obtaining this agreement have not been successful. In the alternative shown in Figure 2, the sidewalk crosses the main site entrance driveway at its intersection with NYS Route 19, and runs along the northern side of the main access road. This requires pedestrians to cross the eastern driveway opening to Wal-Mart's parking lot near the McDonald's entrance before continuing westerly within an existing Wal-Mart parking lot island to the storefront driveway. The existing Wal-Mart parking lot island will be widened to accommodate the proposed sidewalk. Widening the island to accommodate the proposed sidewalk will result in the loss of one parking space at the end of the island near the storefront driveway. This alternative sidewalk route involves encroachment on the McDonald's site and the Applicant is currently pursuing McDonalds' consent to construct this sidewalk. The construction of the sidewalk is contingent upon obtaining McDonalds' consent and on both McDonalds and Wal-Mart entering into a mutually acceptable sidewalk easement agreement. Constructing the sidewalk along this route will result in the removal of two trees on the McDonald's site. The crossing of the main entrance driveway at NYS Route 19 would utilize pedestrian signal controls for safe access. Final details of sidewalk configuration will be determined under site plan review.
  7. The parking lot configuration north and east of the Wal-Mart store near the existing pond has been modified. Some parking originally proposed between the store and the existing pond has been removed, while parking has been extended closer to the northern border of the Project Site. These modifications were made in order to move parking spaces closer to the front of the store and to

- accommodate sufficient parking capacity for the site. The layout of the northerly parking lot, including the configuration and location of parking lot islands has also been revised. Parking lot islands will contain landscaping to provide an aesthetically appealing parking lot and provide a safe, efficient parking lot layout for employees and customers. All revised parking lot configurations are shown on the revised Site Plan (C-2) included in Appendix G. Revised landscaping details are shown on the Xeriscape Plan (C-6) included in Appendix G. The parking lot layout as shown on the revised Site Plan provides for 677 spaces (not including cart corrals) for the proposed 150,381 square foot retail store. This provides a total onsite parking ratio of 4.5 parking spaces / 1,000 square feet of commercial space. This parking ratio is the same ratio that was proposed in the original Site Plan contained in Appendix B of the DEIS. No change in the overall parking ratio of the Project will occur as a result of the revised Site Plan.
8. The revised Site Plan included in Appendix G will require a net import of fill estimated at approximately 37,000 cubic yards. This estimated volume of fill for the revised Site Plan is considerably larger than the preliminary estimate of 25,000 cubic yards of fill previously provided in DEIS Section III.A.2.(a). This increase is partly due to the reconfiguration of parking on site, with additional parking provided toward the north, which requires additional fill material. The original retaining wall proposed in the DEIS to accommodate the grade change from the parking lot north of the Wal-Mart store near the existing pond will be extended further east to allow for additional parking in that area, as shown on the site plan in Appendix G. This extension of the retaining wall is necessary to raise existing grades and provide for a reasonably level parking area at this location. Fill will be placed in all areas where additional parking or building expansions are proposed in order to maintain adequate grades for construction. Onsite soil will be used as temporary surcharge fill to hasten settlement under a portion of the building addition to limit the amount of fill that must be trucked to the Project Site. Locations and elevations where fill is proposed are shown on the Earthwork Calculations Drawing in Figure 3. Earthwork calculations based on existing and proposed site elevations are also included in Figure 3.
  9. As noted, the site plan will require the importation of approximately 37,000 cubic yards of fill to the Project Site. At an average of 20 cubic yards per truck load, this represents approximately 1,850 truckloads of fill being delivered to the Project Site. To mitigate potential effects of undesirable noise, vibration, and dust resulting from increased truck traffic carrying earth fill through the Village of Warsaw, the Applicant has agreed to limit truck trips importing earth fill from the south through the Village to less than 10,000 cubic yards, which represents no more than 500 truckloads of earth fill traveling through the Village to get to the site. The remaining trucks importing earth fill to the Project Site will come from the north on NYS Route 19 which will reduce undesirable impacts to the Village from truck traffic during the construction period.

10. In the DEIS, the expansion was proposed to be a 143 prototype Wal-Mart. The existing store will now be expanded to a Wal-Mart 150 prototype Supercenter. Due to numerous water saving measures incorporated into the new store prototypes as part of Wal-Mart's push for greater energy efficiency and sustainability, the average domestic water demand will drop to approximately 3,135 gallons per day from the estimated 4,600 gallons per day cited in the DEIS. The estimated peak instantaneous water and fire flow demands are the same as initially proposed: 130 gpm and 2,000 gpm, respectfully.
11. The location for the relocated sanitary pump station was initially shown in an existing landscaped island in the Wal-Mart parking lot approximately 40 feet west of the southwest corner of the McDonald's parcel and just north of the main entrance drive. The site plan in the FEIS shows the proposed location approximately 750 feet farther to the west behind the expanded store. The actual location of the pump station will be determined by the Town on the basis of what works best for the proposed sanitary sewer district and may differ from the location shown in this document.
12. In order to minimize the number of trucks importing fill to the Site for this project, some of the required on-site fill will be excavated from a "soil borrow area" at the rear (west side) of the building, south of the water quality ponds. The proposed location for the soil borrow area is shown on the Grading and Drainage Plan in Appendix G (C-4). More detail about the profiles for the soil borrow area is provided in Drawing C-4.1. The activity will involve excavation but no filling. It is located outside the 100 year flood plain and will not impact any floodplains along Oatka Creek. The existing pond located to the northwest of the store was created for the same purpose when the store was originally constructed.
13. Under normal conditions (based on flow testing conducted on August 31, 2010), adequate water flows and pressures exist for average daily water demands and to supply fire flows. In order to address concerns regarding fire safety under extreme conditions (such as a waterline break), the applicant will evaluate, during site plan approval, the feasibility of a dry hydrant installation on-site. If determined to be feasible within reasonable costs, a dry hydrant will be installed. Results of the flow testing are included in Appendix H.
14. The proposed area for snow storage has been relocated. In the DEIS, the parking lot closest to Route 19 was proposed to be the primary location for snow storage. Snow storage is now proposed to be placed primarily on the northernmost lot, near the existing pond on the site. This location will minimize problems associated with snow melt and ice in parking lots and creating safety hazards. Drawing C-3 from the DEIS has been revised and a new Drawing C-3 is provided in Appendix G of the FEIS.

15. In order to provide adequate screening for adjacent properties and to comply with the Town's zoning requirements, the Applicant will provide a fence along the site's northern property line.

While there have been changes made to the Project, the changes are not of a scale or nature that would require the preparation of a Supplemental Environmental Impact Statement. Other than those outlined here, no other significant changes have been made to the proposed Project since the DEIS was published. The DEIS contained a detailed analysis of the Project. It is the Lead Agency's position that the Project's significant environmental impacts have been addressed in the Draft and Final Environmental Impact Statements, and that the proposed mitigations address the adverse impacts to the maximum extent practicable under SEQRA.

Prior to obtaining site plan approval, the Applicant may make additional minor adjustments to the Project as a result of comments received from the public, Involved Agencies, Interested Agencies, and the Lead Agency. The Town may require additional adjustments as part of the site plan approval process. Any such adjustments would be made to further reduce possible environmental impacts to the greatest extent practicable or to improve the site layout and, therefore, not require additional SEQRA review.

#### **IV. RESPONSE TO COMMENTS FROM AGENCIES, CONSULTANTS, AND THE PUBLIC**

This section of the FEIS contains verbatim extracts of written comments received during the DEIS comment period from the SEQRA Lead Agency, SEQRA Lead Agency Consultants and SEQRA Involved Agencies, along with responses to those comments. No comments on the DEIS were provided from SEQRA Interested Agencies. A meeting with the Town of Warsaw Planning Board was held on May 18, 2009 to solicit comments and concerns about the contents of the DEIS. At the May 18, 2009 Planning Board meeting, the Board determined that all substantive comments have been identified in Wendel Duchscherer's May 19, 2009 memorandum titled: *Substantive Comments for Applicant to Address*. This memorandum also includes all substantive public comments raised at the April 30, 2009 public hearing. A copy of this memorandum is contained in Appendix B of this FEIS. Complete copies of all written comments from Lead Agency Consultants and Involved Agencies are contained in Appendix B. The Town of Warsaw Planning Board did not receive any written public comments during the DEIS public comment period. Also included in Appendix B is an official transcript of the public hearing on the DEIS. Table IV-1 contains a list of all comments provided from agencies and consultants on the contents of the DEIS. The comments have been numbered and grouped by topic for ease of reference.

**Table IV-1: DEIS Comments from Agencies and Consultants**

Letter #	Comment	Topic	Name of Agency or Consultant	Date
1	1.1 through 1.5	Land	Dana R. Braun, Wendel Duchscherer, Town of Warsaw Consultant	5/19/09
	1.6	Water		
	1.7 through 1.9	Stormwater		
	1.10 through 1.18	On-Site Facilities		
	1.19 through 1.21	Pedestrian Facilities		
	1.22	Air Quality		
	1.23 through 1.28	Aesthetics		
	1.29 through 1.31	Transportation		
	1.32 through 1.40	Public Comments		
2	2.1	Sewer District	Douglas E. Borschel, Deputy Permit Administrator, NYS Dept. of Environmental Conservation	5/15/09
	2.2	Stormwater		
	2.3	Water Quality		
3	3.1	State Wetlands, Floodplains, and Surface Water	Steven J. Doleski, Regional Permit Administrator, NYS Dept. of Environmental Conservation	2/12/09
	3.2	Cultural Impacts		
	3.3	Sewer District		
	3.4	Floodplains		
	3.5	Stormwater		
	3.6	Water Quality		
	3.7	Sewer District		
	3.8	Green Building Design		
	3.9	Asbestos		
	3.10	Mercury and Lead		
	3.11	Posting of DEIS		
	3.12	Documentation		
4	4.1 through 4.3	Transportation	David C. Goehring, P.E., Regional Traffic Engineer NYS Dept. of Transportation	4/24/09
5	5.1 through 5.3	Transportation	David C. Goehring, P.E., Regional Transportation Operations Engineer, NYS Dept. of Transportation	2/28/07
6*	6.1 through 6.3	Federal Wetlands	Amy M. Krueger Biologist U.S. Army Corps of Engineers	9/16/09

\*The letter from the U.S. Army Corps of Engineers is informational in nature and does not comment on the contents of the DEIS. This letter comments on regulations governing Federal jurisdictional wetlands.

**LETTER # 1: DANA R. BRAUN, WENDEL DUCHSCHERER,  
TOWN OF WARSAW CONSULTANT (5/19/09)**

**LAND:**

**Comment 1.1:** *The applicant estimates approximately 25,000 cubic yards of fill will be needed. An estimated 50 to 100 trucks (16 cy each) per day will come to the site over a 4 to 6 week period to bring fill to the site. The applicant has agreed that earthen fill brought to the site will be brought in from the north and south only via Route 19. The FEIS should address how this routing system will be ensured during construction period. Impacts that should also be addressed include hours of operation, dust control, vibration and similar impacts. Potential impacts to the Village will need to be clarified based on the percentage of trucks that will be reaching the site from the south and traveling through the Village of Warsaw.*

**Response:** As discussed in Section III of the FEIS, the revised Site Plan for the project (included in Appendix G) will require a net import of fill estimated at approximately 37,000 cubic yards. Earthwork calculations based on existing and proposed site elevations are included in Figure 3. The estimated amount of fill required for the revised Site Plan is considerably larger than the preliminary estimate of 25,000 cubic yards of fill previously provided in DEIS Section III.A.2.(a). To limit the amount of earth fill that needs to be imported to the site, onsite soil will be used as temporary surcharge fill to hasten settlement under a portion of the building addition. Fill will be placed as needed in all areas where additional parking or building expansions are proposed in order to maintain adequate grades for construction. Locations and elevations where fill is proposed are shown on the Earthwork Calculations Drawing in Figure 3.

At this time, the Applicant has not selected a contractor or company to transport fill to the Project Site. The contractor will be given the option to provide the fill material from any qualified source so long as it meets specifications, but the contract with the company transporting fill to the site will require that the contractor limit the number of trucks arriving from the south, or through the Village of Warsaw business district, to no more than 500 trucks. Truck traffic will be required to access the site via Route 19, a state highway and truck route. Trucks will be prohibited from traveling on side streets through residential areas where such trucks are prohibited.

Increased truck traffic during Project construction to import the estimated 37,000 cubic yards of fill has the potential to create undesirable noise, vibration, or dust in the Village of Warsaw if trucks are routed through the Village. Therefore, the Applicant has agreed to limit the number of trucks importing earth fill routed from the south through the Village to less 500 truck loads, which is the equivalent of approximately 10,000 cubic yards at an average of 20 cubic yards per truck load, and the contract with the supplier will include a clause to this effect, as noted above. It is estimated that in total, there will be approximately 1,850 truckloads of fill delivered to the Project Site. To avoid negative impacts to the Village of Warsaw, all but 500 of the trucks importing earth fill

to the Project Site will come from the north on NYS Route 19. These restrictions on the number of trucks traveling through the Village will limit the negative impacts to the Village from noise, dust and vibrations resulting from heavy trucks traveling through Village streets. Using fill from the borrow area will also help reduce the amount of fill that needs to be brought to the site.

The impacts from trucks bringing fill to the site during the construction period will be temporary. In order to minimize impacts, the hours of truck transportation will be restricted. As stated in Section III.A.2.a of the DEIS, hours when trucks will transport fill to the Project Site will be limited to the hours between 8am and 5pm. It is anticipated that most truck traffic bringing fill to the Project Site will occur during a 6 to 7 week construction period. These restrictions on truck traffic will serve to minimize noise, dust, and vibrations at the Project Site. As stated in Section III.A.3 of the DEIS, “Steps such as wetting soil surfaces and covering of trucks and other dust sources will be included as part of the specifications of the construction contract.” Additional mitigations to minimize impacts from construction activities are contained in Section III.A.3. of the DEIS.

**Comment 1.2:** *A retaining wall will accommodate grade change from the parking lot north to the existing pond. A segmental wall is expected with a maximum reveal height of 16 feet. The base of the wall will be kept a minimum of 10 feet from the limits of the wetlands surrounding the pond. Discussion needs to be provided regarding how no impact to the pond/wetland will be ensured during construction periods.*

**Response:** As discussed in Section III.A.3 of the DEIS, “The development of the proposed Wal-Mart store expansion on the Project Site will include a Stormwater Pollution Prevention Plan (SWPPP) designed to meet the requirements of NYSDEC GP-0-08-001 (General Permit for Stormwater Discharges from Construction Activities) which requires provision of methods for controlling dust, erosion and sediment, and stormwater runoff during construction. The contractor will be required to abide by the stipulations of the SWPPP prepared by the Applicant in compliance with the NYSDEC General Permit for Stormwater Discharges from Construction Activities (GP-0-08-001).” Control measures in the vicinity of the existing pond will consist of temporary measures placed and maintained during construction as depicted in the preliminary Erosion and Sediment Control Drawing ESC-1 and ESC-2 included in Appendix B of the DEIS. A silt fence will be installed to protect the existing pond to filter any surface runoff which may discharge into the pond, as shown on Sediment Control Drawing ESC-1 and ESC-2 in Appendix B of the DEIS. The proposed silt fence will also delineate the disturbance limit associated with the construction of the retaining wall. The contractor will be required to work within the designated area to construct the wall. This may mean that the material staging area will be located in the vicinity of the wall but not directly in front of it. No disturbance to the north or west of the pond is proposed. These areas will be preserved in their existing state. Disturbed portions of the Project Site will be sequenced as listed in Section III.A.3 of the DEIS to limit areas which are to be stripped of vegetation or pavement to under 5 acres at any given time. Areas where construction activity has stopped shall be seeded and stabilized no later than 14 days

from the last construction activity occurring in these areas. Additional measures to control erosion and stabilize slopes during construction may be included in the SWPPP and consist of a combination of silt fence, erosion control mats, seeding, rip-rap, and retaining structures. The SWPPP may also contain provisions requiring the contractor to maintain oil and grease absorbing materials and floatation booms on the Project Site or have them readily available to contain and clean up fuel or chemical spills and leaks. The SWPPP will be finalized after it is reviewed and approved by NYSDEC.

**Comment 1.3:** *Mitigation measures regarding truck idling cited in the DEIS are sufficient to address impacts from idling. Construction period should include hourly restrictions for on-site activities to minimize adverse impacts.*

**Response:** No residential areas exist in the vicinity of the Project Site. The Town of Warsaw Zoning Code does not impose any hourly restrictions for on-site activities. If hourly restrictions were to be imposed, it would likely result in an extended construction period, thereby increasing the duration of adverse construction impacts. In order to balance the desire for a shorter construction period with a need to limit negative impacts from construction noise, typically, outdoor construction work will be limited to daylight hours. Once the building expansion is enclosed, night time work inside the store may be undertaken to better accommodate store operational needs, but work will occur within the enclosed building to limit off-site noise.

**Comment 1.4:** *It must be ensured the fill be kept within the project boundary limits identified in the DEIS to prevent 100 year flood plain impacts. Project boundary limits for “toe” of fill should be marked by construction fencing and appropriate silt fencing to ensure construction equipment does not push fill into the flood plain and to reduce unnecessary damage to existing flood plain vegetation.*

**Response:** Sediment Control Drawing ESC-2 in Appendix B of the DEIS proposes a silt fence be erected approximately 50 feet or more east of the limits of the 100-year floodplain. As stated in the Best Management Practices Sequence on Sediment Control Drawing ESC-1 and ESC-2 and in Section III.A.3 of the DEIS, the silt fence(s) and silt dike(s) pertinent to the current limits of construction will be installed prior to any clearing and grubbing, grading, or construction activities. According to the Best Management Practices Maintenance Erosion Notes on Sediment Control Drawing ESC-1 and ESC-2, all erosion and sediment control measures proposed (including silt fence) shall be maintained in a fully functional condition and inspected by a qualified inspector, as defined by GP-0-08-001 until no longer required for a completed phase of work or final stabilization of the site. The proposed silt fence should be adequate to ensure construction equipment does not push fill into the floodplain.

**Comment 1.5:** *Since the possibility of 500 year flood impacts will affect the toe and edge of project fill, it is extremely important that the entire edge of fill be stabilized by planting ground covering vegetation as soon as possible to prevent possible erosion from flood waters. DEC recommends that the ground vegetation should include plantings that provide good erosion protection, (avoid a grass only coverage).*

**Response:** In the vicinity of the Project Site, the 500 year flood level is around one foot higher than the 100 year flood level. There may be a small amount of grading within the 500 year flood plain. This work would occur adjacent to the discharge weir of the proposed water quality pond. No fills will occur within the 500-year flood limit. All areas will be properly stabilized to protect against erosion. The extreme outer edge of the 500 year flood plain will experience relatively low velocity flow and thus low erosion potential during a 500 year event.

As stated in Section III.A.3 of the DEIS and shown on Sediment Control Drawing ESC-1 and ESC-2 in Appendix B of the DEIS, site disturbance will be kept to a minimum involving only those areas necessary for the building, pavements, stormwater basin, and adjacent slopes to blend back into existing grades. Disturbed portions of the Project Site where construction activity, as defined by GP-0-08-001 has stopped shall be seeded and stabilized no later than 14 days from the last construction activity occurring in these areas. Prior to construction, the Applicant will apply for a NYSDEC General Permit for Stormwater Discharges from Construction Activities (GP-0-08-001). The Applicant will work with the NYSDEC to provide acceptable plantings and other measures to provide sufficient erosion protection at the site.

**WATER:**

**Comment 1.6:** *Mitigation cited in the DEIS are sufficient to address the adverse impacts to surface water and wetlands and will be included in the Findings.*

**Response:** The comment is acknowledged. No response is necessary.

**STORMWATER AND DETENTION:**

**Comment 1.7:** *In the DEIS, the applicant states that NYSDEC does not require stormwater quantity control when discharging to a 4<sup>th</sup> order stream (Page 29, Appendix G – Page 2). This is only partially correct. NYSDEC does not require stormwater quantity control when discharging directly to a 4<sup>th</sup> order stream. While we agree that Oatka Creek is a 4<sup>th</sup> order stream, we do not agree that this project discharges directly to Oatka Creek. The applicant will be required to show that the sheet flow from the water quality ponds does not adversely impact the area between the water quality ponds and Oatka Creek.*

**Response:** The proposed stormwater quality pond, also known as a “wet pond” (less the detention volume), will be designed to comply with the requirements of the New York Stormwater Management Design Manual. It will discharge via a weir and then sheet flow westerly into Oatka Creek. As stated in Section III.B.3.c of the DEIS, a wet pond is one of the NYSDEC approved practices to address water quality. Water will flow into the pond where it will be retained to allow suspended solids and particles to settle out. Water will then be discharged from the pond via an earthen weir. This will allow water to discharge in a wide pattern instead of confining it to a point source which

could increase the chance for erosion of the downstream soils. The broad-crested earthen overflow weir will be designed to be resistant to erosion. The proposed 'wet pond' basin will be owned and maintained by the Applicant. The Applicant will comply with the provisions of the SWPPP, which will outline maintenance responsibilities, required maintenance activities and frequencies of various maintenance activities. Appendix G of The NYSDEC Stormwater Design Manual provides maintenance inspection checklists for all of their accepted stormwater practices. The checklist includes various facets of the practice along with a frequency that each area should be inspected. The SWPPP must be approved by NYSDEC and will comply with NYSDEC standards.

The proposed stormwater management system will require a Stormwater Permit from NYSDEC. Prior to the commencement of construction activities, the Applicant will apply for a NYSDEC General Permit for Stormwater Discharges from Construction Activities (GP-0-08-001). Upon review of this application, if NYSDEC has concerns regarding potential impacts to the area between the water quality pond(s) and Oatka Creek, the Applicant will work with NYSDEC to provide an acceptable design that will prevent adverse impacts to the area in question.

A direct discharge (to a specific surface water body) is defined in the SPDES General Permit for Construction Activities, (GP-0-08-001) as the following: "means that runoff flows from a construction site by overland flow and the first point of discharge is the specific surface water body, or runoff flows from a construction site to a separate storm sewer system and the first point of discharge from the separate storm sewer system is the specific surface waterbody". The Project fits this definition since the water quality pond sheet flows overland and directly into Oatka Creek.

The area downstream of the proposed weir discharge point consists of dense, long grasses and pockets of scrub brush. This area has a typical slope of approximately 2.76 percent. The discharge rate from a 60-foot long weir during a 100-year storm event was calculated to be 37.46 cfs. Manning's equation was used to determine the velocity of the overland flow for various width flow paths. The calculated velocities averaged 2.44 fps for flow widths of 60, 80, and 120 feet. The geotechnical engineer found that the soils in this discharge area consist of a layer of topsoil over silt and clay with traces of gravel and shale fragments. This type of soil is not easily erodible. Table 3.6 Maximum Permissible Velocities for Selected Seed Mixtures, from the New York Standards and Specifications for Erosion and Sediment Control indicates the "Grass Mixtures / Reed Canarygrass", slope range 0-5%, erosion-resistant soils category, has a permissible velocity of 5 fps. Therefore, the anticipated 100 year storm event discharge velocities are less than the permissible velocity of this site's cover / soil type. Appendix F of this FEIS contains the supporting calculations used to determine that the downstream groundcover will support the anticipated flow velocities.

**Comment 1.8:** *As shown on the drawings and described in Appendix G, there is not enough detail provided to confirm that the wet ponds will work as designed. Please provide additional detail on:*

*\* The area near the end section of pipe entering the first pond. Will stabilization methods be used to keep the pond from eroding?*

*\* The area between the first and second pond. What type of connection exists between these two areas?*

*\* Location and construction of the proposed broad crested weir. Where will this be located and how will it be constructed to provide sheet flow?*

**Response:** The area below the end section of the inflow pipe into the water quality pond will be stabilized with rock outlet protection. The rock outlet protection will be designed according to the New York Standards and Specifications for Erosion and Sediment Control guidelines. A detail of the length, width, depth, and stone size will be provided during the Site Plan approval stage. As depicted on the plans located in Appendix G of the FEIS, the stormwater quality pond has two sections: the first portion is a forebay which provides an area for sediment and other particulate materials to settle out of the incoming stormwater. Water from the forebay will flow into the main pond via a stone overflow spillway. This spillway will be lined with stone to provide a stabilized flow path into the main pond. This spillway is consistent with the specifications of the P-2 pond outlined in the NYS Stormwater Management Design Manual.

The broad crested weir will be located in the northwest portion of the main pond, or second portion of the stormwater quality pond. This weir will be lined with stone at a consistent elevation to facilitate a uniform discharge pattern. The existing ground cover downstream of the proposed discharge point is well established consisting of long grasses and pockets of scrub bush.

Construction details of the overflow spillway and discharge weir will be provided during the Site Plan approval stage. The length of the discharge weir will be approximately 60 linear feet. The 100 year storm event peak inflow to the stormwater management pond is estimated to be 37.46 cubic feet / second. For this flow rate, the peak water depth and velocity over a 60 linear feet weir are 0.27 feet and 2.42 feet/second, respectively. This velocity is not erosive. Once the flow passes over the weir, it will fan out as it continues toward Oatka Creek, further reducing velocity.

**Comment 1.9:** *In Appendix F, the Floodplain Evaluation Study, Figures 1 through 4 shows the 100yr Water Surface Elevations as modeled within HEC-RAS. In each of the figures, the text presented does not match the water elevation shown in the figure. For example, the proposed water surface elevation in Figure 1 is given in the text as 974.44. If you look at the figure, the water surface elevation presented by the model looks to be under 974. Please correct these figures to provide the correct water surface elevations.*

**Response:** The elevation scales on Figures 1 through 4 were based on the NAVD 88 vertical datum. These scales were update to reflect the NGVD 1929 vertical datum, the survey datum used at the Project. This correction eliminates any discontinuity between the text in the report and the figures. The updated Floodplains Report is located in Appendix D of this FEIS.

**ON-SITE FACILITIES:**

**Comment 1.10:** *The FEIS must provide a discussion on proposed snow storage. Snow storage needs to be provided in such a manner that runoff does not impact the accessibility and safety of the main parking field.*

**Response:** The Paving and Snow Removal Drawing C-3 in Appendix B of the DEIS showed the suggested snow storage area as the outermost northern and eastern portions of the proposed parking areas, with the largest storage area located in the lot closest to Route 19. This drawing has been revised and a new Paving and Snow Removal Drawing (C-3) is provided in Appendix G of the FEIS. Snow storage is now located primarily in the northernmost lot closest to the existing pond on the site. This area is relatively remote and snow storage in this area will have minimal interference with traffic circulation on the site. Runoff from the snow will flow to the rear of the site, toward the existing pond, minimizing impacts from ice and snow melt to the main parking lots. The parking lot closest to Route 19 near the McDonald's is shown as a secondary snow storage area. This area is to be used only as temporary snow storage in the event of a major snow event.

**Comment 1.11:** *The amount of parking that will be lost to snow storage must be shown. The impact that snow storage has on total parking capacity on site versus the busiest times on site needs to be illustrated and discussed.*

**Response:** As stated in the response to Comment 1.10, the snow storage area will be in the northwestern parking areas nearest the existing pond. This outermost area has been selected for snow storage to ensure safe, efficient, and convenient traffic access is maintained during the winter months. The relatively remote spaces where snow storage is proposed will only be utilized by shoppers when other parking is not available, typically during the peak Christmas shopping season days. Snow storage can take place in this location at the periphery of the lot while ensuring that traffic lanes are kept open and sight distance is maintained. Snow melt will drain away from other lots and away from the building, minimizing problems of icing. If an extreme snow event occurs over an extended period of time whereby the entire area designated for snow storage is utilized, approximately 51 parking spaces would be lost to snow storage in the primary snow storage area, and an additional 48 spaces would be lost in the temporary snow storage area in the lot between the bank and the McDonald's. In the event that accumulated snow exceeds the limits of the set-aside storage areas or if the store manager wishes to reduce the storage area to accommodate shopper traffic volume, he or she will arrange for excess snow to be trucked offsite and disposed of at permitted locations in the general area.

**Comment 1.12:** *Parking to be located between the 5 Star Bank and the McDonald's, adjacent to NYS Route 19, should be further justified as to need by Wal-Mart. A minimal reduction equivalent to the width of two parking spaces from Route 19 needs to be provided. The FEIS must articulate how the parking area is needed for the site*

*operation and balance the need for parking with green space. A justification of meeting parking requirements of the Town Zoning code is not an adequate justification.*

**Response:** (The comment was discussed with its initiator and the reference that a “minimal reduction equivalent to the width of two parking spaces from Route 19 needs to be provided” is meant to mean that the Planning Board desires that the parking lot be so modified and not that the Town Zoning Code or other criteria require this modification.) The parking area located between the 5 Star Bank and the McDonald’s adjacent to NYS Route 19 has been designated for a variety of uses. As stated in Section III.2.e of the DEIS, parking located between the 5 Star Bank and the McDonald’s, adjacent to NYS Route 19 will be utilized by shoppers when other parking is not available, typically during the peak Christmas shopping season. Some of the parking spaces will also be utilized by employees.

This parking area is located in front of the store and is within 300 to 450 feet of the store entrance. The original design of this site, in the early 1990’s, provided for a future expansion of parking into this space and sized the stormwater facilities (both onsite and offsite) to handle the full development of it. The Applicant is bound by an agreement to provide a minimum number of parking spaces, which the current site plan accommodates.

The need to balance parking capacity, green space, and comply with the Town Zoning Code is addressed in Section III.K.2.a and Section III.K.3 of the DEIS. In order to increase the amount of green space at this location, the Site Plan included in Appendix B of the DEIS has been revised to increase the parking lot setback from NYS Route 19 from approximately 30 feet to 50 feet. This revision is shown on the revised Site Plan included in Appendix G of this FEIS. Increasing the parking lot setback will result in the loss of 16 parking spaces in the parking area located between the 5 Star Bank and the McDonald’s. However, providing a greater setback from NYS Route 19 will increase the amount of green space and provide a more aesthetically pleasing visual experience for drivers traversing NYS Route 19 at the Project Site. The Project, as currently proposed, will require the granting of a parking variance to allow approximately 677 parking spaces (not including cart corrals), where approximately 856 spaces would be required per Town Code. The current plan utilizes areas available for parking while conforming to setback requirements. It also provides additional green space and while avoiding impacts to the existing on-site pond and wetlands.

Given the site constraints, the site plan is designed to balance the required parking space dimension and quantity, while meeting the Applicant’s contractual parking requirements. The Applicant has expressed confidence, based on past experience, that the proposed number and size of parking spaces are appropriate.

**Comment 1.13:** *If the parking area is to be used as snow storage during the peak store utilization time, are there ‘greener’ options than standard asphalt pavement, such as utilizing pervious materials.*

**Response:** The Applicant investigated the feasibility of alternatives to pervious materials for the more remote parking lot. Based on that investigation, the Town is satisfied that pervious parking is not appropriate at this location. The storage of snow tends to concentrate debris such as salts and sands used in anti-icing measures. These can be seen as residues when snow melt occurs. In particular, sands are very destructive to pervious pavements and tend to plug up the pavement, negating its ability to drain rainfall and runoff. There is concern that pervious pavements are not designed to accept heavy vehicles and are especially prone to damage from truck turning movements. Pervious pavements also have different maintenance needs from traditional asphalt pavement. Pervious concrete pavement was also investigated, and has the same issues as pervious asphalt with respect to snow storage; it is also prone to ‘scuffing’ whereby the surface aggregate can easily be abraded off. The use of open grid concrete pavers, such as “Grass Pave” was also investigated. These pavers provide good support for vehicle parking during warm weather months and also reduce impervious area. However, they are vulnerable to severe damage resulting from snowplowing. Given the local climate, all parking lots on the site will be subject to snowplowing to permit parking use.

**Comment 1.14:** *The FEIS should address whether replacing the 22 painted (striped) islands within the parking field with planted islands will better address the aesthetics, landscaping and green elements of the site. The replacement elements could consist of grass and tree or shrub components to enhance the overall site.*

**Response:** Due to the reconfiguration of the parking lot between the DEIS and the FEIS, the number of striped islands has been reduced. The current site plan provides extensive tree planting between the parking area and the highway and also between the lot and the McDonald’s parcel, as depicted in the updated Xeriscape Plan included in Appendix G of this FEIS. Similarly, landscaping will be provided along the east and north edges of the parking lot expansion behind the 5 Star Bank to provide visual screening from the east and north. Additional plantings and landscaping will also be provided inside the parking lot as shown on the Xeriscape Plan in Appendix G of this FEIS to break up and beautify the parking fields. The parking lot will be restriped and resurfaced to give a fresh appearance. All of these measures will enhance the visual appearance of the Project Site.

There is concern that adding curbed islands in the parking lot could create problems by interrupting stormwater runoff patterns and inhibiting drainage. The proposed landscaping addresses aesthetic impacts. While additional modifications to the landscaping shown on the site plan may be made during the site plan review process, the environmental impacts have been addressed to the extent practicable, balancing landscaping and aesthetics with the need to provide adequate parking.

**Comment 1.15:** *The FEIS needs to address impacts to trees on the site. All trees on-site that are currently located within areas where store expansion, parking expansion, or sidewalk expansion will be lost. Will these trees be replanted or replaced on the site? The replacement of the existing trees should be in addition to the required landscaping.*

*Below illustrates the number of trees that are shown to be removed to accommodate the current site plan layout.*

- a. Store expansion area = 6 trees*
- b. Parking expansion area = 16 trees*
- c. Sidewalk expansion area = 5 trees, 6 shrubs*
- d. Front parking lot area = 15 trees, 1 shrub*

**Response:** The Zoning Code of the Town of Warsaw does not specify numbers of trees or shrubs to be planted. Impacts to trees are shown on the Demolition Plan (Drawing C-1) in Appendix B of the DEIS. Trees, shrubs, and perennials to be added or transplanted are shown on the revised Xeriscape Plan in Appendix G. The following table shows the number of trees to be removed, transplanted or added as a result of the Project.

TREES REMOVED	31*
TREES TRANSPLANTED	18
NEW TREES ADDED	32

\* Assuming Sidewalk Option 2 is selected. One additional tree would be lost under Sidewalk Option 1.

A total of 49 trees are being displaced under the likely alignment of the sidewalk. Thirty-one trees will be removed and 18 will be transplanted to other locations throughout the Project Site. The Project will add 32 new trees to offset the existing trees to be removed. The end result will be no significant difference in the number of trees on the site. In addition to trees, the Project is anticipated to add 128 shrubs and 89 perennials to the Project Site. Locations of plantings, types of plant species, and additional landscaping details are shown on the revised Xeriscape Plan in Appendix G. Information on proposed landscaping and aesthetic resources is provided in Section III.F.b of the DEIS. Final landscaping details will be addressed under site plan review, but the aesthetic issues of the proposed landscaping have been addressed adequately under SEQR.

**Comment 1.16:** *The expansion of the store will bring the parking lot to a distance of 300 feet from the property line and the store will be 600 feet from the property line. Truck deliveries are noted to occur anytime during the 24 hour operation of the store.*

**Response:** (This reference is understood to pertain to the distances from the south property line of the closest residence north of the site.) The store will be open 24 hours a day, seven days a week and may receive deliveries at any time. It is noted that the truck deliveries will all be through the south (main) entrance and around the south side of the store to the rear loading dock. Therefore the truck route on site is approximately 1000 feet or more from the nearest residence's south property line. The residence itself is situated less than 100 feet from Route 19, which carries large volumes of both cars and heavy trucks at high speeds and at all times. The comparative impact of onsite delivery truck traffic noise is small.

**Comment 1.17:** *The FEIS must specify truck delivery hours and address potential negative impacts to the ambient noise levels of the site.*

**Response:** The store will be open 24 hours a day, seven days a week and may receive deliveries at any time. The Town of Warsaw Zoning Code does not restrict truck delivery hours and accordingly, the store may receive deliveries at any time. As stated in Section III.I.2.a of the DEIS, noise from delivery trucks will occur as they enter and exit the Project Site. A Wal-Mart Supercenter of this size typically receives on average 9 large delivery trucks per day (including Wal-Mart delivery trucks) as well as smaller truck deliveries from individual vendors. However, Wal-Mart policies dictate that trucks are not allowed to idle longer than 5 minutes at a time so there will not be significant noise generated while trucks are unloaded. Additional information on Wal-Mart's "No Idling Policy" for their fleet of trucks is contained in Section III.E.3 of the DEIS.

As stated in Section III.I.2.a of the DEIS, noise level studies done at similar locations where Wal-Mart stores have been proposed reveal that the anticipated noise levels from a fully operational Wal-Mart facility will be similar to those encountered by everyday activities in a commercial corridor environment such as the surrounding area for this project.

The only residences in the general vicinity of the Project Site are located north of the Project Site. The nearest residence is situated approximately 600 feet from the Wal-Mart building. Upon completion of the proposed Project, the same residence will be located approximately 15 feet closer to the store. The relative noise increase associated with the change in proximity should be indiscernible. Parking will be located closer to the northern property line of the Wal-Mart parcel, but this parking is not likely to be used during non-peak periods.

The Project's loading dock and trash compactor/dumpster will be located in the rear behind the southern portion of the store (over 1,000 feet away from the subject residences) and these residences will be blocked from the noise by virtue of both the distance and the presence of the building between the noise generators and the residences.

Once the Project is complete, onsite activities will continue almost unchanged from existing ambient noise levels at the Project Site as discussed in Section III.I.1.a of the DEIS. Therefore, no significant noise impacts are anticipated due to the proposed Wal-Mart Project.

**Comment 1.18:** *The FEIS must address the need for screening at the northern property line and articulate how this will be accomplished. It must address what will happen to existing vegetation/screening at the northern property line. The screening is necessary to provide shielding from debris that may be generated from the site. It will also serve as a noise buffer from the site.*

**Response:** As stated in Section III.K.2.a of the DEIS, the Town of Warsaw Zoning Code requires that off-street parking areas for more than 5 vehicles be effectively buffered on the rear and side yards by a fence of acceptable design, unpierced masonry

wall, landscaped berm or compact evergreen hedge. Such fence, wall or hedge shall not be less than 6 feet in height and shall be maintained in good condition. When the parking area adjoins a residential area, a planted buffer area shall be provided in addition to the hedge or wall mentioned above. The planned buffer area shall not be less than 10 feet in depth. The applicant has agreed to provide an acceptable fence along the northern property line, as well as additional landscaping as depicted in the new Xeriscape Plan shown in Appendix G of the FEIS.

The area to the north of the Project Site is undeveloped adjacent to the Project Site and buffered by a significant wooded hedgerow extending from NYS Route 19 back to Oatka Creek. There are two residences north of this hedgerow, with the closest being located approximately 300 feet from the Project parking lot. Additional plantings and the fence will compensate for trees lost in this vicinity. A total of 7 Locust trees, 13 Austrian Pine trees, 3 Red Oak trees, and 21 Sea Green Juniper shrubs will be planted on the north side of the expanded parking lot as shown on the revised Xeriscape Plan in Appendix G in the FEIS.

**PEDESTRIAN FACILITIES:**

**Comment 1.19:** *FEIS needs to include a discussion of pedestrian facilities.*

**Response:** Pedestrian facilities are addressed in the following sections of the DEIS:

- Section III.G.1.d. Existing Off-Site Pedestrian Traffic and Facilities
- Section III.G.1.e. Existing On-Site Pedestrian and Vehicular Circulation
- Section III.G.2.d. Potentially Adverse Impacts to Off-Site Pedestrian Activity
- Section III.G.2.e. Proposed On-Site Pedestrian and Vehicle Circulation
- Section III.G.3. Proposed Traffic Mitigation Measures

At present, pedestrian facilities do not exist from the public sidewalk along NYS Route 19 to the Wal-Mart store. Virtually all pedestrian shopper traffic to the site is presumed to come from the south. A sidewalk along NYS Route 19 terminates at the southwest corner of the main Project Site entrance. A sidewalk does extend to the Tops Plaza storefront from the NYS Route 19 sidewalk at the south end of the Tops plaza. To serve the Wal-Mart with a sidewalk directly from NYS Route 19, there is very little space to extend the sidewalk north across the McDonald's parcel. To access the Wal-Mart store, pedestrians must either walk up the sidewalk at the south end of the Tops Plaza and across in front of the Tops Plaza storefronts to reach the Wal-Mart or walk across the busy site main entrance and through the Wal-Mart parking lot.

There are two options for extending a sidewalk into the Project Site that the Applicant has considered and actively pursued. Both of these involve extending a new sidewalk across land owned by others to access the Project Site. The first option, depicted on Figure 1, involves extending the sidewalk westerly along the south side of the main site entrance driveway. The sidewalk would be placed within the existing landscaped area at the northeast corner of the DDR- owned Tops plaza, cross the first entry to the Tops parking lot from the main site entrance drive, and then cross the main site entrance west

of the access drive to McDonald's. The walkway would then extend along the landscaped island along the southern side of the Wal-Mart parcel to the storefront drive. The island would be widened to better accommodate pedestrian traffic, as shown in Figure 1. This alignment is favorable since the pedestrian traffic avoids the main Route 19 entrance, the McDonald's traffic and most of the traffic accessing the Wal-Mart store. In order to construct the sidewalks as proposed, the property owner, DDR and the lessee, Tops would need to consent to the construction of sidewalks, and efforts to obtain this consent have not been successful. Without the consent of DDR or Tops, who own the land the sidewalk must access, this option is unavailable to the Applicant and cannot be pursued further.

The second option is discussed in FEIS Section III and illustrated on Figure 2. The second option involves extending a new sidewalk from the existing sidewalk terminus northerly across the main site entrance to the north side of the driveway, then turning westerly and continuing between the McDonald's pavement and the main entrance driveway, crossing the eastern driveway opening to Wal-Mart's parking lot and continuing westerly in the existing (widened) Wal-Mart landscaped island to the storefront driveway. This route involves encroachment on the McDonald's site and the Applicant is currently pursuing McDonald's consent to construct this sidewalk. The crossing of the main entrance driveway at Route 19 would utilize pedestrian signal controls for safe access. The crossing at the main entrance driveway cut into the Wal-Mart parking lot and McDonald's would be provided with stop signs on the eastern (on the main site entrance driveway) and northern (traffic coming from McDonald's and Wal-Mart to the main site entrance driveway) approaches.

The installation of the proposed traffic signal at the intersection of NYS Route 19 with the main Project Site entrance will improve both pedestrian and vehicle safety along Route 19. Pedestrian crosswalks, push buttons and signals will be included on the northeast, northwest and southeast sides of the NYS Route 19 intersection with the main Project Site entrance. As presented in the Transportation Research Board publication NCHRP (National Cooperative Highway Research Program) Report 617 – Accident Modification Factors for Traffic Engineering and ITS Improvements, installation of a traffic signal significantly reduces right angle and left turn type accidents. Also, total economic costs (all crashes at the intersection included) are reduced significantly.

**Comment 1.20:** *Pedestrian access to the site must be clearly provided with ADA compliant designs. Access should originate from the existing sidewalk on Route 19 at the main site drive intersection and connect into the sidewalk proposed around the building's perimeter. How this will be achieved and the impact it will have on both the vehicle and pedestrian traffic on site needs to be addressed, as discussed at several Planning Board meetings.*

**Response:** All proposed sidewalks will have ADA compliant designs. Refer to the response to Comment 1.19 above for a discussion of pedestrian access to the Project Site.

**Comment 1.21:** *Areas where pedestrian crosswalks are provided should be treated with traffic calming designs to provide the safest environment for the pedestrian to move within. This can be accomplished with additional signage, elevated crosswalks or a similar combination.*

**Response:** The new traffic signal at the south driveway will provide accommodations for pedestrians to cross NYS Route 19. Pedestrian signal phases will provide the benefit of crossing NYS Route 19 when vehicle traffic is stopped. Stop signs will be provided at the intersection near the McDonald's entrance.

**AIR QUALITY:**

**Comment 1.22:** *Truck routing patterns will be critical to minimization of air quality impacts, and should be illustrated in the FEIS.*

**Response:** As stated in Section III.G.2.e of the DEIS, onsite truck traffic routing patterns will be largely as they exist today. Truck deliveries will continue to utilize the main entrance and loading dock area behind the store. Some garden center deliveries will be made immediately north of the garden center, with trucks entering from behind the store and exiting at the main southern entrance. To minimize air quality impacts Wal-Mart policies dictate that trucks are not allowed to idle longer than 5 minutes at a time so there will not be significant air quality impacts generated while trucks are unloaded. Additional information on Wal-Mart's "No Idling Policy" for their fleet of trucks is contained in Section III.E.3 of the DEIS.

During construction, truck traffic will access the site via NYS Route 19, a state highway which is intended to carry licensed truck traffic. Construction truck traffic impacts to air quality are temporary and are likely to be similar to those experienced when the original Wal-Mart store was constructed or when the Tops Plaza was constructed. As stated in Section III.E.3 of the DEIS, steps such as wetting soil surfaces and the use of tarpaulins on trucks hauling soil will reduce dust impacts both onsite and offsite. These controls will be included as part of the specification of the construction contract.

**AESTHETICS:**

*The applicant has presented an updated rendering of the architectural design of the Wal-Mart building. This rendering must be included in the FEIS. To ensure the colors of materials is accurately represented samples should be presented. The final design will be determined during site plan review.*

*The following comments were developed during the course of a special meeting held by the Planning Board, with the applicant, to discuss the aesthetic design of the building. However, most have been addressed by the updated rendering. The applicant will need to discuss how their revised rendering has addressed these concerns.*

**Comment 1.23:** *The Town is rural and traditional; the building façade should reflect that in the design.*

**Response:** The revised rendering of the Wal-Mart Store is provided in Appendix E of this FEIS. The overall structure and form of this building integrates local elements as requested by the Town of Warsaw Planning Board. Similar to many historic buildings in Warsaw, the Project has embraced the New England vernacular by pulling themes from early-European influences.

The articulation of the expansion's façade simulates a distinct cadence easily observed within the downtown storefronts. The use of brick provides a durable, yet familiar, texture to the exterior and extends along the building's facade. Windows simulate double-hung sashes with divided lights, and while placement is driven by function of light and transparency as in Early-Colonial constructions, their bays' symmetrical adjacency include Federal and Georgian architectural overtones, as well. In addition, design cues were taken from the local Wyoming County Courthouse as requested in the following comment. The Applicant met with the Town Planning Board on June 28, 2010 to review this design.

**Comment 1.24:** *The Wyoming County Courthouse is a building the town is proud of and feels represents this rural tradition. The architecture of the building should take this into consideration.*

**Response:** The design shown in Appendix E does take a number of design features from The Wyoming County Courthouse into consideration. Some of these include the color of the front canopy, the use of glass around the vestibule and brick accents at the pedestrian level.

**Comment 1.25:** *The Town feels the current proposed façade design is too modern and not within the context of their town characteristics.*

**Response:** See response to Comment 1.23.

**Comment 1.26:** *The architectural design of the building should incorporate the following elements, as discussed at the Planning Board meeting with Wal-Mart architects:*

- a. *Classic roof lines (peaked) rather than the radiused roofs*
- b. *Brick or brick like material. Consider corbelling in certain areas.*
- c. *Pillars near entrances*
- d. *Copper (faux) standing seam roof*
- e. *Precast concrete panels – change color (or provide optional color samples)*
- f. *Trespa – provide sample*
- g. *Autumn color palette (reds, oranges, natural colors – samples should be provided)*
- h. *Windows are a desirable feature*
- i. *Bike racks*

- j. Roofed pedestrian area*
- k. Plantings in front of building*
- l. Use the Wyoming County Courthouse as a reference to good rural architecture*
- m. The covered sidewalk areas are desirable but snow loading needs to be considered in the design*

**Response:**

Most of these comments were addressed by the Applicant with the new architectural design, which was accepted by the Town of Warsaw Planning Board at a Meeting held to discuss the architectural design (June 28, 2010). Brick has been added at all pedestrian level locations. Design details, such as materials, massing, etc. have been resolved. The colors and materials have been revised and are acceptable to the Planning Board. Samples showing colors of the precast concrete and Trespa materials were provided to the Planning Board. There will be windows in the front elevation, as shown on the renderings in Appendix E of the FEIS. There will be bike racks along the front sidewalk and the proposed canopy over the Market and Pharmacy entry will extend to the north, terminating at the proposed bus stop/ transit sign that will be located along the front sidewalk. Snow loading will be taken into consideration in the structural design of the canopy, and proper reinforcement will be provided for the canopy in accordance with building codes. There will be a large planter provided on the front sidewalk. As the response to Comment 1.24 notes, the new design is intended to better reflect local architectural and character.

**Comment 1.27:** *If all utilities on site are not placed underground, address potential visual impacts of these uses. This includes the pump station and required electrical boxes. If components must remain above ground, what visual screening will be provided?*

**Response:** As shown on the Utility Plan in Appendix G, all utilities on the Project Site are placed underground with the exception of one overhead electric line running from the rear of the Tops Plaza to an electric pole at the rear of the Wal-Mart store. This overhead electric line and electric pole is located behind the store out of sight from the public and is not anticipated to create an adverse visual impact.

Section III.H.3.a of the DEIS discusses visual mitigation measures for the sanitary pump station. The existing sanitary pump station will be relocated. The preferred location for the sanitary pump station will be determined by the Town, based on best practices and the operational needs of the system. The pump station will most likely be located primarily underground, with minimal above ground aesthetic impacts from the hatches, pipes and mechanical systems that must be above ground.

**Comment 1.28:** *There are no gas pumps proposed for the Wal-Mart site. If gas pumps are ever proposed on-site a new, separate review process will be required.*

**Response:** The comment is noted. No response is necessary or required.

**TRANSPORTATION:**

**Comment 1.29:** *The increase in traffic volume impacts the nearby traffic operations at the NYS Route 19 at Buffalo Road and Doody Road unsignalized intersection. The Doody Road eastbound left/through/right movement experiences the largest increase in delay for both the Friday PM peak hour and the Saturday Midday peak hour. The delay increases by a minimum of one minute up to two and half minutes. This delay needs to be reviewed and addressed in the FEIS.*

**Response:** Delays at the Buffalo Road intersection were measured in the field during both the weekday PM peak hour and the Saturday mid-day peak hour, when traffic volume is heaviest both for Wal-Mart and the surrounding highway system. The measured delays were found to be less than indicated in the capacity analysis. In other words, the delays predicted by the traffic model overestimated actual conditions. This is typical for a stop sign controlled intersection during peak hours of activity. The macroscopic method of analysis offered by Synchro does not adequately account for driver acceptability of gaps in traffic created by nearby traffic signals. Hence the delays reported in the traffic analysis exceed those observed by Bergmann Associates or anticipated in the SimTraffic traffic simulation. SimTraffic was used to determine more accurate delay estimates because SimTraffic accounts for gaps in traffic due to the traffic signals to the north and south of Buffalo Road. SimTraffic results show delays of approximately 67 seconds during the Friday PM peak hour and approximately 37 seconds during the Saturday peak hour. Delays could be even less because the analysis was based on a 155,000 square foot Wal-Mart store. The proposed store will be 150,381 square feet, or 4,619 square foot smaller than the estimates assumed.

Delays of one minute or less are normal for stop sign controlled local roads at arterials during peak conditions. The proposed traffic signal at the south Wal-Mart driveway will help to increase the number of available gaps in Route 19 traffic to allow vehicles to turn onto Route 19. Regular review of this intersection is recommended in the future.

**Comment 1.30:** *The Buffalo Road westbound approach to the Route 19 at Buffalo Road and Doody Road unsignalized intersection is projected to operate at a LOS F for the Friday PM peak hour. This is a 13.5 second increase from the existing conditions, but given that it pushes the LOS to an F it is a serious impact. This delay needs to be reviewed and addressed in the FEIS.*

**Response:** Delays at the Buffalo Road and NYS Route 19 intersection are discussed in response to Comment 1.29.

**Comment 1.31:** *NYS DOT concurs with the applicants proposed mitigations, as they are stated in the January 2009 TIS. The mitigation is for the addition of a traffic signal at the intersection of the main site driveway and NYS Route 19. The January 2009 TIS is included in the DEIS as an appendix.*

**Response:** The comment is acknowledged. No response is necessary or required.

**PUBLIC COMMENTS:**

*Comments 1.32 through 1.40 represent all substantive comments made at the Public Hearing for the DEIS held at the Wyoming County Courthouse on April 30, 2009. The comments are summarized from the minutes of the Public Hearing, and contained in full in Appendix C. Some of these questions repeat issues raised by others.*

**Comment 1.32 (Valerie Duell):** *What property tax incentives are being provided? How will taxes be utilized and split between agencies? It appears this question was answered in the DEIS.*

**Response:** The issue of tax incentives and how taxes are split between agencies is addressed in Section III.K.2.e of the DEIS.

It is anticipated that the Project will provide an increase in property tax revenues to the Town of Warsaw, the Warsaw Central School District, and Wyoming County. The Project will also generate increased sales tax revenues annually after Project completion. Sales tax revenues primarily go to the State government, with a portion going to the County. For additional tax evaluations and calculated projections refer to Section III.K.2.e of the DEIS.

It is assumed that the Applicant will utilize the Real Property Tax law Section 485-b abatement program, which is a development incentive program available to any new commercial development in New York State where local municipalities participate. With this, the revenue stream to each of the participating governments is reduced in the first ten years of project occupation. The program provides a fifty-percent abatement of the increase in property taxes attributable to the development in year one, declining by five percent each year to year eleven when the abatement ends. At present, the Town of Warsaw, the Warsaw Central School District, and Warsaw County all participate in the 485-b tax abatement program.

**Comment 1.33 (Valerie Duell):** *Will traffic make it more difficult to turn onto Route 19 from side streets?*

**Response:** The impact will be small. Given the new traffic signal at the south driveway, traffic is expected to function satisfactorily. The traffic signal will help to increase the number of available gaps in NYS Route 19 traffic to allow vehicles to turn onto NYS Route 19.

**Comment 1.34 (Valerie Duell):** *The general architecture of the building is very modern. It should be modified to reflect the historical architecture that exists within the Village of Warsaw.*

**Response:** This comment has been addressed in the responses to comments 1.23 through 1.26 of this FEIS document.

**Comment 1.35 (Valerie Duell):** *Larger size parking spaces may be desirable for this Wal-Mart provided the (elderly) population that it serves.*

**Response:** As shown on the Site Plan in Appendix G, seventeen handicapped spaces are designated which are adjacent to striped parking spaces where parking is prohibited. Three of the seventeen handicapped spaces are handicapped van accessible spaces. These handicapped van accessible spaces are approximately three times the size of a typical parking space. The proposed store expansion, pedestrian facilities, and parking facilities have been designed to be fully ADA compliant. Larger size parking spaces have been incorporated into this Project to serve the handicapped population that may require larger parking spaces.

The Applicant will apply to the Town Zoning Board of Appeals for a parking space dimension variance. As stated in Section III.K.2.a of the DEIS, the Town of Warsaw Zoning Ordinance requires 10' x 20' parking spaces. The Project will increase the required number of parking spaces. Due to existing Project Site constraints such as the proximity of adjacent commercial businesses, existing wetlands and Oatka Creek, and the location of the existing store, larger parking spaces cannot be provided without losing green space on the site. 9.5' x 20' parking spaces are proposed to maximize the space available for parking while accommodating green space at the front of the site. A variance will be requested to provide 9.5' x 20' parking spaces. The proposed new parking spaces will be the same size as the existing Project Site parking spaces, which are also 9.5' wide.

**Comment 1.36 (Valerie Duell):** *Will the addition of the traffic signal impact traffic in the Village of Warsaw?*

**Response:** The traffic signal will help to increase the number of available gaps in NYS Route 19 traffic to allow vehicles to turn onto NYS Route 19. It will not affect traffic in the central business district of the Village of Warsaw.

**Comment 1.37 (Valerie Duell and Dave DiMatteo):** *What are the plans for snow removal? Where will snow storage occur on site?*

**Response:** Snow removal and snow storage is addressed in the response to Comment 1.10 and Comment 1.11.

**Comment 1.38 (Dave DiMatteo):** *What are the plans for accommodating pedestrians?*

**Response:** Pedestrian accommodations and facilities are discussed in response to Comment 1.19, Comment 1.20, and Comment 1.21.

**Comment 1.39 (Valerie Duell and Dave DiMatteo):** *What are the extent/boundaries of the sewer district? When is it expected to be completed? Where will facilities, such as the pump station, be located on site? Will the pump station be located underground? What will the visual impact of the new pump station be?*

**Response:** There is a District map and legal description included in the engineering report prepared by Wendel Duchscherer and included in Appendix 1 of the DEIS. The sewer district planning is currently underway by the Town of Warsaw and is independent of the proposed Project. Estimates are that completion will entail a 6-9 month process from when design is started. The location of specific facilities is a function of actual design that has not yet advanced. In general there will be gravity sewer coming into the center of the plaza from Route 19 to the pump station located near Wal-Mart's south building line. The actual location of facilities such as the pump station will be dependent upon final engineering and site-specific conditions. The pump station will be primarily underground with an access housing potentially protruding up to a few feet above ground. There will also be a vent pipe up to 30 inches above ground and possibly a pole mounted control panel set about 4 feet above ground. The visual impact of the sanitary pump station is expected to be relatively slight with most of the pump station being below grade. There may be a security fence to screen and protect the facility. Depending on the height of the access point, there will probably also be shrubs provided to shield visual impact from the facility.

**Comment 1.40 (Marian Foster):** *How much additional sewage will be sent to the Village system, and is the sewage treatment plant able to handle the additional flow?*

**Response:** The flow projections from a prior engineering study suggested that currently this commercial area discharges approximately 5,800 gallons per day to the Village system. The projected flows from the proposed sewer district are approximately 12,800 gallons per day. The Village of Warsaw has indicated to the Town that there is sufficient reserve capacity to handle these increased flows.

**LETTER # 2: DOUGLAS E. BORSCHEL, DEPUTY PERMIT ADMINISTRATOR**  
**NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION**  
**(5/15/09)**

**Comment 2.1:** *The review of the newly created Sewer District and any sewer extension that may be necessary, must satisfy the Department's Division of Water. That review will be conducted by Mr. Daniel Judd. Once this review is complete and the Division of Water is satisfied with what is proposed, the permitting process can move forward.*

**Response:** Approvals necessary for the creation of a Sewer District are discussed in Section III.H.3 of the DEIS. The Town of Warsaw Town Board, upon its own petition, will create the sewer district. In addition, approval from the Wyoming County Public Health Department and the New York State Department of Environmental Conservation will be required for the creation of the sewer district. It is noted that the Town sewer district creation is a separate project, although related, and it is subject to SEQR independently from the Wal-Mart project.

**Comment 2.2:** *If project activities will involve land disturbance of over 1 acre, the project sponsor is required to obtain a State Pollutant Discharge Elimination System General Permit (GP-0-08-001) for Stormwater Discharge from Construction Activities. A Notice of Intent (NOI) is required to be sent to NOTICE OF INTENT, NYSDEC, Bureau of Water Permits, 625 Broadway, 4<sup>th</sup> Floor, Albany, New York 12233-3505, telephone: 518/402-8111 and approved before construction commences. The General Permit GP-0-08-001 and NOI form are available on the Department's website at [www.dec.ny.gov](http://www.dec.ny.gov). We have included the NOI form with a copy of this letter to the project owner. This General Permit requires the project owner or operator to control stormwater runoff according to the Stormwater Pollution Prevention Plan, which is to be developed prior to filing NOI and prior to commencement of the project. The stormwater issue must also be addressed. The applicant must apply for a Construction Activity Permit from the Division of Water to answer the stormwater concerns.*

**Response:** Section III.A.3 and Section III.B.3.a of the DEIS discuss the need for a State Pollutant Discharge Elimination System General Permit (GP-0-08-001) for Stormwater Discharge from Construction Activities. The Project will involve land disturbance over 1 acre and the Applicant will obtain a State Pollutant Discharge Elimination System General Permit (GP-0-08-001) for Stormwater Discharge from Construction Activities that addresses stormwater. A Notice of Intent (NOI) will be sent to the NYSDEC prior to construction activities.

**Comment 2.3:** *Once the U.S. Army Corps of Engineers, Buffalo District has completed their review and if it is deemed that Water Quality Certification will be needed from this Department, this Office will review that need and issue Water Quality if it is determined necessary.*

**Response:** No Federal wetlands or surface waters under the jurisdiction of the U.S. Army Corps of Engineers will be impacted as a result of the Project. Therefore, a Water Quality Certification from NYSDEC is not required for the Project.

**LETTER # 3: STEVEN J. DOLESKI, REGIONAL PERMIT ADMINISTRATOR**  
**NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION**  
**(2/12/09)**

**Comment 3.1:** *The Department has determined that there are no state regulated wetlands that will be affected by the Wal-Mart Expansion Project, including necessary infrastructure installations. We agree that the 100 year floodplain elevation and configuration of that floodplain boundary appears accurate and that the plans confirm that the proposed site layout will not involve any work within the 100 year floodplain. Moreover, based on the plans provided, no work will be proposed within 50 feet of Oatka Creek, which is a protected stream under Environmental Conservation Law.*

**Response:** The comment is acknowledged. No response is necessary or required.

**Comment 3.2:** *We are also pleased to note that the proposed DEIS contains information on the potential archaeological sensitivity of the property and that an archaeological review/investigation was performed. Moreover, the New York State Office of Parks, Recreation and Historic Preservation has provided a concurrence letter in Appendix K, which states that it is that agency's belief that the Wal-Mart project will not result in any significant negative historic or archaeological impacts.*

**Response:** The comment is acknowledged. No response is necessary or required.

**Comment 3.3:** *We believe that the proposed formation of the new sewer district is a very positive element of the project and should eliminate some existing on-site sewage treatment facilities that may have failed and if so, surface and groundwater water quality should be improved and better protected for the future. As you are aware, the Town and Village of Warsaw will have to enter into an inter-municipal agreement to form the sewer district, which will then be reviewed by the New York State Department of State in that agency's approval process. An important element of the submission that this Department will review will be the establishment of who (which municipality) will operate and maintain the new sewer line and pump station and this must be documented in the sewer district formation inter-municipal agreement.*

*To complete this Department's necessary approval of the required sewer extension, the future applicant must provide a detailed downstream routing of the proposed sewer lines to the location of the sewage treatment plant in the Village of Warsaw. An engineering report must be prepared to confirm that the sewer lines will have proper capacity for the anticipated volume of sewage, during normal and peak flows, including wet weather events, to insure that the proposed Wal-Mart development project and existing businesses and residences to be connected will not experience sanitary overflows or basement flooding.*

**Response:** It should be noted that the creation of a new Sewer District in the Town of Warsaw is a separate, although related, project from the proposed Wal-Mart Project. The Town of Warsaw Town Board will need to acquire all approvals and enter into any

necessary inter-agency agreements as it moves forward with the creation of a new sewer district.

**Comment 3.4:** *The DEIS discusses in 4.5.2 Impacts on Surface and Ground Water (pg 5-6) that the applicant would run a detailed floodplain analysis based upon before-and-after criteria. The reason that floodplain impacts were identified as potentially important was because of the FEMA identified Zone A (approximate) flood hazard area that provided no detail. Since it was unknown how much of the Wal-Mart plaza expansion would encroach into the flood hazard area, and what affect those encroachments may have on flood elevations and impacts on other properties and, this Department stated that such a study would be required. The required study was to identify the impact that Wal-Mart would have on flood elevations of Oatka Creek, and identify mitigation if flood elevations would increase.*

*Wal-Mart did not do the proposed study. Fortunately for Wal-Mart, the Buffalo District Corps of Engineers produced a Draft Preliminary Flood Map and Flood Insurance Study, which analyzed the Oatka Creek corridor in its entirety within the Town and Village of Warsaw. Because the Corps study is considered the best available data, as compared to the earlier un-numbered A Zone approximate study provided by FEMA, it was used by the consultant to show that the actions proposed by Wal-Mart will not encroach into the 100-year flood hazard area. The plaza expansion will include a substantial amount of fill, some of which comes very close to the edge of the 100-year flood plain, and which would be in the 500-year flood plain. But because the consultant determined that none of the planned activities actually encroach into the 100-year flood plain, the DEIS has reasonably concluded that no further analysis is required because significant flood impacts from the project should not be expected.*

*Municipal officials should recognize that it will be very important to ensure that all fill (especially the toe of fill) for this project must be kept within project boundary limits presently identified in the DEIS to prevent 100-year flood plain impacts. Project boundary limits for toe of fill should be marked by construction fencing and appropriate silt fencing to ensure construction equipment does not push fill into the flood plain and to reduce unnecessary damage to existing flood plain vegetation.*

*Since the possibility of 500-year flood impacts will affect the toe and edge of project fill, it is extremely important that the entire edge of fill be stabilized by planting ground covering vegetation as soon as possible to prevent possible erosion from flood waters. While grass is commonly used for landscaping purposes, we recommend that other ground cover vegetation (that will afford greater erosion protection) be substituted for fill edge planting. Such substitute plantings will also likely require less maintenance in the future. Municipal building/site inspectors should ensure that contractors correctly conduct all the work just mentioned.*

**Response:** Bergmann Associates, on behalf of Wal-Mart Real Estate Business Trust, conducted a Floodplain Evaluation Study dated November 20, 2008 that incorporated the Buffalo District Corps of Engineers Draft Preliminary Flood Map and Flood

Insurance Study. That Floodplain Evaluation Study is included in Appendix F of the DEIS and discussed in Section III.B.1.b, Section III.B.2.b, and Section III.B.3b of the DEIS. A revised copy of the Floodplain Evaluation Study is included in Appendix D of this FEIS. The Study concludes that the Project is not anticipated to adversely impact floodplains since there will be no grading or disturbance within the 100-year floodplain.

Comments concerning fencing and erosion control are addressed in the response to Comment 1.4 and Comment 1.5.

**Comment 3.5:** *Department staff have reviewed the Stormwater Management Report for the Wal-Mart project and it seems that the proposed plan has an appropriate methodology. However, the presented information is only an outline of the overall plan, which only broadly explains the main components of the working system (i.e. water quantity, water quality, drainage, etc.). Additional information is needed when application for the construction stormwater general permit (i.e. erosion and sediment controls, long term operation and maintenance and more details on specific calculations) is submitted to this office for review by Mr. Damianos Skaros, Division of Water.*

*However, for present purposes, the lack of specific details is not a problem. Further information, as noted, must be submitted with the stormwater pollution prevention plan/notice of intent, which will be reviewed at this office to ensure the project will meet all permit requirements. While having this information now, included in the DEIS, would make the document more complete for public and agency review purposes, we will leave this decision to the Town Board, Town of Warsaw, which has the role of SEQR Lead Agency.*

**Response:** The Stormwater Management Report included in Appendix G of the DEIS is preliminary in nature. Additional information on stormwater management will be provided in the application for a State Pollutant Discharge Elimination System General Permit (GP-0-08-001) for Stormwater Discharge from Construction Activities to ensure the Project will meet all NYSDEC permit requirements.

**Comment 3.6:** *In respect to Water Quality Certification that the Buffalo District Corps of Engineers may request the project sponsor to obtain from this Department, please be advised that while this possible approval may or may not apply, we do not anticipate that Department issuance of that certification would be problematic.*

**Response:** The potential need for a Water Quality Certification is addressed in the response to Comment 2.3.

**Comment 3.7:** *Since the 100-year flood plain should not be affected by the Wal-Mart project and since federal wetlands within the project area are unlikely to be affected (however, this must be determined and verified by applicant discussions with the Buffalo District Corps of Engineers), it is our belief that the Environmental Protection*

*Agency (EPA) 50-year moratorium for sewer line installations that would cause flood plain or wetland impacts should not apply to this project. If it is determined by the Town and Village of Warsaw, after discussion with the Corps, that federal wetlands may be impacted, then the EPA moratorium would presumably apply. In that event, then the Town and Village of Warsaw would have to request and apply for a waiver of the moratorium from EPA for sewer line connection purposes. This is a matter that the municipalities must address, but, if applicable, this Department would favor such a moratorium waver.*

**Response:** These comments are addressed in the response to Comment 3.3.

**Comment 3.8:** *I anticipate (based on Wal-Mart's excellent environmental policy programs) that "green" building measures (to conserve energy) will be incorporated, as much as possible, into the design of the expansion project and other buildings that may be envisioned in the future for the referenced property in the Town of Warsaw. This Department certainly strongly encourages and recommends such green design, along with possible "deconstruction" procedures to maximize the reuse of building materials (from renovation activities) that would otherwise be disposed of as demolition debris.*

**Response:** Wal-Mart's green building measures to conserve energy will be incorporated into this Project. The Project also attempts to salvage and reuse existing building infrastructure on the Project Site to the greatest extent possible. Rather than demolish the entire existing Wal-Mart store, the Project will expand the existing store and utilize existing onsite materials and infrastructure as much as possible.

**Comment 3.9:** *Please be aware that if asbestos exists in the building to be demolished/renovated, the protection of workers is regulated by the New York State Department of Labor (716/847-7126) and Occupational Safety and Health Administration (OSHA) 716/684-3891. In addition, the disposal of friable (readily crumbled and brittle) asbestos is regulated by this Department under 6 NYCRR Part 360-2.17(p). For more information on the disposal of friable asbestos, please contact Mr. Mark Hans (716/851-7720) at this Department.*

**Response:** An Asbestos Survey was conducted by Stohl Environmental. Results of a report prepared by Stohl Environmental dated November 8, 2006 stated that there was the presence of asbestos in silver paint used on the roofing which encompasses approximately 400 square feet. During demolition/renovation, all federal, state and local regulations concerning asbestos will be complied with to protect worker safety and properly dispose of any asbestos containing material.

**Comment 3.10:** *The presence of elemental mercury and/or lead in buildings being renovated/demolished is also a concern of the Department. Mercury is found in many different common items such as florescent lights and electrical switches, while lead is mainly found in older paints (pre-1980). For guidance on the proper handling and disposal of mercury and/or lead, please contact Mr. Thomas Corbett of this*

*Department (716/851-7220) or email the Department's Mercury Task Force (dshmwrr@gw.dec.state.ny.us).*

**Response:** A Lead-Based Paint survey was conducted by Stohl Environmental. Results of a report prepared by Stohl Environmental dated November 8, 2006 stated that no lead-based paint is present at the Project Site. Any mercury encountered at the Project Site will be handled and disposed of in accordance with all federal, state and local regulations.

**Comment 3.11:** *As a reminder, effective February 26, 2006, Chapter 641 of the NYS Laws of 2005 mandated the posting of Draft Environmental Impact Statements (DEIS) on a publicly accessible Internet website (www.dec.ny.gov/permits/6197.html). The FEIS must remain posted on the website until one year after all final approvals have been evaluated and then issued for the project. This requirement is in addition to the distribution requirement described in 6NYCRR Part 617.12 of the SEQOR regulation. Accordingly, please provide Department staff with the publicly accessible Internet website which will be stated in all legal notices that may be required by this Department.*

**Response:** The publicly accessible website containing the DEIS is:  
<http://www.wd-gis.com/WyomingCountyProjects/TownOfWarsaw.htm>

**Comment 3.12:** *Thank you for allowing us to review this pre-draft document before public distribution since it was very important for us to resolve possible regulatory problems before that occurred. Accordingly, I am pleased to state that this office does concur with the release of this pre-draft document as the official DEIS for public distribution. Please ensure that this letter is included as an appendix item in the DEIS for public informational purposes.*

*I am sure other Region 9 Department staff join with me in our appreciation of the planning and design efforts that the Wal-Mart officials required for this proposal. The Warsaw Wal-Mart proposal should now meet this Department's regulatory requirements, as long as there are no significant changes to the project design and all work is carried out in accordance with the plan submissions presently reviewed. Thank you for your cooperation in this matter and for a job well done.*

**Response:** This letter was included in Appendix K of the DEIS for public informational purposes. The Applicant concurs that the Project currently meets NYSDEC's regulatory requirements if no significant changes to the Project's design is proposed and all work is carried out in accordance with the plan submissions contained in the DEIS.

**LETTER # 4: DAVID C. GOEHRING, P.E.,  
REGIONAL TRAFFIC ENGINEER  
NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
(4/24/09)**

**Comment 4.1:** *We have completed our review of the January, 2009 Traffic Impact Study for the 80,000 (approximately) square foot expansion of the existing 75,167 square foot Wal-Mart. This study was revised from a February, 2007 Traffic Impact Study to expand the existing Wal-Mart by 105,000 square feet.*

*We conclude that since the scope of the proposed Wal-Mart Expansion has not changed appreciably, an 80,000 square foot expansion compared to the previously proposed 105,000 square foot expansion, our previous comment letter of February 28, 2007 is still applicable. Specifically, we agree with the recommended traffic mitigation to install a three color traffic signal at the intersection of Route 19 and the Wal-Mart Plaza/bank driveway. The developer/property owner is responsible for the installation of the traffic signal. Since the plaza is the primary generator of traffic from the plaza driveway, the state will maintain the traffic signal. However, this will be done by annual permit issued to the developer/owner. The developer/owner is responsible for the cost of maintenance.*

**Response:** The Applicant acknowledges that the responsibility for the installation of the traffic signal and the cost of maintenance lies with the owners of the property served by the signal.

**Comment 4.2:** *We agree that the traffic signal should have three phases, including a northbound left turn arrow on Route 19 and an overlapping eastbound right turn arrow for right turns exiting the Wal-Mart Plaza. The existing through/left lane for the Wal-Mart driveway should be aligned with the entering lane at the bank driveway. Pedestrian crosswalks and phasing should be included on the north and west side of the intersection for pedestrians crossing Route 19 and the Wal-Mart plaza driveway. With the three color traffic signal in place, we agree that traffic impacts of the proposed Wal-Mart Expansion should be addressed.*

**Response:** All traffic mitigations mentioned above have been included as part of the Project as discussed in Section III.G.3 in the DEIS and the Traffic Impact Study contained in Appendix J of the DEIS. As stated in FEIS Section III and the response to Comment 1.19, pedestrian crosswalks, push buttons, and signals will be included on the north and west sides of the NYS Route 19 intersection with the main Project Site entrance in conjunction with the proposed sidewalk extending from NYS Route 19 to the front of the Wal-Mart store. Refer to FEIS Figure 2 and 3 for additional information on pedestrian accommodations.

**Comment 4.3:** *A Highway Work Permit is required for all work within State right-of-way. Please submit detailed traffic signal plans prepared in accordance with the Region 4 Checklist for Highway Work Permits to Ms. Sue Erdle, Assistant Resident*

*Engineer at the following address:*

*New York State Department of Transportation  
3879 Route 19, PO Box 370  
Warsaw, NY 14569*

**Response:** Detailed traffic signal plans will be submitted to apply for a Highway Work Permit. A Highway Work Permit will be obtained prior to construction.

**LETTER # 5: DAVID C. GOEHRING, P.E.,  
REGIONAL TRANSPORTATION OPERATIONS ENGINEER  
NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
(2/28/07)**

**Comment 5.1:** *The recommended traffic mitigation for the proposed Wal-Mart Expansion is to install a traffic signal at the intersection of Route 19 and the Wal-Mart Plaza/bank driveway. We agree with this recommendation. The developer/property owner is responsible for the installation of the traffic signal and an annual maintenance fee to maintain the traffic signal.*

**Response:** Traffic signal mitigation is addressed in the response to Comment 4.1.

**Comment 5.2:** *We agree that the traffic signal should have three phases, including a northbound left turn arrow on Route 19 and an overlapping east right turn arrow for right turns exiting the Wal-Mart Plaza. The existing through/left lane for the Wal-Mart driveway should be aligned with the entering lane at the bank driveway. Pedestrian crosswalks and phasing should be included on the north and west side of the intersection for pedestrians crossing Route 19 and the Wal-Mart plaza driveway. With the three color traffic signal in place, we agree that traffic impacts of the proposed Wal-Mart Expansion should be addressed.*

**Response:** All traffic mitigations listed above are addressed in the response to Comment 4.2.

**Comment 5.3:** *A Highway Work Permit is required for all work within state right-of-way. Please submit detailed traffic signal plans prepared in accordance with the Region 4 Checklist for Highway Work Permits to Ms. Sue Erdle, Assistant Resident Engineer at the following address:*

*New York State Department of Transportation  
3879 Route 19, PO Box 370  
Warsaw, NY 14569*

**Response:** The need for a Highway Work Permit is addressed in the response to Comment 4.3.

**LETTER # 6: AMY M. KRUEGER  
BIOLOGIST  
U.S. ARMY CORPS OF ENGINEERS (USACE)  
(9/16/09)**

**Comment 6.1:** *This pertains to the request submitted by Bergmann and Associates, P.C. for a Jurisdictional Determination located at 2348 State Route 19 North, Town of Warsaw, Wyoming County, New York.*

*The Corps of Engineers regulatory responsibilities under Section 404 of the Clean Water Act establishes jurisdiction over the discharge of dredged or fill material into waters of the United States, including wetlands.*

*The wetland delineation you submitted confirms that wetlands and waters under Federal jurisdiction exist on the property, but I understand that you do not intend to impact them at this time. In this regard, I would like to point out that the Federal wetland boundary located on your property, as shown on the attached drawings, was confirmed on July 9, 2009 and will remain valid for a period of five (5) years from the date of this correspondence unless new information warrants revision of the delineation before the expiration. Further, this delineation/determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resource Conservation Service prior to starting work.*

**Response:** The Project has been designed to avoid impacts to wetlands and waters under Federal jurisdiction on the Project Site, as delineated and confirmed by the Corps of Engineers on July 9, 2009 in accordance with the Clean Water Act. The Applicant is not a USDA program participant and does not fall under the jurisdiction of the wetland conservation provisions of the Food Security Act of 1985, as amended. A certified wetland determination from the Natural Resource Conservation Service is not required.

**Comment 6.2:** *Based upon my review of the submitted delineation and on-site observations, I have determined that the wetlands and waters on the subject parcel are part of a surface water tributary system to a navigable water of the United States as noted on the attached Jurisdictional Determination form. Therefore, the wetlands and waters are regulated under Section 404 of the Clean Water Act. Department of the Army authorization is required if you propose a discharge of dredged or fill material in these areas.*

**Response:** Department of the Army authorization is not required for the Project. The Project does not propose to discharge dredged or fill materials in wetlands and

waters regulated under Section 404 of the Clean Water Act.

**Comment 6.3:** *Finally, this letter contains an approved jurisdictional determination for the subject parcel. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal the above determination, you must submit a completed RFA form within 60 days of the date on this letter to the Great Lakes/Ohio River Division Office at the following address:*

*Review Officer  
Great Lakes and Ohio River Division  
CELRD-PDS-O  
550 Main Street, Room 10032  
Cincinnati, OH 45202-3222  
Phone: 513-684-7261*

*In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by November 16, 2009.*

*It is not necessary to submit an RFA to the Division office if you do not object to the determination in this letter.*

**Response:** The Applicant does not object to the determination in this letter. Submission of an RFA to the Division office is unnecessary.