

## INITIAL RESOLUTION

(Scannell Properties #600, LLC and Amazon.com Services LLC Project)

A regular meeting of the Orange County Industrial Development Agency held on February 15, 2023 at 4:30 p.m. (local time) at the Orange County Government Center Community Room, 255 Main Street, Goshen, New York.

The meeting was called to order by Chairman Torelli and upon the roll being duly called, the following members were:

**MEMBERS PRESENT:** Torelli, Tamburri, Odock, Rinaldi, Greene, Palladino

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** B. Fioravanti, S. Katzoff, K. Reilly, M. Halahan, C Eckart, R. Murry, M. Boone, R. McLaughlin, G. Thames, C. Lemmer, D. Brady

The following Resolution was offered by Chairman Torelli and seconded by Palladino:

**RESOLUTION OF THE ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF SCANNELL PROPERTIES #600, LLC AND AMAZON.COM SERVICES LLC WITH RESPECT TO A CERTAIN PROJECT; (ii) DESCRIBING THE FINANCIAL ASSISTANCE BEING REQUESTED WITH RESPECT TO SUCH PROJECT; AND (iii) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO SUCH PROJECT**

**WHEREAS**, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 390 of the Laws of 1972 of the State of New York, (hereinafter collectively called the "Act"), the Orange County Industrial Development Agency (hereinafter called the "**Agency**") was created with the authority and power, and for the purpose of, among other things, acquiring, constructing, reconstructing and equipping manufacturing, warehousing, research, commercial, or industrial facilities as authorized by the Act; and

**WHEREAS**, Scannell Properties #600, LLC and Amazon.com Services LLC, each a Delaware limited liability company, each for itself or on behalf of an entity to be formed (collectively, the "**Company**"), has submitted an application (the "**Application**") to the Agency requesting the Agency's assistance with a certain project (the "**Project**"), consisting of: (A)(i) the acquisition of a leasehold interest in an aggregate approximately 100 acres of land located at 22 McBride Road (Tax Map No. 15-1-63.21), Hoops Road (Tax Map No. 11-1-34.34) and portions of the following: 3079 Route 6 (Tax Map No. 11-1-34.1), 3141 Route 6 (Tax Map No. 11-1-41), 3071 Route 6 (Tax Map No. 11-1-34.31), Hoops Road (Tax Map No. 11-1-34.32) and Hoops Road (Tax Map No. 11-1-34.33), all in Wawayanda, New York (collectively, the "**Land**"); (ii) the demolition of certain structures and the construction of an approximately 925,000 sq.ft. distribution center/warehouse, including office space, specializing in distribution and delivery, site improvements including stormwater controls, utility improvements, including but not limited to, water, sewer, pumpstation, electric, gas, car parking spaces, trailer/truck storage spaces, loading docks, dark-sky compliant lighting, sound barrier walls and landscaping (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Facility of furniture, fixtures

and equipment (collectively, the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (collectively, the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a leaseback agreement; and

**WHEREAS**, pursuant to Article 18-A of the General Municipal Law, the Agency desires to adopt a resolution describing the Project and the Financial Assistance (as defined below) that the Agency is contemplating with respect to the Project; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination with respect to the environmental impact of any “action” (as said quoted term is defined in SEQRA) to be taken by the Agency and the approval of the Project constitutes such an action; and

**WHEREAS**, Scannell Properties #600, LLC prepared and submitted a Full Environmental Assessment Form (“**EAF**”) to the Town of Wawayanda Planning Board to obtain approval for a project that is substantially similar to the Project being undertaken by the Agency;

**WHEREAS**, the Town of Wawayanda Planning Board determined that the project before it and described in the EAF constituted a “Type I” action and appointed itself to act as “lead agency” for purposes of conducting a “coordinated review” (as said quoted terms are defined in SEQRA); and

**WHEREAS**, on October 12, 2022, the Town of Wawayanda Planning Board, as lead agency, and consistent with the procedures and criteria set forth in 6 NYCRR 617.7, analyzed the relevant areas of environmental concern using the SEQRA standards and ultimately determined that the project would not have a significant adverse impact on the environment, and adopted a Negative Declaration (“**Negative Declaration**”), a copy of which is attached hereto as **Exhibit “A”**; and

**WHEREAS**, the Agency has not approved undertaking the Project or granting the Financial Assistance; and

**WHEREAS**, the grant of Financial Assistance to the Project is subject to, among other things, the Agency finding after a public hearing pursuant to Section 859-a of the Act that the Project will serve the public purposes of the Act by promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State or increasing the overall number of permanent, private sector jobs in the State.

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:**

**SECTION 1.** The Company has presented the Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's Application, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) The Project constitutes a "project" within the meaning of the Act;

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) The Financial Assistance contemplated with respect to the Project consists of assistance in the form of exemptions from State and local sales and use taxation and mortgage recording tax. The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Orange County, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

**SECTION 2.** Each the Chairperson, Vice Chairperson and/or the Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to hold a public hearing pursuant to Section 859-a of the Act. A public hearing with respect to the Project and Financial Assistance shall be scheduled with notice thereof published, and such notice, as applicable, shall further be sent to affected tax jurisdictions within which the Project is located.

**SECTION 3.** The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

**SECTION 4.** The Secretary or the Chief Executive Officer of the Agency are hereby authorized to and may distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution. A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

**SECTION 5.** In the event that (a) the Company does not proceed to final Agency approval within six (6) months of the date hereof; and/or (b) close with the Agency on the proposed Financial Assistance within twelve (12) months of the date hereof, the Agency reserves

the right to rescind and cancel this Resolution and all approvals made hereunder or under any other Agency resolution or action.

**SECTION 6.** Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Agency and others to prepare, for submission to the Chairman, Vice Chairman and/or Chief Executive Officer, all Documents necessary to effect the intent of this Resolution.

**SECTION 7.** These Resolutions shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<i><b>Yea</b></i>	<i><b>Nay</b></i>	<i><b>Absent</b></i>	<i><b>Abstain</b></i>
Chairman Torelli	X			
Dean Tamburri	X			
Vincent Odock	X			
James Rinaldi	X			
Marc Greene	X			
Giovanni Palladino	X			

Susan Walski

X

The Resolutions were thereupon duly adopted.

STATE OF NEW YORK     )  
COUNTY OF ORANGE    ) SS:

I, the undersigned Chief Executive Officer of the Orange County Industrial Development Agency, **DO HEREBY CERTIFY**:

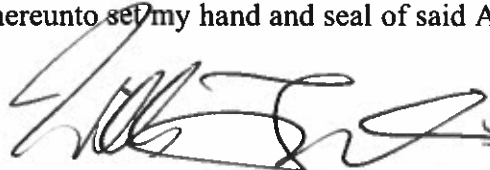
That I have compared the foregoing extract of the minutes of the meeting of the Orange County Industrial Development Agency (the "Agency") including the resolution contained therein, held on February 15, 2023, with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

**I FURTHER CERTIFY** that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with Article 7.

**I FURTHER CERTIFY** that there was a quorum of the members of the Agency present throughout said meeting.

**I FURTHER CERTIFY** that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal of said Agency this  
\_\_\_\_15th day of February, 2023.

  
\_\_\_\_\_  
William Fioravanti, Chief Executive Officer

(S E A L)

**EXHIBIT A**  
**NEGATIVE DECLARATION**

**TOWN OF WAWAYANDA PLANNING BOARD  
80 Ridgebury Hill Rd, Slate Hill, NY 10973**

**State Environmental Quality Review Act**

**NEGATIVE DECLARATION**

**Notice of Determination of Non-Significance**

**12 October 2022**

This notice is issued pursuant to the New York State Environmental Quality Review Act, Article 8 of the NYS Environmental Conservation Law and its implementing regulations contained in Part 617 of the New York State Code of Rules and Regulations (collectively, "SEQRA").

The Planning Board of the Town of Wawayanda (the "Planning Board"), as the lead agency under SEQRA, has determined that the proposed action described below will not have a significant adverse environmental impact and a draft environmental impact statement will not be prepared.

**Name of Action:**      Slate Hill Commerce Center

**SEQR Status:**        Type I

**Description of Proposed Action:**

Scannell Properties #600, LLC ("Scannell"), has submitted applications (collectively, the "Application")<sup>1</sup> to the Town of Wawayanda Planning Board (the "Planning Board") for approval to reclaim an existing commercial mine, and to redevelop the mine and other lands located at 22 McBride Road and Hoops Road in the Town of Wawayanda with a new 925,000± square foot warehouse, storage and distribution facility to be known as the Slate Hill Commerce Center (the "Project"). The lands involved in the Project include SBL ## 15-1-63.21, 11-1-34.34, 11-1-34.33, 11-1-34.32 and 11-1-34.31, along with small portions of SBL ## 11-1-34.1 (referred to herein as "Lot 34.1") and 11-1-41 (referred to herein as "Lot 41") (collectively, the "Property").<sup>2</sup> Scannell has negotiated with the current owner of Lot 34.1 the right to acquire an easement over the affected portion of such lot and has secured from the current owner of Lot 41 the option to purchase a portion of such lot. Site Plan Review approval and a Special Use Permit are required from the Planning Board for the Project pursuant to Article VII of the Town of Wawayanda Zoning Law (the "Zoning Law") and NYS Town Law §§ 274-a and 274-b. The Project also requires the consolidation of lots and proposed subdivision/lot line changes involving the Property pursuant to Chapter 162 of the Town Code, entitled "Land Subdivision Regulations of the Town of Wawayanda, Orange County, New York" ("Subdivision Regulations") and NYS Town Law § 276.

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<sup>1</sup> On July 13, 2022 Scannell submitted updated applications for Special Use Permit, Site Plan Review and Subdivisions/Lot Line Changes to the Planning Board.

<sup>2</sup> Scannell is a contract vendee to Purchase the Property from the current owner, Aden Slate Hill, LLC.

In support of its request for these approvals, the following submissions have been made by Scannell and its consultants, collectively comprising the Application:

- June 28, 2021 Special Use Permit, Site Plan and Subdivision/Lot Line Change Applications;
- March 9, 2022 SEQRA Expanded EAF Submission;
- April 13, 2022 Supplemental Submission;
- May 25, 2022 Supplemental Submission;
- June 8, 2022 Supplemental Submission;
- July 13, 2022 Supplemental Submission;
- August 31, 2022 Supplemental Submission;
- September 9, 2022 Supplemental Submission; and
- September 28, 2022 Supplemental Submission.

Specific references to the materials in these submissions supporting the Planning Board's SEQRA review and findings with respect the Project are provided in footnotes and in the body of this SEQRA Negative Declaration.

These submissions have been reviewed in detail by the Planning Board and its traffic, legal and engineering consultants. Scannell has revised the Project to address the comments raised by both the Board and its consultants.

The Property contains 169.6± acres of land and is primarily located in the Town's Mixed Commercial ("MC-1") zoning district. As proposed, the Property will be reconfigured into three separate tax parcels to be owned by Scannell:

- Parcel #1 - The remainder of Lot 63.21 will be consolidated with Lot 34.34 to form a separate parcel comprised of 81.3± acres of land located entirely within the MC-1 zoning district. Development associated with the Project will almost entirely be undertaken on this consolidated parcel, which is where the existing mining operations are now being conducted; and
- Parcel #2 - A small portion of the Property on SBL # 15-1-63.21 containing 4.3± acres is located in the Agricultural Residential (AR) zoning district; however, no development is proposed on this portion of the Property so no adverse environmental impacts will occur there. A subdivision/lot line change will establish the lands in the AR zoning district as a separate parcel;<sup>3</sup>
- Parcel # 3 - To provide access to Parcel #2 from U.S. Route 6 on a realigned, private driveway (now Hoops Road) and to provide additional lands for stormwater controls for the private drive and utilities for the Project, Scannell is also acquiring additional properties owned by Aden Slate Hill, LLC along the west side of Hoops Road in the MC-1 zoning district, namely SBL ## 11-1-34.31, 11-1-34.32 and 11-1-34.33, along with a small portion

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<sup>3</sup> This proposed subdivision/lot line change is shown on a map entitled "Preliminary Lot Line Change Plat," prepared by MJ Engineering and Land Surveying, P.C., dated September 28, 2021, last revised March 3, 2022. See March 9, 2022 SEQRA Expanded EAF Submission, Appendix 5.

of adjoining parcel SBL # 11-1-41 to be added to Parcel #3 through a subdivision/lot line change.<sup>4</sup> For the new service road, Scannell will be buying a small portion (1.1 acres) of parcel SBL ## 11-1-34.1 and acquiring an easement over a portion of SBL # 11-1-41. The existing use of the large dirt truck parking area on the portion of Parcel #3 adjacent to Route 6 will be discontinued.

Together, Parcel #1 and Parcel #3 comprise the Project Site, separated as tax parcels by a railroad owned and operated by the Middletown and New Jersey Railroad ("MNJRR"), and bounded on the north by I-84, by McBride Road (a town road) to the west, by a reconfigured private driveway (now Hoops Road) to the east and U.S. Route 6 to the south.

The Project will entail the construction of an approximately 925,000± square foot warehouse building (including office space) on the Project Site.<sup>5</sup> In addition to the warehouse, Scannell will undertake other site improvements on the Site including stormwater controls, utility improvements (water, sewer, pumpstation, electric, gas, etc.), car parking spaces, trailer/truck storage spaces, loading docks, dark-sky compliant lighting, sound barrier walls and landscaping.

Scannell is proposing that primary access to and from the Project for trucks will be from an internal service road ("Service Road") originating at a signalized access point onto U.S. Route 6 near the eastern boundary of Lot 41 and continuing generally parallel with Route 6 and the existing power lines in a westerly direction across Lot 41 and a portion of Lot 34.1, connecting with what is now Hoops Road.<sup>6</sup>

Scannell is working with the Town to obtain the discontinuance/abandonment of any public use of Hoops Road so it can become a private driveway to be owned, maintained and repaired by Scannell (at no cost to the Town). In addition, Hoops Road crosses the MNJRR. Accordingly, Scannell is negotiating a private crossing agreement with the MNJRR allowing the realigned driveway to cross the tracks and for the installation of utility lines under the tracks.<sup>7</sup>

The Service Road will be two lanes wide, approximately 40' wide and 2,650' in length and will be constructed in accordance with industry standards for heavy truck use and with Town of Wawayanda Code § 158-28 for commercial driveways subject to the review of the Town Superintendent of Highways and the Town Engineer. In accordance with the stated goals of Mr. Nick Fitzpatrick, the owner's representative of Lots 34.1 and 41, the Service Road must limit any negative impacts on the future value of the remaining portions of Lot 34.1 and Lot 41. To achieve these goals, the location of the Service Road has been located immediately south of the power lines crossing the two tax lots. In addition, the Service Road has been designed to allow for a future connection for a driveway to serve development on Lot 41.

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<sup>4</sup> This proposed subdivision/lot line change is shown on a map entitled "Lot Line Adjustment Map," prepared by MJ Engineering and Land Surveying, P.C., dated July 14, 2022. See July 13, 2022 Supplemental Submission.

<sup>5</sup> Project site plans prepared by Colliers Engineering & Design, dated March 9, 2022, last revised July 13, 2022 ("Site Plans"). See July 14, 2022 Supplemental Submission.

<sup>6</sup> See March 9, 2022 SEQRA Expanded EAF Submission, Narrative. See also August 31, 2022 Submission.

<sup>7</sup> See March 9, 2022 SEQRA Expanded EAF Submission, Narrative.

All traffic will use the Service Road to access Route 6 at the access point near the eastern boundary of Lot 41.

The Project would be built adjacent to U.S. Interstate 84 ("I-84") on an existing active commercial mine site where extensive mining has already occurred and is ongoing pursuant to a NYSDEC mining permit. As described above, traffic from the Project would enter onto U.S. Route 6, an established east/west state highway with a direct connection to I-84 approximately two miles away to the east through a commercial corridor. The Project's layout is oriented towards I-84, with the building and parking areas located as far away from adjoining properties as possible. See Site Plans. As discussed below, through the Project's design, including site layout, set-backs, architecture and landscaping, impacts to the neighborhood and environment will be minimized while supporting the Town's long-term planning objectives to locate commercial/industrial development in the MC-1 zoning district along the U.S. Route 6 corridor next to I-84.

To connect the Project to public water and sewer<sup>8</sup>, proposed water and sewer main extensions would originate on the Project Site in the vicinity of the MNJRR. A pump station for the sewer main would be provided on the Project Site. The mains would be constructed under the MNJRR rail line<sup>9</sup> and would then run along the outside edge of agricultural fields on the western and northern perimeters of the adjoining property (SBL # 11-1-19.2) for approximately 2,000 feet to the eastern lot line. From there, the water and sewer mains would be constructed for a distance of approximately 3,000 feet under I-84 and across the property and along the driveway of an existing warehouse owned by Middletown, LLC PPF Industrial 3301 US-6 ("PPF Industrial") on SBL # 4-1-83.7. A lateral sewer line would be constructed from that warehouse to the new sewer main and would include a pump station. The mains would extend to the vicinity of the intersection of the driveway to PPF Industrial and U.S. Route 6. At that point, the water main would tap into the existing main providing public water. From the driveway, the sewer main would be constructed within the right-of-way of Route 6 over an additional distance of nearly a mile to a connection to an existing Town of Wawayanda gravity sewer main near the Horizons at Wawayanda apartments. The design of the pump stations for wastewater effluent from the Project Site and from the PPF Industrial warehouse will be coordinated with the design for an upgraded Town pump station at the connection point of the new main and the public system. All infrastructure associated with the new water and sewer mains would be offered for dedication to the Town.

In addition to the proposed water/sewer main extensions, Scannell will also install dry water and sewer mains from the Project Site out to Route 6 in the vicinity of the current Hoops Road intersection. See Water/Sewer Plans. This would allow for the future extension of those

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<sup>8</sup> July 13, 2022 Supplemental Submission, Water and Wastewater Extension Plans, prepared by Delaware Engineering, D.P.C., dated July 13, 2022 ("Water/Sewer Plans"); July 13, 2022 Supplemental Submission; May 25, 2022 Supplemental Submission, Supplemental SEQRA Narrative (dated May 25, 2022) evaluating the potential environmental impacts from the proposed extension of water and sewer mains to serve the Project.

<sup>9</sup> The private crossing agreement Scannell is negotiating with the MNJRR allowing the realigned driveway (Hoops Road) to cross the tracks would also include this underground crossing.

mains in either direction along Route 6 to provide public water and sewer service to other existing properties or future development along Route 6 as the Town deems necessary in the future.

## **II. HISTORY OF MINING OPERATIONS ON PARCEL #1**

Almost all of the lands comprising Parcel #1 of the Project Site are approved for commercial mining operations by the New York State Department of Environmental Conservation (the "NYSDEC") and the Planning Board.<sup>10</sup> Approval of the Project will result in the immediate cessation of these mining operations and the regrading and redevelopment of Parcel #1 through the construction of the Project pursuant to Town building permits in accordance with the approved Site Plans.<sup>11</sup> In addition, Scannell will be required to comply with any NYSDEC procedural or other requirements that are necessary to close out the mining permit and to comply with the NYS Environmental Mined Land Reclamation Law (ECL Article 23, Title 27) and its implementing regulations.<sup>12</sup>

Existing mining operations on Parcel #1 include excavation and on-site processing of sand and gravel, glacial till and consolidated rock. Consolidated materials are subject to either mechanical ripping or blasting to prepare them for transport in suitable sizes. On-site material processing activities include crushing and screening. Processed materials are hauled off of Parcel #1 for use in construction projects. Approximately 44 truck trips a day travel to and from the mining operations over the mine's access road onto McBride Road and with the majority of trucks traveling in the direction of I-84 to the east of the Property. Approximately 59 +/- acres of Parcel #1 has been mined and internal haul roads throughout the Property have been installed for these mining operations.

NYSDEC initially approved the mining operation and a mined land reclamation plan for Parcel #1 in 2009, with the original authorized access to U.S. Route 6 from Parcel #1 via Hoops Road. NYSDEC renewed its approval for the mining operation in 2014. In 2015, NYSDEC approved an amendment to the permit for mining operations on Parcel #1, authorizing primary access to McBride Road instead of Hoops Road. NYSDEC authorized the transfer of the mining permit to the current owner of Parcel #1 in April 2021, and mining operations are continuing under the authority of the State Administrative Procedure Act while NYSDEC reviews the timely application made for renewal of the permit. Pursuant to the Zoning Law, the Planning Board authorized a Special Use Permit for the mining operations based upon and incorporating conditions from the NYSDEC approvals.

Prior to granting these approvals, in both 2009 and 2015, NYSDEC reviewed the potential environmental impacts of the proposed mining operations pursuant to the State Environmental Quality Review Act and its implementing regulations in 6 NYCRR Part 617 (collectively, "SEQRA"),<sup>13</sup> issuing a Negative Declaration that the proposed mining operations would have no

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<sup>10</sup> See March 9, 2022 SEQRA Expanded EAF Submission, Narrative and Appendix 6

<sup>11</sup> See March 9, 2022 SEQRA Expanded EAF Submission, Narrative.

<sup>12</sup> 6 NYCRR Parts 420-425

<sup>13</sup> No SEQRA review was required for the 2014 NYSDEC permit renewal or the 2021 permit transfer, both of which were deemed to be Type 2 actions under SEQRA pursuant to 6 NYCRR Part 617 that do not require SEQRA review.

**TOWN OF WAWAYANDA PLANNING BOARD  
80 Ridgebury Hill Rd, Slate Hill, NY 10973**

**State Environmental Quality Review Act**

**NEGATIVE DECLARATION**

**Notice of Determination of Non-Significance**

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of adjoining parcel SBL # 11-1-41 to be added to Parcel #3 through a subdivision/lot line change.<sup>4</sup> For the new service road, Scannell will be buying a small portion (1.1 acres) of parcel SBL ## 11-1-34.1 and acquiring an easement over a portion of SBL # 11-1-41. The existing use of the large dirt truck parking area on the portion of Parcel #3 adjacent to Route 6 will be discontinued.

Together, Parcel #1 and Parcel #3 comprise the Project Site, separated as tax parcels by a railroad owned and operated by the Middletown and New Jersey Railroad ("MNJRR"), and bounded on the north by I-84, by McBride Road (a town road) to the west, by a reconfigured private driveway (now Hoops Road) to the east and U.S. Route 6 to the south.

The Project will entail the construction of an approximately 925,000± square foot warehouse building (including office space) on the Project Site.<sup>5</sup> In addition to the warehouse, Scannell will undertake other site improvements on the Site including stormwater controls, utility improvements (water, sewer, pumpstation, electric, gas, etc.), car parking spaces, trailer/truck storage spaces, loading docks, dark-sky compliant lighting, sound barrier walls and landscaping.

Scannell is proposing that primary access to and from the Project for trucks will be from an internal service road ("Service Road") originating at a signalized access point onto U.S. Route 6 near the eastern boundary of Lot 41 and continuing generally parallel with Route 6 and the existing power lines in a westerly direction across Lot 41 and a portion of Lot 34.1, connecting with what is now Hoops Road.<sup>6</sup>

Scannell is working with the Town to obtain the discontinuance/abandonment of any public use of Hoops Road so it can become a private driveway to be owned, maintained and repaired by Scannell (at no cost to the Town). In addition, Hoops Road crosses the MNJRR. Accordingly, Scannell is negotiating a private crossing agreement with the MNJRR allowing the realigned driveway to cross the tracks and for the installation of utility lines under the tracks.<sup>7</sup>

The Service Road will be two lanes wide, approximately 40' wide and 2,650' in length and will be constructed in accordance with industry standards for heavy truck use and with Town of Wawayanda Code § 158-28 for commercial driveways subject to the review of the Town Superintendent of Highways and the Town Engineer. In accordance with the stated goals of Mr. Nick Fitzpatrick, the owner's representative of Lots 34.1 and 41, the Service Road must limit any negative impacts on the future value of the remaining portions of Lot 34.1 and Lot 41. To achieve these goals, the location of the Service Road has been located immediately south of the power lines crossing the two tax lots. In addition, the Service Road has been designed to allow for a future connection for a driveway to serve development on Lot 41.

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<sup>4</sup> This proposed subdivision/lot line change is shown on a map entitled "Lot Line Adjustment Map," prepared by MJ Engineering and Land Surveying, P.C., dated July 14, 2022. See July 13, 2022 Supplemental Submission.

<sup>5</sup> Project site plans prepared by Colliers Engineering & Design, dated March 9, 2022, last revised July 13, 2022 ("Site Plans"). See July 14, 2022 Supplemental Submission.

<sup>6</sup> See March 9, 2022 SEQRA Expanded EAF Submission, Narrative. See also August 31, 2022 Submission.

<sup>7</sup> See March 9, 2022 SEQRA Expanded EAF Submission, Narrative.

All traffic will use the Service Road to access Route 6 at the access point near the eastern boundary of Lot 41.

The Project would be built adjacent to U.S. Interstate 84 ("I-84") on an existing active commercial mine site where extensive mining has already occurred and is ongoing pursuant to a NYSDEC mining permit. As described above, traffic from the Project would enter onto U.S. Route 6, an established east/west state highway with a direct connection to I-84 approximately two miles away to the east through a commercial corridor. The Project's layout is oriented towards I-84, with the building and parking areas located as far away from adjoining properties as possible. See Site Plans. As discussed below, through the Project's design, including site layout, set-backs, architecture and landscaping, impacts to the neighborhood and environment will be minimized while supporting the Town's long-term planning objectives to locate commercial/industrial development in the MC-1 zoning district along the U.S. Route 6 corridor next to I-84.

To connect the Project to public water and sewer<sup>8</sup>, proposed water and sewer main extensions would originate on the Project Site in the vicinity of the MNJRR. A pump station for the sewer main would be provided on the Project Site. The mains would be constructed under the MNJRR rail line<sup>9</sup> and would then run along the outside edge of agricultural fields on the western and northern perimeters of the adjoining property (SBL # 11-1-19.2) for approximately 2,000 feet to the eastern lot line. From there, the water and sewer mains would be constructed for a distance of approximately 3,000 feet under I-84 and across the property and along the driveway of an existing warehouse owned by Middletown, LLC PPF Industrial 3301 US-6 ("PPF Industrial") on SBL # 4-1-83.7. A lateral sewer line would be constructed from that warehouse to the new sewer main and would include a pump station. The mains would extend to the vicinity of the intersection of the driveway to PPF Industrial and U.S. Route 6. At that point, the water main would tap into the existing main providing public water. From the driveway, the sewer main would be constructed within the right-of-way of Route 6 over an additional distance of nearly a mile to a connection to an existing Town of Wawayanda gravity sewer main near the Horizons at Wawayanda apartments. The design of the pump stations for wastewater effluent from the Project Site and from the PPF Industrial warehouse will be coordinated with the design for an upgraded Town pump station at the connection point of the new main and the public system. All infrastructure associated with the new water and sewer mains would be offered for dedication to the Town.

In addition to the proposed water/sewer main extensions, Scannell will also install dry water and sewer mains from the Project Site out to Route 6 in the vicinity of the current Hoops Road intersection. See Water/Sewer Plans. This would allow for the future extension of those

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<sup>8</sup> July 13, 2022 Supplemental Submission, Water and Wastewater Extension Plans, prepared by Delaware Engineering, D.P.C., dated July 13, 2022 ("Water/Sewer Plans"); July 13, 2022 Supplemental Submission; May 25, 2022 Supplemental Submission, Supplemental SEQRA Narrative (dated May 25, 2022) evaluating the potential environmental impacts from the proposed extension of water and sewer mains to serve the Project.

<sup>9</sup> The private crossing agreement Scannell is negotiating with the MNJRR allowing the realigned driveway (Hoops Road) to cross the tracks would also include this underground crossing.

mains in either direction along Route 6 to provide public water and sewer service to other existing properties or future development along Route 6 as the Town deems necessary in the future.

## **II. HISTORY OF MINING OPERATIONS ON PARCEL #1**

Almost all of the lands comprising Parcel #1 of the Project Site are approved for commercial mining operations by the New York State Department of Environmental Conservation (the "NYSDEC") and the Planning Board.<sup>10</sup> Approval of the Project will result in the immediate cessation of these mining operations and the regrading and redevelopment of Parcel #1 through the construction of the Project pursuant to Town building permits in accordance with the approved Site Plans.<sup>11</sup> In addition, Scannell will be required to comply with any NYSDEC procedural or other requirements that are necessary to close out the mining permit and to comply with the NYS Environmental Mined Land Reclamation Law (ECL Article 23, Title 27) and its implementing regulations.<sup>12</sup>

Existing mining operations on Parcel #1 include excavation and on-site processing of sand and gravel, glacial till and consolidated rock. Consolidated materials are subject to either mechanical ripping or blasting to prepare them for transport in suitable sizes. On-site material processing activities include crushing and screening. Processed materials are hauled off of Parcel #1 for use in construction projects. Approximately 44 truck trips a day travel to and from the mining operations over the mine's access road onto McBride Road and with the majority of trucks traveling in the direction of I-84 to the east of the Property. Approximately 59 +/- acres of Parcel #1 has been mined and internal haul roads throughout the Property have been installed for these mining operations.

NYSDEC initially approved the mining operation and a mined land reclamation plan for Parcel #1 in 2009, with the original authorized access to U.S. Route 6 from Parcel #1 via Hoops Road. NYSDEC renewed its approval for the mining operation in 2014. In 2015, NYSDEC approved an amendment to the permit for mining operations on Parcel #1, authorizing primary access to McBride Road instead of Hoops Road. NYSDEC authorized the transfer of the mining permit to the current owner of Parcel #1 in April 2021, and mining operations are continuing under the authority of the State Administrative Procedure Act while NYSDEC reviews the timely application made for renewal of the permit. Pursuant to the Zoning Law, the Planning Board authorized a Special Use Permit for the mining operations based upon and incorporating conditions from the NYSDEC approvals.

Prior to granting these approvals, in both 2009 and 2015, NYSDEC reviewed the potential environmental impacts of the proposed mining operations pursuant to the State Environmental Quality Review Act and its implementing regulations in 6 NYCRR Part 617 (collectively, "SEQRA"),<sup>13</sup> issuing a Negative Declaration that the proposed mining operations would have no

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<sup>10</sup> See March 9, 2022 SEQRA Expanded EAF Submission, Narrative and Appendix 6

<sup>11</sup> See March 9, 2022 SEQRA Expanded EAF Submission, Narrative.

<sup>12</sup> 6 NYCRR Parts 420-425

<sup>13</sup> No SEQRA review was required for the 2014 NYSDEC permit renewal or the 2021 permit transfer, both of which were deemed to be Type 2 actions under SEQRA pursuant to 6 NYCRR Part 617 that do not require SEQRA review.

significant adverse environmental impact. This extensive SEQRA review of the mining operations is reflected in the July 30, 2008 "Draft Part 3 EAF" provided as Appendix 7 to Scannell's March 9, 2022 submission that is specifically referenced in the NYSDEC mining permits. The Planning Board was an involved agency in NYSDEC's SEQRA reviews of the potential environmental impacts from the mining operations. The Planning Board considered these reviews in issuing a Special Use Permit for the mine under the criteria provided in the Zoning Law, including review of impacts on nearby residential uses and I-84.

Some of the anticipated impacts of the mining operations discussed during the prior SEQRA review included significant impacts to bedrock from mechanical ripping and blasting, and from the removal of soils, bedrock and minerals and the permanent alteration of Parcel #1's topography. They also included major impacts to plants and animals and their habitat due to the removal of existing vegetative communities and the displacement of wildlife and disruption of travel patterns of species. Substantial adverse visual and noise impacts from the mining operation were also anticipated, but not deemed significant. The 2009 SEQRA review also contemplated increased truck traffic on Hoops Road and the 2015 SEQRA review considered the impacts of moving the primary mining access from Hoops Road onto McBride Road.

The NYSDEC concluded through both SEQRA reviews that the mining operations would not have any significant adverse environmental impacts and that an environmental impact statement would not be required. The Planning Board, as an involved agency in the SEQRA reviews of the mining operation, held no different view of the potential impacts of the mining operations as reflected in its Special Use Permit ("SUP") for those operations based on the criteria for issuance of an SUP in the Zoning Law.

### **III. SEQRA COMPLIANCE**

Even though there have been prior SEQRA Negative Declarations for the commercial mining operations, the Project's potential environmental impacts must still be reviewed pursuant to SEQRA. For the Planning Board, review of the proposed Project is the SEQRA "action" based on the Application submitted by Scannell. The Planning Board has classified the Project as a Type 1 action pursuant to 6 NYCRR § 617.4(b)(i), established itself as lead agency for SEQRA review of the Project, and has coordinated its SEQRA review with other involved and interested agencies.

### **IV. INVOLVED AND INTERESTED AGENCIES**

In its role as lead agency, the Planning Board has coordinated its SEQRA review of the Project with the following agencies that may be involved or interested in the environmental review and approval of the Project:

Town of Wawayanda Town Board;  
City of Middletown;  
Orange County Planning Department;  
Orange County Health Department;  
Orange County Department of Public Works;

Orange County Industrial Development Agency;  
NYS Department of Environmental Conservation, Region 3;  
NYS Office of Parks, Recreation and Historic Preservation; and  
NYS Department of Transportation, Region 8

## **V. EVALUATION OF POTENTIAL ENVIRONMENTAL IMPACTS**

The Planning Board, as SEQRA lead agency, must consider the criteria for determining the significance of potential environmental impacts from the Project as set forth in the SEQRA regulations at 6 NYCRR § 617.7(c). To accomplish this, the Planning Board has reviewed the Application and Part 1 of the FEAF<sup>14</sup> and completed Parts 2 and 3 of the FEAF to provide the basis for its SEQRA determination. In completing EAF Part 3, the Planning Board has taken a “hard look” at each potential “moderate to large” impact that it has identified in EAF Part 2 in order to explain its rationale for why the potential impact may or may not have a significant adverse impact on the environment.<sup>15</sup> This assessment by the Planning Board has included consideration of “[w]hether the project, as proposed, includes mitigation measures that would eliminate one or more of the potentially significant adverse impacts, or reduce one or more impacts to a level of non-significance.”<sup>16</sup>

For the reasons set forth below, the potentially “moderate to large impacts” identified by the Planning Board in EAF Part 2 will not have any significant adverse environmental impacts on the environment based on the Project’s proposed design and the mitigation measures. Based on the following findings, it is the Planning Board’s determination that the Project will not create any significant adverse environmental impacts, a Negative Declaration is warranted under SEQRA for the Project.

### **LAND**

**Finding: The Project will not result in any significant adverse environmental impacts on Land.**

The Planning Board identified the following potential “moderate to large” impacts to Land from the Project:

- 1. The proposed action may involve construction on land where bedrock is exposed, or generally within 5 feet of existing ground surface;*
- 2. The proposed action may involve the excavation and removal of more than 1,000 tons of natural material;*
- 3. The proposed action may involve construction that continues for more than one year or in multiple phases; and*
- 4. The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).*

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<sup>14</sup> Updated FEAF Part included in August 31, 2022 Submission.

<sup>15</sup> NYSDEC SEQRA Handbook, 4<sup>th</sup> Edition, 2020, Page 86.

<sup>16</sup> *Id.*

For the following reasons, these potential “moderate to large” impacts from the Project will not result in any significant adverse impact to Land:

- In 2009, NYSDEC determined pursuant to SEQRA that the existing commercial mining operations on the Project Site would not have a significant adverse environmental impact and issued a Negative Declaration. The Planning Board was an involved agency for that SEQRA determination and indicated no objection to the Negative Declaration. The Project’s potential impacts to land will be substantially less than those from the existing approved mining operations since the Project will result in the end of mining operations and the reclamation of the existing mining site.

A Geotechnical Report prepared by Scannell’s consultant in February 2022<sup>17</sup> demonstrated that potential bedrock on the Project Site where construction will occur was encountered at depths ranging from 4’ to 48’ below ground surface. Previous Mining Plans addressed the removal of bedrock from the site.

- NYSDEC’s 2009 SEQRA review for the mine was based on a proposal to excavate and remove from the Project Site an estimated 2,042,350 cubic yards of material generated from the mining operations including an estimated 436,826 cubic yards of rock.
- The Project is not expected to remove more than 1000 tons of natural material from the site. The Project is a proposed warehouse distribution center, not a mine. Due to the amount of material already removed as a result of the commercial mining operations, it is not anticipated that the Project will involve the removal of significant amounts of natural materials from the site.
- The Project is expected to be constructed within 12 months of obtaining all necessary approvals, so any impacts related to construction will be of limited duration and will be less than any impacts from the ongoing mining operations on the Project Site.
- The Project, as proposed, will result in substantially less erosion than under current conditions associated with the mining operations. As required by the NYSDEC stormwater regulations, the Project will implement a stormwater pollution prevention plan (“SWPPP”)<sup>18</sup> which includes Best Management Practices stormwater controls and mitigation measures to eliminate adverse stormwater impacts from the Project. Some of these mitigation measures are discussed in more detailed below. The SWPPP will be reviewed and approved by the Town engineer and will be subject to Town and NYSDEC oversight /enforcement. Stormwater impacts will be minimal because of these mitigation measures. See discussion regarding Surface Water below.
- Project construction will also be undertaken in accordance with the recommendations for earthwork provided in the Geotechnical Report, further mitigating any potential impacts to land during construction. The Town’s engineer will also review the Projects stormwater pollution controls.

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<sup>17</sup> See March 9, 2022 SEQRA Expanded EAF Submission, Appendix 9.

<sup>18</sup> See March 9, 2022 SEQRA Expanded EAF Submission; See also July 14, 2022 and August 31, 2022 Submissions.

- Project construction will also be undertaken in accordance with the recommendations for earthwork provided in the Geotechnical Report, further mitigating any potential impacts to land during construction.

***Additional background information considered:***

Parcel #1 has been actively mined since approvals were granted by NYSDEC and the Planning Board in 2009 and the final reclamation plan for the mine has not been implemented. As a consequence, existing surface grades vary greatly across Parcel #1, generally sloping downward from north to south, and from west to east. Surface elevations along the northern portion of the Parcel #2 near I-84 are generally at 574± feet above sea level and slope downward to 510± feet near the Parcel #2's southern boundary. Similarly, elevations on the western portion of the Parcel #1 are generally at 550± and slope downward to 540± on Parcel #1's eastern side. The proposed elevation for the building proposed for the Project is 557.5 feet above sea level.

Approximately 59 +/- acres of Parcel #1 have been mined to date and internal haul roads have been installed for these mining operations.<sup>19</sup> Mining operations are actively ongoing on Parcel #1 and they are continuing while the Project is under review by the Planning Board. Reclamation of the mine site will occur through the development of the Project. Scannell intends that the Project's site plan, if approved by the Planning Board, will become the reclamation plan for the mine site. NYSDEC has advised Scannell that the existing mining permit will be closed by NYSDEC upon the issuance of a building permit by the Town for the Project. Excavation of up to 20 feet below existing grades will be required to achieve the Project elevations shown on the Site Plans for the Project. This excavation activity will occur in areas of Parcel #1 approved for mining operations. It is anticipated that very stiff soils will be encountered, along with decomposed rock or bedrock. Accordingly, excavation will likely entail moderate to hard ripping to excavate potential bedrock. Blasting will be needed, as previously approved for the mining operations. Scannell will develop and implement a blasting plan to minimize any impacts.<sup>20</sup>

Most earthwork will involve the excavation for subsurface features including building foundations, stormwater management systems, and placement of fill to level building and parking areas. Following excavation for these features, backfilling and fill operations will bring the development area to the desired grade.

Erosion control measures will be implemented during construction to minimize the erosion of land on the Project Site.<sup>21</sup> No construction will occur on land where the depth to the water table is less than 3 feet, and any erosion of land as a result of construction activities will be controlled and minimized through the implementation and maintenance of the sediment and erosion control measures required for the Project.

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<sup>19</sup> March 9, 2022 SEQRA Expanded EAF Submission, Narrative. See also Site Plans.

<sup>20</sup> March 9, 2022 SEQRA Expanded EAF Submission, Appendix 9 ("Geotechnical Report"). See also August 31, 2022 Submission, SEQRA Narrative for Service Road.

<sup>21</sup> July 13, 2022 Supplemental Submission, Preliminary Stormwater Pollution Prevention Plan, prepared by Colliers Engineering & Design, dated July 13, 2022 ("SWPPP"). See also August 31, 2022 Submission, SEQRA Narrative for Service Road.

The Project will create 59.25± acres of new impervious surface on the Project Site based on the FEAF Part 1 submitted with Scannell's August 31, 2022 Supplemental Submission. If properly implemented, the impacts of creating these new impervious surfaces will be negligible given the storm water control measures that will be constructed and operated in accordance with the State's stormwater control regulations. See SWPPP. Moreover, the Project's location in the MC-1 commercial/industrial zoning district makes the Project an appropriate use for the lands involved.

Based on the foregoing, the Project will not create any significant adverse impacts on Land.

### **GEOLOGICAL FEATURES**

**Finding: The Project will not result in any significant adverse environmental impacts on Geological Features.**

There are no unique landforms on the Property that will be impacted by the Project.<sup>22</sup> The Project Site contains an active commercial mine and has been subject to extensive commercial mining operations. Accordingly, the Project is not anticipated to have any significant adverse impact on geological features.

### **SURFACE WATER**

**Finding: The Project will not result in any significant adverse environmental impacts on Surface Water.**

The Planning Board identified the following potential "moderate to large" impacts to Surface Water from the Project:

1. *The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body;*
2. *The proposed action may create turbidity in a waterbody, either from upland erosion, runoff or by disturbing bottom sediments; and*
3. *The proposed action may cause soil erosion, or otherwise create a source of stormwater discharge that may lead to siltation or other degradation of receiving water bodies; and*
4. *The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action.*

For the following reasons, these potential "moderate to large" impacts from the Project will not result in any significant adverse impact to Surface Water:

- The Project will have a minimal impact (approximately 2,100 sf or .048± acres) on the approximately 0.8563 acres of wetlands subject to federal wetlands jurisdiction along a small creek on the western portion of the Project Site related to the installation of a stormwater outfall.<sup>23</sup> The involved wetlands comprise less than 6% of the wetlands on the

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<sup>22</sup> July 13, 2022 Supplemental Submission, FEAF Part 1.

<sup>23</sup> March 9, 2022 SEQRA Expanded EAF Submission, Natural Resources Information, Appendix 15.

Project Site. This is a minor impact. No construction will occur within the bed or banks of the creek. Approval for the minor wetland disturbance has been obtained from the United States Army Corps of Engineers pursuant to Nationwide Permit 39<sup>24</sup>, so the Project's minor wetland impacts will be undertaken in compliance with federal standards, mitigating any potential impacts.

- Avoidance and/or mitigation of turbidity or erosion will occur through the Project's implementation of the SWPPP which includes modern stormwater management controls which are designed to ensure that any stormwater discharged from the Project Site will comply with NYSDEC water quality standards, both during and after construction, resulting in minimal impacts to surface waters. Stormwater from the Project will be managed, treated and discharged in accordance with the requirements set forth in NYSDEC State Pollution Discharge Elimination System general stormwater permit and the Project's SWPPP, subject to prior review and oversight by the Town's engineer and continuing regulatory oversight and enforcement by NYSDEC. Stormwater will be collected and treated to protect water quality prior to discharge. As required by law, stormwater will be managed to control the rate of stormwater runoff to less than pre-development rates for a full range of storm events from the 1-year storm to the 100-year storm. As required by Chapter 154 of the Town of Wawayanda Code, Scannell will be required to enter into a Stormwater Facilities Maintenance Agreement to provide for the continued maintenance of stormwater controls on the Project Site subject to periodic inspections by regulating authorities, further reducing the probability of impacts to surface waters.
- During Project construction, erosion and sediment control, soil stabilization, dewatering and pollution prevention measures will be installed, implemented and maintained on the Project Site as set forth in the SWPPP and as required by law to minimize the discharge of erosion of sediment and prevent a violation of the State's water quality standards. These mitigation measures are designed to limit erosion of land by controlling the flow of water until permanent stormwater control measures are installed and pervious surfaces are stabilized with vegetation and/or buildings and parking areas. Measures will include, but not be limited to, installation of silt-fencing to control disturbed areas; stockpiling soils and vegetative soil stabilization; seeding and mulching of all disturbed surfaces; dust control (as necessary); and ongoing inspection and maintenance of erosion control measures to ensure their effectiveness until all disturbed surfaces are stabilized. All erosion and sediment measures are designed to comply with the New York State Standards and Specifications for Erosion and Sediment Control, dated November 2016 and the January 2020 NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity, Permit # GP-0-20-001.
- Post-construction, the Project's stormwater management system will collect stormwater run-off from the Project Site through a series of catch basins and pipes and convey the water to the proposed stormwater management areas depicted on the Site Plans and in the SWPPP. Mitigation of potential impacts will occur through the treatment of sediments and other contaminants in the run-off as described in the SWPPP to ensure the stormwater

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<sup>24</sup> March 9, 2022 SEQRA Expanded EAF Submission, Natural Resources Information, Appendix 15; May 25, 2022 Supplemental Submission, Colliers' response to Town engineer comments.

discharges meet applicable water quality standards and have minimal impacts on the downstream water courses and wetlands. Stormwater management facilities, including lined bioretention areas and open detention basins, will be located adjacent to the new impervious surfaces, as depicted on the Site Plans and the SWPPP. As required by the NYSDEC stormwater regulations, the peak rate of run-off from the Project Site will be essentially the same or less than the peak rate of run-off under the existing conditions.

- As a result of these mitigation measures, potential surface water impacts from the Project will be significantly less than those from the approved mining operations, which were the subject of a NYSDEC Negative Declaration in 2009. By their nature, the exposed soils and disturbed lands involved in an ongoing mining operation have greater potential for erosion and sedimentation in surface waters than the more stable status of the Project Site after the Project is constructed with its state-of-the-art stormwater controls.

Based on the foregoing, the Project will not create any significant adverse impacts on Surface Water.

## **GROUNDWATER**

**Finding: The Project will not result in any significant adverse environmental impacts on Groundwater.**

The Project will not have any significant adverse impacts on groundwater. The Project is estimated to require 7,000 gallons per day of water and to involve the discharge of 7,000 gallons per day of wastewater. Scannell proposes to obtain water and wastewater services from the Town of Wawayanda under its water/sewer agreement with the City of Middletown, subject to approval by the Town Board. Scannell's engineer has provided a report on Water & Sewer Services for the Project demonstrating that the Town will have sufficient capacity under its agreement with the City to provide these services.<sup>25</sup>

The Project will not discharge wastewater into the ground. No subsurface disposal systems will be used on the Project Site. Subject to Town Board approval, the Project will connect to municipal sewer service provided under the Town's agreement with the City of Middletown for the treatment of wastewater. See Water/Sewer Plans. Further, the Project Site is not located over or adjoining any primary or principal aquifer, nor over or adjoining any aquifers used as a community drinking water source.

Stormwater run-off from the truck parking areas on the Project Site will be collected separately and treated as "hot-spot" areas as identified by NYSDEC stormwater regulations. See SWPPP. These areas will be collected and discharged through a series of stormwater treatment practices suitable to treat stormwater from hot-spot areas in accordance with the NYSDEC Stormwater Design Manual. Hot-spot run-off is directed to onsite oil-water separators followed by hydrodynamic separator quality treatment structures and ultimately to a proposed stormwater extended detention wetland/pond to adequately clean and remove any potential contaminants prior to discharge.

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<sup>25</sup> March 9, 2022 SEQRA Expanded EAF Submission, Water & Sewer Services Report, Appendix 10.

A Phase 1 Environmental Site Assessment conducted on Parcel #1 in January 2021 did not indicate the presence of any known or suspected current or historic sources of soil or groundwater contamination on that Parcel, or any report of such contamination on Parcel #3.<sup>26</sup> No hazardous wastes have been generated, treated or disposed of on the Project Site, nor is there any report of environmental contamination involving the Project Site.<sup>27</sup>

Finally, Project construction will not have any significant impact on groundwater, as demonstrated by the Geotechnical Report submitted as Appendix 9 to Scannell's March 9, 2022 submission. The Project Site is not located over, or immediately adjoining, a primary, principal or sole source aquifer. Any groundwater other than perched pockets on Parcel #1, where nearly all of the development will occur is expected to be below the planned foundation excavation depths. The Geotechnical Report indicates that perched groundwater conditions may be encountered at some locations, which may require some limited dewatering as part of some excavations. Perched groundwater conditions were noted during the prior SEQRA review of the mining operations, but were not considered to be an environmental impact.

Based on the foregoing, the Project will not create any significant adverse impacts to groundwater.

## **FLOODING**

**Finding: The Project will not result in any significant adverse environmental impacts on Flooding.**

The Project will not have any significant adverse impacts on flooding. As discussed in detail above and shown on the Site Plans, all storm water from the Project Site will be collected, managed and treated by a stormwater management system in accordance with the NYSDEC General SPDES permit for stormwater discharges and SWPPP. The Federal Emergency Management Administration Flood Insurance Rate Maps ("FIRM") covering the Town of Wawayanda show that the Property is located outside any designated floodway, 100-year floodplain or 500-year floodplain.<sup>28</sup>

Based on the foregoing, the Project will not create any significant adverse impacts on flooding.

## **AIR**

**Finding: The Project will not result in any significant adverse environmental impacts on Air.**

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<sup>26</sup> March 9, 2022 SEQRA Expanded EAF Submission, Natural Resources Information, Appendix 12.

<sup>27</sup> July 13, 2022 Supplemental Submission, FEAF Part 1.

<sup>28</sup> March 9, 2022 SEQRA Expanded EAF Submission, Appendix 13.

The Project will not result in any significant adverse impacts on air quality. The Project does not include a State regulated air emission source or involve any activity that will have more than a minimal impact on air quality. Similarly, commercial vehicles using the Project's parking areas will be subject to NYSDEC regulations governing vehicle idling which prohibits vehicle idling for longer than 5 minutes. The idling regulations may be enforced by the NYSDEC Environmental Conservation Officers and other state police. Further, as discussed below, the Project will only create minor traffic delays (over existing conditions) at surrounding intersections and these intersections will continue to operate at overall acceptable levels of service and efficiency, so there will not be unnecessary idling due to traffic delays. Therefore, no significant adverse localized air quality impacts are expected.

Finally, the Project entails the demolition of the existing barn on Parcel #1 and a small existing garage on Parcel #3.<sup>29</sup> New York State Department of Labor regulations require that prior to demolition, any asbestos containing materials ("ACM") must be identified and properly removed by a certified asbestos abatement contractor. A Pre-Demolition Regulated Building Materials Inspection ("RBMI") of the barn on the Parcel #1 was prepared in January 2022.<sup>30</sup> The inspection identified a limited number of ACMs in the barn, which is common for buildings of its age. These materials will be removed and properly disposed of by a NYS-licensed asbestos abatement contractor prior to demolition. An RBMI will also be conducted for the garage, built in 1999, on Parcel #3 and any ACMs will be properly removed prior to demolition as required by law.

Based on the foregoing, the Project will not create any significant adverse impacts on air quality.

## **PLANTS AND ANIMALS**

### **Finding: The Project will not result in any significant adverse environmental impacts on Plants and Animals**

The Project will not have any significant adverse impacts on plants and animals on Parcel #1 as demonstrated by the Natural Resources Information that has been submitted with respect to wetlands and wildlife.<sup>31</sup> Further, the overall impacts on plants and animals on Parcel #1 will not exceed the impacts of the approved mining operations as determined through NYSDEC's prior SEQRA review. Finally, the Service Road will be primarily constructed on lands that have been extensively disturbed and do not provide any suitable habitat for plants or animals.

A wetland delineation was undertaken to determine whether any wetlands subject to federal or state permitting jurisdiction exist that would be impacted by the Project. No wetlands subject to NYSDEC jurisdiction were identified, however, approximately 0.8563 acres of wetlands along a small creek on the western portion of the Project Site are subject to federal jurisdiction. The Project will have a minimal impact (.048± acres) on these wetlands related to the installation of a

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<sup>29</sup> Although not indicated on the Site Plans, the existing building on Parcels #1 and #3 will be demolished. See Site Plans.

<sup>30</sup> March 9, 2022 SEQRA Expanded EAF Submission, Appendix 14.

<sup>31</sup> March 9, 2022 SEQRA Expanded EAF Submission, Appendix 15.

stormwater outfall. No impacts to the creek will occur. Scannell's consultant submitted a Pre-Construction Notice to USACE and has obtained coverage for this minor wetland disturbance pursuant to Nationwide Permit 39.<sup>32</sup> Erosion and stormwater controls implemented during and after construction of the Project pursuant to the SWPPP discussed above will protect wetlands and creek from direct and indirect impacts. Accordingly, the Project will almost entirely avoid adverse impacts to wetlands and the creek on the Project Site and associated wetland habitat.

Several protected animal species have been identified as potentially having habitat in the general area of the Town of Wawayanda including the Project Site. The likelihood of habitat for these species being present and the potential for adverse impacts to these species from the Project was assessed. A Habitat Assessment was prepared for Parcel #1 in Appendix 15 to Scannell's March 9, 2022 SEQRA submission. The assessment researched publicly available sources of information from state and federal agencies and other data bases for rare, threatened or endangered species that have been observed in the general geographic area including the Project Site. With this information, a site visit was conducted by qualified professionals to observe any species present and/or to assess the potential that the Parcel #1 may provide suitable habitat for such species.

The Habitat Assessment documents that the potential presence of Northern Long-Eared Bats ("NLEB") and Indiana Bats was considered. NLEB are listed as "threatened" and Indiana Bats are listed as "endangered" species by both NYSDEC and the U.S. Fish & Wildlife Service (the "USFWS"). Protection efforts for these species focus on avoiding or minimizing impacts to or near "overwintering" and "summer roosting" habitats, with overwintering habitats typically found in caves and abandoned mines and summer roosting habitat consisting of certain trees that are generally 3" diameter or more at breast height in size.

The Habitat Assessment determined that there is no overwintering habitat for bats present on Parcel #1. Habitat suitable for roosting and/or foraging was found in small areas on the periphery of the Project Site, however almost all of Parcel #1 is either significantly mined, farmed, comprised of vegetative covertypes that do not provide suitable habitat for bats, or will not be impacted by the Project. Through development of the Project, only .77± acres of tree removal will occur<sup>33</sup> of which only .55± acres have trees that could potentially provide suitable habitat for bats. The balance of the 1.43± acres to be removed consists of small sapling-sized trees (not considered to be "forested areas" in the FEAF Part 1) that would not provide suitable habitat for bats. The Project's retention of almost all of the forested riparian corridor on the western portion of the area will minimize the loss of any other potential NLEB or Indiana Bat habitat on the Parcel #1, where

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<sup>32</sup> March 9, 2022 SEQRA Expanded EAF Submission, Natural Resources Information, Appendix 15; May 25, 2022 Supplemental Submission, Colliers' response to Town engineer comments.

<sup>33</sup> In its response to the Planning Board's SEQRA lead agency notice, NYSDEC sought consultation based on impacts to potential Indiana Bat habitat and the initial FEAF Part 1 indication that over 10 acres of forest would be removed. Based on current conditions on the Project Site and the ongoing mining operations, there will actually only be 1.43± acres of tree removal, including .77± acres of forested covertype potentially providing habitat, that will occur as reflected in the updated FEAF Part 1 and Habitat Assessment. See March 9, 2022 SEQRA Expanded EAF Submission, Natural Resources Information, Appendices 8 and 1 and July 13, 2022 Supplemental Submission, FEAF Part 1.

almost all Project development will occur. To avoid any potential impacts to NLEB and Indiana Bats, however, Scannell will limit any tree-cutting associated with the Project to winter months (when bats are hibernating) between November 1<sup>st</sup> and March 31<sup>st</sup> consistent with federal and state guidelines for protecting these species. On Parcel #3, little to no impacts will occur to potential bat habitat from: (1) the realignment of Hoops Road for the Project's access drive; (2) installation of utility lines along the drive; (3) demolition of the small garage in the existing parking area; or (4) installation of a stormwater basin next to Hoops Road. A small portion of forested area (approximately .8 acres) will be removed for the Service Road, which may also contain suitable habitat for bats. This tree removal will be restricted to November 1<sup>st</sup> through March 31<sup>st</sup>.

More generally, the Project Site is predominantly a disturbed, open area providing little habitat for animal species and including an intensive mining operation, farmland and other previously disturbed lands. Relatively mature forest exists within the riparian corridor in the western portion of the Site and within narrow, fragmented patches along the I-84 right-of-way and the Project's southern along the railroad. Otherwise, the Project Site consists of the mining operation, a cultivated farm field, early-successional brush and woodlands and previously disturbed lands. The lands primarily comprising the Service Road have also been extensively disturbed by mining and agricultural activities.

Terrestrial habitat is primarily within the forest on the western portion of the Property, which may provide habitat for large mammals. This area will not be disturbed by the Project. The freshwater wetlands on the Property may provide habitat for small mammals such as muskrats and voles and reptiles and amphibians such as eastern painted turtle, spotted turtle, common snapping turtle, pickerel frog, northern leopard frog, and green frog. Terrestrial species, including some of those listed above, may also utilize the freshwater wetlands on the Property for foraging, cover, or travel.

General wildlife species are not anticipated to be significantly impacted by the Project as wildlife occurrences and habitation within the disturbed mine and immediately adjacent farmland is expected to be very limited. Wildlife should be able to disperse to and use other nearby habitats. The forested riparian corridor to the west will remain and contains habitat for terrestrial, semi-aquatic and aquatic wildlife and provides connectivity to other habitats on and offsite.

Finally, while small whorled pogonia, a threatened flower, was identified in the USFWS database, it is not anticipated to be found on the Property based on its extreme rarity in New York State. There is currently only one known occurrence of small whorled pogonia in New York State in Schunnemunk Mountain State Park in Orange County, with the previous last known observation of this species dated back to 1976 in Onondaga County. The remaining historical occurrences were in different counties than the Property and date back to the late 1800s and early 1900s. Notably, USFWS did not identify this species in its correspondence discussed above.

Finally, no pesticides will be used on the Property and any indirect impacts from the Project on plants or animals due to lighting or noise will be minimized by mitigation measures for such potential impacts as discussed below.

Based on the foregoing, the Project will not have any significant adverse impacts on plants and animals.

### **AGRICULTURAL RESOURCES**

**Finding: The Project will not result in any significant adverse environmental impacts on Agricultural Resources.**

The Project will not cause significant adverse impacts to agricultural resources due to the ongoing mining operations. The Property is located in Orange County Agricultural District #1.<sup>34</sup> Since 2009, Parcel #1 has been extensively mined and it was anticipated then by NYSDEC and the Planning Board that the mining operations would continue for at least 20 years, affecting most of the lands involved including 40% of the soils considered to be “significant agricultural resources.”<sup>35</sup> Some areas of Parcel #1 not currently being mined are still being used for crop production or have been previously disturbed. Construction of the Service Road will primarily occur on lands that are active farmland but that have been extensively disturbed by past site activities and mining. While the reclamation plan for the mining operation contemplated that Parcel #1 could eventually be returned to possible agricultural use, it was acknowledged even in 2009 that upon completion of the mining operations Parcel #1 might be more suitable for “large-scale development” consistent with the Town’s Zoning Law. The Project is consistent with this prior SEQRA assessment of the potential conversion of Parcel #1 and with the Town’s commercial/industrial zoning that contemplates such development on the Project Site. Moreover, compared to the extensive agricultural acreage in the surrounding area and throughout the Town, the loss of these soils will have a negligible impact on the Town’s agricultural resources.

Further, the impacts of the Project are mitigated by the location of the Project Site next to I-84 in a commercial/ industrial zoning district designated by the Town for precisely the use proposed as part of the Project. The Town’s zoning map reflects the community’s priority of protecting agricultural land in the Town outside the commercial/industrial zoning district through land use controls. Most of the land in the Town (over 65% based on the 2018 Town of Wawayanda Comprehensive Plan) is zoned to encourage agricultural uses and the use of almost all of this land in the Town is limited by this zoning. By contrast, lands in the MC-1 zoning district only comprise 10.3% of the Town’s lands according to the Comprehensive Plan. The Project will support this Town wide planning strategy by avoiding any development on the Agricultural Residential (“AR”) lands (Parcel #2) on the Property, mitigating the potential impacts to other lands in the AR zoning district and benefiting the Town by providing a new warehouse (with significant fiscal benefits to the local community) in the MC-1 zoning district on lands immediately adjacent to I-84.

Based on the foregoing, no significant adverse environmental impacts to agricultural resources are anticipated from the Project. Consistent with the requirements of the NYS Agriculture and Markets Law and as required by the Town, an agricultural data statement was prepared to notify nearby farming operations of the Project and potential impacts to agriculture

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<sup>34</sup> March 9, 2022 SEQRA Expanded EAF Submission, Appendix 16.

<sup>35</sup> March 9, 2022 SEQRA Expanded EAF Submission, Appendix 7.

resources. Additionally, notice of the Planning Board's public hearing on the Project has been provided to nearby property owners as required by the Zoning Law.

### **AESTHETIC RESOURCES**

**Finding: The Project will not result in any significant adverse environmental impacts on Aesthetic Resources.**

The Planning Board identified the following potential "moderate to large" impacts to Aesthetic Resources from the Project:

1. *The proposed action may be visible from publicly accessible vantage points both seasonally (e.g., screened by summer foliage, but visible during other seasons) and year-round; and*
2. *Visibility involving the public may occur during routine travel by residents, including to and from work and during recreational or tourism-based activities.*

For the following reasons, these potential "moderate to large" impacts from the Project will not result in any significant adverse impact to Aesthetic Resources:

- The Project is an allowed use under the Zoning Code that will be located in a growing commercial/industrial zoning district in the Town, where some visibility of proposed uses similar to the Project is to be reasonably expected and permitted by the Zoning Code. The Project's potential visibility will be consistent with the existing commercial mining operation on the Project Site and nearby commercial and industrial developments that is also located along U.S. Route 6 and I-84.
- The Project will not be visible from any officially designated federal, state, or local scenic or aesthetic resources nearby, nor will it impact any officially designated scenic views. While located within five miles of the Orange Heritage Trail and Hunter Farm Nature Preserve, both nearby public visual resources identified in the FEAF Part 1, the Project is not visible from those resources due to distance, topography and intervening vegetation.
- Visual simulations of the Project from vantage points selected by the Planning Board along I-84 and U.S. Route 6 demonstrate that a combination of distance, topography, existing trees and vegetation, new landscaping and proposed sound control barriers will provide reasonable screening of the Project from both public highways and avoid any significant adverse environmental impacts.<sup>36</sup> Any partial views of the Project by the traveling public will be short in duration along both highways.
- To further mitigate any potential aesthetic impacts, a building design will be used with projecting first-floor glass entry elements at the office area, attractive paint schemes to add depth and character, varied roof lines on the east and west elevations, and decorative parapets that include glass clerestory windows on the north and south elevations. This

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<sup>36</sup> July 13, 2022 Supplemental Submission, Building Floor Plan, Elevations and Visual Simulations (dated June 22, 2022), prepared by MACKENZIE. See also August 31, 2022 Supplemental Submission with additional Visual Simulations Requested by the Planning Board.

design and varied paint scheme will make the building more visually appealing when viewed from public locations to the extent such views may occur. As depicted in the visual renderings, the building will be painted with neutral earth tone colors that will help reduce its visibility.

- Overall, the Project will represent an improvement as compared to the existing visual impacts of the mining pit, which were previously determined through SEQRA review by NYSDEC and the Planning Board to not be a significant adverse environmental impact.
- Since the Project is located on lands zoned by the Town for industrial/commercial uses that normally involve more visible development, the overall limited visibility of the Project, mitigated as proposed by distance, topography, sound walls, vegetation and architectural design, is reasonable and will not result in any significant adverse environmental impacts on aesthetic resources.

Based on the foregoing, the Project will not result in any significant adverse environmental impacts on aesthetic resources.

## **HISTORIC AND ARCHEOLOGICAL RESOURCES**

**Finding: The Project will not result in any significant adverse environmental impacts on Historic and Archeological Resources.**

The Project will not impair the character or quality of any important historical and/or archaeological resources.

No historic buildings or sites listed on the State or National Registers of Historic Places are located on or near the Project Site and the Site is not located in or adjacent to an historic district.<sup>37</sup> No significant archaeological resources were identified on Parcel #1 during the original review of the proposed mining operations and New York State's Historic Preservation Office ("SHPO") has twice determined that there would be no adverse effects on historic or archaeological resources from the Project on Parcel #1.<sup>38</sup> In 2007, over 1000 test pits were undertaken on Parcel #1 and no indication of historic or archaeological resources was found.

In addition, given the limited disturbance that will occur on and the extensive prior disturbance of Parcel #3 that has occurred, no significant impacts to cultural resources are expected from the construction of the project access drive or installation of utilities or stormwater control measures or demolition of the small garage (1999 construction) as part of the Project.<sup>39</sup> Finally, Scannell's consultant has reviewed the lands where the Service Road will be located and concluded that due to extensive prior disturbance no cultural resources are likely to be found there.<sup>40</sup>

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<sup>37</sup> July 13, 2022 Supplemental Submission, FEAF Part 1.

<sup>38</sup> March 9, 2022 SEQRA Expanded EAF Submission, Historic and Archaeological Resources Information, Appendix 18.

<sup>39</sup> March 9, 2022 SEQRA Expanded EAF Submission, Historic and Archaeological Resources Information, Appendix 18.

<sup>40</sup> August 31, 2022 Supplemental Submission, SEQRA Narrative for Service Road.

Based on the foregoing, the Project will not create any significant adverse impacts to historic or archaeological resources.

### **OPEN SPACE AND RECREATION**

**Finding: The Project will not result in any significant adverse environmental impacts on Open Space and Recreation.**

The Project will not result in any loss of recreational opportunities, or any reduction of an open space resource designated in a governmental open space plan. The Property is located in a zoning district intended for commercial/industrial development such as the Project. The Property is privately owned and is not used for public recreation.

Based on the foregoing, the Project will not have any significant adverse impact on open space and recreational resources.

### **CRITICAL ENVIRONMENTAL AREAS**

**Finding: The Project will not result in any significant adverse environmental impacts on designated Critical Environmental Areas.**

The Project will not have any significant adverse impacts on any critical environmental areas ("CEAs") designated by NYSDEC because the Project Site does not contain any CEAs and will have little to no impact on a nearby CEA.<sup>41</sup> A portion of the construction of the water and sewer mains for the Project will occur in the Town of Wawayanda's "Ridgeline Preservation Areas" CEA where the CEA includes lands along the Matrix warehouse driveway near the intersection with U.S. Route 6 and potentially for a short distance north along Route 6. Any construction impacts on the CEA will be minimal, however, as the installation of the mains will only involve temporary disturbance to land adjacent to an existing driveway and highway in previously disturbed areas. The new mains will not be installed in any ridgeline areas for which the CEA was designed to protect. All mains will be installed underground and will not be visible from the CEA. The new sewer and water mains will affect only a very small area of the CEA. Further, erosion control measures will be undertaken and maintained during construction and all disturbed soils will be stabilized and revegetated.

Accordingly, no significant adverse impacts to CEAs will occur from the Project.

### **TRAFFIC/TRANSPORTATION**

**Finding: The Project will not result in any significant adverse environmental impacts on Traffic/Transportation.**

The Planning Board identified the following potential "moderate to large" impacts to Traffic/Transportation from the Project:

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<sup>41</sup> July 13, 2022 Supplemental Submission, FEAF Part 1; May 25, 2022 Supplemental Submission, Supplemental SEQRA Narrative (dated May 25, 2022) evaluating the potential environmental impacts from the proposed extension of water and sewer mains to serve the Project.

1. *Projected traffic increase may exceed capacity of existing road network;*
2. *The proposed action will degrade existing transit access;*
3. *The proposed action may alter the present pattern of movement of people or goods; and*
4. *Other impacts: Route 6; Intersection NYS Route 17M/I-84; NYS Route 6/NYS Route 284.*

There will not be any significant adverse environmental impacts from the Project on Transportation/Traffic because:

- The Traffic Impact Study ("TIS") dated March 1, 2022 projected that traffic generated by the Project would not exceed the capacity of the roadway network and studied intersections based on the mitigation measures proposed by the TIS.<sup>42</sup> The TIS concluded that the studied intersections would all operate at overall acceptable levels of service with the mitigation measures recommended by the TIS. Those mitigation measures are discussed in more detail below.
- Project-generated traffic will travel on State highways - U.S. Route 6 and Route 17M, which are designed to handle such traffic. The TIS was reviewed by the Town's traffic consultant (Creighton Manning), which concurred in its assessment.<sup>43</sup> NYSDOT provided comments on the TIS and proposed highway mitigation improvements and indicated no significant concerns.<sup>44</sup>
- The TIS evaluated potential traffic impacts from the Project on other intersections along U.S. Route 6 between NYS Route 284 to the west and NYS Route 17M to the east, along with impacts to the on and off ramps for I-84 on Route 17M. In general, comparing projected future traffic conditions if the Project is built or not built, the TIS found that the

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<sup>42</sup> The Project includes an approximately 925,000± square foot warehouse, however, the traffic study is based on a 1,000,000 square foot building. Estimates of the amount of traffic to be generated by the proposed warehouse were developed based on information provided by the Institute of Transportation Engineers (ITE) in the report titled "Trip Generation", 11th Edition, 2021. To provide a conservative analysis, the "higher" Trip Generation Rates for Land Use Category - 130 Industrial Park (which includes manufacturing and warehouse uses) were used in this analysis. In addition, the TIS takes into account general background traffic growth, as well as both approved and pending nearby large-scale projects that will add to the traffic on the roads analyzed. Based on comments on the TIS from the Planning Board, its consultants and NYSDOT, Scannell has undertaken additional traffic sensitivity analysis and provided further materials with respect to potential traffic impacts associated with the Project. See April 13, 2022 Supplemental Submission, Sensitivity Analysis (dated April 8, 2022), I-84 Ramp Concept (dated March 28, 2022) and Colliers' April 13, 2022 response to comments from Town consultants; May 25, 2022 Supplemental Submission, Colliers' May 25, 2022 response to comments from Town consultants; June 8, 2022 Supplemental Submission, Colliers' June 8, 2022 Response to comments from NYSDOT, May 25, 2022 Collier's Truck Acceleration Memorandum in response to Planning Board comments, and a map prepared by Colliers depicting existing conditions in the U.S. Route 6 Right-of-Way at its intersection with Hoops Road, dated February 22, 2022.

<sup>43</sup> Based on comments on the TIS from the Planning Board, its consultants and NYSDOT, Scannell has undertaken additional traffic sensitivity analysis and provided further materials with respect to potential traffic impacts associated with the Project. See April 13, 2022 Supplemental Submission, Sensitivity Analysis (dated April 8, 2022), I-84 Ramp Concept (dated March 28, 2022) and Colliers' April 13, 2022 response to comments from Town consultants; May 25, 2022 Supplemental Submission, Colliers' May 25, 2022 response to comments from Town consultants; June 8, 2022 Supplemental Submission, Colliers' June 8, 2022 Response to comments from NYSDOT, May 25, 2022 Collier's Truck Acceleration Memorandum in response to Planning Board comments, and a map prepared by Colliers depicting existing conditions in the U.S. Route 6 Right-of-Way at its intersection with Hoops Road, dated February 22, 2022.

<sup>44</sup> June 8, 2022 Supplemental Submission, Colliers' June 8, 2022 Response to comments from NYSDOT.

overall increase in delays at those intersections would not be significant when compared to the No-Build condition.

- Based on Planning Board comments, an additional traffic mitigation measure consisting of an internal service road has been proposed by Scannell to further minimize traffic impacts to Route 6 and other local roads.<sup>45</sup> This service road would run parallel to Route 6 and would connect the Project Site with other adjacent lots on the north side of Route 6. The service road would create the opportunity for all future development (if any) on these adjoining parcels to use the service road for access to Route 6. The service road would mitigate potential traffic impacts on Route 6 and would provide a number of benefits including the following: it would consolidate future access drives from the adjacent lots on to Route 6 into 1 access points on the highway; it would improve emergency access to all these adjacent lots; it would remove slower moving trucks off Route 6 and reduce truck traffic on Route 6 in front of the Site.
- Based on the TIS and further discussion with the Planning Board, the following proposed mitigation measures will be constructed and paid for by Scannell to avoid or reduce significant potential traffic impacts related to the Project:
  - ✓ A service road will be constructed from Hoops Road across SBL # 11-1-34.1 to the eastern side of SBL #11-1-41 to provide an access point for trucks entering onto U.S. Route 6;
  - ✗ A new traffic signal is proposed to be installed on U.S. Route 6 for vehicle access from the service road;
  - ✓ A separate left turn and separate right turn lanes for site entering truck traffic from U.S. Route 6 onto the service road;
  - ✓ A new traffic signal at the U.S. Route 6 and C.R. 56 intersection;
  - ✓ Traffic volumes and delays less affected by the Project at the intersection U.S. Route 6 and NYS Route 284 will be monitored to determine whether installation of a new signal under future conditions is warranted;
  - ✓ The installation of an additional eastbound left turn lane from U.S. Route 6 onto NYS Route 17M, along with associated signal timing changes and a vehicle detection camera to reduce delays; and
  - ✓ To improve the safety and flow of traffic entering onto NYS Route 17M north from the I-84 westbound off-ramp, a dedicated off-ramp lane instead of the existing stop sign.
- With respect to the currently unsignalized intersection of NYS Route 284 with U.S. Route 6, Scannell proposes to conduct monitoring of the intersection to determine, over time, whether a signalized intersection is warranted there due to Project-generated traffic. Installation of a signal at that intersection would substantially improve future conditions including Project traffic to a Level of Service "B" during weekday a.m. and p.m. peak hours. If NYSDOT determines that it is warranted, Scannell will install a signal at the intersection of NYS Route 284 and U.S. Route 6. Scannell will place funds in escrow to be

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<sup>45</sup> See August 31, 2022 Submission, SEQRA Narrative for Service Road.

used to conduct the monitoring and the installation of the new signal if required by NYSDOT to mitigate impacts from the Project.

- Scannell will conduct a post-construction traffic impact study 1-year after the issuance of the Certificate of Occupancy to determine the effectiveness of the proposed traffic mitigation measures for the Project (listed above) and to assess the need for additional mitigation measures. Scannell will place funds in escrow to guarantee its performance of this post-construction monitoring study and will undertake the installation of any improvements required by NYSDOT for the Project. Any required improvements will be fully constructed within 18-months of NYSDOT approval.
- As the agency charged with jurisdiction over U.S. Route 6, NYS Routes 284 and 17M and I-84, NYSDOT's review of the Project's proposed highway improvements and the above traffic mitigation measures will further ensure that no significant adverse impacts from Project-generated traffic will occur.

For the foregoing reasons, the Project will not have any significant adverse impacts on traffic or transportation.

## **ENERGY**

**Finding: The Project will not result in any significant adverse environmental impacts on Energy.**

The Project will require the use of electricity subject to the specific needs of any future potential tenant. Increased electricity usage may be required for lighting, HVAC systems, office/warehouse equipment, etc. See FEAF Part 1, Appendix 8 to March 9, 2022 Submission. This energy usage will be similar in amount to the energy used for comparable commercial buildings in the Town, County, and across the State. The utility provider has indicated that sufficient electricity will be available to serve the Project. Overall, the Project will not result in a significant increase in the use of energy.

Accordingly, no significant adverse impact on energy will occur.

## **NOISE, ODOR AND LIGHT**

**Finding: The Project will not result in any significant adverse environmental impacts on Noise, Odor and Light.**

The Planning Board identified the following potential "moderate to large" impact to Noise, Odor and Light from the Project:

*The proposed action may result in blasting within 1,500 feet of any residence, hospital, school, licensed day care center, or nursing home.*

There will not be any significant adverse environmental impacts from the Project on Noise, Odor and Light because:

- In 2009, NYSDEC determined, pursuant to SEQRA, that the blasting as part of the existing mining operations on the lands where the Project is proposed to be located would not have any significant adverse environmental impacts. Noise from blasting for the mining operations was expected to occur over 20 years of mining and was not identified as a potential significant impact. The Planning Board was an involved agency for that SEQRA determination and indicated no objection to NYSDEC's Negative Declaration.
- Blasting will occur during the initial phases of the Project's construction in order to establish necessary elevation grades for the building and other improvements. This blasting will be very limited in duration during the first several months of construction as compared to blasting from the existing mining operations which will continue to occur over the next 7 years. The Project will eliminate 7 more years of blasting at the mine and will provide a substantial benefit in this regard. All blasting during construction will be performed pursuant to a program developed by a qualified Geotech engineer to minimize impacts, including noise. Mitigation measures for noise include only conducting blasting activities during weekday working hours and not blasting when weather conditions, including wind direction, are unfavorable for avoiding noise impacts. As a further mitigation measure, prior notice of planned blasting activities will be provided to residents and other property owners within 1500 feet of the Project Site.

***Additional background information considered:***

During construction, any noise and odor impacts from construction equipment will be temporary, of short duration and non-significant. The Project, when operational, is not anticipated to generate any odor impacts and any noise and lighting impacts will be substantially mitigated so that no significant adverse impacts will occur.<sup>46</sup>

With respect to noise impacts on the Project Site, the Project will likely represent an overall reduction compared to continuous noise from the approved mining operations during normal working hours for those operations. Only infrequent noises of short duration from the Project will be comparable to existing noise from mining operations, which were deemed not to have a significant adverse impact through NYSDEC's prior SEQRA review of the mining operations, resulting in the issuance of a Negative Declaration.

Potential noise impacts from the mining operations necessarily considered by NYSDEC and the Planning Board in the 2008 SEQRA determination of non-significance included noise associated with ground clearing activity, excavation, material processing (rock crushing), blasting, loading and truck traffic. By comparison to the continuous nature of the noise from the mining operations during daytime hours, including blasting and trucks using McBride Road, the highest noise levels expected from the Project will only occur infrequently and will be of very short duration, measured in little more than a second. In addition, noise impacts from sand and gravel trucks using McBride Road, authorized by NYSDEC and the Planning Board in 2015, will be

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<sup>46</sup> July 13, 2022 Supplemental Submission, FEAF Part 1; May 25, 2022 Supplemental Submission, Acoustical Study, prepared by Cavanaugh Tocci, dated May 25, 2022; Site Plans.

eliminated altogether because the Project's primary access will be from the new private access drive (now Hoops Road) to Route 6 and the mine access from McBride Road will be closed and gated except for access for emergency vehicles.

To evaluate the potential for noise impacts from the Project, a sound study was prepared comparing the loudest potential operational noises from the Project against NYSDEC guidelines for exterior uses, based on ambient noise levels from existing sources around the Project Site, and for compliance with Zoning Law standards at the Project's property line (the "Sound Study").<sup>47</sup> The Project Site's location between I-84 and U.S. Route 6 results in significant background noise levels from vehicles traveling at high speeds on those highways. These highways are considered to be the dominant source of existing ambient noise for nearby residences (in addition to the mine) near the Project Site on McBride Road, Route 6 and across I-84.

For the most conservative impact analysis, the Sound Study used reasonable "worst-case" noise levels based on sound measurements at a similar facility. These noise levels are associated with truck movement activities including back-up alarms, trailer disconnects, and accelerating or idling vehicles near sound measurement locations. Anticipated truck movements are intermittent during daylight hours and less frequently overnight.

Because of the potential for noise impacts from the Project associated with truck movement activities on the Project Site, Scannell will install varying height sound control barriers along the western truck parking and loading areas nearest McBride Road. These barriers are intended to mitigate the impacts of noise associated with truck activities on the Project Site. They will also limit the visibility of Project operations. As the Sound Study demonstrates, the sound control barriers effectively ensure that there will be no significant adverse noise impacts from the Project on neighboring property owners.

The Sound Study used ambient sound measurements that had been gathered on the Project site in August 2021 from representative locations on McBride Road and U.S. Route 6. For McBride Road, estimated ambient sound measurements were gathered from a location near the west property corner of the proposed facility, where noise from traffic on I-84 and Route 6 was not highly audible. Sound measured at this location is considered to be typical for residences along McBride Road. Estimated ambient sound measurements for residences along Route 6 were taken along the railroad right-of-way near the property line to the south of the proposed facility, where sound was dominated by traffic on Route 6. For the residences on the opposite side of I-84, an updated sound study measured ambient levels from a location a similar distance away from I-84 as the residence on that side of I-84 located nearest to the Project.

The NYSDEC guidelines, as applied to the Project, recommend that noise levels experienced by nearby residences should not increase by more than 6 decibels as a result of noise associated with the Project. The guidelines further indicate that in some cases increases of more than 6 decibels over ambient levels may be acceptable and that increases of less than 5 decibels are considered to be "unnoticed or tolerable."

Based on the Sound Study, with the addition of the proposed sound control barriers, most of the anticipated noise levels experienced by nearby homes as a result of the Project will be at or

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<sup>47</sup> May 25, 2022 Supplemental Submission, Acoustical Study, prepared by Cavanaugh Tocci, dated May 25, 2022.

below existing ambient levels. Of the handful of potential increases in noise levels from the Project over ambient conditions, all of them will be in the range deemed “unnoticed or tolerable” under NYSDEC guidelines, except for the minor increases of noise levels above the 6-decibel guideline associated with trailer disconnects.

Trailer disconnect noise occurs when trucks are unhitched from their trailers, creating a sharp noise lasting little more than a second. This activity is expected to occur infrequently over the course of daily operations, and infrequently during night-time hours, when trucks are unhitched from trailers in order for the trailers to be stored in the trailer parking area until they are needed again. Further, the potential impacts would not be significant, since the potential noise levels associated with trailer disconnects would be only 1-3 decibels above the NYSDEC guideline at several of the nearby homes. Because of the momentary duration of the noise from trailer disconnects and the infrequency of their occurrence, particularly during overnight hours, noise levels associated with trailer disconnects will not result in a significant adverse environmental impact. Finally, it must be noted that the potential fleeting, infrequent noise levels from trailer disconnects would be less than noise levels resulting from the crushing, screening, blasting and truck activities associated with the approved mining operations on Parcel #1 that were previously deemed not to be a significant adverse environmental impact under SEQRA.

Due to the lot configuration and the Project layout needed to meet the anticipated requirements of any future potential tenant, noise-generating activities associated with truck movements are likely to occur near the Project’s property boundaries, making it impossible for the Project to meet the Zoning Law’s 65 dBA standard as measured at the northern property line adjacent to I-84.<sup>48</sup> By contrast, noise at all other property lines will comply with the Town’s 65 dBA noise standard. Scannell has applied to the Zoning Board of Appeals to allow higher, periodic noise levels at the northern property line along I-84. For SEQRA review purposes, compliance with the Town’s noise standard along the I-84 property line would serve little to no purpose because there are no sensitive receptors on I-84 and the highway creates a significant noise footprint from vehicles travelling at high speeds. For residential properties on the opposite side of I-84 from the Project, the Sound Study demonstrates that there will only be minimal, if any, impacts due to noise from the Project. In fact, noise from the “worst-case” scenario used in the Sound Study indicates that noise from the Project for even the closest resident on the opposite side of I-84 will be well within NYSDEC guidelines, and generally even less than the conservative ambient noise level used in the Study.<sup>49</sup>

Scannell will conduct a post construction Noise Study 6-months after the issuance of the Certificate of Occupancy. Scannell will place funds in escrow to guarantee its performance of the post-construction Noise Study and will provide for the installation of any resulting additional mitigation measures required as a result of the monitoring.

With respect to lighting, new, dark-sky compliant, modern and energy-efficient lighting will be used throughout the Site. See Site Plans. Exterior site lighting will be designed to comply

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<sup>48</sup> Scannell has applied to the Town of Wawayanda Zoning Board of Appeals for a variance from the Town’s noise standard set forth in Zoning Law § 195-23(D), as measured at the northern property line adjacent to I-84. With the elimination of the auxiliary truck parking area on Parcel #3, no additional noise variances are required for the Project.

<sup>49</sup> May 25, 2022 Supplemental Submission, Acoustical Study, prepared by Cavanaugh Tocci, dated May 25, 2022, p. 17.

with the Zoning Law and to be the minimum necessary while ensuring a safe and secure facility. All proposed lighting will be downward facing and will minimize sky glow and light pollution from the Site. Where appropriate, lighting fixtures will be of a full cutoff type or provided with shields to reduce glare and light pollution. As shown on the Site Plans, the fixture locations have been sited to avoid any light trespass onto adjacent properties. These measures have been incorporated to minimize otherwise potential adverse impacts from site lighting of the new building and parking facilities.

Based on the foregoing, the Project will not cause any significant adverse impacts involving noise, odor or light.

### **HUMAN HEALTH**

**Finding: The Project will not result in any significant adverse environmental impacts on Human Health.**

No significant impacts to human health are anticipated from the Project because all construction and operational activities will be undertaken in accordance with and in compliance with all pertinent environmental and land development regulations and related permit and approval procedures and requirements. The Project will be serviced by municipal water and sewer services and no septic system will be used.

### **COMMUNITY PLANS**

**Finding: The Project is consistent with Community Plans.**

The Project complies with the Town of Wawayanda's Zoning Law and no variances are required except for the potential periodic exceedance of the Town's noise standard at the I-84 property line.<sup>50</sup> The Project's warehouse use is allowed in the MC-1 zoning district with a site plan approval and SUP from the Planning Board. The Project will comply with all bulk and dimensional requirements of the Zoning Law.

In terms of the Town's 2018 Comprehensive Plan (the "Plan"), the Project is consistent with the adopted vision for commercial/industrial development in the Town that will reduce the property tax burden on local residents with a Project that will have minimal local impacts. As demonstrated by the Community Impact Statement for the Project<sup>51</sup>, the Project will result in significant property tax benefits for local taxing jurisdictions, including the Town, the school district and the County. Further, the Project will generate a minimal need for local services and have limited impacts on the community. The Project will use U.S Route 6 for access and is proposing to redevelop Hoops Road as a private drive, which would lessen the tax burden of maintaining that road on the Town.

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<sup>50</sup> March 9, 2022 SEQRA Expanded EAF Submission, Site Plan Review/Special Use Permit Narrative, Appendix 21.

<sup>51</sup> March 9, 2022 SEQRA Expanded EAF Submission, Community Impact Statement, Appendix 23.

The Project also supports the Plan's goals for the MC-1 zoning district (Comprehensive Plan, p. 5.1). Those goals and how the Project will advance them are as follows:

*Goal: To improve the appearance of commercial corridors and mixed-use areas.* The Project will convert an existing mining operation into a new warehouse and distribution center set back from Route 6 that will minimize aesthetic impacts from adjoining neighborhoods, I-84 and NYS Route 6 as compared to existing conditions.

*Goal: Guide commercial development to state and county road corridors.* The Project will provide a private drive with direct access to U.S. Route 6, lessening impacts on the Town from the current maintenance of Hoops Road and directing traffic from the Project onto U.S. Route 6. It will also eliminate current truck traffic on McBride Road by closing the access road to the existing mine.

*Goal: Promote the expansion of municipal water and sewer systems within existing commercial zones.* The Project will include the expansion of public water and sewer services to serve the Project Site, facilitating the possibility of other commercial development connecting to municipal services in the future.

*Goal: Identification of transportation improvements to facilitate transportation related developments with commercial zones.* The TIS has identified current and potential improvements to the U.S. Route 6 corridor that would support the Town's transportation goals. Specifically, safety improvements would be undertaken at the Hoops Road intersection with U.S. Route 6. Additionally, the TIS identifies other improvements to the U.S. Route 6 corridor between the intersection of NYS Route 284 and NYS Route 17M, along with possible improvements to the westbound off-ramp for I-84, that will improve traffic flow in the area surrounding the Project.

*Goal: To promote incremental commercial and residential growth in the hamlet centers.* The Project will not be located in the hamlet centers. However, through its multi-million-dollar investment in the Town, Scannell will serve as a catalyst for further growth of the MC-1 corridor along U.S. Route 6. By extending public water and sewer services to the Project Site, Scannell will make it possible for other neighboring properties in the Town to obtain such services. Finally, by creating a significant number of jobs in the community, including higher wage jobs, the Project will support additional growth and spending in the Town's residential and commercial hamlet centers.

Finally, the Project is consistent with Orange County planning objectives. The Project Site is identified as part of a Priority Growth Area by the 2019 Orange County Comprehensive Plan.<sup>52</sup> See Orange County Planning Documents, Appendix 22. The Project's proposed use is also one targeted by the 2015 Orange County Economic Development Strategy as one the County seeks to attract for economic development growth purposes.

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<sup>52</sup> March 9, 2022 SEQRA Expanded EAF Submission, 2015 Orange County Economic Development Strategy, Appendix 22.

For the foregoing reasons, the Project will support and further the goals and objectives of local community plans and will not have a significant adverse impact on them.

### **COMMUNITY CHARACTER**

#### **Finding: The Project is consistent with Community Character.**

As described above, the Project is consistent with the existing and planned commercial and industrial character of the area where the Project Site is located between I-84 and U.S. Route 6 in the Town's MC-1 zoning district. The Project Site is situated with immediate access to U.S. Route 6 and nearby access to I-84 to significantly advance the Town's purposes for the MC-1 zoning district with minimal impacts to the Town, the neighborhood or the environment.

The Project is located in an area zoned for such uses that includes a growing number of warehouses and other commercial buildings located along the U.S. Route 6 commercial/industrial corridor. Compared to the existing, approved mining operations on the Project Site, the Project will represent an overall improvement by ending those disruptive operations and providing for reclamation of Parcel #1. In this context, the Project is entirely consistent with the MC-1 zoning district community character.

The Project's proposed building and associated parking and loading areas are located as far away from existing residential uses, and as close to I-84 as possible. Topography and forested areas in the I-84 right-of-way, along with proposed landscaping, will reduce impacts associated with the location of the building along the northern property line. Proposed sound control barriers along the truck parking areas and the intervening forested areas on Parcel #1, the western portion of the Project Site and neighboring properties near McBride Road will significantly reduce the potential for adverse noise and visual impacts from the Project to nearby homes to the west. Topography and intervening forested areas along the railroad and U.S. Route 6 will mitigate any Project impacts to the south of the Project Site.

As discussed above, the potential visual impacts of the Project on nearby residential uses will be sufficiently mitigated by intervening topography and vegetation, along with an attractive architectural design for the Project, that will lessen visual impacts. Further, due to the location of the Project Site in the MC-1 commercial/industrial zoning district, some visibility of the Project from surrounding uses is to be reasonably expected. Similarly, with respect to noise, the Project will mostly result in no increase in the noise experienced by nearby residential neighbors above existing, ambient levels. Finally, the Project's proposed lighting will be dark-sky compliant, minimize sky glow and light pollution and, as shown on the Site Plans, will substantially avoid any light trespass onto adjacent properties.

To further minimize aesthetic impacts, a building design will be used that is more representative of a high-tech R&D production facility than a warehouse, with projecting first-floor glass entry elements at the office area, attractive paint schemes to add depth and character, varied roof lines on the east and west elevations, and decorative parapets that include glass clerestory windows on the north and south elevations. This design and diverse paint scheme will make the building more visually appealing when viewed from public locations and nearby residential uses.

As designed, the Project will positively contribute to the character of this area of the MC-1 zoning district along I-84 and the Town's planned U.S Route 6 commercial/industrial corridor. Furthermore, the Project will enhance the value of nearby properties in the MC-1 zoning district, consistent with the Town's goals for future commercial/industrial growth in the U.S. Route 6 corridor. Accordingly, the Project will be consistent with the Town's expectations for the community character of the MC-1 zoning district.

For these reasons, the Project will not have a significant adverse impact on the community character of the Town of Wawayanda.

### **IMPACTS TO COMMUNITY SERVICES**

**Finding: The Project will not result in significant adverse Impacts to Community Services.**

Overall, the Project will have either no or minimal adverse impacts on local services, including the school district. Moreover, as noted above, traffic from the Project will not involve any wear and tear on local Town roads, as Hoops Road would be converted into a private drive and access to McBride Road would be restricted to a gated emergency entrance.

By contrast, the Project is anticipated to provide a substantial, recurring benefit to the Town, Minisink Valley Central School District, Slate Hill Fire District, Highway Fund and Orange County through real property tax revenues. The projected assessed value of the Parcel #1 alone would increase from the current value of \$204,400 to an equalized value of \$68,425,000.<sup>53</sup> Combined, projected annual tax revenue for the Town, County, school district and other taxing jurisdictions from Parcel #1 – based on 2021 tax rates – would grow correspondingly from \$9,313 to \$3,117,689.

For the first 10 years after Project construction, Scannell intends to apply for the partial tax exemption allowed by New York State Real Property Tax Law (§ 485-b) for property developed for commercial or industrial purposes. This partial exemption starts at 50% and is reduced by 5% each year until it expires altogether after 10 years. Because of the significant start-up investment required for developments like the Project, this program provides an important incentive to facilitate commercial and industrial development in New York. The partial exemption would not apply to the Slate Hill Fire District, which would always receive 100% of its share of the projected tax revenues.

Even with this partial exemption, a Project of this size will generate positive tax revenue in future years. By comparison, as demonstrated by the Community Impact Statement, the cost of municipal services to the community would be minimal, resulting in a substantial surplus to all of the taxing jurisdictions and particularly to the Minisink Valley Central School District, which is not expected to incur any costs as a result of the Project.

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<sup>53</sup> Scannell's additional acquisition of Parcel #3 comprising SBL ## 11-1-34.31, 11-1-34.32, 11-1-34.33 and a small portion of 11-1-41 will add to assessed value associated with the Project and the recurring property tax revenues that will benefit local taxing jurisdictions.

While the full scope of job-creation benefits during the Project's operation will be driven by the specific operations of any potential future tenant, it is anticipated that the Project would result in the creation of hundreds of warehouse and office jobs. This would represent a significant increase in the Town's private sector employment opportunities.

Direct jobs will also cause additional, indirect jobs to be created in the local area through business-to-business purchases (e.g., a tenant business buying inputs from a local supplier) and employees of tenant businesses spending a portion of their wages locally creating indirect and induced job creation, sales tax revenues and earnings.

Overall, the Project will result in a multi-million-dollar investment in the Town of Wawayanda, create substantial new job opportunities in the community and provide other, significant fiscal benefits. The Project will contribute significantly to the growth of the local property tax base to support schools and community infrastructure, with little or no impact to local water/sewer infrastructure and other municipal services.

Based on the foregoing, the Project will have a significant positive fiscal impact on the Town of Wawayanda and broader local community and will not create any significant adverse impacts on community services.

**For further information:**

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**A copy of this Notice of Negative Declaration will be filed with:**

Town of Wawayanda Town Board;  
Orange County Planning Department;  
Orange County Health Department;  
Orange County Department of Public Works;  
Orange County Industrial Development Agency;  
City of Middletown  
NYS Department of Environmental Conservation, Region 3;  
NYS Office of Parks, Recreation and Historic Preservation;  
NYS Department of Transportation, Region 8;  
United States Army Corps of Engineers; and  
United States Fish and Wildlife Service.