

**Common Council Member Fox offered the following:**

**Resolution Number 86.121.08R**

**RESOLUTION OF THE COMMON COUNCIL REGARDING ADOPTION OF A SUPPLEMENTAL FINDINGS STATEMENT IN ACCORDANCE WITH ARTICLE 8 OF THE ENVIRONMENTAL CONSERVATION LAW (SEQRA) AND THE REGULATIONS PROMULGATED THEREUNDER AND THE ZONING ORDINANCE IN CONNECTION WITH THARALDSON DEVELOPMENT COMPANY'S APPLICATION FOR REZONING OF 124-128R WASHINGTON AVENUE EXTENSION**

**WHEREAS**, on or about September 10, 2003, Tharaldson Development Company ("Tharaldson"), filed an application for rezoning with the City of Albany Common Council ("Common Council") together with a legal description of the area to be rezoned, Long Environmental Assessment Form, site plan and other relevant information to allow the construction and operation of a 124-unit Residence Inn facility, and associated improvements (the "Project") on ±3.6 acres of land on the south of Washington Avenue Extension, north of the Town of Guilderland municipal boundary line, in the City of Albany, New York (the "Site"); and

**WHEREAS**, the Common Council previously determined to act as lead agency for the Project pursuant to Article 8 of the Environmental Conservation Law and 6 NYCRR Part 617 ("SEQRA"), and coordinated review of the Project as SEQRA lead agency with the other involved agencies for this action determined to constitute a Type I action; and

**WHEREAS**, on February 19, 2004, as SEQRA lead agency, the Common Council determined that the Project may have a significant effect on the environment, requiring the preparation of a Draft Environmental Impact Statement ("DEIS") and, thereafter, published notice of its positive declaration in the Environmental News Bulletin; and

**WHEREAS**, the Common Council determined to conduct scoping for the Project and consistent with the requirements of SEQRA, conducted a public hearing on August 26, 2004 to consider the Draft Scoping Checklist; and

**WHEREAS**, written comments were received and considered by the Common Council on the Draft Scoping Checklist which was thereafter modified to reflect substantive comments received thereon, and a Final Scoping Checklist was prepared in accordance with the requirements of 6 NYCRR 617.8 and accepted as complete on September 20, 2004; and

**WHEREAS**, the Draft Environmental Impact Statement ("DEIS") was prepared pursuant to the Final Scoping Checklist and the requirements of 6 NYCRR § 617.9(b); and

**WHEREAS**, the Common Council based upon its own independent examination and consideration of the DEIS and consultation with its staff, found and determined that the DEIS was satisfactory with respect to its scope, content and adequacy for purposes of commencing public review and consistent with the content of the Final Scope and published it as required by SEQRA; and

**WHEREAS**, on April 18, 2005, the Common Council conducted a combined public hearing to consider the DEIS and rezoning application/petition as required by SEQRA and Albany City Code (Zoning Ordinance) at which all members of the public desiring to be heard were given an opportunity to submit oral and written comments on the Project, including but not limited to, the DEIS and rezoning; and

**WHEREAS**, on April 21, 2005, the Albany County Planning Board conducted a meeting and issued a recommendation on the Project which stated “Modify local approval to include: 1) Review by the Albany Pine Bush Commission (the “Commission”); and 2) Notification to the Town of Guilderland”; and

**WHEREAS**, the Commission participated in the review of the Project, offering written comments and providing oral comments at public hearings and meetings; and

**WHEREAS**, the Town of Guilderland has been notified of the Project; and

**WHEREAS**, at the conclusion of the public comment period on the DEIS on May 19, 2005, the Common Council caused to be prepared a Final Environmental Impact Statement (the “FEIS”) with respect to the Project, which includes, but is not limited to, responses to public comments received on the DEIS for the Project; and

**WHEREAS**, the Planning, Economic Development and Land Use Committee of the Common Council (“Zoning Committee”) conducted a two public meetings to allow public comment, consider the FEIS and make a recommendation regarding acceptance of the FEIS to the Common Council; and

**WHEREAS**, the Zoning Committee recommended acceptance of the FEIS as complete, adequate and accurate as to form, content and substance; and

**WHEREAS**, on November 21, 2005, the Common Council, based upon its own independent examination and consideration of the FEIS and consultation with its engineering and legal consultants and recommendation by the Zoning Committee, determined that the FEIS to be satisfactory with respect to its scope, content and adequacy; and

**WHEREAS**, on December 15, 2005, the Zoning Committee conducted a public meeting and invited additional public comments on the draft SEQRA Findings Statement and, after due deliberation, the Zoning Committee passed a resolution to recommend adoption of the SEQRA Findings Statement and to rezone the Site from R-1B Single Family Medium Density Residential District to C-2 Highway Commercial to the Common Council; and

**WHEREAS**, after waiting the required ten day consideration period of the FEIS, pursuant to 6 NYCRR §617(11)(a), on December 19, 2005, the Common Council: a) adopted a comprehensive SEQRA Findings Statement and b) thereafter rezoned the Site from R-1B to C-2; and

**WHEREAS**, a lawsuit was commenced challenging the determinations of the Common Council, and in a Decision & Order dated February 7, 2007 (the “Decision”), the Court dismissed all of the claims raised against the Common Council with the exception of whether an appropriate amount of attention was given to the potential impact of the Project on “other rare, threatened and endangered species found in the [Pine Bush] Preserve”; and

**WHEREAS**, the Court specifically referenced a September 2004 letter from NYSDEC concerning the draft Scope for the Project, wherein the NYSDEC commented concerning evaluation of other “rare” species known as the “Hognosed Snake”, “Worm Snake”, “Eastern Spadefoot Toad” and “Frosted Elfin” and an April 25, 2005 comment letter concerning the DEIS, where the Commission noted that the Albany Pine Bush is “home to 19 rare plant and animal species” including the Karner blue butterfly, Frosted Elfin and Adder’s Mouth Orchid; and

**WHEREAS**, the Decision indicated that the EIS’s contained considerable analyses pertaining to the Karner blue butterfly however states:

Missing from the Futyma reports are any discussion of animals, other than butterflies, which may be present on the site. And, though considerable attention was given to the impact the project may have on the off-site Karner blue butterfly population, and to a lesser extent the Frosted Elfin butterfly, there is no evaluation, despite the contrary statement in the FEIS, of the impact the project may have on any of the ‘rare’ plant and animal species known to be present in the Albany Pine Bush particularly those specifically identified by NYSDEC and the APBPC. Consequently, with respect to this issue the environmental impact statements are deficient; and

**WHEREAS**, the Court found:

Based upon the absence in the environmental impact statements of a hard look at the potential impacts of the action on the range of rare plant and animals found in the Albany Pine Bush, the determination of the City of Albany Common Council pursuant to SEQRA is vacated, the ordinance rezoning the site of the proposed project is annulled and the matter is remitted to the Common Council; and

**WHEREAS**, on August 20, 2007, the Common Council adopted a resolution determining to resume the environmental review of the Project, consistent with the Decision, and to continue to act as SEQRA lead agency for this Project; and

**WHEREAS**, the Common Council contacted the other involved agencies and expressed its intention to undertake further consideration of the Project consistent with SEQRA and the Decision and the other involved agencies concurred; and

**WHEREAS**, in order to address the issues cited in the Decision, the Common Council, without conceding or prejudicing and reserving all of its rights on any appeal, directed that a Supplemental Draft Environmental Impact Statement (“Supplemental DEIS”) be prepared; and

**WHEREAS**, in August, 2007, the Supplemental DEIS was filed with the City and provided to the members of the Zoning Committee and the City of Albany Department of Development and Planning for detailed review as to scope, adequacy and content; and

**WHEREAS**, the Supplemental DEIS contained two new reports from B. Laing Associates and the LA Group; and

**WHEREAS**, the Supplemental DEIS evaluated all of the rare plant and animal species known to be within the Albany Pine Bush and identified as such in the APBPC 2002 Management Plan and those identified by the New York State National Heritage Program (“NHP”) as possibly being in the vicinity of the Site and as noted by NYSDEC consistent with the Decision; and

**WHEREAS**, while the Decision identified only certain species, the B. Laing report entitled “Endangered, Threatened and Special Concern Zoological Species of New York State for Residence Inn Project City of Albany, Albany County, New York August 2007” analyzed not only those species identified, but also, to ensure the most complete evaluation, many other species potentially in the Albany Pine Bush as follows:

Reptiles

Eastern Hognosed snake  
Worm snake  
Spotted turtle

Amphibians

Eastern Spadefoot toad  
Jefferson salamander

Insects

Frosted elfin  
Mottled Duskywing skipper  
Henry’s elfin  
Edwards’s hairstreak  
Bird Dropping moth  
Noctuid moths  
Inland Barrens buckmoth

Birds

Sharp-Skinned hawk  
Cooper's hawk  
Golden winged warbler  
Yellow-Breasted chat  
Whip-poor-will

and;

**WHEREAS**, the Supplemental DEIS also contains a report from the LA Group entitled "Supplemental Evaluation of Residence Inn Site of Tharaldson Development Company, Washington Avenue Extension, City of Albany, NY for Rare, Threatened and Endangered Species" which evaluated such plant species in the Albany Pine Bush, as follows:

Plants

Bayard's Adder's mouth orchid  
Yellow Giant hyssop  
Side Oats grama  
Schweintz's flatsedge  
Virginia False groomwell  
Slender Marsh bluegrass  
Whip nutrush

and;

**WHEREAS**, the detailed B. Laing Report and LA Group Reports concluded that there would be no significant adverse environmental impacts on any of the rare, threatened or endangered species in the Albany Pine Bush because, among other things, after thoroughly analyzing the Site and its on and off-site environs, none of the species, or their habitat, were found to exist on or in the vicinity of the Site; and

**WHEREAS**, at a meeting of the Zoning Committee on October 9, 2007, the Zoning Committee indicated that the Supplemental DEIS was complete, except for the final determination of future funding to be provided by Tharaldson; and

**WHEREAS**, the Supplemental DEIS was supplemented with an agreement executed by Tharaldson and The Nature Conservancy that the United States Fish and Wildlife Service found to be acceptable which addressed the future funding issue; and

**WHEREAS**, on June 3, 2008, the Zoning Committee conducted a public meeting to allow public comment, consider the Supplemental DEIS and make a recommendation regarding acceptance of the Supplemental DEIS to the Common Council as complete and adequate and accurate as to form, content, substance and readiness for public comment; and

**WHEREAS**, the Supplemental DEIS also contains a letter dated June 4, 2008 from USFWS determining that a “taking” permit pursuant to the federal Environmental Endangered Species Act will not be required to develop the Project; and

**WHEREAS**, all members of the Common Council received and considered the Supplemental DEIS; and

**WHEREAS**, on June 16, 2008, the Common Council after considering the Supplemental DEIS and consulting with its staff found and determined that the Supplemental DEIS was satisfactory with respect to its scope, content and adequacy for purposes of commencing public review and scheduled a public hearing; and

**WHEREAS**, on August 4, 2008, a duly noticed combined public hearing was conducted to consider the Supplemental DEIS and rezoning application/petition as required by SEQRA and Albany City Code (Zoning Ordinance) at which all members of the public desiring to be heard were given an opportunity to submit oral and written comments on the Project, including but not limited to, the Supplemental DEIS and rezoning; and

**WHEREAS**, on August 4, 2008, the NYSDEC also issued a letter determining pursuant to the State Endangered Species Act that a “taking” permit will not be required to develop the Project; and

**WHEREAS**, in accordance with SEQRA, the public comment period on the Supplemental DEIS closed on August 15, 2008; and

**WHEREAS**, public and agency comments on the SDEIS were carefully reviewed and thoroughly considered and responses to all substantive comments received were incorporated into a Final Supplemental Environmental Impact Statement (“SFEIS”); and

**WHEREAS**, in a letter dated August 13, 2008, NYSDEC indicated that an “Eastern Hognosed Snake” was found twice at unspecified times and dates within the Butterfly Management Area south of the Site (an area that has been subjected to intensive management by NYSDEC and the Commission for numerous years) and that a “worm snake” had been found on the Site under a piece of human debris (“wooden pallets”); and

**WHEREAS**, NYSDEC indicated that this was the first time the worm snake has been found in Albany County since 1986 or 1987 when a worm snake was last found within the Management Area; and

**WHEREAS**, based on these findings, NYSDEC concluded that the Site had suitable habitat for such species; and

**WHEREAS**, regarding the “Eastern Spadefoot toad, NYSDEC noted that suitable habitat “may” exist on the Site based on “depressional areas” on the Site and two ponded areas were within 500 feet of the Site; and

**WHEREAS**, the NYSDEC confirmed that there are no likely impacts to any of the avian species as a result of the Project and no “taking” permit would be required with regard to the Karner blue butterfly and frosted elfin; and

**WHEREAS**, in response to the NYSDEC letter, B. Laing re-examined the Site and the areas in the vicinity, including the right-of-way and northern areas of the butterfly hill and areas west of the Site and supplemented their initial report with a report dated October 7, 2008; and

**WHEREAS**, regarding the Eastern Hognosed snake, B. Laing re-confirmed that it conducted numerous first hand evaluations of the Site and the habitat at the Site; and

**WHEREAS**, B. Laing concluded that “the project site’s habitat differs significantly from that favored by the species”; its potential prey species (i.e. frogs) only occurred in very limited numbers and were only located under man-made debris, which the snake tends to avoid; significant areas of the Site are open and without “tufted” grasses exposing them to avian predators; and

**WHEREAS**, B. Laing determined that the findings made in their original report remain valid; and

**WHEREAS**, regarding the worm snake, B. Laing initially confirmed that the sighting of the species by NYSDEC on August 4, 2008, under wooden pallets, was **not** located on the Site as alleged because the pallets are **not** located on the Site; and

**WHEREAS**, given the proximity of NYSDEC’s finding to the Site, and sensitivity to the fragile Pine Bush ecology, however B. Laing continued its evaluation of this species, and on September 9, 2008 B. Laing located a worm snake south of and off the Site; and

**WHEREAS**, on September 4, 2008 NYSDEC also reported a finding of a worm snake, determined by B. Laing, to be at a location beneath a pile of garbage at the northern end of the gravel area; and

**WHEREAS**, B. Laing confirmed that the gravel areas of the Site and man-made debris, which obviously must be removed from the Site regardless of the Project, are not considered favorable habitat for this species; and

**WHEREAS**, B. Laing examined precipitation levels and, based on studies of the worm snake, determined soil moisture appears to strongly influence the worm snake’s presence/absence and movements and that a particularly wet summer may have contributed to the discovery of a worm snake in the area for the first time in over 20 years in August and September; and

**WHEREAS**, B. Laing determined that the areas where the worm snake were found were limited to man-made debris and no suitable habitat was located on or in the vicinity of the Site; and

**WHEREAS**, nevertheless, while this species is not a threatened or endangered species entitled to special protection status under either the federal or state Endangered Species Acts, B. Laing suggested the following conservation measures: 1) leaving an 0.07 acre area along the western boundary undeveloped, 2) prior to and during site construction employ a biologist to survey the Site and relocate any species found to the preserved areas and 3) bury the proposed fencing to a depth that prevents worm snakes from possibly burrowing onto the site and to maintain such fencing for a number of years; and

**WHEREAS**, additional measures were suggested to possibly “create” potential habitat for the worm snake by the placement of “cover” (i.e. cut logs or flat stones) for such species within the 0.25 acre area; and

**WHEREAS**, these identified measures will ensure that no individual of the species is harmed during construction and the potential for re-occurring harm to the species during project operation is minimized while possible habitat at an appropriate location may be created; and

**WHEREAS**, it is recognized that the future management of the 0.25 acre area will be the responsibility of NYSDEC, so any placement of logs or stones will be at their direction and could reasonably occur during the selective clearing process of white pine trees; and

**WHEREAS**, regarding the Eastern Spadefoot toad, B. Laing confirmed the Site provides little to no potential habitat for this species because they require “fish-free, isolated, ephemeral ponds for breeding” and the water bodies in the area do not possess these characteristics; and

**WHEREAS**, the draft SFEIS, with supplemental B. Laing report was made available to the public for review and comment at the Office of the City Clerk on October 15, 2008; and

**WHEREAS**, on November 6, 2008, the Zoning Committee conducted a public meeting and invited additional public comments on the draft SFEIS wherein a representative of the Project Sponsor summarized the contents of the SFEIS and opponents of the Project appeared to voice objections; and

**WHEREAS**, after due deliberation, the Zoning Committee passed a resolution to recommend acceptance of the SFEIS as complete, adequate and accurate as to form, content and substance to the Common Council; and

**WHEREAS**, the draft SFEIS was available for public review from October 15<sup>th</sup> through November 17<sup>th</sup>; and

**WHEREAS**, on November 17, 2008 the Common Council, after considering a request that day from NYSDEC and the Commission for additional time to comment on the draft SFEIS and, based upon its own independent examination and consideration of the Supplemental FEIS, and the entire record, and consultation with its planning staff, and legal counsel found and determined that the Supplemental FEIS was satisfactory with respect to its scope, content and adequacy; and

**WHEREAS**, the Common Council confirms that certain information and analysis that were examined in the Supplemental DEIS were amplified and further discussed and evaluated in reports and at public meetings before the Common Council and the Zoning Committee. This material was examined and determined to be consistent with the information regarding such issues contained in the Supplemental DEIS and did not alter the conclusions therein. The information amplified and augmented information previously considered by the Common Council and contained in the EIS's and did not identify any newly discovered information about potential significant adverse environmental affects which were not previously adequately addressed; and

**WHEREAS**, as a result of its independent examination and careful review, the Common Council determined that, on balance, and after due consideration of all relevant documentation and comments, it had more than adequate information to evaluate all of the relevant benefits and potential significant adverse environmental impacts of the Project and to adopt the SFEIS; and

**WHEREAS**, pursuant to 6 NYCRR 617.11(a), the Common Council circulated the SFEIS, as adopted on November 17, 2008, to all interested and involved agencies, including NYSDEC, and awaited a reasonable time period for the consideration of the SFEIS prior to adoption of this Findings Statement; and

**WHEREAS**, the Zoning Committee conducted another public meeting on December , 2008, to consider any additional comments on the SFEIS, and invited additional public comments on the draft SEQRA Findings Statement and rezoning; and

**WHEREAS**, after due deliberation, the Zoning Committee passed a resolution to recommend adoption of the SEQRA Findings Statement and to rezone the Site from R-1B Single Family Medium Density Residential District to C-2 Highway Commercial to the Common Council; and

**WHEREAS**, the Common Council has considered the contents of the DEIS, the FEIS, the SEQRA Findings Statement, the SDEIS and SFEIS and all other documents and comments and submissions made during and after the public hearings, meetings and comment periods.

**NOW, THEREFORE, BE IT RESOLVED**, that the Common Council finds and determines that the December 19, 2005 SEQRA Findings Statement is supplemented as follows:

**I. BACKGROUND**

There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled "Background".

This section elaborated on the clearing of a portion of the Site that occurred approximately ten (10) years ago and placing of gravel material on the property and relation to a SPDES permit for Crossgates issued by NYSDEC. This was, one or more of the claims raised in the prior lawsuit and dismissed by the Court in the Decision. The DEIS and FEIS document this issue and provided a delineation of the limits of such gravel area in relation to the Site.

NYSDEC has been actively involved in the review of the Project and provided numerous comments to the Common Council to assist the Common Council in its review of the Project during the original proceedings and the supplemental proceedings. No new information has been provided that would require any changes to the prior environmental analysis.

## II. POTENTIAL PROJECT IMPACTS

### 1. LAND USE AND ZONING.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Land Use and Zoning”.

B. Neither the Site, nor land uses in its surroundings have changed. As stated in the Final EIS:

Here the Project Site is situated on a heavily traveled New York State highway located between two regional shopping centers – Crossgates Mall and Crossgates Commons. Immediately to the west are the offices of Time Warner Cable. These commercial uses which surround the Site make it inconceivable that the Site should remain residentially zoned... Consequently, it is plain that rezoning allows the use of the Site to be consistent with the highly commercial nature of the area.

C. Development of the Project remains consistent with Albany's long-range planning strategy. *Albany Ahead: An Historic City's Bright Future* (February, 1985) and *Partnership to Progress: Realizing Albany's Future* (January 1989), both prepared by the Mayor's Strategic Planning Committee, increase employment and tax base in the City. The City recently took the first step in developing a Comprehensive Plan by issuing an RFQ for a planning firm to assist in its development. Therefore, it appears if a Comprehensive Plan is eventually adopted, it will not occur for an extended period of time. Commencement of a Comprehensive Plan process does not prevent the consideration of the Common Council of a zoning change, especially a zone change that it previously had approved but annulled on SEQRA grounds.

D. It was also suggested that the Project might constitute or promote “sprawl” and that bicycle facilities should be provided. The term “sprawl” does not apply to this Site. The Site lies between a highly developed regional shopping center (Crossgates) and an active office building site (Time-Warner). It is located on a major east-west highway with existing adequate utility services. Other uses in the area include another regional shopping center (Crossgates Commons), a truck/bus repair center, a number of nursing homes and assisted living facilities. Locating needed facilities on a 3.6 acre Site within a fully developed area of the City is not an example of “sprawl”. Within the Capital District, which extends 35 miles north and 25 miles to the east and includes many thousand of acres of undeveloped, rural and agricultural property, there are many opportunities for “sprawl” to occur. Developing this Site, on Washington Avenue

Extension does not promote “sprawl”.

E. It was also suggested that the Project may inhibit future bicycle use. The Project will not significantly adversely impact any future plans of the City to create or implement a bicycle master plan. If such planning results in the identification of bicycle improvements, they may be implemented. Such improvements may include designated bicycle lanes, shared bicycle lanes or additional signage. As noted in the SFEIS, a bicycle rack facility is proposed to be included as a site plan component for the Project

F. Rezoning for the Project remains consistent with and presents no conflict with the zoning and land use plans for this area or in the City of Albany and will serve the general welfare of the community at large.

## 2. ALBANY PINE BUSH PRESERVE.

A. Discussion from the original December 19, 2005 SEQRA Findings Statement is incorporated by reference and supplemented as follows. Supplementary analysis was performed to address, including but not limited to, the holding of the New York State Supreme Court and Appellate Division decisions and recent finding of a species of special concern on or in the vicinity of the Site.

B. The Supplemental DEIS contained a report by B. Laing Associates (“B. Laing Report”) that examined a wide range of species including invertebrates, amphibians and reptiles and birds in the Albany Pine Bush. None of these species are a federal or state listed species. The Supplemental DEIS also contained a report by the LA Group (“LA Report”) that examined a wide range of plant species. The list of plant and animal species evaluated not only includes the species originally identified by NYSDEC, but also includes all species identified in the 2002 Management Plan and species identified by the Natural Heritage Program.

C. The Common Council finds that the evaluation of these species in the B. Laing Report and LA Report to be reasonable, comprehensive and responsive to the court decisions.

D. B. Laing examined the Site and areas in the vicinity of the Site for invertebrates, amphibians and reptiles and birds that might be impacted by the development on several different dates in May, June and July, 2007. B. Laing determined that none of the species were located on or in the vicinity of the Site, there was no suitable habitat on the Site for such species and there would be no potentially significant adverse environmental impacts to any of the species as a result of the Project.

E. The LA Report has examined and documented, among other things, the plant life at the Site for many years. In July, 2007, the LA Group returned to the site and again examined plant species and found no evidence of any of the species identified in the 2002 Management Plan or Natural Heritage Program on or in the vicinity of the Site, nor was any of the other plants found to be a member of a rare, threatened, or endangered

species and that the Project would have no potential significant adverse environmental impact on any rare, threatened, or endangered plant species on or in the vicinity of the Site.

F. On June 4, 2008 and August 4, 2008, the USFWS and NYSDEC issued respective letters determining that the proposed Project did not implicate the taking provisions of the federal and/or state Endangered Species Acts.

G. During the public comment period on the SDEIS, after the public hearing, NYSDEC sent a letter indicating one of its employees had located a “worm snake” on the Site under discarded wooden pallets and concluded, without further elaboration, that suitable habitat exists on or in the vicinity of the Site. NYSDEC also indicated that twice an eastern hognosed snake had been located south of the Site in the Butterfly Management area at unspecified dates and times and concluded, without further elaboration, that suitable habitat exists on or in the vicinity of the Site. NYSDEC also indicated that suitable habitat for the eastern spadefoot toad may exist on the Site.

H. In response to NYSDEC’s findings, B. Laing conducted another first-hand extensive search of the Site for such species. The results of B. Laing’s efforts are documented in the SFEIS in a supplemental report and summarized as follows:

I. Regarding the eastern spadefoot toad, B. Laing explained:

Eastern spadefoot toads are explosive breeders (i.e., they breed in one or two nights triggered by very wet rain events). They emerge from “hibernating” locations several feet below ground following significant rain events. However, they “require fish-free, isolated, ephemeral ponds for breeding...” (Greenberg, C.H., Tanner, G.W., 2004). The water bodies in the area near the site do not meet these criteria. First, the Atria pond is permanent and has been stocked with Koi and/or goldfish (personnel communication). Second, the Time Warner Cable storm water basin appears to hold water year-round; however, this is unconfirmed. On September 22, 2008, gold fish were observed in this water body. It is also expected that the somewhat lower water quality of these water bodies (high turbidity, high phosphorus and low D.O.) as they receive storm water runoff from adjacent parking and roadway areas would be a further impediment to breeding, even if these ponds were ephemeral and/or did not contain fish. As the eastern spadefoot toad is not as hearty as the American toad, it would not be expected to be able to utilize these basins for breeding purposes. Therefore, consistent with our original report, the site provides little to no potential habitat for the eastern spadefoot toad.

J. The Site also possesses unsuitable habitat for such species as it possesses primarily a gravel covering. Therefore, the Common Council determines, since the

eastern spadefoot toad has not been located on or in the vicinity of the Site, and the waterbodies located to the west do not possess proper breeding conditions, the Site and vicinity do not appear to constitute suitable habitat for this species.

K. Regarding the eastern hognosed snake, B. Laing explained:

1. It conducted first-hand evaluations the Site and its surrounds and confirmed, contrary to the statement by NYSDEC that the Site possessed suitable habitat, according to B. Laing, the habitat at project Site differs significantly from that favored by this species. There is little to no “grassy habitats” on the Site, which may explain why NYSDEC located the species in such habitat south of the Site in the Management area which contains such attributes. Moreover, it has been documented many times that the southern and western portions of the proposed Residence Inn site have a thickly wooded edge with a closed canopy. Thus, the southern and western parts of the site do not contain an open canopy with grasses beneath, as occurs on the right of way to the south. The northern, eastern and southeastern portions of the Site is an open cut/gravel fill with limited grass species and no “tufted” grasses. The northern, eastern and southeastern portions of the Site are also exposed to avian predators (hawks, etc.) and the only “cover” for herptiles is man-made debris, which they avoid.

2. NYSDEC indicated that certain common toad species (potential prey) were located on the Site. Regarding such potential prey, B. Laing Associates, Inc. personnel found three individual toads beneath human debris in a graveled area. B. Laing stated:

No American toads were found in other on-site locations and none occurred other than beneath man-made debris. Thus, while some individuals of this prey species have been located on site they are not abundant and represent a limited food source. Further, the prey occurred beneath human debris (a.k.a., garbage) and the eastern hognose snake avoids such locations.

3. B. Laing indicated that the prey species identified were considered to be a “hearty species” and probably came from two waterbodies located to the west of the Site. Although these waterbodies (one is a decorative pond) contain fish, they are considered adequate habitat for this prey species, but not preferred. B. Laing explained that, due to the hazards crossing the intervening Time Warner Cable facilities to get to the Site, the more likely location for such prey, assuming they are from the offsite stormwater/decorative ponds, is from the south of the Site. Such prey would be required to traverse south from the stormwater/decorative ponds, then east (to avoid the Time Warner facilities) to possibly reach the Site. This may explain why NYSDEC indicated it found the eastern hognosed snake on two separate unspecified dates and times, south of the Site but within the management area. It is this location where the toads have the

greatest potential to become prey for such snakes. The presence of the toads in the right-of way south of the Site, in turn creates the limited possibility that the eastern hognose snake may occur on site.

4. Based on B. Laing's detailed analysis of the site and its surroundings, B. Laing, thus concluded, similar to the conclusion in the original report, that the Site does not possess preferred habitat for eastern hognosed snake, especially since none were found after extensive examination and suitable habitat is lacking and development of the Project would not adversely impact such species.

5. Based on B. Laing's detailed analysis, the Common Council determines that the Site has a very limited ability to provide habitat or prey for the eastern hognosed snake. Therefore, while the Site is in the vicinity where NYSDEC claims to have located such species, it is not likely that the Project will result in any significant adverse impact on such species.

6. Nevertheless, the Common Council recognizes the uniqueness of the Albany Pine Bush and the ecosystem and determines to balance the benefits that will be achieved with this Project (job creation and tax revenues) and the potential impacts to this species and the Pine Bush ecosystem by implementing certain conservation measures for this species to mitigate any possible adverse impacts to the maximum extent practicable as set forth below in the mitigation section.

L. Regarding the worm snake, B. Laing explained:

1. It examined the location of the wooden pallets where NYSDEC stated it found such species. Based on mapping prepared by Hershberg and Hershberg, NYSDEC's statement that such species were located "on the Site" does not appear to be accurate. The location of the wooden pallets is located south of the Site. See, SFEIS Appendix IV.

2. Similar to the NYSDEC finding, in September 2008, B. Laing personnel also located a worm snake in the vicinity of the Site and on-site. The B. Laing Report elaborates on the worm snake's ecology as a fossorial (soil dwelling) species. Thus, soil moisture appears to strongly influence the worm snake's presence/absence and movements.

3. The worm snake mainly prefers moist but unsaturated and loose (e.g., sandy) soils. Thus, it is explained that under normal levels of precipitation, its movements are substantially limited to areas which have or are very near (e.g., 53 meters) wetlands. The Site is located more than three times away such a wetland area in a direct line. No wetlands occur on site or in the vicinity of the Site. The water bodies (and some adjacent, mesic-moist woodlands) that do occur are located hundreds of feet distant from the Site are separated from it by man-made structures.

4. The particularly “wet” summer conditions may have contributed to local soils being more moist than normal. B. Laing stated: “Therefore, it is possible that the individuals occurring near the site and the individual occurring on the site are part of a broader movement from other normally wetter locations in the Albany pine bush area. This is especially likely in the case where the species was found beneath wooden pallets and human debris in the gravel area”.

5. Graveled areas, which comprise approximately one-half the site, are not considered favorable habitat as they are much more “dense,” hardened and xeric substrates than fossorial species generally appears to prefer. Moreover, this species was found under human debris that will be removed regardless of the Project eliminating this “habitat”.

6. In an effort to provide for the further conservation of this species, the following measures were suggested to be incorporated into the Project:

A. In addition to the proposed 0.25 acre conservation area in the southwest portion of the Site available for future management, a 0.07 acre area on the Site’s northwestern corner remain in its current wooded state resulting in a total of 0.32 acres of somewhat more mesic woodlands (approximately 30 percent of the mesic woodlands to be impacted on site) will remain undeveloped.

B. Prior to and during site clearing where a qualified professional will again survey the Site for any herptofauna and relocate any species found in the area to be cleared to woodlands in the 0.32 acres.

C. The proposed perimeter fence will be extended eastward on the northwestern corner of the Site. The fence and/or metal flashing attached to the fence will be extended approximately 18 inches below ground. The fence itself will be a solid wood or synthetic board structure. The surface and subterranean portion of the fence will then act as a barrier to these species during construction and operation of the Project.

6. It was also suggested that potential habitat be created through the placement of logs and/or flat stones to provide “cover” for such species within the 0.25 acre area as an additional conservation measure.

7. The Common Council recognizes the uniqueness of the Albany Pine Bush and the ecosystem and determines to balance the benefits (job creation and tax revenues) that will be achieved with this Project and the potential impacts to this species and the Pine Bush ecosystem by implementing these conservation measures to mitigate any possible adverse impacts to the maximum extent practicable and as fully set forth below in the mitigation section (V).

8. Therefore, according to the B. Laing Report, as a result of these measures, the potential for herptile species to “migrate” or wander onto the developed portions of the Site will be virtually eliminated, while an area better suited for the species will be created and maintained. These measures minimize to the maximum extent practical, potential adverse impacts on such species and the Pine Bush ecosystem.

M. In accordance with SEQRA, the Common Council provided the SFEIS, including the B. Laing supplemental report, to NYSDEC for its consideration. It is noted that the Butterfly Management Area, where these species were located, is an area that NYSDEC has actively managed for numerous years. NYSDEC has not located the worm snake at this location for over 20 years, despite its active management of the area.

N. Certain information and analysis regarding issues examined in the SDEIS were amplified and further discussed in the supplemental B. Laing Report as a result of comments received from NYSDEC and the public. Additional measures for the conservation of species have resulted.

O. Comments regarding minimum acreage for the Pine Bush Preserve, including size, shape and configuration.

1. It was suggested by a commentor that the issue of the minimum acreage for the Preserve should be addressed again and that the goal should not be 2,000 (as noted in several court decisions), rather approximately 4,000 acres. Although this statement appears to contradict the statement made by commentor’s lawyer that the “Preserve is still short of *its goal of 2,000* fire manageable acres”, this is an issue raised in the original proceedings and the subject of one the claims in the petition previously decided in the Decision. The minimum preserve issue was exhaustively analyzed and a “hard look” taken by the Common Council. In fact, commentor stated: “The applicant in the DEIS, goes to **great lengths** to show that a 2,000 acre fire-manageable Preserve has been attained”.

2. In any event, it appears that commentor obtained this number from the 2002 Management Plan which was part of the extensive analysis at every step in EIS process. The 2002 Management Plan identifies 2,735 acres of “existing” Preserve (now it is over 3,100 acres), plus 1,875 acres of land recommended “full” protection within all three municipalities (Albany, Colonie and Guilderland). Thus, if all “full” protection parcels become part of the Preserve, a Preserve of 4,610 acres will be obtained. Only 110 acres of full protection land are identified to be within the City of Albany. The Site is not one of them. Thus, the Commission’s goal of a viable Preserve of an identified size, shape and configuration may be achieved even if the Site were to be fully developed, which it is not.

3. The 2002 Management Plan contains numerous maps and analysis of the Commission’s vision for the Pine Bush Preserve, including its current size, shape and configuration and desired future size, shape and configuration.

Therefore, as set forth in the 2002 Management Plan, there is a plan in place to achieve such a Preserve and the Site is not identified for such (or any) purpose. The 2002 Management Plan (at page 79) specifically finds that “the Preserve can be completed”. Thus, even in the absence of such parcel for inclusion in the Preserve, it appears that all the land identified in the 2002 Management Plan as “full” protection remain available for inclusion in the Preserve and the vision of the Preserve by the Commission remains intact. There is also over 1,000 acres of “partial” protection lands listed as available for inclusion in the Preserve (15 acres of which are in the City of Albany). The Site is not one of them.

4. Adoption and implementation of the 2002 Management Plan and Implementation Guidelines are plans adopted by the Commission which are intended to further insure that the minimum preserve of a size, shape and configuration will be acquired and/or managed ensure the survival of the ecology.

5. Consequently, the DEIS, FEIS and December 19, 2005 SEQRA Findings Statement, SDEIS and SFEIS contain a comprehensive evaluation of this issue. In the absence of the Site, which is not identified as “full” or “partial” protection, from the Preserve and incorporation of the identified mitigation measures, there will be no significant adverse impact with proposed development of the Site on the probability, likelihood or expectation of acquiring the acreage needed to establish the Preserve. Nevertheless, as mitigation, a portion of the Site will be made available to the NYSDEC for commitment to the Preserve to assist in conservation of rare, threatened or endangered plant and animal species that are located in the Albany Pine Bush.

P. Regarding comments concerning the City of Albany landfill expansion and the alleged findings in the prior SEQRA Findings Statement that the Common Council considered such expansion to be a “significant cumulative impact”, the Common Council made no such finding. Rather, the Common Council considered the landfill expansion and several other development projects cumulatively in accordance with SEQRA. In this regarding, the December 19, 2005 SEQRA Findings Statement found:

...Even assuming such permission [to expand the landfill] was ultimately obtained, it was reported that the City will pledge to acquire comparable additional lands to dedicate to the Preserve. In any event, any expansion of the landfill will undergo its own detailed environmental review process. Even assuming an application is made and eventually approved, it will have no impact on the ability of the Site to provide the ecological benefits contained in the mitigation measures below. The landfill is situated northwest from the Site across Washington Avenue Extension and the New York State Thruway making it remote from the Site. In fact, the 2002 Management Plan draws a distinction between management objectives for butterfly populations and the Preserve located north and south of the NYS Thruway. See 2002

Management Plan, Table 7, P 36. It states the management objectives to be: “Maintain two separate populations with at least 3,000 adult butterflies in each: one north of the NYS Thruway (190) and a second south of the Thruway.”

\* \* \*

None of these projects [including the landfill expansion] when considered with the Project will impact the ability of the Site to continue to provide its environmental benefits and functions, identified in the mitigation measures, since neither the Implementation Guidelines nor 2002 Management Plan classified the Site for acquisition into the Preserve or for any other ecological function. The Draft and Final EIS’s evaluated the cumulative impact of these projects together and concluded that the goal of a linkage corridor, and increased connectivity, as defined in the Implementation Guidelines, 2002 Management Plan and federal Recovery Plan, would be achieved. It is not expected that protection priority for the Site would change as a result of these projects or any combination thereof.

As more fully elaborated in this Findings Statement, the Common Council finds that, after consideration and weighing of the competing viewpoints and conclusions as to what potential adverse environmental impacts will occur, if any, as a result of the Project, and balancing those viewpoints and conclusions against the efforts to minimize and/or avoid such potential impacts through adoption of the mitigation measures set forth herein, and the undisputed social, economic and other benefits resulting from the Project, the Project avoids or minimizes identified potential adverse impacts relating to the Preserve and the Albany Pine Bush to the maximum extent practicable.

Q. The City’s ongoing efforts to expand the landfill were also analyzed in detail in the SDEIS and SFEIS. Originally, the City proposed a northward expansion into the mobile home park and then a western expansion. The current landfill expansion proposes an eastward expansion. Considering the potential cumulative impacts of the Project and current landfill expansion proposal does not reveal any significant adverse environmental impacts or change the prior analysis. According to the landfill expansion Draft Scope, an integral part of the expansion involves habitat restoration to re-establish east-west connectivity through the trailer park and over portions of the closed landfill. According to the October 9, 2008 NYSDEC Environmental Notice Bulletin <http://www.dec.ny.gov/enb/47460.html>, the current landfill expansion plan is described as follows:

### **Project description and location:**

The proposed project involves the expansion of the existing City of Albany landfill, located on Rapp Road, onto City owned lands located east of the existing landfill. The proposed expansion, commonly referred to as the "Eastern Expansion," will allow the City to continue to meet the solid waste disposal needs of City residents and businesses as well as the communities that make up the Albany New York Solid Waste Energy Recovery System (ANSWERS) Solid Waste Management Planning Unit, and the Capital Region as a whole...

The Eastern Expansion of the landfill involves an overfill of approximately 23 acres of the existing landfill and a lateral expansion of approximately 15 acres that includes 2 acres within the existing landfill operations area (disturbed/developed lands) and 13 acres within undeveloped City owned property directly to the northeast. The City proposes to relocate existing landfill infrastructure including offices, the recycling building, and other accessory uses to several privately owned parcels totaling approximately 3.5 acres located directly east of the landfill entrance road...

The expansion would require the direct filling of 5.05 acres of wetlands and an additional 4.06 acres of wetlands would be regraded as part of the overall wetland mitigation and restoration plan. The mitigation plan for the wetland impacts will involve the creation of 22.14 acres of new wetlands in areas that are currently uplands. An additional 27.45 acres of existing wetlands would be enhanced in quality and function.

The proposed expansion involves a modification to the landfill's existing Solid Waste Management permit and a modification/renewal to the facility's Air Title V permit. It will also require a new Freshwater Wetlands permit along with a Section 401 Water Quality Certificate for the proposed disturbance of State and federally regulated wetlands. A SPDES Stormwater permit is also needed for construction related activities.

R. The environmental impact statement review process is ongoing for this application with NYSDEC as the SEQRA Lead Agency. A public hearing is scheduled for December 3, 2008.

S. As noted in the December 19, 2005 SEQRA Findings Statement, the 2002 Management Plan, which evaluated a potential expansion of the landfill, draws a distinction between management objectives for butterfly populations and the Preserve located north and south of the NYS Thruway. See 2002 Management Plan, Table 7, P 36. It states the management objectives to be: "Maintain two separate populations with at least 3,000 adult butterflies in each: one north of the NYS Thruway (I90) and a second south of the Thruway." The landfill is located north and the Site is located south of these thoroughfares.

T. The Site remains not located in the vicinity of the landfill, or the current expansion. The change in location of the landfill expansion (eastward) has no impact on this or the objectives sought to be achieved with the landfill expansion.

U. According to the “Albany Rapp Road Ecosystem Mitigation, Restoration & Enhancement Plan”, the landfill expansion proposes a habitat restoration plan that will ultimately result in “approximately 250 acres of restoration, mitigation and enhancement” and protected. See page 12 of Enhancement Plan. Such restoration will include improved water quality and changing the cover on the landfill surface to desirable native dry prairie and scrub ecosystem as a part of the closure plan and earth moving in the trailer park to remove topsoil that support invasive species. It is the expected that the restoration plan will enhance wetland functions and expand wildlife habitat for many species.

V. As noted above, the Site is located to the south of the Thruway and Washington Avenue Extension and the landfill is north. The objectives identified in the 2002 Management Plan proposed creation of new subpopulations for the “northern population” and “southern population”. (2002 Management Plan at p. 36). The landfill is situated northwest from the Site across Washington Avenue Extension and the New York State Thruway making it remote and functionally distinct from the Site. Moreover, the landfill expansion proposes to restore habitat to improve east-west connectivity. The Project will have no effect on the goal of east-west connectivity being pursued as part of the landfill application. Therefore, given the location and distance from the Site the potential landfill expansion, intervening major highways discouraging and/or preventing connectivity of Karner blue butterfly, the Karner blue butterflies weak flying capabilities and the management objectives set forth by the APBPC in the 2002 Management Plan for western migration of the butterflies (to remain south of the Thruway), there is no identified adverse cumulative impacts associated with the development of these projects.

W. Questions were raised regarding the appropriate amount of funding paid for the management of habitat and/or acquisition of additional lands. The Project Sponsor executed a long term agreement with The Nature Conservancy in consultation with the USFWS and NYSDEC. This agreement obligates the Project Sponsor to provide a considerable amount of funding over an extended period of time. The funding will be used by the Commission and NYSDEC to manage the Butterfly Corridor area. This is intended to directly benefit the endangered Karner blue butterfly and the future management of this area.

X. The Commission requested receipt of additional funding to allow it to possibly acquire additional land identified as valuable by the Commission in its Vision Plan. The Commission indicates that development of this Project within the Albany Pine Bush Study Area will irreversibly remove this land from being part of the Preserve. However, part of the Site is proposed for management as part of the butterfly corridor area and the proposed funding will assist in the goals of habitat restoration in this area. The Common Council has considered the request by the Commission for additional

funding and determines that it is not appropriate, given the existing commitment of the Project Sponsor.

Y. The Common Council is keenly sensitive to the fragile ecosystem comprising the Albany Pine Bush and has ensured, through extensive mitigation measures, that any potential adverse impacts of the Project on all rare, threatened and endangered species in the Albany Pine Bush have been fully analyzed and properly addressed.

3. OPEN SPACE/LANDSCAPING.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled "Open Space/Landscaping". An additional 0.07 acre area will remain undeveloped as potential habitat for the identified species of special concern. This is considered a positive addition to the Project.

4. PUBLIC BENEFITS/ECONOMIC IMPACTS.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled "Public Benefits/Economic Impacts".

B. The Common Council continues to recognize the need of the City to increase commercial base to create construction and operational jobs and stimulate the economy.

C. The Preserve will also receive benefits in the form of a long-term funding agreement with The Nature Conservancy for habitat management.

D. If the Project had been approved in 2004 and assessed as complete in 2005, the following estimated increased tax revenue would have accrued:

- City - Increase over existing payments for 2005, 2006, 2007 and 2008 would have totaled **\$392,000**
- School District - Increase over existing payments for 2005, 2006, 2007 and 2008 would have totaled **\$440,000**
- County - Increase over existing payments for 2005, 2006, 2007 and 2008 would have totaled **\$112,000**
- Total increase in real property taxes for 2005, 2006, 2007 and 2008 would have totaled **\$944,000**

E. Even if the Project Sponsor applies for and obtains property tax relief pursuant to Real Property Tax Law 485-b phase in for such taxes, the initial benefit will be smaller, but the revenues will still be significantly increased as compared to current

conditions, and taxes will increase for five years until at full value.

F. Certain comments speculate that jobs to be created might be “minimum wage” and result in hidden taxpayer costs. The Common Council, however, finds that the creation of construction jobs and part-time and full time employment jobs are positive benefits of this Project. These jobs to be created may be filled by City of Albany residents, including residents that are currently unemployed.

G. There is an obvious public benefit to be achieved through substantial increase in property and school taxes, construction of necessary hotel facilities, increased employment, usage of the City's infrastructure investment, completion of improvements to mitigate traffic impacts and contribution of monies toward the preservation and management of the Albany Pine Bush Preserve. The Project contributes substantially to such public benefits.

5. UTILITIES.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Utilities”.

6. GEOLOGY.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Geology”.

7. WATER RESOURCES.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Water Resources”.

8. AIR RESOURCES.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Air Resources”.

9. WETLANDS.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Wetlands”.

10. AGRICULTURAL RESOURCES.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Agricultural Resources”.

11. EDUCATIONAL FACILITIES.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Educational Facilities”.

12. POLICE PROTECTION.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Police Protection”.

13. FIRE PROTECTION.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Fire Protection”.

14. HEALTH CARE FACILITIES.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Health Care Facilities”.

15. SOCIAL SERVICES.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Social Services”.

16. RECREATIONAL FACILITIES.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Recreational Facilities”.

17. DEMOGRAPHY.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Demography”.

18. STORMWATER MANAGEMENT.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Stormwater Management”.

19. CULTURAL IMPACTS.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Cultural Impacts”.

20. TRAFFIC/TRANSPORTATION

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Traffic/Transportation”.

B. The intent of the Project is to serve business travelers arriving from the Albany International Airport and other area business travelers who are unlikely to utilize or require bicycle facilities.

C. Nevertheless, public comments suggested the need for bicycle accommodations on Washington Avenue Extension and at the Site. Although pedestrian and bicycle facilities are not likely to be necessary for customers of the hotel, the Common Council determines that a bicycle rack should be provided on-site for customers of the Project, in a location to be finalized during the site plan review process by the Planning Board.

D. A planning study regarding bicycle transportation has been commenced. The Project does not create a need for bicycle facilities on Washington Avenue Extension, however if the City deems it advantageous to construct such facilities, there is nothing to prevent such action provided all procedural and substantive requirements of law are followed and appropriate permits obtained.

E. Concern for the transportation needs of employees of the facility was raised and that additional riders on a route with few riders to begin with may put further strain on the public transit system. The Project is located in the immediate vicinity of Crossgates Mall where numerous CDTA public transportation buses stop. For instance, the Washington Avenue to Crossgates Mall Bus (Route 12) runs frequently (10 minute to 20 minute intervals daily during busiest time). This stop is within walking distance of the Site. CDTA describes itself “As a flexible and innovative company, CDTA is well-equipped to respond to the changing needs of the region and its customers”. Therefore, if necessary, CDTA may change its service to support a greater need. However, the Common Council does not anticipate the need to change any such services as a result of the Project.

21. VISUAL RESOURCES.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Visual Resources”.

22. NOISE.

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Noise”.

### III. ALTERNATIVES

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Alternatives”. The Court found that the Common Council’s prior evaluation and “hard look” of reasonable alternatives was proper.

B. It was suggested that the alternative analysis should include off-site parcels in the Harriman Office Campus not owned or under option to the Project Sponsor. However, the Project Sponsor does not own any property at the campus, nor was any proof submitted that the Harriman redevelopment is even considering the development for a hotel facility. This suggestion is speculative in nature not considered to be reasonable or feasible considering the capabilities of the Project Sponsor. Moreover, the SEQRA Findings Statement for Harriman redevelopment states that “An opportunity now exists for a Master Developer to partner with OGS, UAlbany and ESDC to convert the Campus into a viable Research and Development Park to complement on-going efforts at UAlbany”. Moreover, “The proposed action [Harriman project] will not have a significant adverse impact on existing land use and zoning. redevelopment is intended to be compliant with existing land use and zoning requirements”. The current zoning for this area is C-O Commercial Office which does not permit development of hotels.

C. It was also suggested that a prior determination was made by USFWS that the Site was “occupied” by Karner blue butterflies and therefore requires additional alternative analysis for the land swap. As noted above, USFWS and NYSDEC each issued determinations that the development of the Project on the Project Site will not result in a taking of a threatened or endangered species or require a permit from either agency.

D. In addition, the Project Sponsor disputes the commentor’s characterization of the Site because no Karner blue butterflies, or their critical habitat (blue lupine plants) have been found on the Site. Since the USFWS and NYSDEC also each confirmed that no “taking” permit was required to construct the Project, the Project Sponsor contends that the development of the Project does not meet the definition of taking – to wit to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”, or result in “significant habitat modification or degradation where it actually kills or injures wildlife” New York v. Sour Mountain Realty, Inc., 276 A.D.2d 8, 14 (2<sup>nd</sup> Dept. 2000)(citing Babbitt v. Sweet Home Ch. Communities for Greater Oregon, 515 U.S. 687, 690 (1995)). Thus, it is not expected that the development of the Project will in any way harm an “occupied” habitat.

D. Even assuming arguendo, that the Site was “occupied” and required a taking permit, it is unclear why the alternative analysis would not be considered adequate. If the Project would result in a taking, then the Project Sponsor would be required to obtain a taking permit prior to constructing the Project. However, since USFWS and NYSDEC determined that no such additional permitting would be necessary for the Project, none will be sought.

E. The Common Council identified and examined reasonable alternatives to the Project. Alternatives analyzed included:

1. No-action; and
2. Alternative use in conformance with existing zoning
3. Alternative use of the Site for an 87 unit hotel
4. Dedication to the Preserve
5. Alternative locations for the project

F. The DEIS and FEIS contain an appropriate analysis of possible reasonable alternatives to the Project, taking into consideration the objectives and capabilities of the Project Sponsor. Identified reasonable alternatives were examined at a level of detail sufficient to allow a comparative assessment of their impacts and were confirmed by the Decision. A land swap with owners of property, especially New York State or one of its entities, beyond the control of an applicant and is speculative in nature, even considering whether such land swaps occurred in the past.

#### **IV. UNAVOIDABLE ADVERSE ENVIRONMENTAL IMPACTS**

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled “Unavoidable Adverse Environmental Impacts”.

B. It was suggested that “global warming” or “global climate change” is a new issue since the December 19, 2005 SEQRA Findings Statement. Global climate change is not a new potential significant adverse environmental impact of the Project, and such impacts are far outside the scope of the SDEIS. Energy use and greenhouse gas emissions were not identified as potentially significant adverse impacts of the Project.

C. Notwithstanding the above, the Common Council determines that, as with any development project, a certain amount of greenhouse gas emissions arising from the construction and operation of the Project are inevitable. During construction, most greenhouse gas emissions will result from the consumption of fossil fuels during production and transportation of construction materials, and the operation of heavy machinery. During operations, greenhouse gas emissions will result from the consumption of fossil fuels for vehicle use and lighting, heating and cooling. Studies indicate that greenhouse gas emissions only lead to global climate change when enormous quantities of such gases build up in the world’s atmosphere over decades. In that context, the total expected greenhouse gas emissions arising from construction and operation of the Project are not expected to have any appreciable, let alone significant, impact on global climate change.

B. Nevertheless, the Applicant intends to undertake a number of energy efficiency measures which will reduce the amount of energy required to operate the Project, and thus reduce its overall carbon footprint. Such measures include the use of (a) an energy management system which will effectively control the amount of energy used by the Project; (b) an energy efficient building envelope, (c) energy efficient windows, water heaters and HVAC systems, (d) time regulated thermostats, and (e) high pressure sodium lighting.

C. The Common Council has considered the global climate change issue and determines that global climate change is not a significant adverse impact of this Project. Even assuming that the Project might contribute to an insignificant increase when viewed cumulatively, with other more significant contributors, the benefits to the City outweigh such potential detriments.

## V. MITIGATING MEASURES

A. There are no substantive changes to the December 19, 2005 SEQRA Findings Statement relative to the section entitled "Mitigation Measures". Except as modified herein, all previously identified mitigation measures in the December 19, 2005 SEQRA Findings Statement are incorporated herein by reference as mitigation measures. The following are additional measures resulting from the supplemental review of the Project:

### B. PINE BUSH

1. Project Sponsor will selectively remove white pine trees within the 0.25 acre area as shown on the Site Plan at the direction of NYSDEC.
2. Project Sponsor will construct an eight foot high stockade-type fence, and if necessary apply for and obtain a height variance for such fencing.
3. Due to the Project Sponsor's commitment to make payments for habitat restoration and management in accordance with an agreement entered into with the Nature Conservancy, the prior proposed payment to the Commission shall not be required.
4. In addition to the 0.25 acre area in the southwest portion of the site available for future management, a 0.07 acre area on the northwestern corner of the Site will remain in its current wooded state resulting in a total of 0.32 acres of more mesic woodlands for possible habitat for future use by species of special concern.
5. Prior to and during site clearing a qualified professional will survey the site for any herptofauna and relocate any species found in the area to be cleared to woodlands in the 0.32 acres.
6. The proposed perimeter fence will be extended eastward into the northwestern corner. The fence and/or metal flashing attached to the fence, will be extended to approximately 18 inches below ground. The fence will be a solid wood or synthetic board structure and properly maintained.
7. During the selective clearing of white pine trees, if directed by NYSDEC, logs will be placed in the 0.25 acre area to serve as possible habitat for species of special concern.

**NOW, THEREFORE, be it further resolved that:**

1. As required by SEQRA, the Common Council hereby finds that it has given adequate consideration to the SDEIS and SFEIS which properly identifies the issues raised in the Decision, and comprehensively responds to all substantive comments, both oral and written, which had been received, and was properly accepted as complete, adequate and accurate as to form, content and substance.

2. The Common Council hereby finds the SDEIS and SFEIS properly evaluated the potential impacts of the Project, including, but not limited to relevant environmental impacts, the facts and conclusions disclosed in the Supplemental Final EIS, and other documents relevant to the Project.

3. The Common Council hereby finds that it has given adequate consideration to the relevant impacts, facts and conclusions disclosed in the SFEIS, and all other subsequent comments and relevant information received, including, but not limited to, the provision of appropriate mitigation measures relating to all of the rare plant and animal species known to be present in the Albany Pine Bush.

4. To provide comprehensive and thorough responses, the SFEIS contains additional information and confirmatory analyses when appropriate to aid the Common Council in its analytical and decision-making obligations under SEQRA. As more fully discussed in the SFEIS, the new information and/or confirmatory analyses contained in the SFEIS amplify and further examine issues examined in the Supplemental DEIS, and prior EIS's, as a result of comments received from the involved agencies and the public, and resulted in additional mitigation measures to enhance the Pine Bush ecology. The additional information and analyses are consistent with the examination of issues contained in the Supplemental DEIS and did not result in the identification of any new or different significant adverse environmental effects. Therefore, the Common Council determined that a second supplemental environmental impact statement is not warranted or required and would not aid the Common Council in analyzing the Project and otherwise performing its obligations under SEQRA.

5. The Common Council has weighed and balanced relevant environmental impacts with social, economic and other considerations.

4. In weighing and balancing, the Common Council has considered the potential impacts on rare, threatened, endangered species and species of special concern, as well as developing land within the Pine Bush study area, an important environmental ecosystem, and finds that in weighing the potential detriments and benefits that on balance, the Project will have significant positive economic impacts for the City and its residents in the form of construction jobs, part-time and full-time employment opportunities and significant increase in tax revenues that outweigh any potential adverse impacts and that the potential adverse impacts have been identified and fully mitigated to the maximum extent practicable.

5. The Common Council finds further and certifies that:

- (1) The requirements of SEQRA have been met;
- (2) Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the Project is one that minimizes, or avoids adverse environmental effects to the maximum extent practicable and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

6. This statement shall be filed in accordance with Section 617.12 of the SEQRA implementing regulations.

7. This Resolution shall take effect immediately.