

***D R A F T - Subject to Change***  
**(5/16/08)**

REQUEST TO REZONE 28.44± ACRES OF LAND  
FROM CF & R-3 TO GB & MFR-6  
218 & 330 Maple Road  
(Z-3-07)  
**CERTIFICATION OF FINDINGS**

Having considered the Draft and Final EIS documents, and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR 617, this Statement of Findings certifies that:

1. The requirements of 6 NYCRR Part 617 have been met;
2. Consistent with the social, economic and other essential considerations from among the reasonable alternatives thereto, the action **approved** is one which minimizes or avoids adverse environmental effects to the maximum extent practicable; including the effects disclosed in the Environmental Impact Statements, and
3. Consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the Environmental Impact Statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

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TOWN OF AMHERST

Name of Agency

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Signature of Responsible Official

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SATISH B. MOHAN, Ph.D.

Name of Responsible Official

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TOWN SUPERVISOR

Title of Responsible Official

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Date

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5583 MAIN STREET, WILLIAMSVILLE, NY 14221

Address of Agency

## **RESOLUTION**

WHEREAS, following the February 2, 2007 submittal of a Draft Environmental Impact Statement (DEIS) prepared by Trowbridge & Wolf Landscape Architects on behalf of the petitioner Benderson Development Company, LLC, the DEIS was accepted by the Town Board on June 4, 2007. The DEIS was submitted for the proposed rezoning from CF and R-3 to GB and MFR-6 and development of 33.326± acres of land located at 218 & 330 Maple Road. On June 28, 2007, the Planning Board held a public hearing on the DEIS and the rezoning request and recommended approval of the subject petition. Subsequently, a public hearing on the DEIS and rezoning request was held by the Town Board on September 4, 2007. A Final Environmental Impact Statement (FEIS) was accepted by the Town Board on December 17, 2007, and a Notice of Completion of the FEIS was filed on December 26, 2007. The rezoning area was subsequently reduced in size to 28.44± acres to retain a CF zoned frontage and create a conservation project along Maple Road and to retain a portion of the existing R-3 zoning district on Maple Road.

WHEREAS, the Planning Board and the Town Board have considered the content of the DEIS, the FEIS, and all other documents and comments and submissions made during and after the hearings.

NOW THEREFORE THE TOWN BOARD FINDS AND DETERMINES THAT:

1. These Findings set forth specific conditions and criteria consistent with 6 NYCRR Sections 617.7, 617.9, 617.11, and 617.12 under which the site plan process can proceed. This process provides procedures to supplement the FEIS if necessary and for public notice and opportunity to participate in hearings before the Town Planning Board before it approves a site plan. An Environmental Assessment Form will be required with site plan application for environmental review. If the proposed development does not conform with these Findings, a Supplemental Findings Statement, a supplement to the FEIS, or a Negative Declaration shall be prepared to comply with 6 NYCRR Section 617.9.
2. The proposed mixed-use office, commercial, community facility and residential development as presented in the FEIS is consistent with the intent and objectives of the Zoning Ordinance.
3. Adequate services and utilities must be available prior to occupancy. Review and approval of services and utilities by the Town agencies will be required for site plan approval.

4. Development will be consistent with all other applicable laws, rules and regulations.

5. **Traffic and Transportation** (FEIS Section 2.12)

Site specific requirements shall be established by the Town, County and State, as appropriate, as development applications are reviewed. The Project Sponsor shall be responsible for any traffic mitigation required for development of the project site. All improvements will be made subject to the review and approval of the Erie County Department of Public Works - Highways Division and the Town Traffic-Safety Board.

The Town Board, as Lead Agency, requires that the Project Sponsor comply with the following mitigation measures during the development of the project site:

A. Traffic Mitigation Measures

Maple Road at Westernmost and Easternmost Driveways

- An exclusive eastbound left turn lane will be provided in the existing center two-way left turn lane of Maple Road.

Maple Road at Western Signalized Driveway and Donna Lea Boulevard

- An exclusive eastbound left turn lane into the development will be installed.
- An exclusive westbound left turn lane to Donna Lea Boulevard will be installed.
- An exclusive westbound right turn lane (deceleration lane) into the development will be installed.
- The western signalized driveway into the development will include a raised median.
- A semi-actuated traffic signal will be installed. The signal will include an advance green left-turn phase for the eastbound approach. Traffic from the site driveway and from Donna Lea Boulevard will proceed concurrently on the same green phase. The new signal will be semi-actuated with vehicle detection on the driveway, Donna Lea Boulevard and the eastbound left turn lane.
- Pedestrian accommodations (signals, crosswalks, pushbuttons, ramps, etc.) will be provided for crossing Maple Road.

- The new traffic signal will be coordinated with the new signal at the eastern signalized driveway and with the existing signal at Maplemere Road.

#### Maple Road at Eastern Signalized Driveway

- An exclusive eastbound left turn lane into the development will be installed.
- An exclusive westbound right turn lane (deceleration lane) into the development will be installed.
- The eastern signalized driveway into the development will include a raised median.
- A new traffic signal will be installed.
- Pedestrian accommodations (signals, crosswalks, pushbuttons, ramps, etc.) will be provided for crossing Maple Road.
- The new traffic signal will be coordinated with the new signal at the western signalized driveway and with the existing signal at Maplemere Road.

#### Maple Road at Millersport Highway Northbound Off-Ramp

- A second right turn lane will be constructed at the northbound off-ramp approach to Maple Road.
- An adjustment will be made to the existing signal timings in accordance with NYSDOT standards.

#### Maple Road at North Forest Road

- A southbound 2<sup>nd</sup> left turn lane will be installed from North Forest Road to Maple Road.
- The existing signal timings will be adjusted as needed to meet demand.
- The Erie County DPW anticipates installing a westbound exclusive right turn lane from North Forest Road to Maple Road in 2009.
- The Developer will post a bond in the amount of \$500,000 to in part supplement the cost of future mitigation alternatives, including traffic calming and connecting sidewalks, necessary as a direct result of the proposed development.

B. Public Transportation

If this section of Maple Road becomes a route for bus service, the Developer will install an off-street “cut out” bus stop in the area of the property frontage just west of the western signalized driveway. Any site plan approvals, subject to review by the Town Traffic-Safety Board and Erie County DPW – Highways Division, will be obtained prior to installation.

C. Construction Vehicles

In order to avoid the adverse environmental impacts associated with construction vehicles, existing local residential streets in the Fairways Subdivision on the south side of Maple Road shall not be utilized by construction vehicles to access the project site.

D. Follow-Up Traffic Studies

To assess the adequacy of the mitigation measures detailed above and to determine the level of cut-through traffic in the neighboring Fairways Subdivision, two (2) follow-up traffic studies will be conducted for this project, and should be conducted at:

- 40% occupancy of the project, and
- either 80% occupancy or no later than one (1) year after the first study is conducted.

It shall be the responsibility of the Project Sponsor to notify the Town when these thresholds are met. The studies will be funded by the Project Sponsor and conducted by a firm selected by the Town. The studies will be reviewed by the Town Traffic-Safety Board and the Erie County Department of Public Works – Highways Division. All further mitigation measures recommended by the supplemental traffic studies will be funded and completed by the Project Sponsor.

If determined by the supplemental traffic study that cut-through traffic needs to be mitigated, the following measures shall be considered:

- improve Level of Service of the Maple Road/North Forest Road intersection, in particular the northbound approach
- remove Donna Lea Boulevard from the Maple Road intersection
- restrict traffic exiting the westernmost signalized driveway to right and left turns only
- restrict Donna Lea Boulevard between Lynn Lea and Maple Road to one-way northbound
- implement traffic calming features along the residential streets following community input

The Project Sponsor shall provide a \$500,000 bond which may be used at the Town's discretion to ensure completion of the identified traffic mitigation measures in this Findings Statement, including any such measures identified in the supplemental traffic studies.

**6. Soils and Environmental Issues** (FEIS Section 2.14)

The project sponsor will be responsible for all costs associated with the environmental investigation and remediation of the site to bring it to development standards as determined by the NYS Department of Environmental Conservation. Specific mitigation measures include:

- The Project Sponsor will comply with all requirements imposed by NYSDEC for the Brownfield Cleanup Program, including:
  - completion and approval by DEC of the Remedial Investigation, Feasibility Study and Work Plan
  - an excavation-and-landfill disposal remedy for the site so that all contaminants are removed in accordance with Program standards. To the extent it is technically and economically feasible, cleanup to residential standard will be completed.
- Project development will comply with Environmental Conservation Law Section 27-1415(6). While residences in this area will be above ground surface, the project sponsor will take the added precaution of removing all soil below the project area either until residential cleanup levels are met or a two foot depth is achieved.
- All contaminated soils in excess of cleanup guidance will be disposed of off-site at an approved facility at the developer's expense. All near surface soils with elevated lead and semi-volatile organic compound levels will be removed from the site to meet soil cleanup objectives (SCOs). All SCOs will meet with the approval of the DEC and will be consistent with planned end use of the site or that area of the site.
- The Geotechnical Engineering Report prepared by Barron & Associates, P.C. dated December 21, 2006 includes findings and foundation considerations for future construction of the various components of the project. The report is included as Appendix B of the FEIS.

The Town shall not grant site plan, subdivision or Public Improvement Permit (PIP) approval for construction of any component of the project (buildings, parking areas or infrastructure) unless the identified limitations as discussed in the geotechnical report are adequately accounted for. The applicant shall be required to provide documentation of site-specific soil characteristics and comply with all relevant Town building codes regarding soil conditions.

Additional mitigation measures to be undertaken by the Project Sponsor may be required by the Building Department.

- In accordance with Town Board Resolution 2008-423 approved by the Board on April 21, 2008, the Town requests that the Project Sponsor offer to remediate any off-site contamination caused by the former gun club activity as part of the current plans to remediate the site.

7. **Wetland Issues** (FEIS Section 2.62)

State Wetlands

Per Wetland Delineation Report prepared by Earth Dimensions, Inc. on December 26, 2006, there are no State wetlands on the subject property.

Federal Wetlands

The Report identified four (4) wetland areas totaling 1.17± acres on the site that are isolated and do not meet the current interpretation of Federally jurisdictional wetlands. The US Army Corps of Engineers has confirmed by letter dated September 13, 2007 that these areas are not regulated pursuant to Section 404 of the Clean Water Act.

8. **Drainage and Stormwater Management** (FEIS Section 2.8)

The following measures shall be implemented by the Project Sponsor to mitigate drainage and stormwater impacts to the maximum extent practicable:

- A. The Project Sponsor shall be required to comply with the intent of the findings and recommendations of the Engineer's Report prepared by Carmina & Wood, P.C. on January 19, 2007 during the course of development.
- B. A detailed Stormwater Pollution Prevention Plan (SWPPP), including a Sediment and Erosion Control Plan, for the various phases of the project including any related on-site drainage areas shall be submitted as specific site plans are submitted for review.
- C. The design of the stormwater system will follow applicable NYSDEC and Town guidelines which limit the discharge following development to pre-development conditions. All runoff from the project will be collected and conveyed to the storm water detention system and will not sheet drain off-site to adjoining properties.

- D. A water quality device prior to stormwater discharge is required by NYSDEC and will be accommodated by installation of a water quality treatment system/outlet control structure approved by NYSDEC. The system will be engineered to provide 24-hour extended detention of the water quality volume.
- E. Extended detention will be provided for the one-year storm event as required by NYSDEC. This volume will be accommodated in the underground pipe detention system. The water quality treatment system/outlet control structure will be engineered to provide 24-hour extended detention.
- F. For overbank flooding, NYSDEC requires that the 10-year storm event be attenuated with detention and that the outlet be restricted to the 10-year existing storm event.
- G. The Town requires attenuation of the 25-year storm event to the existing 10-year conditions.
- H. For extreme storm protection, NYSDEC requires that the 100-year storm event will be attenuated with detention and that the outlet be restricted to the 100-year existing storm event.
- I. The proposed site grading for the project will maintain positive drainage across the site and produce no adverse drainage conditions on adjacent properties.

**9. Cultural / Archaeological Resources (FEIS Section 2.11)**

A Phase I Cultural Resources Investigation and Phase IB Addendum conducted for the project site by Panamerican Consultants, Inc. concluded that the proposed project will have no effect on cultural resources listed, or eligible for listing, in the State or National Registers of Historic Places, and that no further cultural resource investigations are recommended. A letter from the NYS Office of Parks, Recreation and Historic Preservation dated June 1, 2007 states that agency's concurrence with this finding.

**10. Economic Issues (FEIS Section 2.15)**

All infrastructure required to support the development of the project site will be installed and/or upgraded at the Project Sponsor's expense. Town-wide or localized special assessment districts (sewer, water, highway, etc.) are established so operating cost can be spread over many taxpayers who use specific services.

An Economic Analysis for the proposed project was prepared by Real Property Services, LLC in December, 2006 which is included in Appendix F of the FEIS. The conclusions of that report are:

- The proposed development is located in an area that will allow it to thrive and prosper, while elevating the character and attractiveness of the surrounding neighborhood.
- The development will add \$44,000,000± to the Town assessment base when completed, generating approximately \$1,600,000 per year in total tax revenues at 2008 levels (2007 estimated). As a comparison, the site is currently assessed at \$461,000 and generates tax revenues of less than \$17,000 per year.
- The proposed development will have no significant direct impact on costs or services to the Town or the Sweet Home Central School District.
- The development will have no significant impact on the marketability or values of nearby existing housing.
- The project will complement existing retail development in the market area and will serve to improve the overall character of the neighborhood.
- The Project Sponsor will not be seeking any tax abatement from the Amherst Industrial Development Agency for this project.

**11. Lighting / Noise / Visual Impacts (FEIS Section 2.5)**

- A. All proposed lighting for the site must conform to the Town Zoning Ordinance for height and type of lighting fixtures. A lighting plan will be required prior to site plan approval, which, according to the Ordinance must show light impacts not exceeding 0.2 foot candles adjacent to residential use and 0.5 foot candles adjacent to commercial use.

Appropriately located lighting, downward-directed lighting fixtures or hooded lighting will be used to prevent off-site light spillage on adjacent residential areas. The light fixtures and their placement will follow all Town of Amherst code requirements for usage and design. The Town Zoning Code requires a lighting plan to be submitted during the site plan review process, and the standards contained in the relevant sections of the Zoning Code regulate lighting spillover from commercial locations onto adjacent residential land uses.

Exterior site lighting will not operate 24 hours per day. The Town will review specific lighting plans in order to minimize the overnight lighting impacts.

- B. The project developer will be required to install Medium and/or High Impact Landscape Screens in accordance with the Town Zoning Ordinance. At the site plan stage, the specific location, type and size of landscaping will be thoroughly reviewed by the Town Planning Department to ensure maximum buffering of the proposed uses from existing residential properties.
- C. All landscaping will be subject to the approval of the Town Planning Department/Planning Board as required by the Zoning Ordinance.
- D. It is anticipated that the project site will be built-out in stages over many years and, as such, there is a need to impose mitigation measures for noise from construction activities to minimize this identified adverse environmental impact to the maximum extent practicable. Both temporary and long term noise impacts may result from the construction activities on the project site as well as from the proposed use of the project site.  
  
Noise from construction-related activities, which will exceed local ambient levels for noise outside of structures, may cause some temporary annoyance to nearby residents. It is expected that this impact, caused by heavy equipment, construction vehicles and power tools, will continue throughout the duration of construction. In order to reduce this noise, the following measures will be undertaken by the Project Sponsor:
  - Limit major construction activities to daytime hours
  - Use of construction equipment with mufflers
  - The preservation of existing vegetation to the maximum extent practicable will provide a noise barrier to existing residential areas.
  - If blasting is required, the Project Sponsor will follow all requirements of the Town Blasting Ordinance
- E. Screening of proposed commercial buildings and parking lots will be provided through the creation of berms or landscaping elements on the periphery of developed areas. All landscape species, size and location will be subject to the approval of the Town Planning Department.
- F. The Project Sponsor will, to the greatest extent practicable, progressively scale building massing from south to north to provide a visually pleasing site layout as shown on the development plan.

**12. Building Height**

No structure in the proposed development shall exceed fifty (50) feet in height.

The residential (MFR-6) portion of the proposed project will feature predominately two-story, townhouse style units with garages and no single-family

detached homes. A small portion of the residential development will involve single-floor units in three-story buildings. None of the proposed residential structures in the MFR-6 zoning district will exceed 35 feet in height.

Residential uses in the General Business (GB) zoned portion of the site will be second floor units located above other allowable GB uses.

**13. Air Quality**

An Air Quality Analysis was prepared by FRA Engineering dated March 24, 2008. The analysis concludes that based on the NYS Department of Transportation’s Environmental Procedure Manual, none of the project-affected intersections require detailed microscale air quality analysis, and no significant adverse air quality impacts are expected to occur as a result of the proposed project.

Potential impacts to air quality resulting from fugitive dust generated during construction activities will be minimized by the following measures:

- seeding and/or mulching exposed soils as soon as practicable and in accordance with the requirements and applicable regulations promulgated by the NYSDEC
- grading roadways and covering them with gravel during construction, periodically regrading, compacting and replacing gravel as necessary as determined by the Town
- wetting down temporary roads to be constructed on the project site during construction of the build-out of the project as needed throughout the duration of construction activities and as determined by the Town.

**14. Land Use**

The proposed development will follow the program summarized below as depicted in the concept plans and DEIS:

USE	DEVELOPMENT PROGRAM (not to exceed)
Specialty retail	225,000± sq. ft.
Restaurant	35,000± sq. ft.
Office	12,000± sq. ft.
Community theater	4,000± sq. ft.
<b>Total 276,000± sq. ft.</b>	
Hotel	125± rooms
Residential	75± units

The following additional limitations will be in effect for the subject development and included in a Declaration of Restrictions recorded in the County Clerk's office:

- No single retail user shall be greater than 50,000 square feet in size.
- There shall be no freestanding drive-thru fast food restaurants.
- There shall be no freestanding drive-thru pharmacies.

The following findings outlining the project's consistency with the Comprehensive Plan, as stated in the Planning Board Resolution to the Town Board dated June 28, 2007, have been made:

- a. The proposed development is consistent with the Plan's "key initiative" for Amherst to become a "knowledge-based community". The plan recommends that the Town "work with the University at Buffalo to create mixed use activity centers around the periphery of the campus", consistent with the proposed development (pg. 11).
- b. The site is located in the section of Maple Road that has proximity to the UB North Campus, an area identified in the Comprehensive Plan's University Focal Planning Area where re-use or redevelopment of properties is encouraged (p. 154).
- c. The proposed mixed-use development will be compatible with the existing mix of uses along Maple Road. The Comprehensive Plan recognizes the "concentration of commercial service located to the south [of the UB campus] along Maple Road" (p. 151).
- d. The project will be located on Maple Road, which classification as a major arterial road recognizes its function and capacity to serve as the site of the proposed project.
- e. The proposed project will provide an economic benefit to the Town.
- f. The subject site is inappropriate for a development consisting solely of residential uses due to its location on a major arterial road and its proximity to non-residential uses including the Pepsi Center and the UB stadium.
- g. The proposed development will serve as a buffer between the existing Pepsi Center and UB stadium and the existing residences on the south side of Maple Road.

**15. Pedestrian / Bicycle Trails (FEIS Section 2.2)**

An area measuring 4.5± acres along the project frontage on Maple Road will be a petitioner-owned and maintained conservation project devoted to greenspace and

a public walkway as depicted in the Plan received March 26, 2008. The location, design, size and type of landscaping and walkway materials will be subject to Town approval.

A public trail system currently exists along Ellicott Creek which connects to the University of Buffalo campus and is used by members of the adjacent neighborhoods as well as the UB community for walking and biking. The distance from the trail to the project site is approximately 0.25 miles along Maple Road or roughly a 10-minute walk. Future connection, subject to Town approval, includes an extension to the proposed mixed-use center, via a sidewalk on the north side of Maple Road. This walkway, while currently existing in the public right-of-way, will be improved for the entire length of the subject Maple Road parcel.

The location of specific connections will be shown on future site plans submitted for development of the subject property if requested by the Town.

It is anticipated that construction of direct trail connections to the subject property will be the responsibility of the developer, with any connections on Town property (i.e. Pepsi Center) the responsibility of the Town. Maintenance and security costs will be finalized during the site plan review process.

**16. Infrastructure**

All sanitary sewer, water and storm sewer systems installed or improved for the project, including lift station improvements, will be undertaken by the Project Sponsor at their cost and will be required to meet all Town, County and State requirements.

**17. Bond**

The Project Sponsor shall provide a \$500,000 bond to be used at the Town's discretion for any mitigation measures, including connecting sidewalks, identified in this Findings Statement.

**18. Supplemental Environmental Impact Statement**

Certain information, including traffic analyses that were examined in the DEIS and FEIS, was amplified and further evaluated in light of the proposed changes to the Project submitted in March 2008. This material is consistent with the information regarding such issues contained in the DEIS and FEIS and does not alter the conclusions contained in those documents. The information amplifies and augments information previously considered by the Town Board and does not identify new information about significant adverse environmental impacts which were not previously addressed.

As a result of its review, the Town Board has determined that, on balance, and after due consideration of all relevant documentation and comments, it has adequate information to evaluate all of the relevant benefits and potential impacts of the Project and to issue this Statement of Findings.

The Town Board has given due consideration and evaluation to the specific changes to the project and rezoning proposed by Benderson Development Co., LLC, including:

- ? Revised legal description for the rezoning;
- ? Revised development plan with conservation project area;
- ? Survey depicting a reduced area to be rezoned from 33.326± acres to 28.44± acres;
- ? Proposed deed restrictions;
- ? Proposed Development Agreement;
- ? Proposed building/site design architectural standards;
- ? FRA Engineering's Traffic Report dated March 24, 2008 responding to Urban Engineers' comments and other information provided by FRA in clarification; and
- ? Comment letter from Urban Engineers dated April 4, 2008 in response to FRA Engineering's March 24, 2008 Traffic Report.

The Town Board has evaluated these materials and determined that there are no potential significant adverse environmental impacts arising from the proposed modifications to the project, rather, impacts identified with the original project are expected to be further mitigated for the following reasons:

- ? The amount of land to be rezoned to GB is reduced and, therefore, the amount of land that may be developed as GB is more limited;
- ? Creation of the conservation project area along the site frontage of Maple Road will retain and improve the aesthetic resources for residences on Maple Road and provide community-wide benefits consistent with the Amherst Comprehensive Plan, including creation of a new open/green space for public use;
- ? The Development Agreement, deed restrictions and architectural standards provide development safeguards and benefits, including:

Deleted: :

- Development standards for buildings and uses which will preclude “big box” development
- Aesthetically appealing development of the property
- Eliminating various “undesirable” uses if the proposed development does not come to fruition
- Limiting the future use of the property that will be binding on potential future developers;

? The limitations placed on the development will not negatively impact the amount of real property and sales tax revenues to the Town, County and School District anticipated to be generated and the amount of jobs to be created from the Project.

The Town Board has determined, after reviewing the criteria in the SEQRA regulations [6 NYCRR 617.9(a)(7)], that the proposed modifications to the project are beneficial in nature and are not expected to result in any new significant adverse environmental impacts not been previously identified and addressed or which would require the preparation of a Supplemental Environmental Impact Statement for their evaluation.

**19. Evaluation of Future Actions**

In accordance with SEQR regulations, upon application to the Town for development of the project site that requires the submittal of an Environmental Assessment Form, the Town will be required to determine if the potential adverse environmental impacts associated with the development have been adequately identified and evaluated in the DEIS, FEIS and this Findings Statement, and whether the proposed development exceeds any of the thresholds and/or requirements contained in this Findings Statement. This determination must be made by the Town prior to the issuance of any discretionary land use approvals by the Town for the proposed development.

The following scenarios are put forth in Section 617.10(c) & (d) of the SEQR regulations:

- A. If the Town determines that the proposed action is in conformance with the conditions and thresholds in the FEIS or the Findings Statement, then no further environmental review pursuant to SEQR will be required;
- B. If the Town determines that the proposed action is adequately addressed in the FEIS, but is not addressed or not adequately addressed in the Findings Statement, then an amended Findings Statement must be prepared;
- C. If the Town determines that the proposed action was not addressed, or was not adequately addressed, in the FEIS, but it will not result in any significant environmental impacts, then a negative declaration must be prepared; or

- D. If the Town determines that the proposed action was not addressed, or was not adequately addressed, in the FEIS, and the action may have one or more significant adverse environmental impacts, then a supplement to the FEIS must be prepared.

EllenK.Gun Club/Findings 5.23.08