



January 30, 2025

Suzanne Hadden, Planning Board Secretary
Town of Montgomery
shadden@townofmontgomery.com

VIA EMAIL

Re: Neelytown Business Park
Project Tracking ID: GID-002769
Town of Montgomery, Orange County
DEIS Comments

Dear Suzanne Hadden;

The New York State Department of Environmental Conservation (DEC) has reviewed the Draft Environmental Impact Statement (DEIS) for this proposed commercial development of two warehouse buildings.

DEC has reviewed the DEIS and offers the following comments on DEC jurisdiction pursuant to the Environmental Conservation Law (ECL):

Freshwater Wetlands

The DEIS states that there “are no designated surface waters or wetlands regulated by the New York State Department of Environmental Conservation (“NYSDEC”)” and that no disturbance is proposed to the 100-foot adjacent area of “the NYSDEC-regulated wetland on the opposite side of Neelytown Road”. No mention is made of DEC-regulated wetlands previously mapped on the opposite side of Beaver Dam Road. The Freshwater Wetlands Law, Article 24 of the Environmental Conservation Law, was revised in 2022 and as January 1, 2025, DEC jurisdiction is no longer restricted to the areas previously mapped.

Portions of New York State regulated freshwater wetlands and their adjacent areas may be located in the project area. Although some limited activities are exempt from permitting, most activities that involve disturbance within a wetland or its 100-foot adjacent area require an Environmental Conservation Law (ECL) Article 24, Freshwater Wetlands permit from the DEC. Information on regulated activities within freshwater wetlands and adjacent areas is available on DEC’s website (see Regulated Activities), which contains examples of regulated activities and those exempt from wetland permits.

DEC’s amended Article 24, Freshwater Wetlands Jurisdiction and Classification regulations (6 NYCRR Part 664) went into effect on January 1, 2025. To determine whether the property contains regulated freshwater wetlands the project sponsor must submit a request for a Parcel Jurisdictional Determination (Parcel JD). A Parcel JD is a determination made by DEC whether a property contains regulated freshwater wetlands

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or adjacent areas within the parcel boundary. Please use the attached link to request a Parcel JD for the project site:

<https://dec.ny.gov/nature/waterbodies/wetlands/freshwater-wetlands-program/freshwater-wetland-jurisdictional-determination>. If you have any problems submitting the Parcel JD request, please email: fwwjurisdiction@dec.ny.gov. By copy of this letter, the project sponsor is directed to request a Parcel JD.

If the property contains regulated freshwater wetlands or adjacent areas, further delineation of the wetland boundaries and a Project Jurisdictional Determination (Project JD) may be required. A Project JD is a determination made by DEC whether a proposed activity within a parcel containing regulated freshwater wetlands or adjacent areas requires an Article 24 Freshwater Wetlands permit. If necessary, a Project JD may also be requested using the link provided above.

If regulated freshwater wetlands or adjacent areas are present, all efforts must be made to first avoid disturbing the wetland and adjacent area. If disturbance to the wetland and/or adjacent area cannot be avoided, the project sponsor must submit a Freshwater Wetland permit application and obtain a permit to conduct a regulated activity. In accordance with DEC's Freshwater Wetlands Permit Requirements Regulations (6 NYCRR Part 663), the applicant would need to justify the disturbance, discuss alternatives, and minimize impacts as part of the Freshwater Wetlands permit application. More information on application procedures and permit issuance standards is available on DEC's website at: <https://dec.ny.gov/regulatory/permits-licenses/waterways-coastlines-wetlands/freshwater-wetlands#Determine>.

Questions on the jurisdiction change or the current process can be directed to the Region 3 Bureau of Ecosystem Health at r3.beh@dec.ny.gov or 845-256-3087.

Endangered and Threatened Species

This site is in an area occupied by the endangered species Indiana bat and northern long-eared bat, tree-roosting bat species. Removal of habitat, taking of individuals, and interference with essential behaviors may result in a taking of the species pursuant to Article 11, Title 5 of the Environmental Conservation Law and require an Incidental Taking Permit pursuant to 6 NYCRR Part 182. At a minimum, take-avoidance measures will need to be implemented to minimize the risk of direct adverse impacts to individuals.

In addition, as the project includes the removal of 38.13 acres of forested habitat, further analysis is needed to determine if the project would constitute a taking of habitat. A forest coverage analysis was provided in the DEIS, but it is not consistent with DEC guidelines for such analyses. An assessment is also needed of other potential impacts that could interfere with essential behaviors, including noise, lighting, etc.

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The project sponsor needs to contact the Region 3 Bureau of Wildlife to obtain the necessary analysis protocols and confidential locations of known occurrences. Please reach out at wildlife.r3@dec.ny.gov.

In order for DEC to make a determination on taking and the need for Part 182 permit, the project sponsor needs to respond to this letter with additional project information as requested above. Please note, additional information, comment, and review may still be needed even after receiving the requested information. Determination of the need for Part 182 Incidental Taking Permit will be a required as part of any application for Freshwater Wetlands Permit and, if an Incidental Taking Permit is required, the applications must be processed together.

Municipal Water Supply

Please note that the water district map in the DEIS Appendix L does not match the approved water district map attached to the Town of Montgomery's Water Withdrawal Permit. Parcel 33-1-91 is Water District 1 as shown. Parcels 36-1-33, -11.221, -11.212, and -11.211 are in the Neelytown West Water District. However, parcels 36-1-11.23, -11.11, and -10.1 are not in the Town's permissible service area. A minor modification of the Town's Water Withdrawal Public Permit will be needed for service of the development. This can be addressed as part of the Town's current renewal application. DEC is currently awaiting a response to the October 24, 2023 Request for Additional Information, which was due January 22, 2024.

If you have any questions about these comments, please contact me by email at rebecca.crist@dec.ny.gov.

Sincerely,

Rebecca S. Crist

Rebecca S. Crist
Division of Environmental Permits

Ecc: RDM Group, LLC
NYSDEC Bureau of Ecosystem Health
NYSDEC Bureau of Wildlife
NYSDEC Division of Water