



**COMMENTS OF OTSEGO 2000, INC.
ON THE DRAFT GENERIC ENVIRONMENTAL IMPACT STATEMENT
FOR THE REDEVELOPMENT MASTER PLAN, ONEONTA RAILYARDS**

INTRODUCTION

Otsego 2000, Inc. respectfully submits the following comments on the Draft Generic Environmental Impact Statement for the Oneonta Railyards Redevelopment Project (“DGEIS”). Otsego 2000, a 501c3 public charity headquartered in Cooperstown, New York, is dedicated to the protection of the historic, agricultural, recreational, and environmental assets of our region.

For the reasons set forth below, the DGEIS is seriously flawed and is in fact a "ghost." Notwithstanding that it is over 110 pages, with headings, tables, and repeated references to environmental buzzwords, it is entirely lacking in substance. The DGEIS fails to supply necessary standards and thresholds concerning which subsequent actions would require future environmental review, an adequate discussion of a reasonable range of alternatives to the project and its future phases, cumulative impacts analysis, or any requirements for mitigation of identified impacts. The applicant, the County of Otsego Industrial Development Agency (“COIDA”) appears to be seeking to shortcut subsequent site-specific environmental reviews by proceeding through an insufficient "generic" process in violation of the New York State Environmental Quality Review Act (“SEQRA”).

Factual inconsistencies and omissions in the DGEIS are pervasive and significant. Among the most notable omissions are related proposals disclosed by the same applicant, COIDA, to construct extensive energy infrastructure to support the project. The DGEIS fails to address or even include plans disclosed by COIDA in its CFA application submitted on July 26, 2018 to build a \$17.5 million compressed natural gas (“CNG”) decompressor station in the Town of Oneonta, supplied by daily deliveries of CNG in heavy tractor-trailer trucks, a \$50-100 million expansion of the DeRuyter pipeline to supply gas to the Railyards project, and miles of pipeline which will be needed to connect the DeRuyter and/or decompressor station to the Railyards site. More recently, COIDA has discussed plans for a power plant to be sited at the Railyards to supply electricity to the site. None of these plans were disclosed until after the adoption of the Final Scoping Document for the Railyards project and after public comment on the Scoping Document was closed.

The Mayor of Oneonta has stated by letter, dated October 15, 2018, that he was "entirely unaware" of the gas infrastructure being proposed by COIDA until after the Scoping Period was closed. The DGEIS must be revised to take this new information into account and correct the many other errors and omissions discussed herein.

DISCUSSION OF FACTS

A. THE DGEIS DEFERS ALL ANALYSIS TO FUTURE PERMITS AND PLANS

A generic environmental impact statement should “set forth specific conditions or criteria under which future actions will be undertaken or approved, including requirements for any subsequent SEQR compliance.” (6 NYCRR § 617.10(c); See also, SEQRA Handbook, Section H (GEIS should consider “[t]hresholds and conditions that would trigger the need for supplemental determinations of significance or site-specific EISs...”)). The DGEIS fails to set forth these necessary conditions, criteria, or thresholds for review of future phases of the project.

The DGEIS admits that future site-specific environmental review may be necessary and concedes that thresholds are required, but fails to address what they will be:

This DGEIS establishes thresholds for environmental review and impacts within the Study Area that will lay the groundwork for permitting and construction projects of the type contemplated within the scope of this study. At the time a site-specific project is determined, additional environmental review under SEQRA *may be necessary...* (italics added; p. 9; see also p. 92.)

Elsewhere, the DGEIS promises that *"feasible"* mitigation measures will be offered for each *"identified"* impact without addressing what is feasible, or discussing mitigation of impacts (such as energy supply) which are not identified. (italics added; p. 6.) Later, the DGEIS states that "the Railyards site *has the potential* to be redeveloped without substantial unavoidable adverse impacts for which mitigation measures are not available." (italics added; p. 101.) However, the DGEIS fails to keep this promise. The DGEIS never discusses or establishes how the project would be developed to avoid substantial adverse impacts.

The DGEIS makes only vague references to future permits which may be required to be issued by other agencies. The DGEIS also states “future actions will require additional public hearings to address specific community concerns” (p. 92). In this way, the City of Oneonta, as SEQRA Lead Agency, improperly defers consideration of environmental impacts to other agencies and to future hearings without setting thresholds or requirements which will trigger future site-specific review or public hearings.

Key provisions of the DGEIS are excerpted here:

Electricity: The DGEIS admits that an electrical load estimated at 7.7 MW will be needed, and that the capacity to supply this load *"does not currently exist."* (italics added; p. 17.) However, no specific plans to create line capacity or to build a power plant to supply this electricity are addressed in the DGEIS. The DGEIS states only that *“NYSEG will be required to provide* more details on upgrades, conversions, construction and costs to customers.” (Id.) This is inconsistent with recent proposals to construct a power plant at the site undertaken by COIDA.

Natural Gas: The DGEIS also fails to disclose any plans to supply natural gas to the site. The DGEIS confirms that natural gas is not available, stating "*nor is natural gas currently available.*" (italics added; p. 6.) The DGEIS then states that "[n]atural gas usage is estimated at 40,000 MMBtu per year..." but, [c]urgently capacity in the natural gas local distribution *may not be available...*" (italics added; p. 17). The DGEIS entirely fails to address how natural gas will be supplied to the project, including a decompressor station supplied by CNG trucks in the Town of Oneonta, and expansion of the DeRuyter pipeline. These plans were disclosed by COIDA for the first time, in a grant application dated July 26, 2018, after the Scoping Period for the DGEIS was closed.

The DGEIS defers all consideration of energy supply and conservation to an unspecified future date and to other agencies. It states: "As specific development plans are prepared *NYSEG will be consulted.*" (italics added; p. 17.) See also: "Future proposals for power supply to the redevelopment site *will be addressed at the time there is a redevelopment proposal.*" (italics added; p. 105, and p. 76.) In the closing pages, the DGEIS addresses options for energy supply in a vacuum, without any relationship to the redevelopment plan being proposed. After providing simplistic dictionary descriptions of energy sources including geothermal, solar thermal, solar photovoltaic, wind, biomass, and CNG, the DGEIS merely concludes: "In the future, *when the energy demands of a specific redevelopment plan are known*, an evaluation of power sources will be conducted at that time and any relevant mitigation measures identified... At that time additional environmental review *may be required.*" (italics added; p. 113.) This directly contradicts plans to build extensive infrastructure to supply gas to the site disclosed by the applicant after the Scoping Period was closed.

Costs: No adverse impacts on community services are discussed in the DGEIS. No impacts on schools, recreation, Police or Fire departments, Emergency Services, health care, or community character are identified (pgs. 69-86). This is misleading because a Housing Needs Assessment attached as Appendix H to the DGEIS shows that sufficient housing stock for new industrial workers does not currently exist. (Appendix H, pp 10-11.) Also, existing manufacturing enterprises do not have enough workers:

According to Barbara Ann Heegan, President and CEO of the Otsego County Chamber of Commerce, the area's manufacturers have reported strong growth over the past one to two years and have *over 140 current open positions*. Filling these positions with skilled workers has been a challenge, and the Chamber of Commerce is partnering with local school districts to create vocational programs. (italics added; Appendix H, p. 25.)

Most significantly, the costs of the redevelopment are not addressed. The costs to build a decompressor station at the Pony Farm industrial site in the Town of Oneonta will exceed \$17.5 million, which the Executive Director of COIDA, Mr. Jody Zakrevsky, admitted were "ridiculous." The DeRuyter pipeline expansion was estimated as \$50-100 million. The DGEIS also fails to address whether Payment In Lieu of Taxes (PILOT) agreements will be offered to developers at the Railyards, further burdening the community. Data from the New York State Comptroller shows the amount of money spent by COIDA to create a single job in the County is more than \$76,000, greatly exceeding costs for neighboring counties. In 2016, expenses in Otsego County were \$33,483 per job gained. In addition, "Net Tax Exemption" per job gained was \$43,000. Acceptance

of the DGEIS without an economic analysis of costs, including secondary and related costs, in these circumstances is an abuse of discretion.

Wetlands: The Wetlands Delineation Report attached as Appendix A to the DGEIS shows that the redevelopment site contains 27 acres of federal jurisdictional wetlands and depicts 100 ft. buffers to those wetlands. However, the DGEIS ignores the fact that "preferred option 3" shows 900,000 sq. ft. of impervious new buildings squarely within the boundaries of the wetlands (before including parking, access roads, and utilities). Such development cannot occur without serious adverse environmental impacts.

The DGEIS admits that wetlands mitigation will be required, but no plans, thresholds or requirements for wetland mitigation are addressed. The DGEIS suggests only that reasons for choosing a particular mitigation strategy *should be documented as part of the permitting process...*" (italics added; p. 43.) Lacking specificity, the DGEIS simply says that "current conditions *may allow for a certain amount* of wetlands mitigation on-site, through the restoration of the *existing wetlands that remain* after redevelopment." (italics added; p. 44.) This is clearly insufficient.

Dr. Vogler, a Wetlands Delineation expert and Professor at SUNY Oneonta, has submitted important comments on the wetlands analysis in the DGEIS. Dr. Vogler concludes that the value of the wetlands for the ecosystem in terms of water quality and flood management are understated in the DGEIS. (Comments submitted by Donna Vogler, Ph.D., attached here as Exhibit A.) She also explains that the wetlands are found on a "mucky soil type" poorly suited for development, stating: "saturation of this soil at this site is a perennial condition.... [t]o place buildings on such ground is foolhardy and would require extensive civil engineering to make it stable for commercial development."

These are serious defects in the redevelopment plan and must be addressed in the DGEIS.

Site Contamination: The DGEIS confirms that the site is currently contaminated with industrial chemicals. It states: "several sediment, surface soil, and subsurface soil samples contained SVOCs and metals at concentrations greater than the respective 6NYCRR Part 375 Commercial SCOs..." (italics added; p. 34.) Yet amazingly, the DGEIS concludes that this is acceptable because harmful chemicals (arsenic and benzo(a)pyrene) were also found offsite, stating that this "*may represent typical background concentrations*" and "*further investigation or remedial activities did not appear to be warranted.*" (Id.) Thus, the DGEIS authors seem to suggest that failure to remediate a contaminated site is acceptable if it is located next to another contaminated site. This is an inappropriate and absurd conclusion.

Given the property's historic industrial use and known contamination, proper analysis of soil contamination should have been included in the DGEIS, but was not. Potential air and water quality impacts to neighboring residents, an Environmental Justice community, impact to construction workers, and a future work force at the site are all ignored by the DGEIS. Dr. Ron Bishop, a Professor of Chemistry at SUNY Oneonta, reviewed the DGEIS provisions related to topography and soils. (See Comments of Dr. Ron Bishop, Ph.D. attached here as Exhibit B.) Dr. Bishop studied the data regarding contamination at the site and noted that "mixtures of hazardous materials should be regarded as more potentially harmful than individual components...but this guidance is absent from the DGEIS". He concluded that redevelopment at the site may cause

significant health impacts: "People-especially children-who live and work downwind would be at risk of ingesting or inhaling fine particulate matter which remains in the air longer and travels farther than ordinary dust grains." These comments must not be ignored.

The DGEIS also admits that the Railyards site is littered with significant amounts of construction debris, fill material, and trash from past uses and illegal dumping (pgs. 12, 34, 85, 86, and 100). However, it merely states that property owners will be responsible for cleanup prior to construction. The DGEIS fails to explain how this will be required of future property owners, or enforced. The DGEIS lacks any clear commitment by the City to pursue a full cleanup and remediation plan for the Railyards. This is unacceptable.

Storm Water Management: The DGEIS states that "[s]tormwater management *will be designed* to maintain as much of the Study Area's natural hydrology *as possible*" without any specification as to how this will be accomplished or what is "possible". (italics added; pgs. 20-21.) In point of fact, the "preferred alternative" with 900,000 sq. ft. of building area assures that natural hydrology will not be protected because wetlands and buffers would be directly impacted by development and almost no area would exist for effective stormwater retention landward of those features. This is made even more problematic by the presence of a stream that passes lengthwise through the property, and that could flush poorly-treated stormwater and soil contaminants liberated by earthmoving into downstream properties and the Susquehanna River.

Although the DGEIS contains a soil assessment and general description of how soil characteristics could affect stormwater management in Appendix B, it fails to provide any comparative assessment of potential stormwater management options as required by SEQRA. The DGEIS performs no analysis of flow volumes, elevations, depth to water table, or other relevant site characteristics. Instead, the DGEIS includes a generalized description of the permitting process, such as the purposes of a SPDES General Permit, Individual Permit, and Stormwater Pollution Prevention Plan. The DGEIS states that "project construction sequencing" will limit the area of soil disturbance to less than five acres at a time, but gives no explanation for how this will be accomplished. Totally missing is any requirement for a master plan for stormwater management over the entire site, critical to ensure protection of water quality. Instead, the DGEIS states that stormwater management will be the responsibility of "future property owners" but neglects to address how this will occur if the site has multiple owners (p. 21). These are severe defects.

Traffic: The DGEIS outlines a range of traffic concerns without addressing what is actually proposed. In this vein, the DGEIS *recommends* reconfiguration of Lower River Street, *upgrade* of Roundhouse Road to City roadway standards, *consideration* of widening Fonda Avenue, a sight-distance evaluation of Lower River Street *during detailed design based on then current conditions*, and *redirection* of heavy traffic to Lower River Street and Oneida Street. (pgs. 64-66). These recommendations are apparently based on a Traffic Impact and Access Study (TIAS) for a 50-acre development attached as Appendix F to the DGEIS. The TIAS projects 365 additional vehicle trips per day at the site during AM peak hours and 288 additional vehicle trips exiting during PM peak hours. (Appendix F, p. 33.). However, there is no discussion in the DGEIS as to how the increase in traffic will impact the residents actually using the local roads.

Significantly, the DGEIS also fails to address future use of local roads by heavy CNG trucks making deliveries to the planned decompressor station in Town of Oneonta. These trucks, making

deliveries to a similar facility in Herkimer County, have already caused several serious accidents along their route in Otsego County and beyond. Clearly, discussion of road and traffic impacts is inadequate.

Potable Water: The DGEIS defers specific plans for water supply, access and design of water distribution and admits such plans are missing and "*will be developed*" (italics added; p. 16.);

Sewer: The DGEIS defers plans for wastewater treatment stating only that such plans "*will be developed*" (italics added; p. 17.);

Telecommunications: The DGEIS provides no plans for telecommunication service, stating only that this "*will be coordinated along within a final redevelopment plan,*" which is not provided. (italics added; p. 20.).

B. THE DGEIS IS INFECTED WITH FACTUAL CONFUSION

1. Size of the Project is Repeatedly Misstated

The DGEIS repeatedly contradicts itself about something so basic as the actual size and scope of the proposed redevelopment. The DGEIS states that "COIDA will prepare a redevelopment master plan and economic development strategy for approximately 50 acres of an 80-acre site owned by COIDA in the area known as the Oneonta Railyards (Study Area) ..." (pp. 3, 4, and 45).

However, elsewhere the DGEIS states that environmental review was conducted on "an area known as the Oneonta Railyards, an area of approximately 200 acres composed of 17 parcels" (p. 8). See also, "Project Site" defined stated as: "The overall Railyards area includes approximately 200 acres..." (p. 11).

Finally, the DGEIS states that development may include property owned by COIDA, but may also include other properties and would be "phased according to property acquisition (where possible), or the interest of the current owner of the other parcels..." (p. 92). See also Options 1a, 1b, and 2, which contain the same language (pgs. 92-93).

The scope of the proposed redevelopment is entirely unlimited and therefore uncertain. This is unacceptable because it taints the entire supposed analysis of environmental impacts and potential mitigation. As the size of the project increases, environmental impacts will necessarily increase as well. It is not rational to assume that quadrupling the size of the project from 50 to 200 acres (or more) would not have additional, substantial environmental impacts. The DGEIS is required to accurately describe the size, scope, and setting of the proposed redevelopment.

2. A Master Plan Is Never Identified

The DGEIS is also confused as to whether a master plan for the project exists. The DGEIS states that COIDA "*will prepare* a master plan".... (italics added; p. 3). Later, the DGEIS states its "goal" is "*to prepare* a redevelopment master plan and economic development strategy..." (p. 4). However, no master plan or economic development plan is submitted.

Later still, the DGEIS states "[t]he master plan *has been prepared...*" (p. 5). Eventually the DGEIS states that Option 3 *is* the "Master Plan" (p. 13). This is incoherent. The public is entitled to know what the master plan is and where it is presented.

3. Full "Build-Out" Is Never Explained or Described

The DGEIS states it "will outline the proposed redevelopment at *full build-out*...the potential environmental impacts and the likely *mitigation measures* that could reduce or eliminate the environmental impacts" (p. 5). However, a full build-out analysis is never presented or addressed. DGEIS, *passim*. Later, the DGEIS states the Redevelopment Plan is based on a *five-year build-out* plan which is considered to be the most expeditious timeline for redevelopment..." (italics added; p. 52).

The public is never told for what period of time the redevelopment plan is expected to be in place, and over what period of time development impacts will be considered. Is the build-out limited to the next five years, or over decades, or more? Does it include 50, or 200 acres, or more? These basic matters should have been made clear and explained in the DGEIS. SEQRA provides that the public has a right to know what is being proposed before it can meaningfully comment on anticipated environmental impacts therefrom.

DISCUSSION OF APPLICABLE LAW

A. THE DGEIS MUST ADDRESS ALL IMPACTS AND IDENTIFY THRESHOLDS FOR FUTURE REVIEW

Following the filing of a DGEIS, "[n]o further SEQR compliance is required if a subsequent proposed action will be carried out in conformance with the conditions and thresholds established for such actions in the generic EIS or its findings statement." (6 NYCRR § 617.10(d)(1).) However, SEQRA regulations provide that a:

supplement to the final generic EIS must be prepared if the subsequent proposed action was not addressed or was not adequately addressed in the generic EIS and the subsequent action may have one or more significant adverse environmental impacts. (6 NYCRR § 617.10(d)(4).)

A generic EIS must also "describe any potential that proposed actions may have for triggering further development. "If such a 'triggering' potential is identified, the anticipated pattern and sequence of actions resulting from the initial proposal should be assessed." (Id.) "The generic EIS should identify upper limits of acceptable growth inducement in order to provide guidance to the decision maker." (Id.)

The DGEIS being considered by the Common Council does not comply with these basic requirements. Again, and again, the DGEIS concedes that future environmental review "may" be required, without setting forth any standards for when future site-specific environmental review would be triggered. The DGEIS also entirely fails to address growth inducing considerations such as the related expansion of fossil fuel energy in the region. Thus, the DGEIS appears designed to

limit environmental review rather than support reasoned decision-making. This is an abuse of the generic EIS process.

B. SEQRA REQUIRES A “HARD LOOK” BASED ON SUBSTANTIAL EVIDENCE

The DGEIS’s failure to develop conditions for approval and/or thresholds for further review in areas of environmental concern is emblematic of a failure to take a “hard look” at the environmental impacts identified. In order to satisfy SEQRA’s “hard look” requirement, the Common Council must be able to demonstrate that it took the relevant areas of environmental concern seriously:

While the term ‘hard look’ may be infelicitous, it recognizes the intent of the Legislature in SEQRA that its concerns that environmental issues are serious and that in making decisions which may have the potential to cause a material adverse environmental effect, they should take such concerns seriously. Nash Metalware Co., Inc. v. Council of City of N.Y., 14 Misc.3d 1211(A), 836 N.Y.S.2d 487, 2006 WL 3849065 (Sup. Ct. N.Y. Dec. 21, 2006).

See also, County of Orange v. Village of Kiryas Joel, 44 A.D.3d 765, 844 N.Y.S.2d 57 (2d Dept. Oct. 9, 2007), aff’g, 11 Misc.3d 1056(A), 815 N.Y.S.2d 494 (Sup. Ct. Orange Co. 2005) (“One cannot presume that the requisite ‘hard look’ was taken based on the thickness of the DEIS or because the consultants were highly regarded in their fields...”). In *County of Orange*, failure to assess the effect on wetlands and the decision to defer these analyses until the design phase was found to defeat the meaningful review required by SEQRA. In H.O.M.E.S. v. New York State Urban Development Corp., 69 A.D.2d 222, 418 N.Y.S.2d 827, 831-32 (4th Dept. 1979) the court held an agency failed to take a “hard look” and acted “in an Alice-In-Wonderland manner” where it “vaguely recognized” that adverse impacts would occur, but relied only on general assurances that future problems would be mitigated.

In Penfield Panorama Area Cnty., Inc. v. Town of Penfield Planning Bd., 253 A.D.2d 342, 688 N.Y.S.2d 848, 854 (4th Dept. 1999), the EIS stated that “‘primary areas of concern’ containing hazardous waste ha[d] been identified, that ‘additional characterization was required,’ and ‘that ‘some site clean-up may also be required.’” Id. at 853. Rather than requiring development of a remediation plan, the Planning Board “conditioned its approval of the project on [the Applicant’s] agreement to get approval of a site remediation plan from NYDEC and the County Department of Health] before any construction begins.” Id. The Penfield Court rejected this approach, holding:

deferring resolution of the remediation was improper because it shields the remediation plan from public scrutiny.... by deferring resolution of the hazardous waste issue, the Planning Board failed to take the requisite hard look at an area of environmental concern. Id. at 854.

Similarly, in AC I Shore Road, LLC v. Incorporated Village of Great Neck, 841 N.Y.S.2d 344, 347 (2nd Dept. 2007), the Court found that a DGEIS was inadequate because it failed to take the requisite ‘hard look’” at two particular areas of environmental concern, one of which being potentially contaminated soil, holding:

while the DGEIS noted that the soil in the area to be rezoned is potentially contaminated... the DGEIS and the SEQRA findings statement simply concluded that the petitioner's Site will be remediated in accordance with applicable standards and requirements, without examining whether the area can be remediated to residential standards, the significance of impacts, preparation of an EIS and a determination on mitigation of those effects. The fact that other agencies may have independent obligations to analyze the potential impacts of the facility has no bearing on the DEC's own obligation, as lead agency to analyze the existing areas of environmental concern. *Id.* (citations omitted)

The DGEIS contains similar flawed reasoning, is rife with omissions, and replete with deferral of all foreseeable environmental review which will be necessary, including wetlands protection, contaminated soil remediation, energy and natural gas infrastructure supply, traffic, health, and safety.

C. CUMULATIVE IMPACTS ARE IGNORED

Section 4 of the DGEIS is titled "Cumulative Impacts Analysis." However, it lacks any content that remotely resembles an analysis of cumulative impacts potentially resulting from development of the Railyards. Instead this section of the DGEIS contains an unrelated summary of policies from the 2007 Comprehensive Plan, now outdated, various statistics about growth and types of jobs, and a description of a few projects located elsewhere in the City. (pgs. 86-91.)

Regarding matters that should have been considered as part of a cumulative impact analysis, the DGEIS falsely asserts "There are currently no other large-scale projects proposed for the area" (p. 91). This is demonstrably untrue.

Public records show that COIDA is presently working to aggressively expand energy infrastructure to support the Railyards project in four ways: 1) by planning a gas decompressor station at a site owned by COIDA in the Town of Oneonta (called Pony Farm) to bring CNG trucks to deliver gas to the area; 2) by supporting expansion of the DeRuyter pipeline which would increase the capacity of the 8-inch pipeline to 10 inches or 12 inches and increase gas supply in the region by as much as 38% or 125%, respectively; and 3) by installing miles of gas pipelines and infrastructure to bring gas from the Pony Farm site and the expanded DeRuyter pipeline to the Railyards. This was presented in a NYS Consolidated Funding Application submitted by COIDA to the State of New York on July 26, 2018.

In addition, recent COIDA Board Minutes confirm that COIDA is in discussions with General Electric's Power Distributed Energy Group to prepare a proposal for a "community solution" to electrical energy needs at the Railyards (October 2018, Board Minutes). GE has asked for \$10,000 to develop electrical/natural gas infrastructure plans including plans for construction of a microgrid (fueled by combustion of wood or gas) to supply electricity to the project. (January 2019, Board Minutes).

The related developments at issue here, proposed by the same applicant, at the same time, intended to supply electricity and gas to the same project, and the cumulative impacts they represent, must be addressed in a coordinated review. It is well established that SEQRA mandates a lead agency

to undertake an analysis of incremental or increased impacts when the impacts of a project are added to other past, present and reasonably foreseeable future actions. (The SEQR Handbook, p.41.)

In Segal v. Town of Thompson, 182 A.D.2d 1043, 583 N.Y.S.2d 50 (3rd Dept. 1992), a Town's attempt to establish a water and sewer district was annulled for failure to assess impacts associated with the development of individual lots within the district. See also, Sun Co. Inc. v. City of Syracuse Indus. Develop. Agency, 209 A.D.2d 34, 625 N.Y.S.2d 371, 379-81 (4th Dept. 1995) (city's preparation of a "substantive working document that serves as a blueprint" for waterfront development is a larger plan requiring City to assess cumulative impacts "reasonably related" to action).

Here, the Common Council is bound to consider the cumulative impacts of the redevelopment, including planned energy infrastructure development for natural gas supply and electrical power generation. The DGEIS throws up its hands and defers this analysis to another time or governmental body. This violates SEQRA.

D. THE DGEIS RELIES ON IMPERMISSIBLE SEGMENTED REVIEW

SEQRA discourages "segmentation" of environmental review¹ which is defined as "the division of the environmental review of an action such that various activities or stages are addressed as though they were independent, unrelated activities, needing individual determinations of significance." Id. at Sec. 617.2(ag). See also, *Cumulative Impacts and Segmentation*, Alan J. Knauf (<https://www.nyenvlaw.com/wp-content/uploads/2014/11/Cumulative-Impacts-and-Segmentation.pdf>).

The reasons for this rule are obvious. If a proposed action can be broken into parts to be considered separately, or later in time by different agencies, each component may seem insignificant, although taken together the combined action is clearly significant. Accordingly, "[e]nvironmental review of the entire project is required before 'any significant authorization is granted for a specific proposal.'" Kirk-Astor Drive Neighborhood Assn. v. Town Board of Town of Pittsford, 106 A.D.2d 868, 869, 483 N.Y.S.2d 526, 528 (4th Dept. 1984) (SEQRA review of rezoning had to consider the office park that was planned for the land); Taxpayers Opposed to Floodmart, Ltd. v. City of Hornell Industrial Development Agency, 212 A.D. 2d 958, 624 N.Y.S. 2d 689 (4th Dept. 1995) (environmental review of a proposed annexation also had to consider a Wal-Mart proposed for the land.); Sun Company, Inc. v. City of Syracuse Industrial Development Agency, 209 A.D.2d 34, 625 N.Y.S. 2d 689 (4th Dept. 1995) (Carousel Landing Project could not be segmented from environmental review of the redevelopment plans for the entire Onondaga Lakefront Area.)

The DGEIS should not encourage segmented environmental review of the project impacts. Deferring consideration of environmental factors, including planned development of energy infrastructure, brownfield remediation, wetlands protection, stormwater control, road alterations, and issues associated with future permit applications to other agencies is improper. SEQRA

¹ "If a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance, and any subsequent EIS, the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible." 6 NYCRR § 617.3(g)(1).

requires the Common Council, as Lead Agency, to analyze all environmental impacts or to set forth specific reasons why this cannot be done, while ensuring that segmented review will be no less protective of the environment. This has not been done.

E. ALTERNATIVES WERE NOT SUBSTANTIVELY CONSIDERED

SEQRA requires the evaluation of project alternatives which could reduce adverse environmental impacts. However, the only alternatives considered by the Railyards DGEIS were for potential building site plans, distinguishable from each other only by the number, size, and placement of buildings. Contrary to the intent of SEQRA, the DGEIS fails to perform any analysis of alternatives for other key aspects of the project, including notably land use, energy and stormwater management (pgs. 91-98).

With respect to land use, the DGEIS considers only industrial development, in fact admitting that the only relevant sectors considered were:

food processing, brewing/manufacturing, bottling/canning/packaging, cost storage [sic], public access import and export, general distribution, cold/frozen/controlled distribution, advanced manufacturing, food hub/collection and packaging, warehouse/storage, distilling and raw material storage, barrel and storage/bottling and packaging, distribution/export (p. 13; and Tables 2.3.5a, 2.3.5b at pgs. 18-19).

At no time does the DGEIS consider alternatives to industrial development, such as high-tech or information-based uses, which may be more suited to attract and keep workers in the 21st century, especially in a city that is home to two universities.

With respect to energy, the DGEIS provides only dictionary descriptions of potential sources, including geothermal, solar thermal, solar photovoltaic, wind, biomass, and compressed natural gas (pgs. 105-111.) No substantive analysis comparing the applicability, cost, or environmental appropriateness of these potential sources of energy is included, and no preferred alternatives or decisions were made in the DGEIS regarding their use.

For the building site plan, the DGEIS selects Option 3 as the "preferred alternative" (p. 13-14). However, it neglects to substantively analyze any site characteristics or potential environmental impacts necessary to make an informed decision regarding this alternative. Critical to such an analysis is the consideration of wetland protection and stormwater design, which might require a smaller building footprint. The DGEIS does not even approximate parameters of what would constitute an effective stormwater management system, providing no calculations whatsoever to demonstrate the feasibility of water retention and treatment for different building site plans (DGEIS, *passim*).

The alternative selected, Option 3, provides for five buildings and over 900,000 sq. ft. of floor area, severely impacts on-site wetlands, invades buffers to those wetlands, and allows almost no room for an effective stormwater management system. On the other hand, Option 4 has a more compact building footprint (615,650 sq. ft.), would preserve the integrity of wetlands on the property, and would provide greater capacity for effective stormwater treatment. (p. 93-94; figure 5.1.4, p. 98.)

In section 6, titled "Unavoidable Adverse Impacts," the DGEIS attempts to justify dismissing this alternative but fails, stating:

This less intense redevelopment plan *is feasible as far as it is possible to design such development and avoid impact to the wetlands and stream*; however, the economic viability relative to market demands is *not known*. ...A smaller footprint...would require *less energy for both operations and heating and cooling*. (italics added; p. 101.)

Clearly, the vague assertion that the economic viability of Option 4 is "not known" does not constitute an analysis. It is the purpose of a GEIS to evaluate the economic viability of alternatives. Significantly, the DGEIS admits that design and development of Option 4 to avoid wetland and stream impacts is feasible, which contradicts the notion of it presenting "unavoidable adverse impacts." Furthermore, the DGEIS acknowledges that this option would require less energy.

The DGEIS also entirely fails to consider an "Eco-Park" at the site which could be constructed with a net-zero, or near net-zero carbon footprint, provide for low-impact sustainable uses, and limit the size of development to ensure protection of wetlands and effective stormwater management (similar in size to Option 4). This could be a major asset to the city. In fact, during the public hearing on March 8, 2019, the Mayor of Oneonta stated that he supports the idea of an eco-park. Sustainable development is also promoted in the city's new draft Comprehensive Plan. Failure of the DGEIS to consider and advance such an alternative must be corrected.

F. THE DGEIS SHOULD NOT HAVE BEEN ACCEPTED UNTIL THE CITY OF ONEONTA'S COMPREHENSIVE PLAN AND A COUNTYWIDE ENERGY TASK FORCE REPORT ARE COMPLETED

The City of Oneonta is currently developing a new Comprehensive Plan, an important effort which requires a large commitment of resources and time. It is premature and irrational to rush through a major industrial development in the City before the Comprehensive Plan is adopted. Consideration of the DGEIS should have awaited its completion.

In addition, the Otsego County Board of Representatives has recently announced creation of the Otsego County Energy Task Force. A Leadership Committee and various sub-committees have been appointed, with broad participation from members of the community. The Task Force will work to identify current and future energy needs, including identification of strengths and weaknesses of current energy infrastructure, and will develop a plan for meeting energy needs in Otsego County.

A massive industrial development of as much as 200 acres in the heart of the City of Oneonta, that will exacerbate energy needs and cause environmental harm, will have adverse impacts for generations to come. Acceptance of the DGEIS should have waited until the County Task Force completed its work. It is arbitrary and capricious to ignore ongoing planning efforts and to consider a project of this scale before those plans can be completed.

G. SEQRA Now REQUIRES CONSIDERATION OF CLIMATE CHANGE

On June 27, 2018, the New York State Department of Environmental Conservation (NYSDEC) adopted the first major revisions to its regulations implementing SEQRA in over 20 years. The amendments took effect January 1, 2019, before the DGEIS was accepted. These amendments introduce climate change impacts into the implementing regulations that *all agencies must follow*.

The amended regulations for the first time expressly require an EIS to detail strategies to mitigate a project's likely contributions to climate change. Two primary components must be addressed: (1) mitigation of the greenhouse gas emissions that cause and contribute to climate change; and (2) a project's vulnerability or resiliency to the effects of climate change, which in turn may affect the nature or significance of a project's environmental impacts. 6 NYCRR § 617.9(b).

The Railyards project proposed in the DGEIS will result in additional greenhouse gas emissions, and may be vulnerable to the hazards brought about by climate change, experiencing greater risk itself or imposing additional risks and impacts on the local environment and communities. Failure of the DGEIS to address new requirements for the consideration of climate change impacts is a fatal omission.

CONCLUSION

For all of the reasons stated above, Otsego 2000 urges the Common Council to address the serious deficiencies in the DGEIS. The Common Council must take the necessary time to fulfill its substantial and significant role as SEQRA Lead Agency to undertake factual analyses regarding each of the potential environmental impacts of the proposed redevelopment, including energy supply, wetlands protection, brownfield remediation, and traffic, among others. Only then can the public participate in a meaningful review. Until this record is corrected, the Common Council will not be in any position to finalize its required SEQRA findings.

Dated: March 15, 2019

Respectfully submitted,



Otsego 2000, Inc.
Nicole A. Dillingham, Board President

cc: Douglas H. Zamelis, Esq.

D.Vogler comments on wetlands

Railyards GEIS
City Hall, 258 Main St.
Oneonta, NY 13820

March 9, 2019

Dear City of Oneonta:

This letter is to comment on the Generic Environmental Impact Statement (GEIS) dated December 28, 2018. I am a citizen of Oneonta and live on East St. Like many citizens I have concerns about the energy use implications for this development but these are being addressed by others with more expertise. I write specifically about the wetlands on this site and to advocate for Option 4 of the alternatives.

My expertise in this area comes from over two decades of wetland experience. I hold a PhD in Botany (Penn State, 1997), teach undergraduate and graduate courses in wetland delineation (Biol 383 and BIOL 683 at SUNY Oneonta), and have worked with Jordan Clements of Otsego County Soil & Water in a wetland delineation. I am currently collaborating with our local USDA Natural Resource Conservation Service with one of my graduate students to evaluate wetland function in 10 wetlands across Otsego County. Several of my former students have entered careers involving wetland delineation. I know and have used both federal and state regulations regarding wetlands, and was previously an employee of the US Fish & Wildlife Service.

My concern for the development plans offered, particularly Options 1a, 1b, 2 and Option 3 (the “preferred” plan) is that all these options show several building and roads squarely in the wetland, and particularly on the soil type designated as Carlisle Muck and other wetland “hydric” soils. This is what the US Department of Agriculture says about the Carlisle (Ce) soil type:

This soil is poorly suited for community development. The high water table and the low strength of the surface layer are the main limitations. The use of onsite septic systems is not feasible in this soil. When the soil is drained, the surface layer shrinks and subsides.

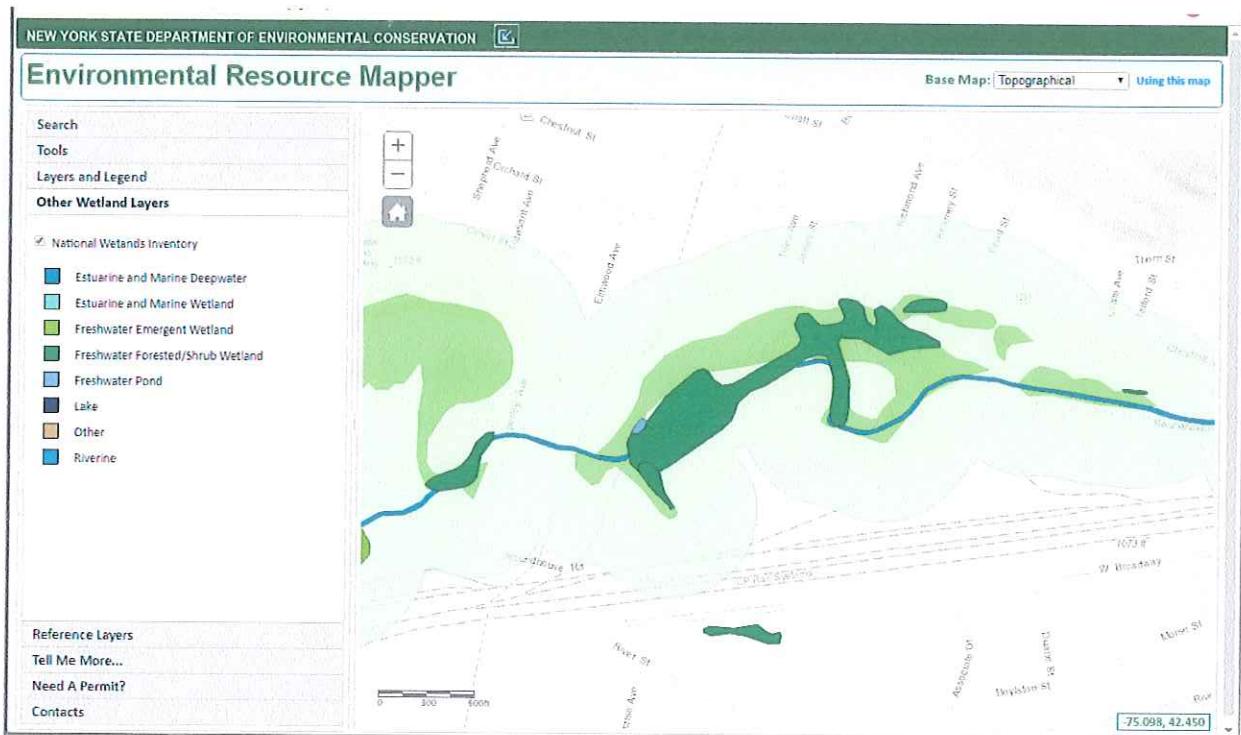
(source: https://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/survey/office/ssr12/?cid=nrcs144p2_016629)

Muck soils are spongy and porous, where water can and often does, travel horizontally. The high organic content retains water, and like a sponge will shrink if dried. The delineation report in the Appendix to the GEIS supports this by stating that these soils have reduced soil chemistry, which means that saturation of this soil at this site is a perennial condition. Options 1-3 involve buildings over a Class 3 stream (or more likely, re-routing it). To place buildings on such ground is beyond foolhardy and would require extensive civil engineering to make it stable for commercial development. Undoubtedly there are construction engineers willing to alter the landscape to this extreme degree to enable it to support a building that would survive flooding or subsidence...in most years. The GEIS listed mitigation is an option for the wetland loss, but I will argue that mitigation is an option best not pursued. I hope our state and federal agencies that would review such a permit request would have the good sense to soundly deny it. Options 1-3 would effectively reduce a wetland that is currently functioning to do what wetlands do best, and currently servicing the City’s interests in water quality and flood management.

The Delineation Report is commendable for its detail, but it underplays the value this wetland has for the region. It alludes to the fact that the wetland is likely “jurisdictional” meaning that both state and federal permits will be required, but this is a certainty. Below I have inserted a screen capture from the NYS DEC’s Wetland Mapper, showing that it does contain a wetland on the federal National Wetland

D.Vogler comments on wetlands

Inventory (NWI). This wetland drains into the Susquehanna River and thus must be reviewed under Section 404 of the Clean Water Act. I ask you to consider: Why is this neglected wetland listed under both state and federal regulations? What value is any wetland, or this particular wetland to Oneonta? I'll tell you.



Screen shot from the DEC Wetland Mapper. In dark green outline are wetlands recognized by the federal government under the National Wetland Inventory. The lime green areas are mapped under NYS Freshwater Wetlands, and the lighter color is the 100 ft buffer zone. In blue is a Class C stream. Any movement of soil that could alter the wetland hydrology requires a permit.

Wetlands have been described as the “kidneys” of an ecosystem. They filter water, purify it by reducing coliform bacteria, nutrients, sediment and in some cases organic pollutants. In fact, many wetlands have been credited to reducing organic contaminants such as tar and coal ash as might have been left at this site from the railroad days. Obligate wetland plants (OBL in the delineation report) have an aerobic layer surrounding their roots and this provides microbes a surface to break down complex, and sometimes toxic, molecules. As a tributary to the Susquehanna, the Roundhouse wetland provides floodwater and stormwater retention. Remember the 2006 flood? How about the 2010 flood? I note that our own wastewater treatment plant is just downstream of the point where this tributary enters the main channel. I strongly recommend keeping as much as the wetland area as still exists in the City area as possible, to continue these vital functions.

The GEIS mentions mitigation and stormwater management several times as a solution to the wetland loss, and concurrent gain of impervious surfaces. This is a very poor solution in our particular case. A “typical” mitigation plan is a 1-for-1 replacement, either on-site or off-site as the report mentions. Yes, there are other wetlands along this tributary—that are in private hands. Also, even if the permit-granting

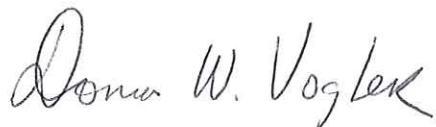
D.Vogler comments on wetlands

agencies approved 1-for-1 mitigation, it would still mean that there would be loss of a functioning wetland with deep muck soils and a permanent stream in this area, for another place to gain or expand one. The Railyard wetland provides services to the Railyard area—and upstream and downstream. A mitigation site some distance away will not provide floodwater retention nor pollution reduction here, not to mention the provision of biodiversity and habitat.

If there is to be development, Option 4, would do the least harm to wetlands while still providing space for commercial development. I am in fact supportive of the industrial development of the roundhouse area, and agree that job creation is an admirable goal for the City. This Railyard area is underused, and contains some suitable areas for development. I emphasize “some”... not all. Keep the wetlands.

In summary, Options 1,2, and 3 would destroy wetlands, alter hydrology, and require significant civil engineering, and permits –permits that I would hope would be denied. Option 4 is a great improvement from a wetlands standpoint. Even if some wetland surface loss is permitted, it would be preferable to alter the lower section of Wetland G than to damage the more valuable and contiguous Wetlands L, D and C in any way. I further suggest that should development take place in the Railyard area, that the remaining wetlands be highlighted as a valued feature, perhaps with signage. Trails and boardwalks do not interrupt flow and can bring additional recreational value to this neglected area. With minor improvements these wetlands could support greater native species and bird habitat and provide more local biodiversity of interest. It would be a great place to extend bike trials or paths of the Oneonta Susquehanna Greenway. Best of all, keeping these wetlands intact provides water quality services to the City, to the County, and to the entire Susquehanna River downstream. Please do not compound the wetland losses of the past at the Railyard site by further reducing the remnant of the original wetland that remains.

Yours truly,



Donna W. Vogler, Ph.D.
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Tel. (607) 436-9234

An electronic copy of this letter has been forwarded to: npowell@oneonta.ny.us, director@occainfo.org, and acucoleeb@gmail.com

**Comments on the Draft Generic Environmental Impact Statement
for the Redevelopment Plan, Oneonta Railyards**

Ronald E. Bishop, Ph.D., CHO

1. **Standing:** I am a resident and taxpayer of Otsego County, NY. Considering that some of my state taxes were included in funds granted to the Otsego County Industrial Development Agency, I claim standing to comment on the Draft Generic Environmental Impact Statement for the Oneonta Railyards Redevelopment Plan (dGEIS).

2. **Expertise:** I earned a bachelor's degree in Chemistry from Youngstown State University in 1981 and a Ph.D. in Biochemistry from the West Virginia University School of Medicine in 1990. I was nationally certified as a Chemical Hygiene Officer (CHO: hazardous materials safety specialist) in 2009. Much of my research has been focused on hazardous chemicals for thirty years, and my original peer-reviewed work has been published in, among other journals, *Cancer Research*, *Chemical Research in Toxicology*, *New Solutions Journal*, and *Trends in Biochemical Sciences*. I am currently an Assistant Professor of Chemistry and Biochemistry at SUNY Oneonta and a member of the Science Advisory Committee for the Southwest Pennsylvania Environmental Health Project.

3. **Scope:** My comments are primarily directed to Sections 3.0 – 3.2 and 6.0 of the dGEIS. They are followed by references to literature cited and a disclosure statement.

4. **Comments:**

3.1.1 Topography, Geology and Soils: Existing Conditions. The extensive presence of Chenango gravelly silt loam and smoothed udorthents, especially those overlying coal ash and cinders, is concerning because of the high propensity of these well-drained mineral-rich soils to generate fine dust particles when they are disturbed. Particles smaller than 63 μm in diameter stick avidly to the skin [1], those 10 μm and smaller are easily inhaled into the lungs, and those 2.5 μm and smaller can penetrate the deep lung and bloodstream of exposed individuals [2]. Toxic heavy metals in soil and construction debris have been shown to be selectively concentrated in fine particles [1, 3]. This observation suggests that measurements of these contaminants in bulk materials may be misleadingly low and such test results should not be interpreted to describe the fine particles released from construction and other land disturbances. There is no mention of these complicating factors in this or any section of the dGEIS.

3.1.2 Topography, Geology and Soils: Potential Impacts. There is no mention of dust propagation in this section, a glaring omission. People – especially children – who live and work downwind would be at risk of ingesting or inhaling fine particulate matter which remains suspended in the air longer and travels farther than ordinary dust grains.

3.1.3 Topography, Geology and Soils: Mitigation Measures. There is no mention of dust propagation in this section, again a glaring omission. Mitigation measures, if they had been considered, might include water spraying or the use of flocculants to prevent the release of fine particulates.

3.2 Soil and Groundwater – Former Site Use Impacts Assessment. Three earlier environmental site assessments were mentioned: by H2M Group in 1993, and by Malcom Pirnie, Inc. in 2005 and 2006. These assessments should have been attached as appendices to this dGEIS to provide longitudinal data on the property's industrial history. This is a major omission, and I consider this dGEIS unacceptable until it is corrected.

3.2.1 Soil and Groundwater – Former Site Use Impacts Assessment: Existing Conditions. The dGEIS cited the USEPA Brownfields Assessment Program Phase II Environmental Site Assessment report of 2006 as indicating that groundwater in the study area was contaminated with 1,2,4-trimethylbenzene, isopropyl benzene (a.k.a. cumene), naphthalene and methyl *tert*-butyl ether (MTBE) at concentrations higher than GA standards set by the New York State Department of Environmental Conservation (NYSDEC) [4]. Discoloring concentrations of iron and manganese in the groundwater were also noted. Soil samples in the study area contained benzo[a]pyrene at more than twice the state commercial soil cleanup objective (SCO) concentration [5], plus SCO-exceeding levels of arsenic, lead and copper. If ingested, inhaled or absorbed through the skin, eyes, or mucous membranes at concentrations greater than GA or SCO standards, these contaminants pose hazards to humans that include harm to skin and multiple organs, and cancer in a variety of tissues [large body of literature]. The Railyards site is well and truly a brownfield, and its redevelopment should be approached with caution.

3.2.2 Soil and Groundwater – Former Site Use Impacts Assessment: Potential Impacts. The National Academy of Sciences has strenuously argued for decades that mixtures of hazardous materials should be regarded as more potentially harmful than individual components in such mixtures [6], and the Agency for Toxic Substances and Disease Registry (ATSDR) recently published a confirming update [7], but this guidance is absent from the dGEIS discussion of potential impacts in this section. Rather, Delaware Engineering attempts to dismiss the seriousness of the situation by using analytical test results from nearby industrial sites as “typical background” with which to compare the test results for the brownfield study area. This is akin to selecting patients in the psychiatric and cardiology wards of a hospital as “normal, healthy adults”, and I believe it is an inexcusable ploy. Considering the real risk of neighbors inhaling microscopic particles containing or coated with the above-cited contaminants, I find the consultants’ assertion that “further investigation or remedial activities did not appear to be warranted” to be without scientific merit – or merit of any kind.

3.2.3 Soil and Groundwater – Former Site Use Impacts Assessment: Mitigation Measures. The dGEIS in this section focuses solely on demolishing abandoned structures and hauling off debris. As mentioned previously, if the generation of dust micro-particles is not prevented or controlled, these activities should be expected to do more harm than good. There was no mention of more promising mitigation measures such as bioremediation for organic compounds such as benzo[a]pyrene [8] and metals such as arsenic [9]. Among other points to consider, longitudinal testing of the Oneonta Railyard soils could have provided some insight as to whether microbes capable of degrading or sequestering the known contaminants may already be established – a missed opportunity. In my opinion, this dGEIS is not complete and not ready for endorsement by a Common Council practicing due diligence or by an educated public.

6.0 Unavoidable Adverse Impacts. I disagree with the consultants' assertion that "the most substantive impacts identified at any scale of development are those to the on-site wetlands". Although these may be substantial, I submit that the most significant impacts would be those to downwind neighbors if this current iteration of the dGEIS is the primary safeguard for redevelopment. This document as a whole, in my opinion, is designed more to promote industrial laissez-faire than to protect public health, and I call on our elected officials to demand better work from their consultants.

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Disclosure: The opinions expressed in this commentary are mine alone, submitted as a private citizen. They do not represent the views of the State University of New York at Oneonta, the Southwest Pennsylvania Environmental Health Project, or any other public or private entity.

Respectfully submitted,

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