

**RECOMMENDATION ON THE VARIANCE APPLICATION OF
MEPT Lincoln Crossing, LLC/Lincoln Gateway-New Bldg/Variances
File #17-239**

I. INTRODUCTION

An application for one use variance has been filed with the NJSEA by Thomas J. O'Connor, Esq., of the firm, Waters, McPherson, McNeill, P.C., on behalf of MEPT Lincoln Crossing, LLC, (the "Applicant") for the premises identified as 1 Daffy's Way (2701 Route 3 East), Block 451.05, Lot 14.011, in the Township of North Bergen, and Block 155, Lots 1.03, 1.04, and 6, in the Town of Secaucus, New Jersey. Said premises are located in the Hackensack Meadowlands District's Regional Commercial zone. The use variance is sought in connection with the Applicant's proposal to construct a 325,856-square-foot warehouse and distribution facility with related site improvements on the subject property.

The Applicant is requesting relief from the following:

1. N.J.A.C. 19:4-5.52(a), where warehouse and distribution facilities are not listed as a permitted use in the Regional Commercial zone.

A public hearing commenced at the Office of the NJSEA on Tuesday, April 17, 2018, and continued on April 24, May 8, May 15, May 22, May 23, and May 29, 2018. Notice was given to the public and all interested parties as required by law. The public notice for this hearing was published in The Jersey Journal newspaper. All information submitted to the Division of Land Use Management relative to this application was made part of the record of this recommendation.

II. GENERAL INFORMATION

A. Existing and Proposed Use

The subject premises is an irregularly-shaped, 19.9-acre parcel fronting along New Jersey State Highway Route 3 Eastbound Ramp U from Paterson Plank Road ("Ramp U"), New Jersey State Highway Route 3 Eastbound Service Road ("Route 3"), New Jersey State Highway Route 95/495 Bypass ("Route 495"), and the New Jersey Turnpike. The property is located in the District's Regional Commercial zone. The existing 236,207-square-foot building on the site contains the former Daffy's warehouse/distribution facility, corporate headquarters and accessory retail outlet for the sale of excess inventory.

Adjacent land uses include a Home Depot retail facility and a vacant parcel to the northwest; a warehouse building, a hotel with an associated parking deck, and a free-standing restaurant to the north; open space across Route 495 to the south; and various commercial facilities across Route 3 to the east. There are no residential properties, as that term is used in the NJSEA's regulations, situated within 2,500 feet in any direction from the premises. Both Home Depot and the subject premises share an access driveway, known as Daffy's Way, located to the west of the properties. Bigley Drive, a private road/driveway on the subject property, provides access to the site from Ramp U off of Paterson Plank Road to the north.

The Applicant is proposing to construct a 325,856-square-foot warehouse and distribution facility with related site improvements on the subject property. The existing warehouse structure is proposed to be removed in its entirety as a part of this application. The proposed warehouse and distribution facility will have 47 loading docks and two drive-in loading doors along the south side of the building, facing Route 495. In accordance with a letter from the Chief Engineer, dated, July 20, 2015, the yards fronting along the Route 3 Service Road, Route 495 and the New Jersey Turnpike are considered to be side yards.

The Regional Commercial zone in which the property is located permits a variety of commercial uses, including, but not limited to, retail, office, hotel, various business, personal, and social services, commercial and public recreation, and convention centers. The strict application of the regulations does not permit the proposed warehouse use on the subject property.

B. Response to the Public Notice

Two objectors provided written comments in response to the public notice dated March 13, 2018. Joseph B. Fiorenzo, Esq., of the firm, Sills, Cummis, & Gross, represented an objector, Towers Associates, Ltd. ("Towers"), owner of two properties located in the Town of Secaucus, identified as Block 155, Lot 7, which is occupied by Home Depot, and Block 155, Lot 1.02, which is a vacant parcel. Thomas H. Bruinooge, Esq., of the firm, Bruinooge & Associates, represented a second objector, Vee Jay International Corp. ("Vee Jay"), owner of the property identified as Block 155, Lot 5, which is occupied by a Hilton Garden Inn hotel, restaurant, and accessory parking deck. Collectively, Towers and Vee Jay may be referred to as "Objectors" in this report.

The following correspondence was submitted by the Objectors and the Applicant during the course of the public comment period, which closed on June 19, 2018:

1. Email, dated April 23, 2018, from Mr. O'Connor, enclosing the New Jersey Department of Transportation permit.
2. Two letters, dated May 10, 2018, by Mr. Fiorenzo, regarding hearing dates and sound measurements, sent via e-mail from Kristoffer Burfitt, of the Sills firm, on May 10, 2018.
3. Email, dated May 11, 2018, from Mr. O'Connor to Mr. Burfitt, with copy to NJSEA, regarding sound measurements.
4. Letter, dated May 14, 2018, from Eric McCullough, of the Waters firm, regarding Objector's response to request for additional hearing dates.

5. Letter, dated May 16, 2018, from Mr. Bruinooge, regarding Mr. Fiorenzo's request for additional hearing dates.
6. Letter, dated May 30, 2018, from Mr. McCullough, regarding an extension of time for the public record, for the purpose of submitting written summations.
7. Email and letter, dated June 19, 2018, from Mr. Fiorenzo, containing written summation.
8. Email and letter, dated June 19, 2018, from Mr. Bruinooge, containing written summation.
9. Email, dated June 19, 2018, from Mr. McCullough, containing written summation.

Other than submissions from the Applicant and Objectors represented by counsel, the following comments were received:

1. A written comment, dated April 6, 2018, from Richard C. Dube, New Jersey Department of Transportation;
2. A written comment, dated May 4, 2018, from Jeff Tittel, Director of the New Jersey Sierra Club, opposing the requested variance.
3. A written comment, dated May 6, 2018, from Paul and Theresa Bailey, opposing the requested variance.
4. Two written comments, dated April 30, 2018 and May 16, 2018, from Mary Blehl Walsh, Conservation Co-Chair of the North Jersey Group of the New Jersey Sierra Club, opposing the requested variance.

III. PUBLIC HEARING (April 17 & 24, and May 8, 15, 22, 23, & 29, 2018)

A public hearing, held at the Office of the NJSEA, commenced on Tuesday, April 17, 2018, and continued on April 24, May 8, May 15, May 22, May

23, and May 29, 2018. NJSEA staff and representatives in attendance for the public hearing were Sara J. Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer; Sharon Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer; Mia Petrou, P.P., AICP, CFM, Principal Planner; Mark Skerbetz, P.P., AICP, Senior Planner; and Douglas J. Janacek, Counsel.

During the May 29, 2018 hearing, and upon conclusion of testimony, the Applicant consented to an extension of the public hearing until June 19, 2018 for the limited purpose of keeping the record open to allow for the submission of written summations. Written summations were filed with the NJSEA on June 19, 2018 on behalf of the Applicant, MEPT Lincoln Crossing, LLC, and Objectors Towers and Vee Jay.

A. Exhibits

The following is a list of the exhibits submitted by the Applicant at the public hearing and marked for identification as follows:

<u>Number</u>	<u>Description</u>
A-1	Aerial image of subject site and surrounding area, prepared by Langan, dated April 12, 2018.
A-2	"Site Plan," Drawing No. CS 101, prepared by Langan, dated June 6, 2017, revised December 18, 2017.
A-3	"Grading and Drainage Plan," Drawing No. CG 101, prepared by Langan, dated June 6, 2017, revised January 29, 2018.
A-4	"Landscape Plan," Drawing No. LP 101, prepared by Langan, dated June 6, 2017, revised October 13, 2017.
A-5	"Cover Sheet," Drawing No. GI 101, prepared by Langan, dated June 6, 2017, revised December 18, 2017.
A-6	Architectural rendering, prepared by KSS Architects.

- A-7 Architectural floor plan, prepared by KSS Architects.
- A-8 Architectural elevation plan, prepared by KSS Architects.
- A-9 "Traffic Impact Study," prepared by Langan, dated June 6, 2017.
- A-10 Acoustical study, prepared by Acentech, dated June 5, 2017.
- A-11 Reciprocal easement agreement, dated September 29, 1992.
- A-12 Letters dated July 17, 2017 and July 18, 2017, from Brian M. Chewcaskie, Esq., representing the Township of North Bergen, in support of the subject application.
- A-13 Variance application for the subject project.
- A-14 "Project Vicinity Plan," Drawing No. EX 101, prepared by Langan, dated June 6, 2017, revised October 13, 2017.
- A-15 NJDOT access permit extension, dated April 17, 2018.
- A-16 Note and spreadsheets prepared by Joseph Horesco, acoustic engineer, Acentech.
- A-17 Hackensack Meadowlands District zoning map - Town of Secaucus.
- A-18 "Lighting Plan," Drawing No. LL 101, prepared by Langan, dated June 6, 2017, revised October 13, 2017.
- A-19 "Lighting Notes & Details," Drawing No. LL 501, prepared by Langan, dated June 6, 2017, revised October 13, 2017.
- A-20 "High-Cube Warehouse Vehicle Trip Generation Analysis," prepared by the Institute of Transportation Engineers, dated October 2016.

The following is a list of the exhibits submitted by the Objectors, Towers and Vee Jay, at the public hearing and marked for identification as follows:

<u>Number</u>	<u>Description</u>
O-1	Figure 7 from 2018 Build Traffic Volumes, Sheet 7 of 7, prepared by Langan, dated April 13, 2017.
O-2	N.J.A.C. 16:47-4.37 Traffic Counts.
O-3	Website printout from www.accuweather.com entitled "Secaucus April Weather 2017 - AccuWeather Forecast for NJ 07094," 3 pages, printed on 4/23/2018.
O-4	NOAA weather report for Teterboro, NJ, April 3-5, 2017.
O-5	Weather Underground report for KTEB, April 4, 2017.
O-6	Farmer's Almanac weather history for Secaucus, NJ, April 4, 2017.
O-7	Excerpt (page 21) from the ITE "Transportation Impact Analysis for Site Development: An ITE Recommended Practice," 2010 edition.
O-8	Letter, dated October 16, 2017, from Langan to Mark Skerbetz, NJSEA, with Figure 1 attachment.
O-9	Page 15 of the "Traffic Impact Study," prepared by Langan, dated June 6, 2017.
O-10	Letter from Langan, dated June 18, 2015, to Gabe Nunez, NJDOT, with NJDOT Driveway Access Permit Application and attachments.
O-11	"Sight Triangle and Truck Circulation Plan," Drawing No. CP-103, prepared by Langan, dated June 6, 2017, revised October 13, 2017.
O-12	NJ Transit Hudson County System Map of bus routes (two sheets).
O-13	"FHWA Traffic Noise Model (FHWA TNM) Technical Manual, Final Report," dated February 1998.
O-14	2015 and 2017 Existing Traffic Volumes, Sheets 2 of 7, prepared by Langan, dated March, 2015, revised June 30, 2015, and dated April 13, 2017.

- O-15 Trip Generation Comparison-Lincoln Gateway, dated May 21, 2018.
- O-16 Synchro 8 Report, "Lanes, Volumes, Timings, 6: Daffy's Way & Paterson Plank Rd, 2016 Build Condition, Weekday PM Peak Hour," page 6 and 8, prepared by Langan and submitted with the 3/13/15 Traffic Impact Study as part of NJSEA File No. 15-100; Synchro 9 Report, "Lanes, Volumes, Timings, 6: Daffy's Way & Paterson Plank Rd, 2018 Build Condition, PM Peak Hour," page 1 and 3, dated 04/13/2017; prepared by Langan and submitted with the 6/6/17 Traffic Impact Study.
- O-17 "Lincoln Gateway Site Circulation Evaluation," prepared by Bowman Consulting, dated May 21, 2018.
- O-18 "Lincoln Gateway Site Circulation Evaluation," prepared by Bowman Consulting, dated May 21, 2018.
- O-19 Table 10-4, "Loading Space Dimensions," from ITE Transportation and Land Development, 2nd Edition.
- O-20 "Proposed First Floor Plan," Drawing No. SP-1, prepared by Michels & Waldron Associates, LLC, dated June 13, 2017, revised February 13, 2018.
- O-21 Decision on the Variance Application from HMDC File No. 96-220, Tribune/Daffy's C.O.-Alteration, dated November 4, 1996.
- O-22 Hackensack Meadowlands District Official Zoning Map, last revised and adopted January 20, 2009.
- O-23 Map 15, "Land Use Plan," of the New Jersey Meadowlands Commission Master Plan, dated January 2004.
- O-24 "Fiscal Impact Analysis," dated June 6, 2017, prepared by Langan.
- O-25 Drive Shack renderings, 14 sheets.
- O-26 "Meadowlands Mobility 2030," adopted May 2004.

- O-27 "Hackensack Meadowlands District Official Zoning Map," revised and adopted November 8, 1972.
- O-28 "Site Plan," Drawing No. SP-1, prepared by Mario V. Cammarano, P.E., R.A., dated October 12, 1992, revised through November 19, 1992.
- O-29 Excerpts of deposition testimony, MEPT Lincoln Crossing.
- O-30 Excerpts of deposition testimony, MEPT Lincoln Crossing.
- O-31 CBRE New Jersey Industrial/Flex Listings, dated October 9, 2014.
- O-32 Email chain between Chase Wells of SCG Retail and Martin Standiford of Bentall Kennedy, including copied recipients LGero of Andover Company and Steven Majich, affiliation unknown, dated August 16 - 22, 2017.

B. Testimony

Thomas J. O'Connor, Esq., of the firm, Waters, McPherson, McNeill, P.C., represented MEPT Lincoln Crossing, LLC, at the hearing. The following witnesses testified in support of the application:

1. Daniel Miola, P.E., Civil Engineer, Langan Engineering.
2. Alan Lothian, P.E., Traffic Engineer, Langan Engineering.
3. Scot Murdoch, R.A., Architect, KSS Architects.
4. Joseph Horesco, Acoustical Expert, Acentech.
5. Gregory Woodruff, P.P., Professional Planner, Langan Engineering.

Joseph B. Fiorenzo, Esq., of the firm, Sills, Cummis, & Gross, represented the Objector, Towers, at the hearing. The following witnesses testified in opposition to the application on behalf of Towers at the hearing:

1. Dr. Thomas Brennan, P.E., Transportation Engineering, College of New Jersey.
2. Perry Frenzel, P.E., P.P., Civil Engineer and Professional Planner, Michels & Waldron Associates, LLC.

3. Leonard Gero, Towers Associates, Ltd.
4. Steven Lydon, P.P., Professional Planner, Burgis Associates.

Thomas H. Bruinooge, Esq., of the firm, Bruinooge & Associates, represented the Objector, Vee Jay at the hearing. The following witnesses testified in opposition to the application on behalf of Vee Jay at the hearing:

1. Perry Frenzel, P.E., P.P., Civil Engineer and Professional Planner, Michels & Waldron Associates, LLC.
2. Eric Keller, P.E., Traffic Engineering, Bowman Consulting Group.
3. Paresh Patel, Vee Jay International Corp.

C. Public Comment

The following members of the public were present and commented on the application:

1. Mary Blehl Walsh, North Jersey Group of the NJ Sierra Club.
2. William Sullivan, Esq., of the firm, Scarinci Hollenbeck, LLC, representing Mack Entities ("Mack"), owner of the adjoining warehouse property at Block 155, Lot 4.
3. Patrick Kelleher, speaking on behalf of union members in the building trades.

Staff findings and recommendations are based on the entire record. Transcripts of the public hearing sessions were prepared and transcribed by Beth Calderone, Certified Court Reporter; Susan Bischoff, Certified Court Reporter; Donna Lynn J. Arnold, Certified Court Reporter; and Mary Baumann, Certified Court Reporter.

IV. RECOMMENDATION

A. Standards for the Granting of a Use Variance from the Provisions of N.J.A.C. 19:4-5.52(a), where warehouse and distribution facilities are not listed as a permitted use in the Regional Commercial zone.

The District Zoning Regulations at N.J.A.C. 19:4-4.14(e)(2) provide that, *a use variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that:*

- i. The strict application of these regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner;*

The subject property is a significantly oversized lot, with poor visibility from its two main access points, which are themselves limited in nature. As set forth below these factors, when taken together, constitute a peculiar and exceptional practical difficulty and exceptional hardship to the property owner.

At approximately 20 acres in size, the subject property is more than six times larger than the Regional Commercial zone's minimum required lot area of three acres. While, as the Objectors and their witnesses have pointed out, a large lot size will generally not constitute a "hardship," that principle does not hold true under the unique circumstances presented here.

The subject property contains frontage along four rights-of-way (ROWs), principally Route 3, Route 495, and the New Jersey Turnpike, with lesser frontage along Route 3 Ramp U at Bigley

Drive. Despite this extensive frontage along major roadways, however, the subject property is not accessible from them.

In a letter dated July 20, 2015, NJSEA Chief Engineer Sara Sundell issued a determination that the frontages along Route 3, Route 495, and the New Jersey Turnpike on the subject property are not deemed to be front yards, pursuant to N.J.A.C. 19:4-3.19(e), which states that, "in the case where a lot line abuts a right-of-way, where the improved edge of the right-of-way is grade separated from a front lot line or front yard, and from which there can be no reasonable access from the right-of-way due to such grade separation, the Chief Engineer may determine that such lot line or yard shall not be considered a front lot line or front yard." Objectors contend that the southerly lot line does not contain a grade separation adjacent to Route 95/495, asserting that the existing grade from the southerly lot line is at elevation 5 feet, and the elevation within the Route 95/495 ROW is at elevation 6 to 7 feet, referring to Exhibit A-14, Project Vicinity Plan. However, a review of the property survey submitted in the application's plan set (Dwg. VL-101, prepared by Joseph E. Romano, P.L.S., Langan Engineering, dated 12/09/2013, and revised through 06/06/2017), which contains measured spot elevations on the premises, indicates the majority of the existing elevations along the southerly lot line are actually between 1.12 feet and 4.01 feet. There are two spot elevations of 4.85 and 5.64 feet at the southeasterly corner of the property where Route 3 intersects with Route 495, which is shown on the Project Vicinity Map as the beginning of an upward sloping area abutting the State ROW line. The *improved* edge of the ROW in this area, which is along the curved entrance ramp to Route 495, is

at approximately elevation 12. There can be no reasonable access to the adjoining state ROWs for numerous reasons, not only due to the combination of this grade separation and the existing configuration of the roadway near the highest point along the southern property line, but also due to the classification of the adjoining roadways by NJDOT. Route 495 and the New Jersey Turnpike are classified as "AL-1", which are fully-controlled-access highways by the NJ State Highway Access Management Code. Access to or from the site from these ROWs is prohibited due to this classification. The site contains approximately 2,969 feet of frontage along these restricted ROWs. In comparison, the site contains approximately 162 linear feet of frontage along the northerly portion of Ramp U and 84.32 feet of frontage along the easterly portion of Ramp U, the property's designated front yards. The easterly Ramp U frontage is a gated emergency entrance to the site that is restricted by the NJDOT and not available for access by the general public. The fact that there is no potential public access available from the ROWs which represent 95 percent of the site's entire frontage is a significant practical difficulty affecting site development.

Ingress to the site is relegated to the use of two existing points of access at the northerly portion of the site. The first point of access is available from a signalized intersection at Paterson Plank Road, along an area identified as Daffy's Way, via a reciprocal access easement on adjoining Block 155, Lot 7 (Towers property). A second means of access from Ramp U is available along Bigley Drive, a long and narrow private road of approximately 450 feet in length, located within the boundaries of the subject property.

Notably, all turns exiting the site at both Daffy's Way and Bigley Drive are right-turn-only movements.

The main developable portion of the site is located at a distance of over 1,000 feet from Paterson Plank Road at the entry point of Daffy's Way, and approximately 500 feet from Ramp U at the entry point of Bigley Drive, via these two sole means of access, which negatively affects the visibility of the site by the traveling public along Paterson Plank Road and Ramp U. Visibility of the site is further constrained by the presence of existing buildings on the Towers, Mack, and Vee Jay properties located along the frontage of Paterson Plank Road and Ramp U, between the subject site and the roadways upon which access to the property in question is available.

The distance from the site's main points of access, combined with the presence of structures that obstruct visibility of the site from its main points of access, does present practical difficulties. Essentially, the site can be seen from heavily-traveled regional roadways but cannot be accessed from them; and the site is not visible from the roadways by which the property is accessed. This configuration is a unique and extraordinary set of conditions applying to the subject property, and was not created by the property owner. These particular site characteristics constitute a significant practical difficulty, particularly in the context of site development on a property in a commercial zone. Good site visibility is typically an important consideration for a commercial user when deliberating whether or not to locate on a particular site. Some commercial uses, and particularly retail uses, rely on a certain

number of "pass-by" trips to draw patrons to their location. The site does not have access from the frontages where development on the site would be visible, nor, as stated previously, is there the ability to gain additional access to the site.

Objectors offered the nearby Harmon Meadow development as a site comparable to the property in question. However, the NJSEA staff does not consider Harmon Meadow to be a valid comparison. While Harmon Meadow is accessible via two intersections along Paterson Plank Road, its principal means of access is gained through multiple access points along the Route 3 West Service Road and overpass from the Route 3 East Service Road. In addition, the interior of Harmon Meadow is serviced by multi-lane roadways and a number of signalized intersections. The 175-acre Harmon Meadow site is a destination containing a large-scale mix of uses, including retail, restaurants, hotels, office, a movie theater, indoor recreation, and residential uses. This scale could not be replicated on the subject 20-acre site, particularly when considering site access to the property is limited to only two points of ingress, with existing long and narrow driveways limited to one travel lane in each direction, and exiting movements restricted to right-turn only egress. The restrictive characteristics of this property relative to site access limitations are not commonly associated with a commercial site of 20 acres in size.

Considered individually, the large size of the property and the extensive site frontage would not appear to constitute a hardship for the development of a permitted commercial use on the site. However, taken collectively, the large size of the site and frontage,

when paired with minimal means of access, the inability to gain additional access from other locations along the site's extensive frontages, and constrained visibility of the site from those access locations, represent a peculiar and exceptional practical difficulty and exceptional hardship that affects the ability of the property owner to develop a property with a use permitted in the Regional Commercial zone.

- ii. *The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

The Applicant requires a use variance to construct a new warehouse building on the subject property in the Regional Commercial zone. The evaluation of this criterion requires an assessment of the proposed use in the context of, not only the existing site conditions, but the surrounding sites in the vicinity of the property in question, as well as the potential impacts of the proposed use to its neighbors and the general public. As part of the subject application, the Applicant has submitted a Project Impact Assessment report, traffic analysis, and noise report evaluating the potential impacts of the proposed use.

Based on the record created during the public hearing, the NJSEA staff finds that the proposed use will not result in a substantial detriment to the public good, and will not adversely affect the public safety. The proposed warehouse use is not proximate to residential development, as that term is used in the NJSEA's regulations, and as discussed below, significant measures have

been taken to protect against any impact to adjoining properties, including the adjacent Vee Jay hotel property. Improvements to the site and building will comply with Flood Plain Management regulations and FEMA requirements by elevating the finished floor of the building above the flood plain, which promotes the public health, safety and general welfare.

It is not anticipated that a substantial detriment to the area's air quality would be generated by the proposed warehouse building. There are no manufacturing processes proposed or airborne emissions resulting as a byproduct of the use within the building. Although Objectors and commenters at the public hearing have expressed concern regarding the number of trucks associated with the proposed use, the number of loading doors and truck parking spaces proposed is not extraordinary with respect to other new warehouse buildings being developed speculatively within the Meadowlands District. The fact that truck parking spaces are being provided, where none are required, provides an efficient layout where trucks can park and logistics operations can be staged within the same area, avoiding a situation where trucks may otherwise idle while waiting for an available loading door or attempt to park or idle on local streets. Nonetheless, any use of the site shall be required to comply with New Jersey State Air Pollution Control Laws and Codes at N.J.A.C. 7:27 and 7:27B, pursuant to N.J.A.C. 19:4-7.5. Therefore, the staff recommends, as a condition of this recommendation, noted as Condition No. 1 in Section V below, that an air quality monitoring program shall be implemented at the site to ensure compliance with NJDEP air quality requirements.

Likewise, with respect to noise, the proposed use will not result in a substantial adverse impact to adjoining properties. The configuration of the proposed building locates the facility's loading doors along the southerly building façade, at the most distant location to adjoining development. This design allows the proposed building to shield and obstruct both visibility and noise from receptors on adjacent properties. The Applicant has provided an acoustical evaluation demonstrating that the operations related to the warehouse use will comply with NJSEA performance standards relative to noise. Though critical of the evaluation provided by the Applicant, the Objectors failed to provide any acoustical evaluation of their own which dispute its conclusions. Regardless, the NJSEA staff recommends that the proposed use and any future rooftop equipment to be installed on the site shall be required to comply with all noise performance standards of N.J.A.C. 19:4-7.3. Therefore, as a condition of this recommendation, the Applicant shall be required to demonstrate as-built compliance with NJSEA noise requirements of N.J.A.C. 19:4-7.3 when the site becomes operational, noted as Condition No. 2 in Section V. below.

Objectors also assert that noises from trucks traveling on Bigley Drive would substantially adversely impact their properties. Noise emanating from passenger vehicles and trucks traveling along public ROWs and driveways from public ROWs is customary and incidental to any non-residential site's operations, as even permitted commercial uses require deliveries by trucks. The NJSEA and its predecessor agencies, have therefore not historically evaluated noise resulting from such traveling vehicles under the NJSEA's noise performance standards. The operation of trucks on

site driveways is customary and is not a source of noise generation that is unique to a warehouse use. Trucks are commonly associated with commercial deliveries and other commercial activities essential to the function of many use types, including those commercial uses permitted in the Regional Commercial zone. The existing site driveways, while the site had been operational, were available for use by truck traffic, as the previous principal use on the site had been a warehouse use. The existing conditions immediately adjoining Bigley Drive include a parking area and the blank easterly façade of the Home Depot facility to the west, and, to the east, a driveway and the westerly façade of the Mack warehouse, largely devoid of openings with the exception of an emergency exit door and clerestory windows.

No substantial adverse impact is likewise anticipated to result on the vacant Towers parcel. During the course of the public hearing, representatives from Towers suggest that their site will be developed with a hotel use in the future, and that the proposed warehouse use would materially impact the ability to develop a hotel at that location. While this alleged impact is entirely speculative, in order to ensure that noise generated by the site's operations related to the warehouse use does not impact the vacant Towers parcel, the NJSEA staff recommends an alternative site design with respect to the proposed location of seven trailer parking spaces designated on the site plan to the west of the proposed building. With the removal of the seven truck parking spaces from the southwesterly paved area, the proposed warehouse use will situate all loading activities along the southerly building façade, at a distance of approximately 200 feet from the Towers vacant parcel.

The proposed building itself will act as a screen to obstruct the view of the loading area and noise resulting from the activities in this area. The same cannot be said of the impacts to Towers' prospective hotel by the existing Home Depot facility, which includes a loading area, outdoor garden center, and outdoor storage and staging areas in the rear of the Home Depot lot, immediately adjacent to the potential hotel use on the Towers vacant parcel. Therefore, this recommendation is conditioned on the removal of the seven trailer parking spaces proposed in the southwesterly portion of the site, noted as Condition No. 3a. in Section V below. This area may be used instead for car parking or landscaped open space, but not for trailer parking, storage or operations.

With respect to visual and noise impacts to the Vee Jay hotel property, an improvement can be anticipated under the proposed conditions. Seven existing loading areas located along the northerly façade of the existing warehouse building will be removed with its demolition, and an 11-foot-wide landscaped buffer will be installed between the proposed parking area on the subject property and the Vee Jay property, where only a five-foot-wide buffer is required. The area between the proposed warehouse building and the hotel will be a parking lot for passenger vehicles. Vee Jay asserts that hotel guests would request reimbursement due to noise originating from the warehouse use on the subject property. This assertion is not given credence by the NJSEA staff, based on the findings herein.

The public order also will not be substantially adversely affected by the proposed warehouse use. The site is zoned for development and any use of the site will generate traffic. Generally, traffic associated with warehouse uses is anticipated to occur at off-peak times of day. The logistics of warehouse operations optimize the movement of goods quickly and efficiently, and most traffic associated with warehouse uses is expected to occur earlier and/or later than peak commuting periods in order to facilitate the movement of goods in an efficient manner. In fact, the New York City DOT Off-Hour Deliveries program promotes deliveries in the city by trucks between 7:00 PM and 6:00 AM as a way to improve travel speeds and service time, as compared to deliveries performed during congestion periods. Due to the close proximity of the proposed warehouse to New York City, it is conceivable that trucks from the facility will be traveling to the city and participating in such programs. Congestion on major interstate highways, including the New Jersey Turnpike, is also typically reduced during the late night and early morning hours, which becomes a more efficient and cost-effective time for long-distance and interstate deliveries. The operations of the proposed use are not expected to interfere with traffic associated with the later morning start times typically associated with most retail development.

The proposed warehouse use on the site will not cause a detriment to area morals, but will restore a vacant, underutilized, and isolated site, which may potentially be subject to vandalism and other illicit activities, to active use. Additionally, the public prosperity will not be adversely affected. The proposed reuse of the site will

generate employment opportunities in the area, and will produce tax revenue in excess of the costs required for public services according to the fiscal impact assessment provided by the Applicant.

The proposed warehouse use will not substantially adversely affect the convenient use of and prosperity on adjacent properties. The subject property is comparatively isolated in relation to adjoining uses. The principal activities on the adjoining properties are oriented toward their frontages on Paterson Plank Road, Ramp U, and Route 3. The loading activity on the subject property is proposed to be located in the most distant location available with respect to adjoining properties.

The proposed use variance will, therefore, not result in substantial detriment to the public good, and will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

iii. Adequate infrastructure, including storm and sanitary sewers, utilities, access roads, will be provided and shall be so designed to prevent and/or minimize negative impacts upon the existing infrastructure. In addition, the proposed use will not decrease the ability of said infrastructure to perform in a safe and efficient manner.

The subject site is a previously developed property that currently contains access to public utilities, including storm and sanitary sewers, public water, gas, electric, and telephone service. Will-serve letters have been received from Suez, PSE&G, and Verizon,

indicating sufficient capacity is anticipated to be available for these utilities to service the site. The Applicant has indicated that the Secaucus MUA does not provide will-serve letters to developers, but indicates its willingness to accept the sewerage from the proposed development.

As part of the development of the property in question, the Applicant proposes to upgrade the existing utilities on the site, particularly with regard to drainage and floodplain requirements, as well as improvements to fire safety via the installation of a water tank and pump house for standby fire suppression purposes on the premises.

While site utilities and stormwater controls would have to be evaluated, and likely upgraded, for any new development on the property, the proposed improvements will nonetheless result in a functional utility and drainage system on the site, which will not negatively impact neighboring properties. The site and building will be elevated to comply with Flood Plain Management regulations and FEMA requirements, which will result in a public benefit through the promotion of resilient development.

The proposed use will also not decrease the ability of this infrastructure to perform in a safe and efficient manner, but rather, will result in overall improvement and upgrading of the site's infrastructure.

Access to and from the site is provided via two private driveways, Daffy's Way and Bigley Drive, off of Paterson Plank Road and

Ramp U, respectively. Access to the westerly portion of the site is provided via Daffy's Way along an access easement through the Home Depot (Towers) site. The intersection of Daffy's Way and Paterson Plank Road is signalized. The second driveway, Bigley Drive, is located approximately 500 feet to the east of Daffy's Way, where it intersects with Ramp U. A third point of access, located along the Route 3 eastbound Service Road near its intersection with Ramp U, is a gated access point restricted by the NJDOT to use by emergency vehicles only.

Both the Daffy's Way and Bigley Drive site driveways are restricted to right-turn-only movements exiting the site. Vehicles exiting at Daffy's Way may make a right turn onto either Paterson Plank Road or Ramp U. Vehicles exiting at Bigley Drive may only exit right onto Ramp U. The Applicant proposes improvements to the Bigley Drive intersection with Ramp U to expand the turning radius for trucks exiting the site, and has obtained an NJDOT permit to install the improvements within the NJDOT right-of-way. These improvements will promote a safer circulation pattern at this intersection.

There were some concerns expressed by Objectors that the location of the proposed guard booth near the southerly portion of the Daffy's Way driveway could potentially cause a queue of vehicles attempting to enter the loading area, thus causing traffic to back up onto the Towers property. The NJSEA staff does not anticipate such back-up queues on to the Towers property because of the extensive queuing length of the driveway from Daffy's Way, as well as the numerous truck parking spaces available within the loading area to

accommodate trailers not utilizing the loading doors. However, in order to maximize the queuing length available on the site, the NJSEA staff recommends that, as a condition of this recommendation, the proposed guard booth at the terminus of the Daffy's Way driveway shall be relocated further south into the site, pursuant to Condition No. 3b of this recommendation in Section V. below.

Regarding site traffic, the Applicant's traffic expert provided a report analyzing the anticipated traffic to be generated by the proposed warehouse use, pursuant to the Institute of Transportation Engineers (ITE) Trip Generation Manual, 9th Edition, which was in effect at the time of application in June 2017. The scope of the Applicant's traffic report was determined in consultation with the NJSEA staff as required by N.J.A.C. 19:4-7.10(b).

Objectors contest that the proposed warehouse use should be evaluated pursuant to the high-cube fulfillment center standards of the Institute of Transportation Engineers (ITE) Trip Generation Manual, 10th Edition, which was published in September 2017. Although MEPT's traffic expert was aware that a 10th Edition of the ITE Manual was available after MEPT's initial application submission date in June 2017, but prior to the public hearing date, he elected to continue to utilize the 9th Edition's Warehouse Land Use Code 150, which provided for higher trip generation rates for the proposed use than the 10th Edition's Warehouse Land Use Code 150, as well as the 9th Edition's High Cube Warehouse Distribution

Center Land Use Code 152, and, therefore, resulted in a more conservative analysis.

Objectors stated that, based on the height of the building and the number of loading doors provided, the proposed warehouse use should be classified as a high-cube fulfillment center (ITE Land Use Code 155) pursuant to the 10th Edition. Objectors' traffic expert offered alternative trip generation estimates based on the various land use codes related to the 9th and 10th Editions of the ITE Manual. Objectors' traffic expert also stated that the traffic study should have relied upon the ITE's "High-Cube Warehouse Vehicle Trip Generation Analysis," dated October 2016 (Exhibit A-20), for the determination of the use as a high-cube fulfillment center, as this would result in a more conservative design.

Upon closer evaluation of this argument, the NJSEA staff are not persuaded, for a number of reasons. First, the number of studies, as data points, utilized as the basis for the 10th Edition's Land Use Code 155 (High-Cube Fulfillment Center) was limited to only two locations. This extremely small sample size calls into question the accuracy of the resulting trip data. By way of comparison, the trip generation estimates associated with the 9th Edition's Warehouse Land Use Code 150 are the result of studies of 23 locations for the AM peak and 31 locations for the PM peak. The Objectors' assertion that the 10th Edition should have been utilized fails to take into account that the 10th Edition trip data numbers are specifically noted by ITE to be used with caution, as they are based on a very small number of building samples. The fact that only two studies with a specific study period were included in the 10th Edition for

Land Use Code 155, leads the NJSEA staff to believe that the 10th Edition numbers, while published, are a place-holder to be further enhanced by future studies that will refine the results to apply to a wider range of facilities. In addition, the areas of the two buildings studied by ITE for Land Use Code 155 are approximately 700,000 square feet and 1,450,000 square feet, which are significantly larger than the proposed 325,856 square foot warehouse. Moreover, the study upon which the 10th Edition Land Use Code 155 was based (see Exhibit A-20), notes that the study was conducted during the busy December holiday season and does not represent the normal traffic expected to be generated by the use. The study (Exhibit A-20) also notes that for fulfillment centers, there are insufficient data to derive usable trip generation rates. Finally, fulfillment centers typically contain a large number of smaller facility vehicles, such as delivery vans, which are not proposed to be accommodated by the Applicant's proposed site plan at the subject location. As such, the NJSEA staff is in agreement with MEPT's traffic expert regarding the use of the 9th Edition's Warehouse Land Use Code 150 as a conservative study of the proposed traffic conditions.

Objectors also called into question the accuracy of MEPT's traffic counts, as the measured traffic counts were substantially lower than counts taken by MEPT during the course of a previous application in 2015. The NJSEA staff accepts the findings of MEPT's traffic expert regarding the accuracy of the traffic counts submitted with the subject application. Traffic patterns shift over time. The fact that the traffic counts relied upon by MEPT's traffic expert represent a decrease from prior counts, conducted years earlier, is therefore not entirely surprising. In fact, the counts in the

MEPT traffic report are similar to traffic flow information available through the NJSEA's Meadowlands Adaptive Signal System for Traffic Reduction (MASSTR). MASSTR is an intelligent transportation system (ITS), operated and maintained by the NJSEA, which automatically coordinates the operations of traffic signals in the Meadowlands region, based on real-time traffic information, in order to maximize the flow of traffic throughout the region. Objectors did not conduct independent traffic counts to counter the alleged inaccuracies.

The Objectors also asserted that the traffic counts were improperly taken as there was inclement weather on the day of the counts. The Objectors presented four exhibits (Exhibits O-3, O-4, O-5, and O-6) that indicated it had rained 1.3 inches on April 4, 2017, and that was, in fact, the highest daily rainfall for the month of April that year. However, the Objectors failed to point out that Exhibit O-5, which listed an hourly weather history for KTEB, which is Teterboro Airport, indicates the majority of the rain fell between 2:49 AM and 3:51 AM, which is hours before typical commuter traffic time, when the traffic counts were started. While there was also some rain between 5:51 AM and 7:51 AM, this rainfall amounted to approximately 0.05 inches over a 2 hour period, which is considered insignificant. Therefore, the NJSEA staff has no issue with the weather conditions during the traffic counts used in the Applicant's traffic analysis.

Both the NJSEA staff and the Objectors questioned the Applicant's traffic expert about the increase in the delay at the intersection of Ramp U and the Route 3 Service Road, as indicated in the

Applicant's Synchro analysis, which is the traffic modeling software utilized in the Traffic Impact Analysis (TIA). The Applicant's traffic expert testified that, according to the analysis, the intersection of Ramp U and the Route 3 Service Road Eastbound has a Level of Service (LOS) of F with a delay time of 68 seconds for the existing, no-build condition. In the future condition, the intersection also has a LOS of F, although with a longer delay of 127 seconds. As the intersection in question is stop-controlled by a Stop sign, the Synchro modeling software anticipates a full stop for vehicles entering the intersection of Ramp U with the Route 3 Service Road, which increases the amount of time each vehicle spends in the intersection. However, the Applicant's traffic expert testified that he observed real-time conditions at this location, which indicated that traffic flows more akin to a "yield" movement at that intersection, as opposed to a full stop. Therefore, he anticipates that the actual delay in traffic on Ramp U will be less than the modeled delay time. The NJSEA staff concurs with this observation, but does anticipate that traffic on Ramp U could worsen from existing conditions when the site is developed. However, the site is an existing developed site that had generated traffic, including truck traffic, when operational. Increased traffic in the area, including the Bigley Drive/Ramp U intersection, could be anticipated to result from any development of the site. In addition, the peak hours of operation of a warehouse use do not typically coincide with peak commuting periods of commercial uses, such as retail and office, which are located in the surrounding area.

The Objectors' traffic expert testified that there will be conflicts between WB-67 trucks exiting Bigley Drive and any vehicles entering Bigley Drive. The Applicant has sought and received approval from the NJDOT to modify the curbing within the Ramp U right-of-way at Bigley Drive to facilitate the movement of vehicles exiting the site. The NJDOT-approved modifications shown will eliminate the need for a WB-67 vehicle from crossing into the on-coming traffic lane of Ramp U when exiting the site. While this is a significant improvement over the existing configuration, a truck of that size will require swing room on Bigley Drive at the approach to the exit. As a result, a vehicle entering Bigley Drive at the same time may be required to stop and wait for the exiting truck to clear Bigley Drive. Such conflicts are not uncommon within the District, and there is sufficient space within the entrance of Bigley Drive for the full length of a WB-67 vehicle to pull completely off of Ramp U while waiting for a truck to clear the driveway. As such, the NJSEA staff agrees that the NJDOT-approved widening will improve the existing conditions of Bigley Drive. The frequency of a conflict between vehicles entering and exiting is not anticipated to be so great as to warrant restrictions on Bigley Drive.

In addition, the Objectors contend that the NJDOT did not grant the extension of the NJDOT permit based on the proposed site plan. This contention is more appropriately raised by Objectors with the NJDOT. It is the responsibility of the Applicant to obtain all necessary approvals from other governmental entities with jurisdiction. However, the restrictions in the NJDOT permit placed on the number of vehicles utilizing Bigley Drive are significantly

higher than the number of trips calculated in the TIA. The access permit allows 164 trips during the morning peak and 169 trips during the evening peak, whereas the TIA for the proposed development indicates that there will be 24 trips in the morning and 40 trips in the evening.

The Objectors' traffic expert also called into question the coding of the Synchro capacity analysis and listed several issues that they alleged caused the analysis to be flawed. First, they stated that the phasing of the existing traffic signals along Paterson Plank Road was not properly input into the program. In several locations within the report results, there are numbers with exclamation points, which they assert signifies a phase conflict between lane groups and improper coding within the program, which skews the results. The NJSEA staff rejects the claim that the analysis was improperly coded. The Synchro model was set up in a way to analyze the two intersections separately, while the signal timing in the field for the two signals is operated by one single controller. The exclamation points appeared in the report because of the unique geometry of the two adjacent intersections. Even though it appears in Synchro that there is a phase conflict, the controller in the field controls the upstream signal so that no traffic flow will go through the conflicting phase. Therefore, the NJSEA staff has no issue with the coding of these intersections and the exclamation points in the Synchro report.

Next, with regard to the Synchro analysis, the Objectors' traffic expert indicated that the heavy vehicle percentage should have included buses, which results in understating the heavy vehicle

percentages in the analysis. The NJSEA staff agrees that buses could have been included in the calculation of heavy vehicle percentages, but does not believe the omission is significant. Buses generally account for less than 3 percent of the total traffic volumes; their exclusion in the heavy vehicle percentages could not have a meaningful impact the results of the analysis.

The Objectors' traffic expert also testified that a default code in the Synchro program was used for loop detectors, instead of using the specifics related to this intersection, which affects the accuracy of the capacity analysis results. The NJSEA staff asserts that the difference between the default and site specific coding is minimal and will not have a significant impact on the analysis results. It should also be noted that Synchro is a macroscopic analysis software and has some limitations when used to code the fully-actuated and self-adaptive system of the MASSTR¹ signals. The NJSEA staff recognizes these limitations and has evaluated the Synchro results in light of the staff's familiarity with and local knowledge of the daily operations of this intersection. Therefore, the NJSEA staff accepts the Applicant's detector coding in the Synchro program.

The Objectors' traffic expert also testified that, for the northbound New Jersey Turnpike exit ramp right turn, the program's results issued a warning for both no build and build conditions that the 95th percentile volume exceeds capacity. In addition, the length of the queue exceeds the available storage; specifically, the length of available storage is 200 feet, yet during the AM peak, the Synchro reports notes that the length of the queue was 327 feet in the AM

and 396 feet in the PM. The NJSEA staff has reviewed this assertion. As mentioned above, the fully-actuated and self-adaptive system of the MASSTR signals cannot be fully accounted for when coded in Syncro. Based on the NJSEA staff's familiarity with and local knowledge of this intersection, the adaptive signal at this intersection helps to reduce queue length at this approach and the LOS is acceptable. Therefore, the NJSEA staff has no issue with the queue lengths in the report.

The Objectors' traffic expert also testified that the Synchro analysis input has a parameter called "Enter Blocked Intersection," meaning that traffic is entering a congested area in that intersection or the intersection is blocked because of existing traffic. The NJSEA staff has reviewed this assertion. Based on the NJSEA staff's local knowledge and experience, the traffic conditions at this intersection do not warrant changing this parameter to a different value. Therefore, the NJSEA staff has no issue with how this parameter was set in the Synchro analysis.

The Objectors' traffic expert expressed concern regarding the impact of the existing bus stops and the dwell time of the buses at the stops, which was not incorporated in the analysis. His concern included the fact that the bus stops located along Paterson Plank Road are used by hotel patrons traveling into NYC and employees of the warehouse who may also choose to use the bus. The NJSEA staff has determined that because buses generally account for less than 3 percent of the total traffic volume in this area, the inclusion of buses is not expected to have a significant impact on the results of the analysis. However, to account for the full effect of any bus

blockage at the intersection, the NJSEA staff recommends that, as a condition of this recommendation, noted as Condition No. 4 in Section V. below, the Applicant shall revise the TIA, for review and approval by the NJSEA staff, to include buses in the heavy vehicle percentages and adjust the bus blockage factor in Synchro accordingly.

The Objectors' traffic expert pointed out that the capacity analysis was not adjusted for the field change of one of the two "through" lanes to a shared "through/right" lane. In the no-build and the PM peak analysis, there is a warning that the "shared through/right" lane should be coded as a right turn lane because of high right turning volumes, but Synchro was not coded this way. The NJSEA staff has reviewed this assertion and notes that the program was coded using the actual field conditions with one "through" lane, one shared "through/right" lane and one "right only" lane. The NJSEA staff has determined that the "warning" in Synchro does not have significant impact on the result of the analysis. As mentioned in the previous section, Synchro has some limitations when coding the fully-actuated and self-adaptive system of MASSTR. Based on the NJSEA staff's familiarity with and local knowledge of this area, the overall LOS reported in the TIA is consistent with the actual operation of the intersection. Therefore, the NJSEA staff has no issue with this coding.

The Objectors' traffic expert testified that the Synchro analysis should have been coded to use the same cycle length and green time when comparing no build to build conditions. As the Applicant's traffic analysis had changes in the green time, this is

not a true comparison of the incremental impact of the proposed development. The NJSEA staff disagrees with this statement. As mentioned in previous sections, the signal at this intersection is part of the MASSTR system, which is fully-actuated and self-adaptive. Under MASSTR, the cycle length and green time change automatically during every cycle according to real-time traffic demand. Therefore, the NJSEA staff believes the Applicant's coding of cycle length and green time in Synchro is correct.

The Objectors' traffic expert also stated that the Synchro analysis has been coded to allow "Right Turn on Red" from eastbound Paterson Plank Road to Daffy's Way, but there is no stop bar within the intersection at Daffy's Way, resulting in improper coding. The NJSEA staff has determined that the coding does not affect the result of the analysis, since the upstream traffic is controlled by the same controller in the field and there is no conflicting traffic.

Overall, the NJSEA staff believes that the coding and assumptions in the Applicant's Synchro capacity analysis are generally acceptable. Some minor revisions to refine the analysis should be implemented, as discussed above, and in accordance with Condition No. 4 of Section V. below.

The Objectors' traffic expert noted that a portion of Daffy's Way located on the subject property narrows down at a particular point to the west of the Towers vacant parcel, thereby preventing entering and exiting truck traffic from traveling concurrently at that location. He continued to state that this situation would result in a queue of vehicles going back to Paterson Plank Road. NJSEA staff

recognizes that the configuration of the driveway and the existing curbed island that extends into the driveway may cause potential conflicting movements between vehicles travelling in opposite directions. A simple reconfiguration of the driveway and curbed island would allow more free-flowing traffic in this location. Therefore, this recommendation is conditioned on site plan revisions to the Daffy's Way driveway in this location to allow enhanced two-way traffic flow, pursuant to Condition No. 3c of this recommendation in Section V. below

The Objectors' traffic expert further attested that vehicular conflicts would result from the drive aisle located through the row of 26 parking spaces within the 60-car parking lot to the south of Towers vacant parcel, which connects Daffy's Way and Bigley Drive. While it is desirable to separate automobile and truck traffic to the maximum extent possible, the 26 spaces are only a small portion of the 282 car parking spaces provided. The majority of the parking spaces are located to the north and west of the proposed warehouse. Based on the location of the proposed guardhouse and security fence, it appears the plan anticipates that only cars will access the drive aisle with the 26 car parking spaces, while trucks would be directed straight along Daffy's Way to the guardhouse prior to accessing the facility's loading doors. In order to ensure that this drive aisle is utilized by cars only, NJSEA staff recommends that signage be installed prohibiting tractor trailers from making a left turn into that aisle. Therefore, this recommendation is conditioned on the installation of signage prohibiting tractor trailers from utilizing the drive aisle through the 60-space car parking lot on the west side of the proposed

warehouse, pursuant to Condition No. 3d of this recommendation in Section V. below

The Objectors' traffic expert testified that the loading docks and trailer parking spaces do not have sufficient drive aisle room for a WB-62 vehicle to maneuver out of the space without multiple movements, as interpolated from the chart provided in Exhibit O-19. As a result, trucks would be impeded from entering the loading area from Daffy's Way. The NJSEA staff believes that, while certain truck types may not be able to maneuver into a loading space in one movement, the proposed loading space length and aisle width are comparable to those at other warehouses in the District. As stated previously, the NJSEA staff does not anticipate back-up queues onto the Towers property, but does recommend that, as a condition of this recommendation, the proposed guard booth at the terminus of the Daffy's Way driveway shall be relocated further south into the site, pursuant to Condition No. 3b of this recommendation in Section V. below.

The NJSEA staff reviews numerous warehouse applications per year, including applications for new warehouse buildings being built on a speculative basis. The proposed warehouse is not a new or unique type of warehouse facility that has never before been proposed in the District. The NJSEA is familiar, through its nearly 50 years of regulating development in the largely-industrial District, with how warehouse facilities have evolved over time and how they currently operate. The proposed warehouse use is not inconsistent with newer warehouse development that has been constructed in the Meadowlands District, as high ceilings and

numerous loading doors are the modern standard for new warehouse construction.

Accordingly, adequate infrastructure, including storm and sanitary sewers, utilities, and access roads, will be provided to accommodate the proposed warehouse use. The existing site driveways are proposed to be improved to the extent possible, by the NJDOT-approved revisions to the Bigley Drive exit and revisions to the Daffy's Way driveway recommended as conditions of approval. For the reasons stated herein, the proposed use will not decrease the ability of the site's infrastructure to perform in a safe and efficient manner.

iv. The variance will not have a substantial adverse environmental impact.

The requested variance will not result in a substantial adverse environmental impact. The proposed warehouse building will comply with all bulk requirements of the Regional Commercial zone. In comparison with the maximum 40 percent lot coverage permitted in the Regional Commercial zone, in industrial zones where warehouse uses are permitted, the lot coverage by structures may be a maximum of 50 to 60 percent of the lot area. The Regional Commercial zone also requires that the site maintain a minimum of 20 percent of its lot area as open space, whereas industrial zones in the District permit a minimum open space of 15 percent. Furthermore, the proposed FAR of 0.38 on the site is well below the permitted maximum FAR of 0.75 in the RC zone. All required setbacks are maintained. Altogether, these characteristics signify that the site is not being overdeveloped to the detriment of the

environment, nor do they portray an attempt by the property owner to maximize their profit.

The proposed warehouse will comply with all NJSEA and FEMA flood plain requirements. Additionally, the Applicant has attested that the proposed warehouse will comply with all performance standards of N.J.A.C. 19:4-7 related to noise, vibrations, airborne emissions, glare, hazardous and radioactive materials, and wastewater. Therefore, this recommendation is conditioned on the Applicant providing a demonstration of as-built compliance with the performance standards relative to noise and airborne emissions and the implementation of mitigation measures in the event that any of these standards are exceeded, pursuant to Conditions No. 1 and 2 of this recommendation in Section V. below

v. The variance will not substantially impair the intent and purpose of these regulations.

The intent and purposes of the District Zoning Regulations contain several goals and objectives for development within the Meadowlands District, which are found at N.J.A.C. 19:4-1.2(a). Those purposes applicable to the subject proposal include the following:

1. To provide for the orderly and comprehensive development of the District, consistent with the carrying capacity of the land and the preservation of critical wetland areas in accordance with the Master Plan of the NJSEA;

The warehouse use is proposed to be accommodated at the subject location in an orderly manner, and complies with all required bulk criteria, including lot area, setbacks, open space, and lot coverage. The Applicant has provided a comprehensive site plan including grading and drainage, lighting and other construction details, as well as supplementary reports, demonstrating that the proposed use can be accommodated within the carrying capacity of the land.

3. To promote the conservation of open space and valuable natural resources and to prevent sprawl and degradation of the environment through improper use of land;

The proposal will be accommodated on a site that is currently developed, thereby diverting development pressure away from undeveloped open areas and sensitive wetlands.

4. To preserve an ecological balance between natural and open areas and development;

The proposed warehouse use at the subject property will preserve an ecological balance between natural and open areas and development. Open space areas on the site will be provided in exceedance of the minimum requirements. Stormwater improvements, including water quality and quantity controls, are proposed to address potential impacts from developed areas on the site to its natural features.

6. To provide sufficient space in appropriate locations for a variety of industrial, warehouse, office, retail, residential, recreational, water dependent, and other uses, including mixed uses;

In theory, the site's large area and frontage on major regional roadways characterize it as an appropriate site to accommodate the types of uses permitted within the Regional Commercial zone. In practice, this theory falls short. As detailed within this recommendation, the site's particular characteristics affect the ability of the site to be developed in accordance with the permitted uses of the RC zone.

The zoning changed on the subject property in 2004 from an industrial zone to a commercial zone, pursuant to the Land Use Plan of the 2004 Hackensack Meadowlands District Master Plan. At that time, accessory retail uses existed on both the subject site and the adjacent Mack warehouse site. There was no intent to increase the land area accommodating commercial uses in the District. Since that time, occupancy of the subject premises has ceased, and the retail area in the Mack building was converted to warehouse use.

Although a use variance is required for the proposed location of a warehouse use within a commercial zone, this particular site is an appropriate location to accommodate the proposed use. The subject property is located on the southwesterly periphery of the RC zone, in an obscure location in relation to its available points of access. The hardships associated with the site's visibility from its access points are not as significant a burden for a warehouse use as they are for a commercial use. Yet, the site's benefits of proximity to regional roadway access remains, and this proximity provides accessibility to a regional market area, making the site an appropriate location to accommodate a warehouse use. Furthermore, the proposed use will not be out of character with the

visual environment of the neighborhood, as adjacent properties include a warehouse and big-box retail store, respectively.

7. To provide that such uses are suitably sited and placed in order to secure safety from fire, flood and other natural and man-made disasters, provide adequate light and air, prevent the overcrowding of land and undue concentration of population, prevent traffic congestion, and, in general, relate buildings and uses to each other and to the environment so that aesthetic and use values are maximized;

The proposed warehouse use is compliant with all bulk requirements of the RC zone, thereby providing adequate light, air and open space. The building is suitably-sited, with the placement of the loading areas along the southerly façade at a distant location from adjoining properties. Landscaping is also proposed to maximize aesthetic values. Site-generated traffic associated with warehouse uses typically occurs during off-peak hours of the roadway, and not during normal commuting hours. Additionally, the site is a developed site that had generated traffic associated with warehouse, office, and retail uses when it was occupied.

8. To promote development in accordance with good planning principles that relates the type, design and layout of such development to both the particular site and surrounding environs;

The proposed design and layout of the building is being implemented in accordance with good planning principles. The building is centrally located, with the site's loading area proposed to be located in a distant location from adjacent private properties, thereby avoiding any detrimental visual impacts to neighbors. The proposed location of the loading doors also minimizes the potential

for conflicts between trucks and passenger vehicles, and the separation of truck parking from passenger vehicle parking is effectively achieved by the proposed site design.

9. To promote a desirable visual environment through building design and location;

The proposed warehouse building will replace an existing vacant and obsolete warehouse building on the site. The proposed building materials will not cause glare or other negative visual impacts to surrounding properties or roadways. Open space is provided in excess of the minimum requirements, and landscaping is proposed throughout the property and along the site's property lines.

10. To provide for infrastructure and utility improvements of the land adequate to serve the uses to be developed on that land;

The Applicant has contacted site utility providers relative to water, sewerage, electric and telephone and has obtained will-serve letters demonstrating adequate utility capacity exists to accommodate the proposed warehouse use. The proposed site infrastructure and utilities will be upgraded to accommodate the proposed new warehouse building on the site. The proposed building will be elevated to comply with NJSEA and FEMA flood plain development requirements, and the site's stormwater management system will include water quality and quantity controls. A water tank is proposed to aid in firefighting capacity. Improvements to the site's existing driveways are proposed to improve vehicle circulation to the extent possible.

11. To encourage the location and design of transportation routes that will promote the adequate flow of traffic and minimize congestion;

The location and design of the site's transportation routes are predetermined. The site is an existing developed site relegated to the use of two access driveways. Improvements to these driveways are proposed within the constraints of the existing site configuration.

12. To encourage the development of a variety of transportation modal choices and to decrease dependence on automobiles as the primary means of transportation;

The proposed warehouse will serve a regional market area. Access to public transit is available to the site via bus stops along Paterson Plank Road.

13. To protect the District from air, water, noise and other types of pollution;

The proposed warehouse use will not significantly impair the condition of air quality, water quality, or noise. Conditions of this recommendation will ensure that noise and air quality are within the required levels established by the performance standards of the District Zoning Regulations. Water quality measures are also proposed to be installed within the site's stormwater management system.

14. To control surface water runoff and prevent flooding and other damage to land and to encourage the control of soil erosion and sedimentation;

The Applicant has configured a stormwater system that will sufficiently accommodate surface water runoff and treat water

quality at the site. The building will be elevated above the flood plain, and no negative impacts are anticipated to occur to neighboring properties. Any fill of the site will require a fill permit by the NJSEA, and a soil erosion and sediment control plan will be required to be submitted to the Hudson/Essex/Passaic Soil Conservation District for review and approval.

The District Zoning Regulations also provide specific purposes for each zone within the District. The purpose of the Regional Commercial zone, in which the subject property is located, according to N.J.A.C. 19:4-5.51 states that "the Regional Commercial zone contains large-scale commercial development proximate to major roadways and is designed to accommodate a range of commercial uses serving a regional market area. Development in the zone should incorporate regional retail facilities and large-scale commercial employment centers."

The proposed warehouse use is intended to function as a storage and distribution facility. Objectors state that the specific nature of the warehouse use cannot be definitively determined at this time, since the proposed warehouse use is being built speculatively, i.e., without a specific user in mind. However, the NJSEA regulations classify the proposed use as a "warehouse and distribution facility," which is defined at N.J.A.C. 19:4-2.2 as "an establishment primarily used for the storage, loading, unloading, and/or distribution of goods, products, or materials, which may include accessory consolidation, repacking and value-added services. Such facility may include accessory parking and storage of trucks and trailers, and accessory maintenance of trucks owned by the

facility.” Any use of the site as a warehouse must comply with this definition.

The question as to whether the warehouse use of the site has been abandoned is considered moot by the NJSEA staff. The staff acknowledges that the property has historically operated, principally as a warehouse use. When the Applicant purchased the property, the site existed as a warehouse use. A warehouse structure currently exists on the site. However, the Applicant proposes to demolish the existing structure and construct a new warehouse building on the site, which is not a use currently permitted on the site. The NJSEA and its predecessor agencies have historically required any applicant who is removing an existing structure to adhere to the current regulations at the time of application, without consideration for past non-conformities. Therefore, the Applicant has applied for a use variance, which is the subject of this recommendation report.

To the north, the subject property is located adjacent to a Home Depot facility, which is commonly classified as a “big box” retail development, and is visually similar to a warehouse use. Home Depot facilities are patronized by contractors in the building trades, and sell lumber and other bulky building materials that are not commonly found in a traditional commercial environment, such as Harmon Meadow. The site is also located adjacent to another warehouse use on the Mack property. Notably, the Mack warehouse previously contained an accessory retail use, operating as an Ethan Allen furniture outlet for a number of years, although the retail component has since been eliminated from the Mack premises. East

of the Mack property, there is a parking garage, and further east, a hotel, both located on the Vee Jay property. The proposed warehouse use on the subject site will be consistent with the prevailing character of the surrounding development pattern in the immediate vicinity of the site.

Although not commercial in nature, the proposed warehouse does satisfy a critical component of the RC zone's intent, as warehouse uses are necessary to support regional retail uses and, consequently, the site contains the potential to serve the regional market area. Additionally, the proposed warehouse will become an employment center and create employment opportunities on a currently defunct site.

Therefore, the requested use variance will not substantially impair the intent and purpose of the District Zoning Regulations.

vi. The variance at the specified location will contribute to and promote the intent of the District Master Plan.

The subject property is located in the Commercial Corridor area of the Land Use Plan of the Hackensack Meadowlands District Master Plan, adopted in 2004. The intent behind this land use designation was to include properties that contained existing commercial uses within proximity to regional roadways. The existing land use of the site is classified as industrial.

The planning objectives in the 2004 District Master Plan prompted the change in the zoning designation of the site, from its previous

light industrial zoning category, to the Regional Commercial zone, a new zoning designation created in response to the 2004 Master Plan, which sought to consolidate the existing commercial uses in the area into one regional zone. The 2004 Master Plan did not seek to expand commercial uses within the District.

The Master Plan painted the proposed Land Use Plan with broad strokes in terms of the proposed vision it intended for the subject area. In some cases, such as in the instant application, there are specific reasons as to why that vision cannot be realized based on individual circumstances. The Master Plan did not investigate this particular site's ability to access the regional roadways upon which it is located.

The Master Plan also did not anticipate the challenges that commercial uses would face from the growth of e-commerce. Since the adoption of the 2004 Master Plan, operations at the subject property, including the retail component, as well as the accessory retail outlet at the adjoining Mack warehouse, have ceased. The NJSEA staff attributes the demise of retail at the subject properties, in part, to the challenging accessibility associated with their respective locations along Ramp U.

Nonetheless, the subject application does further and promote the basic objectives of the Master Plan for the District. The proposal is privately redeveloping an underutilized, previously developed site, diverting development pressures from undeveloped, environmentally-sensitive open space areas. This promotes a specified goal of the Master Plan (Page 1-7), which is "to prevent

urban sprawl and degradation of the environment through improper use of land." Another specific goal of the Master Plan promoted by the subject application is "to promote a suitable array of land uses which encourage economic vitality with job creation, and support the public health, safety, and general welfare."

V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Use Variance from the Provisions of N.J.A.C. 19:4-5.52(a), where warehouse and distribution facilities are not listed as a permitted use in the Regional Commercial zone.


Based on the record in this matter, the use variance application to permit a warehouse and distribution facility with a maximum area of 325,856 square feet on the subject property in the Regional Commercial zone is hereby recommended for **CONDITIONAL APPROVAL** subject to the following **CONDITIONS**:


1. The site shall comply with the requirements of the New Jersey State Air Pollution Control Laws and Codes at N.J.A.C. 7:27 and 7:27B, pursuant to N.J.A.C. 19:4-7.5. The Applicant shall provide an air quality plan for review and approval by the NJSEA Chief Engineer prior to the issuance of any Certificate of Completion and/or Occupancy Certification for the building. The plan shall include air quality monitoring provisions for a minimum period of one year from the date of issuance of a Certificate of Completion and/or Occupancy Certification and 100 percent occupancy level. The NJSEA reserves the right to extend the time period for air quality monitoring at the site, and to require the posting of a performance guarantee to ensure compliance and/or implementation of any identified mitigation measures.

2. An as-built noise evaluation shall be submitted by the Applicant within sixty (60) days of issuance of a Certificate of Completion and/or Occupancy Certification for the building, demonstrating compliance with the requirements of N.J.A.C. 19:4-7.3. The NJSEA reserves the right to require additional sound testing and to require the implementation of mitigation measures within one year of the date of issuance of a Certificate of Completion and/or Occupancy Certification and 100 percent occupancy level.
3. The site plan shall be revised for review and approval by the NJSEA staff as follows:
 - a. The seven trailer parking spaces proposed in the southwesterly portion of the site shall be eliminated. This area may instead be used for car parking or landscaped open space, but not for trailer parking, storage or operations.
 - b. The proposed guard booth at the terminus of the Daffy's Way driveway shall be relocated further south into the site.
 - c. The Applicant shall provide plans for the reconfiguration of the Daffy's Way driveway on the subject property, including the curbed island, to allow enhanced two-way traffic flow and reduce the potential for conflicting movements between vehicles travelling in opposite directions.
 - d. The site plan shall be revised to indicate a sign prohibiting tractor trailers from utilizing the drive aisle through the 60-space car parking lot on the west side of the proposed warehouse.

This recommendation regarding whether the evidence presented supports a conclusion that the requirements of N.J.A.C. 19:4-4.14(e)(2) have been satisfied, also considers the extent to which the evidence demonstrates satisfaction of the items set forth in N.J.A.C. 19:4-4.14(f)(2). The Board of Commissioners, in

making their decision, shall base their conclusion on the entirety of the record of these proceedings.

CONDITIONAL APPROVAL 8/23/18 
Recommendation on Date Sharon A. Mascaró, P.E.
Variance Request Deputy Director of Land Use Management

Conditional Approval 8/24/18 
Recommendation on Date Adam Levy
Variance Request Vice President of
Legal & Regulatory Affairs