

Response 29:

The regulatory language referenced by this comment is neither compulsory nor proscriptive, but rather uses the permissive word “may.” As such, there is no prohibition on private developers considering other sites that may not be within their immediate control. MVHS is a private entity that provides a vital service for the benefit of the public. Accordingly, MVHS was free to consider any site to determine whether that site would satisfy its goals and objectives in evaluating a “range of reasonable alternatives” that are “feasible, considering the objectives and capabilities” of MVHS (see 6 NYCRR § 617.9(b)(5)(v)).

The comment is also inaccurate because MVHS holds purchase options on a significant number of the properties located within the downtown Utica Project footprint and is in active negotiations with several other owners to acquire the remaining properties. For those few properties that MVHS may not be able to acquire through negotiation, MVHS has asked Oneida County and the City of Utica URA to assist with the acquisition of those properties via *eminent domain* since the Project serves the public health and welfare by providing improved medical services to the populations in most need and by spurring economic development to revitalize a blighted area in accordance with the City’s Urban Renewal Plan. See Responses 32, 47 and 60.

Comment 30: Frank Montecalvo, Attorney at Law, Letter, 12/26/18:

Applicant’s Project depends upon a grant provided under Public Health Law (PBH) Section 2825-b. The grant application will be judged on “the extent to which the applicant has engaged the community affected by the proposed capital project and the manner in which community engagement has shaped such capital project.” (PBH 2825-b (4)(f)). The Applicant never at any time engaged the Public on the proposed location of the Project. In fact, there is evidence that local officials deliberately kept the discussion of facility location away from the Public (See word-searchable e-mail ‘dump’ or images, 9/1/15 e-mail, Anthony Brindisi to Steven DiMeo and Anthony Picente: “I don’t want public opinion derailing this.”) Had the Applicant engaged the Public at the site selection stage, Applicant would have been able to develop appropriate siting criteria to address the Public Interest (*e.g.*, convenience of the Public to access current medical providers and the new facility, loss of businesses and taxable properties, disruption to traffic patterns, need to construct new municipal facilities and public infrastructure, changes to community character, facility location relative to transportation of hazardous substances, *etc.*).

Given PBH 2825-b(4)(f), if the Applicant continues to pursue a site other than St. Luke’s Campus, it needs to reopen the site selection process for Public Input and to develop appropriate criteria for choosing a site that protects the Public Interest.

Response 30:

As noted in Response 1, MVHS submitted an application for grant funds pursuant to the OCHCFTP in January 2017 and was awarded the grant on April 3, 2017. In connection with that application, MVHS was asked to address how “[...]the Eligible Applicant engaged the community affected by the Eligible Project and the manner in which community engagement shaped the Eligible Project” as required by PHL 2825-b(4)(f).

MVHS responded to the question as follows:

“Planning a project of this magnitude occurs in several stages over the course of years. Throughout this process, there has been and will continue to be opportunities for community engagement and education. In addition to education via local and regional news outlets, starting in 2015, MVHS officials have directly spoken with more than 600 individuals regarding the downtown health campus. Groups have included elected leaders (the City of Utica Common Council, Oneida County Legislators), neighborhood associations (Bagg’s Square Association, Association of Block Coalitions, St. Elizabeth Medical Center Neighbors Group), local business leaders (Clinton Chamber of Commerce, the Greater Utica Chamber of Commerce, Mohawk Valley EDGE), higher education (Rust2Green, Hamilton College students and former employees), boards and groups associated with MVHS (current hospital board members for both Faxton-St. Luke’s and St. Elizabeth Medical Center, St. Elizabeth

College of Nursing Board of Directors, MVHS Patient and Family Engagement Council), local retiree groups (former National Grid employees), historical preservation (Landmarks Society of Greater Utica), and community interest groups (Rotary Club of Utica, Garden Path Club, and the Faxton St. Luke's Healthcare Foundation's Women's Giving Circle). MVHS has also engaged with The Paige Group, a consultancy for public engagement²⁷. The Paige Group's role is to act as an extension of the MVHS team to assist with public education and obtain community input for Project consideration. The Paige Group has conducted many stakeholder input sessions with a variety of individuals, business leaders, representatives and community organizations, such as:

- Oneida County Health Department
- Mohawk Valley Resource Center for Refugees
- Mohawk Valley Latino Association
- The Parkway Center
- Mohawk Valley Institute for Learning in Retirement.

In addition, MVHS hosted two public information sessions/community dialogues on January 10, 2017, in which approximately 300 community members participated. Participants were broken into groups to brainstorm factors that should be considered in the planning and design of the hospital and campus. This input, along with input from other community stakeholders, will be developed into guiding principles that will be used by the Project Steering Committee. In addition to meetings and direct stakeholder discussions, Project education materials and an online informational landing page with feedback form have been developed to keep the community informed on a variety of topics, including:

- Regional healthcare benefits of a new hospital campus
- Site selection and rationale for a downtown campus
- Estimated project timeline
- Frequently asked questions.

Several methods for feedback have been promoted within the community, including telephone, email, and via the landing page. MVHS will continue to deploy a robust community engagement program that will include:

- Formation of a Community Advisory Group. This group will be comprised of community representatives, and will be responsible for synthesizing and sharing community input with the Project Steering Committee. It will also provide feedback for consideration on Steering Committee plans.
- Expanded schedule of community presentations
- Additional opportunities for input as plan elements are established
- Large and small group meetings and discussions
- Community forums and/or symposiums
- Continued partnerships with local and regional media to convey plan elements and encourage community feedback"

Accordingly, selection of the Downtown Site was consistent with the requirements of Public Health Law Section 2825-B and does not need to be reopened as each of the statutory factors has been addressed and considered by NYSDOH prior to awarding the grant to MVHS for the Downtown Site in April 2017. Finally, the comment fails to identify any rule of law, statute, or regulation that requires the site selection process to be reopened. See *Molinari v. City of N.Y.*, 146 Misc. 2d 713, 720 (Sup. Ct. Richmond County 1990).

See also Response 36.

²⁷ MVHS's public engagement efforts were further described in DEIS Section 1.2.3.

Comment 31: Frank Montecalvo, Attorney at Law, Letter, 12/26/18:

The Summary Memorandum states that a Geographic Information System analysis was initially used to “identify parcels 50 acres and larger that could potentially host a new combined facility”. Of the 12 sites subsequently considered for “fatal flaws,” an exception to the above rule appears to have been made for the Downtown Site because it is neither a “parcel” (actually being about 90 parcels as shown on County ownership maps) nor is it 50 acres (actually being from 17 to 34 acres depending upon how the site is defined). Since the other 11 sites (e.g., 5 of them are golf courses) more closely match the 50-acre-parcel rule, the Downtown site is dissimilar to the others.

The Applicant needs to explain why an exception was made to its 50-acre-parcel site-screening rule to put the Downtown Site on the list of sites to be considered, otherwise its placement on the list appears arbitrary.

Response 31:

The DEIS as well as the Hospital Site Selection Summary Memorandum, attached to the DEIS as Appendix D, indicates that Urban Sites required 10-acres and suburban sites required 50-acres. The Downtown Site satisfied the 10-acre requirement for Urban Sites and, therefore, its consideration was not arbitrary.

Comment 32: Frank Montecalvo, Attorney at Law, Letter, 12/26/18:

According to the Summary Memorandum, the 12 sites were screened for “fatal flaws” – “factors that could impact the development potential of the site.” The Downtown Site is currently occupied by some 40 entities including Private Businesses, Not-For-Profits, and a Municipal Police Garage. It is also occupied by streets that would have to close to accommodate the Project. The Site has been in use for nearly 200 years. The length and level of use of the Downtown Site (detailed in Appendix E of the Draft EIS), which could be expected to complicate any redevelopment, make it markedly dissimilar to the other sites which are mostly outside the urban core.

The Applicant needs to explain why the current and past history of uses were not considered a “fatal flaw” that would warrant rejection of the Downtown Site, otherwise its “fatal flaw” analysis appears arbitrary.

Response 32:

Although the Project Site has been used to some extent for nearly 200 years, it has been chronically underused and blighted for almost 30 years. The Project Site is located in a HUB zone; is in a former Empire Zone; is designated as a potential EJ area; and is in the Urban Renewal Plan Utica Downtown Development Project Area. A HUB is a qualified census tract designated by the US Department of Housing and Urban Development (HUD) with either: (1) a poverty rate of at least 25 percent; or (2) 50 percent or more of its householders must have incomes below 60 percent of the area median household income. An EJ area is a U.S. Census block group of 250 to 500 households each that, in the Census, had populations that met or exceeded at least one of the following statistical thresholds: (1) At least 51.1% of the population in an urban area reported themselves to be members of minority groups; or (2) At least 23.59% of the population in an urban or rural area had household incomes below the federal poverty level. An Empire Zone was an area of up to two non-contiguous miles, in which tax incentives were offered by the State of New York to bring new businesses and jobs to the State. The Urban Renewal Plan Utica Downtown Development Project Area was established to eliminate slums, blight and obsolete buildings and create sites for new buildings to revitalize this area of downtown.

According to the City’s Master Plan, the City’s urban landscape is characterized by vacant or significantly under-utilized industrial buildings and many of its neighborhoods are either deteriorating or continuing to decline. The Urban Renewal Plan for the area encompassing the Project Site states that its purpose is “to revitalize this area of downtown.” According to the Urban Renewal Plan, the “economic and physical revitalization of the project area is a critical public purpose for the community because of the area’s location.” In fact, the City of Utica URA is authorized to acquire property in the Project footprint through *eminent domain* for the purposes of economic redevelopment.

There are 79 individual tax map parcels owned by 37 different owners within the Project area because several of the parcels are used as assemblages in conjunction with other parcels or are under similar ownership. There are approximately 20-25 existing businesses and 4 active not-for-profit organizations. At least 9 of the businesses are small-scale auto parts/service or warehousing businesses conducted in garages or other low-quality retail space. The businesses also include 2 bars and an adult entertainment establishment. Other businesses include an HVAC contractor, fabrication business, billboard company, paint retailer, retail bookstore, dry cleaner, salon, and The Salvation Army. Most or all the properties at issue were not specifically constructed for the current use, but instead are adapted for second or third-generation, lower quality use and most can be easily relocated to other similarly situated areas. Approximately 20 properties are vacant or dilapidated and 8 of the properties are owned by the City's URA.

Accordingly, this area has been targeted by the City of Utica for economic redevelopment for years making it an appropriate location for consideration by MVHS. See photographs included in Response 47.

With respect to the police garage, see Response 4.

Comment 33: Frank Montecalvo, Attorney at Law, Letter, 12/26/18:

After most of the sites were eliminated due to "fatal flaws" the Summary Memorandum indicates that the remaining three (St. Luke's, Downtown, and the Psych Center) were scored based on points assigned for certain criteria. [. . .] the Applicant made no effort to determine criteria to protect the Public Interest. The criteria that were chosen appear arbitrary/subjective. For example, proximity to the Thruway and Oriskany Blvd. is deemed important, but proximity to the Parkway/Pleasant/Burrstone corridor that would collect traffic from Corn Hill, South East Utica, and northeastern Town of New Hartford; and French Rd./Champlin Ave. that would collect traffic from South Utica and New Hanford Village, is not. Distance to employees (using zipcode "centroids" rather than actual distances) is deemed important, but distance to actual patients is not, and distance to medical providers is not.

The scoring appears equally arbitrary/subjective. Two points are assigned to Downtown for having a "Potential microgrid opportunity," while St. Luke's received no points for actually having a microgrid (the Co-Gen Facility). Why were 4 points not deducted from Downtown for the 2500 foot gas line referenced on Draft EIS p. 94/3527? Why was a point not added to St. Luke's for not encroaching on a potential federal wetland when the Draft EIS' "Capacity Analysis" (p. 1596/3527) demonstrates project elements could be arranged on-site so as not to encroach on the wetland? As previously indicated, the criteria have not been related to the purpose, objectives and goals of PBH 2825-b. In so far as the environmental criteria are concerned, they appear selective, subjectively scored and inadequately explained and have not been related to the legal requirements of SEQRA (as detailed under Part III, *infra*) to avoid/minimize environmental impacts or of other provisions of the Environmental Conservation Law. Applicant's choice of St. Luke's rather than the 2nd-ranked Psych Center as its "second option" suggests that even Applicant believes that the scoring process was arbitrary and subjective.

In light of the above, the criteria and scoring provisions of the site selection process appear to have been arbitrarily chosen and calculated to achieve a predetermined result, making them unreliable for decision-making.

Response 33:

The criteria established here, the scoring of those criteria, and the ultimate site selection were all carefully considered by the Project Sponsor in light of its objectives and capabilities and relevant environmental factors. See Comment 25. While the Commenter might disagree with the scoring, the Commenter has his own set of goals and objectives that are different from MVHS, the Project Sponsor. Rather, the comment is based on disagreement with the methodologies used and conclusions reached by MVHS rather than on any evidence. See Response 26 for a further discussion of alternative sites.

With respect to determining whether the location protected the public interest as required by the OCHCFTP, MVHS addressed this in its grant application. Home to one of the largest refugee resettlement agencies in the country, the Mohawk Valley Resource Center for Refugees (MVRRCR) has, since the 1980s, resettled more than 15,000 individuals in Utica with ethnicities and nationalities including Vietnamese, Russian, Bosnian, Somali Bantu, Burmese and Nepali. Utica foreign-born residents constitute 17.6 percent of the population. 26.6 percent of households in Utica speak a language other than English. The new hospital/health campus downtown would improve access for our refugee population. (MVHS spends more than \$800,000 annually to provide language assistance for health care services. In addition, MVHS employ four program specialists/interpreters, 22 per diem interpreters and works with outside agencies, covering 30 different languages and dialects.) Within the rural areas of Oneida County, there are also growing areas of Amish and Mennonite populations.

Relative to the NYSDOH's Prevention Quality Indicators (PQI), areas that need improved access to care in Oneida County include Utica, Rome and Waterville. These areas have total PQI rates that are 2 to 5 times greater than the average rates for Central and Upstate New York.

- Health Status Indicators Morbidity ranked Oneida County 53/62 counties in New York; premature death indicator allows focus on preventable morbidity and mortality and aligns with reducing inappropriate hospital use
- Leading causes of premature death, ranked in order: cancer, heart disease, chronic lower respiratory disease, unintentional injury, stroke
- Leading measure of community health is infant mortality influenced by socioeconomic, personal and system factors including access. Infant and neonatal death rates higher than New York State. (MVHS operates an Obstetrical (OB) Care Center and Women's Health Center for our Medicaid population and uninsured. The OB Care Center would move to the new hospital.)
- High cardiovascular disease mortality
- Aging population brings concerns of chronic disease, issues with access to timely and appropriate care due to inadequate supply of providers
- Rates of smoking, adult obesity (25.7% of adults and 36.5% of children and adolescents are considered obese), physical inactivity and teen birth rates are all higher than the state and national benchmark
- Dental Health significantly worse than NYS and national benchmark (MVHS operates a Dental Residency Program for Medicare and Medicaid patients)
- Percentage of adults with poor mental health higher than state (mental health and substance abuse 24.3%)
- Increased need for outpatient services as 85% of patient outcomes are determined outside of exam room/hospital bed

The IHC Project benefits Medicaid enrollees and uninsured individuals by providing improved and more equitable healthcare access in Oneida County. The poverty rate for Utica is 30.1%. Living in poverty or in a low-income household are economic barriers to care and limits an individual's or family's access to care –the population is more vulnerable. The Medicaid population shows high prevalence rates for chronic medical and behavioral health conditions along with high Prevention Quality Indicators (PQI) and Potentially Preventable Emergency Room Visits (PPV) rates. This is corroborated by information from the NYS Medicaid Chronic Health Conditions Inpatient/Emergency Department (ED) Utilization dataset. Chronic medical and behavioral health issues have a significant impact on hospital utilization in Oneida County. Specifically, approximately 35% of the region's safety net population either uses hospital Emergency Departments for primary care or do not access regular primary care. Linked with MVHS's work on Delivery System Reform Incentive Payment (DSRIP) implementation and primary care development, the new hospital Project will support the infrastructure to provide a more integrated and equitable delivery system for Oneida County. Specific DSRIP objectives include:

- Increasing the number of practices that have National Committee for Quality Assurance (NCQA) Level 3 Patient-Centered Medical Home (PCMH) recognition
- Reducing ED visits for ambulatory-sensitive conditions such as ED Care Triage for at-risk populations – provide a patient navigation program in our ED to coach patients about appropriate use of ED, address social needs and connect to primary care
- Reduce hospital admissions for super utilizers – Care Transitions Intervention Model to Reduce 30-Day Re-admissions
- Integration of behavioral health into primary care setting

The new IHC Project will continue DSRIP progress and be a:

- Catalyst for health promotion and education; the Project is located where the target population resides
- Catalyst for cultural change among providers and increased roles and collaboration with community based organizations to address social determinants of health
- Opportunity to improve built environment, drawing grocery stores to downtown to increase access to affordable fresh fruits and vegetables; and offering safe parks and a neighborhood that encourages physical activity

See also Responses 1 and 32 for further discussion of the Applicant’s compliance with the OCHCFTP.

The 2015 Hospital Site Selection Process Summary Memorandum, which was included in the DEIS as Appendix D, accounted for the acceptable conditions for a community microgrid, which is defined by NYSERDA as a self-sustaining, small electric grid that will provide power to multiple customers, including residential and commercial customers, as well as crucial public services such as hospitals, first responders, and water treatment facilities. In the downtown location, the hospital would be situated next to the police station, the AUD (which could be a center of refuge), and City Hall. Accordingly, during the site selection process, these were considered a potential microgrid opportunity. Ultimately, as the Project design has progressed, a community microgrid was not pursued by MVHS, but that has little bearing on whether the Downtown Site serves the broader goals and objectives of the Applicant. For example, from a facilities perspective, the consolidation of two aging facilities (100 and 60 years) will provide a more energy-efficient environment, which meets and exceeds current day best practices and building codes.

In addition, one of the advantages to the downtown location is stable power from National Grid’s Terminal Substation at Harbor Point. The terminal substation is built with a high level of redundancy and the Project’s proposal to utilize underground conduit (vs aboveground lines) to service the IHC provides a greater degree of storm resiliency.

Comment 34: Frank Montecalvo, Attorney at Law, Letter, 12/26/18:

Capacity Analysis: A “conceptual capacity analysis” was performed on the top three sites to, essentially, position the elements of the Project on those sites. Interestingly, the analysts chose to distinguish an “urban site” (with a 10 acre requirement) from a “suburban site” (with a 45 acre requirement) without explaining why an urban configuration of elements could not be employed on a suburban site to conserve space, avoid environmental impacts, and allow for future growth. Although an answer to the question “What is the cost premium of the recommended site?” is promised, it appears nowhere. (Draft EIS p. 39/3527, and Appendix D). Again, the selection of data and conclusions presented appear to be arbitrary and unreliable for decision-making.

Response 34:

The cost premium of the recommended site was reviewed by Hammes and shared with MVHS as part of a presentation to the Board of Directors – it was never part of the Site Selection Study and it is not relevant to the analysis required by SEQRA. See also Responses 26 and 33.

Comment 35: Frank Montecalvo, Attorney at Law, Letter, 12/26/18:

The Site Selection Process' failure to incorporate 6 NYCRR 617.7(c)(1) criteria makes the Draft EIS incomplete and insufficient to support SEQR findings.

All levels of government that will fund and/or approve aspects of the Project are obliged to make a SEQR finding that the project will avoid or minimize adverse environmental impacts to the maximum extent practicable (etc.). All draft environmental impact statements must contain "a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor...The range of alternatives may also include, as appropriate, alternative: (a) sites..." (6 NYCRR 617.9(b)(5)(v)(a)).

While an applicant cannot be made to consider sites it does not own or have under option as an alternative (see 6 NYCRR 617.9(b)(5)(v) ('g')) (*i.e.*, the Applicant here could not have been made to consider Downtown as an alternative), where an applicant, as the Applicant here, admits that it owns a site that meets all its objectives and capabilities, a government agency could not honestly make its SEQR finding if it appeared that the owned-site might better avoid/mitigate adverse environmental impacts.

The State has promulgated a non-exhaustive list of such adverse environmental impacts in 6 NYCRR Part 617.7 (c)(1). The Site Selection Process failed to incorporate these criteria into the analysis of site alternatives to permit the determination of which sites best minimized or avoided adverse environmental impacts (see Part III *infra*).

Failure to include this analysis is fatal to going forward on the Downtown choice because at this point the record is incomplete for the purposes of supporting a SEQR finding. The EIS needs to supply this information and be able to support a conclusion that the Downtown Site better minimizes/avoids environmental impacts.

Response 35:

MVHS is a private Project Sponsor and its decisions are not subject to SEQRA. Nevertheless, MVHS evaluated a reasonable range of alternatives to determine which site would be feasible for the IHC considering its own objectives and capabilities. Following selection of the Project Site, SEQRA requires further review to ensure that the site selected will minimize or avoid environmental impacts to the maximum extent practicable. The Downtown Site not only satisfied MVHS's goals and objectives, but also minimizes or avoids environmental impacts for the reasons identified in the DEIS and in this FEIS. For example, the Downtown Site will improve a blighted area, provide a link between other revitalization projects occurring within the City, improve outdated utility infrastructure, remediate any hazardous materials, and improve health care for all residents of the County, including those most in need.

Moreover, once a site has been selected and a project has been identified by a private sponsor, SEQRA does not require that multiple sites be evaluated pursuant to the regulatory criteria and that the site with the least environmental impact be selected. See *Palczynski v. County of Herkimer*, 55 A.D.3d 1242, 1243 (4th Dept. 2008). Instead, as the regulatory language indicates, the "objectives of a private project sponsor are important in determining what alternatives should be considered in an environmental impact statement." See *Crossroads Ventures*, 2006 N.Y. ENV LEXIS 88, at *96. In fact, it is not the intention of SEQRA for environmental factors to be the sole consideration in agency decision making. The purpose of SEQRA is to ensure that the environmental impacts of an action are weighed and balanced with social, economic and other considerations so that a suitable balance of social, economic and environmental factors may be incorporated in the decision-making process. SEQRA gives considerable discretion to agencies to make decisions consistent with social, economic and other essential considerations. This allows agencies to approve actions providing social or economic benefits even if all environmental impacts cannot be totally avoided or mitigated, which is not the case here.

Here, the DEIS identifies and describes the potential adverse impacts associated with the IHC Project and describes mitigation measures to minimize those potential adverse environmental impacts. This information

must be weighed by the Planning Board, together with social and economic impacts, to determine whether the action: minimizes or avoids adverse environmental impacts to the maximum extent practicable, and, to incorporate into the decision those mitigation measures identified in the SEQR process as practicable.

See Responses 26 and 33.

Comment 36: Frank Montecalvo, Attorney at Law, Letter, 12/26/18:

Various e-mails (see e-mail ‘dump’ or images) exchanged in January and February 2015 (about the time that the PBH 2825-b funding was announced) among County Executive Anthony Picente; former State Senator, County Executive and current counsel to MVHS Raymond Meier; Lawrence Gilroy, Co-chairman of the Mohawk Valley Regional Economic Development Council (MVREDC); Mohawk Valley EDGE (MVEDGE) President Steven DiMeo and Assemblyman Anthony Brindisi; reveal that this group of individuals, who are effectively the local “gate-keepers” controlling Applicant’s access to the State’s Grant apparatus, wanted the Project to be located Downtown for urban renewal purposes and that they would try to steer the process to that end.

Relevant to this is the 2/3/2015 e-mail from Mr. DiMeo to Mr. Brindisi wherein Mr. DiMeo stated:

*“...My whole thought process in bringing Elan on board is to **make sure that we guide siting decision in favor of downtown...**” [emphasis supplied].*

MVEDGE hired Elan to do the site selection study, and the Summary Memorandum was provided by MVEDGE, Elan, and O’Brien & Gere (OBG, also author of the Draft EIS).

Also relevant is the 11/5/2015 e-mail from Mr. Brindisi to Mr. DiMeo, wherein Mr. Brindisi stated:

“...I feel like walking away from this whole thing and telling the community and hospital if you don’t want this thing downtown then good luck at St Luke’s and don’t come see me for one ounce of state support...”

Against the backdrop of a Summary Memorandum that shows an inconsistent and somewhat arbitrary process, the still-secret status of the siting study, and Applicant’s voluntary designation of St. Luke’s Campus as its ‘second option,’ the e-mails suggest that the site selection process may have been tainted by undue influence and that the conclusions and recommendations of the site selection process, to the extent reported in the Draft EIS, reflect this influence and must be discounted accordingly.

Response 36:

The comment suggests a conspiracy where none exists. The referenced e-mails appear to be between current and former elected officials and individuals responsible for encouraging economic development. No one employed by MVHS or on the MVHS Board of Directors was included on these communications. Moreover, one of the e-mails raised in the comment occurred months after the Board of Directors selected the Project Site.

Communications between elected officials and entities that promote economic development regarding the placement of businesses and industries on certain sites to foster urban renewal are commonplace practice today. This is particularly the case where officials are trying to develop a site that has not had any interest in 20+ years. There is nothing unlawful or impermissible about these e-mail exchanges.

The MVHS Board of Directors made its site selection in July 2015 after extensive research and studies were performed. Criteria analyzed in these studies included access to the site by the populations served, environmental impacts and infrastructure requirements. In addition, significant funding was made available for sites located in downtown Utica, without which funding MVHS would be financially incapable of constructing a new healthcare campus.

The criteria established here, the scoring of those criteria, and the ultimate site selection were all carefully considered in light of MVHS’s specific objectives and capabilities and relevant environmental factors.

Accordingly, it is completely proper for MVHS to consider the availability of state funding or public assistance in connection with its site selection process.

Nevertheless, it is worth noting that, under the evaluation of monetary studies category, the Site Selection study is clear that the Downtown Site was not given preferential treatment because of the \$300 million available under the NYSDOH grant.

See Responses 26, 28 and 33.

Comment 37: Frank Montecalvo, Attorney at Law, Letter, 12/26/18:

The Applicant is unable to proceed on the Downtown Site in light of its ownership of a satisfactory site at St. Luke's Campus, and the lack of data in the EIS to support a conclusion that the Downtown Site better avoids/minimizes adverse impacts than the St. Luke's Campus – which is unlikely given the analysis in Part III below.

Applicant's choice of its St. Luke's Campus as a "second option" is supportable on the existing record because it already owns the site and cannot be made to consider sites it neither owns nor has options upon. If the Applicant wants to proceed with the Project on the St. Luke's Campus, it would accordingly have to revise its designs and the EIS.

Response 37:

As the comment noted, the Applicant's preferred site for a new integrated healthcare campus was, and still is, in downtown Utica. The downtown Utica location offers significant environmental and economic benefits including: improving a blighted area, providing a link between other revitalization projects occurring within the City, improving outdated utility infrastructure, remediating any hazardous materials, and improving health care for all residents of the County, including those most in need.

As noted above (Response 35), once a site has been selected and a project has been identified by a private sponsor, SEQRA does not require that multiple sites be evaluated pursuant to the regulatory criteria or that the site with the least environmental impact be selected. See *Palczynski v. County of Herkimer*, 55 A.D.3d 1242, 1243 (4th Dept. 2008). SEQRA requires the Lead Agency to balance the benefits of a project against its unavoidable environmental risks, but it does not require the Lead Agency to act in any particular matter or to reach a particular result. See *Jackson*, 67 N.Y.2d at 417; *Coalition against Lincoln West, Inc. v. New York*, 94 A.D.2d 483 (1st Dept. 1983). Rather SEQRA gives the Lead Agency room for a reasonable exercise of discretion. *Id.*

See also Responses 26, 28, 29 and 35.

Comment 38: Frank Montecalvo, Attorney at Law, Letter, 12/26/18:

Summary Conclusion on Matrix: Numerous adverse environmental impacts as identified by State regulation or law will be avoided or minimized by simply relocating the Project to the St. Luke's Campus.²⁸

Response 38:

See Responses 26, 28, 29, 35 and 37.

While the Commenter has a different opinion with respect to the site selection, that is based solely on his opinion and his own personal goals and objectives. The Applicant's (Project Sponsor's) preferred site for the

²⁸ The Commenter supplemented their narrative comments with a matrix comparing the St. Luke's Campus with the Downtown site, based on the Commenter's identification of regulatory environmental criteria. The Commenter's complete matrix can be viewed in its entirety in Appendix B to this FEIS Responsiveness Summary.

new IHC was, and still is, in downtown Utica because the downtown Utica location satisfies all the goals and objectives of the Applicant.

Comment 39: Frank Montecalvo, Attorney at Law, Letter, 12/26/18:

The SEQRA process is set forth in ENV Article 8 and its implementing regulations, 6 NYCRR Part 617 (State Environmental Quality Review, SEQR). As described in the SEQR Handbook (p.3):

“SEQR establishes a process to systematically consider environmental factors early in the planning stages of actions that are directly undertaken, funded or approved by local, regional and state agencies. By incorporating environmental review early in the planning stages, projects can be modified as needed to avoid adverse impacts on the environment.”

The availability of State funds for the Project was announced in early 2015, the site for the Project was announced in September, 2015, and we just got around to SEQR in 2018 when the Oneida County Industrial Development Agency made a Positive Declaration. Does that sound like “incorporating environmental review early in the planning stages” so that “projects can be modified as needed to avoid adverse impacts on the environment?” Why was SEQR not part of the planning of the Project from the very beginning, including the choice of the site? As noted under Part I Section I, the site of a project is an appropriate consideration under SEQR, and the State promulgated a non-exhaustive list of those actions considered to have significant adverse impacts (6 NYCRR 617.7(c)(1)). This could have been used to help screen or rank the sites – but it was not.

People may disagree with how the regulations were applied or sites ranked in Part III above, however, the process only took a few hours. This Project deserved at least that level of attention being paid to the environmental consequences of site selection. Most people would probably intuitively conclude that trying to shoehorn a hospital with acres of parking into the middle of a Central Business District that was built for another era, another style of development, and a different purpose would be more disruptive to the environment than locating the hospital on a site that had enough room and had been specifically designed for that use. It is no surprise that the choice of site is still a controversial topic after three years.

For a major project such as this, ENV 8-0109 requires preparation of an EIS. The regulations make clear that a government agency cannot undertake, fund or approve of an action until it has complied with the provisions of SEQR (see 6 NYCRR 617.3 (a)). But that is, in deed, what happened at least as far back as Summer 2016 when Oneida County put county employees, and Utica put city employees (the Planning Board’s Staff), to the task of engaging in regular meetings with MVHS to help plan for the Project at the Downtown Site, because government employee time is money.

If the applicability of SEQR and need for an EIS was not apparent to the local authorities at that point in time, then it should have been apparent when the County approved funding for MVEDGE to provide property appraisal services for MVHS aiding the pursuit of the Downtown Site. The County should have stopped further action and opened the SEQR process then, but it did not. Nothing was done about SEQR until there was an “application” that triggered a review – but, as noted above, the law wants the environment taken into consideration “early in the planning stages” so that “projects can be modified as needed to avoid adverse impacts on the environment.” Here, the County and City had employees planning this project without the environmental information required by law. It is a shame that so much time and money was spent on a flawed process.

Like the Site Selection Process appears to have been tainted by undue influence, the entire EIS appears tainted as well. People who have personally invested their time toward securing the Project for Downtown will have difficulty focusing on another site – an impossibility for those where the alternate site is in another jurisdiction.

At this point in time the Planning Board is faced with (1) an EIS that cannot support a SEQR finding because St. Luke’s appears to be the environmentally superior site and (2) having to give up jurisdiction because it has no legal authority in New Hartford.