

December 12, 2011

Report

To: East Hampton Town Board And Other Concerned Governmental And Environmental Entities

From: East End Dunes Residents Association (EEDRA) And Other Concerned Citizens Of East Hampton

Re: Town Board Suggested Expansion Of Existing Public Beach On Napeague Parcel Of Land Now Designated As “Natural Preserve And Beach” With Access To Proposed Adjacent Parking Lot by Way Of Dolphin Drive

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Introductory Synopsis

At an East Hampton Town Board work session held at Town Hall on September 20, 2011 a discussion was held by the Board which put forth the “suggestion/idea” of creating additional public beach access by constructing a substantial paved parking lot on a parcel of land (which land was purchased by East Hampton Town in 2001 for 8.4 million dollars entirely with Community Preservation Funds) adjacent to a development on State Route 27, known as Montauk-on-Sea, which consists of 149 residences.

The area within which this parcel of land is located is known as Napeague and such parcel consists of approximately 41 acres, having for its boundaries Dolphin Drive on the west, Route 27 on the north, the Atlantic Ocean on the south and Tax Lots 7.4a-8.0A (C) on the east, shown as Section 2 (see Exhibit 1).

Upon the purchase of this land, East Hampton Town signs designating this parcel of land “Nature Preserve and Beach” were, soon after, placed on its borders for all to see.

On September 21, 2011 the daily newspaper “East Hampton Press” ran an article on its front page entitled “New Beach for Napeague?” (see Exhibit 2) describing the Town Board’s discussion of such matters and its further “suggestion/idea” of using Dolphin Drive, the western border road of Montauk-on-Sea development, a narrow rural road, as the access road off Route 27 to the proposed parking lot.

Additionally the Town Board went on to say that the size of the proposed parking lot would mandate, among other things, restrooms with attendant septic systems and the usage of an existing small access road to the beach at the southern end of Dolphin Drive, which is currently a short 4-wheel drive vehicle sand access path carved out over the years by residents engaged in passive recreational use activities such as fishing, bathing and hiking.

Needless to say, the community residents, as well as other environmentally concerned citizens, were alarmed and immediately prepared and organized a unified statement of opposition to a project of this size on this particular parcel of land. Such statement was read into the record in front of the East Hampton Town Board on October 4, 2011 (see Exhibit 3) and was followed up by an additional statement on October 11, 2011 (see Exhibit 4).

This October 11th statement was generated by additional research which enabled us to secure the initial report to the Town Board (see Exhibit 5) drawn up by Larry Penny, East Hampton Director of Natural Resources and Environmental Protection, and submitted to the Town Board on December 1, 2000 in support of the purchase of such parcel for future public passive recreational use. Mr. Penny also cited the unique nature of this piece of land, one of the narrowest parts of all Long Island, and the home of many endangered and State protected species of plant and wildlife as well as a local, State and Nationally designated scenic treasure.

We are in favor of access to our beautiful beaches – we use them and gladly share them on a daily basis – but, for the following reasons, among others, we strongly protest the “suggestion/idea” of a substantial paved parking lot and rest rooms to be constructed on this

specifically unique piece of land, which the Town's own signage appears to confirm as a "Nature Preserve And Beach", using Dolphin Drive as an access road.

Section I

A. Some Pertinent Environmental Issues

Only 100 miles from New York City, the East End of Long Island, New York, presents an amazing range of habitats and scenic vistas that have been detailed in numerous assessments by Federal, State, local and private organizations. The reports also detail the various threats to these regional and local treasures, along with inventories, recommendations, policies and enforcement tools to help preserve, protect and restore them.

In keeping with the Town of East Hampton's interest in good stewardship to both preserve and enhance its natural setting, three tools were developed to help guide decision making regarding present and future development. The preparation of these tools embraced considerable public involvement that included meetings, a public opinion survey, public hearings, widely attended public meetings, a boater and marina survey, Town Board review at public meetings, presentations to various communities, television programs on Local TV public access cable channel 27 and extensive press coverage.

The first tool is a Comprehensive Plan for the Town (Exhibit 6), finalized in 2006, the second is the Local Waterfront Revitalization Plan (LWRP) (Exhibit 7), which received New York State approval in 2007 and the third is the Local Waterfront Revitalization Consistency Review Law (Exhibit 8). They all work together in that the LWRP is the coastal management component of the Comprehensive Plan and the Local Waterfront Revitalization Consistency Review Law assures that actions within the coastal area are first reviewed locally by the Town and subsequently by the New York State Department of Environmental Conservation.

To further the goals defined in the Comprehensive Plan and LWRP, the Town utilizes Community Preservation Funds (CPF) to acquire parcels of land that further the protection and preservation of significant areas. These well thought out actions clearly reveal the intent of the Town of East Hampton to preserve and protect the natural, scenic, historic, open space character, protective capacity and native biological diversity of the area.

B. Proposed Project

The East Hampton Town Board of Supervisors has suggested the development of services and access to an existing public beach on the Napeague Stretch's South Flora parcel of land, previously purchased by the Town with Community Preservation Funds and designated as "Natural Preserve and Beach". They further propose to use Dolphin Drive to access a proposed adjacent substantial parking lot.

Because of the size of the parking lot, said expansion would mandate, among other things, restrooms with attendant septic systems and the usage of an existing access road to the beach at the southern end of Dolphin Drive which is currently a 4-wheel drive vehicle sand access path carved out over the years by residents engaged in passive recreational use activities such as fishing, bathing and hiking.

C. Current Conditions

1. Flora and Fauna -- In a comprehensive study of “The Significant Habitats and Habitat Complexes of the New York Bight Watershed”, the U.S. Fish and Wildlife Service identified Napeague Beach, of which the South Flora parcel is a part, as an example of the beach dune interdunal swale complex that is one of the seven ecological/geographical subcomplexes in the Montauk Peninsula that are of regional significance to fish, wildlife, plants, or biological diversity. They detail that the Peninsula supports 148 species of special emphasis of which 37 species are plants (Exhibit 9).

The Nature Conservancy has also identified the Peninsula as a high conservation priority and believes that the “critical threats to the Montauk Peninsula’s biodiversity are invasive species, fire exclusion, and incompatible recreational uses.”

More specifically, Mr. Larry Penny, Town of East Hampton Director of Natural Resources and Environmental Protection, submitted a “Report on the ‘South Flora’ Parcel, Napeague, With Respect to Its Significance, Possible Acquisition and Future Management”, dated December 1, 2000 (Exhibit 5), to the Town of East Hampton Board of Supervisors. The South Flora parcel was subsequently purchased by the Town in 2001 utilizing Community Preservation Funds. Mr. Penny characterized the parcel as being unimproved oceanfront duneland covered with a unique community of plants and animals which provides ready access to a wide expanse of beach. He points out that the South Flora parcel is the only remaining large parcel south of Montauk Highway and that this dune plain type once covered three-quarters of the Napeague isthmus but is now less than 100 acres with the largest, least disturbed, intact portion residing on the South Flora property.

Further, Mr. Penny observed that the parcel contains several plants on the New York State Protected list and three rare plants included on the New York State Natural Heritage List. One of the rare plants, pink lady’s-slipper, is a possibly unique subpopulation. He also noted rare wildlife such as the eastern spadefoot toad, present on the State’s Special Concern list, and the State Threatened “northern harrier”. Also present are the federally threatened and state endangered piping plover, which breeds on the parcel’s beach annually, and the state endangered least tern, which breeds there occasionally.

Recognizing the importance of the piping plover and the least tern, the East Hampton Town LRWP recommends that the beach be closed at Dolphin Drive and Atlantic Drive seasonally from April 1st to August 15th to protect nesting shorebirds, and to fence the colony and erect signs.

As part of that protective plan, and as a matter of fact, all access from Dolphin Drive to the ocean, both vehicular and pedestrian, is regularly denied the public each year for the period stated above by the erection of temporary fences and appropriate signing.

There have been several attempts to acquire subdivision approval for development of the South Flora parcel in the past. All have failed; no doubt because of the danger of significantly

compromising the known biological, visual and erosion protection values of this site. The recent attempts were:

- In 1985 an application received final approval but the conditions of the approval were not met and the approval expired.
- In 1989 another application was made and also allowed to lapse.
- In 1996, Sea Breeze Estates made application to subdivide the South Flora parcel into 10 lots. Review by the East Hampton Planning Department resulted in a recommendation to the Town Planning Board that a Draft Environmental Impact Statement be prepared. This application was also allowed to lapse.
- In 2006 the Town of East Hampton endeavored to build a small parking lot (approximately 20 cars) that would provide boardwalk access to the beach at a disturbed site to the East of the location of the Lobster Roll, which is near to the eastern border of the South Flora parcel. The New York State Department of Environmental Conservation objected to the project because they found that it would be “likely to cause a measurable increase in erosion at this site, is not reasonable and necessary, and will not prevent or minimize adverse impacts on natural protective features and their functions and protective values.” The Town did not further pursue the project.

2. Scenic – The “East Hampton Scenic Areas of Statewide Significance Report” (see Exhibit 10) identifies 9 areas totaling 25,050 acres with potential for designation as Scenic Areas of Statewide Significance (SASS) under New York’s Coastal Management Program - Napeague is one of these areas “by virtue of its exceptional landscape character, environmental features, state of preservation, uniqueness, public accessibility and public recognition. It is one of the most scenic areas of the state’s coastline, providing dramatic views of high sand dunes, wide sandy beaches, salt ponds, Block Island Sound and the Atlantic Ocean. The visual quality of the SASS is distinguished by its openness, its contrasting flat and hilly terrain, its large salt ponds and unique dune formations. It is one of the narrowest, sandiest and most open and windswept segments of the Montauk Peninsula.”

The report also notes that although there are some discordant features within the SASS they “are relatively small in proportion to the large, unspoiled landscape of the SASS and do not significantly impact its otherwise high visual character and unique state of preservation”. Together with the Napeague State Park just to the west, the South Flora parcel acts to visually stitch remaining dune–beach-ocean vistas together to maintain the scenic perspective.

The report concludes that “Keeping future development away from the dunefields and shoreline will be critical in maintaining the visual character of the SASS and in ensuring the safety of people and property. In park and conservation areas, future expansion of visitor facilities, roads, parking lots, power lines, signage, structures and communications facilities should be kept away from the visually sensitive bluff top, back dune, beach and meadow landscapes.”

Importantly, whether proposed to be located within or outside a designated SASS, any State or federal agency actions or activity requiring a federal permit or approval must be assessed to determine whether it could affect a scenic resource and whether it would be likely to impair the scenic beauty of the scenic resource. The LWRP also includes a policy to “prevent impairment of scenic resources of statewide significance”.

3. Erosion – As previously stated, the dune plain type that once covered three-quarters of Napeague is now less than 100 acres with the largest, least disturbed, intact portion residing on the South Flora property, which is located in LWRP Reach 10, where the primary erosion protection features are the beaches and dune system. The other major remaining piece is the slightly smaller Amagansett National Wildlife Refuge to the west of the South Flora parcel. Established December 16, 1968, this 36-acre refuge is also of special significance in the protection and management of our fragile shore habitat and wildlife.

To be effective, the dune system must be allowed to naturally progress through the normal cycles of sand erosion and accretion, marked by occasional blowouts, and be abetted by the anchoring and sand capturing effects of dune vegetation such as beach grass. Recognizing this, the Town’s Comprehensive Plan concurs that the “south shore from Wainscott to Amagansett is a flat coastal plain which has agricultural soils rated among the most productive in the country. One or several lines of dunes provide a barrier between the fertile coastal plain and the Atlantic Ocean. The Atlantic Double Dunes in Amagansett and Napeague Beach are among the largest remaining areas of undeveloped barrier beach and back dune ecosystems on Long Island ...”

The LWRP notes that “At the Dolphin Drive/Atlantic Drive access point, a storm-narrowed ocean beach left the area vulnerable after the '93-94 winter, and prevailing southwesterlies did not rebuild the beach to normal post-summer widths”.

It should be noted that such Dolphin Drive vehicular and pedestrian access points, as referenced above and previously described in the report, have already breached the dunes at that point and have reduced both the height and mass of the dunes, the primary coastal defense against flooding.

In 2007, the Town adopted Coastal Erosion Overlay District legislation to regulate projects designed to control or prevent flooding and erosion of the coastline and adjacent upland areas, implementing the coastal erosion recommendations of the LWRP.

D. Environmental Impacts

1. Flora and Fauna – Napeague Beach is one of sixteen areas within the Town of East Hampton that have been designated as Significant Coastal Fish and Wildlife Habitats by the New York State Department of State and the South Flora parcel is one of the ecological communities that contributes to this designation.

The Town of East Hampton, speaking through the LWRP, has much to say about the vulnerability of the Napeague Beach to any “land disturbance or increased human activity in the area”. These impacts, of course, are the very things that the suggested project will bring in large measure to the South Flora parcel.

The LWRP specifically mentions both the collection and trampling of native flora and fauna as being of special detriment to the area, especially in the very sensitive upper beach and dune areas. Such project, therefore, would threaten one of the very areas most requiring preservation.

2. Scenic – There is no need to speculate on the impact the proposed project may have on the South Flora parcel and, as a consequence, the Napeague SASS. The SASS report especially notes that the same attributes now existing on the South Flora parcel were once extant within the SASS at Hither Hills State Park where “the area north of the dunes has been transformed by the campgrounds, roads, parking lots and buildings of the state park” and that “Marked visual contrasts exist between the east and west portions of the subunit. The western portion is largely untouched by human hands and remains in a relatively pristine condition. The eastern portion of the subunit has been heavily altered as a result of the construction of the state park”.

The suggested project’s substantial parking lot, restrooms, septic systems and substantial human traffic would have a similar effect on the South Flora parcel by visually covering the back dune area, threatening the stability of the frontal dune and substantially altering the vegetative assembly of the site. The proposed project clearly violates the SASS report’s conclusion that “visitor facilities, roads, parking lots, power lines, signage, structures and communications facilities should be kept away from the visually sensitive ... back dune, beach ... landscapes”.

As the largest, least disturbed, intact portion of the remnant dune plain type south of the Montauk Highway, its loss will, in turn, have a significant deleterious effect upon the visual aspects of the Western portion of the SASS. It is this parcel in combination with the Napeague State Park, just to the west of it, that acts to visually stitch the dune–beach–ocean vistas together.

3. Erosion – According to the LWRP, Reach 10 is one of the most vulnerable in the Town to flooding and erosion and the beaches and dunes provide the primary defense against storms. It recommends that everything possible be done to keep them intact, stop practices that degrade them and employ stringent conservation.

In this regard, any increase in the current vehicular or pedestrian traffic would accelerate the present rate of erosion of these dunes and further compromise their protective ability resulting in an increased threat to adjacent public and private property including the potential flooding of Route 27.

Additionally, the present vehicular sand access road at the end of Dolphin Drive would have to be widened to accept heavier emergency and municipal vehicles and further breaching would result.

As previously mentioned, in 2006 the Town of East Hampton planned to construct a small parking lot with boardwalk access to the beach (but without bathroom and septic systems) at a disturbed site just to the East of the South Flora parcel. The New York State Department of Environmental Conservation objected to the project because they were concerned that it would cause a “measurable increase in erosion”. Further they found that the project was “not reasonable and necessary, and will not prevent or minimize adverse impacts on natural protective features

and their functions and protective values". It would appear that the project did not comply with Section 505.6 (Exhibit 11) of the Coastal Erosion Hazard Act Regulations which sets standards for issuance of coastal erosion management permits. The Town decided not to pursue the project.

It is relevant, and informative at this point, to observe that much of the back dune area on this parcel is barely above sea level in many locations, with a depth to the water table at 0-feet in some locations.¹

The discussed septic systems would be subject to flooding damage due to hurricanes, unusually high tides and/or nor'easters with resultant septic contamination of the entire area.

It is not uncommon over the years to have this parcel and adjacent residential areas flood for days from consistent heavy rainfall.

With Local, State and Federal laws and policies vastly more integrated than when this more modest plan failed the consistency test in 2006, it would seem that to progress with the currently suggested project would be inconsistent with current East Hampton Town environmental, scenic and erosion goals and policies.

¹ Town of East Hampton Planning Department Evaluation Form For Subdivisions, re: Sea Breeze Estates Pre-preliminary Subdivision, January 5, 1996.

Section II

A. General Pedestrian, Motorist, Residents and Visitors Safety Issues

The Section of State Route 27 specifically in focus is the intersection with (going East) first Napeague Meadow Road on the north and, approximately 180-feet later, Dolphin Drive on the south (see Exhibit 12). It is an offset intersection and will be dealt with in close-up in Section III of this report.

To begin with, it should be noted that, from the end of Napeague Meadow Road when it “T’s” (ends) at Route 27, to the fork of Route 27 and Old Montauk Highway (approximately 1 mile East), there is no other east or west bound road but Route 27 available to the thousands of vehicles that annually use this road; sometimes, in summer season, several thousand vehicles a day. (note: we are in the process of securing accurate data on this traffic load as well as data on vehicular and pedestrian accidents on this stretch – see Exhibits 13 and 14).

A Federal Highway Administration study found that the left turn vehicle pedestrian accident rate was twice that involving right turning vehicles. It is also reasonable to assume that many, if not most, of the vehicles exiting the proposed parking lot will be making a left turn to go West on Route 27 towards East Hampton (Montauk has its own beaches).

Considering the existing sightlines on Route 27 at the Dolphin Drive intersection, and frequent parking space Summer turnover, the increased above described left turn activity will further seriously compromise the already precarious safety of motorists and pedestrians alike.

Indeed, one of the recommendations made in East Hampton’s Comprehensive Plan for Amagansett, and specifically the Montauk Highway corridor, is to “limit traffic congestion and new turning movements” as well as “maintain unobstructed clear safe vehicular movement”.

This intersection and ensuing section of road, used by the number of vehicles above mentioned, as well as tens of thousands of hikers, adult and adolescent bikers, joggers, skateboarders, rollerbladers, infants in walkers attended by parents and toddlers on foot, is the most drastic bottleneck imaginable and, with increased traffic, it's danger level is rising each year.

When you add traffic entering this stretch of Route 27 from Dolphin Drive, Atlantic Drive and Marlin Drive (the three streets existing in Montauk-on-Sea Development), plus Napeague Meadow Road plus vehicles in and out of (see Exhibit 15):

- a. Six Motels/Hotels on the South Side
- b. The Lobster Roll (“Lunch”) – South Side
- c. The Clam Bar – North Side
- d. Bonzai Burger and Boutique Shop – North Side
- e. Hither Hills Tennis facility - North Side
- f. Cyril’s Fish House – North Side.

all within this one-mile stretch of a 2-lane highway, it is not an unreasonable stretch of the imagination to envision the ongoing dangerous chaos currently generated on any given day (see Exhibit 15).

To add to this chaos with the construction of a major beach facility with its access and egress off Route 27 within this negative “miracle mile” is, we suggest, a highly dangerous proposition.

B. Dynamics – Intersection of Dolphin Drive, State Route 27 and Napeague Meadow Road (see Section III).

C. Safety of adjacent neighborhood (Montauk-on-Sea)

There already exist access points to the subject Beach at the southern ends of Dolphin Drive and Atlantic Drive.

The Atlantic Drive access provides parking for about 20 vehicles and, during the summer months, is chaotic with vehicles looking for parking spaces or pulling in and out of parking spaces. There is no legal parking at the end of Dolphin Drive.

Additionally, Atlantic Drive to and from the beach, and to and from Route 27 during summer season, handles an already dangerous level of traffic (some traveling much faster than the speed limit).

Bear in mind that all Montauk-on-Sea local roads are already handling a constant stream of pedestrian traffic accessing and leaving the beach to and from their homes in the area, including those who live on the North side of Route 27 and cross the highway on foot to access the beaches.

To add the additional traffic which would be generated by the proposed expanded public beach project would overrun an already overrun neighborhood, what with motorists entering the proposed lot and either finding an empty spot or, finding the lot full, exiting and looking around the area for a legal (or sometimes illegal) parking space.

Adding this transient traffic on Dolphin Drive and the neighborhood to the already busy traffic on Atlantic Drive would engulf the neighborhood completely and endanger all pedestrians and bikers and, most especially, the children who play in and about their homes.

Last in this section but certainly not least, the impact to the safety and quality of life for those residents who live on Dolphin Drive would be irreversibly destroyed. In the summer months it is virtually impossible for them to get out of their own driveways, let alone trying to access Route 27 going East or, especially, going West (a left turn across the East bound Traffic Lane).

D. The already difficult and limited beach access for emergency vehicles would be substantially impaired due to the sheer volume of traffic on a summer day, especially on the weekends.

E. The Additional Policing Necessary

1. The Beach

(a) Bonfires so close to a residential community is already an issue. Increased activity of this nature puts homes more at hazard and increases police burdens.

(b) Littering increase and attendant refuse cleaning and collecting.

(c) Undesirable night activities - alcohol and other high spirits generating the need for a greater police presence.

2. The Parking Lot –It will have to be policed day and night all year long, an additional police burden.

3. The Adjacent Neighborhood

(a) The additional transient traffic, both motor and pedestrian, raises the level of risk of break-ins, trespassing, vandalism and crime.

(b) Illegal parking and blocking of driveways.

Section III

Close-up analysis and graphic display of intersection of Dolphin Drive, State Route 27 and Napeague Meadow Road with it's adjacent Long Island Railroad gated crossing

The attached Exhibit 16 (Dolphin Drive Intersection Plate and 5 Overlays) and the attendant acetate master overlay are intended to demonstrate the existing complexity of the intersection as well as hypothecate the impact of the construction of a parking lot with Dolphin Drive as the access road.

The final overlay on the acetate master, graphically demonstrates the extensive complexity of convergences, as witnessed over the years by residents, motorists and accident victims. Such convergences often happen simultaneously with a frequency and regularity that increases exponentially in the Summer months.

You will note that the area is further complicated by an adjacent Long Island Railroad Crossing approximately 90-feet North of Route 27 on Napeague Meadow Road.

Section IV

Comments on legislation enabling Community Preservation Funds (CPF) activity, its guidelines and restrictions

The South Flora parcel was purchased by East Hampton Town in 2001 for 8.4 million dollars using Community Preservation Funds (CPF) for the entire purchase price, which fund was established by Article 4, Section 64F of New York State Town Law (see Exhibit 17). This legislation shall hereinafter be referred to as the “Act”.

The prime directive of the Act and the use of CPF funds is the “preservation of community character” and, for our purposes, shall involve one or more of the following:

- (a) The establishment of:
 - (1) Parks
 - (2) Nature preserves
 - (3) Recreation areas
 - (4) Wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species.
- (b) Preservation of:
 - (1) Open space
 - (2) Lands of exceptional scenic value
 - (3) Fresh and saltwater marshes or other wetlands
 - (4) Undeveloped beach lands or shoreline
 - (5) Pine barrens consisting of such biota as pitch pine
 - (6) Unique or threatened ecological areas

Clearly the purchase of the South Flora parcel with CPF funds was appropriate for all of the above reasons.

However, once the purchase is made, Section 9 of the act mandates the ensuing administrative stewardship and management of the acquired land in a manner which:

- (a) allows public use and enjoyment in a manner compatible with the natural, scenic and open space character of such lands;
- (b) Preserves the native biological diversity of such lands;
- (c) limits improvements to enhancing access for passive use of lands such as peripheral parking areas, “provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat”.

Based on the previous sections of this report, subsequent Town legislation and Town policies previously promulgated plus the specific language of the Act itself, we suggest that the very scale of the “suggestion/idea” which is the subject of this report is impermissible as a matter of law.

To further reinforce this position, the Napeague Dunes have received official Federal, U.S. Army, State and Town recognition as being, among other things, environmentally valuable,

greatly endangered, unique and irreplaceable as well as a refuge and habitat for many endangered and/or threatened species of plants and wildlife.

The South Flora tract is the single largest remaining parcel of such dune land south of the highway and, as such, should be and, in fact, is protected from permitted activity which is overly invasive.

Section V

The Process – Our Reasonable Expectations

While we, as residents and concerned citizens of East Hampton, as well as concerned environmental groups, fully realize that the functioning of government is a constant ongoing activity dealing with myriad subjects and, as such, the Board cannot endlessly debate each situation before it and thereby forfeit any action of consequence, we do, and it is our duty, request a level of transparency in the Town Board's activities that, at the least, affords us the opportunity to communicate with the Board on an informed basis in advance of proposed activities which vitally affect the life of the community at large.

We assert that this is a reasonable expectation of the Board and would, and will, relieve us from the happenstance reliability of being informed of such vital issues via newspaper articles.

Such was the case regarding the subject matter at hand and, while meetings and work sessions are open to the Public, the Public cannot always be available on an "hours notice", which we have been led to understand is the standard notice of the proposed agenda of a work session or meeting.

That being said, and desiring to be an ongoing part of the governing process, as we should and have endeavored to be, we make the following requests regarding the subject matter which we would ask be completed and furnished to interested parties reasonably in advance of the public hearing (as "envisioned" by Mr. Wilkinson, The Town Supervisor, at the October 4, 2011 Town Board work session) and which we feel are reasonable and standard for a proposed project of this nature on the proposed scale:

1. An independent draft environmental impact study such as was requested from potential developers of the subject parcel in the past;
2. An independent traffic analysis furnished by certified traffic engineers.

The above, we request as aforesaid, be completed and furnished to the Public in advance of the public hearing allowing interested parties a reasonable amount of time to analyze such information so as to formulate an informed response, be it for or against such project.

Section VI

Conclusion

Three thousand years ago, the first grains of sand were deposited by the sea on what would become the land bridge between what we now know as Montauk and Amagansett.

The largest, contiguous, undeveloped tract of that landbridge, the “South Florida Parcel”, has survived not only the pressures of the ocean for all that time but, more importantly, the pressures of commercial and residential development for over 350 years.

The previous sections of this report state the history, facts, and probable outcomes pertaining to the current Napeague Beach idea. Allow us now to reflect upon the heart and spirit of the matter at hand.

This parcel of land is virtually untouched by humanity since its geological birth. It is, in fact, a living museum of plant and wildlife evolution that began one thousand years before Jesus of Nazareth was born.

We must admit that when we began writing this report in September of this year, we had only a “gut feeling” as to the special nature of this land parcel. As we researched deeper into its history, we were increasingly amazed at just how unique and valuable it is from an environmental and habitat standpoint as acknowledged by the Town, State and Federal governments.

We respect the Town Board’s desire to provide additional protected beaches, as well as its right and duty to explore any ideas that relate to this quest. But, as to the South Floral Parcel, we respectfully offer another idea and request, namely – Leave this parcel intact! - preserve its status as “Nature Preserve and Beach” and leave it protected for posterity.

Thus, you would leave a legacy that would resonate with all who love the East End, both residents and visitors alike.

Acknowledgements

We wish to thank the people listed below for their many contributions in the preparation of this report.

Edwards, Norm - Resident and member of the East End Dunes Residents Association
Ligorner, Marty - Resident and President of the East End Dunes Residents Association
Ling, David - Resident and member of the East End Dunes Residents Association
Sands, Harvey - Resident and member of the East End Dunes Residents Association
Sonenberg, David - Resident and member of the East End Dunes Residents Association
Sterlacci, Mike - Resident and member of the East End Dunes Residents Association
Wallace, Jonathon - Resident and member of the East End Dunes Residents Association

New Beach For Napeague?

Town Board considers improvements to Dolphin Drive access

BY WILL JAMES

The East Hampton Town Board is considering creating a protected bathing beach near Dolphin Drive in Napeague.

Supervisor Bill Wilkinson, Councilwoman Theresa Quigley, Clerk of the Trustees Diane McNally and several town department heads recently met and discussed the idea. Ms. Quigley said at a work session on Tuesday.

The beach would be developed as part an existing preserve that was created when the town purchased 37.7 acres of land along the south side of Napeague in 2001, using \$8.4 million from its Community

Preservation Fund. Beachgoers have been parking their vehicles on Montauk Highway and Dolphin Drive and walk-

The town has owned the 37.7-acre site since 2001.

ing to the beach, officials said. Assigning lifeguards to watch the beach, constructing a "comfort station" with bathrooms and building a park-

ing lot would expand access to Napeague's shoreline, Mr. Wilkinson said. There is not enough parking space on Dolphin Drive to accommodate many vehicles.

"There is an opportunity to put another guarded beach in Napeague," Mr. Wilkinson said. "I would call it Napeague Beach."

Eventually creating a protected bathing beach was on the prior Town Board's mind when it purchased the land, according to a copy of the 2001 resolution.

"There was a whole concept of having a beach there, way

See BEACH, Page A8

THE EAST HAMPTON PRESS | SEPTEMBER 21, 2011

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BEACH: Town Looking At Napeague

FROM PAGE A1

back," Ms. Quigley said. "I understand this is not a new idea. This is an idea that has been out there for 10 years or so."

"We bought it to make it a beach," said Director of Land Acquisition and Management Scott Wilson. "It just hasn't been done yet."

The town could tap its Community Preservation Fund to build a parking lot, Mr. Wilson said, but would likely use other funds to construct the bathrooms.

Councilman Pete Hammerle said the biggest obstacle will be the State Department of Environmental Conservation, which will need to approve the restrooms before they can be built. The department has rejected plans for comfort stations in the past, he said.

Superintendent of Recreation John Rooney said there are



The East Hampton Town Board is considering adding lifeguards, bathrooms and a parking lot to a beach near Dolphin Lane in Napeague.

KYRIL BRONLEY

eight existing protected bathing beaches in the town's jurisdiction. He referred comments on the prospect of another one in Napeague to Mr. Wilkinson. Mr. Wilkinson did not return a call after the meeting seeking comment.

A separate stretch of beach in Napeague, to the west, is the

subject of an ongoing 2009 lawsuit by beachfront homeowners and business owners who claim ownership of the shoreline, where scores of visitors park their vehicles in the summertime. Hundreds of beachgoers have rallied to pressure the Town Board and Trustees to ensure it remains public.

EXHIBIT 3

October 4, 2011

To: The Town Board Of East Hampton

From: Citizens Concerned About The Environmental Safety Of The East End

As citizens and homeowners seriously concerned about the environmental safety of the East End, we were shocked to learn that the Town Board was considering the construction of a parking lot along with restrooms and comfort stations and necessary septic tanks on the approximately 40 acre Nature Preserve directly adjacent to Dolphin Drive on the Napeague Stretch, with said Dolphin Drive, a small road bordering the community known as Montauk-On-Sea, as the access road. We do not believe such a project should go forward because:

First and Foremost: The Napeague Stretch in its entirety and especially the existing town designated Nature Preserve is an environmental wonder representing a very narrow vulnerable strip of land between the ocean and Napeague Bay. The Preserve site is actually located on the narrowest point of the stretch, which is the narrowest point in all of Long Island, approximately ¼ mile between the Ocean and the Bay.

As concerned citizens, we were grateful that the Town acquired this land ten years ago and immediately designated it as a Nature Preserve and Beach. The acquisition was no doubt motivated and hastened by the environmentally protective restrictions imposed on would-be developers.

Allowing this area to be intruded upon in the proposed fashion, we feel, would be an environmental mistake of substantial proportions as well as a dangerous escalation of safety factors with respect to pedestrians (children and adults), hikers, bikers, skate-boarders, roller-bladers, joggers, infants in walkers and pedestrians who currently use Dolphin Drive as their access to the beach.

The intersection of Dolphin Drive, Route 27 and Napeague Meadows Road with its railroad crossing is already a very dangerous intersection that is very difficult to navigate. To make Dolphin Drive a road for beach access would cause an enormous increase in traffic that would result in a serious safety hazard in the Montauk-On-Sea community.

As repeatedly attested to at the Town Board's meeting on December 1, 2000, when the resolution to buy the land was adopted, the Nature Preserve is a unique, Nationally recognized, pristine area containing endangered and State protected foliage as well as being a natural habitat for wildlife including the Plover, Tern and other water and land fowl.

The land also contains rare dune configurations ranging in height from 2.5 feet on the interior to 37 feet on the ocean, the areas first and best protection against coastal flooding and beach erosion. The Preserve should remain a preserve.

Secondly: the proposed construction and access road would further dangerously agitate the already massive amounts of traffic that currently exist specifically in this area. There are four restaurants, a tennis facility and several hotels on the stretch of Route 27 between Dolphin Drive and Cyrils. This area can not support additional traffic that would ensue from adding a parking lot on the Preserve.

In closing we would like to state that we strongly believe in the public access to our beautiful beaches and we believe such access to the Napeague Beaches already exists.

If additional access is desired we ask that the Town Board not proceed with the subject plan and explore other alternatives with substantially less negative impact.

Mike Sterlacci – Homeowner and member of East End Dunes Residents Association (EEDRA)

EXHIBIT 4

October 11, 2011

To: East Hampton Town Board

From: Members of EEDRA (East End Dunes Residents Association) and other concerned
Members of the Town of East Hampton

We would like to thank the Board for allowing us the opportunity to express our views concerning the construction of a public beach on the Napeague Stretch, specifically located on the 40 acre "South Flora" Nature Preserve, adjacent to Dolphin Drive.

Further, and subsequent to, our comments at the Board's work session last Tuesday, October 4, 2011, we were able to locate Larry Penny's, Town of East Hampton Director of Natural Resources, original report on the Preserve, which report was presented to the Board on December 1, 2000 (a copy of which is attached hereto). Reading this report is quite enlightening and we would suggest that each member of the Board read it in its entirety.

Mr Penny refers to the land as "oceanfront duneland covered with a unique community of plants and animals".

"In addition to the bearberry-heather-staghorn lichen species, the site contains several plants on the New York State 'protected' list, three of which are orchids, rose pogonia, calopogon and pink lady's-slipper. The former are wetland species associated with the cranberry bogs and damp sands."

"Three 'rare' plants included on the New York State's natural Heritage List are also found on the South Flora parcel."

"The subject site is home to some interesting and rare wildlife ... which are on the State's 'Special Concern' list. The federally threatened and state endangered piping plover breed ... the State endangered least tern breeds...the state threatened "northern harrier"... the most interesting and rarest meadow jumping mouse, which like the gray fox and New England cottontail, is one of those animals that is disappearing from most of Long Island."

“The wetlands on the South Flora parcel are expected to increase in size over time. Sea level is rising and the interface between seawater and fresh groundwater on Napeague is only 50 feet or so below grade ... the fresh water table will rise ... the wetlands will expand ... and cranberry bogs will cover about one-third of the parcel.”

This report was written almost eleven years ago. Since that time, as Mr. Penny cautioned, there has been a significant increase in global warming as well as a disturbing amount of beach erosion on this pristine Nature Preserve.

Quite apart from the concerns expressed by Mr. Penny in connection with developing this parcel, we point out once again that the land mass between the Atlantic Ocean and Napeague Harbor in the area north and south of the Preserve, is less than 1/4 mile. This strip is the narrowest part of Long Island.

We believe that the Preserve should be maintained in its natural state and that it not be disturbed in any fashion. The idea of constructing a Public Beach, with parking facilities, public lavatories and underground septic tanks on this fragile parcel seems to be inconsistent with the expressed underlying reasons for purchasing the land. The parcel itself is too fragile to support such an undertaking, and the water table makes such a proposition, we feel, untenable.

We have already expressed our concerns regarding traffic in our small community. Any substantial additional traffic in our area would present an unacceptable safety hazard.

Traditionally, the Town of East Hampton has displayed genuine concern about the environment and the negative impact that can result from construction on wetlands, dunelands and parcels of land that deserve to be protected. It was for that very reason that Larry Penny recommended that the Town of East Hampton purchase the Preserve.

We would hope this current Board and the individual members would continue to show the same level of concern for the environment and the public safety of the citizens of East Hampton, and

exercise restraint before proposing any action that might harm this fragile parcel which is, in our view, both a local, State and National treasure.

Sincerely,

Mike Sterlacci

Resident and member of the East End dunes Residents Association (EEDRA)

Copy for:

East Hampton Town Trustees

John Jilnicki – Town Attorney

Fred Overton – Town Clerk

Jeremy Samuelson – Group For The East End

Ricky Greening – Wildlife Rescue

Paul D’Andrea - South Fork Nature Conservancy

William Fonda – Department Of Environmental Conservation

EXHIBIT 5

REPORT ON THE "SOUTH FLORA" PARCEL, NAPEAGUE, WITH RESPECT TO ITS SIGNIFICANCE, POSSIBLE ACQUISITION AND FUTURE MANAGEMENT

The ca. 40 acre parcel situated in Napeague, recently referred to as "South Flora", is a long-standing unimproved parcel of oceanfront duneland covered with a unique community of plants and animals which provides ready access to a wide expanse of beach. Geologically, it is among the most recent of East Hampton Town lands as it was formed only about 3,000 years ago from Montauk sands dumped by the littoral drift. In fact, it may be the only point on the entire stretch of ocean beach between Montauk Point and the Southampton Town line that is not receding, as it is still receiving sands from Montauk shores and the near shore ocean bed. You might say, it is a piece of land in progress.

The parcel surrounds a small parcel of Town land that includes a concrete slab, the last remnants of a building that is shown on an early map of the area. In the last 30 years, the stretch of ocean dunelands between Napeague State Park on the west and Hither Hills State Park on the east has seen considerable development. The South Flora parcel is the only remaining large, subdivisible parcel south of Montauk Highway.

Behind the shore, the parcel is fronted by 1700 linear feet of primary dune. Behind the dune line is a gently rolling dune plain, which tilts down to reach the water table south of Montauk Highway. The dune plain is the most outstanding natural feature of the parcel as it is covered with a relictual assemblage of pioneer plants having northern affinities, a low mat of bearberry, beach heather and staghorn lichens, in superficial aspect, similar to the arctic tundra. This dune plain is part of a once much larger system that extended on the north all the way to Napeague Bay and covered three-quarters of the Napeague isthmus. It has shrunk to fewer than 100 acres, having been usurped by pitch pines moving in from the west and human residential and resort development, taking place on the north, south and east. The largest, least disturbed, intact portion of this dune plain vegetative cover resides on the South Flora property. (Ironically, perhaps, the only other area outside of Napeague in East Hampton Town where such a complex of bearberry, heather and staghorn lichens existed in large amounts up until recently is Sannis Beach.)

In addition to the bearberry-heather-staghorn lichen species, the site contains several plants on the New York State "protected" list, three of which are orchids, rose pogonia, calopogon and pink lady's-slipper. The former are wetland species associated with cranberry bogs and damp sands, the latter is a woodland species generally associated with pine forests. This dune subpopulation of lady's-slipper, the members of which are completely exposed to the sun and coastal winds and salt spray, may also be unique.

Three "rare" plants included on New York State's Natural Heritage List are also found on the South Flora parcel. Emmon's sedge and pine barren sandwort occur in association with the bearberry-heather-lichen mat, serorse sedge is found in the fingers of wetlands south of the highway. Cranberries are the most dominant wetland plant, but sundews and other interesting wetlands species also occur here. Several of the plants on the site were of importance as food to local Native Americans, and to early settlers, as well, particularly the cranberries, beach plums and highbush blueberries. Berry picking is not just a thing of the past, it is still practiced by many East Hamptonites.

The subject site is home to some interesting and rare wildlife. The eastern spadefoot toad breeds here when the water table is very high; it's on the state's "Special Concern" list. The federally threatened and state endangered piping plover breed on the site's beach, annually. The state endangered least tern breeds on the site's beach, occasionally. The state threatened "northern harrier" gleans rodents from the dunes during the winter.

Of the several mammals that use the site, the most interesting and rarest is the meadow jumping mouse, *Zapus hudsonicus*. As the gray fox and New England cottontail, it is one of those animals that is disappearing from most of Long Island.

Gray treefrogs, spring peepers and Fowler's toads are three amphibians known to breed on the site when the water table is high. Black racers, eastern ribbon snakes, milk snakes and eastern garter snakes and the eastern box turtle are five reptiles that frequent the site.

The wetlands on the South Flora parcel are expected to increase in size over time. Sea level is rising and the interface between seawater and fresh groundwater on Napeague is only 50 feet or so below grade. For every rise in sea level there is a corresponding rise in the water table. The rise in sea level anticipated as a result of global warming in this century is at least 1.5 feet. Consequently, the fresh water table will rise at least that much and the wetlands will expand laterally. A hundred years from now, cranberry bogs will cover about one-third of the parcel.

Management Concerns. Based on the foregoing, it is the Natural Resource Department's position that the Town should acquire the South Flora parcel. The fact that the natural features on the parcel are so compelling, does not concomitantly rule out its potential for recreational use, as well. Popular beach uses such as sun bathing, walking, swimming, and fishing can be compatible with protecting the breeding of endangered plovers and terns. A pedestrian access to the beach should be made part of that recreational beach use. A small parking area, large enough to accommodate 20 vehicles can be constructed on the disturbed parcel (containing the old concrete building slab and vegetated by Japanese black pines) already owned by the Town. An access driveway linking the parking to Montauk Highway can probably be negotiated or created by condemnation. (A "landlocked parcel", such as the Town's existing parcel, is entitled to receive access.)

A boardwalk with rope railings through an existing blow-out area could provide pedestrian access from parking area to beach. The beach, itself, could be a low-use beach and the locus of its recreational use could be shifted one way or another to accommodate breeding plovers and terns, while providing for the recreational needs of people. The upland area could be provided with a self-guided nature trail that would keep pedestrians from stepping on the plants in the sensitive plant communities.

Some active habitat management practices, such as the removal of Japanese black pines and other invasive weedy species, would need to be invoked as part of the management plan.

In a word, the area could be managed as a "nature preserve" with a master plan spelling out its uses. Several Town nature preserves already provide for beach recreation. County, state and federal wildlife habitat lands (e.g., Morton Wildlife Refuge) also accommodate swimming and other human beach uses. An entrance sign and strategically placed interpretive signs could be installed as part of the overall management plan.

An emergency four-wheel drive trail to the beach already exists on the southeast side of the parcel. It takes issue from Dolphin Drive.

South Flora Site Plan



EXHIBIT 6

TOWN OF EAST HAMPTON COMPREHENSIVE PLAN
MAY 6TH, 2005

**The Full Text Of This Extensive Report May Be Viewed On The
East Hampton Town Website At:**

<http://www.town.east-hampton.ny.us/DocumentsPDF/CompPlan2005/TownCompPlanWeb.pdf>

EXHIBIT 7

TOWN OF EAST HAMPTON LOCAL WATERFRONT REVITALIZATION PROGRAM

**The Full Text Of This Extensive Report May Be
Viewed On The East Hampton Town Website At:**

<http://nyswaterfronts.com/LWRP/Town%20of%20East%20Hampton/default/PDF/East%20Hampton%20Final%20LWRP.pdf>

EXHIBIT 8

EAST HAMPTON TOWN LWRP LOCAL CONSISTENCY REVIEW LAW

WHEREAS, a public hearing was held by the Town Board of the Town of East Hampton on June 16, 2005, and held open for public comments until July 1, 2005, regarding a proposed Local Law adding Chapter 150 ("LWRP Local Consistency Review Law") to the Town Code in order to better protect the Town's coastline, by instituting a framework for agencies of the Town of East Hampton to incorporate the policies and purposes contained in the Town of East Hampton Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or direct agency actions within the coastal area; and to assure that such actions and direct agency actions by the Town are consistent with the LWRP policies and purposes; and

WHEREAS, the Town Board has considered the comments of all persons regarding this Local Law, both as submitted in writing during the comment period and as presented orally at the public hearing; and

WHEREAS, the adoption of this local law is an unlisted action pursuant to the State Environmental Quality Review Act (SEQRA); and

WHEREAS, the Town Board has prepared and considered an Environmental Assessment Form which evaluates the potential environmental impacts of the proposed amendment; and

WHEREAS, the Board has determined that the adoption of this Local Law will not have a significant negative impact upon the environment;

NOW, THEREFORE, BE IT RESOLVED, that a negative declaration is hereby made pursuant to the State Environmental Quality Review Act (SEQRA); and

NOW, THEREFORE, BE IT RESOLVED, that the said Local Law is hereby enacted to read as follows:

LOCAL LAW NO. 22 OF 2005

INTRODUCTORY NO. 16 OF 2005

A Local Law providing for the addition of Chapter 150 ("LWRP Local Consistency Review Law") to the East Hampton Town Code in order to better protect the Town's coastline, by instituting a framework for agencies of the Town of East Hampton to incorporate the policies and purposes contained in the Town of East Hampton Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or direct agency actions within the coastal area; and to assure that such actions and direct actions by the Town are consistent with the LWRP policies and purposes, said Local Law to read as follows:

BE IT ENACTED by the Town Board of the Town of East Hampton as follows:

SECTION I: Findings and Objectives:

The Town Board has determined to add Chapter 150 ("LWRP Local Consistency Review Law") to the Town Code in order to better protect the Town's coastline, by instituting a framework for agencies of the Town of East Hampton to incorporate the policies and purposes contained in the Town of East Hampton Local Waterfront Revitalization Program (LWRP) adopted , when reviewing applications for actions or direct agency actions within the coastal area; and to assure that such actions and direct agency actions by the Town are consistent with the LWRP policies and purposes.

SECTION II: Town Code Amended:

Section 150-10. Title.

This Local Law will be known as the Town of East Hampton Local Waterfront Revitalization Program Consistency Review Law

Section 150-20. Authority.

This local law is adopted as a local law pursuant to the authority conferred in Article IX of the New York State Constitution; Section 10 of the New York Statute of Local Governments; Article 2, Section 10 of the Municipal Home Rule Law and Article 42 of the Executive Law, Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York. Section 150-50(H) is hereby adopted using the supercession authority under New York State Town Law, § 23 of the Municipal Home Rule Law.

Section 150-30. Purpose.

A. The purpose of this Local Law is to provide a framework for agencies of the Town of East Hampton to incorporate the policies and purposes contained in the Town of East Hampton Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or direct agency actions within the coastal area; and to assure that such actions and direct actions by the Town are consistent with the LWRP policies and purposes.

B. It is the intention of the Town of East Hampton that the preservation, enhancement and utilization of the unique coastal area of the Town take place in a coordinated and comprehensive manner to ensure a proper balance between protection of natural resources and the need to accommodate population growth and economic development. Accordingly, this Local Law is intended to achieve such a balance, permitting the beneficial use of coastal resources while preventing loss of living coastal resources and wildlife; diminution of open space areas or public access to the waterfront; disruption of natural coastal processes; impairment of scenic or historical resources; losses due to flooding, erosion and sedimentation; impairment of water quality; or permanent adverse changes to ecological systems.

C. The substantive provisions of this Local Law shall only apply while there is in existence a Town of East Hampton Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

Section 150-35. Definitions.

A. "Actions" include all the following, except minor actions:

(1) projects or physical activities, such as construction or any other activities that may affect natural, man-made or other resources in the coastal area or the environment by changing the use, appearance or condition of any resource or structure, that:

(i) are directly undertaken by an agency; or

(ii) involve funding by an agency; or

(iii) require one or more new or modified approvals, permits, or review from an agency or agencies;

(2) agency planning and policymaking activities that may affect the environment and commit the agency to a definite course of future decisions;

(3) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect coastal resources or the environment; and

(4) any combination of the above.

B. "Agency" means any board, agency, department, office, other body, or officer of the Town of East Hampton.

C. "Coastal area" means that portion of New York State coastal waters and adjacent shorelands as defined in Article 42 of the Executive Law which is located within the boundaries of the Town of East Hampton, as shown on the coastal area map on file in the office of the Secretary of State and as delineated in the Town of East Hampton Local Waterfront Revitalization Program (LWRP).

D. "Coastal Assessment Form (CAF)" means the form, a sample of which is appended to this local law, used by an agency to assist in determining the consistency of an action with the Local Waterfront Revitalization Program.

E. "Consistent" means that the action will fully comply with the LWRP policy standards, conditions and objectives and, whenever practicable, will advance

one or more of them.

F. "Direct Agency Actions" mean actions planned and proposed for implementation by an agency, such as, but not limited to a capital project, rule making, procedure making and policy making.

G. "Environment" means all conditions, circumstances and influences surrounding and affecting the development of living organisms or other resources in the coastal area.

H. "Local Waterfront Revitalization Program, or LWRP" means the Local Waterfront Revitalization Program of the Town of East Hampton, approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42), a copy of which is on file in the Office of the Clerk of the Town of East Hampton.

I. "Minor actions" include the following actions, which are not subject to review under this chapter:

(1) maintenance or repair involving no substantial changes to an existing structure or facility;

(2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, except for structures in areas designated by local Coastal Erosion Hazard Area law where structures may not be replaced, rehabilitated or reconstructed without a permit;

(3) repaving of existing paved highways not involving the addition of new travel lanes;

(4) street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;

(5) maintenance of existing landscaping or natural growth, except where threatened or endangered species of plants or animals are affected, or in Nature Preserves or within the Harbor Protection Overlay District (HPOD);

(6) granting of individual setback and lot line variances, except in relation to a regulated natural feature;

(7) minor temporary uses of land having negligible or no permanent impact on coastal resources or the environment;

(8) installation of traffic control devices on existing streets, roads and highways;

- (9) mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;
- (10) information collection including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soils studies that do not commit the agency to undertake, fund or approve any action;
- (11) official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s);
- (12) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
- (13) conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action;
- (14) collective bargaining activities;
- (15) investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;
- (16) inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;
- (17) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials;
- (18) adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;
- (19) engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this Part have been fulfilled;
- (20) civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be

undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;

(21) adoption of a moratorium on land development or construction;

(22) interpreting an existing code, rule or regulation;

(23) designation of local landmarks or their inclusion within historic districts;

(24) emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to coastal resources or the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part;

(25) local legislative decisions such as rezoning where the Town Board determines the action will not be approved.

J. "Waterfront Advisory Committee" (WAC) means the Waterfront Advisory Committee of the Town of East Hampton, as created pursuant to this Chapter.

Section 150-40. Management and Coordination of the LWRP

A. The Town Supervisor shall be responsible for overall management and coordination of the LWRP. In performing this task the Supervisor shall:

(1) Inform the Town Board, Town Trustees and other Town agencies or boards on implementation, priorities, work assignments, timetables, and budgetary requirements of the LWRP.

(2) Make applications for funding from State, Federal, or other sources to finance projects under the LWRP.

(3) Coordinate and oversee liaison between Town agencies and departments, including but not limited to the Town Board, Town Trustees, Planning Board, Zoning Board of Appeals, and Planning, Natural Resources and Harbormasters Departments of the Town, and with other nongovernmental bodies, to further implementation of the LWRP.

(4) Prepare an annual report on progress achieved and problems encountered in implementing the LWRP, and recommend actions necessary for further implementation to the appropriate Town agency or the Town Board.

(5) Perform other functions regarding the coastal area and direct such actions or projects as are necessary, or as the Town Board may deem appropriate, to implement the LWRP.

B. In order to foster a strong relationship and maintain an active liaison among the Town agencies responsible for implementation of the LWRP, the Town Supervisor shall convene at least annually a Town LWRP coordinating council, including but not limited to representatives of the Town Board, Town Trustees, Planning Board, Zoning Board of Appeals, Waterfront Advisory Committee, and such other Town departments or individuals charged with LWRP implementation as the Senior Harbormaster, Highway Superintendent, Natural Resources Director, Planning Director, Director of Parks and Recreation, Director of the Town Shellfish Hatchery, Director of Emergency Services and Civil Defense Coordinator.

Section 150-45. Waterfront Advisory Committee.

A. A Committee is created and shall be hereafter known as the "Waterfront Advisory Committee of the Town of East Hampton" (WAC). The WAC shall meet at least annually to review the Supervisor's annual progress report and shall advise the Town Board on LWRP implementation and on policy, project and budget priorities, as well as on amendments to the LWRP. The WAC may also perform other functions regarding the coastal area as the Supervisor or Town Board may assign to it from time to time.

B. The Town Board of the Town of East Hampton is hereby authorized to appoint five (5) persons to said Committee, all of whom shall be residents of the Town of East Hampton. Of the members of the Committee first appointed, one (1) shall hold office for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of four (4) years and one (1) for a term of five (5) years from and after the expiration of the terms of their predecessors in office. Thereafter, all members shall be appointed for a term of five (5) years. Vacancies shall be filled by the Town Supervisor by appointment for the unexpired term. Members may be removed by the Town Board for cause and after public hearing.

C. The Town Board shall annually appoint one (1) committee member to serve as chairperson of the Committee. Upon failure of the Town Board to appoint a chairperson, the members of the Committee shall elect a chairperson.

D. The Committee may employ such persons as may be needed, as authorized by the Town Board, and shall have the power to adopt rules of procedure for the conduct of all business within its jurisdiction.

Section 150-50. Review of Actions.

A. Whenever a proposed action is located in the Town's coastal area, a Town agency shall, prior to approving, funding or undertaking the action, make a determination that it is consistent with the LWRP policy standards summarized in Section I herein. No action in the coastal area shall be approved, funded or undertaken by an agency without such a determination.

B. The Town Planning Department shall be responsible for coordinating review of actions in the Town's coastal area for consistency with the LWRP, and will advise, assist and make consistency recommendations for other Town agencies in the implementation of the LWRP, its policies and projects, including physical, legislative, regulatory, administrative and other actions included in the program. The Planning Department will also coordinate with NYS DOS regarding consistency review for actions by State or Federal agencies.

C. The Planning Department will assist each agency with preliminary evaluation of actions in the coastal area, and with preparation of a Coastal Assessment Form (CAF). Whenever an agency receives an application for approval or funding of an action, or as early as possible in the agency's formulation of a direct action to be located in the coastal area, the agency shall refer to the Planning Department for preparation of a CAF, a sample of which is appended to this local law. The Planning Department staff will coordinate their preliminary evaluation with permitting or other review by each agency or the agencies considering an action.

D. The Planning Department shall require the applicant to submit all completed applications, EAFs, and any other information deemed necessary to its consistency recommendation. The recommendation shall indicate whether, in the opinion of the Planning Department, the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards and objectives and shall elaborate in writing the basis for its opinion. The Planning Department shall, along with its consistency recommendation, make any suggestions to the agency concerning modification of the proposed action, including the imposition of conditions, to make it consistent with LWRP policy standards and objectives or to greater advance them.

E. If an action requires approval of more than one agency, decision making will be coordinated between agencies to determine which agency will conduct the final consistency review, and that agency will thereafter act as designated consistency review agency. Only one CAF per action will be prepared. If the agencies cannot agree, the Planning Director shall designate the consistency review agency.

F. Upon recommendation of the Planning Department, the agency shall consider whether the proposed action is consistent with the LWRP policy standards summarized in Section I herein. Prior to making its determination of consistency,

the agency shall consider the consistency recommendation of the Planning Department. The agency shall render a written determination of consistency based on the CAF, the Planning Department recommendation and such other information as is deemed necessary to its determination. No approval or decision shall be rendered for an action in the coastal area without a determination of consistency. The designated agency will make the final determination of consistency.

G. Where an EIS is being prepared or required, the draft EIS must identify applicable LWRP policies and standards and include a discussion of the effects of the proposed action on such policy standards. No agency may make a final decision on an action that has been the subject of a final EIS and is located in the coastal area until the agency has made a written finding regarding the consistency of the action with the local policy standards referred to in Section I herein.

H. In the event the Planning Department's recommendation is that the action is inconsistent with the LWRP, and the agency makes a contrary determination of consistency, the agency shall elaborate in writing the basis for its disagreement with the recommendation and state the manner and extent to which the action is consistent with the LWRP policy standards. No agency except the Town Board or Town Trustees shall issue such an overruling determination without a majority plus one vote of all members qualified to vote.

I. Actions to be undertaken within the coastal area shall be evaluated for consistency in accordance with the following summary of LWRP policies, which are derived from and further explained and described in the Town of East Hampton LWRP, a copy of which is on file in the Town Clerk's office and available for inspection during normal business hours. Agencies which undertake direct actions shall also consult with Town of East Hampton LWRP Section XIV, Projects of the LWRP, in making their consistency determination. The action shall be consistent with the policies to:

- (1) Revitalize deteriorated and underutilized waterfront areas (Policy 1).
- (2) Retain and promote recreational water-dependent uses (Policy 2).
- (3) Strengthen economic base of small harbor areas by encouraging traditional uses and activities (Policy 4).
- (4) Ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (Policy 5).
- (5) Streamline development permit procedures (Policy 6).
- (6) Protect significant and locally important fish and wildlife habitats from

human disruption and chemical contamination (Policies 7, 8).

(7) Maintain, promote and expand commercial fishing opportunities (Policies 9, 10).

(8) Minimize flooding and erosion hazards through non-structural means, carefully-selected, long-term structural measures and appropriate siting of structures (Policies 11, 12, 13, 14, 16, 17).

(9) Safeguard economic, social and environmental interests in the coastal area when major actions are undertaken (Policy 18).

(10) Maintain and improve public access to the shoreline and to water-related recreational facilities while protecting the environment (Policies 2, 19, 20, 21, 22).

(11) Protect and restore historic and archeological resources (Policy 23).

(12) Protect and upgrade scenic resources (Policy 25).

(13) Conserve and protect agricultural lands (Policy 26).

(14) Site and construct energy facilities in a manner which will be compatible with the environment, which are dependent upon the need for a waterfront or water location (Policies 27, 29, 40).

(15) Prevent ice management practices which could damage significant fish and wildlife and their habitats (Policy 28).

(16) Protect surface and groundwaters from direct and indirect discharge of pollutants and from overuse (Policies 30, 31, 32, 33, 34, 35, 36, 37, 38).

(17) Perform dredging and dredge spoil disposal in a manner protective of natural resources (Policies 15, 35).

(18) Handle and dispose of hazardous wastes and effluent in a manner which will not adversely affect the environment (Policies 8, 30, 36, 39).

(19) Protect air quality (Policies 41, 42, 43).

(20) Protect tidal and freshwater wetlands (Policy 44).

J. If the agency determines that an action will be inconsistent with one or more LWRP policy standards or objectives, such action shall not be undertaken unless the agency makes a written finding that:

(1) no reasonable alternative exists to the proposed action which will not substantially hinder the achievement of such LWRP policy standards or objectives; and

(2) the action will be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards or objectives; and

(3) the action will advance one or more other LWRP policy standards or objectives; and

(4) the action will result in a benefit to the project sponsor that is greater than any detriment to the Town.

Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards.

K. Each agency shall maintain a file for each action made the subject of a consistency determination, including any recommendations received from the Planning Department. Such files shall be made available for public inspection upon request.

Section 150-55. Enforcement.

The Town Building Inspectors, Town Attorney, Code Enforcement Officers, Marine Patrol Personnel, Sanitation Inspector and Natural Resource Director shall be responsible for enforcing this Chapter. No action in the coastal area which is subject to review under this Chapter shall proceed until a written determination has been issued from the designated agency that the action is consistent with the Town's LWRP policy standards. In the event that an activity is being performed in violation of this Chapter or any conditions imposed thereunder, the Building Inspector or any other authorized official of the Town shall issue a stop work order and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop work order is in effect.

Section 150-60. Violations.

A. A person who violates any of the provisions of, or who fails to comply with any condition imposed by, this Chapter shall have committed a violation, punishable by a fine not exceeding five hundred dollars (\$500.00) for a conviction of a first offense and punishable by a fine of one thousand dollars (\$1000.00) for a conviction of a second or subsequent offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional violation.

B. The Town Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this local law. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty.

Section 150-65. Severability.

The provisions of this local law are severable. If any provision of this local law is found invalid, such finding shall not affect the validity of this local law as a whole or any part or provision hereof other than the provision so found to be invalid.

Section 150-70. Effective Date.

This local law shall take effect immediately upon its filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

SECTION III. - SEVERABILITY:

Should any part or provision of this Local Law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole nor any part thereof other than the part so decided to be unconstitutional or invalid.

SECTION IV. - EFFECTIVE DATE:

This Local Law shall take effect immediately upon filing with the Secretary of State as provided by law.

AND BE IT FURTHER RESOLVED, that the Town Clerk is directed to forward copies of this resolution to: Town Attorney Laura Molinari; Planning Director Marguerite Wolffsohn; Chief Building Inspector Donald T. Sharkey; the Director of Natural Resources Larry Penney; the East Hampton Town Trustees; Ordinance Enforcement Director Dominic Shirrippa; Superintendent of Parks and Recreation Ken Scott; Planning Board; Zoning Board of Appeals; Architectural Review Board; Senior Harbormaster Ed Michels; and Superintendent of Highways Christopher Russo.

BY ORDER OF THE TOWN BOARD
TOWN OF EAST HAMPTON, NEW YORK
FRED L. OVERTON, TOWN CLERK

EXHIBIT 9

SIGNIFICANT HABITATS AND HABITAT COMPLEXES OF THE NEW YORK BIGHT WATERSHED

U.S. FISH AND WILDLIFE SERVICE

SOUTHERN NEW ENGLAND - NEW YORK BIGHT
COASTAL ECOSYSTEMS PROGRAM

CHARLESTOWN, RHODE ISLAND

COMPLETED NOVEMBER 1996
PUBLISHED NOVEMBER 1997

Montauk Peninsula COMPLEX #7

I. SITE NAME: Montauk Peninsula

II. SITE LOCATION: The Montauk Peninsula is located at the easternmost end of Long Island's South Fork, about 170 kilometers (106 miles) east of New York City.

TOWN: East Hampton

COUNTY: Suffolk

STATE: New York

USGS 7.5 MIN QUADS: Napeague Beach, NY (40072-81), East Hampton, NY (40072-82), Gardiners Island, NY (41072-11), Montauk Point, NY (41071-18).

USGS 30x60 MIN QUADS: Long Island, East, NY (40072-E1), Block Island, RI-CT-NY-MA (41071-A1), New Haven, CT-NY (41072-A1)

III. BOUNDARY DESCRIPTION AND JUSTIFICATION: The Montauk Peninsula habitat complex includes the easternmost point of land on Long Island, the Montauk Peninsula, as well as the surrounding nearshore waters. The complex extends from Beach Hampton on the south shore eastward to Montauk Point, a distance of approximately 18 kilometers (12 miles). Width of

the land boundary varies from less than 0.4 kilometer (0.25 miles) along the southern shore of Napeague Harbor to 5 kilometers (3 miles). The complex includes the entire peninsula bounded on the north by Block Island Sound and on the south by the Atlantic Ocean. The outermost, or water, boundary of this complex includes the nearshore waters of these two bodies of water along the northern and eastern shorelines out to a distance of approximately 1 kilometer (0.5 mile) from the shoreline, except around the vicinity of Montauk Point where it widens to about 3 kilometers (2 miles) and then narrows again along the Atlantic Ocean shoreline. Included within the general boundary are the major embayments of Napeague Harbor and Bay, Fort Pond Bay, and Lake Montauk. Developed areas in the village of Montauk and in villages along the Atlantic Ocean coastline are excluded from the habitat complex. The accompanying map shows the general boundary outline as well as the specific significant fish, wildlife, and plant habitat sites included within the complex. The habitat complex boundary encompasses a system of contiguous beach, bay, nearshore, and upland sandplain habitats supporting regionally significant coastal plant and animal populations.

Seven ecological/geographical subcomplexes, or groupings, of sites can be identified within the greater complex as being of particular regional significance to fish, wildlife, plants, or biological diversity: **Hither Hills** Maritime Forest; **Montauk Moorlands**, including Culloden Point, Shadmoor Ditch Plains, Montauk Downs, and Montauk Point; **beach dune interdunal swale complexes** (Napeague Beach, Walking Dunes, Promised Land); **Hicks Island-Goff Point** beach nesting area; **embayed aquatic habitats**, including Napeague Bay, Napeague Harbor, Fort Pond Bay, and Lake Montauk; **ponds** (includes Oyster Pond, Big and Little Reed Ponds, and Fort Pond); and **nearshore open water aquatic habitats**. These subcomplexes and the individual sites they comprise are delineated on the accompanying boundary map of the complex.

IV. OWNERSHIP/PROTECTION/RECOGNITION: More than half of this area is under public ownership, and includes five New York State Parks: Napeague State Park, Hither Hills State Park, Montauk Downs State Park, Montauk Point State Park, and Camp Hero State Park managed by the New York State Office of Parks, Recreation, and Historic Preservation. Suffolk County holdings include Montauk County Park, Lee Koppelman Nature Preserve, and Hither Woods Preserve. Other public parcels are owned by Suffolk County and the town of East Hampton. The Nature Conservancy owns several preserves, including the Napeague Cranberry Bog Preserve, Montauk Mountain Preserve, and Promised Land Preserve. Despite this assemblage of protected lands, there are several large, privately owned, unprotected tracts that support ecologically significant areas and species populations. Napeague, Montauk, Oyster Pond, and Big Reed Pond have been designated and mapped as undeveloped beach units as part of the Coastal Barrier Resources System pursuant to the federal Coastal Barriers Resources Act, prohibiting federal financial assistance or flood insurance within the unit. Culloden Point has been recognized by the U.S. Fish and Wildlife Service as a priority wetlands site under the federal Emergency Wetlands Resources Act of 1986. Big Reed Pond has been designated as a National Natural Landmark by the National Park Service. Significant Coastal Fish and Wildlife Habitats recognized by New York State Department of State include, from west to east: Napeague Beach, Napeague Harbor, Hither Hills Uplands, Fort Pond, Culloden Point, Lake Montauk, Big and Little Reed Ponds, and Oyster Pond. The New York State Natural Heritage Program, in conjunction with The Nature Conservancy, recognizes several Priority Sites for

Biodiversity within the Montauk Peninsula habitat complex. These sites are listed here along with their biodiversity ranks: Montauk Downs Grassland (B2 - very high biodiversity significance), Napeague/Hither Hills (B2), Shadmoor Ditch Plains (B2), Big Reed Oyster Pond Complex (B3 - high biodiversity significance), Easthampton Heathland (B3), Montauk Mountain (B3), and Montauk Point (B3). The Nature Conservancy has designated Montauk Point as a core area within its Peconics Bioserve, one of its "Last Great Places." Wetlands are regulated in New York under the state's Freshwater Wetlands Act of 1975 and Tidal Wetlands Act of 1977; these statutes are in addition to federal regulation under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act of 1977, and various Executive Orders.

V. GENERAL AREA DESCRIPTION: The South Fork of Long Island, including the Montauk Peninsula, was formed by the deposition of the Ronkonkoma terminal moraine of the most recent (Wisconsin) glaciation. The Montauk Peninsula uplands occurring on the moraine have a hilly, rolling topography with numerous depressions. The soils are moderately well-drained, moderately coarse to medium-textured sandy loam/silt loam. Throughout pre-colonial and colonial times, this area was cleared by fire and grazing.

The complex as a whole contains an impressive diversity of upland, wetland, and shoreline habitats and communities of a maritime nature. The maritime oak-holly forest community found here is composed of American holly (*Ilex opaca*), black oak (*Quercus velutina*), or American beech (*Fagus grandifolia*) as dominant trees, often with sassafras (*Sassafras albidum*), and with an abundance of vines and ericaceous (heath) shrubs in the understory. A mosaic of open canopy maritime plant communities occurring on much of the peninsula, particularly grassland, heathland, and shrubland communities, comprises what is collectively referred to as moorlands. These maritime communities occur on sandy, glacially derived soils of the Atlantic Coastal Plain and are under the influence of a maritime climate, which is characterized by moderate temperatures, long frost-free season, ocean winds, and salt spray. The grasslands are generally dominated by bunch-forming grasses such as little bluestem (*Schizachyrium scoparium*), common hairgrass (*Deschampsia flexuosa*), and poverty-grass (*Danthonia spicata*), often with low heath shrubs and reindeer moss (*Cladonia rangiferina*). The grasslands occur as small pockets in the Montauk Moorlands, especially on hilltops. Maritime heathlands on the Montauk Peninsula are dominated by bearberry (*Arctostaphylos uva-ursi*), beach heather (*Hudsonia tomentosa*), blueberry (*Vaccinium angustifolium*), black huckleberry (*Gaylussacia baccata*), bayberry (*Myrica pensylvanica*), and beach plum (*Prunus maritima*); maritime shrublands include black cherry (*Prunus serotina*) and pin cherry (*Prunus pensylvanica*), sumacs (*Rhus glabra* and *R. copallinum*), bayberry, arrow-wood (*Viburnum dentatum* var. *lucidum*), hawthorns (*Crataegus* spp.), beach plum, wild roses (*Rosa* spp.), catbrier (*Smilax rotundifolia*), and blackberries (*Rubus* spp.). Wet depressions have ponds and red maple hardwood swamps dominated by red maple (*Acer rubrum*) and black gum (*Nyssa sylvatica*) trees.

Large expanses of cordgrass-dominated (*Spartina* spp.) salt marshes and brackish meadows and sparsely vegetated, narrow, sandy or pebbly beaches and spits occur on the back, or Block Island Sound side, of the peninsula, especially in the vicinity of Napeague Harbor. On the Atlantic Ocean side, the shoreline is dominated in stretches by steep bluffs or large dunes and broad expanses of sparsely vegetated or unvegetated sandy to cobbly beach. There are several types of dune and interdunal plant communities in this area, for example, beachgrass (*Ammophila*

breviligulata)-dominated ocean dunes, mixed associations of beach heather (*Hudsonia tomentosa*), bearberry, and bayberry in interdunal areas, and extensive stands of pitch pine (*Pinus rigida*) and oak (*Quercus* spp.) woodlands.

The embayed aquatic habitats and coastal ponds include both estuarine-brackish water and freshwater systems. Napeague Harbor, Lake Montauk, and Oyster Pond are brackish, with openings into Block Island Sound; Little Reed Pond is transitional between brackish and freshwater ponds; Big Reed and Fort Ponds are freshwater ponds. Lake Montauk, nearly 365 hectares (900 acres) in size, supports a substantial growth of eelgrass (*Zostera marina*). Waters and bottom habitats in the nearshore areas here are fully exposed to storms and open ocean conditions. The mean tidal range of the open ocean waters at Montauk Point is 0.6 meter (2.0 feet).

VI. ECOLOGICAL SIGNIFICANCE/UNIQUENESS OF SITE: The complex of undeveloped maritime communities on the Montauk Peninsula supports an unusual diversity of rare plants and animals, and the nearshore waters support important concentrations of marine species. There are 148 species of special emphasis in the Montauk Peninsula complex, incorporating 37 species of plants, and including the following federally and state-listed species. (Living resources and their habitats are dynamic; therefore, the ecological significance and species information presented here may not be complete or up-to-date. State and federal environmental agencies [see [Appendix III](#) for office contacts] should be consulted for additional information.)

Federally listed endangered

leatherback sea turtle (*Dermochelys coriacea*)
Atlantic (=Kemp's) ridley sea turtle (*Lepidochelys kempii*)
peregrine falcon (*Falco peregrinus*)
roseate tern (*Sterna dougallii*)
finback whale (*Balaenoptera physalus*)
northern right whale (*Eubalaena glacialis*)
humpback whale (*Megaptera novaeangliae*)
sandplain gerardia (*Agalinis acuta*)

Federally listed threatened

loggerhead sea turtle (*Caretta caretta*)
green sea turtle (*Chelonia mydas*)
piping plover (*Charadrius melodus*)

Federal species of concern⁽¹⁾

northern diamondback terrapin (*Malaclemys t. terrapin*)
harlequin duck (*Histrionicus histrionicus*)
New England blazing-star (*Liatris scariosa* var. *novae-angliae* [=*L. borealis*])
bushy rockrose (*Helianthemum dumosum*)
Nantucket juneberry (*Amelanchier nantucketensis*)

¹Species of special concern listed here include former Category 2 candidates

State-listed endangered

eastern tiger salamander (*Ambystoma t. tigrinum*)
least tern (*Sterna antillarum*)
curly-grass fern (*Schizaea pusilla*)
Mitchell's sedge (*Carex mitchelliana*)
seabeach purslane (*Sesuvium maritimum*)
water-pennywort (*Hydrocotyle verticillata*)
scotch lovage (*Ligusticum scoticum*)
field-dodder (*Cuscuta pentagona*)

State-listed threatened

red-shouldered hawk (*Buteo lineatus*)
northern harrier (*Circus cyaneus*)
osprey (*Pandion haliaetus*)
common tern (*Sterna hirundo*)
long-tubercled spikerush (*Eleocharis tuberculosa*)
marsh fimbry (*Fimbristylis castanea*)
orange fringed orchid (*Platanthera ciliaris*)
whorled mountain-mint (*Pycnanthemum verticillatum* var. *verticillatum*)
sandplain flax (*Linum intercursum*)
featherfoil (*Hottonia inflata*)
lance-leaved loosestrife (*Lysimachia hybrida*)
clustered bluets (*Oldenlandia uniflora*)

State-listed special concern animals

southern leopard frog (*Rana sphenoccephala*)
blue-spotted salamander (*Ambystoma laterale*)
common loon (*Gavia immer*)
least bittern (*Ixobrychus exilis*)
eastern bluebird (*Sialia sialis*)
grasshopper sparrow (*Ammodramus savannarum*)
harbor porpoise (*Phocoena phocoena*)

State-listed rare plants

Emmon's sedge (*Carex albicans* var. *emmonsii*)
necklace sedge (*Carex hormathodes*)
coast flatsedge (*Cyperus polystachyos* var. *texensis*)
salt-marsh spikerush (*Eleocharis halophila*)
dwarf bulrush (*Lipocarpa micrantha*)
slender crabgrass (*Digitaria filiformis*)
swamp pink (*Arethusa bulbosa*)
grassleaf ladies'-tresses (*Spiranthes vernalis*)
pine barren sandwort (*Minuartia [=Arenaria] caroliniana*)
pine barren gerardia (*Agalinis virgata*)

The **maritime moorlands and forest communities** of the Montauk Peninsula are regionally significant and noteworthy not only for their uniqueness and restricted geographical occurrence, but also for their relatively pristine condition. Some upland areas on the Montauk Peninsula, especially on **Hither Hills**, contain some of the largest undeveloped tracts of maritime deciduous forests in the region, including stands of the globally rare maritime oak-holly forest. This forest type is restricted in the New York Bight region to undeveloped barrier beaches of Long Island and New Jersey and the eastern end of Long Island. Montauk contains the largest of two remaining maritime heathlands in New York: Montauk Mountain and the East Hampton Heathland. Maritime grasslands occur only on Long Island, Block Island, Martha's Vineyard, Nantucket, and Cape Cod on land formed from the terminal moraine of the Wisconsin glaciation. These communities on Montauk, including those found at **Shadmoor Ditch Plains, Montauk Downs, Hither Hills**, and the **Big Reed Oyster Pond complex**, provide essential habitat for a number of regionally and globally rare plant species, including two of only twelve known remaining populations of sandplain gerardia in the world. Nantucket juneberry and bushy rockrose are endemic to these maritime sandplain communities. A successional maritime forest along with maritime shrublands, a small example of a coastal plain poor fen, and an occurrence of the rare swamp pink occur at **Caswell Cliff** (Montauk Moorlands). Other rare plants found in the maritime grasslands/heathlands include New England blazing-star, lance-leaved loosestrife, pine barren gerardia, Emmon's sedge, dwarf plantain (*Plantago pusilla*), whorled mountain-mint, grassleaf ladies'-tresses, fringed boneset (*Eupatorium hyssopifolium* var. *lacinatedum*), sandplain flax, and orange fringed orchid (*Platanthera ciliaris*). Grassland birds such as the upland sandpiper (*Bartramia longicauda*) were once abundant on the grasslands on Montauk, but have disappeared as the grasslands succeeded into shrubs and forest. The blue-spotted salamander, a rare glacial relict, is found in this region only on the Montauk Peninsula, where it may occur locally in fairly high densities. This disjunct population is one of the few locations in the Northeast where this species has not hybridized with the Jefferson's salamander (*Ambystoma jeffersonianum*). The small freshwater ponds that are interspersed throughout the upland areas of the peninsula support several rare aquatic plant species such as featherfoil, water-pennywort, dwarf bulrush, and northeastern smartweed (*Polygonum hydropiperoides* var. *opelousanum*).

Napeague Beach is one of the largest remaining areas of undeveloped beach and back dune ecosystems on Long Island, with extensive dunes and maritime interdunal swale communities. These beaches, dunes, and swales support breeding by about 30 species of birds, including grasshopper sparrow which nest in the grassy dune areas at Napeague Beach. Seven species of amphibians and reptiles, including a large population of eastern spadefoot toad (*Scaphiopus h. holbrookii*) as well as Fowler's toad (*Bufo woodhousei fowleri*), eastern box turtle (*Terrapene c. carolina*), and eastern hognose snake (*Heterodon platyrhinos*) are all known to occur in the swales and surrounding uplands. Abundant small mammal populations provide prey for raptors that feed in the area during fall migration; these include American kestrel (*Falco sparverius*), merlin (*Falco columbarius*), sharp-shinned hawk (*Accipiter striatus*), northern harrier, osprey, peregrine falcon, and Cooper's hawk (*Accipiter cooperii*). Northern harrier, merlin, and short-eared owl (*Asio flammeus*) also feed in this area in the winter. Dunes and interdunal swales at Napeague Beach, **Walking Dunes**, and **Napeague Meadows** (Promised Land) include some of the largest and most intact examples of pitch pine-dominated maritime dune woodlands in New York, and support several rare plant species, including pine barren sandwort, New England blazing-star, evening primrose (*Oenothera oakesiana*), and the best occurrence in New York of

curly-grass fern. A large brackish/salt marsh area at Napeague Meadows supports several of the plant species occurring in the interdunal swales as well as necklace sedge, coast flatsedge, marsh fimbry, slender crabgrass, heart-winged sorrel (*Rumex hastatulus*), and seaside plantain (*Plantago maritima* ssp. *juncooides*).

Sand beaches along the Atlantic Ocean at Napeague Beach support nesting by piping plover and small colonies of least tern. The **Hicks Island** and **Goff Point Beaches**, at the entrance to Napeague Harbor along Block Island Sound, support nesting by these two species as well as roseate tern, common tern, black skimmer (*Rynchops niger*), American oystercatcher (*Haematopus palliatus*), herring gull (*Larus argentatus*), and great black-backed gull (*Larus marinus*). Piping plover and least tern have also historically nested at the entrance of **Oyster Pond** near the tip of Montauk Point. Hicks Island is one of only a relatively few roseate tern nesting areas in the Northeast; this beach supported 80 adults in 1984 and 40 adults in 1989, much lower numbers in 1990-1992, and no documented nesting by roseate terns in recent years. The town of East Hampton, along with the state, county, The Nature Conservancy, and U.S. Fish and Wildlife Service, will be conducting a roseate tern restoration project at this site. The globally rare seabeach knotweed (*Polygonum glaucum*) occurs on both the Atlantic Ocean and Block Island Sound beaches; the federally listed threatened seabeach amaranth (*Amaranthus pumilis*) historically occurred on several of these beaches and this annual plant could potentially reestablish here or be reintroduced from other south shore populations.

The open waters of the **embayed ponds and harbors** along Block Island Sound, including **Napeague Bay, Napeague Harbor, Fort Pond Bay, and Lake Montauk**, are important waterfowl wintering areas for greater and lesser scaup (*Aythya marila* and *A. affinis*), red-breasted and common mergansers (*Mergus merganser* and *M. serrator*), Canada goose (*Branta canadensis*), American black duck (*Anas rubripes*), bufflehead (*Bucephala albeola*), and common goldeneye (*Bucephala clangula*). These same areas and associated marshes are productive nesting and feeding areas for American black duck, least bittern (*Ixobrychus exilis*), mallard (*Anas platyrhynchos*), osprey, and northern harrier. Finfish and shellfish populations in both nearshore and embayed aquatic habitats in this area are diverse and abundant. The species composition varies over the area; silversides (*Menidia* spp.), killifish (*Fundulus* spp.), menhaden (*Brevoortia tyrannus*), and bay anchovy (*Anchoa mitchill*) are abundant forage species which make these areas important feeding and nursery areas for a number of estuarine-dependent commercially and recreationally important species, including bluefish (*Pomatomus saltatrix*), weakfish (*Cynoscion regalis*), summer flounder (*Paralichthys dentatus*), winter flounder (*Pleuronectes americanus*), striped bass (*Morone saxatilis*), northern quahog (*Mercenaria mercenaria*), American oyster (*Crassostrea virginica*), and bay scallop (*Argopecten irradians*).

Fort Pond is one of the largest freshwater ponds (65 hectares [160 acres]) on Long Island. It has a maximum depth of 7.9 meters (26 feet). Although there is significant shoreline development, this pond supports one of the three major smallmouth bass (*Micropterus dolomieu*) populations on Long Island. There is a significant recreational warmwater fishery here, augmented by stocking. Striped bass hybrid species were formally stocked; a new management strategy is to stock walleye (*Stizostedion vitreum*) in the future. The pond is also an important waterfowl wintering area, especially for Canada geese.

The complex of freshwater and brackish wetlands around **Big and Little Reed Ponds** support confirmed or probable nesting by northern harrier, red-shouldered hawk, least bittern, Canada goose, mallard, redhead (*Aythya americana*), American black duck, and blue-winged teal (*Anas discors*), as well as feeding by these species, other waterfowl, herons, egrets, and songbirds. Blue-spotted salamanders occur in the swales around Big Reed Pond. The pond and stream system of Big and Little Reed Ponds is one of the few spawning areas on Long Island for alewife (*Alosa pseudoharengus*) which migrate from the ocean to spawn in shallow water in spring. Big Reed Pond also contains an excellent largemouth bass fishery.

Oyster Pond is probably the best example of a brackish and coastal salt pond with an undeveloped watershed in New York. The wetlands around the pond support blue-spotted salamander and southern leopard frog, as well as nesting and feeding by a variety of waterfowl and waterbirds. Rare plants along the shoreline include Mitchell's sedge and the only known population of seabeach purslane in New York.

The **nearshore open waters surrounding Montauk Point** provide regionally significant and critical wintering waterfowl habitat and concentration areas; they also contain extensive beds of blue mussel (*Mytilus edulis*) and kelp (*Laminaria agardhii*). Found here in significant numbers, particularly in winter, are several species of special emphasis in the region, such as common loon (*Gavia immer*), common eider (*Somateria mollissima*), white-winged scoter (*Melanitta fusca*), surf scoter (*Melanitta perspicillata*), black scoter (*Melanitta nigra*), bufflehead, common goldeneye, great cormorant (*Phalacrocorax carbo*), and red-breasted merganser. Harlequin duck and king eider (*Somateria spectabilis*) occur here regularly during the winter, and this is the southernmost regular wintering population of harlequin ducks on the East Coast. On the Block Island Sound side of the peninsula, in somewhat more protected areas, American black duck (*Anas rubripes*) and oldsquaw (*Clangula hyemalis*) occur in large wintering concentrations. The sea duck concentrations around Montauk Point are the largest nearshore winter concentrations in New York, and notable concentrations of pelagic seabirds occur in the spring, summer, and fall (see [seabird](#) chapter). The Christmas bird count on Montauk Point consistently tallies from 125 to 135 species, one of the best totals in the Northeast.

The nearshore waters off Montauk Point are one of the most important nearshore areas for sea turtles and marine mammals in the New York Bight region. Recent studies indicate that the nearshore waters within Peconic and Gardiners Bays, Block Island and Long Island Sounds, and off Montauk Point are critical developmental habitat for juvenile Atlantic ridley sea turtles, one of the rarest of the marine turtles, and a major feeding area for the loggerhead sea turtle. A regular feeding area for leatherback sea turtles also occurs just to the east of Montauk Point. Gray and harbor seals (*Halichoerus grypus* and *Phoca vitulina*) often use the rocks around Montauk Point and other shoreline areas, including Culloden Point, as haulout areas during the winter. Northern right whales (usually individuals) are regularly sighted migrating through the area, mostly from March through June. Small aggregations of finback whales feed close to shore from Shinnecock Inlet to Montauk Point from January to March. Minke whales (*Balaenoptera acutorostrata*) occur along the south shore throughout the year but are more abundant in the summer. Humpback whales feed all around Montauk Point, primarily between June and September. An inshore population of bottlenosed dolphin (*Tursiops truncatus*) feed along Long Island's south shore from June through September. Regular sightings of harbor porpoise

(*Phocoena phocoena*) in nearshore waters off Montauk Point and Block Island Sound occur from December to June.

VII. THREATS AND SPECIAL PROBLEMS: Although much of this area is under public ownership, there are several privately held sites of regional significance to fish, wildlife, or plant species. Poorly planned development could result in the destruction or degradation of aquatic and terrestrial habitats of species of special emphasis. Suppression of wildfires, essential to the maintenance of regionally important maritime and pineland communities, could result in vegetation changes and consequent loss of the characteristic biota of these communities, including several rare plants dependent on fire. Sensitive aquatic habitats of the area suffer from ever increasing nonpoint (contaminant/nutrient enrichment/sedimentation) pollution, which is inherent with development. Encroachment by exotic and invasive species such as common reed (*Phragmites australis*) is a threat. Recreational use and park management practices may be incompatible with natural resources, e.g., fragmentation of habitat by roads created to improve public access; vehicles and fishermen on beaches; erosion from heavy use of bridle trails; spread of exotic species' seeds in horse manure along bridle trails; and erosion from four-wheel drive vehicles.

Nesting populations of colonial waterbirds and piping plovers on sand or gravel beaches in this area, particularly around Napeague Harbor and the Atlantic Ocean beaches, are especially vulnerable during the nesting season (April to August) to human-caused disturbances such as trampling or destruction of nests from beach-walking, picnicking, boat landings, off-road vehicle use, predation by dogs and cats, and unregulated dredged material disposal. There are also unnaturally high population levels of predators such as gulls, crows, and red fox that coexist well with humans. Erosion of bluffs and beaches and attempts at stabilization which prevent natural coastal processes limit the amount of suitable nesting habitat. The nearshore and embayed open water habitats and associated waterfowl and marine mammal populations surrounding the Montauk Peninsula are vulnerable to oil spills, contaminants, waste disposal, boat and ship traffic, and dredging activities.

VIII. CONSERVATION RECOMMENDATIONS: Attention needs to be directed towards the continued protection of the offshore waters around Montauk Point and associated marine and estuarine communities, particularly as regards the area's regionally significant concentrations of pelagic species, especially seabirds, sea turtles, and marine mammals. The National Oceanic and Atmospheric Administration should consider the designation of the offshore waters of Montauk Point as a Marine Sanctuary. This high-risk ocean-fronting area is subject to the full fury of winter storms and hurricanes and would be extremely vulnerable to an oil spill, ship collision, or contaminant discharge that, at certain times of the year, could result in devastating impacts on fish and wildlife populations in the immediate vicinity and throughout the region. Comprehensive containment and response plans and procedures should be developed, and equipment placed in readiness, to ensure the protection of this area and its living resources in the event of such a catastrophe. More regular monitoring of migrating and wintering seabirds would better define their critical areas and seasons. This monitoring could be done in concert with the Seawatch seabird monitoring program in Avalon, New Jersey, run by the Cape May Bird Observatory.

Disturbances to wintering and nesting bird populations need to be minimized or eliminated entirely, particularly for colonial beach-nesting birds such as federally listed terns and piping plovers. Human intrusions into beach nesting areas during the critical nesting season (April to August) should be prevented using a variety of methods, including protective fencing, posting, warden patrols, and public education. Additionally, closures to off-road vehicles at Goff Point, Napeague Beach, and other areas where off-road vehicle use is a problem are needed to protect piping plover nests and chicks in accordance with the guidelines in the piping plover recovery plan. When determined to be a problem, as it is at most mainland-connected nesting beaches, predator removal/control should be instituted. Those tasks and objectives of the piping plover and roseate tern recovery plans that might be applicable to beaches and nesting populations of these species in this area should be undertaken, including restoration or enhancement of degraded sites.

Many of the public parklands are in need of specific resource management plans directed at long-term conservation. Perpetuation of the area's unique maritime communities and associated rare plants, particularly those such as grasslands, heathlands, and pinelands, in which fire has historically played an important ecological role, needs to be the primary management goal for the individual sites and the complex as a whole. Fire management plans need to be specifically developed and implemented for the full spectrum of ecologically significant sites occurring over the general area; these should utilize the experiences and talents of such organizations as The Nature Conservancy and other groups in cooperation with state and county park resource managers and private landowners in the vicinity.

State and local government should cooperate in the development of plans for nonpoint source pollution reduction. Emphasis should be placed on the need to improve existing drainage situations that impact waters throughout Long Island. Riparian owners must be made aware of how their actions, e.g., graywater discharge, use of fertilizers, wetland destruction, impact the water they live on, so that they become better stewards.

While more than half of the land on the Montauk Peninsula is publicly owned, including the majority of significant sites, some of the regionally important sites are privately owned and vulnerable to development or mismanagement of the resources occurring there. It is not necessarily best, nor possible, for government agencies or conservation organizations always to acquire all the lands needed to protect a rare community type or important habitat. Various approaches and strategies exist for protecting valuable wildlife habitats; each provides different degrees of protection and requires different levels of commitment by regulatory agencies, conservation organizations, and landowners. These techniques include combined public and private financing, land exchanges, conservation easements, cooperative management agreements, mutual covenants, purchase of development rights, comprehensive planning, zoning, and land-use regulations, enforcement of existing local, state, and federal regulations, and fee simple acquisition. Techniques can be combined to develop a strategy for land protection that is tailored to a specific site. Partnerships among individual landowners within habitat complexes offer an exciting, practical, and innovative approach to the large, landscape-scale habitats recognized here. Government agencies or conservation organizations should also work with managers of public lands to insure that these lands are managed for conservation and protection of rare communities and species.

A comprehensive field survey and regional analysis of rare species populations, including endemics and near-endemics, and threats to "edge of the ice" communities associated with the terminal moraine from New York City to Cape Cod would be helpful in determining and protecting the most important remaining areas.

Montauk Peninsula Map:

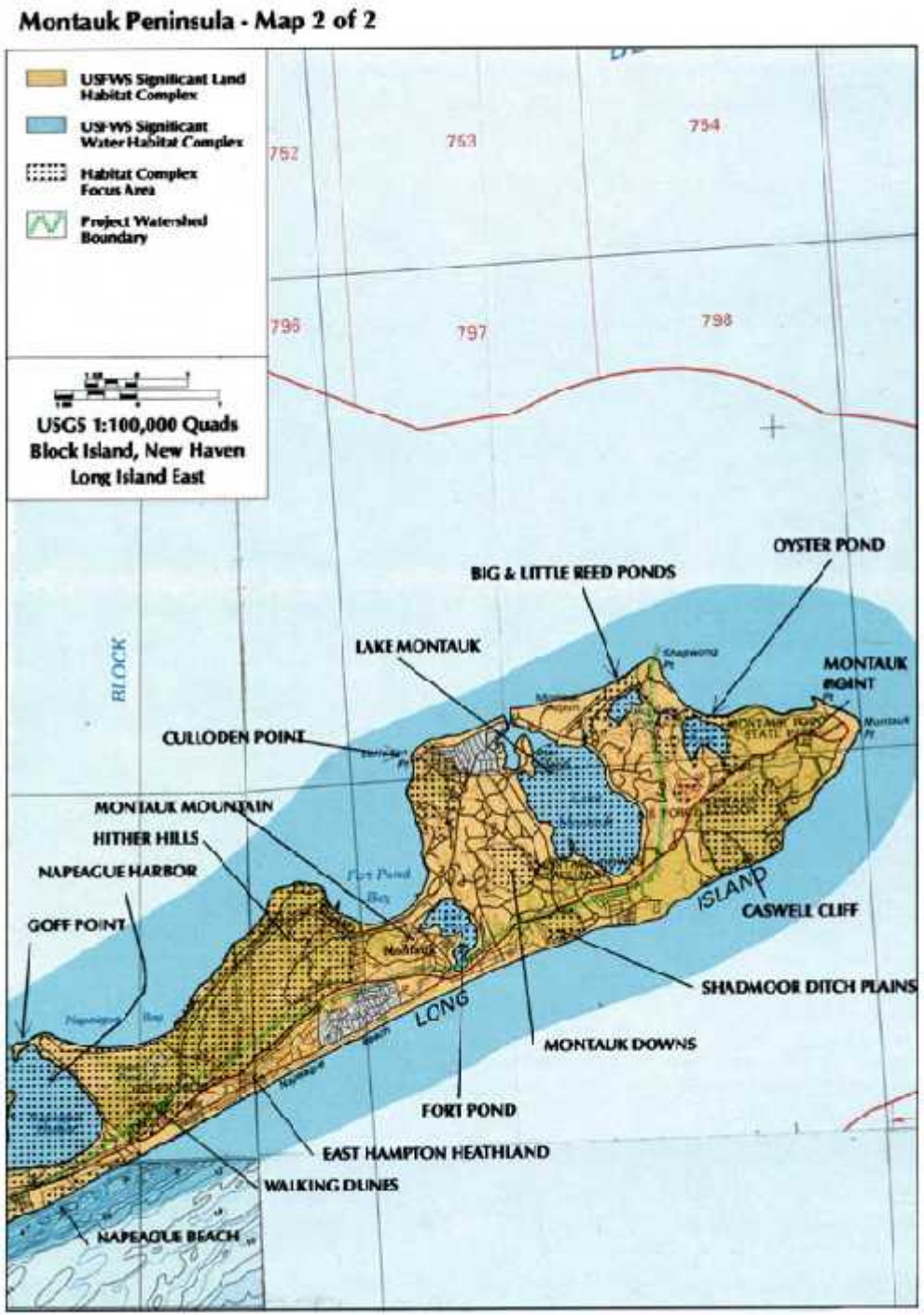


EXHIBIT 10

**East Hampton Scenic Areas of Statewide Significance
New York State Department of State
Division of Coastal Resources
January 2010**

**The Full Text Of This Extensive Report May Be Viewed On The East
Hampton Town Website At:**

<http://www.town.east-hampton.ny.us/DocumentsPDF/PlanningDept/PlanningDept/Publications/SASSReport.pdf>

EXHIBIT 11

New York State Coastal Erosion Hazard Areas Act Regulations

§505.6 Standards for issuance of coastal erosion management

A coastal erosion management permit will be issued only if the commissioner finds that the proposed regulated activity:

(a) is reasonable and necessary, considering reasonable alternatives to the proposed activity and the extent to which the proposed activity requires a shoreline location;

(b) will not be likely to cause a measurable increase in erosion at the proposed site or at other locations; and

(c) prevents, if possible, or minimizes adverse effects on:

(1) natural protective features and their functions and protective values as described in section 505.3 of this Part;

(2) existing erosion protection structures; and

(3) or natural resources, including, but not limited to significant fish and wildlife habitats and shellfish beds.

EXHIBIT 13

This message was sent with high importance.

Ligomer, Martin

From: Ligomer, Martin
To: ehtpd@ehtpd.org
Cc:
Subject: Freedom of Information-accidents
Attachments:

Sent: Fri 9/30/2011 12:05 PM

Please supply number of traffic accidents between Martin Drive (Napeague) and the highway fork at Old Montauk Highway for the past 2 years. Could you also ask Chief Ecker if the police get involved in a traffic study IF the town plans to create a public beach on a 40 acre parcel bordering on Dolphin Drive with 100 vehicle parking lot with access on Dolphin Drive. When it is ready please call my cell and I will advise where to send.
Marty

Martin M. Ligomer
Licensed Real Estate Salesperson
Ecobroker Certified
Prudential Douglas Elliman
20 Main Street
East Hampton, New York 11937
(631) 267-7313 (office direct)
(631) 329-9882 (office fax)
(917) 282-5416 (mobile)
miligomer@elliman.com

EXHIBIT 14

December 7, 2011

Ms Elizabeth Chamakkala
Claims Officer
New York State Department of Transportation
Region 10
State Office Building
250 Veterans Memorial Highway
Hauppauge, New York 11788

Re: Official Request for Data and Information

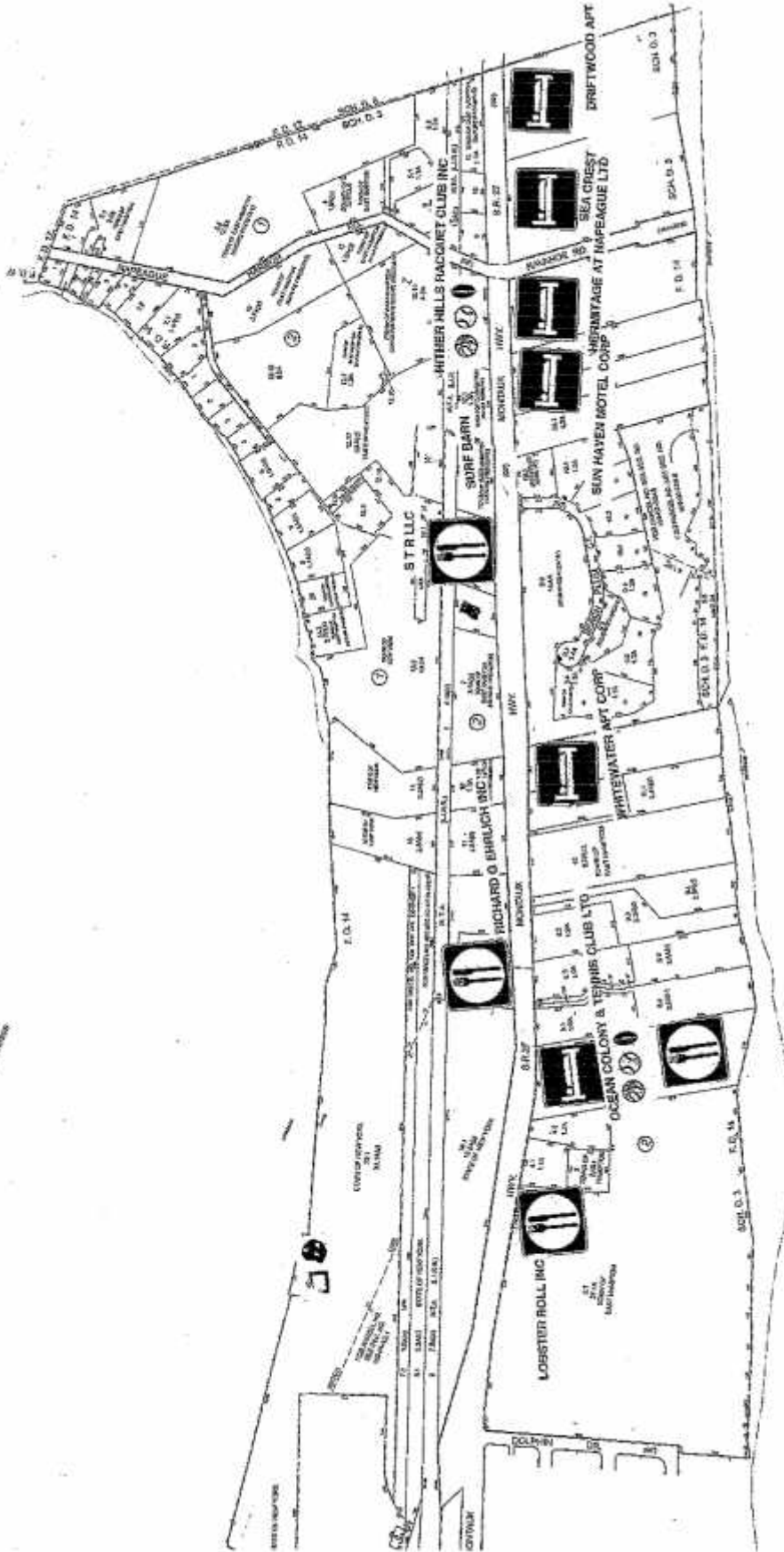
Dear Ms. Chamakkala:

At the direction of Mr Frank Perrion, Regional Traffic Engineer, this is to request any and all data and information in the possession of NYSDOT pertaining to the stretch of New York State Route 27 from Napeague Meadow Road, Amaganseth, eastward for approximately 1 mile to Old Montauk Highway and from Napeague Meadow Road westward for approximately 1 mile. The period in question would be for the past 5 years and would include traffic analyses performed both in-house and through consultants, if any, studies and/or crash data, and copies of any and all correspondences involving this stretch of State road sometimes referred to as the "Napeague Stretch".

I have been authorized by the East End Dunes Residents Association (EEDRA) to request this information. Should there be a charge for obtaining such, please advise. I will forward a check immediately. My mobile phone is (201) 519-0009. As of December 12th of this month my address will be 6799 Collins Ave, Apt 1106 S, Miami Beach, FL 33141. Thanking you in advance.

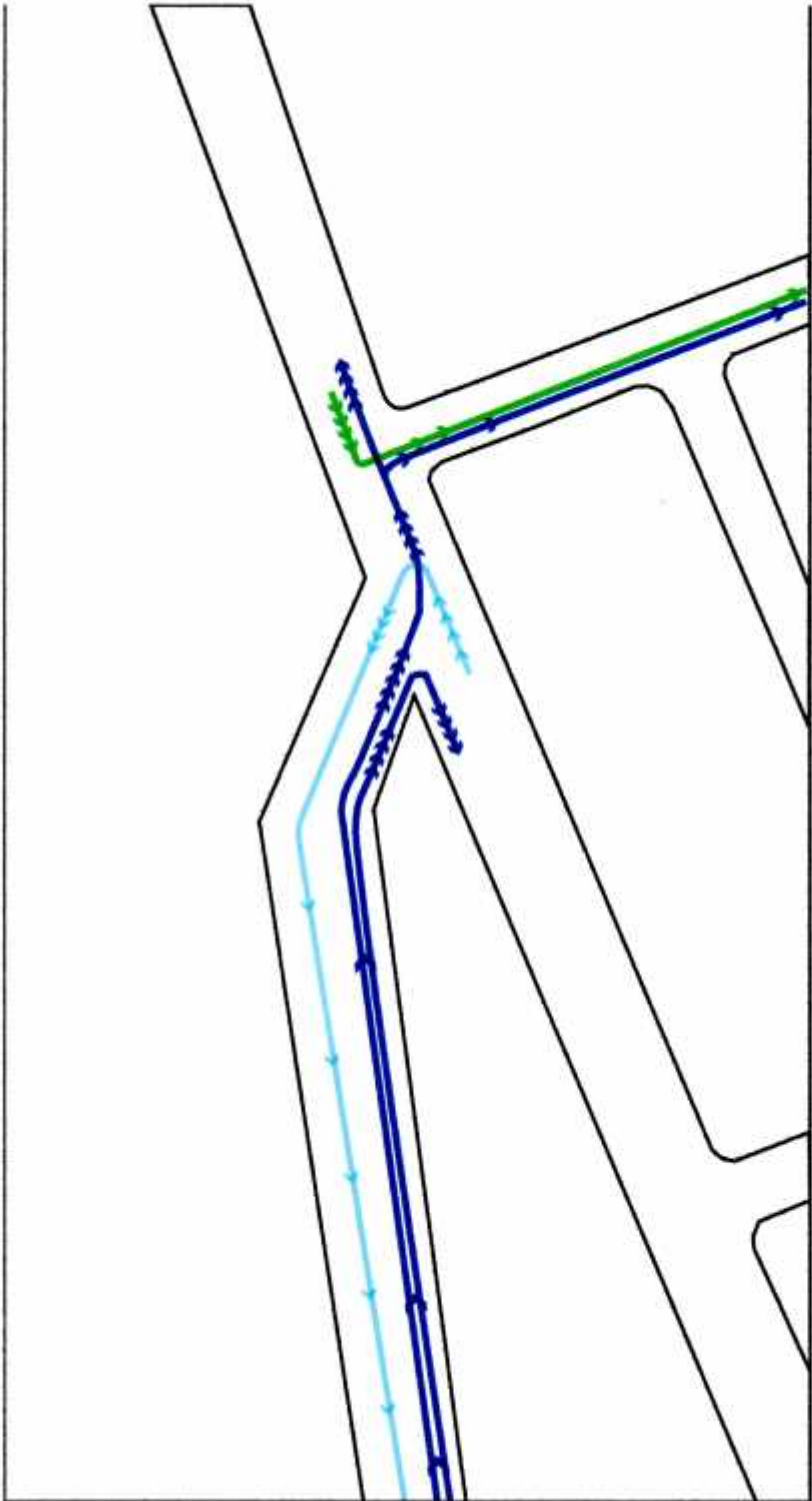
Harvey S. Sands

EXHIBIT 15



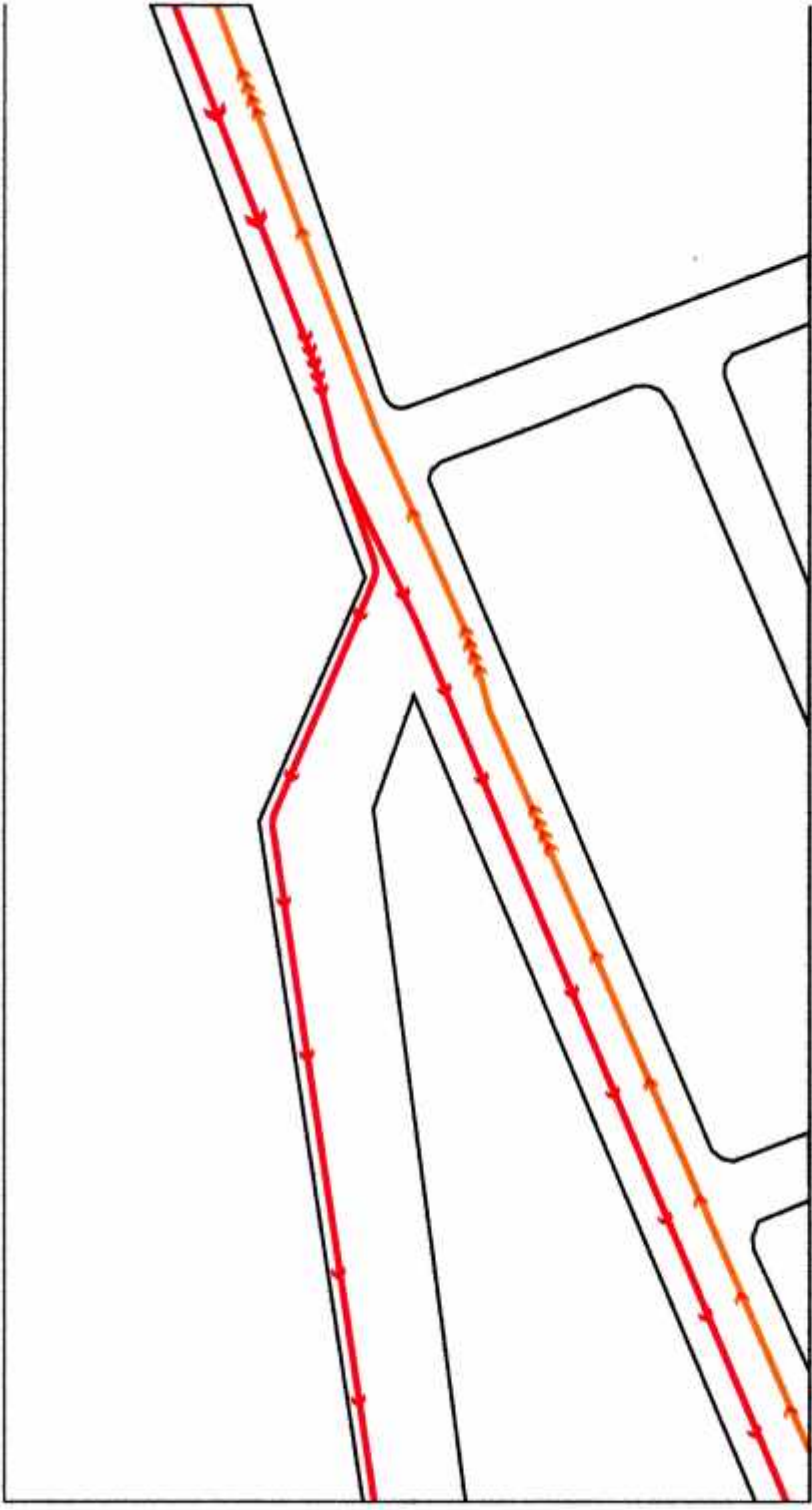
MAKING COPY
BY REC. NO. 10

3



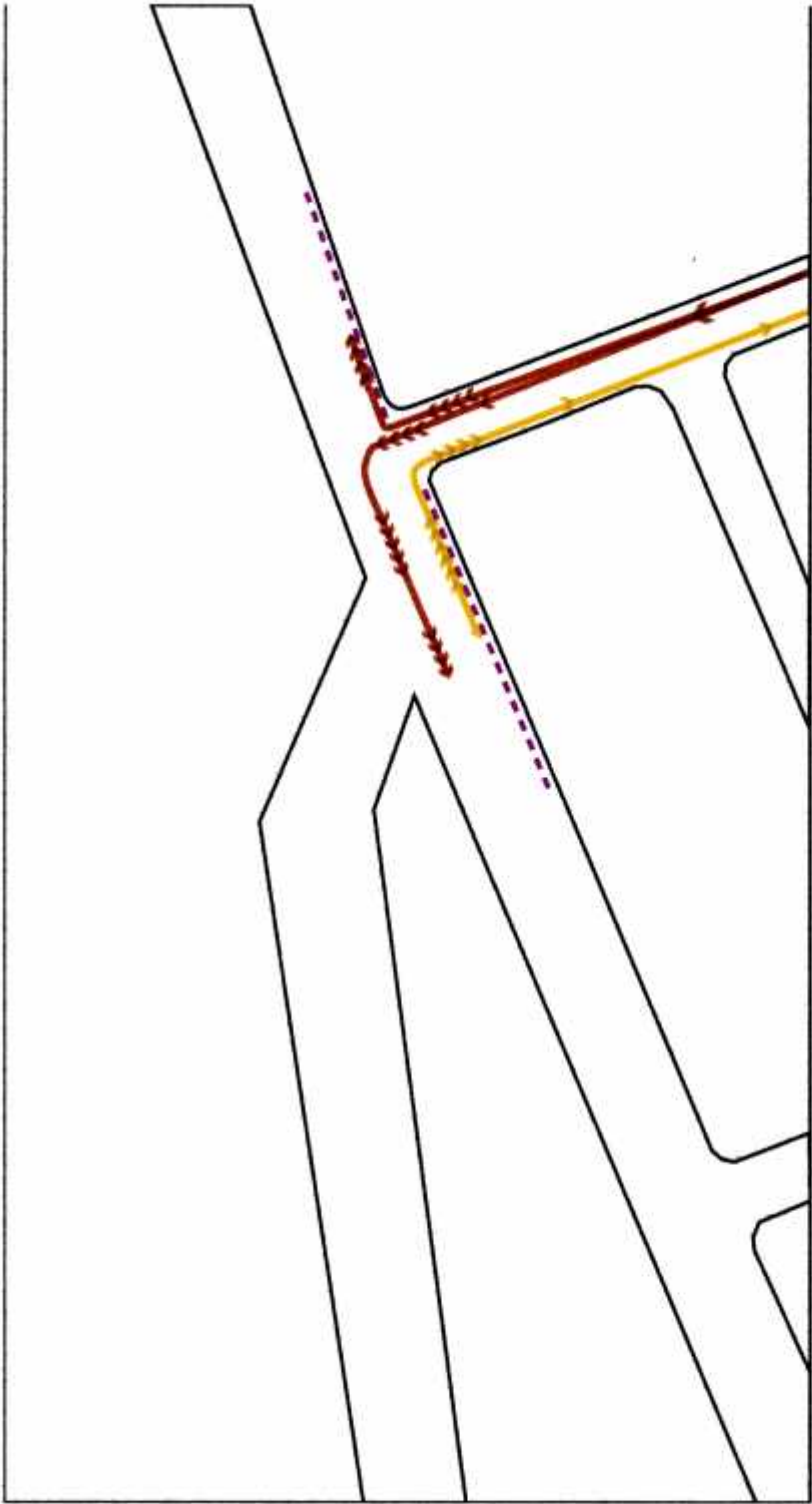
- A - CARS WAITING TO MAKE A LEFT ONTO DOWN CURVE FROM RT 27 - WESTBOUND
- B - CARS WAITING TO MAKE A LEFT ONTO RAMP/CURVE FROM RT 27 - EASTBOUND
- C - CARS WAITING TO MAKE LEFT OR RIGHT TURN ONTO RT 27 - GATED L/RN CROSSING CLOSE BEHIND

4



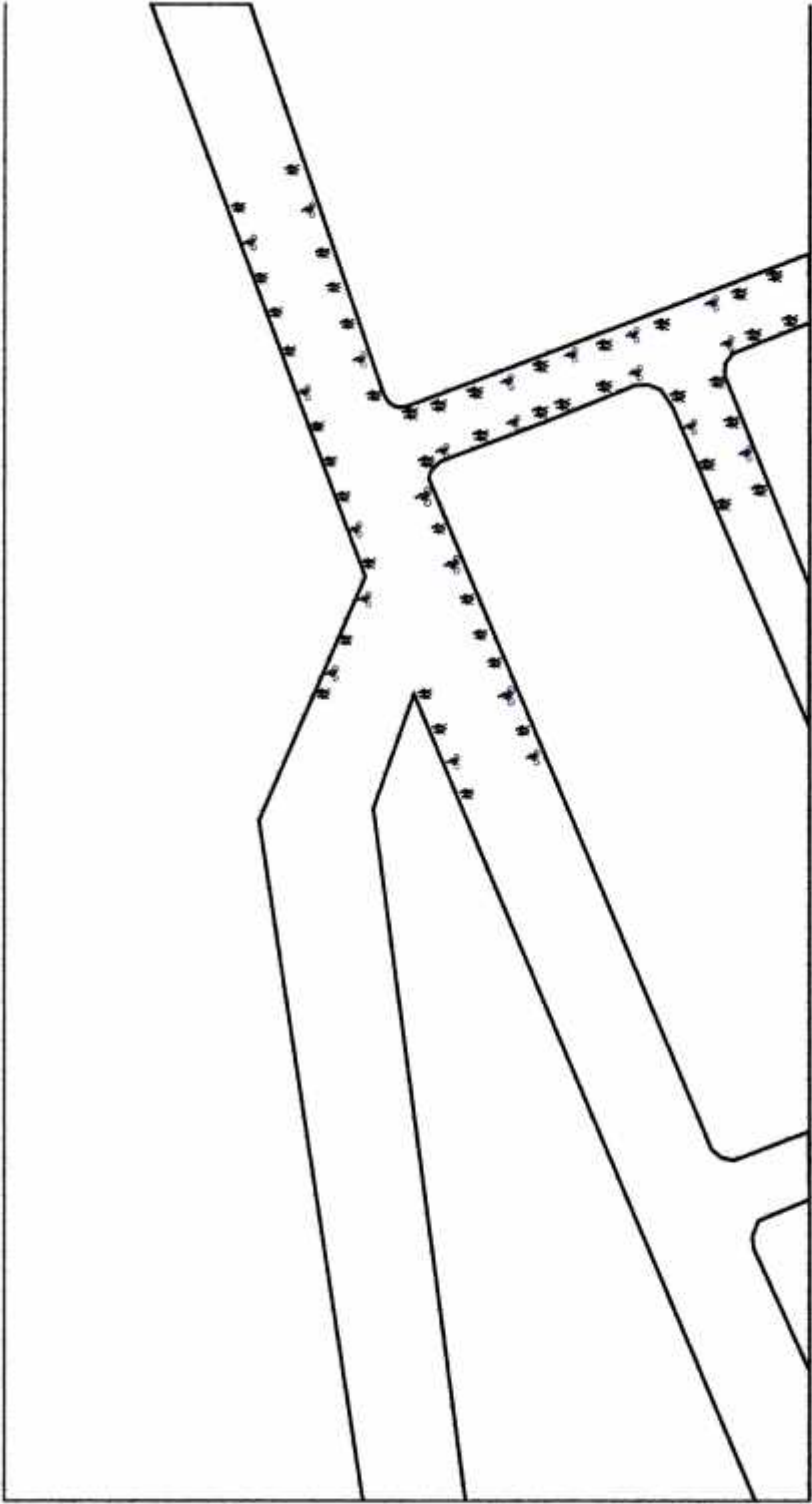
- D - CARs HEADING WEST ON RT 27 - PASSING "C" CARS ON THE RIGHT.
POSSIBLY CONTINUING WEST OR MAKING A RIGHT TURN ON NAPAQUE MEADOW RD.
DISTANCE FROM DOUPHIN DR. TO NAPAQUE MEADOW RD. AND VICKERSA = 175ft. = 2.2 SECONDS @ 55mph
- E - CARs HEADING EAST RT 27 - PASSING "B" CARS ON THE RIGHT.
DISTANCE FROM DOUPHIN DR. TO NAPAQUE MEADOW RD. AND VICKERSA = 175ft. = 2.2 SECONDS @ 55mph
BRAKING DISTANCE TO A COMPLETE STOP @ 55mph = approx. 300ft. ON DRY PAVEMENT AND GOOD TIRES.
NOT ENOUGH TIME TO AVOID COLLISION.

5



- F - CARS PARKED ON HIGHWAY AND ACCESSING BEACH ON FOOT ALONG DOULPHIN DRIVE BLOODING RIGHT LINES OF CARS 14'
- G - CARS ACCESSING PROPOSED PARKING LOT ADJACENT TO DOULPHIN DRIVE
- H - CARS EXITING COOLIDGE PARKING LOT INTENDING TO MAKE RIGHT TURN TO EASTBOUND LANE RT 27 OR CROSS THE EASTBOUND LANE MAKING A LEFT AND RIGHT TURN STOPPING AT CARS LOOKING TO MAKE LEFT ONTO DOULPHIN DRIVE ON ENCOUNTERING TO CARS PASSING TO CARS ON THE RIGHT, HEADS, REAR, BLOODING ON RT 27

⑦



P - PEDESTRIANS, INFANTS, PUGGERS, ROLLER SKIS,
SKATEBOARDERS, INFANT STROLLERS, ADULTS AND ADOLESCENTS



EXHIBIT 17

<http://web2.westlaw.com/print/printstream.aspx?sv=Split&destination>

Westlaw Delivery Summary Report for BALDWIN,ELIZABET

Date/Time of Request:	Thursday, May 7, 2009 10:39 Central
Client Identifier:	SCOTT
Database:	NY-ST-ANN
Citation Text:	NY TOWN s 64-e
Lines:	453
Documents:	1
Images:	0

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Westlaw

McKinney's Town Law § 64-e

➤

Effective: July 21, 2008

McKinney's Consolidated Laws of New York Annotated Currentness

Town Law (Refs & Annot)

Chapter 62. Of the Consolidated Laws (Refs & Annot)

§ Article 4. Town Boards

→ § 64-e. Peconic Bay region community preservation funds

1. As used in this section, the following words and terms shall have the following meanings:

(a) "Peconic Bay region" means the towns of East Hampton, Riverhead, Shelter Island, Southampton and Southold.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision four of this section.

(c) "Board" means the advisory board required pursuant to subdivision five of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

2. The town board of any town in the Peconic Bay region is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-D of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section. Where a town finances an acquisition, in whole, or in part, pursuant to the local finance law, the resolution authorizing such indebtedness shall be accompanied by a report from the town supervisor demonstrating how said indebtedness will be repaid by the fund. Said report shall include an estimate of projected revenues of the fund during the period of indebtedness. The report shall also provide an accounting of all other indebtedness incurred against the fund to be repaid for the same period. The town board shall make findings by resolution that there will be sufficient revenue to repay such indebtedness in its entirety from the fund before authorizing such indebtedness. A town in the Peconic Bay region may only adopt the local law authorized by this subdivision if it has incurred or authorized bonded indebtedness since nineteen hundred eighty for open space purposes equal to or greater than two hundred dollars per town resident. The number of residents shall be determined by the 1990 U.S. Census. Said local law shall make a finding that the town has complied with the per resident financial commitment requirement of this subdivision.

3. The purposes of the fund shall be exclusively, (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, (d) to provide a management and stewardship program for such interests and rights consistent with subdivisions nine and nine-a of this section and in accordance with such plan designed to preserve community character; provided that not more than ten percent of the fund shall be utilized for the management and stewardship program, and (e) to make payments to fire, fire protection and ambulance districts in connection with lands owned by the state or any municipal corporation within the central pine barrens area as defined in subdivision ten of section 57-0107 of the environmental conservation law. Such payments may only be made to districts where more than twenty-five percent of the assessed value of such district is wholly exempt from real property taxation pursuant to the real property tax law because it is owned by the state or a municipal corporation. Not more than ten percent of the fund may be used for said purpose in any calendar year. School districts shall also be eligible for such payments, provided (1) that real property within such school district has been made wholly exempt from real property taxation pursuant to the real property tax law to effectuate the purposes of the fund, and (2) such school district is determined to be a high need or average need school district pursuant to the need resource capacity index established by the state education department. Such payments from the fund shall not exceed the actual tax liability that would have been due if such lands of the state or of a municipal corporation had been subject to real property taxation. Where more than one district is eligible for such a payment under this provision, and such payment is less than the actual tax liability that would have been due if such lands of the state or a municipal corporation had been subject to real property taxation, the town shall apportion such annual payment on the basis of the total tax levied by each district within the town for the year such payment is made. Such payment made by the town shall be used solely to reduce the property tax liability of the remaining taxpayers of the district within said town. If the implementation of the community preservation project plan, adopted by a town board, as provided in subdivision six of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

3-a. Preliminary and incidental costs in connection with the acquisition of interests or rights in real property, pursuant to subdivision three of this section, shall be deemed part of the cost of the acquisition for which they were incurred. Such expenditures may include any administrative or other expenditures directly arising therefrom. No expenditure shall be charged to the fund, unless authorized by law. A full accounting of such costs for each acquisition of land shall be provided to the town board.

4. Preservation of community character shall involve one or more of the following: (a) establishment of parks, nature preserves, or recreation areas; (b) preservation of open space, including agricultural lands; (c) preservation of lands of exceptional scenic value; (d) preservation of fresh and saltwater marshes or other wetlands; (e) preservation of aquifer recharge areas; (f) preservation of undeveloped beachlands or shoreline; (g) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species; (h) preservation of pine barrens consisting of such biota as pitch pine, and scrub oak; (i) preservation of unique or threatened ecological areas; (j) preservation of rivers and river areas in a natural, free-flowing condition; (k) preservation of forested land; (l) preservation of public access to lands for public use including stream rights and waterways; (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and (n) undertaking any of the aforementioned in furtherance of the establishment of a greenbelt.

5. The town board of any town in the Peconic Bay region which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation or land preservation activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer.

6. The town board of any town in the Peconic Bay region which has established a community preservation fund shall, by local law, adopt a community preservation project plan. This plan shall list every project which the town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in the plan. The plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Funds from the community preservation fund may only be expended for projects which have been included in said plan. Said plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of the plan shall be filed with the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Said plan shall be completed at least sixty days before the submission of the mandatory referendum required by section one thousand four hundred forty-nine-bb of the tax law. As part of, or in addition, to said community preservation fund project plan, each town board may also adopt a management and stewardship plan for interests or rights in real property acquired pursuant to this section. No monies from the fund shall be expended for management and stewardship, except as approved in said plan. Said plan may provide management and stewardship projects for up to a three year period and shall provide a description and estimated cost for each project. Said plan shall be approved and adopted by local law and may be updated from time to time at the discretion of the town board. Only management and stewardship

projects permitted pursuant to subdivision nine-a of this section shall be eligible to be included in the plan.

7. The town board of any town in the Peconic Bay region which has established a community preservation fund pursuant to this section shall study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the community preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned to the community preservation fund.

8. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of a town board approving an acquisition of land pursuant to this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

9. Lands acquired pursuant to this section shall be administered and managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and open space character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. In furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit corporation law and engage in land trust activities to manage lands including less than fee interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

9-a: (a) Except for interests or rights in real property acquired for historic preservation purposes, management and stewardship projects shall be only expended for (1) projects which promote the protection or enhancement of the natural, scenic, and open space character for which the interests or rights in real property were acquired, or (2) accessory uses related to the purpose for which the interests or rights in real property were acquired consistent with subdivision nine of this section, or (3) restoration of acquired real property to its natural state including the demolition of existing buildings and structures.

(b) In the case of interests or rights in real property acquired for historic preservation purposes, funds may be expended only for the restoration and rehabilitation of buildings and structures consistent with accepted standards for historic preservation.

(c) Expenses related to the customary operation and maintenance of acquired interests or rights in real property shall not be permitted from the fund.

(d) Any project funded pursuant to this subdivision must have a useful life of five years or more under section 11.00 of the local finance law.

(e) Any expenditure from the fund for a purpose other than that permitted, herein, shall be deemed to be prohibited.

10. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the legislature. Nothing in this section shall preclude a town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by a town acquired pursuant to this section, where said sale is made by a central bank created by a town, pursuant to a transfer of development rights program established by a town pursuant to section two hundred sixty-one-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision four of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

11. Notwithstanding any provision of law to the contrary, towns may enter into intermunicipal agreements pursuant to article five-G of the general municipal law for the following purposes: (a) to jointly acquire interests or rights in real property, consistent with the purposes of this section, where the acquisition of such interests or rights promotes a regional public benefit for two or more towns pursuant to a regional plan,

(b) to establish an office or department among all five towns to render legal opinions and interpretations to facilitate the efficient and consistent administration of each fund created under this section,

(c) to provide for an independent financial audit of each town's fund,

(d) to hire employees necessary to implement the provisions of this section.

12. Each town shall annually commission an independent audit of the fund. The audit shall be conducted by an independent certified public accountant or an independent public accountant. Said audit shall be performed by a certified public accountant or an independent public accountant other than the one that performs the general audit of each town's finances. Such audit shall be an examination of the fund and shall determine whether the fund has been administered consistent with the provisions of this section and all other applicable provisions of state law. Said audit shall be initiated within sixty days of the close of the fiscal year of each town and shall be completed within one hundred twenty days of the close of the fiscal year. A copy of the audit shall be submitted annually to the state comptroller and the town clerk. A copy of the audit shall be made

available to the public within thirty days of its completion. A notice of the completion of the audit shall be published in the official newspaper of the town and posted on the official sign board of the town within ten days of its filing with the town clerk. Said audit and notice shall also be posted on the internet site for the town. The cost of the audit may be a charge to the fund.

13. The cost of employees and independent contractors to implement the provisions of this section, may only be paid for by the fund where the duties and responsibilities of said employees and independent contractors are directly dedicated to implementing the provisions of this section. Where such employees and independent contractors are not exclusively dedicated to implementing the provisions of this section, no more than the cost of the actual time expended directly dedicated to implementing the provisions of this section may be charged. Such costs shall be expressly identified in the town budget and any plan adopted pursuant to this section before funds for such costs may be expended. In addition, such costs must be documented by a time accounting system, subject to audit. Costs relating to the activities of elected officials implementing the purposes of this section may not be a charge to the fund.

CREDIT(S)

(Added L.1998, c. 114, § 2, eff. June 21, 1998; amended L.2002, c. 250, § 1, eff. July 30, 2002; L.2007, c. 531, § 2, eff. Aug. 15, 2007; L.2008, c. 373, § 2, eff. July 21, 2008.)

HISTORICAL AND STATUTORY NOTES

2009 Electronic Update:

L.2008, c. 373 legislation

L.2008, c. 373, § 1, provides:

"Legislative findings. The Peconic Bay region community preservation fund was enacted by the state legislature in 1998. It has been in effect for nearly ten years. It has been one of the most successful land preservation programs in the nation. More than \$500 million has been collected in revenue and nearly 10,000 acres have been protected.

"Upon the 10th anniversary of the program, it is important to examine the record of the fund, and seek ways to improve its administration. In the Peconic Bay region, a task force was created to review the towns' experience with the law and suggest ways to improve its operation.

"In addition, the state of New York, having authorized the two percent real estate transfer tax, which finances this fund, has a strong state concern in insuring that the fund is administered effectively and efficiently. It is noted that several other regions of the state have also recently gained authority from the state legislature to implement similar funds. Other requests are pending. The state has an interest in insuring that this successful program continues to meet its objectives.

"This legislation accomplishes these goals by instituting a series of fiscal oversight measures and financial controls to insure that the original intent of the law is met and that these revenues are utilized exclusively to advance the dedicated purpose of protecting community character."

2003 Main Volume

L.2002, c. 250 legislation

L.2002, c. 250, § 2, provides:

"Where a town extends the provisions of article 31-D of the tax law in relation to the date of expiration of chapter 114 of the laws of 1998 as authorized by section three of this act [amending L.1998, c. 114, § 5], or where a town adopts the provisions of section one of this act [amending Town Law § 64-c] in relation to payments to a school, fire protection, fire and/or ambulance district, such action shall be implemented by local law subject to a mandatory referendum pursuant to section 23 of the municipal home rule law."

L.1998, c. 114 legislation

L.1998, c. 114, § 1, provides:

"§ 1. Legislative findings and intent. The legislature finds that the protection and preservation of open space, significant natural areas, and historic places and the provision of park and recreation opportunities, collectively called community character are public purposes that greatly concern the people of the state. It is for that reason that the legislature enacted the environmental protection fund to provide a dedicated and continuing source of funding to effectuate these and other public purposes. In addition, the legislature enacted and the voters approved in 1996, the State Clean Water/Clean Air Bond Act to provide an additional funding source for these public purposes.

"The legislature also recognizes that certain local governments in the state, such as the Peconic Bay region of Suffolk county, have also made a substantial commitment of public funds to these public purposes. Specifically, since 1980, the five towns of the Peconic Bay region have expended or authorized over 50 million dollars in public funds to protect community character. Such an expenditure is unmatched by any other local governments in the state.

"The Peconic Bay region has long been recognized for its plethora of unique natural resources and scenic beauty. The area has received state recognition as part of the Long Island Pine Barrens Maritime Reserve, national recognition as part of the National Estuary Program, and global recognition by the Nature Conservancy as one of its twelve great places.

"The legislature further recognizes that the Peconic Bay region is currently under extreme development pressure with open space and farmland being converted to other land uses at an alarming pace.

"The local planning departments in the region have established the fact that despite the availability of state funds and the unprecedented commitments of local funds, the rate of development is still outpacing conservation efforts. If not addressed, the unique rural character of the Peconic Bay region, including farmland, open space, historic places, and small hamlet centers could be lost forever. Not only would these valuable resources be jeopardized, but the substantial investment of the state in protecting community character in the Peconic Bay region would also be jeopardized.

"The legislature further recognizes that existing traditional funding mechanisms such as state grant programs and local real property taxes will not provide adequate funding to preserve fundamental community character in the Peconic Bay region.

"Therefore, while it has been the stated purpose of this legislature to reduce the state and local tax burden, the issue of the preservation of community character in the Peconic Bay region presents a unique circumstance. In summary, (1) the Peconic Bay region has made an unprecedented commitment of local funds, (2) the state has also made its own substantial investment towards such preservation, (3) the Peconic Bay region is confronting unprecedented development pressures which threaten this investment, and (4) traditional funding sources are not adequate to protect the community character of the Peconic Bay region.

"Therefore, this legislature by this act, given these unique local circumstances, authorizes the towns within the Peconic Bay region to impose a real estate transfer tax, subject to mandatory referendum, for the purposes of community preservation.

"This legislature also wishes to insure that the expenditure of these funds are made pursuant to sound planning practices and that said funds are utilized solely for the purposes outlined in this act. Therefore, by this act, towns in the Peconic Bay region shall be authorized to establish a dedicated community preservation fund for the deposit of real estate transfer tax proceeds, and that a targeted list shall be established for the voluntary acquisition of open lands. In addition, a portion of the community preservation funds may be utilized in connection with the establishment of a transfer of development rights program pursuant to section 261-a of the town law in order to preserve lands identified pursuant to this act as necessary to protect community character."

LIBRARY REFERENCES

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Towns ¶ 48.

C.J.S. Towns §§ 191 to 195.

In a caselaw database, run TO(381) or 381k[add key number] to retrieve cases related to Towns.

McKinney's Town Law § 64-e, NY TOWN § 64-e

Current through L.2009, chapters 1 to 14, 16, 17 and 50 to 55.

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