

COUNCIL ON ENVIRONMENTAL QUALITY

MINUTES

A regular meeting of the Suffolk County Council on Environmental Quality was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York on Wednesday, November 17, 2004.

MEMBERS PRESENT:

Theresa Elkowitz, Chairperson
Larry Swanson, Vice-Chairperson
Michael Kaufman
Lance Mallamo
John Finkenberg
Nancy Manfredonia
Legislator Jay H. Schneiderman, Chairman of Parks and Cultural Affairs Committee

ALSO IN ATTENDANCE:

Steve Brown, CAC Brookhaven
Joy Squires, CAC Huntington
James Bagg, Chief Environmental Analyst/Department of Planning
Penny Kohler, Department of Planning
Richard Martin, Historic Services
Lauretta Fischer, Principal Planner
Brian Zitani, Town of Babylon
Scott A. Strough, Town of Southampton
Eileen A. Powers, Town of Southampton
Christopher Jeffreys, Assistant County Attorney
Leslie Mitchel, Deputy Commissioner of Public Works
Larry Penny
Paul Proulx, Town of Babylon
Nick Gibbons, Suffolk County Parks Department
Nicole Wachter, PO Aide
Amy Duryea, Leg. Aide, Town of Southampton
Kevin LaValle, Aide to Leg. Losquadro
Elana Roffman, Pace Environmental Litigation Clinic
Matthew Atkinson, General Counsel, Peconic Baykeeper
Kevin McAllister, Peconic Baykeeper
Stephen Feller, Reporter for Suffolk Life
Walter Dawydiak, SC Health Department
Jennifer Kohn, Assistant County Attorney
Elizabeth Harrington, Assistant County Attorney
Dominick Ninivaggi, SC Department of Public Works
Dr. Dillon, Public Health
Charles Bender, Aide to PO
Mea Knapp, Counsel to Legislature

MINUTES TAKEN AND TRANSCRIBED BY:

Diana Kraus - Court Stenographer, Alison Mahoney - Court Stenographer
and Donna Catalano - Court Stenographer

(THE MEETING CONVENED AT 9:35 AM)

CHAIRPERSON ELKOWITZ:

Good morning. Welcome to the November 17th CEQ meeting. I'm going to call the meeting to order and ask that the members review the minutes of the October 20th, 2004 meeting. And any comments, we'll take. If not, I'll entertain a motion to approve.

MS. MANFREDONIA:

I'll make a motion.

CHAIRPERSON ELKOWITZ:

I have a motion to approve by Ms. Manfredonia. Do I have a second?

MR. KAUFMAN:

Second.

CHAIRPERSON ELKOWITZ:

I have a second by Mr. Kaufman. All those in favor? Opposed? Abstentions? I abstain; I wasn't present at the October 20th meeting.

Okay. Correspondence. I have a letter from Legislator Schneiderman that I'd like to read into the record. It was addressed to me, to Mr. Bagg and to Suffolk County Planning. "Dear Ms. Elkowitz and Mr. Bagg, I write to express my continued concern over a scheduling issue that has been causing me some considerable inconvenience since I took office in January 2004. As you aware, I serve as the Chairperson of the Legislature's Parks and Cultural Affairs Committee, Vice-Chair of the Environmental, Planning and Agriculture Committee and am a member of the Economic Development, Higher Education and Energy Committee. All three of these Committees meet on Wednesdays. And as a result I'm occupied in committees for the entire day from 9:30 AM to the adjournment of the EPA committee meeting, which occurs sometime in the mid to late afternoon. Unfortunately thus far in 2004 CEQ meetings have been scheduled on Wednesdays at a time that directly conflicts with the Parks Committee meeting. As a result of this scheduling situation, I am forced to choose between chairing the Parks Committee or attending CEQ. I have an interest in both meetings and I would like to -- like the opportunity to be able to chair Parks without having to continually forgo attending CEQ. I understand that I may send a representative to CEQ but the current schedule forces me to send a representative in my stead to every CEQ meeting. This circumstance is simply not acceptable to me as the sitting Legislator for the Second District. I would, therefore, respectfully request that the CEQ membership consider opening a dialogue with my office to discuss the possibility of rescheduling CEQ meetings for a time that would permit me to attend. Thank you for considering -- for your consideration of the foregoing and I look to discussing this matter with the CEQ membership.

Anybody have any comments on this? Yes?

MR. BAGG:

I responded back to the Legislator and requested that he possibly be here for today's meeting. There were five CEQ meetings during the year, which did not have any conflicts with the Legislator's, you know, agenda.

CHAIRPERSON ELKOWITZ:

I see a back and forth between you and Amy Duryea, Legislator Schneiderman's aide, regarding this. I mean, not that I don't want to cooperate with Legislator Schneiderman, but I think that everybody knows we have a problem as well getting attendance. And I've been on the CEQ 12, 13, 14 years, however long it's been. And our meetings are always the third Wednesday at 9:30 unless there's a holiday or some other problem. And in the past where we had Legislators who

had conflicts, those Legislators sent their aides, their aids couldn't vote; but they came. So unless someone feels differently, I'm not inclined -- it's confusing enough for people that attend our meetings to go across the street and come here on alternating, you know, whatever day we can get. So, I'm not inclined to move the meeting unless somebody else feels strongly about it. All right. I'll take the -- I'll take the initiative to discuss this with Legislator Schneiderman unless someone else would like to -- feels differently about it. Okay. Excuse me for one minute.

All right. The next item on the agenda is recommended Type II Actions ratification of staff recommendations for legislative resolutions laid on the table November 16, 2004. Jim, is there anything you'd like to call to the Council's attention?

MR. BAGG:

Yes, there are a couple of things. In the packet there is introductory resolution number 2017. It's appropriating funds for the demolition of the old Cooperative Extension Building and parking facilities in the Town of Riverhead. The CEQ recommended a positive declaration that went to the legislators' Environmental, Planning and Agriculture Committee. I believe they also supported a positive declaration. But one was never drafted. And in essence this has not undergone SEQRA and SEQRA is not complete. So, I put down that a DEIS is required.

CHAIRPERSON ELKOWITZ:

And someone will communicate with Legislator Caracciolo directly so he understands this?

MR. BAGG:

Yes. We've sent him three times the CEQ's memo and all the supporting information.

CHAIRPERSON ELKOWITZ:

Okay.

MR. BAGG:

There's also resolution number 2102 --

CHAIRPERSON ELKOWITZ:

Jim, before we get off this, is this introductory resolution 2017 pretty much the same as the prior resolution that we did recommend a pos dec for?

MR. BAGG:

Yes.

CHAIRPERSON ELKOWITZ:

Okay.

MR. BAGG:

Yes. I mean he's calling for the demolition of the building.

CHAIRPERSON ELKOWITZ:

Okay.

MR. BAGG:

And appropriating funds. \$450,000.

CHAIRPERSON ELKOWITZ:

Okay.

MR. BAGG:

There is also resolution number 2102. It's adopting a local law to promote the health of Suffolk County residents by limiting non-essential use of toxic chemical pesticides in Suffolk County. And basically it states that anything that is the on EPA or New York State list of chemicals that

might be related to carcinogens should be banned for use in Suffolk County. And that's included by homeowners. So, my question to the CEQ -- I put down that it's possibly an unlisted action which require an Environmental Assessment Form.

CHAIRPERSON ELKOWITZ:

It may even be a Type I action. That I can't tell you at the moment without looking at it.

MR. BAGG:

I believe --

CHAIRPERSON ELKOWITZ:

But it certainly needs environmental review.

MR. BAGG:

It is a new program.

CHAIRPERSON ELKOWITZ:

Right, it is. Well, at a minimum, it's an unlisted action. I have to look at the -- I have to look at it, but it clearly needs an Environmental Assessment Form and a Determination of Significance.

MR. BAGG:

All right. And those are the two things within the packet that warrant review.

CHAIRPERSON ELKOWITZ:

Does anybody have any questions for Mr. Bagg? If not, I'll entertain a motion to accept staff recommendations.

MR. KAUFMAN:

I make that motion.

CHAIRPERSON ELKOWITZ:

I have a motion by Mr. Kaufman. Do I have a second?

MS. MANFREDONIA:

I'll second.

CHAIRPERSON ELKOWITZ:

Second by Ms. Manfredonia. All those in favor? Opposed? Abstentions? Carried. Okay.

Proposed Park - Greenways Program, southeast corner of Dixon Avenue and Great Neck Road, Suffolk County Tax Map # 100-177-2-83 and 87, Town of Babylon. Is there anybody here to speak on this matter? Come forward. Just state your name. You can sit at the table if you'd like.

MR. PROULX:

Good afternoon. My name is Paul Proulx. I'm with the Town of Babylon.

CHAIRPERSON ELKOWITZ:

Good morning.

MR. PROULX:

This is Brian Zitani. And we have here a larger plan. I believe you all have copies of an eight and a half by eleven inch plan in front of you.

CHAIRPERSON ELKOWITZ:

We do.

MR. PROULX:

Hopefully this can elaborate a little bit on that. There are some minor changes between what you have in front of you and this plan here.

CHAIRPERSON ELKOWITZ:

Okay.

MR. PROULX:

And we do plan on further honing the concept plan both represented in the paper in front of you and here on this board.

CHAIRPERSON ELKOWITZ:

Okay.

MR. PROULX:

If you'd like, I can start by --

CHAIRPERSON ELKOWITZ:

You can just quickly go through the project.

MR. PROULX:

Yeah. My name is Paul Proulx, P-r-o-u-l-x. First of all, this is a bit of a gateway project for our downtown revitalization efforts in Copiague. It's at the northern corner of the downtown area, the southeast corner of Dixon and Great Neck Road. Basically here Dixon heads east and then north. And then Great Neck Road heads north and south. This is a brick path that we plan on using to connect the corners. And in the center there will be a statue or some representation of the area's history. Right now we're thinking of Guglielmo Marconi. Perhaps you're aware of the rich history of Marconiville in this area. For a longtime that area was named after the inventor of the wireless radio, Guglielmo Marconi. So, depending on what kind of funding we can arrange, we do plan on a large statue of Marconi there in the center. And then going along on the sides here, there's going to be a different surface outside of the brick path, whether that be a mulch or some other permeable surface. It'll differ from the bricks around the center.

And then going along the outside on that second surface, will be either a series of plaques or we've also considered exercise stations. We're also considering different pieces of art; the idea being to make at a very attractive area where people will -- the people will visit and then walk through and continue onto the downtown just south of there. We also plan on investing over a \$100,000 this year on colonial lighting in this area to connect the park with the central business district. And if you'd like, I can tell you a little bit more about what we have planned for the individual stations along the path.

CHAIRPERSON ELKOWITZ:

Yes.

MR. PROULX:

Starting on the outside and going down and then going back up, Copiague was originally named after the Indian word for Sheltered Place. So, we're going to have a little plaque there that will discuss that and elaborate upon the historical origins of the word Copiague. It also -- the second one we'll talk about the early name for the area called _Powels_ , which was named after one of the original settlers to the area. The third station here will hopefully be a model of the original wireless communication device which Marconi used and tested in the Town of Babylon. The fourth station will be a map of the Venetian Canals in the southern part of Copiague. That was known as the American Venice. And there are several canals that caused it to be named as such.

The fifth station will have some sort of representation hopefully with a lot of community input of the Italian heritage that is really the start -- the starting ethnic heritage in the area, a little about

the immigrant experience. The sixth station will be a representation of Jacob Lipkin's art. Jacob Lipkin was a famous artist in the Town of Babylon. And depending again on funding, we hope to get a piece of his art to place there. The seventh and eight station will again represent the immigrant experience this time from a Hispanic and then a Polish perspective. Copiague is very rich in both those ethnicities today and the restaurants south of here truly show that. So, we're hoping to elaborate a bit on that experience.

The ninth station will be sort of a contemporary marker of the events of 9/11 and perhaps tie in with the firefighters of the area or perhaps those who lost their lives on that day. The tenth will hopefully represent hope after that experience and perhaps we'll deal with that or have an illustration again, a bronze plaque of the Towers of Light, which are shown at Ground Zero after 9/11. The eleventh station will be a memorial and a little bit about Maxine Postal's life and address her great efforts in securing this property for the Town and for Copiague and her -- the great work that she did as Legislator.

And then the twelfth plaque we'd like to leave blank for the time being. But the idea being that the road of history continues. And that there'll be opportunities to either fill that plaque later or simply leave it blank. So, again, it's a historical representation of the Copiague or Babylon experience. And we hope it'll be an attraction that will draw people to the area and allow them to continue on their journey to the downtown area and hopefully, you know, enjoy the businesses and all the services that are offered there.

CHAIRPERSON ELKOWITZ:

I just have one question. The EAF reflects that it was a former residential use. Doesn't reflect any buildings. So, I assume that whatever buildings were there are gone already; is that correct?

MR. PROULX:

Yes. Let me clear that up. I believe that the application in front of you needs to be amended. The application reflects two Suffolk County tax map numbers.

CHAIRPERSON ELKOWITZ:

Yes.

MR. PROULX:

And it should only reflect one, which is lot 87.

CHAIRPERSON ELKOWITZ:

So, 83 is not on this. So, we're going to remove 83 from the EAF.

MR. PROULX:

That's correct.

CHAIRPERSON ELKOWITZ:

Does it change the acreage that's in here? If we remove that tax map it does?

MR. PROULX:

Yes.

CHAIRPERSON ELKOWITZ:

By how much? About?

MR. ZITANI:

I believe the property was 90 by -- I think -- 50.

CHAIRPERSON ELKOWITZ:

90 by 50; okay.

MR. ZITANI:

That's also the property that had the former residential structure.

CHAIRPERSON ELKOWITZ:

Okay. So, lot 83 which is 90 by 50 is going to be removed from consideration.

MR. PROULX:

Correct.

CHAIRPERSON ELKOWITZ:

And the plan that you're showing us does not include that parcel?

MR. PROULX:

Correct.

CHAIRPERSON ELKOWITZ:

I don't have any other questions. Does anybody else have any other questions? If not -- Jack? You have to use the mike.

MR. FINKENBERG:

I'm just curious. It looks like it's in a residential neighborhood. Is there any kind of pedestrian traffic that would warrant that kind of a park -- there's no parking facilities? I mean who do you think is going to be going to that park?

MR. PROULX:

I think the idea is to connect the residential neighborhood generally to the downtown area. We're planning on quite a bit of development in the downtown area. We already have plans in front of the Suffolk County Planning Commission for a three-story building. And generally speaking we expect the density in the area to increase so both the new residents and the residents near the park here we expect to use this park.

MR. FINKENBERG:

Okay.

CHAIRPERSON ELKOWITZ:

Any other questions? Lance?

MR. MALLAMO:

I would say in addition to the downtown, this is perfect. Your emphasis on history here for school field trips, for school kids to learn so much about Copiague history in a little site is a wonderful concept for such a small piece of property.

CHAIRPERSON ELKOWITZ:

Nancy.

MS. MANFREDONIA:

I would just like to second that. I think that, you know, I would like to thank you. A lot of thought went into it and I think it's a great thing for the community.

MR. PROULX:

Thank you.

CHAIRPERSON ELKOWITZ:

Is there anyone else from the public that would wish to speak on this? If not, I'll entertain a motion for SEQRA determination.

MR. KAUFMAN:

I'd like to make a motion this is an unlisted neg dec.

CHAIRPERSON ELKOWITZ:

I have a motion. Do I have a second? Second by Mr. Mallamo. All those in favor? Opposed? Abstentions? Carried. Thank you very much.

MR. PROULX:

Thank you.

CHAIRPERSON ELKOWITZ:

By the way, I just want to take a moment to welcome Legislator Schneiderman. It's nice to have you. We've discussed you a little bit before you got here, but you can read about it in the minutes. And now I won't have to call you.

LEG. SCHNEIDERMAN:

Tell me what you decided.

CHAIRPERSON ELKOWITZ:

No, you can read the minutes.

MR. MALLAMO:

They'll be out next month.

CHAIRPERSON ELKOWITZ:

We basically talked about the fact that you would like us to change the meeting.

LEG. SCHNEIDERMAN:

I have a conflict with Parks. I'm Chair of the Parks Committee, which meets typically at the same time.

CHAIRPERSON ELKOWITZ:

I know. And we talked a little bit about that. But in the 14 years that I've been on and there are a few people that pre-date me, I think Nancy was here before me, I think Larry was here before me, our meetings are always consistently the third Wednesday of each month. And the problem that we have is that trying to coordinate nine members' schedules plus CAC members has become a little arduous. So, what we were hoping you could do is we've had this situation in the past. There was -- several years ago, five or six years ago. There was a Legislator -- and I can't even remember who it was -- that could not make one meeting. But what he did was he just sent his aid who communicated back and forth. The aid can't vote, but, you know, we kept everybody informed.

LEG. SCHNEIDERMAN:

That's the problem. I don't like being on a committee that I can't attend. Even today I also sit on a new committee that reviews appraisals, which is Real Estate Trust Review Board that meet at 10 o'clock in the Dennison Building. So even today when I don't have a Legislative meeting I have a conflict with this meeting. And I think what maybe needs to happen is if you're not willing to change your times of your meetings, maybe we'll have to change the County Charter to allow the Chair of the Parks Committee or his or her designee to sit on this Committee.

CHAIRPERSON ELKOWITZ:

That would work; because this problem has occurred in the past.

LEG. SCHNEIDERMAN:

Okay. I will look into that.

CHAIRPERSON ELKOWITZ:

Okay.

LEG. SCHNEIDERMAN:

That might resolve that. I would love to come to these meetings but I typically cannot.

CHAIRPERSON ELKOWITZ:

It's nice to have you, though.

LEG. SCHNEIDERMAN:

Thank you.

CHAIRPERSON ELKOWITZ:

Proposed improvements to Suffolk County Trap and Skeet Range, Southaven County Park, Yaphank, Town of Brookhaven. Is someone here to speak on that? Just tell me it's not in the Pine Barrens. Please. Good morning.

MR. GIBBONS:

Nick Gibbons, Parks Department. Okay, the Council might recall we closed Trap and Skeet, I'm guessing, about two years ago now. And the reason for was the County wanted to address the noise and lead mitigation issues on the site. We hired a consultant. We got the results of that work in August of '04 of this year. And the County's made a decision --chosen an option from that report, which I brought today but I didn't give a copy to each of the members in that it just got too lengthy. In it it outlines different options for noise and lead mitigation. Our real issue is to reopen the site. We'd like to address the noise. The lead is really in compliance with a trap and skeet facility, but not for open general parkland. So, to make it so, we would have to clean the site for general public access. But to reopen as a trap and skeet facility, we're okay and in compliance. So, the primary focus of this EAF is the noise wall. The consultant's report gave us 20 different options for a noise barrier. And the option we've selected, option one, calls for a timber construction wall, the details of which are outlined in the EAF. It is made of pressure treated wood. It is a sandwich, if you could imagine, of T 111 panels, plywood siding on both sides and with a interior structure of pressure treated wood as well. The life span of the wall is about 30 years. It's relatively low maintenance and low cost compared to some of the others. The estimate for the wall using this ply wall -- ply wall system, T 111 system is \$395,000. To give you an idea of why that's relatively inexpensive, some of the options cost as much as one point two, one point three. So, it gets quite costly. The one point two, for instance, is the DOT concrete post and panel system similar to what you see on the highway. And obviously we don't have the capital funds to cover something like that. The Capital Program set aside \$500,000 of which 50 we spent on planning, which I had brought to the CEQ in '02, maybe; end of '02. And now we're coming back for the additional 450 for construction. That's what we're here for today.

Other things I'll just bring to your attention, it is within Southaven County Park. And although that's general parkland, it's subject to the regulations set forth in WSR under NYS DEC and under the Central Pines Barrens Commission. We'd have to go to them for some sort of analysis of the project and whether or not it's an exempt project or not.

CHAIRPERSON ELKOWITZ:

I have a couple of questions and a procedural statement. My first question is what the consultant -- who was the consultant that did this report?

MR. GIBBONS:

MacLean Associates.

CHAIRPERSON ELKOWITZ:

Okay. Did they actually do a noise study or did they give you mechanisms for attenuating noise and decible levels that would attenuate?

MR. GIBBONS:

We had a noise analysis done prior to Maclean being brought on to analyze the actual wall, the structure itself, and how that might work to mitigate the noise issue.

CHAIRPERSON ELKOWITZ:

Right. But my curiosity is did we identify what the nearest sensitive receptor is? Did we identify what the noise is at that receptor without --

MR. GIBBONS:

Yes.

CHAIRPERSON ELKOWITZ:

We have all that?

MR. GIBBONS:

Right.

CHAIRPERSON ELKOWITZ:

I'd like to see that.

MR. GIBBONS:

That comes from a previous report that came about as a result of the immediate closure of the facility.

CHAIRPERSON ELKOWITZ:

Right.

MR. GIBBONS:

We hired two consultants. One to do the noise and one to do the lead.

CHAIRPERSON ELKOWITZ:

Right.

MR. GIBBONS:

I didn't bring those today. But I could certainly provide those for your review.

CHAIRPERSON ELKOWITZ:

And I'd like to see the lead report. I'd like to see that report. And I'd like to see the entire consultant's report. And the other thing that I would like to do even if this is an unlisted action, which at the moment I haven't decided what I think it is, I'd like to do a coordinated review. I want to do a coordinated review with the Central Pine Barrens Commission and with all other involved agencies. I'd like the input of the Town of Brookhaven as well because this has the potential to be a real issue. And I, you know, I don't think that we should be in isolation making judgements about it. I'd like to know what other people have to say if that's okay and if the Council occurs. Larry.

MR. SWANSON:

Nick, what is the current status on -- in New York State with regard to using lead shot?

MR. GIBBONS:

The only restrictions on lead shot are over water bodies; either fresh or salt water, in which case you need to use steel or some other suitable substitute.

MR. SWANSON:

So, it could still be used --

MR. GIBBONS:

Upland is fine, right.

MR. SWANSON:

Another question I had was, what are your plans about implementing a recycling program in this facility?

MR. GIBBONS:

It's cost effective to do so. And it needs to be part of the regular maintenance and a more formal maintenance than was previously done in the 35 years that the trap and skeet range was under the Park's purview. The lead analysis recommends and suggests cost effective measures to take to recycle the lead. And there is an easy way for us do that.

MR. SWANSON:

There is an easy way, you say?

MR. GIBBONS:

Right.

MR. SWANSON:

What is it?

MR. GIBBONS:

Running equipment over the properties to reclaim the spent shot.

MR. KAUFMAN:

Something like what they do on golf courses, golf ranges, etcetera, with the little ball carts?

MR. GIBBONS:

I couldn't speak to the technology itself. But it is something that's pointed out in the report that Terry's requested. You all see --

MR. SWANSON:

What about recycling other materials that are very likely users of this facility will bring into it, like, you know, cans, bottles and so forth?

MR. GIBBONS:

The separation of trash at that facility is as the case in most parks, Larry, frankly, we don't do it. And we do have a private concessionaire that would conceivably run the trap and skeet facility. And often times they will separate deposit cans in particular just to recoup that money if possible. There'll be a -- there have been in the past a small kitchen area. They serve very basic food and soda, for instance.

MR. SWANSON:

I'm going to continue to press the County to live up to what everybody else has to do with regard to recycling and see if you can't find a way within the budget to do it.

MR. GIBBONS:

And I'll continue not to misrepresent what we're actually doing, which is not much within the Parks Department.

CHAIRPERSON ELKOWITZ:

And we appreciate that. Does anybody else have any questions? You have a question? Okay.

MR. KAUFMAN:

Nick, quick question for you regarding -- it's basically -- the wood that you're using, it's some sort of pressure treated?

MR. GIBBONS:

Right. Typically ACQ now.

MR. KAUFMAN:

Okay. So basically if you have wood splinters flying all over the place and rain hitting those splinters, you're going to have some run off basically, some sort of chemical reaction but you're basically saying it's within proper limits, shall we say?

MR. GIBBONS:

Well, ACQ is the approved replacement for what we commonly use in CCA applications. Are you -- the wall will be behind the shooters. It isn't as if they're firing towards the wall.

MR. KAUFMAN:

Okay. Sorry.

MR. GIBBONS:

So, the weathering and or the abuse the wall is going to take would be minium.

MR. KAUFMAN:

Okay.

CHAIRPERSON ELKOWITZ:

Lance.

MR. MALLAMO:

Jim, I would echo your comments. I would like to see these reports as well. But I have a couple of additional -- one clarification. One question. You mention in the EAF that a portion of the park is a critical environmental area. Is this portion of the park in that?

CHAIRPERSON ELKOWITZ:

Well, the entire Central Pine Barrens is a critical environmental area.

MR. GIBBONS:

Right.

CHAIRPERSON ELKOWITZ:

By definition --

MR. MALLAMO:

Of which this would be a part.

CHAIRPERSON ELKOWITZ:

Yes.

MR. MALLAMO:

I wondered why it said a portion. If my memory serves me correct, that's what it says. Number two, the main concern I would have and it indicated there were no archeological resources in this area, but I don't agree with that finding. The area immediately nearby to this was an extremely sensitive area. And the fact that this project is probably going to be digging in excess of 300 holes to install this wall and fence -- has this area been surveyed?

MR. GIBBONS:

Which area are you referring to, Lance, that is a sensitive archeological area?

MR. MALLAMO:

The portion of Southaven Park along the river. I know you should have -- in the Parks Department there was a survey done about 1980 by _Ed Johanam_ and _Laurie Biladelo_ --

MR. GIBBONS:

Correct.

MR. MALLAMO:

-- about Southaven Park. I spoke to _Laurie Biladelo_ yesterday asking her if this was something we should be concerned about. And she indicated that, yes, it was; that number of holes and -- that they really didn't survey this area because it was in public use at that time. But I feel this is a natural area for its proximity to the river for Native American resources to be found. And I think that this an issue that has to be addressed.

CHAIRPERSON ELKOWITZ:

Well, since -- and I would hope that the Council agrees with me, I'm going to recommend that we do a coordinated review even though _OPRHP_ is not an involved agency per se. It's appropriate to send them this for information purposes and to ask for their comments. So that's something, Jim, that assuming that the Council agrees, that's something I'd like to do. And it's also one of the standards of the Pine Barrens Commission, too. Any other questions or comments? Is there anybody from the public that would like to speak on this? If not, I hope to entertain a motion to table with a recommendation that there be a coordinated review undertaken and that, you know, obviously all involved agencies -- and I'd like interested parties also contacted.

MR. MALLAMO:

I'll make that motion.

CHAIRPERSON ELKOWITZ:

I have a motion.

MR. KAUFMAN:

And I'll second.

CHAIRPERSON ELKOWITZ:

I have a second by Mr. Kaufman. All those in favor? Opposed? Abstentions? Carried. Thanks, Nick. And you'll make sure that the two noise reports get to Jim so that he can distribute them to the Council?

MR. GIBBONS:

One noise report, one lead report.

CHAIRPERSON ELKOWITZ:

Th original noise report, right.

MR. GIBBONS:

Right.

CHAIRPERSON ELKOWITZ:

So, it's two noise reports and a lead report.

MR. GIBBONS:

Right. If you're referring to the second noise report being what was included --

CHAIRPERSON ELKOWITZ:

Right.

MR. KAUFMAN:
Right. That's fine.

CHAIRPERSON ELKOWITZ:
Thanks, Nick.

MR. SWANSON:
Nick, before you leave, the questions that we raised with regard to how technically you're going to pick up the lead, etcetera, is in the lead report; is that correct?

MR. GIBBONS:
Right. I can pull that out as a separate summary document for -- so you don't have to --

MR. SWANSON:
You don't have to do that. I just want to make sure it's covered.

MR. GIBBONS:
Yes.

CHAIRPERSON ELKOWITZ:
Just so you know, I took a peek at the regs while we were talking. And I agree for what it's worth, that it's an unlisted action. But I'd like to do coordinated review anyway.

MR. GIBBONS:
Okay. This isn't necessarily a concern of the Council's, but this being a capital project, and we being into November now, I know it's our fault more than anybody else's, but is there a provision for Jim to continue what he needs to do even though the action is tabled while still securing or at least --

CHAIRPERSON ELKOWITZ:
No, I don't think so. The only thing that you could do is go directly to the Legislature and circumvent CEQ if you wanted to do that. And it's certainly within your ability to do it.

MR. GIBBONS:
It's not my choice to do so. And the coordinated review schedule wouldn't allow itself for me to bring this back in December. So, we'll be into '05 with this. Okay. Very good.

CHAIRPERSON ELKOWITZ:
Although I would -- I would consider if the only -- if we got the coordination letters out immediately, we actually may be able to do it because the way the regulations read, although people misread them all the time, is lead agency has to be determined within 30 days. Doesn't necessarily mean you have to wait for 30 days. So, our meeting is what day? I don't have a calendar with me. Our meeting is what date in December? Do we know?

MR. GIBBONS:
The 15th, I believe.

CHAIRPERSON ELKOWITZ:
When is it?

MR. GIBBONS:
But we still need to give them the 30 days.

CHAIRPERSON ELKOWITZ:
You don't. That's not what the regulations say. Clearly not. It's the 15th? Jim, do me a favor.

If the coordination letters go out tomorrow -- can they go out tomorrow?

MR. BAGG:
Yes.

CHAIRPERSON ELKOWITZ:

Tell them that the Council intends to make a recommendation regarding lead agency on December 15th so that we need all comments by December 14th at five PM. And feel free to check the regs. Trust me, it's been tested.

MR. GIBBONS:

I'll trust you. I like the answer. I appreciate that.

CHAIRPERSON ELKOWITZ:

Okay. Thanks.

Proposed donation of 2.848 acres of land for Open Space Preservation purposes in the Orowoc Creek Wetland Preserve area, Town of Islip. I saw Laretta. Hello Laretta.

MS. FISCHER:

Good morning. I'm Laretta Fischer with Planning. The proposal is a donation of 2.848 acres in the Orowoc Creek watershed in the Town of Islip. This was originally on the master list that we had proposed to acquire lands throughout the County. And the individual was contacted. And he was interested in donating it to us. It's a wonderful series of properties inter-mixed with the County's acquisitions in this area as well as the Town of Islip. It's an important watershed to the County as well as the Town to buy land wetlands and lands adjacent to those wetlands to protect this watershed as best we can in this area. So, if you have any other further questions --

CHAIRPERSON ELKOWITZ:

Do we have any questions for Laretta?

MR. KAUFMAN:

Yeah, hi, Laretta. How are you doing? One quick question. I'm looking at the map and Terry and I think we both see the same thing. It appears that the acquisition parcels are inter-mixed with parcels that are already owned by the Town of Islip?

MS. FISCHER:

By the County of Suffolk is in yellow

CHAIRPERSON ELKOWITZ:

No, we don't have color.

MR. KAUFMAN:

We have black and white.

MS. FISCHER:

Sorry.

MR. KAUFMAN:

No, you don't have to come up and show us. Your word is good enough.

CHAIRPERSON ELKOWITZ:

Laretta, there's hatching. And the hatching -- the key seems to see that the hatching is Town of Islip on the map.

MS. FISCHER:

There's two hatching areas. Unfortunately, one hatching area is in red, which you can't see.

CHAIRPERSON ELKOWITZ:

Right.

MS. FISCHER:

And the other hatching area is in yellow, which is the lands interspersed with the solid color.

CHAIRPERSON ELKOWITZ:

Okay. But they're publically owned by the Town of Islip or Suffolk?

MS. FISCHER:

Yes. I can give you a color copy just to verify.

CHAIRPERSON ELKOWITZ:

For the file I would appreciate it.

MS. FISCHER:

No problem.

CHAIRPERSON ELKOWITZ:

Does anybody have any questions? Is there anybody from the public that wishes to speak on this? If not I'll entertain a motion.

MR. KAUFMAN:

Yes, I'll make a motion this is an unlisted neg dec.

CHAIRPERSON ELKOWITZ:

I have a motion for an unlisted neg dec by Mr. Kaufman.

MS. MANFREDONIA:

I'll second it.

CHAIRPERSON ELKOWITZ:

Second by Ms. Manfredonia. All those in favor? Opposed? Abstentions? Carried. Okay. Lauretta, the next one I assume is yours, too, proposed acquisition of land for Open Space Preservation purposes known as the Falco property in the Town of Islip.

MS. FISCHER:

Yes. This was a proposed acquisition. Earlier this year we entertained -- we outreached to the owner Falco -- Judith Falco. And she was an interested seller. This property is 1.2 acres. It is adjacent to the Town of Islip properties known as the South Shore Nature Center. South of this -- these -- this town property is a large County holding, which many people misconstrue as Town of Islip property because they manage it. But we actually own 100 acres plus of tidal and fresh water wetlands just immediately south of that Islip property. So, this is an addition to that watershed area. And this is in the hamlet of East Islip east of Bayview Avenue, which would connect actually this park into the Islip properties. That open area to the west on the Islip property is actually the facility where you come into and then move down into this South Shore Nature Center. So, it's all connected into this preserve that the Town and the County own.

MR. KAUFMAN:

Lauretta, one quick question on this. Regarding access -- I think it's a good purchase. But regarding access, are there any roads coming into this for county residents to park on? Or would the access be from some of the county-owned or town-owned parcels to the south?

MS. FISCHER:

Well, at this time the property that we're acquiring does -- can have access off of Bayview Avenue. But there isn't any open area to come onto this site. But your access will probably

come from the already existing access into the town-owned site.

MR. KAUFMAN:

Okay.

MS. FISCHER:

And you can then walk back into that property. There aren't any plans to use this property for any kind of further access needs.

MR. KAUFMAN:

I'd just like to be able to walk it without getting a ticket. That's all.

MS. MANFREDONIA:

I'd like just to point out for the record that the Islip Town Environmental Council is in favor of this purchase and also the prior one which I forgot to mention.

CHAIRPERSON ELKOWITZ:

Any other questions? Jack? Use your mike.

MR. FINKENBERG:

The property to the north, who owns the property to the north of this site? You know, where the road comes in off Bayview Avenue?

MS. FISCHER:

You'll have to show me. There's a residence there just to the north of the proposed acquisition site. Are you talking about north of the Town of Islip site?

MR. FINKENBERG:

Well, no. If you look at the County site you're proposing to purchase, just -- you see --

MS. FISCHER:

Just north of that is a residential lot.

MR. FINKENBERG:

So, the road that comes in off of Bayview Avenue is a privately owned piece of property?

MS. FISCHER:

You'll have to show me. Bayview Avenue runs parallel to the proposed acquisition on the east side of the property.

MR. FINKENBERG:

But just north of the site -- see the --

CHAIRPERSON ELKOWITZ:

I'll come around and show you.

MS. FISCHER:

I see what you mean. Yes, that's the access to the site and I believe that that's part of the property line. It's just off a bit. But that is a road that comes in and brings you into the South Shore Nature Center off of Bayview.

MR. FINKENBERG:

So, the property line should be a little bit --

MS. FISCHER:

North of that, yes.

MR. FINKENBERG:

Okay. All these years I thought this property was owned by the Town. Amazing.

MS. MANFREDONIA:

Lauretta, just to clarify that point, is the entire property of the South Shore Nature Center owned by the County?

MS. FISCHER:

No. The piece that you're seeing directly west with that open area is owned by the Town of Islip. South of that is what the County owns.

MS. MANFREDONIA:

So, I don't know where people park to use the nature center.

MS. FISCHER:

They park on the Town of Islip property now.

MS. MANFREDONIA:

Okay.

MS. FISCHER:

Basically. There is some parking down by the building on the County property as well. So, it's

--

MS. MANFREDONIA:

Well, I guess the question Mike had would be what's the story if somebody was not an Islip resident, wanted to come in there?

MS. FISCHER:

I believe that it's open to all County residents, the entire two -- all of the lots down there. I've been down there. And I have never seen a sign that said Town of Islip residents only. It's not explicit. There are signs as you go through the County -- through the properties and it will say -- there's a tiny little sign that says County of Suffolk. But there's no, you know, delineation with regard to parking that I've ever seen.

MS. MANFREDONIA:

Thank you.

CHAIRPERSON ELKOWITZ:

Any other questions?

MR. KAUFMAN:

I'll make a motion this an unlisted action neg dec.

CHAIRPERSON ELKOWITZ:

I have a motion. I have a second by Legislator Schneiderman. All those in favor? Opposed? Abstentions? Carried.

MS. FISCHER:

Thank you.

CHAIRPERSON ELKOWITZ:

Thank you. Proposed restoration of Marine Railway at Long Island Maritime Museum, Town of Islip.

MR. MARTIN:

At this point the Commissioner of Parks would like to table this work. They have additional questions on the design and the program that's being proposed there.

CHAIRPERSON ELKOWITZ:

I'll entertain a motion to table.

MR. KAUFMAN:

Motion to table.

CHAIRPERSON ELKOWITZ:

I have a second by Mr. Mallamo. All those in favor? Opposed? Abstentions? Carried.

Okay. You know what, we're just going to take a two-minute break and then we'll come back and deal with Vector Control.

(The meeting was reconvened at 10:15 A.M.)

CHAIRPERSON ELKOWITZ:

I'm going to call the meeting back to order. And given the level of interest in this, what I'm going to do is I'm going to call the Vector Control Program, ask DPW if it wishes to make a statement regarding the program. I will then read the letters that I have received into the record. And then I will open it up to public commentary before -- if there's a specific question for DPW while whomever is up here from the Council, I'll be happy to have them address it. But then I'm going to open it up to the public to make their statement. And then the Council will deliberate after all of the public comments are received. Okay? So, is there someone from DPW that would like to come up and make a statement to the Council?

DEPUTY COMMISSIONER MITCHEL:

Are we going to answer questions?

CHAIRPERSON ELKOWITZ:

If there are questions from the Council, yes.

DEPUTY COMMISSIONER MITCHEL:

Then I'm going to bring my army with me.

CHAIRPERSON ELKOWITZ:

Sure, whomever you'd like to bring. To make it easy when you sit down, I think that everybody should just introduce themselves for the record and for the stenographer. And just if anybody has any cell phones, could you please turn them off? Hello.

DEPUTY COMMISSIONER MITCHEL:

Good morning.

CHAIRPERSON ELKOWITZ:

Good morning.

DEPUTY COMMISSIONER MITCHEL:

I am Leslie Mitchel. I am the Deputy Commissioner with Suffolk County Department of Public Works. Do you want me to introduce everybody at the table?

CHAIRPERSON ELKOWITZ:

Sure, you can.

DEPUTY COMMISSIONER MITCHEL:

From the Health Department we have Walt Dawydiak. Dominick Ninivaggi from Vector Control. Chris Jeffreys is with the County Attorney's Office. Dr. Dillon with the Health Department; and Jenny Kohn with the County Attorney's Office.

CHAIRPERSON ELKOWITZ:

Good morning.

DEPUTY COMMISSIONER MITCHEL:

You know most of us already.

CHAIRPERSON ELKOWITZ:

Yes, we do.

DEPUTY COMMISSIONER MITCHEL:

As you know this matter was tabled at the last CEQ meeting to afford the CEQ members an opportunity to take the time that was necessary to review a very comprehensive document that we had prepared for you. In addition there were comments that were made at that meeting and issues that were raised and we were asked to respond to those issues, which we did. And you should be in receipt of correspondence. And at this point I don't really feel the need to go over what has been said in the past. I'd rather open it up to your questions to try and move this matter forward. We are anxious to get this matter to the Legislature as you know. The Plan of Work expires at the end of this year. And so we are anxious to have a Plan of Work that is approved so that we can continue our work into '05.

CHAIRPERSON ELKOWITZ:

Does anybody have any specific questions for anybody at DPW or the Health Department at the particular moment?

MR. SWANSON:

I just wanted to comment on the -- thank you for responding to the questions that came up and doing so in a timely fashion so that everybody got an opportunity to see it at this time.

DEPUTY COMMISSIONER MITCHEL:

Thank you. And let me just take this opportunity to thank the stenographer for being so kind as to get us the excerpt from those minutes, which I was very appreciative. It was easier for us to be comprehensive. Thank you.

CHAIRPERSON ELKOWITZ:

Thank you. So, what I'm going to do is I'll ask you all to step back. If there are specific questions that we have after we hear from the public, we'll call you back.

DEPUTY COMMISSIONER MITCHEL:

Right.

CHAIRPERSON ELKOWITZ:

And have you respond to them.

DEPUTY COMMISSIONER MITCHEL:

Thank you.

CHAIRPERSON ELKOWITZ:

I have -- I guess I have three pieces of correspondence -- four pieces of correspondence. But I see -- which I'll be happy to read into the record. But I see a few people in the audience that I

know representing the Peconic Baykeeper, representing the Town of East Hampton. So, I don't want to read your letters into the record if you intend to come up and either read them or make a presentation. So, I'm actually going to ask Mr. Penny would you rather present your own letter?

MR. PENNY:
Yes.

CHAIRPERSON ELKOWITZ:

Yes. Mr. Atkinson, would you rather present your own letter so that I will not read it into the record or do you want me to read it?

MR. ATKINSON;
I'll present it.

CHAIRPERSON ELKOWITZ:

Okay. I also have a letter from the town -- the board -- the Town Trustees of the Town of Southold? Is anybody here from Southold? If not, I'm going to read it into the record. It's actually addressed to Michael Caracciolo. But a copy was provided to me. I am writing on behalf of the Southold Town Board of Trustees regarding the Suffolk County Vector Control plans for next year. The Council on Environmental Quality is holding a hearing on this matter tomorrow, (today). And the Southold Trustees are unable to attend as they have their meeting tomorrow. In the future, please include our office when scheduling meetings on this matter. The Southold Board of Trustees who are in charge of protecting the wetlands of the Town of Southold are very much opposed to the ditching and re-ditching of the salt marshes for mosquito control. There have been numerous studies on the ditching of salt marshes throughout the east coast since they were originally ditched, which do not show that it is -- that it is a helpful form of mosquito control. Often the ditching causes more mosquito habitat by creating fresh water pooling. The mosquito that breeds in the salt water is not the one that carries the dangerous diseases. We are aware that Vector Control needs to work at cutting down on mosquitos and the diseases they carry. We do not feel that ditching the marshes will benefit them and is very harmful to the marshes. The salt marshes are greatly harmed and changed by ditching culverts in any physical changes. They are sensitive areas with a variety of plants and animals. Please contact this office for any further information. And please contact this office when the Legislature holds its meeting on the subject -- on this subject. Sincerely Heather Tetrault, Environmental Technician.

Okay, the other letter that I have is addressed to James Bagg, Leslie Mitchel and the Suffolk County CEQ from the Town of Brookhaven, Conservation Advisory Committee. And it's from Steve Brown. Dear Mr. Bagg, please consider this letter as comments from the Town of Brookhaven Conservation Advisory Council regarding the 2005 Management Plan for Vector Control. The Conservation Advisory Council recognizes the need for mosquito control in Suffolk County. The Conservation Advisory Council would like to see certain ideas included in the 2005 Vector Control Management Plan. These ideas include: 1) increased education of the public regarding the need to address mosquito breeding sites on private property. Mailings and presentations at school would both be appropriate as would broadcast public service announcements. 2) the creation of habitat and shelter for natural control agents such as bats, insectivorous, birds and fish. 3) further study of the environmental impact of ditching marshes including data on the transport and absorption of pollutants by marshes and the retention or transport of pollutants to surface waters by a County created and maintained mosquito ditches. Thank you for the opportunity to comment on the 2005 Vector Control Plan. Please call me if you have any questions. Sincerely yours, Steve Brown, Chairman.

Okay. Is there anyone from the public that would like to make a presentation to the Council on this matter? Mr. Penny.

MR. PENNY:
May I sit here?

CHAIRPERSON ELKOWITZ:

You may. And just identify yourself for the record although most of us know you.

MR. PENNY:

Larry Penny, Natural Resource Director of the Town of East Hampton. Sorry. Thank you very much for inviting me to appear here. And since my letter will become part of the record, I hope, I'm not going to read it but talk around it very quickly. I met with the Town Board yesterday. And these remarks essentially mirror their collective view on the matter of vector control work in the Town of East Hampton. And they also -- my remarks also address the Peconic estuary, one of the national estuaries. There are some blatant misinformations in the SEQRA review published as part -- attached to the work plan of 2005. And I would like to address those very briefly. One, it says that the ditches themselves do not contribute to deteriorating water quality. They don't have a deleterious effect on water quality. Back in 1990 and '91, New York State in their budget appropriated some money for doing a report on the fecal coliform amounts coming out of these vector control ditches. And Cornell Cooperative Extension of Suffolk County did that study and showed fairly conclusively with the help of the Town of East Hampton that these ditches are hot spots for fecal coliforms. And all of that information is on record. And that preliminary work led the Town of East Hampton into a program of open marsh water management. And I must say since Mr. Ninivaggi's sitting here, he helped us considerably first working for the DEC; and secondly when he took control of the Suffolk County Vector Control and the Open Marsh Water Management Program that we have in the town. And that seems to be working. Secondly -- so the ditches themselves are collectors of all kinds of wildlife feces, raccoon feces, Canada geese feces, new swan feces and so forth. And they all contribute to fecal coliforms. And they also in many places connect to road run-off where other kinds of fecal coliform contributions can be made.

They also during rain events at the right tide flush-out fine particles because they collect fine particles, fine sediments. And we pretty demonstrated that the _tributity_ and the receiving waters increases as a result of this flushing out of fine particles, which includes the coliforms and who knows what else. And it turns out that wherever we have extensive ditching in the town, by coincidence perhaps but maybe by some kind of causal relationship, we also have diminished eel grass beds. It turns out that are two -- our two largest ditch areas Northwest Creek and Aquobogonic Harbor, one was about 16 miles of vector control ditching and one was 17 miles of vector control ditching, have the least amount of eel grass of any of our town waters. And this decline of the eel grass has been progressive. And It may be caused by something else. We don't know what's really causing it. But there is a relationship there.

There's a mention in the report about Phragmites not being -- not being abetted by ditching. But we find just the opposite. We've surveyed our Phragmites stands as part of our tidal marsh wetland studies over the years beginning in 1995. And it turns out that the two most extensive Phragmites invasions where Phragmites does really threaten the marsh in the Town of East Hampton have to do with those two aforementioned water bodies, Northwest Creek and Accabonac Harbor. In fact, there's a publication in the literature by Norman Paler, who is the botanist for Botanic Gardens, that was one of the first botanist to really study the flora of Long Island. He was hired by the Mosquito Commission, the old Mosquito Commission, to actually investigate the role of the ditches. And, you know, what they did to biota and so forth, vegetation. He discovered back then that the Phragmites was related to the ditching program. He didn't make much of it because he didn't think Phragmites would become such a problem, the kind of problem it has become today as it takes over our salt marshes. We've seen in the East Hampton Town a progressive loss of -- we are a fishing community. We've seen a progressive loss of bay scallops, blue crabs, various species of fish. We monitor our harbors, our tidal waters very closely. And we have an extensive data base of water fowl, the fish species, the marine invertebrates and so forth. And there's an overall decrease. Now, this may not have anything to do with ditching; but then again it may have something to do with mosquito control over the years in general. Maybe a tribute to other forces, too, that are beyond our kin at

the moment.

We have had a very good relationship with the Suffolk County Vector Control. They have been using BTI in two bodies of water, Accabonac Harbor and _Knappee_, the wetland edges of those bodies of water with, I think, very good success over the years because we don't have that many mosquito complaints. And I get a lot of the mosquito complaints. And when Mr. Schneiderman was the Supervisor of the Town, he got a lot of mosquito complaints, I'm sure, but relatively small number. We found out in our own studies that the leaching catchment basins about 50% of the towns catchment basins collect water and control -- and raise mosquitos. And we have started under Mr. Schneiderman's administration a program of raising mosquito fish and distributing those mosquito fish throughout pondings, throughout the leaching control -- leaching catchment basins, throughout the recharge basins and so forth. And we probably have a couple hundred thousand mosquito fish now in various ponds that we use to get these fish for distribution. We would prefer since -- in as much as our fisheries production and diversity has gone down over the years, we would prefer that -- the Town would prefer that we don't use artificial hormones like alticid, resmethrin -- methoprene -- I'm sorry -- methoprene for controlling -- for maintaining mosquito larvae and -- in a larval state. If we could possibly avoid it because we probably are affecting other aquatic invertebrates at the same time because these hormonal -- these synthetic hormones mimic throughout the invertebrates are not that very different with respect to controlling molting and pupation and other vital like processes of those invertebrates.

So, we would prefer that that be put on hold until -- until we definitely know that it isn't affecting, say, dragonflies and a bunch of other aquatic species including the plankton of shellfish and fin fish. We would like to be -- the Town is very rarely consulted in terms of health emergencies that might involve equine encephalitis or West Nile disease and -- I can't remember -- I can't speak for Mr. Schneiderman, but we find out about these things after they happen. For example, if we had a pool of the West Nile carrying mosquitos, we did have a few instances, we didn't find out until a month after that it was close to one of our parks and so forth. So that kind of -- that kind of working with the Town, the consultation is sort of absent from this as far as I can see. A lot of allusions to working with the County and working with other state agencies. But working with the individual towns themselves is very important, particularly with the leadership of the town, talking about the Supervisor and the Town Board.

Those are -- we would like to continue the -- the relationship with Suffolk County Vector Control. We don't -- the Town does not want to get into the business of controlling mosquitos, but we would like to -- not re-ditch any of the -- any of the ditches that are leading into the Peconic estuary through the various tributaries. But we would like to continue to work with open marsh water management. And we'd like Vector Control to work with us. Those are my comments. Thank you.

CHAIRPERSON ELKOWITZ:

Thank you very much, Mr. Penny. Do you have a question for Mr. Penny?

LEG. SCHNEIDERMAN:

Yes.

CHAIRPERSON ELKOWITZ:

Sure.

LEG. SCHNEIDERMAN:

Thank you, Larry, for coming out today. I know how long the drive is. Is in your opinion the entire ditch program -- should it be ditched or should it just be -- should they do the reconstruction and renovation of the existing ditch system or should they eliminate the ditches that are existing now?

MR. PENNY:

Well, the open marsh water management system does ultimately eliminate those ditches because they fill in and the salt marsh grasses come back and take over and so forth. And while they're doing that, they're interesting habitats for a lot of shore birds and other species like sharp tail sparrows that are in short supply. The ditches -- the ditches that are more upland, for example, those that go into south: Lake Montauk are not -- are -- we wouldn't want to see those ditch plain system, for example, we wouldn't want to see that go by the wayside. Vector control has been very good in maintaining those -- the sides of those ditches so the water flows through them. We are working on some plans to catch some of that water and treat it prior to going into Lake Montauk. But we would -- we certainly want to -- those kind of ditches that are outside away from the wetlands, we certainly don't want to stop, you know, having those things maintained.

LEG. SCHNEIDERMAN:

So, ditches that are --

MR. PENNY:

We're really talking about salt marsh ditches.

LEG. SCHNEIDERMAN:

-- basically tributaries, things like Peter's runout in Montauk, kind of the main runs, for water, those you can support keeping? But the rest that are basically the -- the cutting of these large marshes and phragmentating --

MR. PENNY:

Right. The salt marshes are where we think the ditches are doing the most damage.

LEG. SCHNEIDERMAN:

And in your opinion, would you believe that that component of the vector program ought to be reviewed through the tool of the full environmental impact statement?

MR. PENNY:

Certainly the re-ditching of any salt marsh ditch, yes.

LEG. SCHNEIDERMAN:

The salt marsh portion. And the spray portion?

MR. PENNY:

BTI not a problem. Methoprene, we'd like to see continued studies of the use of methoprene in long-term impacts.

LEG. SCHNEIDERMAN:

Now, you were there and I was --

MR. PENNY:

We don't use adult -- as far as I know, Vector Control doesn't use adulticides in East Hampton unless there is a health emergency in a vicinity near wetlands and so forth.

LEG. SCHNEIDERMAN:

How do you resolve the issue -- and you were there as I was when we did get the report about the triple E encephalitis, the equine eastern encephalitis out near the point. And, as you know, that they can be very fatal.

MR. PENNY:

Right.

LEG. SCHNEIDERMAN:

Like a 30% mortality or something like that depending on the age. Very serious. And I would hate to see the County's hands tied, you know, because they couldn't use a particular pesticide in that situation. I don't know how you can differentiate through the SEQRA process. And there's certainly different components of what we're looking at here.

MR. PENNY:
Right.

LEG. SCHNEIDERMAN:

There's ditching, there's the spraying and there's different public health risks associated with, you know, different insect borne pathogens.

MR. PENNY:

I think in that instance the Town Board -- the Town Board is very much in support of any kind of control of -- a control during a health emergency or presumed health emergency. It's just that they would like to be given a little bit more consultation. Remember in that particular situation a fogger showed up in the Camp Hero community in Montauk Point without any kind of notification to the Town, so forth. Since then notification has gotten much better. But, no, we wouldn't -- if it's a serious health emergency, I think the Town Board's feeling are that we have to control the vector. In that particular instance, DEC called me up, Steve Lawrence, because they couldn't come out and check out the wetlands and -- to see how far away Suffolk County was from the wetlands and so forth. We actually did their monitoring for them in that particular instance.

LEG. SCHNEIDERMAN:

So, would it be fair to say that in the absence of a declared health emergency by the Health Commissioner that chemicals such as methoprene should not be used until further study?

MR. PENNY:

I think so. And I think any adulticide-- pyrethrin-based adulticide shouldn't be used anywhere around -- anywhere in the vicinity of wetland habitats, aquatic habitats, And certainly the tributaries of the Peconic estuary.

LEG. SCHNEIDERMAN:

Thank you.

CHAIRPERSON ELKOWITZ:

Mike.

MR. KAUFMAN:

Mr. Penny, I'm on the Technical Advisory Committee and the marsh work -- marsh wetlands working group for the environmental impact study that's presently underway at Suffolk County. And we've been looking very extensively at Phragmites invasion and marsh management. Correct me if I'm wrong, but I think you asserted that there was some sort of a connection between Phragmites invasion and a lessen biota. And you mentioned at least one study that was done a while back in regard to the Mosquito Commission. Are there any other studies on that particular point? And am I fairly representing what you said?

MR. PENNY:

Yes. Phragmites is just -- really only become a thorn in the side in the last ten years. In fact, still -- there are still people -- we just recently learned in the last three years that the strain of Phragmites that we're dealing with is a European strain of a worldwide species that is much more aggressive. Interestingly enough it's disappearing in Europe, but it's taking over our marshes. You'd be hard pressed to find a native strain -- a native genome of Phragmites in any of our marshes. And this particular European strain -- it's called a haploid strain -- something like that -- haploid -- responds to disturbances; any kind of disturbances. And also --

MR. KAUFMAN:

Responds by colonization.

MR. PENNY:

Right. And it's all -- it's all _risoma_. It very rarely seeds. And it's _risoma_ -- by _risoma_
extension.

MR. KAUFMAN:

So, in other words, you have several studies on this?

MR. PENNY:

Right.

MR. KAUFMAN:

Suggestion that there's an interplay between Phragmites invasion and lessen biota.

MR. PENNY:

Yes.

MR. KAUFMAN:

Okay. I'm curious. I haven't heard that connection between the European strain of Phragmites.
Where did this particular study come from?

MR. PENNY:

It was worked out at Yale University by a young woman, PhD named _Saltentah_. She's
down in Delaware now. And she's been all over the country. Fairly easy to do genotypes based
on enzyme analysis and so forth, you know, that PCR. And -- and she's found very few native
North American genomes left amongst -- amongst the wild populations. It's pretty much all
European especially along the east coast. But also into the mid-west and west coast, too.

MR. KAUFMAN:

There's been no inter-breeding between the old world and the new world species?

MR. PENNY:

Apparently not a lot of hybridization. That's interesting. But since this Phragmites is mostly
clonal, you know, mono-clonal, expanding by _risoma_ extension from an upland base or near
upland base, there's very little genetic cross-mixing or enter-breeding.

MR. KAUFMAN:

Okay. No drift or anything like that. Okay. One other comment. I read in your letter that you
were considering that OMWM was maybe the best way to deal with marshes, etcetera. I have
to tell you that at the marsh land work groups, we're looking very closely at OMWM. And it
might be a very good idea if you were to send representatives to the TAC meetings eventually
on all of this. We've been looking at the way it's classically been done. And, in fact, I'm not
particularly happy with the classic ways that OMWM has been done. And there may be some
changes in the way that the County may be approaching it. So, it might behoove you to start
sending people.

MR. PENNY:

I think Brian Frank has been attending, but he was the Town's representative. But I'll check on
that.

MR. KAUFMAN:

Okay. Thank you.

CHAIRPERSON ELKOWITZ:

Thank you, Mr. Penny.

MR. PENNY:

Thank you.

CHAIRPERSON ELKOWITZ:

Is there anyone else that would like to speak to this matter? Good morning.

MR. ATKINSON:

I'm Matthew Atkinson, general counsel for Peconic Baykeeper. This is the fourth and materially the same plan of work that's been submitted to CEQ. The 2002 Plan of Work was neg dec'd, you know, partly because it was limited in time and scope. We're now looking at the fourth year of this, the serial reenactment of this plan of the 75 linear miles of reconstruction of wetlands and the repeated applications of pesticides has not been considered yet by the CEQ or Suffolk County Legislature except when it did a positive determination of significance under the long-term plan. We believe that the same should apply here.

It's also evident now and Vector Control, you know, freely admits that there's no real distinction between cleaning these 400,000 linear miles of ditches and the reconstruction and expansion of these ditches, which is actually permitted under the current DEC permit, which Vector Control also says in its papers, it will seek renewal of if this plan is approved.

Vector Control argues that the scope of its authority under this plan is limited by the review of other agencies on a case by case basis. Even if there were true, Suffolk County cannot delegate its review under SEQRA to other agencies including Office of Ecology or DEC. It's the Suffolk County Legislature and this body making a recommendation to that Legislature that needs to review the plan and make a determination of significance based upon the plan submitted. Thus, you're looking at 400,000 linear feet of ditches without any limitation on that except what might be imposed by some other agency. It's Suffolk County that needs to impose some limitations. As we've heard, there's dubious ethicacy in these salt water ditches for controlling the mosquitos; and a lot of potential harm. There's very little reason to continue with the quote unquote status quo. Although how that status quo is maintained if you're allowed to reconstruct a ditch that is essentially filled in, I would suggest that that's not the status quo; that's a reversion to the situation that occurred in the 1930's without the benefit of the science we know today.

I want to address briefly also this temporary emergency measures, which is brought by Legislature Schneiderman. SEQRA has no impact upon emergency measures. That is to say you can not approve a wide spread plan that entitles Vector Control to do its entire bag of tricks. And yet at any time that a health emergency is found, and, of course, Vector Control can go in immediately and take care of that health emergency. The real question here is not whether the emergency measures should be undertaken, but weather this Plan of Work may result in an adverse environmental impact. We have repeatedly sought a more limited Plan of Work from Vector Control; one that involved surveillance and monitoring. So, it knows what's going on with mosquito populations, knows where diseases are, public education, application of BIT to stagnant waters; and including replacement of some culverts especially when we're dealing with these, you know, pockets of wetlands that have been isolated by man-made structures. But, you know, we believe that this could go forward. And then emergency measures of spraying could take place, you know, as needed. In the meantime the rest of the program can be looked at as is appropriate in the EIS. This Plan of Work doesn't do that. This Plan of Work allows massive amounts of spraying, massive amounts of methoprene and for re-construction of ditches without any limitation whatsoever by Suffolk County, by the Legislature, which is the reviewing agency.

I just want to point this out, which I did in my letter, but I'd like to make it in the record that, you know, what's necessary to protect human health would be much clearer if there's some limitations imposed. In this year there were eight infected pools of mosquitos found in Suffolk

County. No human cases. And Suffolk County Vector Control sprayed adulticides 26 times as per the published notices in Newsday. If we go to Nassau County, which had 14, that is six more infected pools of mosquitos and also no human cases, they didn't spray adulticides one time. They didn't find it necessary to protect human health to do so. And if you go back to 2003 Nassau County had 29 positive pools and 17 human cases; again, not once did they find it necessary to spray adulticides.

We should limit this program to its environmentally benign aspects. And only permit these more aggressive spraying campaigns and ditching where emergency situations require. Thank you.

CHAIRPERSON ELKOWITZ:

Is there anybody else that wishes to speak on this?

LEG. SCHNEIDERMAN:

I have some questions of the attorney. I'm still formulating. If I can split the program again like I did with the last speaker into the two components, the ditching versus the spraying, and look at the ditching for a moment. And, again, there are -- if I can split that again into ditches that relate to flooding and ditches that relate to mosquito control. Is the position of the Peconic Baykeeper that that presents a problem; that portions that relate to flooding? Because there are some public health and safety issues that's connected to that obviously.

MR. ATKINSON:

Okay. As it relates to flooding, a lot of these ditch networks do act as storm water systems essentially. When they're purely an upland areas such as in the ditch plains section where Larry's talking, we think that, you know, measures such as he's talking about adopting, you know, to deal with the water quality, you know, should be undertaken. And those ditches, sure, can be maintained until that's done.

LEG. SCHNEIDERMAN:

Let me just give an example in terms of how it relates to water quality. Using ditch plains as an example, we have seen when those ditches become clogged that that entire area floods out. It creates an artificial water table there that floods every cesspool in that area which then eventually gets carried into Lake Montauk. So by not maintaining those ditches, you're bringing, you know, high levels of nitrogen into Lake Montauk and greatly degrading water quality there. I know that your purpose is to improve water quality, not to degrade it. And, you know, my fear is that in a comprehensive EIS that would hold off all ditching. You could potentially actually decrease water quality by targeting some of these areas where the ditching is solely or primarily for prevention of flooding.

MR. ATKINSON:

I think that, you know, ditch plains is more isolated than the general rule. That is to say one can specify, you know, with some certain clarity, you know, where things need to actually take place without having to sort of make a blanket authorization. There are cases, for example, at Cupsogue Park, where the ditches act as a storm water system for the parking area. You know, ultimately you'd want to arrange there a better storm water system. And it may mean ending up having to use a portion of what would be natural wetlands now as a storm water treatment area as it were by closing off those ditches and allowing the marsh to act as a kind of filtration basin. This is not ideal. Normally one wouldn't want that. One would want to stop the polluted water from entering the wetlands themselves. But this isn't always possible. And because of past mistakes, it may be necessary to do specific projects. And, of course, these do exist. It would be very simple; however to, you know, devise a plan that simply put off limits, you know, salt water reconstruction of ditches except with, you know, certain very specific in limited instances, And which could include ditch plains and so forth.

LEG. SCHNEIDERMAN:

Let me ask a question to the Chair or maybe to Mr. Bagg. In making a SEQRA determination, can we look at components of the plan and say, okay, let's say the ditching in marshes -- salt

water marshes, that would rise to the level of, you know, full EIS, whereas other ditching does not.

CHAIRPERSON ELKOWITZ:

No. We have our -- the way SEQRA works, and obviously we're just advisory of the Legislature, but an applicant, in this case DPW with a Vector Control Plan has come with the entire plan. If the applicant doesn't get up here and say to us we hereby modify our plan and our proposed action to do such and such, we are compelled to act and to make a recommendation on the action, yes.

LEG. SCHNEIDERMAN:

On the whole plan.

CHAIRPERSON ELKOWITZ:

And that's our only charge here is to make a SEQRA recommendation.

LEG. SCHNEIDERMAN:

On the plan in its entirety.

CHAIRPERSON ELKOWITZ:

Right.

LEG. SCHNEIDERMAN:

So, if one component of the plan we feel rises to a level of an adverse impact, then, the entire plan rises to the level.

CHAIRPERSON ELKOWITZ:

Unless -- unless we -- I mean we obviously can express that. And if the applicant wants to modify its plan sitting here to say well, we're not going to do X and we hereby modify our plan to remove X, then, we can make a SEQRA recommendation on the plan as amended.

LEG. SCHNEIDERMAN:

Would that be a condition neg dec?

CHAIRPERSON ELKOWITZ:

No, it would not be a condition neg dec. This is a Type I action. It's not permitted. And the reason why it wouldn't be a condition neg dec is just quickly, condition neg decs are conditions that are imposed by a lead agency; in this case it would be a voluntary change that the applicant would make. Okay.

LEG. SCHNEIDERMAN:

Okay. Thank you.

CHAIRPERSON ELKOWITZ:

Okay. Do you have a question of Mr. Atkinson or of me? Mr. Atkinson.

MR. SWANSON:

I just wanted to go back to your comments about the use of wetlands for water quality mitigation. All over this country in coastal states, wetlands are being used as alternative to sewage treatment plants. And wetlands are even being constructed for that purpose. And I'm curious as to why you're opposed to it here?

MR. ATKINSON:

Oh, I'm not opposed to it per say at all. I think that, you know, naturally functioning wetlands would provide an extraordinary service in terms of the natural filtration from rain water runoff from natural areas, you know, that are deposited from, you know, the raccoons and new swans we've heard about. And I also and through the tidal flushing that helps clean surface waters.

When they're ditched, of course, they lose these capacities because, the water, you know, flows straight out and there's no retention time. What I'm saying is that the conversion of healthy tidal wetlands to a storm water treatment arrangement, which could be done, is not necessarily the best thing for those wetlands. And I don't think it's always a good alternative to now like turn our wetlands into storm water treatment centers. But the use of them in specific instances, it actually takes place. I mean if you simply restore the wetlands to their integrity, they will act as filtration systems. The question is whether you have enormous discharges of fresh water from certain built-up areas where, you know, past developments patterns were done without, you know, any thought of the consequences. In cases like this, you may actually want to actually take a chunk of your wetlands and say okay, we're going to turn these wetlands now into a storm water treatment center. In a way this is too bad, you know. But it's making up for past mistakes.

CHAIRPERSON ELKOWITZ:

Any other questions for Mr. Atkinson? Is there anybody else that would like to speak on this matter? Mr. McAllister?

MR. McALLISTER:

Would you mind if I sat?

CHAIRPERSON ELKOWITZ:

Not at all.

MR. McALLISTER:

For purposes of this visualization, I'd like to show the photograph.
I apologize.

CHAIRPERSON ELKOWITZ:

If it makes you more comfortable, you can stand. You just have to take a microphone with you.

MR. McALLISTER:

I'm good. Thank you. For the record, my name's Kevin McAllister. I'm the Executive Director and Baykeeper for Peconic Baykeeper. I looked over the transcript from the last meeting. And I obviously made some remarks with my impression of the impact of ditching and the invasion of Phragmites. And my statement is accurate. I stand by that statement. I'd like to say that, you know, in the course of my work both actually professionally as well as recreationally, I spend a great deal of time in wetlands. And I've seen probably -- I'd say most of the wetland complexes certainly on the south shore and the Peconic system. And it's indicative to me from visualization where you actually see these tongues of Phragmites coming from the uplands coming into a ditch head or straddling that ditch; that, in fact, ditches do have a negative impact and enhance the invasion of Phragmites. There's also been some discussion on obviously water quality impacts. And, again, you heard Mr. Penny speak to you, conveyance. And certainly I've been bringing this forward for several years now. And obviously looking at _Napeek_ marsh in Montauk. And that's an extensive wetland system. But one can see the extensive network of ditches -- again in the photograph itself is limited where it doesn't capture necessarily the uplands. But obviously the net effect is drainage. So dependent on the inputs into these systems and particularly specifically into the ditches, that has a potential to degrade water quality with direct conveyance.

I know in the comments that Mr. Ninivaggi responded, I guess, to some of the testimony, there was reference made that the County was unaware of any studies that support the claim water quality impacts result from ditching. This is an excerpt from the Peconic Estuary Program, CCMP. And I'll read this if you don't mind. "It was thought that ditching marshes to facilitate drainage would result in less standing water at low tide; however, it is now believed that the increase drainage has allowed storm water runoff coming into the marsh to enter the main bodies of water without adequate detention time resulting in high loading a coliform bacteria to subtitle shellfish beds." So, I guess -- point out that I think -- I believe this is certainly recognized

that this is a potential impact to obviously the practice of ditching and the conveyance of storm water.

Further, and I know Mr. Atkinson actually mentioned Cupsogue County Park. And this is indicative or somewhat common place in some of the applications we've seen for some of the ditch work throughout the County. And this is specific to Cupsogue. And if you are familiar with Cupsogue County Park, I would say that it's probably a good 10, 12 acre asphalt parking lot that is, in fact, pitched toward the extensive tidal marsh that fronts Moriches Bay. And then again this is another excerpt for the purpose and the need to do the work. These ditches are important for the drainage of upland rain runoff. It is academic that storm water runoff is a single biggest threat to water quality in our nation. And certainly locally. And Suffolk County, in the municipalities whether it be Southampton Town, East Hampton Town, which are both present today, as well as Suffolk County, they're spending a great deal of time and effort and financial resources to address this significant problem. And again in recognition that these ditches, you know, if we are, in fact, using them for storm water conveyances, I firmly believe that's going in the wrong direction.

Moving into the pesticide applications and obviously I have expressed concern about the use of methoprene, the larvicide that is, again, I will say, I use the word routinely, I will at least say periodically applied directly over salt marshes. And the intent is to get it in the water. Back in December of 2000 Karen _Gralick_ who represents the DEC actually wrote a letter to Mr. Ninivaggi outlining some concerns at that time with the 2001 work plan. And she specifically focused in one area on the use of methoprene or alticide expressing concerns based on studies that, you know, there would be collateral damage to other crustacea, other invertebrates within these marsh complexes; and that her thought was that this material should be minimized if not used in favor of BTI. And, again, from the information that I've reviewed, the literature doesn't appear that BTI possess certainly the environmental risk that methoprene clearly does.

I also mention to you in the last presentation about Dr. Michael _Horst_ from Merca School of Medicine in Georgia. And I cited the comment that he was quoted -- the quotation in New York Times "you would have to be an absolute fool to use methoprene near coastal waters." Mr. Ninivaggi has indicated that his findings have not been peer reviewed. And I would submit he's part of the team that underwent the research looking at pesticides for the Long Island Sound Lobster Die-off. Certainly he's a co-author on the paper that was published and suffice to say I think his credentials and his work in this area certainly qualifies him to make those statements. We have spoken to him out of our office. And he clearly expresses grave concern for the use of methoprene.

The Minnesota study, and I have a copy, at least, the abstract for that. And again that was looking at fresh water wetlands and the impacts -- both looked at BTI as well as methoprene. And the author certainly -- this was a three-year study. And what he noted after year two the methoprene treated wetlands showed significant reduction in invertebrates. And, again, if you recall my earlier testimony, I spoke of Dr. _Horst's_ research that, in fact, methoprene has a propensity to bioaccumulate in biota. So, perhaps the buildup in a system over, again, multiple applications over a course of years could have significant consequences for the food web dynamics.

Last item with respect to the California study, and obviously the -- Mr. Ninivaggi referenced that the pyrethroids in question, and if you recall, I presented this study that, in fact, they showed significant reduction again in the benthos, benthic organisms, from run-off coming off of these agriculture fields. Mr. Ninivaggi has made the distinction that these are not the same materials. Based on the 2005 work plan, I could not determine whether or not permethrin is still in use. Perhaps it may be. And if that is the case, certainly this was one compound that was under review within the study. Beyond that, I would suggest that, you know, looking at the class of pyrethroids, this validates the need to take a really closer examination particularly when these products, and this is the adulticide, the suite of adulticides that are in use, if these enter water bodies, again, these are very highly toxic to both fish and invertebrates.

And the last item I'd had like to say and this, you know, speaks to I think the application of pesticides, you know, both looking at obviously the larvicide methoprene as well as the pyrethroids. In 1981, '82, New York state Department of Health GEIS that looked at mosquito control applications, and, you know, this Council may be familiar with that. In essence their findings were regardless of legality the pesticide application to pesticide laws, these pesticide applications should be subject to specific environmental review. So, when you hear that the label or EPA has approved this for use, you know, we should not automatically assume that it's necessarily safe in the environment. And certainly the earlier work from Department of Health suggest that, you know, closer examination is certainly warranted. I do appreciate for the time to be able to represent obviously our concerns, our input to this work plan. And I thank you for taking consideration of my remarks. Thank you.

CHAIRPERSON ELKOWITZ:

I have a question for you, Mr. McAllister. Are you okay?

MR. McALLISTER:

Yes.

CHAIRPERSON ELKOWITZ:

Is it your -- is it the Baykeeper's position that if the 2005 program did not have maintenance ditching as part of it and did not have the use of methoprene as part of it, that you would -- it would be your opinion that the implementation of the 2005 program would not have a significant impact on the environment? Is that your position? What I'm trying to do is understand what your specific issues are about the 2005 program.

MR. McALLISTER:

It's very close to being correct. Obviously we take objection to the use of methoprene.

CHAIRPERSON ELKOWITZ:

Right.

MR. McALLISTER:

We take strong objection to the reconstruction of ditches and tidal wetlands.

CHAIRPERSON ELKOWITZ:

Right.

MR. McALLISTER:

And we do acknowledge there are instances with culverts and drainage patterns that due consideration has to be applied. And I guess the third item we would like to see strict limitations on the use of the adulticides, the pyrethroids. So, what we're really dealing with pools of mosquitos that have been identified to be carrying virus and targeting those areas. But, again, this is strict limitations. And it's making a clear distinction from nuisance control to disease prevention. So, in essence, yes, you know, I would say and I'd certainly like talk to counsel on this, but, you know, I believe I've articulated generally speaking where our concerns are and acceptability of seeing some modifications to this '05 work plan that we would be -- find it acceptable.

CHAIRPERSON ELKOWITZ:

Okay. Thank you, Mr. McAllister.

MR. McALLISTER:

Thank you. Anybody else?

LEG. SCHNEIDERMAN:

I think that was an important clarification that you just made, too. Is it fair to assume that with

this -- if this work plan receives a negative declaration that your group is prepared to challenge that through Article 78, if that's the right proceeding?

MR. McALLISTER:

Mr. Schneiderman, I guess, I'm not prepared to answer that today.

LEG. SCHNEIDERMAN:

Okay.

MR. McALLISTER:

Thank you. And I'll try not to fall down when I get up.

MR. KAUFMAN:

That would be appreciated from a county liability standpoint.

CHAIRPERSON ELKOWITZ:

That's not an Article 78. No, that is an Article 78. Him falling is not an Article 78. It's a different lawsuit. Come forward.

MS. ROFFMAN:

Hello. My name is Elana Roffman. And I'm a legal intern at the Pace Environmental Litigation Clinic at Pace Law School. And I've been working with Peconic Baykeeper. Do you need me to spell my name? Or can you hear me?

CHAIRPERSON ELKOWITZ:

We can hear you.

MS. ROFFMAN:

Okay. I'm also a citizen of Suffolk County. I was born and raised in Greenlawn. I would just like say a few words about the difference between permissible segmentation and impermissible segmentation and urge you to consider that a negative declaration of the 2005 Plan of Work would result in impermissible segmentation. Permissible segmentation requires that related actions be identified and discussed to the fullest extent possible. In the Environmental Assessment Form accompanying the 2005 Plan of Work, the discussion of why the County should be allowed to segment the review of the 2005 Plan of Work from the long term Plan of Work says that the 2005 Plan of Work minimizes or eliminates all environmental impacts. And the potential impacts of the 2005 Plan of Work have been considered fully in the EAF. SEQRA states that if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement. While permissible segmentation will allow for a separate review of proposed actions, it does not allow the County to disregard SEQRA if either one of these actions may have a significant environment -- significant impact, and, therefore, qualify for a positive declaration. A minimizing of the environmental impacts leaves many questions as to what impacts the actions will have on the environment. These aspects include the widespread application of pesticides and substantial ditching. The EAF review also fails to identify the fact that this is one of a series of annual plans and, therefore, wholly fails to address cumulative impacts. That the County examined the potential impacts and fully considered them in the EAF means only that a potential impact does exist and, therefore, must be analyzed in an Environmental Impact Statement. Thank you.

CHAIRPERSON ELKOWITZ:

Anybody else wish to address the Council?

MR. STROUGH:

I'll try not to fall down.

CHAIRPERSON ELKOWITZ:

Maybe you should try a different chair.

MR. STROUGH:

It's the wheels. Well, good morning, Council members.

CHAIRPERSON ELKOWITZ:

Good morning.

MR. STROUGH:

Madam Chairperson. My name is Scott Strough. I am the President of the Board of Trustees of the Freeholders in Commonality in the Town of Southampton. We are a separate independent board from the Town of Southampton. And we derive our jurisdiction from the Colonial Charter of the Dongan Patten as well as the Andros Patten of 1686.

It's a pleasure to be here. It's my first time addressing the Council. At first I'd like to address one of the points that has been brought up earlier today. With regard to my friend and colleague Legislator Schneiderman, I'd be remiss if I didn't bring this up for the people of the Town of Southampton and East Hampton regarding his time; and regarding simply the vote or the ability to vote or have an action on this Board for the people of the east end, the Town of Southampton and East Hampton. He's our representative. And I'd like some clarity on that; just to be able to go back to the people of the Town of Southampton and be able to tell them that, yes, we do have an active vote. And I know that it was addressed earlier as far as the change to the Charter but before I begin --

CHAIRPERSON ELKOWITZ:

It think there's something else actually. Any CAC -- any town that has a Conservation Advisory Council has a seat here. And they can vote on county wide actions and actions that are affect their particular town. Does the Town of Southampton to our knowledge have a CAC?

MR. BAGG:

I believe they do. And they are sent a copy of everything. And they were sent a copy of all this information and requested to submit their concerns and attend the meeting.

CHAIRPERSON ELKOWITZ:

Jim, to whom did it go?

MR. BAGG:

It went to the Chair of the CAC.

CHAIRPERSON ELKOWITZ:

Which is? Do we know who that is?

MR. BAGG:

I don't have a list here.

CHAIRPERSON ELKOWITZ:

Okay.

MR. STROUGH:

Let me clarify my remarks one more time.

CHAIRPERSON ELKOWITZ:

Sure.

MR. STROUGH:

Again, I represent and serve as the President of the Board. And let me give you a little background just to make sure you have an understanding of my tenure. I've served for 15 years. I'm an elected official. I'm up for re-election every two years. For the last 13 years my

peers have nominated me and elected me Board President. We have an outstanding relationship with the County of Suffolk. I'm pressing this right now because I want to make sure that there is a vote on this Council that is reflective not only of the Conservation Board if that's -- sir, if that's who you are indicating. If it's the Conservation Board, and Harry Ludlow is the Chairman, then, the Town of Southampton would receive notice. The Board of Trustees is a separate independent body.

CHAIRPERSON ELKOWITZ:

I don't believe that you actually -- and I don't have the County Charter in front of me so I may be the wrong person to ask. There are representatives of the County Attorney's office here. And I would suggest actually that you talk to them about it. But I don't believe that the County Charter provides for a seat from the Southampton Town Trustees. I don't believe that. However, the nine members of this Board with the exception of Mr. Schneiderman who is here because he's the Chair of the Parks Committee, and that's an assigned representation on the CEQ, are appointed by the Suffolk County Executive. So, we don't have any say truly of who gets appointed. But I would encourage you to talk to -- and there are representatives of the Suffolk County Attorney's Office regarding what the Charter specifically provides. And personally we're happy to have representation.

MR. STROUGH:

Well, just so that the board members have an understanding, the towns of Southold, East Hampton, Southampton, Shelter Island -- their Town Board acts as their Board of Trustees --

CHAIRPERSON ELKOWITZ:

Right.

MR. STROUGH:

-- as well as Brookhaven Township, Huntington Township. I know these Boards are intact. They may be somewhat merged with their town boards. But the independent boards, the duly elected independent boards of the Town of East Hampton, Southampton and Southold are still intact and in place. And for the Town of Southampton, we are the largest land owner and we are specific to this issue today. I mean we own those under water lands in fee title ownership. And this ownership and the authority and the jurisdiction of the Board of Trustees has been upheld and recognized by the State of New York; the courts of the State of New York. And quite frankly we cannot be recognized by the County of Suffolk as the Town of Southampton. It would be remiss of the County or any other agency to do that.

The other point that I want to clarify that -- that is of importance to us that, I would hope that this Board or this Council would keep us involved with the status of Legislator Schneiderman and his position. Because if, in fact, the Charter is going to be changed or if in fact you're going to appoint somebody, we want to know who it is because we want to be able to have a contact person. I don't know if Jay wants to comment.

CHAIRPERSON ELKOWITZ:

Right. But just please, please understand that we are appointed volunteers. And we have one primary responsibility; and that is to make SEQRA recommendations to the Suffolk County Legislature and the County Executive on matters. That really -- we also serve as the Historic Trust so we have some approval authority over what happens to certain historic buildings. But beyond that, we don't have any other function. And although I'm appreciative of your comments and quite frankly we used to have very substantial representation from the east end. We even had a representative appointed by the County Executive who was a member of the Board in the Town of Shelter Island. But we have absolutely no say in what the representation of this board is. It's solely by Charter.

MR. STROUGH:

I don't know if Jay wants to --

LEG. SCHNEIDERMAN:

I won't disagree with anything the Chair just said. I am here by virtue of my Chairmanship of the Parks Committee. It wouldn't have to be an east end representative. It happens to be an east end representative. But this group is an advisory board. And the declarations that it makes from SEQRA go to the Legislature. And the ultimate decision is made there. And there I do sit as the east end representative. So, at least for the south fork. And, you know, I have made attempts to -- to have this meeting changed. We'll look at the Charter issue. I know Counsel to the Legislature is sitting in the back of the room so she's hearing this, but it's a potential that I could assigned somebody if the Charter's changed, who could come to the meetings. Or there's a possibility that I could find another time to hold a Parks Committee meeting so that it wouldn't conflict with these meetings. So, I'm going to look at some of those options. And I appreciate your comments, Scott, your desire to see me here. I share that desire.

CHAIRPERSON ELKOWITZ:

And I know Ms. Squires just had something that she wanted to say and then we'll go back.

MS. SQUIRES:

Sir, this is really very important for you to take back to the Town of Southampton. I'm Joy Squires. I'm the Conservation Board Chair from the Town of Huntington. I am also President of the New York State Association of Conservation Commissions. Every town, every village has the ability to send a representative to CEQ to vote on anything that concerns their town. I do not have the right to vote on something in Islip. Steve Brown, who's from Brookhaven, and is the Conservation Board Chair from Brookhaven, cannot vote on other towns. But in the town and in whole county, we have the right to vote. Everybody has that right. And for everybody else to know, Southampton has one of the most comprehensive conservation boards. They are a decision making body in regard to action in the marine environment. Most conservation boards do not have that ability. So, you really should be sending somebody here when it concerns the town. We have this right. We've had this right for many years. And I come virtually every time. Steve comes frequently. It is our responsibility as conservation board or conservation advisory council people to be here. Jim Bagg has the list. The person is so designated. It can be the Chair or anyone from the board who can make a meeting. The meetings are always on Wednesdays; third Wednesday. So, there really is no excuse for someone to not be there from the town.

LEG. SCHNEIDERMAN:

Typically there would not be something on the agenda that affected Southampton. It could be. Today obviously with this Vector Control Program, you have a large issue that affects Southampton. But I wouldn't think it would be that many times a year that somebody from the Trustees would need to appear.

CHAIRPERSON ELKOWITZ:

Jim, you had something to say? Just let Jim comment.

MR. BAGG:

A point of clarification. The members of the Council on Environmental Quality are appointed by the Legislature now. It used to be the County Executive. But they're now appointed by the Suffolk County Legislature.

CHAIRPERSON ELKOWITZ:

Thank you, Jim.

MR. STROUGH:

Can I make one point?

CHAIRPERSON ELKOWITZ:

Sure. And then I'd like to get to the Vector Control, if that's okay.

MR. STROUGH:

Just a point of clarity, and this is certainly with all due respect to the Council person from the Town of Huntington, in the Town of Southampton, we do a Conservation Board. It is specific in their Charter as designated by the Town Board that their authority ends at the high water mark. They do not have authority. They do not have jurisdiction or any Legislative authority regarding any of the waters, of the maritime activities or any of the points cited by the Council person. And I say that with all due respect because I'm not sure how Huntington is or other townships.

CHAIRPERSON ELKOWITZ:

But you only have two options, then. Either someone from the trustees -- and I understand your jurisdiction because I've had to come and get permits from you. So, either someone from the trustees gets named by the Legislature as a member of the council or the Charter gets changed to designate that a representative of Southampton Town Trustees just like the Chair of the Parks Commission gets it. But we have absolutely no authority over it. Okay?

MS. SQUIRES:

And, sir, I have -- I'm only advisory to the Town. I'm a volunteer. I have no decision making ability. What I do is I collect information, take it back to the town, which is what I think Southampton can do. They can send -- we have the right to sit here, to gather information and take it back. We're just volunteers. I don't make decisions in my Town. I just advise.

MR. STROUGH:

If I can move on point now?

LEG. SCHNEIDERMAN:

Teresa, are there empty seats on this committee? They're all filled.

CHAIRPERSON ELKOWITZ:

I don't believe so, no.

MR. MALLAMO:

Madam Chairman? I have a question. In the response prepared by Mr. Ninivaggi, it clearly states Trustees' lands will not be subject to work under the permit without trustee permission.

CHAIRPERSON ELKOWITZ:

Right. I saw that in the response.

MR. MALLAMO:

So is --

CHAIRPERSON ELKOWITZ:

Well, I'm sure the trustees have something they'd like to say.

MR. STROUGH:

Well, I'd like to --

CHAIRPERSON ELKOWITZ:

Yes.

MR. STROUGH:

-- continue on point.

CHAIRPERSON ELKOWITZ:

Sure.

MR. STROUGH:

In the beginning of my conversation with the Council, I stated that we had a good relationship. The Board of the Trustees has, what I consider to be, a good relationship with Suffolk County. We have worked extensively with Suffolk County with the piping clover program of the Town of Southampton, which has been recognized by numerous agencies, the pump-out boat program. And the Town of Southampton is recognized nation-wide as one of the leading programs. An example of how the program, how a pump-out program of such wide -- of such wide area should be conducted. And, in fact, County Executive Steve Levy, when he was sitting in the Legislature, worked with us extensively to try to promote Suffolk County's assistance in the programs that are in place for the pump-out program.

The relationship we have with Parks and Rec and the Waterways Division of Suffolk County is outstanding. We've been communicating. We've been talking to each other. And I say that in the spirit of cooperation and hoping to establish a line of communication with Vector Control and Suffolk County. It's important for to remind this Council that at this time we have pending litigation against Suffolk County and the New York State DEC regarding this matter. And the litigation speaks for itself. I'm not going to comment on that. But if I seem cautious today with any questions, and I welcome all of your questions, it is because of the pending litigation. But the intent here is to continue to try to cooperate with each other and to continue to try to discuss the issues and try to address these issues certainly from a local perspective. And I've heard comments today on other matters that's it's important to keep involved agencies in place, local governments in place and try to cooperate with each other. And that is certainly the spirit that -- why I'm here today and why we -- we need to try to move forward.

Legislator Schneiderman has broken up this work plan into, or has proposed breaking it up into two components. One is ditching and the other one is the application of adulticides and larvicides. Let's talk about ditches first. Let me make the Board of Trustees' position crystal clear to this Council. It is the board's position that there will be no net loss of wetlands or any type of wetland habitat in the Town of Southampton. What does this mean? We're simply not going to allow ditching in the Town of Southampton. Let me make it even more clear and give you an example. The wetland fringes on -- in Shinnecock and Moriches Bay. We have asked the town taxpayers in Southampton to foot the bill for numerous years of funding, of studies to evaluation to actual physical restoration of wetland components throughout the Shinnecock and Moriches estuary system. And the board's position is, and I find it incredible that we are now dealing with the situation where those complexes will be torn up. And it's contrary to everything that we've worked on and everything that we keep putting forward in the Town of Southampton and certainly from the board's policy position. And it's important that this Council from simply an environmental perspective, we have -- we have all of this time, money and commitment. And we have been able to reestablish these ditches or the remnants of these ditches back in place where we have been able to restore shellfish grounds; we've been able to restore viable habitat. They're healthy, thriving habitats. And they're significant in their size and in their impact to Shinnecock and Moriches Bays. I use this just simply as an example. There are other complexes up in Sag Harbor Cove in the Town of Southampton and over toward Flanders and certainly well within the creeks and arteries of the Peconic Bay system.

So, we're not going to allow it. It's very simple. We are the property owners also. I want to remind this Council that we are the fee title owners as vested in the Colonial Charters. We're not going to allow it. And I need you to understand that. And I need Suffolk County to understand that.

The impacts of ditching also from a surface water quality and shellfish habitat in the aquatic and the benthic life adjoining in Shinnecock and Moriches, and I use it again as just one simple example, we believe would be devastating. And we take this matter quite seriously. We've been able to restore shellfish grounds in the Town of Southampton. We've been able to work in restoring eel grass beds. We've been able to put back hard clam and soft clam populations, scallop populations we're working on right now. We're devoting a tremendous amount of man

hours, time and money. And we're asking the local taxpayers in the Town of Southampton to foot the bill. And to have Suffolk County -- and to come in here with this type of approach when it comes to the physical destruction of these wetlands after all of that time and money and commitment, when, in fact, I don't think anybody on this Council can say with verified certainty that these ditches will, in fact, improve the quality of life of the people in the Town of Southampton as well Suffolk County, I find that hard to believe. And I hope that the Council members will take this into consideration when, in fact, making a determination. And quite frankly, if you can't split it, then you know where your vote is.

As far as the applications, we have real concerns. In the Town of Southampton we were the focal point of the Baykeeper's concern. And the testimony that you heard from Kevin McAllister and others, it started, or part of it started with the incident at Flanders. And we had a fishkill there. And whether or not Vector Control wants to assert themselves and acknowledge that it was part of their program or the application of insecticides or adulticides, larvicides, whatever the application was at that time, there was cause for concern. And all of the testimony that I've heard today -- and again, I admit, this is my first meeting here and this is the first time I've heard this testimony and I'm sure you've gone through it time and time again -- but time and time again you hear people come up to you and testify to you as council members that these applications have cause for concern. Now, the scope of that concern vary -- it may vary and the opinions may vary; but that alone, that cause for concern alone demands that you put this entire work plan under the microscope. You need to see what's going on. You cannot have all of this testimony and you can't have property owners, and that's what we are, the trustees hold as property owners, the same cause for concern. If you're going to go into the Town of Southampton and start dropping and having the helicopters with the fly-bys dropping larvicides or insecticides or adulticides -- and I'll give you an example of what we have experienced. Last summer my -- the confidential secretary to the Board of Trustees was camping in a County Park at Shinnecock Inlet. She called me on my cell phone. There were people fishing, there were people enjoying the day. And she said, "We just had a fly-by of a County helicopter spraying by the Meadowlands on the north side of Meadow Lane toward the Village of Southampton and Shinnecock Inlet. Now, if that's not cause for concern as far as a public relations between the County and the Town of Southampton -- that, too, should be mentioned in your deliberations. Because there seems to be a real gap as far as public education. And Larry Penny has addressed that. Every one of the speakers today has addressed it. Public education and public notification is going to be and should be a real strong part of your recommendations, whatever they may be.

But getting back to the spraying, we really need to take a hard look at that. As property owners and the Board of Trustees, the message is clear that we are not going to allow for adverse impacts and continue what we believe to be continued adverse impacts of this program in the Town of Southampton. I'll open it up for your questions.

CHAIRPERSON ELKOWITZ:

I actually have what is going to sound like an extremely silly question. Suffolk County has a no-spray list; are you on it?

MR. STROUGH:

That I couldn't tell you.

CHAIRPERSON ELKOWITZ:

Are they on it?

MR. NINIVAGGI:

No.

CHAIRPERSON ELKOWITZ:

That's the first thing I think that we could do, although it doesn't relate to the impact thing, but that may solve the immediate concern that the trustees have. Because my understanding of the

no-spray list, and somebody is going to have to help me here because I'm not we'll versed in this, but as a property owner because you are property owners and fee title, any property owner in Suffolk County can be asked to be put on the no-spray list and you don't get sprayed.

Now, I have one other question that I don't know the answer to. If the Commissioner of the Department of Health Services were to identify a health emergency, does the no-spray list prevail?

DEPUTY COMMISSIONER MITCHEL:

No.

CHAIRPERSON ELKOWITZ:

No. So in the event of a public health emergency the Commissioner could spray. But my understanding is if you're on the no-spray list, you're on the no-spray list.

LEG. SCHNEIDERMAN:

That's an interesting point you bring up because not only are the Trustees major property holders, but the town itself is a major property owner.

CHAIRPERSON ELKOWITZ:

Well, that's my question.

LEG. SCHNEIDERMAN:

In East Hampton as well; in fact, almost every marsh is owned by the town --

MR. STROUGH:

The Town of Southold, same situation.

CHAIRPERSON ELKOWITZ:

What you said -- when you were harping, and you were right to harp on the fact that you own this property in fee title which I happen to know because of what I do for a living, it just seems kind of simple to me that if the County is obligated not to spray you, if you're on the no-spray list, you should be on the no-spray list.

MR. STROUGH;

Let me -- let me --

LEG. SCHNEIDERMAN:

So the town, the trustees, East Hampton Town, they could all go on the no-spray list.

MR. STROUGH:

But --

CHAIRPERSON ELKOWITZ:

Well, you know, you have a no-spray list for property owners; you're a property owner, right?

LEG. SCHNEIDERMAN:

That would shut down the spray program on the east end.

CHAIRPERSON ELKOWITZ:

You're a property owner.

MR. STROUGH:

Madam Chairperson?

CHAIRPERSON ELKOWITZ:

Yes.

MR. STROUGH:

If your statement in question implies to the Council and to everybody today that there is an all-or-nothing type of situation --

CHAIRPERSON ELKOWITZ:

No, that wasn't the reason I raised it. I just raised it because -- I raised it not for that reason and not even to talk about the impact of this. The only reason that I raised it is because it seems to me from the passion in which you're speaking to us, that you have a very strong position about what the County should or shouldn't be doing on your land. And you control that land. So at a minimum, I would think, you should be on the no-spray list.

MS. POWERS:

Can I just address that?

CHAIRPERSON ELKOWITZ:

Sure, absolutely.

MS. POWERS:

My name is Eileen Powers and I'm the Deputy Town Attorney for --

MS. KRAUS:

Please use the microphone.

CHAIRPERSON ELKOWITZ:

If you need a break, by the way, tell me when we're done.

MS. POWERS:

My name is Eileen Powers. I'm the Deputy Town Attorney for the Town of Southampton.

CHAIRPERSON ELKOWITZ:

Uh-huh.

MS. POWERS:

And I'm not sure that the spray list, first of all, applies to methoprene and to all of the larvicides. But beyond that, when Scott raised his question about whether this is an all-or-nothing, maybe it's simple for you to say -- to eliminate us by saying just put yourself on the no-spray list and we don't have to --

CHAIRPERSON ELKOWITZ:

That wasn't my intention, though. That was not my intention. My intention was to raise the potential option so that you could further protect yourselves. And I was very clear, I thought, in saying it's not related to what I'm deliberating about today. It was a mere suggestion because you raise the fact that you're a property owner. That was all it is.

MS. POWERS:

Unless the Town of Southampton is going to take over their own vector control, it's really not a viable option. You want us to say wholesale there will be no spraying in --

CHAIRPERSON ELKOWITZ:

No, I don't want you to do anything. It was just a suggestion that you could be on the no-spray list. You know, it's not -- you have to understand something. Our purview here as a Council is solely to make a SEQRA recommendation on something that's put before us. The only reason I raised it is because when Mr. Strough was making his comments about being a property owner, it just dawned on me. Personal opinion. It has nothing do with CEQ. My personal opinion about this is you should -- and this is personal -- it has nothing to do with what the County does

or doesn't. The town should be involved, the town should have to consent unless it's, you know, a public health threat. I agree with all of that. I have no influence over it whatsoever. But if I were trying to control what somebody did and I was a property owner and I could go on the no-spray list to further my ability to control what happens, I personally would want to do it. That was the whole genesis of my comment.

LEG. SCHNEIDERMAN:

It doesn't materially change our discussion here today.

CHAIRPERSON ELKOWITZ:

Right.

LEG. SCHNEIDERMAN:

We're talking about the potential SEQRA declaration on the work plan for the County. And, you know, it could go either way. Let's say it gets pos dec'd and there's an environmental impact statement that's prepared. You don't know how that will end up. You might end up with, you know, the plan being approved in its entirety or changed somehow. This mechanism down the road of being on this no-spray list could be something that you find a valuable tool and I think it should --

CHAIRPERSON ELKOWITZ:

That was my point.

LEG. SCHNEIDERMAN:

It shouldn't be taken for more than that at this point.

MR. STROUGH:

I think the difficulty that we find on a local level is the level of responsibility we have to the citizens of the town, the understanding of any health threats, the understanding of any emergency conditions which clearly, again, unless that's vested and unless that's incorporated into the local government, into town government, which it's unlikely that -- we're going to continue to rely on Suffolk County. The point is that it comes back to this Council. That if we're going to move forward, then, let's make sure we move forward in the right direction. And you heard testimony today from two of the east end towns, Southampton and East Hampton now, that we have grave concerns over this work plan.

CHAIRPERSON ELKOWITZ:

I have to clarify something that you just said, though. The policy doesn't come back to this Council. We don't make policy. We don't even influence policy. You will see, though, in some of our SEQRA recommendations that we may make a recommendation to the Legislature to treat something in a certain way in addition to making a SEQRA recommendation. But our authority, and it's not even authority, our purview stops at offering a recommendation for SEQRA determination to the Suffolk County Legislature. That's all we do. So actually, these comments are most appropriate to the Suffolk County Legislature. But I'm sure that Jay will carry them back. Larry, did you have a question?

MR. SWANSON:

I have a question and I have a comment. You know, the very reason we're having this discussion today has been the concern -- continuous concern of this Council about the Vector Control Program in Suffolk County. We're the ones that generated the need for developing an environmental impact statement. And we're the ones that felt that there was some questions with regard to ditching, with regard to what was being sprayed, when and where. And, you know, I think you're here today because of the foresight of many members of this Council about the problems of vector control.

CHAIRPERSON ELKOWITZ:

There is -- and I'm sure you know this -- there is a long-term program that's being developed

and there is -- that was something that was insisted upon by the CEQ. And we went to the Legislature and we lobbied for it. And we also lobbied for a positive declaration. And the County is embarking on, I guess, it's up to a \$4 million study, a generic environmental impact statement on the long-term program. The scoping document is longer than some of the environmental impact statements that I've seen in my career. So, that -- you know, people will argue is that separate from, is that part of this plan. I guess that's all going to wash out in either the Legislature's deliberation or a lawsuit that is a result thereof. But the reality is that I'm hopeful, and Larry is right, that in the long-term we're going to solve the problem. In the short-term, I just -- the only thing I can do is encourage you to go to the Legislature and make your feelings known as you have today. I'm certainly sensitized to them, but this Council can do absolutely nothing about them except ask Jay to take them back to the Legislature.

LEG. SCHNEIDERMAN:

Madam Chair, can I interject or ask a question here?

CHAIRPERSON ELKOWITZ:

Sure.

LEG. SCHNEIDERMAN:

We've spoken today about the many components of this work plan. And one of the components that raises a lot of the concerns is the spraying of pesticides. And we do -- you know, the whole SEQRA process is a State process and the State has maintained the right to regulate pesticides through the DEC. Our SEQRA process is through the DEC.

CHAIRPERSON ELKOWITZ:

Our SEQRA process is not.

LEG. SCHNEIDERMAN:

Well, it's under the DEC, the SEQRA process.

CHAIRPERSON ELKOWITZ:

No, it's a State act but it's not under the DEC. The DEC has no jurisdiction over the SEQRA process that the County undertakes for this other than they are an involved agency because they have permitting authority.

LEG. SCHNEIDERMAN:

Well, what I'm getting at, have we as a board or has the County considered whether doing an EIS on the spraying of pesticides, whether the State will potentially challenge that as preempted? Because --

CHAIRPERSON ELKOWITZ:

I don't have a clue about that, not a clue; but I'm sure that the State would not insert itself into whatever the County's determination is one way or another, just based on past experience.

LEG. SCHNEIDERMAN:

Because I'm assuming they have -- although I would disagree with the findings of the State, they obviously have done or DEC has done a review on these chemicals which are regulated by the EPA and the DEC and made decisions in terms of their use.

CHAIRPERSON ELKOWITZ:

But on the long term program, though, these things are actually being evaluated, it was something that was brought up during the scoping process.

LEG. SCHNEIDERMAN:

Okay. And this is use-specific in certain areas to wetlands, etcetera --

CHAIRPERSON ELKOWITZ:

Yes.

LEG. SCHNEIDERMAN:

-- that may need further review. But I expect that that might be something that is contentious or at least challenged by the State whether we have that authority.

CHAIRPERSON ELKOWITZ:

Go ahead.

MR. KAUFMAN:

I serve on the TAC as I alluded to earlier. And we are doing massive studies as part of the environmental impact statement that's being prepared looking at all of these chemicals, looking at the impacts, looking at how they should be applied, how they should be sprayed. I mean, we've gotten into the minutia, we've gotten into overarching concerns also. We're looking at individual chemicals, and I think Walter Dawydiak and others will talk about that probably later. All of these chemicals are being looked at. We've already stripped out some of them from the program. So, it's not as if no one is looking at any of this stuff. It is, however, in a certain context wherein this Council in 2002 declared a pos dec and we pushed for an EIS to be done and we've gotten millions of dollars from the County to do it. So, it is all being looked at.

You also should know that in a procedural context, the State will be reviewing a lot of this activity. One, their representatives from DEC, and we also have them from the Feds, etcetera, are on the TAC. We're looking at, in conjunction with all of these agencies, these chemicals. When the EIS comes out, okay, there will be mitigation measures in there, there will be certain procedures established, etcetera. But as a -- in a functional way, Suffolk County does the EIS under the State per number of SEQRA. After that, for the individual years, or if we go for a general permit, DEC will be reviewing the pesticide activities that the County is undertaking in terms of application of larvicides and also an application of adulticides, etcetera. So DEC will be reviewing this stuff also. They'll have an advantage in that they will know that Suffolk has gone through a very legitimate and very in-depth process of examination of all these chemicals.

CHAIRPERSON ELKOWITZ:

Yeah, but what's actually almost more important procedurally is -- and now we're talk about something that's not before us today which is the long-term program -- that's what Mike's talking about, this investigation on the long-term program. But when the long-term program is concluded and the DGEIS is completed, the hearings are held, the FGEIS is completed, there's something very important that's going to happen. And it's going to happen at the Suffolk County Legislature. You are going to make findings. And those findings are going to say what pesticides, when, where, what pesticides, what ditches, where, when, how they're monitored and everything else. So, at some point in the, I hope, not too distant future, we're not going to be having these kinds of conversations about annual plan -- program, annual plans. And that study is underway. Did you have a question, Eileen?

MS. POWERS:

I just wanted to make one final comment.

CHAIRPERSON ELKOWITZ:

Sure.

MS. POWERS:

Because since you initiated this long-range study. The County has come back over and over asking for an annual Vector Control Plan. You have recognized the potential adverse impacts of a lot of what is contained in the 2005 Vector Control Plan. But they're still coming in here year after year asking you to neg dec it. They haven't significantly reduced the scope of the Vector Control Plan. And that's the concern here.

LEG. SCHNEIDERMAN:

Right. That's part of --

CHAIRPERSON ELKOWITZ:

Well, although I'm not going to tell you what the deliberations are, the last statement you made was not entirely true. Because in 2001-2002, they came in, before we ever went to the program in 2002 when CEQ finally said, "You know what, it's time to evaluate a lot of the things that you do, it's time to do a DGEIS." They were coming in with annual programs. And I can't remember what year, whether it was 2001, 2002, whatever it was. They came in with a program. And there were substantial concerns that this Council and members of the public had. And DPW significantly reduced many of the components of that study. You don't even see them anymore. Because there were things that this Council believed, even on an annual program, were likely to result in significant adverse impact. And they knew if that program didn't change, there was no choice but to give them a pos dec because it was significant. So, with that clarification, your comments are very well received.

MS. POWERS:

I'm just saying, they did not significantly reduce it.

CHAIRPERSON ELKOWITZ:

Not from last year. But from the -- when they got their first neg dec, you know, in that year, they had significantly reduced their program and they had instituted monitoring, too, that didn't exist previously.

MS. POWERS:

Okay. And my final point is simply that we understand the role of this committee.

CHAIRPERSON ELKOWITZ:

It's very important that you do.

MS. POWERS:

And we absolutely intend to address the Suffolk County Legislature as a whole when it goes -- But I don't you can underestimate the influence of your recommendation to the Legislature as a whole. You are charged with studying the issue. You've had a large number of people address you primarily on the issues of the use of methoprene and other adulticides and the ditching in Suffolk County, I mean, specifically from our point of view in the Town of Southampton. And if the County is not willing to eliminate those items from the Vector Control Plan, we respectfully ask you to recommend a negative -- a positive declaration to the Suffolk County Legislature.

CHAIRPERSON ELKOWITZ:

Thank you.

LEG. SCHNEIDERMAN:

I just wanted to finish my comments just for the record to state that I do believe that the County does have the right to set pesticide policy. Like in this case and elsewhere where there's a public health concern because we do have a Health Department that makes public health decisions on a daily basis. I think we can. I just think it's a potential for challenge and it's one more reason why it would be easier for us if we were looking at various components of this work plan, you know, that which relates to flooding, that which relates to mosquito control, you know, ditching and, you know, adulticides versus, you know, organic things like DTI. It's unfortunate that we have to look at it as a whole because --

CHAIRPERSON ELKOWITZ:

We have to look at what the applicant, in this case DPW, brings us.

MR. KAUFMAN:

You realize, though, also if you did split it into a number of different pieces, you'd be creating segmentation, which is something that a lot of people disagree with.

LEG. SCHNEIDERMAN:

It wouldn't be us splitting it. It would be the department can look at, let's say, flooding control as a different program than mosquito control.

CHAIRPERSON ELKOWITZ:

Well, flooding control -- yeah, they could do that, you could have two, you could separate -- yes, that you could do. But it would be the department that would have to come before us now--

LEG. SCHNEIDERMAN:

Yes, it wouldn't be us splitting it.

CHAIRPERSON ELKOWITZ:

Right.

LEG. SCHNEIDERMAN:

Okay, thank you.

MS. POWERS:

Without eliminating those areas which have the most concern for adverse impacts to the environment, the County appears to be forcing their hand. If you don't neg dec it, they have no 2005 Vector Control Plan. They have to come back to you with something modified like a plan with no ditching or they don't do vector control.

LEG. SCHNEIDERMAN:

They have no program other than the emergency program.

MS. POWERS:

Exactly. So, I just want to make sure that the board understands our position. You ought to pos dec it if they are unwilling to consider eliminating these significant potential adverse impacts from their plan. And I know that you have the right to do that. And their alternative is to come back with another plan or to have no plan.

CHAIRPERSON ELKOWITZ:

Which is what we had them do in 2001.

MS. POWERS:

Right.

CHAIRPERSON ELKOWITZ:

That's exactly what we had them do. Okay, thank you.

MR. STROUGH:

Just in summary, this is on a more personal note, I want to thank everyone here. This is, again, my first time in front of this Council, and it's my understanding that many of you are volunteers, are appointed volunteers, and especially my friend from Huntington, thank you, because your time and energy is certainly important. And a lot of people out on the east end certainly look at some of the -- Suffolk County and some of the western activities -- or even concerns about driving in here, like Jay said, "I know the drive in here". And people just don't know. And I'm going to go back to them and tell them that, quite frankly, that there's a conscientious and concerned board or Council and that there are a number of people who are -- certainly have appeared to be reasonable people. And I certainly appreciate that.

CHAIRPERSON ELKOWITZ:

And we thank you for coming.

LEG. SCHNEIDERMAN:

And thank you for your work as a Trustee, Scott. The work that you're doing to make sure that the water quality, you know, remains pristine and, you know, that our shellfish populations are healthy.

MR. STROUGH:

Yeah. Well, my only wish is that many of the townships restore and fight and strengthen their Board of Trustees because it's certainly a part of Suffolk County's history, an important part of Suffolk County's history. And quite frankly, it's a lot of fun for the community, so --

CHAIRPERSON ELKOWITZ:

Thank you. Okay, we have to change paper so let's just -- okay, we're back on the record.

Is there something that DPW would like -- before the County starts to deliberate, is there something that DPW would like to state?

DEPUTY COMMISSIONER MITCHEL:

I am going to allow Dominick and Walt both to very briefly, hopefully, respond to some of what you've just heard. And I'd also just like to distribute a copy of an article that appeared in Sunday's Newsday which is a nice summary that I don't know if anybody -- if you all saw it. If you didn't, I'll just pass it around while they're speaking.

MR. NINIVAGGI:

Hi. Nice to be in front of the CEQ again. I was trying to take some notes of some of the various things that have been said. Some of these things, there seems to be a lack of information, lack of understanding of what the program does, in some cases a lack of understanding of what mosquito control is about.

As far as the Southold comments, there are some major errors such as the idea that salt marsh mosquitos are not involved with disease. And that has been gone over several times and that's just not correct. The idea of fresh water staying on the salt marsh the way they describe is not really the way we see it. And it's kind of unfortunate that the town would make these kinds of pronouncements about mosquito control without contacting Vector Control because we are the County experts on it. Or if they choose not to believe us we could point them in other directions. But we are there to provide technical information and to explain what we do and how we do it. And just as I'm sure there are things we could do to better coordinate with the towns and the villages and the other entities, it would be helpful if before they go on the record with various assertions and claims about vector control if they would contact us. I think communication goes both ways. It would be helpful.

CHAIRPERSON ELKOWITZ:

Dominick, as someone who makes her living probably 40% of her life representing private applicants, it's the way life is.

MR. NINIVAGGI:

True, but we can't --

CHAIRPERSON ELKOWITZ:

You can't do anything about it.

MR. NINIVAGGI:

As far as some of the comments that Larry Penny made, and I think that I'll let Walt speak about

some of the issues regarding Peconic Estuary and the transmission of pollutants. One thing I would point out is that when you look at things like, well, we have ditched marshes and we have Phragmites, some of the marshes he was talking about we haven't maintained the ditches in many, many years. The fact that there's Phragmites there, one could just as easily turn the argument on its head and say that the Phragmites is invading because we're not maintaining the ditches. Again, I think it's a case by case basis and I think it's something that needs to be looked at more scientifically.

We looked at that at Wertheim National Wildlife Refuge where their Phragmites has been extensively invading the marsh. And it's a marsh that we haven't touched the ditches in many, many years. Now, I don't know what that says, but let's keep in mind also that these ditches have been there since the 1930's. If we want to talk about eel grass in areas where there are and are not ditches, I don't -- these ditches have been there since the 30's, so obviously at one time the ditches being there didn't seem to keep the eel grass from growing. So, we need to be very careful about how we evaluate these things.

A couple of the speakers, and this seemed to be a common theme, that Vector Control should just do emergency control. Let me explain what emergency mosquito control is. What emergency mosquito control is, is waiting until you detect an imminent threat of disease and then you apply adulticides which are broad spectrum pesticides in residential areas or wetlands or anywhere else you have virus, and you control the adult mosquitoes that way. Frankly, that's the opposite of what all the authorities on mosquito control recognize as good, environmentally sound mosquito control and good environmentally sound protection of public health. Protection of public health involves preventing emergency situations and preventing imminent threats of disease rather than waiting for these to occur and then reacting at the last minute.

If you want an example of that approach, you can look at New York City in 1999 where there was no preventative mosquito control program until they literally found people sick and dying of what turned out to be West Nile Virus. And at that point they had very little option except to basically spray the entire city from one end to the other. That's exactly the kind of situation that this plan strives to avoid for Suffolk County because we recognize that an integrated program that emphasizes prevention is the correct point of view from a public health point of view and in terms of protecting the environment. I think that that's something that can't be emphasized too strongly, that all the parts of the program fit together and they're designed to support one another and each part helps to lessen the impacts of the others.

We heard a lot about Methoprene. Methoprene in this program should not be looked at as a villain. Methoprene should be looked at as a hero. Methoprene has allowed us to greatly reduce our need for treatment for adult mosquitos and especially our treatment of residential areas. And, again, it makes sense to reduce the exposure of human beings to pesticides by reducing the treatments and the need to treat residential areas. So, Methoprene has been very helpful in this regard. I have yet to see any kind of evidence that there's been any kind of significant adverse effects from our use of this material. Even some of the newer -- I've seen an abstract of Dr. _Horst's_ work. He showed a little bit lower toxicity levels for Methoprene in the laboratory. But, again, the levels he used were still far higher than what you see in the field and for far longer duration. So it's interesting work, but it doesn't break any new ground that suddenly we find out things about Methoprene that we never knew and that are huge problems.

I haven't seen exactly what study Mr. McAllister was referring to about Minnesota. It was a multi-year study, if it's the same one we're thinking of. But I know that that study had some years where it seemed to show effects, some years where it didn't; again, that's all going in to the long-term plan. None of these things are smoking guns that say, "My God, this is a terrible thing, let's forego the benefits that we get from Methoprene by reducing our need to spray peoples' homes for the sake of some unknown impact out in the marsh."

As far as the California study, yes, in fact we do not use -- there is no permethrin in the 2005 plan of work. None of the pesticides referred to in the California study are in this plan of work.

And they are very different pesticides applied in a very different way from the materials called for in this 2005 plan of work. So, again, you have a question of relevance.

Similarly, trying to compare Nassau County to Suffolk County is also more or less irrelevant because the ecological conditions are extremely different in Nassau County than in Suffolk County. In particular, Suffolk County, through the good works of the various interest groups has protected many of its fresh water and salt water wetlands. People live in close proximity to fresh water and tidal wetlands. This is by and large not the case in Nassau County. So, when you try to compare things like numbers of virus isolations, numbers of human cases, which, by the way, they've generally had more than we have, it's just an apples and orange comparison. And I'm not going to say that because they had 17 cases one year and we had 10, that proves that they should have had adulticided. It's just not a valid comparison to make.

I can't talk a lot about the issues with the Southampton Trustees, unfortunately, because we are in litigation. You know, what I will say is that we've had several very cooperative and I thought productive meetings with the trustees. I think that one of the things that we're trying to ascertain in this whole issue is whether trustee lands are even involved at all in mosquito control. My understanding is that the trustee lands go to the high water mark. Mosquitos generally breed above the main high water mark. So, I think in a lot of cases it's going to turn out that we're not even operating in trustee lands and hopefully that will make things a lot easier. Also, as I pointed out, we're not proposing under this DEC permit to do anything on trustee lands without their permission.

I wanted to clarify some things about the no-spray list. The no-spray list basically applies to non-emergency adulticiding in residential areas. It wouldn't apply to larviciding. And the Legislature has looked at this as lithaproposals for extending the no-spray list to larviciding. And what the Legislature has determined is that if you allowed somebody to say that their property couldn't be larvicided, those mosquitos would not stay on that person's property. Those mosquitos would become a problem for all their neighbors. And it was recognized that you can't have people opt out of larviciding and expect to run an effective program. And it was also recognized that the risks of these products are extremely low to people in wildlife and there really wasn't the need for a no-spray list for larviciding.

For the trustee lands, you wouldn't really need to be on a no-spray list for the adulticiding because adulticiding, if it's done in emergency, does not take place in wetlands. If there's a public health threat, we would do adulticiding in wetlands; but then that's a separate issue and the no-spray list is not involved. So, I think that there are a lot of ways that we can come to some understandings among one another in a non-adversarial way and come up with a reasonable program.

But I think that, again, there's just a lot of misinformation being put out there. There were extensive hearings and studies regarding this fishkill in Flanders. No evidence was ever presented that Vector Control pesticides were in any way involved. DEC looked into our use of pesticides and determined that we were not in violation of the label. This is continually brought up. But, again, it doesn't have a lot of meaning in terms of what the program is about. None the less, we feel very strongly that we should operate in the most environmentally sound manner possible and that's what this program is designed to do.

I think we need to also keep in mind that what you're presented with is an overall plan. It's not possible to present you at this time with every single thing we might do in the year 2005 because what we do in 2005 depends a lot on our surveillance. We don't know in many cases what we're going to be doing because we haven't seen where the mosquito breeding is. But I think that's an important thing to realize, is that everything that's in this plan is designed to be tailored to the individual situation. And not just on our say so as a vector control agency but also in consultation with people who should know like the Office of Ecology and the State DEC.

And let me just remind you, Mr. McAllister mentioned a letter from a few years ago from Karen

Graulic expressing concerns. But what he didn't mention is that in the intervening time DEC continues to give us permits for Methoprene out in the salt marsh and in other areas. So even though concerns may have been expressed in one letter at one time, their official position continues to be that the uses that we've proposed are appropriate under the State Pesticide Law and under Article 15, Protection of Waters.

So, again, I think it's important to recognize that back in 2002 we did try to scale back the program to make it -- to remove some elements that were of concern. But the idea of piecemealing the program into various components basically removes one's ability to do the right thing for the right situation. And I think that that's the important thing to do here is to look at individual situations. If there are situations where cleaning of ditches might cause a Phragmites infestation, then maybe we shouldn't clean that particular ditch. But we need to look at it on a case by case basis and you can't bring each one of those cases to CEQ right now.

I don't know if, Walt, you would like to talk a little bit about the CCMP.

MR. DAWYDIAK:

Yeah, I'd like to make a few comments, but I don't know if there's any questions for Dominick first.

LEG. SCHNEIDERMAN:

It's nice to meet you. We've spoken on the phone many times when I was Supervisor and I do appreciate your responsiveness. Luckily in those four years, through your effort and the work the Larry Penny, we actually were able to get through it without any adulticide spraying, which I think is a great achievement. And I appreciate the position you're in trying to protect the public health. I think that there are environmental concerns, ecological concerns that are valid and I think this is an important discourse to have.

Let me ask you first on this. You're using several different substances, two that have been mentioned that are larvicides or at least designed to affect the larval populations, Methoprene and BTI?

MR. NINIVAGGI:

Yes, and there's a third one called Vector Lex. It's a live bacteria.

LEG. SCHNEIDERMAN:

Okay. Alticide is not?

MR. NINIVAGGI:

Alticide is a trade name for Methoprene.

LEG. SCHNEIDERMAN:

Oh, okay, that's Methoprene. And we've heard some testimony today suggesting that while Methoprene may have some cumulative type of impacts, I guess there's some debate over whether there's an adverse environmental impact from Methoprene. It seemed that there was more support for BTI. Could you explain when you choose to one versus the other, why not just use the BTI?

MR. NINIVAGGI:

Suffolk County Vector Control was one of the first agencies in the country to use BTI back in 19 -- 1981. We actually ran a BTI only Salt Marsh Larvicide Program for about ten years. And the results were basically disastrous. BTI was not effective in keeping salt marsh mosquitos under control. And those were the years that we had to do the highest amount of adult mosquito control. In those years it was very common twice a year to have to do aerial spray of residential areas along the entire coast line basically from the Robert Moses Bridge out to Shirley. By implementing -- BTI can be effective at certain times in the salt marsh. And when it is going to be effective, we do use it. As a matter of fact, in 2004 we actually used more acres

of BTI treatment in the salt marsh than Methoprene. But on the other hand, there are situations where Methoprene is going to be the only material we have available to us that's going to effectively control salt marsh mosquitos. And in that case, I think it's far better to prevent these mosquitos from flying out into the residential areas by controlling them in the marsh than it is to just let them go the way we did when we only had BTI.

LEG. SCHNEIDERMAN:

Any clue as to why the BTI was not effective in the salt marsh condition? Was that universal or was that just in spots --

MR. NINIVAGGI:

It varies --

LEG. SCHNEIDERMAN:

-- or could it have related to application?

MR. NINIVAGGI:

What we find, it seems to have to do with temperature. It seems to work better in the spring and the fall. It has to do with the stage of the larvae in their development. It works better in the earlier stages than the late stages. And what we try to do is when we go out and we see that there's breeding in the salt marshes, we look at that situation and we make a determination, is BTI likely to be effective, is Methoprene likely to be effective. Sometimes we need to use a combination of those two. Again, these things have to be looked at based on the situation you have in front of you. There's no one material that works all the time under all situations. And -- but if you have both of these materials available to you, you're far more likely to be successful in preventing these large scale infestations of, in this case, salt marsh mosquitos.

LEG. SCHNEIDERMAN:

So you couldn't -- you don't see the possibility of a BTI only larvalcide program?

MR. NINIVAGGI:

We tried it for ten years and weren't able to make it work.

LEG. SCHNEIDERMAN:

Is that because you were getting there too late?

MR. NINIVAGGI:

What we tried to do is --

LEG. SCHNEIDERMAN:

Is that because -- I mean, I'm not trying to be critical, but is it possible that you could be more proactive? You're saying that basically the effectiveness of BTI has to do with the stage of the larval growth. And if you get their early, it's effective, if you get there late, it's not. Is it possible through administrative, you know, procedures that you can actually get this done and have it effective?

MR. NINIVAGGI:

Well, we try to do that. Very often there is only a 24-hour window or less that you have to operate with BTI. And There are also situations where people have seen treatment failures for BTI in the salt marsh and they really don't know why. They don't know whether it has to do with surface films, all kinds of things that have been postulated. But it's just not going to work at all times. You can try to fine tune it. You have to remember that we have to go out and survey about a hundred salt marsh sites in a given week. Then we have to get a contract helicopter out there. We usually get it out there the next day. Sometimes we need to go over two days. Nassau County uses the same contractor, so somehow they have to get their applications in.

LEG. SCHNEIDERMAN:

Your answer as a practical matter --

MR. NINIVAGGI:

We do what we can to use BTI because it's a good product, but administratively and practically you can't use it all the time.

LEG. SCHNEIDERMAN:

For my second comment, I want to go back to Methoprene and your statements that it doesn't appear to be, you know, have any adverse environmental consequences. It just feels like de ja vu to me because there have been so many chemicals that that has been said for, you know, recently, _Diazinon_ which is now being pulled from the shelves, which supposedly was not supposed to have an impact. We could go back to, you know, chemicals like DDT that were put into our environment believing that they were safe and later we find that they have, you know, a tragic impact. So, you know, something you can't -- nobody has a crystal ball, but we know that these chemicals are designed to kill living things and, you know, we sometimes do find later on that they have an impact and it does make sense to ere on the side of caution, certainly in certain instances.

The Last thing I want to say is let's assume that you're right. Let's assume Methoprene has no adverse impacts, it's able to kill all the mosquito larvae without introducing toxins that will affect other, you know, other insects or other marine life. What is the ecological impact just from that alone by wiping out the mosquito population? I'm assuming, though, we think of them as pests, that there's some beneficial function mosquitos play in terms of providing -- what is the word I'm looking for? Providing food for other organisms.

MR. NINIVAGGI:

Well, ironically Methoprene has a big advantage there, because Methoprene does not kill the larvae outright. Methoprene simply prevents them from turning into adults. So you're actually disturbing the food chain less using Methoprene than you are using BTI which immediately kills the larvae.

The issue -- as far as we know, there aren't any predators that are totally dependent on mosquito larvae for their subsistence because mosquito larvae and the adults are very good at avoiding predators, it's how they survive. Mosquito larvae tend to live in places where you don't have predators.

LEG. SCHNEIDERMAN:

Is it fair to assume that, you know, the larvae versus the adult, you're talking about maybe different predators, birds may be eating the adults or frogs eating the adults and other marine species eating the larvae, is that true?

MR. NINIVAGGI:

Oh, yeah. Well, it's certainly the case, it seems like the best predator for controlling mosquito larvae and mosquitos in general are fish. And one of the things that we hope to do in the coming years in our Water Management Program is to do more to encourage fish eating mosquito larvae. There are lot of myths about birds and other animals eating adult mosquitos. For instance, Purple Martins have only a very small fraction of their diet in the form of mosquitos. The same thing with bats. It's hard for a bird or another higher animal to be an obligate mosquito predator because mosquitoes come and go very quickly and an animal that depends only on mosquitoes could starve very easily.

LEG. SCHNEIDERMAN:

Okay. And I guess just lastly, whatever these environmental consequences are, and it's hard for me to say that it's possible that there are none, you obviously -- even if these chemicals aren't toxic, which I assume that they are, you do have some ecological effects by eliminating mosquitoes, but I guess in your position you're saying that the public health concerns outweigh those potential risks and this type of program needs to move forward so that, you know,

somebody doesn't die from a bite from an insect containing West Nile Virus, is that --

MR. NINIVAGGI:

Well, I think it's ultimately --

LEG. SCHNEIDERMAN:

Is that too simplified?

MR. NINIVAGGI:

Well, it's ultimately the Legislature's call to balancing those kinds of pluses and minuses.

CHAIRPERSON ELKOWITZ:

But what you are representing to the Council is that the implementation -- you are representing to the Council that the implementation of this program and the use of these chemicals would not have a significant adverse effect on the environment; that's something that you are representing.

MR. NINIVAGGI:

That's correct, that is what we do represent. You can argue that there might be some unknown hypothetical impact out there. We've tried to look at everything. We will never operate under perfect knowledge, nobody does. But it's our best judgement based on the information we have that any impacts are not going to be significant.

CHAIRPERSON ELKOWITZ:

And then it --

LEG. SCHNEIDERMAN:

Have you looked at the food chain impact; is that something you've studied?

DR. DILLON:

Hi, I'm Dr. Dillon with Public Health. I've actually sat in on several meetings where I've asked that question, if mosquitoes were eliminated off the face of the earth, what animals would starve or would be harmed. And I've heard from the various entomologists and biologists that no one would. In fact, the only person who seems to be totally dependent on the mosquito population is the Suffolk County Department of Health Entomologist. And he said he would starve, but that would be about it.

MR. FINKENBERG:

Yeah, but they are a significant food source for --

CHAIRPERSON ELKOWITZ:

You have to speak into the microphone.

MR. FINKENBERG:

But they are a significant food source for many birds, especially birds on the marshes and so on.

DR. DILLON:

What they're indicating to me is no, there's no bird that is highly dependent on the mosquitos. When we look at --

MR. FINKENBERG:

Yeah, maybe not dependent but it's awful presumptuous to say that you're going to eliminate a species and not have an impact.

DR. DILLON:

Even if we were --

MR. NINIVAGGI:

Well, I don't think we have to worry about eliminating this -- these species. What we find is that no matter what we do, you know, they come back and we have to be back out there. So, that's another thing to keep in mind is that none of the things that we do, especially in regards to pesticides, have long-term impacts on the mosquito populations. What we try to do is keep them under a reasonable level of control. But what you find is when you relax control, the mosquitos come back all too quickly.

LEG. SCHNEIDERMAN:

I would actually -- if I might -- like to hear from Larry Penny who is a naturalist and an lf biologist and an ecologist. And I think I certainly respect his opinion on this matter in terms of the ecological consequences and the elimination of the mosquito population. Larry, could you say a word on that, or --

MR. PENNY:

I would just say that there are species like dragonflies --

MS. KRAUS:

You have to come up, I'm sorry.

CHAIRPERSON ELKOWITZ:

You can go to the podium, Larry.

MR. PENNY:

Larry Penny, Natural Resources, East Hampton Town. Dragonflies, many species of dragonflies, damsel flies and so forth, are almost exclusively mosquito eaters. And we have noted, although we have not done -- that's about the only thing we haven't really studied in our marshes, the change in dragonfly population over the years. But there -- you ask any dragonfly biologist, and there's a dragonfly website and so forth, you will see that the number of dragonflies not only in terms of species but the number of dragonflies in terms of individual species, per individual species, has been going down. And the salt marsh dragonflies become very, very uncommon. We don't know that is. But there are lots of species, by the way, that eat mosquitos. Fish, invertebrates, lots of species. There are very few species that are dependent upon any one type of food. That's not the way it works. There used to be a food chain. Now it's a food pyramid. And so species use and switch from species to species in terms of pray as they become more or less abundant. So, it would be fair to say that about any species that contributes to the food chain that its elimination is not going to decrease expedientially or even maybe significantly that particular pray species. And that's pretty much an ecological principal by now and very well worked out over lots and lots of areas and many, many species. Thank you.

LEG. SCHNEIDERMAN:

Thank you.

CHAIRPERSON ELKOWITZ:

Thank you, Mr. Penny. Larry?

MR. SWANSON:

You just raised a question in my mind. What about the mosquitos building up resistance to the materials that you're using?

MR. NINIVAGGI:

You know, that -- resistance management is certainly a concern and that's one of the things that we look at in the way we use the materials. That's one reason why, even though it's very difficult to make BTI work in the salt marsh, we always make a concerted effort to use it there because we don't want to use only Methoprene in the salt marsh; because when you use one

material in a particular environment, that's when you're particularly likely to develop resistance.

One of the good things about BTI is that it's apparently very difficult, if not impossible, for mosquito larvae to develop resistance to that particular material. As far as the adult control materials, again, we use -- we do adult control in very, very limited areas in any given year. There are plenty of mosquitos that get to fly around and never see any of the adulticides that we use and they can contribute their gene pool to the population. We also have, for instance, the National Seashore which is an area where we don't do any control at all. So, those mosquitoes live their lives completely unexposed to the materials that we use except when they fly out of that area. So, it's a pool of susceptible individuals available to maintain susceptibility in our population.

But we do concern ourselves with it because we have so few materials that we can use, particularly here in New York, that we don't want to lose any of them to resistance.

CHAIRPERSON ELKOWITZ:

Mr. Dawydiak, did you have something you wanted to say to the Council?

MR. DAWYDIAK:

Yeah, thank you. Madam Chair, Members of the Council, if I could have just a couple of minutes to hit on a few points. I know it's well into lunch time and everybody is probably tired and hungry, as I certainly am.

A quick note on mosquito ecology. That's a very good question. It's something that we're addressing as part of the long-term plan, what happens to the food web and the ecology of the dynamic in the absence of mosquitos. We're scouring the literature. There's probably no easy answer to that question. We have a number of wetlands targeted as long-term study sites that we'll be looking at over time to hopefully get some of those answers. That, again, is an example of data of national significance that little Suffolk County is gathering for our brother and the country.

A quick note on fishkills. That _Prest Pond_ fishkill, I want to make a more emphatic statement than Dominick did. The chemical that was found in the fish in Flanders Bay was a pyrethrin. Pyrethrins are totally distinct chemically in terms of their signature from pyrethroids which are used by vector control. There is no dispute that the chemical that was in the fish was not the chemical that was used by vector control. Similarly, there is no dispute that low dissolved oxygen which has historically been the culprit in that area and many areas of Suffolk County waters was a likely cause of the fishkill. That was not measured so we can't say with any certainty. But that's just by way of clarification on the fishkill.

I want to make a quick note on eel grass. Eel grass decline has been discussed. Eel grass historically has been cyclical. There was a big wasting disease in the first half of the 20th Century. There is a regional decline of eel grass of unknown cause. So, whether or not _anthropogenic_ impact, human impacts, individually or cumulatively have any effect on eel grass, there's not no one in this scientific community that's understudy. We just can't say at this point. But I just wanted to clarify that this is not specific to areas near vector control ditches. It is a regional and a national issue.

The Open Marsh Water Management Studies that were done in the Town of East Hampton -- I mentioned this last time, I'll mention it again since there are some new faces here -- it's been probably over a decade since I've looked at that work. I do know it was a great effort to institute Open Marsh Water Management. I also recall that the State Department of Environmental Conservation conditionally reopened some of the waters in proximate areas to the Open Marsh Water Management. That was potentially as a result of increased monitoring. The State historically has not monitored it in all areas frequently. On more frequent monitoring they were able to justify conditional reopenings. There was not sufficient preimplementation monitoring from the perspective of the Health Department to conclude that there was an actual

improvement in water quality; just, again, by way of clarification.

Do animals defecate in the marsh? Yes. Are you likely to see levels of fecal coliform in the marsh, which also happens to be a pathogen indicator? Yes. Do the ditches significantly impair receding water qualities above and beyond storm events or tidal overwash? We don't know the answer to the significance of that. We've looked at the literature. There is no clear indication. It's another one of those areas of a long-term plan. It may wind up being case by case. It's an area that we are collecting data on but that we don't have an answer for as of now.

I want to clarify that the long-term plan is related to but entirely distinct from the Annual Plans of Work. It's also independent. The Legislature decided to pull funding from this long-term plan. We contend in the Health Department that this would have absolutely no impact on your review of the Annual Plan of Work. A long-term plan is a scientific study well above and beyond any SEQRA requirement. We're looking at a full scale of water management alternatives, chemical and non-chemical controls and other management issues like geographic information systems and long-term monitoring. We committed early on to do an EIS, a generic Environmental Impact Statement for that plan. A large part of that was administrative efficiency so that the consultant could concurrently work on the EIS while working on the plan. But again, those are actually and functionally entirely interdependent. Again, it's data of national significance. And we in the Health Department don't believe that the annual plan should be held hostage for this long-term data collection that obviously you'll agree was never the idea of SEQRA review of individual actions.

I want to make a quick note about impacts of ditching that I don't think has been emphasized today. This ditch system has been around since the 1930's. A whole lot of things have changed since then. The sea level has risen. We've anchored the upland and the buffer with development. The natural dynamic of the marsh has entirely changed and the ability of the marsh to respond to changes in nature has changed. There's no question that if all of us were around in the 1930's, we would not have grid ditched this system as we did today. We would have implemented more environmentally sound open marsh water management practices. We've inherited this legacy. We're going to do our best to reverse engineer these marshes to a more natural state which results in less mosquito breeding, a more ecologically sound and natural system and less chemical usage. This is going to be done on a case by case basis where we get a universe of marshes, which are going to be subject to Open Marsh Water Management. Hopefully some of them can revert naturally. But what we have to be careful of is adverse impacts of no action. Haphazard decay of the existing ditch system may well result in fresh water impoundment. The DEC has expressed its concerns about this. We in the Health Department have concerns about this. Fresh water impoundment can result in Phragmites invasion. It can even result in drowning of vegetation. So preservation of the status quo with a carefully controlled ditching program from our perspective is the most prudent option while we continue to evaluate long-term alternatives.

A quick note about the Peconic Estuary Program. At various junctures statements are taken out of context and potentially misrepresented. I just wanted to again emphasize that we are entirely consistent with the Peconic Estuary Program recommendation of not ditching areas which have never been ditched and not reditching areas which have been reverted. There are various safeguards to implementation of this recommendation both at the DEC level and the County Health Department level. We're also harmonizing this recommendation with Open Marsh Water Management, which is hard because sometimes that relies on ditches. And we're also looking to reduce chemical usage. Again, no action in the marshes may well result in an increased requirement of chemical usage, which would be another example of a significant adverse environmental impact associated with not adopting this plan.

One other note about the Memorandum of Understanding with ecology and also the way the DEC reviews case by case submissions on water management. There's been a representation that this somehow violates SEQRA by delegating it. Again, from our perspective, this is just quality assurance on the operation of the program. This Annual Plan of Work is significantly

scaled back from the ones that you saw prior to 2002, far less water management, far more checks and balances and safeguards, fewer chemicals, setbacks. They continue to get even more and more restrictive. We in the Health Department recommended for the 2002 plan that it warranted a Negative Declaration. This body recommended that as well. From our perspective, we have not seen environmental data since that time which would warrant otherwise. And we urge you to recommend a negative declaration for this Annual Plan of Work as well.

Thank you for your time and patience. If there's any questions, I'd be happy to answer them. Mr. Swanson?

MR. SWANSON:

Walter, you mentioned the fishkill, I guess, that was in Flanders. And in all likelihood, the fact I guess that it was due to hypoxia. Can you tell me in what capacity dissolved oxygen plays a role in the degradation of the materials that you've used in the mosquito program?

MR. DAWYDIAK:

Whether dissolved oxygen plays a role in the degradation of like Resmethrine or Methoprene or those chemicals?

MR. SWANSON:

Right.

MR. DAWYDIAK:

I don't know the answer to that offhand. Perhaps Dominick does.

MR. NINIVAGGI:

I don't know if it has any effect at all, you know, particularly in this case. It was Resmethrin. You would expect most of that to breakdown before it even got into the pond because of the rapid degradation of that material. So I don't know if dissolved oxygen would have much of an effect one way or the other.

MR. SWANSON:

So it's your opinion that dissolved oxygen is in no way diminished by the application of Resmethrin?

MR. DAWYDIAK:

Well, what you're suggesting is that there's some sort BOD associated with the organic chemical that lowers DO?

MR. NINIVAGGI:

Oh, no. The amounts of material that we use are miniscule. You're talking -- Resmethrine, for instance, you're talking about a total spray volume of six-tenths of an ounce per acre. And, again, a lot of that doesn't even reach the ground. So, there's not enough material there to have a biological oxygen demand.

CHAIRPERSON ELKOWITZ:

I've been asked by one of the Council members just for a two minute break, and then we'll come back.

LEG. SCHNEIDERMAN:

I had a question. Could I ask my question first?

CHAIRPERSON ELKOWITZ:

Go ahead, you wanted to ask a question and then we'll do it? Sure.

LEG. SCHNEIDERMAN:

Also for Walter. I guess let me preface by saying how much I respect your work that you've done with the Peconic Estuary and other work for the County. I think you stand out in your field and I think the County is very fortunate to have somebody of your caliber.

I assume that you were intimately involved in development of this work plan; is that correct?

MR. DAWYDIAK:

Yes, I drafted the -- I'm sorry, this is the Annual Plan of Work. I've been involved in drafting of the Memorandums of Understanding as well as reviewing the work plan and providing input to it.

LEG. SCHNEIDERMAN:

Would you say that -- would it be fair to say that this plan represents a balancing of environmental concerns and public health concerns; is that a fair statement?

MR. DAWYDIAK:

Yes.

LEG. SCHNEIDERMAN:

Okay. Now, it is before us to make a SEQRA declaration. Are you contesting -- you're not contesting that is a Type I Action; is that correct?

CHAIRPERSON ELKOWITZ:

It's clearly a Type I Action.

LEG. SCHNEIDERMAN:

Okay.

MR. DAWYDIAK:

No, we've conceded to the DPW and the Legislature are the leads on this and that it is a Type I.

LEG. SCHNEIDERMAN:

Do you believe that within it, you did just say it was a balancing, although I put the words in your mouth, of both public health and environmental concerns, do you think that there is a potential for any adverse impacts to the environment from this plan?

MR. DAWYDIAK:

I think Dominick stated it well when he said that our state of knowledge of environmental impacts as well as science is just imperfect and it continues to evolve. Whether there are any adverse impacts at all, whether there have been any is not always certain to know. I mean, based on all the environmental information that we have, there's no likelihood of the substantial adverse environmental impact is what we represent, I believe, as a threshold.

LEG. SCHNEIDERMAN:

Okay, of a substantial adverse impact. Because what we are tasked with -- and the Chair can correct me if I'm wrong on this -- is whether there may be adverse impacts.

CHAIRPERSON ELKOWITZ:

The threshold -- and I can read it to you verbatim if you want. Whether there --

LEG. SCHNEIDERMAN:

Yes, I would like that.

CHAIRPERSON ELKOWITZ:

You want me to read it verbatim?

LEG. SCHNEIDERMAN:

I would like that because it --

CHAIRPERSON ELKOWITZ:

I'll read it to you verbatim.

LEG. SCHNEIDERMAN:

-- because it could effect the decision.

CHAIRPERSON ELKOWITZ:

"It's whether a Type I or Unlisted Action may have a significant adverse impact on the environment". That's the threshold.

LEG. SCHNEIDERMAN:

May have a significant --

CHAIRPERSON ELKOWITZ:

Adverse impact on the environment.

LEG. SCHNEIDERMAN:

Okay. And it's your opinion that there -- there's no potential for a significant adverse impact on the environment from this work plan; is that correct?

MR. NINIVAGGI:

Well, what I did is -- that's what the EAF is for. And I went through the EAF and answered the questions in consultation with the other County officials and we came to the conclusion that none of the adverse impacts reached thresholds for a positive declaration.

LEG. SCHNEIDERMAN:

Okay, thank you.

CHAIRPERSON ELKOWITZ:

So, we're going to take just a two minute break and we'll be right back.

*(*The meeting was reconvened at 12:40 P.M. *)*

[SUBSTITUTION OF STENOGRAPHER - DONNA CATALANO]

CHAIRPERSON ELKOWITZ:

I'm going to call the meeting back to order. I understand there are two more very brief statements that we want to make, then I'm going to actually call for the CEQ to deliberate.

DEPUTY COMMISSIONER MITCHEL:

Dr. Dillon would like to speak.

DR. DILLON:

Actually I'd like to address a couple of issues that I heard come up earlier in the meeting. The first one that scares me the most is bats. Five percent of the bats that we capture in Suffolk County are rabid. And I treat every summer over 40 to 50 people for bat exposures. What happens is -- it's kind of interesting, bats are the -- an unusual animal that keeps rabies alive in the world. They can survive and transmit the virus for well over a year, year and a half. A cat or a dog, once they become so infected with the rabies virus, their throat closes down, they can't swallow, they can't drink, they starve, usually die of dehydration within ten days.

LEG. SCHNEIDERMAN:

So you say bats have no useful purpose either?

DR. DILLON:

No, they do, they do. But I don't want to bring them in close proximity to people. And that's also not a solution to our mosquito problem. They have done studies looking at bats to say, well, you know, gee, without bats would we have a greater incidence of mosquito population? Bats would choose to eat bigger things, like moths rather than spend a lot of energy chasing after one small mosquito, so -- you're smiling at me.

LEG. SCHNEIDERMAN:

I'm not going to bring Larry Penny back up.

MR. FINKENBERG:

But what about the -- you know --

MR. KAUFMAN:

The BLA may get very upset with him. The Bat Liberation Army.

DR. DILLON:

Yes, they will.

LEG. SCHNEIDERMAN:

Maybe we should introduce some giant spider to go after mosquitos, some African -- we'll have other ecological problems.

DR. DILLON:

But I do want to point out that people die of rabies every year, okay. And in fact, we had one regionally in the '80s, a little girl. And it turned out that the virus that was found in her body matched the DNA from a silver haired bat. So, the conclusion was that that bat was actually in the attic of her house. So, if you wake up, and there's a bat in your room while you've been sleeping, if you don't capture that bat, you let it go out the window, then I'm obligated to treat for post exposure of rabies. So, I'm not in favor of bringing people in contact with bats. I don't like people handling bats. And I would prefer not to do that. I don't see that as a solution to the well thought out Vector Control Program.

The second thing is education. We in the Public Health Department have tried to do everything we can for education. We do have people that go into the schools. We put out pamphlets in the libraries. We have a bilingual educator who will go and work with those who are at greatest risk for these diseases; the day-laborers, people who are working outside. We also educate people continuously about emptying their gutters, the pots -- the overturned pots in their backyard, etcetera. I think education can only go so far. We also have to look at the benefits and risks of allowing mosquito breeding to go unchecked. And I fully believe that from a public health perspective, that the proposed 2005 Annual Vector Control Plan is not only appropriate, but it is essential. We really need to continue this plan. Also, looking at one other issue someone brought up was -- their suggestion was let's only target pools that are shown to be virus positive. So, we will wait until we find a virus present in a mosquito pool, then we will go and treat that area. Well, that's actually impossible. If you had that -- if that was your only plan, it would fail for several reasons. The technology is very slow. When we set up traps, we collect mosquito pools. We have only one laboratory we can use right now. So, as you noticed last fall, we ended up getting Eastern Equine Encephalitis results thirty days after we had collected that pool. So, if we were to wait that long, Eastern Equine Encephalitis is about 90% fatal to children. It's shown that it will occur in Nassau County. We have seen it multiple times over the past decade. It will set up shop here if we allow it to go unchecked. So, therefore, I really believe that this Vector Control plan should go through.

LEG. SCHNEIDERMAN:

Just on that issue alone. You have now changed our testing laboratory; is that correct?

DR. DILLON:

We tried.

LEG. SCHNEIDERMAN:

Not yet?

DR. DILLON:

We wanted to find a testing lab --

LEG. SCHNEIDERMAN:

So that we could get results faster than thirty days. This is such a big concern. Thirty days is way too late.

DR. DILLON:

I agree. It still is. Right now we've got it down to about two weeks for West Nile Virus.

LEG. SCHNEIDERMAN:

But that's not as deadly as Eastern Equine Encephalitis.

DR. DILLON:

Right. It's still -- and that's still a problem.

LEG. SCHNEIDERMAN:

Could you please fix that?

DR. DILLON:

We don't have a local testing lab. We compete against 60 other counties when we are sending specimens to Albany.

LEG. SCHNEIDERMAN:

I thought we approved some money to do something at Stony Brook where they were going to do this testing; is that not happening?

DR. DILLON:

Yes, we actually proposed that, and then the plan fell through. Stony Brook wanted the money up front. They didn't want to accept it on a test by test basis.

LEG. SCHNEIDERMAN:

Nobody has told the Legislature that that plan fell through. So, come up with another plan.

DR. DILLON:

I wish I could. We need a level three lab in order to do this type of testing. We would be in favor of building a level three lab and running this on a County wide basis. That would be a long term plan.

LEG. SCHNEIDERMAN:

Why don't you make a proposal.

DR. DILLON:

Good.

MR. SWANSON:

May I ask since I work at Stony Brook, I'm interested in who shot the plan down; not necessarily the person, but was it because you were developing an MOU?

DR. DILLON:

It was in the MOU phase that they wanted to have payment ahead of time, and that's something that -- it's some type of technicality that was not agreeable to both sides.

MR. SWANSON:

We've had that problem with the State. And we've been able to overcome it. Perhaps, you know, we can talk and see about how we could overcome it in this particular case.

DR. DILLON:

Oh, that would be wonderful.

MR. BROWN:

What about Brookhaven National Lab?

DR. DILLON:

I don't believe they have a level three laboratory. Level three actually indicates that you're allowed to handle live virus that is potential pathogen. And certain viruses fall into that category such as Eastern Equine and West Nile.

LEG. SCHNEIDERMAN:

What about Plum Island?

DR. DILLON:

Sounds wonderful. They're not interested.

CHAIRPERSON ELKOWITZ:

Was there another statement that someone wanted to make?

MS. KOHN:

I'd just like to make two points. One is just to reiterate that public health is a concern of SEQRA and something that you are obligated to take into consideration in your deliberations; that not doing Vector Control is also a SEQRA-able action. And also I'd just like to reiterate that our office has issued an opinion stating that in the County Attorney's opinion that consideration of the 2005 plan does not constitute segmentation. The 2005 plan is an independent and stand-alone plan. The contents of the long term plan are speculative.

We believe that the dictates of SEQRA have been followed with respect to this plan and will be followed, so there's no evasion of SEQRA. And in conclusion, even if this were segmentation, we believe that the public health needs and the other factors stated in the EAF justify -- would justify such segmentation. Thank you.

MR. JEFFREYS:

My name is Christopher Jeffreys, Assistant County Attorney. During the past few years, I've been able to become involved as we proceed through the litigation process and the appellate process concerning the various Vector Control Plans that have been presented to this body.

Presently, and I believe Mr. Legislator, the issues that you raise concerning environmental versus human issues is of key concern to our Appellate Court also. The Appellate Division of our Department has issued a stay permitting the County to continue its Vector Control activities due to the potential for vector borne diseases in different humans throughout this County. And I believe Assistant County Attorney Kohn is correct, that, yes, we have to balance the environmental concerns with the public health concerns. And from viewing all of our precedent that we have in this state, the presentation of the issues to the Appellate Division in our Department and the issues that we have here in the 2005 plan, not only is this not segmentation as Ms. Kohn said, but it affects the necessary balance between environmental concerns and realistic public health concerns.

Who wants to be the person to say we are not going to do Vector Control activity? Who wants to be the person to say we are going allow vector control and vector borne illnesses to be rampant throughout the County? Who wants to be one to say to the families of someone who dies, we're sorry, we could have done something, but we won't? Those are the issues that the Appellate Division are grappling with now. Those are the decisions and the issues that the Appellate Division have found, yes, the County does have to continue its vector control activities pursuant to a stay.

CHAIRPERSON ELKOWITZ:

Just to clarify a few things. You understand that this board's charge is very simple.

MR. JEFFREYS:

Yes, it is.

CHAIRPERSON ELKOWITZ:

It's to make a recommendation under SEQRA. My understanding and the decisions that the County has gotten is there has been no court of competent jurisdiction that has made any determination regarding segmentation; isn't that true?

MR. JEFFREYS:

There are -- there was some discussion in the 2002 decision concerning segmentation. There has been no decision at this point on the 2003 and reenacted into the 2004 Plan concerning segmentation. That was briefed, and that is in the Appellate Division presently. That was raised in opposition to our stay application when we requested continued permission to spray. For whatever reason, whether the Appellate Division tacitly denied it or there was an actual understanding of the issues, and they said no, this is -- this is either not segmentation or it is permissible segmentation --

CHAIRPERSON ELKOWITZ:

Right. But my recollection is they didn't discuss the issue in their decision.

MR. JEFFREYS:

They didn't have to discuss it because the public health threat was so overwhelming.

CHAIRPERSON ELKOWITZ:

Right. And that may be that case. But you understand that this board just makes clearly a SEQRA determination. We're not the policy maker, we're not the decision maker. And my understanding of the regulations and the case law is that it's the decision maker that has to weigh and balance environmental impacts against public policy and social and economic considerations.

MR. JEFFREYS:

Correct. But even in a SEQRA determination, there is, according to the statute and regulations, a public health element that has to be considered --

CHAIRPERSON ELKOWITZ:

Oh, absolutely.

MR. JEFFREYS:

-- by our initial bodies as well as the lead agency in the case.

CHAIRPERSON ELKOWITZ:

Well, it's a criteria for determining significance, too.

MR. JEFFREYS:

Yes.

CHAIRPERSON ELKOWITZ:

The impact on public health is one of the criteria that is listed in the regulations.

MR. JEFFREYS:

Absolutely.

CHAIRPERSON ELKOWITZ:

Okay.

LEG. SCHNEIDERMAN:

Mr. Jeffreys, maybe I'm misinterpreting what you said, but in discussing the stay that's been issued, does that imply that, you know, irregardless, I guess, of our determination should we decide that this is a positive declaration, that that County Vector Control Program would continue on -- at least the continuation of the '04 Program would continue into '05?

MR. JEFFREYS:

No.

LEG. SCHNEIDERMAN:

No?

MR. JEFFREYS:

The stay issued by the Appellate Division permits the County to operate under the State West Nile Virus Response Plan until the end of this calendar year, December 31st, 2004. Effective December 31st, 2005, which we should have an oral argument time by that date, the stay would expire because our letters of threat from the Department of Health would expire on December 31st.

LEG. SCHNEIDERMAN:

I'm sorry, on what date would it expire on?

MR. JEFFREYS:

December 31st, 2004.

LEG. SCHNEIDERMAN:

2004.

MR. JEFFREYS:

But it does expire at that point, because that's when the threat would expire also.

LEG. SCHNEIDERMAN:

So a positive declaration could, in fact, shut down the Vector Control Program then?

MR. JEFFREYS:

Yes, it could.

LEG. SCHNEIDERMAN:

That's a serious concern.

MR. JEFFREYS:

That is a very serious concern.

CHAIRPERSON ELKOWITZ:

Does everybody have their questions answered? Thank you.

I have -- I have before you, and this is something that I raised with Jim Bagg one day sitting

when I was sitting in my office, because this is a Type I Action, I was curious as to whether or not the County initiated the proper lead agency coordination. And Jim called over to DPW. And subsequent to that conversation, lead agency coordination letters were sent out to the New York State Department of Environmental Conservation, the New York State Department of Health, Suffolk County Department of Health Services. And it's dated October 25th, 2004. So just the lead agency coordination letter specifically says, please respond to this request within 30 days of the date of this letter. If no response is received within 30 days, we will assume that you have no objection to Suffolk County or another agency assuming the role of lead agency and have no comments to offer regarding the proposed action at this time.

So in whatever we discuss, you should understand that the agencies have until November 25th -- and they know that they have until November 25th -- to offer commentary and/or to object to a lead agency. With regard to objection to lead agency, given my past experience, I find it highly unlikely that anybody is going to object. But from a procedural standpoint, the County is not even serving as lead agency at the moment. So you should all be aware of that.

LEG. SCHNEIDERMAN:

Would it be premature, then, to make a SEQRA declaration?

CHAIRPERSON ELKOWITZ:

Well, to make a SEQRA declaration, certainly. The lead -- the lead agency is the Suffolk County Legislature. And they could not make a declaration prior to that. What is bothering me is not the lead agency declaration so much; is that this letter went out seeking commentary from an agency that we do know -- well, at least one agency that we do know is interested, and that's the DEC. Whether or not they'll comment, I don't know, but today's not November 25th.

MR. KAUFMAN:

So basically also, we would be operating in a vacuum at this point in time without the advice.

CHAIRPERSON ELKOWITZ:

I don't know if it would be totally in a vacuum, but we would not have the commentary of the DEC. I don't have any commentary from the DEC or the State Department of Health. Obviously the Suffolk County Department of Health is represented.

LEG. SCHNEIDERMAN:

And making a decision without those potential comments would be hasty?

CHAIRPERSON ELKOWITZ:

My feeling -- well, it could be -- it could be hasty. Normally -- we have -- I'm not going to say that the CEQ has never made a recommendation or never offered a recommendation while we were awaiting a close of a lead agency coordination period. We have. And we have clearly stated in our recommendation that the coordination period hadn't closed, and we cautioned the Legislature regarding that. But on something with this level of significance, this level of controversy, and this level of litigation, I'm not so sure that this is something that would behoove the County or public policy to do. The only alternative that we would have is to discharge it to the Legislature without recommendation.

MR. KAUFMAN:

In other words, classify as a Type I and just discharge without a neg or a pos dec?

CHAIRPERSON ELKOWITZ:

Yes.

MR. KAUFMAN:

Could we attach recommendations other than the neg and pos dec?

CHAIRPERSON ELKOWITZ:

No. I wouldn't do that. Why would you do that? It's without a recommendation. You would discharge it with no recommendation.

LEG. SCHNEIDERMAN:

On the time frame of this --

CHAIRPERSON ELKOWITZ:

Yes.

LEG. SCHNEIDERMAN:

We've heard one date of December, I guess, 31st deadline when this work plan expires. The County in its Vector Control Program, I'm assuming it's mostly -- it starts in the springtime? Am I wrong? Is there winter work that happens as well?

DEPUTY COMMISSIONER MITCHEL:

The water management work begins right away.

LEG. SCHNEIDERMAN:

Okay.

DEPUTY COMMISSIONER MITCHEL:

The preventive work.

LEG. SCHNEIDERMAN:

All right. So, if we don't move this along, it could potentially impact your work? It could be a lapse between --

DEPUTY COMMISSIONER MITCHEL:

The Legislative calendar --

LEG. SCHNEIDERMAN:

The program can't be frozen for a certain period or time.

DEPUTY COMMISSIONER MITCHEL:

Right. That's correct.

MR. MALLAMO:

But there's only two more meetings.

DEPUTY COMMISSIONER MITCHEL:

Right. The Legislative calendar is tight at this time of year, so we really are anxious to get it to them.

LEG. SCHNEIDERMAN:

I think you only have --

DEPUTY COMMISSIONER MITCHEL:

There are two meetings in December. It's very tight.

LEG. SCHNEIDERMAN:

There's two committee cycles. It's very tight though. Because, I mean, it sounds like, you know, the sentiment is to move this from this committee directly to the Legislature. It makes a lot of sense. In the past, the Legislature -- the things that have come before the Legislature in terms of SEQRA declarations have -- at least since I've been there -- have been fairly obvious

declarations, minor projects.

This is something that obviously has a lot more attention to it. Ultimately, the Legislature is the decision making body. My -- this would go to the Environment, Planning and Agriculture Committee, which I'm going to guess they will also boot this up to the full Legislature because of the same considerations. So, that would probably end up some time mid-December in front of the Legislature. And you'll be back to making full presentations in front of the full Legislature, I'm sure yourselves and many of the other individuals who have presented. Want to make a motion?

CHAIRPERSON ELKOWITZ:

Someone can make a motion.

MR. KAUFMAN:

I'm going to make a motion on this one. I made this motion last month because I saw a lot of these problems. I'm going to make a motion that this be classified as a Type I Action and that it simply be discharged without recommendation to the Suffolk County Legislature.

CHAIRPERSON ELKOWITZ:

Do I have a second?

MR. MALLAMO:

I'll second, because I think I seconded it last time.

CHAIRPERSON ELKOWITZ:

Okay.

MR. KAUFMAN:

Guilty by association.

CHAIRPERSON ELKOWITZ:

All those in favor? And I'm going to actually ask you to put your hands up just in case. In favor? Opposed? I have one opposed. Mr. Swanson is opposed. Six in favor, one opposed, no abstentions. Motion carried. (6-1-0)

MR. KAUFMAN:

I'd like to make one comment to the assembled forces of the Department of Public Works and the Department of Health, etcetera. While this does not form in any way, shape or manner a part of any recommendation --

CHAIRPERSON ELKOWITZ:

Independently. These are not the recommendations of the CEQ.

MR. KAUFMAN:

Correct. This is something that I would simply like to comment upon. We've heard a lot around here in the last couple of hours regarding fecal coliforms, stormwater runoffs, etcetera -- actually, withdrawn. I'm not going to make that statement.

CHAIRPERSON ELKOWITZ:

Do I have any CAC concerns? I have Historic Services.

MR. MARTIN:

I just want to announce the date for our next Historic Trust Committee Meeting. It will be December 7th at 9:30 to be held at Meadow Croft County Park in Sayville. And we'll be reviewing the housing program in the Suffolk County Parks Department.

MR. KAUFMAN:

Could we get written notice of that?

MR. MARTIN:

Yes, you will.

LEG. SCHNEIDERMAN:

Is that the same body as CEQ?

MR. MARTIN:

It's a committee that reports to the CEQ.

CHAIRPERSON ELKOWITZ:

CEQ serves as the Historic Trust. There's a committee that -- any other business? I have no other business. Motion to adjourn, second.

Happy Thanksgiving.

(THE MEETING WAS ADJOURNED AT 1:05 P.M.)

denotes spelled phonetically