COUNTY OF SUFFOLK
DEPARTMENT OF PLANNING
COUNCIL ON ENVIRONMENTAL QUALITY

HELD AT:
ROSE CARACAPPA LEGISLATIVE AUDITORIUM
WILLIAM ROGERS LEGISLATURE BUILDING
VETERANS MEMORIAL HIGHWAY
SMITHTOWN, NEW YORK

NOVEMBER 9, 2006
2:00 P.M.

Court Reporter:
Lori Anne Curtis
APPEARANCES:

MEMBERS OF THE COUNCIL:

LAWRENCE SWANSON, Chairperson
MIKE KAUFMAN, Vice Chair
STEVE BROWN, Member
JOHN E. POTENTE, Member
LAUREN STILES, Member
MARY ANN SPENCER, Member
GLORIA RUSSO, Member
VIVIAN VILORIA-FISHER, Legislator, Member
ENRICO G. NARDONE, Member
DANIEL PICHNEY, Member
JAMES R. BAGG, Staff
PENNY KHOLER, Staff

ALSO PRESENT:
NICHOLAS GIBBONS
Senior Environmental Analyst
Department of Parks, Recreation & Conservation

LAURETTA FISCHER
Principal Environmental Analyst
Suffolk County Department of Planning

DOMINICK WINIVAGGI,
Superintendent, Department of Public Works
Vector Control
APPENDICES:
(Continued)

WALTER DAWYDIAK, JR., P.E., J.D.
Chief Engineer
Department of Health Services
Division of Environmental

DR. PATRICIA DILLON
Medical Director
Communicable Diseases
Department of Public Health Services

CHRISTOPHER JEFFREYS, ESQ.
Assistant County Attorney
Suffolk County Attorney's Office

JENNY KAHN, ESQ.
Suffolk County Attorney's Office

RALPH BURKOWSKI
Landscape Architect
Department of Public Works

ROBERT DEBONA
President,
Mastic Beach Property Owners Association

GERALD LUDWIG
Vice President
Mastic Beach Property Owners Association

ED MOONEY
President East End Wireless
Montauk Fire Department

JOY MOONEY
Vice President East End Wireless
Montauk Fire Department

CAPTAIN ED ECKER, JR.
East Hampton Town Police Department

THOMAS J. POTTER
Senior Account Manager
Motorola
APPEARANCES:
(Continued)

RONALD LASLEY

LARRY MERRYMAN
Conservation Chair
Great South Bay Society

KEVIN McALLISTER
Peconic Bay Keeper

MATTHEW ATKINSON
General Counsel
Peconic Bay Keeper

GEORGE PROIOS
Chairman
S.C. Soil and Water

KIM SHAW
Principal Environmental Analyst
Department of Health Services

JOHN REICHLING

PHILIP DEBLASI
Environmental Analyst
SCDEE

VITO MINEI
Director, Environmental Quality
Department of Health Services

CATHERINE STARK
Legislative Aide
Represents: Leg. Schneiderman

DAVIS TONJES
Cashin Associates

BOB McMALY

KASEY JACOBS
Program Coordinator
Citizens Campaign for the Environment
A P P E A R A N C E S:
(Continued)

ILIA ROENLIN
Entomologist
Department of Public Works - Vector Control

MARY DEMPSEY
Biologist
Department of Public Works - Vector Control

CHIEF CHARLES GRIMES
Montauk Fire Department

DAWN REILLY
District Secretary
Montauk Fire Department

MICHELLE WILLIAMS
Deputy Refuge Manager
U.S. Fish and Wildlife Service

RICHARD WHITE, JR.
Treasurer
Montauk Fire Department

*** All other interested parties
CEQ Meeting - November 9, 2006

(***THE MEETING WAS CALLED TO ORDER
AT 2:03 P.M.***)

CHAIRMAN SWANSON: Good afternoon. I'd like to call the November CEQ meeting to order, and first I'd like to go over the minutes.

We're looking at the minutes of July 19th and August 9th. They were available supposedly on the website. Does anybody have any comments?

MR. BAGG: Also the October 18th minutes.

CHAIRMAN SWANSON: And the October 18th minutes as well.

MS. RUSSO: There are a few small mistakes, as far as people's names and they didn't correctly spell out what exactly "OMWM" is. They changed it and they kept using the word "market," instead of "marshes."

CHAIRMAN SWANSON: So would you give your marked-up copy to the stenographer, and she can correct it appropriately?

MS. RUSSO: Yes.
CHAIRMAN SWANSON: Are there any other comments anyone would like to note?

(No response.)

CHAIRMAN SWANSON: Do we have a motion?

MS. RUSSO: I'll make the motion.

CHAIRMAN SWANSON: Do we have a second?

MR. KAUFMAN: I'll second.

CHAIRMAN SWANSON: All in favor?

(Whereupon, those in favor respond in the affirmative.)

CHAIRMAN SWANSON: Opposed?

(No response.)

CHAIRMAN SWANSON: Motion carried.

Thank you.

Correspondence. Jim, you are you were going to comment on that.

MR. BAGG: Yes. I would point out for the members that there is correspondence in your packet. There's an November 8, 2006 letter from Larry Penny, the director of the Environmental Preservation Department in East Hampton, regarding a GATR site and ospreys;

There's an October 17, 2006 letter from
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the Village of Sag Harbor. They bring up
the issue of local waterfront
revitalization planning with respect vector
control;

There's an October 18, 2006 letter from
Jeanette Macleod regarding mosquito
infestations in her backyard;

There's an October 18, 2006 memo from
Mike Kaufman pertaining to Mr. Potente's
wetland presentation;

October 23, 2006 letter from
Mr. Potente concerning the 2007 Vector
Control Plan of Work and what issues should
be covered;

An October 30, 2006 letter from New
York State DEC regarding the 2007 Vector
Control Plan of Work;

A November 3, 2006 letter from
Legislator Romaine asking certain SEQRA
questions regarding the 2007 Vector Control
Plan of Work, and;

A November 8, 2006 memo from
Mr. Dawydiak transmitting the FGEIS, which
was received in the council office, and I
believe copies of that GEIS on disk were
overnighted to the council members.

CHAIRMAN SWANSON: Thank you.

Just to remind everybody in the
audience that this is a public meeting and
you are more than welcome to make a
statement and participate. I have one
individual who has requested to speak on
behalf of the Vector Control Plan or --
speak about it; I wouldn't say, on behalf
of it -- and when we get to that section,
we will provide you the opportunity to do
so.

Jim, what about the recommended Type 2
actions, "Ratification of Staff
Recommendations for Legislative
Resolutions"?

MR. BAGG: Basically, there are none.

There was no packet that was laid on the
table, so this month is kind of a non-issue
in terms of the packet. There will be one
next time.

CHAIRMAN SWANSON: Thank you.

Next, "Proposed Installation of
Good afternoon.

MR. GIBBONS: Afternoon.

CHAIRMAN SWANSON: State your name for the record, please.

MR. GIBBONS: Nick Gibbons, County Parks Department.

Dick, come on up.

(Mr. White complies.)

MR. GIBBONS: I just want to start by going through the packet that I sent to you. The requests came about as a result of a letter we received from the Montauk Fire District. That's your first attachment, the letter dated April 17 of '06 to Commissioner Ron Foley from the chairman of the district, John Salmon.

The second attachment is an aerial of the GATR site that shows -- north of it across the top of the page -- shows the approximate orientation of the proposed site for the emergency communication
installation. It's a 60-by-75-foot rectangle, and it's shown in relation to the two existing buildings that we have up at the GATR facility.

The third attachment labeled "Infinity Engineering; Lease Exhibit Plan," shows the same approximate area -- 60-by-75 foot -- and shows approximately five equipment shelters and the two monopoles to be installed in that perimeter area.

The forth attachment is a rendering of a view from the GATR site road looking up at the existing site with the addition of the two monopoles, and I'll come up, if necessary, to point out which two those are.

And the final attachment is the short EAF. It lists the two 80-foot monopoles, the five electrical cabinets, and the perimeter fence around that 60-by-75-foot, or approximately .10 acre, of area.

And I brought with me today, Dick White. He's our trustee from the Town of East Hampton. He's also the treasurer of
Montauk Fire District.

MR. WHITE: Fire department.

MR. GIBBONS: I'm sorry?

MR. WHITE: Fire department. We do have the treasurer from the district here, but I'm from the department.

MR. GIBBONS: And I brought him here to speak to the need, the local need, as to the use, and to answer any questions.

CHAIRMAN SWANSON: Please, go ahead.

MR. WHITE: I'm sorry I'm late.

The cover picture was taken just a couple days --

CHAIRMAN SWANSON: You are going to have to speak into the microphone.

MR. WHITE: Okay.

On the cover, you will see the site as it is today. Those poles were put up in the '50s. They are over 50 years old. They are 80 feet tall each. If you go to Page 2, it's a computer generated picture of the tip of Montauk, and all the way on the left, you will see a little button that says "signal source," and then about
approximately in the middle, you will see
where it says "GATR" -- G-A-T-R -- "site."
And this is where we'd like to put the two
monopoles.

The problem that we have right now is
the signal that comes out on the signal
source on the left is blocked by Fort Hill.
So the signal is very, very poor in the
Lake Montauk area, which is the body of
water between those two points. Also,
there is very little signal east of
Prospect Hill out to the lighthouse. And
the problem there is, as you look at the
lake -- which is in the middle of the
picture -- go to the top, go up a little
bit. All that beach is county beach and
state beach. There is very little signal,
and when people use a cell phone from
there, 9-1-1, it goes across the body of
water to Rhode Island, Fisher's Island and
Connecticut.

The delay in emergency response is
anywhere from 20 minutes to an hour,
bouncing it back. By putting a cell site
in one of the monopoles, that will eliminate that. The 9-1-1 calls will then go to East Hampton and be redirected to East Hampton Town Police or Montauk Emergency Services.

And the following pages are a little more backup of exactly what I was talking about.

CHAIRMAN SWANSON: Thank you.

Nick, could you please explain to us the legal issues that may arise with regard to putting the monopole in county parkland? Is this a commercial venture?

MR. GIBBONS: Well, I do have an opinion from the County Attorney's Office, and Jenny Kahn is here to speak to that as well, but I'll just read it into the record. It says that:

"Our continued legal research has provided us with the basis to find that the agreement between the County and the Montauk Highway Fire Department is not an impermissible alienation of parkland due to the fact that the construction will
enhance the safety of park-users and

generally benefit the park as a result."

And that's dated August 25th of 2005,
from Christine Malafi, County Attorney's
Office.

LEG. VILORIA-FISHER: Can I ask a
question?

CHAIRMAN SWANSON: Yes.

LEG. VILORIA-FISHER: Jenny, I have a
question for you.

We looked at South Carolina county
parkland, and we didn't move forward with
it at that time. Now, is this different
because of the emergency services
component; is that what differentiates it?
And could this be used as a precedent at a
later time for commercial uses in parkland?

MS. KAHN: I think this particular
opinion is limited to this specific
situation which includes the public safety
issue as well as other facets that relate
to this particular situation.

LEG. VILORIA-FISHER: So you don't see
it as a slippery slope that could be --
MS. KAHN: It's not a general opinion that cell towers everywhere are permissible in parklands.

CHAIRMAN SWANSON: Is the fire department going to be permitted or not permitted to have commercial use established on these poles? Or, is it strictly fire department?

MR. GIBBONS: You know, Larry, part of the need goes back to that 9-1-1 usage, and so that's to be made available to the general public as a whole, so there will be commercial use on those poles.

CHAIRMAN SWANSON: And who will be financially gaining from it?

MR. GIBBONS: To my knowledge, we have yet to sign the agreement with the district, but the crux of that issue is that the County stands to receive 80% of the revenue generated, and the district receives 20%, presumably for maintenance and upkeep of the facility.

CHAIRMAN SWANSON: Mr. Kaufman?

MR. KAUFMAN: I've got a little bit of
a question, if you will, regarding the legal opinion.

I'm an attorney. I've also litigated some cell towers that have gone all the way up to the Circuit Court of Appeals. I have a little bit of experience on this.

Your opinion starts off by saying, Jenny, that this is a limited opinion and that it is essentially only for this particular situation. Those are essentially your words as of about two minutes ago.

Would that change if that did occur at a later time on this particular pole? I mean, we just heard Nick say that there's a revenue stream that's possible that's going to be coming off of this pole. Would your opinion change if commercial activity came on at a later time?

MS. KAHN: I don't really authorize to go beyond the County Attorney's opinion, so I can't really say -- I do know this specific opinion is for the facts that are related to the GATR site.
MR. KAUFMAN: Let me put this in context for you. I live in a community which suffers a similar debilitating problem with cell tower needs. Basically, we have firemen who cannot communicate with the base stations, and the same with the policemen. I'm cognizant of these safety issues. The signal propagation characteristics are very, very difficult where I live, and I take what the problem is to be in Montauk, to be essentially the same. So I am cognizant of that.

I'm seeing that there are dead spots over here, and I'm also seeing that apparently the bandwidth that's being used is not sufficient to cover those particular dead spots. Whatever equipment it is, I don't know; that's a question to ask. But nonetheless, you are talking about a cell tower going up here, which I particularly don't have a big issue with, but it's inside a county park and it's alienation as we've dealt with other times.

We've received previous advise over the
years that this kind of stuff would be alienation when it's on specifically park property, and also Historic Trust property, which is a secondary issue.

If looked at in and of itself -- your response earlier seems to be limited to this particular situation -- what happens if commercial activity is proposed in the future?

MS. KAHN: You mean at this site?

MR. KAUFMAN: This particular site; this particular tower.

MS. KAHN: You know, I didn't write this opinion. This was the County Attorney's opinion. I can't say exactly what she based it upon, so, you know, that's not really something I can answer --

MR. KAUFMAN: I don't want to push it any further.

MS. KAHN: -- but I think she feels that under these circumstances, as it's been presented to her, that this would not be an impermissible alienation.

MR. KAUFMAN: Well, that's a little bit
in variance with some of the previous advice we've received, but that's for the chairman to recognize.

In and of itself, if just looked at for the safety issues, et cetera, that may be a defensible argument. I'm also looking forward to the future because I know that cell towers are a very valuable commodity, and I'm just worried about that particular issue.

MS. KAHN: I understand.

MR. KAUFMAN: By the way, what's the bandwidth being used over here; does anyone know?

AUDIENCE MEMBER: 800.

MR. KAUFMAN: Okay.

What equipment, by the way, do you guys propose to use; Sprint, AT&T? Any ideas?

AUDIENCE MEMBER: The public safety portion is 800 megahertz, Motorola, for police, fire. And the commercial site would be -- I don't know.

MR. KAUFMAN: That's good enough.

Thank you.
MR. GIBBONS: Mike, I just wanted to be clear. It's not a question of whether or not commercial use will occur here; it will. There's no way to differentiate between an emergency cell phone call and a generic cell phone call.

MR. KAUFMAN: No, I'm talking about location of repeater equipment for other companies such as Cingular, et cetera, commercial companies piggybacking onto a cell tower itself.

MR. GIBBONS: They will, I'm saying. They are in here; they are on the plan. Each of those companies, to my understanding, will have their own equipment cabinet.

CHAIRMAN SWANSON: Any other comments?

MS. STILES: I don't think anyone doubts that there is a need for this out there. I think that the concerns are to make sure that if we approve it, that it's done the right way.

I'm just wondering, in doing the research -- which I know you say you did,
and I don't doubt it -- do you know if the County Attorney's Office came across a case that was in upstate New York that was basically the same as this? It was a municipality looking to put a cell tower in a county park based on the we-need-911-capabilities reason, and it actually went to the state legislature for a vote on alienation. So, I'm not sure that they would have gone through this whole process if they didn't have to. And I know this came up when the resolution you were speaking about -- I think that was Legislator Fields that responded to that before and I had pretty extensive discussions with her about that -- and it seemed -- I'm just wondering, did this application come in as a response to that resolution? Because, I think that wasn't a resolution; it was an RFP that went out. I just think that maybe we should do a little extra research before we move on this. I mean, to provide 9-1-1 service for emergency service capability, you only need
one carrier. If you have a Verizon phone, it's my understanding -- correct me if I'm wrong -- and you dial 9-1-1 and the tower is a Sprint tower, it will still go through. You don't need to have five different companies having their equipment go on the site, which is what is shown by the survey. So that's my question.

And one more thing, do you know offhand if this is going to require lighting under FAA guidelines?

AUDIENCE MEMBER: No.

May I speak?

CHAIRMAN SWANSON: Please come forward and identify yourself for the stenographer.

MR POTTER: Yes. Good afternoon. My name is Tom Potter, senior account manager with Motorola, representing the Town of East Hampton. And I, hopefully, can answer some of your questions.

First of all, on the issue of a cell phone dialing 9-1-1, each cell phone operates in its own specific piece of frequency spectrum. So if only Verizon is
on the tower, only a Verizon phone will connect and dial 9-1-1.

MS. STILES: Are you certain of that?

MR. POTTER: I'm positive of that.

CHAIRMAN SWANSON: Thank you very much.

Let me remind many that the alienation of parkland property really is a legal question as opposed to an environmental issue, and our major concern here is one of aesthetics.

MR. KAUFMAN: I would disagree with you, Mr. Chairman, for one reason. Under the CEQ, you are probably correct; under the Historic Trust, I do not believe that would necessarily be true. This would be an issue, I think, that would be considered as part of the Historic Trust rules, which clearly state alienation -- if I'm not mistaken -- is an issue that we have to be careful about because it is dedicated to the Historic Trust.

MS. KAHN: I'd just like to say that, you know, no one is saying there is not an issue. The County Attorney has rendered an
opinion specifically on this issue. So unless -- are you saying her opinion -- I mean --

MR. KAUFMAN: She's looking at it maybe just as alienation of parkland; okay? And that may well be -- in a CEQ context under SEQRA, that may well be outside of our bounds. We may be looking at the environmental impact only of it. But under the Historic Trust aspects of this, I'm saying there may be other issues out there to examine. I'm not sure at this point in time what they are, but I do know we've always been very protective of Historic Trust lands.

MS. KAHN: And rightfully so. I'm just saying that you do have a legal opinion based on the County Attorney's advice and research that states that this is not impermissible.

MR. KAUFMAN: I understand that.

MR. BAGG: If I might mention something. The CEQ is a Historic Trust, and your main function is to review what is
the impact on the historic integrity of the property. And historic services and historic impacts have always been grouped under SEQRA. So in this particular instance, you are looking at what is the environmental impact of these two particular monopoles on this particular site and whether or not they are ascetically going to have environmental impacts, and No. 2, are they going to impact the historic integrity of the site.

And one of the past rulings of the CEQ is that these poles be maintained -- and that's the next thing on your agenda -- because the poles are historic. So you have to look at whether or not another pole on this particular site is going to impact the historic integrity.

MR. KAUFMAN: Actually, it's a reduction in poles. I think there are a number of poles up there right now. The proposal is to take some of them down and essentially replace them with these two. I don't see a difference in the view shed in
that particular situation. I don't see a harm to it. But I still am concerned at least from the historic aspect on the alienation issue.

MS. STILES: With regard to the aesthetic consequences or impact, is this type of pole the type of cell phone tower that you see has a million cell phone tower cells on the side of it, or is it contained inside?

MR. WHITE: All the antennas from the cell portion will be inside the poles. You will see nothing but similar to what you see on the cover of this document.

The other poles will have small antennas on cross pieces. They won't look anything like some of the antenna farms that you see. It will be an 80-foot monopole with some cross pieces with some repeaters on them.

MS. STILES: Is it going to have guidewires?

AUDIENCE MEMBER: No, no guide wires.

MR. GIBBONS: Lauren, I just want to
point out that the rendition in the package that was sent to you ahead of time, that actually does reflect the external look on that one monopole.

I'll just point out these two -- I'll come up.

(Mr. Gibbons steps up to the dais.)

MS. STILES: Okay. It's kind of hard to tell from the pictures.

MS. SPENCER: I have a question?

CHAIRMAN SWANSON: Yes.

MS. SPENCER: This involves more than just poles as I read the diagram in front of me. As I understand it, you will be changing, or retrofitting, existing buildings and constructing more. And that --

MR. WHITE: That's not us, ma'am.

That's the county parks.

MS. SPENCER: What?

MR. GIBBONS: I'm sorry, are you referring to the attachment?

MS. SPENCER: I'm talking about this diagram (indicating), and it says that
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"proposed Nextel equipment shelter;
proposed area for Cingular, T-Mobile and
Sprint; proposed Verizon equipment
shelter."

So it's not just poles; it's also
equipment shelters. Am I incorrect?

MR. GIBBONS: No, that's right, ma'am.
That is reflected in the EAF as well. It's
those five --

MS. SPENCER: Okay, so when you speak
of it, you shouldn't just speak about the
poles; you should talk about the equipment
shelters that go along with.

Okay?

MR. GIBBONS: I'm sorry, how so? We
did mention that.

MS. SPENCER: Just for clarification,
when you say "it's just two poles," it's
also five equipment shelters.

MR. GIBBONS: That's correct, and it's
approximately an area of 60 to 75 feet.

MS. SPENCER: Right.

MR. KAUFMAN: I have a question for the
fire department over there and also the
Motorola representative.

Is it possible to have just one carrier on that pole and yet provide enhanced 9-1-1 services? In other words, is it possible to fiddle with the equipment -- for lack of a better word -- and basically allow someone, say Cingular or whatever company, to be received, say, over a Motorola or Verizon piece of equipment so that safety is not lost?

MR. POTTER: Unfortunately, no. Each carrier operates in its own frequency part of the spectrum. For example, Nextel is in 800 megahertz; Sprint is 900 megahertz; T-Mobile is 2 gigahertz. Each one of those requires their own antenna and their own base station to receive the signal and then process it into the telephone system to complete the 9-1-1 call. So no matter how we slice it, we still need to have an antenna and a base station that completes that call and does the hand-off into the wire line system. It requires the carrier to be on site, otherwise we're limited on
9-1-1 calls to just the carriers and
carrier subscriber unit that the individual
carries to complete the call.

Now, technically could there be a way
to wire all this together? I think the
answer is yes. But will any of the
carriers do it? I think the answer is no.
I hope that answers your question, sir.

MR. KAUFMAN: Thank you.

CHAIRMAN SWANSON: Thank you.

Any other comments?

(No response.)

CHAIRMAN SWANSON: Do we have a motion?

MR. KAUFMAN: We have to do two
motions. One is the Historic Trust and
then we have to do CEQ because it's
Historic Trust property.

CHAIRMAN SWANSON: Well --

MR. KAUFMAN: I don't want to make the
motion on this one.

MR. BAGG: In the past, Mike, the CEQ
has made joint motions; Historic Trust and
SEQRA. So it's either approval of the
proposal in the Historic Trust, and then
they make the SEQRA recommendation.

MS. STILES: Mr. Chairman, I think we might have a comment from the audience. Do you want to maybe possibly take another comment before the motion?

CHAIRMAN SWANSON: Please identify yourself for the record.

MR. GRIMES: Yeah, my name is Charlie Grimes. I'm chief of the Montauk Fire Department.

Just to let you know where we stand, early this spring, a motel on West Lake Drive had some fisherman in it. A man went into cardiac arrest. On their cell phone, they tried to call out; they couldn't. They couldn't. It was probably a 45-minute delay. Of course, the person died.

Two years ago on East Lake Drive, there was a house caught on fire. A woman was home with her children. Her husband was still at work. She dialed 9-1-1. She got an emergency service in Connecticut. There was a delay. The call never came to our 9-1-1. One of our firemen going home, came
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over the hills, saw the glow in the sky.

He set the alarm off. The house totally
burnt to the ground. So, this isn't
something that we're talking about that
might happen; it's happening on a daily
basis.

The fire department and police
department -- police captain is here -- we
work very closely together on EMS and fire
side; okay? When we can't communicate --
and I mean we can't communicate with
anybody -- an ambulance gets down in that
area, if they need help, if they need
something else, forget about it; somebody
has to hop in a car, drive two miles to the
top of a hill in order to communicate. It
is a serious problem.

We're here asking -- and this has been
going on for quite a few years now -- we've
been talking and talking and talking about
trying to do this. It's something that
it's for the health and the safety of the
taxpayers who live in Suffolk County and
live in Montauk area, and we're trying to
do the best service that we can.

It's not a commercial endeavor. Yes, we have to involve commercial people because if I want to talk to the captain or of the chief of police, okay, I do it on my cell phone, but I can only do it in certain areas. If I need help, that cell phone is how I get the help. So we need the cell phones to be working, which are going to be inside the pole. We need the poles to hang our antennas on so the fire department, the police department, and your own county parks -- if somebody takes sick or gets hurt on Shagwan Beach in the summertime and the ranger is on the beach, he can't even call up to the base station to talk to them. So it's your problem, too. The state parks have the same thing. So it's something that's going to solve a problem for just about all of us. And I would hope you would consider that when you do your motions and your votes and stuff.

This is something that we really need. It's serious. Like I said, we've had one
person die, that I know of, and one house
that completely burnt to the ground because
the person could not call us and alert us.

Thank you very much.

CHAIRMAN SWANSON: Thank you very much.

LEG. VILORIA-FISHER: Mr. Gibbons, I
have a question on the timeline, on the
projected construction. When did you hope
to get this started and what kind of
timeline do you have?

MR. GIBBONS: Well, first we need an
agreement before anything is followed. And
it's been back and forth between the
District and the Parks Department for
several months now --

LEG. VILORIA-FISHER: An agreement
between?

MR. GIBBONS: Montauk District --

LEG. VILORIA-FISHER: The fire
district?

MR. GIBBONS: That's correct.

-- and the County.

MR. WHITE: And it was signed today.

MR. GIBBONS: Well, it was signed by
them, but that's still not --

LEG. VILORIA-FISHER: But it's in the county, so we don't have an agreement yet.

MR. GIBBONS: Correct.

LEG. VILORIA-FISHER: And once that agreement is in order, what happens?

MR. GIBBONS: I think once the agreement has been executed, maybe about a two-month time frame.

MS. MOONEY: Good afternoon. My name is Joy Mooney, East End Wireless.

We have to go through our own processes based on FCC guidelines and requirements. So once the agreement would be executed with Montauk Fire Department and County Parks, then we would file what we call the NEPA process. We have to notify SHIPO, Wildlife Preservation, FCC, FAA, an entire NEPA checklist.

We go through that; that takes about 60 days. They have 60 days to respond. If we got no responses, we can move forward at that point in time. If we do get a response, we need to answer their
questions, and we go through that process.

I can say today that if the agreement was signed between the County and the Fire District, we would be able to have the site on air prior to Memorial Day; so it would be on air for next summer.

MR. GIBBONS: And just to clarify, I was saying two months for signature, not to construction.

MS. VILORIA-FISHER: Yes, I understood that. That was clear.

CHAIRMAN SWANSON: Okay, any other comments?

(No response.)

CHAIRMAN SWANSON: Do we have a motion?

MS. STILES: I'll make the motion.

Can I make a quick comment before I make the motion?

CHAIRMAN SWANSON: (Indicating).

MS. STILES: I think we definitely recognize there is a need for this and that this is something that the community really needs. But I think that to make sure this goes as smoothly as possible, the CEQ has
to make sure we know exactly what our role is on the historic context and also on the alienation issue. Although the County Attorney's Office has given us an opinion on alienation as a whole, I think we need to determine what our role is on that issue. So, I'm going to make the motion to table this until the next meeting so that we can determine exactly what our role in this process is. It doesn't seem like we're too clear on that right now.

CHAIRMAN SWANSON: We have a motion; do we have a second?

MR. KAUFMAN: I'll second that.

CHAIRMAN SWANSON: Any discussion on the motion?

LEG. VILORIA-FISHER: Yes. I have a comment on the motion.

If we table the motion, that doesn't hold up the contract process; does it, Nick?

MR. GIBBONS: No. We do well enough on our own to slow that down.

LEG. VILORIA-FISHER: Yes, I know
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(laughing).

Okay, thank you, Nick.

CHAIRMAN SWANSON: All in favor of the motion?

(Whereupon, those in favor respond in the affirmative.)

CHAIRMAN SWANSON: Opposed?

(No response.)

CHAIRMAN SWANSON: Motion carries.

MR. GIBBONS: Larry, just before we move on to the next item, for the benefit of the folks who came here from Montauk and the east end, I just want to be clear there aren't any additional questions that they would be more appropriate to answer at this point in time. If it's just the alienation issue and role of Historic Trust on the CEQ relevant to that, that's okay with me, then we have some homework to do. But otherwise, for the benefit of everyone here, I'd rather not have them come in for the next meeting.

CHAIRMAN SWANSON: I think they made their case. Clearly, there is definite
need for something out there. As far as I'm concerned, that issue is resolved.

MR. PICHNEY: Just one quick question.

Is there going to be any kind of Request For Proposal procedure that will slow things down further? Once you have the Memorandum of Understanding, it will be relatively clear sailing from there?

MR. GIBBONS: Correct.

MR. PICHNEY: Okay.

CHAIRMAN SWANSON: Okay, thank you very much.

MR. GIBBONS: Thank you.

CHAIRMAN SWANSON: All right, let's move onto the next, which is "Propose Adaptive Reuse of the GATR Facility."

MR. GIBBONS: I apologize for the two projects in the same site. It looks and feels like segmentation, but it isn't.

LEG. VILORIA-FISHER: Nick, can you move the mike closer to you? I'm having difficulty hearing you.

(Mr. Gibbons complies.)

MR. GIBBONS: Okay, you may recall that
in October 2005, just a little over a year ago, I came to the council with a proposal for the adaptive reuse for the GATR facility, Theodore Roosevelt County Park in Montauk. The proposal called for the adaptive reuse of the two existing buildings. At the time, the council recommended that they did not have a significant environmental impact pursuant to SEQRA; however, they requested -- and I agreed -- that we would retain the poles, and thus the historic nature of the site.

There are 15 poles on site. The final attachment that I had sent to you is a rendering of the site that shows those poles. The shaded poles represent those that I'm requesting permission from the council to remove. And the reason is, if you notice, those poles are either directly or indirectly tied to the building. So in order to make the building safe and accessible, we need to remove those guidewires so that we destabilize the poles. We want to remove them for safety
issues. The remaining seven or eight poles here -- eight poles -- will remain on site.

And as you heard earlier, and after some clarification on the alienation issue, if that previous project goes forward, two additional poles will be replaced. Essentially, while those poles won't be timber, they will have the appearance of it.

So, the proposal here is to remove those seven, retain the additional eight, and then the project can proceed as previously presented.

CHAIRMAN SWANSON: Nick, can you come up and show more clearly which poles you are talking about?

(Mr. Gibbons complies.)

CHAIRMAN SWANSON: All right.

Sometimes I wonder what goes through our mind when we talk about a storage shed.

MR. GIBBONS: Well, the idea was -- just to refresh your memory -- the park is, in fact, entirely dedicated to the Historic Trust. However, it's for the sensitivity
related to Native American artifacts and
the potential to discover more. Certainly,
we have a quite a collection already, but
there's always a potential for more. It's
not directly related to the previous post
World War II/Cold War era GATR facility;
however, it was discussed at that meeting
in October of '05 that there is a
potential, at least, for the site to be
listed. However, it's not at this time.

MR. KAUFMAN: I notice that Rich Martin
is not here, and unfortunately Lance
Mallamo is also not here. Lance has been
very involved with this, and I know Rich
also has been.

Have you had any feedback from them
regarding the issues that we're faced with
at this point in time? Are they okay with
it?

MR. GIBBONS: I did talk with Richard
and Mr. Mallamo, and neither of them had a
concern. Actually, they weren't concerned
with the previous issue that we just
discussed, either, and we should have
stated that for the record during that presentation.

However, for this, they support the adaptive reuse of the building; they understand the need to remove those poles to make that happen, and it's something they can live with.

MR. KAUFMAN: We also received a letter from Larry Penny, I believe it is, regarding ospreys in the area, regarding both this project and the previous project. Did you see this particular letter dated November 8th?

MR. GIBBONS: Yes, I did. I saw it about an hour ago.

MR. KAUFMAN: That should be more than enough time to form an opinion.

MR. GIBBONS: I'm familiar with the nesting site, especially at Pole A, which, if you look at the top of that rendering, there's actually two 80-foot poles that are kind of wired together as a frame, and there's a platform on there. It has a somewhat active pair; they come and go from
year to year. Nothing we're proposing will adversely impact them.

MR. KAUFMAN: That's a critical statement. You don't think any of the work you will be doing in that area will harm them.

Do you have a problem with the timeline that Mr. Penny is proposing?

MR. GIBBONS: Yes, I do, in the sense that that will effectively rule out any construction between -- the birds typically come back around St. Patrick's Day, and are here until mid-October.

MR. KAUFMAN: I'm not familiar that much with osprey living patterns. Can they take some disturbance in the area?

MR. GIBBONS: Yes, they can. It's very much variable depending on the individual, Mike. I couldn't comment on the disposition of these particular birds.

MR. KAUFMAN: And these birds seem to come back -- come and go, the same pair?

I'm just curious.

MR. GIBBONS: Yes, they do come back to
the same site typically. But, you know,
you can find them nesting above Sunrise
Highway, and you can find other pairs that
have been in the nest if you walked passed
it once.

MR. KAUFMAN: I'm curious about that in
that, again, we do have the Montauk
situation with the fire tower, and it's not
necessarily something that I want to try
and have problems with. And I'm not
exactly sure how to phrase this --
actually, withdrawn.

CHAIRMAN SWANSON: Any other questions?

MS. STILES: I know that you said
jokingly that, you know, it smells like
segmentation but it's not. I don't think
it's segmentation between the project we
heard earlier and this one, but I do have a
concern as to what is indicated in the
letter from Mr. Asuto (phonetic spelling),
that the locations of the guidewires and
the poles are going to be altered to
provide room for future development, and
I'm just a little concerned that that might
be getting into the segmentation area. If we know we're doing this to make room for future development, then maybe we should be considering that at the same time. I think one is dependent on the other.

MR. GIBBONS: My understanding of the future development he's referring to -- You are talking about the letter to Steve Asuto from Ward --

MS. STILES: I'm sorry, yes.

MR. GIBBONS: -- is the future development, meaning the actual adaptive reuse of the facility itself. And, in fact, we've gotten to the point that we do have biddable documents. And I have a plan; I brought it today. I wasn't sure if it was germane to what we're talking about, but it has to do with access around the immediate perimeter of the building. You couldn't really drive vehicles around the building with the wires in place where they are, and it's a hazardous condition to expect the staff to kind of go over and/or under the guidewires to do their job.
Any proposal to expand the facility or otherwise alter the footprint would certainly be a matter for the Council to hear, and I would bring it to you.

CHAIRMAN SWANSON: Mr. Bagg?

MR. BAGG: Yes. As Nick pointed out previously, in October of 2005, the Council did review the reuse of that by the Parks Department, you know, for their facility, and they did review the restoration of that facility for reuse by the Parks Department.

So this is kind of in addition. The Council put on a restriction that you don't cut the poles down because during World War II, this was an antenna site and so on. So Nick is coming back to you to further clarify and say that because some of them are a safety issue, they would like to take them down. But the project was previously listed by the CEQ in an unlisted action, neg. dec. recommendation.

CHAIRMAN SWANSON: Do we have a motion?

LEG. VILORIA-FISHER: I'd like to make a motion; unlisted action, neg. dec.
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CHAIRMAN SWANSON: Second?

MS. RUSSO: Second.

CHAIRMAN SWANSON: All in favor?

(Whereupon, those in favor respond in the affirmative.)

CHAIRMAN SWANSON: Opposed?

(No response.)

CHAIRMAN SWANSON: Motion carried.

Proposed Construction of a Memorial for the Victims of September 11th.

Good afternoon.

MR. BURKOWSKI: Ralph Burkowski, Suffolk County Department of Public Works.

I handed out copies of our rendering of the September 11th Victims Memorial Plan for the area east of Armed Forces Plaza at the corner of 347 and Simeon Woods Road.

You can see it's a hundred-by-hundred-foot square memorial, approximately 10,000 square feet. It has 150 glass panels representing each victim, and on each panel there will be a biography about each person.

There's bench seating around the
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perimeter, some walkways and there's a
natural garden in the center that's
comprised of all native-type plantings.

Any questions?

CHAIRMAN SWANSON: Yes.

Without any disrespect to the victims
of 9/11, I have a question of: What is the
long-term plan with regard to memorials in
this area? It seems like we're continuing
to add them and add them and add them, and
maybe it's appropriate and maybe it's not.
I'd just like to know --

MR. BURKOWSKI: Well, there is a
Memorials Committee, siting committee, that
this memorial did go through. It was
approved by the committee. However, at
this time, that committee is establishing
criteria for any future memorials that are
imposed on county property. They would
have to go before that committee and then
that committee would have to make a
recommendation depending on whether or not
it met the criteria established by that
committee.
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However, right now there's a moratorium on any future memorials or monuments until that criteria is established.

CHAIRMAN SWANSON: It's deemed desirable to go through with this one? It went before --

MR. BURKOWSKI: This went through that committee several years ago, and it did get approval from them.

CHAIRMAN SWANSON: Any questions of Ralph?

MR. PICHNEY: I have a question.

In the inaccessible garden, that area there, during construction, is that going to be sort of roped off or something like that, or is the entire area going to be cleared and graded and so forth?

MR. BURKOWSKI: We'll probably have the entire area fenced off, and there will be a construction site, and that's how that will be handled.

MR. PICHNEY: And then you are going to plant native shrubs?

MR. BURKOWSKI: Yeah. There will be
new native trees and shrubs.

MR. PICHNEY: I see.

The reason I ask that, since that area will be inaccessible, and since you will be introducing into it container material or boulder burlap material that would have been grown elsewhere, whenever there is a disturbed soil area like that, you run the risk of having really invasive weeds like mugworts or --

MR. BURKOWSKI: Well, we say "inaccessible," but it will be accessible to a maintenance person. So we will have access into it.

MR. PICHNEY: Oh, so not literally.

MR. BURKOWSKI: Not literally. It's just the public isn't going to be going in there, but we will maintain it periodically.

MR. PICHNEY: Right.

The other comment I was going to make, if the -- if it was possible to maintain the existing vegetation that's in there already, it's already kind of a stable
community -- it would be able to keep out
some more insidious weeds and some more
vines, things like that.

MR. BURKOWSKI: Certainly, if that
existing material falls within that zone
and the grade doesn't need to be changed in
that area and we can keep it, we will keep
it. But, you know, in some cases, we might
be raising the grade.

If you see the picture, these panels
are set up higher on, like, a pedestal,
several feet higher. So behind that, we
could either -- we haven't, I guess,
solidified that. I guess we'd either
maintain the existing grade or raise that
grade up. So in areas that we can keep
existing material, we will try.

MR. PICHNEY: Okay, thank you.

MR. BURKOWSKI: Especially the trees,
of course.

CHAIRMAN SWANSON: With regard to
maintenance, is there any concern that the
grass and so forth that's proposed to be
used will, in fact, be marred and damaged?
MR. BURKOWSKI: That question has arisen, obviously, and we talked with our consultant extensively about that. And he feels that the technology that has come with this type of glass that he's using is like it's indestructible; it's very hard to damage. But there is a possibility. I mean, someone, if they hit it with a sledge hammer, you know, of course, you know, it might not withstand something like that. But if someone throws a stone or a bottle --

CHAIRMAN SWANSON: Graffiti, that kind of thing?

MR. BURKOWSKI: Yeah, within reason. It can withstand a certain amount, but...

MR. KAUFMAN: Ralph, I'm looking at the site plan for the memorial, and I'm trying to interpret the markings on there. The area that's going to be cleared for all of this, is that mature climax woods or is it brush? What's over there? Because, I can't tell for sure from the aerial.

MR. BURKOWSKI: From what I recall,
there are several scattered trees, but
there are viable pest material, brush.

MR. KAUFMAN: We're not knocking down a
forest or anything like that?

MR. BURKOWSKI: No, we're not taking
down the whole established forest. But
there are some scattered trees throughout
the area; several of them, not too many.

CHAIRMAN SWANSON: Any other questions?

(No response.)

CHAIRMAN SWANSON: Motion?

MR. KAUFMAN: I'll make the motion, and
this looks like an unlisted negative
declaration to me.

CHAIRMAN SWANSON: Second?

MR. PICHNEY: Second.

CHAIRMAN SWANSON: All in favor?

(Whereupon, those in favor indicate
in the affirmative.)

CHAIRMAN SWANSON: Opposed?

(No response.)

CHAIRMAN SWANSON: Motion carries.

"Proposed Acquisition of Land For Open
Space Known As the Mastic/Shirley
MR. BROWN: Larry, can I make a recommendation that we take five and up to ten all at one time?

CHAIRMAN SWANSON: All in one?

Actually, I would prefer to quickly go through them because we have made a point before that we didn't want to group them, and we've made Lauretta suffer through one at a time, so we might as well make others suffer through one at a time.

MR. BROWN: These are all in the same area, that's why. But, okay.

MS. FISCHER: Good afternoon. We do have five proposed acquisitions in the Mastic/Shirley area. The first one is the Schaeffler property. This is a small .043-acre lot down here in Narrow Bay in a tidal wetland area, low-lying area. So this is part and parcel of the other acquisitions that we're trying to bring forward to protect this watershed area.

CHAIRMAN SWANSON: Motion?

MR. KAUFMAN: I'll make a motion;
unlisted neg. dec.

MR. BROWN: Second.

CHAIRMAN SWANSON: All in favor?

(Whereupon, those in favor respond in the affirmative.)

CHAIRMAN SWANSON: Opposed?

(No response.)

CHAIRMAN SWANSON: Motion carried.

MS. FISCHER: The next one is the Furniss property, also in the Mastic/Shirley area. This is about a half an acre lot, .46 acres, again in the conservation area that we're trying to protect; wetlands, uplands and watersheds, flood zones.

MR. KAUFMAN: I'll make a motion;

unlisted neg. dec.

MR. BROWN: Second.

CHAIRMAN SWANSON: I have a question before we move on.

I notice that we're not getting the prices anymore. Is that on purpose?

MS. FISCHER: No. Didn't we give you the resolutions?
MS. VILORIA-FISHER: No.

CHAIRMAN SWANSON: No. I know we're not supposed to consider it, but we have commented before.

MS. FISCHER: I'm sorry. It was an omission of mine. The resolution should have been attached to the EAF. But I can tell you it's $10,000.

CHAIRMAN SWANSON: Okay, thank you.

Call the motion.

MR. KAUFMAN: I made a motion of unlisted neg. dec.

MR. BROWN: I seconded it.

CHAIRMAN SWANSON: All in favor?

(Whereupon, those in favor respond in the affirmative.)

CHAIRMAN SWANSON: Opposed?

(No response.)

CHAIRMAN SWANSON: Motion carries.

Schneider property.

MS. FISCHER: This is a .092 lot, approximately less than a tenth of an acre property; again, in Mastic/Shirley down by Narrow Bay.
CHAIRMAN SWANSON: Any questions?

MS. RUSSO: The price on this one?

MS. FISCHER: $10,500.

CHAIRMAN SWANSON: Motion?

MR. KAUFMAN: Unlisted, neg. dec.

MR. BROWN: Second.

CHAIRMAN SWANSON: All in favor?

(Whereupon, those in favor respond in the affirmative.)

CHAIRMAN SWANSON: Opposed?

(No response.)

CHAIRMAN SWANSON: Motion carried.

Downey property.

MS. FISCHER: Again, another Mastic/Shirley property. This is approximately a third of an acre in the Sheep Head Creek area; very pivotal piece, actually, in that area, very low-lying. In fact, it's wet most of the time.

MR. KAUFMAN: I'll guess it's maybe $37,000?

MS. FISCHER: Maybe you are right.

MR. KAUFMAN: I'll make a motion; unlisted neg. dec.
MR. BROWN:  Second.

CHAIRMAN SWANSON:  All in favor?

(Whereupon, those in favor respond in the affirmative.)

CHAIRMAN SWANSON:  Opposed?

(No response.)

CHAIRMAN SWANSON:  Motion carries.

All right, private Accardo and L'Hommedeieu property.

MS. FISCHER:  This is a .18-acre lot down by Narrow Bay again, by a large dredge spoil area, actually near the zone A -- V zone, actually, flood zone, which is rather unusual for the mainland of the Island.

MR. KAUFMAN:  So, exposed property?

MS. FISCHER:  Yes.

CHAIRMAN SWANSON:  Are you buying dredge material?

MS. FISCHER:  No, not on this site.

CHAIRMAN SWANSON:  Can we have a motion?

MS. STILES:  Motion; unlisted action, neg. dec.

MR. KAUFMAN:  Second.
CHAIRMAN SWANSON: All in favor?

(Whereupon, those in favor respond in the affirmative.)

CHAIRMAN SWANSON: Motion carries.

The Beggins property?

MS. FISCHER: This is a beautiful, six-and-a-half-acre lot to the west of our Terreells River County Park in Moriches, and it contains fresh and tidal wetlands.

We're looking to buy this under New Drinking Water For Wetlands Protection.

MR. KAUFMAN: I'm personally familiar with this property and the environ, and I think it would be a heck of a buy for the County if they were able to acquire; especially with the split that I'm seeing in who is buying it and how it's being bought. It's a very valuable piece of land as far as I'm concerned.

I'll make the motion.

MR. BROWN: Second.

CHAIRMAN SWANSON: Okay. I actually don't see the boundaries.

MS. FISCHER: Do you see the red
parcel? The red is the parcel that is imposed.

CHAIRMAN SWANSON: Will that officially become part of the park?

MS. FISCHER: Absolutely.

CHAIRMAN SWANSON: Do we have a motion?

COUNCIL MEMBERS: Yes.

CHAIRMAN SWANSON: All in favor?

(Whereupon, those in favor respond in the affirmative.)

CHAIRMAN SWANSON: Opposed?

(No response.)

CHAIRMAN SWANSON: Motion carries.

And donation of property to County Parks, Town of Brookhaven.

MS. FISCHER: This is a Board of Review -- Suffolk County Department of Health Services Board of Review TDR wherein the County will be -- a piece of .2 acres will be donated to the county. It's located in the Manor/Yaphank Road Nature Preserve area adjacent to a large parcel that was actually on our Master List II, called Pine Ridge -- if you are familiar
with that area in Manorville -- south of the LIE. It's predominately a pitch pine scrub oak area in Hydrogeologic Zone III.

CHAIRMAN SWANSON: And this is a clean piece of property?

MS. FISCHER: Yes. It's wooded.

CHAIRMAN SWANSON: Any questions?

MR. KAUFMAN: I'll make a motion unlisted neg. dec.

MR. BROWN: Second.

CHAIRMAN SWANSON: All in favor?

(Whereupon, those in favor respond in the affirmative.)

CHAIRMAN SWANSON: Motion carries.

And the last one for today, Lauretta?

MS. FISCHER: Yes. This is another TDR, Board of Review variance in which a donation of .57 acres, one lot, will be donated to the county in Beaverdam Creek Headwaters area. This is an area that was identified, actually, under the -- if you can remember -- the old Green Ways Open Space -- Community Green Ways Open Space Program, and we are acquiring this through
a donation.

This will -- both of these lots are in Hydrogeologic Zone VI in the Town of Brookhaven.

CHAIRMAN SWANSON: Motion?

MR. KAUFMAN: Motion; unlisted neg. dec.

MR. BROWN: Second.

CHAIRMAN SWANSON: All in favor?

(Whereupon, those in favor respond in the affirmative.)

CHAIRMAN SWANSON: Motion carries.

MS. STILES: Can I have, Mr. Chairman, a question before we go to the next? Would you mind?

CHAIRMAN SWANSON: Go ahead.

MS. STILES: It seems like this takes a lot of our time up at our meetings, and I'm sure it takes a lot of your time in your office preparing all of these. And I know the county legislature has already -- all of these parcels are all on the Master List; right?

MS. FISCHER: Well, not all of them,
but many of them.

MS. STILES: If there were a way the
Council could make a motion to -- not
today, but in the future -- to declare
anything on the Master List, an unlisted
neg. dec. so that it could expedite the
application process?

I used to intern for a private law
firm, and we calculated how long we would
take to purchase a piece of property, to go
through the entire county process, even if
we had a completely willing seller, and it
could take years. People are working very
hard to get all the of this done, and being
we're sort of in a race for open space here
on Long Island, I think it might be
helpful, if your office would think it
would be helpful.

MS. FISCHER: We, actually, presented
this about a half a year ago, and we would
be more than happy to bring it again to the
Council to request that, as you have stated
it. That's exactly what we would like to
do.
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MS. STILES: And perhaps, to make sure we have it clarified, that any -- if you are buying something and putting it into the Parks system, if you were going to build something on it, then that would have to come back.

MS. FISCHER: Yes. And that was the caveat that we would make; that if there was any proposed acquisition that would include any active recreation or any other parkland other than natural, environmentally-sensitive protected as to recreational uses, then we would bring that before you with a site plan use. Usually, we always bring a site plan with any sort of active recreational.

MR. KAUFMAN: Lauretta, I have a problem with that for one reason. And again, this goes back a little to institutional history; I've been here for over a decade. While I respect Master Lists I and II, I don't think we should give an automatic pass-through, if you will, that meet certain criteria. I have
encountered -- and this council has
encountered -- numerous properties that
were less than satisfactory sometimes, and
I would like to see some of these
properties before they go through just to
serve as a final check or something like
that.

And there are properties on Master List
I and II that I don't think should be
purchased; that I don't think have
environmental benefits.

CHAIRMAN SWANSON: Legislator
Viloria-Fisher?

LEG. VILORIA-FISHER: Well, I haven't
been here as long as you have -- but I have
served a few years -- but most of the
acquisitions where we did have some
reservations, I don't recall being the ones
on the Master List. Some of them were
acquisitions that were brought before the
legislature or brought to the legislature
by a legislator who was receiving a lot of
community pressure, let's say, because they
were trying to save a spot from development
but we didn't see a clear, positive environmental -- positive environmental benefit in it.

However, with the Master List, I don't recall ever seeing one of those that presented a problem. But that's just my own recollection.

MR. KAUFMAN: I can tell you, if you don't mind, there are three properties, for example, on Master List I inside the Town of Smithtown that I would not necessarily believe to be either an environmental benefit to the county or, as our charge is, to see if there is an environmental detriment. I'm not sure I would necessarily be able to vote on it.

All I'm saying is I think we should review it. There are properties out there that sometimes get onto these lists, you just never know.

CHAIRMAN SWANSON: Jim?

MR. BAGG: In the past, the CEQ, as we reviewed the $60 million Bond Act proposal as an entire program, and they issued --
that was a Type I action because it was
acquisition more than a hundred acres with
a negative declaration providing that any
parcels acquired for active recreational
purposes have to come before the Council
for the full review because otherwise it
would be segmentation.

The issue before the CEQ is not whether
or not you think a parcel is worthy and how
it's determined as to whether or not, but
what is the actual impact of acquisition of
a piece of land -- not whether it's worthy
or what the cost is -- and what the impact
to the environment is. And if we're
acquiring a piece of land as-is and keeping
it as open space in its natural state,
there is no impact.

MS. STILES: Can I add to that?

It's my understanding that even if we
were buying toxic waste sites, let's say --
and I don't think we are -- but even if we
were the act of purchasing it is not
creating the environmental detriment. The
environmental detriment is already there,
and the fact that we're buying it makes it more likely that it's going to be cleaned up. Exchanging a deed and some money is not hurting the environment at all. It could never, no matter how awful the project is. And there are mechanisms in place now -- especially after things that happened not so distant in the past -- there are mechanisms in place. There are other committees reviewing how much money we're spending, whether or not it's worth it. I really, with all do respect, I know it's our natural curiosity to want to know because we're all county taxpayers, but I really don't think that's within the scope of the CEQ's role.

LEG. VILORIA-FISHER: I couldn't agree with you more. Because, I sit on the CCRB, so we have that level of scrutiny when we're looking at the money that's being spent, and there's a very clear presentation on price, how it's best used, how we determine the value of the property, and so we really take a very close, hard
look at that.

And then, of course, it goes to the environmental committee, where it's reviewed again. And then from the environmental committee, it goes to the general legislative meetings. And so we do have various several stages in the process where you have a bite at the apple at getting a hard look.

And by the way, although -- the CCRB when we are discussing the money, that's in executive session because we're talking about the appraisal, so it's not in public; however, at the Environment Committee, you do have public porton, and all CEQ members are welcome to go to that if you want to take a look at all the pieces of land that we acquire. And then we have the general meeting where all members of the public are invited to come and take a look. So I think we certainly have enough ways to look at the properties we're acquiring.

MR. BROWN: Several years ago, we went through this process and were lumping a lot
of these properties together, and we were voting. And we made a determination that a lot of these properties we didn't know what we were voting on, and that's why we asked them to break them down into individual lots.

Now, obviously, when I talked about the group that's over here in the Mastic/Shirley conservation area, they are all in the area that the County is going to purchase. To me, I thought we could have voted on that as one whole. But as an individual process, you know, we have a lot in Brookhaven or Yaphank, or we have a lot in South Hampton, I think we have to look at these, regardless if they are on somebody's else's let's-buy list, for the fact to know that we are understanding what we are voting on.

MS. FISCHER: If I may just interject here, one of the things we would present to you -- and we gave you a copy of -- were the reports that went along with the Master Lists, including maps of the properties.
And we would again do that for you. And if you had any specific questions on any particular portions of those Master Lists, I'd be more than happy to make any type of presentation to you regarding that.

They all had to go through a review of criteria, and you know, it did go through a process and a procedure to get those lists approved, so I would be more than happy to bring them to you. I think the maps are very clear and helpful to evaluating these sites, and if you had any specific questions on any particular site in mind that you had a question on, I'd be more than happy to address them and then move forward with the lists.

MR. KAUFMAN: All right, straight off, once bit twice shy, is my opinion. I have institutional memory here of several properties where it would have gone through, except one of us had local knowledge and knew some problems with it --

MS. FISCHER: That does not include any
properties that were brought individually
by the legislators, and in my recollection,
of all the things that I've presented to
you over the last few years, there hasn't
been a problem with one of the ones I have
presented to you specifically. There have
been questions on ones that have been
proposed by legislators, and they have had
similar questions in the other portions of
this evaluation that goes on on many
levels.

MR. KAUFMAN: I agree with you
Lauretta. I know for a fact that you have
not presented any of those properties.
Okay? I'm not trying to impune you in any
way, shape or form.

MS. FISCHER: Well, I just want to make
that clear.

MR. KAUFMAN: Okay, not a problem.

But I am once bit, twice shy, and I am
very, very careful with this kind of stuff.

MS. FISCHER: Well, if you were given
the reports and had time to evaluate the
reports and aerials and all that
information, is that not enough? Because, that's basically what you get when I come here.

MR. KAUFMAN: No, generally, the information you supply to us is more than adequate and we're able to make a decision based upon that. But it's good to be able to see -- you never know what kind of knowledge some of us might possess that might change opinions.

MS. FISCHER: And you don't think that would be available to you when I give you the report, the Master List, and you can take your time? And anyone who has a question regarding a specific property, again, I would address that for you.

MR. KAUFMAN: I guess it's a procedure and how we want to go.

MS. FISCHER: Okay, just offering.

CHAIRMAN SWANSON: Thank you very much. I think we're getting warmed up for the most exciting part of the agenda, and that's Vector Control. I have somebody here to speak to the 2007 Work Plan for
Vector Control.

Mr. Dawydiak, do you want to introduce your panel?

MR. DAWYDIAK: For the record, this is not my panel, Dr. Swanson. I'm mainly here for the long-term plan which is later on in your agenda. I'm just here to answer environmental quality questions.

This is Dominick Ninivaggi to my right here.

DR. DILLON: Dr. Patricia Dillon, with Public Health.

MS. KAHN: I'm Jenny Kahn from the Law Department.

MR. JEFFREYS: I'm Christopher Jeffreys, Assistant County Attorney from the Law Department.

Mr. Chair, before we begin our presentation, there's procedural issues that have to be taken care of on behalf of the County Attorney's Office.

The County Attorney issued a formal request for one of the members from CEQ to recuse herself in reference to this matter.
Lauren Stiles was specifically requested by the County Attorney on October 20, 2006 to recuse herself because of the appearance of impropriety that could be created by her presence on this panel for this particular issue. Not generally for the CEQ, but on this particular issue, there is a potential appearance of impropriety.

I'm not sure what Ms. Stiles' position is going to be on this, but if Ms. Stiles does participate in this particular portion of the CEQ process, the County Attorney will have to take the position that there will be issues of law if there is any challenge on behalf of either party -- whether the plan gets a positive declaration, negative declaration, or anything else that this panel says, because of the appearance of impropriety of a member of CEQ.

So there is an objection by the County Attorney on behalf of the County of Suffolk for Ms. Stiles' continued participation on this particular element of the program for
today.

CHAIRMAN SWANSON: Thank you very much for that advice. Let me just say that Ms. Stiles is a dually appointed member of the CEQ, and as such, she will have to make a personal decision on whether she is in conflict on this particular issue.

And with that said, I'd like to just move ahead with your presentation.

MS. STILES: May I respond?

CHAIRMAN SWANSON: I don't think it would be appropriate at this point.

MS. STILES: Well, a serious allegation has been raised against me and it affects my role and input here today, and I think it needs to be addressed.

MR. JEFFERYS: Just as counsel for CEQ also -- because the County Attorney is counsel for CEQ -- I have not mentioned anything concerning the contents of the County Attorney's letter to you, Ms. Stiles. That is confidential between you and the County Attorney's office. You may, of course, choose to bring up any
content that you want, but just realize
that the content of that letter is
confidential. You have the right to talk
about it if you want, but the County
Attorney's Office won't talk about it.

MS. STILES: Right. That's interesting
since the County Attorney's Office talked
about it in Newsday today, so I find it
interesting that you say that.

Anyway, I just want to let the CEQ
know, because my credibility has been put
into question here, and I think that it's
very troubling particularly because the
letter that was sent to me by the County
Attorney's Office is filled with
misinformation and untrue statements of
fact and some pretty irrelevant provisions
of law. And I think it's really, really
troubling that the County Attorney's Office
has let itself be used to try to stifle any
dissent or potential dissent on the record.

As I'm sure most of you here know, this
is not the first time someone who has been
critical of Vector Control has been, you
know, asked to recuse herself or someone
has pointed the ethics finger. And I'm
sure you know I'm talking about
Ms. Adrienne Esposito. She was, as I'm
sure you know, removed from the CEQ by the
legislature based on allegations of ethics
problems and perceived conflicts. And then
after the fact, the Suffolk County Ethics
Commission issued an opinion that there was
absolutely no conflict.

I have written to the Suffolk County
Ethics Commission, and they will hopefully
be issuing me a recommendation or -- they
issue confidential legal opinions to let
you know if you have the conflict or not.
And I'm quite certain I do not have the
conflict, nor have I ever.

But that being said, Mr. Jeffreys, I've
been told that you have threatened to write
to the New York State Committee on
Character and Fitness, which -- for those
of you who are not attorneys, that's the
committee that reviews -- when you first
take the bar and after you pass the bar,
you go before this committee of judges and
experienced lawyers, and they determine
whether or not you are fit to be an
attorney.

And if you do send them a letter, I
strongly advise you to pick your facts a
little bit better than what is in the
County Attorney's letter because --

CHAIRMAN SWANSON: All right, we're not
going to --

MR. JEFFERYS: Mr. Swanson, whether
there's anything that -- Ms. Stiles, I
didn't even know you were not admitted yet.
I thought you were an attorney already
admitted into practice in this state. I
could care less, one way or the other about
your admission. You appear to be a
competent member of the legal profession
from other dealings that I've had with you
as an intern in environmental law. I don't
know where you got your information from
that I have any interest, at all, one way
or the other concerning your admission as a
lawyer or your character and fitness. I
don't care one way or the other, to be perfectly honest with you. I care that as a member of CEQ and a client of the Suffolk County Attorney's Office that you protect yourself to the extent you believe it's necessary. And if you believe a recusal is appropriate, do that; and if you believe that a recusal is inappropriate, just make certain that your facts are available and that you have protected yourself. That's all I can say on the point. The County Attorney has asked for recusal, though.

CHAIRMAN SWANSON: Mr. Jeffreys, can we move ahead now with the substance of this afternoon?

MR. JEFFREYS: The initial portion of this presentation will be done by Dominick Ninivaggi, the superintendent of Vector Control. And we also have with us Dr. Patricia Dillon, concerning the health component of vector control; and it is my understanding that we have some folks also who may be interested in having public comment on this concerning the health
effects that have personally touched each
of their family members.

Dominick?

MR. NINIVAGGI: Thank you very much. I
have, hopefully, a short Power Point
presentation. I came to realize that we
have some new CEQ members. I think it's
good to go back through some of the history
of the program, history of the things we
do. I want to describe a little bit about
the program.

One of the things I was asked last
meeting was to come up with some pictures
and graphics, so I have complied with that,
and basically to describe a little bit
about why we have the program, what's been
going on in the last year or so, better
describe some of our activities since there
seems to be some questions about that, and
also to address some of the issues that
were raised at the last CEQ meeting.

This is an area -- and I will use my
pointer -- basically, this is a look at the
West Nile virus distribution in 1999, which
is the first year that West Nile was found in North America. It turns out that West Nile virus was already widespread in Suffolk County when it was first discovered to be in North America in 1999. You can see that we had 31 horse cases, about a third of which were fatal. We had widespread positive birds, dead birds. We had to group together mosquitos from nine locations by the time we found out about this to get enough for testing, so somewhere among these nine locations we were able to come up with positive mosquitos. And again, considering this was the first year this was found in North America, this is pretty good surveillance.

Over the years, we have been doing extensive surveillance, looking at positive dead birds and mosquitos. A little history, through 2005: 2000 was our peak year for our mosquito samples. You can see that West Nile activity has continued over the years. We had a drop in 2004, which I attribute primarily to a cold snap that we
had in early August, and that seemed to
greatly suppress virus activity. But you
can see in 2005, virus activity came back
up. And the main point I want to make of
all these dots on the map, is that in any
given year, West Nile virus can be
virtually anywhere in the county. So you
can't say "Well, don't worry, the mosquitos
in your area are not infected." You know,
"We don't think there's any virus in your
area," because this is something that
happens year in and year out.

We have another mosquito-borne disease
in Suffolk County that is of great concern,
Eastern Equine Encephalitis. Eastern has a
much higher variance to people than West
Nile does. It's a 25 to 75% fatality rate,
case fatality rate. It's a very serious
disease. Even before West Nile, we had an
extensive triple-E surveillance program,
and fortunately that helped prepare us for
West Nile.

Triple-E is a little different than
West Nile in that it is a disease that has
a focus area on Long Island, primarily in red maple swamps. So there are certain habitats that you can look for the history of this Eastern activity, and you can identify and concentrate your surveillance and control in those types of areas.

As you can see, most of those are in the eastern part of the county, but certainly in populated areas in western Suffolk. And our last finding of Eastern on Long Island was in 2003 where we had positive mosquitos and an equine fatal case.

An equine fatally is a very serious matter for Eastern because the same species of mosquitos that transmit to horses, transmit to people. So those are the mammal-biters. So we were very close to human involvement of Eastern virus in 2003. Probably our peak year -- and the other thing about Eastern virus is it tends to be intermittent or to go in cycles. You can see that we had virus activity in the mid-'90s. We didn't see it for quite a few
years. It came back in 2003. New England has experienced severe Eastern activity the last two years, including fatal cases. We don't have a good explanation for why we've had Eastern virus all around us in the last couple of years, yet we haven't seen it; we're just happy that that's the case.

The big mosquito-borne disease story in 1999 would have been malaria. We had multiple transmission of malaria in Camp Bating Hollow. This is something that's intermittent, and primarily travelers bring in the pathogen and it's getting at least, unfortunately, temporarily established local mosquitos. But between West Nile and malaria, this just brings the point that exotic pathogens can and do enter Suffolk County and do cause outbreaks of human disease. And at any time in this global world, new exotic pathogens can enter Suffolk County, and if they find conditions favorable, there are plenty of mosquitos that can cause humane disease.

This is a description of the program
(indicating). This is from 2005, so you saw this last year. But basically, this part of the program is very well-established. All the little green dots you see are known mosquito larval habitats that we know about, we visit relatively regularly depending upon where they are and how often they do produce mosquitos. You can see they are all over the county. They tend to concentrate on the wetter areas, not surprisingly. We put most of our efforts in the populated parts of the county, for the obvious reason; we're interested in protecting people.

The red, are our aerial larvicide sites. These are areas that are too large for us to treat by ground, and we do treat those by helicopter. As you can see, they are primarily coastal marshes. They are concentrated around Great South Bay, in particular, because, again, these are where we have these marshes that produce large numbers of mosquitos in proximity to people. There are plenty of marshes in the
eastern part of the county that don't have
a lot of people around them, and we don't
pay nearly as much attention because we're
not trying to kill every mosquito in
Suffolk County; we're trying to minimize
the number that are biting people. Just to
update you on how things serve our standard
program.

What happened in 2006? We had 57
positive mosquito samples, which is fewer
than 2005, but more than some of our other
years. They were scattered throughout the
county. I'll show you a little bit about
that, but again, in 2004, we thought West
Nile was going away. Well, I guess not;
it's still here.

We had 61 positive birds. Even though
we had quite a sampling effort, this is
lower than any year since 2004, and it does
suggest that perhaps fewer birds are dying
of West Nile virus and they may be a less
valuable indicator. This does not mean
that our birds are immune to West Nile; all
it means is that fewer of them die and
become known to us.

We had two aerial adulticide treatments in direct response to West Nile virus, and three ground operations. These are situations where we may not have had tremendous number of mosquitos, but we had indicators of significant risk of areas for human transmission, and at the direction of the Health Department, we did treatments in response.

We also have what's called our vector control adulticiding, which is basically a response to numbers of mosquitos in the absence of virus. These are vector species that we don't want to get out of hand. You will find that those continue to be limited to Fire Island for various reasons; southern Brookhaven, our traditional areas; we did have one treatment out in Beach Hampton, in Amagansett.

Typically, every year, someplace that doesn't normally have a mosquito problem will have one, and we do an adulticide in a place we don't normally do it, but there
are certain chronic areas that we treat on a regular basis. And for larval control, which is the bulk of the program, we have typical numbers. As far as our positive birds and mosquitos, the green is positive birds; red is positive mosquitos. There was virus activities. We saw a lot of it in the western part of the county, but certainly it was still out there in the eastern end. It seems like a lot of activity on the central part of the Island. Part of that is whatever unique conditions we had this year; part of it is we did have a special project going in the central part of the county looking at virus in residential areas.

One point I'd like to make is you shouldn't think that every time somebody calls us and says "I've got mosquitos," that we run out and we spray for adult mosquitos. All the red dots here are service calls, people calling my office and saying "We've got mosquitos biting us; do something about it."
Most of the response to these service calls is we go and look for the source, and we try to deal with the source primarily with larviciding. However, certain parts of the county are particularly mosquito bitten, and particularly, this area in the eastern end of Great South Bay. And you could see that those are the areas where we treated for vector control for numbers of mosquitoes along Fire Island. These areas are particularly high in mosquito numbers, and one out in East Hampton.

The red, those are treatments for West Nile virus response. And you can see there weren't necessarily a lot of complaints about biting mosquitos, but again, an evaluation was made on disease risk, and we did treatments in the Nesconset area -- where I live -- and Heckscher Park were done by air. The other treatments were ground. There's no relation to the fact that I live there that we did aerial treatment; it had more to do with the geography.
MR. KAUFMAN: Are you sure about that?

MR. NINIVAGGI: Well, especially since I understand our new environment commissioner lives within the spraying area. So I did not know that at the time, but these decisions have been updated on that basis.

This is a description of our ultra low-volume adulticide with the familiar truck running down the street or the helicopter. This is called Ultra Low Volume. It's an aerosol treatment applying to adult mosquitos. This is basically our adulticide usage in the so-called West Nile era. And as you can see, we did a lot of treatment in 2000 when we had a lot of virus activity. We went down 2001, where issues more related to disputes over which areas should and shouldn't be treated. It's varied over the years. 2004, very little adulticiding, relatively speaking. The last couple years, it's been very consistent.

And again, we try to minimize this and
try to only respond to the very serious situations, and we try to keep this to the minimal level for various reasons. I think everybody in mosquito control understands and agrees that treating for adult mosquitos is the last line of control, because that basically involves using relatively broad spectrum pesticide in populated areas. We certainly want to reduce human exposure to pesticides if possible, and these relatively broad spectrum may have a wider non-targeted impact.

Most of our program is larval control. These are places where we applied larvicide in 2006. And again, you can see we work all over the county because mosquitos and viruses are all over the county, but we tend to concentrate in the swampy areas, not surprisingly.

This is our use of various larvicide over the last few years (indicating), and one of the points I wanted to make here is that we use a lot of bacterial pesticide.
The orange or -- and I'm not sure what that color is -- is a treatment where we just use bacterial product, mostly Bti, on the site. There are some areas in this upper part here (indicating), where you use Altosid or methoprene by itself. Sometimes we use them in combination. Overall, we treat more acreage with bacterial products than we do with methoprene because bacterial products have a lot of advantages, and we've used them since 1982. We're very happy with them. However, bacterial products will not solve every problem for you. They won't give you control in every situation. But as you can see, we run a mixed program. And one reason why we want to do that is because you don't want to use any one material excessively; that's a good recipe for pesticide resistance.

We had questions about methoprene that was raised periodically in the last meeting, so I want to go over how we use methoprene, why we use methoprene in
Suffolk County. It's one part of an IPM program -- an Integrated Pest Management program -- that continues to rely heavily on bacterial products. Using a variety of actives is fundamental in IPM because we want to avoid pesticide resistance. We don't want to use methoprene all the time -- even though it's a very good product and will work in a lot of situations -- because the last thing we want is for the insects to develop resistance. Similarly, for the bacterial products, we like the bacterials, but resistance has been reported in other areas. We don't want that here because we have very few products that we can use.

Methoprene works in situations where Bti, our primary bacterial product, does not. In particular, methoprene tends to work in the salt marsh better than Bti; it tends to work on the older larvae, mosquito larvae, in the salt marsh better than Bti. On the other hand, Bti tends to work well on the early-stage larvae, if conditions
are cool. Nothing works all the time and everywhere.

You can see from the earlier graph, sometimes we use these products individually; sometimes we use them together. And that makes sense if you think of yourself as a mechanic. You have a tool box; you've got a lot of different tools in your tool box because no one tool does the job in every situation. If a mechanic shows up to work on your car and all he has is a pair of pliers and a screwdriver, I would suggest you get a new mechanic.

Our major use in terms of acreage treated for methoprene, is in salt marshes. And again, this is because -- for reasons that are not fully understood, Bti has a particularly difficult time working in salt marshes. But the important point about this is that our major use of methoprene, is that we're using liquids that are short duration exposure, low-level exposure to the product. We had questions of the use
of sustained-release methoprene products.

A very, very small acreage is used in things like percept (phonetic spelling) because they are not needed in the salt marsh. You have a brood of mosquitos out there. Liquid works fine and it disappears, which is what you want.

Methoprene is basically essential to protecting public health and reducing pesticide exposure to adulticide. We cannot do a proper job of controlling mosquitos in the larval stage relying only on the bacterials. We tried that for about ten years in the late '80s and early '90s, and, frankly, it was a failure. There are certain situations that Bti will not give you the control, and then you end up having to treat a lot more for adult mosquitos, which is the opposite of what everybody wants.

Reducing adulticide, as I previously pointed out, reduces the risk to the non-targets. And this is again where we get into integrated management of how the
program hangs together. We've heard people say "Well, just get rid of methoprene."

Getting rid of methoprene would not reduce the environmental impact of our program. If anything, it may increase it by forcing us to use more of these broad spectrum pesticides, and would certainly result in an increased human exposure to pesticides, which we don't want.

We've been using methoprene in salt marshes since 1995. There is no evidence of any kind of adverse impact. It has helped us a great deal, as a matter of fact.

This is a little history, going back to 1991 (indicating). The purple is adulticide usage. It might be a little hard to read some of the graphics here.

In 1994, we did a lot of adulticiding in response to Eastern virus. In 1995, we started using methoprene. In 1996, we had another bout of Eastern virus that required a lot of adulticiding, and then we were able to bring our adulticiding down. And
we had 1999 and 2000, West Nile virus started showing up, but we were able to bring adulticiding levels down compared to the pre-methoprene era when they were up here (indicating). Now our average is down here (indicating). So methoprene reduced our need for adulticiding, use of adulticiding, and I would argue that it resulted in an overall reduction of environmental impact of the program.

We heard some allegations about impacts of methoprene in crustaceans. The horse lab Walker, et al suggested that there was an increase in mortality in lobster larvae. They used concentrations of 1 - 2 ppb [parts per billion] over 72 hours.

The problem with that study -- a couple of problems. The main reason that's a problem is that when you actually go out and measure methoprene -- which we've done with the USGS, in particular, certainly an objective entity -- it turns out the highest methoprene concentrations you see in the field are 1 - 3 ppb [parts per
billion], and that's only for a half-hour after the treatment. If you go back a few hours later, the material is nearly undetectable. So the idea of parts-per-billion levels for 72 hours, that doesn't match the reality of the way the material is used. Stony Brook researchers tried to reproduce these results, and they were unable to find similar impacts at similar levels. So there's some question as to the validity of those results in the first place.

The bottom line, like many other laboratory studies that claim to find an impact on methoprene, the exposures that cause the impacts turn out to be much higher or a longer-term duration than what you see in the environment in Suffolk County; again, because of where this material is used, the way it is used, especially in the salt marsh. Again, this is a short duration, low exposure use of the material.

There were some studies done over the
years in Minnesota regarding larvicides, and we should remember that they not only used liquid methoprene, they used liquid Bti. And those results were very equivocal. Similar result, if anything, seemed to be anomalous because there was no obvious causal explanation. The droughts and other meteorological factors may have impacted the results.

They were not able to reproduce these results in continuing years. Even though they continued to use the pesticides, they did not find the same results.

They did their work in freshwater systems. Most of our methoprene is in the salt marsh, so they are dealing with a different use pattern and they are dealing with a different habitat.

They also alleged they found impacts from the bacterial products, which we would use instead of methoprene. So, if we don't use the methoprene, we use the bacterial, if you believe Hershey. Well, we're still going to get impacts, so I don't see the
benefit.

The interesting thing about it is that in the area where these studies were done, methoprene continues to be a major component of there mosquito control program. So, apparently, in the area where this study was done, the results were not convincing enough to make this a non-used material.

Bottom line on methoprene: It's an essential part of an integrated program; it reduces program impacts; it limits the amount of adult control we have to do; there's no scientific evidence that indicates we're getting significant impacts; no evidence has been presented that contradicts the EPA and DEC registration of these products. These products were looked at by both the EPA and DEC. They are registered. They determined that significant impacts were unlikely. Nothing has been presented since then to change the EPA and DEC judgment.

I found an interesting thing that the
state DEC actually compared a Generic
Environmental Impact Statement for the
Pesticide Registration Program because they
realized that registering pesticides
implies that they are going to be used.
So, it was a SEQRA-able item, and they did
a GEIS on it.

Over the years, they actually did a
more thorough review on methoprene than
they did for Bti. Given the DEC already
did a GEIS for these products, one could
actually argue whether or not we even
needed to do any further SEQRA on these
products. Nonetheless, we've done some.

We had questions about water management
and what we plan to do in 2007. We
estimate an upper limit of about 2,000
linear feet of ditch maintenance work --

MR. DAWYDIAK: 200,000.

MR. NINIVAGGI: 200,000, I'm sorry.

I'm trying to run through this fast
because I realize this is not everybody's
favorite subject.

200,000 feet is a similar number that
we've used for the last few years. It's hand and machine work, and it's basically an upper bound we are using so you have something to review. We actually normally do less than this.

The overwhelming majority of this is hand work in developed areas, with minimal sediment removed from the ditches, what we call "hooking." And I'm sorry, I didn't bring a potato hook here so you can see what the implement looks like. But basically, it's just removing the material from the ditches. And I'm going to show you where we've done work in the last year and a half or so, so you can get an idea of where we're talking about.

This is out in the developed area (indicating). This is not out in the middle of the pristine salt marsh that we have our hand crews working.

Machine work, as the plan called for, is limited to the minimal amounts needed to maintain tidal flow in degraded wetland. A lot of wetlands actually depend upon vector
control structures for their survival to tidal wetlands. And while we agree while doing the EIS we shouldn't be doing a lot of machine work, in some cases that is necessary for mosquito control and also to maintain the health of the wetland.

I looked at this a little closer (indicating), and it's unlikely that for any given project where we might have a culvert to be cleared or replaced, things like that where we need to clear more than a hundred feet of the tributary ditches with machines in order to maintain the tidal flow. It turns out, with all the permitting and other things you need to do, it would be a lot to do ten of these projects in the season, so we're basically talking about ten times a hundred -- around a thousand feet of the 200,000 feet we're talking about, would be machine work.

I hope that gives you an idea that when we say we're going to do a minimal amount of work just to maintain this tidal flow, this is what we're talking about. And if
that wasn't clear in the original plan, you have it here in front of you.

Machine work is done under permit. Again, we have to go to DEC on these things, possibly to towns, depending on the situation. So, there's additional oversight and review. It's not like we go out to do these things and nobody is looking over our shoulder; far from it. And it has the effect, of course, of limiting the number of projects you are going to do because there's a fair amount of project drawings and paperwork and other things you need to do to make one of these projects happen, even if it's as simple as just replacing a culvert.

This is a map I pulled up (indicating), locations where we did hooking, which is actually a category in our database for 2005 to about two weeks ago in 2006. And the important point about this is that you can see it's mostly the developed area. A little bit out in the east end, mostly in the developed areas. Take a little closer
look in the south shore here, and there were about 200 dots on the map there. Here's where we were working on the south shore (indicating). It's in our core service area. And if you notice where the dots are, they are back in the neighbors, back among the streets. This is not something that you go out in the middle of a salt marsh to do.

I looked for some aerial photography to show this, and the problem you have, in particularly this area, if you look at the aerial photographs, you don't see the ditches because they are under canopies, among the trees and among the yards.

A lot of this work of the roughly 200, about 50 of these sites were in the Mastic/Shirley area. And you can see this was back in the neighborhoods. As you know from acquisition, Mastic Beach and South Shirley are very swampy areas. It's a problem for us. A lot of stuff ends up in these ditches from both natural and, shall we say, anthropogenic inputs.
This is just a whole map of mosquito larvae habitats in the Mastic/Shirley area. Every one of these red dots is a site that we've identified that we visit on a regular basis to control mosquito larvae. The purple polygons here are areas for aerial larvicide. And you can see a lot of these sites, in these small areas, in among the houses. And that's where, in the off-season, you know, if a crew is in this area, and they are constantly treating it because water is stagnant, they are going to say "Well, let's maintain these ditches over the course of the winter to try to reduce the problem and try to reduce our need to larvicide in the coming year."

This is a close-up (indicating). One section there -- and unfortunately the room isn't quite dark enough to show it -- but this is a wetland. It has some ditches in it. The only reason that this is a tidal wetland is because there are some pipes going through this road that connect this marsh to tidal waters.
This (indicating) again, is some salt marsh here. Again, the only reason this is salt marsh is because of vector control structures. Some of these ditches go back into the upland areas, back into among the houses. Again, we're not talking about the wilderness here. We're talking about an area that's very heavily impacted by people. Again, we're trying to do minimal work in a developed area.

A little bit of a close-up, as you can see, back to this, it's not mapped as a wetland. It's kind of an upland area. You can see there's ditches that go back through this whole system here. The evergreen trees, you can see, it's relatively dry. But there are these ditches back there anyway.

I took a couple of pictures of the guys at work a couple of weeks ago. And this doesn't show it real well, but basically, they just came in and hooked out some of the material. The original photo shows it better, but basically there are some leaves
and a little bit of silt that ended up outside the ditch. Again, we're trying to do minimal work. We realize that there are concerns, so we try to minimize the work.

And as I told my boss, we're in a unique situation in DPW where it seems like the less work we do, the happier some people are, which is generally not the DPW way of doing things.

This just shows you an example of the kind of things that can crop up on us (indicating). This is one of our pipes that's starting to collapse. It's starting to impact a road out in Montauk. We will work with the town to repair this pipe. We will have to get the permit. The town may end up, in fact, being the permit-holder on this. So these are the things that happen over the course of the season, and that you can't really predict, which is why the plan is pretty general in nature. But I put this in to give you an idea and understanding of the kind of things we have in mind for 2007. The idea is not that
we're out in the middle of the marsh doing a lot of work. Again, it's minimal; it's in developed area.

Another thing that I saw that was sort of an undercurrent on this rather than specific comments, was there seems to be a lack of understanding of where the ditch system, where our activities fit into the landscape in general, where vector control systems fit into the costal wetlands that we have.

All of our costal wetlands -- and these are tidal wetlands and sometimes adjacent to pressure water wetlands -- have been impacted or modified to a greater or lesser degree, particularly at our core service area. You really can't find an unaltered marsh of any size in Suffolk County. Our systems, for better or worse, have been out there for 70-plus years, and they are basically part of the landscape. Our wetlands look the way they do now, as much because of the ditches that are in them as for any other factor. You can't really
separate their current condition from the fact that they are ditched.

Our ditch system is infinitely tied into the way our wetlands are now. If you like the wetland the way it is now or if you don't, is in someway related to the ditches and the condition of the ditches. We typically operate in very severely altered systems, and neglecting these systems, may not be denied.

The idea that if we just walked away and didn't do anything, that things would somehow get better, is an issue that I want to address. This is one of the few areas you can look at in the south shore, our main service area. This is Gardiner County Park (indicating). If you go back to the 1930's quad sheets, this is a little remnant of kind of the way the whole coastline used to work. There's a neck of land, relatively high, freshwater wetland to upland, and there are these tidal creeks that provide the tidal flow to the marsh. And basically tidal flow in these early
days and in these relatively natural systems, went in and out of tidal creeks and then spread horizontally across that neck of land, in this case on either side.

And again, if you go back to what records we have in the 1930's, this is basically the way our coastline looked. An important thing to realize is you might think well, here's the beach (indicating), the salt marsh must get saltwater directly. That's not so. Because, along this shoreline here, a berm has built up. We call it the ice berm. The sand has built up. In general, water can't get through into the salt marsh through this berm unless it's pierced for some reason such as by one of our pipes or ditches. But in the natural state, that really didn't matter because the salt marsh got it's saltwater through these tidal creeks. So again, it's important to understand this is a relatively unusual condition on the south shore of Suffolk County.

This is the marsh next door
indicating). This is the Branson property, which is owned by Nature Conservancy; some of it is also owned by the state DEC. Instead of tidal creeks on either side, you've got a canal. These canals are bulkhead. Water doesn't go from a bulkheaded canal across into the adjacent wetland unless there's a pipe, and those pipes are generally put in by us or are maintained by us. There are some pipes over here (indicating), that basically feed the ditch system, and that's the source of saltwater for the salt marsh. Salt marshes need salt water, and in this case, they get it from the vector system; again, for better or for worse.

There's not much by way of piercing this beach berm. And again, this is 10-foot high spoil. There is no flow this way (indicating). When I was managing this wetland, I started to work with the state -- with the Vector Control to try to change that. I ended up with this job, and we haven't followed through on that, but
this is also an example of a restoration candidate.

This dark area you see is phragmites, an invasive species. Because of the lack of saltwater, this marsh is being invaded by phragmites. So, that's not something we want to see.

On the positive side, we can also look at this as an opportunity. There's an opportunity to restore tidal flow and hopefully bring back our native vegetation, restore wetlands values.

This is certainly a common situation along the south shore where we operate. This is Nancy Creek. It's on the border of Islip and Brookhaven. This is area where we also do aerial larviciding. This creek is the boundary between Islip and Brookhaven. It goes back a long way.

There's salt marsh over here (indicating). What seems to have happened is very common; this creek probably came down through here (indicating), and ended up being bulkheaded. Again, you take the material
out of the canal, you make building blocks.

This is a very, very common pattern of development that you see up and down our coastline. You see the extreme situation in areas like Copiague and Amityville, where basically all the salt marshes have been filled. Wetlands Law came into effect in 1973 to basically stop a lot of this type of development, so we're left with these remanent marshes.

This Nancy Creek marsh is being heavily infiltrated by Phragmites on the upper brackish shed, which is no surprise. The only tidal flow it gets is a pipe down here (indicated), that we maintain. If that pipe is not maintained, this marsh will disappear as a salt marsh. It will first go to all phragmites and then upland to a different type of species. I would suggest that is not an outcome that we're looking for.

This is the adjacent marsh. We have some good spartina grass growing here. The reason it's growing here is because there's
a pipe providing saltwater to the salt marsh. So again, this is a situation, where without the ditch system, you would not have a salt marsh here. If this pipe were to collapse, I think it would make good sense to replace it as quick as we could so the water would flow. I think that most resource managers would agree that this is a positive thing and that we shouldn't allow the marsh to basically die, while we do extensive and exhaustive environmental reviews.

Just to show you, this is not uniquely a south shore west end problem. This is Corwin Boulevard out in Southold. You've got a little salt marsh here (indicating) that we do have to aerial larvicide. The only reason for the salt marsh is because of one of our pipes and ditches here. This is what we're talking about, about where these ditches and culverts fit into the landscape.

Another example in Southampton. This is called silt expulsion. And again, you
can see, people thought it would be nice to have a nice canal to dock their boat, build their houses; dredge spoil area here (indicating). But again, the only tidal flow comes through this ditch system here (indicating). This is a restoration we're working with the Town of Southampton on. So this is to give you an idea of our primary areas where we work.

This is another aerial of a larvicide area (indicating).

We also basically heard the claim that natural processes, if they are just allowed to proceed, are eventually going to erase all the mosquito ditches; self-control mosquitos, I guess, with predators. We saw pictures of predators eating mosquito larvae, and if we just leave the ditches alone long enough, the marsh will turn into a natural wetland.

It turns out, if you look throughout our landscape, these mosquito ditches can persist more or less indefinitely depending upon the flow rate. If enough water flows
in out of the ditch, it will never fill in, because sedimentation will not proceed to a complete soaking in, or at least not in human time frames. All the available historic information that we have, indicates that our natural wetlands back in the early part of the 20th century produced a lot of the mosquitoes. That's why Suffolk County Vector Control Mosquito Commission was organized, why this program exists. If natural wetlands were not touched, were not producing mosquitoes, I kind of doubt that all this work would have been done. If you look again through what historical information we have, there were certainly a lot of mosquitoes in Suffolk County. In those days, people were very happy to be rid of them.

If you go today to natural wetlands, you will find plenty of mosquitoes, particularly in salt marshes. Salt marsh mosquitos are part of the salt marshes. Salt marsh mosquitos have evolved to breed in great numbers in the salt marshes.
The mosquitos have also evolved to defeat their predators. One of the ways that they -- well, a couple of ways they defeat their predators. One way is by saturating the predators; that in producing such enormous numbers, there will never be enough predators to bring them under control. The other way mosquitos defeat their predators is by reproducing in areas that are just not hospitable to predators. For instance in water that's too polluted or low oxygen or hot or salty for fish and other predators to live in. Mosquitoes have evolved to get away from predators, evolutionarily speaking.

Phragmites invasion thrives in low tidal flow. Salt marshes, as I've said a couple times now, need saltwater. So the idea that if we left the ditches, just neglect, disappear, go away, in some cases, you are going to end up with just phragmites and other invasive species; you are not going to end up with a natural valuable salt marsh.
A good place to look at this is in our wilderness areas. We haven't touched the ditches in the wilderness in over 30 years. We don't do any larviciding in there either, so you get an idea of what would happen if we went away for awhile. Basically what happens is that we get massive numbers of mosquitos coming out of these wilderness areas. The ditches are still there; predators are not controlling the mosquito population. So, we've actually done the experiment and shown that simply allowing natural processes to proceed is not going to get rid of our mosquito problem, at least not on human time scales. Now, maybe if sea level rises and swamps and washes away all of our marshes, then we can go out of business. But that's not happening any time soon.

This is some examples (indicating).

This is Crab Meadow. Again, some of these ditches have been untouched for 20, 30 years. They are still there. Some of them are actually getting bigger as the
tidal flow gets through. So the idea that they are going to disappear, again, that doesn't seem to be happening.

This is an area in Oakdale (indicating). This is just to show you what effect you have of lack of tidal flow. This is connected to the bay here (indicating). We've got reasonably good tidal marsh where it's connected to the bay. There's a dike running along this canal here (indicating), and the only tidal flow that gets through it are some pipes that were put in for vector control. And back when I worked for DEC and managed this land, I had them put in larger pipes to try to maintain some wetlands values. But as you can see, this wetland is being infiltrated, the dark area, with phragmites. This marsh, if trends continue, will not be a nice kind of salt marsh. This will ultimately be 12-foot-tall phragmites, especially if we would allow the pipes to collapse and disappear.
This is part of Fire Island National Seashore (indicating). This is part of the Hospital Point salt marsh, directly across from the Mastic/Shirley area. And again, the ditches are still there. Twenty, thirty years down the line, this area turns out for ditches, a number of mosquitoes by far the highest number of mosquitoes anywhere in Suffolk County. When you set a trap in this area, you do not count the mosquitoes; you weigh them because we're talking about a magnitude of more mosquitoes there than anywhere in Suffolk County. If these mosquitoes stayed in the National Seashore, this would not concern me at all, but occasionally they do come and visit our neighbors in Mastic Beach and Shirley. So if anybody thinks that just leaving the marshes alone is going to solve our mosquito problems in a meaningful way, they need to take a look at this, and I think you have your answer.

To summarize, we're addressing an ongoing public health need. I don't think
that the "no-action" option is an option here. We have mosquito-borne disease; we have mosquitoes; the county needs a mosquito control program. We have a very well-designed, professionally run, integrated pest management program, and it's designed for the parts to work together and minimize adverse impacts. The components of the plan support one another, and are designed to minimize impacts and maximize the effectiveness. If you pick it apart and say, well, take this component part out or take that part out, we are not going to be reducing impacts; you will just be, if anything, making them greater.

We use EPA and DEC registered materials that have been reviewed by higher levels of government for adverse impacts. So it's not like we're just picking material and using it on our own. There's no information out there that contradicts the registration of these products.

Our water management is minimal maintenance work that is designed to
alleviate specific problems; it's in
developed areas; it helps to reduce our
pesticide use; and it helps to prevent
sedimentation of wetlands. So I hope that
gives you a little bit better idea of how
the program works and why it is the way it
is. And I resisted the urge to try to put
a humorous line at the end, and we can
answer any questions.

CHAIRMAN SWANSON: Thank you. I'll
hold the questions for a few minutes. I
want to try to get some people that are on
a difficult schedule to have an opportunity
to speak.

Is Mr. Gerald Ludwig here?

MR. LUDWIG: Yes.

CHAIRMAN SWANSON: Mr. Ludwig, I
understand that you have to leave shortly,
if you would like to make your comments.

MR. LUDWIG: My name is Gerald Ludwig,
and I'm vice president of Mastic Beach
Property Owners Association, and I want to
briefly address the situation in Mastic
Beach, Mastic and Shirley with regard to
the mosquito level. I'm concerned about
the health aspects. You know, we're
talking about something that exchanges
biological fluids between people and
animals, and, of course, that's a health
risk. I haven't had any personal
experience with anybody having a
mosquito-borne disease, but I do have quite
a bit of personal experience with the
levels of mosquitos we have in Mastic
Beach.

It's a very long mosquito season, and
in the middle of the day, when mosquitos
are not supposed to be active -- according
to conventional wisdom -- if you walk
across the lawn, you will find swarms of
mosquitoes attacking you. And from what I
understand, those are more characteristic
of the salt marsh mosquitoes.

My sister has a two-year-old son and
another baby on the way, and she has a
beautiful yard over a half an acre. And
most of the summer her son has to play on
the cement driveway because if he goes on
the grass, the mosquitoes are going to
attack him.

Pets bring the mosquitoes in. When I
open my door to leave my house in the
morning there are three or four mosquitoes
waiting for me; they get in the car with
me. When I get home -- you know it's
almost -- it's eerie. You get out of the
car, and you open the door and several
mosquitoes are waiting for you right
outside the door. Now, I can't imagine
that they were actually in that spot. Now
that just gives you an idea of the
concentration of mosquitoes we have there.

If you go to Smith Point Beach in the
evenings, there are bands that play music
there and you can sit and have a drink if
the mosquitoes don't attack you. I've used
DEET. I've used sprays. And basically, if
you are doing yard work in the summer, you
have to constantly keep applying it. It
will keep them maybe from landing on the
spots that were actually sprayed, but they
will keep hovering around your face; they
will find unique spots; they will go through your socks. They will attack your fingers. It's a terrible problem in Mastic Beach, which is a quality-of-life issue, but all of these attacks statistically make it more likely that someone is going to get a mosquito-borne disease.

And in addition to people who are diagnosed with mosquito-borne disease, there are undoubtly many people who have had some clinical effects; they have been infected and maybe they haven't gone to the doctors but they have had fevers or they have had malaise, and they have had the effects of the disease. And basically, I just wanted to bring that to the attention of the group.

I know that I'm also on the civic's action committee for vector control, and my experience with speaking to the people on the committee is many of the people who oppose the mosquito spraying don't live in areas such as Mastic Beach. They don't seem to have particular problems with
mosquitoes personally. They say they are
never affected; their quality of life is
never affected; their activities are never
impacted personally by mosquitoes. And I
can tell you that my experience, my
activities, and those of my friends and
neighbors and family in the area are
severely impacted in the summer by
mosquitoes.

CHAIRMAN SWANSON: One point of
clarification. You are on the CAC that is
reviewing this plan; is that correct?

MR. LUDWIG: Right. I represent the
Mastic Beach Property Owners Association.
We've been attending that CAC since its
inception, and I've been there, personally,
for about the last two or three years
representing the Property Owners
Association.

CHAIRMAN SWANSON: I wanted to, if you
will bear with me, do some things a little
out of order.

Lauren, you wanted to make a brief
statement here.
MS. STILES: Yes. We were discussing this before, and we jumped into the meeting. I just wanted to finish up my statement that I was making earlier.

I am going to be recusing myself from this vote, not because I feel I have any reason to based on the law or any of my past history or connections with anyone who may be opposing this Vector Control Plan, I'm doing so because I feel threatened. I feel that Mr. Jeffreys may or may not have -- I have heard that you have -- threatened to write this letter that could seriously damage my entire career, and I do not think that my entire legal career is worth one vote on an annual plan.

That being said, I do intend to participate in the discussions.

MR. JEFFERYS: Mr. Swanson, I just have to respond.

Ms. Stiles, I don't intend on writing anything about you one way or the other, in favor or opposition to the Committee on Character and Fitness. I don't care one
way or the other. I think I've made that very clear. I don't know who you have heard it from, but whoever you heard it from, you are getting bad advice.

I have no intention one way or the other -- I appreciate you are going to be a member of the bar, and I look forward to you being a member of the bar. To the extent that allays any of your fears, take it for what it's worth. I don't care one way or the other.

CHAIRMAN SWANSON: Thank you.

Dominick, is anybody else going to make a statement here this afternoon?

DR. DILLON: I will.

CHAIRMAN SWANSON: We'll get back to you.

DR. DILLON: Okay.

CHAIRMAN SWANSON: I just had to take the one gentleman very briefly.

MR. NINIVAGGI: Dr. Dillon has a presentation. I don't know if any of our people from the general public -- oh, we have somebody else that has to leave at a
certain time, so I'll turn that over to Dr. Dillon.

DR. DILLON: Hello. I'm Dr. Dillon. I'm with Public Health, and I actually have a guest with me today, Mr. Ronald Lasley. And the reason why I brought him is that in 2002 we experienced quite a few cases of West Nile virus in our human population, and Mr. Lasley is one of the firsthand observers of this, as his mother contracted West Nile disease, spent several months in a coma and on a ventilator, did eventually make it to a nursing home and did go home. And if you ever follow what we write in the press, we said she was recovering at home, but when we get to the part where I talk about his mom, I'll have him speak a little more personally on that.

It's interesting how wherever we live, we tend to think we're the center of the universe. And when it comes to West Nile disease, I think we really are.

And what happened in 1999, in Flushing, Queens, there was -- an infectious disease
doctor started noticing clusters of elderly people. Most of the people had the same thing in common; they rarely left their backyard, they were very close with their families, they had a lot of backyard barbecues, and four of them were in the hospital with encephalitis. Their family members hugged them, kissed them, they even ate the same food as them, yet their family members were fine. And so, what would explain this? No one could understand.

Eventually we had eight cases of encephalitis, and we had four deaths. New York City was actually notified by the infectious disease doctor in Flushing. At the same time, we started seeing dying crows in the New York City area. And in Suffolk County -- I think one of the people who was here at our last meeting commented on Dr. John Andrayson, who anyone out east knows him. He's a very good veterinarian. He has primarily an equine practice, and he started noticing he was getting called for horses that were acting bizarrely. He
would describe the horse would tilt its head to one side and go around in circles. He started worrying that maybe they were rabid. When the horses died, he would send the brain to Cornell. The rabies tests were coming back negative.

Eventually, he ended up with 22 horse cases, 13 died. When he knew it wasn't rabies, he put a phone call to Dr. David Graham, who was the public health director at that time. Dr. Graham said, "You know, this is interesting because there is something going on in Flushing Hospital with encephalitis in humans."

So what was going on? Well, this is September 3rd. The CDC actually did tests on some of the spinal fluid on the people from Flushing. And what they found was -- they said "It's Saint Louis Encephalitis." Well, actually, if you have West Nile disease, you will test positive for Saint Louis Encephalitis, and we knew West Nile didn't exist in our country. So CDC would not have even had the antigens to test
against the disease if they did not exist in our country.

But what happened at the same time, Tracey MacNamara, who is a zoologist at the Bronx Zoo, she had already lost several flamingos, she had lost a pheasant, a cormont, and she knew that this didn't make much sense to her. So she actually contacted a friend who worked for the U.S. Army, and so she said "I think maybe the CDC is wrong." And you know why? She had a whole pack of emus.

Does anybody here, the board, know what an emu is?

MR. Address: It's a big bird that can't fly.

DR. DILLON: That's right. It's a big bird that can't fly.

Now, that's a handsome bird (indicating).

Now, she was watching her emus. She knew that they were going to die because Saint Louis encephalitis kills emus. These guys weren't even acting sick. So she
began to question, Is the CDC wrong? So she took some of the crows that had died, the wild crows that had died and landed on the sidewalk in the zoo, she shipped them off to the friend who is USAMRD, which is the military research branch.

Now, remember, the difference between the CDC -- the CDC only looks for things we already have in the our country. The military thinks about bioterrorism. Believe it or not, West Nile disease was one of those diseases that was theoretically possible to be a bioterrorism agent. So they had the antigen to West Nile disease. Those crows tested positive for West Nile disease.

Okay, so at the same time now, there was a gentleman out in U.C. Irvine in California, he had the results -- he had brain tissue from five of the victims that were in Flushing Hospital. Four out of the five cases, he was able to prove that the West Nile virus was present.

Okay. Here is where it started
(indicating). There was eight cases; eight human cases here, and then this is what happened (indicating), very quickly. This is 1999. Now remember, it first entered the United States in Queens, Long Island. Then look how quickly, by 2002, where we were.

Now, the CDC had no way of knowing how many people were truly infected with West Nile disease. And let me tell you right now, it's a very inexact science, and I'll tell you later on how many people we find that have West Nile disease, they had many, many other diagnoses. They go usually months or weeks later that they will actually have someone that does the test specifically for West Nile.

For every one person with encephalitis, you can guesstimate that 150 people were affected. Most of them will be asymptomatic. Well, why is that? No one knows. There seems to be something specific about someone's immune system that allows some people to just get nothing more
than a flu-like system with West Nile, and then the other people get incredibly ill. They develop encephalitis.

What I found here in Suffolk, is that the people who develop encephalitis -- meaning they get really, really sick; they end up in a coma -- if we do blood tests early, we don't even get a positive test for West Nile. It's not until later when they are starting to recover that the test is positive. Makes sense; maybe they couldn't make antibodies to West Nile, that's why it went to their brain. But it also makes me worry; how many other cases do I not know about because the person died before they ever recovered long enough for me to get a West Nile test that was positive.

This is actually the primary host for West Nile disease (indicating). It belongs in the bird. We as humans and horses are considered incidental hosts; meaning, the mosquito carries the virus, gives it to the bird, goes back around in a vicious cycle.
Once in a while, that mosquito -- and I always have a hard time because the only ones that bite are the female, so I have to call her "she." -- now she, once in a while, can't get the blood meal she wants from the bird, so she'll go to us or she'll go to the horses. Now, we in Suffolk County, we are very fortunate because we don't see any horse deaths anymore because the vaccine that is out there for horses is very effective. The only horse death we had was a couple years ago, he was a horse that hadn't been vaccinated in a couple years. Horses need to be vaccinated every year to be protected from this.

Okay, so where were we in 2002? In the U.S., there were over 4,000 cases of West Nile disease; there were 284 deaths. In Suffolk County, we had eight cases with two deaths.

Now, what else happened nationally in 2002? Well, they ended up with a patient who actually -- a donor had received a blood transfusion, and then four organ
donor recipients developed West Nile from that person that went on to die. So they proved you can get West Nile disease from a blood transfusion. We also found out that year, you can get it from an organ donation.

Remember how I said, a lot of times, our people, we do a blood test on them initially when they are very, very sick, they are not doing well, their blood test is negative; six weeks later, it's positive. So that's a problem. So, if you are going to have someone who died of brain death, and they would naturally make a wonderful organ donor, are you now in trouble because you didn't realize they had West Nile? You are putting their organs into other people that do not have a good immune system.

Now, you can see by the fall of 2002, there was 23 cases of West Nile disease that actually developed because of blood donations.

So, what was the government going to
do? Well, now, because we've got this

disease out of control, we now have to have
every unit of blood screened in our
country. You still worry, though, because
sometimes people could have the virus but
at low levels, and the test could still
measure negative. It's not a hundred
percent accurate, but it's still a worry.

Okay, what did they do in 2002? Well,
that was the one year, if you remember,
they had a severe shortage of blood. And
the reason is, CDC had to recall all the
blood in the West Nile areas, because there
was no way of protecting that blood supply
and being sure that it was not carrying the
virus. And then they began testing the
blood supply.

And then what they started doing is
asking on the donor questionnaire -- I
don't know if anyone has donated blood
lately, but that's actually one of the
questions they will ask you now.

All right, I'm going to go onto the
next one. It's interesting, but here's a
list throughout the country. You can see it's everywhere now. Now, when they test our blood, everybody that donates blood, they just randomly test it. This is how often they throw away your unit of blood because they found the West Nile virus present in your blood. Not the antibody; meaning, the actual virus. You had it but didn't know it; you felt well enough to go donate blood.

So in 2002, we had 2,000 cases from mosquitoes to humans; we had five cases due to blood transfusions; and four from organ transplants; and one death. The other side, West Nile virus in mother's breast milk; whether or not the mother can make the baby sick by breast-feeding is not known yet.

Okay, but what's worrisome is a lot of times you will hear people, oh, that's a disease of old people. Well, no, actually, something specific about the West Nile virus attracts it to nerve tissue. It has the propensity to go straight to the nerve.
And, in fact, people who are very, very sick with West Nile, they have a very difficult time of finding the virus in their blood, but you will see right away, they will develop confusion, coma, they will have permanent neurological problems.

Now, this is an interesting case that happened in Syracuse. There was a woman who was pregnant. She's in her 27th week of pregnancy, and she picks up West Nile. So she had a two-day history of fever, headache, blurred vision. All of her baby ultrasounds, were perfect, no problems. Several weeks later, she is hospitalized, and she has encephalitis. So she's confused, going in and out of brain issues.

Five weeks later, she would give birth to an infant, and the baby has severe abnormalities, and the baby is infected with West Nile virus.

Now, this is a normal CAT scan (indicating). All you are looking for is symmetry. There's a straight line that runs down the middle. You want everything
on the left to look like everything that's on the right, and that's all there really is to a CAT scan. So as you can see, this is a completely normal CAT scan of somebody.

This is what the CAT scan looked like of that baby (indicating). You can see parts of the brain are missing, there are huge areas that are completely defective.

So, what does the CDC say? The CDC said West Nile illness during pregnancy is now considered a potential risk factor for adverse birth outcomes.

All right, so in 2002, we had what we call one infection, meaning just one person who had a little fever, their test came back positive for West Nile; we had one who presented with a polio-like presentation; we had one with meningitis, and five with encephalitis. One of those encephalitis patients was actually Mr. Lasley's mom, and two people died that year in Suffolk County.

This was actually our first patient,
and the whole point of this thing, is that
this is a young, 55-year-old guy who tends
to smoke cigarettes. He wants to stay out
of the house while his wife is in the
house, so he goes out to the shed and
smokes his cigarettes out there at night.
He rides his bike, he does a lot of hiking,
he does kayaking; he's really active. And,
of course, he gets mosquito bites while
he's sitting by the shed. And he ends up
with all kinds of symptoms of fever,
light-headedness, and he starts urinating
uncontrollably. So he ends up in our
emergency room not once, not twice, but in
three different emergency rooms here in
Suffolk County. No one can figure out
what's wrong with him. He finally is seen
by a neurologist; he even has a T.U.R.P.
done because they think maybe it's a
urologic problem.

So finally, he's starting to feel a
little bit better, goes on a planned
vacation with his wife down to North
Carolina, and there he starts getting
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confused. So, he's in a different state, a
different hospital. The hospital people
said "Oh, hey, he's from Long Island. That
must be right near Flushing, Queens.
That's all the same place; right? Let's
test him for West Nile."

Now had I gotten the phone call up
here, I would have said "No, can't test him
because he doesn't meet any of the
criteria." One of my jobs is to make sure
that not everyone gets tested that wants to
be tested, but that we appropriately use
the limited resources of the state lab. So
I would have actually said no. Somebody is
peeing a whole lot and has a fever, that's
not appropriate to test for West Nile. It
comes back positive. This is our very
first case of West Nile disease.

It's not on the local doctor's care
requirements, and even if they had thought
of it and called me, I definitely would
have made a mistake and said "No, he
doesn't meet the criteria. I'm not allowed
to send the specimen on for testing."
Next case. Okay, now, this is actually Mr. Lasley's mom (indicating). And she had a little bit of a fever, and her doctor thought maybe she had a sinus infection. He put her on antibiotics. And then she's found by her husband on the floor in the middle of the night, and she has a seizure, and she's got a very high fever. They take her to the hospital -- and she's got a rash on both legs. Other than that, they can't really figure out what's going on with her. She stops breathing, and they put er on a breathing machine, and she's in the ICU.

Do you want to talk a little bit about this?

MR. LASLEY: You bet.

First of all, as Dr. Dillon said, my name is Ron Lasley, and I'm a Babylon resident. I want to thank you so very much for the opportunity to speak here today.

As Dr. Dillon also mentioned, approximately four years ago, my mother was a victim of the West Nile virus, and she survived that terrible, terrible situation.
I understand that we have here today members of the board of the Environmental Advisory and also members of the Suffolk County Department of Health. I'm happy about that.

My purpose is, hopefully, to assist in developing a comprehensive and, most of all, a standard approach to deal with the escalating medical threat of the West Nile virus. First, I want to say thank you to Dr. Dillon and her staff for their assistance and expertise during a very difficult period for my family. Their professionalism and compassion is a credit to themselves and Suffolk County. Who would ever think I would be here today to discuss what was once an obscure concept for America, the West Nile virus? We now all know -- and Dominick's charts, I think really portray what's happening in our country today -- we now know that the West Nile virus is here, and the potential for a national medical disaster exists.

The question here today seems to be --
and maybe I'm wrong -- is what is the best control approach to cause or eliminate the cause of the West Nile, which certainly is the mosquito. I personally would have hoped that over the last four or five years we would have answered that question by now, but it doesn't seem that we have a meeting of the minds here.

Where were we and where are we going?

Well, quickly, as Dr. Dillon appropriately pointed out, my mother was admitted to the hospital with a 105 degree temperature which escalated into convulsions, and two weeks in intensive care and life support equipment. She was basically nonresponsive. The medical experts at that time, in the hospital, advised me that the elderly are at a greater risk; and that her chances of survival were very, very limited. They gave me very little hope.

Nine weeks later, she was alive, still in the hospital, unable to walk and suffering from the damage that was done from the West Nile. She spent three months
in the rehabilitation center and was lucky to be alive.

Today, the quality of her life has been adversely affected by this horrendous killer. I really don't feel comfortable explaining her current medical condition, but I will tell you that she can walk only a limited distance and takes nine medications daily. Before this, she only took one or two, and those are all directly attributed to the affects of the West Nile in her.

During this experience, I personally observed a technically competent staff of the Department of Health. They trapped and tested mosquitoes in our area. Their methods and procedures seem, to me, to be very, very complete. They analyzed the data from those traps and those pests, and only after that did they suggest an approach of isolated spraying. They were very, very cautious and prudent, and utilized the only immediate proactive remedy, which was the selective spraying of
pesticides. There wasn't anything else they could do.

The agricultural industry today sprays to protect their crops; we need to spray to protect our lives, and specifically, the elderly. Until technology develops a viable alternative, we need to spray pesticides. Anything less would seem to me to be negligence. Human life is our number one priority, and you are empowered with the decision of spraying; therefore, it is your responsibility.

I want to thank you today. Do you have any questions?

CHAIRMAN SWANSON: Dr. Dillon, are you about through?

DR. DILLON: I have a couple more things. Did you want to keep going before you ask any questions?

CHAIRMAN SWANSON: Well, we haven't even given our stenographer a break, and I'm thinking her fingers are probably sore. Could we give her a break and then come back and complete it? Would
that deter the continuity?

DR. DILLON: Sure, we could stop for five minutes.

CHAIRMAN SWANSON: Okay? So we will adjourn for a few minutes.

(Whereupon, a recess was taken from 4:43 p.m. to 4:49 p.m.)

CHAIRMAN SWANSON: Everybody take their seats so we can start again, please.

Dr. Dillon, I appreciate your allowing us to take a break.

DR. DILLON: I'm going to try to use some technology that may fail and may work.

Bonnie, can you hear me?

MS. BOON: Yes, I can hear you.

DR. DILLON: Oh, good, it does work.

What we've done is hooked up a speakerphone. We have a microphone sitting on top of it. Bonnie has given me permission to give her information on who she is.

On the phone with us is Bonnie Boon (phonetic spelling). If you look at the date of this press release, the date on
this is November 14, 2003. Now, do you remember how I told you that when people pick up West Nile disease, we oftentimes don't know about it, can't figure it out, or we have to wait so long for them to have the testing done?

And this is the case with Bonnie, so I'm going to read it to you here.

It says:

"Acting Commissioner of Health Services Linda Mermalstein, M.D., M.P.H., announced today that West Nile has been confirmed in a 48-year-old female resident of East Hampton, bringing the County's total of human cases to eight.

The individual began experiencing symptoms including fever, headaches, muscle pain, joint pain and a rash on August 26th."

Now, from August 26th through November 14th, before we actually had a confirmation from New York State, she was never hospitalized and had nearly recovered. And so when you see this, I hear from people
"Oh, come on, West Nile is just a wimpy disease. It's just little flu-like symptoms and people get better."

Now, Bonnie, can I ask you, how is your health today? That was 2003, and now you have had plenty of time to recover; correct?

MS. BOON: Correct. I have been okay, but I never fully recovered. There's aftereffects of West Nile virus, that -- the aftereffects were, I guess, determined by my neurologist, who is Dr. Reilly, out here in East Hampton. And ever since I kind of recuperated from West Nile virus, I was left with certain things that just didn't go away. I have slight numbness on the right side of my face, and my right eye has lost a certain amount of depth perception. Dr. Reilly sent me in for an MRI and CAT scan, and found that on the cortex of my brain, I've got little tiny calcium deposits. He has ruled everything else out, and it was his determination, or his diagnosis, that this was the result of
West Nile virus, and he actually said that there's really nothing we can do about it, and, you know, I should feel lucky because it didn't kill me. But these are things that aren't going away.

Also, the rash that I had was a viral rash. As you all know, it's a very flat rash. But it was so concentrated and intense on every square inch of my body that when it did go away, what it had done was broken tiny, little capillaries under my skin. I'm very fair, so it shows. So I've got little red spots around me, and my husband loves to call me "spot" now. And, I don't know how to get rid of them. I don't know if I'll ever get rid of them. But that was something that was dermological, I guess -- I'm sorry, I'm a little nervous. I'm not used to speaking, so, bear with me.

DR. DILLON: You're doing fine, Bonnie.

Now, tell us, is there anything you had to give up because of West Nile? You were telling me before about --
MS. BOON: Well, yeah. I don't drive outside of my township, East Hampton. I am a real estate broker, so I'm fine around my town. My town is small and it's very slow-moving traffic, and I know it like the palm of my hand because I've lived here forever, but it's extremely nerve-wracking for me to drive where there's a lot of vehicles driving because of the depth perception thing. Like, I'll see something out of the corner of my eye, and I can't quite judge the distance.

And stairs, going up and down the stairs, I have to concentrate. And being a real estate broker, of course, I'm looking at houses every day. But I team up with different people that work with me, and they make sure I get up and down the stairs just fine, you know.

And, again, at home, I'm okay because I've counted my stairs and I know the distance, but it's unfamiliar stairs. It actually got me out of jury duty, too, by the way -- I know I didn't tell you that
yesterday, Dr. Dillon -- but they wanted me to go up the Island for jury duty, which I would have done, and my doctor said, no way, you can't drive. I'm 50 years old, 51 years old. I'm afraid I'm going to lose my license over this some day. So hopefully, that won't happen.

If I ever had an emergency where I had to drive up the Island, which we recently did, I was an absolute -- it was terrible. My husband has to drive me everywhere. If I need to go up the island for whatever reason, my husband has to take off work and drive me up there, and that's just the way our life, I guess, is going to be. And we've adjusted. I'm not seriously complaining. Again, like my doctor said, you know, I'm really happy and glad to be alive. I was very, very sick at home. I could see how this kills people. I can see how it can kill people that are infirmed, elderly or very young.

I'm strong. I used to do things like hiking and camping and rock-climbing and
horse-back riding. I can't do those things anymore. And there was a bit of a weight gain, too, which was quite unsettling, but I've gotten that under control.

I mean, I'm not depressed; I'm happy. I have a great life, a wonderful husband, grandchildren. And I have a grandson that's 16 months old, and I would never want him to get West Nile virus.

And that's all I can say, unless you have any other questions, Dr. Dillon.

DR. DILLON: Does anyone here have any questions for Bonnie?

(No response.)

DR. DILLON: Bonnie, I think we all really want to thank you for your time.

MS. BOON: Okay. If I could ever be of help in your research... I know this is such an unstudied disease. I would like it to be more studied so it could help benefit people in the future.

And I really do think that as far as Long Island goes, we have a lot of standing water. Come on, guys, all over the place.
And I know, especially out here in East Hampton, we need to keep the mosquitoes under control. West Nile virus isn't the only thing they carry.

DR. DILLON: You just said my final line. Thank you, Bonnie.

MS. BOON: Thank you, Dr. Dillon. I'll speak with you soon. Have a wonderful week.

DR. DILLON: I'm going to hold on this one for a minute (indicating). This was a CDC slide, that came out way in the beginning, and this was a guide to us in the Health Department as to how we were to know when we had West Nile in our area.

The first thing we were supposed to see was dead birds. Then we're were supposed to see other -- the mosquitoes, test them, find it. Then we were supposed to see the horses, and then the human cases.

Well, remember, the horses have been eliminated from this now. We do mosquito testing, we do the dead birds. We do everything we can to figure out where we've
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got this virus, and keep it under control. And the real important thing -- I don't know if anybody saw the PBS series that they had last week about Yellow Fever in the U.S.? It was all about Walter Reid, and they did not believe that these things, these mosquitoes, could actually transmit disease to humans, and how we proved that it's true. And we have the perfect atmosphere to have Yellow Fever, and we had malaria; we had Eastern Equine among mosquito populations. Now, what goes to my mind when I hear Eastern Equine, I think of little children dying because it has its most significant mortality rate on children. And so, we need to control the mosquito population.

I just want to thank you for your time.

CHAIRMAN SWANSON: Thank you.

Dominick, do you have anybody else?

MR. JEFFERYS: No. Mr. Chair, unless there are additional public people here that want to speak, we're here to answer questions. I know there were legal issues
on some SEQRA issues that members of the
Council have asked me to research. I've
done the research. If anybody remembers
what their questions were, both myself and
Jenny Kahn split it from my office to be
able to give the answers to some of the
legal questions.

CHAIRMAN SWANSON: Okay.

I'm going to go to the public
participants in a few minutes, but,
Dr. Dillon, I just had one question of you
to help me understand things in a bigger
perspective.

Why are there not similar types of
programs trying to tackle something like
Lyme disease in Suffolk County as opposed
to mosquitoes? It seems to me, so many
more people are affected by Lyme disease.
That's also something spread nationally,
and it seems to be out of control. Why
have you chosen to focus on this very
serious problem of mosquitoes, but you
leave others alone?

DR. DILLON: We don't really leave
ticks alone. In the '70s we tried all kinds of things to control the tick population. But I think the best correlation to describe it, a tick is very similar to a cockroach. It's very difficult to kill. You are going to ruin your environment; you are going to do all kinds of things before you are going to eliminate those ticks in the population.

Also, remember, if you allow the mosquito population to go unchecked, you just got an empty vacuole waiting to be filled with all of the diseases, including Eastern Equine, Yellow Fever; all of those diseases will set up and develop in a greater way.

Ticks are limited in that they do carry severe specific diseases, and the best thing we can do to protect the public against Lyme disease is just education; to recognize and pull the tick off right away and to dress appropriately. And there's not much more we can do to offer protection against ticks.
CHAIRMAN SWANSON: Thank you.

The panel can stay here. I'd just like
to give the opportunity to our public.

Mr. McMaly?

I will cut you off in five minutes.

MR. McMALY: Please do that.

Mr. Chairman, thank you very much. I'm
so glad you asked the question about the
Lyme disease there. There are about
200 cases of tick-borne disease in this
county for every mosquito-borne disease.
The Center for Disease Control says that we
are more or less immune to it now because
we've all been bit, and it's like getting
the annual inoculation for the flu. This
is a flu; it's a virus.

Anyhow, I was going to say something
else, but when I heard -- and excuse me for
saying it this way, but I can't resist
it -- although I look too young to be
involved, I was involved in the bad old
days of the Cold War. What I think I saw
here is what a criminologist would call a
disinformation campaign. It is not exactly
wrong -- I'm not saying you're wrong -- but
it's not relevant.

And there are other aspects, and I did
hear the attorney trying to purge another
attorney. This is somewhat similar to what
I remember from those days, and I think I
gave you, Mr. Chairman, a copy of the
letter that I sent to the County about what
I thought was some unethical behavior
relative to this program, how a
hundred-million-dollar program contract was
given to a guy who was not thrown off. His
purpose for coming to the Citizen's
Advisory Committee, which I'm on, was to
get the money, and the County was all
compliant with it.

We're talking about ethics, I wrote --
I don't know, do you have this in the
record? Do we have new members here?
Should I give this to the secretary?

CHAIRMAN SWANSON: Is this what you
gave us at the hearing in Riverhead?

MR. McMALY: Yeah, I did.

CHAIRMAN SWANSON: Okay. It's in the
record.

MR. McMALY: Do the other members have it? There are some new members. Anyhow, it was not considered to be an ethical violation in Suffolk County according to the person that called me up. But, you know, I think Suffolk County has a long history with ethics, and I don't want to touch that now. I will respond to some of the assertions and statements made by Mr. Ninivaggi about the dead birds. The dead birds die primarily due to pesticide exposure, the top of the food chain. And yet, before the West Nile virus, there were dead birds.

When the doctor -- whatever his name is up in Albany -- analyzed these birds, he found lots of pesticides. Eventually, he came to the conclusion that the pesticides were killing the birds. Yes, they could have something else; they could have a cold or something else. I don't know.

As far as I know, there has never been a case of equine encephalitis in a human
being in Suffolk County; is that true, Doctor?

DR. DILLON: Not in a human being. In horses.

MR. McMALY: Right.

And I think there was one mosquito found in salt marsh mosquitoes that was infected by the West Nile virus?

DR. DILLON: It was a pool. A pool would be hundreds.

MR. McMALY: But one sample, you found it.

DR. DILLON: Which year are you referring to?

MR. McMALY: Any year.

This year, I was told -- we were told they finally had the Holy Grail, or hit the lotto; that they finally got the test that showed that a salt marsh mosquito in Suffolk County might have -- possibly did have the West Nile virus. Whether it was a stained petri dish, who knows.

Anyway, about being in the salt marsh, I had lunch with Peter Scully, who was the
-- still is the commissioner of the DEC, who gave the permission to dig up the Wertheim property. He said to a group of people -- and I'm sure he'd tell you -- if anyone on this council would like to know why did Scully permit the contractor for hundreds of thousands of dollars to dig giant swan lakes in the Wertheim property with canals in between?

CHAIRMAN SWANSON: You have about thirty seconds.

MR. McMALY: Okay. Call up Scully. I'm sure he'll tell you. He said it's not restoration. Those holes and canals were not there before. That cannot be called restoration, and he's the guy from the DEC that approved it. So there's a lot of disinformation that went on, and I don't have the time to do it now, but please, somebody call up Scully. I'm sure he'll tell you if you call in your official position. He told a mixed bag of guys who just happened to meet him at lunch one time.
Thank you very much.

Oh, just one question. Are we talking about this long-term study, the environmental impact, et cetera, et cetera.

CHAIRMAN SWANSON: No. We're only talking right now about the 2007 Work Plan.

MR. McMALY: Am I just a layman that doesn't understand government? Shouldn't you have the study completed before, so you have a basis to approve or disapprove?

CHAIRMAN SWANSON: We can't operate in a vacuum, and it has taken about three years to approve the long-term study. Life goes on. So, we're trying to accommodate both long-term study, but in the meantime, not stop at the treadmill.

Thank you very much for your continued participation.

Mr. John Reichling.

(No response. )

CHAIRMAN SWANSON: All right, is there anybody else here that would like to speak from the public?

(Audience member raises hand.)
Good evening. Long day. My name is Kevin McAllister, and I'm the Peconic Bay Keeper.

I'd like to talk about the '07 Work Plan and point out some discrepancies. I guess, on Page 13 and obviously through the plan itself, there's references made to machine ditching. Page 13 at the bottom, "Impacts on Water," there's no data to date affirmatively linking Vector Control ditches to adverse water quality impacts on or adverse impacts on wetland values.

I had made mention of this the last time I spoke, but I will provide this to you. This is a report that came out of South Hampton College, estuarine research in March of 2006. They looked extensively at ditches in Flanders Bay, and it was confirmed that these ditches have high levels of nitrogen as well as fecal...
coliform bacteria that are exiting, being discharged to receiving waters with the high levels of nitrogen. They also pose the risk of triggering harmful outcomes. This is in Dr. Gobler’s report.

The last time I made mention also, and relative to the ditch network -- and I've certainly stated this time and time again -- these ditches act as conveyances for upland stormwater runoff, upland source pollutants.

In a 2001 application at Cupsogue County Park -- again, this application was submitted to DEC for maintenance activities, re-ditching. These ditches are important for the drain runoff.

I faxed academic -- obviously, I think you are aware Mr. Levy, in his State of the County Address a couple years ago, acknowledged the impact that ditches were having on wetlands; that there be no new ditching.

With the extensiveness of the network ditches, they are roughly 700 miles. Quite
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frankly, all of these systems, for the most part, already have been altered. 200,000 linear feet is 38 miles. If you consider a two-foot wide ditch, that's 91 acres, if I've done my math correctly. That's extensive.

And again, the latitude that's in this plan is troubling. Mr. Kaufman, in earlier discussions on the acquisition of some parcels you felt it was important that even small -- I think a tenth of an acre -- parcel come before the Council for review. And yet, there's potential for great latitude relative to this plan.

The methoprene, you heard Mr. Ninivaggi talk about the Minnesota Study. And, again, I've certainly presented that or provided it in the past.

Speaking to significant reductions in insect populations and wetlands- and I'll provide you with the comments that he has provided -- and please forgive me, but this does, I guess, tie in with the long-term plan that's being vetted with the EIS.
Relative to the dismiss by Mr. Ninivaggi that at the application rates, the concentrations that are applied of methoprene, again, directly over salt marshes, that it was both Stony Brook as well as the U.S. Geologic Survey, you know, their monitoring of very low detections -- no detects or very low detection.

If you look at the actual locations, open bay water, open ditch water, relative to a shallow water pan that's on a marsh that's maybe just half an inch deep, very small in size, again, those concentrations can be significantly higher, and that has not been examined.

Dr. Horst further goes on to talk about the implications to other insect assemblages. And if I recall Mr. Potente's presentation, I think mosquitoes were 2% of the assemblage of insects on tidal wetlands. So, again, we could be knocking out a whole host of more important other insects that are, in fact, predators to the mosquito larvae.
I'll repeat this -- they came to the conclusion in their Environmental Inspect Statement that methoprene had no basis for use in the estuarine environment, and placed restrictions on that use.

And the last thing -- I will just sum up here -- Dr. Dillon, obviously made a presentation regarding public health implications, and I'm certainly not going to debate -- I mean, she's experienced, well-credentialed in that area -- but this body is not here to determine whether or not the threat is significant or not. You are here -- and again, Mr. Bagg, you pointed it out I think earlier -- in keeping everyone focused relative to SEQRA, and that fundamental question: Is there the potential for significant adverse impacts? You need to be myopic in your view with that information. All this other information is, quite frankly, irrelevant. So I ask you to focus on that and come to the right conclusion that, in fact, the
potential does exist, significant potential, for environmental impact thereby requiring a positive declaration on this '07 Work Plan.

Thank you.

CHAIRMAN SWANSON: Thank you.

A point of clarification, you handed us this paper. You mentioned Dr. Gobler, but it seems that the author is Tanya Reisenauer.

MR. McALLISTER: Yes. Ms. Reisenauer worked under supervision from Dr. Gobler. He's the director of the SCERP Program.

CHAIRMAN SWANSON: She's a student?

MR. McALLISTER: Yes.

CHAIRMAN SWANSON: She's an undergraduate at South Hampton College?

MR. McALLISTER: I don't know her status. I will say the oversight that Dr. Gobler provides is quite extensive, and he gets the study before it is actually released.

CHAIRMAN SWANSON: Thank you.

LEG. VILORIA-FISHER: Kevin, as I've
listened to Dominick Ninivaggi and the
department, my assumption has been -- and
correct me if I'm wrong, Mr. Ninivaggi or
Mr. McAllister, whoever -- it seems to me
that we have tried to restrict our use of
methoprene, too, by using a number of
different methods that would compliment one
another.

Do you know if the restrictions in New
York City or Westchester are much more
restrictive than ours? Because, I would
define ours as restrictive on the use. So
I'm not sure of the quantity you are
talking about.

MR. McALLISTER: Again, relative to the
application, methoprene is applied directly
over wetlands by helicopter, again, with
spraying apparatus. It's intended to get
into the water. Relative to Westchester
and New York City, they have restricted its
use to be restrictive from direct estuarine
applications, but rather where the
propensity for that material to exist in a
storm drain or catch basin is restrictive.
LEG. VILORIA-FISHER: Can you say that again? Where are they restricting it to?

MR. McALLISTER: In areas where, again, not a direct application over estuarine waters. So in the case of Jamaica Bay, it's not allowed.

MS. VILORIA-FISHER: So it's not the quantity, but where it's being applied.

Thank you, Kevin.

MR POTENTE: I had submitted a letter that you got in your packet today. If you look at the very last three sentences, it actually describes that. I'm also recommending the restriction from the estroid. I am not say saying that we should use methoprene, but there are certain instances where it's best not used, and two areas -- New York City and Westchester -- have decided to do that.

The last sentence in my submission is: "New York City and Westchester have voluntarily eliminated methoprene from their estuarine waterways, and have restricted its use to man-made structures..."
such as catch basins, recharge basins and
detention ponds."

LEG. VILORIA-FISHER: May I ask
Dominick to answer that on behalf of what
the County is doing?

MR. NINIVAGGI: Well, New York City and
Suffolk County are two totally different
jurisdictions, with totally different
mosquito problems, with totally different
geography. I spoke to my counterpart
there, and basically, they are getting the
results they would like to get with the
bacterials, so they haven't felt the need
to use methoprene, but they have held
permits for methoprene.

The reality is that the same DEC that
supposedly restricts this in New York
City -- which I'm not even sure that's
correct -- has issued us permits for
methoprene since 1995. So, again, the DEC,
at any time since 1995, if they thought
this was a problem, they could certainly
have told us not to use this material.

They haven't done that.
New York City's situation is also
different. It's a lot of fresh water and
brackish areas. Ours is mostly salt marsh.
Believe me, this program tried to make Bti,
by itself, work in salt marsh for over ten
years. No matter what we did, we could not
get adequate numbers of control. And this
is basically because of the unique nature
of the salt marsh environment. Now, I
don't know if you want to go into every
technical detail; I'd be happy to do that
if you would like.

The reality is, we tried to use the
right material for the right purpose at the
right time to reduce the overall impact of
the program.

I wanted to make mention of one thing.
Mr. McAllister said that 200,000 feet of
ditch cleared two feet wide was 93 acres.
I invite anybody else to check the math. I
did the math, and it came out to 9.2 acres.
So, somebody could check me, but 400,000
square feet -- considering an acre is about
40,000 square feet -- you are talking about
10 acres. So it's not 90-something acres; it's about nine.

You want to talk about that SCERP report, that South Hampton College report, that's not -- as Dr. Swanson said, that's not a Gobler paper. It's a student paper. It has not been peer-reviewed. There are a lot of technical problems. We don't know how accurate their essays are. It is certainly very questionable whether it would ever stand up to peer review.

I think it also begs the most important question. They found things that they didn't like coming out of the ditch. Well, basically, materials coming out of the marsh. Unless you want to build a wall around the marsh -- which we call "impoundment," which we don't allow -- whatever is in the marsh, has got to come out of the marsh some way or the other otherwise it's not a tidal marsh. And whether it comes out of a ditch or it comes out of a tidal creek, the material is going to come in and out of the marsh. If you
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want to keep everything in the marsh, you are going to kill the marsh as a salt marsh.

So, the idea that this student report is something we should be making important decisions about the environment on, just does not make a whole lot of sense to me. Especially, when, again, math is important.

MR. POTENTE: Mr. Chair, can I?

CHAIRMAN SWANSON: Yes.

MR. POTENTE: Dominick, can you please go back to your summary slide, the last slide?

(Mr. Ninivaggi complies.)

MR. POTENTE: I'd just like to go through the summary here a little bit, because while you bring up -- you kind of mix, which is a nice technique -- the facts with...

MR. NINIVAGGI: You better be prepared to back up what you say.

MR. POTENTE: "The 2007 Annual Plan addresses an ongoing public health need. No action is not an option."
I just want to discuss the public health need real quickly. According to Suffolk County Health records, there's about 10,000 people that die every year in Suffolk County. About two-and-a-half thousand people die every year from cancers. Many of those cancers are from generic aberrations and some of them may be from toxins, some of the very toxins that you are applying to the county.

In 2002, two people died from West Nile virus. In 2003, two people died.

If you go on the website, it's not even listed on the list of causes for cancer every year in Suffolk County, so you might want to correct that, to have those two people included.

The "No action is not an option." I don't know where you ever got that idea for no action. Nobody ever said "no action."

Your bologna pans out of proportion and makes large exaggerations.

I was happy to see some of the aerials which I had requested. Finally you are
doing some of your homework, including some
of the things you plan to do by showing
these aerials and ground photographs. And
that's exactly the sort of thing the CEQ
needs to see so it knows what's going on in
the county.

MR. NINIVAGGI: And we're happy to
provide it.

MR. POTENTE: When you show an aerial
photograph of an inland area that's in
question and is actually in dire need of
some treatment, and you go to compare that
to a healthy marsh that may not need the
sinuous sort of treatment you are
proposing, then you are misleading the
public.

But, yes, I would like to see more of
these aerial photographs to see exactly
what it is you wanted to do in your annual
plan to Suffolk County. And I thought
Kevin McAllister brought up an excellent
point. Mike Kaufman wants to see a tenth
of an acre and take a look at that, and you
are asking to be given carte blanche to do
what you want, everyone expecting to be
your good judgment.

This is a committee established by the
county legislature to overlook these type
of activities. That's one of the very
reasons this entity was established.

"The plan describes..." Well, I don't
know which plan, you are talking about, the
Annual Work Plan?

No. 3: "The program uses EPA and DEC
registered materials." Well, that's true.
The methoprene is EPA registered, and in
the registration, if you look on the label,
it says "These chemicals, such as
methoprene or Altosid, are harmful to
apply..." So, yeah, it's registered, and
in the registration it says it is harmful.

The study that was done by the County
on this $4 million study in order to prove
that methoprene is safe, methoprene -- for
the members of the committee who are not
familiar with methoprene -- it's an insect
hormone prohibetur which prevents the
insects from developing into adulthood, and
that's why it's used with mosquitoes; you apply it, and the larval mosquitoes can't graduate into adults. But the insects are part of the arthropod family, and the arthropod family includes things like crabs and lobsters, so there's collateral damage that takes place. And the implication that Kevin McAllister is talking about, many of these papers and studies that are being done, are done on the collateral damage that takes place with the crabs and lobsters and other shellfish. So, when you apply this, that's the danger that we're talking about.

"No new information which contradicts the EPA findings." When you say "no new information," so you are discounting all of these new publications that are coming out on the effects of methoprene?

MR. NINIVAGGI: Yes, I am. There's a scientific reason for that.

MR. POTENTE: A scientific reason --

MR. NINIVAGGI: If I may finish my sentences, please.
Mr. Potente: No.

A scientific reason for discounting peer-reviewed literature? You're providing a scientific reason? Yes, go ahead, I want to hear this.

Mr. Ninivaggi: The reason literature is peer-reviewed is so that all the data is there for people to make an independent judgment. "Peer-reviewed" does not mean it's chiseled in stone, and that it is an absolute truth because that's the way science works.

In peer-reviewed literature, in the data provided, you will see -- as I said in my presentation -- that "The concentrations used to produce the ill-effects were all higher than the environmental concentrations that result from our use of the product."

So that's the reason I said what I said; that none of this information -- it's called "dose-response." The idea is that yes, if you use enough methoprene, you can certainly cause ill-effects in an variety
of organisms. However, we have used -- in the way that we've used it, there are no significant impacts.

MR. POTENTE: Perfect. So what you did was, you took $4 million from the County and performed a Caged Fish Study. Now, this is the continuation of what I'm talking about with the methoprene. If you apply methoprene to a larval form of crustaceans, you will inhibit their growth. So what did they do with their Caged Fish Study? They applied these dosages to adult shrimp. It's not going to have any impact on adult shrimp; it's going to have an impact on the larval shrimp. It's a botched study. And that's what you're basing your dosages on?

MR. DAWYDIAK: Dr. Swanson, I would like to respond to Horst Hershey and the wetlands paper, and now might be an opportune time, Mr. Potente, if you would like me to...

CHAIRMAN SWANSON: Go ahead.

MR. DAWYDIAK: On the student paper,
the fact that what you had posed to you is
the evidence of estuary impact, is
basically --

CHAIRMAN SWANSON: The paper the
student --

MR. DAWYDIAK: The student SCERP paper,
which was attributed to Gobler, for which
Gobler takes no responsibility.

In a nutshell, somebody looked in a
dish and found organic matter and said, "Oh
my, there's nutrients in there. This must
be the big source to the estuary." I mean,
this is beyond laughably amateurish. It's
not considered to be anything significant.
It's dealt with in the FEIS; I invite you
to read all of the FEIS as well as the
section on that.

We did extensive studies as part of our
plan in terms of stormwater versus
non-stormwater situations of nutrient and
pollutant transport. We looked in the
literature elsewhere, and again, we're
going to discuss this a little more
probably next month, but I just wanted to
discount that paper which was attributed
last month and this month to Gobler. It's
a student term paper, and that's all there
is to it. It's dealt with in the plan.

Horst Hershey dealt with this very
significantly in the FEIS. Dominick
summarized it very, very well. Hershey's
results have significant anomalies and are
potentially confounded. They were not
reproduced. It doesn't mean it was a bad
study; it means these studies are extremely
difficult, labor intensive, time-consuming
and costly to do. This one has significant
questions associated with it, and not to
mention the fact this was performed in a
different type of environment than that
which Vector Control operates in.

What you've heard today in terms of
comments form the Peconic Bay Keeper was
not "Gee, the County misinterprets that
study," it's "No, that study is out there
and methoprene is dangerous."

We have availed ourselves of in-house
as well as external experts, and our
analysis of these papers is there in plain
text for you to read, and we invite you to
read it and are happy to discuss it. It is
just simply is not relevant and not
dispositive. That is not to say that we
don't take pesticides seriously. County
policy is to minimize or eliminate
pesticide usage. There are certainties
associated with this. We acknowledge that;
we acknowledge it's an evolving field.
What we also state is that there has been
no study out there -- and we looked as long
and hard as anybody out there has looked --
that has documented adverse impacts of
methoprene at the concentrations and
application methods that are being proposed
in this plan. Nothing you have heard has
been to the contrary. All you have heard
is Gees, literature says methoprene could
be bad. No contest there; that was known

The Horst piece of work on methoprene
is orders of magnitude higher in terms of
exposure, dose, 72 hours versus on the
order of minutes for a concentration.
Again, it was not reproduced by others.
There were questions about statistical
significance and validity. That all being
said, it's just simply not relevant; that
much is conceded.

What you didn't hear today from the
Peconic Bay Keeper, is "Gees, the FEIS is
wrong, Horst didn't look at 1 ppb; he
looked at .1 ppb." We have the science
right in this plan and it speaks for
itself, and we're proud of it. And what
you have heard doesn't confound or contest
that whatsoever.

I also wanted to mention a point that
the Peconic Bay Keeper made about how all
of our samples were in open water; we're
diluting this stuff to avoid the possible
impacts of it. You know, EPA looks at this
sort of thing when they do the registration
document. We looked out there in the
literature; we conducted tests out there.
We did them in the ditches as well as other
areas. As part of the Caged Fish Study, we
looked at maximal nominal dosages immediately after an application, and they were at the max in that 1 - 3 ppb [parts per billion] range.

Again, is it a concern? Of course, it's a concern. It's a pesticide, and it kills things. We've taken the hardest look possible at this, and we haven't been able to find any significant adverse environmental impact. Is it an apocalyptic risk to human health? Maybe not, but it's significant. It's a low risk, but it's a present risk. We haven't been able to document any significant risk above measurable criteria to the environment, and to that situation, we think this annual plan is a well-balanced and reasonable approach, and we've taken as hard look at it as we can.

If there's any questions on that, I just wanted to make the record straight. You know, take into context what you've heard versus what's been presented to you, and you're hearing speculation. We take
this stuff seriously, and will continue to take it seriously, but on balance, we in Health and Environmental Quality offer an unequivocal support of this annual plan.

MR. NINIVAGGI: As far as whether this is a significant human health risk, I defer to the department -- the Division of Public Health and Dr. Dillon. It's not my job as Vector Control superintendent to determine what is and what is not a significant threat to human health. That's Public Health's job, and you just heard Dr. Dillon tell you that.

CHAIRMAN SWANSON: I'd like to make a comment about the student papers and put this to rest because I don't want it to keep coming up in discussions every month.

It's unfair to students to use their paper in this kind of environment. It actually stifles, eventually, creativity if there's a threat that their paper is going to be used for something potentially that could be suitable for litigation. And in many cases, we discourage classes from
being allowed to use their papers in this fashion, so thank you. Kevin, you have had your say, so please sit down.

MR. McALLISTER: Dr. Gobler --

CHAIRMAN SWANSON: Please sit down.

MR. McALLISTER: -- was involved with this from the start.

CHAIRMAN SWANSON: Maybe he was. But I've been involved in a lot of papers with advisors, too, but --

MR. McALLISTER: Mr. Swanson, don't dismiss this paper because there's a student's name on it.

CHAIRMAN SWANSON: I'm not dismissing it. It's not fair to the student.

MR. McALLISTER: Yes, you are, and that's unfair.

LEG. VILORIA-FISHER: There was an allegation made that the Caged Fish Study was not significant in the way that you -- that your methodology made it deceptive, I guess, because the allegation was made that the affect was on the larval stage, and that you didn't use the larval stage, but
rather the adult stage of the crustaceans.

Can you please elaborate on that?

MR. NINIVAGGI: I can. I'm really trying not to mix the long-term plan discussion with this discussion, the question is raised and it's a fair question.

That Caged Fish Study was not in our original design. We admit that it's a fairly prude and blunt tool and probably not the best way to look at subtle impacts on the food web. That study was requested by the DEC, and the State Department of Environmental Conservation as a real world add-on to our initial scope of work. It was presented to the legislature who also believed it was important, and they funded and directed we do it. It supplements a risk assessment, a literature review, a series of measurements in the field -- which we'll discuss at length at a future time -- but there is no contest that we do not hold the Caged Fish Study out as a dispositive piece of evidence showing that
there are no impacts. It's one tool in a
tool box of studies that we've used, and it
happened not to show impacts.

MR. POTENTE: Now can you answer the
question that she asked?

Does that study show that methoprene is
safe on the larval forms of the
crustaceans?

MR. NINIVAGGI: The Caged Fish Study
was never intended to test that theory.
The risk assessment and other initiatives
were, which is something I'd really rather
not get into at this point.

MR. POTENTE: One of the conclusions in
the Draft Environmental Impact Statement
was that as a basis of this study, it shows
the methoprene is safe. Now, how do you
broadcast that --

MR. DAWYDIAK: If that language is in
the plan, it's regrettable because no one
says that pesticides are safe. What we try
to say is words like "impact as per
measurable methodology and standards show
that it doesn't exceed impact thresholds";
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"that impacts do not appear to be significant"; that impacts were not demonstrated." I mean, pesticides are designed to kill things and they are inherently unsafe, and that's why we use them judiciously and sparingly and minimize our usage.

MR. NINIVAGGI: We're not relying only on the Caged Fish Study. When I talk about the Caged Fish Study, I'm not just talking about the actual looking at what happens to the organisms in the cages; I'm talking about all the measurements of environmental concentrations that were made at the time.

So the fact -- yes, we used adult shrimp because that seemed like the most appropriate organism that could be worked on. Nevertheless, there are studies that claim to show effects of methoprene on adult crustaceans, and we didn't see that in this particular case. Obviously, we didn't test every single specious of crustacean known to man -- no county could do that -- so again, we relied on the
toxicity data and the measured concentrations, which is the only reasonable way that you could ever evaluate these things.

MR. POTENTE: I would like to address that issue.

As part of the Caged Fish Study, the way it's being tested, the toxicity and the concentration levels, they had fish and they put them in cages and they submerged the cages, and then they wanted to see -- this is not on crustaceans; this is on the fish now -- the fish were kept underneath the surface of the water. They found the fish were okay, but that was because the pesticides landed on the surface of the water and the concentrations were higher on the surface of the water. So this is another misleading conclusion from this study.

I want to say that in all fairness, I am not against Vector Control per se. There are issues that need to be taken care of in the county to control vectors of
disease. However, I am saying that the Division of Vector Control needs to be held accountable for the work that it does, and it has taken much too much leeway in the past, and thankfully, this was finally pos. dec'd and we're taking a look at it.

What this committee needs to do is look more specifically, rather than leave it up to Vector Control, "Don't worry, we'll take it from here; just give us the go ahead," we want to see just like there's a request to see all of these parcels of land, all of these sign posts that we're putting up, all these telephone poles going up all over the county. When you are spraying pesticides that may have environmental impacts and health impacts upon the county and going back in the marshes, after 70 years of ruining them with grade ditching, now we're proposing "Well, we came up with a new idea, now we're going to build crooked ditches, call them creeks, and we're going to build ponds and bring fish in, and that will improve the health of the marsh." We
need to look at each specific thing, 
activity, that Division of Vector Control 
wants to perform. Some of these activities 
we may agree with and say yes, that looks 
good, go ahead, and some we may say no, but 
it should not be carte blanche.

CHAIRMAN SWANSON: Let's keep it to 
2007 Work Plan, and not the broader.

MR. POTENTE: I have my letter, and I 
stand by my letter. If you are going to be 
doing maintenance, don't show us a little 
piece of somebody's backyard and say, 
"Well, look, this is the ditch maintenance. 
We're pulling garbage bags out of 
somebody's backyard. When in the same 
token, you are including with that going 
into a fresh healthy marsh and pulling out 
silt from ditches that maybe that doesn't 
need to be done.

And you're saying that reversion 
doesn't take place? It absolutely does. I 
went out and I saw it in Accabonic Bay in 
East Hampton. I went there with Larry 
Penny and beach reversion does take place.
I'm not saying it always does and that's the answer, but that is one thing that can happen in certain instances. So if you just give a broadcast, "We're going to do a maintenance; we're keeping these ditches open," no, I don't agree with that. I want to see the ditches.

If you are doing someone's backyard, fine do it. But if you are doing a healthy marsh that the people of Suffolk County worked long and hard to protect, and then go in there with a free license to start pulling out more silt -- one of the reasons that you put in this long-term plan for digging these ponds was because there wasn't enough silt to put back in the ditches. So, while you are pulling the ditches out and pulling the soil out of these ditches, doing your ditch maintenance, then you're going to come back here later "Well, you know, we don't have the soil so we got to dig some ponds out because we already moved the soil from the ditch basins." Whether you broadcast it or
whatever you did, I don't care, whether you
it hauled it or you kept it on site doing
your back-grading, what I'm saying is I
reiterate my request from the last meeting.
I submitted my letter, and again, I will
not sign off -- and I don't care if this
committee completely votes against me, but
I will not sign off on this until these two
points are taken care of. If you want to
do ditch maintenance, show us the aerial
photographs where you want to do it. And
if you want to apply methoprene, same
thing. In some cases that's applicable;
but in other cases it may not be.

We need to do two things here: We need
to protect the public health, but we also
need to protect the environment of the
valuable ecosystems we have here in Suffolk
County.

CHAIRMAN SWANSON: Thank you.

Anyone else?

(Audience member steps up.)

CHAIRMAN SWANSON: State your name.

MS. JACOBS: My name is Kasey Jacobs.
I'm with the Citizens Campaign for the Environment, but really I want to speak to the two studies -- and I know we wanted to gloss over that, but -- I'm a graduate of South Hampton College and friends with both of the researchers on the Caged Fish Study and on the SCERP project. So, I'm not really speaking for CCE, but more as a former undergraduate student who now does have a B.S. in environmental science biology.

If you are going to discount the SCERP project and the research, you also have to discount the Caged Fish Study because both of them were done by students from the same class, with the same leadership, with the same supervision. One had more funding and it had more layers to it because of the County's involvement, and one did not because it was more independent. However, they were both done by students who had the same exact training, the same exact supervision, a lot of the field data was done by the student who is in the same
class as the other student. So if you are going to discount the one study, I do strongly feel you have to discount the other one as well.

CHAIRMAN SWANSON: Thank you.

Lauren?

MS. STILES: I just -- we were crunching numbers before on how many acres were affected by the ditching, and I don't know if the Bay Keeper or you had said it, that it was generally two feet across per ditch, but isn't it sometimes three feet across depending on the machinery you are using?

MR. NINIVAGGI: What we're talking about is hand maintenance, so what we're talking is usually less than two feet.

MS. STILES: We are also talking about machine maintenance.

MR. NINIVAGGI: As I already said, machine work for 2007 -- and remember we're talking about 2007 -- would be about a thousand feet, probably much less.

MS. STILES: Okay. The point I was
just going to make is I did a little number crunching of my own. In addition to the alteration of wetland habitat within the ditch from maintenance activities, whether it's hand or machine, when you back-grade the material, you dig out over the adjacent wetland areas, from the records that I've seen of Suffolk County Vector Control, generally you are spreading that out sometimes over a ten-foot wide area. So I just wanted to point out to the Council, my number crunches show it's about 2 million square feet of altered wetlands; 200,000 square linear maintenance, so that's a lot of acres.

MR. KAUFMAN: I'd like to caution everyone at the board right now, we seem to be mixing apples and oranges quite a lot in several different ways. We are here today only to deal with the annual plan. I admit fully that some of the elements of the long-term plan may be relevant to the discussion, but that should not drive the discussion that we are dealing with today.
We officially have not seen it; we don't know officially what is before us in terms of the long-term plan. In fact, it's sitting here as a big wad of paper in front of me, and some people are getting it on disk. Many of us know what is in there, but I think it's very unfair to the County to try to mix this stuff at this point in time. And I also think it's unfair to us because you are mixing things that have no relevance to an annual plan, pure and simple.

CHAIRMAN SWANSON: Anybody else have any comments?

MR. ATKINSON: Larry, may I?

CHAIRMAN SWANSON: Yes.

MR. ATKINSON: Matthew Atkinson, general counsel of Peconic Bay Keeper.

I just want to applaud what's just been said, to begin with, because, indeed, you are looking at the 2007 Plan of Work, which is the sixth generation in a row of annual plans of work. All of this discussion, and all of the concern here about the impacts
are recognized by Suffolk County, have been recognized by its legislature; that's why an Environmental Impact Statement is being prepared.

The question here is going to be what kind of recommendation is CEQ going to give to the legislature? It's going to have to make some hard policy decisions about what to do both with the long-term plan, but more immediately, with the 2007 Plan of Work. These policy decisions will include such questions as the medical issues that we've heard, but in all fairness to the legislature -- and I'm happy to see two of them here -- they need a very frank and clear statement from this council about are there potential for adverse impacts in this plan. This plan is the same as the long-term plan essentially, stripped of OMWM. And we've already found that. And if you don't make a clear and concise statement to the legislature, the legislature is now disabled from making its own policy statements in a fully informed
way. They can go forward with or without SEQRA; they've done it before and they can do it again. But there is no reason to misrepresent what is actually involved.

Now, last week, I talked about all of the legal reasons why this is -- in fact, has to be given a positive determination of significance, and I'm not going to reiterate those. So I just really wanted to make that clear, the importance of making this kind of determination. All of this stuff about whether the methoprene was tested in the right places or wrong places during the Caged Fish Study, that's what the FEIS is for. Please, let's let that get flushed out and lets look at the plan on its own merits. We've looked at it before; it's part of a multi-year plan, and it may have significant adverse impacts; we're discussing them now.

I wish, as Mr. Potente suggested, that Vector Control would remove elements of this plan so that the legislature would have the benefit of seeing a surveillance
program, a cleaning program, a program that permitted Vector Control to respond in terms of if there's a real health emergency until a real plan is put on the table that's been looked at carefully.

I just have one other little statement I'd like to make, which is the way this plan is working, there really is no real review -- and another reason it needs a pos. dec. on its own merits -- thousands and thousands of acres can be sprayed with pesticides with unknown results, frankly. There can be a lot of ditching done with unknown results. And even though I believe Vector Control should have the authority and the ability -- and I think it does under law -- to respond to health emergencies, I think all of these water management programs in the short terms should come before this council. They are no different than the bus stops, the boardwalks that you look at. There is no emergency. If there's a health emergency because a road collapses, that can be dealt
with under the emergency provisions of SEQRA. All of these water maintenance, for one, absolutely does not need to be approved under this plan.

Then my last statement is I submitted an e-mail to Chairman Swanson, Mr. Swanson, and as well as to James Bagg concerning the recusal issue. I would hope that this would be distributed to the other members of CEQ; I would like you to know my views on this. I hold Lauren in high esteem. She's done tremendous amount of public service in Suffolk County, and to somehow equate this public service with a private interest, I find really too bad, a young woman like this starting out in her career.

Thank you very much.

CHAIRMAN SWANSON: Thank you.

I would like to move this thing along.

Mr. Kaufman?

MR. KAUFMAN: Mr. Atkinson, are you saying that there is no review right now? I have heard of an agency called Department of Environmental Conservation. Are they
not issuing permits, occasionally, or are they totally derelict in their duties? And are you challenging (1) their jurisdiction and (2) their ability to do their job?

MR. ATKINSON: I actually will challenge their jurisdiction over certain issues. Some of the wetlands regulations I do not believe is wholly within their jurisdiction; although, it's partly within their jurisdiction. But Mr. Kaufman, as an attorney, surely you know that it is the Suffolk County Legislature, on advice from this body, that is supposed to review these plans, not some other agency. It's established law in New York State that you are the reviewing agency, not anybody else.

MR. KAUFMAN: We are one of the reviewing agencies. That's where I see an error of law in what you are stating.

MR. ATKINSON: You are the lead agency.

MR. KAUFMAN: Lead agency, whatever you want to call it; and yes, we are the advisors to the lead agency in this situation. Nonetheless, you are making an
allegation that there is no review, and I
do not see that. I'm telling you right off
the bat, to the extent DEC is reviewing
those actions of the County when it
operates under general permits and specific
permits, et cetera, I'm not saying that's
the end all and be all -- and we would be
abdicating our job if we were not doing
that -- nonetheless, they are being
reviewed. And I really take great
exception to when you are saying it's not
being reviewed at all.

CHAIRMAN SWANSON: It's not operating
in a vacuum.

Mr. Ninivaggi, would you comment on
your willingness to consider Dr. Potente's
two suggestions?

MR. NINIVAGGI: The suggestions
regarding bringing every ditch cleaning
operation to CEQ, well, looks like we do
about -- hand crews, cleaning up ditches,
at about a hundred locations a year,
roughly. I don't know if the CEQ wants to
look at, you know, a hundred sections of
ditch and make some kind of independent
judgment as to whether that's a good or bad
idea.

If you look at it over the years -- and
this goes back a long way -- the Annual
Plan of Work has never been a document that
had every individual activity that Vector
Control was going to do for a year. It's
just never been like that. It's been a
general plan that describes the type of
activities in general and where we plan to
do them. In realizing that what we do,
especially for this 2007 plan -- which is
again very limited while we wait for the
EIS to be finished up -- these are
low-level maintenance type activities. The
analogy is not acquiring a piece of land or
building a bridge; it's more like fixing a
pothole or unclogging a storm drain. I
don't know that the CEQ really wants to see
eyevery little operation like this.

And again, one of the things I tried to
do in my presentation here is to give you a
little bit more information about what kind
of areas we actually do operate in and the fact that this is a maintenance thing; it's done in developed areas. The work we do in terms of water management, you know, is not out in pristine habitats where there's significant potential for impact, and it's also working on existing structures, structures that in many cases have been there for 50, 60, 70 years. We're not going out and making a change on the landscape. We're doing the very minimal, ongoing clean-up-the-stuff maintenance operation. And the CEQ has never wanted to see every single one of these. We certainly couldn't do that for the pesticide applications.

I did show you the maps of the sites that we treat; I showed aerial sites so you get an idea of what the program looks like. I obviously can't tell you which areas are going to be treated and which areas are not going to be treated in the coming year because we do this work under surveillance, or because of surveillance, which is
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exactly the way that these things should be
done.

The same thing with the water
management and cleaning the ditches. It's
based on our surveillance and going where
there's a problem. Again, I think that for
this interim type general plan, I think
that we've given you plenty of information
that you can judge what we do and what we
don't do, and I'm not sure it benefits
anybody, certainly, if we had to do any
time before we send a crew out to clean a
ditch, I had to prepare a project drawing
and wait for the next CEQ meeting and see
whether you think it's a good idea or
not -- and I'm not sure under what
basis anyone would decide if cleaning
somebody's ditch in their backyard is a
good idea or not -- I don't know if that's
a productive use for any of our time. And
I can tell you the result will be more use
of pesticides because we're not going to
get the work done. And certainly, in some
cases, people's yards are going to flood;
people are going to be very unhappy; and again, for what environmental purpose? I'm not sure.

So I think there's a difference between oversight and micromanagement, and I think we're treading perilously close to the latter. I think that we should really look at what it is CEQ wants to look at.

CHAIRMAN SWANSON: Thank you.

LEG. VILORIA-FISHER: Mr. Ninivaggi, I appreciate what you are saying, and certainly you have routine work and the hand ditching. I can certainly understand that. But there might be some middle ground here.

The machine ditches you say that occurs only about ten times in a season, what is the feasibility of that coming, those projects which probably would be a little more involved and you would need the time to plan them out anyway, what about those coming before the legislature with the aerials, which is the suggestion that Dr. Potente put before you.
MR. NINIVAGGI: It depends on whether you want to see any work accomplished. I would have to look at the resources I have in my division, and frankly, if we have to go through this for every single project --

MS. VILORIA-FISHER: I'm just saying the larger projects.

MR. NINIVAGGI: -- at what point do we get any work accomplished? And again, we're talking about ongoing maintaining existing structures. And again, if an area is flooding because we need to go and get permits for it, or we need to go to the CEQ for it. For these projects that are reconstruction, we're already going to the DEC, and we're already delayed. So, again, I think there's a lot of environmental review.

I'm not sure you as the CEQ want to see every single time we replace --

LEG. VILORIA-FISHER: Can I go back to my question because I don't think you directly answered it. And that is: When you are doing the machine ditching, you are
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getting DEC permits for those; aren't you?

MR. NINIVAGGI: Yes.

LEG. VILORIA-FISHER: Now, when you are
preparing that, you could prepare,
concurrently, something for this body;
couldn't you?

MR. NINIVAGGI: We can send you copies
of the permit applications.

LEG. VILORIA-FISHER: You are saying
that's only ten a year; right?

MR. NINIVAGGI: We can send you copies
of the permit applications if that's what
you want.

LEG. VILORIA-FISHER: I heard a request
from one of the members of the body here,
and I'm trying to find a place where we can
meet. And it seems that if you're doing a
report on that, perhaps that might be a way
of addressing it. Because, truth be told,
if we are now a member of the legislature
and a member of CEQ, but I know that when
this comes before the legislature, there
will have to be a vote taken there. And if
there's a sense that legislators aren't
receiving all of the information, and that
as people who have identified themselves as
people who are protecting the environment,
if there's a sense that we are
relinquishing our authority as the lead
agency by not requiring all of the
information that another agency is
requiring who is giving the permitting,
there's nothing wrong with getting more
information.

MR. NINIVAGGI: We can certainly send
you copies of any permit applications we
prepare. Again, that's never been done;
there's never been a need expressed for
that.

LEG. VILORIA-FISHER: But there had
never been done this long-term plan,
either. So we're taking a different kind
of look now.

MR. NINIVAGGI: We're going to be
preparing that information anyway. We can
certainly send it to another mailbox.

CHAIRMAN SWANSON: I think that would
be very beneficial. If we look at the bus
stops, certainly we can look at an acre of
marsh land that you are going to be dealing
with. I don't think that's unreasonable,
and I think, Dominick, in the sense that
we've never done this before, is not an
excuse. What we're trying to do is to help
the County manage its resources more
effectively now than perhaps we have in the
past, and so I think that's our only
objective, not to tie your hands.

MR. NINIVAGGI: Also, I know in the
long-term plan, there are specific
procedures for review. There's a
stewardship and everything, and I would
imagine if that plan is finally approved,
we would ultimately go with whatever
procedures that are under the long-term
plan.

MR. JEFFERYS: Mr. Chair, just on the
statutory issue, because we have a charter
issue there, the way the charter is
apparently written for the oversight of
Vector Control, the only time that there is
CEQ involvement is the review of the annual
plan. So if there's going to be an alteration there, there has to be some sort of a change. I don't know how that would be procedurally done, but to implement something that if it's in the Vector Control Plan and would be some sort of maintenance procedure that requires our DEC permits, then there has to be some sort of language drafted to also make that a CEQ activity. Presently, it doesn't exist, and it's something to think about if down the road this is what CEQ would like. It doesn't exist presently.

MS. VILORIA-FISHER: What we're requesting is that as part of the annual plan, the larger machine ditching projects allow us to take a look at the permitting process that DEC is making a determination, so that would certainly be within the charter provisions, and that's what I'm requesting.

MR. JEFFERYS: Right. It's my understanding, though, Legislator Viloria-Fisher, that some of the work that
we do during the course of the year --
because I see all the permits that we
get -- is emergency type of work that is
not the sort of work that we can anticipate
doing at this time as we're sitting here in
November of 2006. There may be a flooding
incident or something like that that would
cause a culvert to collapse in May of 2007.
We can't anticipate that at this point, and
we do get DEC permission for that. The
question I have is for that type of
situation. How would you like us to handle
that? I don't know the answer to that;
it's something to discuss.

MS. VILORIA-FISHER: I think the
Council could put language in about an
emergency.

CHAIRMAN SWANSON: We don't want to tie
your hands. I certainly don't want
Dominick calling me at two in the morning
saying "There's a culvert that collapsed."

So I don't think we're trying to be
unreasonable. On the other hand, our
objective here, again, is to protect the
resources of Suffolk County and to try to
make sure that we aren't going to continue
to lose valuable wetlands over the next
years, and hopefully we are in the process
of this long-term plan working on a system
that will assure positive results.

MR. JEFFERYS: It may be an issue that
could be included in a resolution. I don't
know how the phrasing of that would go, but
somehow, either in the code, the charter, a
resolution or local law, we have to have
something to get the procedure down.

MR. KAUFMAN: We could always make it
simply a recommendation.

MR. BROWN: You can actually take out
the mechanical maintenance of the ditching
out of your annual plan and then come in
front of us each time you need to do it;
correct?

MR. JEFFERYS: Dominick would have to
answer that. That's on the technical side,
and I wouldn't know the answer to that.

MR. BROWN: Because that would take it
away from the annual plan, and that would
supercede the...

MS. STILES: Mr. Jeffreys, are you talking about Article 8 of the Suffolk County Charter that sets forth the different divisions of the county?

MR. JEFFERYS: Right. It's (c)8-2 and (c)8-4 are the two primary Vector Control sections of the Suffolk County Charter.

MS. STILES: Which part of that do you read to say that Vector Control only comes before CEQ on this issue alone.

MR. JEFFERYS: The only part of the charter that actually indicates Vector Control's presence for the CEQ is that the Annual Plan of Work is presented to the legislature; it doesn't even say "CEQ," it say's "to the legislature."

MS. STILES: Well, we have other statutes that say when you go before the legislature for a vote, you come to the CEQ.

MR. JEFFERYS: Correct. But I'm quoting what the present charter says. And my concern is, to avoid a process
challenge -- any process challenge by anybody along the way -- the process has to be set out somewhere; whether that's by charter, code provision, local law or resolution, it just has to be somewhere memorialized so that if there is a challenge anywhere along the line, we say this is the process we're following because our elected body has made that provision that we follow. I don't think it's clear enough presently in our existing code, either in Section 8-2 or 8-4, for CEQ or legislative review of the individual project. So my concern is how do we do it process-wise, and I don't know the answer. I'm putting it out there for the Council. I don't know the answer to that. It may be by resolution; I just don't know the answer.

MR. POTENTE: Mr. Jefferys, my particular grunt is not a broken culvert or an emergency situation. This conversation has waivered way off track talking about culverts. Culverts, of course -- I believe
culverts should be maintained or revamped
or even enlarged to enhance tidal flow and
keep good circulation. Culverts have
nothing to do with what I'm talking about.

CHAIRMAN SWANSON: I think we're taking
care of that. Where the DEC has to get
involved, we'll get involved.

MR. KAUFMAN: Can I break in for just a
second? Jim came up with a very good
formulation to sort of summarize what we
were just dealing with regarding machine
ditching. That's the only issue I'm
dealing with at this point in time.

He came up with this language:

"When a Vector Control activity
involving machine ditching requires a
permit from the New York State DEC, a copy
of the permit will be submitted to CEQ and
the Department of Environment for review
and comment except for in emergency
cases."

We put this in on any recommendations
that we do. We don't have the force of law
over here. It's a suggestion on a policy
bases. We're looking at machine ditching
and we're somewhat worried about the ten
activities a year. This is adequate
language, I believe, to accomplish what
Legislator Viloria-Fisher was talking about
and also to bring before CEQ. And I
propose that's what we do with any motion.

MR. POTENTE: It's a good start.

MR. JEFFERYS: Mr. Chairman, there's
also another issue in the County Law. It's
Chapter 279 in our county code. It sets
forth the CEQ guidelines generally, and the
issue there is the oversight responsibility
versus the permitting responsibility.
There probably would have to be some sort
of a clarification of the language in that
particular section of the Suffolk County
Code to do the things that we're talking
about here. There would have to be some
sort of clarification, and I'd be happy to
work on that with anybody. I'm not
particularly a legislative drafter, but --

LEG. VILORIA-FISHER: Maybe you and I
could meet with legislative counsel and
look at a resolution and address some of
the concerns.

MR. JEFFERYS: Thank you.

CHAIRMAN SWANSON: Mr. Dawydiak, could
you live with that provision?

MR. DAWYDIAK: I'm merely answering
questions. I'll refer to Dominick on the
Annual Plan. Although, if I go home, I've
got kids, so this is looking pretty good
right now.

MR. NINIVAGGI: We're certainly a
public agency, as counsel has pointed out.
There's some question as to the legalisms
of whether the CEQ can vote on every single
time we clear a culvert.

MR. KAUFMAN: We're not talking about a
voting. We're talking about review and
comment.

MR. NINIVAGGI: We're always happy to
provide people information, especially
something like this. We're going to be
preparing permit applications anyway.

MR. KAUFMAN: Can you do it; yes or no?
Can you send something over for review and
comment except in emergency cases?

MR. NINIVAGGI: Yes. One thing you also should keep in mind is we do this work in cooperation, for instance, with a town. So sometimes you might see something where the permit applicant would be a town.

MR. KAUFMAN: We'll understand what it is.

MR. POTENTE: I make a motion we table this until this is taken care of.

CHAIRMAN SWANSON: We really can't do that. What I recommend is we go forward with a motion one way or the other that would incorporate this as appropriate, and then we work out the charter deals.

MS. STILES: Before there's a motion, I have some comments I'd like to be given out on the CEQ, and some other things to say.

CHAIRMAN SWANSON: If they are not too much longer.

MS. STILES: These are my comments on the 2007 Plan, and I went through the document that we received at the last meeting. I don't know if you have revised
that at all. I thought when we left the last meeting, you indicated you were going to, but I haven't received anything, and I don't think anybody else on the CEQ has.

MR. NINIVAGGI: We've not revised the plan. My presentation today was designed to clarify the points that seemed to need clarification and to address the issues raised in the last meeting.

MS. STILES: So the presentation you made, the slides are incorporated into the plan?

MR. NINIVAGGI: There's nothing in the slides there. What I did in the slides is simply to make it clear what we meant by what's included in that 200,000 feet of ditch maintenance and to explain where we normally do this hand maintenance. That's basically what's in the presentation there, and there wasn't any need to modify the plan because that's always what we had in mind.

CHAIRMAN SWANSON: Might I remind you, we need to get recommendations to the
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legislature by next week.

MS. STILES: What's in the charter, doesn't say that we have to do that. There's something in the charter that says by October 1st, you have to submit a copy of your proposed plan to the legislature, and that by November --

MR. JEFFERYS: -- 15th, the resolution has to be to the legislature.

MS. STILES: And it also says right after that, it can be approved as-is or modified. So I don't know if that means that CEQ absolutely has to give a determination right here, right now, at this moment. I feel like we're being pressured to do that.

MR. KAUFMAN: Lauren, we have had months to do this.

MS. STILES: Actually, we only received this last month, so that's not true.

MR. BROWN: But there are changes that haven't taken place, and I don't have a copy of the 2007 Plan. I thought that would be here today. And there are changes
that the members want put into place, and we don't show these changes taking place, whether it be on here or in a copy of it itself.

MR. NINIVAGGI: The 2007 Plan was submitted about two weeks before your CEQ last met.

MS. STILES: We didn't get it.

MR. NINIVAGGI: I gave it to Mr. Bagg, as the appropriate person to distribute.

MR. KAUFMAN: You may not have gotten it as a CAC member. That's a possibility. But nonetheless --

MR. BROWN: Say that again. I may not have gotten it as a CAC member --

MR. KAUFMAN: That's possible.

MR. BROWN: If that's a possibility, then it's really an unacceptable time frame to be making a judgment call on a piece of paper that I haven't seen. I see that there's also changes that people want to place in it.

MR. KAUFMAN: We have one recommendation.
MR. BROWN: I see two recommendations from Mr. Potente, and I'm not sure what else is out there right now.

MR. KAUFMAN: I disagree a lot with what Mr. Potente is saying and I don't know that I can support a lot of his recommendations. That's what we're here for.

MR. BROWN: I'm not asking you to support him or not support him. All I'm saying is I don't see them in the plan. I don't see the recommendation.

MR. KAUFMAN: Okay. Excluding CEQ, recommendations shall be made within 45 days of receipt of the submissions by initiating unit; however, the CEQ finds that insufficient information has been provided to allow said recommendation and notifies the initiating unit in writing of the specific deficiencies, the time allowed for recommendation may be extended.

MS. STILES: Mr. Swanson, I have a couple things I just want to point out, and I see in our packet that we received today,
I think there are a lot of court decisions from the SEQRA litigation that was going back and forth.

MR. JEFFERYS: Correct. Mr. Atkinson had submitted the 2005 final memorandum decision, and since we have many new members, I went back to the beginning of the litigation in 2002 and included all of the decisions in a packet from 2002 through 2005, plus there was some discussion last time of the Clean Water Act litigation. And although there are no orders on that, I did submit the docket sheet for the Suffolk County Clean Water Act litigation and the upstate Clean Water Act litigation to make seven different exhibits.

MS. STILES: I summarized the activities that occurred for some of the newer members. It's sort of a tortured history and pretty hard to get your mouth around, particularly when you are just coming into it, particularly if you are not a trial attorney or something.

So, there are four lawsuits that
occurred in the past; 2002, 2003, 2004, and 2005. And the most recent of those was 2005, and it was on the 2005 plan. There's a trial court decision from Judge Baisley, I believe, that I have -- on the last page of this little packet I gave you, there are quotes that are from the decision, and you have the whole decision in the packet from Mr. Jeffreys, I presume. I also have a copy here if you would like.

But essentially, the Court made it pretty clear that this has to be a Type 1 action pos. dec. The 2007 plan is not that much different from the 2005 plan, but somehow it magically changes from what had to be a pos. dec. to what now can be a neg. dec. The Court found that -- what happened in that case is that the county legislature had done a Type 1 action and they neg. dec'd it. The Court remitted it to the county legislature for full environmental review, which is basically telling them they had to pos. dec. that, including the cumulative impact of pesticide use and
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habitat modification in the freshwater and tidal wetlands.

If you read the little bullet points under what the trial court has said, applying that to what we have right now before us, it's pretty obvious that that's what it is. However you want to spin it, and oh, DEC is reviewing it and we have all this stuff going on with the long-term plan, that's fine and great, but CEQ's role is to look at the law and look at the facts and come to an independent determination. And to do something else besides that is what gets you in trouble. So I'm encouraging you all to read that and do what you want with it.

MR. KAUFMAN: Lauren, if I might. I also am an attorney. There's something called Law of the Case; there's also something called an appeal. I believe that Judge Baisley rendered decisions. As I understand it -- correct me if I'm wrong -- those three decisions were all appealed by Suffolk County.
Were all three decisions appealed by Suffolk County; yes or no?

MS. STILES: No. There are four trial court decisions.

MR. KAUFMAN: Sorry if I misquote the number.

MR. JEFFERYS: There were four trial court decisions, Mr. Kaufman. 2002 was appealed, 2003 was appealed and 2004 was appealed. In all of those cases it was a mootness determination. 2003 and 2004 concerned this council's recommendation to the legislature that was accepted that annual plan of work was a Type 2 plan instead of a Type 1 plan, and Judge Baisley determined that no, that was wrong, it's a Type 1 plan. And the appellate division reversed because it was moot by the time it got to them.

In 2005, we got a memorandum decision from Judge Baisley, which is not an appealable document. It's not a document that the County could take up. There was a judgment proposed by the counsel for the
Peconic Bay Keeper, and there was a
judgment proposed by counsel for the County
Attorney's Office, and neither judgment was
accepted; there was no appealable paper to
take up on an appeal to that case.

But based on the appellate's prior
decision about mootness, once the calendar
year expired on the plan -- and this is
pretty much how all the decisions read --
it was moot. They were not going to decide
it.

MR. KAUFMAN: That's why I said three,
not four. But nonetheless, let me ask you
a question. Given the fact that there have
been appeals, given the fact that the
judgement on the latest case was not
executed, has Judge Baisley's decision any
basis in continuing to restrict County
activities at this point in time? In other
words, as a matter of the law of the case,
is his decision a nullity in the three
prior cases?

MR. JEFFREYS: Well, the three prior
cases he was reversed; 2003, 2004, 2005 he
was reversed based on mootness.

   MS. STILES: He was not reversed. Your last appeal you did on 2004, you lost your appeal on mootness. Don't try to make it seem like the Bay Keeper lost them; you lost it on mootness because you brought appeal to late and his decision is not --

   MR. JEFFERYS: But this is the appeal -- well, I'm not going to argue about it. The decision is a matter of record in the appellate division, and it is denied because of mootness.

   MR. KAUFMAN: Do any of these Court decisions restrict us in any way, shape or form at this point in time given the --

   MR. JEFFREYS: Well, this is a new annual plan, so I don't know what the affect will be. To the extent there's a different type of plan that's being offered, it is, as any judge's decision would be. You are entitled to read it and see what there is. But there were two decisions by Judge Baisley that year, in 2005. They are both in my packet. They
appear to me, in reading them, they appear to be totally inconsistent. So I leave it to the panel to read them. There is no prohibition based on law of the case that would mandate a finding one way or the other.

MR. KAUFMAN: One other question on that.

Can a Court order a positive declaration to be issued by anyone?

MR. JEFFERYS: No, they can't.

MR. KAUFMAN: So that's out of the Court's jurisdiction?

MR. JEFFREYS: Correct. The Court has no -- there is no right for a court of judicial review to determine that a pos. dec. should be ordered. What they can do on an Article 78 review is determine that the actions of the Suffolk County Legislature were arbitrary and capricious, and that is the ultimate determination. So to the extent that Judge Baisley said something different, that would have been an issue on appeal, but I'm pretty certain
that would have been moot.

MR. KAUFMAN: But we're not ordered by any of those decisions to do a pos. dec.?

MR. JEFFREYS: No.

MS. STILES: I wasn't suggesting that Judge Baisley has ordered us to make a particular -- ordered CEQ to make a particular determination on the 2007 plan. It's plain old simple common sense. You don't have to be a fancy attorney to figure it out.

If the County has Type 2'd it and had decisions on the merits saying that was the wrong thing to do, which were then appealed and lost on mootness, mootness is not the merits of the case; it's the procedural, technical --

MR. KAUFMAN: But as of the law of the case, it doesn't exist.

MS. STILES: That's great, if you want to stick your head in a hole and pretend it didn't happen, that's fine. But we had decisions from the County saying Type 2, the judge said wrong; decisions from the
County, Type 1, neg. dec., judge said it's wrong. Commonsense tells you if it's basically the same plan year after year after year, you have to be kind of pretending these cases didn't exist. If it's not going to be --

MR. KAUFMAN: Well, your bringing up the technical posture, so I'm coming back as a different technical posture, which would be if this was private litigation, under law of the case rules, if the decision is a nullity, I don't have to pay attention to it.

Now, I fully admit this probably is a Type 1. But I don't see the judge having the ability to order a pos. dec. and leaving that as our only choice. If this board wants to, we can declare it neg. dec. We can do whatever we want. We're not constrained by the judge.

MS. STILES: But the question is what's right under the law, and that's what these decisions help you come to.

MR. KAUFMAN: Well, that's an
interesting point. I think there are things right under the law which some of the people in the audience have declared to be wrong under the law.

MR. POTENTE: If we just go according to the law and put everything off the table, according to New York State Department of Environmental Conservation, Part 1617, a project or action involves a physical alteration ten acres, Type 1, that's a pos. dec.

MR. BAGG: That's incorrect. It says if it's a Type 1 action, it is more than likely to probably have a significant impact on the environment; however, it does not require the preparation of an EIS. The requirement is that the body, the lead agency, has to take a hard look and has to mitigate impacts. And if it's determined that the action or the action has been changed and altered in such a way as to mitigate environmental impacts, then a negative declaration could be written. But a Type 1 action does not require a
preparation of an EIS, and I would say that
99% of all the Type 1 actions in New York
State receive neg. dec's. not EIS's.

MR. JEFFERYS: If I could make a
comment on that.

On that one point, Mr. Potente, the
Court of Appeals has actually spoken on it
in a case called Rearson versus McNally
(phonetic spelling), with a Type 1 action,
that you have to have a pos. dec., and they
found that it is not a true statement.

MR. POTENTE: Okay, but it does fall
under the confines of a Type 1.

LEG. VILORIA-FISHER: I have a comment
on the last bullet.

MR. JEFFERYS: I don't have it with me.

LEG. VILORIA-FISHER: Oh, I'll read it
to you then.

"The County's failure to verify
whether the information provided in the
EAF was accurate and complete indicates it
failed to take a requisite hard look."

Can I just have your opinion on that
particular bullet point?
MR. JEFFREYS: Well, the standard for any SEQRA review is: Did the lead agency take a hard look at the issue that is being presented to see if there is any significant environmental impact? That's basically the standard that we're governed by in SEQRA review. And I don't really know what Judge Baisley was thinking when he wrote the line. But to say that this panel and the Suffolk County Legislature doesn't take a hard look at this, I would dispute that.

LEG. VILORIA-FISHER: My request that we get greater detailed information on individual projects that require machine ditch digging come before us, would that bring us closer to what might have been interpreted as a hard look?

MR. JEFFREYS: Well, I would say it was my position, and still is my position, that this body each year takes a hard look at the legislature.

MS. VILORIA-FISHER: But that would be a harder look.
MR. JEFFREYS: It would be a very hard look. It's very similar to what we did in 2002 when we went from 600,000 linear feet to 400,000 linear feet. That was one of the issues that Judge Baisley, in the initial order of that case, which was in favor of the County, determined that we took environmental considerations into account in making our determinations of environmental significance. And that's the requirement under SEQRA: Did you take environmental considerations into account? And I believe we do that each and every year.

LEG. VILORIA-FISHER: The reason I'm asking that is because I would like to see us move this out, and I'll tell you why. We've had one rain event after another. In fact, I totaled a car in a rain event. And I would like the County to be able to start moving forward with the plan, but I want to do everything within my ability as a member of the legislature as well as member of this body, to take a hard look at what's
going on.

However, I'm one of 18 people, and so if I'm going to speak in support of the plan, I want to be able to say that we have recommended in our recommendation that we take a harder look than we have in the past. I don't know if we need to require that the plan have -- that we have an EAF before us for a particular plan, because I don't know how much of a time element we would have.

MR. NINIVAGGI: I did prepare an EAF, and following the instructions on the EAF --

LEG. VILORIA-FISHER: I meant EIS, I'm sorry.

MR. NINIVAGGI: Yeah. Because, what I ended up doing is as per -- when you go through the EAF, it says if you identified major impacts to the EAF; if not, you don't.

CHAIRMAN SWANSON: I think what's important, Legislator Viloria-Fisher, is if you look through the history of the annual
plans, it's fair to say there's been considerable litigation over the years. And more than just a hard look has been held to the litigation. And you might argue there are still impacts. The question is: Are those impacts truly significant particularly in the context we come from?

MR. KAUFMAN: Can I address that particular issue, Legislator Viloria-Fisher, and then I'll make a motion.

You are very right that since 2002 there have been heavy mitigations done to the plan that we originally sought in 2002. Essentially, the County has been ordered to try to avoid as much alteration of marsh property; avoid damaging vegetation as much as possible in the marsh hydrology; avoid damaging vegetation as much as possible in the marsh; try to avoid destroying anything in the upper marshes; trying to keep marshes alive, et cetera.

Essentially, the plan, as it stands
right now, has been to maintain what exists and try to hold that back as much as possible, and to try to get the DEC permits to deal with some of these issues.

I haven't really seen substantial changes in the last four years under this mitigation regime. Since 2002, I don't see the extensive damage that is required under SEQRA, which I have in front of me, required for determining significance under a proposed Type 1 action where it's required to have a significant adverse negative effect on the environment that might reasonably be expected to result from the particular activity. I don't see that since 2002. Again, I have an institutional view because I was here as one of the people who got the pos. dec., as one of the people who pushed for the EIS. I don't see extensive damage at this point in time. We've ordered as much scaling back as we could within our purview. The legislature has also adopted those issues, too. And again, four times this has come up since
2002. By charter, the County has to come with an Annual Plan subject to SEQRA, year by year. The last four years, the legislature, the executive, et cetera, have not seen substantial damage from the scaled back plan. So the plan, as mitigated, has not caused the damage that I believe would need a pos. dec., or anything like that.

Lots of people alleged things. I'm hearing things about methoprene; I'm hearing about marshes. And I do understand about the marshes, et cetera. But none of them, in my opinion, rise to the level of scientific proof of submission to change the basic 2002 litigation.

Now, I compare each plan, again, with the 2002 effort, and the things that we did in 2003, when we further scaled it back. I don't look at it in isolation. I know Lauren likes to look at it as an individual plan each year in a row. I don't see it that way. I think it has to be assessed in contrast with what has previously been done.
MS. STILES: That is the exact opposite of what I said.

MR. KAUFMAN: In which case, I apologize if that's the exact opposite of what you said.

Be that as it may, remember SEQRA does not require zero impacts for projects to continue, rather it requires a hard look as Legislator Fisher was talking about, to identify the issues and mitigation to identify the impacts to the best extent possible. We've already done a lot of mitigation. Can it be chipped at the edges? Yeah, I'm sure it probably can to some degree, but I don't see it rising to a positive declaration at this point in time. I just frankly don't see it.

CHAIRMAN SWANSON: And the public is part of the evaluation.

MR. KAUFMAN: And that leads up to something else. Under SEQRA -- and I'm looking at the Type 1 criteria for determining significance -- you can look at this two ways. SEQRA says, pos. dec.,
something in the creation of hazard so
human health exists. The question I
have -- and this would be for
Mr. Ninivaggi -- would be if we don't
continue with the annual plan -- let's say
it gets shut down -- are we going to be
creating a hazard to human health? Are we
going to see more problems out there?

MR. NINIVAGGI: Well, I can tell you,
if we don't do our job, you will certainly
see more mosquitoes. For instance, just
under the old regime, when we were using
Bti and not methoprene, our traps were
catching ten times as many salt marsh
mosquitoes, and they do under the current
regime.

So you can figure, in some locations
there would be at least ten times as many
mosquitoes as we've seen over the last few
years. You know, there could be
substantially more if Bti is...

One of the things I wanted to mention
is in terms of changes and mitigation in
the plans, I took a look back and the 2006
Plan of Work was not challenged legally.

But I made some notes that there were some changes that we did from the 2005 to the 2006, and that we've continued for 2007; such as, the Adapco Wingman air spray system, which is designed to -- if we have to do an aerial adulticide -- to minimize impacts targeting the application, you know, so that's something we didn't have for 2005;.

We have two new positions, an entomologist and principal engineering aid. An entomologist is a person who's going to help us do more surveillance and further target our applications; the principal engineering aid allows us to do better project drawings and project plans with water management, so that is a way of improving our water management part of the program.

And we're limiting the ditch maintenance. And in 2006 is when we made it very clear that the only ditch maintenance by machine we were going to do
was this -- as I described -- maintaining-wetlands help.

So actually, there are additional impact-limiting steps that we've implemented since 2005, going to 2006, and now to 2007. So the 2007 plan is not identical to the 2005 plan, you know, whatever the legal status in the 2005 plan.

MS. STILES: Can I just add one quick thing?

The hard-look question that you had earlier -- and Mr. Jeffreys didn't answer it all the way. I'm not saying you gave a wrong answer or anything -- but if you receive information after you made your recommendation after the vote, that doesn't count toward your hard look. You are supposed to have your information before you make the decision. It's not a hard look to follow-up on something.

LEG. VILORIA-FISHER: No. But I'm saying I would like to recommend as part of our motion today that we have the additional provisions that we look at those
machine ditching; you know, the plans for each machine ditching project.

MS. STILES: I'm not saying that's a bad idea; I think it's a great idea. But just for legal purposes, you're not taking a hard look just because you have asked in the future to look at it.

MR. JEFFERYS: Correct. The hard-look issue deals with what's there for you today to look at, for the legislature to look at, based on all the testimony, the visuals, the printed materials. If there's a term in the resolution that says that certain activities would have to come back in front of CEQ for their approval and final legislature approval, that goes to the mitigation or modification aspect of review of the plan, and that would be a mitigation issue -- even though I don't like to use that term because it's an EIS term, not an EAF term -- it's more of a modification; we're taking into account environmental issues.

MR. KAUFMAN: I would like to respond
to Mr. Jeffreys and Mrs. Stiles.

Remember, we tabled this plan
previously. It's been over a month out
there for people to respond; we've had
people come back with additional public
testimony, et cetera. We've also waited
for coordinated review to come in and we
have stuff from DEC, et cetera. So I'm
simply saying that there's been quite a lot
of time out there for people to make their
comments. When we walked in today, and we
had more information in the packet, I
religiously read my information in those
additional letters, et cetera. In my
opinion, I think we've taken a pretty hard
look at this and we are well aware of the
particular issues.

MS. STILES: I just think that --

CHAIRMAN SWANSON: Well, Mr. Dawydiak
and Mr. Ninivaggi, you received comments or
the minutes from the last CEQ meeting where
we raised a number of issues that we hoped
you would be taking care of.

MR. NINIVAGGI: Yes, I did receive
that. I think that I -- it seemed like the major questions that weren't legal things for Mr. Jeffreys, had to do with questions about methoprene and the issue of what do we mean by the water management figures and where do we do water management.

CHAIRMAN SWANSON: We were also giving comments about the 200,000 linear feet of ditching as well; right?

MR. NINIVAGGI: Right. And that's one of the things that I pointed out; that what we mean by that figure is total hand plus machine. And the reality is, out of that 200,000 feet, I estimate less than a thousand would actually be machine.

CHAIRMAN SWANSON: And that's going to be recorded in your final 2007 Work Plan?

MR. NINIVAGGI: Well, that's recorded in this meeting here. I don't know whether it could certainly do so. It's on the record. I didn't think that I should go back and -- basically what I was doing there was clarifying what I thought the plan said. It was always -- what I
described was always my intent in the plan, and my presentation here was just to make that clear.

CHAIRMAN SWANSON: So I just don't want you to dismiss what we gave you, you know, as comments that you weren't going to pay attention to.

MR. NINIVAGGI: No. That's what I did when I...

MS. STILES: Just one last thing, and hopefully, I'll be done.

Pos. dec, to constitute -- the issue of positive declaration, if you look at SEQRA, 6 NYCRR 617.2(a)(c) defines a positive declaration as -- it says:

"A written statement prepared by the lead agency indicating that implementation of action as proposed may have a significant adverse impact on the environment."

That's a very, very low threshold that triggers the need for Environmental Impact Statements; "may." There's a ton of case law out there on this, and we cannot
mitigate away a bad -- I don't mean bad in
the sense of bad idea to be doing it -- but
an environmentally harmful project. I
think mitigate, mitigate, mitigate; that
circumvents the entire SEQRA process, and
that is actually --

MR. KAUFMAN: Well, that Court of
Appeals decision specifically says that:
"Speculation does not equal
justification for pos. dec."
And that's what the Court of Appeals
says.

CHAIRMAN SWANSON: It's also a measure
of significance.

MR. JEFFERYS: Mr. Chair, that was one
of the issues that the Council had asked me
to look at with the speculation issue.
"The general rule that can be
distilled from the cases are that the
declaration of environmental significance
must be rational and supported by
substantial evidence. Conclusory,
generalized alligations with no scientific
basis or expert opinions to support them,
are insufficient to support a positive declaration."

Now, there are a lot of cases that talk about that. I can go through the list of citations; but that's the general rule that can be distilled from all the cases.

"Substantial evidence" by most of the courts -- including the U.S. Supreme Court, who has interpreted that phrase -- construed it to mean "less than a preponderance but more than a scintilla," and it has to be based on evidentiary facts. It's a very wide...

MS. STILES: Which means it's a very low threshold.

CHAIRMAN SWANSON: Don't quote the cases.

Let's go forward with a motion, please.

MR. KAUFMAN: Okay, I will make a motion that this is a Type 1 activity with a negative declaration, and with a further recommendation that when a Vector Control activity involving machine ditching requires a permit from the DEC, a copy of
the permit will be submitted to CEQ and the
Department of the Environment for review
and comment, except for emergency cases.

CHAIRMAN SWANSON: May I have a second?

MS. RUSSO: Second.

CHAIRMAN SWANSON: Any discussion?

MS. STILES: Can you record this as a
roll call vote, please?

CHAIRMAN SWANSON: Sure.

Steve?

MR. BROWN: I vote against that motion.

MR. POTENTE: I vote against the motion.

MS. STILES: I'm recusing myself.

MS. SPENCER: I vote for it.

MS. RUSSO: I vote for.

LEG. VILORIA-FISHER: For.

MR. KAUFMAN: Yes.

CHAIRMAN SWANSON: Yes.

MR. NARDONE: No.

MR. PICHNEY: Yes.

LEG. VILORIA-FISHER: Three no's; one
recusal.

CHAIRMAN SWANSON: The motion carries.

Thank you very much.
I would just like to say this has been a very painful process over the last four years, and looking over the last four years, I know that everybody doesn't have what they want out of the program, but I honestly believe that we have the means to protect our wetlands far greater than we ever had in 2001. And I want to thank everybody, Suffolk County Health Department, Suffolk County. I also want to thank the Bay Keeper and everybody else that has spoken out on this issue. This is very important for the County, and it's also a very important process in democracy.

So thank you, everybody, for their help and consideration.

MR. DAWYDIAK: Chairman Swanson, are you breaking up the meeting? It seems like everyone is going away.

CHAIRMAN SWANSON: I think they want to be going away, but I haven't closed the meeting yet.

MR. DAWYDIAK: Can I beg just one more minute of your time? I know it's been a
very long afternoon.

CHAIRMAN SWANSON: Yes.

MR. DAWYDIAK: I just wanted everyone
to get from Kim Shaw, who's handing them
out -- a one-page project update on the
long-term plan and Generic Environmental
Impact Statement.

I wanted to note that the Steering
Committee approved the long-term plan this
past Monday, November 6th, for distribution
to CEQ and to move ahead to the
legislature. So the plan piece has been
planned. Right now, the FEIS has been
mailed to you via overnight mail yesterday.
We had hoped to have it out earlier; we had
production problems and we apologize, but
we did meet today's deadline in any event.

Today is November 9th, and it's our
understanding from Mr. Bagg -- and please
correct me if I'm wrong -- that the SEQRA
statutory review period for this is no less
than 10 days and no more than 30 days, so
it's our hope that discussion and action
will occur at the next meeting.
We have prepared a Power Point presentation, which will take about twenty minutes to go through to brief, particularly, the new members so it doesn't take you hours to read through the plan to understand the FEIS. I know at this time it's late. We would be happy to stay late and talk to anybody who would like us to.

Dave Conte (phonetic spelling) just also wanted to give a presentation on the Wertheim Wildlife Refuge, which also answers some of the issues raised by Dr. Potente at last month's meeting, and we'd be happy to do that next month also. I just wanted to get that on the record and make sure everybody was clear on the procedure, and that we'd be back next month with a presentation with hopefully discussion and action on the FEIS.

CHAIRMAN SWANSON: Thank you.

Do we have a motion to adjourn?

MR. KAUFMAN: Motion.

MS. RUSSO: Second.

CHAIRMAN SWANSON: All in favor?
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(Whereupon, those in favor respond in the affirmative.)

CHAIRMAN SWANSON: Motion granted. We are adjourned.

(Time noted: 6:46 p.m.)