

# COUNTY OF SUFFOLK



STEVE LEVY  
SUFFOLK COUNTY EXECUTIVE

## DEPARTMENT OF PUBLIC WORKS

THOMAS LAGUARDIA, P.E.  
CHIEF DEPUTY COMMISSIONER

GILBERT ANDERSON, P.E.  
COMMISSIONER

LOUIS CALDERONE  
DEPUTY COMMISSIONER

### MEMORANDUM

**TO:** Hon. William J. Lindsay, Presiding Officer of the SC Legislature  
Legislators: Romaine, Schneiderman, Browning, Caracappa, Vilorio-Fisher,  
Losquadro, Eddington, Montano, Alden, Barraga, Kennedy, Nowick, Horsley,  
Mystal, Stern, D'Amaro and Cooper.  
Jeffrey Szabo, Deputy County Executive / Chief of Staff  
Vito Minei, P.E., Director, Environmental Quality, S.C. Health Services  
Thomas Isles, Director, Suffolk County Planning Department  
Ron Cohen, representing Legislator Louis D'Amaro, SCSA Legislator-at-Large,  
Michael Cavanagh, representing Presiding Officer Lindsay  
Catherine Stark, representing Legislator Jay Schneiderman, Chairman of the  
Public Works and Transportation Committee

**FROM:** Gilbert Anderson, P.E., Commissioner, SCDPW and Chairman, Suffolk County  
Sewer Agency

**DATE:** November 21, 2007

**SUBJECT:** MINUTES OF THE SEWER AGENCY MEETING OF NOVEMBER 19, 2007

Attached for your information please find a copy of the minutes for the above referenced meeting.

GA/BW/bc: sg

#### Attachments

cc: Thomas LaGuardia, PE, Chief Deputy Commissioner  
Louis Calderone, Deputy Commissioner  
Ben Wright, P.E., Chief Engineer, Division of Sanitation  
Bob Carballeira, P.E., Associate Civil Engineer  
John Donovan, P.E., Sr. Civil Engineer  
Laura Conway, C.P.A., Director of DPW Administrative Services  
Patricia Jordan, Esq., Dept. of Law  
Walter Hilbert, P.E., S.C. Dept. of Health  
Walter Dawydiak, P.E., S.C. Dept. of Health  
Tim Laube, Clerk of the Legislature  
James Morgo, Commissioner of Economic Development and Workforce Housing  
William Spitz, NYSDEC

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## **MINUTES OF THE SUFFOLK COUNTY SEWER AGENCY**

### **MEETING OF NOVEMBER 19, 2007**

The meeting was called to order at 11:04 am by Gil Anderson, PE, Commissioner of DPW and Chairman of the Suffolk County Sewer Agency. In attendance were Jeff Szabo, Deputy County Executive representing County Executive Steve Levy; Tom Isles, the Suffolk County Director of Planning; Michael Cavanagh, Legislative Aide to Presiding Officer Lindsay; Vito Minei, P.E., representing the Commissioner of the Department of Health Services and Catherine Stark representing Legislator Schneiderman, Chairman of the Legislative Public Works and Transportation Committee

Also present were Jessica Hogan, Esq. of the Department of Law and Ben Wright, PE and Bob Carballeira, PE, Secretary to the Sewer Agency.

Project representatives are shown on the copy of the sign-in sheet attached at the end.

Minutes from SCSA for September 17, 2007, were discussed. A motion to accept the minutes was made by Vito Minei and Commissioner Anderson seconded it. Motion passed with all in favor.

#### **Public Participation**

There were no requests to make statements.

#### **NEW BUSINESS**

Ben asked for a few moments to update the members of the Agency on recent developments:

1. Earlier this year there was discussion and an endorsement by the Agency to limit Conceptual Certification to 2 years. During the March meeting, there was an agreement to send out letters to all projects that had received conceptual certification that they had six months to re-apply or their conceptual certification status would cease as well as their claim to a lower connection fee rate. The opinion of the County Attorney was simply that this could not be done retroactively. All new Conceptual Certification projects could have that provision added to their resolutions but previous ones could not be given the sunset clause. That decision was in line with that stated in Resolution 38-2007 (effective March 26, 2007) which granted any Conceptual Certifications and Formal Approvals the continuation of the \$15.00 per gallon rate for their connection fee.

2. Ben then discussed the Agency Findings Statements that would be required when there is a positive declaration in SEQRA and the FEIS is adopted, such as the situation with the Tall Grass development. In his opinion and based on documents faxed to the staff, the Agency must have its own Findings Statement, adopt it at the meeting and then proceed with the adoption of the Formal Approval documents.

Commissioner Anderson asked if the two activities could be done simultaneously and Ben said that they could as it is written in the NYS SEQRA regulations.

Gene Wishod then took the floor and said that these were faulty interpretations of the SEQRA regulations. The Tall Grass FEIS discussed in great length the sewers and the sewage treatment systems while the Findings Resolution does not. The FEIS is the only document with all of the details. In his opinion, the Findings Statement is the formal resolution that approves the application.

Vito then mentioned that the effort had been a coordinated review with input from the SC DPW and DHS. His recollection was that if the effort was uncoordinated, then the department of Health Services had to issue a Findings and Determinations Statement. He then said that he wondered whether the question to the County Attorney was properly phrased in light of a coordinated review.

Ben Wright referred to question 8 of the attached background information handed out to the Agency members and then read that the Findings and other legislation can be handled simultaneously. He further stated that the staff does not consider this much of a problem, but it needs to address this as part of the Formal Approval or as a separate resolution.

Gene Wishod then stated that all had been involved in the FEIS and not in the Findings, and the Town granted the change of zoning for the project which should not have been done without the Findings Statement being adopted. He claimed that the Town is now tinkering on details before passing on Findings and Determinations Statement.

Vito then mentioned that the application for Formal Approval states that this can only be passed when the SEQRA is complete, then nothing further can be done since the Findings Statement is the last step of the SEQRA.

Gene then stated that the FEIS is the last of all of the details but, technically, SEQRA is not complete until the Findings are accepted by the lead agency.

There was agreement that all future resolutions would add a resolved clause stating that all SEQRA matters were complete.

Tom Isles than stated that he was concerned that this is a legal question whether the Agency's actions are consistent with the SEQRA regulations. He further stated that there were no issues with the Tall Grass project but merely with whether the County is acting consistently with SEQRA. This typically means that involved agencies cannot act until the lead agency completes its SEQRA process.

Vito then stated that in the context of the coordinated SEQRA review he saw no violation to understanding Gene had of the situation or to Tom's concerns.

Vito stated that as part of the Formal Resolution to similar projects, the Agency should request a meeting with the Department of Law to establish a policy for the future, especially in the context of a coordinated review of a positive declaration.

3. Ben than mentioned that Legislative Resolution No. 554-2007 requires that all connections to a Suffolk County Sewer District with at least 10 residential units requires that 20 % of them be affordable housing. Further the Director of Workforce Housing must certify to that fact, the Legislature must approve the connection and that all covenants must be approved by the County Attorney.

Gene then stated that when the County doubled the connection fees (38-2007), they "grandfathered" all those projects that had received either a Conceptual Certification or a Formal Approval. He and other representatives fought hard for the grandfathering clause. Then, this new law (554-2007) is passed and the only "grandfathering" is done is for the Formal Approvals, not for the Conceptual Certifications. He said that he merely wanted to make a statement to that effect.

#### **FORMAL APPROVAL**

#### **HERITAGE SQUARE AT EAST MORICHES**

**BR 1370**

Ben mentioned that this project is a proposed residential/commercial subdivision consisting of 450 unit planned retirement community and 200 bed nursing home situated on 52 acres in East Moriches. The 450 units include a 316 unit senior apartment complex with community building,

and a 134 unit senior condominium complex. The project has received a negative declaration from SEQRA.

The project is expected to create an estimated flow of 105,000 GPD and there is no County sewer district in the vicinity of this project.

The project received Formal Approval to construct a sewage treatment plant in February 2004.

However, there has been no signed Agreement for the Construction and Operation & Maintenance of a Sewer System and since the submitted plans for the site were submitted over 3 years ago, these must be re-reviewed to insure that they meet the present standards.

At the present time, when developers proposed a development and the project must provide a treatment plant, the developer is required to set aside 100% of the plant area for future expansion of the treatment plant. In this case, the developers of Heritage Square have agreed to allow other local developments to connect to their treatment plant provided the expense is paid for by the developers who would be connecting and, thus, not building other small local treatment plants.

Staff recommended granting Formal Approval for an on-site STP.

Commissioner Anderson asked who represented the project and Thomas Lembo said that he did and he introduced John Haras of Haras, Bloom and Archer. He then stated that the facts related by Ben Wright were correct except that the 200-bed nursing home had been removed from the project. Then he proceeded to thank Tom Isles for his encouragement and support of the meeting with all of the owners and engineers of the projects along County Road 51 in Eastport. As a result of that meeting, the Eastport Mixed Use development is considering expanding and connecting to the treatment plant for this project.

Tom Isles said that the thanks should go to the Developers and the staff of the Departments for the meeting.

Jeff Szabo made a motion to approve the application and Tom Isles seconded it. Motion passed unanimously.

**(S. C. Sewer Agency Resolution 22-2007)**

**WESTHAMPTON BEACH TOWNHOUSES**

**SH-1488**

. The project has been modified in size and is now requesting approval to construct an on-site treatment plant for the sanitary wastes.

Ben mentioned that this project is a proposed townhouse condominium project with 39 units, a clubhouse and a pool complex with an expected flow of 15,000 gpd, which is situated on 6.6 acres on the west side of Old Riverhead Road, 1,500 feet north of Montauk Highway in the incorporated village of Westhampton Beach. He further stated that this project was presented and tabled by the Agency numerous times during 2004 and 2005, while it was requesting approval to connect to the Gabreski Airport's sanitary system. However, capacity at the Airport's plant is fully utilized, so other connections are not possible.

The project is requesting FORMAL APPROVAL for the construction of a small sewage treatment plant to process the wastes from this development.

There is no Suffolk County Sewer District in the vicinity of this project. There is a treatment plant at the Suffolk County Gabreski airport, but this facility has not become a Sewer District and so cannot enter into connection agreements with an outside party, such as this development. In addition, the capacity at the facility is completely assigned so an expansion would be the only way to connect to that treatment plant.

Staff recommended granting the Formal Approval to this project.

Commissioner Anderson asked who represented the project and Mike Chiarelli said that he did. He introduced Sol Muchnick and Keith Archer and said that the information Ben had provided was correct.

Tom Isles asked Ben why the Gabreski Airport treatment plant was not available and Ben responded that the plant would need to be expanded from the present 100,000 gpd to 200,000 gpd and this would cost some \$4-5 million. The existing capacity is all assigned to the industrial complex at the Airport and the various Airport buildings. Further, there is still no resolution of the ANG situation, so there is no pressing need to make that area another Sewer District at this time.

Tom asked about the connection of the Village of Westhampton and Ben stated that they are no longer interested in connecting to the Airport STP.

Vito then asked that a statement of the above facts including the assignment of all the available capacity so that when other look into the situation they see the consistency of the Agency's decisions. (The statement is attached in a memo from Ben Wright, PE; Re: Gabreski/SH 1488)

Tom Isles made a motion to approve the application and Jeff Szabo seconded it. Motion passed unanimously.  
**(S. C. Sewer Agency Resolution 23-2007)**

### CONCEPTUAL CERTIFICATIONS

**SONS CORAM, LLC**

**BR-1599**

Ben mentioned that this project is a proposed restaurant complex that is applying for permission to connect to the facilities of SC Sewer District No. 11- Selden. It is expected that this facility will generate a sanitary discharge of 3,000 gallons per day of wastewater.

This project is situated on the east side of Route 112 approximately 1,000 north of the intersection with County Road 83, on 2 lots that have an aggregate area of 2.1 acres.

The District's STP is expected to have sufficient excess treatment capacity due to an expansion of the facilities that should amount to a 47,000 gallon per day permit increase. However, this additional capacity will not be available until the plant is tested, under the supervision of the NYS DEC, for its present expansion and then for the additional 47,000. It is not expected that this will not be completed and permitted until late-2007 or early 2008, if ever.

Ben mentioned that the staff recommended granting the Conceptual Certification with the understanding that none of the capacity will be available until the permit is revised by the NYS DEC to reflect an increased of 47,000 gallons per day after the present expansion is permitted. The stressing of the sewage treatment plant was attempted last winter but it was not successful. The plans are in place to provide the stress test this winter.

Commissioner Anderson reiterated that all of this was conditioned on passing the stress test and then asked who represented the project and Gene Wishod said that he did and he was in agreement with Ben's comments.

Vito then stated that while he was in agreement with the concept of this connection, the Department of Health Services had not received an application for this project and Gene said that he would make sure that he got an application as soon as possible. Vito then asked whether

making this a Conceptual Certification was an expansion of the terminology of the Conceptual Certification.

Vito then asked that the definition of Conceptual Certification be officially expanded to include such items as SEQRA, technology issues and outstanding administrative issues. If the expanded definition is memorialized, then there would be no problem in approving other reasons for Conceptual Certification.

Vito then made a motion to table the application because the Department of Health Services did not receive an application from this project and it was seconded. Motion to table passed unanimously.

**TALL GRASS VILLAGE CENTER**

**BR 1496**

Ben mentioned that this project is a proposed combined residential and commercial subdivision with a golf course. It consists of a mix of 129 various sized detached homes, 212 attached villas and 37 affordable housing units. The Commercial uses are for a restaurant, office space, a theatre and golf clubhouse situated on 320-acres located west of William Floyd Parkway, east of Randal Road and south of NYS Route 25A in Shoreham.

The project has received a positive declaration from SEQRA from the Town of Brookhaven in December 2005 and the Town accepted the revised FEIS on July 24, 2007. This was part of the earlier discussion. However, the Town did not accept a Findings Resolution regarding the project, so the Sewer Agency could not pass its own Findings Resolution and thus cannot pass on a Formal Approval for the project. Consequently, the developers are applying for the **Conceptual Certification** to build an on-site STP for the estimated flow of 120,000 GPD.

County Sewer District No. 20-William Floyd containing 2 sewage treatment plants, one in Leisure Village and the other at Ridge Haven Estates, is in the vicinity of this project. However, neither of the plants could accept 120,000 gpd. There are no other sanitary service areas existing within near proximity to this development.

Staff recommended granting Conceptual Certification for an on-site STP.

Commissioner Anderson asked who represented the project and Gene Wishod said that he did and further stated that he needed at least the Conceptual Certification since he was making an application to the Pine Barrens Commission.

Vito stated that the Department of Health Services did receive an application from this project. Commissioner Anderson made a motion to grant conceptual Certification to this application and Mike Cavanagh seconded it. Motion passes unanimously.

**(S. C. Sewer Agency Resolution 24-2007)**

A motion was made to adjourn and it was seconded. Motion passed unanimously at 11:42 am.

**SIGN-IN SHEET**

**Suffolk County Sewer Agency  
SCDPW - Sanitation -Engineering**

**Date - November 19, 2007**

	NAME	FIRM	REPRESENTING WHAT PROJECT
1	MIKE CHAPMAN	LOWERY ENG	WEST HAMPTON BEACH
2	Keith Alvey	HSA	West Hampton Beach
3	EUGENE LI WISITCO	HAMBURGER, MAXSON, ET AL	SONS CORAM, LLC Toll Man Valley Centre
4	TOM LEMBO	NELSON AAKE	HERITAGE SQUARE
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DEPARTMENT OF PUBLIC WORKS

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COMMISSIONER  
**M E M O R A N D U M**

LOUIS CALDERONE  
DEPUTY COMMISSIONER

TO: Members of the Suffolk County Sewer Agency

FROM: Ben Wright, P.E. *BW*

SUBJECT: Gabreski/SH 1488

DATE: November 21, 2007

During the Agency meeting of November 20, 2007 the consideration of the referenced project (Westhampton Townhouse Condominiums) a request was made to incorporate Gabreski expansion information into the record. The request was initiated due to the allocation of the existing capacity, the SH 1488 proposed plant of 15,000 gallons per day and the issue of expanding the existing facility. Comments were made that the 100,000 gallon per day plant could not be expanded by a small amount (15,000 gpd) and the cost of an expansion by 100,000 gpd would be too significant for a small development to bear.

DPW had an evaluation of an expansion prepared by the firm of H2M in March 2005. That report concluded that "it is estimated that the construction cost of the facility to be expanded from 100,000 GPD to 200,000 GPD would be approximately \$4,500,000 to \$5,000,000 to include construction, contingencies and engineering. This budget cost would not include any construction costs associated with the new collection system and/or pumping stations required to service the expansion areas". The estimate was in 2007 dollars and that estimate would require an increase.

BW:vp  
bw11-21-07 bw Gabreski Memo to Agency

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SUFFOLK COUNTY SEWER AGENCY  
RESOLUTION NO. **22 - 2007**  
AUTHORIZING AN ON-SITE SEWAGE TREATMENT PLANT  
FOR **HERITAGE SQUARE – BR-1370**

WHEREAS, application has been made for Heritage Square which is a proposed 450 unit planned retirement community and 200 bed nursing home complex located in East Moriches, New York, situated on property on the west side of East Moriches-Riverhead Road, approximately 1,000 feet south of Sunrise Highway ("the Premises"), and

WHEREAS, this Agency has determined that the 105,000 gpd of sanitary sewage generated by the said project shall be treated at an on-site sewage treatment plant to be constructed by the developer, and,

WHEREAS, Resolution 4-2004, granted a one year time for completion of the Agreement, but the year has passed without the completion of the Agreement, and negotiations concerning such an agreement are nearing completion, and a proposed agreement is been prepared, and,

WHEREAS, the developer has requested an extension of the authorization granted in Resolution No. 4-2004,

NOW, THEREFORE, BE IT

RESOLVED, that the said application be approved subject to the execution of an agreement between the developer, the Suffolk County Department of Public Works, the Suffolk County Department of Health Services, the County of Suffolk and this Agency, on such terms as the Chairman of this Agency shall determine, including, but not limited to, the following:

1. The developer shall, at its sole cost, expense and effort, construct a complete sewage collection, treatment and disposal facility for the project in accordance with Agency standards and shall offer to dedicate the said facility to the Agency at no charge;
2. The developer shall operate and maintain the said facility until such time, if ever, as a Suffolk County, or other municipal, sewer district is formed encompassing the premises within its boundaries;
3. No Certificate of Occupancy shall be issued for any of the units in the project until the sewage treatment plant has been completed, and is operating, to the satisfaction of this Agency's staff;
4. The developer shall post a Letter of Credit, in form, wording and amount as determined by this Agency's staff, as security for the performance of all of the developer's obligations under the said agreement, and be it further

RESOLVED, that this resolution shall become null and void, and of no further force or effect, without any further action by this Agency or notice to the developer of Heritage Square if, within one (1) year from the date of the adoption hereof, an agreement in furtherance of the authorization granted herein, in form and content satisfactory to the Chairman of this Agency, has not been negotiated and fully executed by all parties thereto.

**SUFFOLK COUNTY SEWER AGENCY**  
**RESOLUTION NO. 23-2007**  
**AUTHORIZING AN ON-SITE SEWAGE TREATMENT PLANT**  
**FOR WESTHAMPTON BEACH TOWNHOUSES – (BR-1488)**

WHEREAS, Westhampton Beach Townhouses is a proposed townhouse project consisting of 39 units with a club house and pool, in Westhampton Beach, New York, situated on property identified on the Suffolk County Tax Map as District 0905-02-01-14, 15, 16, 17 &18 and 0905-04-01-06 in an area on the west side of Old Riverhead Road approximately 1500 feet north of Montauk highway, and

WHEREAS, this Agency has determined that the fifteen thousand gallons per day (15,000 gpd) of sanitary sewage generated by the said project shall be treated at an on-site sewage treatment plant to be constructed by the developer, and

WHEREAS, this Agency believes that prospective purchasers of the units should be apprised of the annual cost of the operation and maintenance of the proposed sewage treatment plant, not only while the plant is privately owned, but also if and when the County, or another municipality, assumes ownership of the plant,

NOW, THEREFORE, BE IT

1<sup>st</sup> RESOLVED, that the said application be approved subject to the execution of an agreement between the developer, the Suffolk County Department of Public Works, the Suffolk County Department of Health Services, the County of Suffolk and this Agency, on such terms as the Chairman of this Agency shall determine, including, but not limited to, the following:

1. The developer shall, at its sole cost, expense and effort, construct a complete sewage collection, treatment and disposal facility for the project in accordance with Agency standards and shall offer to dedicate the said facility to the Agency at no charge;

2. The developer and/or the Home Owners Association (HOA) shall operate and maintain the said facility until such time, if ever, as a Suffolk County, or other municipal sewer district is formed encompassing the premises within its boundaries;

3. No Certificate of Occupancy shall be issued for any of the units in the project until the sewage treatment plant has been completed, and is operating, to the satisfaction of this Agency's staff;

4. The developer shall post a Letter of Credit, in form, wording and amount as determined by this Agency's staff, as security for the performance of all of the developer's obligations under the said agreement;

5. The developer shall disclose, in the project's Offering Plan/Prospectus, in language to be approved by this Agency's staff, the annual cost of operation and maintenance of the proposed sewage treatment plant, in order to ensure that prospective purchasers of the condominium are apprised of said cost. The developer shall include in said notice the projected annual cost of operation and maintenance of the proposed sewage treatment plant for the ensuing years, based on an inflation factor, in order to ensure that all future owners of the condominium units are apprised of said cost, not only while the plant is privately owned, but also if and when the County, or another municipality, assumes ownership of the plant.

And be it further

2<sup>nd</sup> RESOLVED, that this resolution shall become null and void, and of no further force or effect, without any further action by this Agency or notice to the developer of WESTHAMPTON BEACH TOWNHOUSES if, within one (1) year from the date of the adoption hereof, an agreement in furtherance of the authorization granted herein, in form and content satisfactory to the Chairman of this Agency, has not been negotiated and fully executed by all parties thereto.

Suffolk County Sewer Agency Meeting (11/19/07)

**SUFFOLK COUNTY SEWER AGENCY**  
**RESOLUTION NO. 24- 2007, GRANTING CONCEPTUAL CERTIFICATION**  
**FOR AN ON-SITE SEWAGE TREATMENT PLANT AT**  
**TALL GRASS SUBDIVISION- BR-1496**

**WHEREAS**, Tall Grass Subdivision is a proposed development consisting of residential and commercial units with a golf course. The residential component consists of a mix of 129 various sized detached homes, 212 attached villas and 37 affordable housing units, in Shoreham, New York, situated on property identified on the Suffolk County Tax Map as 0200-126.00-02.00-002.000; 0200-127.00-01.00-002.000 & 003.000; 0200-148.00-02.00-006.000 in an area bounded by Montauk Highway on the south and Eastport Manor Road on the on the east, and

**WHEREAS**, the sewage flow from Tall Grass Subdivision is expected to be one hundred twenty thousand gallons per day (120,000 gpd) when fully developed, and

**WHEREAS**, there is no Suffolk County Sewer District, or any other municipal sewer district in the vicinity of Tall Grass Subdivision with available capacity to serve the development's sanitary needs, and

**WHEREAS**, Tall Grass Subdivision has applied to this Agency for permission to construct an on-site sewage treatment plant for Tall Grass Subdivision, and

**WHEREAS**, inasmuch as the SEQRA process for Tall Grass Subdivision has not been completed, this Agency cannot, at this time, approve the said application, and

**WHEREAS**, in the interest of good planning, and in order to minimize potential hardship on applicants, it is the policy of this Agency, upon review of an application prior to the completion of the SEQRA process, to give applicants an indication of what method of wastewater disposal this Agency would like to see for a particular project, thereby giving applicants an indication of the action that this Agency might take if it were to pass upon the application at the time of such review, and

**WHEREAS**, in furtherance of such policy, this Agency is desirous of giving the Tall Grass Subdivision an indication of the action that this Agency might take regarding the proposed sewage treatment plant if the SEQRA process had been completed and this Agency were to pass upon the matter at this time,

NOW, THEREFORE, IT IS

**1<sup>st</sup>** **RESOLVED**, that this Agency hereby grants "Conceptual Certification" for an on-site sewage treatment plant for Tall Grass Subdivision in Shoreham, New York as aforesaid, and it is further

**2<sup>nd</sup>** **RESOLVED**, that this resolution shall become null and void, and of no further force or effect, without any further action by this Agency or notice to the developer of Tall Grass Subdivision, within two (2) years from the date of the adoption hereof if an application for Formal Approval in form and content satisfactory to the Chairman of this Agency, has not been submitted for consideration.

And be it further

**3<sup>rd</sup>** **RESOLVED**, that

1. Such conceptual certification is not, and is not to be construed as, final approval, which can only be granted by this Agency after the SEQRA process for the proposed project has been completed;
2. The applicant shall return to this Agency for such final approval;
3. The granting of conceptual certification as set forth herein shall not be binding upon this Agency when final approval is sought; and
4. The granting of conceptual certification does not constitute a position by this Agency, favorable or otherwise, with respect to local land use, zoning and/or subdivision requirements.

(Suffolk County Sewer Agency meeting 11/19/07)

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SUFFOLK COUNTY EXECUTIVE

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LOUIS CALDERONE  
DEPUTY COMMISSIONER

## M E M O R A N D U M

TO: Gilbert Anderson, P.E., Commissioner

FROM: Ben Wright, P.E. *BW*

SUBJECT: Sewer Agency - Conceptual Certification

DATE: September 28, 2007

This memo is to retract the staff opinion that projects that received conceptual certification over two years ago would be required to reapply at a higher connection fee. County Attorney Malafi has commented that this policy is flawed and beyond the Agency authority. Resolution 38-2007 is cited as grandfathering project that had conceptual certification prior to the local law being effective (March 26, 2007).

During the January and February Sewer Agency meetings the concept of a limiting conceptual certification to a two year period was discussed and endorsed. This concept was initiated due to some projects holding capacity for a number of years while equally important projects could be limited in obtaining capacity. An example is the LIE Rest Stop of 60,000 gpd that received conceptual certification during December 2003 and does not appear to require capacity in the future. The sunset provision is valid and although projects granted prior conceptual certification (prior to March 26, 2007) would retain their right to have a connection fee of \$15 per gpd new projects have had Agency resolutions issued with the two year provision.

In order to satisfy the County Attorney's opinion it is suggested that we must request the authority from the Legislature. We note that nothing is contained in the Agency files on other Agency policy issues (Formal Approval valid for one year, inspection fees, security requirements, etc). The Agency may not have formally carried out the requirements of the Suffolk County Code, Section 772-4, that states "The Agency may

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adopt and from time to time amend its own rules and regulations of its procedures as it may deem necessary and appropriate." The definition of "procedures" and may have been interpreted too broadly.

The opinion of the staff was that projects that had received conceptual certification for more than two years would receive a letter to reapply for conceptual or formal approval. In theory the environmental process for most projects should be completed within two years. Minutes of those meetings are attached. It was proposed that if the application was for conceptual the increased connection fee would apply. Letters were drafted for approximately thirty projects but have not been sent.

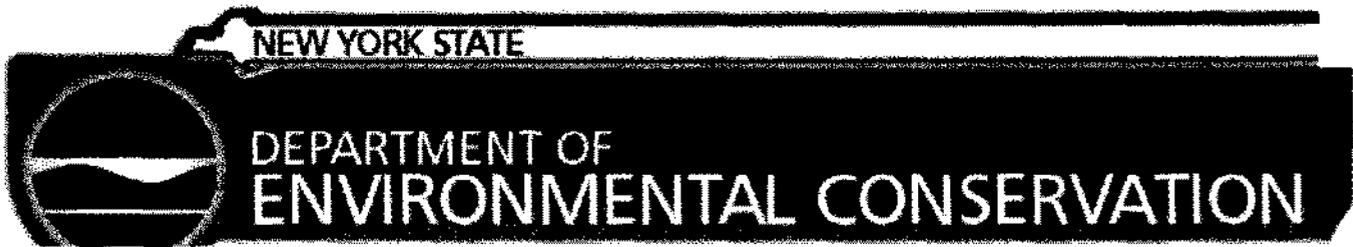
It is recommended that by the next Agency meeting of October 15<sup>th</sup> a listing of procedures and policies be prepared for discussion. It may be necessary to have this discussion in a closed meeting.

BW:gf

Atth.

cc: Christine Malafi, Esq., County Attorney  
John Donovan, P.E.  
Robert Carballeira, P.E.  
Patricia Jordan, Esq.

bw9-28-87 conceptual certification memo GA



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## Participation in the SEQR Process E. Involved Agency Responsibilities

### Participation in the SEQR Process E. Involved Agency Responsibilities

#### 1. What is an involved agency?

For SEQR purposes, an agency is "involved" when the determination is made that the agency has or will have a discretionary decision to make regarding some aspect of the action. Normally an agency becomes aware of its involvement when it receives an application or is contacted by another involved agency as part of a coordinated review.

#### 2. What if an agency cannot be certain of its involvement until later?

An agency should be treated as an

Page Applies To:



All Regions

Contact for this Page:

NYS DEC  
Division of  
Environmental  
Permits  
4th Floor  
625 Broadway  
Albany, NY 12233-  
1750

518-402-9167  
email us

involved agency unless there is reasonable certainty that it will have no jurisdiction (i.e., no discretionary decisions to make) in the particular action. If an agency's jurisdiction is questionable it would be unwise for that agency to serve as lead agency. If the potential for a future discretionary decision is too speculative, the agency may be considered as non-involved.

3. What are the responsibilities of an involved agency under SEQR?

Depending on how an agency first becomes involved in an action, initial responsibilities will vary. Participation in the SEQR Process - A. Coordinated Review describes various involved agency roles and options in the coordination process. Questions 5, 6 and 7 in Participation in the SEQR Process - C. Establishment of Lead Agency address lead agency establishment and responsibilities, if an agency is the first one contacted by an applicant. Once the determination that an involved agency is not serving as lead or is not proceeding alone with an uncoordinated review, that agency's responsibilities in a coordinated review are as follows:

Before the lead agency has made a determination of significance, all remaining involved agencies should:

Make certain the lead agency understands the extent of the involved agency's jurisdiction; and

Provide the lead agency with observations and concerns about the proposed action and its potential environmental impact so the lead agency may consider them in making a determination of significance.

When a lead agency has made a negative determination of significance (negative declaration) each remaining involved agency may make its final decision on the action after completing any other required procedures.

When a lead agency has made a positive declaration each involved agency should:

Participate in scoping, making the lead agency aware of that agency's concerns and technical requirements identify potential significant environmental impacts and suggest alternatives and mitigation;

Assist the lead agency in reviewing a draft EIS for adequacy, if requested;

Participate in any hearings, as appropriate;

Provide formal agency comments during the public review period;

Assist the lead agency in responding to substantive comments on the final EIS, if requested; and

Prepare the involved agency's own separate SEQR findings before making its final decision.

4. Can an involved agency influence the determination of significance by the lead agency?

Yes. All involved agencies are encouraged to submit comments during the coordination period. Comments that deal with an agency's specific area of interest or jurisdiction are especially appropriate. However, there is no provision in SEQR that guarantees that the lead agency will make a particular determination of significance.

5. Does an agency lose its decision making authority with respect to an action if it is not the lead agency?

No. All underlying jurisdictions of each involved agency with respect to an action remain unchanged.

6. If an involved agency has no concern about the impacts of the action, must it respond during the coordination process?

If an agency does not respond to a request for coordination, the agency will be assumed to have no comments. However, it is recommended that all solicited agencies acknowledge receipt of a coordination inquiry.

7. If an involved agency has no concerns about an action, may it proceed to its final decision during the coordination period?

NO! All involved agencies are prohibited from making final decisions or commitments before the SEQR process is completed. [see 617.3(a)] Agencies making such decisions and applicants

accepting such decisions do so at their own risk, because such decisions may be declared null and void through court action, on the grounds that they are procedurally flawed.

8. If an involved agency has the opportunity, but does not participate in the public comment period, must it still consider the draft and final EIS in its decision making?

Yes. If the involved agency fails to participate in the EIS process, it must still consider the EIS as the basis for its written SEQR findings.

9. What recourse does an involved agency have if it has participated in the EIS process but its concerns have been ignored or inadequately addressed?

It is important for an involved agency which has substantive concerns regarding the adequacy of the draft EIS to make this known to the lead agency. If the involved agency's comments are then disregarded or responded to unsatisfactorily, it may take such deficiencies into account in making its own decision regarding the action which could result in negative SEQR Findings and a denial. Alternatively, the involved agency could commence litigation challenging the sufficiency of the Final EIS.

This Handbook is still being updated. We expect to be posting additional sections through mid-2007, until the complete

document is on-line.

If you have any comments to offer on any of these postings, please E-mail us. Please be sure to indicate which section or item you are commenting on, and include your name. Comments will remain open until all sections are posted.

Thank you for your help in making this handbook the most accurate and useful tool it can be.

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**FINAL**  
**Generic Environmental Impact Statement**  
**on the**  
**Proposed Amendments**  
**to the**  
**State Environmental Quality Review Act (SEQRA) Regulations**

**6 NYCRR - Part 617**

**PREPARED BY**  
**THE NEW YORK STATE**  
**DEPARTMENT OF ENVIRONMENTAL CONSERVATION**  
**DIVISION OF REGULATORY SERVICES**  
**50 Wolf Road**  
**Albany, New York 12233-1750**

**Contact:** **Jack A. Nasca**  
**Barbara B. Rinaldi**  
**Division of Regulatory Services**  
**518-457-2224**

**Date accepted: September 6, 1995**

environment and was not adequately addressed by the existing EIS record then a supplemental EIS would be required.

Comment: Several commentors thought that 617.9(d)(5), (May 94 proposal) omitted the requirement that mitigation be the maximum practicable.

Response: The provision has been revised to make it clear that there is no change in the standard, simply a reordering and restatement of the previous standard (see 617.11(d)(5)).

Comment: Several people thought this provision and/or the definition of findings eliminated the requirement that findings be written and that balancing is still required.

Response: The regulations are clear that findings must be written; however, this has been strengthened by additional use of the term in 617.11(a). Both the definition (617.2(p)) and 617.11(d) have been revised to clarify the duty to balance environmental harm against economic, social and other considerations.

Comment: The proposed change in language emphasize economic and other non-environmental considerations to such an extent as to give the perception that environmental protection is a secondary goal. This changes findings into a cost-benefit analysis.

Response: The changes in the findings language clarify what is currently the requirement for balancing the identified environmental impacts against the social and economic considerations. The revised language does not diminish the weight given to environmental impacts

Comment: Several people stated that involved agencies should have to file findings statements within a certain time after the lead agency; one commentor suggested that only the lead agency prepare findings with input from involved agencies; another suggested involved agencies should file findings with the lead agency and other involved agencies; and one commentor suggested that the lead agency should be required to provide written notice to the applicant when it would be unable to issue findings within 30 days and could seek an additional period of time not to exceed 30 days.

Response: Since agencies are not always working within the same timeframes and their findings are usually timed with a final decision on an action, it is not possible to set a time period within which involved agency findings must be filed. It is also important to continue to have each involved agency be responsible for making its own findings since each agency may have different perspectives on the information in an EIS based on their particular jurisdiction; this requirement also ensures that each agency independently considers the environmental impacts of its decision. Findings are required to be filed with other involved agencies and this requirement is highlighted in the revised regulations; in this way, involved agencies can tell each other what conditions each is imposing, thereby avoiding conflicts or overlaps. The regulations are clear that a lead agency must make its findings within 30 days if the project involves an applicant. The change proposed by the commentor to allow an

additional 30 days would weaken this requirement and probably result in more lead agencies delaying the release of findings. The lead agency could always seek to extend the 30 day time period consistent with the provisions of 617.3(i).

Comment: One commentor argued that ten days is not long enough for consideration before making findings and would like local government officials to receive findings.

Response: We have not proposed any change to the period following acceptance of a final EIS. There has been at least one case where a final EIS has contained so much new information a supplement might have been required; in such a case, the period following final EIS acceptance was three weeks. This was upheld by the Court of Appeals in Webster Assocs. v. Town of Webster, 59 NY2d 220. In most cases, scoping and the public comment period for review of the draft EIS gives adequate time for public review and comment. The ten days following acceptance of the final EIS is primarily a consideration period for the lead and involved agencies. Regarding the filing of findings, in most cases, the local government is at least an involved agency and would receive findings.

Comment: Requiring a written findings statement when an action is disapproved is contrary to Article 8 and places an unnecessary burden on lead agencies.

Response: This requirement has been in Part 617 since the January 1978 version of the regulations and it is a matter of equity. Without a findings statement the applicant would not have a written explanation of the reasons for the agency's denial.

Comment: The revised regulations mandate that the findings Statement and project approval must be made simultaneously.

Response: Subdivision 617.11(c) states that "findings and a decision **may** be made simultaneously" (emphasis added). This change was made to clarify that a findings and a decision could be made at same meeting of a local agency such as a planning board.

## 617.12 DOCUMENT PREPARATION, FILING, PUBLICATION AND DISTRIBUTION REQUIREMENTS

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### **Current notice and filing requirements are confusing.**

Issue: The current language regarding the content of notices and required filing points is confusing.

Revision: The entire section regarding document preparation, filing, publication and distribution has been revised to clarify the requirements.

Discussion: The present language regarding the preparation and filing of SEQR notices is confusing and in many places redundant. The notice requirements have been reorganized to reduce the redundancy and guidance regarding the filing, distribution and publication of notices has been added. Changes have also been made to the publication of the Environmental Notice Bulletin (ENB) in the effort to make the ENB more efficient and timely.

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## ENB - Region 1

### Negative Declaration

**Suffolk County** - The New York State Department of Transportation (NYS DOT), as lead agency, has determined that the proposed Taxiway Bravo Relocation will not have a significant adverse environmental impact. The action involves the relocation of existing Taxiway Bravo to a location 300 feet west of Runway 1-19. The taxiway is currently 200 feet west of the runway. The project is located at the Republic Airport, Suffolk County.

**Contact:** Michael Geiger, NYS DOT,  
7150 Republic Airport, East  
Farmingdale, NY 11735. Phone: (631)  
752-7707.

Page applies to all  
NYS regions

Contact for this Page:

Lindy Sue Czubemat  
NYS DEC  
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625 Broadway, 4th  
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Albany, NY 12233-  
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email us

### Positive Declaration

**Suffolk County** - The Town of Southold Planning Board, as lead agency, has determined that the proposed The

Heritage at Cutchogue may have a significant adverse impact on the environment and a Draft Environmental Impact Statement must be prepared. The action involves the site plan of a 46.16 acre parcel into 139 single family detached and attached, age restricted, residential units. The project is located on the northwest corner of Griffing Street and School House Lane, approximately 1,079 feet north of Main Road in Cutchogue, New York.

**Contact:** Mark Terry or Amy Thiel, P.O. Box 1179, 54375 State Road 25, Southold, NY 11971, Phone: (631) 765-1838.



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## **Notice of Acceptance of Final EIS**

**Suffolk County** - The Brookhaven Town Board, as lead agency, has accepted a Final Environmental Impact Statement on the proposed Tall Grass Village Center PDD. The action involves the application to rezone two properties from their existing A (Residence) 1 zone to Planned Development District (PDD), for the purpose of developing a total of 378 units of various residential types, 175,000 SF of commercial space, retain an existing golf course, and provide necessary and appropriate utilities (including an on-site STP) and recreational amenities. The 320.20 acre project site is presently occupied by the

Delalio Sod Farm and the Tall Grass Golf Course. The DEIS is available online at [www.tallgrasscommunities.com](http://www.tallgrasscommunities.com). The project is located east of Randall Road, south of NYS Route 25A and both north and south of Cooper Street, in an area west of the William Floyd Parkway, in the hamlet of Shoreham, Town of Brookhaven, Suffolk County, New York.

**Contact:** David W. Woods, Dept. of Planning, Environment & Land Management, Town of Brookhaven, E-mail: [dwoods@brookhaven.org](mailto:dwoods@brookhaven.org).

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Intro. Res. No. 1079-2007

Laid on Table 2/6/2007

Introduced by Legislators Schneiderman and Browning

**RESOLUTION NO. 554 -2007, ADOPTING LOCAL LAW NO. -  
2007, A LOCAL LAW TO AMEND THE COUNTY POLICY FOR SEWER  
CONNECTIONS TO PROMOTE AFFORDABLE HOUSING**

**WHEREAS**, there was duly presented and introduced to this County Legislature at a meeting held on February 6, 2007, a proposed local law entitled, "**A LOCAL LAW TO AMEND THE COUNTY POLICY FOR SEWER CONNECTIONS TO PROMOTE AFFORDABLE HOUSING**"; now, therefore be it

**RESOLVED**, that said local law be enacted in form as follows:

**LOCAL LAW NO. -2007, SUFFOLK COUNTY, NEW YORK**

**A LOCAL LAW TO AMEND THE COUNTY POLICY FOR SEWER  
CONNECTIONS TO PROMOTE AFFORDABLE HOUSING**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK**, as follows:

**Section 1. Legislative Intent.**

This Legislature hereby finds and determines that there exists a critical need for affordable housing opportunities in Suffolk County.

This Legislature also finds and determines that the County of Suffolk has shown its commitment to providing affordable housing by crafting an affordable and workforce housing infrastructure improvement fund, by instituting a 72-h property transfer program to promote affordable housing, and by commissioning a study to determine the best methods to generate more affordable and workforce housing in Suffolk County.

This Legislature further finds and determines that the County of Suffolk regularly enters into contracts to permit residential housing developments to connect to County sewer districts, without regard to any public benefit that these developments could provide to the people of Suffolk County.

This Legislature finds that a portion of the excess sewer capacity that is given away to private developers should be reserved for affordable and workforce housing so as to encourage their construction.

Therefore, the purpose of this law is to promote the development of affordable and workforce housing opportunities in Suffolk County by requiring residential housing developments that connect to County sewer districts to contain no less than 20% of affordable housing units.

**Section 2. Amendments.**

Chapter 424 of the SUFFOLK COUNTY CODE is hereby amended as follows:

**Chapter 424, SEWERS**

\*\*\*\*

**ARTICLE VIII, General Provisions**

\*\*\*\*

§ 424-45. Connection by premises outside district.

A. The Administrator is hereby authorized and empowered to consider applications for connections to a county sewer district facility by businesses, industries and other users from outside the geographical boundaries of a district and to negotiate contracts and agreements with those businesses, industries and users as he deems appropriate upon such terms and conditions as to him may seem reasonable and proper to protect the best interests and to accrue to the financial benefit of the district, including but not limited to provisions intended to relieve a district of the full burden of maintenance and capital costs, present or future, if any, attributable to and that might result from such contractual connections, and including the filing of a surety bond or the deposit of cash or securities with the County Treasurer or the giving of every guaranty to the district to ensure the performance of said agreements and contracts, and the costs, if any, to a district relating thereto will be offset by payments from the owner and will not constitute an undue burden upon the property within said district, subject to the provisions of § 424-38 of this chapter and the charges imposed thereunder.

B. 1. No contract between the Administrator and an applicant from outside the geographical boundaries of a district may be entered into unless, in the case of a residential housing development or a development that includes a residential component, which consists of 10 or more units only, the housing development or component is comprised of no less than 20% of units that are set aside for homebuyers or renters whose income does not exceed 120% of the HUD established median income limit for the Nassau-Suffolk Primary Metropolitan Statistical Area (PMSA) adjusted by family size.

2. Prior to the approval of a contract with the Administrator, the Director of Affordable Housing within the Suffolk County Department of Economic Development and Workforce Housing shall be provided with such documentation and certification as he or she deems necessary in order to certify that the requirements outlined in paragraph (B)(1) of this Section are being complied with.

3. Upon approval of a contract with the Administrator, a covenant shall be filed on the deed of those units that are required to be set aside pursuant to paragraph (B)(1) of this Section, which covenant or covenants shall contain the following restrictions:

a. said unit or units shall be restricted for use as affordable housing units, defined for purposes of this Section as meaning units which are set aside for homebuyers or renters whose income does not exceed 120% of the HUD established median income limit for the Nassau-Suffolk Primary Metropolitan Statistical Area (PMSA) adjusted by family size, for a period of fifteen years from the date of filing of the covenant or covenants;

b. said unit or units shall remain the principal residence of the individual or individuals who occupy the unit or units during the fifteen year restriction described above;

c. all covenants filed pursuant to this Section shall be in a form approved by the Suffolk County Attorney.

[B.]C. Any contracts or agreements negotiated by the administrative head of any Suffolk County Sewer District shall be subject to the final review, approval and ratification of the Suffolk County Legislature.

\*\*\*\*

**Section 3. Applicability.**

This law shall apply to contracts or agreements entered into on or after the effective date of this law, but shall not apply to contracts or agreements that arise from applications that received formal approval from the Suffolk County Sewer Agency prior to the law's effective date.

**Section 4. Enforcement.**

The County Attorney may institute any other action or proceeding in any court of competent jurisdiction that may be appropriate or necessary for the enforcement of the provisions of this chapter, including actions to secure permanent injunctions enjoining any acts or practices which constitute a violation of any provision of this law, mandating compliance with the provisions of this chapter, or for such other relief as may be appropriate.

**Section 5. Severability.**

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**Section 6. SEQRA Determination.**

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20) and (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

**Section 7. Effective Date.**

This law shall take effect immediately upon filing in the Office of the Secretary of State.

[ ] Brackets denote deletion of existing language  
 \_\_\_ Underlining denotes addition of new language

DATED: June 12, 2007

APPROVED BY:

/s/ Steve Levy  
 County Executive of Suffolk County

Date: July 12, 2007