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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.

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Court Reporter:
Lori Anne Curtis

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A P P E A R A N C E S :

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 NINIVAGGI,
Superintendent, Department of Public Works
Vector Control

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2 A P P E A R A N C E S:

(Continued)

3

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

8

9 DR. PATRICIA DILLON
10 Medical Director
11 Communicable Diseases
12 Department of Public Health Services

13

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

17

18 JENNY KAHN, ESQ.
19 Suffolk County Attorney's Office

20

21 RALPH BURKOWSKI
22 Landscape Architect
23 Department of Public Works

24

25 ROBERT DEBONA
26 President,
27 Mastic Beach Property Owners Association

28

29 GERALD LUDWIG
30 Vice President
31 Mastic Beach Property Owners Association

32

33 ED MOONEY
34 President East End Wireless
35 Montauk Fire Department

36

37 JOY MOONEY
38 Vice President East End Wireless
39 Montauk Fire Department

40

41 CAPTAIN ED ECKER, JR.
42 East Hampton Town Police Department

43

44 THOMAS J. POTTER
45 Senior Account Manager
46 Motorola

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2 A P P E A R A N C E S :
(Continued)

3

RONALD LASLEY

4

LARRY MERRYMAN
Conservation Chair
Great South Bay Society

5

6

KEVIN McALLISTER
Peconic Bay Keeper

7

8

MATTHEW ATKINSON
General Counsel
Peconic Bay Keeper

9

10

GEORGE PROIOS
Chairman
S.C. Soil and Water

11

12

KIM SHAW
Principal Environmental Analyst
Department of Health Services

13

14

JOHN REICHLING

15

PHILIP DEBLASI
Environmental Analyst
SCDEE

16

17

VITO MINEI
Director, Environmental Quality
Department of Health Services

18

19

CATHERINE STARK
Legislative Aide
Represents: Leg. Schneiderman

20

21

DAVIS TONJES
Cashin Associates

22

23

BOB McMALLY

24

KASEY JACOBS
Program Coordinator
Citizens Campaign for the Environment

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2 A P P E A R A N C E S:
(Continued)

3

4 ILIA ROENLIN
Entomologist
Department of Public Works - Vector Control

5

6 MARY DEMPSEY
Biologist
Department of Public Works - Vector Control

7

8 CHIEF CHARLES GRIMES
Montauk Fire Department

9

10 DAWN REILLY
District Secretary
Montauk Fire Department

11

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

13

14 RICHARD WHITE, JR.
Treasurer
Montauk Fire Department

15

16 *** All other interested parties

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1 CEQ Meeting - November 9, 2006

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

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

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

12 MR. BAGG: Also the October 18th
13 minutes.

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

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

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

25 MS. RUSSO: Yes.

1 CEQ Meeting - November 9, 2006

2 CHAIRMAN SWANSON: Are there any other
3 comments anyone would like to note?

4 (No response.)

5 CHAIRMAN SWANSON: Do we have a motion?

6 MS. RUSSO: I'll make the motion.

7 CHAIRMAN SWANSON: Do we have a second?

8 MR. KAUFMAN: I'll second.

9 CHAIRMAN SWANSON: All in favor?

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

12 CHAIRMAN SWANSON: Opposed?

13 (No response.)

14 CHAIRMAN SWANSON: Motion carried.

15 Thank you.

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

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

25 There's an October 17, 2006 letter from

1 CEQ Meeting - November 9, 2006
2 the Village of Sag Harbor. They bring up
3 the issue of local waterfront
4 revitalization planning with respect vector
5 control;

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

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

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

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

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

23 A November 8, 2006 memo from
24 Mr. Dawydiak transmitting the FGEIS, which
25 was received in the council office, and I

1 CEQ Meeting - November 9, 2006

2 believe copies of that GEIS on disk were
3 overnighted to the council members.

4 CHAIRMAN SWANSON: Thank you.

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

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

19 MR. BAGG: Basically, there are none.
20 There was no packet that was laid on the
21 table, so this month is kind of a non-issue
22 in terms of the packet. There will be one
23 next time.

24 CHAIRMAN SWANSON: Thank you.

25 Next, "Proposed Installation of

1 CEQ Meeting - November 9, 2006
2 Emergency Communication Facility At the
3 Former GATR Facility at the Roosevelt
4 County Park in the Town of East Hampton."

5 Good afternoon.

6 MR. GIBBONS: Afternoon.

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

9 MR. GIBBONS: Nick Gibbons, County
10 Parks Department.

11 Dick, come on up.

12 (Mr. White complies.)

13 MR. GIBBONS: I just want to start by
14 going through the packet that I sent to
15 you. The requests came about as a result
16 of a letter we received from the Montauk
17 Fire District. That's your first
18 attachment, the letter dated April 17 of
19 '06 to Commissioner Ron Foley from the
20 chairman of the district, John Salmon.

21 The second attachment is an aerial of
22 the GATR site that shows -- north of it
23 across the top of the page -- shows the
24 approximate orientation of the proposed
25 site for the emergency communication

1 CEQ Meeting - November 9, 2006
2 installation. It's a 60-by-75-foot
3 rectangle, and it's shown in relation to
4 the two existing buildings that we have up
5 at the GATR facility.

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

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

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

23 And I brought with me today, Dick
24 White. He's our trustee from the Town of
25 East Hampton. He's also the treasurer of

1 CEQ Meeting - November 9, 2006

2 Montauk Fire District.

3 MR. WHITE: Fire department.

4 MR. GIBBONS: I'm sorry?

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

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

11 CHAIRMAN SWANSON: Please, go ahead.

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

13 The cover picture was taken just a
14 couple days --

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

17 MR. WHITE: Okay.

18 On the cover, you will see the site as
19 it is today. Those poles were put up in
20 the '50s. They are over 50 years old.
21 They are 80 feet tall each. If you go to
22 Page 2, it's a computer generated picture
23 of the tip of Montauk, and all the way on
24 the left, you will see a little button that
25 says "signal source," and then about

1 CEQ Meeting - November 9, 2006
2 approximately in the middle, you will see
3 where it says "GATR" -- G-A-T-R -- "site."
4 And this is where we'd like to put the two
5 monopoles.

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

23 The delay in emergency response is
24 anywhere from 20 minutes to an hour,
25 bouncing it back. By putting a cell site

1 CEQ Meeting - November 9, 2006
2 in one of the monopolies, that will
3 eliminate that. The 9-1-1 calls will then
4 go to East Hampton and be redirected to
5 East Hampton Town Police or Montauk
6 Emergency Services.

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

10 CHAIRMAN SWANSON: Thank you.

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

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

20 "Our continued legal research has
21 provided us with the basis to find that
22 the agreement between the County and the
23 Montauk Highway Fire Department is not an
24 impermissible alienation of parkland due
25 to the fact that the construction will

1 CEQ Meeting - November 9, 2006

2 enhance the safety of park-users and
3 generally benefit the park as a result."

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

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

9 CHAIRMAN SWANSON: Yes.

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

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

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

24 LEG. VILORIA-FISHER: So you don't see
25 it as a slippery slope that could be --

1 CEQ Meeting - November 9, 2006

2 MS. KAHN: It's not a general opinion
3 that cell towers everywhere are permissible
4 in parklands.

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

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

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

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

24 CHAIRMAN SWANSON: Mr. Kaufman?

25 MR. KAUFMAN: I've got a little bit of

1 CEQ Meeting - November 9, 2006

2 a question, if you will, regarding the
3 legal opinion.

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

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

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

21 MS. KAHN: I don't really authorize to
22 go beyond the County Attorney's opinion, so
23 I can't really say -- I do know this
24 specific opinion is for the facts that are
25 related to the GATR site.

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2 MR. KAUFMAN: Let me put this in
3 context for you. I live in a community
4 which suffers a similar debilitating
5 problem with cell tower needs. Basically,
6 we have firemen who cannot communicate with
7 the base stations, and the same with the
8 policemen. I'm cognizant of these safety
9 issues. The signal propagation
10 characteristics are very, very difficult
11 where I live, and I take what the problem
12 is to be in Montauk, to be essentially the
13 same. So I am cognizant of that.

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

25 We've received previous advise over the

1 CEQ Meeting - November 9, 2006
2 years that this kind of stuff would be
3 alienation when it's on specifically park
4 property, and also Historic Trust property,
5 which is a secondary issue.

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

11 MS. KAHN: You mean at this site?

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

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

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

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

25 MR. KAUFMAN: Well, that's a little bit

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2 in variance with some of the previous
3 advice we've received, but that's for the
4 chairman to recognize.

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

12 MS. KAHN: I understand.

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

16 AUDIENCE MEMBER: 800.

17 MR. KAUFMAN: Okay.

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

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

24 MR. KAUFMAN: That's good enough.

25 Thank you.

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

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

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

18 CHAIRMAN SWANSON: Any other comments?

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

24 I'm just wondering, in doing the
25 research -- which I know you say you did,

1 CEQ Meeting - November 9, 2006
2 and I don't doubt it -- do you know if the
3 County Attorney's Office came across a case
4 that was in upstate New York that was
5 basically the same as this? It was a
6 municipality looking to put a cell tower in
7 a county park based on the
8 we-need-911-capabilities reason, and it
9 actually went to the state legislature for
10 a vote on alienation. So, I'm not sure
11 that they would have gone through this
12 whole process if they didn't have to. And
13 I know this came up when the resolution you
14 were speaking about -- I think that was
15 Legislator Fields that responded to that
16 before and I had pretty extensive
17 discussions with her about that -- and it
18 seemed -- I'm just wondering, did this
19 application come in as a response to that
20 resolution? Because, I think that wasn't a
21 resolution; it was an RFP that went out.

22 I just think that maybe we should do a
23 little extra research before we move on
24 this. I mean, to provide 9-1-1 service for
25 emergency service capability, you only need

1 CEQ Meeting - November 9, 2006
2 one carrier. If you have a Verizon phone,
3 it's my understanding -- correct me if I'm
4 wrong -- and you dial 9-1-1 and the tower
5 is a Sprint tower, it will still go
6 through. You don't need to have five
7 different companies having their equipment
8 go on the site, which is what is shown by
9 the survey. So that's my question.

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

13 AUDIENCE MEMBER: No.

14 May I speak?

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

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

22 First of all, on the issue of a cell
23 phone dialing 9-1-1, each cell phone
24 operates in its own specific piece of
25 frequency spectrum. So if only Verizon is

1 CEQ Meeting - November 9, 2006

2 on the tower, only a Verizon phone will
3 connect and dial 9-1-1.

4 MS. STILES: Are you certain of that?

5 MR. POTTER: I'm positive of that.

6 CHAIRMAN SWANSON: Thank you very much.

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

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

23 MS. KAHN: I'd just like to say that,
24 you know, no one is saying there is not an
25 issue. The County Attorney has rendered an

1 CEQ Meeting - November 9, 2006
2 opinion specifically on this issue. So
3 unless -- are you saying her opinion -- I
4 mean --

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

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

22 MR. KAUFMAN: I understand that.

23 MR. BAGG: If I might mention
24 something. The CEQ is a Historic Trust,
25 and your main function is to review what is

1 CEQ Meeting - November 9, 2006
2 the impact on the historic integrity of the
3 property. And historic services and
4 historic impacts have always been grouped
5 under SEQRA. So in this particular
6 instance, you are looking at what is the
7 environmental impact of these two
8 particular monopoles on this particular
9 site and whether or not they are
10 ascetically going to have environmental
11 impacts, and No. 2, are they going to
12 impact the historic integrity of the site.

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

20 MR. KAUFMAN: Actually, it's a
21 reduction in poles. I think there are a
22 number of poles up there right now. The
23 proposal is to take some of them down and
24 essentially replace them with these two. I
25 don't see a difference in the view shed in

1 CEQ Meeting - November 9, 2006
2 that particular situation. I don't see a
3 harm to it. But I still am concerned at
4 least from the historic aspect on the
5 alienation issue.

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

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

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

22 MS. STILES: Is it going to have
23 guidewires?

24 AUDIENCE MEMBER: No, no guide wires.

25 MR. GIBBONS: Lauren, I just want to

1 CEQ Meeting - November 9, 2006

2 point out that the rendition in the package
3 that was sent to you ahead of time, that
4 actually does reflect the external look on
5 that one monopole.

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

8 (Mr. Gibbons steps up to the dais.)

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

11 MS. SPENCER: I have a question?

12 CHAIRMAN SWANSON: Yes.

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

19 MR. WHITE: That's not us, ma'am.
20 That's the county parks.

21 MS. SPENCER: What?

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

24 MS. SPENCER: I'm talking about this
25 diagram (indicating), and it says that

1 CEQ Meeting - November 9, 2006
2 "proposed Nextel equipment shelter;
3 proposed area for Cingular, T-Mobile and
4 Sprint; proposed Verizon equipment
5 shelter."

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

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

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

15 Okay?

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

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

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

23 MS. SPENCER: Right.

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

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2 Motorola representative.

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

12 MR. POTTER: Unfortunately, no. Each
13 carrier operates in its own frequency part
14 of the spectrum. For example, Nextel is in
15 800 megahertz; Sprint is 900 megahertz;
16 T-Mobile is 2 gigahertz. Each one of those
17 requires their own antenna and their own
18 base station to receive the signal and then
19 process it into the telephone system to
20 complete the 9-1-1 call. So no matter how
21 we slice it, we still need to have an
22 antenna and a base station that completes
23 that call and does the hand-off into the
24 wire line system. It requires the carrier
25 to be on site, otherwise we're limited on

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2 9-1-1 calls to just the carriers and
3 carrier subscriber unit that the individual
4 carries to complete the call.

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

10 MR. KAUFMAN: Thank you.

11 CHAIRMAN SWANSON: Thank you.

12 Any other comments?

13 (No response.)

14 CHAIRMAN SWANSON: Do we have a motion?

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

19 CHAIRMAN SWANSON: Well --

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

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

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2 they make the SEQRA recommendation.

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

7 CHAIRMAN SWANSON: Please identify
8 yourself for the record.

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

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

19 Two years ago on East Lake Drive, there
20 was a house caught on fire. A woman was
21 home with her children. Her husband was
22 still at work. She dialed 9-1-1. She got
23 an emergency service in Connecticut. There
24 was a delay. The call never came to our
25 9-1-1. One of our firemen going home, came

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2 over the hills, saw the glow in the sky.
3 He set the alarm off. The house totally
4 burnt to the ground. So, this isn't
5 something that we're talking about that
6 might happen; it's happening on a daily
7 basis.

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

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

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2 do the best service that we can.

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

24 This is something that we really need.
25 It's serious. Like I said, we've had one

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2 person die, that I know of, and one house
3 that completely burnt to the ground because
4 the person could not call us and alert us.

5 Thank you very much.

6 CHAIRMAN SWANSON: Thank you very much.

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

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

17 LEG. VILORIA-FISHER: An agreement
18 between?

19 MR. GIBBONS: Montauk District --

20 LEG. VILORIA-FISHER: The fire
21 district?

22 MR. GIBBONS: That's correct.

23 -- and the County.

24 MR. WHITE: And it was signed today.

25 MR. GIBBONS: Well, it was signed by

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2 them, but that's still not --

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

5 MR. GIBBONS: Correct.

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

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

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

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

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

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2 questions, and we go through that process.

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

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

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

13 CHAIRMAN SWANSON: Okay, any other
14 comments?

15 (No response.)

16 CHAIRMAN SWANSON: Do we have a motion?

17 MS. STILES: I'll make the motion.

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

20 CHAIRMAN SWANSON: (Indicating).

21 MS. STILES: I think we definitely
22 recognize there is a need for this and that
23 this is something that the community really
24 needs. But I think that to make sure this
25 goes as smoothly as possible, the CEQ has

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2 to make sure we know exactly what our role
3 is on the historic context and also on the
4 alienation issue. Although the County
5 Attorney's Office has given us an opinion
6 on alienation as a whole, I think we need
7 to determine what our role is on that
8 issue. So, I'm going to make the motion to
9 table this until the next meeting so that
10 we can determine exactly what our role in
11 this process is. It doesn't seem like
12 we're too clear on that right now.

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

15 MR. KAUFMAN: I'll second that.

16 CHAIRMAN SWANSON: Any discussion on
17 the motion?

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

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

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

25 LEG. VILORIA-FISHER: Yes, I know

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2 (laughing).

3 Okay, thank you, Nick.

4 CHAIRMAN SWANSON: All in favor of the
5 motion?

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

8 CHAIRMAN SWANSON: Opposed?

9 (No response.)

10 CHAIRMAN SWANSON: Motion carries.

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

24 CHAIRMAN SWANSON: I think they made
25 their case. Clearly, there is definite

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2 need for something out there. As far as
3 I'm concerned, that issue is resolved.

4 MR. PICHNEY: Just one quick question.

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

10 MR. GIBBONS: Correct.

11 MR. PICHNEY: Okay.

12 CHAIRMAN SWANSON: Okay, thank you very
13 much.

14 MR. GIBBONS: Thank you.

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

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

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

24 (Mr. Gibbons complies.)

25 MR. GIBBONS: Okay, you may recall that

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2 in October 2005, just a little over a year
3 ago, I came to the council with a proposal
4 for the adaptive reuse for the GATR
5 facility, Theodore Roosevelt County Park in
6 Montauk. The proposal called for the
7 adaptive reuse of the two existing
8 buildings. At the time, the council
9 recommended that they did not have a
10 significant environmental impact pursuant
11 to SEQRA; however, they requested -- and I
12 agreed -- that we would retain the poles,
13 and thus the historic nature of the site.

14 There are 15 poles on site. The final
15 attachment that I had sent to you is a
16 rendering of the site that shows those
17 poles. The shaded poles represent those
18 that I'm requesting permission from the
19 council to remove. And the reason is, if
20 you notice, those poles are either directly
21 or indirectly tied to the building. So in
22 order to make the building safe and
23 accessible, we need to remove those
24 guidewires so that we destabilize the
25 poles. We want to remove them for safety

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2 issues. The remaining seven or eight poles
3 here -- eight poles -- will remain on site.

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

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

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

18 (Mr. Gibbons complies.)

19 CHAIRMAN SWANSON: All right.
20 Sometimes I wonder what goes through our
21 mind when we talk about a storage shed.

22 MR. GIBBONS: Well, the idea was --
23 just to refresh your memory -- the park is,
24 in fact, entirely dedicated to the Historic
25 Trust. However, it's for the sensitivity

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2 related to Native American artifacts and
3 the potential to discover more. Certainly,
4 we have a quite a collection already, but
5 there's always a potential for more. It's
6 not directly related to the previous post
7 World War II/Cold War era GATR facility;
8 however, it was discussed at that meeting
9 in October of '05 that there is a
10 potential, at least, for the site to be
11 listed. However, it's not at this time.

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

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

21 MR. GIBBONS: I did talk with Richard
22 and Mr. Mallamo, and neither of them had a
23 concern. Actually, they weren't concerned
24 with the previous issue that we just
25 discussed, either, and we should have

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2 stated that for the record during that
3 presentation.

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

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

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

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

19 MR. GIBBONS: I'm familiar with the
20 nesting site, especially at Pole A, which,
21 if you look at the top of that rendering,
22 there's actually two 80-foot poles that are
23 kind of wired together as a frame, and
24 there's a platform on there. It has a
25 somewhat active pair; they come and go from

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2 year to year. Nothing we're proposing will
3 adversely impact them.

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

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

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

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

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

22 MR. KAUFMAN: And these birds seem to
23 come back -- come and go, the same pair?
24 I'm just curious.

25 MR. GIBBONS: Yes, they do come back to

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2 the same site typically. But, you know,
3 you can find them nesting above Sunrise
4 Highway, and you can find other pairs that
5 have been in the nest if you walked passed
6 it once.

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

14 CHAIRMAN SWANSON: Any other questions?

15 MS. STILES: I know that you said
16 jokingly that, you know, it smells like
17 segmentation but it's not. I don't think
18 it's segmentation between the project we
19 heard earlier and this one, but I do have a
20 concern as to what is indicated in the
21 letter from Mr. Asuto (phonetic spelling),
22 that the locations of the guidewires and
23 the poles are going to be altered to
24 provide room for future development, and
25 I'm just a little concerned that that might

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2 be getting into the segmentation area. If
3 we know we're doing this to make room for
4 future development, then maybe we should be
5 considering that at the same time. I think
6 one is dependent on the other.

7 MR. GIBBONS: My understanding of the
8 future development he's referring to --

9 You are talking about the letter to
10 Steve Asuto from Ward --

11 MS. STILES: I'm sorry, yes.

12 MR. GIBBONS: -- is the future
13 development, meaning the actual adaptive
14 reuse of the facility itself. And, in
15 fact, we've gotten to the point that we do
16 have biddable documents. And I have a
17 plan; I brought it today. I wasn't sure if
18 it was germane to what we're talking about,
19 but it has to do with access around the
20 immediate perimeter of the building. You
21 couldn't really drive vehicles around the
22 building with the wires in place where they
23 are, and it's a hazardous condition to
24 expect the staff to kind of go over and/or
25 under the guidewires to do their job.

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2 Any proposal to expand the facility or
3 otherwise alter the footprint would
4 certainly be a matter for the Council to
5 hear, and I would bring it to you.

6 CHAIRMAN SWANSON: Mr. Bagg?

7 MR. BAGG: Yes. As Nick pointed out
8 previously, in October of 2005, the Council
9 did review the reuse of that by the Parks
10 Department, you know, for their facility,
11 and they did review the restoration of that
12 facility for reuse by the Parks Department.
13 So this is kind of in addition. The
14 Council put on a restriction that you don't
15 cut the poles down because during World War
16 II, this was an antenna site and so on. So
17 Nick is coming back to you to further
18 clarify and say that because some of them
19 are a safety issue, they would like to take
20 them down. But the project was previously
21 listed by the CEQ in an unlisted action,
22 neg. dec. recommendation.

23 CHAIRMAN SWANSON: Do we have a motion?

24 LEG. VILORIA-FISHER: I'd like to make
25 a motion; unlisted action, neg. dec.

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2 CHAIRMAN SWANSON: Second?

3 MS. RUSSO: Second.

4 CHAIRMAN SWANSON: All in favor?

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

7 CHAIRMAN SWANSON: Opposed?

8 (No response.)

9 CHAIRMAN SWANSON: Motion carried.

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

12 Good afternoon.

13 MR. BURKOWSKI: Ralph Burkowski,
14 Suffolk County Department of Public Works.
15 I handed out copies of our rendering of the
16 September 11th Victims Memorial Plan for
17 the area east of Armed Forces Plaza at the
18 corner of 347 and Simeon Woods Road.

19 You can see it's a
20 hundred-by-hundred-foot square memorial,
21 approximately 10,000 square feet. It has
22 150 glass panels representing each victim,
23 and on each panel there will be a biography
24 about each person.

25 There's bench seating around the

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2 perimeter, some walkways and there's a
3 natural garden in the center that's
4 comprised of all native-type plantings.

5 Any questions?

6 CHAIRMAN SWANSON: Yes.

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

14 MR. BURKOWSKI: Well, there is a
15 Memorials Committee, siting committee, that
16 this memorial did go through. It was
17 approved by the committee. However, at
18 this time, that committee is establishing
19 criteria for any future memorials that are
20 imposed on county property. They would
21 have to go before that committee and then
22 that committee would have to make a
23 recommendation depending on whether or not
24 it met the criteria established by that
25 committee.

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2 However, right now there's a moratorium
3 on any future memorials or monuments until
4 that criteria is established.

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

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

11 CHAIRMAN SWANSON: Any questions of
12 Ralph?

13 MR. PICHNEY: I have a question.

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

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

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

25 MR. BURKOWSKI: Yeah. There will be

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2 new native trees and shrubs.

3 MR. PICHNEY: I see.

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

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

16 MR. PICHNEY: Oh, so not literally.

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

21 MR. PICHNEY: Right.

22 The other comment I was going to make,
23 if the -- if it was possible to maintain
24 the existing vegetation that's in there
25 already, it's already kind of a stable

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2 community -- it would be able to keep out
3 some more insidious weeds and some more
4 vines, things like that.

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

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

19 MR. PICHNEY: Okay, thank you.

20 MR. BURKOWSKI: Especially the trees,
21 of course.

22 CHAIRMAN SWANSON: With regard to
23 maintenance, is there any concern that the
24 grass and so forth that's proposed to be
25 used will, in fact, be marred and damaged?

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2 MR. BURKOWSKI: That question has
3 arisen, obviously, and we talked with our
4 consultant extensively about that. And he
5 feels that the technology that has come
6 with this type of glass that he's using is
7 like it's indestructible; it's very hard to
8 damage. But there is a possibility. I
9 mean, someone, if they hit it with a sledge
10 hammer, you know, of course, you know, it
11 might not withstand something like that.
12 But if someone throws a stone or a
13 bottle --

14 CHAIRMAN SWANSON: Graffiti, that kind
15 of thing?

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

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

25 MR. BURKOWSKI: From what I recall,

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2 there are several scattered trees, but
3 there are viable pest material, brush.

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

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

10 CHAIRMAN SWANSON: Any other questions?

11 (No response.)

12 CHAIRMAN SWANSON: Motion?

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

16 CHAIRMAN SWANSON: Second?

17 MR. PICHNEY: Second.

18 CHAIRMAN SWANSON: All in favor?

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

21 CHAIRMAN SWANSON: Opposed?

22 (No response.)

23 CHAIRMAN SWANSON: Motion carries.

24 "Proposed Acquisition of Land For Open
25 Space Known As the Mastic/Shirley

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2 Conservation Area."

3 MR. BROWN: Larry, can I make a
4 recommendation that we take five and up to
5 ten all at one time?

6 CHAIRMAN SWANSON: All in one?
7 Actually, I would prefer to quickly go
8 through them because we have made a point
9 before that we didn't want to group them,
10 and we've made Laretta suffer through one
11 at a time, so we might as well make others
12 suffer through one at a time.

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

15 MS. FISCHER: Good afternoon. We do
16 have five proposed acquisitions in the
17 Mastic/Shirley area. The first one is the
18 Schaeffler property. This is a small
19 .043-acre lot down here in Narrow Bay in a
20 tidal wetland area, low-lying area. So
21 this is part and parcel of the other
22 acquisitions that we're trying to bring
23 forward to protect this watershed area.

24 CHAIRMAN SWANSON: Motion?

25 MR. KAUFMAN: I'll make a motion;

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2 unlisted neg. dec.

3 MR. BROWN: Second.

4 CHAIRMAN SWANSON: All in favor?

5 (Whereupon, those in favor respond

6 in the affirmative.)

7 CHAIRMAN SWANSON: Opposed?

8 (No response.)

9 CHAIRMAN SWANSON: Motion carried.

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

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

19 MR. BROWN: Second.

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

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

24 MS. FISCHER: No. Didn't we give you
25 the resolutions?

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2 MS. VILORIA-FISHER: No.

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

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

10 CHAIRMAN SWANSON: Okay, thank you.

11 Call the motion.

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

14 MR. BROWN: I seconded it.

15 CHAIRMAN SWANSON: All in favor?

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

18 CHAIRMAN SWANSON: Opposed?

19 (No response.)

20 CHAIRMAN SWANSON: Motion carries.

21 Schneider property.

22 MS. FISCHER: This is a .092 lot,
23 approximately less than a tenth of an acre
24 property; again, in Mastic/Shirley down by
25 Narrow Bay.

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2 CHAIRMAN SWANSON: Any questions?

3 MS. RUSSO: The price on this one?

4 MS. FISCHER: \$10,500.

5 CHAIRMAN SWANSON: Motion?

6 MR. KAUFMAN: Unlisted, neg. dec.

7 MR. BROWN: Second.

8 CHAIRMAN SWANSON: All in favor?

9 (Whereupon, those in favor respond

10 in the affirmative.)

11 CHAIRMAN SWANSON: Opposed?

12 (No response.)

13 CHAIRMAN SWANSON: Motion carried.

14 Downey property.

15 MS. FISCHER: Again, another

16 Mastic/Shirley property. This is

17 approximately a third of an acre in the

18 Sheep Head Creek area; very pivotal piece,

19 actually, in that area, very low-lying. In

20 fact, it's wet most of the time.

21 MR. KAUFMAN: I'll guess it's maybe

22 \$37,000?

23 MS. FISCHER: Maybe you are right.

24 MR. KAUFMAN: I'll make a motion;

25 unlisted neg. dec.

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2 MR. BROWN: Second.

3 CHAIRMAN SWANSON: All in favor?

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

6 CHAIRMAN SWANSON: Opposed?

7 (No response.)

8 CHAIRMAN SWANSON: Motion carries.

9 All right, private Accardo and
10 L'Hommedeieu property.

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

16 MR. KAUFMAN: So, exposed property?

17 MS. FISCHER: Yes.

18 CHAIRMAN SWANSON: Are you buying
19 dredge material?

20 MS. FISCHER: No, not on this site.

21 CHAIRMAN SWANSON: Can we have a
22 motion?

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

25 MR. KAUFMAN: Second.

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2 CHAIRMAN SWANSON: All in favor?

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

5 CHAIRMAN SWANSON: Motion carries.

6 The Beggins property?

7 MS. FISCHER: This is a beautiful,
8 six-and-a-half-acre lot to the west of our
9 Terrells River County Park in Moriches, and
10 it contains fresh and tidal wetlands.
11 We're looking to buy this under New
12 Drinking Water For Wetlands Protection.

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

21 I'll make the motion.

22 MR. BROWN: Second.

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

25 MS. FISCHER: Do you see the red

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2 parcel? The red is the parcel that is
3 imposed.

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

6 MS. FISCHER: Absolutely.

7 CHAIRMAN SWANSON: Do we have a motion?

8 COUNCIL MEMBERS: Yes.

9 CHAIRMAN SWANSON: All in favor?

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

12 CHAIRMAN SWANSON: Opposed?

13 (No response.)

14 CHAIRMAN SWANSON: Motion carries.

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

17 MS. FISCHER: This is a Board of
18 Review -- Suffolk County Department of
19 Health Services Board of Review TDR wherein
20 the County will be -- a piece of .2 acres
21 will be donated to the county. It's
22 located in the Manor/Yaphank Road Nature
23 Preserve area adjacent to a large parcel
24 that was actually on our Master List II,
25 called Pine Ridge -- if you are familiar

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2 with that area in Manorville -- south of
3 the LIE. It's predominately a pitch pine
4 scrub oak area in Hydrogeologic Zone III.

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

7 MS. FISCHER: Yes. It's wooded.

8 CHAIRMAN SWANSON: Any questions?

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

11 MR. BROWN: Second.

12 CHAIRMAN SWANSON: All in favor?

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

15 CHAIRMAN SWANSON: Motion carries.

16 And the last one for today, Laretta?

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

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2 a donation.

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

6 CHAIRMAN SWANSON: Motion?

7 MR. KAUFMAN: Motion; unlisted neg.
8 dec.

9 MR. BROWN: Second.

10 CHAIRMAN SWANSON: All in favor?

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

13 CHAIRMAN SWANSON: Motion carries.

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

17 CHAIRMAN SWANSON: Go ahead.

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

25 MS. FISCHER: Well, not all of them,

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2 but many of them.

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

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

20 MS. FISCHER: We, actually, presented
21 this about a half a year ago, and we would
22 be more than happy to bring it again to the
23 Council to request that, as you have stated
24 it. That's exactly what we would like to
25 do.

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2 MS. STILES: And perhaps, to make sure
3 we have it clarified, that any -- if you
4 are buying something and putting it into
5 the Parks system, if you were going to
6 build something on it, then that would have
7 to come back.

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

18 MR. KAUFMAN: Laretta, I have a
19 problem with that for one reason. And
20 again, this goes back a little to
21 institutional history; I've been here for
22 over a decade. While I respect Master
23 Lists I and II, I don't think we should
24 give an automatic pass-through, if you
25 will, that meet certain criteria. I have

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2 encountered -- and this council has
3 encountered -- numerous properties that
4 were less than satisfactory sometimes, and
5 I would like to see some of these
6 properties before they go through just to
7 serve as a final check or something like
8 that.

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

13 CHAIRMAN SWANSON: Legislator
14 Viloria-Fisher?

15 LEG. VILORIA-FISHER: Well, I haven't
16 been here as long as you have -- but I have
17 served a few years -- but most of the
18 acquisitions where we did have some
19 reservations, I don't recall being the ones
20 on the Master List. Some of them were
21 acquisitions that were brought before the
22 legislature or brought to the legislature
23 by a legislator who was receiving a lot of
24 community pressure, let's say, because they
25 were trying to save a spot from development

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2 but we didn't see a clear, positive
3 environmental -- positive environmental
4 benefit in it.

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

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

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

22 CHAIRMAN SWANSON: Jim?

23 MR. BAGG: In the past, the CEQ, as we
24 reviewed the \$60 million Bond Act proposal
25 as an entire program, and they issued --

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2 that was a Type I action because it was
3 acquisition more than a hundred acres with
4 a negative declaration providing that any
5 parcels acquired for active recreational
6 purposes have to come before the Council
7 for the full review because otherwise it
8 would be segmentation.

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

19 MS. STILES: Can I add to that?

20 It's my understanding that even if we
21 were buying toxic waste sites, let's say --
22 and I don't think we are -- but even if we
23 were the act of purchasing it is not
24 creating the environmental detriment. The
25 environmental detriment is already there,

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2 and the fact that we're buying it makes it
3 more likely that it's going to be cleaned
4 up. Exchanging a deed and some money is
5 not hurting the environment at all. It
6 could never, no matter how awful the
7 project is. And there are mechanisms in
8 place now -- especially after things that
9 happened not so distant in the past --
10 there are mechanisms in place. There are
11 other committees reviewing how much money
12 we're spending, whether or not it's worth
13 it. I really, with all do respect, I know
14 it's our natural curiosity to want to know
15 because we're all county taxpayers, but I
16 really don't think that's within the scope
17 of the CEQ's role.

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

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2 look at that.

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

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

24 MR. BROWN: Several years ago, we went
25 through this process and were lumping a lot

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2 of these properties together, and we were
3 voting. And we made a determination that a
4 lot of these properties we didn't know what
5 we were voting on, and that's why we asked
6 them to break them down into individual
7 lots.

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

21 MS. FISCHER: If I may just interject
22 here, one of the things we would present to
23 you -- and we gave you a copy of -- were
24 the reports that went along with the Master
25 Lists, including maps of the properties.

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2 And we would again do that for you. And if
3 you had any specific questions on any
4 particular portions of those Master Lists,
5 I'd be more than happy to make any type of
6 presentation to you regarding that.

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

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

25 MS. FISCHER: That does not include any

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2 properties that were brought individually
3 by the legislators, and in my recollection,
4 of all the things that I've presented to
5 you over the last few years, there hasn't
6 been a problem with one of the ones I have
7 presented to you specifically. There have
8 been questions on ones that have been
9 proposed by legislators, and they have had
10 similar questions in the other portions of
11 this evaluation that goes on on many
12 levels.

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

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

20 MR. KAUFMAN: Okay, not a problem.
21 But I am once bit, twice shy, and I am
22 very, very careful with this kind of stuff.

23 MS. FISCHER: Well, if you were given
24 the reports and had time to evaluate the
25 reports and aerials and all that

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2 information, is that not enough? Because,
3 that's basically what you get when I come
4 here.

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

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

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

20 MS. FISCHER: Okay, just offering.

21 CHAIRMAN SWANSON: Thank you very much.

22 I think we're getting warmed up for the
23 most exciting part of the agenda, and
24 that's Vector Control. I have somebody
25 here to speak to the 2007 Work Plan for

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2 Vector Control.

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

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

10 This is Dominick Ninivaggi to my right
11 here.

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

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

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

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

23 The County Attorney issued a formal
24 request for one of the members from CEQ to
25 recuse herself in reference to this matter.

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2 Lauren Stiles was specifically requested by
3 the County Attorney on October 20, 2006 to
4 recuse herself because of the appearance of
5 impropriety that could be created by her
6 presence on this panel for this particular
7 issue. Not generally for the CEQ, but on
8 this particular issue, there is a potential
9 appearance of impropriety.

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

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

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2 today.

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

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

11 MS. STILES: May I respond?

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

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

18 MR. JEFFERYS: Just as counsel for CEQ
19 also -- because the County Attorney is
20 counsel for CEQ -- I have not mentioned
21 anything concerning the contents of the
22 County Attorney's letter to you,
23 Ms. Stiles. That is confidential between
24 you and the County Attorney's office. You
25 may, of course, choose to bring up any

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2 content that you want, but just realize
3 that the content of that letter is
4 confidential. You have the right to talk
5 about it if you want, but the County
6 Attorney's Office won't talk about it.

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

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

23 As I'm sure most of you here know, this
24 is not the first time someone who has been
25 critical of Vector Control has been, you

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2 know, asked to recuse herself or someone
3 has pointed the ethics finger. And I'm
4 sure you know I'm talking about
5 Ms. Adrienne Esposito. She was, as I'm
6 sure you know, removed from the CEQ by the
7 legislature based on allegations of ethics
8 problems and perceived conflicts. And then
9 after the fact, the Suffolk County Ethics
10 Commission issued an opinion that there was
11 absolutely no conflict.

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

19 But that being said, Mr. Jeffreys, I've
20 been told that you have threatened to write
21 to the New York State Committee on
22 Character and Fitness, which -- for those
23 of you who are not attorneys, that's the
24 committee that reviews -- when you first
25 take the bar and after you pass the bar,

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2 you go before this committee of judges and
3 experienced lawyers, and they determine
4 whether or not you are fit to be an
5 attorney.

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

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

12 MR. JEFFERYS: Mr. Swanson, whether
13 there's anything that -- Ms. Stiles, I
14 didn't even know you were not admitted yet.
15 I thought you were an attorney already
16 admitted into practice in this state. I
17 could care less, one way or the other about
18 your admission. You appear to be a
19 competent member of the legal profession
20 from other dealings that I've had with you
21 as an intern in environmental law. I don't
22 know where you got your information from
23 that I have any interest, at all, one way
24 or the other concerning your admission as a
25 lawyer or your character and fitness. I

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2 don't care one way or the other, to be
3 perfectly honest with you. I care that as
4 a member of CEQ and a client of the Suffolk
5 County Attorney's Office that you protect
6 yourself to the extent you believe it's
7 necessary. And if you believe a recusal is
8 appropriate, do that; and if you believe
9 that a recusal is inappropriate, just make
10 certain that your facts are available and
11 that you have protected yourself. That's
12 all I can say on the point. The County
13 Attorney has asked for recusal, though.

14 CHAIRMAN SWANSON: Mr. Jeffrey, can we
15 move ahead now with the substance of this
16 afternoon?

17 MR. JEFFREYS: The initial portion of
18 this presentation will be done by Dominick
19 Ninivaggi, the superintendent of Vector
20 Control. And we also have with us
21 Dr. Patricia Dillon, concerning the health
22 component of vector control; and it is my
23 understanding that we have some folks also
24 who may be interested in having public
25 comment on this concerning the health

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2 effects that have personally touched each
3 of their family members.

4 Dominick?

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

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

23 This is an area -- and I will use my
24 pointer -- basically, this is a look at the
25 West Nile virus distribution in 1999, which

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2 is the first year that West Nile was found
3 in North America. It turns out that West
4 Nile virus was already widespread in
5 Suffolk County when it was first discovered
6 to be in North America in 1999. You can
7 see that we had 31 horse cases, about a
8 third of which were fatal. We had
9 widespread positive birds, dead birds. We
10 had to group together mosquitos from nine
11 locations by the time we found out about
12 this to get enough for testing, so
13 somewhere among these nine locations we
14 were able to come up with positive
15 mosquitos. And again, considering this was
16 the first year this was found in North
17 America, this is pretty good surveillance.

18 Over the years, we have been doing
19 extensive surveillance, looking at positive
20 dead birds and mosquitos. A little
21 history, through 2005: 2000 was our peak
22 year for our mosquito samples. You can see
23 that West Nile activity has continued over
24 the years. We had a drop in 2004, which I
25 attribute primarily to a cold snap that we

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2 had in early August, and that seemed to
3 greatly suppress virus activity. But you
4 can see in 2005, virus activity came back
5 up. And the main point I want to make of
6 all these dots on the map, is that in any
7 given year, West Nile virus can be
8 virtually anywhere in the county. So you
9 can't say "Well, don't worry, the mosquitos
10 in your area are not infected." You know,
11 "We don't think there's any virus in your
12 area," because this is something that
13 happens year in and year out.

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

24 Triple-E is a little different than
25 West Nile in that it is a disease that has

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2 a focus area on Long Island, primarily in
3 red maple swamps. So there are certain
4 habitats that you can look for the history
5 of this Eastern activity, and you can
6 identify and concentrate your surveillance
7 and control in those types of areas.

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

15 An equine fatallly is a very serious
16 matter for Eastern because the same species
17 of mosquitos that transmit to horses,
18 transmit to people. So those are the
19 mammal-biters. So we were very close to
20 human involvement of Eastern virus in 2003.
21 Probably our peak year -- and the other
22 thing about Eastern virus is it tends to be
23 intermittent or to go in cycles. You can
24 see that we had virus activity in the
25 mid-'90s. We didn't see it for quite a few

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2 years. It came back in 2003. New England
3 has experienced severe Eastern activity the
4 last two years, including fatal cases. We
5 don't have a good explanation for why we've
6 had Eastern virus all around us in the last
7 couple of years, yet we haven't seen it;
8 we're just happy that that's the case.

9 The big mosquito-borne disease story in
10 1999 would have been malaria. We had
11 multiple transmission of malaria in Camp
12 Bating Hollow. This is something that's
13 intermittent, and primarily travelers bring
14 in the pathogen and it's getting at least,
15 unfortunately, temporarily established
16 local mosquitos. But between West Nile and
17 malaria, this just brings the point that
18 exotic pathogens can and do enter Suffolk
19 County and do cause outbreaks of human
20 disease. And at any time in this global
21 world, new exotic pathogens can enter
22 Suffolk County, and if they find conditions
23 favorable, there are plenty of mosquitos
24 that can cause humane disease.

25 This is a description of the program

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

16 The red, are our aerial larvicide
17 sites. These are areas that are too large
18 for us to treat by ground, and we do treat
19 those by helicopter. As you can see, they
20 are primarily costal marshes. They are
21 concentrated around Great South Bay, in
22 particular, because, again, these are where
23 we have these marshes that produce large
24 numbers of mosquitos in proximity to
25 people. There are plenty of marshes in the

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2 eastern part of the county that don't have
3 a lot of people around them, and we don't
4 pay nearly as much attention because we're
5 not trying to kill every mosquito in
6 Suffolk County; we're trying to minimize
7 the number that are biting people. Just to
8 update you on how things serve our standard
9 program.

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

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

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2 are certain chronic areas that we treat on
3 a regular basis. And for larval control,
4 which is the bulk of the program, we have
5 typical numbers. As far as our positive
6 birds and mosquitos, the green is positive
7 birds; red is positive mosquitos. There
8 was virus activities. We saw a lot of it
9 in the western part of the county, but
10 certainly it was still out there in the
11 eastern end. It seems like a lot of
12 activity on the central part of the Island.
13 Part of that is whatever unique conditions
14 we had this year; part of it is we did have
15 a special project going in the central part
16 of the county looking at virus in
17 residential areas.

18 One point I'd like to make is you
19 shouldn't think that every time somebody
20 calls us and says "I've got mosquitos,"
21 that we run out and we spray for adult
22 mosquitos. All the red dots here are
23 service calls, people calling my office and
24 saying "We've got mosquitos biting us; do
25 something about it."

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2 Most of the response to these service
3 calls is we go and look for the source, and
4 we try to deal with the source primarily
5 with larviciding. However, certain parts
6 of the county are particularly mosquito
7 bitten, and particularly, this area in the
8 eastern end of Great South Bay. And you
9 could see that those are the areas where we
10 treated for vector control for numbers of
11 mosquitoes along Fire Island. These areas
12 are particularly high in mosquito numbers,
13 and one out in East Hampton.

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

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2 MR. KAUFMAN: Are you sure about that?

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

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

25 And again, we try to minimize this and

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2 try to only respond to the very serious
3 situations, and we try to keep this to the
4 minimal level for various reasons. I think
5 everybody in mosquito control understands
6 and agrees that treating for adult
7 mosquitos is the last line of control,
8 because that basically involves using
9 relatively broad spectrum pesticide in
10 populated areas. We certainly want to
11 reduce human exposure to pesticides if
12 possible, and these relatively broad
13 spectrum may have a wider non-targeted
14 impact.

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

22 This is our use of various larvicide
23 over the last few years (indicating), and
24 one of the points I wanted to make here is
25 that we use a lot of bacterial pesticide.

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2 The orange or -- and I'm not sure what that
3 color is -- is a treatment where we just
4 use bacterial product, mostly Bti, on the
5 site. There are some areas in this upper
6 part here (indicating), where you use
7 Altosid or methoprene by itself. Sometimes
8 we use them in combination. Overall, we
9 treat more acreage with bacterial products
10 than we do with methoprene because
11 bacterial products have a lot of
12 advantages, and we've used them since 1982.
13 We're very happy with them. However,
14 bacterial products will not solve every
15 problem for you. They won't give you
16 control in every situation. But as you can
17 see, we run a mixed program. And one
18 reason why we want to do that is because
19 you don't want to use any one material
20 excessively; that's a good recipe for
21 pesticide resistance.

22 We had questions about methoprene that
23 was raised periodically in the last
24 meeting, so I want to go over how we use
25 methoprene, why we use methoprene in

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2 Suffolk County. It's one part of an IPM
3 program -- an Integrated Pest Management
4 program -- that continues to rely heavily
5 on bacterial products. Using a variety of
6 actives is fundamental in IPM because we
7 want to avoid pesticide resistance. We
8 don't want to use methoprene all the
9 time -- even though it's a very good
10 product and will work in a lot of
11 situations -- because the last thing we
12 want is for the insects to develop
13 resistance. Similarly, for the bacterial
14 products, we like the bacterials, but
15 resistance has been reported in other
16 areas. We don't want that here because we
17 have very few products that we can use.

18 Methoprene works in situations where
19 Bti, our primary bacterial product, does
20 not. In particular, methoprene tends to
21 work in the salt marsh better than Bti; it
22 tends to work on the older larvae, mosquito
23 larvae, in the salt marsh better than Bti.
24 On the other hand, Bti tends to work well
25 on the early-stage larvae, if conditions

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2 are cool. Nothing works all the time and
3 everywhere.

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

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

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2 of sustained-release methoprene products.
3 A very, very small acreage is used in
4 things like percept (phonetic spelling)
5 because they are not needed in the salt
6 marsh. You have a brood of mosquitos out
7 there. Liquid works fine and it
8 disappears, which is what you want.

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

22 Reducing adulticide, as I previously
23 pointed out, reduces the risk to the
24 non-targets. And this is again where we
25 get into integrated management of how the

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2 program hangs together. We've heard people
3 say "Well, just get rid of methoprene."
4 Getting rid of methoprene would not reduce
5 the environmental impact of our program.
6 If anything, it may increase it by forcing
7 us to use more of these broad spectrum
8 pesticides, and would certainly result in
9 an increased human exposure to pesticides,
10 which we don't want.

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

16 This is a little history, going back to
17 1991 (indicating). The purple is
18 adulticide usage. It might be a little
19 hard to read some of the graphics here.

20 In 1994, we did a lot of adulticiding
21 in response to Eastern virus. In 1995, we
22 started using methoprene. In 1996, we had
23 another bout of Eastern virus that required
24 a lot of adulticiding, and then we were
25 able to bring our adulticiding down. And

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2 we had 1999 and 2000, West Nile virus
3 started showing up, but we were able to
4 bring adulticiding levels down compared to
5 the pre-methoprene era when they were up
6 here (indicating). Now our average is down
7 here (indicating). So methoprene reduced
8 our need for adulticiding, use of
9 adulticiding, and I would argue that it
10 resulted in an overall reduction of
11 environmental impact of the program.

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

18 The problem with that study -- a couple
19 of problems. The main reason that's a
20 problem is that when you actually go out
21 and measure methoprene -- which we've done
22 with the USGS, in particular, certainly an
23 objective entity -- it turns out the
24 highest methoprene concentrations you see
25 in the field are 1 - 3 ppb [parts per

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2 billion], and that's only for a half-hour
3 after the treatment. If you go back a few
4 hours later, the material is nearly
5 undetectable. So the idea of
6 parts-per-billion levels for 72 hours, that
7 doesn't match the reality of the way the
8 material is used. Stony Brook researchers
9 tried to reproduce these results, and they
10 were unable to find similar impacts at
11 similar levels. So there's some question
12 as to the validity of those results in the
13 first place.

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

25 There were some studies done over the

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2 years in Minnesota regarding larvicides,
3 and we should remember that they not only
4 used liquid methoprene, they used liquid
5 Bti. And those results were very
6 equivocal. Similar result, if anything,
7 seemed to be anomalous because there was no
8 obvious causal explanation. The droughts
9 and other meteorological factors may have
10 impacted the results.

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

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

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

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2 benefit.

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

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

25 I found an interesting thing that the

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2 state DEC actually compared a Generic
3 Environmental Impact Statement for the
4 Pesticide Registration Program because they
5 realized that registering pesticides
6 implies that they are going to be used.
7 So, it was a SEQRA-able item, and they did
8 a GEIS on it.

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

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

20 MR. DAWYDIAK: 200,000.

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

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

25 200,000 feet is a similar number that

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2 we've used for the last few years. It's
3 hand and machine work, and it's basically
4 an upper bound we are using so you have
5 something to review. We actually normally
6 do less than this.

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

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

22 Machine work, as the plan called for,
23 is limited to the minimal amounts needed to
24 maintain tidal flow in degraded wetland. A
25 lot of wetlands actually depend upon vector

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2 control structures for their survival to
3 tidal wetlands. And while we agree while
4 doing the EIS we shouldn't be doing a lot
5 of machine work, in some cases that is
6 necessary for mosquito control and also to
7 maintain the health of the wetland.

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

22 I hope that gives you an idea that when
23 we say we're going to do a minimal amount
24 of work just to maintain this tidal flow,
25 this is what we're talking about. And if

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2 that wasn't clear in the original plan, you
3 have it here in front of you.

4 Machine work is done under permit.

5 Again, we have to go to DEC on these
6 things, possibly to towns, depending on the
7 situation. So, there's additional
8 oversight and review. It's not like we go
9 out to do these things and nobody is
10 looking over our shoulder; far from it.
11 And it has the effect, of course, of
12 limiting the number of projects you are
13 going to do because there's a fair amount
14 of project drawings and paperwork and other
15 things you need to do to make one of these
16 projects happen, even if it's as simple as
17 just replacing a culvert.

18 This is a map I pulled up (indicating),
19 locations where we did hooking, which is
20 actually a category in our database for
21 2005 to about two weeks ago in 2006. And
22 the important point about this is that you
23 can see it's mostly the developed area. A
24 little bit out in the east end, mostly in
25 the developed areas. Take a little closer

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2 look in the south shore here, and there
3 were about 200 dots on the map there.
4 Here's where we were working on the south
5 shore (indicating). It's in our core
6 service area. And if you notice where the
7 dots are, they are back in the neighbors,
8 back among the streets. This is not
9 something that you go out in the middle of
10 a salt marsh to do.

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

17 A lot of this work of the roughly 200,
18 about 50 of these sites were in the
19 Mastic/Shirley area. And you can see this
20 was back in the neighborhoods. As you know
21 from acquisition, Mastic Beach and South
22 Shirley are very swampy areas. It's a
23 problem for us. A lot of stuff ends up in
24 these ditches from both natural and, shall
25 we say, anthropogenic inputs.

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2 This is just a whole map of mosquito
3 larvae habitats in the Mastic/Shirley area.
4 Every one of these red dots is a site that
5 we've identified that we visit on a regular
6 basis to control mosquito larvae. The
7 purple polygons here are areas for aerial
8 larvicide. And you can see a lot of these
9 sites, in these small areas, in among the
10 houses. And that's where, in the
11 off-season, you know, if a crew is in this
12 area, and they are constantly treating it
13 because water is stagnant, they are going
14 to say "Well, let's maintain these ditches
15 over the course of the winter to try to
16 reduce the problem and try to reduce our
17 need to larvicide in the coming year."

18 This is a close-up (indicating). One
19 section there -- and unfortunately the room
20 isn't quite dark enough to show it -- but
21 this is a wetland. It has some ditches in
22 it. The only reason that this is a tidal
23 wetland is because there are some pipes
24 going through this road that connect this
25 marsh to tidal waters.

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2 This (indicating) again, is some salt
3 marsh here. Again, the only reason this is
4 salt marsh is because of vector control
5 structures. Some of these ditches go back
6 into the upland areas, back into among the
7 houses. Again, we're not talking about the
8 wilderness here. We're talking about an
9 area that's very heavily impacted by
10 people. Again, we're trying to do minimal
11 work in a developed area.

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

20 I took a couple of pictures of the guys
21 at work a couple of weeks ago. And this
22 doesn't show it real well, but basically,
23 they just came in and hooked out some of
24 the material. The original photo shows it
25 better, but basically there are some leaves

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2 and a little bit of silt that ended up
3 outside the ditch. Again, we're trying to
4 do minimal work. We realize that there are
5 concerns, so we try to minimize the work.
6 And as I told my boss, we're in a unique
7 situation in DPW where it seems like the
8 less work we do, the happier some people
9 are, which is generally not the DPW way of
10 doing things.

11 This just shows you an example of the
12 kind of things that can crop up on us
13 (indicating). This is one of our pipes
14 that's starting to collapse. It's starting
15 to impact a road out in Montauk. We will
16 work with the town to repair this pipe. We
17 will have to get the permit. The town may
18 end up, in fact, being the permit-holder on
19 this. So these are the things that happen
20 over the course of the season, and that you
21 can't really predict, which is why the plan
22 is pretty general in nature. But I put
23 this in to give you an idea and
24 understanding of the kind of things we have
25 in mind for 2007. The idea is not that

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2 we're out in the middle of the marsh doing
3 a lot of work. Again, it's minimal; it's
4 in developed area.

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

13 All of our costal wetlands -- and these
14 are tidal wetlands and sometimes adjacent
15 to pressure water wetlands -- have been
16 impacted or modified to a greater or lesser
17 degree, particularly at our core service
18 area. You really can't find an unaltered
19 marsh of any size in Suffolk County. Our
20 systems, for better or worse, have been out
21 there for 70-plus years, and they are
22 basically part of the landscape. Our
23 wetlands look the way they do now, as much
24 because of the ditches that are in them as
25 for any other factor. You can't really

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2 separate their current condition from the
3 fact that they are ditched.

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

12 The idea that if we just walked away
13 and didn't do anything, that things would
14 somehow get better, is an issue that I want
15 to address. This is one of the few areas
16 you can look at in the south shore, our
17 main service area. This is Gardiner County
18 Park (indicating). If you go back to the
19 1930's quad sheets, this is a little
20 remnant of kind of the way the whole
21 coastline used to work. There's a neck of
22 land, relatively high, freshwater wetland
23 to upland, and there are these tidal creeks
24 that provide the tidal flow to the marsh.
25 And basically tidal flow in these early

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2 days and in these relatively natural
3 systems, went in and out of tidal creeks
4 and then spread horizontally across that
5 neck of land, in this case on either side.

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

25 This is the marsh next door

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

18 There's not much by way of piercing
19 this beach berm. And again, this is
20 10-foot high spoil. There is no flow this
21 way (indicating). When I was managing this
22 wetland, I started to work with the
23 state -- with the Vector Control to try to
24 change that. I ended up with this job, and
25 we haven't followed through on that, but

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2 this is also an example of a restoration
3 candidate.

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

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

14 This is certainly a common situation
15 along the south shore where we operate.
16 This is Nancy Creek. It's on the border of
17 Islip and Brookhaven. This is area where
18 we also do aerial larviciding. This creek
19 is the boundary between Islip and
20 Brookhaven. It goes back a long way.
21 There's salt marsh over here (indicating).
22 What seems to have happened is very common;
23 this creek probably came down through here
24 (indicating), and ended up being
25 bulkheaded. Again, you take the material

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2 out of the canal, you make building blocks.
3 This is a very, very common pattern of
4 development that you see up and down our
5 coastline. You see the extreme situation
6 in areas like Copiague and Amityville,
7 where basically all the salt marshes have
8 been filled. Wetlands Law came into effect
9 in 1973 to basically stop a lot of this
10 type of development, so we're left with
11 these remanent marshes.

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

23 This is the adjacent marsh. We have
24 some good spartina grass growing here. The
25 reason it's growing here is because there's

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2 a pipe providing saltwater to the salt
3 marsh. So again, this is a situation,
4 where without the ditch system, you would
5 not have a salt marsh here. If this pipe
6 were to collapse, I think it would make
7 good sense to replace it as quick as we
8 could so the water would flow. I think
9 that most resource managers would agree
10 that this is a positive thing and that we
11 shouldn't allow the marsh to basically die,
12 while we do extensive and exhaustive
13 environmental reviews.

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

24 Another example in Southampton. This
25 is called silt expulsion. And again, you

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2 can see, people thought it would be nice to
3 have a nice canal to dock their boat, build
4 their houses; dredge spoil area here
5 (indicating). But again, the only tidal
6 flow comes through this ditch system here
7 (indicating). This is a restoration we're
8 working with the Town of Southampton on.
9 So this is to give you an idea of our
10 primary areas where we work.

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

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

22 It turns out, if you look throughout
23 our landscape, these mosquito ditches can
24 persist more or less indefinitely depending
25 upon the flow rate. If enough water flows

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2 in out of the ditch, it will never fill in,
3 because sedimentation will not proceed to a
4 complete soaking in, or at least not in
5 human time frames. All the available
6 historic information that we have,
7 indicates that our natural wetlands back in
8 the early part of the 20th century produced
9 a lot of the mosquitos. That's why Suffolk
10 County Vector Control Mosquito Commission
11 was organized, why this program exists. If
12 natural wetlands were not touched, were not
13 producing mosquitos, I kind of doubt that
14 all this work would have been done. If you
15 look again through what historical
16 information we have, there were certainly a
17 lot of mosquitoes in Suffolk County. In
18 those days, people were very happy to be
19 rid of them.

20 If you go today to natural wetlands,
21 you will find plenty of mosquitos,
22 particularly in salt marshes. Salt marsh
23 mosquitos are part of the salt marshes.
24 Salt marsh mosquitos have evolved to breed
25 in great numbers in the salt marshes.

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2 The mosquitos have also evolved to
3 defeat their predators. One of the ways
4 that they -- well, a couple of ways they
5 defeat their predators. One way is by
6 saturating the predators; that in producing
7 such enormous numbers, there will never be
8 enough predators to bring them under
9 control. The other way mosquitos defeat
10 their predators is by reproducing in areas
11 that are just not hospitable to predators.
12 For instance in water that's too polluted
13 or low oxygen or hot or salty for fish and
14 other predators to live in. Mosquitoes
15 have evolved to get away from predators,
16 evolutionarily speaking.

17 Phragmites invasion thrives in low
18 tidal flow. Salt marshes, as I've said a
19 couple times now, need saltwater. So the
20 idea that if we left the ditches, just
21 neglect, disappear, go away, in some cases,
22 you are going to end up with just
23 phragmites and other invasive species; you
24 are not going to end up with a natural
25 valuable salt marsh.

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2 A good place to look at this is in our
3 wilderness areas. We haven't touched the
4 ditches in the wilderness in over 30 years.
5 We don't do any larviciding in there
6 either, so you get an idea of what would
7 happen if we went away for awhile.
8 Basically what happens is that we get
9 massive numbers of mosquitos coming out of
10 these wilderness areas. The ditches are
11 still there; predators are not controlling
12 the mosquito population. So, we've
13 actually done the experiment and shown that
14 simply allowing natural processes to
15 proceed is not going to get rid of our
16 mosquito problem, at least not on human
17 time scales. Now, maybe if sea level rises
18 and swamps and washes away all of our
19 marshes, then we can go out of business.
20 But that's not happening any time soon.

21 This is some examples (indicating).
22 This is Crab Meadow. Again, some of these
23 ditches have been untouched for 20,
24 30 years. They are still there. Some of
25 them are actually getting bigger as the

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2 tidal flow gets through. So the idea that
3 they are going to disappear, again, that
4 doesn't seem to be happening.

5 This is an area in Oakdale
6 (indicating). This is just to show you
7 what effect you have of lack of tidal flow.
8 This is connected to the bay here
9 (indicating). We've got reasonably good
10 tidal marsh where it's connected to the
11 bay. There's a dike running along this
12 canal here (indicating), and the only tidal
13 flow that gets through it are some pipes
14 that were put in for vector control. And
15 back when I worked for DEC and managed this
16 land, I had them put in larger pipes to try
17 to maintain some wetlands values. But as
18 you can see, this wetland is being
19 infiltrated, the dark area, with
20 phragmites. This marsh, if trends
21 continue, will not be a nice kind of salt
22 marsh. This will ultimately be
23 12-foot-tall phragmites, especially if we
24 would allow the pipes to collapse and
25 disappear.

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2 This is part of Fire Island National
3 Seashore (indicating). This is part of the
4 Hospital Point salt marsh, directly across
5 from the Mastic/Shirley area. And again,
6 the ditches are still there. Twenty,
7 thirty years down the line, this area turns
8 out for ditches, a number of mosquitoes by
9 far the highest number of mosquitos
10 anywhere in Suffolk County. When you set a
11 trap in this area, you do not count the
12 mosquitoes; you weigh them because we're
13 talking about a magnitude of more mosquitos
14 there than anywhere in Suffolk County. If
15 these mosquitoes stayed in the National
16 Seashore, this would not concern me at all,
17 but occasionally they do come and visit our
18 neighbors in Mastic Beach and Shirley.

19 So if anybody thinks that just leaving
20 the marshes alone is going to solve our
21 mosquito problems in a meaningful way, they
22 need to take a look at this, and I think
23 you have your answer.

24 To summarize, we're addressing an
25 ongoing public health need. I don't think

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2 that the "no-action" option is an option
3 here. We have mosquito-borne disease; we
4 have mosquitoes; the county needs a
5 mosquito control program. We have a very
6 well-designed, professionally run,
7 integrated pest management program, and
8 it's designed for the parts to work
9 together and minimize adverse impacts. The
10 components of the plan support one another,
11 and are designed to minimize impacts and
12 maximize the effectiveness. If you pick it
13 apart and say, well, take this component
14 part out or take that part out, we are not
15 going to be reducing impacts; you will just
16 be, if anything, making them greater.

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

24 Our water management is minimal
25 maintenance work that is designed to

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2 alleviate specific problems; it's in
3 developed areas; it helps to reduce our
4 pesticide use; and it helps to prevent
5 sedimentation of wetlands. So I hope that
6 gives you a little bit better idea of how
7 the program works and why it is the way it
8 is. And I resisted the urge to try to put
9 a humorous line at the end, and we can
10 answer any questions.

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

16 Is Mr. Gerald Ludwig here?

17 MR. LUDWIG: Yes.

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

21 MR. LUDWIG: My name is Gerald Ludwig,
22 and I'm vice president of Mastic Beach
23 Property Owners Association, and I want to
24 briefly address the situation in Mastic
25 Beach, Mastic and Shirley with regard to

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2 the mosquito level. I'm concerned about
3 the health aspects. You know, we're
4 talking about something that exchanges
5 biological fluids between people and
6 animals, and, of course, that's a health
7 risk. I haven't had any personal
8 experience with anybody having a
9 mosquito-borne disease, but I do have quite
10 a bit of personal experience with the
11 levels of mosquitos we have in Mastic
12 Beach.

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

21 My sister has a two-year-old son and
22 another baby on the way, and she has a
23 beautiful yard over a half an acre. And
24 most of the summer her son has to play on
25 the cement driveway because if he goes on

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2 the grass, the mosquitoes are going to
3 attack him.

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

16 If you go to Smith Point Beach in the
17 evenings, there are bands that play music
18 there and you can sit and have a drink if
19 the mosquitoes don't attack you. I've used
20 DEET. I've used sprays. And basically, if
21 you are doing yard work in the summer, you
22 have to constantly keep applying it. It
23 will keep them maybe from landing on the
24 spots that were actually sprayed, but they
25 will keep hovering around your face; they

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2 will find unique spots; they will go
3 through your socks. They will attack your
4 fingers. It's a terrible problem in Mastic
5 Beach, which is a quality-of-life issue,
6 but all of these attacks statistically make
7 it more likely that someone is going to get
8 a mosquito-borne disease.

9 And in addition to people who are
10 diagnosed with mosquito-borne disease,
11 there are undoubtedly many people who have
12 had some clinical effects; they have been
13 infected and maybe they haven't gone to the
14 doctors but they have had fevers or they
15 have had malaise, and they have had the
16 effects of the disease. And basically, I
17 just wanted to bring that to the attention
18 of the group.

19 I know that I'm also on the civic's
20 action committee for vector control, and my
21 experience with speaking to the people on
22 the committee is many of the people who
23 oppose the mosquito spraying don't live in
24 areas such as Mastic Beach. They don't
25 seem to have particular problems with

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2 mosquitoes personally. They say they are
3 never affected; their quality of life is
4 never affected; their activities are never
5 impacted personally by mosquitoes. And I
6 can tell you that my experience, my
7 activities, and those of my friends and
8 neighbors and family in the area are
9 severely impacted in the summer by
10 mosquitoes.

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

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

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

24 Lauren, you wanted to make a brief
25 statement here.

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2 MS. STILES: Yes. We were discussing
3 this before, and we jumped into the
4 meeting. I just wanted to finish up my
5 statement that I was making earlier.

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

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

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

22 Ms. Stiles, I don't intend on writing
23 anything about you one way or the other, in
24 favor or opposition to the Committee on
25 Character and Fitness. I don't care one

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2 way or the other. I think I've made that
3 very clear. I don't know who you have
4 heard it from, but whoever you heard it
5 from, you are getting bad advice.

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

13 CHAIRMAN SWANSON: Thank you.

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

16 DR. DILLON: I will.

17 CHAIRMAN SWANSON: We'll get back to
18 you.

19 DR. DILLON: Okay.

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

22 MR. NINIVAGGI: Dr. Dillon has a
23 presentation. I don't know if any of our
24 people from the general public -- oh, we
25 have somebody else that has to leave at a

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2 certain time, so I'll turn that over to
3 Dr. Dillon.

4 DR. DILLON: Hello. I'm Dr. Dillon.
5 I'm with Public Health, and I actually have
6 a guest with me today, Mr. Ronald Lasley.
7 And the reason why I brought him is that in
8 2002 we experienced quite a few cases of
9 West Nile virus in our human population,
10 and Mr. Lasley is one of the firsthand
11 observers of this, as his mother contracted
12 West Nile disease, spent several months in
13 a coma and on a ventilator, did eventually
14 make it to a nursing home and did go home.
15 And if you ever follow what we write in the
16 press, we said she was recovering at home,
17 but when we get to the part where I talk
18 about his mom, I'll have him speak a little
19 more personally on that.

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

24 And what happened in 1999, in Flushing,
25 Queens, there was -- an infectious disease

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2 doctor started noticing clusters of elderly
3 people. Most of the people had the same
4 thing in common; they rarely left their
5 backyard, they were very close with their
6 families, they had a lot of backyard
7 barbecues, and four of them were in the
8 hospital with encephalitis. Their family
9 members hugged them, kissed them, they even
10 ate the same food as them, yet their family
11 members were fine. And so, what would
12 explain this? No one could understand.

13 Eventually we had eight cases of
14 encephalitis, and we had four deaths. New
15 York City was actually notified by the
16 infectious disease doctor in Flushing. At
17 the same time, we started seeing dying
18 crows in the New York City area. And in
19 Suffolk County -- I think one of the people
20 who was here at our last meeting commented
21 on Dr. John Andrayson, who anyone out east
22 knows him. He's a very good veterinarian.
23 He has primarily an equine practice, and he
24 started noticing he was getting called for
25 horses that were acting bizarrely. He

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2 would describe the horse would tilt its
3 head to one side and go around in circles.
4 He started worrying that maybe they were
5 rabid. When the horses died, he would send
6 the brain to Cornell. The rabies tests
7 were coming back negative.

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

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

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2 against the disease if they did not exist
3 in our country.

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

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

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

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

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

22 Now, she was watching her emus. She
23 knew that they were going to die because
24 Saint Louis encephalitis kills emus. These
25 guys weren't even acting sick. So she

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2 began to question, Is the CDC wrong? So
3 she took some of the crows that had died,
4 the wild crows that had died and landed on
5 the sidewalk in the zoo, she shipped them
6 off to the friend who is USAMRD, which is
7 the military research branch.

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

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

25 Okay. Here is where it started

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

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

19 For every one person with encephalitis,
20 you can guesstimate that 150 people were
21 affected. Most of them will be
22 asymptomatic. Well, why is that? No one
23 knows. There seems to be something
24 specific about someone's immune system that
25 allows some people to just get nothing more

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2 than a flu-like system with West Nile, and
3 then the other people get incredibly ill.
4 They develop encephalitis.

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

20 This is actually the primary host for
21 West Nile disease (indicating). It belongs
22 in the bird. We as humans and horses are
23 considered incidental hosts; meaning, the
24 mosquito carries the virus, gives it to the
25 bird, goes back around in a vicious cycle.

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2 Once in a while, that mosquito -- and I
3 always have a hard time because the only
4 ones that bite are the female, so I have to
5 call her "she." -- now she, once in a
6 while, can't get the blood meal she wants
7 from the bird, so she'll go to us or she'll
8 go to the horses. Now, we in Suffolk
9 County, we are very fortunate because we
10 don't see any horse deaths anymore because
11 the vaccine that is out there for horses is
12 very effective. The only horse death we
13 had was a couple years ago, he was a horse
14 that hadn't been vaccinated in a couple
15 years. Horses need to be vaccinated every
16 year to be protected from this.

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

22 Now, what else happened nationally in
23 2002? Well, they ended up with a patient
24 who actually -- a donor had received a
25 blood transfusion, and then four organ

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2 donor recipients developed West Nile from
3 that person that went on to die. So they
4 proved you can get West Nile disease from a
5 blood transfusion. We also found out that
6 year, you can get it from an organ
7 donation.

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

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

25 So, what was the government going to

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2 do? Well, now, because we've got this
3 disease out of control, we now have to have
4 every unit of blood screened in our
5 country. You still worry, though, because
6 sometimes people could have the virus but
7 at low levels, and the test could still
8 measure negative. It's not a hundred
9 percent accurate, but it's still a worry.

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

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

24 All right, I'm going to go onto the
25 next one. It's interesting, but here's a

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2 list throughout the country. You can see
3 it's everywhere now. Now, when they test
4 our blood, everybody that donates blood,
5 they just randomly test it. This is how
6 often they throw away your unit of blood
7 because they found the West Nile virus
8 present in your blood. Not the antibody;
9 meaning, the actual virus. You had it but
10 didn't know it; you felt well enough to go
11 donate blood.

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

20 Okay, but what's worrisome is a lot of
21 times you will hear people, oh, that's a
22 disease of old people. Well, no, actually,
23 something specific about the West Nile
24 virus attracts it to nerve tissue. It has
25 the propensity to go straight to the nerve.

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2 And, in fact, people who are very, very
3 sick with West Nile, they have a very
4 difficult time of finding the virus in
5 their blood, but you will see right away,
6 they will develop confusion, coma, they
7 will have permanent neurological problems.

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

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

22 Now, this is a normal CAT scan
23 (indicating). All you are looking for is
24 symmetry. There's a straight line that
25 runs down the middle. You want everything

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2 on the left to look like everything that's
3 on the right, and that's all there really
4 is to a CAT scan. So as you can see, this
5 is a completely normal CAT scan of
6 somebody.

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

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

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

25 This was actually our first patient,

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

22 So finally, he's starting to feel a
23 little bit better, goes on a planned
24 vacation with his wife down to North
25 Carolina, and there he starts getting

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2 confused. So, he's in a different state, a
3 different hospital. The hospital people
4 said "Oh, hey, he's from Long Island. That
5 must be right near Flushing, Queens.
6 That's all the same place; right? Let's
7 test him for West Nile."

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

20 It's not on the local doctor's care
21 requirements, and even if they had thought
22 of it and called me, I definitely would
23 have made a mistake and said "No, he
24 doesn't meet the criteria. I'm not allowed
25 to send the specimen on for testing."

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2 Next case. Okay, now, this is actually
3 Mr. Lasley's mom (indicating). And she had
4 a little bit of a fever, and her doctor
5 thought maybe she had a sinus infection.
6 He put her on antibiotics. And then she's
7 found by her husband on the floor in the
8 middle of the night, and she has a seizure,
9 and she's got a very high fever. They take
10 her to the hospital -- and she's got a rash
11 on both legs. Other than that, they can't
12 really figure out what's going on with her.
13 She stops breathing, and they put er on a
14 breathing machine, and she's in the ICU.

15 Do you want to talk a little bit about
16 this?

17 MR. LASLEY: You bet.

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

22 As Dr. Dillon also mentioned,
23 approximately four years ago, my mother was
24 a victim of the West Nile virus, and she
25 survived that terrible, terrible situation.

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2 I understand that we have here today
3 members of the board of the Environmental
4 Advisory and also members of the Suffolk
5 County Department of Health. I'm happy
6 about that.

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

25 The question here today seems to be --

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

10 Where were we and where are we going?
11 Well, quickly, as Dr. Dillon appropriately
12 pointed out, my mother was admitted to the
13 hospital with a 105 degree temperature
14 which escalated into convulsions, and two
15 weeks in intensive care and life support
16 equipment. She was basically
17 nonresponsive. The medical experts at that
18 time, in the hospital, advised me that the
19 elderly are at a greater risk; and that her
20 chances of survival were very, very
21 limited. They gave me very little hope.

22 Nine weeks later, she was alive, still
23 in the hospital, unable to walk and
24 suffering from the damage that was done
25 from the West Nile. She spent three months

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2 in the rehabilitation center and was lucky
3 to be alive.

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

14 During this experience, I personally
15 observed a technically competent staff of
16 the Department of Health. They trapped and
17 tested mosquitoes in our area. Their
18 methods and procedures seem, to me, to be
19 very, very complete. They analyzed the
20 data from those traps and those pests, and
21 only after that did they suggest an
22 approach of isolated spraying. They were
23 very, very cautious and prudent, and
24 utilized the only immediate proactive
25 remedy, which was the selective spraying of

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2 pesticides. There wasn't anything else
3 they could do.

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

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

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

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

21 CHAIRMAN SWANSON: Well, we have
22 haven't even given our stenographer a
23 break, and I'm thinking her fingers are
24 probably sore. Could we give her a break
25 and then come back and complete it? Would

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2 that deter the continuity?

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

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

7 (Whereupon, a recess was taken from
8 4:43 p.m. to 4:49 p.m.)

9 CHAIRMAN SWANSON: Everybody take their
10 seats so we can start again, please.
11 Dr. Dillon, I appreciate your allowing us
12 to take a break.

13 DR. DILLON: I'm going to try to use
14 some technology that may fail and may work.
15 Bonnie, can you hear me?

16 MS. BOON: Yes, I can hear you.

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

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

23 On the phone with us is Bonnie
24 Boon (phonetic spelling). If you look at
25 the date of this press release, the date on

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2 this is November 14, 2003. Now, do you
3 remember how I told you that when people
4 pick up West Nile disease, we oftentimes
5 don't know about it, can't figure it out,
6 or we have to wait so long for them to have
7 the testing done?

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

10 It says:

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

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

21 Now, from August 26th through November
22 14th, before we actually had a confirmation
23 from New York State, she was never
24 hospitalized and had nearly recovered. And
25 so when you see this, I hear from people

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2 "Oh, come on, West Nile is just a wimpy
3 disease. It's just little flu-like
4 symptoms and people get better."

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

9 MS. BOON: Correct. I have been okay,
10 but I never fully recovered. There's
11 aftereffects of West Nile virus, that --
12 the aftereffects were, I guess, determined
13 by my neurologist, who is Dr. Reilly, out
14 here in East Hampton. And ever since I
15 kind of recuperated from West Nile virus, I
16 was left with certain things that just
17 didn't go away. I have slight numbness on
18 the right side of my face, and my right eye
19 has lost a certain amount of depth
20 perception. Dr. Reilly sent me in for an
21 MRI and CAT scan, and found that on the
22 cortex of my brain, I've got little tiny
23 calcium deposits. He has ruled everything
24 else out, and it was his determination, or
25 his diagnosis, that this was the result of

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2 West Nile virus, and he actually said that
3 there's really nothing we can do about it,
4 and, you know, I should feel lucky because
5 it didn't kill me. But these are things
6 that aren't going away.

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

22 DR. DILLON: You're doing fine, Bonnie.
23 Now, tell us, is there anything you had
24 to give up because of West Nile? You were
25 telling me before about --

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2 MS. BOON: Well, yeah. I don't drive
3 outside of my township, East Hampton. I am
4 a real estate broker, so I'm fine around my
5 town. My town is small and it's very
6 slow-moving traffic, and I know it like the
7 palm of my hand because I've lived here
8 forever, but it's extremely nerve-wracking
9 for me to drive where there's a lot of
10 vehicles driving because of the depth
11 perception thing. Like, I'll see something
12 out of the corner of my eye, and I can't
13 quite judge the distance.

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

21 And, again, at home, I'm okay because
22 I've counted my stairs and I know the
23 distance, but it's unfamiliar stairs. It
24 actually got me out of jury duty, too, by
25 the way -- I know I didn't tell you that

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2 yesterday, Dr. Dillon -- but they wanted me
3 to go up the Island for jury duty, which I
4 would have done, and my doctor said, no
5 way, you can't drive. I'm 50 years old, 51
6 years old. I'm afraid I'm going to lose my
7 license over this some day. So hopefully,
8 that won't happen.

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

24 I'm strong. I used to do things like
25 hiking and camping and rock-climbing and

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2 horse-back riding. I can't do those things
3 anymore. And there was a bit of a weight
4 gain, too, which was quite unsettling, but
5 I've gotten that under control.

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

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

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

15 (No response.)

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

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

23 And I really do think that as far as
24 Long Island goes, we have a lot of standing
25 water. Come on, guys, all over the place.

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2 And I know, especially out here in East
3 Hampton, we need to keep the mosquitoes
4 under control. West Nile virus isn't the
5 only thing they carry.

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

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

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

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

22 Well, remember, the horses have been
23 eliminated from this now. We do mosquito
24 testing, we do the dead birds. We do
25 everything we can to figure out where we've

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2 got this virus, and keep it under control.
3 And the real important thing -- I don't
4 know if anybody saw the PBS series that
5 they had last week about Yellow Fever in
6 the U.S.? It was all about Walter Reid,
7 and they did not believe that these things,
8 these mosquitoes, could actually transmit
9 disease to humans, and how we proved that
10 it's true. And we have the perfect
11 atmosphere to have Yellow Fever, and we had
12 malaria; we had Eastern Equine among
13 mosquito populations. Now, what goes to my
14 mind when I hear Eastern Equine, I think of
15 little children dying because it has its
16 most significant mortality rate on
17 children. And so, we need to control the
18 mosquito population.

19 I just want to thank you for your time.

20 CHAIRMAN SWANSON: Thank you.

21 Dominick, do you have anybody else?

22 MR. JEFFERYS: No. Mr. Chair, unless
23 there are additional public people here
24 that want to speak, we're here to answer
25 questions. I know there were legal issues

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2 on some SEQRA issues that members of the
3 Council have asked me to research. I've
4 done the research. If anybody remembers
5 what their questions were, both myself and
6 Jenny Kahn split it from my office to be
7 able to give the answers to some of the
8 legal questions.

9 CHAIRMAN SWANSON: Okay.
10 I'm going to go to the public
11 participants in a few minutes, but,
12 Dr. Dillon, I just had one question of you
13 to help me understand things in a bigger
14 perspective.

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

25 DR. DILLON: We don't really leave

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2 ticks alone. In the '70s we tried all
3 kinds of things to control the tick
4 population. But I think the best
5 correlation to describe it, a tick is very
6 similar to a cockroach. It's very
7 difficult to kill. You are going to ruin
8 your environment; you are going to do all
9 kinds of things before you are going to
10 eliminate those ticks in the population.

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

18 Ticks are limited in that they do carry
19 severe specific diseases, and the best
20 thing we can do to protect the public
21 against Lyme disease is just education; to
22 recognize and pull the tick off right away
23 and to dress appropriately. And there's
24 not much more we can do to offer protection
25 against ticks.

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2 CHAIRMAN SWANSON: Thank you.

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

5 Mr. McMaly?

6 I will cut you off in five minutes.

7 MR. McMALLY: Please do that.

8 Mr. Chairman, thank you very much. I'm
9 so glad you asked the question about the
10 Lyme disease there. There are about
11 200 cases of tick-borne disease in this
12 county for every mosquito-borne disease.
13 The Center for Disease Control says that we
14 are more or less immune to it now because
15 we've all been bit, and it's like getting
16 the annual inoculation for the flu. This
17 is a flu; it's a virus.

18 Anyhow, I was going to say something
19 else, but when I heard -- and excuse me for
20 saying it this way, but I can't resist
21 it -- although I look too young to be
22 involved, I was involved in the bad old
23 days of the Cold War. What I think I saw
24 here is what a criminologist would call a
25 disinformation campaign. It is not exactly

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2 wrong -- I'm not saying you're wrong -- but
3 it's not relevant.

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

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

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

24 MR. McMALLY: Yeah, I did.

25 CHAIRMAN SWANSON: Okay. It's in the

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2 record.

3 MR. McMALLY: Do the other members have
4 it? There are some new members.

5 Anyhow, it was not considered to be an
6 ethical violation in Suffolk County
7 according to the person that called me up.
8 But, you know, I think Suffolk County has a
9 long history with ethics, and I don't want
10 to touch that now. I will respond to some
11 of the assertions and statements made by
12 Mr. Ninivaggi about the dead birds. The
13 dead birds die primarily due to pesticide
14 exposure, the top of the food chain. And
15 yet, before the West Nile virus, there were
16 dead birds.

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

24 As far as I know, there has never been
25 a case of equine encephalitis in a human

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2 being in Suffolk County; is that true,
3 Doctor?

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

6 MR. McMALLY: Right.

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

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

12 MR. McMALLY: But one sample, you found
13 it.

14 DR. DILLON: Which year are you
15 referring to?

16 MR. McMALLY: Any year.

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

24 Anyway, about being in the salt marsh,
25 I had lunch with Peter Scully, who was the

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2 -- still is the commissioner of the DEC,
3 who gave the permission to dig up the
4 Wertheim property. He said to a group of
5 people -- and I'm sure he'd tell you -- if
6 anyone on this council would like to know
7 why did Scully permit the contractor for
8 hundreds of thousands of dollars to dig
9 giant swan lakes in the Wertheim property
10 with canals in between?

11 CHAIRMAN SWANSON: You have about
12 thirty seconds.

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

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2 Thank you very much.

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

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

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

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

18 Thank you very much for your continued
19 participation.

20 Mr. John Reichling.

21 (No response.)

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

25 (Audience member raises hand.)

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2 CHAIRMAN SWANSON: This is new
3 material?

4 MR. MCALLISTER: Yes. Some of it is
5 new.

6 Good evening. Long day. My name is
7 Kevin McAllister, and I'm the Peconic Bay
8 Keeper.

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

18 I had made mention of this the last
19 time I spoke, but I will provide this to
20 you. This is a report that came out of
21 South Hampton College, estuarine research
22 in March of 2006. They looked extensively
23 at ditches in Flanders Bay, and it was
24 confirmed that these ditches have high
25 levels of nitrogen as well as fecal

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2 coliform bacteria that are exiting, being
3 discharged to receiving waters with the
4 high levels of nitrogen. They also pose
5 the risk of triggering harmful outcomes.
6 This is in Dr. Gobler's report.

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

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

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

24 With the extensiveness of the network
25 ditches, they are roughly 700 miles. Quite

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2 frankly, all of these systems, for the most
3 part, already have been altered. 200,000
4 linear feet is 38 miles. If you consider a
5 two-foot wide ditch, that's 91 acres, if
6 I've done my math correctly. That's
7 extensive.

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

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

20 Speaking to significant reductions in
21 insect populations and wetlands- and I'll
22 provide you with the comments that he has
23 provided -- and please forgive me, but this
24 does, I guess, tie in with the long-term
25 plan that's being vetted with the EIS.

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2 Relative to the dismiss by
3 Mr. Ninivaggi that at the application
4 rates, the concentrations that are applied
5 of methoprene, again, directly over salt
6 marshes, that it was both Stony Brook as
7 well as the U.S. Geologic Survey, you know,
8 their monitoring of very low detections --
9 no detects or very low detection.

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

17 Dr. Horst further goes on to talk about
18 the implications to other insect
19 assemblages. And if I recall Mr. Potente's
20 presentation, I think mosquitoes were 2% of
21 the assemblage of insects on tidal
22 wetlands. So, again, we could be knocking
23 out a whole host of more important other
24 insects that are, in fact, predators to the
25 mosquito larvae.

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2 Westchester, New York City -- and again
3 I'll repeat this -- they came to the
4 conclusion in their Environmental Inspect
5 Statement that methoprene had no basis for
6 use in the estuarine environment, and
7 placed restrictions on that use.

8 And the last thing -- I will just sum
9 up here -- Dr. Dillon, obviously made a
10 presentation regarding public health
11 implications, and I'm certainly not going
12 to debate -- I mean, she's experienced,
13 well-credentialed in that area -- but this
14 body is not here to determine whether or
15 not the threat is significant or not. You
16 are here -- and again, Mr. Bagg, you
17 pointed it out I think earlier -- in
18 keeping everyone focused relative to SEQRA,
19 and that fundamental question: Is there
20 the potential for significant adverse
21 impacts? You need to be myopic in your
22 view with that information. All this other
23 information is, quite frankly, irrelevant.
24 So I ask you to focus on that and come to
25 the right conclusion that, in fact, the

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2 potential does exist, significant
3 potential, for environmental impact thereby
4 requiring a positive declaration on this
5 '07 Work Plan.

6 Thank you.

7 CHAIRMAN SWANSON: Thank you.

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

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

15 CHAIRMAN SWANSON: She's a student?

16 MR. McALLISTER: Yes.

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

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

24 CHAIRMAN SWANSON: Thank you.

25 LEG. VILORIA-FISHER: Kevin, as I've

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2 listened to Dominick Ninivaggi and the
3 department, my assumption has been -- and
4 correct me if I'm wrong, Mr. Ninivaggi or
5 Mr. McAllister, whoever -- it seems to me
6 that we have tried to restrict our use of
7 methoprene, too, by using a number of
8 different methods that would compliment one
9 another.

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

16 MR. McALLISTER: Again, relative to the
17 application, methoprene is applied directly
18 over wetlands by helicopter, again, with
19 spraying apparatus. It's intended to get
20 into the water. Relative to Westchester
21 and New York City, they have restricted its
22 use to be restrictive from direct estuarine
23 applications, but rather where the
24 propensity for that material to exist in a
25 storm drain or catch basin is restrictive.

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2 LEG. VILORIA-FISHER: Can you say that
3 again? Where are they restricting it to?

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

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

10 Thank you, Kevin.

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

21 The last sentence in my submission is:

22 "New York City and Westchester have
23 voluntarily eliminated methoprene from
24 their estuarine waterways, and have
25 restricted its use to man-made structures

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2 such as catch basins, recharge basins and
3 detention ponds."

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

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

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

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

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

18 I wanted to make mention of one thing.
19 Mr. McAllister said that 200,000 feet of
20 ditch cleared two feet wide was 93 acres.
21 I invite anybody else to check the math. I
22 did the math, and it came out to 9.2 acres.
23 So, somebody could check me, but 400,000
24 square feet -- considering an acre is about
25 40,000 square feet -- you are talking about

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2 10 acres. So it's not 90-something acres;
3 it's about nine.

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

13 I think it also begs the most important
14 question. They found things that they
15 didn't like coming out of the ditch. Well,
16 basically, materials coming out of the
17 marsh. Unless you want to build a wall
18 around the marsh -- which we call
19 "impoundment," which we don't allow --
20 whatever is in the marsh, has got to come
21 out of the marsh some way or the other
22 otherwise it's not a tidal marsh. And
23 whether it comes out of a ditch or it comes
24 out of a tidal creek, the material is going
25 to come in and out of the marsh. If you

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2 want to keep everything in the marsh, you
3 are going to kill the marsh as a salt
4 marsh.

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

10 MR. POTENTE: Mr. Chair, can I?

11 CHAIRMAN SWANSON: Yes.

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

15 (Mr. Ninivaggi complies.)

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

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

23 MR. POTENTE: "The 2007 Annual Plan
24 addresses an ongoing public health need.
25 No action is not an option."

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2 I just want to discuss the public
3 health need real quickly. According to
4 Suffolk County Health records, there's
5 about 10,000 people that die every year in
6 Suffolk County. About two-and-a-half
7 thousand people die every year from
8 cancers. Many of those cancers are from
9 generic aberrations and some of them may be
10 from toxins, some of the very toxins that
11 you are applying to the county.

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

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

19 The "No action is not an option." I
20 don't know where you ever got that idea for
21 no action. Nobody ever said "no action."
22 Your bologna pans out of proportion and
23 makes large exaggerations.

24 I was happy to see some of the aeriels
25 which I had requested. Finally you are

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2 doing some of your homework, including some
3 of the things you plan to do by showing
4 these aerials and ground photographs. And
5 that's exactly the sort of thing the CEQ
6 needs to see so it knows what's going on in
7 the county.

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

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

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

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2 what you want, everyone expecting to be
3 your good judgment.

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

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

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

19 The study that was done by the County
20 on this \$4 million study in order to prove
21 that methoprene is safe, methoprene -- for
22 the members of the committee who are not
23 familiar with methoprene -- it's an insect
24 hormone prohibetur which prevents the
25 insects from developing into adulthood, and

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2 that's why it's used with mosquitoes; you
3 apply it, and the larval mosquitoes can't
4 graduate into adults. But the insects are
5 part of the arthropod family, and the
6 arthropod family includes things like crabs
7 and lobsters, so there's collateral damage
8 that takes place. And the implication that
9 Kevin McAllister is talking about, many of
10 these papers and studies that are being
11 done, are done on the collateral damage
12 that takes place with the crabs and
13 lobsters and other shellfish. So, when you
14 apply this, that's the danger that we're
15 talking about.

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

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

23 MR. POTENTE: A scientific reason --

24 MR. NINIVAGGI: If I may finish my
25 sentences, please.

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2 MR. POTENTE: No.

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

7 MR. NINIVAGGI: The reason literature
8 is peer-reviewed is so that all the data is
9 there for people to make an independent
10 judgment. "Peer-reviewed" does not mean
11 it's chiseled in stone, and that it is an
12 absolute truth because that's the way
13 science works.

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

21 So that's the reason I said what I
22 said; that none of this information -- it's
23 called "dose-response." The idea is that
24 yes, if you use enough methoprene, you can
25 certainly cause ill-effects in a variety

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2 of organisms. However, we have used -- in
3 the way that we've used it, there are no
4 significant impacts.

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

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

24 CHAIRMAN SWANSON: Go ahead.

25 MR. DAWYDIAK: On the student paper,

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2 the fact that what you had posed to you is
3 the evidence of estuary impact, is
4 basically --

5 CHAIRMAN SWANSON: The paper the
6 student --

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

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

19 We did extensive studies as part of our
20 plan in terms of stormwater versus
21 non-stormwater situations of nutrient and
22 pollutant transport. We looked in the
23 literature elsewhere, and again, we're
24 going to discuss this a little more
25 probably next month, but I just wanted to

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2 discount that paper which was attributed
3 last month and this month to Gobler. It's
4 a student term paper, and that's all there
5 is to it. It's dealt with in the plan.

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

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

24 We have availed ourselves of in-house
25 as well as external experts, and our

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2 analysis of these papers is there in plain
3 text for you to read, and we invite you to
4 read it and are happy to discuss it. It is
5 just simply is not relevant and not
6 dispositive. That is not to say that we
7 don't take pesticides seriously. County
8 policy is to minimize or eliminate
9 pesticide usage. There are certainties
10 associated with this. We acknowledge that;
11 we acknowledge it's an evolving field.
12 What we also state is that there has been
13 no study out there -- and we looked as long
14 and hard as anybody out there has looked --
15 that has documented adverse impacts of
16 methoprene at the concentrations and
17 application methods that are being proposed
18 in this plan. Nothing you have heard has
19 been to the contrary. All you have heard
20 is Gees, literature says methoprene could
21 be bad. No contest there; that was known
22 going in.

23 The Horst piece of work on methoprene
24 is orders of magnitude higher in terms of
25 exposure, dose, 72 hours versus on the

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2 order of minutes for a concentration.
3 Again, it was not reproduced by others.
4 There were questions about statistical
5 significance and validity. That all being
6 said, it's just simply not relevant; that
7 much is conceded.

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

16 I also wanted to mention a point that
17 the Peconic Bay Keeper made about how all
18 of our samples were in open water; we're
19 diluting this stuff to avoid the possible
20 impacts of it. You know, EPA looks at this
21 sort of thing when they do the registration
22 document. We looked out there in the
23 literature; we conducted tests out there.
24 We did them in the ditches as well as other
25 areas. As part of the Caged Fish Study, we

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2 looked at maximal nominal dosages
3 immediately after an application, and they
4 were at the max in that 1 - 3 ppb [parts
5 per billion] range.

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

21 If there's any questions on that, I
22 just wanted to make the record straight.
23 You know, take into context what you've
24 heard versus what's been presented to you,
25 and you're hearing speculation. We take

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2 this stuff seriously, and will continue to
3 take it seriously, but on balance, we in
4 Health and Environmental Quality offer an
5 unequivocal support of this annual plan.

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

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

19 It's unfair to students to use their
20 paper in this kind of environment. It
21 actually stifles, eventually, creativity if
22 there's a threat that their paper is going
23 to be used for something potentially that
24 could be suitable for litigation. And in
25 many cases, we discourage classes from

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2 being allowed to use their papers in this

3 fashion, so thank you. Kevin, you have had

4 your say, so please sit down.

5 MR. McALLISTER: Dr. Gobler --

6 CHAIRMAN SWANSON: Please sit down.

7 MR. McALLISTER: -- was involved with

8 this from the start.

9 CHAIRMAN SWANSON: Maybe he was. But

10 I've been involved in a lot of papers with

11 advisors, too, but --

12 MR. McALLISTER: Mr. Swanson, don't

13 dismiss this paper because there's a

14 student's name on it.

15 CHAIRMAN SWANSON: I'm not dismissing

16 it. It's not fair to the student.

17 MR. McALLISTER: Yes, you are, and

18 that's unfair.

19 LEG. VILORIA-FISHER: There was an

20 allegation made that the Caged Fish Study

21 was not significant in the way that you --

22 that your methodology made it deceptive, I

23 guess, because the allegation was made that

24 the affect was on the larval stage, and

25 that you didn't use the larval stage, but

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2 rather the adult stage of the crustaceans.
3 Can you please elaborate on that?

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

9 That Caged Fish Study was not in our
10 original design. We admit that it's a
11 fairly crude and blunt tool and probably
12 not the best way to look at subtle impacts
13 on the food web. That study was requested
14 by the DEC, and the State Department of
15 Environmental Conservation as a real world
16 add-on to our initial scope of work. It
17 was presented to the legislature who also
18 believed it was important, and they funded
19 and directed we do it. It supplements a
20 risk assessment, a literature review, a
21 series of measurements in the field --
22 which we'll discuss at length at a future
23 time -- but there is no contest that we do
24 not hold the Caged Fish Study out as a
25 dispositive piece of evidence showing that

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2 there are no impacts. It's one tool in a
3 tool box of studies that we've used, and it
4 happened not to show impacts.

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

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

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

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

20 MR. DAWYDIAK: If that language is in
21 the plan, it's regrettable because no one
22 says that pesticides are safe. What we try
23 to say is words like "impact as per
24 measurable methodology and standards show
25 that it doesn't exceed impact thresholds";

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2 "that impacts do not appear to be
3 significant"; that impacts were not
4 demonstrated." I mean, pesticides are
5 designed to kill things and they are
6 inherently unsafe, and that's why we use
7 them judiciously and sparingly and minimize
8 our usage.

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

16 So the fact -- yes, we used adult
17 shrimp because that seemed like the most
18 appropriate organism that could be worked
19 on. Nevertheless, there are studies that
20 claim to show effects of methoprene on
21 adult crustaceans, and we didn't see that
22 in this particular case. Obviously, we
23 didn't test every single species of
24 crustacean known to man -- no county could
25 do that -- so again, we relied on the

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2 toxicity data and the measured
3 concentrations, which is the only
4 reasonable way that you could ever evaluate
5 these things.

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

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

22 I want to say that in all fairness, I
23 am not against Vector Control per se.
24 There are issues that need to be taken care
25 of in the county to control vectors of

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2 disease. However, I am saying that the
3 Division of Vector Control needs to be held
4 accountable for the work that it does, and
5 it has taken much to much leeway in the
6 past, and thankfully, this was finally pos.
7 dec'd and we're taking a look at it.

8 What this committee needs to do is look
9 more specifically, rather than leave it up
10 to Vector Control, "Don't worry, we'll take
11 it from here; just give us the go ahead,"
12 we want to see just like there's a request
13 to see all of these parcels of land, all of
14 these sign posts that we're putting up, all
15 these telephone poles going up all over the
16 county. When you are spraying pesticides
17 that may have environmental impacts and
18 health impacts upon the county and going
19 back in the marshes, after 70 years of
20 ruining them with grade ditching, now we're
21 proposing "Well, we came up with a new
22 idea, now we're going to build crooked
23 ditches, call them creeks, and we're going
24 to build ponds and bring fish in, and that
25 will improve the health of the marsh." We

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2 need to look at each specific thing,
3 activity, that Division of Vector Control
4 wants to perform. Some of these activities
5 we may agree with and say yes, that looks
6 good, go ahead, and some we may say no, but
7 it should not be carte blanche.

8 CHAIRMAN SWANSON: Let's keep it to
9 2007 Work Plan, and not the broader.

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

21 And you're saying that reversion
22 doesn't take place? It absolutely does. I
23 went out and I saw it in Accabonic Bay in
24 East Hampton. I went there with Larry
25 Penny and beach reversion does take place.

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2 I'm not saying it always does and that's
3 the answer, but that is one thing that can
4 happen in certain instances. So if you
5 just give a broadcast, "We're going to do a
6 maintenance; we're keeping these ditches
7 open," no, I don't agree with that. I want
8 to see the ditches.

9 If you are doing someone's backyard,
10 fine do it. But if you are doing a healthy
11 marsh that the people of Suffolk County
12 worked long and hard to protect, and then
13 go in there with a free license to start
14 pulling out more silt -- one of the reasons
15 that you put in this long-term plan for
16 digging these ponds was because there
17 wasn't enough silt to put back in the
18 ditches. So, while you are pulling the
19 ditches out and pulling the soil out of
20 these ditches, doing your ditch
21 maintenance, then you're going to come back
22 here later "Well, you know, we don't have
23 the soil so we got to dig some ponds out
24 because we already moved the soil from the
25 ditch basins." Whether you broadcast it or

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2 whatever you did, I don't care, whether you
3 it hauled it or you kept it on site doing
4 your back-grading, what I'm saying is I
5 reiterate my request from the last meeting.
6 I submitted my letter, and again, I will
7 not sign off -- and I don't care if this
8 committee completely votes against me, but
9 I will not sign off on this until these two
10 points are taken care of. If you want to
11 do ditch maintenance, show us the aerial
12 photographs where you want to do it. And
13 if you want to apply methoprene, same
14 thing. In some cases that's applicable;
15 but in other cases it may not be.

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

21 CHAIRMAN SWANSON: Thank you.

22 Anyone else?

23 (Audience member steps up.)

24 CHAIRMAN SWANSON: State your name.

25 MS. JACOBS: My name is Kasey Jacobs.

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2 I'm with the Citizens Campaign for the
3 Environment, but really I want to speak to
4 the two studies -- and I know we wanted to
5 gloss over that, but -- I'm a graduate of
6 South Hampton College and friends with both
7 of the researchers on the Caged Fish Study
8 and on the SCERP project. So, I'm not
9 really speaking for CCE, but more as a
10 former undergraduate student who now does
11 have a B.S. in environmental science
12 biology.

13 If you are going to discount the SCERP
14 project and the research, you also have to
15 discount the Caged Fish Study because both
16 of them were done by students from the same
17 class, with the same leadership, with the
18 same supervision. One had more funding and
19 it had more layers to it because of the
20 County's involvement, and one did not
21 because it was more independent. However,
22 they were both done by students who had the
23 same exact training, the same exact
24 supervision, a lot of the field data was
25 done by the student who is in the same

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2 class as the other student. So if you are
3 going to discount the one study, I do
4 strongly feel you have to discount the
5 other one as well.

6 CHAIRMAN SWANSON: Thank you.
7 Lauren?

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

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

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

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

25 MS. STILES: Okay. The point I was

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

17 MR. KAUFMAN: I'd like to caution
18 everyone at the board right now, we seem to
19 be mixing apples and oranges quite a lot in
20 several different ways. We are here today
21 only to deal with the annual plan. I admit
22 fully that some of the elements of the
23 long-term plan may be relevant to the
24 discussion, but that should not drive the
25 discussion that we are dealing with today.

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2 We officially have not seen it; we don't
3 know officially what is before us in terms
4 of the long-term plan. In fact, it's
5 sitting here as a big wad of paper in front
6 of me, and some people are getting it on
7 disk. Many of us know what is in there,
8 but I think it's very unfair to the County
9 to try to mix this stuff at this point in
10 time. And I also think it's unfair to us
11 because you are mixing things that have no
12 relevance to an annual plan, pure and
13 simple.

14 CHAIRMAN SWANSON: Anybody else have
15 any comments?

16 MR. ATKINSON: Larry, may I?

17 CHAIRMAN SWANSON: Yes.

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

20 I just want to applaud what's just been
21 said, to begin with, because, indeed, you
22 are looking at the 2007 Plan of Work, which
23 is the sixth generation in a row of annual
24 plans of work. All of this discussion, and
25 all of the concern here about the impacts

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2 are recognized by Suffolk County, have been
3 recognized by its legislature; that's why
4 an Environmental Impact Statement is being
5 prepared.

6 The question here is going to be what
7 kind of recommendation is CEQ going to give
8 to the legislature? It's going to have to
9 make some hard policy decisions about what
10 to do both with the long-term plan, but
11 more immediately, with the 2007 Plan of
12 Work. These policy decisions will include
13 such questions as the medical issues that
14 we've heard, but in all fairness to the
15 legislature -- and I'm happy to see two of
16 them here -- they need a very frank and
17 clear statement from this council about are
18 there potential for adverse impacts in this
19 plan. This plan is the same as the
20 long-term plan essentially, stripped of
21 OMWM. And we've already found that. And
22 if you don't make a clear and concise
23 statement to the legislature, the
24 legislature is now disabled from making its
25 own policy statements in a fully informed

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2 way. They can go forward with or without
3 SEQRA; they've done it before and they can
4 do it again. But there is no reason to
5 misrepresent what is actually involved.

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

22 I wish, as Mr. Potente suggested, that
23 Vector Control would remove elements of
24 this plan so that the legislature would
25 have the benefit of seeing a surveillance

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2 program, a cleaning program, a program that
3 permitted Vector Control to respond in
4 terms of if there's a real health emergency
5 until a real plan is put on the table
6 that's been looked at carefully.

7 I just have one other little statement
8 I'd like to make, which is the way this
9 plan is working, there really is no real
10 review -- and another reason it needs a
11 pos. dec. on its own merits -- thousands
12 and thousands of acres can be sprayed with
13 pesticides with unknown results, frankly.
14 There can be a lot of ditching done with
15 unknown results. And even though I believe
16 Vector Control should have the authority
17 and the ability -- and I think it does
18 under law -- to respond to health
19 emergencies, I think all of these water
20 management programs in the short terms
21 should come before this council. They are
22 no different than the bus stops, the
23 boardwalks that you look at. There is no
24 emergency. If there's a health emergency
25 because a road collapses, that can be dealt

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2 with under the emergency provisions of
3 SEQRA. All of these water maintenance, for
4 one, absolutely does not need to be
5 approved under this plan.

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

18 Thank you very much.

19 CHAIRMAN SWANSON: Thank you.

20 I would like to move this thing along.

21 Mr. Kaufman?

22 MR. KAUFMAN: Mr. Atkinson, are you
23 saying that there is no review right now?
24 I have heard of an agency called Department
25 of Environmental Conservation. Are they

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2 not issuing permits, occasionally, or are
3 they totally derelict in their duties? And
4 are you challenging (1) their jurisdiction
5 and (2) their ability to do their job?

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

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

21 MR. ATKINSON: You are the lead agency.

22 MR. KAUFMAN: Lead agency, whatever you
23 want to call it; and yes, we are the
24 advisors to the lead agency in this
25 situation. Nonetheless, you are making an

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2 allegation that there is no review, and I
3 do not see that. I'm telling you right off
4 the bat, to the extent DEC is reviewing
5 those actions of the County when it
6 operates under general permits and specific
7 permits, et cetera, I'm not saying that's
8 the end all and be all -- and we would be
9 abdicating our job if we were not doing
10 that -- nonetheless, they are being
11 reviewed. And I really take great
12 exception to when you are saying it's not
13 being reviewed at all.

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

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

19 MR. NINIVAGGI: The suggestions
20 regarding bringing every ditch cleaning
21 operation to CEQ, well, looks like we do
22 about -- hand crews, cleaning up ditches,
23 at about a hundred locations a year,
24 roughly. I don't know if the CEQ wants to
25 look at, you know, a hundred sections of

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2 ditch and make some kind of independent
3 judgment as to whether that's a good or bad
4 idea.

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

23 And again, one of the things I tried to
24 do in my presentation here is to give you a
25 little bit more information about what kind

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2 of areas we actually do operate in and the
3 fact that this is a maintenance thing; it's
4 done in developed areas. The work we do in
5 terms of water management, you know, is not
6 out in pristine habitats where there's
7 significant potential for impact, and it's
8 also working on existing structures,
9 structures that in many cases have been
10 there for 50, 60, 70 years. We're not
11 going out and making a change on the
12 landscape. We're doing the very minimal,
13 ongoing clean-up-the-stuff maintenance
14 operation. And the CEQ has never wanted to
15 see every single one of these. We
16 certainly couldn't do that for the
17 pesticide applications.

18 I did show you the maps of the sites
19 that we treat; I showed aerial sites so you
20 get an idea of what the program looks like.
21 I obviously can't tell you which areas are
22 going to be treated and which areas are not
23 going to be treated in the coming year
24 because we do this work under surveillance,
25 or because of surveillance, which is

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2 exactly the way that these things should be
3 done.

4 The same thing with the water
5 management and cleaning the ditches. It's
6 based on our surveillance and going where
7 there's a problem. Again, I think that for
8 this interim type general plan, I think
9 that we've given you plenty of information
10 that you can judge what we do and what we
11 don't do, and I'm not sure it benefits
12 anybody, certainly, if we had to do any
13 time before we send a crew out to clean a
14 ditch, I had to prepare a project drawing
15 and wait for the next CEQ meeting and see
16 whether you think it's a good idea or
17 not -- and I'm not sure under what
18 basis anyone would decide if cleaning
19 somebody's ditch in their backyard is a
20 good idea or not -- I don't know if that's
21 a productive use for any of our time. And
22 I can tell you the result will be more use
23 of pesticides because we're not going to
24 get the work done. And certainly, in some
25 cases, people's yards are going to flood;

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2 people are going to be very unhappy; and
3 again, for what environmental purpose? I'm
4 not sure.

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

10 CHAIRMAN SWANSON: Thank you.

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

17 The machine ditches you say that occurs
18 only about ten times in a season, what is
19 the feasibility of that coming, those
20 projects which probably would be a little
21 more involved and you would need the time
22 to plan them out anyway, what about those
23 coming before the legislature with the
24 aerials, which is the suggestion that
25 Dr. Potente put before you.

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2 MR. NINIVAGGI: It depends on whether
3 you want to see any work accomplished. I
4 would have to look at the resources I have
5 in my division, and frankly, if we have to
6 go through this for every single project --

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

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

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

22 LEG. VILORIA-FISHER: Can I go back to
23 my question because I don't think you
24 directly answered it. And that is: When
25 you are doing the machine ditching, you are

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2 getting DEC permits for those; aren't you?

3 MR. NINIVAGGI: Yes.

4 LEG. VILORIA-FISHER: Now, when you are

5 preparing that, you could prepare,

6 concurrently, something for this body;

7 couldn't you?

8 MR. NINIVAGGI: We can send you copies

9 of the permit applications.

10 LEG. VILORIA-FISHER: You are saying

11 that's only ten a year; right?

12 MR. NINIVAGGI: We can send you copies

13 of the permit applications if that's what

14 you want.

15 LEG. VILORIA-FISHER: I heard a request

16 from one of the members of the body here,

17 and I'm trying to find a place where we can

18 meet. And it seems that if you're doing a

19 report on that, perhaps that might be a way

20 of addressing it. Because, truth be told,

21 if we are now a member of the legislature

22 and a member of CEQ, but I know that when

23 this comes before the legislature, there

24 will have to be a vote taken there. And if

25 there's a sense that legislators aren't

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2 receiving all of the information, and that
3 as people who have identified themselves as
4 people who are protecting the environment,
5 if there's a sense that we are
6 relinquishing our authority as the lead
7 agency by not requiring all of the
8 information that another agency is
9 requiring who is giving the permitting,
10 there's nothing wrong with getting more
11 information.

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

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

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

24 CHAIRMAN SWANSON: I think that would
25 be very beneficial. If we look at the bus

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2 stops, certainly we can look at an acre of
3 marsh land that you are going to be dealing
4 with. I don't think that's unreasonable,
5 and I think, Dominick, in the sense that
6 we've never done this before, is not an
7 excuse. What we're trying to do is to help
8 the County manage its resources more
9 effectively now than perhaps we have in the
10 past, and so I think that's our only
11 objective, not to tie your hands.

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

20 MR. JEFFERYS: Mr. Chair, just on the
21 statutory issue, because we have a charter
22 issue there, the way the charter is
23 apparently written for the oversight of
24 Vector Control, the only time that there is
25 CEQ involvement is the review of the annual

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2 plan. So if there's going to be an
3 alteration there, there has to be some sort
4 of a change. I don't know how that would
5 be procedurally done, but to implement
6 something that if it's in the Vector
7 Control Plan and would be some sort of
8 maintenance procedure that requires our DEC
9 permits, then there has to be some sort of
10 language drafted to also make that a CEQ
11 activity. Presently, it doesn't exist, and
12 it's something to think about if down the
13 road this is what CEQ would like. It
14 doesn't exist presently.

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

23 MR. JEFFERYS: Right. It's my
24 understanding, though, Legislator
25 Viloria-Fisher, that some of the work that

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2 we do during the course of the year --
3 because I see all the permits that we
4 get -- is emergency type of work that is
5 not the sort of work that we can anticipate
6 doing at this time as we're sitting here in
7 November of 2006. There may be a flooding
8 incident or something like that that would
9 cause a culvert to collapse in May of 2007.
10 We can't anticipate that at this point, and
11 we do get DEC permission for that. The
12 question I have is for that type of
13 situation. How would you like us to handle
14 that? I don't know the answer to that;
15 it's something to discuss.

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

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

23 So I don't think we're trying to be
24 unreasonable. On the other hand, our
25 objective here, again, is to protect the

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2 resources of Suffolk County and to try to
3 make sure that we aren't going to continue
4 to lose valuable wetlands over the next
5 years, and hopefully we are in the process
6 of this long-term plan working on a system
7 that will assure positive results.

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

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

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

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

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

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2 supercede the...

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

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

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

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

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

23 MR. JEFFERYS: Correct. But I'm
24 quoting what the present charter says. And
25 my concern is, to avoid a process

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2 challenge -- any process challenge by
3 anybody along the way -- the process has to
4 be set out somewhere; whether that's by
5 charter, code provision, local law or
6 resolution, it just has to be somewhere
7 memorialized so that if there is a
8 challenge anywhere along the line, we say
9 this is the process we're following because
10 our elected body has made that provision
11 that we follow. I don't think it's clear
12 enough presently in our existing code,
13 either in Section 8-2 or 8-4, for CEQ or
14 legislative review of the individual
15 project. So my concern is how do we do it
16 process-wise, and I don't know the answer.
17 I'm putting it out there for the Council.
18 I don't know the answer to that. It may be
19 by resolution; I just don't know the
20 answer.

21 MR. POTENTE: Mr. Jefferys, my
22 particular grunt is not a broken culvert or
23 an emergency situation. This conversation
24 has wavered way off track talking about
25 culverts. Culverts, of course -- I believe

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2 culverts should be maintained or revamped
3 or even enlarged to enhance tidal flow and
4 keep good circulation. Culverts have
5 nothing to do with what I'm talking about.

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

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

15 He came up with this language:

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

23 We put this in on any recommendations
24 that we do. We don't have the force of law
25 over here. It's a suggestion on a policy

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2 bases. We're looking at machine ditching
3 and we're somewhat worried about the ten
4 activities a year. This is adequate
5 language, I believe, to accomplish what
6 Legislator Viloría-Fisher was talking about
7 and also to bring before CEQ. And I
8 propose that's what we do with any motion.

9 MR. POTENTE: It's a good start.

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

24 LEG. VILORIA-FISHER: Maybe you and I
25 could meet with legislative counsel and

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2 look at a resolution and address some of
3 the concerns.

4 MR. JEFFERYS: Thank you.

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

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

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

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

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

24 MR. KAUFMAN: Can you do it; yes or no?
25 Can you send something over for review and

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2 comment except in emergency cases?

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

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

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

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

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

20 CHAIRMAN SWANSON: If they are not too
21 much longer.

22 MS. STILES: These are my comments on
23 the 2007 Plan, and I went through the
24 document that we received at the last
25 meeting. I don't know if you have revised

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2 that at all. I thought when we left the
3 last meeting, you indicated you were going
4 to, but I haven't received anything, and I
5 don't think anybody else on the CEQ has.

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

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

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

24 CHAIRMAN SWANSON: Might I remind you,
25 we need to get recommendations to the

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2 legislature by next week.

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

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

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

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

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

22 MR. BROWN: But there are changes that
23 haven't taken place, and I don't have a
24 copy of the 2007 Plan. I thought that
25 would be here today. And there are changes

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2 that the members want put into place, and
3 we don't show these changes taking place,
4 whether it be on here or in a copy of it
5 itself.

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

9 MS. STILES: We didn't get it.

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

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

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

17 MR. KAUFMAN: That's possible.

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

24 MR. KAUFMAN: We have one
25 recommendation.

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2 MR. BROWN: I see two recommendations
3 from Mr. Potente, and I'm not sure what
4 else is out there right now.

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

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

14 MR. KAUFMAN: Okay. Excluding CEQ,
15 recommendations shall be made within
16 45 days of receipt of the submissions by
17 initiating unit; however, the CEQ finds
18 that insufficient information has been
19 provided to allow said recommendation and
20 notifies the initiating unit in writing of
21 the specific deficiencies, the time allowed
22 for recommendation may be extended.

23 MS. STILES: Mr. Swanson, I have a
24 couple things I just want to point out, and
25 I see in our packet that we received today,

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2 I think there are a lot of court decisions
3 from the SEQRA litigation that was going
4 back and forth.

5 MR. JEFFERYS: Correct. Mr. Atkinson
6 had submitted the 2005 final memorandum
7 decision, and since we have many new
8 members, I went back to the beginning of
9 the litigation in 2002 and included all of
10 the decisions in a packet from 2002 through
11 2005, plus there was some discussion last
12 time of the Clean Water Act litigation.
13 And although there are no orders on that, I
14 did submit the docket sheet for the Suffolk
15 County Clean Water Act litigation and the
16 upstate Clean Water Act litigation to make
17 seven different exhibits.

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

25 So, there are four lawsuits that

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2 occurred in the past; 2002, 2003, 2004, and
3 2005. And the most recent of those was
4 2005, and it was on the 2005 plan. There's
5 a trial court decision from Judge Baisley,
6 I believe, that I have -- on the last page
7 of this little packet I gave you, there are
8 quotes that are from the decision, and you
9 have the whole decision in the packet from
10 Mr. Jeffreys, I presume. I also have a
11 copy here if you would like.

12 But essentially, the Court made it
13 pretty clear that this has to be a Type 1
14 action pos. dec. The 2007 plan is not that
15 much different from the 2005 plan, but
16 somehow it magically changes from what had
17 to be a pos. dec. to what now can be a neg.
18 dec. The Court found that -- what happened
19 in that case is that the county legislature
20 had done a Type 1 action and they neg.
21 dec'd it. The Court remitted it to the
22 county legislature for full environmental
23 review, which is basically telling them
24 they had to pos. dec. that, including the
25 cumulative impact of pesticide use and

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2 habitat modification in the freshwater and
3 tidal wetlands.

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

18 MR. KAUFMAN: Lauren, if I might. I
19 also am an attorney. There's something
20 called Law of the Case; there's also
21 something called an appeal. I believe that
22 Judge Baisley rendered decisions. As I
23 understand it -- correct me if I'm wrong --
24 those three decisions were all appealed by
25 Suffolk County.

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2 Were all three decisions appealed by
3 Suffolk County; yes or no?

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

6 MR. KAUFMAN: Sorry if I misquote the
7 number.

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

21 In 2005, we got a memorandum decision
22 from Judge Baisley, which is not an
23 appealable document. It's not a document
24 that the County could take up. There was a
25 judgment proposed by the counsel for the

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2 Peconic Bay Keeper, and there was a
3 judgment proposed by counsel for the County
4 Attorney's Office, and neither judgment was
5 accepted; there was no appealable paper to
6 take up on an appeal to that case.

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

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

24 MR. JEFFREYS: Well, the three prior
25 cases he was reversed; 2003, 2004, 2005 he

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2 was reversed based on mootness.

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

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

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

17 MR. JEFFREYS: Well, this is a new
18 annual plan, so I don't know what the
19 affect will be. To the extent there's a
20 different type of plan that's being
21 offered, it is, as any judge's decision
22 would be. You are entitled to read it and
23 see what there is. But there were two
24 decisions by Judge Baisley that year, in
25 2005. They are both in my packet. They

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2 appear to me, in reading them, they appear
3 to be totally inconsistent. So I leave it
4 to the panel to read them. There is no
5 prohibition based on law of the case that
6 would mandate a finding one way or the
7 other.

8 MR. KAUFMAN: One other question on
9 that.

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

12 MR. JEFFERYS: No, they can't.

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

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

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2 that would have been moot.

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

5 MR. JEFFREYS: No.

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

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

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

21 MS. STILES: That's great, if you want
22 to stick your head in a hole and pretend it
23 didn't happen, that's fine. But we had
24 decisions from the County saying Type 2,
25 the judge said wrong; decisions from the

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2 County, Type 1, neg. dec., judge said it's
3 wrong. Commonsense tells you if it's
4 basically the same plan year after year
5 after year, you have to be kind of
6 pretending these cases didn't exist. If
7 it's not going to be --

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

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

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

25 MR. KAUFMAN: Well, that's an

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2 interesting point. I think there are
3 things right under the law which some of
4 the people in the audience have declared to
5 be wrong under the law.

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

13 MR. BAGG: That's incorrect. It says
14 if it's a Type 1 action, it is more than
15 likely to probably have a significant
16 impact on the environment; however, it does
17 not require the preparation of an EIS. The
18 requirement is that the body, the lead
19 agency, has to take a hard look and has to
20 mitigate impacts. And if it's determined
21 that the action or the action has been
22 changed and altered in such a way as to
23 mitigate environmental impacts, then a
24 negative declaration could be written. But
25 a Type 1 action does not require a

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2 preparation of an EIS, and I would say that
3 99% of all the Type 1 actions in New York
4 State receive neg. dec's. not EIS's.

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

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

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

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

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

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

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

24 Can I just have your opinion on that
25 particular bullet point?

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2 MR. JEFFREYS: Well, the standard for
3 any SEQRA review is: Did the lead agency
4 take a hard look at the issue that is being
5 presented to see if there is any
6 significant environmental impact? That's
7 basically the standard that we're governed
8 by in SEQRA review. And I don't really
9 know what Judge Baisley was thinking when
10 he wrote the line. But to say that this
11 panel and the Suffolk County Legislature
12 doesn't take a hard look at this, I would
13 dispute that.

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

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

24 MS. VILORIA-FISHER: But that would be
25 a harder look.

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2 MR. JEFFREYS: It would be a very hard
3 look. It's very similar to what we did in
4 2002 when we went from 600,000 linear feet
5 to 400,000 linear feet. That was one of
6 the issues that Judge Baisley, in the
7 initial order of that case, which was in
8 favor of the County, determined that we
9 took environmental considerations into
10 account in making our determinations of
11 environmental significance. And that's the
12 requirement under SEQRA: Did you take
13 environmental considerations into account?
14 And I believe we do that each and every
15 year.

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

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2 going on.

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

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

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

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

23 CHAIRMAN SWANSON: I think what's
24 important, Legislator Viloría-Fisher, is if
25 you look through the history of the annual

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2 plans, it's fair to say there's been
3 considerable litigation over the years.
4 And more than just a hard look has been
5 held to the litigation. And you might
6 argue there are still impacts. The
7 question is: Are those impacts truly
8 significant particularly in the context we
9 come from?

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

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

25 Essentially, the plan, as it stands

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2 right now, has been to maintain what exists
3 and try to hold that back as much as
4 possible, and to try to get the DEC permits
5 to deal with some of these issues.

6 I haven't really seen substantial
7 changes in the last four years under this
8 mitigation regime. Since 2002, I don't see
9 the extensive damage that is required under
10 SEQRA, which I have in front of me,
11 required for determining significance under
12 a proposed Type 1 action where it's
13 required to have a significant adverse
14 negative effect on the environment that
15 might reasonably be expected to result from
16 the particular activity. I don't see that
17 since 2002. Again, I have an institutional
18 view because I was here as one of the
19 people who got the pos. dec., as one of the
20 people who pushed for the EIS. I don't see
21 extensive damage at this point in time.
22 We've ordered as much scaling back as we
23 could within our purview. The legislature
24 has also adopted those issues, too. And
25 again, four times this has come up since

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2 2002. By charter, the County has to come
3 with an Annual Plan subject to SEQRA, year
4 by year. The last four years, the
5 legislature, the executive, et cetera, have
6 not seen substantial damage from the scaled
7 back plan. So the plan, as mitigated, has
8 not caused the damage that I believe would
9 need a pos. dec., or anything like that.

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

17 Now, I compare each plan, again, with
18 the 2002 effort, and the things that we did
19 in 2003, when we further scaled it back. I
20 don't look at it in isolation. I know
21 Lauren likes to look at it as an individual
22 plan each year in a row. I don't see it
23 that way. I think it has to be assessed in
24 contrast with what has previously been
25 done.

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2 MS. STILES: That is the exact opposite
3 of what I said.

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

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

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

21 MR. KAUFMAN: And that leads up to
22 something else. Under SEQRA -- and I'm
23 looking at the Type 1 criteria for
24 determining significance -- you can look at
25 this two ways. SEQRA says, pos. dec.,

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2 something in the creation of hazard so
3 human health exists. The question I
4 have -- and this would be for
5 Mr. Ninivaggi -- would be if we don't
6 continue with the annual plan -- let's say
7 it gets shut down -- are we going to be
8 creating a hazard to human health? Are we
9 going to see more problems out there?

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

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

23 One of the things I wanted to mention
24 is in terms of changes and mitigation in
25 the plans, I took a look back and the 2006

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2 Plan of Work was not challenged legally.
3 But I made some notes that there were some
4 changes that we did from the 2005 to the
5 2006, and that we've continued for 2007;
6 such as, the Adapco Wingman air spray
7 system, which is designed to -- if we have
8 to do an aerial adulticide -- to minimize
9 impacts targeting the application, you
10 know, so that's something we didn't have
11 for 2005;.

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

22 And we're limiting the ditch
23 maintenance. And in 2006 is when we made
24 it very clear that the only ditch
25 maintenance by machine we were going to do

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2 was this -- as I described --
3 maintaining-wetlands help.

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

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

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

22 LEG. VILORIA-FISHER: No. But I'm
23 saying I would like to recommend as part of
24 our motion today that we have the
25 additional provisions that we look at those

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2 machine ditching; you know, the plans for
3 each machine ditching project.

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

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

25 MR. KAUFMAN: I would like to respond

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2 to Mr. Jeffreys and Mrs. Stiles.

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

19 MS. STILES: I just think that --

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

25 MR. NINIVAGGI: Yes, I did receive

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2 that. I think that I -- it seemed like the
3 major questions that weren't legal things
4 for Mr. Jeffreys, had to do with questions
5 about methoprene and the issue of what do
6 we mean by the water management figures and
7 where do we do water management.

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

11 MR. NINIVAGGI: Right. And that's one
12 of the things that I pointed out; that what
13 we mean by that figure is total hand plus
14 machine. And the reality is, out of that
15 200,000 feet, I estimate less than a
16 thousand would actually be machine.

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

19 MR. NINIVAGGI: Well, that's recorded
20 in this meeting here. I don't know
21 whether it could certainly do so. It's on
22 the record. I didn't think that I should
23 go back and -- basically what I was doing
24 there was clarifying what I thought the
25 plan said. It was always -- what I

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2 described was always my intent in the plan,
3 and my presentation here was just to make
4 that clear.

5 CHAIRMAN SWANSON: So I just don't want
6 you to dismiss what we gave you, you know,
7 as comments that you weren't going to pay
8 attention to.

9 MR. NINIVAGGI: No. That's what I did
10 when I...

11 MS. STILES: Just one last thing, and
12 hopefully, I'll be done.

13 Pos. dec, to constitute -- the issue of
14 positive declaration, if you look at SEQRA,
15 6 NYCRR 617.2(a)(c) defines a positive
16 declaration as -- it says:

17 "A written statement prepared by the
18 lead agency indicating that implementation
19 of action as proposed may have a
20 significant adverse impact on the
21 environment."

22 That's a very, very low threshold that
23 triggers the need for Environmental Impact
24 Statements; "may." There's a ton of case
25 law out there on this, and we cannot

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2 mitigate away a bad -- I don't mean bad in
3 the sense of bad idea to be doing it -- but
4 an environmentally harmful project. I
5 think mitigate, mitigate, mitigate; that
6 circumvents the entire SEQRA process, and
7 that is actually --

8 MR. KAUFMAN: Well, that Court of
9 Appeals decision specifically says that:

10 "Speculation does not equal
11 justification for pos. dec."

12 And that's what the Court of Appeals
13 says.

14 CHAIRMAN SWANSON: It's also a measure
15 of significance.

16 MR. JEFFERYS: Mr. Chair, that was one
17 of the issues that the Council had asked me
18 to look at with the speculation issue.

19 "The general rule that can be
20 distilled from the cases are that the
21 declaration of environmental significance
22 must be rational and supported by
23 substantial evidence. Conclusory,
24 generalized alligations with no scientific
25 basis or expert opinions to support them,

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2 are insufficient to support a positive
3 declaration."

4 Now, there are a lot of cases that talk
5 about that. I can go through the list of
6 citations; but that's the general rule that
7 can be distilled from all the cases.
8 "Substantial evidence" by most of the
9 courts -- including the U.S. Supreme Court,
10 who has interpreted that phrase --
11 construed it to mean "less than a
12 preponderance but more than a scintilla,"
13 and it has to be based on evidentiary
14 facts. It's a very wide...

15 MS. STILES: Which means it's a very
16 low threshold.

17 CHAIRMAN SWANSON: Don't quote the
18 cases.

19 Let's go forward with a motion, please.

20 MR. KAUFMAN: Okay, I will make a
21 motion that this is a Type 1 activity with
22 a negative declaration, and with a further
23 recommendation that when a Vector Control
24 activity involving machine ditching
25 requires a permit from the DEC, a copy of

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2 the permit will be submitted to CEQ and the

3 Department of the Environment for review

4 and comment, except for emergency cases.

5 CHAIRMAN SWANSON: May I have a second?

6 MS. RUSSO: Second.

7 CHAIRMAN SWANSON: Any discussion?

8 MS. STILES: Can you record this as a

9 roll call vote, please?

10 CHAIRMAN SWANSON: Sure.

11 Steve?

12 MR. BROWN: I vote against that motion.

13 MR. POTENTE: I vote against the motion.

14 MS. STILES: I'm recusing myself.

15 MS. SPENCER: I vote for it.

16 MS. RUSSO: I vote for.

17 LEG. VILORIA-FISHER: For.

18 MR. KAUFMAN: Yes.

19 CHAIRMAN SWANSON: Yes.

20 MR. NARDONE: No.

21 MR. PICHNEY: Yes.

22 LEG. VILORIA-FISHER: Three no's; one

23 recusal.

24 CHAIRMAN SWANSON: The motion carries.

25 Thank you very much.

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2 I would just like to say this has been
3 a very painful process over the last four
4 years, and looking over the last four
5 years, I know that everybody doesn't have
6 what they want out of the program, but I
7 honestly believe that we have the means to
8 protect our wetlands far greater than we
9 ever had in 2001. And I want to thank
10 everybody, Suffolk County Health
11 Department, Suffolk County. I also want to
12 thank the Bay Keeper and everybody else
13 that has spoken out on this issue. This is
14 very important for the County, and it's
15 also a very important process in democracy.

16 So thank you, everybody, for their help
17 and consideration.

18 MR. DAWYDIAK: Chairman Swanson, are
19 you breaking up the meeting? It seems like
20 everyone is going away.

21 CHAIRMAN SWANSON: I think they want to
22 be going away, but I haven't closed the
23 meeting yet.

24 MR. DAWYDIAK: Can I beg just one more
25 minute of your time? I know it's been a

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2 very long afternoon.

3 CHAIRMAN SWANSON: Yes.

4 MR. DAWYDIAK: I just wanted everyone
5 to get from Kim Shaw, who's handing them
6 out -- a one-page project update on the
7 long-term plan and Generic Environmental
8 Impact Statement.

9 I wanted to note that the Steering
10 Committee approved the long-term plan this
11 past Monday, November 6th, for distribution
12 to CEQ and to move ahead to the
13 legislature. So the plan piece has been
14 planned. Right now, the FEIS has been
15 mailed to you via overnight mail yesterday.
16 We had hoped to have it out earlier; we had
17 production problems and we apologize, but
18 we did meet today's deadline in any event.
19 Today is November 9th, and it's our
20 understanding from Mr. Bagg -- and please
21 correct me if I'm wrong -- that the SEQRA
22 statutory review period for this is no less
23 than 10 days and no more than 30 days, so
24 it's our hope that discussion and action
25 will occur at the next meeting.

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2 We have prepared a Power Point
3 presentation, which will take about twenty
4 minutes to go through to brief,
5 particularly, the new members so it doesn't
6 take you hours to read through the plan to
7 understand the FEIS. I know at this time
8 it's late. We would be happy to stay late
9 and talk to anybody who would like us to.

10 Dave Conte (phonetic spelling) just
11 also wanted to give a presentation on the
12 Wertheim Wildlife Refuge, which also
13 answers some of the issues raised by Dr.
14 Potente at last month's meeting, and we'd
15 be happy to do that next month also. I
16 just wanted to get that on the record and
17 make sure everybody was clear on the
18 procedure, and that we'd be back next month
19 with a presentation with hopefully
20 discussion and action on the FEIS.

21 CHAIRMAN SWANSON: Thank you.

22 Do we have a motion to adjourn?

23 MR. KAUFMAN: Motion.

24 MS. RUSSO: Second.

25 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.)