

Association of Brookhaven Civic Organizations
Brookhaven Village Association
Coalition to Save the Lakes
East Moriches Property Owners Association
Environmental Defense Fund
Friends of the Edgewood Preserve
Friends of the Wertheim National Wildlife Refuge
Hamlet Organic Garden
Long Island Pine Barrens Society
Long Island Drinking Water Coalition
Long Island Environmental Voters Forum
Mastic Park Civic Association
Manor Park Civic Association
Miller Place Civic Association
Open Space Council
Open Space Preservation Trust
Peconic Baykeeper
Post-Morrow Foundation
Ridge Civic Association
Regina Seltzer
South Yaphank Civic Association

William J. Lindsay, Presiding Officer
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Steve Stern, Lou D'Amaro, Jon Cooper
Suffolk County Legislature
W. H. Rogers Legislative Building
725 Veterans Memorial Highway
Smithtown, New York 11787

October 20, 2009

Re: The Carmans River and Legacy Village

Ladies and Gentlemen:

County Executive Steven Levy has requested the County Legislature to approve a resolution that would declare 250 acres of county-owned land in Yaphank close to the Carmans River as surplus and transfer that land to private developers for the Legacy Village project that would consist of 1,000 affordable and market-rate residential resident units and tens of thousands of square feet of retail, commercial and recreational facilities. We request that the County Legislature table or disapprove this resolution pending the completion of 1) a full environmental impact statement (EIS) on the proposed surplus declaration and transfer program and 2) the Carmans River Groundwater Watershed Preservation Plan study on which the Town of Brookhaven and the Central Pine Barrens Commission are embarking.

Our request rests on concerns about the wide range of potential adverse impacts of a development anywhere close to the scale of the County's Legacy Village proposal on the Carmans River and its inestimable aquatic and terrestrial groundwater watershed flora and fauna resources. The Carmans River was the State's first designated Wild, Scenic and Recreational River. At the mouth of the River lies the Wertheim National Wildlife Refuge, by far the largest such Refuge on Long Island. Southaven Park and Cathedral Pines Park are two other extraordinary public resources along the River. The Town, County, State and federal government have invested many millions of dollars in acquiring ecologically invaluable land within the corridor of and close to the River. In addition, major segments of the River, its corridor and watershed lie within the Core Preservation Area of the Central Pine Barrens, and another

major segment falls within the Compatible Growth Area. It is odd, to say the least, to have the County selling off this land so close to the River, the Core Preservation Area and the CGA for development when at the same time it is, along with the Town of Brookhaven and New York State, spending additional millions of dollars to purchase other parcels similarly situated in proximity to and within the watershed of the Carmans River!

The protection of the Carmans River and its corridor resources described above reflect an historic recognition by the County, the Town, the State and the US Department of Interior of this remarkable ecological and recreational gem that nature has bequeathed us in the central heart of Suffolk County. Yet, this pine barrens river is under stress, with much of the groundwater watershed already developed and much of the remaining, privately owned, undeveloped tracts in the watershed the subject of formal or informal development proposals.

Pine barrens rivers are characterized by low nitrogen levels and this is our major concern. One indication of this stress is the high levels of nitrates in the River that are exacerbating the spread of invasive species in the River's lakes and significantly and irreversibly altering the flora and fauna of this naturally nutrient-poor system. Furthermore, this watershed is a significant groundwater recharge area, and actions that will limit the introduction of more nitrates and will eventually lead to a reduction in nitrate levels in the groundwater recharged in this watershed will have benefits for those who depend on Suffolk County groundwater and the resources of the South Shore Estuary Reserve. In our view the highest and best use for any undeveloped publicly owned land in the corridor is to remain in that state to offset and dilute nitrate and other contamination from existing development as well as development on privately-owned, currently unprotected land in the watershed.

In view of historic commitments to the River and its watershed ecosystem, the pre-recession pace of development within this watershed and evidence of ecological and water quality stress, at the suggestion of the chair of the Pine Barrens Commission, the Carmans River Partnership earlier this year drafted a proposal to the Commission and the Town of Brookhaven to develop a Carmans River Groundwater Watershed Preservation Plan. Both the Town and the Commission have recognized the wisdom of undertaking such a planning study at this time, and the Town has indicated a deep interest in leading this effort with the support of the Commission and the Carmans River Partnership. The Town and Commission are awaiting receipt of a report from the Suffolk County Department of Health Services delineating the groundwater watershed boundaries of the Carmans River. We have recently been advised that this report may be transferred to the Town by the end of October. We are confident that the 250-acre tract in question falls within this Watershed.

Upon receipt of this report, the Town with support from the Commission and assistance from other agencies should be in a position to undertake a detailed natural resource inventory of the watershed, to delineate the status of the undeveloped and unprotected parcels of land in the watershed, to consider the likely range of potential impacts of development based on current zoning on the groundwater and terrestrial resources of the watershed and thus the River itself and to consider alternative management strategies, including critical resource and sending area designations, down zonings, focused acquisitions, revisions of groundwater and River nitrate water quality standards and other measures, that will further the vision embodied in the Pine Barrens Act and Comprehensive Plan, the South Shore Estuary Reserve Comprehensive Conservation and Master Plan, the Town of Brookhaven's Open Space Plan and the State's Wild, Scenic and Recreational River designation and protect the County as well as the Town's and State's considerable investments in land conservation to date within the Carmans River corridor and, more broadly, its Groundwater Watershed.

In view of the status of this Carmans River Groundwater Watershed Preservation Plan, the timing of the County's request to the County Legislature to approve the resolution to declare these 250 acres of publicly owned land in the groundwater watershed as surplus and thus ripe for intensive private development is inauspicious, to say the least. We would therefore request that the County Legislature postpone any action on the resolution until this Carmans River Groundwater Watershed Preservation Plan study is complete.

In its draft resolution the County has taken the position that, while the proposed action that the resolution describes is a SEQRA Type I action, it will have no environmental impact such that no environmental assessment or EIS is required. We consider this legal posturing by the County to be legally questionable and, in light of the inestimable value of the Carmans River and its watershed resources, to be reprehensible.

The County's SEQRA-anemic position is premised, we fear, on contortions of logic and common sense. We could imagine that its logic might run along these lines:
"We are merely requesting the County Legislature to declare the Legacy Village 250-acre parcel that the County purchased with County taxpayer money to be surplus; such a declaration by itself has no discernible environmental impact; the fact that the County has gone through an elaborate RFP process of a massive residential, retail and commercial development of the site is an entirely independent circumstance that the County Legislature need not take into account in consummating its part of the County's transaction through declaring the parcel surplus; thus, the County

Legislature can turn a blind eye to the overall purpose of the surplus declaration and the commercial transfer contract to which the County is committed; further, even if one were to conjoin the surplus declaration with the contractual undertaking there is no discernible environmental impact that an EIS could describe and assess since the Town of Brookhaven has full powers to deny any application for a change in zoning required to bring the County's proposal to fruition; that the County resolution and contract will, of course, put no pressure on the Town of Brookhaven to take any zoning or land use action that it deems best; and that therefore the Town of Brookhaven is the proper entity to assume full responsibility for SEQRA compliance that the County eschews."

Each step in such a logic train is questionable. The conclusion is not credible and is inconsistent with the mandate of Section 617.7(c)(1) and (2) of SEQRA, in particular (c)(2) that provides: "For purposes of determining whether an action may cause one of the consequences listed in paragraph (1) (criteria for determining significance) of this subdivision, the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are ... (i) likely to be undertaken as a result thereof;..."

It is, moreover, bizarre for the County that owns this land today and has devoted more than two years towards the formulation of this project to pretend that the Town will be responsible for its shape, size scope, meaningful exploration of alternatives and thus its environmental impacts on the Carmans River and the water and terrestrial resources of its groundwater watershed. Furthermore, while the County's posture pretends that the Town has an entirely free legal, as well as political and technical, landscape to shape the use of these 250 acres, it is not evident that the Town will have the practical option of halting any and all development of this tract, once it is transferred, even on a contingent basis, from public to private ownership, as though it were still publicly owned land.

If the transfer to Legacy Village is contingent upon approval by the Town of a change in zone that is substantially in compliance with the plans that the County has described, the Town will be under enormous pressure to act in accordance with the wishes of the County and, through a surplus resolution, the County Legislature. Nor is it clear that the Town will retain an entirely free hand to deny the change of zone that the county anticipates and/or to zone it for conservation resource purposes as though it were publicly-owned land. If they Town were to do so, would the property still be deemed "surplus"? Is the County prepared to hold the Town harmless and free from all claims for damages or takings if the Town so acts? We can't imagine that the County will be a neutral spectator to the Town's consideration of an application for change of zone from the new private owners. The County will be the de facto if not the de jure applicant.

In our view, therefore, the County should prepare a comprehensive EIS before the County Legislature takes any action on the proposed resolution that would fully investigate at least three alternatives: 1) retaining the parcel as County land that would become part of the Carmans River Watershed Preserve; 2) a development based on current Town zoning; and 3) the County's proposed massive residential, commercial and retail development with attendant new roadway and parking capacity. Further, the evaluation of impacts should take place with the realization that the long term use of this highly sensitive tract should be consistent with and further the goals of the Town and Carmans River Groundwater Watershed Preservation Plan as that Plan evolves over the next six to 12 months. In our view, the Carmans River and its groundwater watershed system are already suffering from high nitrate levels that any development as the County proposes will intensify.

While we applaud the County's desire to facilitate construction of affordable housing, we do not believe that a delay in consideration of this resolution would affect the supply of such housing given the recent decline in housing prices and foreclosure rates. Further, embracing a full EIS process at this stage would give the County and the Town an opportunity to consider fully other alternative locations, such as those to the south in the north Bellport region, among others, an opportunity that approval of the resolution by the County Legislature would effectively foreclose.

We would request an opportunity following any action that CEQ may take to review any formal legal SEQRA documentation and analysis that it or legal counsel for the Suffolk County Legislature develops for consideration of the Legislature.

Yours very truly,

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