

Jeffrey L. Bragman, P.C.  
15 Railroad Avenue, Suite 1  
East Hampton, New York 11937

### Public Scoping Comments

Name of Action: East End Ventures, LLC (Michael Maiden)  
Site Plan for 1,3,5 Ferry Road Apartments  
SCTM# 0903-2-2-4.2, 4.3 & 6

SEQRA Status: Type I Action

Scoping: A public scoping session to identify issues of concern was held before the Planning Board (the Lead Agency) at the Sag Harbor Village Hall, Main Street, Sag Harbor, NY on September 23, 2008 at 7:00 p.m.

Description of Action: The Proposed Action is the demolition of the existing structures (Harborview Professional Center and one story concrete building), to construct a 3 story apartment building to contain eighteen (18) individually-owned units on property located at 1, 3 and 5 Ferry Road in the Village of Sag Harbor. As part of this proposal the applicant intends to provide thirty-six parking spaces for the occupants of the building, and intends to construct an in-ground swimming pool on the western end of the building. Accessory to the residential units, the applicant intends to construct a docking facility to allow eighteen (18) boat slips, or one per unit. According to the plans, each slip is intended to have water and electric service.

Project Location: 1, 3, & 5 Ferry Road, Village of Sag Harbor, NY  
SCTM# 903-2-2-4.2, 4.3 & 6

This memo summarizes comments of Save Our Waterfront made at the hearing to receive public scoping comments.

#### ADVANCE \d 51. **SITE PLANS/MAPS/SURVEY**

The applicant should provide maps that depict only one or two relevant issues per map, so that materials are clear, readable and readily scalable.

**Ownership:** One map should depict the overall limits of the property with limited additional information. This map should contain a metes and bounds description showing property lines, underwater lands, existing rights of way, adjacent waters and the shoreline. The extent of applicant's title to the lands which are subject to review is a critical component in evaluating lot area and lot coverage.

**Wetlands:** The applicant should prepare a map depicting all identified wetlands on and off site. Dimensional and wetland setbacks should be clearly shown.

**Railroad Grant:** The applicant should submit a separate map of the railroad grant, clearly depicting the area of the grant with a metes and bounds description, and showing the metes and bounds of the area purportedly reverting to private ownership.

The applicant should also provide a certified title report clearly demonstrating record ownership of the land subject to the grant.

In connection with a map of the railroad grant, the applicant should provide a narrative which specifically addresses the Local Waterfront Revitalization Plan (LWRP) narrative contained in Section 2 at pages 30-36 which discusses the grant and its reversion to public ownership.

**Coverage:** The applicant should submit a separate site plan/map/survey depicting lot area in accordance with Village of Sag Harbor definitions, as a basis to determine total coverage. This map should contain a legend which refers explicitly to Village Code provisions defining "lot area", "lot coverage" and "structures."

In the event that the applicant claims that parking structures are not included in total coverage, the issue should be referred to the Zoning Board of Appeals, on appropriate public notice, to consider an interpretation.

**Zoning District Change:** The applicant should submit a narrative which discusses the 1992 refusal of the Sag Harbor Village Board to change the existing zoning from a business classification to a marina classification. This narrative should explain why its proposal to create a condominium with an associated marina is consistent with that prior action. The narrative should include available minutes of Village Trustee discussions and resolutions.

**Agency Jurisdiction:** The applicant should submit a site plan/map/survey depicting the delineations of all involved agency jurisdictions. This map should clearly depict the subject premises and the lines of agency jurisdiction for shoreline areas and underwater lands. The map should clearly distinguish areas subject to control by the State of New York and by the Trustees

of the Town of Southampton to the west of the 114 bridge abutment. This map should also show the geographic extent of the Sag Harbor Village LWRP jurisdiction. It should also show limits of the Office of General Services jurisdiction for underwater lands.

**Public Land:** The applicant should also submit a site plan/map/survey depicting the subject premises together with adjacent Village owned parkland clearly labeled and delineating the boundaries and relationship between the two properties. Adjacent streets, shorelines and properties should be depicted to show the environmental setting of the properties.

**Proposed Dock Plan:** The applicant should submit a site plan/map/survey showing the proposed dock plan together with existing navigation channels and dredge spoil sites. This map is a necessary component to evaluate impacts from the proposed dockage plan. The map showing navigation channels should also contain notations showing ownership of foreshore areas and underwater lands.

**Alternatives:** All potential alternative locations and configurations which can mitigate identified potential adverse impacts should be separately mapped. Maps should include dimensions, coverage calculations wetland setbacks and all other zoning considerations.

## **2. DOCK SLIP IMPACTS**

The applicant should submit a narrative demonstrating whether the development of a dock is appropriate given the proposed high intensity development of the site. The narrative should specifically refer to Local Waterfront Revitalization Plan policies. It should also address the Village Board of Trustees 1992 refusal to change zoning from business to marina use.

The narrative should describe all proposed uses of the docks, i.e., fueling, discharge, electricity, repairs, dry-dock, etc. The narrative should also address all discharge issues relating to effluent of any kind, gasoline and petro-chemicals as well as other related environmental effects such as necessary dredging, the location of dredge spoil, issues of shoaling and scouring. The discussion should include impacts to the shoreline, vegetation and fish and shellfish populations. The necessity for a pump-out station should also be addressed.

The narrative should explain precisely how the proposed dock use differs in terms of impacts from a typical marina use.

The narrative should also include a discussion of compatibility of placing a private dock in a location which requires public access to the foreshore areas. Detail should be provided to demonstrate efforts to mitigate the lack of access and accommodate public access.

The applicant should provide a construction narrative detailing the size and length of the dock, and the construction manner, method and materials. The narrative should specifically refer to LWRP recommendations regarding length and depth of docks.

The narrative should also include issues of safety and traffic, specifically referring to the traffic conflict potential west of the 114 bridge which is detailed in the LWRP Section 2 at page 131.

The narrative should address whether the creation of docks consists of a principal or an accessory use under zoning, together with a discussion of applicable precedents for the use. To the extent necessary, a referral should be made to the Zoning Board of Appeals for an interpretation.

### **3. PUBLIC RIGHTS/FORESHORE ACCESS/UNDERWATER LANDS**

The applicant should specifically address LWRP Policy 7.5 which requires an assurance of public access to public trust lands and navigable waters. The narrative should include a discussion of the location of foreshore areas which constitute public trust lands adjacent to and a part of the subject property. It should also include a discussion of the title to underwater lands, and the public's rights of passage and use of the foreshore and underwater areas.

The narrative should specifically detail the manner in which its development plan *enhances* public rights to foreshore and underwater land use. It should also address the public interest in preserving and conserving foreshore areas and underwater lands against pollution and infringement by private property owners, with specific reference to those aspects of the site plan which promote these policies.

The narrative should also include a discussion of the potential for creating lateral access from adjacent lands owned by the Village of Sag Harbor. The applicant should describe the manner in which the proposed site plan reasonably protects the public interest and right of access, particularly with reference to the adjacent public property. Specific reference should be made to the LWRP policy which requires the maintenance of public interest and the recovery from private ownership of public trust lands.

### **4. TRUSTEE RIGHTS**

The applicant should provide a narrative which examines the location of Southampton Town Trustee jurisdiction. As to Southampton Town Trustee lands, the applicant should provide a historical narrative of any grants over such lands adjacent or in the vicinity of the subject property, which explicitly protect public access and public use. This narrative should be based

upon a records search of Southampton Trustee approvals, including historic approvals which confirm public trust and public access rights. Among the Trustee decisions which did so are the Moller Dock decision, dated April 16, 1940 at Page 365; the Remkus Landing decision, dated April 1, 1941 at Page 408; decision regarding other Trustee lands near the North Haven Bridge abutment, dated February 1, 1941 at Page 681. The narrative should include visual illustrations which clearly delineate public trust lands over which public access remains currently available.

## **5. LEGAL TITLE**

The applicant should be required to provide a certified title report demonstrating ownership within the metes and bounds description provided for Suffolk County Tax Map lots 4.2 and lot 6.0, specifically addressing ownership of the SR 114 Right of Way. The narrative should specifically refer to Suffolk County Tax Maps which reflect the applicant's non-ownership of Route 114 as well as prior surveys including prior surveys of the applicant's grantor, the Diner family, in which SR 114 is marked as property "to be conveyed to the Village."

## **6. PUBLIC LANDS/WINDMILL PARK**

The applicant should be required to provide a narrative which discusses the functionality of the Windmill Park property adjacent to the subject premises. The applicant should specifically discuss ways in which the site plan and/or alternatives can enhance public access and enhance visual access so that the public property is more readily recognized and usable as such.

A narrative discussion of Alternative Designs should be submitted for designs which integrate and enhance the project site with the nearby open space availability of the Windmill Park property. The applicant should address the issue of visual accessibility, the creation of green space on the project property to extend and enhance visual accessibility, and the creation of actual access to the Windmill Park property.

The narrative should discuss as alternatives, site plans which create a more constructive and dynamic relationship with the adjacent Windmill Park land. In other words, project designs should be presented which acknowledge the use and amenity of the Village property and which enhance both the project land and the adjacent village land, and enhance its public access value by the creation of enhanced view sheds and green space.

The narrative should also specifically address the LWRP goal of "maintaining and enhancing natural areas, open space and recreational opportunities." See, LWRP Part III, Items 1.3b, c. The narrative should explain the manner in which the current design, which effectively totally covers the property with building and/or structures, complies with the above LWRP policies.

## **7. NATURAL FEATURE ASSESSMENT, SHORELINE SITE ASSESSMENT**

The applicant should prepare a narrative which assesses the historic and current state of shoreline vegetation and habitat. It should provide specific documentation about the historic condition of the shoreline in its natural state, specifically referencing the existence of a salt marsh fringe and/or other vegetation in its natural state. The narrative should also discuss the history of the construction of rip rap over a part of the shoreline. Permitting documents should be provided to the extent they are available.

In discussing its preferred site plan, the applicant should explain how the current proposal minimizes adverse impacts of redevelopment and avoids alteration of the shoreline. This discussion should specifically reference the applicant's proposal to construct some 500 feet of retaining walls and impose massive change to the natural contours of the land by elevating the building site.

The narrative should also include the discussion of alternatives to create and/or restore more natural drainage features which would restore the shoreline to its natural condition as a means of dealing with storm water runoff. This part of the narrative should also discuss LWRP policies which favor the creation of natural drainage features. The discussion should include a description of "compensatory mitigation," another policy contained in the LWRP which suggests the restoration of former wetlands and natural features as a means of minimizing impacts from redevelopment. See, LWRP III at Page 25. The discussion should include a clear visual depiction of the drywells and other drainage structures required on site by the current proposed plan, and natural drainage features which could be employed in the alternative.

## **8. PRESERVE AND RESTORE NATURAL PROTECTIVE FEATURES/MINIMIZE INTERFERENCE WITH NATURAL COASTAL PROCESSES**

The applicant should prepare a narrative which describes the ways in which its proposed site plan *preserves and restores* the natural protective features on site and minimizes interference with natural coastal processes. This discussion should specifically reference this requirement, contained in LWRP policies 4.2 and 6.1.

The applicant should explain how its proposed project location, configuration and construction methods, employing cut and fill and retaining walls, will reverse damage to the natural shoreline and avoid alterations of the shoreline in its natural state, as required by LWRP policies. Cut and fill calculations should be included in the narrative, including a conversion into typical dump truck sized loads, as well as site plan maps or diagrams elevations clearly contrasting existing natural grade and elevation and final construction grade and elevation.

The applicant should specifically explain the necessity to continue the use of rip rap shore hardening in light of low-wave action at the site. Tide and wave action historical and quantitative data should be presented. The narrative should also include a discussion of alternative use of bio-logs and other natural materials, including the planting of wetland grasses to eliminate rip rap and restore a natural wetland and shore line habitat.

## **9. ASSESSMENT OF WATERS AND NATURAL POPULATIONS**

The applicant should submit quantitative data which establishes a historical range and a current baseline assessment of the quality and quantity and constraints of adjacent waters, and their natural populations. The narrative should focus on the quality of adjacent water habitat and the historic changes to natural populations of fish, shellfish, turtles and nesting coastal birds which it hosts. The narrative should specifically address three aspects of that habitat: the surface habitat, the benthic, or bottom habitat, and the shore edge habitat.

The narrative should include an inventory of the natural populations and should specifically address the manner in which the proposed site plan, size, scale and location protect and restore the quality and function of the Harbor eco-system as required by the LWRP, including Policy 6 of the LWRP.

The narrative should include a historical assessment of the above described populations. It should also discuss the impacts of the project upon seasonal shellfish closings, with a focus on how the site plan would mitigate site and shoreline disturbance to protect against the loss or further degrading of these resources in accordance with LWRP policies. The focus of the narrative should be to establish a baseline inventory and assessment of the waters and natural populations against which potential impacts can be measured.

## **10. SITE DISTURBANCE ISSUES**

The applicant should provide quantitative calculations demonstrating the total amount of cut and fill proposed in the current site plan. The narrative should specifically refer to the 500 feet, plus or minus, of retaining walls which are required and the specifics of the proposed changes in elevation. The applicant should address LWRP Policy 6.2 which requires that projects be designed with the least possible impacts.

Site disturbance should also address the presence of clay soils on site. Test borings should be submitted showing the disbursement of clay soils on site. The narrative should also include a site soils analysis map, with particular reference to the presence and location of clay. The

narrative should address the potential impacts from clay instability, and drainage constraints for surface and sub-surface waters.

Alternative designs should be presented which reduce site disturbance to minimize impacts to the natural shoreline, either currently or historically present on the site. Alternatives should be proposed to reduce the loss of shoreline and habitat and impacts to populations. Alternatives should detail design features which would enhance shoreline, habitat and populations and should include reductions in size, alternative designs, more compact configurations and significant reductions in the density of units.

In connection with the narrative on site disturbance, the applicant should be required to provide adequate test hole data to establish seasonal high groundwater elevations. Currently, the only data provided was a single July test hole which is inadequate to disclose seasonal highs.

Alternatives should also address retaining natural topography and indigenous shoreline vegetation. The narrative should also address the specific way in which the site plan avoids fragmenting existing open space.

## **11. VISUAL IMPACT ASSESSMENT: ARCHEOLOGY**

The location of the site on a sheltered beach along a once productive inlet means that there potentially exist historic and pre-historic resources. Archeological literature suggests pre-historic and contact-period Native American habitation is often located near such coastlines.

Also, ship hulks were used in later years to stabilize shorelines and water levels have risen. The hulks themselves may contain artifacts of interest. Also, this type of activity further suggests that archaeological resources may well be deeply buried at this site.

The site also has a history of use as a railroad terminus, engine house and railroad yard. These uses, too, suggest the possible presence of significant artifacts.

The applicant should undertake a full Phase One Archeological Survey, not just a literature search. The Phase One Survey should include test pits and the input of a geomorphologist to determine the likelihood of locating deeply buried artifacts. The archeological Phase One should also include underwater archeology.

## **12. VISUAL IMPACT ASSESSMENT: VIEWSHED ANALYSIS**

The site proximity to coastal features, the historic district, and publicly owned parkland on one of the most heavily traveled road corridors in the Village, establishes a potential for significant adverse visual impacts. Accurate digital 3-D visual simulations should be presented which are scientifically based and verifiable.

**Viewpoints:** multiple viewpoints must be employed to develop a viewshed map. Some of the likely viewpoints are

- Views heading east and west over the North Haven-114 Bridge, including approaches and mid-point views; ADVANCE \d 5
- Lateral views from 114 and from West Water Street;
- Views from Main Street; ADVANCE \d 5
- Views from Long Beach ;
- Views from Windmill Green; ADVANCE \d 5
- Views from Windmill Park ; ADVANCE \d 5
- Views from the wharf ; ADVANCE \d 5
- At least 3 locations on the bay; ADVANCE \d 5
- Views from the post office.

A Comprehensive Viewshed Analysis that is reliable and not merely a P.C. “Photoshop” view simulation must be submitted. The digital modeling must employ accurately scaled plans and include an accurate model of the topography. Input should also include surrounding buildings and structures.

The modeling program must be GIS based, that is based upon a Geographic Information System. Elevations must be digitized using electronic shape files. The study must provide sufficient information to verify the inputted data for accuracy. This type of modeling is readily available by appropriate design and engineering concerns. Costs are reasonable given the size and scale of this proposal, which can be estimated to be in the range of \$25 million.

A narrative of the massing and architecture of the proposed structure must be submitted. Details of its generic “garden apartment style” should be described and explained with specific references made to the mid-19<sup>th</sup> Century vocabulary of the architecture of Sag Harbor. This vocabulary should include the use of brick and subtle detailing on notable Sag Harbor Village buildings. The narrative should explain how the proposed building’s blockish mass, repetitive gable roofs and balconies comport with the architectural vocabulary of Sag Harbor.

The applicant should discuss alternative massing that does not “hog the view” disclosed by the various viewpoints. The narrative should indicate how building design provides cues about Sag Harbor’s architectural heritage. The applicant should also submit a narrative and inventory of the best forms of Sag Harbor architecture with specific reference to the Gingerbread House, the American Hotel and the Whaler’s Church and other signature buildings in the Village. The size, mass, scale, materials, and the location on site should be discussed in this context.

Alternatives must be considered which explore smaller revised designs, lower height, lower density, more compact footprint, and relocations on site. Accurate GIS based digital visual simulations of alternatives should also be provided.

### 13. **WATER QUALITY IMPACTS**

Policy 5 of the LWRP requires that projects protect and improve water quality. The applicant should provide a narrative describing these aspects of the proposal which would minimize non-point pollution on coastal waters. The narrative should specifically address whether the creation of a docking field and a swimming pool fulfill these policies.

In addition, the narrative should demonstrate the manner in which the design is intended to preserve natural features, minimize cut, fill and grading, retain the natural topography, minimize disturbance and stabilize vegetation, prevent an increase in runoff and maintain buffers of natural vegetation. All of the above factors are policies of the LWRP.

**Baseline:** The narrative should establish baseline facts of water quality in the immediate environs of the project. The applicant should use relevant Peconic Estuary monitoring results from two stations in Sag Harbor Bay as well as relevant DEC water quality testing results to present available and historical analysis on water quality and trends in water quality.

**Dilution Analysis:** The EIS should address impacts to water quality from the proposed dock/marina use applying the New York State DEC Dilution Analysis Method, which is a calculation to determine the maximum level of added contamination.

To the extent possible, quantitative data should address the easterly portion of outer Sag Harbor, which has previously been reported in the LWRP as an area of specific concern

In addition, the applicant should provide mathematical models for bacteria loading anticipated from the project runoff as proposed. These models should include quantitative storm water analysis demonstrating any increase in runoff or sediment supply.

**Tidal Action:** The EIS should contain a narrative addressing tidal action in the immediate environs of the property. It should specifically analyze the small narrow tidal strait immediately adjacent to the property, addressing the fact that the strait provides incomplete flushing of waters with a tidal range of feet.

**Seasonal Impacts:** The narrative should present quantitative and historic data on seasonal impacts to water quality, particularly from a cumulative development impacts point of view. Seasonal shellfish closings data and analysis should be presented.

#### **14. GROUNDWATER DEMANDS**

The EIS should provide a quantitative analysis of water demands and well capacity for the project.

The EIS should provide a narrative discussion of the use of enhanced setback buffers to attenuate the effects of construction. Specific reference should be made to available means for reconstituting lost physical conditions of the shoreline to create a more natural shoreline and buffer.

#### **15. WETLANDS**

The applicant should submit a narrative which addresses wetland standards in accordance with Sag Harbor Village Code Chapter 53 A.

To the extent that any development is located less than 100 feet from wetlands, the narrative should address the non-conformity. The narrative should discuss methods to minimize visual and other impacts to adjacent wetland areas and to enhance adequate visual access to a natural shoreline.

Finally, the narrative should discuss the ways in which the application proposes to conform with the natural topography to minimize wetlands disturbance. It should also discuss methods to minimize adverse impacts from necessary dredging and the creation of dredge spoils with a view toward minimizing changes in the bottom topography which would affect existing or historic wetlands.

The EIS should contain a narrative describing the extent to which the project complies or does not comply with applicable wetland standards. The narrative should include a discussion of the extent to which the project can be anticipated to adversely affect adjacent wetlands. The narrative should include a discussion of the ways in which the project is designed to preserve natural vegetation within 75 feet of mean high water or the upland edge of brackish fresh or tidal wetlands. The discussion should demonstrate how the project has created setbacks which are the maximum possible with respect to existing wetland edges.

The narrative should also include a discussion of the use of supplemental wetland plantings to enhance the existing shoreline and historical wetland conditions.

## **16. POOL ISSUES**

The applicant should submit a construction narrative and construction plans demonstrating the means and methods to construct the proposed swimming pool. In addition, the narrative should address pollution issues such as decanting water, spillage, chemical use, the placement of drywells, and the adequacy of drainage. The applicant should also discuss the classification of the swimming pool as a commercial pool associated with condominiums as opposed to a private pool associated with a single family residence.

## **17. PARKING/TRAFFIC**

The applicant should produce a site plan which is limited to depicting all the proposed access points together with the three existing access points. The site plan should diagram all adjacent parking areas and streets and eliminate irrelevant detail so that a clear readable plan for traffic and access can be reviewed.

The applicant should submit a narrative explaining the coordination of the five access points within 240 linear feet. The narrative should also include traffic impacts on Route 11 and bottlenecks in the area, including traffic to and from Noyac.

A complete traffic engineering analysis should be submitted showing traffic and circulation analysis, an alignment analysis, traffic counts and trip generation calculations based upon quantitative evidence and employing standard industry calculations. Impacts to existing levels of service (LOC) should be examined.

## **18. SEPTIC EFFLUENT DISCHARGE**

The applicant should submit quantitative documentation about the adequacy and historic capacity of the Village Sewage Treatment Facility. The analysis should include a quantitative analysis of the cumulative impacts of condominium development within the Village of Sag Harbor.

The narrative should also assemble and analyze discharge data from the Village Treatment Facility including bacteria loading test result data off Havens Beach and other areas

which have been historically monitored to measure impacts to adjacent waters from discharge from the facility.

Dated: East Hampton, New York  
September 29, 2008