STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1010

In the Matter

- of -

the Proposed "Community" Designations for Two Locations Within the Recreational Segment of the Peconic River Corridor, in Suffolk County, New York, Within the Wild, Scenic and Recreational Rivers System Pursuant to Article 15, Title 27 of the Environmental Conservation Law ("ECL") and Part 666 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"),

- by -

the Town of Riverhead, Suffolk County, and the County of Suffolk, New York.

COMMISSIONER'S DECISION AND ORDER

January 12, 2010

COMMISSIONER'S DECISION AND ORDER

This administrative proceeding presents a question of first impression for the Department, namely, whether to designate specific localities as "communities" within a river area that has been classified "recreational" by the Wild, Scenic and Recreational Rivers Systems Act ("WSRRSA").

Statutory and Regulatory Background

The WSRRSA, enacted in 1973 (L. 1973, c. 400) and contained in Article 15, Title 27 of the Environmental Conservation Law ("ECL"), is primarily a land use and control law administered by the Department and, in certain instances, by the Adirondack Park Agency (see ECL §§ 15-2701 and 15-2705). An express purpose of the WSRRSA is to preserve certain selected rivers of the state in free-flowing condition, and to protect those rivers and their immediate environs "for the benefit and enjoyment of present and future generations" (ECL § 15-2701[3]).

In 1986, the Department promulgated regulations to implement the provisions of the WSRRSA in Part 666 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"). The WSRRSA regulations in 6 NYCRR Part 666 were later amended by the Department in 1994.

Together, the WSRRSA and 6 NYCRR Part 666 regulations are designed to protect and enhance the conditions of designated river corridors by managing and limiting development that has the potential to degrade a broad spectrum of natural, scenic, historical, ecological, recreational, aesthetic, botanical, geological, hydrological, fish and wildlife, cultural, archeological, and scientific values in those river corridors (see ECL § 15-2701[1] and 6 NYCRR § 666.1).

In furtherance of this, the WSRRSA and implementing regulations provide criteria for establishing the three classes or types of river areas eligible for inclusion in the protected system, *i.e.*, "wild," "scenic," or "recreational," as well as management objectives for and regulatory administration of each designated river (see generally ECL §§ 15-2707 and 15-2709, and 6 NYCRR § 666.4).

With respect to allowable land uses within the established boundaries of a river area classified as "recreational," ECL § 15-2709(2) provides as follows:

> "c. In recreational river areas, the lands may be developed for the full range of agricultural uses, forest management pursuant to forest management standards duly promulgated by regulations, stream improvement structures for fishery management purposes, and may include small communities as well as dispersed or cluster residential developments and public recreational areas. In addition, these river areas may be readily accessible by roads or railroads on one or both banks of the river,

> and may also have several bridge crossing and numerous river access points."

See ECL § 15-2709(2)(c) *(emphasis added)*.

When 6 NYCRR Part 666 was amended in 1994, the Department added, among other things, the definition of "community" (see 6 NYCRR § 666.3[m]), as well as a process by which the Department, consistent with the land uses allowed by ECL § 15-2709(2)(c), could "designate specific areas as communities" within recreational river areas (see 6 NYCRR § 666.6[b]).[1] The regulatory provision for "community" designation was intended to be less restrictive on land use than the "recreational" classification, and to permit development on lands in and around river area hamlets, villages and towns that existed at the time of WSRRSA inclusion.

The designation of a "community" under the WSRRSA regulations allows industrial, institutional, and commercial development within a "recreational" river area while providing specific restrictions on lot size and lot coverage, as well as

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[1] A regulation becomes effective 30 days after filing with the Secretary of State (see ECL § 3-0301[2][a]; Executive Law § 102[4]). The statute of limitations to challenge a regulation commences when the regulation becomes final and binding (see e.g. Matter of Essex County v. Zagata, 91 NY2d 447, 452-453 [1998]). Amendments to 6 NYCRR Part 666, including the addition of §§ 666.3(m) and 666.6(b), were filed with the Secretary of State on May 24, 1994. Thus, the statute of limitations commenced on June 24, 1994, and the time to challenge the current Part 666 regulations has long since passed (see Matter of Entergy Nuclear Indian Point v. New York State Dept. of Envtl. Conserv., 23 AD3d 811 [3d Dept. 2005], *leave to appeal dismissed in part, denied in part* 6 NY3d 802 [2006]).

standards on setbacks from the riverbank, screening from view of the river, wildlife corridors, water usage, groundwater protection, and open space (see 6 NYCRR § 666.13 - Table of Use Guidelines).

Accordingly, the Department's determination to designate a locality within a "recreational" river area as a "community" must be based on: (i) the specific density criteria set forth in 6 NYCRR § 666.3(m); and (ii) "natural, cultural and recreational features whose protection and preservation are necessary to accomplish the purposes of the" WSRRSA (6 NYCRR § 666.6[a]).

Proposals to Designate "Communities" in Peconic River Corridor

The Peconic River is located on the eastern end of Long Island, in Suffolk County, New York. The river forms the boundary between the towns of Brookhaven and Riverhead, as well as the border between the towns of Riverhead and Southampton. The Peconic is the longest river on Long Island, consisting of slow-moving fresh water until about the center of Riverhead where it becomes an estuary.

As relevant to this proceeding, the Peconic River was initially placed in the WSRRSA in 1985 as a river to be studied for future inclusion in the system. With the addition of paragraphs (2)(ff) and (3)(gg) to ECL § 15-2714 in July 1987, two segments of the Peconic River were designated, respectfully,

as "scenic" and "recreational" river classes under the WSRRSA by the legislature (L. 1987, c. 395). The "scenic" segment of the Peconic River is approximately thirteen and one-half miles in length (see ECL § 15-2714[2][ff]), while the "recreational" segment of the river is approximately seven and one-half miles in length (see ECL § 15-2714[3][gg]).

Subsequently, in accordance with ECL § 15-2711 and the then-provisions of 6 NYCRR § 666.7 (now § 666.6), Commissioner Jorling established, after a public hearing, final river corridor boundaries for the legislatively designated segments of the Peconic River (see Matter of the Adoption of Final River Corridor Boundaries for the Peconic River, Suffolk County, Commissioner Decision and Order, Sept. 18, 1990).

Pursuant to the provisions of 6 NYCRR § 666.6(b), the Town of Riverhead and the County of Suffolk each submitted separate proposals to the Department in September 2007 seeking the designation of boundaries for two distinct "communities" within the "recreational" segment of the Peconic River. Each proposal included specific delineated boundaries and supporting information relative to the "community" designation criteria set forth in 6 NYCRR § 666.3(m).

The Town of Riverhead's proposed "community" consists of a total area of approximately 135 acres on 93 parcels of real property within Riverhead that are comprised, almost entirely,

of a mixture of developed residential, industrial, retail, institutional, and commercial use buildings.[2] Nearly all of the development on the parcels within the Town of Riverhead's proposed "community" existed prior to the Peconic River's inclusion in the WSRRSA and the Department's implementing regulations. Moreover, portions of the area proposed for "community" designation by the Town of Riverhead are located within a recognized New York State Empire Zone, which is designed to encourage the siting and expansion of businesses in areas targeted for economic expansion.

The County of Suffolk's proposed "community" consists of an area of approximately 50 acres on one currently developed parcel of real property known as the Suffolk County Government Center Complex at Riverhead (Town of Southampton) comprised of existing office buildings, parking lots, access roads, lawn and landscaped areas.[3] The Government Center Complex site has been

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[2] Only seven of the 93 parcels of property proposed for "community" designation by the Town of Riverhead are currently not developed in some manner. The proposed "community" is located north of the Peconic River between Mill Road to the west and Grangebel Park to the east with the major portion lying north of State Route 25 between Mill Road and Raynor Avenue and south of Pulaski Street, with the remainder lying generally south of State Route 25 in the hamlet of Riverhead, Town of Riverhead, Suffolk County.

[3] The County of Suffolk's proposed "community" site is also known as the Evans K. Griffing County Center. It is located on the south side of Nugent Drive (County Road 94, also known as State Route 24), on the west side of East Moriches-Riverhead Road (County Road 51), in the hamlet of Riverhead, Town of Southampton, Suffolk County.

the seat of Suffolk County government since the 1950s and, as such, was developed prior to the Peconic River's inclusion in the WSRRSA and the Department's implementing regulations. Furthermore, only portions of the parcel that were previously developed or disturbed as part of the Government Center Complex are proposed for "community" designation; all naturally vegetated and undisturbed areas of the property were excluded from the County of Suffolk's proposal.

Notices of both proposals for "community" designation were duly published in the Department's *Environmental Notice Bulletin* ("ENB") on September 12, 2007. As lead agency for both proposals, the Department also published Negative Declarations pursuant to the State Environmental Quality Review Act (ECL Art. 8) in the September 12, 2007, ENB.[4]

The Department opted to hold a combined public hearing prior to making a decision to adopt, modify or reject the "community" designation proposals (see 6 NYCRR § 666.6[b]). Notice of the combined public hearing, scheduled for December 10, 2008, at the Riverhead Town Hall, was duly published in the Department's ENB on October 22, 2008.[5] Thereafter, in late October and early November 2008, notices of the combined public hearing were published in *The News Review,* the *South Shore*

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[4] See http://www.dec.ny.gov/enb/20070912_not1.html.

[5] See http://www.dec.ny.gov/enb/20081022_not1.html.

Press, *The Smithtown News*, and the *Southampton Press (Western Edition)* newspapers.

In accordance with the notices, a combined public hearing on the two "community" proposals was held at the Riverhead Town Hall on December 10, 2008. As a result of certain deficiencies with the public notices for the County of Suffolk's proposal, a second public hearing on that proposal was held at the Cornell Cooperative Extension in Riverhead on January 21, 2009. Written public comments on both proposals were accepted by staff of the Department until February 27, 2009.

Findings and Conclusion

Department staff prepared the attached summary of public comments, hearing report, and recommendation concerning the two proposals for "community" designation within the "recreational" segment of the Peconic River by the Town of Riverhead and the County of Suffolk ("Hearing Report"), which I adopt as my decision in this matter, subject to the following comments.

Based upon the record in this proceeding, the Town of Riverhead has demonstrated that its proposal should be modified, by excluding seven larger wetland-associated parcels from the area as discussed in the attached Hearing Report, and, as modified, should be adopted and designated as a "community" within the "recreational" segment of the Peconic River pursuant

to 6 NYCRR § 666.6(b). I find that the designation, as modified, complies with the density criteria set forth in 6 NYCRR § 666.3(m), and ensures preservation of the natural, cultural and recreational features of the protected river segment in accordance with the purposes of the WSRRSA and implementing regulations.

Furthermore, based upon the record in this proceeding, the County of Suffolk has demonstrated that its proposal should be adopted, as discussed in the attached Hearing Report, and should be designated as a "community" within the "recreational" segment of the Peconic River pursuant to 6 NYCRR § 666.6(b). I find that this designation complies with the density criteria set forth in 6 NYCRR § 666.3(m), and ensures preservation of the natural, cultural and recreational features of the protected river segment in accordance with the purposes of the WSRRSA and implementing regulations.

NOW, THEREFORE, having considered this matter and being duly advised, it is **ORDERED** that:

I. The Town of Riverhead's proposal for "community" designation pursuant to 6 NYCRR § 666.6(b), with boundaries modified and described in the attached Hearing Report, is hereby adopted as modified.

II. The County of Suffolk's proposal for "community" designation pursuant to 6 NYCRR § 666.6(b), with boundaries described in the attached Hearing Report, is hereby adopted.

III. The County of Suffolk shall, within thirty (30) days of the date of service of a copy of this order upon the County

of Suffolk, provide the Department with a metes and bounds description of the area designated as a "community" by this order.

IV. Upon the County of Suffolk providing the Department with a metes and bounds description of the area designated as a "community" by this order, and in accordance with the provisions of 6 NYCRR § 666.6(d), Department staff is hereby directed to file final boundary maps and narrative descriptions for the areas designated as "communities" by this order with the clerk of each county in which the designated portion of the Peconic River is located.

V. Upon the County of Suffolk providing the Department with a metes and bounds description of the area designated as a "community" by this order, and in accordance with the provisions of 6 NYCRR § 666.6(d), Department staff is hereby directed to notify affected local governments and state agencies of the areas designated as "communities" by this order, and to provide them with maps and narrative descriptions of the boundaries of each "community."

VI. Upon the County of Suffolk providing the Department with a metes and bounds description of the area designated as a "community" by this order, and in accordance with the provisions of 6 NYCRR § 666.6(d), Department staff is hereby directed to publish a notice of the establishment of both of the "community" boundaries established by this order in the *Environmental Notice Bulletin.*

VII. The final river corridor boundaries for the Peconic River, Suffolk County, established by Commissioner Jorling in September 1990, shall remain and continue with the inclusion therein of the two "communities" designated by this order.

VIII. Maps and narrative descriptions of the "community" boundaries established and designated by this order shall be maintained for public inspection and review at the Department of Environmental Conservation, Regional Headquarters, SUNY at Stony Brook, 50 Circle Road, Stony Brook, New York, and in its Central Office Headquarters located at 625 Broadway, Albany, New York.

For the New York State Department
of Environmental Conservation

By: _____
Alexander B. Grannis
Commissioner

Dated: January 12, 2010
Albany, New York

TO: Office of the Supervisor
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Attn: Robert Marsh, Bureau of Habitat

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Proposed Wild, Scenic, and Recreational Rivers "Community" Designations for the Peconic River Corridor, Suffolk County
Town of Riverhead Proposal and Suffolk County Center Proposal

Article 15, title 27 of the New York State Environmental Conservation Law (ECL) and Part 666 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR)

I. Background

Article 15, Title 27 of the Environmental Conservation Law (ECL), known as the Wild, Scenic, and Recreational Rivers (WSRR) Act, was enacted in 1973. The Peconic River Recreational corridor was legislatively designated on July 23, 1987, and final river corridor boundaries were set by Commissioner Jorling's Decision and Order of September 1990. The Department adopted regulations (6 NYCRR Part 666) in June 1989 to implement ECL Title 27 which were revised in June 1994. Generally, 6 NYCRR Part 666 severely restricts or prohibits industrial, institutional, and commercial development within designated river corridors. However, the regulations allow for areas within a recreational river corridor to be designated as a "Community." The "Community" designation provides some flexibility to allow for industrial, institutional, and commercial uses and development. The criteria for the designation of "Community" areas are enumerated in 6 NYCRR § 666.3 (m), which states:

> "Community' means an area of existing development delineated by DEC as part of the final boundary setting process that has a minimum of 30 acres and, at the time of legislative designation, a minimum 85% of the lots developed. In addition the area must have either lot sizes that average ½ acre or less or no less than 40% of the lots developed for industrial, institutional and/or commercial uses."

While the "Community" designation allows industrial, institutional, and commercial development, it also contains stringent requirements related to lot coverage, setbacks from the riverbank, lot size, screening from view of the river, wildlife corridors, water usage, groundwater protection, and open space.

II. Proceedings

Since the time the Department first established the "Community" designation in its 6 NYCRR Part 666 regulations in 1994, there has been a dialogue between the Department and the Town of Riverhead regarding potential areas to consider for a "Community" designation. These plans have progressively become more specific over the ensuing years and culminated with a proposal initially put forth by the Town of Riverhead in September 2007 (See Figure 1). The Town of Riverhead proposed to include a total of 134 acres on 93 lots in a "Community" designation.

However, based on the map submitted with the Town's proposal and using the Department's GIS system (June 2008 tax parcel data layer), staff calculated that there are 100 lots totaling 141.9 acres in the area proposed by the Town. This area includes that portion of the WSRR corridor within downtown Riverhead and primarily contains lots that are partially or completely developed with a mixture of residential, industrial, institutional, and commercial uses.

Similar to discussions with the Town of Riverhead, Suffolk County was involved in a dialogue with Department staff about the potential for designating the Evans K. Griffing County Center in the Town of Southampton as a "Community." These discussions culminated with a proposal by Suffolk County in September 2007 (See Figure 1). The proposed area covers 49.6 acres and includes that portion of the County Center containing government buildings, parking lots, access roads, lawn, and landscaped areas.

In evaluating the Town of Riverhead and Suffolk County proposals, the Department completed a coordinated review under SEQRA and determined to have a public hearing to provide interested groups and individuals an opportunity to comment on both proposals for a "Community" designation. On December 10, 2008, a public hearing was held at Riverhead Town Hall in the matter of the applications by the Town of Riverhead and the County of Suffolk to designate two sections of the Peconic River Corridor as a "Community." A second hearing was held on January 21, 2009, for the Suffolk County application because the initial hearing notice published by the County was determined to be legally insufficient. Comments were accepted at both hearings regarding the County application. Written comments for both applications were originally scheduled to be received until Friday, January 30, 2009, but an extension of the comment period was granted until Friday, February 27, 2009, at the request of the Town of Southampton Trustees.

Twenty-eight people filled out the attendance sheet for the December 10, 2008, Public Hearing at Riverhead Town Hall. A total of fourteen people made oral statements, including presentations by the Town of Riverhead and Suffolk County. No one attended the January 21, 2009, hearing concerning the Suffolk County application. A total of twelve written comments were received by the Department prior to the extended deadline of February 27, 2009. Two letters expressed support for the "Community" designation, while ten expressed opposition. No additional comments were received after the close of the extended comment period other than a letter dated March 19, 2009, from Suffolk County responding to comments submitted by the Town of Southampton.

a. Summary of Support for "Community" Designations

The following are summaries of all comments provided on the proposals:

Town of Riverhead--Provided a power point presentation on the proposed change of designation for the 134 acre section of Downtown Riverhead. The Town pointed out that, of the 93 lots comprising the proposed "Community" area, only seven are not currently developed. In addition, approximately 50% of the developed lots are presently being utilized for commercial, institutional, or industrial uses. Portions of the proposed "Community" area are within a New

York State Empire Zone, which is designed to encourage the location and expansion of businesses in areas targeted for economic revitalization. The current Recreational classification of this area does not allow for these uses and, therefore, creates a conflict between Town zoning law and WSRR regulations. The Town asserts that this conflict is preventing existing building owners from rehabilitating or expanding their businesses. Besides the potential economic benefits of the "Community" designation, the Town stated that any new commercial development would have to meet new stricter Town stormwater management code and be required to connect to a wastewater treatment plant for the management of septic waste.

Suffolk County--Pointed out that the Riverhead County Center Complex has been the seat for Suffolk County government since 1955, well before the WSRR Act was enacted and before the implementing regulations went into effect. The County went on to note that its proposal contains only areas which were previously developed as buildings, parking areas, or turfed areas associated with the County Center complex. All naturally vegetated and undisturbed areas were left out of the area proposed for the "Community" designation as part of the County's application. In addition, the County pointed out that it has preserved approximately 1,159 acres of natural area within the Peconic WSRR boundary to the west of the County Center and an additional 1,500 acres adjacent to the WSRR corridor.

Assemblyman Marc Alessi--Expressed support for the "Community" designation because of potential economic benefits to the Town. Assemblyman Alessi indicated a belief that the regulations associated with a "Community" designation offered adequate support to protect the Peconic River resource.

Ron Abrams--A Consultant to the Town and Developers of Projects within the Town--Claimed that the existing regulations have prevented the modernization of storm water management infrastructure, replacement of failed septic systems, or mitigation measures that could result from approval of the proposed "Community" designation. Dr. Abrams states that the Act and WSRR regulations were intended primarily for the protection of rivers in upstate New York, and are not well-suited for Long Island. He also pointed out that the Department's regional office had previously issued permits for commercial development in the Peconic River corridor with the existing Recreational designation in place but no longer does so.

Councilman James Wooten--Town of Riverhead Councilman--Councilman Wooten asserted that the Town is suffering economic hardship because the Recreational designation prevents commercial businesses from rehabilitating or expanding.

Ms. Keeney--Town Resident and Permit Expediter--Spoke about the difficulties applicants have in obtaining permits from the NYSDEC. Supported the "Community" designation.

Mr. Goelz--Owns a Plumbing Supply Store West of the Proposed "Community" Designation--Would like to see the proposed "Community" designation boundary

expanded and shifted further west to include his lot. Expressed concern about not being able to expand his business.

Mr. Ciarelli--Attorney Representing a Local Property Owner West of the Proposed "Community" Designation in Downtown Riverhead--Would like to see the area proposed for the "Community" designation expanded and the proposed boundary moved further west.

Ms. Berry--Planning Designer and Architect with Peconic Green Growth--Supports the "Community" designation as long as it is implemented in a way that supports local businesses but protects the river resource.

Mr. Osman--Commercial Property Owner--Supports "Community" designation but would like to see the boundary expanded west to include his properties.

Mr. Sendlewski--Vice President and Chairman of the board of the Riverhead Business Alliance--Supports the "Community" designation and would like to see the boundary expanded further west.

Mr. Danowski--Local Land Use Attorney--Supports the "Community" designation and feels that the WSRR regulations hurt appraisal values of properties in the corridor.

b. Summary of Opposition to "Community" Designations

The following are summaries of all comments provided on the proposals:

Matthew Atkinson--General Counsel for the Peconic Baykeeper--Questioned the authority of DEC to enact the "Community" designation in the absence of an act of the State Legislature. Mr. Atkinson stated that unlike the Wild, Scenic, and Recreational designations, the designation of a "Community" was not established by the State Legislature in the WSRR Act. He went on to state that the "Community" designation would be inconsistent with the critical land protections identified by the Peconic Estuary Program. Mr. Atkinson submitted two letters, one dated December 10, 2008, the other January 30, 2008. The letters state that the Town should have looked at the build out potential under both designations and again questions the underlying legality of the "Community" designation. The letters also point out that the area proposed for the "Community" designation by the town includes large lots that feature significant freshwater wetlands, and question why those lots were included.

Ms. Skilbred--Group for the East End--Spoke about the importance of protecting the Peconic River and the potential impacts to the Peconic Estuary. Ms. Skilbred expressed concern about the potential precedent the proposed action could have with regard to the relaxation of protections for other state protected waterways. She asserted that the Town's application appeared to be incomplete because the Environmental Assessment Form contained numerous blanks. Ms. Skilbred also mentioned that the Department's SEQRA Negative Declaration was based on the fact that the re-designation did not entail a physical activity in and of itself. She also asserted that the Department should have looked at the build out potential under both designations and any and all potential impacts associated with the change in classification. She pointed out that the "Community" designation has

never been used before in New York State, and argued that, as such, unknown issues could arise such that a more detailed analysis is warranted. Ms. Skilbred stated that the Suffolk County proposal seems logical as it consists entirely of developed or disturbed land, and noted that, in contrast, the Town proposal includes a significant portion of naturally vegetated areas, some of which have been targeted for protection by the Peconic Estuary Program Land Protection Strategy. She also asserted that the Town's assertion that 92% of the lots are developed is misleading because many of the developed lots contain natural areas, and that the seven undeveloped lots are some of the largest in the area. It was recommended that overall undeveloped acreage be calculated for the proposed "Community" area. Finally, she mentioned that the existing sewage treatment plant is already overburdened and adding additional sewage from new development would add to the problem. Ms. Skilbred also submitted two letters. The first, dated 14 January 2009, essentially summarizes her testimony at the December 10, 2008, public hearing but also asks that the Department rescind its negative declaration [as per SEQRA-6 NYCRR § 617.7 (f)] and require the Town to prepare a DEIS to fully examine the long term potential impacts of the re-designation. A second letter, dated February 27, 2009, mentions that the Town's proposal lies within or adjacent to a Suffolk County designated Critical Environmental Area (CEA) under Article 8 of the ECL and 6 NYCRR Part 617. The letter also notes that, while the Town's Environmental Assessment Form acknowledges the connection to the CEA, the Department's determination of significance states that the area does not lie within a CEA. Based on this fact the letter again asks the Department to rescind its previous Negative Declaration and require that a Draft Environmental Impact Statement be prepared in conjunction with the application.

Town of Southhampton--The Town of Southampton submitted two letters objecting to the proposed "Community" Designation. The first, dated January 29, 2009, states that the Town of Southampton was never notified of the public hearing. It requests an extension of the comment period in order to examine potential impacts of the re-designation on water quality in Southampton Town waters which are downstream of the affected area. The second letter, dated February 27, 2009, reiterates the request for a build out analysis under both designations. The letter also claims that 6 NYCRR Part 666 regulations related to the "Community" designation are vague and requests clarification as to how future commercial and industrial uses would be regulated with respect to environmental performance standards to ensure the Peconic Estuary system is protected. The letter recommends leaving the current "Recreational" designation in place and requiring applicants to file variances, as outlined in 6 NYCRR § 666.9, when applying for commercial or industrial developments, as a preferable alternative to the "Community" designation. Finally, the letter requested that the Administrative Law Judge assigned to these matters extend the decision timetable so that the applicants or Department staff can develop a "river area management plan" pursuant to 6 NYCRR § 666.7/ECL 15-2711.

Citizen's Advisory Committee for the Peconic Estuary Program--The Citizen's Advisory Committee for the Peconic Estuary Program also submitted two letters. The first, dated January 29, 2009, objects to the proposed "Community" designation in the Town of Riverhead. The letter emphasizes the importance of water quality in the Peconic River relative to the protection of the ecological health of the Peconic Estuary. The letter also asserts that full build out potential under both designations should be analyzed, and that several large undeveloped lots which contain freshwater wetlands that connect to the river should not be included in the area proposed for the "Community" designation. The second letter, dated February 26, 2009, is a request for an additional, 45-day extension of the comment period. The Citizen's Advisory Committee for the Peconic Estuary Program advised that it is in negotiations with the Town of Riverhead for the Town to provide additional planning documents and zoning code amendments which could provide clarification of potential future land uses in the proposed "Community" area.

Anonymous Concerned Citizen--An anonymous concerned citizen sent a letter dated 11 February 2009 voicing concerns regarding the "Community" Designation. The letter cites the ecological importance of the Peconic River and the Peconic Estuary. It also states that sections of Riverhead's downtown, outside of WSRR jurisdiction, have a significant amount of unoccupied commercial real estate which should be developed rather than promoting new development in undeveloped areas in the "Recreational" corridor.

North Fork Environmental Council--The Department received an e-mail from a representative of the North Fork Environmental Council, who indicated that they would support the "Community" designation but only if eight listed criteria were met. Because several of the criteria cited were not addressed under the Town or County's proposals, the e-mail is being characterized as and grouped with those in opposition to the proposed designation. Some criteria which were not addressed include: the Town of Riverhead purchasing all lots on the south side of Route 25 or arranging for Transfer of Development Rights; the development/establishment of recreational trails to the south of Route 25; a prohibition against franchise businesses in the affected area; a proposal that there be a density neutral outcome for future development in the affected area; that 6 NYCRR Part 666 regulations for the "Community" designation be strictly adhered to with no variances granted; and that the designation be approved only if the change reduces pressure to develop the former Naval Weapons Industrial Reserve Plant (also known as EPCAL) site.

III. Staff Analysis and Conclusions

a. Public Comment

Many of the public comments and letters received, both in support of and in opposition to the "Community" designation, failed to specify whether they were directed at the Town of Riverhead application, the Suffolk County application, or if they were meant to address both. Based on the specific locations, projects, and potential impacts cited,

however, it is clear that the vast majority of comments received by the Department were directed at the Town of Riverhead proposal.

There were substantive comments made both in support of, and in opposition to, the proposed change of designation in the Town of Riverhead. Comments in support noted that the area proposed for re-designation is already significantly developed, and that approximately half of that development is commercial in nature. Commenters went on to state that the commercial zoning and almost all of the development predated the WSRR Act and implementing regulations. They noted that many of these businesses are dilapidated and/or rundown, and that portions of the affected area are included in the New York State Empire Zone program to encourage economic revitalization. The existing "Recreational" corridor designation does not permit expansion or significant rehabilitation of pre-existing, non-conforming businesses. Commenters asserted that approval of the proposed "Community" designation would allow such businesses to expand and rehabilitate existing substandard structures, and argued that improved sanitary/wastewater management, stormwater treatment, and naturally vegetated buffers could be required.

Comments in opposition to the Town of Riverhead's application for "Community" designation fell into several categories. One is the assertion by Counsel for the Peconic Baykeeper and representatives of several environmental organizations that no statutory authority exists for the "Community" designation, and that the Department exceeded its authority when it amended the 6 NYCRR Part 666 regulations in 1994 to create the "Community" designation, because the Wild, Scenic and Recreational designation categories were all established by legislative action. Department legal staff disagrees with this contention. The statute recognizes at ECL §15-2709 (2)(c) that "Recreational River Areas...may include small communities as well as dispersed or cluster residential developments..." Thus, staff maintains that the "Community" designation described in 6 NYCRR Part 666 merely formalizes these allowable uses. To ensure protection of river area resources, 6 NYCRR Part 666 includes provisions to require significant constraints on development in areas with a "Community" designation [see 6 NYCRR § 666.13 (K)(3)(i-xi)]. Additionally, the "Community" designation was enacted by regulation in 1994, was subject to previous public notice and comment requirements, and was not challenged within the applicable statute of limitations period.

Another comment indicated that, because the Town's proposed re-designation area is located in or adjacent to a Suffolk County designated Critical Environmental Area (CEA) under Article 8 of the ECL and 6 NYCRR 6, the Department should rescind its SEQRA Negative Declaration and require the submission of a DEIS. The "Community" designation proposed by the Town of Riverhead is not within a CEA, but the "Community" designation proposed by Suffolk County is within the Central Suffolk Special Groundwater Protection Area (SGPA). Staff considered the proximity of the area to the CEA when assessing potential impacts for both proposals and determined that a Negative Declaration was appropriate. In addition, staff determined that circumstances

described in the SEQRA regulations for amending a Negative Declaration [6 NYCRR § 617.7(e)] and rescission of a Negative Declaration [6 NYCRR § 617.7(e)] are not applicable in this case.

Several commenters who expressed opposition to the Town's application argued that the Department should have required the Town to undertake analyses of the full build out potential for the area affected under both designations. In considering this comment, staff observed that this would be difficult for the Town to do because of the uncertainty of the way in which the "Community" designation regulations would be applied to individual lots in the subject area. Various requirements in the 6 NYCRR Part 666 regulations (10% lot coverage, 500 foot setback from the river, and 100 foot setback from public roads) would likely mean that future developers of most of the lots in the proposed "Community" section would be required to apply for variances in order to advance projects in the area. It would be difficult, at best, for the Town to speculate what, if any, variances the Department might approve in the area. Therefore, predicting future build out of the subject area under either designation, with any certainty, would be problematic.

Another frequent comment offered by those in opposition to the Town's application was the inclusion in the subject area of several large undeveloped and naturally vegetated lots, some of which contain wetlands connected to the Peconic River. According to the Town, the lots were included in the proposed "Community" designation to maintain connectivity to commercially developed lots further to the west. Staff finds merit in the argument proffered by the opposition to the Town's proposal.

b. Technical Evaluations

Three technical questions are currently before the Department for each proposed "Community" designation. First, does the proposal meet the standards contained in 6 NYCRR § 666.3 for "Community" designation? Second, if the proposal does not meet the standard contained in 6 NYCRR § 666.3, is there an alternative proposal that could meet the standard? Third, since 6 NYCRR § 666.6(b) states that the decision to designate communities is at the Department's discretion, does the Department want to designate a specific area as a "Community" at the present time? The following subsections address each of these questions for the two proposals before the Department.

1) Suffolk County Proposal

Q1: Does the proposal meet the standards contained in 6 NYCRR § 666.3?

The regulations establish three criteria that must be satisfied for inclusion. First, the area must be a minimum of 30 acres in size. The Suffolk County proposal satisfies this criterion because the proposed area encompasses 49.6 acres. Second, the area must have a minimum of 85% of the lots developed at the time of legislative designation. The Suffolk County proposal satisfies this criterion because it consists of one lot that was originally developed in 1958 for institutional use. Third, the area must meet one of two criteria: the area has lot

sizes that average ½ acre or less, or the area has no less than 40% of the lots developed for industrial, institutional, and/or commercial uses. The Suffolk County proposal does not meet the average lot size criteria (1 lot at 82.7 acres exceeds half acre criteria), but does meet the minimum percent lot development criteria (100% of lots are developed for an institutional use).

Q2: If not, is there an alternative proposal that does meet the standards contained in 6 NYCRR § 666.3?
This question is not applicable because the Suffolk County proposal meets standards established in 6 NYCRR § 666.3.

Q3: Should the Department designate a specific area as a "Community?"
Staff supports a "Community" designation for the 49.6 acres proposed for inclusion by Suffolk County. The Suffolk County proposal only includes property that was developed long before the Peconic River Corridor was established. Suffolk County excluded all areas of natural vegetation and only included disturbed areas with buildings, paved parking surfaces, and turf. However, while staff believe the Suffolk County proposal should be adopted, Suffolk County should provide a metes and bounds description of the area they proposed for designation. While the map was adequate for making a recommendation, the detailed description is critical for implementing the "Community" designation. Finally, it should be noted that a "Community" designation merely creates a mechanism for allowing new or modified industrial, institutional, or commercial development. Any new development within a designated "Community" will still require a WSRR permit from the Department, where potential impacts on the river resources would be analyzed and addressed.

2) Town of Riverhead Proposal

Q1: Does the proposal meet the standards contained in 6 NYCRR § 666.3?
The regulations establish three criteria that must be satisfied for inclusion. First, the area must be a minimum of 30 acres in size. The Town of Riverhead proposal satisfies this criterion because the proposed area encompasses 141.9 acres. Second, the area must have a minimum of 85% of the lots developed at the time of legislative designation. The Department does not have records to determine accurately the percentage of lots that were developed on July 23, 1987. However, staff believes that the Town of Riverhead proposal satisfies the 85% criteria because 6 NYCRR § 666.3 (p) defines "Development" to include physical disturbance to the land as well as the act of subdividing the land. All of the lots contained in the Town's proposal were subdivided from larger lots prior to designation of the WSRR corridor. Third, the area must meet one of two criteria: the area has lot sizes that average ½ acre or less or the area has no less than 40% of the lots developed for industrial, institutional, and/or commercial uses. The Town of Riverhead proposal does not meet either of these criterion. The Town of

Riverhead proposal for including 100 lots that covers 141.9 acres leads to an average lot size of 1.4 acres[1]. Regarding the criterion for a minimum percent of lots developed for industrial, institutional, and/or commercial uses; the Town of Riverhead proposal only included a conclusory statement that "approximately 50% of the developed properties are commercial, institutional, and industrial," and did not provide a lot-by-lot accounting of use. Staff performed a lot-by-lot analysis and determined that 39 lots are currently in industrial, institutional, and commercial use according to definitions contained in 6 NYCRR Part 666 (See Figure 2). Thus, based on the Department staff's analysis, only 39% of the lots included in the Town of Riverhead's proposal are currently developed with industrial, institutional, and commercial uses, which falls just short of the 40% minimum required in the regulations.

Q2: If not, is there an alternative proposal that does meet the standards contained in 6 NYCRR § 666.3?

Department staff reviewed the Town of Riverhead's proposal, conducted an analysis of the current use of lots within the Town's proposed "Community," and believes that removing seven larger parcels from the proposed area will provide a modified proposal that would meet the criteria established in 6 NYCRR § 666.3(m) (see Figure 3 and Appendix A). Table 1 compares the Town of Riverhead's proposal with staff's modified proposal in terms of the number of lots and acreage. The parcels that staff proposes to exclude from "Community" designation are generally larger parcels (average 9.2 acres) that are either undeveloped or residentially developed. In addition, most of these parcels either contain, or are adjacent to, extensive wetlands associated with a tributary of the Peconic River (see Figure 4).

[1] The Town of Riverhead's submission indicates 93 lots on 134 acres, leading to the same average lot size of 1.4acres/lot

Table 1. Comparison of industrial, institutional, and commercial uses in two proposed "Community" designations for the Peconic River Wild, Scenic, and Recreational River Corridor, Suffolk County.

	Lots				Area			
	Riverhead[1]		Modified[2]		Riverhead		Modified	
	#	% of Total	#	% of Total	Acres	% of Total	Acres	% of Total
Industrial, Institutional, Commercial Use	39	39.0	39	41.9	52.2	36.8	52.2	67.5
Total	100		93		141.9		77.3	

[1] "Community" designation as proposed by the Town of Riverhead
[2] "Community" designation as proposed by the Town of Riverhead and modified by Department staff

Q3: Should the Department designate a specific area as a "Community?"
Staff supports a modified "Community" designation in the Town of Riverhead that allows commercial, industrial, and institutional development within areas with existing development of this kind. However, larger lots with residential development or undeveloped areas with extensive wetlands directly connected to the Peconic River should not be included in the "Community" designation (see Figure 4). Staff believes that regardless of the current percentage of lots in non-conforming uses within the Town of Riverhead proposal, larger undeveloped lots should not be included in an area with a "Community" designation. Thus, even if proponents of the Town's proposal provide an alternative to staff's lot-by-lot analysis of use that purportedly attains the minimum 40%, staff would not change its recommendation. The seven lots excluded from the Town of Riverhead proposal are larger undeveloped or residentially developed parcels that could benefit from WSRR regulation, with many containing extensive wetlands associated with a tributary of the Peconic River. Including these seven lots in a "Community" would not be protective of the river area resources.

Finally, while the "Community" designation would allow for commercial, industrial and institutional development that are presently prohibited under the existing "Recreational" designation, 6 NYCRR Part 666 regulations will still require that development proposals meet stringent requirements related to lot size, lot coverage, setbacks from the riverbank, screening from view of the river, wildlife corridors, water usage, groundwater protection, and open space [see 6 NYCRR § 666.13(K)(3)(i-xi)]. In many cases, requirements in an area designated as a "Community" are more stringent than other portions of Recreational River areas. Thus, staff believes that the modified "Community" will allow for some environmental improvements to existing areas with heavily developed

commercial, industrial, and institutional use within downtown Riverhead. As part of the WSRR permit process, mitigation could be required to improve existing developed areas immediately adjacent to the Peconic River.

IV. Recommendation

Staff recommends two areas within the Peconic River WSRR Corridor for a "Community" designation. First, the Department should adopt the Suffolk County proposal without change and include the portion of the Suffolk County Center containing existing areas of institutional development as a "Community." This recommendation is contingent on Suffolk County providing a metes and bounds description of the area for "Community" designation. Second, the Department should adopt a modification of the Town of Riverhead proposal, with 93 lots located north of the Peconic River within the Town of Riverhead designated as a "Community." (see Figure 3). Finally, the final boundary as set by Commissioner Jorling in 1990 should remain, with the two areas described above designated as "Communities."

Roy A. Jacobson, Jr.
Biologist 3 (Ecology)
Landscape Conservation Section
Bureau of Habitat
Division of Fish, Wildlife, and Marine Resources

Figure 1. Map depicting two proposed community designations for Wild, Scenic, and Recreational Rivers Corridor, Peconic River, Suffolk County

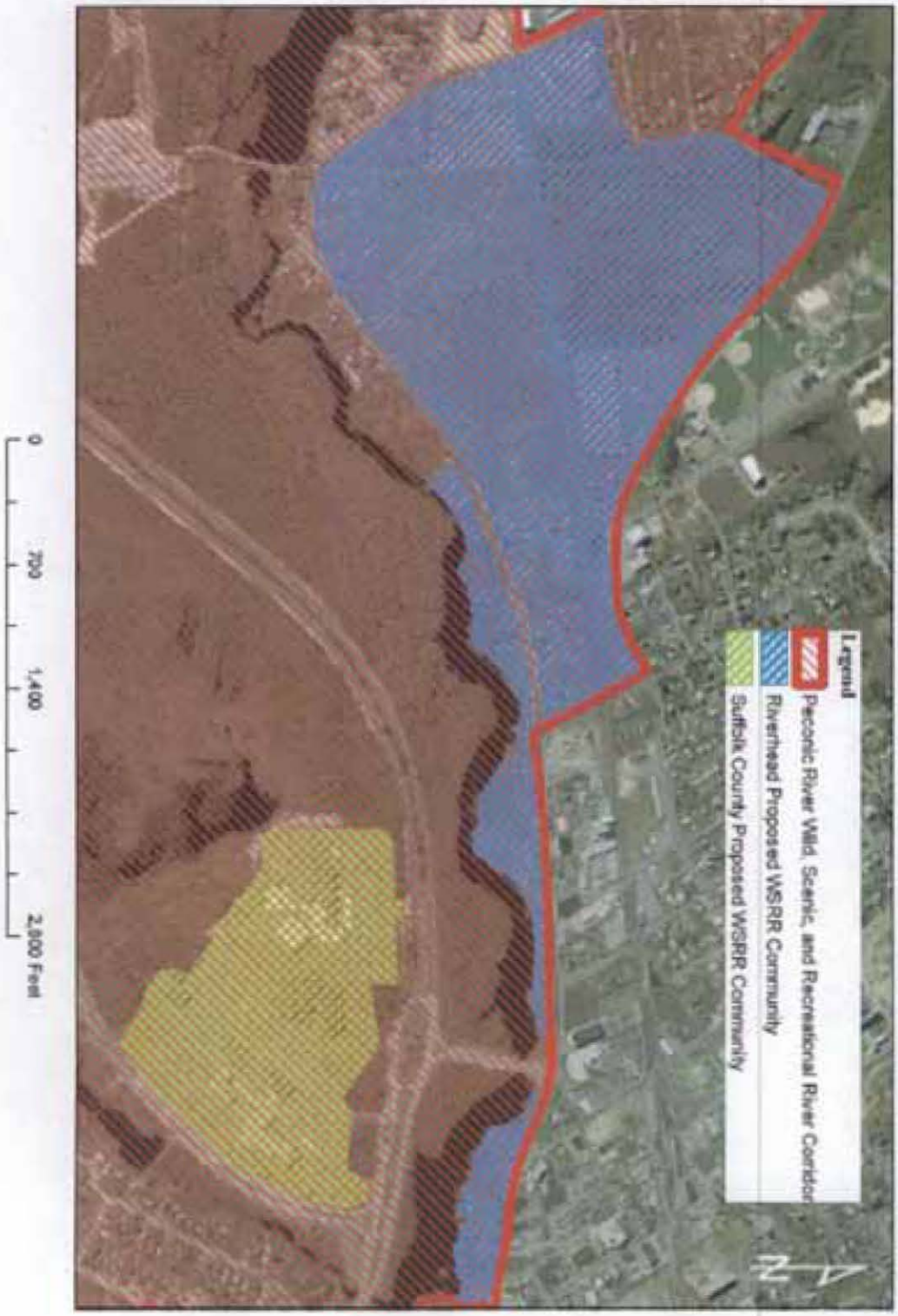


Figure 2. Map depicting parcels currently in industrial, institutional, and/or commercial uses within Town of Riverhead proposed community designation for Wild, Scenic, and Recreational Rivers Corridor, Peconic River, Suffolk County

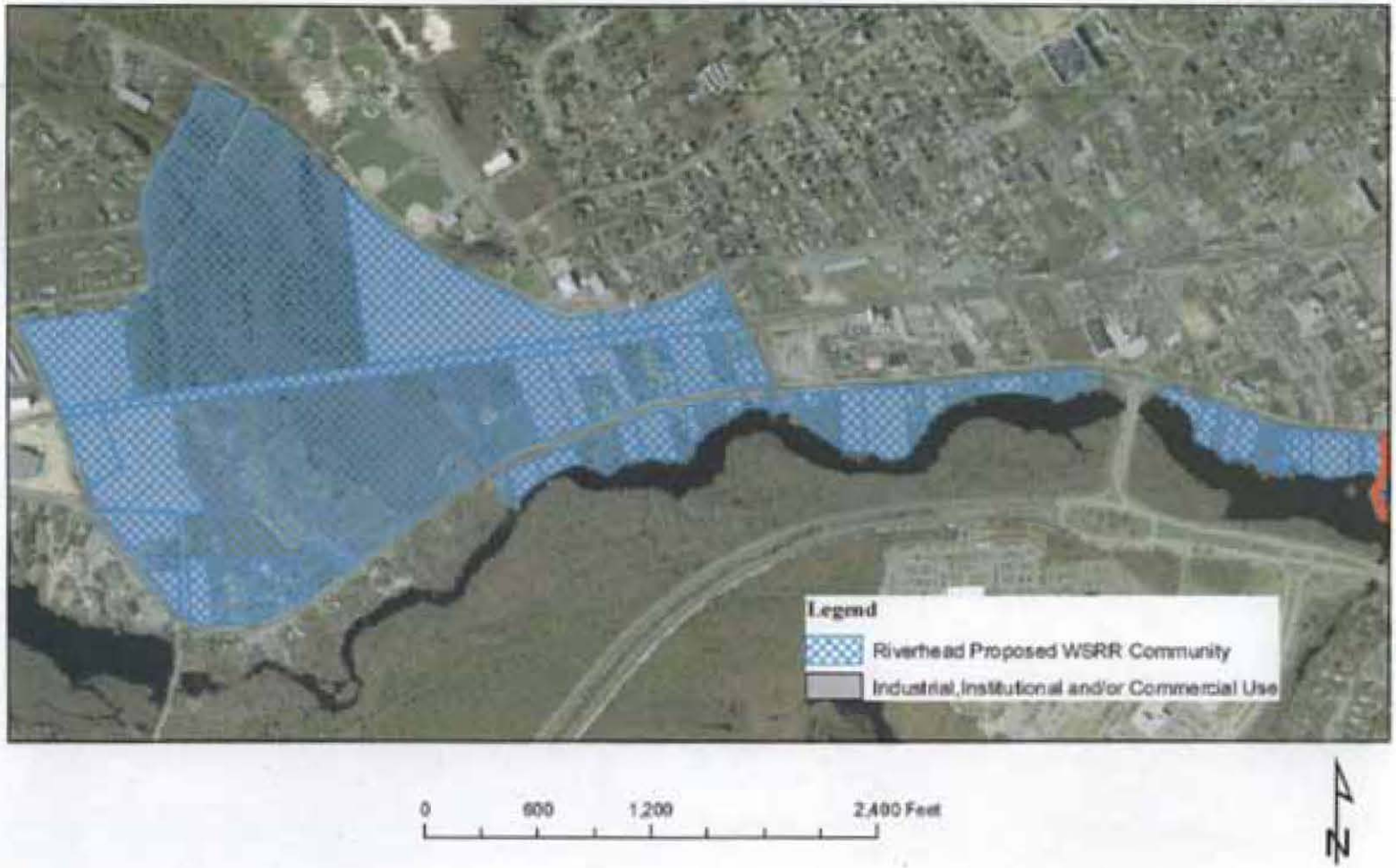


Figure 3. Map depicting proposed community designation for Wild, Scenic, and Recreational Rivers Corridor, Peconic River, Suffolk County

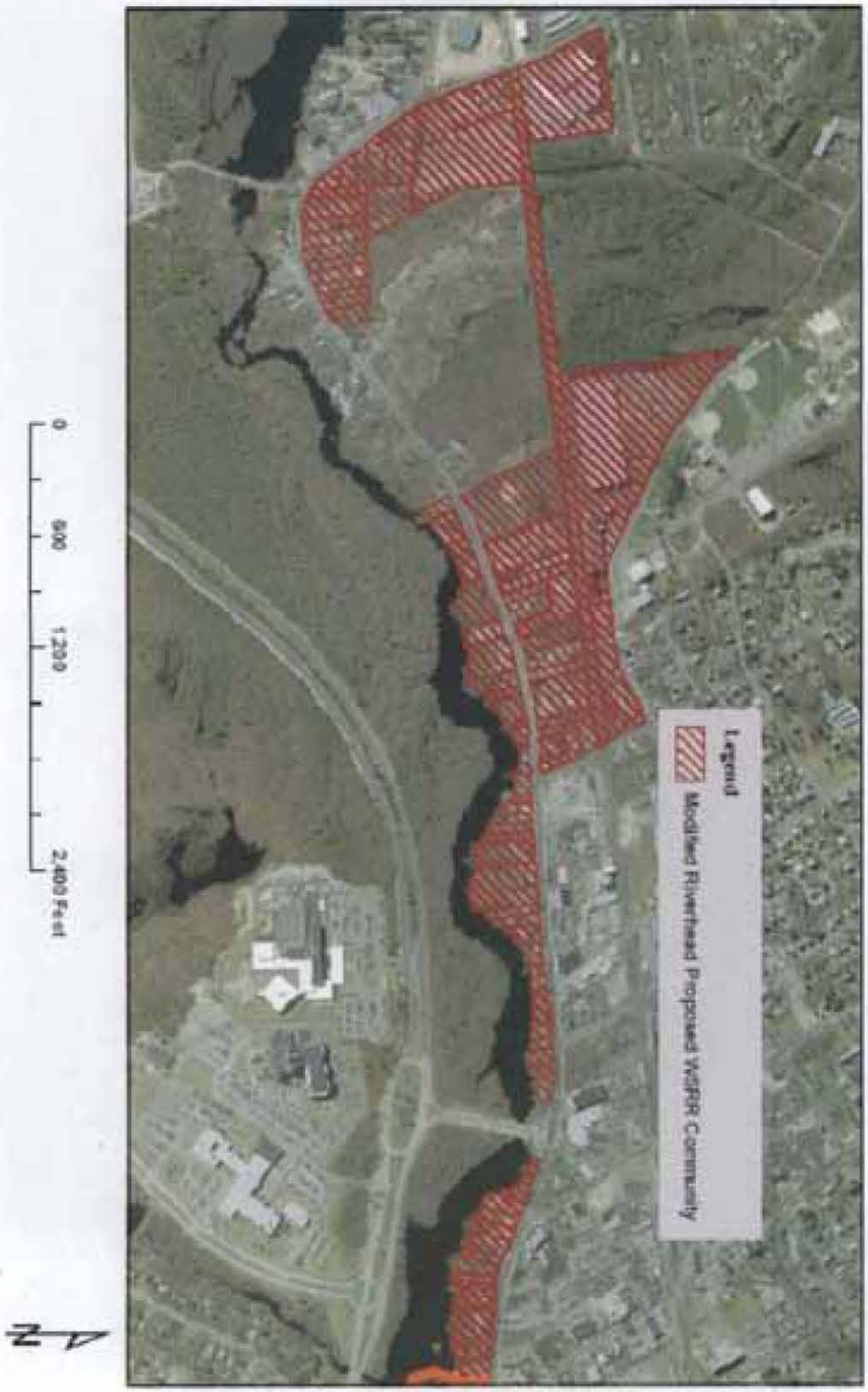
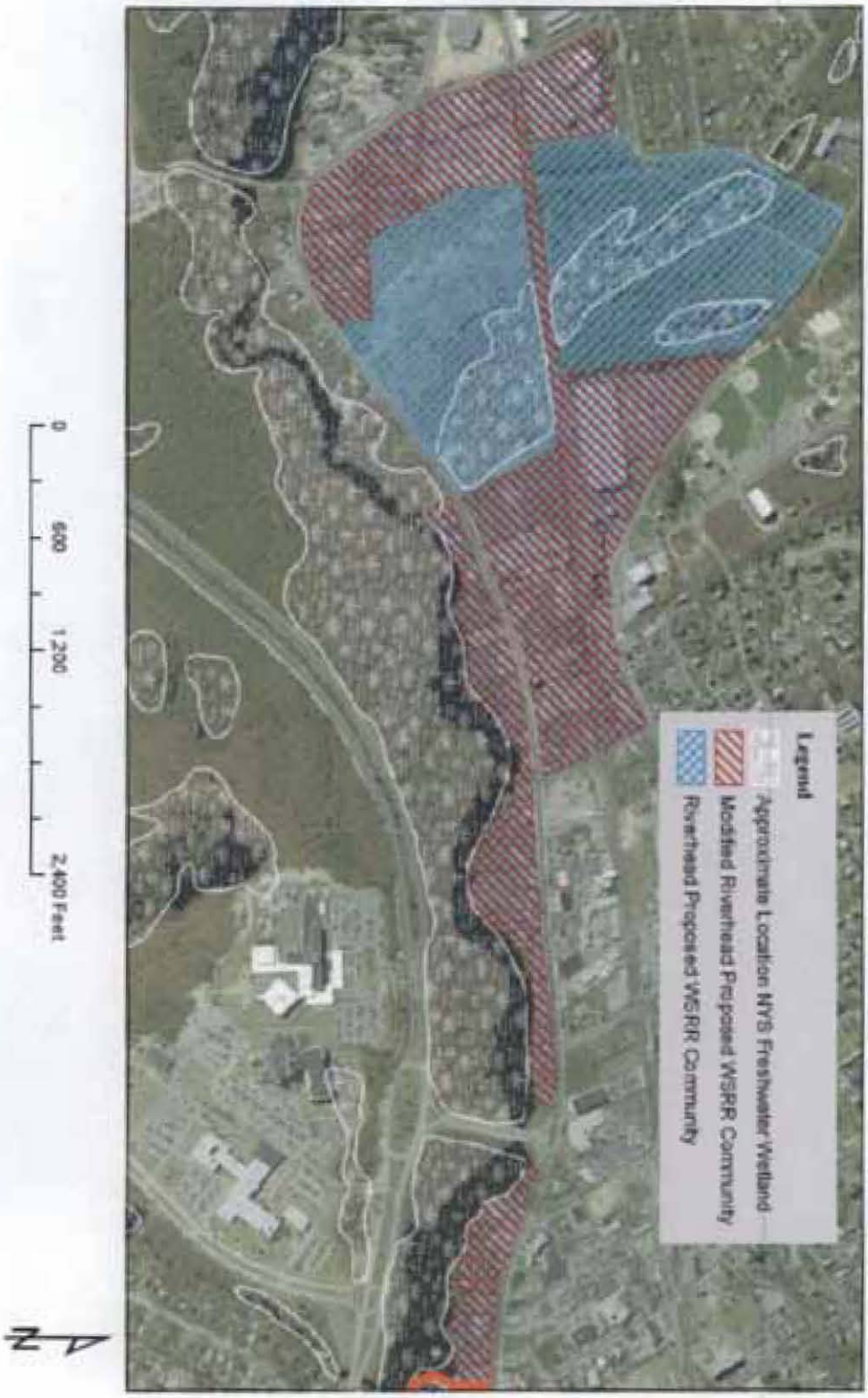


Figure 4. Map depicting two proposed community designations for Wild, Scenic, and Recreational Rivers Corridor, Peconic River, Suffolk County



Appendix A

PARCEL ID NUMBERS as reflected here are based upon Suffolk County tax parcel data (latest electronically available June 2008).
Note: Identification numbers and lot lines are subject to change, however, the extent of the modified "Community" designation recommended by DEC staff is based upon these data.

Lots proposed by DEC staff for inclusion in modified "Community" designation

PARCEL ID NUMBERS	LAST_NAME	ACREAGE	USE
0600120000100031000	R E J CORP	5.24	Commercial
0600120000200006003	UNLIMITED CEMENT CORP	1.64	Commercial
0600120000200007000	MARKETSPAN GAS CORP	5.37	Industrial
0600120000200009001	GAME G ASSOCIATES	1.29	Residential
0600120000200009003	LACHHAR PET HEALTH LLC	1.36	Commercial
0600120000200009004	KAPPENBERG	0.56	Residential
0600124000100027000	RIVERHEAD WATER DISTRICT	1.45	Institutional
0600124000100028000	MEIGEL	0.13	Residential
0600124000100029001	CARPLUK JR	0.14	Residential
0600124000100029002	CARPLUK JR	0.19	Residential
0600124000100031000	RIVERHEAD TOWN OF	0.28	Institutional
0600124000300001000	RICHAR CORP	0.99	Industrial
0600124000300002000	RICHAR CORP	0.30	Residential
0600124000300003000	RICHAR CORP	0.61	Residential
0600124000300004000	RICHAR CORP	1.27	Industrial
0600124000300005000	RICHAR CORP	0.72	Residential
0600124000300006000	CRUMP	0.80	Residential
0600124000300007000	SINGER	0.44	Residential
0600124000300008000	TERRY	1.43	Commercial
0600124000300009000	BROCKBANK	0.36	Residential
0600124000300010000	MCELROY	0.36	Residential
0600124000300011000	TERRY	0.24	Residential
0600124000300012000	MCELROY	0.24	Residential
0600124000300013000	BOHN	0.37	Commercial
0600124000300014000	MCELROY	0.21	Commercial
0600124000300027000	M T A LIRR	2.44	Institutional
0600124000400004000	DANOWSKI	0.31	Residential
0600124000400005000	WOODHULL	0.50	Commercial
0600124000400006000	945 MAIN PLAZA CORP	0.55	Commercial
0600124000400008001	TUCCIO	0.98	Residential
0600124000400009000	NATIONAL PROPANE L P	0.48	Commercial
0600124000400010000	NATIONAL PROPANE L P	1.01	Commercial
0600124000400011002	LOVEM INC	0.51	Residential
0600124000400011003	LOVE M INC	0.27	Commercial
0600124000400011004	LOVE M INC	0.45	Undeveloped
0600124000400011005	RIVERHEAD TOWN OF	0.06	Institutional
0600124000400012000	BOHN	0.20	Commercial
0600124000400013001	FEMMINO	0.27	Residential
0600124000400015001	BOOKER	0.23	Residential

PARCEL ID NUMBERS as reflected here are based upon Suffolk County tax parcel data (latest electronically available June 2008).
Note: Identification numbers and lot lines are subject to change, however, the extent of the modified "Community" designation recommended by DEC staff is based upon these data.

Lots proposed by DEC staff for inclusion in modified "Community" designation

PARCEL ID NUMBERS	LAST_NAME	ACREAGE	USE
0600124000400016000	BOOKER	0.11	Residential
0600124000400017000	SCOTT	0.08	Residential
0600124000400018000	SCOTT	0.16	Residential
0600124000400019000	SARUBBI	0.27	Residential
0600124000400020000	SCAGLIONE	0.31	Residential
0600124000400021000	CALVO VINCENT	0.29	Residential
0600124000400022000	BARRY C WEDEL BY PASS CREDIT T	0.94	Commercial
0600124000400025000	KANRAMAN	0.37	Residential
0600124000400026000	NORWOOD	0.12	Residential
0600124000400028001	JANICE MACKIEG REALTY CORP	0.17	Residential
0600124000400029000	COMMUNITY HOUSING INNOVATI	0.38	Commercial
0600124000400030000	NII	0.28	Residential
0600124000400031000	RIVERHEAD TOWN OF	0.06	Town Park
0600124000400032000	CARSON	0.20	Residential
0600124000400033000	CARSON	0.34	Commercial
0600124000400035002	ART SITES LLC	1.93	Commercial
0600125000200003005	RIVERHEAD BUILDING SUPPLY CO	12.42	Commercial
0600125000200004000	M T A L I R R	2.96	Institutional
0600125000200005002	R B REALTY CO	2.06	Commercial
0600125000200005005	RIVER REAL ESTATE CORP	3.81	Residential
0600125000200010001	TEUBER	0.41	Residential
0600125000200011000	SARGENT	0.31	Residential
0600125000200012000	PUB PROPERTIES	0.30	Residential
0600125000200013000	K D C REALTY CORP	0.34	Residential
0600125000200014000	NEELIE REALTY CORP	0.52	Residential
0600125000200015000	MATUSAIK	0.37	Residential
0600125000200016000	HOLM	0.64	Residential
0600125000200017000	QUINN JOSEPH PATRICK JR	0.66	Residential
0600125000200018000	MARCA	0.47	Residential
0600125000200019000	DETAIL STONE WORKS INC	0.92	Commercial
0600125000200020000	LONG ISLAND LIGHTING CO	0.31	Institutional
0600125000200021000	SAVINO	0.56	Commercial
0600125000200022000	FELDSCHUH	0.35	Residential
0600128000200005000	VOLONTS	0.23	Residential
0600128000200006000	RICHMOND	0.15	Residential
0600128000200007001	COUNTY OF SUFFOLK	0.14	Undeveloped
0600128000200007002	COUNTY OF SUFFOLK	0.29	Undeveloped
0600128000200008000	COUNTY OF SUFFOLK	0.27	Undeveloped
0600128000300047000	TUCCIO	0.43	Commercial

PARCEL ID NUMBERS as reflected here are based upon Suffolk County tax parcel data (latest electronically available June 2008).
Note: Identification numbers and lot lines are subject to change, however, the extent of the modified "Community" designation recommended by DEC staff is based upon these data.

Lots proposed by DEC staff for inclusion in modified "Community" designation

PARCEL ID NUMBERS	LAST_NAME	ACREAGE	USE
0600128000300048000	TUCCIO	0.45	Commercial
0600128000300049000	TUCCIO	0.30	Residential
0600128000300050000	245 WEST MAIN STREET REALTY C	0.43	Commercial
0600128000300051000	245 WEST MAIN STREET REALTY C	0.53	Commercial
0600128000300052000	FIOTO	0.22	Residential
0600128000300053000	CAPKANIS	0.36	Residential
0600128000300054000	CAPKANIS	0.08	Residential
0600128000300055000	RAMSAUER	0.19	Residential
0600128000300056000	CAPKANIS	0.16	Commercial
0600128000300057000	CAPKANIS	0.21	Commercial
0600128000300058000	SFOGLIA	0.31	Commercial
0600128000300059000	FGP WEST STREET LLC	1.07	Commercial
0600128000300060000	131 WEST MAIN LLC	0.26	Commercial
0600128000300061001	TUCCIO	0.39	Commercial
0600128000300072001	RIVERHEAD TOWN OF	3.17	Town Park
	Total Acreage Included=	77.30	

Lots proposed by DEC staff for exclusion from Town of Riverhead proposal

PARCELID	LAST_NAME	ACREAGE	Use
0600125000200001000	SCHAD	35.35	Undeveloped
0600125000200006000	COUNTY OF SUFFOLK	4.15	Undeveloped
0600125000200007000	GUAZHAMBO	0.60	Residential
0600125000200008001	MASSOUD EGHRARI LIVING TRUST	12.56	Residential
0600125000200008002	MASSOUD EGHRARI LIVING TRUST	3.63	Residential
0600125000200008003	MASSOUD EGHRARI LIVING TRUST	0.49	Residential
0600125000200008004	PECONIC BAY REALTY CORP	7.78	Residential
	Total Acreage Excluded=	64.57	
	Total Acreage Included & Excluded=	141.87	