

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
COMMISSIONER'S DETERMINATION
OF
LEAD AGENCY UNDER ARTICLE 8
OF THE
ENVIRONMENTAL CONSERVATION LAW**

PROJECT: Designation of lead agency for the review of a 20-unit condominium project on a 10.3-acre site in the Town of Huntington, Suffolk County

INVOLVED AGENCIES: Region 1 Office, New York State Department of
Environmental Conservation
Region 10 Office, New York State Department
of Transportation
Town of Huntington, Town Board
Town of Huntington, Planning Board
Suffolk County, Department of Health Services

This decision to designate the Town of Huntington Town Board as lead agency for the conduct of an environmental review under the State Environmental Quality Review (SEQR) process is made pursuant to Article 8 of the Environmental Conservation Law and 6 NYCRR 617. I find that the project, as proposed, will require a decision regarding the fundamental land use of the site and that the impacts are primarily local in nature.

The proposed project is the construction of a 20-unit condominium development which includes a pool, recreation center, storm water recharge basin and on-site sewage disposal by West Hills Commons, Inc. on a 10.3-acre site in the Town of Huntington, Suffolk County.

The Region 1 office of the Department of Environmental Conservation (DEC) and the Town of Huntington have been unable to reach an agreement on lead agency. The DEC must issue a decision on a freshwater wetlands permit under Article 24 of the Environmental Conservation Law for an access road. The Town of Huntington's decisions involve a change in zone and subdivision review.

In resolving a dispute about lead agency, I am guided by the three criteria listed in order of importance in paragraph 6 NYCRR 617.6(e)(5). These are: (1) whether the anticipated impacts are primarily of local, regional or statewide significance; (2) which agency has the broadest powers for investigation of potential impacts; and (3) which agency has the greatest capability to provide a thorough environmental assessment of the proposed action.

The potential impacts from the construction of this project are: disturbance to the adjacent area of two regulated freshwater wetlands; traffic; discharge of sanitary wastewater to groundwater; loss of open space; and loss of wildlife habitat. These impacts are primarily local in nature. The site is contained within an area designated by the Town of Huntington as open space in recognition that the amount of open space within the Town of Huntington is limited and any loss of such lands would be of local concern.

The local nature of the impacts clearly indicates that an agency within the Town of Huntington should act as lead agency. The fact that the applicant has not yet submitted an application to any town agency does not affect that agency's standing as an involved agency under SEQR. According to subdivision 6 NYCRR 617.2 (t), an agency is considered to be an involved agency if that agency will ultimately make a discretionary decision to fund, approve or undertake an action notwithstanding that it has not received an application at the time the SEQR process is commenced.

In order for the project to be constructed as proposed, the applicant must obtain a zone change from the Town Board and subdivision approval from the Planning Board. In considering the zone change, the Town Board will have to assess the needs of the community for residential development versus the value of the site as open space and the appropriate density for any subsequent use. The decision on zoning must be addressed before any subsequent decision related to construction at the site can be assessed. The importance of the zoning decision and the potential for that decision to modify or affect subsequent decision making at the site points to the Town of Huntington Town Board as the most appropriate involved agency to serve as lead agency.

The third criteria relates to the capacity of an agency to provide for a thorough environmental assessment of the action. Both the DEC and the Town of Huntington Town Board possess the necessary staff or have access to staff in order to complete the environmental review. The Town of Huntington Town Board also possesses the jurisdiction and more expertise to assess the land use issues.

I conclude, based on the facts presented, that the Town of Huntington Town Board best serves the function of lead agency for conduct of the environmental review for the West Hills Commons, Inc. application due to its responsibility for making the fundamental land use decision and the local nature of the impacts. In assessing the basic land use issue, the Town of Huntington Town Board may choose to use a generic environmental impact statement (EIS) in order to conceptually evaluate the impacts of different types of use at the site.

This decision does not in any manner limit or minimize the responsibility of all other involved agencies to review the proposed action and to assist the Town Board in completion of the environmental review process. If the Town Board chooses not to entertain a petition to rezone the site, as allowed under Town Law, such legislative decision would not be reviewable under SEQR [6 NYCRR 617. 6(f)(1)(ii)]. If this occurred, the Town Board would not be an involved agency, there would be no action as is now proposed, and this decision and the proposal of West Hills Commons, Inc. would be moot. Notwithstanding that potential, my decision must be based on the action that has

been proposed and the reasonable likelihood that the Town Board would consider a rezoning petition. Also, subparagraph 6 NYCRR 617.6(f)(1)(ii) provides for the re-establishment of a lead agency in the event of a failure of the lead agency's basis of jurisdiction.

Dated: June 27, 1991
Albany, New York

/s/
Thomas C. Jorling Commissioner

Distribution of Copies

R. Cowen, Director, Region 1 Office, NYS Dept. of Env. Cons.
S. Ferraro, Supervisor, Town of Huntington
W. Byrne, Chairman, Town of Huntington Planning Board
R. Machtay, Director of Planning, Town of Huntington
R. Reynolds, Suffolk County Dept. of Health
D. Kost, NYS Dept. of Transportation
D. Sutherland, West Hills Commons, Inc.

New York State Department of Environmental Conservation

Commissioner Jorling
L. Marsh
M. Gerstman
G. Kamaras
J. Stallmer
R. Greene