STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Application for a Freshwater Wetlands Permit Pursuant to Article 24 of the Environmental Conservation Law (ECL) and Part 633 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

- by -

GARY FELDBAU,

Applicant.

Appearances of Counsel:

-- Steven C. Russo, Deputy Commissioner and General Counsel (Kari E. Wilkinson of counsel), for staff of the Department of Environmental Conservation

-- Twomey, Latham, Shea, Kelley, Dubin & Quartararo, LLP (Christopher D. Kelley of counsel), for applicant Gary Feldbau

ORDER OF DISPOSITION OF THE CHIEF ADMINISTRATIVE LAW JUDGE

Proceedings

Applicant Gary Feldbau is the owner of a parcel of real property located at 87 Mill Pond Lane, Watermill, Town of Southampton, Suffolk County. Applicant filed an application for a freshwater wetlands permit to construct a new single family dwelling on the parcel. Staff of the Department of Environmental Conservation (Department) denied the application and, in July 2011, applicant requested a hearing.

The matter was referred to the Department’s Office of Hearings and Mediation Services (OHMS) and an adjudicatory hearing was scheduled for March 6-7, 2012. The hearing was adjourned prior to notice publication pending settlement discussion between the parties.
By letter dated April 11, 2012, Department staff filed a stipulation executed by applicant and the Department. Staff asserts that the stipulation resolves all outstanding issues between the parties. Pursuant to the stipulation, Department staff will issue a freshwater wetlands permit in the form attached to the stipulation as Exhibit C within 30 days of the issuance of an order of disposition from OHMS.

Order of Disposition

Pursuant to 6 NYCRR 624.13(d) and Organization and Delegation Memorandum 94-13, Effect of Stipulations on Decision-Making in Permit and Enforcement Proceedings, where a permit application has been referred for an adjudicatory hearing and the parties reach a stipulation that resolves any or all of the issues in dispute, the agreement eliminates the need for the permit hearing and any substantive involvement of the Administrative Law Judge or the Commissioner with respect to the stipulated issues.

Accordingly, pursuant to the stipulation of the parties, the permit hearing is cancelled, and the hearing file maintained by OHMS is closed. The matter is remanded to Department staff for issuance of a permit consistent with the stipulation.

FOR THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

/s/
by: ________________
James T. McClymonds
Chief Administrative Law Judge

Dated: April 20, 2012
Albany, New York