

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

In the Matter of

NATHAN HALE NATURE PRESERVE, INC.,
PAUL C. THOMSON III, and KIM E. THOMSON,

Petitioners,

- for a Judgment pursuant
to Article 78 of the CPLR -

TOWN OF HUNTINGTON PLANNING BOARD and
VINEYARD BAY LLC a/k/a VINEYARD BAY
ESTATES LLC,

Respondents.

Index No. _____

VERIFIED PETITION

Petitioners, NATHAN HALE NATURE PRESERVE, INC., PAUL C. THOMSON III, and KIM E. THOMSON, (hereinafter “Petitioners”), as and for their Verified Petition against TOWN OF HUNTINGTON PLANNING BOARD and VINEYARD BAY LLC a/k/a VINEYARD BAY ESTATES LLC (hereinafter “Respondents”), respectfully allege as follows:

NATURE OF THE ACTION

1. This proceeding is brought pursuant to Article 78 of the CPLR to annul the determination of the Town of Huntington Planning Board (the “Planning Board”) made by Resolution passed on March 19, 2025, and filed with the Town Clerk on March 21, 2025, which granted preliminary approval of the “Preliminary Maps of Vineyard Bay Estates” dated January 11, 2022, revised December 26, 2024 and received on January 13, 2025, with modifications (hereinafter, the “Preliminary Subdivision Plan Approval”). *See Resolution, Exhibit A.*

2. The Preliminary Subdivision Plan Approval must be annulled because it is contrary to law, premised on an error of law, arbitrary and capricious, irrational and unsupported by evidence, lacking a rational basis and contrary to the Town's own laws and procedures. Further, the Preliminary Subdivision Plan Approval must be annulled because the Planning Board failed to comply with and violated the requirements of SEQRA for reasons stated in the Article 78 proceeding presently pending under Suffolk County Index No. 630332/2024, the Verified Petition of which is incorporated herein by reference.

3. The Planning Board acted beyond its jurisdiction and authority in granting variance relief that is solely within the purview of the Town of Huntington Zoning Board of Appeals and which it had no authority of its own to grant.

4. The entirety of the Subject Property constitutes a "Hillside Area" specifically designated for specialized environmental, density, and development regulation under the Town's duly enacted Steep Slopes Conservation Law (sometimes hereinafter the "Steep Slopes Law"), as set forth in Article X of the Town of Huntington Town Code (within Chapter 198 thereof, i.e., the zoning code).

5. The Preliminary Subdivision Approval violates the express provisions of the Steep Slopes Law and is in direct contravention of its stated purpose

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this proceeding pursuant to Article 78 of the CPLR, the Town Law of the State of New York, and 6 N.Y.C.R.R. Part 617, *et seq.*

7. Venue is proper in the Court pursuant to CPLR 506(b).

THE PARTIES

8. Petitioner, Nathan Hale Nature Preserve, Inc., (“NHNP”) is a Not-For-Profit Corporation with a principal address of 120 Main Street, Huntington New York 11743, New York incorporated by residents of the Town of Huntington, Suffolk County, New York, with the purpose of protecting the Town of Huntington’s environment through compliance with, and advancement of, the enforcement of environmental laws, rules and regulations.

9. Petitioners, Paul C. Thomson III and Kim E. Thomson, husband and wife (collectively “Thomson”) reside at 81 Bay Avenue, Halesite, New York 11743-1206, within the Town of Huntington. Their residence is located within 500 feet of the Subject Property.

10. The Petitioners’ premises are in close proximity to the subject application and, therefore, are adversely affected both in actual fact and as a matter of legal presumption by the proposed action. *See e.g., Matter of Gernatt Asphalt Products v. Town of Sardinia*, 87 N.Y.2d 668, 687 (1996); *Stephens v. Gordon*, 202 A.D.2d 437, 438 (2d Dept. 1994). In any event, they are particularly harmed by the water drainage issues, environmental, traffic and aesthetic impacts which will result from the proposed subdivision development. Indeed, the Petitioners’ asserted injuries are within the zone of interests sought to be protected by applicable law including but not limited to NYS Town Law, SEQRA, and the Town of Huntington Town Code and its Steep Slopes Conservation Law. Finally, Petitioners, given their proximity to the Subject Property and their specifically affected interests, will suffer direct harm and injury that is different from that of the public at large should the project be constructed as designed.

11. Petitioners are additionally aggrieved, *inter alia*, pursuant to Section 198-64(E) of the Town of Huntington Town Code.

12. At all times relevant to this Proceeding, Respondent Vineyard Bay LLC a/k/a Vineyard Bay Estates LLC (“Vineyard Bay” or “Applicant”) is and has been a New York Limited Liability Company authorized to do business in the State of New York with principal offices located at 157 E. Main Street, Huntington, New York 11743. Vineyard Bay is the owner of the Subject Property and Applicant for the Preliminary Subdivision Plan Approval granted in the Resolution.

13. Respondent Town of Huntington Planning Board (the “Planning Board”) is a duly constituted Board of the Town of Huntington which is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York with offices at 100 Main Street, Huntington, New York 11743.

RELEVANT BACKGROUND

The Administrative Proceedings

14. Respondent Vineyard Bay, the owners (by relatively recent purchase) and developers of the Subject Property, submitted an “application for preliminary approval of a proposed subdivision of Subject Property into eight lots to the Planning Board, inclusive of a map or plat of the layout as then proposed (designated the “Map of Vineyard Bay Estates”). The application is dated April 4, 2022 (but curiously notarized on April 1, 2022) and is indicated to have been received by the Planning Board on June 1, 2022 (the “Application”).

15. The Application expressly denotes that it was not being submitted pursuant to Town Law 278 as a cluster development.

16. In its Application for preliminary subdivision approval, the Applicant expressly stated and represented, *in a sworn statement*, that it was not proposing a cluster development, indicating as follows: “Is a cluster development proposed pursuant to New York State Town Law

Section 278 and pursuant to Huntington Town Code Chapter 198-114? **No.”** *See Official Application for Preliminary Approval, Exhibit B.*

17. The Application was never amended with respect to this express denial of proposing a cluster development pursuant to Town Law §278.

Prior Erroneous Approval of Same Application Was Required to Be Vacated

18. The Application was addressed as part of the Planning Board’s agenda at its August 2, 2023 meeting. At that meeting, members of the Planning Board, and even the Applicant’s counsel, made numerous express assurances to the members of the public, some of whom voiced concerns about the subdivision proposal, that this was merely a preliminary discussion and that the community members would have the opportunity to be heard again.

19. As just one example, a Planning Board member explicitly volunteered, in response to and in an attempt to allay the palpable concerns of the gathered public, that was just a preliminary hearing about the proposal stating, “I would like to assure the people that are attending here, as well as the people that may be viewing it, the dynamic is that things are cumulative like this. So it isn’t like whatever you did today, that’s the end of it. We’re going to have an environmental review study.”

20. Despite these assurances, Petitioners and other members of the public were expressly prohibited from making public comments and were excluded from any active participation in the further proceedings conducted by the Planning Board in 2023.

21. The August 2, 2023 preliminary hearing concluded with the Planning Board’s Chairperson announcing that the hearing was “closed” without following the required protocol of a motion and seconding by Planning Board members. Nevertheless, at a subsequent meeting (not

hearing) of the Planning Board on October 11, 2023, the Applicant was afforded an opportunity and presented revised plans and had an extended colloquy with the Planning Board regarding same.

22. However, at the October 2, 2023 meeting, the Planning Board again adamantly refused to allow anyone from the public to be heard, despite the fact that the Applicant had revised its plan and was afforded the opportunity to be heard and to present, discuss and urge support of those plan revisions with the Planning Board.

23. The Planning Board's process reflected the antithesis of transparency and even-handedness. The advancement of the Application played out over the next six months in a shroud of darkness in a process that the public was literally frozen out from either participating in or even knowing about.

24. On February 21, 2024, in its Resolution of even date, the Planning Board approved the Applicant's preliminary subdivision plan and issued a negative declaration purportedly under SEQRA.

25. The February 21, 2024 subdivision approval was made pursuant to Town Law §276 and made no reference to Town Law §278 or to the proposed subdivision plan being a cluster development.

26. On or about March 29, 2024, Petitioners commenced an Article 78 proceeding to challenge both the Planning Board's subdivision approval and the negative SEQRA declaration issued at that time under Suffolk County Index No. 607902/2024.

27. The Article 78 proceeding under Index No. 607902/2024 challenged the February 2024 subdivision approval and SEQRA determination on numerous grounds citing the multiple and significant defects undermining same. Among the most basic of the identified defects (but certainly not the only) was the fact that the SEQRA determination did not precede the public

hearing on the subdivision but rather was perfunctorily adopted as a mere afterthought together with the subdivision preliminary plan approval.

28. In recognition of the significant and fatal defects inherent in its February 21, 2024, Resolution and SEQRA determination, as set forth in the Article 78 proceeding under Index No. 607902/2024, the Planning Board tellingly elected not to answer or defend the Article 78 petition but rather was compelled to “voluntarily” vacate and rescind its own prior preliminary subdivision approval and SEQRA determination.

Planning Board Forced to Address SEQRA First But Errs Again

29. In connection with the unprecedented and voluntary rescission, the Planning Board agreed to consider anew, and in good faith, the SEQRA determination at its June 26, 2024 meeting, and further agreed that the Petitioners would be afforded the opportunity to be heard at that time.

30. To be clear, however, the June 26, 2024 meeting was not a public hearing and no members of the public, other than Petitioners, were permitted to speak.

31. In advance of the June 26, 2024 Planning Board meeting, the Planning Board prepared a draft resolution by which it was to determine that it would issue a negative declaration.

32. This draft resolution foreshadowed the Board’s intent to rubber stamp both the negative declaration and subdivision approval.

33. At the June 26, 2024 Planning Board meeting (in mid-stream thereof) the Applicant, having been informed by Petitioners that there were significant problems with the purported environmental assessment, asked that the Planning Board not vote on the proposed SEQRA Resolution but instead requested that it be allowed to suspend and table its presentation. The Petitioners’ presentations were interrupted, and the Planning Board begrudgingly agreed to suspend and table the meeting as per the Applicant’s request.

34. The June 26, 2024 SEQRA meeting was thus adjourned without a resumption date and without any deadline for Applicant to submit revised materials. Vineyard Bay was able to thereafter proceed at its own pace and take all the time it needed to address its Application's defects (which turned out to be several months) in order to make revised submissions to the Planning Board.

35. The opportunity for Petitioners to speak at the SEQRA meeting was an express part of a negotiated Stipulation providing for the discontinuance, without prejudice, of the prior Article 78 litigation. When the meeting was suspended mid-stream at Applicant's request, the Petitioners' stipulated right to be heard necessarily was continued over to whenever the meeting resumed.

36. Nevertheless, and despite the fact that the June 26, 2024 meeting was suspended at the Applicant's specific request, when that meeting was resumed in October 2024, following Applicant's supplementation of the record and apparent alteration of its environmental plans and submissions, the Planning Board refused the Petitioners' rights to speak. The Petitioners' ability to speak on their own behalf was an express, stipulated condition of the discontinuance of the prior Article 78 Proceeding. The Planning Board's refusal to permit the Petitioners the opportunity to speak improperly disregarded the parties' Stipulation and evidenced a troubling lack of even-handedness in its conduct of the process.

37. At the October 2024 continuation of the meeting, and before taking a vote or other action on the SEQRA issue, the Planning Board, by its Chair, communicated that, effectively, nothing that Petitioners could state would change their minds.

38. The Planning Board displayed a palpable animus toward Petitioners and were overtly annoyed that Petitioners were appearing at the public meetings. The Chair remarked to the

effect that “you can’t just keep coming back here” and “this has to come to an end” – which comments displayed either a remarkable misunderstanding of its obligations to the Town’s citizens’ interests and concerns or a knowing misrepresentation of the prior proceedings – i.e., that the reason the Application was before the Planning Board, again, was because the Planning Board had erred so clearly and obviously that, when those errors were called out in the prior Article 78 proceeding, the Planning Board had to vacate and rescind its own prior determinations, requiring that the SEQRA meeting be continued to a future date because the Applicant had requested such adjournment to address its Application’s continuing deficiencies.

The Self-Contradictory and Erroneous Negative Declaration

39. The Planning Board, by Resolution passed on October 23, 2024, found that “there will be no significant environmental impacts” in connection with a proposed subdivision (“Preliminary Map of Vineyard Bay Estates”) and issued a Negative Declaration.

40. In the EAF, the Planning Department affirmatively identified six (6) areas where the proposal **would result in environmental impacts**, explicitly confirming on the EAF as follows:

- Impact on Land. Proposed action may involve construction on, or physical alteration of, the land surface of the proposed site. **Yes**
- Impact on Groundwater. The proposed action may result in new or additional use of groundwater, or may have the potential to introduce contaminants to groundwater or an aquifer. **Yes**
- Impact on Plants and Animals. The proposed action may result in a loss of flora or fauna. **Yes**
- Impact on Historical and Archaeological Resources. The proposed action may occur in or adjacent to a historical or archaeological resource. **Yes**
- Impact on Energy. The proposed action may cause the increase in the use of any form of energy. **Yes**
- Impact on Noise, Odor, and Light. The proposed action may result in an increase in noise, odors, or outdoor lighting. **Yes**

41. The narrative addendum to Part 3 additionally admits and affirmatively acknowledges that:

- The proposed action would “disturb” and remove 3.51 forested acres;
- The action will result in the removal of 202 trees;
- The action will result in the loss of other flora or fauna;
- The property contains steep slopes;
- The average slope of the hillside area is 32.34%;
- The proposed action will involve construction on slopes greater than 15%;
- The hazard for erosion of certain soils existing on the property is “moderate to severe” and is “moderate to slight” for other soils;
- The project will create and increase the amount of paved and impervious surfaces;
- The proposal creates the potential for erosion and runoff; and
- The proposal involves the creation of flag lots.

42. In light of the multitude of acknowledged potential environmental impacts, a positive declaration should have been issued and an environmental impact statement (EIS) required.

43. The Planning Board’s SEQRA finding contains an inherent internal contradiction. It “finds” that the proposed subdivision and development of the steep slope area will not have significant environmental impacts. But, as noted above, the Applicant’s own consultants and the Town’s Planning Department both affirmatively and expressly acknowledged the proposed development would have significant environmental impacts; indeed, the Planning Board affirmatively recognized the impacts as existing in and across multiple categories of SEQRA concern.

44. The Planning Board’s determined attempts to evade the self-disqualifying import of such an obvious contradiction solely by indulging the speculative qualification that, in every

instance of the many recognized and admitted impacts, all may be satisfactorily addressed through future, but unspecified, mitigation efforts.

45. For an Unlisted Action, the issuance of a Negative Declaration that is premised upon the implementation and efficacy of mitigation efforts violates SEQRA.

46. SEQRA provides a mechanism for dealing with precisely such a circumstance, which is the issuance of a “conditioned negative declaration” or “CND.” Indeed, the conditioned negative declaration is uniquely available for and applicable to Unlisted actions.

47. Despite the availability of the conditioned negative declaration, and notwithstanding it being expressly and repeatedly brought to the Planning Board’s attention, the Planning Board declined to issue a conditioned negative declaration and proceeded to violate SEQRA by issuing a Negative Declaration that was contradictory on its face as it was rife with a multitude of affirmative findings of environmental impacts.

48. The decision not to issue either a positive declaration or a conditioned negative declaration, despite the need and appropriateness of same, and despite those being the only options given any reasonable consideration or application of the Planning Board’s own findings, represented a further effort of the Planning Board to continue an ongoing and consistent pattern to accommodate the developers and throttle public participation in the vetting of the Application.

49. To the extent mitigation measures are contained in the Planning Board’s conclusion that the proposal will not result in adverse environmental impacts, such measures were not the product of an “open and deliberative process” as is required under SEQRA for Unlisted or Type 1 actions.

50. SEQRA’s fundamental policy is to inject environmental considerations directly into governmental decision making. This policy is effectuated, in part, through strict compliance

with the review procedures outlined in the environmental laws and regulations. A SEQRA review process conducted through closed bilateral negotiations between an agency and a developer would bypass, if not eliminate, the comprehensive, open weighing of environmentally compatible alternatives both to the proposed action and to any suggested mitigation measures. *See Merson v. McNally*, 90 N.Y.2d 742 (1997).

51. Indeed, at the June 2024 meeting of the Planning Board, counsel for the Applicant unknowingly yet emphatically admitted this point – indicating that although the public had no way of knowing, the approval process had been ongoing for years. This acknowledgement that the Applicant and the Planning Board had long been working behind the scenes without public awareness or participation was supposed to be salutary to the public. But this is the precise exclusive, collusive and corrupt process that SEQRA seeks to eradicate.

52. “The environmental review process was not meant to be a bilateral negotiation between a developer and lead agency but, rather, an open process that also involves other interested agencies and the public.” *See Merson v. McNally*, 90 N.Y.2d 742 (1997).

53. The Negative Declaration fails to comport with SEQRA and the settled caselaw that provides that “a lead agency clearly may not issue a negative declaration on the basis of conditions contained in the declaration itself.” *See Merson v. McNally*, 90 N.Y.2d 742 (1997).

54. While the EAF affirmatively found, as noted above, six areas where the proposed action would result in adverse environmental impacts (which renders the SEQRA determination of no significance irrational *per se* given the facial contradiction), the EAF is additionally and separately arbitrary and capricious insofar as it also found that other areas would not create environmental impacts despite the obvious indications to the contrary. These categories of negative findings are irrational on their face.

- Impact on geological features. The finding that the proposed action would not “result in the modification or destruction of, or inhibit access to, any unique land forms on the site is contradicted by the face of the Application. It is undisputed that the entirety of the site is a “steep slope” area as that term is defined by the Town Code itself. It is undisputed that the project proposes to modify this land form that gets specialized attention under the Town Code and will involve the significant grading and clearing of same, the removal of over 200 trees, the introduction of large swaths of impervious surfaces, and the installation of crude elements, extensive retaining walls, that eviscerate the defining character of the sloped land.
- Impacts on Surface Water. The subject area is within close proximity of Huntington Harbor and Huntington Bay. It is undisputed that the entirety of the site is a “steep slope” area as that term is defined by the Town Code itself. It is undisputed that the project proposes to modify this land form that gets specialized attention under the Town Code and will involve the significant grading and clearing of same, the removal of over 200 trees, and the installation of crude elements, retaining walls, that will disfigure the existing topography. It is implausible to imagine that the project would not cause runoff, erosion, entering or affecting the Harbor. And if this were an area that the applicant proposes to address through a designed drainage plan, that would require that its potential impacted by noted with a “Yes” and join the other categories that the Planning Board is accepting, erroneously, as adequately mitigated.
- Impacts on Flooding. It is undisputed that the entirety of the site is a “steep slope” area as that term is defined by the Town Code itself. It is undisputed that the project proposes to modify this land form that gets specialized attention under the Town Code and will involve the significant grading and clearing of same, the removal of over 200 trees, and the installation of retaining walls. It is implausible to imagine that the project would not cause runoff, erosion, entering or affecting the Harbor and Bay, or would not result in or require the modification of existing drainage patterns. And if this were an area that the Applicant proposes to address through a designed drainage plan, that would require that its potential impacted by noted with a “Yes” and join the other categories that the Planning Board is accepting, erroneously, as adequately mitigated.
- Impacts on Aesthetic Resources. It is undisputed that the site entirety of the site is a “steep slope” area as that term is defined by the Town Code itself. It is the stated purpose and policy of the Town “to protect and safeguard scenic landscapes and the vegetative features of steeply-sloped lands throughout the Town of Huntington. The Planning Board recognizes that development in hillside areas disrupts the aesthetic and scenic qualities of these sites.
- Impact on Open Space and Recreation. The project may eliminate an open space resource in an area with few such resources. Upon information and

belief, the Petitioners, with the support of the North Shore Land Alliance, made a presentation to the Town's Environmental Open Space and Park Fund Review Advisory Committee that the two parcels be considered as a potential target for acquisition by the Town because of its beneficial character as open space. The Committee acted favorably upon the Petitioners' open space acquisition petition and passed a motion in August 2023 to send a "willing seller Letter to the property owner." The letter was sent but the owner rejected the offer to explore the Town's acquisition and preservation of the parcels as open space parkland without any discussion.

- Impact on Critical Environmental Areas. This project is proposed for a site, the entirety of which is a steep slope as defined by the Town Code. The proposal thus, by definition, threatens to impact a critical environmental area.
- Consistency with Community Character. The EAF fails to explain how this proposal is consistent with the character of the community. There is no comparable development upon steep slopes and certainly none after the enactment of the Steep Slopes Law.

55. The EAF's "no" response to questions on the EAF are wholly irrational and unsupported. There is no basis for the EAF to indicate that the proposal has no potential effect on surface water, flooding, aesthetic resources, open space, critical environmental areas or consistency with community plans or community character. The entirety of the Subject Property is a Hillside Area within the meaning of the Steep Slopes Law. The Steep Slopes Law's statement of purpose acknowledges and seeks to protect these very concerns and impacts arising from such development as is proposed by the Application.

56. The Negative Declaration is erroneous as a matter of law since the Planning Board affirmatively found that the project would have environmental impacts in several areas of SEQRA relevance. The Planning Board's additional qualifying rationalizations that those impacts could be addressed by certain mitigation measures proposed by the Applicant do not allow for a negative declaration. Rather, the affirmative findings of impacts mandate a positive declaration or, at a minimum, a conditioned negative declaration pursuant to 6 N.Y.C.R.R. Sec. 617.2(h).

57. Notably, however, the Planning Board did not issue a conditioned negative declaration. Such a declaration would have required, appropriately, notice of the CND *and at minimum 30-day public comment period*.

58. The Planning Board aggressively resisted public participation or input at every turn of these proceedings. Its election to not issue a conditioned negative declaration when it, in point of fact is appropriate, is plain error and reflective of an intention to avoid the public component and procedural requirements that identifying its decision as such would require.

59. A negative declaration cannot issue where it is premised entirely on an assumption that known and acknowledged environmental impacts may be ameliorated by future mitigation efforts.

60. The Planning Board's erroneous Negative Declaration is the subject of the pending Article 78 proceeding under Suffolk County Index No. 630332/2024.

61. If the Negative Declaration is annulled, as it must be, the Preliminary Subdivision Plan Approval based upon same must, as a matter of law, be annulled.

62. Given the Town's clearly expressed intent and policies and stated purpose for its Steep Slopes Law (Huntington Town Code, Chapter 198, Article X), and the aggressive proposal by the Applicant to permanently interject a major subdivision on an open space, steeply sloped Hillside Area involving extensive excavation and construction of large retaining walls, the Planning Board's Preliminary Subdivision Plan Approval, like its SEQRA determination, was incontrovertibly improper and made without any rational justification.

63. It must be emphatically stated that if either the retaining walls or drainage systems failed in any regard, the results could be catastrophic. There is insufficient information by which to evaluate the structural integrity or future performance of the "conceptual" and continuous 200-

foot long retaining wall that is not only proposed to cross over three contiguous plots along Vineyard Road but upon which the entire concept of the subdivision is conditioned. premised.

64. The plans appear misleading insofar as the foreseen, yet to be engineered, height of the retaining walls failed to reflect the berm on top which they are designed to be located and the drop-off behind them (making the real or effective wall height closer to 20 feet). The true height and width of the walls is not indicated and is admittedly only “conceptual.” The required width of the base of the wall may either be, or need to be, wider than indicated on the plans as submitted. This is relevant not only to the question of structural integrity but also goes to the issue of the subdivision layout and yield and, importantly, goes to the Applicant’s credibility. In some cases, the plans already call for relaxation of the required 10-foot setback for the retaining walls to be set off from the lot lines or the boundary of the preserved Hillside Area. If a wider base or footing is required, the profile of the wall will in fact be invading the restricted Hillside Areas. Further, there is no excavation plan, but the depth and width of the excavation to accommodate this aggressively conceived design will be massive.

65. No representation is made by the Applicant as to the global stability of the wall systems. The integrity of a manufactured or predesigned wall system can only be evaluated as incorporated into the actual place of installation, accounting for the slopes and topography at every such location.

66. Critically, there is no as-built rendering of the walls or project, or even elevation drawings, provided by the Applicant. This precludes an objective review of the aesthetic impact of the project. It is disingenuous to assert that a certain portion of the two parcels is being conserved where the conserved area is inaccessible and when the “cost” of such conservation is

the destruction of more than 200 old growth trees and the erection of a large, 200' long retaining wall system that negatively transforms and degrades the area's natural aesthetics.

67. Indeed, the publicly available record does not include or reflect that the Town's Engineering Division nor that its Planning & Environmental Department has sufficiently vetted or independently confirmed any of the engineering details on which the Applicant's proposal is based. There is no indication that the Planning Board has confirmed any of the engineering provided to it concerning the structural stability of the retaining walls as conceptualized. It cannot be controverted that if either the retaining walls or the proposed drainage system fail in any regard, given the extreme steep slope here, the results could be catastrophic. The record shows that the Planning Board has insufficient information (and as such insufficient evidence and no rational basis) to evaluate the structural integrity or the future performance of the drainage plan and retaining walls that are not only proposed but upon which the integrity of the entire proposed subdivision is wholly predicated.

68. Significantly, the plans before the Planning Board are misleading as to the height of the retaining walls proposed (reflecting neither the drop off behind them nor the berm on top). The true height and width of the walls is not indicated thereon. The required width of the base of the walls may either be (or need to be) wider than shown. This "unknown" is relevant not only the structural stability but also to the issue of subdivision layout and yield, and it impacts not only the Subject Property and its development, but also all of the nearby properties. Nor is there any representation as to the global stability of the wall system. Indeed, the Planning Board did not even have before it or require that the Applicant prepare an as-built rendering of the walls (or the project) or even an elevation drawing. This precluded any reasonably objective evaluation of the aesthetic impact of the proposed development and its large wall system (or any consideration of

the impact or change in the neighborhood or community). It also triggered the Planning Board's need to seek Zoning Board of Appeals review of the need for variance relief attendant to the proposed development. The fact that the Planning Board did not have this information before it prior to issuing its Resolution is irrational.

The Planning Board Presses Forward in Disregard of Patent Errors

69. On December 18, 2024, the Planning Board held a public hearing on the preliminary approval of the "Preliminary Maps of Vineyard Bay Estates."

70. Petitioners and other residents of the hamlet of Halesite, the Incorporated Village of Huntington Bay and Town appeared at the December 18th hearing in opposition to the Application. They presented information and expressed concerns, reviewing those that had been previously presented to and scornfully disregarded by the Planning Board. They also provided more recently developed information concerning adverse impacts to the subject parcels and surrounding properties. Previously documented concerns included the fact that the Petitioners and other community members had identified that the subject parcels were listed by the New York Historic Preservation Office (SHPO) as an archaeologically sensitive site inventory, a fact that the developers were apparently aware of but did not disclose in its FEAF Part 1 filing or during their years-long dealings with the Planning Department and Planning Board as part of the Application process. *See Area Designated as Sensitive for Archaeological Sites on the SHPO Archaeological Site Inventory Presentation - Exhibit C.* This fact prompted the Chief of the Unkechaug Nation to write and send an August 5, 2024 letter on behalf of the Nation to the Planning Board's Chairman expressing that the Chief and the Nation "vehemently object to the development of the [subject] property." *See Harry B. Wallace, Chief Unkechaug Nation letter – Exhibit D.* Tellingly, neither the Chairman nor the Planning Board ever gave the courtesy of a response to the Chief's letter, nor

has the Planning Board made any mention of, or reference to, the Chief's letter throughout the Application's proceedings. Additionally, and as previously detailed, there are other environmental concerns including degradation of the habitat of the endangered Northern Long-eared bat, the preservation of ancient oak-hickory tree canopy and thousands of historic specimen Rhododendron cultivars, the narrow road dimensions of both Bay Avenue and Vineyard Road and the detrimental and potentially hazardous impact of prolonged construction on traffic flow to the area's historic residences.

71. Newly developed information presented at the December 18, 2024 hearing included the fact that the prior owner had amassed, and for many decades, stored a massive collection of hazardous materials including "dozens of abandoned cars" that "were rusted and in disrepair with their tires sinking into the ground." There were "dozens of lawn mowers and dozens of CRT TV consoles and other electronics." There were "dangerous chemicals stored in the basement." When they were eventually removed, the workers "had to wear respirators." *See Official Transcript of TOH Planning Board Meeting of December 18, 2024, Public Hearing #1, Vineyard Bay Estates, received January 24, 2025, TOH Department of Planning & Environment - pages 60-62.* The Planning Board gave this and other new and concerning revelations zero consideration when informed by its Town's citizens.

72. On or about February 5, 2025, for unknown reasons, the Planning Board was presented with and granted the Applicant's request for an extension of review time.

73. Subsequently, and unknown to the Petitioners but apparently consistent with the expressed concerns of the residents and Mayor of the Incorporated Village of Huntington Bay "about potential rain runoff onto Vineyard R[oa]d," the Applicant made material revisions to their subdivision plans, including the critical grading and drainage plans, which revisions purport to

better address the expressed environmental concerns regarding drainage and stormwater runoff.

See Message from the Mayor, Village of Huntington Bay – Exhibit E.

74. The fact that the Applicant was continuing to revise its plans in this regard is further proof and illustration of the fallacy of the Negative Declaration issued months before based upon the prior set of plans that did not include such necessary and highly critical design components.

75. Despite the record developed by Petitioners and other community residents, the Planning Board, at its March 19, 2025, took up and passed a resolution that granted approval of the “Preliminary Maps of Vineyard Bay Estates” dated January 11, 2022, revised December 26, 2024 and received on January 13, 2025, with modifications (the “Preliminary Subdivision Approval”).

The Town of Huntington’s Steep Slopes Law

76. The Vineyard Bay Respondents herein are developers and were vocal opponents of the Steep Slopes Conservation Law when it was proposed and enacted in 2005. As such, they were acutely aware of same prior to their purchase of the Subject Property and knowingly chose to purchase same subject to the enhanced zoning restrictions imposed by the Slopes Law.¹

77. The legislative intent of the Slopes Law as expressly stated in Town Code Section 198-60 is specifically intended to protect and safeguard scenic landscapes and vegetation such as

¹ “‘Steep slope’ measure raises developers’ temps,” L.I. Business News, July 15, 2006 (<https://libn.com/2005/07/15/steep-slope-measure-raises-developers-temps/>) (last visited 3/26/24) (also citing the Town’s spokesman Don McKay as stating “Huntington is just trying to preserve its way of life by preserving its scenic hillsides. When developers remove ancient trees and fragile vegetation, it’s more than just ugly; it causes erosion that causes the domino effect of unstable hillsides and rainwater runoff....*** It seems that previous generations of developers knew better than to erect homes on hillsides, McKay said. ‘If the land is so OK to build on, why didn’t they build on this property 30 years ago?’” he asked. McKay believes developers are taking whatever open land is left and that’s why this problem is emerging.”).

the land where the development is proposed for the Vineyard Bay Estates subdivision. The intent section of the Code provides as follows:

198-60 Legislative Intent:

It is the intention of the Huntington Town Board to protect and safeguard scenic landscapes and the vegetative features of steeply-sloped lands throughout the Town of Huntington. The Board recognizes that development in hillside areas disrupts the aesthetic and scenic qualities of these sites and adversely impacts surrounding properties by disrupting the surrounding natural vegetation and wildlife habitat, increasing the risk of stormwater runoff, flooding, surface erosion, sudden slope failure and soil movement. This legislation seeks to establish specific regulations for development and density outside conventional zoning controls by which the adverse impacts to adjoining properties and steep slopes will be ameliorated to the greatest extent possible not only during development of these sites but thereafter.

78. Pursuant to the Slopes Law, any property with average slopes in excess of 10% are deemed to be “Hillside Areas” and subject to the regulation.

79. The entirety of the Subject Property has an average slope in excess of 32% .

80. The entirety of the Subject Property constitutes a “Hillside Area” as defined in the Steep Slopes Law.

81. specifically designated for specialized environmental, density, and development regulation under the Town’s duly enacted Steep Slopes Conservation Law (sometimes hereinafter the “Slopes Law”), as set forth in Article X of the Town of Huntington Town Code (within Chapter 198 thereof, i.e., the zoning code). Here, the entirety of the Subject Property has an average slope well in excess of 25%.

82. Tellingly, the nearly 9-acres of the two parcels situated in the Town of Huntington were acquired for \$825,000, a sum far below the market value of surrounding parcels that are not Hillside Area properties.

83. Town Law §277 provides that “[n]otwithstanding any provision of law to the contrary, where a plat contains one or more lots which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article...”.

AS AND FOR A REQUEST FOR RELIEF PURSUANT TO CPLR ARTICLE 78

84. Petitioners repeat, reiterate and reallege Paragraphs 1 through ____ and incorporate the same herein by reference.

A. Because the Board Violated SEQRA, the Preliminary Subdivision Plan Approval Must Be Annulled

85. The Planning Board failed to comply with the substantive and procedural requirements of SEQRA.

86. The Planning Board’s Negative Declaration and SEQRA determination is contrary to law, premised on an error of law, arbitrary and capricious, irrational and unsupported by evidence, lacking a rational basis, and contrary to the Town’s own laws and procedures.

87. The Planning Board’s SEQRA determination failed to consider public input, failed to engage in the required coordination with other involved agencies including, but not limited to, the ZBA, and engaged in improper segmentation – all of which is in direct violation of SEQRA.

88. As a result of the failure to comply with the substantive and procedural requirements of SEQRA, the Planning Board’s Determination “is void and, in a real sense, unauthorized.” *E.F.S. Ventures Corp. v. Foster*, 71 N.Y.2d 359, 371 (1988).

89. Because the Planning Board violated SEQRA, its Preliminary Subdivision Plan Approval is contrary to law, premised on an error of law, arbitrary and capricious, irrational and unsupported by evidence, lacking a rational basis, and contrary to the Town’s own laws and procedures, and must be annulled.

90. The Planning Board's Preliminary Subdivision Plan Approval is made pursuant to Town Law §276. Town Law §276 requires, however, that a "planning board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations." Because the Planning Board did not comply with SEQRA, it violated Town Law §276, and could not, as a matter of law, grant Preliminary Subdivision Plan Approval.

B. The Planning Board Has No Variance/Modification Authority

91. The Preliminary Subdivision Plan Approval grants certain "modifications" that purport to grant relief from the Town's zoning code as regards lot frontage and lot width as well as the side yard setbacks for retaining walls.

92. The Preliminary Subdivision Plan Approval is contrary to law, premised on an error of law, arbitrary and capricious, irrational and unsupported by evidence, lacking a rational basis, and contrary to the Town's own laws and procedures, since the Planning Board has no authority to modify zoning requirements.

93. Under New York State Town Law, only the Town's Zoning Board of Appeals has the authority to grant the variances that the Planning Board impermissibly embedded in its Preliminary Subdivision Approval.

94. Under the Town Code of the Town of Huntington, only the Town's Zoning Board of Appeals has the authority to grant the variances that the Planning Board impermissibly embedded in its Preliminary Subdivision Plan Approval.

95. Even more specifically, under the Town's Steep Slopes Law, only the Town's Zoning Board of Appeals has the authority to grant the variances that the Planning Board impermissibly embedded in its Preliminary Subdivision Plan Approval.

96. Any limited authority a planning board may have under Town Law §278 to modify zoning requirements is completely inapplicable here.

97. The Application expressly disavows, by sworn statement, that the subject Application is not one being made for a cluster development or pursuant to Town Law §278.

98. Nor is the Application in substance one for a cluster development; rather the Application is made pursuant to and under the narrow application of the Steep Slopes Law.

99. The Steep Slopes Law itself expressly requires any variance relief to be sought exclusively from the Zoning Board of Appeals.

100. The Planning Board's Preliminary Subdivision Plan Approval grants modifications that the Planning Board had no legal authority to grant.

101. The Steep Slopes Conservation Law (Article X of the Huntington Code, § 198-60 through 198-65.1) repeatedly provides and reaffirms that any variance relief from the provisions of the Slopes Law itself or from the zoning requirements applicable to the proposed parcels or layout of same could only be sought by application made to the Town's Zoning Board. *See, e.g., §§198-63(G), 198-64(J), and 198-65.1(G)(1). See also* Town Law §267-b(3).

102. Pursuant to the Applicant's plans, the proposal requires relaxation of the lot width requirements of the Slope Law §198-63(B) on three of the proposed eight lots. In addition, the plans reflect that the proposal will require very significant relaxation of the retaining wall footprints as required by §198-64(G), as well as relief from the building footprint requirements of the Town Code.

103. In approving a plat, a Planning Board is not authorized to waive zoning restrictions. *McEnroe v Planning Bd. of Clinton*, 61 Misc. 2d 937, 307 N.Y.S.2d 302, 1969 N.Y. Misc. LEXIS 981 (N.Y. Sup. Ct. 1969). The discretionary powers granted to a Board of Appeals under § 267(5)

of the Town Law were not granted to planning boards. The authority of a planning board unlike a Zoning Board of Appeals, is strictly limited by §§ 276 and 277 of the Town Law. *Id.*; *Deon v. Town of Brookhaven*, 2006 NYLJ LEXIS 4539 (Suffolk County Supreme Court 2006).

104. The Preliminary Subdivision Plan Approval's reference to Town Law §278 is contrary to law, is arbitrary and irrational, and is potentially fraudulent. As indicated, the Application expressly disavows that this it proposed a cluster development pursuant to Town Law §278. The Application was never amended in this regard, nor was there any basis to amend it, despite repeated admonitions to do so by Petitioners. The introduction of the term "cluster" in the Approval is without any purpose except as an improper post hoc attempt to cure a blatant defect and violation known to the Applicant and the Planning Board and reflects the Planning Board's improper and overtly over-accommodating considerations of the Applicant's interests in this subdivision application process.

105. The "modifications" improperly contained within the Planning Board's Preliminary Subdivision Plan Approval constitute area variances for which the Town of Huntington Zoning Board of Appeals (ZBA) has exclusive jurisdiction and authority to grant. No variances from the ZBA have been sought or granted. Nothing in the publicly available record indicates that the Planning Board has ever referred or coordinated these matters to or with the ZBA. This is violative of SEQRA's requirement for such coordination and additionally constitutes impermissible segmentation of SEQRA review.

106. This is separately significant because the SEQRA review process must be coordinated with other agencies or entities involved in some portion of the proposed action. Here, the proposal requires variance relief that only the Town's Zoning Board of Appeals may grant. The Planning Board's handling of the SEQRA process – already contorted to evade public

participation by intentionally issuing a negative declaration when its actual determination was that of a positive or conditioned negative declaration – once again, by its failure to coordinate with the ZBA, seeks to maintain a fully insular review process without the input of other agencies or the public.

107. The Planning Board's improperly granting variance relief to allow the retaining walls to be placed directly on and across applicable property lines with no setback whatsoever is an express violation of the requirements of the Steep Slopes Law provisions specifically addressed to same. As a further effort to evade this defect, the Town Board was poised to entertain an amendment to the Town Code of this very provision of the Steep Slopes Law but, responsive to considerable opposition, the proposed amendment was abruptly pulled from recent Town Board consideration and action.

C. The Preliminary Subdivision Plan Approval Violates the Steep Slope Law

108. The Planning Board's Preliminary Subdivision Plan Approval violates the Town's Steep Slopes Law.

109. The Preliminary Subdivision Plan Approval fails to properly calculate the yield under the provisions of the Steep Slopes Law.

110. The Preliminary Subdivision Plan Approval improperly approves of development on "Hillside Areas" and upon steep slopes.

111. The Preliminary Subdivision Plan Approval violates applicable provisions of the Steep Slopes Law regarding retaining walls.

D. The Preliminary Subdivision Plan Approval Violates the NYS Town Law

112. The Planning Board's Preliminary Subdivision Plan Approval failed to require that the land shown on the map be of such character that it can be used safely for building purposes

without danger to health or peril from fire, flood, drainage or other menace to neighboring properties or the public health, safety and welfare pursuant to Town Law § 277.

INJUNCTIVE RELIEF

113. Petitioners repeat and re-allege each and every allegation contained in paragraphs 1 through and including 123 above, as if fully set forth herein.

114. Petitioners will suffer irreparable injury in the absence of injunctive relief. The proposed development will forever disfigure the natural landscape, change the character of the neighborhood, cause extreme environmental impacts, and cause pecuniary and other unique harm to Petitioners. The continued advancement of the proposed subdivision plan, which is void *ab initio* as a matter of law, will itself cause Petitioners significant harm if permitted to continue unnecessarily.

115. Petitioners have no adequate remedy at law.

116. By reason of the foregoing, and pursuant to Article 63 of the CPLR, Petitioners are entitled to entry of an order and judgment preliminarily and permanently enjoining, restraining and prohibiting any further actions based on the Resolution or reliance thereon by any of the Respondents.

WHEREFORE, Petitioners respectfully request that the Court enter judgment:

- (a) annulling and setting aside the Planning Board's Preliminary Subdivision Approval;
- (b) enjoining the Respondents from taking any action to advance or further the Application or the proposed development of the Subject Property; and
- (c) awarding Petitioners reasonable costs and attorneys' fees and such other and further relief as the Court deems just, equitable and proper.

Dated: Sayville, New York
April 21, 2025

Respectfully submitted,

PERILLO HILL LLP

Timothy Hill

By: _____

Timothy Hill, Esq.

Lisa A. Perillo, Esq.

285 West Main Street, Suite 203

Sayville, New York 11782

(631) 582-9422

thill@perillohill.com

Attorneys for Petitioners

VERIFICATION

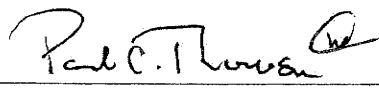
STATE OF NEW YORK :

SS.:

COUNTY OF Suffolk :

PAUL C. THOMSON III, being duly sworn, deposes and says:

Deponent is a Petitioner in the within proceeding; deponent has read the foregoing Petition and knows the contents thereof; the same is true to deponent's own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters therein stated to be alleged on information and belief, deponent believes it to be true.



PAUL C. THOMSON III

Sworn to before me this
21 day of April, 2025
NOTARY PUBLIC

ALEXANDER S. ROTHENBERG
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01RO0019973
QUALIFIED IN SUFFOLK COUNTY
COMMISSION EXPIRES 17 JANUARY 2026

HUNTINGTON TOWN PLANNING BOARD

MEETING OF MARCH 19, 2025

The following resolution was offered by D. Pennetta

and seconded by J. Tantillo

WHEREAS, Stanley Weissberg and Walter Morris, Managing Members, Vineyard Bay, LLC, 157 E. Main Street, Huntington, NY 11743, the owners, have submitted a subdivision map known as **Vineyard Bay Estates**, located on the east side of Bay Avenue through to the west side of Vineyard Road, Halesite, adjacent the Incorporated Village of Huntington Bay, prepared by Christopher W. Robinson, PE, R&M Engineering, Elm Street, Huntington, NY 11743, and indicated as parcels 0400-033.00-01.00-001.000 and 002.000 on the Suffolk County Tax Map; and

WHEREAS, the proposed Overall Steep Slope Analysis, prepared by R&M Engineering, dated August 11, 2020 and revised on August 17, 2021, complies with Chapter 198-63(B), Subdivision of land, of the Town of Huntington Steep Slope Conservation Law, and demonstrates that the lot yield of the subject property is eight (8) lots; and

WHEREAS, a preliminary application was received on June 1, 2022, for the subdivision of a 7.93-acre property into eight (8) lots and was classified as an Unlisted Action pursuant to SEQRA; and

WHEREAS, the subdivision map is described property and is not part of a filed map; and

WHEREAS, 211 Vineyard Road, Halesite, previously contained a two-story single-family dwelling, two-story detached garage, 20 ft. x 20 ft. one-story poultry house, accessory building, wood shed, detached wooden staircase and concrete pad, all of which have been removed by the property owner with permits from the Town; and

WHEREAS, 78 Bay Avenue, Huntington, previously contained a one-story single-family dwelling, detached garage, shed and 6 ft. x 10 ft. one-story poultry house, all of which have been removed by the property owner with permits from the Town; and

WHEREAS, by memorandum dated October 7, 2022, the Department of Engineering Services indicated that, "If more than 1-acre is cleared, a SWPPP is required."; and

WHEREAS, at their regular meeting held on August 2, 2023, the Huntington Town Planning Board discussed the applicant's request to waive the installation of sidewalks along east side of Bay Avenue and along the west side of Vineyard Road, and by consensus, the Board granted the applicant's request; and

WHEREAS, in accordance with Huntington Town Code, Chapter 173, Streets and Sidewalks, the Planning Board shall require a payment to be made to the Town when the installation of curbs or sidewalks have been waived; and

WHEREAS, at their regular meeting held on October 23, 2024, the Huntington Town Planning Board issued a Negative Declaration pursuant to SEQRA, based upon the Board's review of the environmental assessment data submitted and the regulations; therefore, no further review is required as SEQRA is complete; and

WHEREAS, as noted in the Environmental Assessment Form (EAF) Part 3, *“Although the property is not part of this subdivision application, the applicant has offered to dedicate an adjacent lot of 1.84 acres (80,308.9 s.f.) in the Village of Huntington Bay for passive parkland to the Town of Huntington (SCTM parcel #0402-006.00-01.00-007.000). This is a voluntary action by the applicant that will be considered in this SEQRA review because it is an adjacent property and because the applicant will be asking the Planning Board to find that this meets their obligation to provide parkland as required by New York State Town Law Section 277(4).”*; and

WHEREAS, on December 18, 2024, the Huntington Town Planning Board held a public hearing on the preliminary map in accordance with Sections 276 and 278 of New York State Town Law, and Town Code, Chapter 198-114, Cluster developments, which was duly advertised, and all interested persons who wished to be heard were heard; and

WHEREAS, at their regular meeting held on February 5, 2025, the Huntington Town Planning Board, by mutual agreement and consent, granted the applicant’s request for an extension of review time from February 18, 2025 to April 21, 2025; and

WHEREAS, at their regular meeting held on February 19, 2025, the Huntington Town Planning Board discussed the most recent revisions to the Grading and Drainage Plan, which includes but is not limited to additional proposed drainage structures on Lots 5, 6, 7 and 8, and a redesign of the overall site drainage capacity from three (3) inches to four (4) inches, which results in an additional 1,373 cubic feet of stormwater runoff to be captured on site, in response to comments made at the public hearing; now therefore be it

RESOLVED, that the Preliminary Maps of Vineyard Bay Estates, as indicated below left, dated January 11, 2022, revised December 26, 2024 and received on January 13, 2025, are hereby granted preliminary approval with modifications, as indicated below right, in accordance with NYSTL §278(3)(b) and subject to conditions:

<u>SHEET INDEX:</u>	<u>MODIFICATIONS GRANTED:</u>
Sheet 1, Alignment Plan	Lot 3: Lot Area 1.4993 acres
Sheet 2, Grading & Drainage Plan	Lot Frontage = 30 ft.
Sheet 3, Utility Plan	Lot Width Established = 249.72 ft. +/-
Sheet 4, Demolition & Erosion Control Plan	
Sheet 5, Tree Preservation Plan	Lots 6, 7 and 8: Retaining Wall Setback 0 feet
Sheet 6, Re-Vegetation Plan	
Sheet 7, Construction Details	
Sheet 8, Constriction Details	
Sheet 9, Erosion Control Details	

; and be it further

RESOLVED, that in accordance with the Town of Huntington Subdivision and Site Plan Regulations, Section 4.10.2, the applicant shall submit a proposed final map, as well as proposed engineering drawings to be distributed to all necessary departments, agencies and commissions for their review and comments; and be it further

RESOLVED, that a Stormwater Pollution Prevention Plan (SWPPP) shall be submitted for review and approval that contains the proposed stormwater management actions that shall occur prior, during and post construction activities at the subject site, which shall ensure the permanent and continuous function and maintenance of the approved stormwater management system, and drainage shall be installed as early in the construction process as possible, in order to prevent runoff from leaving the site; and be it further

RESOLVED, that the applicant shall complete the following conditions after conditional final approval has been granted, and prior to the signing of the map:

1. Prior to filing the TDFR Conservation Easement and Planning Board Covenant and Restriction with the Suffolk County Clerk, the applicant shall complete the proposed native vegetation planting within the conservation easement area and conservation area on Lot 6, as depicted on the Re-Vegetation Plan, and request inspection of said revegetation from the Environmental Review Division. Alternatively, the Town and County may agree upon language to be included within the filed TDFR Conservation Easement to permit the revegetation to occur after the filing;
2. If weather conditions prevent the above referenced planting from being fully completed, alternatively, upon review and approval by the Town Attorney, conditions may be added to the TDFR Conservation Easement and Planning Board Covenant and Restriction, ensuring that the proposed native vegetation planting is completed and inspected as required, within Lot 6;
3. The applicant shall depict the TDFR Conservation Easement filing information on the Final Map;
4. The applicant shall depict the Planning Board Covenant and Restriction filing information on the Final Map;
5. The applicant shall submit metes and bounds descriptions of the proposed road widenings;
6. The applicant shall submit a payment to the Town of Huntington in lieu of the installation of sidewalks; and be it further

RESOLVED, that the applicant shall notify the Environmental Review Division prior to and upon completion of the proposed native vegetation planting within the conservation easement area/conservation area on Lot 6, which areas were previously disturbed by the removal of the two-story frame residence; and be it further

RESOLVED, that if any portion of the proposed TDFR Conservation Easement Area is not approved as a sending site, or if the applicant no longer desires to pursue the TDFR, then that area of land will be designated as Conservation Area, to remain natural in perpetuity, and will be included in the Planning Board's Covenant and Restriction; and be it further

RESOLVED, that the Huntington Town Planning Board having relied on the Town Comprehensive Plan, a review of the site conditions as provided on the Preliminary Map and review of an Environmental Assessment Form pursuant to SEQRA wherein demographic, social, economic and site suitability has been studied determined that:

1. The present population of the Town and anticipated increases in the number of households require that additional land shall be needed to be set aside for public parkland;
2. The Town of Huntington Subdivision and Site Plan Regulations provides for up to a ten percent (10%) dedication for park purposes, however a suitable park cannot be adequately located on the subject site;

3. In accordance with the rules and regulations as set forth in New York State Town Law §277(4), the Planning Board finds that the proposed dedication of the adjacent lot 1.84 acres (80,308.9 s.f.) in the Village of Huntington Bay for passive parkland to the Town of Huntington (SCTM parcel #0402-006.00-01.00-007.000), meets the obligation to provide parkland, and said land shall be dedicated to the Town of Huntington, prior to the filing of the subdivision map with the Suffolk County Clerk; and be it further

RESOLVED, that the applicant shall submit a deed and a survey of the 1.84-acre property to the Town of Huntington for the proposed passive parkland dedication of land situated within the Incorporated Village of Huntington Bay and depicted on the Suffolk County Tax Map as parcel #0402-006.00-01.00-007.000; and be it further

RESOLVED, that in the event that the Huntington Town Board does not accept the above referenced dedication parcel as open space (1.84-acres), the applicant shall comply with the Town of Huntington Subdivision and Site Plan Regulations, Chapter A202, Schedule D (A), and a recreation fee in the form of a certified or bank check, made payable to the Town of Huntington, to be held in a trust and agency account by the Comptroller until such money is appropriated in accordance with the rules and regulations as set forth in New York State Town Law §277, shall be required prior to the signing of the map; and be it further

RESOLVED, that approval of this map does not supersede any other conditions that may be imposed by the Town of Huntington or by any other governmental agency; and be it further

RESOLVED, that any proposed development shall be subject to all applicable laws, requirements, and regulations of the Town of Huntington and all agencies having jurisdiction; and be it further

RESOLVED, that prior to the submission of a building permit, the applicant shall submit the Application for Removal of Excess Material (AREM) to the Department of Planning and Environment; and be it further

RESOLVED, prior to the commencement of any site grading or construction, or the issuance of a building permit, the applicant shall install tree protection in accordance with Huntington Town Code, Chapter 186.3(C), and shall attend a meeting at the subject property, at which time the installed tree protection will be inspected by the Environmental Review Division to determine if it is adequate; and be it further

RESOLVED, that all tree removal shall be in accordance with the approved plans and the applicant shall contact the Environmental Review Division to request inspection prior to the removal of any additional trees located inside or outside of the limit of clearing and grading depicted on the approved plans; and be it further

RESOLVED, that this approval is based on the information provided by the applicant, and during construction, if subsurface and/or site conditions warrant modification to the scope of work, modified plans may be required for review, prepared in conformance with the standards in effect at the time of construction; and be it further

RESOLVED, that no certificate of occupancy shall be issued on any structure on any of the lots until it is determined that all applicable standards and requirements have been met; and be it further

RESOLVED, that all proposed easements or road widening dedications to the Town of Huntington shall be submitted to the Town for review and approval, prior to filing with the Suffolk County Clerk's Office and release of the maintenance bonds; and be it further

RESOLVED, that no lot may be further subdivided or changed at any future date in any manner except by action of the Huntington Town Planning Board.

VOTES: 5 AYES: 5 NOES: 0 RECUSED: 1



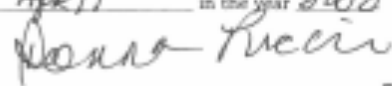
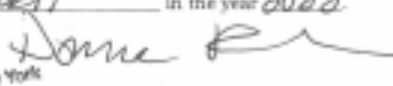
P. Ehrlich, Chair	Not Voting
R. Bontempi, Jr., Vice Chair	RECUSED
Hon. M. M. Amendola	AYE
S. Becker	AYE
Hon. R. A. Lifson	AYE
D. Pennetta	AYE
J. Tantillo	AYE

The resolution was thereupon declared to be duly adopted.

Exhibit B

HUNTINGTOWN TOWN PLANNING BOARD
TOWN OF HUNTINGTON, SUFFOLK COUNTY, NEW YORK

OFFICIAL APPLICATION FOR PRELIMINARY APPROVAL

Date: 4/4/22		File #: D-20-013-V	
SCTM #: 0400. 33-1-1 & 2			
Subdivision Name: Map of Vineyard Bay Estates			
Property Address: 78 Bay Avenue, Huntington			
Tie Distance: 214.40' Vineyard Road			
Zoning: R-7 & R-10	Lots Requested: 8	Total Area: S.F. 345,528	Acres: 7.93
Fee: \$ 3,000.00		Receipt #:	Date:
Owner(s): Vineyard Bay, LLC			
Owner(s) Address: 157 East Main Street, Huntington NY 11743			
Owner Phone: (516) 380-8598		Owner Email: waltermoris2@aol.com	
Applicant(s): Same as above			
Applicant(s) Address:			
Applicant Phone:		Applicant Email:	
Map Prepared by: R&M Engineering, Christopher W. Robinson, PE			
Map Preparer Phone: (831) 271-0576		Map Preparer Email: cwr@rmengineering.com	
Will affordable housing units be provided to households earning 80% of the Town's median income? No			
Number of affordable housing units proposed: None			
Is a cluster development proposed pursuant to New York State Town Law Section 278 and pursuant to Huntington Town Code Chapter 198-114? No			
Proposed Open Space Area in square feet and acre:			
Has the proposed subdivision been granted a variance from the Zoning Board of Appeals? N/A			
ZBA Decision date:		ZBA Application No.:	
OWNER'S AFFIDAVIT STATE OF NEW YORK) ss: COUNTY OF SUFFOLK)  (Signature of Owner)		APPLICANT'S AFFIDAVIT STATE OF NEW YORK) ss: COUNTY OF SUFFOLK)  (Signature of Applicant)	
I, being duly sworn, depose that I am the property owner, that the above answers are true to the best of my knowledge, and that all requirements for the filing of the subdivision have been complied with.		I, being duly sworn, depose that I am the applicant, that the above answers are true to the best of my knowledge, and that all requirements for the filing of the subdivision have been complied with.	
I reside at: 157 East Main Street, Huntington NY 11743		I reside at: 157 East Main Street, Huntington NY 11743	
Address		Address	
NOTARY PUBLIC: Sworn to on the 1 day of the month of April in the year 2022  DONNA A. RUCCIO Notary Public, State of New York No. 01706132256 Qualified in Suffolk County Commission Expires 12/31/25		NOTARY PUBLIC: Sworn to on the 1 day of the month of April in the year 2022  DONNA A. RUCCIO Notary Public, State of New York No. 01706132256 Qualified in Suffolk County Commission Expires 12/31/25	

NO ACTION MAY BE TAKEN TO BEGIN CONSTRUCTION ON THE SUBJECT PROPERTY

Area Designated as Sensitive for Archeological Sites on the SHPO Archeological Site Inventory Presentation

On February 21, 2024 the Town of Huntington Planning Board passed a Resolution which granted preliminary approval Vineyard Bay LLC a/k/a Vineyard Bay Estates LLC's subdivision application and the Planning Board's negative declaration under SEQRA. In making the SEQRA determination of significance, the Planning Board having received, considered and relied upon the responses represented and verified in the long-form FEAF Part 1 prepared by the Owners'/Developers' Sponsor, R&M Engineering on April 04, 2022. Section E.3 of the FEAF Part 1 form concerning "Designated Public Resources On or Near Project [the] Site," the question "is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archeological sites on the NY Historic Preservation Office (SHPO) archeological site inventory?" was answered "No" by the preparer.

We researched the accuracy of that "No" response by accessing the New York State Department of Conservation's (NYSDEC) website's EAF Mapper Resource and discovered that the "No" response E.3.f verified in the Sponsor's FEAF Part 1 conflicted with the "Yes" **pre-populated response** to that question in the NYSDEC EAF Mapper form.

We contacted the appropriate NY State agency, sending an email to Chelsea Towers with the New York State Office of Parks, Recreation & Historic Preservation (OPRHP) on May 09, 2024 @ 12:41 PM and asked the following question about the Vineyard Bay Estates parcels 211 Vineyard Road, Halesite, NY 11743 and 78 Bay Avenue, Halesite NY 11743, with copies of those EAF Mapper reports for each parcel attached:

On the EAF mapping site of NY State, both [parcels] received a yes for [being] "located in or adjacent to an area designated as sensitive for located in archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory." Could you please tell me what are the specifics and what does this mean?"

That same day, @ 04:19:07 PM EDT, Tim Lloyd, Ph.D., Scientist – Archaeology, Division for Historic Preservation with the New York State OPRHP sent the following email response:

*Chelsea passed your inquiry to me. **That area is sensitive for Native American archaeological resources.** That doesn't mean that archaeological sites are located within the footprints of the proposed developments, **but there is a potential.***

On May 22, 2024, Dr. Lloyd called and conveyed the following additional information to us:

- Dr. Lloyd has a 35-year career in this field of work;
- He assumed that the Vineyard Bay Estates project had already undergone a SEQRA review and determination of significance;
- Dr. Lloyd said that municipalities are absolutely free to ignore any of OPRHP findings, but if another government agency at the state level or the federal level looked at the EAF notation that the proposed project "area is sensitive for Native American archaeological resources" and OPRHP found about the project's "archaeological sensitivities," OPRHP would "100% pay attention to it" when the project sponsors or developers or engineering firms go to the DEC for permits. The DEC reviewer would bring this up because **they would look at the notation on the state documents accessible on NYSDEC EAF Mapper;**

- Dr. Lloyd's office does not do the actual field work, but they make recommendations on what to do, noting that the developer might have to pay a cultural resource/research firm to investigate and make archaeological findings on any evidence that may, or may not, be discovered;
- Dr. Lloyd's office "works hard to maintain cordial relationships with all municipalities because they want them to reach out to his office – **their whole effort is to preserve history**. Long Island, particularly out on the East End between the forks, is the richest archaeological area in New York State for these ancient peoples;"
- Dr. Lloyd stated that the TOH Planning Board, as lead agency, should be informed that the proposed subdivision development is located in an area designated by the New York State Office of Parks Recreation and Historic Preservation (OPRHP) as archaeologically sensitive and that the Planning Board should submit the project to the OPRHP for review.

Requested Action:

Based upon a plain reading of that April 04, 202 FEAR Part 1, as prepared by the Sponsor, and the NYSDEC's website's EAF Mapper Part 1, accessed directly from the NYSDEC EAF Mapper for the proposed subdivision action, it is indisputable that the Sponsor's FEAR Part 1 response E.3. f., "Archeological Sites" must be corrected and changed from "No" to "Yes" responsive to that question. That action alone requires that the Planning Board act as it did when it issued the Indian Hills Resolution and make a positive declaration in the pending Vineyard Bay Estates subdivision action (excerpts of the Indian Hills FEAR Part 1 EAF Mapper form are attached below)

END OF PRESENTATION

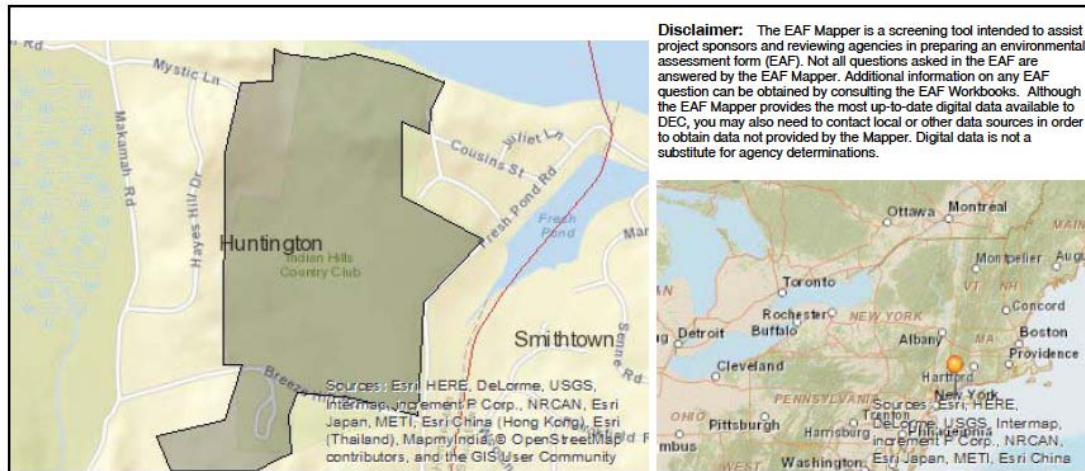
NOTE: In the Draft Resolution posted to the Planning Board's website on the mid-afternoon on Friday June 21, 2024, FEAR Part 2, prepared on June 20th by the Town of Huntington Department of Planning and Environment, made two references to the New York State Department of Environmental Conservation (NYSDEC) Environmental Resource Mapper's prepopulated responses to the Vineyard Bay Estates' parcels that are in the proposed subdivision action that is before the Planning Board for SEQRA determination of significance and for approval of the preliminary subdivision plan by the Planning Board. In each instance cited to by the Department of Planning and Environment, the prepopulated fields responses were both favorable to the Owners'/Developers' interests regarding (a) Impact on Plants and Animals and (b) Natural Resources Description as NYSDEC had predetermined that "the property is not in the vicinity of rare plants or animals." The Department of Planning and Environment's cites to these negative, prepopulated responses establishes that the Department of Planning and Environment knew that the NYSDEC EAF Mapper captured tax map specific parcel information that was material to literal compliance with SEQRA.

INDIAN HILLS FEAF PART 1**A. Project and Sponsor Information.**

Name of Action or Project: The Preserve at Indian Hills
Project Location (describe, and attach a general location map): 21 Breeze Hill Road, Northport, New York; SCTM #0400-14-04-1,2 and #0400-15-01-3.1, 3.2, 11,12, 16, 19 & P/O 22
Brief Description of Proposed Action (include purpose or need): See The Preserve at Indian Hills, Expanded Project Description (attached)

EAF Mapper Summary Report

Thursday, December 03, 2015 12:36 PM



f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?

☒ Yes ☐ No

VINEYARD BAY ESTATES FEAF PART 1 (SPONSOR'S AUGUST 04, 2022 SUBMISSION)

**Full Environmental Assessment Form
Part 1 - Project and Setting**

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1 is accurate and complete.

A. Project and Applicant/Sponsor Information.

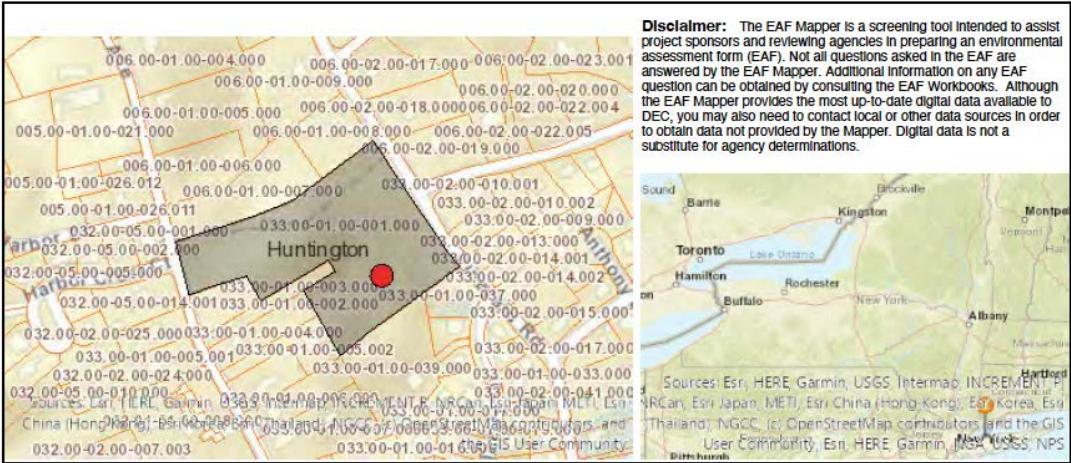
2020-074

Name of Action or Project: Vineyard Bay Estates
Project Location (describe, and attach a general location map): SCTM: 0400 - 033.00 - 01.00 - 001.00 & 002.00 - Situs 78 Bay Avenue & 211 Vineyard Road, Huntington
Brief Description of Proposed Action (include purpose or need): Applicant is proposing to subdivide the two tax lots into eight (8) individual residential lots

EAF Mapper FEAF Part 1 form for 211 Vineyard Road, Halesite, NY

EAF Mapper Summary Report

Thursday, May 9, 2024 11:29 AM



E.3.f. [Archeological Sites]	Yes
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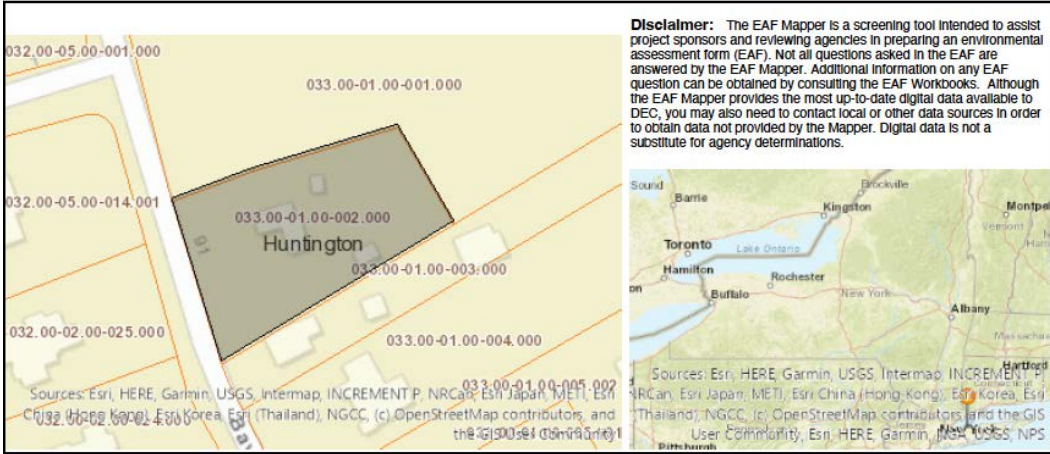
E. Site and Setting of Proposed Action

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? ☒ Yes ☐ No

EAF Mapper FEAF Part 1 form for 78 Bay Avenue, Halesite, NY

EAF Mapper Summary Report

Saturday, June 22, 2024 3:10 PM



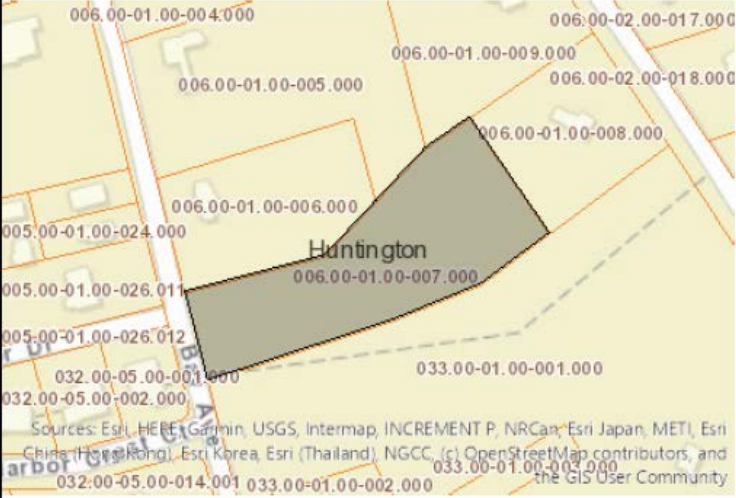
E.3.f. [Archeological Sites]	Yes
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f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? ☒ Yes ☐ No

EAF Mapper FEAF Part 1 form for Parcel situated in the Incorporated Village of Huntington Bay


EAF Mapper Summary Report

Saturday, June 22, 2024 3:29 PM



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community, Esri, HERE, Garmin, USGS, NPS

E.3.f. [Archeological Sites]	Yes
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f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?

☒ Yes ☐ No

August 5 , 2024

Chairman Paul Ehrlich
Town of Huntington Planning Board
planning@HuntingtonNY.gov

Re: Address: 78 Bay Ave & 211 Vineyard Road, Huntington or tax map 0400-03.00 -01.00-001.00
& 002.00 aka Vineyard Estates

Dear Sirs:

I am the Chief of the Unkechaug Nation and on behalf of the Nation we vehemently object to the development of the above referenced property. This property is an area that contains known burials of our people as well as archaeological artifacts of significant spiritual and cultural value. This is a site which the NYS Parks and Historical Preservation office recommended that it be designated an Historic site for preservation purposes.

Further, in 2023, the NYS Legislature passed and the Governor signed the Unmarked Burial Site Protection Act. Codified at Sec. 171 of the Executive Law. In the event of an inadvertent discovery, the act requires a thorough archaeological survey of any known burial sites for a determination of a plan of action prior to any development, which includes an independent monitor of any excavation. It would require immediate cessation of any activity pending the development of the plan of action. The Act also provides for criminal penalties for failure to notify of any discoveries including a felony for desecration of any burials. In addition, any relevant party, including the NYS Attorney General may commence an action to prohibit development.

We believe it is necessary to conduct a thorough archeological survey of the site prior to any construction, and an agreement made to provide for an independent monitor. It would be prudent and most certainly in your best interests to know for certain that there are no sensitive burials at this site prior to excavation. A post discovery would be extremely risky and certainly expensive.

We are concerned that this site may be desecrated. We are not against development per se, but we are against desecration.

We request that you do nothing on this property until a thorough investigation and archaeological survey is done. I may be reached at 516-909-6292 or my email: hwal1@aol.com

Yours truly,

Harry B. Wallace, Chief Unkechaug Nation

Message from the Mayor



February 21, 2025

Dear Neighbors,

I wanted to take a moment to share some important updates with you.

First, many of you have asked about the Vineyard Estates project. Even though this property is not in the Village of Huntington Bay, it directly affects the intersection of Bay Road and Vineyard Road. I attended the recent Town of Huntington Planning Board meeting to gather information, and I raised concerns about potential rain runoff onto Vineyard Rd. After reviewing the plans, I found the initial calculations for rainfall runoff were based on a 3-inch formula, which is below the state-required 4 inches. Additionally, the plans didn't show adequate drainage for Vineyard Rd.

However, after speaking directly with the builder, I learned that the latest set of plans includes a corrected 4-inch calculation and addresses my concerns. The updated designs include three 10' x 12' leaching basins at the lowest part of the property, which should help protect Vineyard Rd from runoff. This is a positive step forward for our village's drainage system.

On another note, the Trustees have been working on a new tree ordinance for the village. We are on our fourth draft and plan to present it at our March 10th meeting for a public hearing.

We've also been working on the preliminary budget for 2025/2026. It's a time-consuming process involving myself, our new accounting firm, and the entire staff. We plan to have a final budget ready to present by April 1st.

As always, the staff and I are available daily for any questions or concerns you may have. We're all hoping for an early spring and look forward to seeing you around the village.

Best regards,
Mark Dara
Mayor