

DISCUSSION DRAFT

EAST HAMPTON WASTEWATER MANAGEMENT BRIEFING BOOK

- I. TOWN-WIDE WASTEWATER MANAGEMENT PLAN
- II. OTHER WATERBODY STUDIES
- III. CPF MODIFICATIONS
- IV. ADVISORY COMMITTEE RECOMMENDATIONS
- V. FINANCIAL ANALYSIS
- VI. THE ROAD AHEAD

December 26, 2015

DISCUSSION DRAFT:

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EXECUTIVE SUMMARY

This Briefing Book is intended to serve as a resource for those who wish to understand the current status of the Town's efforts to remediate widespread wastewater impairment of the town's waterbodies, private and public drinking water, the Peconic Estuary and, quite possibly, the sole source aquifer in the future.

INTRODUCTION

Untreated wastewater is one of the major sources of contamination of East Hampton harbors, lakes and ponds (waterbodies). Each of those 12 waterbodies is impaired to some degree with algal and bacterial contamination, shellfish closings and/or bans on swimming. In addition, drinking water from private wells is at risk of contamination from nearby septic systems or cesspools. Lombardo Associates was hired: (a) to resolve what should be done with an aging and underutilized scavenger waste plant (now closed); and (b) to develop a town-wide wastewater management plan to help address the town's increasingly evident surface water problems.

This report resulted from the author's participation as a member of the Wastewater Project Management Advisory Committee (the "**Committee**"), which was appointed in June, 2015 to review and advise the Town Board on Lombardo Associates' **Town Wide Wastewater Management Plan** dated Sept, 9, 2014 (the "**Lombardo Reports**" or the "**Plan**") and completed its business in November. Although the Committee voted to accept the "Plan", it is truly a work-in-progress.

This briefing book contains a summary of the Lombardo Reports (**Section I**), citations of 6 water quality studies (**Section II**), proposed modifications to CPF law to provide funding for water quality improvement projects (**Section III**), the advisory committee's recommendations (**Section IV**), the author's preliminary financial analysis (**Section V**) and his views on implementation (**VI. The Road Ahead**).

TOWN-WIDE WASTEWATER MANAGEMENT PLAN

The 528-page Lombardo Reports (9 different reports and an Executive Summary) provide a wealth of information regarding town-wide wastewater issues, but they are hard to absorb in their entirety and the recommended projects have not yet been vetted. Only two of the town's 12 waterbodies (Georgica and Hook Ponds) have been the subject of comprehensive study to determine the primary causes of impairment, although, the neighborhoods around Lake Montauk and Fort Pond have received a lot of attention.

While it is impossible to adequately summarize all of the Lombardo Report's findings and recommendations, here is an inventory of properties that may need improved wastewater treatment.

- 656 properties in Montauk and East Hampton Village recommended for community wastewater systems.
- 1,081 properties may have possible drinking water problems due to small lot size and therefore inadequate separation of wells and septic systems. (The Committee believes that another 1,279 properties with high groundwater may be at risk.)
- 2,093 large capacity systems, some of which have SPDES permits, for which the Suffolk County Health Department has already approved advanced treatment systems.
- 3,051 properties with a variety of "wastewater needs" that can be addressed with individual onsite wastewater treatment but whose locations have not been specified.
- 8,351 properties contributing to excessive nitrogen loading of the Town's waterbodies included in Lombardo's TMDL analysis.
- 12,570 properties still using cesspools, which have not been permitted since 1973 (the report erroneously uses 1978).
- Approximately 20,000 developed properties in a consolidated database prepared by Lombardo from a variety of town and county sources.

Aside from the obvious need for remediation of some or all of the problem areas cited above, the Lombardo Reports include the following recommendations:

- A water quality monitoring program
- Enforcement of the existing Town Code requirement of a septic system inspection every three (3) years (§ 210-5-1).
- Wastewater and Water Quality Program Managers (External and Internal)

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- Watershed studies for Georgica, Hook and Fort Ponds.
- A variety of watershed specific projects, including several demonstration sites for Permeable Reactive Barriers (PRBs).

Finally, Lombardo has developed an extensive list of wastewater improvement projects summarized in Exhibit 1 at the end of Section I. (TOWN-WIDE WASTEWATER MANAGEMENT PLAN).

OTHER WATERBODY STUDIES

Six additional studies shed additional on the Town's water quality.

1. Georgica Pond (Gobler)
2. Lake Montauk (Nelson Pope & Voorhis)
3. Hook Pond (Lombardo)
4. Accabonac Harbor (Horsley Witten Group, Inc.)
5. Trustees Report for Accabonac Harbor, Napeague Harbor, Hog Creek, Northwest Creek, Fresh Pond, Three-Mile Harbor, Georgica Pond, and Hook Pond (Gobler)
6. Lake Montauk, Fort Pond, Fresh Pond, Pussy's Pond and Georgica Pond water quality reports (Concerned Citizens of Montauk/Surfriders)

PROPOSED CPF MODIFICATIONS

Proposed modifications to existing Community Preservation Fund (CPF) law would profoundly impact the financial viability of water quality projects. The principal modifications would:

- Make up to 20% of CPF receipts available for water quality improvement projects.
- Extend the CPF expiration date from 2030 to 2050.
- Require a plan that lists every water quality improvement project "updated not less than once every five years, but in no event until at least three years after the adoption of the original plan."

To access these provisions, the Town will have to prepare a Water Quality Improvement Project Plan and modifications to the town code to be approved by referendum next fall (November, 2016) after public hearings have been held during the summer of 2016.

ADVISORY COMMITTEE RECOMMENDATIONS

In addition to recommending acceptance of the Plan "as a basis for moving forward", the Committee recommended several criteria for prioritizing wastewater projects and the following recommendations:

1. A Long-Term Town-Wide Surface Water Testing and Monitoring
2. A Town-Wide Drinking Water Testing and Monitoring Program
3. Upgrading all Large Capacity Systems at the time of property transfer or within five (5) years.
4. Individual Residential On-Site Systems replaced and upgraded consistent with best available technology at the time of property transfers, substantial alterations or an unspecified date.
5. Individual Watershed Plans
6. Watershed Protection Improvement District(s) to help to raise revenue to fund improvements.
7. Review and refine the Town Code re: sanitary system standards and inspections.
8. Education and Outreach
9. A Town-Wide Water Quality Advisory Committee
10. Public-Private Partnerships
11. Expansion of Staff Resources

FINANCIAL ANALYSIS

An analysis of the sources and uses of wastewater remediation leads to the following conclusions:

- There is considerable uncertainty as to the total town-wide cost of wastewater remediation at this point, but it could easily exceed \$200 million if projects and properties aren't carefully prioritized.
- Stormwater, other water quality improvement projects and administrative costs will compete with wastewater projects for CPF dollars.
- Community wastewater systems are much more expensive than individual onsite and drinking water systems and could account for a disproportionate amount of total remediation costs.

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- It is unlikely that a wastewater remediation program extended out over 35 years to 2050 would be acceptable to East Hampton residents.
- While alternatives to borrowing against future CPF receipts should be explored, borrowing is the only feasible way to finance community wastewater systems.

Therefore, two critical components of any financing plan will be

- a. A more precise estimate of the number of properties requiring wastewater remediation.
- b. A fair and equitable allocation of costs between business and residential property owners.

A multi-disciplinary task force will be required to fit all the pieces of a financial plan together.

THE ROAD AHEAD

Looking forward, the most urgent task will be to prepare a written Water Quality Improvement Plan, without which CPF funding will not be available, by mid-spring, 2016 to be available for public hearings. In order to implement a town-wide wastewater management plan, several efforts will have to proceed simultaneously:

- Comprehensive watershed studies, including TMDL analyses, for all 12 waterbodies using existing data and studies wherever possible.
- Prioritization of water quality improvement projects by public health needs, watershed, sub-watershed, and characteristics of individual properties to minimize costs while maximizing water quality improvements.
- Updated provisions to the Town Code coupled with robust inspection and enforcement capabilities.

To make all this happen, an organizational plan with additional staff at all levels together with outside professional help and community participation will be required. An advisory group with senior management experience may be helpful in getting this effort off to a good start.

*Peter A. Wadsworth
February 11, 2016*

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I. TOWN-WIDE WASTEWATER MANAGEMENT PLAN: SUMMARY & ANALYSIS

The “Town Wide Wastewater Management Plan” prepared by Lombardo Associates, Inc. (the “Lombardo Reports”) consists of 10 individual reports issued on various dates from November, 2013 to September, 2014 as listed below in date sequence:

Wastewater Management Alternatives	November 27, 2013
Financial Alternatives and User Charges	December 4, 2013
Management & Legislative Alternatives	December 4, 2013
Water Quality Monitoring – outline	December 11, 2013
Community Profile	December 17, 2013
Solutions Scenarios Development	December 30, 2013
Wastewater Needs Analysis	January 8, 2014
Scavenger Waste Facility	April 28, 2014
Lot by Lot Analysis	September 8, 2014
Executive Summary	September 8, 2014

It should be noted that certain material contained in later reports, e.g. the Lot by Lot Analysis (9/8/2014), supersedes earlier material on the same subject, e.g. Wastewater Needs Analysis (1/8/2014).

SCOPE OF WORK: WATERSHEDS & NEIGHBORHOODS

East Hampton includes 11 waterbodies and therefore watersheds:

- Accabonac Harbor
- Fort Pond
- Fresh Pond
- Georgica Pond
- Hog Creek
- Hook Pond
- Lake Montauk
- Napeague Harbor
- Northwest Harbor
- Three Mile Harbor
- Wainscott Pond

Lombardo has recommended baseline watershed studies for the following water bodies and included them in their analysis of Wastewater Needs (see below):

- Georgica Pond
- Hook Pond
- Fort Pond

These same watersheds were included in the Summary of Wastewater Needs (see below). A larger number of watersheds and developed properties (8,341) were studied for nitrogen loading in Lombardo’s Lot by Lot Analysis, but Wainscott Pond, Fresh Pond, Hog Creek, Town Pond were not included.

It is unclear why studies have not been recommended for any of the remaining water bodies although Nelson Pope & Voorhis recently completed as watershed study Lake Montauk focused on storm water rather than wastewater.

SUMMARY OF FINDINGS: WASTEWATER NEEDS

While it would be impossible, or at least impractical, to summarize all of the findings of the Plan reports itemized above, one of the most important findings contained in the Plan is a Summary of Wastewater Needs presented as Table 2-1 in the Executive Summary and Table 3-16 in the Lot by Lot Analysis, which finds that there are 4,326 developed properties (out of a total of nearly 20,000 in the Town of East Hampton that need attention.

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Table 2-1 Summary of Wastewater Needs by Sub-Study Areas

Study Sub-Area	# of Dev. Prop.	WW Design Flow (gpd)	1. Nitrogen and Phosphorus TMDL considerations	2. Bacterial public health	3. Impermeable/Hydric Soils ¹	4. Malfunctioning systems considerations	5. Setback requirements	6. Private water supply considerations	7. Public water supply considerations	8. Town & County Code & State Law considerations			9. Cost Considerations	10. Economic sustainability issues	11. Space availability	# With WW Needs	% With WW Needs
										Comm. w/Cess	SPDES	>1,000-gpd					
1. Montauk Center	114	124,745	<i>See Watershed Studies</i>	7	0	0	4	25	0	66	4	49			49	90	78.9%
2. The Docks	64	186,720		40	21	0	37	1	0	34	8	11			11	58	90.6%
3. Ditch Plains	276	77,275		50	237	0	0	8	0	0	0	77			77	214	77.5%
4. Camp Hero	28	8,237		0	5	28	0	0	0	0	0	0			0	28	100.0%
5. South 3-Mile	61	25,012		38	31	0	46	2	0	6	1	4			4	59	96.7%
6. Village Business	325	157,209		14	2	0	0	42	0	126	8	110			110	207	63.7%
7. Georgica Pond Watershed	1,335	574,892		36	31	0	50	141	0	78	1	114			114	267	20.0%
8. Hook Pond Watershed ²	1,960	711,707		85	33	0	18	56	0	36	4	72			72	218	11.1%
9. Fort Pond Watershed ³	250	149,790		49	39	0	90	17	0	33	1	33			33	134	53.6%
10. Individual Onsite ⁴	3,051	1,797,160		960	801	0	564	789	111	201	19	997			997	3,051	100.0%
Totals	7,464	3,812,746	1,279	1,200	28	809	1,081	111	580	46	1,467			1,467	4,326	58.0%	

1. Soils data is area-wide data that may not accurately reflect the actual soils where the disposal system is located
2. Data from Village Business area not included to avoid double counting
3. Data from portion of Montauk Center that is within Fort Pond Watershed not included to avoid double counting
4. Data from pond watershed areas not included to avoid double counting

NOTA BENE: *The totals for the numbered columns 1,2 and 3 of Table 2-1 above should correctly appear in numbered columns 2,3 and 4.*

Two or more such “Needs”, shown below, can exist on a given property.

WASTEWATER NEED CATEGORY	# DEVELOPED PROPERTIES WITH SPECIFIED NEED
8. Code Considerations	2,093
11. Space Availability	1,467
2. Bacterial	1,279
3. Impermeable/Hydric Soils	1,200
6. Private Water Supply	1,081
5. Setback from Water Body	809
7. Public Water Supply	111
4. Malfunctioning	28
1. Nitrogen	NA
Total (overlapping) Wastewater Needs	8,068
Total Developed Properties with Needs	4,326

While 1,275 of the developed properties with needs are located in specific neighborhoods or watersheds, the remaining 3,051 properties (70+%) are simply identified as “Individual Onsite”. The geographical distribution of needs is as follows:

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Watershed/Neighborhood	# Developed Properties with Needs
Montauk Center	90
Montauk - The Docks	68
Montauk - Ditch Plains	214
Montauk - Ft. Pond	134
Montauk - Camp Hero	28
South 3-Mile Harbor	25
EH Village Business Center	207
Georgica Pond	267
Hook Pond	218
Individual Onsite (not located)	3,051
Town-wide Total	4,302

It should be noted that the total developed properties “Needs” in this table (4,302) varies slightly from the prior table (4,236). In addition, over 70% of the developed properties with Needs have not been located either neighborhood or by watershed. Presumably the database created by Lombardo from several town and county sources would assist in locating these properties.

1. NITROGEN/SHELLFISHING

Nitrogen contributions were not analyzed by property. Instead, Section 3.2 (“Nitrogen Loading Considerations”) of the Lot by Lot Analysis contains Table 3-5a (shown below). The astute reader will note that the 3,928 developed properties categorized as “Individual Onsite” in this table the 3,051 developed properties in the same category in the Summary of Wastewater Needs and the total of 8,341 developed properties substantially exceeds the total of 4,326 developed properties with wastewater needs in the Summary of Wastewater Needs (Table 2-1 above) in the Lombardo Reports.

Table 3-5a Basic Study Area Improvements

Study Sub-Area	# of Dev. Prop.	Description of Basic Improvements				Flow as % of Total	
						Top 10	Top 20
1. Montauk Center	114	Alternative small diameter collection system		Treatment & disposal locally or at Montauk Manor Fire Dept. site, with prospective golf course	39%	63%	
2. The Docks	64				61%	80%	
3. Ditch Plains	276						
4. Camp Hero	28	Wastewater System Improvements					
					Top 5	Top 10	
5. South 3-Mile	61	Alternative small diameter collection system		Treatment & disposal locally with irrigation reuse integrated	39%	45%	
					Top 10	Top 20	
6. Village Business	325				30%	44%	
7. Georgica Pond Watershed	1,335	Baseline In-Pond & Watershed Studies	PRB demonstration Projects		21%	29%	
8. Hook Pond Watershed	1,960						
9. Fort Pond Watershed	250						
10. Individual Onsite	3,928	Repair / replace malfunctioning systems					
Totals	8,341						

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Total Maximum Daily Loads (TMDL) studies, as required by federal law for impaired water bodies, were completed for the following watersheds:

- | | |
|--------------------|-------------------------|
| NW Harbor | Lake Montauk |
| Three Mile Harbor | Oyster Pond |
| Accabonac Harbor | Three Mile Harbor South |
| W. Napeague Harbor | Georgica Pond |
| E. Napeague Harbor | Hook Pond |
| Fort Pond | Fort Pond. |

The results are shown in Tables 3-5 through 3-11 of the **Lot by Lot Analysis** (pp. 31-37). Not analyzed were: *Wainscott Pond, Fresh Pond, Hog Creek, Town Pond*

Gobler Studies for Trustees

In the Nitrogen section of Lot by Lot Analysis, Lombardo includes reference to Dr. Chis Gobler’s work with the East Hampton Trustees

“Gobler (March 2014) performed a study for the East Hampton Trustees in 2013 to assess the temporal and spatial dynamics in East Hampton marine waters of:”

- Coliform bacteria;
- Paralytic shellfish poisoning (PSP)-causing dinoflagellate *Alexandrium*;
- Diarrhetic shellfish poisoning (DSP)- causing dinoflagellate *Dinophysis*;
- Ichthyotoxic dinoflagellate, *Cochlodinium*, whose blooms are toxic to fish, shellfish and other aquatic organisms “

Gobler also assessed “the dynamics of toxic cyanobacteria and cyanotoxins in East Hampton's major freshwater/brackish bodies.”

Shellfishing Closures

“Figure 3-1 (below) presents Gobler’s comparison of NYS DEC’s actions on shellfish closures with his measured values for coliforms and comparison to shellfish standards.”

Site #	Site Name	Measured Values	DEC Status	
1	Napeague	Over: May-Oct	Open	Should be Seasonally Closed
2	Napeague - Lazy Point	Over: Jul-Sep	Open	Should be Seasonally Closed
3	Fresh Pond – Outlet	Over	Uncertified	Closed and Confirmed
4	Fresh Pond	Over	Uncertified	Closed and Confirmed
5	Accabonac - Louse Point	Over: May-Sep	Seasonally Uncertified: May 1 – Nov 30	Closed and Confirmed
6	Accabonac - Landing Lane	Over: Apr-Oct	Seasonally Uncertified: May 1 – Nov 30	Closed and Confirmed
7	Accabonac - Gerard Drive	Over: May-Sep	Open	Should be Seasonally Closed
8	Hog Creek – Clearwater	Over: May-Oct	Seasonally Uncertified: May 1 – Nov 30	Closed and Confirmed
9	Hog Creek - Isle of Wight	Over: Apr-Oct	Seasonally Uncertified: May 1 – Nov 30	Closed and Confirmed
10	Three Mile Harbor - Gann Road	Over: May-Oct	Seasonally Uncertified: May 15 – Oct 15	Closed and Confirmed
11	Three Mile Harbor - Head of the Harbor	Under: Nov-Apr	Uncertified	Could be Seasonally Open
12	Three Mile Harbor - Hand's Creek	Over: May-Nov	Seasonally Uncertified: May 1 – Nov 30	Closed and Confirmed
13	Northwest Creek	Under: Apr-May	Uncertified	Could be Seasonally Open
16	Georgica Cove	Over	Uncertified	Closed and Confirmed

2. BACTERIAL (1,279 DEVELOPED PROPERTIES WITH NEEDS)

“Bacterial public health considerations based upon insufficient depth to groundwater – using the criteria of a minimum 2-foot separation between disposal system bottom and the seasonal high groundwater table.”

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Neighborhood/Waterbody	# Developed Properties
Montauk Center	7
Montauk - The Docks	40
Montauk - Ditch Plains	50
Montauk - Ft. Pond	49
Montauk - Camp Hero	-
Montauk Subtotal	146
South 3-Mile Harbor	38
EH Village Business Center	14
Georgica Pond	36
Hook Pond	85
Individual Onsite (not located)	960
Town-wide Total	1,279

3. IMPERMEABLE/NON-HYDRIC SOILS (1,200 PROPERTIES)

“Systems on sites with impermeable/hydric soils will be identified as candidates malfunctioning systems. Other data will be relieved upon for explicit needs definition. Soils data will be used as advisory- no needs will be based solely on soils criteria.”

Neighborhood/Waterbody	# Developed Properties
Montauk Center	-
Montauk - The Docks	21
Montauk - Ditch Plains	237
Montauk - Ft. Pond	39
Montauk - Camp Hero	5
Montauk Subtotal	302
South 3-Mile Harbor	31
EH Village Business Center	2
Georgica Pond	31
Hook Pond	33
Individual Onsite (not located)	801
Town-wide Total	1,200

4. MALFUNCTIONING (28 PROPERTIES)

“sites whose septic systems are malfunctioning which could be caused by a variety of site, system design/construction and/or use factors. Malfunctioning systems are considered a public health threat.” The only property identifies as malfunctioning (by present standards) is Camp Hero with 28 units. Additional systems “suspected to be malfunctioning due to their age and large service area” include:

- Three Mile Harbor Trailer Park
- Whalebone Apartments,
- Accabonac Apartments,
- Windmill 1 and 2 Apartments, Avallone on Fort Pond Bay

5. SETBACK FROM WATER BODY (809 PROPERTIES)

“for water quality protection may require off site solutions for properties adjacent to waterfront and wetland areas that are too small to comply with setback requirements.”

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Neighborhood/Waterbody	# Developed Properties
Montauk Center	4
Montauk - The Docks	37
Montauk - Ditch Plains	-
Montauk - Ft. Pond	90
Montauk Subtotal	131
South 3-Mile Harbor	46
Georgica Pond	50
Hook Pond	18
Individual Onsite (not located)	564
Town-wide Total	809

6. PRIVATE WATER SUPPLY (1,081 PROPERTIES)

“for areas where small lot size makes the required horizontal separation distances between disposal systems and individual water supply wells unlikely to be maintained. For areas where the only public health concern is separation between disposal systems and individual water supply wells, a public water supply solution may be technically and economically preferable versus a community wastewater solution.”

While the neighborhoods where private wells were threatened were believed to be primarily in Springs and Montauk, the Summary of Wastewater Needs provides no location for almost three quarters (73%) of the properties with “Private Water Supply Considerations” and the Georgica Pond watershed as the location of the next most prevalent properties (13%) with such needs.

Private Water Supply Considerations	# Dev. Props.	% of Total
Individual Properties (no location specified)	789	73.0%
Georgica Pond watershed	141	13.0%
Hook Pond watershed	56	5.2%
EH Village	42	3.9%
Montauk Center	25	2.3%
Fort Pond watershed	17	1.6%
Ditch Plains	8	0.7%
South 3-Mile Harbor watershed	2	0.2%
The Docks	1	0.1%
Town-wide Total	1,081	100.0%

The Needs Analysis finds a larger number of developed properties with Private Water Supply Considerations (1,383 properties) than the Lot by Lot Analysis (1,081) with no explanation or discussion of how that number arrives at or why it differs from the Needs Analysis total of 1,383.

In the Community Profile Report, Lombardo reports a total of 3,110 small (less than ¼ acre) lots but organized by school district rather than watershed.

Montauk	1,318
East Hampton	853
Amagansett	495
Springs	372
Wainscott	72
Totals	3,110

Unresolved Drinking Water Issues

Without access to the database (see below) it is impossible to tell whether or to what extent properties with drinking water issues attributable to small lot size and therefore proximity of wells and cesspools/septic

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systems also contribute to surface water contamination. This is important because it may dictate one of two radically different solutions:

- a) If there is no material impact on a water body, then public drinking water (Suffolk County) or whole house filtration, if effective, would be the best and least costly solution.
- b) If there is material impact on a water body, then the replacement of the septic system or cesspool would be required and the drinking water solution might be redundant.

7. PUBLIC WATER SUPPLY (111 PROPERTIES)

“for areas with wastewater systems discharging within short (2 - 5 years) travel time to community water supply wells.”

Neighborhood/Waterbody	# Developed Properties
Individual Onsite (not located)	111
<i>Town-wide Total</i>	<i>111</i>

8. TOWN & COUNTY CODE/STATE LAW CONSIDERATIONS (2,093 PROPERTIES)

Lombardo’s table of wastewater needs (Table 2-1 in the Executive Summary) identifies 2,093 properties with “Town & County Code & State Law considerations”, i.e. large systems comprised of:

- 580 commercial systems with cesspools,
- 46 SPDES permits out of 112 permits town-wide
- 1,467 additional systems with more than 1,000 gallons per day of wastewater flow.

This report explores SPDES systems and provides data on large scale systems. 1,217 (59.4%) of which are amenable to onsite solutions, according to the table below, although we don’t know which locations or waterbodies they may impact, if any.

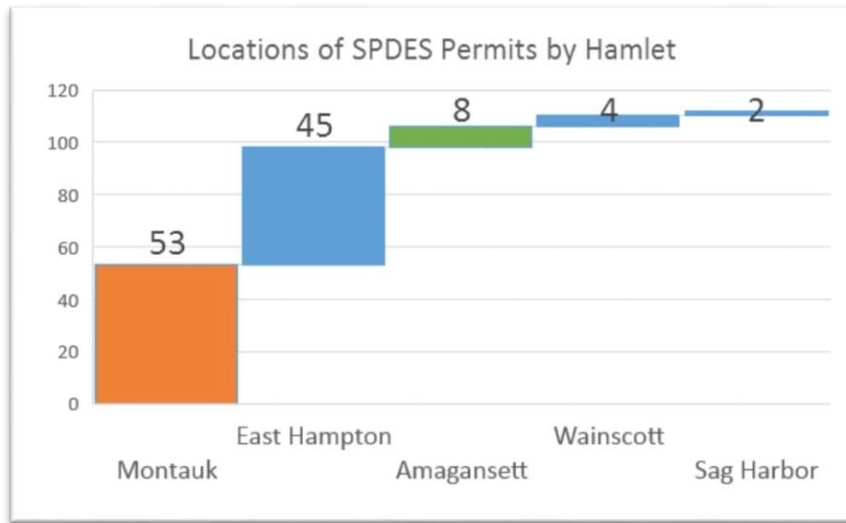
Neighborhood/Waterbody	# Developed Properties			Totals
	Comm. w/Cesspool	SPDES	> 1,000 Gals/day	
Montauk Center	66	4	49	119
Montauk - The Docks	34	8	11	53
Montauk - Ditch Plains	0	0	77	77
Montauk - Ft. Pond Watershed	33	1	33	67
Montauk - Camp Hero	0	0	0	-
<i>Montauk Subtotal</i>	<i>133</i>	<i>13</i>	<i>170</i>	<i>316</i>
South 3-Mile Harbor	6	1	4	11
EH Village Business Center	126	8	110	244
Georgica Pond Watershed	78	1	114	193
Hook Pond Watershed	36	4	72	112
Individual Onsite (not located)	201	19	997	1,217
<i>Town-wide Total</i>	<i>580</i>	<i>46</i>	<i>1,467</i>	<i>2,093</i>

Lombardo estimates that there are 529 large capacity wastewater systems in East Hampton consisting of: (a) 514 Modified Subsurface Sewage Disposal Systems (MSSDS’s) required for flows of less than 15,000 gallons per day (gpd); and (b) 15 Wastewater Treatment Facilities (WWTFs) required for flows greater than 15,000-gpd. In addition, Lombardo reports 112 SPDES systems for which addresses are available. Maps of the SPDES (State Pollutant Discharge Elimination System) permits are shown below to show what might be possible with access to the database created by Lombardo from town and county records.

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SPDES Permits

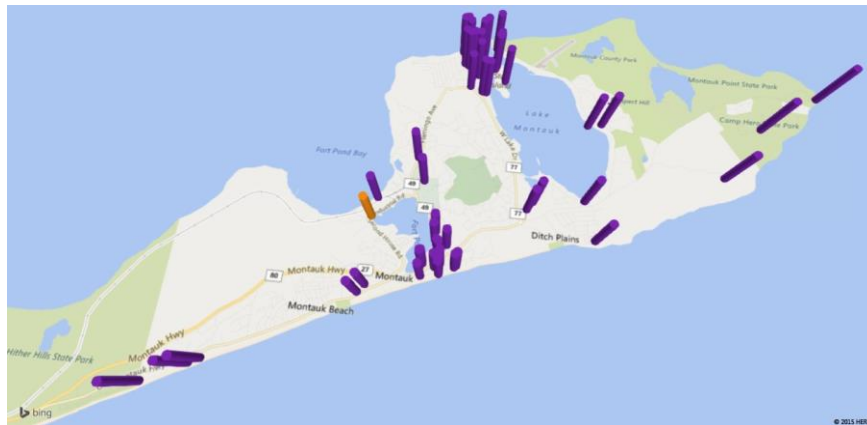
The following information was derived from the Community Profile Report dated December 17, 2013.



The maps below show the approximate locations of the businesses and organizations with SPDES permits.

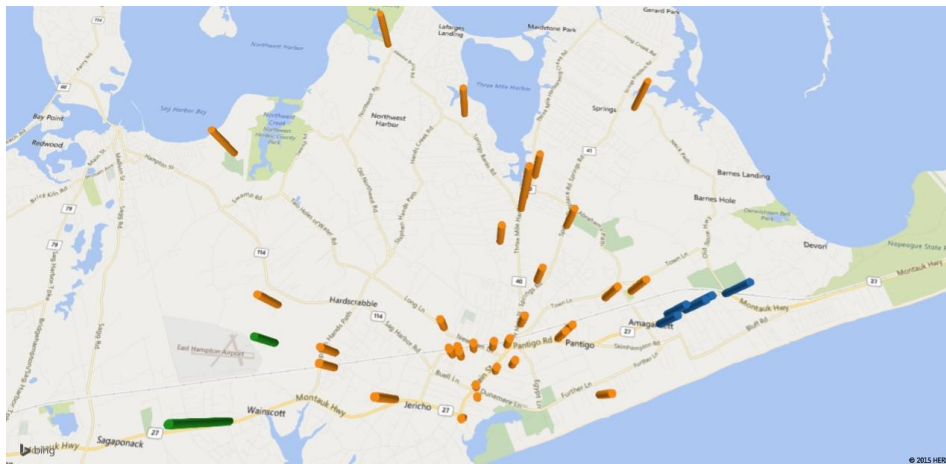
Montauk Closeup

SPDES permits in Montauk outnumber those in the other hamlets and exhibit greater clustering, especially at the south end of Fort Pond and the north end of Lake Montauk than East Hampton Village.



East Hampton Village. et. al. Closeup

The closeup below shows SPDES permits for the western portion of the town including Wainscott, the village, NW Woods, Springs and Amagansett. A SPDES permit sited in Noyac (?) is not shown.



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Other Large Capacity Systems

While Lombardo reports 112 SPDES permits, their estimate of larger capacity wastewater systems exceeds 500, as shown below. It is unclear whether this includes or excludes SPDES permits.

“Table 2-6 presents the estimated number of required treatment system types based on current property use by school district exclusive of consideration of grandfathered properties

- For flows < 15,000-gpd, a Modified Subsurface Sewage Disposal System (MSSDS) is required
- For flows >15,000-gpd, a Wastewater Treatment Facility (WWTF) is required.”

Table 2-6 Required System Types by School District – without consideration of grandfathered use/flows

School District	Type of System Required Based on Current Use (No Consideration of Grandfathered Properties)		
	Standard	MSSDS	WWTF
Amagansett	2,843	75	3
East Hampton	7,239	108	2
Montauk	5,250	222	9
Sag Harbor	968	31	0
Springs	5,489	35	0
Wainscott	1,383	43	1
Total	23,172	514	15

The Lot by Lot Analysis contains the following additional data on large (>1000 gals./day) systems

- 143 commercial properties (Appendix A of the Lot by Lot Analysis)
- 98 temporary housing properties (Appendix B of the Lot by Lot Analysis)
- 320 “use areas” associated with 143 commercial properties
- 801 commercial properties with an estimated aggregate wastewater flow of 1.3 million gallons per day.

11. SPACE AVAILABILITY (1,467 PROPERTIES)

[Although 1,426 developed properties were shown in Summary of Wastewater Needs as having “Space Availability” needs a search of all 528 pages of the Plan revealed no definition of “Space Availability” nor an explanation of how this property count was determined.]

Neighborhood/Waterbody	# Developed Properties
Montauk Center	49
Montauk - The Docks	11
Montauk - Ditch Plains	77
Montauk - Ft. Pond	33
Montauk - Camp Hero	-
Montauk Subtotal	170
South 3-Mile Harbor	4
EH Village Business Center	110
Georgica Pond	114
Hook Pond	72
Individual Onsite (not located)	997
Town-wide Total	1,467

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DATABASE USED IN LOT BY LOT ANALYSIS

A database of developed properties in the Town of East Hampton was assembled using parcel information from Town and Suffolk County Dept. of Health Services files.

- Assessment records: 24,851 parcels.
- The GIS database: 25,866 parcels
- The combined database totals 20,058 developed parcels, including:
 - 18,928 Residential developed parcels
 - 789 Commercial developed parcels
 - 341 other developed parcels

Lombardo's explains the variance between the Assessment and GIS databases appears to be due to subdivisions of lots which does not materially affect the CWMP analysis.

NEED FOR FURTHER ANALYSIS

Despite the abundance of information in the Summary of Wastewater Needs and the Lot by Lot Analysis, the criteria for selecting these particular 4,326 properties and eliminating others are unclear. Some of the unanswered questions include:

- Which watersheds are the 3,051 the "Individual Onsite" developed properties associated with?
- How many of these properties are associated with watersheds not listed in the Summary of Wastewater Needs (Table 2-1, Executive Summary), e.g. Accabonac, Napeague and Three Mile Harbors, Hog Creek, Fresh Pond, etc.?
- To what extent do the 1,081 developed properties with "Private (drinking) Water Supply Considerations" involve cesspools or septic systems that contribute to surface water impairment, which may dictate a wastewater rather than drinking water solution?
- Why would the town not want to eliminate all 12,570 cesspools notwithstanding the Town Code as currently written?
- If the Town wanted to prioritize septic and cesspool systems with 2, 4, 6 or 8 years of groundwater travel time in each watershed associated with an impaired water body, how many properties would be involved?

The above-referenced Database prepared by Lombardo may hold the answer to many of these questions

LOMBARDO ASSOCIATES' RECOMMENDATIONS

Embedded in The Plan are a number of recommendations. Here are some of the highlights:

Legislative Options

Lombardo has recommended the town consider creating one or more of the following districts through legislation:

- § 190-g Water quality treatment districts;
- § 190-e Wastewater disposal districts
- Watershed Protection Improvement Districts (RECOMMENDED)
- Business Improvement Districts

"The **Watershed Protection Improvement District, or a special Town District** similar in structure as or a modification of the Town's Scavenger Waste District, are the recommended legislative options."

"Upgrades to Septic Systems to achieve Advanced Tertiary Treatment (AWT)

"applies to properties that are required by Town/County/State code and/or in environmentally sensitive areas that require additional nitrogen or phosphorus removal

"On Property Upgrades to Septic Systems to Avoid Bacterial Contamination

"Septic System Inspection prior to property transfer, with potential phasing of repairs based upon environmental risks to minimize the burden on lower income property owners."

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“Properties Requiring a Public Water Supply

“This category represents properties that are at risk from well water contamination with the appropriate solution being connection to the Suffolk County Water Authority water supply system.”

“Water Quality Monitoring Program

“This category is for activities associated with monitoring ground and surface water quality.”

NON-STRUCTURAL RECOMMENDATIONS

1. **Enforce the existing Town Code requirement for a septic system inspection every three (3) years** (§ 210-5-1) and by requiring such prior to property transfer. Additionally, all properties within the Harbor Protection District need to certify compliance with § 255-3-75C.
2. **The Scavenger Waste District, Town Code Chapter 210, should be replaced** (after existing debts are paid) or supplemented by a Watershed Protection District or similar entity as provided in Town Law Article 12, 12-A and 12-C. Options include:
 - § 190-g Water quality treatment districts;
 - § 190-e Wastewater disposal districts
 - Watershed Protection Improvement Districtswith the Watershed Protection Improvement District being the recommended vehicle
3. **A Wastewater Management and Water Quality Improvement Advisory Committee** should be established as soon as possible to provide oversight and recommendations to the Supervisor/Town Board and facilitate public participation.
4. **Wastewater and Water Quality Program Managers (External and Internal)** to the Town needs to be appointed to report to the Advisory Committee and Supervisor/Town Board. Given the complexities of the Plan, the external role is usually performed by the project’s retained professional engineer. The internal role is performed by a Town staff person designated responsible for the Plan’s implementation.

STRUCTURAL RECOMMENDATIONS SUMMARY

Neighborhood Wastewater Systems

Lombardo has recommended community wastewater (sewer) systems for the following areas:

1. Montauk Center
2. The Docks
3. Ditch Plains
4. Camp Hero
5. Three Mile Harbor
6. Village Business Area

Watershed Studies

“The following watersheds need further scientific studies to refine the levels of needed wastewater and nutrient reduction efforts.

7. Georgica Pond
8. Hook Pond
9. Fort Pond

“Groundwater treatment via a Nitrex™ Permeable Reactive Barrier (PRB), at strategically important locations, can achieve the desired nitrogen and/or phosphorus reductions at a significantly lower cost than wastewater system improvements. Importantly the positive impacts on the surface body’s water quality will be noticeable in a shorter time period with the PRB vs. wastewater improvements due to the long groundwater travel time in parts of the watersheds. This option is proposed for Georgica and Hook Pond watersheds.”

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WATERSHED & NEIGHBORHOOD RECOMMENDATIONS

Three Mile Harbor

“The following corrective actions are recommended to address the eutrophic conditions in southern 3 Mile Harbor.

- Demonstration project of the use of the Nitrex™ Permeable Reactive Barrier (PRB) for nitrogen removal in the following areas: Three Mile Harbor Road and Springy Bank Road.
- Demonstration projects on the use of oyster/shellfish aquaculture as a nitrogen removal tool
- Individual on-site nitrogen removal systems and sewerage with nitrogen removal for neighborhood/area wide systems may be needed to supplement the other options
- Require the use of organic fertilizers in the watershed
- Groundwater modeling and sampling to determine groundwater flow patterns and existing groundwater quality

“For the larger 3 Mile Harbor watershed, it is recommended that:

- PRB demonstration projects and shellfish cultivation be pursued first due to their low cost and the immediate improvements that can be achieved
- Groundwater and surface water sampling and modeling studies be performed to determine the best locations for the PRB and the degree to which additional efforts will be needed to reduce nitrogen loadings
- Identification and prioritization of areas that should be sewerage with nitrogen removal.”

Georgica Pond

The following corrective actions have been recommended by Lombardo Associates:

- Require the use of organic fertilizers in the watershed
- Enforce NYS law regarding fertilizer applications near water bodies
- Groundwater modeling and sampling to determine groundwater flow patterns and existing groundwater quality
- Demonstration project of the use of the Nitrex™ Permeable Reactive Barrier (PRB) for nitrogen and phosphorus removal in the following areas:
 - a. **Stone Road & Goose Creek Lane**
 - b. **Georgica Road and Georgica Close Road** The Nature Conservancy owns lands that may be appropriate for the PRB application.
- Installation of shoreline buffers with native vegetation and infiltration systems to minimize direct runoff into the Pond.
- Septic system upgrades with nutrient removal as best as practical. *It is noted that the use of the PRB may obviate the need for septic nutrient removal and consequently be very cost-effective.*

And ongoing scientific studies to:

- Establish baseline conditions of Pond algae and nutrients, groundwater quality and influence of Pond muds
- Perform a nutrient budget for the Pond Quantitatively refine nutrient removal requirements

Hook Pond

The following corrective actions are recommended to address the eutrophic conditions in Hook Pond:

- **Require the use of organic fertilizers** in the watershed and enforce NYS law regarding fertilizer applications near water bodies
- **Groundwater modeling and sampling** to determine groundwater flow patterns and existing groundwater quality

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- Demonstration project of the use of the **Nitrex™ Permeable Reactive Barrier (PRB)** for nitrogen and phosphorus removal in the following areas:
 - a. Maidstone Lane
 - b. Village owned properties to the west of Egypt Lane
- **Village Business Area Wastewater System** to remove significant quantities of nitrogen and phosphorus from the Pond's watershed, as the area drains to Hook Pond
- **Maidstone Golf Course maintenance** to ensure grass clippings do not enter Pond and fertilizer are properly being applied
- **Septic system upgrades** with nutrient removal as best as practical. ... *the use of the PRB should reduce the need for septic nutrient removal*

Concurrent scientific studies are needed to;

- Establish baseline conditions of Pond algae and nutrients, groundwater quality and influence of Pond muds
- Perform a nutrient budget for the Pond
- Quantitatively refine nutrient removal requirements

Fort Pond

The following corrective actions are recommended to address the eutrophic conditions in Fort Pond:

- **Require the use of organic fertilizers** in the watershed, especially at ballfields and enforce NYS law regarding fertilizer applications near water bodies
- **Groundwater modeling and sampling** to determine groundwater flow patterns and existing groundwater quality
- **Septic system upgrades with nutrient removal especially for commercial properties**, such as **Surf Lodge** and **Montauk school** Sewerage system with discharge outside of watershed may be necessary.
- **Montauk Center Wastewater System** will remove significant quantities of nitrogen and phosphorus from the Pond's watershed

Ongoing scientific studies are needed to:

- Establish baseline conditions of Pond algae and nutrients, groundwater quality and influence of Pond muds
- Perform a nutrient budget for the Pond
- Quantitatively refine nutrient removal requirements

INITIATIVES SUGGESTED BY ANALYSIS OF LOMBARDO REPORTS

The Committee did not have the time or, in some cases, the necessary resources and skills to develop specific recommendations in such areas as law, code enforcement and finance. And while Lombardo Associates has offered a list of projects, they lacked sufficient specificity to be fully evaluated at this time by the Committee. However, the following initiatives, in addition to those recommended by the Committee, suggest themselves as a result of a review of the Lombardo Reports:

1. Create a Water Improvement Project Plan (see below) for public review no later than April, 2016 based on Committee recommendations, a project list from Lombardo Associates, stormwater remediation initiatives (Dept. of Natural Resources) and other sources.
2. Develop a long term plan to upgrade all individual onsite septic systems to the best available technology giving priority to:
 - a. Watersheds or sub-watersheds impacting impaired sections of the Town's water bodies, e.g. shellfish closings, algal blooms, etc.
 - b. Harbor protection overlay districts
 - c. Groundwater travel time and high groundwater areas.
 - d. Cesspools.
3. Consider extending the Harbor Protection Districts to encompass entire watersheds or portions thereof based on groundwater travel time.

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4. Appoint a task force with legal representation and code enforcement experience to review all relevant laws and enforcement procedures to recommend changes to the town code, inspection requirements and enforcement processes and procedures.
5. Appoint a task force to develop a prioritized financing program that includes:
 - a. Community Preservation Funds
 - b. All available county, state and federal grants
 - c. Other public funds
 - d. Subsidies and incentives to upgrade for individual homeowners and business.
6. Appoint a citizens' advisory committee for each of the Town's impaired water bodies to monitor progress toward and make recommendations regarding diagnosis and remediation.
7. Appoint a Montauk Water Resources Task Force to develop a long term hamlet plan that addresses wastewater remediation, coastal erosion, sea level rise and other issues related to the future of residential and commercial Montauk.

CONCLUSIONS

An economic analysis shows that the actual cost of wastewater remediation could far exceed the funding that may be available from the Community Preservation Fund between now and 2050 if the Governor signs the proposed legislation. Therefore, prioritization of properties subject to wastewater remediation and preparation of a realistic Wastewater Protection Plan becomes job # 1 between now and April, 2016. The database prepared by Lombardo Associates serves as a powerful tool to help prioritize properties for remediation.

1. While the Plan appears to narrow down the number of properties needing remediation as presented in the Summary of Wastewater Needs (Table 2-1 of the Executive Summary and Table 3-16 of the Lot by Lot Analysis), internal contradictions and inconsistencies render it less useful than it would appear:
 - a. While the Summary of Wastewater Needs asserts that there are 4,326 properties with wastewater needs, the overlapping needs add to approximately 8,000.
 - b. Over 3,000 of the 4,326 properties with Wastewater Needs are identified only as Individual Onsite with no location given.
 - c. Nitrogen contributions analyzed by watershed included 8,341 developed properties.
 - d. Lombardo estimates that 12,570 cesspools (as opposed to septic systems) are still in service but presents not plan to phase them out.
2. The cost per property to upgrade to nitrogen reducing septic systems ranges from \$10,000 to \$20,000 for individual onsite wastewater solutions to \$105,000 per property for community wastewater solutions proposed by Lombardo, and the resulting aggregate cost could far exceed estimated funds available from Community Preservation Fund if proposed legislation is signed by the Governor.
3. A database of East Hampton properties that served as the basis of the Lot by Lot Analysis may prove, subject to examination, extremely useful in clearing up the above-referenced ambiguities and enabling the Town to estimate the financial and environmental impact of assigning remediation priorities.
4. Community wastewater systems are far more expensive than individual onsite systems but may be the only viable wastewater solution in downtown Montauk, Ditch Plains and the Docks.
5. Lombardo has made a number of recommendations including legislation and enforcement, more detailed study of waterbodies and the use of Permeable Reactive Barriers (PRBs). Many of these are included in a project list prepared by Lombardo, which will require further articulation and analysis.

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6. The report has some defects, including typos and lack of adequate summarization, that can easily be remedied by Lombardo Associates if so instructed by the Town Board.
7. The Committee and Lombardo agree on the need for a Water Quality Monitoring program for all impaired waterbodies.

(for Initiatives Suggested by this Analysis see SECTION IV. THE ROAD AHEAD)

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EXHIBIT 1. LOMBARDO RECOMMENDED PROJECTS BY WATERSHED

LAKE MONTAUK

Ditch Plains: Neighborhood wastewater system
The Docks: Neighborhood wastewater system
Individual on-site systems and/or small neighborhood systems

FORT POND

Neighborhood wastewater system
Individual on-site systems and/or small neighborhood systems
Demonstration projects

OCEAN/PECONIC BAY

Camp Hero: upgrade required (in progress)
Individual on-site systems or small neighborhood systems

ACCABONAC HARBOR (EASTERN PORTION OF SPRINGS)

Entire Harbor, Shoreline Properties in particular: Septic system upgrades required
Individual Properties on-site systems
Small neighborhood systems
PRB

ACCABONAC HARBOR & 3 MILE HARBOR (SPRINGS)

Gardiners Ave – 3 Mile Harbor Road: Connect to public water supply
Fort Pond Blvd – 3 Mile Harbor Road: Connect to public water supply
Areas down gradient of SWF/landfill: Connect to public water supply

HOG CREEK

Watershed Wastewater Management Plan
Water Quality Monitoring Program

THREE MILE HARBOR

Watershed Wastewater Management Plan
Water Quality Monitoring Program
Harbor Water Quality - Hydro Model
Southern Harbor

- Neighborhood wastewater system
- Boat marina discharge suspected (?)

Hands Creek and Squaw Road

- Individual on-site systems or
- Small neighborhood systems

Individual Properties

- Individual on-site systems or
- Small neighborhood systems

HOOK POND

Water Quality Monitoring Program
Stormwater treatment: Wetlands
Groundwater treatment: PRB for nitrogen and phosphorous removal (demonstration project)
Properties on Egypt Lane to North Main Street: Decentralized wastewater systems
Sediment Removal

GEORGICA POND

Sediment Removal
PRB for nitrogen and phosphorous removal

WAINSCOTT POND

PRB for nitrogen and phosphorous removal

NORTHWEST HARBOR

TBD

II. OTHER WATERBODY STUDIES

While the Committee did not review all of the other watershed and water quality studies that may be relevant, it is aware of the following:

GEORGICA POND (GOBLER)

After a year of study, on August 1, 2015 Dr. Chris Gobler presented his findings to a group of Georgica Pond homeowners and made the following recommendations:

1. **Upgrade septic systems** to maximize the removal of nitrogen.
2. **Minimize fertilizer use**; switch to organic fertilizers.
3. **Create/expand growth of local & natural vegetation** as unfertilized buffers to intercept land runoff.
4. **Opening the cut** on a regular basis
5. **Dredging**: sediment; entrance to Georgica Cove; the bar along the north end of the pond
6. **Harvesting Macroalgae** to mitigate nitrogen and phosphorus
7. **Permeable Reactive Barriers (PRB)** to remove nitrogen, phosphorus
 - Headwaters of streams
 - Georgica Cove
8. **The storm drain within Georgica Cove/constructed wetland**
 - cited in prior NYSDEC study as a strong source of pathogens.
 - not a large source of phosphorus and nitrogen.
 - A constructed wetland could intercept pathogens and slightly reduce the delivery of nutrients.

LAKE MONTAUK (NELSON POPE & VOORHIS)

NPV completed a watershed study dated December 31, 2014 for Lake Montauk, which focused on storm water, rather than wastewater, remediation. Fecal studies showed that animals were the primary cause.

HOOK POND (LOMBARDO)

Lombardo Associates has been retained by East Hampton Village to study Hook Pond and a variety of initiatives, including sediment analysis, stormwater remediation, PRBs and a community wastewater system have been recommended.

ACCABONAC HARBOR (HORSLEY WITTEN GROUP, INC.)

This stormwater study was dated June, 2013.

TRUSTEES REPORT (GOBLER)

This study was undertaken from April through December of 2014 for the East Hampton Town Trustees to assess water quality, harmful algal blooms, and pathogenic bacteria in their marine and freshwater bodies including Accabonac Harbor, Napeague Harbor, Hog Creek, Northwest Creek, Fresh Pond, Three-Mile Harbor, Georgica Pond, and Hook Pond.

CCOM (SURFRIDER FOUNDATION)

CCOM (Concerned Citizens of Montauk) through an arrangement with the national Surfriders Foundation conducts ongoing water quality measurement for the following water bodies: Lake Montauk, Fort Pond, Fresh Pond, Pussy's Pond and Georgica Pond.

III. WATER QUALITY PROVISIONS OF CPF LAW

If a town-wide referendum in November, 2016 passes, modifications to the existing New York State law authorizing the Peconic Bay Community Preservation Fund (CPF) would profoundly impact the financial viability of water quality projects. The principal provisions of the water quality related modifications are:

- Extend the expiration date of the law by 20 years to December 31, 2050.
- The purposes of the fund shall [include]: to implement water quality improvement projects in accordance with a plan to preserve community character. A maximum of twenty (20) percent of the fund may be utilized for the implementation of water quality improvement projects; provided that where such water quality improvement funds are utilized for the operation of the Peconic Bay National Estuary Program, the use of such funds shall only be utilized to match federal, state, county, or other public or private funds on a dollar for dollar basis, not to exceed ten (10) percent of the annual amount appropriated for water quality improvement projects.
- Water Quality Improvement Projects are defined as:
 - (1) wastewater treatment improvement projects;
 - (2) Non-Point Source Abatement and Control Program projects developed pursuant to section eleven-b of the soil and water conservation districts law, title 14 of article 17 of the environmental conservation law, section 1455b of the federal coastal zone management act, or article forty-two of the executive law;
 - (3) aquatic habitat restoration projects;
 - (4) pollution prevention projects, and
 - (5) the operation of the Peconic Bay National Estuary Program, as designated by the United States Environmental Protection Agency. Such projects shall have as their purpose the improvement of existing water quality to meet existing specific water quality standards.

Projects which have as a purpose to permit or accommodate new growth shall not be included within this definition.

- A plan that lists every water quality improvement project must be prepared and “shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan.”

WATER QUALITY IMPROVEMENT PROJECT PLAN

The legislation requires each town to “adopt a community preservation project plan, ... [which] shall ... list every water quality improvement project which the town plans to undertake pursuant to the community preservation fund and shall state how such project would improve existing water quality.”

- “Funds from the community preservation fund may only be expended for projects which have been included in said plan.
- “Said plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan.”

PROJECT DEFINITIONS

The modifications go on to define Water Quality Improvement Projects in more detail:

(f) "**Wastewater treatment improvement project**" means the planning, design, construction, acquisition, enlargement, extension, or alteration of a wastewater treatment facility, including alternative systems to a sewage treatment plant or traditional septic system, to treat, neutralize, stabilize, eliminate or partially eliminate sewage or reduce pollutants in treatment facility effluent, including permanent or pilot demonstration wastewater treatment projects, or equipment or furnishings thereof. Stormwater collecting systems and vessel pumpout stations shall also be included within the definition of a wastewater improvement project.

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(g) **"Aquatic habitat restoration project"** means the planning, design, construction, management, maintenance, reconstruction, revitalization, or rejuvenation activities intended to improve waters of the state of ecological significance or any part thereof, including, but not limited to ponds, bogs, wetlands, bays, sounds, streams, rivers, or lakes and shorelines thereof, to support a spawning, nursery, wintering, migratory, nesting, breeding, feeding, or foraging environment for fish and wildlife and other biota.

h) **"Pollution prevention project"** means the planning, design, construction, improvement, maintenance or acquisition of facilities, production processes, equipment or buildings owned or operated by municipalities for the reduction, avoidance, or elimination of the use of toxic or hazardous substances or the generation of such substances or pollutants so as to reduce risks to public health or the environment, including changes in production processes or raw materials; such projects shall not include incineration, transfer from one medium of release or discharge to another medium, off-site or out-of-production recycling, end-of-pipe treatment or pollution control.

(i) **"Stormwater collecting system"** means systems of conduits and all other construction, devices, and appliances appurtenant thereto, designed and used to collect and carry stormwater and surface water, street wash, and other wash and drainage waters to a point source for discharge.

(j) **"Vessel pumpout station"** means a project for the planning, design, acquisition or construction of a permanent or portable device capable of removing human sewage from a marine holding tank.

LETTER FROM ASSEMBLYMAN FRED THIELE

Assemblyman Fred Thiele wrote the following letter to the East Hampton Star explaining the content, rationale and safeguards built into the modifications to CPF law:

Bridgehampton, August 10, 2015

Dear Editor:

Your editorial on the community preservation fund and state legislation to include water quality projects is bare opinion unsupported by any facts. Here are some of the facts that the editorial failed to mention.

The editor fails to mention that the legislation would authorize the extension of the C.P.F. from 2030 to 2050, generating an additional \$1.5 billion in new revenue. At least \$1 billion of the new money would go to land preservation. The total amount of revenue generated from 2015 to 2050 would total \$2.7 billion. The maximum that could be utilized for water quality would be around \$500 million. Thus, the great majority of new money generated would still be used for land preservation.

The editor fails to mention that major local land preservation advocates such as the Peconic Land Trust, the Group for the East End, and the Long Island Pine Barrens Society support the legislation.

The editor has decided to conflate "water quality" projects with "sewer projects." The East End is not looking to sewer its way out its water quality problems, like western Suffolk or Nassau. Knowledgeable folks know that East End municipalities are looking to reduce nitrogen with projects such as alternative and community septic systems, stormwater abatement projects, wetland restoration projects, marine pump-out stations, agricultural management plans to reduce the use of fertilizers, and the Peconic Estuary Program. To have a plan to reduce nitrogen in our water, but no funding to implement the plan, would be an empty promise to improve water quality.

The editor fails to mention the fact that water quality funds could not be used for growth-inducing projects, but only for projects that result in the actual improvement of water quality and reduction of nitrogen.

The editor fails to state that the new law could only be implemented after adoption of a local law by the town after public hearing and approval by the public in a mandatory referendum.

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The editor fails to mention that before the referendum could be held, each town would have to develop a project plan telling the public how every cent would be spent on water quality so that they would know how the money would be spent.

The editor fails to offer an alternative funding source to address the hundreds of millions of dollars the East End will need to reverse the continuing degradation of surface waters and groundwater that is resulting in algal blooms, fish kills, and the closing of beaches and shellfish grounds. Residents cannot afford an increase in real property taxes.

The editor also conflates the attempted illegal action of diverting C.P.F. funds to buy buildings and the general fund with the democratic process of asking the voters whether or not C.P.F. tax dollars should go to protecting community character by preserving both land and water. It is somewhat ironic that while Senator Ken LaValle and I called in the state comptroller many years ago to investigate the illegal use of the C.P.F. in East Hampton, The Star was asleep at the switch for years about the illegal diversion of C.P.F. to the general fund, getting scooped by one of the other newspapers in town. Finally, it is the county district attorney who is investigating buying buildings with C.P.F. funds, not me.

Here is the bottom line: We can preserve all the land left in East Hampton, but if people can't fish, swim, or boat on our surface waters, or drink the groundwater, we will have lost the war. East Hampton will not only lose its heritage but its future.

There is nothing outrageous about Senator LaValle and my presenting an option to the voters to extend the C.P.F. for 20 years and asking the voters whether or not they want to use the C.P.F. to preserve both land and water. What would be outrageous would be to stand by and do nothing as our water resources continue to degrade.

Sincerely,

Fred w. Thiele Jr., Assemblyman

FINANCIAL IMPACT

If the modifications to CPF are allowed to become law and a town-wide referendum on the subject prevails in East Hampton next November (2016), it is conceivable that CPF monies could fund more than half the total costs of wastewater remediation (see Section V. Financial Analysis). More specifics will depend upon the water quality priorities and projects determined by the Town Board.

IV. ADVISORY COMMITTEE RECOMMENDATIONS

TO: East Hampton Town Board
FROM: Wastewater Management Project Advisory Committee
DATE: November 20, 2015
RE: **East Hampton Town Wide Wastewater Management Plan**
Prepared by Lombardo Associates, Inc.
September 9, 2014

Acceptance of the East Hampton Town Wide Wastewater Management Plan (The Plan) – The Committee finds that the Plan contains a wealth of valuable information needed to drive sound water resource management and recommends acceptance of the Plan as a basis for moving forward. The Committee also notes that additions and refinements to the Plan will be necessary prior to formulating and executing future water quality projects.

Recommendations:

(1) Evaluation Criteria for Water Quality Improvement Action Items.

Limited resources and funding in the face of Town-wide water quality impairments necessitate a rational approach in order to ensure the most effective use and equitable distribution of resources. The Committee developed the following criteria to evaluate potential water quality improvement actions. It is hoped that these criteria can serve as a guide or framework for decision-making moving forward. It is also noted that there is an unavoidable overlap between and among criteria.

The following is a brief summary of the criteria developed by the Committee:

- Public Health Impacts/Threats.** The number of threats to public health related to water quality impairments are many. Potential impacts to public health include, but are not limited to, unsafe drinking water, closed water bodies (including bathing beaches) and the prevalence of harmful algal blooms and contaminated shellfish.
- Impacts/Threats to Environmental Quality.** Indicators of water quality-related impacts to the environment include, but are not limited to, declining shellfish and finfish populations, eelgrass declines and the prevalence, variety, duration and intensity of harmful algal blooms.
- Lost Recreational Opportunities.** Closed bathing beaches and similar lost recreational opportunities were identified as priority issues.
- Vulnerability to Climate Change and Sea Level Rise.** Climate change and sea level rise pose a number of concerns. Considerations include storm-related property and environmental damage, impacts to wastewater systems within the coastal zone and increased salt-water intrusion.
- Economic Impacts.** Water quality impairments can have a profound impact on the local economy. Degraded ground and surface waters can impact the marine economy in the form of decreased shellfish harvests. In addition, the prevalence, intensity and duration of harmful algal blooms and bacteria driven beach closures can hurt the local tourist economy and local real estate values. While the quantification of these values may pose a challenge, it is undeniable that water quality declines adversely impact the local economy.
- Aesthetic Impacts.** Macro algal blooms can blanket local beaches and result in slime-tainted waters that reduce the use and enjoyment of the coastal zone.

The Committee recommends that consideration should be given to the development of a scoring matrix in order to further refine this process moving forward. In addition, the database prepared by Lombardo Associates, as is or as subsequently modified, may be extremely useful in prioritizing properties for remediation.

(2) Recommended Water Quality Improvement Actions.

The Committee recommends the following water quality improvement actions:

Long-Term Town-Wide Surface Water Testing and Monitoring –

The Committee recommends the establishment of a town-wide surface water quality monitoring program in order to develop independent, science-based data needed to guide sound policy choices moving forward. In addition, the Committee recommends that the Town Board work with the Trustees and other partners to develop this program.

Town-Wide Drinking Water Testing and Monitoring Program –

It is noted that many residents, serviced by cesspools and septic systems, ~~remain~~ depend on private wells which are vulnerable to contamination due to inadequate depth to groundwater and/or insufficient separation between sanitary systems and well water. A water quality testing and monitoring program should be established which prioritizes these vulnerable locations. The Suffolk County Department of Health Services (DOHS) is the most appropriate entity to manage the testing program due to its statutory responsibility to protect drinking water supplies.

In addition, the Committee finds that the Town of East Hampton should be proactive in its approach and encourage residents to have their wells tested by the Suffolk County DOHS and to share those results with the Town.

The Committee also recommends that areas which evidence contamination should be connected to public water as a high priority. While the provision of public water is necessary in order to address immediate threats to public health, it is also critical that the Town take steps to address the ongoing source of groundwater contamination. Therefore, consideration should also be given to on-site septic system upgrades in addition to the provision of public water.

Large Capacity Systems –

The Committee's recommendations for large capacity wastewater systems (defined by Suffolk County as systems that process in excess of 1,000 gallons per day) are as follows: Town Code Modifications. The Committee recommends that the Town Board consider a modification of Town Code to ensure that new systems are consistent with the best available technology.

Enforcement of Existing Standards. The Town Board should partner with the Peconic Estuary Program – Policy Committee to ensure the enforcement of existing standards.

Cesspools. The Committee recommends that all large capacity cesspools be eliminated consistent with Federal law. All such systems should be upgraded consistent with both the “best available technology” and current State Pollution Discharge Elimination System (SPDES) standards.

Septic Systems. The Committee recommends that all existing large capacity septic systems be brought into compliance with State Pollution Discharge Elimination System (SPDES) standards. Non-compliant systems should be updated in compliance with the best available technology at the time of property transfer or within five (5) years, whichever occurs first. New systems, consistent with the best available technology, should also be required in connection with new construction, expansions, substantial alterations and changes of use. The Committee recommends a modification of more than twenty-five percent (25%) as a possible criterion for a “substantial alternation.”

The Committee notes the potential need to establish stricter treatment standards than current Suffolk County DOHS requirements and that the Town should also consider the implementation of “community systems” in those instances where they provide an advantage over on-site systems.

In addition, the Committee notes the need for a uniform inspection process in order to ensure compliance moving forward.

Individual Residential On-Site Systems –

The Committee recommends that individual residential on-site systems be replaced and upgraded consistent with best available technology at the time of property transfers, in connection with substantial alterations or after a period of time to be determined by the Town Board, whichever occurs first. The Committee recommends a modification of more than twenty-five percent (25%) as a possible criterion for “substantial alteration.” The best available technology shall also be required in connection with all new construction.

The Committee notes that the Town may wish to consider more restrictive standards than those currently established by the Suffolk County Department of Health Services.

The Committee recommends that the Town consider the alternative of off-site community systems in those circumstances where they provide advantages over on-site systems or represent the only alternative.

Finally, the Committee identified the need to establish a uniform inspection process in order to ensure long-term compliance and to identify emerging trends moving forward.

Individual Watershed Plans –

The Committee recommends that the Plan include the development of detailed watershed plans for all of the Town’s watersheds and sub-watersheds. The Committee recommends that the Plan include, but not be limited to, the following watersheds:

- Accabonac Harbor
- Fort Pond
- Fresh Pond
- Georgica Pond
- Hog Creek
- Hook Pond
- Lake Montauk
- Napeague Harbor
- Northwest Harbor
- Three Mile Harbor
- Wainscott Pond

Watershed Protection Improvement District(s) –

After discussion, the Committee indicated that the establishment of a water quality improvement district(s) pursuant to Town Law may be a tool for the Town Board to consider in connection with the implementation of a comprehensive water resource management plan. Such a district(s) would help to raise revenue needed to fund improvements while helping to equitably distribute potential costs.

Regulatory Processes –

The Committee recommends that the Town Board review and refine the Town Code with respect to sanitary system standards including inspections.

Education and Outreach –

The Committee noted that community outreach and education were critical elements of any wastewater plan moving forward. The importance and complexity of ground and surface water issues demand that the public be engaged in the process of identifying and implementing solutions. Outreach and education efforts should cover a wide spectrum of issues from new sanitary technologies to best practices for fertilizer and pesticide use to emerging contaminants such as pharmaceuticals and personal care products to name just a few.

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Town-Wide Water Quality Advisory Committee –

The Wastewater Management Project Advisory Committee was charged with the review of the East Hampton Town Wide Wastewater Management Plan. However, the Committee noted that the protection of the town's ground and surface waters requires the preparation of a more comprehensive community based and scientifically supported water resource management plan. The preparation of such a plan should be led by Town staff and supported by a broad collection of stakeholders including water quality and environmental experts, civics, academics, professional consultants as well as legal and financial experts.

Public-Private Partnerships –

The Committee supports public-private partnerships that help the Town to reach its goal of improved water quality. It is important that all such efforts be coordinated through the Town in order to ensure the equitable allocation of resources and to avoid duplication of services.

Staff Resources –

The administration of the comprehensive water resource management plan which strengthens and expands testing, monitoring, inspection, remediation and enforcement actions will require additional staffing. The Committee recommends that the Town take steps to ensure that all necessary resources are provided to oversee the implementation and administration of this strategy. It is also recommended that the Town consider the establishment of a water resource manager to spearhead the Town's efforts.

Conclusion:

The Committee wishes to extend its gratitude to the Town Board for the opportunity to participate in the review of the Town's Wastewater Plan. The protection of the Town's ground and surface water resources is critical to the health, safety and welfare of the public. Indeed, the Town's quality of life will be determined by its ability to protect and restore these resources which have declined in recent years. The mounting evidence of nutrients, bacteria and toxins impacting local water resources is alarming. Closed bathing beaches, state designated impaired waterbodies and the decline in once abundant finfish and shellfish populations demand action.

The Committee believes that the Wastewater Management Plan prepared by Lombardo Associates with further refinement is a good first step in the development of a sound water resource management plan.

V. FINANCIAL ANALYSIS

The purpose of this section is to attempt to estimate: (a) the costs of town-wide wastewater remediation; and (b) the extent to which Community Preservations Funds can cover those costs and, conversely, the extent to which public and private sources other than the CPF will be needed to help defray the town-wide costs of remediation.

TOTAL COST OF REMEDIATION

Although Lombardo has provided a cost estimate for five community wastewater systems (see below), it is impossible to project the full cost of wastewater remediation at this time for the following reasons:

- The number of properties requiring drinking water solutions is indeterminate as this time because
 - individual properties need to be tested
 - the cost of providing Suffolk County Water to residents has yet to be determined
 - Wastewater remediation may be sufficient for some properties
 - Much less expensive whole house water purification systems have yet to be investigated.
- The cost of upgrading as many as 2,093 large capacity (>1,000 gallons per day) wastewater systems has not been determined, and some of them will required community systems.
- 3,051 individual onsite systems, 70% of the properties in Lombardo's Summary of Wastewater Needs, have not been associates with either a neighborhood or a watershed, although Lombardo's database may provide the answers.
- The unit cost of individual onsite systems has yet to be determined and may depend on the outcome of the six systems now being tested by the Suffolk County Health Dept.
- A nitrogen TMDL analysis for encompasses 8,351 properties, nearly twice as many as in the Summary of Wastewater Needs.
- An estimated 12,570 cesspools still in use may require remediation.
- The number of properties requiring upgraded systems to protect our aquifers has not been determined and may eventually be all 20,000 of them.
- Administrative costs, including professional fees for comprehensive watershed studies and ongoing water quality measurement, have yet to be determined.

Taken as a whole, this lack of information underscores the need for comprehensive watershed studies, lot-by-lot database analysis and further investigation of available solutions and more precise estimates of individual wastewater and drinking water system costs.

COMMUNITY WASTEWATER SYSTEMS

The only wastewater remediation costs that have been estimated by Lombardo to-date are community wastewater systems to serve five areas: Montauk Center; The Docks; Ditch Plains; Camp Hero (repair); South Three Mile Harbor; and the Village business district. The estimated aggregate cost of community wastewater systems proposed by Lombardo is \$68.9 million and would serve a total of 656 properties or \$105,000 per property as shown in the table below.

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Location	Properties with Wastewater Needs	Estimated Capital Expenditures (CapEx)	CapEx per Property	Annual O&M	Annual O&M/Property
Montauk Center	90	\$15,585,000	\$173,167	\$240,994	\$2,678
The Docks	58	\$18,083,000	\$311,776	\$251,988	\$4,345
Ditch Plains	214	\$10,633,000	\$49,687	\$144,624	\$676
Camp Hero (repair)	28	\$300,000 (est.)	\$10,714	NA	NA
South Three Mile Harbor	59	\$4,426,000	\$75,017	\$61,525	\$1,043
EH Village Business	207	\$19,875,000	\$96,014	\$249,228	\$1,204
Totals/Averages	656	\$68,902,000	\$105,034	\$948,359	\$1,446

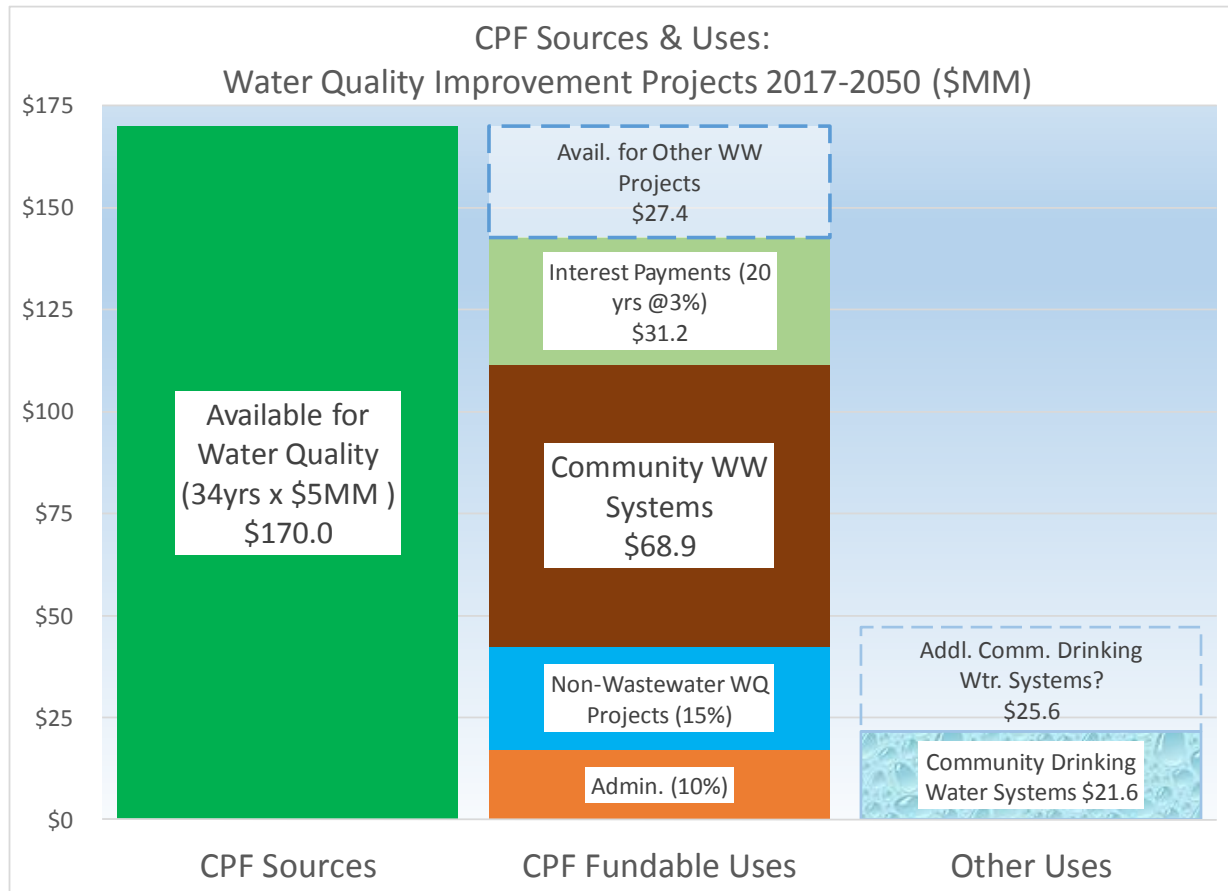
NOTE: CapEx and Annual O&M per property costs are based on properties with “Wastewater Needs” rather than total properties in the designated areas. Spreading costs over a larger population could conceivably reduce the cost per property.

CPF FINANCING

The average annual CPF receipts over the last six years were \$22.4 million, of which \$4.5 million (20%) would be available for water quality projects. This includes some years during which real estate sales admittedly were depressed.

(\$MM)	2009	2010	2011	2012	2013	2014	AVG
RE Transfer Tax (CPF)	\$19.4	\$18.2	\$14.2	\$22.1	\$28.4	\$32.3	\$22.4
20% for Water Quality	\$3.9	\$3.6	\$2.8	\$4.4	\$5.7	\$6.5	\$4.5

For the purposes of analysis, we assume approximately \$5 million per year of CPF receipts will be available for water quality, which includes a variety of water quality projects including stormwater remediation, etc. In addition, there will be administrative costs, professional consulting and engineering fees, etc.



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We have also assumed that 25% of CPF receipts designated for water quality are spent on something other than the direct costs of wastewater remediation, as shown in the table below. This leaves approximately \$3.75 million per year for wastewater remediation or \$127.5 million between 2017 and 2050.

<u>(\$MM)</u>		<u>Yearly</u>	<u>2017-50</u>
CPF Receipts Available for Water Quality	20%	\$5.00	\$170.0
LESS: Other Projects	15%	(\$0.75)	(\$25.5)
LESS: Administration	10%	(\$0.50)	(\$17.0)
CPF Funds Available for Wastewater Mgmt.		\$3.75	\$127.5

Of that \$127.5 million, according to Lombardo's recommendation, \$68.9 million will be spent on community wastewater (sewer) systems. In addition, \$21.6 million would be required to provide community drinking water to 1,081 households. Both types of community systems will have to be financed with tax exempt bonds to be repaid over the next 20 years. After paying off the principal and interest on \$90.5 million of debt (assuming a 3% interest rate on 20 year bonds), \$5.8 million of CPF receipts would be available for onsite individual systems.

<u>(\$MM)</u>	<u>Yearly</u>	<u>2017-50</u>
CPF Funds Available for Wastewater Mgmt.	\$3.75	\$127.5
LESS: Community Wastewater Systems		(\$68.9)
LESS: Interest Payments (20 yrs. @3%)		(\$31.2)
Remaining CFP Funds Available		\$27.4

FUNDS AVAILABLE FOR HOMEOWNER & BUSINESS ASSISTANCE

Since it is unlikely that the Town Board would wish to allocate most of the available CPF funds to community systems, ways must be found to share costs more equitably among businesses and homeowners. For example, to the extent that property owners help pay the debt service costs of providing community systems, more money will be available to provide assistance for replacement of individual systems.

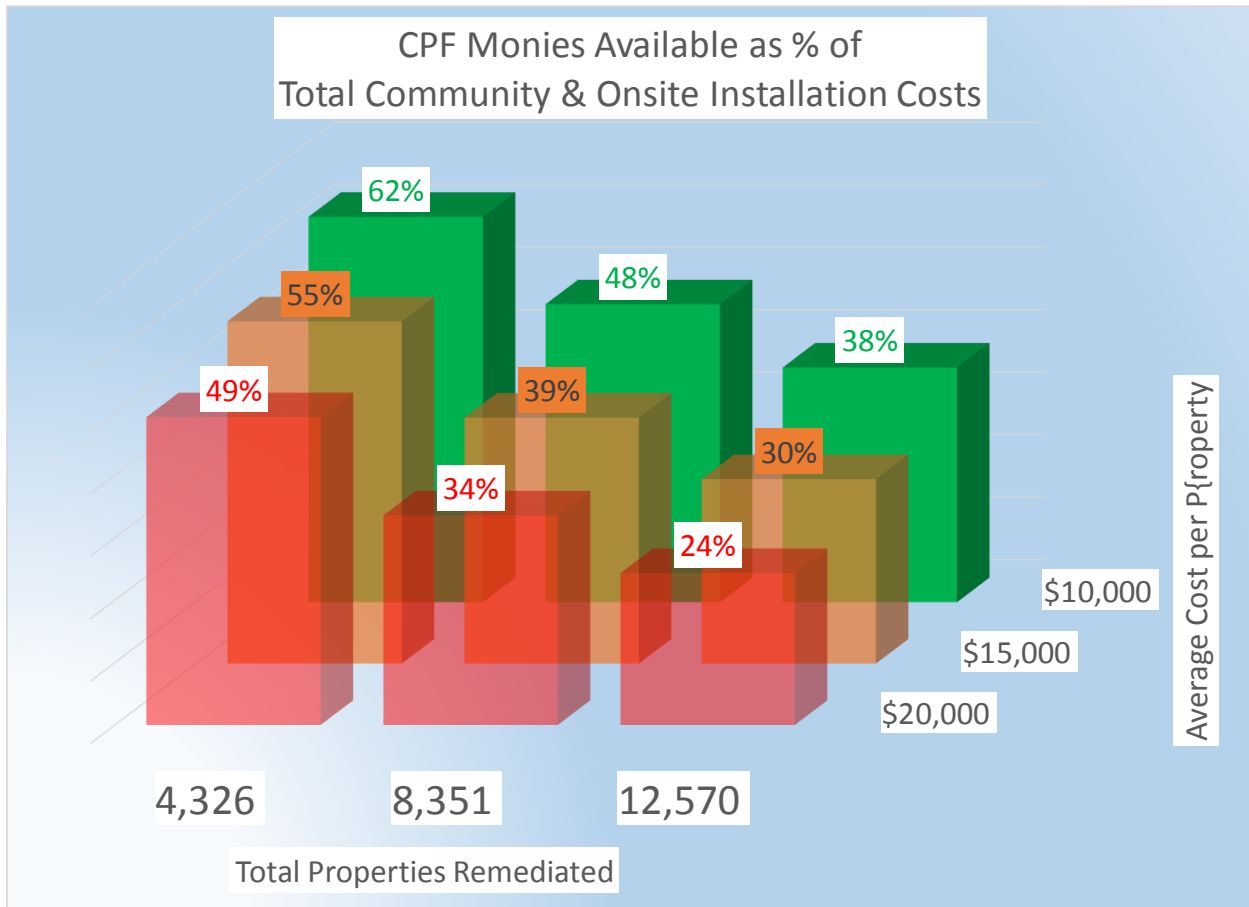
We do not know the exact cost of drinking water and onsite wastewater solutions. However, they are believed to be in the range of \$10,000 to \$20,000 per property. There is also a wide range in the possible number of properties requiring onsite solutions, from approximately 3,000 in the Lombardo Reports' Summary of Wastewater Needs (Table 2-1 of the Executive Summary) to 7,000 from the nitrogen TMDL analysis to 11,000 cesspools.

The percentage of aggregate cost for onsite replacements or upgrades that could be paid for with CPF monies varies therefore with the total number of properties requiring wastewater solutions and the average cost of an onsite solution. The following analysis illustrates the effects.

CPF FUNDS AVAILABLE IF SHARED EQUALLY AMONG COMMUNITY & ONSITE SYSTEMS

If CPF monies are shared equally (as a percentage of costs) among all properties, then the amount covered by CPF varies from a maximum of 62% if only 3,051 onsite systems are installed at an average cost of \$10,000 to 24% if 12,570 onsite systems are installed at an average cost of \$20,000, as illustrated in the chart below.

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The table below shows the total cost of community of onsite systems based on the same assumptions as in the previous table, i.e. the number of systems replaced or upgraded and the average cost of each system.

Total Costs of Community and Onsite Systems (\$MM)

Number of Develop Properties Remediated	4,326	8,351	12,570
If average cost per onsite system is: \$10,000	\$121.0	\$161.3	\$203.5
If average cost per onsite system is: \$15,000	\$136.3	\$196.7	\$259.9
If average cost per onsite system is: \$20,000	\$151.5	\$232.0	\$316.4

ISSUES TO BE RESOLVED

The foregoing analysis raises a number of issues that will ultimately have to be determined by the Town Board with professional assistance.

1. How many properties need to have upgraded or community systems in order for the town to meet its water quality goals for all major water bodies and to protect the sole source aquifer from eventual contamination?
 - a. 4,326 properties identified in the Lombardo Reports as having “wastewater needs”?
 - b. 8,341 properties enumerated in the Lombardo Reports as contributing to nitrogen loading of selected water bodies.
 - c. 12,570 properties estimated to have cesspools rather than septic systems.
 - d. Some other number of properties to be determined by careful analysis and prioritization?
2. How will the construction costs of the proposed community wastewater systems be paid for?
 - a. Entirely by the town from CPF monies?
 - b. Initially by the town then repaid by the property owners?
 - c. Principal by the Town and interest by property owners?

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- d. All debt service as well as operating costs by property owners?
 - e. A scale based upon ability to pay?
3. How and to what extent will individual homeowners receive assistance, subsidies, incentives, etc. and how many can the town afford to help in any given year.
 4. To what extent is the town willing to issue debt to be repaid with future CPF receipts:
 - a. To finance the substantial up-front costs of community wastewater systems.
 - b. To accelerate rate at which homeowners and businesses replace their septic systems and cesspools with denitrification systems.

Allocation of costs among CPF funds, business owners and residential property owners and prioritization of properties for remediation all impact financial planning and will require a multi-disciplinary effort to fit all the pieces together.

VI. THE ROAD AHEAD

The Committee's recommendations (Section IV) call for additional analysis (water quality measurement and comprehensive water shed studies, for example) a variety of action items including, most notably, upgrading or replacing all large capacity systems to the best available denitrification technology within five years, modifications to the town code and augmentation of staff resources. This section attempts to flesh out some of the initiatives that will be required by the town to achieve its water quality objectives, arguably the largest project in terms of scope and expense the town has ever embarked upon. To be successful it will require the confluence of a variety of different skills and resources in a coordinated effort.

WATER QUALITY IMPROVEMENT PROJECT PLAN (SPRING, 2016)

"The East End is not looking to sewer its way out its water quality problems... East End municipalities are looking to reduce nitrogen with projects such as alternative and community septic systems, stormwater abatement projects, wetland restoration projects, marine pump-out stations, agricultural management plans to reduce the use of fertilizers, and the Peconic Estuary Program."

- Letter to the East Hampton Star from Assemblyman Fred Thiele, August 10, 2015 -

As stated in Section III, the modifications to NY state law authorizing the Community Preservation Fund (CPF) make up to 20% of the monies received available for water quality projects. In order for East Hampton Town to avail itself of such funds it will have to prepare a Water Quality Improvement Project Plan (WQIPP) that will be subject to public hearings before a referendum in November, 2016. **According to the modifications to CPF law, the Water Quality Improvement Project Plan (WQIPP) cannot be modified for at least three years.** It should therefore be completed by mid-spring, 2016 to allow sufficient time for public hearings in advance of the referendum in November, 2016.

The WQIPP will list all projects for which money is to be expended over the next three years, including:

- Wastewater treatment improvement projects
- Stormwater collecting systems
- Aquatic habitat restoration projects
- Pollution prevention projects

It would be advisable to prepare a rationale and summary of such projects in a form that is easily digestible by and appealing to the residents of East Hampton who will vote it up or down.

Most likely the first WQIPP will be long on analysis, e.g. watershed studies, cost estimation and program design, and short on actual remediation. It seems safe to assume that the WQIPP will include at least the following recommendations from both Lombardo Associates and the Committee.

- Long Term Water Quality Monitoring Program.
- Watershed Studies for all impaired waterbodies, building upon existing stormwater studies and Dr. Gobler's work with the trustees and Georgica Pond homeowners.
- Public Water Supply for properties whose drinking water it contaminated.
- Watershed Improvement District(s), a substantial expansion or replacement of Harbor Protection Overlay Districts that are currently limited to 200 feet from the shoreline.
- A Water Quality Advisory Committee that includes "a broad collection of stakeholders including water quality and environmental experts, civics, academics, professional consultants as well as legal and financial experts." (language of Project Advisory Committee)

In addition, the Committee's recommendation of a program to upgrade all large capacity systems to "best available technology" within five years deserves consideration.

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PROGRAM DESIGN/TOWN-WIDE POLICY

It was recognized that a number of policy decisions will need to be thought through in order to design a remediation program that meets the public needs and has their support. Decisions made early on, e.g. the amount of property owner subsidies or support, may have far-reaching consequences and cost implications:

1. What Water Quality Goals & Objectives should the Town adopt for Surface Water and for the Aquifers? (Threats to aquifers were not addressed by Committee or Lombardo.)
2. How long can the Town take to achieve its water quality goals?
 - a. 5 years (same as for large capacity systems)?
 - b. 35 years (from now until 2050)? (Will the public accept such a long time horizon?)
 - c. As properties change hands or current owners apply for significant expansion? (may not be sufficient turnover to achieve water quality goals & objectives)
3. How many wastewater systems must be upgraded to meet those goals?
 - a. 4,326 (Summary of WW Needs, Table 2-1)
 - b. 8,351 nitrogen contributors (Lot-by-lot Analysis)
 - c. 12,570 cesspools
 - d. All 20,000+ PRIORITIZED
4. If the Town can't afford to pay the full costs of water quality improvement how will it share the costs with property owners/taxpayers?
 - a. A straight percentage based on financial projections of future costs and CPF receipts?
 - b. A formula based on usage (businesses) and ability to pay (homeowners)?
 - c. Equalize the financial burden to property owners of community and onsite systems?
5. How will the Town pay for the upfront costs of community wastewater systems?
 - a. Wait until there are sufficient CPF receipts accumulated to pay the full cost?
 - b. Special assessment of affected property owners?
 - c. Borrow against future CPF receipts?
 - d. External source of funds?
6. What skills and experience are needed to resolve these and other policy issues?
 - a. Water Science?
 - b. Finance?
 - c. Legal/Town Code/Enforcement?
 - d. Management?
7. How should the Town organize to plan and implement the largest undertaking in its history?
 - a. BFAC type central committee
 - b. Neighborhood/Watershed Committees
 - c. Staff & Outside Professionals?
 - d. Water Quality Czar?

PLANNING & DEVELOPMENT

The town will have to bring together many different skills to plan a project of this scope. Most likely it will be a combination of outside professionals, staff and volunteers with skills in the environmental sciences, finance, law and management.

PRIORITIZATION/WASTEWATER PROPERTIES DATABASE

Prioritization of remediation efforts by watershed, subwatershed and groups of properties, e.g. those with high groundwater or short groundwater travel time, will be the key to getting the most bang for the buck from available public and private funds. An understanding of the various "wastewater needs" and the results of the comprehensive watershed studies will be essential to making those decisions. This will likely involve a collaborative effort by the Town Board, an advisory committee, professional consultants and town employees and involving public hearings.

One tool that could be invaluable to this effort, if kept up-to-date, is the Lot by Lot Analysis prepared by Lombardo Associates, which is now embodied in a database of 20,000+ properties in East Hampton. This

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is unique mashup of GIS, tax assessor and county records with wastewater specific information added would enable the Town to simulate different prioritization criteria to estimate water quality impact and cost of remediation. Even this database is incomplete in that certain information, such as well water contamination, can only be obtained by inspection or testing. In addition, it is unlikely that provisions have been made to update these records as ownership transfers, building permits and other changes occur.

LEGAL, INSPECTION & CODE ENFORCEMENT

All federal, state, county and local laws be codified as they relate to water quality, and the difficult task of inspection and enforcement must be planned in advance. A low intensity effort might be to require upgrading individual systems to best available technology when a new health department permit is required, e.g. new construction, or when ownership is transferred. But this approach could take many years to achieve meaningful results. A more aggressive effort might involve setting goals, such as:

- Testing **drinking water quality** for all high risk properties, i.e. high groundwater or small lot size, within the next 12 months.
- Inspecting all **large capacity wastewater systems** within the next year to determine: (a) whether there is a septic system or cesspool and (b) whether the system is functioning properly.
- Inspecting all **residential wastewater systems** within the next 3 years to determine: (a) whether there is a septic system or cesspool and (b) whether they are functioning properly.

All results would be entered into the Wastewater Properties Database until there was a complete inventory of all wastewater systems and all at-risk drinking water systems.

ORGANIZATION & STAFFING

As noted by one public official, the water quality improvement initiative could be the largest project ever tackled by the Town of East Hampton by an order of magnitude. It will require careful prioritization, additional staffing and retaining hired professionals, the coordination and management of whose efforts, will be a major task in and of itself.

The Committee has recommended a town-wide water quality committee and additional staff resources. While committees are often created on an ad hoc basis, an advisory committee of this nature will require specific skills, such as legal and practical experience with the permitting and code enforcement processes at local, county and state levels. And it will take some relevant professional experience to create an organization that is up to the task of planning and executing an effort of this magnitude.

With respect to inspection and code enforcement, for example, staffing and procedures could become a major impediment if not worked out in advance. For example, if inspections are performed:

- Will they be done by the private sector or public employees?
- If by public employees, how many will be needed, what kind of training will be required, at what will be the cost and will they become permanent employees or temps?
- How will the inspections be performed and to what standards?

While it is unlikely that an entire organizational plan can or should be developed between now and April, 2016, it is not too soon to begin the planning process.

FINANCE

Certain key policy decisions will have a profound influence on the scope of the WQIPP and subsequent remediation efforts, most notably:

- The extent to which the Town is willing to borrow against future CPF receipts to finance community drinking water and wastewater projects.
- The extent to which property owners upgrading individual onsite systems will receive financial assistance from CPF or other financial sources.
- Remediation priorities among and within watersheds based on condition of waterbody, proximity of property to waterbody, etc. Lombardo's property database could be extremely beneficial in this regards, as described below.

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Not only must key policy decisions be made but a great deal of detail must be worked out so that the financial burden of water quality improvement is fairly and equitably shared among public and private funding sources. For example, the Village of Southampton has developed a schedule of fees for businesses and homeowners based on both usage and property values to help pay the costs of a community wastewater system intended to help restore Lake Agawam.

APPENDIX A: LOMBARDO PROPOSED WATERSHED PROJECTS

I. Lake Montauk

Sub-Areas:

1. Ditch Plains

(A) Water Quality Issues:

8. Nitrogen and bacterial contamination

9. Bathing bans

(B) Proposed Solutions:

8. Neighborhood wastewater system

2. Docks

(A) Water Quality Issues:

Nitrogen and Bacterial contamination of Lake Montauk

Excessive septic pumping - Public health hazard

(B) Proposed Solutions:

Neighborhood wastewater system

3. Individual Properties

(A) Water Quality Issues:

Nitrogen and bacterial contamination of Lake Montauk

Excessive septic pumping - Public health hazard

Illegal cesspool use

(B) Proposed Solutions:

Individual on-site systems or

Small neighborhood systems

4. Entire Watershed

(A) Water Quality Issues:

Watershed Wastewater Management Plan

Water Quality Monitoring Program

Lake Water Quality/Hydro Model

(B) Proposed Solutions:

To be Determined

II. Fort Pond

Sub-Areas:

1. **Downtown Montauk**

(A) Water Quality Issues:

Nitrogen contamination of Fort Pond

Phosphorous contamination of Fort Pond

Excessive septic pumping - public health hazard

(B) Proposed Solutions:

Neighborhood wastewater system

2. **Individual Properties**

(A) Water Quality Issues:

Phosphorous contamination of Fort Pond

Bacterial contamination of Fort Pond

Excessive septic pumping – public health hazard

Illegal cesspool use

SPDES upgrades may be required

(B) Proposed Solutions:

Individual on-site systems or

Small neighborhood systems

APPENDIX A: LOMBARDO PROPOSED WATERSHED PROJECTS

Demonstration projects

Upgrades

3. Entire Watershed

(A) Water Quality Issues:

Watershed Wastewater Management Plan

Water quality monitoring program

Lake water quality model

(B) Proposed Solutions:

To Be Determined

III. Ocean/Peconic Bay

Sub-Areas:

1. Camp Hero

(A) Water Quality Issues:

Malfunctioning wastewater system

(B) Proposed Solutions:

Upgrade required

2. Individual Properties

(A) Water Quality Issues:

Bacterial contamination – Public health hazard

Illegal cesspool use

(B) Proposed Solutions:

Individual on-site systems or

Small neighborhood systems

IV. Accabonac Harbor (Eastern Portion of Springs)

Sub-Areas:

1. Entire Harbor, Shoreline Properties in particular

(A) Water Quality Issues:

Nitrogen contamination

Bacterial contamination

(B) Proposed Solutions:

Septic system upgrades required

2. Individual Properties

(A) Water Quality Issues:

Nitrogen contamination

Bacterial contamination

Excessive septic pumping – public health hazard

Illegal cesspool use

SPDES upgrades may be required

(B) Proposed Solutions:

Individual on-site systems or

Small neighborhood systems

3. Entire Watershed

(A) Water Quality Issues:

Watershed Wastewater Management Plan

Water Quality Monitoring Program

Harbor Water Quality/Hydro Plan

(B) Proposed Solutions:

To Be Determined

V. Accabonac Harbor & 3 Mile Harbor (Springs)

Sub-Areas:

1. Gardiners Ave – 3 Mile Harbor Road

(A) Water Quality Issues:

APPENDIX A: LOMBARDO PROPOSED WATERSHED PROJECTS

Lack of 100-foot separation between wells and septic

(B) Proposed Solutions:

Connect to public water supply

2. Fort Pond Blvd – 3 Mile Harbor Road

(A) Water Quality Issues:

Lack of 100-foot separation between wells and septic

(B) Proposed Solutions:

Connect to public water supply

3. Areas down gradient of SWF/landfill

(A) Water Quality Issues:

Lack of 100-foot separation between wells and septic

(B) Proposed Solutions:

Connect to public water supply

VI. Hog Creek

Sub-Areas:

1. Entire Watershed

(A) Water Quality Issues:

Nitrogen contamination

(B) Proposed Solutions:

Watershed Wastewater Management Plan

Water Quality Monitoring Program

VII. 3 Mile Harbor

Sub-Areas:

1. Southern Harbor

(A) Water Quality Issues:

Nitrogen contamination

Bacterial contamination

Excessive septic pumping – public health hazard

Illegal cesspool use

SPDES upgrades may be required

(B) Proposed Solutions:

Neighborhood wastewater system

Boat marina discharge suspected (?)

2. Hands Creek and Squaw Road

(A) Water Quality Issues:

Nitrogen contamination

Bacterial contamination

Excessive septic pumping – public health hazard

Illegal cesspool use

SPDES upgrades may be required

(B) Proposed Solutions:

Individual on-site systems or

Small neighborhood systems

3. Individual Properties

(A) Water Quality Issues:

Nitrogen contamination

Bacterial contamination

Excessive septic pumping – public health hazard

Illegal cesspool use

SPDES upgrades may be required

(B) Proposed Solutions:

Individual on-site systems or

APPENDIX A: LOMBARDO PROPOSED WATERSHED PROJECTS

Small neighborhood systems

4. Entire Watershed

(A) Water Quality Issues:

Nitrogen contamination

Bacterial contamination

Excessive septic pumping – public health hazard

Illegal cesspool use

SPDES upgrades may be required

(B) Proposed Solutions:

Watershed Wastewater Management Plan

Water Quality Monitoring Program

Harbor Water Quality - Hydro Model

VIII. Northwest Harbor

Sub-Areas:

1. Northwest Area – NW Landing Road

(A) Water Quality Issues:

Bacterial contamination (suspected source is water fowl) contamination

(B) Proposed Solutions:

TBD

IX. Hook Pond

Sub-Areas:

1. Stormwater treatment

(A) Water Quality Issues:

Nitrogen contamination

Phosphorous contamination

(B) Proposed Solutions:

Wetlands

2. Groundwater treatment

(A) Water Quality Issues:

Nitrogen contamination

Phosphorous contamination

(B) Proposed Solutions:

PRB for nitrogen and phosphorous removal (demonstration project)

3. Properties on Egypt Lane to North Main Street

(A) Water Quality Issues:

Nitrogen contamination

Phosphorous contamination

(B) Proposed Solutions:

Decentralized wastewater systems

4. Sediment

(A) Water Quality Issues:

Nitrogen contamination

Phosphorous contamination

(B) Proposed Solutions:

Removal

5. Entire Watershed

(A) Water Quality Issues:

Water Quality Monitoring Program

(B) Proposed Solutions:

To Be determined

X. Town Pond

Sub-Areas:

APPENDIX A: LOMBARDO PROPOSED WATERSHED PROJECTS

1. Sediment

(A) Water Quality Issues:

Nitrogen contamination

Phosphorous contamination

Bacterial contamination

(B) Proposed Solutions:

Removal

XI. Georgica Pond

Sub-Areas:

1. Sediment

(A) Water Quality Issues:

Nitrogen contamination

Phosphorous contamination

Bacterial contamination

(B) Proposed Solutions:

Removal

2. Entire Watershed

(A) Water Quality Issues:

Groundwater

Water Quality Monitoring Program

(B) Proposed Solutions:

PRB for nitrogen and phosphorous removal

Underway

XII. Wainscott Pond

Sub-Areas:

1. Entire Watershed

(A) Water Quality Issues:

Groundwater

Water Quality Monitoring Program

(B) Proposed Solutions:

PRB for nitrogen and phosphorous removal

APPENDIX B: MODIFICATIONS TO CPF LAW

2015 Mods to CPF Legislation A 7471 Thiele Same as Uni. S 5324 LVALLE Town Law TITLE....Relates to the Peconic Bay Community Preservation Fund STATE OF NEW YORK

S. 5324A. 7471

2015-2016 Regular Sessions

SENATE - ASSEMBLY

May 13, 2015

IN SENATE -- Introduced by Sen. LVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

IN ASSEMBLY-- Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments

AN ACT to amend the town law, in relation to the Peconic Bay community preservation fund and chapter 114 of the laws of 1998 amending the town law and other laws relating to authorizing certain towns in the Peconic Bay region to establish community preservation funds, in relation to extending the effective date thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 64-e of the town law, as amended by chapter 373 of the laws of 2008, subdivision 3 as amended by chapter 330 of the laws of 2011 and subdivision 4 as amended by chapter 423 of the laws of 2013, is amended to read as follows: 5§ 64-e. Peconic Bay region community preservation funds.

1. As used in this section, the following words and terms shall have the following meanings:

(a) "Peconic Bay region" means the towns of East Hampton, Riverhead, Shelter Island, Southampton and Southold.

(b) "Community preservation" shall mean and include any of the purposes outlined in subdivision four of this section.

(c) "Board" means the advisory board required pursuant to subdivision five of this section.

(d) "Fund" means the community preservation fund created pursuant to subdivision two of this section.

(e) "[Water quality improvement project](#)" means:

[\(1\) wastewater treatment improvement projects;](#)

[\(2\) Non-Point Source Abatement And Control Program projects developed pursuant to section eleven-b of the soil and water conservation districts law, title 14 of article 17 of the environmental conservation law, section 1455b of the federal coastal zone management act, or article forty-two of the executive law;](#)

[\(3\) aquatic habitat restoration projects;](#)

[\(4\) pollution prevention projects, and](#)

[\(5\) the operation of the Peconic Bay National Estuary Program, as designated by the United States Environmental Protection Agency. Such projects shall have as their purpose the improvement of existing water quality to meet existing specific water quality standards.](#)

APPENDIX B: MODIFICATIONS TO CPF LAW

Projects which have as a purpose to permit or accommodate new growth shall not be included within this definition.

(f) "Wastewater treatment improvement project" means the planning, design, construction, acquisition, enlargement, extension, or alteration of a wastewater treatment facility, including alternative systems to a sewage treatment plant or traditional septic system, to treat, neutralize, stabilize, eliminate or partially eliminate sewage or reduce pollutants in treatment facility effluent, including permanent or pilot demonstration wastewater treatment projects, or equipment or furnishings thereof. Stormwater collecting systems and vessel pumpout stations shall also be included within the definition of a wastewater improvement project.

(g) "Aquatic habitat restoration project" means the planning, design, construction, management, maintenance, reconstruction, revitalization, or rejuvenation activities intended to improve waters of the state of ecological significance or any part thereof, including, but not limited to ponds, bogs, wetlands, bays, sounds, streams, rivers, or lakes and shorelines thereof, to support a spawning, nursery, wintering, migratory, nesting, breeding, feeding, or foraging environment for fish and wildlife and other biota.²⁹

h) "Pollution prevention project" means the planning, design, construction, improvement, maintenance or acquisition of facilities, production processes, equipment or buildings owned or operated by municipalities for the reduction, avoidance, or elimination of the use of toxic or hazardous substances or the generation of such substances or pollutants so as to reduce risks to public health or the environment, including changes in production processes or raw materials; such projects shall not include incineration, transfer from one medium of release or discharge to another medium, off-site or out-of-production recycling, end-of-pipe treatment or pollution control.

(i) "Stormwater collecting system" means systems of conduits and all other construction, devices, and appliances appurtenant thereto, designed and used to collect and carry stormwater and surface water, street wash, and other wash and drainage waters to a point source for discharge.

(j) "Vessel pumpout station" means a project for the planning, design, acquisition or construction of a permanent or portable device capable of removing human sewage from a marine holding tank.

2. The town board of any town in the Peconic Bay region is authorized to establish by local law a community preservation fund pursuant to the provisions of this section. Deposits into the fund may include revenues of the local government from whatever source and shall include, at a minimum, all revenues from a tax imposed upon the transfer of real property interests in such town pursuant to article thirty-one-D of the tax law. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. In no event shall monies deposited in the fund be transferred to any other account. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any acquisition or water quality improvement project authorized pursuant to this section. Monies ~~4~~from the fund may be utilized to repay any indebtedness or obligations ~~5~~incurred pursuant to the local finance law consistent with effectuating the purposes of this section. Where a town finances an acquisition or water quality improvement project, in whole, or in part, pursuant to the local finance law, the resolution authorizing such indebtedness shall be accompanied by a report from the town supervisor demonstrating how said indebtedness will be repaid by the fund. Said report shall include an estimate of projected revenues of the fund during the period of indebtedness. The report shall also provide an accounting of all other indebtedness incurred against the fund to be repaid for the same period. The town board shall make findings by resolution that there will be sufficient revenue to repay such indebtedness in its entirety from the fund before authorizing such indebtedness. ~~[A town in the Peconic Bay region may only adopt the local law authorized by this subdivision if it has incurred or authorized bonded indebtedness since nineteen hundred eighty19 for open space purposes equal to or greater than two hundred dollars per20 town resident. The number of residents shall be determined by the199021 U.S.Census.Said local law shall make a finding that the town has22 complied with the per resident financial commitment requirement of this23 subdivision.]~~

APPENDIX B: MODIFICATIONS TO CPF LAW

3. The purposes of the fund shall be exclusively, (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, [and] (d) to provide a management and stewardship program for such interests and rights consistent with subdivisions nine and nine-a of this section and in accordance with such plan designed to preserve community character; provided that not more than ten percent of the fund shall be utilized for the management and stewardship program, and (e) to implement water quality improvement projects in accordance with a plan to preserve community character. A maximum of twenty (20) percent of the fund may be utilized for the implementation of water quality improvement projects; provided that where such water quality improvement funds are utilized for the operation of the Peconic Bay National Estuary Program, the use of such funds shall only be utilized to match federal, state, county, or other public or private funds on a dollar for dollar basis, not to exceed ten (10) percent of the annual amount appropriated for water quality improvement projects.

If the implementation of the community preservation project plan, adopted by a town board, as provided in subdivision six of this section, has been completed, and funds are no longer needed for the purposes outlined in this subdivision, then any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

3-a. Preliminary and incidental costs in connection with the acquisition of interests or rights in real property, pursuant to subdivision three of this section, shall be deemed part of the cost of the acquisition for which they were incurred. Such expenditures may include any administrative or other expenditures directly arising therefrom. No expenditure shall be charged to the fund, unless authorized by law. A full accounting of such costs for each acquisition of land shall be provided to the town board.

4. Preservation of community character shall involve one or more of the following: (a) establishment of parks, nature preserves, or recreation areas; (b) preservation of open space, including agricultural lands; (c) preservation of lands of exceptional scenic value; (d) preservation of fresh and saltwater marshes or other wetlands; (e) preservation of aquifer recharge areas; (f) preservation of undeveloped beach lands or shoreline including those at significant risk of coastal flooding due to projected sea level rise and future storms; (g) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species; (h) preservation of pine barrens consisting of such biota as pitch pine, and scrub oak; (i) preservation of unique or threatened ecological areas; (j) preservation of rivers and river areas in a natural, free-flowing condition; (k) preservation of forested land; (l) preservation of public access to lands for public use including stream rights and waterways; (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and (n) undertaking any of the aforementioned in furtherance of the establishment of a greenbelt. Preservation of community character shall also include the protection and improvement of the quality of all water resources.

5. The town board of any town in the Peconic Bay region which has established a community preservation fund shall create an advisory board to review and make recommendations on proposed acquisitions of interests in real property or water quality improvement projects using monies from the fund. Such board shall consist of five or seven legal residents of the municipality who shall serve without compensation. No member of the local legislative body shall serve on the board. A majority of the members of the board shall have demonstrated experience with conservation [or] and land preservation activities or water quality improvement activities. The board shall act in an advisory capacity to the town board. At least one member of the board shall be an active farmer.

6. The town board of any town in the Peconic Bay region which has established a community preservation fund shall, by local law, adopt a community preservation project plan. This plan shall list every project

APPENDIX B: MODIFICATIONS TO CPF LAW

which the town plans to undertake pursuant to the community preservation fund. It shall include every parcel which is necessary to be acquired in the town in order to protect community character. Such plan shall provide for a detailed evaluation of all available land use alternatives⁴³ to protect community character, including but not limited to: (a) fee simple acquisition, (b) zoning regulations, including density reductions, cluster development, and site plan and design requirements, (c) transfer of development rights, (d) the purchase of development rights, and (e) scenic and conservation easements. Said evaluation shall be as specific as practicable as to each parcel selected for inclusion in the plan. The plan shall establish the priorities for preservation, and shall include the preservation of farmland as its highest priority. Said plan shall also list every water quality improvement project which the town plans to undertake pursuant to the community preservation fund and shall state how such project would improve existing water quality. Projects which have as their purpose the accommodation of new growth as opposed to the remediation of water quality shall not qualify for funding under this section. Funds from the community preservation fund may only be expended for projects which have been included in said plan. Said plan shall be updated not less than once every five years, but in no event until at least three years after the adoption of the original plan. A copy of the plan shall be filed with the commissioner of environmental conservation, the commissioner of agriculture and markets and the commissioner of the office of parks, recreation and historic preservation. Said plan shall be completed at least sixty days before the submission of the mandatory referendum required by section one thousand four hundred forty-nine-bb of the tax law. As part of, or in addition, to said community preservation fund project plan, each town board may also adopt a management and stewardship plan for interests or rights in real property acquired pursuant to this section. No monies from the fund shall be expended for management and stewardship, except as approved in said plan. Said plan may provide management and stewardship projects for up to a three year period and shall provide a description and estimated¹⁶cost for each project. Said plan shall be approved and adopted by local law and may be updated from time to time at the discretion of the town¹⁸board. Only management and stewardship projects^{permitted pursuant to}¹⁹subdivision^{nine-a} of this section shall be eligible to be included in²⁰the plan.

7. The town board of any town in the Peconic Bay region which has established a community preservation fund pursuant to this section shall study and consider establishing a transfer of development rights program to protect community character as provided for by section two hundred sixty-one-a of this chapter. All provisions of such section two hundred sixty-one-a shall be complied with. If at any time during the life of the community preservation fund a transfer of development rights program²⁸is established, the town may utilize monies from the community preservation fund in order to create and fund a central bank of the transfer^{of}³⁰development rights program. If at any time during the life of the commu-³¹nity preservation fund, a transfer of development rights program is repealed by the town, all monies from the central bank shall be returned³³to the community preservation fund.

8. No interests or rights in real property shall be acquired pursuant to this section until a public hearing is held as required by section³⁶two hundred forty-seven of the general municipal law; provided, however, that nothing herein shall prevent the town board from entering into a conditional purchase agreement before a public hearing is held. Any resolution of a town board approving an acquisition of land pursuant^{to}⁴⁰this section, shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the town.

9. Lands acquired pursuant to this section shall be^{administered and}⁴⁴managed in a manner which (a) allows public use and enjoyment in a manner compatible with the natural, scenic, historic and opens pace character of such lands; (b) preserves the native biological diversity of such lands; (c) with regard to open spaces, limits improvements to enhancing access for passive use of such lands such as nature trails, ⁴⁹boardwalks, bicycle paths, and peripheral parking areas provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and (d) preserves cultural property consistent with accepted standards for historic preservation. In⁵³ furthering the purposes of this section, the town may enter into agreements with corporations organized under the not-for-profit^{corporation}⁵⁵law and engage in land trust activities to manage lands including less⁵⁶than fee

APPENDIX B: MODIFICATIONS TO CPF LAW

interests acquired pursuant to the provisions of this section, provided that any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the town that public accessibility would be detrimental to the lands or any natural resources associated therewith.

9-a. (a) Except for interests or rights in real property acquired for historic preservation purposes, management and stewardship projects shall be only expended for (1) projects which promote the protection or enhancement of the natural, scenic, and open space character for which the interests or rights in real property were acquired, or (2) accessory uses related to the purpose for which the interests or rights in real property were acquired consistent with subdivision nine of this section, or (3) restoration of acquired real property to its natural state including the demolition of existing buildings and structures. (b) In the case of interests or rights in real property acquired for historic preservation purposes, funds may be expended only for the restoration and rehabilitation of buildings and structures consistent with accepted standards for historic preservation. (c) Expenses related to the customary operation and maintenance of acquired interests or rights in real property shall not be permitted from the fund. (d) Any project funded pursuant to this subdivision must have a useful life of five years or more under section 11.00 of the local finance law. (e) Any expenditure from the fund for a purpose other than that permitted, herein, shall be deemed to be prohibited.

10. Rights or interests in real property acquired with monies from such fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this section without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the legislature. Nothing in this section shall preclude a town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this section. This subdivision shall not apply to the sale of development rights by a town acquired pursuant to this section, where said sale is made by a central bank created by a town, pursuant to a transfer of development rights program established by a town pursuant to section 40 two hundred sixty-one-a of this chapter, provided, however (a) that the lands from which said development rights were acquired shall remain preserved in perpetuity by a permanent conservation easement or other instrument that similarly preserves the community character referenced in subdivision four of this section, and (b) the proceeds from such sale shall be deposited in the community preservation fund.

11. Notwithstanding any provision of law to the contrary, towns may enter into intermunicipal agreements pursuant to article five-G of the general municipal law for the following purposes: (a) to jointly acquire interests or rights in real property, consistent with the purposes of this section, where the acquisition of such interests or rights promotes a regional public benefit for two or more towns pursuant to a regional plan, (b) to establish an office or department among all five towns to render legal opinions and interpretations to facilitate the efficient and consistent administration of each fund created under this section, (c) to provide for an independent financial audit of each town's fund, (d) to hire employees necessary to implement the provisions of this section.

12. Each town shall annually commission an independent audit of the fund. The audit shall be conducted by an independent certified public accountant or an independent public accountant. Said audit shall be performed by a certified public accountant or an independent public accountant other than the one that performs the general audit of each town's finances. Such audit shall be an examination of the fund and shall determine whether the fund has been administered consistent with the provisions of this section and all other applicable provisions of state law. Said audit shall be initiated within sixty days of the close of the fiscal year of each town and shall be completed within one hundred twenty days of the close of the fiscal year. A copy of the audit shall be submitted annually to the state comptroller and the town clerk. A copy of the audit shall be made available to the public within thirty days of its completion. A notice of the completion of the audit shall be published in the official newspaper of the town and posted on

APPENDIX B: MODIFICATIONS TO CPF LAW

the official sign board of the town within ten days of its filing with the town clerk. Said audit and notice shall also be posted on the internet site for the town. The cost of the audit may be a charge to the fund.

13. The cost of employees and independent contractors to implement the provisions of this section, may only be paid for by the fund where the duties and responsibilities of said employees and independent contractors are directly dedicated to implementing the provisions of this section. Where such employees and independent contractors are not exclusively dedicated to implementing the provisions of this section, no more than the cost of the actual time expended directly dedicated to implementing the provisions of this section may be charged. Such costs shall be expressly identified in the town budget and any plan adopted pursuant to this section before funds for such costs may be expended. In addition, such costs must be documented by a time accounting system, subject to audit. Costs relating to the activities of elected officials implementing the purposes of this section may not be a charge to the fund.

§ 2. Where a town extends the provisions of article 31-D of the tax law in relation to the date of expiration of chapter 114 of the laws of 1998 as authorized by section three of this act, or where a town adopts the provisions of section one of this act in relation to including water quality improvement projects under the definition of the preservation of community character, such action shall be implemented by local law subject to a mandatory referendum pursuant to section 23 of the municipal home rule law. § 3. Section 5 of chapter 114 of the laws of 1998, amending the town law and other laws relating to authorizing certain towns in the Peconic Bay region to establish community preservation funds, as amended by chapter 391 of the laws of 2006, is amended to read as follows: § 5. This act shall take effect immediately; provided that article 31-D of the tax law, as added by section three of this act shall remain in full force and effect until December 31, [2030] 2050 when upon such date the provisions of such section three of this act shall expire and be deemed repealed, provided however, that the tax authorized by section three of this act shall not take effect before July 1, 1998. § 4. This act shall take effect immediately.

NEW YORK STATE ASSEMBLY MEMORANDUM IN SUPPORT OF LEGISLATION
SUBMITTED IN ACCORDANCE WITH ASSEMBLY RULE III, SEC 1(F) BILL NUMBER: A7471
SPONSOR: THIELE

TITLE OF BILL: An act to amend the town law, in relation to the Peconic Bay community preservation fund and chapter 114 of the laws of 1998 amending the town law and other laws relating to authorizing certain towns in the Peconic Bay region to establish community preservation funds, in relation to extending the effective date thereof PURPOSE: This legislation relates the Peconic Bay Community Preservation Fund (CPF) by extending the 2% real estate transfer tax from December 31, 2030 to December 31, 2050 and creating a new category of eligible funding for water quality improvement projects, including wastewater treatment, aquatic habitat restoration and pollution prevention.

Summary of provisions:

Section 1. Amends Section 64-e of the Town Law relating to the CPF which defines and provides a new category of eligible funding for water quality improvement projects including: wastewater treatment; aquatic habitat restoration; and pollution prevention. It further allows the town boards of any town within the Peconic Bay region (East Hampton, River-head, Shelter Island and Southold) to utilize a maximum of 20% of the CPF to finance the implementation of water quality improvement projects. The CPF water quality improvement funds could be used to match any federal, state, county or other funds up to a maximum of 10% of water quality improvement funding for the operation of the Peconic Bay National Estuary Program (PEP).

Section 2. Provides that a town which extends the provisions of Section 31-D of the tax law, or adopts the provisions of this act relating to water quality improvement projects must implement a local law subject to a mandatory referendum pursuant to municipal home rule law.

Section 3. Extends the 2% real estate transfer tax from December 31, 2030 to December 31, 2050.

Section 4. Immediate effective date.

APPENDIX B: MODIFICATIONS TO CPF LAW

Justification:

Since its inception in 1999, the Peconic Bay Community Preservation Fund (CPF), a 2% real estate transfer tax for land acquisition for open space, farmland, and historic preservation, as well as recreational purposes, has raised over \$1 billion to protect over 10, 000 acres of land on the East End of Long Island. Extending the CPF through 2050 will ensure that additional funds are raised to help further protect lands and community character. Also included in this extension is a new provision allowing a portion of the generated revenue on projects that would help improve water quality. The East End, surrounded entirely by water, is a community whose history, economy, and character is dependent upon clean water for recreation, tourism, and shell fishing. Maintaining the ecological health of local bays is just as crucial to protecting the character of the community as preserving open space has been.

LEGISLATIVE HISTORY: 2015: New Legislation FISCAL IMPLICATIONS: None to the State.

EFFECTIVE DATE: This act shall take effect immediately.

Section 1449-BB of NY State Tax Law

* § 1449-bb. Imposition of tax. Notwithstanding any other provisions of law to the contrary, any town in the Peconic Bay region, acting through its town board, is hereby authorized and empowered to adopt a local law imposing in such town a tax on each conveyance of real property or interest therein where the consideration exceeds five hundred dollars, at the rate of two percent of the consideration for such conveyance. Provided, however, any such local law imposing, repealing or reimposing such tax shall be subject to a mandatory referendum pursuant to section twenty-three of the municipal home rule law. Notwithstanding the foregoing, prior to adoption of such local law, the town must establish a community preservation fund pursuant to section sixty-four-e of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund. Such local law shall apply to any conveyance occurring on or after the first day of a month to be designated by such town board, which is not less than sixty days after the enactment of such local law, but shall not apply to conveyances made on or after such date pursuant to binding written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer."