



Commission Meeting of December 19, 2018
Southaven County Park, Yaphank, NY

Adopted Resolution
Eagan Dittmer Core Hardship Waiver Application
Yaphank, Town of Brookhaven, SCTM # 200-529-5-36

Present:

Ms. Gallagher, for the Governor of the State of New York

Mr. Freleng, for the Suffolk County Executive

Mr. Romaine, Brookhaven Town Supervisor

Ms. Jens-Smith, Riverhead Town Supervisor

Mr. Collins, for the Southampton Town Supervisor

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Laura Jens-Smith
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Whereas, on August 22, 2018, James P. Eagan and Henry R. Dittmer (collectively the “Applicant”), by its representative, Armand Eagan, submitted to the Central Pine Barrens Joint Planning and Policy Commission (the “Commission”) an application (the “Eagan Dittmer Core Hardship Waiver application”) for a Core Preservation Area Extraordinary Hardship Waiver to develop a single-family residence with an individual sanitary system and related infrastructure including customary accessory uses on an undeveloped parcel of land containing 4,000 square feet of area (0.09 acre) identified on the Suffolk County Tax Map as #200-529-5-36 (the “Parcel”). The nearest existing improved road is Yaphank Middle Island Road which is 113 feet away from the Parcel’s westerly line, and

Whereas, the Applicant proposes to clear and develop a 153' x 28' portion (4,284 square feet), of an undeveloped paper street known as Chesterfield Avenue to provide access to the Parcel. This distance is the width of Chesterfield Avenue adjacent to the Parcel and the width of 113 feet of Chesterfield Avenue adjacent to another lot controlled by Dittmer. Chesterfield Avenue is platted with a width of 30 feet. The development proposed for the Parcel and the improvement of the vacant wooded paper street (shown as being 33 feet wide) is shown on a survey prepared by Kenneth H. Beckman, L.S. dated December 22, 2016, and

Whereas, the Commission finds in its written decision, which denies the Eagan Dittmer Core Hardship Waiver application, that the Applicant failed to establish or provide information sufficient to demonstrate an extraordinary hardship, and

Whereas, as the Commission previously determined, the Eagan Dittmer Project is a Type II Action pursuant to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act, SEQRA), now, therefore, be it

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Resolved, that the Commission adopts the attached document that constitutes the written decision for the Eagan Dittmer Core Preservation Area Hardship Waiver Application, Yaphank, Town of Brookhaven, SCTM # 200-529-5-36.

Motion by: Mr. Romaine

Second by: Mr. Collins

Ayes: Ms. Gallagher, Mr. Freleng, Mr. Romaine, Ms. Jens-Smith and Mr. Collins

Nays: None

Abstentions: None

Absent: None

Central Pine Barrens Joint Planning and Policy Commission
December 19, 2018

Adopted Decision
Eagan Dittmer Core Hardship Waiver Application
Yaphank, Town of Brookhaven, SCTM # 200-529-5-36

I. The Project

On August 22, 2018, James P. Eagan and Henry R. Dittmer (collectively the “Applicant”), by its representative, Armand Eagan, submitted to the Central Pine Barrens Joint Planning and Policy Commission (the “Commission”) an application for a Core Preservation Area Extraordinary Hardship Waiver to develop a single-family residence with an individual sanitary system and related infrastructure including customary accessory uses on an undeveloped parcel of land containing 4,000 square feet of area (0.09 acre) identified on the Suffolk County Tax Map as #200-529-5-36 (the “Parcel”). The nearest existing improved road is Yaphank Middle Island Road which is 113 feet away from the Parcel’s westerly line.

The Applicant proposes to clear and develop a 153' x 28' portion (4,284 square feet), of an undeveloped paper street known as Chesterfield Avenue to provide access to the Parcel. This distance is the width of Chesterfield Avenue adjacent to the Parcel and the width of 113 feet of Chesterfield Avenue adjacent to another lot controlled by Dittmer. Chesterfield Avenue is platted with a width of 30 feet. The development proposed for the Parcel and the improvement of the vacant wooded paper street (shown as being 33 feet wide) is shown on a survey prepared by Kenneth H. Beckman, L.S. dated December 22, 2016 and shall be referred to as the “Project.”

II. The Long Island Pine Barrens Protection Act of 1993, the Commission, Development and the Central Pine Barrens Comprehensive Land Use Plan

The Commission was created by the Long Island Pine Barrens Protection Act (the “Act”) adopted in 1993 and codified in Article 57 of the Environmental Conservation Law (ECL). The Act empowered the Commission, to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area. Section §57-0107(13) of the ECL defines development to be the “performance of any building activity, . . . , the making of any material change in the use or intensity of use of any . . . land and the creation . . . of rights of access.”

ECL Section §57-0123(3)(a) provides that, “[s]ubsequent to the adoption of the land use plan, the provisions of any other law, ordinance, rule or regulation to the contrary notwithstanding, no application for development within the Central Pine Barrens area shall be approved by . . . the [C]ommission . . . unless such approval or grant conforms to the provisions of such land use plan; provided, however, that the [C]ommission by majority vote is hereby authorized to waive strict compliance with such plan or with any element or standard contained therein, for an application for development of any person, upon finding that such waiver is necessary to alleviate hardship for proposed development in the core preservation area according to the conditions and finding of extraordinary hardship . . . pursuant to subdivision ten of section 57-0121 of this title, and every application is consistent with the purposes and provisions of this

article and would not result in substantial impairment of the resources of the Central Pine Barrens.”

ECL Section 57-0121 (10) provides that, “[a]ny person, . . ., may apply to the commission for a permit exempting such [development from the prohibition on new development in the Core Preservation Area]. Such application for an exemption pursuant to the demonstration of hardship within the core preservation area shall be approved only if the person satisfies the following conditions and extraordinary hardship or compelling public need is determined to have been established under the following standards []:

- (a) The particular physical surroundings, shape or topographical conditions of the specific property involved would result in an extraordinary hardship, as distinguished from a mere inconvenience, if the provisions of this act are literally enforced. A person shall be deemed to have established the existence of extraordinary hardship only if he or she demonstrates, based on specific facts, that the subject property does not have any beneficial use if used for its present use or developed as authorized by the provisions of this title, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which:
 - (i) Do not apply to or affect other property in the immediate vicinity;
 - (ii) Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; or
 - (iii) Are not the result of any action or inaction by the applicant or the owner or his or her predecessors in title including any transfer of contiguous lands which were in common ownership on or after June 1, 1993.

* * *

- (c) An application for a permit in the core preservation area shall be approved only if it is determined that the following additional standards also are met:
 - (i) The granting of the permit will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire, endanger public safety or result in substantial impairment of the resources of the core preservation area;
 - (ii) The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of this title; or
 - (iii) The waiver is the minimum relief necessary to relieve the extraordinary hardship, which may include the granting of a residential development right to other lands in the compatible growth area that may be transferred or clustered to those lands to satisfy the compelling public need.

On June 28, 1995 the Commission, in furtherance of its mission and in compliance with the directives set forth in the Act, adopted its Central Pine Barrens Comprehensive Land Use Plan (the “Plan”). Section 4.5.1 of the Plan, states, “[t]he Act requires the prohibition or

redirection of development in the Core Preservation Area and sets forth the jurisdiction of the Commission over, and certain requirements for processing, hardship exemptions. The Act authorizes the Commission, by majority vote, to waive strict compliance with this Plan upon finding that such waiver is necessary to alleviate hardship according to the conditions and finding of extraordinary hardship" pursuant to subdivision of Section 57-0121(10) of the Act.

The Project constitutes development as defined by the Act and in order to proceed, the Applicant must demonstrate a hardship exists pursuant to ECL §57-0107(10) that results from the Parcel having no beneficial use if used for its present use or as authorized under the Act.

III. The Application, the Staff Report, the Public Process and the Supplemental Materials

Applicant's submitted Part I of the Full Environmental Assessment Form, completed by Armand Eagan and a copy of the Beckman survey submitted under an August 22, 2018 cover letter (collectively the "Application"). A public hearing on the Application was held on October 17, 2018. At the Hearing a Commission Staff Report with 13 Exhibits (A through M) was introduced into the record. The Commission received sworn testimony from Applicant James P. Eagan, Applicant's attorney, Peter D. Baron, and its representative, Armand Eagan. Applicant also submitted a petition with five exhibits at the hearing. A stenographic transcript was made of the hearing.

IV. The Parcel and its Immediate Vicinity, the Study Area

The Applicant acquired the Parcel from Henry R. Dittmer as Administrator of the Estate of Richard C. Dittmer via an Administrator's Deed, on September 6, 2016 for Ten Dollars (\$10). The Parcel is located on Chesterfield Avenue, which is a paper street, that is a mapped but not yet improved road and is approximately 113 feet east of the nearest developed, paved road, Yaphank Middle Island Road. The Parcel is in the Town of Brookhaven's A Residence 5 zoning district, which has a minimum lot area requirement of 200,000 square foot. It appears as Lot 57 and Lot 58 on an old filed subdivision map, a map filed with the Suffolk County Clerk prior to enactment of the Brookhaven's zoning ordinance, known as Flower City Park. More than 50% of lots in Flower City Park have been acquired and protected as publicly-owned nature preserve.

To determine the characteristics of the immediate vicinity of the Parcel, the Commission defined a Study Area, which is an area that extends one-half mile from the Parcel in all directions. The Study Area was part of the Commission's Staff Report as its Exhibit I. The Study Area encompasses approximately 450 to 500 acres in the Core Preservation Area and Compatible Growth Area. Approximately 75% of the Study Area is in the Core Preservation Area. Of this area, the dominant land use in the Study Area is preserved land acquired by public agencies including Suffolk County and the Town of Brookhaven.

Expansive areas of public land holdings comprise a significant portion of the eastern half of the Study Area including large blocks of natural, unfragmented open space in the Core Preservation Area. Warbler Woods, a Suffolk County Nature Preserve, is in the Study Area. Other environmentally sensitive resources in the Study Area include a Central Pine Barrens Critical Resource Area (CRA) Site B2 identified in Volume 1 Chapter 4 of the Plan, in the

western half of the Study Area, as well as a Scenic Resource corridor, Yaphank Middle Island Road, identified in Volume 2, Chapter 8 of the Plan.

The Commission and Applicant are in agreement that approximately 23 vacant privately-owned parcels may remain in the Map of Flower City Park (Hearing at 32). The parcels are wooded and substandard as per current zoning and are interspersed with publicly owned, undeveloped, wooded parcels. Undeveloped paper streets also exist in the Map.

The Parcel is surrounded by other property owned or controlled by Henry Dittmer, individually or with Armand Eagan, the Applicant's representative. Adjacent to the Parcel on the west are two parcels owned now or formerly by Richard Dittmer. These parcels front on Middle Island Yaphank Road. (See Staff Report Exhibit B). The southerly of the two also has 113 feet of frontage on Chesterfield Avenue. In 2011, Henry Dittmer, in his capacity as Administrator of the Estate of Richard C. Dittmer, conveyed a conservation easement on each parcel to the Commission. (Hearing at 7). The easements prohibit development of the lots. The easement on the southerly parcel also precludes development of the northerly half of Chesterfield Avenue adjacent to the lot because the legal description of the easement included the grantee Richard Dittmer's interest in Chesterfield Avenue. Thus the northerly half of the first 113 feet of Applicant's proposed 153 foot access road cannot be developed.

Adjacent to the Parcel on the east is a parcel owned by Henry Dittmer and Armand Eagan. The Commission has twice denied applications for a Core Preservation Area Hardship Exemption to develop this parcel. As in the instant Application, Dittmer proposed developing the portion of Chesterfield Avenue protected by the Commission's conservation easement and the portion of Chesterfield Avenue adjacent to the Parcel to provide access to the Dittmer Armand Eagan parcel. (See Staff Report Exhibit L). The first denial was remanded back to the Commission after the owners filed a CPLR Article 78 proceeding to review the Commission's decision. The Commission again denied the application on remittal. A copy of the remittal decision was included in the Staff Report.

Notwithstanding the Applicant's assertion to the contrary (Hearing at 32 and 34), the Parcel is not "adjacent" to a single family house. The house the Applicant refers to fronts on Yaphank-Middle Road and is on the north side of the northerly Richard Dittmer parcel, one of the two protected by Commission conservation easements. The southeast corner of the developed parcel is coterminous with the northwest corner of the Applicant's Parcel and shares a single point of contact with the developed property, as part of a four property corner.

According to a New York Natural Heritage Program Report dated November 2, 2018, Tiger Salamander (*Ambystoma tigrinum*), a State-listed Endangered amphibian, and summer roosting habitat for the Northern Long-eared Bat (*Myotis septentrionalis*), a State-listed Threatened species are known to occur within 0.5 mile and 1.0 mile, respectively of the Parcel. Featherfoil (*Hottonia inflata*), a State-listed Threatened species, is noted in the Warbler Woods area, east of the project site growing in shallow water masses, per a 1995 survey. According to the Report, the Persius Duskywing (*Erynnis persius persius*), a State-listed Endangered species, is a "rare animal that has historical records at the project site." The Duskywing is noted as observed in May 2017 in Yaphank. Specific locations are withheld from the Report for the

protection of plants and animals and to avoid poaching or taking by the public. The Report is advisory and site specific surveys are required to determine whether any of the species exists on or near the Parcel.

V. The Application, Applicant Statements in Support of the Application

Applicant's representative stated that the Parcel is unique because there is "no other property like it in the Core Area." (Hearing at 31). Applicant's representative also stated that the Parcel was unique from the other parcels on the Map of Flower City Park. Applicant maintains that there are no regulated wetlands between, the Parcel and the adjacent parcel on the east, in which there is a commonality of interest, and Middle Island Yaphank Road, but the "other parcels on the map [Flower City Park] would be prevented from having access to a paved, improved road, due to DEC freshwater-regulated wetlands being blocking the road – any possible road improvements on the map." (Hearing at 20). And thus the Parcel development would not be "precedential." (Id.).

The Applicant maintains that Commission Exhibit I, an aerial photograph depicting the protected and unprotected parcels within the Map of Flower City Park is "completely inaccurate." (Hearing at 19) because the Applicant or the Applicant representative, is in "negotiations to buy" a "vacant and available," lot within Flower City Park that wasn't properly identified on the Exhibit. The existence of this parcel and the parcel directly adjacent to the Parcel owned by Dittmer and Armand Eagan belies the Parcel's uniqueness.

In support of its Application, Applicant cited four Commission matters, a 1998 decision on a Pine Barrens Credit Appeal of The Woodstock Company, a 1998 decision on a Pine Barrens Credit appeal of Doris Fichter, a 1995 Hardship Exemption request of Donald and Amy Madelung and a 1996 Hardship Exemption request of Rita Kristiansen Hardship Application and a 1998 amendment of the Act that deemed the construction of a single family home on certain parcels to be non-development. According to the Applicant each matter presented substantially similar features and thus supported the Application.

The Applicant maintains that constructing a house of the Parcel and clearing and developing a road on Chesterfield Avenue is the "very definition" of "orderly and compact development because it is adjacent to a single family house (Hearing at 32 and 34). The Commission finds that while the Parcel shares a common four property point, the Parcel is substantially adjacent to two parcels each protected by a Commission conservation easement, and one of the easements precludes the clearing of vegetation on the northerly half of Chesterfield Avenue, which is the Applicant's proposed access.

VI. Potential Adverse Environmental Impacts

The Commission finds the Project would result in significant adverse environmental impacts on the resources of the Central Pine Barrens including adverse impacts on groundwater resources, ecological resources, fragmentation of existing natural habitat and publicly-owned open space. The Project may establish an adverse precedent in that it may support the submission of similar types of development applications on vacant undeveloped lots in the Core, and support

development to occur in the vicinity of the Parcel and in other hamlets in the Core Preservation Area where low-density development and expansive public land holdings exist. The Project may result in growth inducing impacts from the development of roads in forested areas where roads are not developed causing fragmentation of protected lands and habitat for vegetation and wildlife. It would facilitate other development to occur in areas that were designed in the Act to protect the functional integrity of the pine barrens ecosystem and significant natural resources, protect the quality of surface water and groundwater, and to discourage piecemeal and scattered development.

VII. Commission Review of the Application and Findings

The Commission finds that the area in the immediate vicinity of the Parcel is not substantially developed based upon the Commission's staff report and the Study Area defined in it. The Staff Report notes the expansive public land holdings in the Study Area and that existing development in the Study Area, in the Core Preservation Area and in the Compatible Growth Area, for the most part, pre-dates the Act. Lots that are developed in the Core Preservation Area in the Study Area have road frontage on Yaphank Middle Island Road.

Pursuant to the Act, in reviewing a Core Preservation Area Hardship exemption application, the Commission shall consider the criteria set forth in ECL §57-0121(10)(a) (i), (ii), and (iii) and Sections 57-0121(10)(c)(i), (ii), and (iii) and determine whether or not the requested relief is consistent with the purposes and provisions of the Act and if granted, would not result in a substantial impairment of the resources of the Central Pine Barrens area. The Commission has considered the application, the Staff Report and Exhibits, and the hearing transcript to determine whether the Applicant satisfied the elements.

In order to establish a hardship under ECL §57-0121(10)(a)(i), the Applicant is required to demonstrate that the subject property does not have any beneficial use if used for its present use or developed as authorized by the provisions of this Act, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which do not apply to or affect other property in the immediate vicinity.

The Commission finds the Applicant has not satisfied the element in ECL §57-0121(10)(a)(i), because the Parcel is not unique and the provisions of the Plan apply to and affect other privately-owned and undeveloped properties, in the immediate vicinity of the Parcel in the Study Area, including but not limited to the parcel directly adjacent to the Parcel which is owned in part by co-Applicant Henry Dittmer and at a minimum the six parcels the Applicant identified in Flower City Park, which includes the parcel the Applicant's representative seeks to purchase.

In order to establish a hardship, under ECL §57-0121(10)(a)(ii), the Applicant is required to demonstrate that the subject property does not have any beneficial use if used for its present use or developed as authorized by the provisions of the Act, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which relate to or arise out of the characteristics of the subject property rather than the personal situation of the Applicant. The Applicant has not established that the Parcel has no beneficial use. It was allocated Pine Barrens Credits.

While the Applicant maintains that “[i]t would be a hardship if the Commission does not grant this exemption and requires that we accept a PBC instead because we do not immediately have a place to apply this PBC and we would be required to be thrown into a market where everyone is in the same position and the best price wins, whereas if this hardship is to be granted, this building lot may have a higher value than other participants in the credit program are willing to sell for, whom may have more aggressive market approach and may be able to sell the PBC more efficiently and cost effectively than we are.” (Applicant’s October 17 materials). Applicant thus concedes that there is a Pine Barrens Credit marketplace. The Commission finds that the allocation of Pine Barrens Credits provides a use to the Applicant and a market exists for such Pine Barrens Credits. (See PBC transactions at www.pb.state.ny.us).

In order to establish a hardship under ECL §57-0121(10)(a)(iii), the Applicant is required to demonstrate that the subject property does not have any beneficial use if used for its present use or developed as authorized by the provisions of this article, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which are not the result of any action or inaction by the Applicant or the owner or his predecessors in title including any transfer of contiguous lands which were in common ownership on or after June 1, 1993.

To address this criteria, the Applicant stated the “hardship is not a result of inaction by the Applicant because Mr. Eagan acquired interest to this property only recently and notice law is no longer applicable in New York State. The Rights and Privileges run with the land, not the Applicant.” The Commission finds that the Applicant paid Ten Dollars for the Parcel after the effective date of the Act and contrary to the Applicant’s statement, and while not determinative in and of itself, the hardship could be in part due to the Applicant’s action or inaction as Applicant purchase of the Parcel constitutes action.

In order to establish a hardship, the Applicant must also demonstrate that pursuant to ECL §57-0121(10)(c)(i), that the Project will meet the standard that the granting of a permit will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire, endanger public safety or result in substantial impairment of the resources of the Core Preservation Area.

The Project would result in the endangerment of public safety or substantial impairment of the resources of the Core Preservation Area since it may result in growth-inducing impacts and is precedent setting in nature in that it would induce and promote additional development in an area which public agencies have expended significant public funds protect and preserve water and ecological resources, where limited development density exists and expansive public land holdings exist and may adversely affect the already preserved public lands; and additional development in an area with expansive undeveloped land may increase the risk of fire danger to public and property.

In order to establish a hardship, the Applicant must also demonstrate that pursuant ECL §57-0121(10)(c)(ii) the Project will be consistent with the purposes, objectives or general spirit and intent of this title. The Plan requires that development be redirected from the Core

Preservation Area and preservation of Core lands, existing natural vegetation, ecologic, and hydrologic functions of the Pine Barrens. The Commission finds that the Project does not achieve the goals and objectives of the Act or the Plan that apply to the Core Preservation Area because it would cause prohibited development in the Core.

In order to establish a hardship, the Applicant must also demonstrate that pursuant ECL §57-0121(10)(c)(ii) the Project is the minimum relief necessary to relieve the extraordinary hardship. Notwithstanding the Applicant assertion that the grant of a hardship exemption is the “minimum relief necessary in order to relieve hardship bestowed upon us by the Act itself.” The Commission finds that development of a naturally vegetated parcel with no frontage on a developed road and the opening and development of a paper street that is presently unopened and contains natural habitat exceeds the minimum relief necessary to relieve hardship.

The Commission further finds that it has not granted an extraordinary hardship exemption to allow development of a paper street to provide access to a parcel on an unopened road and to allow construction of a house on the otherwise inaccessible parcel and to do so, based on the information provided in this Application, would be inconsistent with the Act, and would not achieve the goals and objectives of the Act or the Plan.

VIII. Commission Review of the Matter Cited by the Applicant

The Commission finds that the cases brought to their attention by the Applicant during the review process have been examined and found to not have similar circumstances and are distinguishable as compared to the Project and therefore are not determinative of the Application. The Commission makes this determination by its review of its decisions in these matters, the Commission files, and the transcripts of the hearings on them. Past decisions and hearing transcripts are posted on the Commission’s website at <https://pb.state.ny.us/>.

The Woodstock Company and Doris Fichter decisions are not relevant to the Application. Both matters addressed requests for the allocation of additional Pine Barrens Credits under the Commission’s Pine Barrens Credit Program. The Applicant is seeking a hardship exemption to authorize the Project. In these decisions, the Commission did not apply the hardship criteria and therefore these decisions are not applicable to the Application.

Applicant maintains that the Madelung hardship is identically similarly situated to the application and that a hardship was granted to Madelung despite having beneficial use of the property. The Applicant continued that Madelung alleged financial hardship, and that the hardship criteria “specifically states is not grounds for the granting a hardship exemption.” (Hearing at 37).

Although Madelung is in the Study Area, it is not similar because the Madelung property had direct access to Yaphank Middle Island Road. The Madelungs owned two adjacent parcels. One the parcels had 100 feet of frontage on Yaphank Middle Island Road. The parcel with the frontage also appeared on the Commission’s Core Preservation Area residential nondevelopment parcel list published in the Plan. Prior to the Act’s amendment in 1998 to include the development of a single family house on the parcels on the list, the Madelung’s

applied for a hardship exemption for the two parcels. In June 1995, prior to the Plan's adoption, the exemption was granted.

Applicant's Parcel, unlike the Madelung lot, was not included on the Core Preservation Area nondevelopment list and the Parcel does not have any frontage on any improved road. Thus, the Commission's decision in Madelung does not constitute precedent that requires the Commission to approve the Application.

The facts underlying Kristiansen are distinguishable from the Project because it was located on a developed road. In Kristiansen there was an existing 22 foot by 24 foot two-car garage and a 20 by 14 foot concrete slab on the parcel for which Kristiansen applied to the Commission for an extraordinary hardship exemption. Kristiansen benefitted from approvals granted by other agencies prior to the Act. Kristiansen had already received prior permission from the Town of Brookhaven to build on the land and had a pre-Act permit to do so in a Town of Brookhaven Building Department Building Permit dated December 15, 1970 and had Wild, Scenic and Recreational Rivers Act Permit issued by the New York State Department of Environmental Conservation and a Freshwater Wetlands Permit. Applicant's Parcel is not on an existing road, has no other permits including permits that pre-date the Act.

The Applicant also maintains that the inclusion of a parcel located outside the Study Area in the Town of Riverhead on the Core Preservation Area residential nondevelopment list requires the approval of the Project. While the Riverhead parcel may not have frontage on an improved road, the Legislature accepted the Commission's 1995 recommendation to amend the Act to define the construction of a single family residence on the parcel as an action not constituting regulated development. Thus, landowners of parcels on this list are permitted to construct a single-family dwelling as of right without a permit from the Commission. See ECL § 57-0107(13)(x). Inclusion of the Riverhead parcel on the list is not relevant to the Application. The Commission finds that the inclusion of the Parcel on the list does not establish any element of the hardship criteria that the Applicant must demonstrate.

The Commission further finds that the Applicant has not identified any instance where the Commission granted an extraordinary hardship exemption to allow the construction of a single-family home on a parcel that does not front on an existing improved road, or does not have access to an existing improved road via an improved driveway on other property owned by Dittmer.

IX. Conclusion

The Commission finds that the Applicant failed to establish or provide information sufficient to demonstrate an extraordinary hardship exists for the reasons set forth above. Therefore the Commission respectfully declines to grant the request hardship exemption.