



SUFFOLK COUNTY CLERK  
RECORDS OFFICE  
RECORDING PAGE

Type of Instrument: DECLARATION  
Number of Pages: 12  
Receipt Number : 11-0071936

Recorded: 06/27/2011  
At: 12:34:01 PM

LIBER: D00012663  
PAGE: 864

District:	Section:	Block:	Lot:
0200	459.00	01.00	001.004

EXAMINED AND CHARGED AS FOLLOWS

Received the Following Fees For Above Instrument

		Exempt			Exempt
Page/Filing	\$60.00	NO	Handling	\$20.00	NO
COE	\$5.00	NO	NYS SRCHG	\$15.00	NO
TP-584	\$0.00	NO	Notation	\$0.00	NO
Cert.Copies	\$15.00	NO	RPT	\$30.00	NO
			Fees Paid	\$145.00	

THIS PAGE IS A PART OF THE INSTRUMENT  
THIS IS NOT A BILL

JUDITH A. PASCALE  
County Clerk, Suffolk County

1 2

Number of pages

12

This document will be public record. Please remove all Social Security Numbers prior to recording.

RECORDED  
2011 Jun 27 12:34:01 PM  
JUDITH A. PASCALE  
CLERK OF  
SUFFOLK COUNTY  
L 000012663  
P 864

Deed / Mortgage Instrument	Deed / Mortgage Tax Stamp	Recording / Filing Stamps
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3 FEES

Page / Filing Fee	<u>60.00</u>	Mortgage Amt.	_____
Handling	<u>25.00</u>	1. Basic Tax	_____
TP-584	_____	2. Additional Tax	_____
Notation	_____	Sub Total	_____
EA-52 17 (County)	_____	Spec./Assit.	_____
EA-5217 (State)	_____	or	_____
R.P.T.S.A.	<u>30.00</u>	Spec. /Add.	_____
Comm. of Ed.	<u>5.00</u>	TOT. MTG. TAX	_____
Affidavit	_____	Dual Town _____ Dual County _____	
Certified Copy	<u>15.00</u>	Held for Appointment	_____
NYS Surcharge	<u>15.00</u>	Transfer Tax	_____
Other	_____	Mansion Tax	_____
		The property covered by this mortgage is or will be improved by a one or two family dwelling only.	
		YES _____ or NO _____	
		If NO, see appropriate tax clause on page # _____ of this instrument.	



4 Dist	0200 45900 0100 001004 1.004	5 Community Preservation Fund
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Real Prop  
Tax Serv  
Agency  
Verificati



6	Satisfactions/Discharges/Releases List Property Owners Mailing Address RECORD & RETURN TO:  Weber Law Group LLP 290 Broadhollow Road Suite 200E Melville, New York 11747	Consideration Amount \$ _____ CPF Tax Due \$ _____ Improved _____ Vacant Land _____ TD _____ TD _____ TD _____
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Mail to: Judith A. Pascale, Suffolk County Clerk 310 Center Drive, Riverhead, NY 11901 www.suffolkcountyny.gov/clerk	7 Title Company Information Co. Name _____ Title # _____
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## 8 Suffolk County Recording & Endorsement Page

This page forms part of the attached declaration of covenants and restrictions made by: (SPECIFY TYPE OF INSTRUMENT)

The American Physical Society

The premises herein is situated in SUFFOLK COUNTY, NEW YORK.

TO

In the TOWN of Brookhaven

Central Pine Barrens Joint Planning & Policy Comm

In the VILLAGE

or HAMLET of Ridge

BOXES 6 THRU 8 MUST BE TYPED OR PRINTED IN BLACK INK ONLY PRIOR TO RECORDING OR FILING.

(over)

## **DECLARATION OF COVENANTS AND RESTRICTIONS**

This declaration made as of the 15 day of June 2011, by **THE AMERICAN PHYSICAL SOCIETY**, a District of Columbia not-for-profit corporation with a place of business located at One Research Road, Ridge, New York 11961 (hereinafter referred to as the "Declarant"):

### **WITNESSETH:**

**WHEREAS**, Declarant is the owner in fee simple of the real property located at One Research Road, Ridge, New York 11961, identified on the Suffolk County Tax Map as 0200-459.00-01.00-001.004 and more fully described in Exhibit "A" annexed hereto and made a part hereof (the "Property"); and

**WHEREAS**, on February 17, 2010, Declarant made an application to the Central Pine Barrens Joint Planning and Policy Commission (the "Commission") for a Core Preservation Area Extraordinary Hardship Exemption pursuant to §57-0121(10) of the New York State Environmental Conservation Law; and

**WHEREAS**, on July 21, 2010, after due deliberation and consideration, the Commission determined that the Declarant's Core Preservation Area Extraordinary Hardship Exemption application meets the criteria for a Core Preservation Area Hardship pursuant to §57-0121(10) of the New York State Environmental Conservation Law; and

**WHEREAS**, on July 21, 2010, the Commission adopted a resolution entitled "Adopted Resolution on the Core Preservation Area Extraordinary Hardship Application of the American Physical Society" (the "Approval Resolution") annexed hereto as Exhibit "B"; and

**WHEREAS**, the Approval Resolution requires, *inter alia*, that the Declarant cause the Approval Resolution and the covenants and restrictions contained herein to be recorded in the Office of the Clerk of Suffolk County; and

**WHEREAS**, the Declarant desires to comply with the conditions of the Approval Resolution; and

**NOW THEREFORE**, in consideration of the premises, the Declarant hereby declares that the Property is held subject to the following covenants and restrictions:

1. The above recitals are incorporated herein and are made a part hereof.
2. Upon completion of the construction for the expansion approved in the Approval Resolution, a minimum of 1.96 acres of the Property shall remain in its natural state (1.55 acres of existing natural area and .41 acres of restored area) as set forth in Cameron Engineering & Associates, LLP's June 2010 vegetation plan annexed hereto as Exhibit "C" (the "Vegetation Plan").
3. The Declarant shall ensure the survivability and maintenance of the .41 acres of restored area detailed on the Vegetation Plan for a period of three years from the date of completion of the restoration activity or the issuance of the certificate of occupancy from the Town of Brookhaven for the expansion approved in the Approval Resolution, whichever occurs later.
4. These covenants and restrictions were conditions to obtain a hardship waiver and are for the benefit of and enforceable by the Commission and shall be and constitute real covenants running with the land and shall be binding upon the Declarant and any and all subsequent owners of said Property or any part thereof, and upon their heirs, executors and administrators, or their successors and

assignees subject, however, to the right of the Commission, upon request by the  
Declarant, its successors and assignees, to amend, alter, annul or repeal any or all  
of the foregoing covenants and/or restrictions at any time.

**IN WITNESS WHEREOF**, the Declarant has executed this Declaration the day and  
year first above written.

**THE AMERICAN PHYSICAL SOCIETY**

By Gene D. Sprouse  
Name: Gene D. Sprouse  
Title: Editor-in-Chief

**ACKNOWLEDGMENT**

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF SUFFOLK     )

On the 15<sup>th</sup> day of JUNE in the year 2011 before me, the undersigned,  
personally appeared, GENE D. SPROUSE, personally known to me or proved to me on the basis  
of satisfactory evidence to be the individual whose name is subscribed to the within instrument  
and acknowledged to me that he executed the same in his capacity, and that by his signature on  
the instrument, the individual of the person upon behalf of which the individual acted, executed  
the instrument.

Roslie Barreto  
Notary Public

Roslie Barreto  
Notary Public State of NY  
No. 01BA6016430 Suffolk Co.  
Term Exp. November 23, 2014

## EXHIBIT "A"

### LEGAL DESCRIPTION

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING, AND BEING IN THE TOWN OF BROOKHAVEN, COUNTY OF SUFFOLK AND STATE OF NEW YORK, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY SIDE OF WILLIAM FLOYD PARKWAY (C.R. 46) AT THE SOUTH EAST CORNER OF THE HEREIN DESCRIBED PREMISES WHERE THE SAME IS INTERSECTED BY THE NORTHERLY SIDE OF LAND NOW OR FORMERLY OF SELRY REALTY CORP., SAID POINT OR PLACE OF BEGINNING ALSO BEING DISTANT 4318.58 FEET NORTHERLY AS MEASURED ALONG THE WESTERLY SIDE OF WILLIAM FLOYD PARKWAY FROM THE EASTERLY END OF A TIE LINE HAVING A LEGNTH OF 131.00 FEET, SAID TIE LINE CONNECTING THE NORTHERLY SIDE OF LONGWOOD ROAD WITH THE WESTERLY SIDE OF WILLIAM FLOYD PARKWAY;

RUNNING THENCE FROM SAID POINT OR PLACE OF BEGINNING ALONG LAND NOW OR FORMERLY OF SELRY REALTY CORP. THE FOLLOWING (2) COURSES AND DISTANCES:

1. SOUTH 85 DEGREES 59 MINUTES 20 SECONDS WEST 363.00 FEET;
2. NORTH 4 DEGREES 00 MINUTES 40 SECONDS WEST 442.28 FEET TO LAND NOW OR FORMERLY OF ELSIE RADA;

THENCE ALONG SAID LAST MENTIONED LAND AND ALONG OTHER LAND NOW OR FORMERLY OF SELRY REALTY CORP. NORTH 85 DEGREES 59 MINUTES 20 SECONDS EAST 744.60 FEET TO THE NORTHWESTERLY SIDE OF WILLIAM FLOYD PARKWAY;

THENCE ALONG THE NORTHWESTERLY SIDE AND WESTERLY SIDE OF WILLIAM FLOYD PARKWAY THE FOLLOWING (2) COURSES AND DISTANCES:

1. SOUTH 54 DEGREES 02 MINUTES 25 SECONDS WEST 312.99 FEET;
2. SOUTH 18 DEGREES 44 MINUTES 22 SECONDS WEST 300.00 FEET TO THE POINT OR PLACE OF BEGINNING.

FOR INFORMATION ONLY: DISTRICT 0200 SECTION 459.00 BLOCK 01.00 LOT 001.004

Exhibit B



**Commission Meeting of July 21, 2010  
SCWA Training Center, Coram, New York**

Present: Peter Scully (State of New York), Mark Lesko (Town of Brookhaven), Carrie Meek Gallagher (Suffolk County), Jill Lewis (Town of Riverhead), Anna Throne-Holst (Town of Southampton)

**Adopted Resolution on the Core Preservation Area Extraordinary Hardship  
Application of the American Physical Society  
Ridge, Town of Brookhaven  
SCTM No. 200-459-1-1.4**

Peter A. Scully  
*Chair*

Mark Lesko  
*Member*

Steve A. Levy  
*Member*

Anna E. Throne-Holst  
*Member*

Sean M. Walter  
*Member*

**Whereas**, the American Physical Society (the "APS"), by its attorneys, the Weber Law Group, filed an application by letter dated February 17, 2010 for a Core Preservation Area Extraordinary Hardship exemption permit for a 16,274 square foot second-story expansion to an existing 31,062 square foot commercial office building (the "Project") in the Core Preservation Area of the Central Pine Barrens; and

**Whereas**, APS has owned since 1979, a five (5.0) acre project site located on the west side of William Floyd Parkway (County Route 46), in the Core Preservation Area of the Central Pine Barrens, SCTM No. 200-459-1-1.4 containing an existing 31,062 square foot commercial office building, 133 parking spaces, and associated infrastructure; 1.55 acres of existing natural area; and

**Whereas**, APS' February 17, 2010 petition included an analysis of the hardship criteria contained in ECL §57-0121(10) in support of its Waiver application; APS submitted additional information to the Commission by letters dated May 14, 2010, June 10, 2010, and July 8, 2010; and

**Whereas**, the Commission held a hearing on the Project on April 21, 2010; and

**Whereas**, the Commission, by resolution dated December 12, 1994 granted APS a Core Hardship Waiver to authorize a 12,000 square foot expansion of the building on site, which was then 18,000 square feet (the 1994 Waiver); the Waiver was subject to two conditions: "1. There shall be a physical delineation in the field of the limit of clearing for the building and associated construction activities; and 2. The building addition shall be designed and constructed in such a manner that any future expansion needs of the sponsors may be accommodated by vertical expansion above the new addition;" and

**Whereas**, the Commission by resolution dated March 16, 2006 issued APS a "non-development" determination authorizing the removal of six trees "in order to permit emergency vehicle access, improve employee safety, and to protect APS' services and assets;" and

**Whereas**, the Project requires APS' on site septic system be expanded and upgraded to accommodate an additional 985.5 gallons per day (gpd) increase in sanitary flow, for a total of 2,748.5 gpd, which exceeds the as of right sanitary flow of 1,500 gpd and current flow of 1,762 gpd, which the current flow rate was granted a Waiver in 1997 by the Suffolk County Department of Health; and

P.O. Box 587  
3525 Sunrise Highway  
2<sup>nd</sup> Floor  
Great River, NY  
11739-0587  
  
Phone (631) 224-2604  
Fax (631) 224-7653  
www.pb.state.ny.us

**Whereas,** the Project requires the removal of 2,613.6 square feet or 0.06 acres of natural vegetation (1.2 percent of the site area); 27 additional parking spaces, for a total of 160 spaces on site; and the reconfiguration of internal driveways and the site ingress/egress access on CR 46; and

**Whereas,** APS' Proposed Vegetation Plan prepared by Cameron Engineering dated June 2010, proposes the restoration of an estimated 1.14 acres (49,658.4 square feet) from developed to vegetated, of which 0.41 acres will be revegetated with native plant species and 0.73 acres will be maintained as managed landscape vegetation; and

**Whereas,** the Project requires a New York State Department of Environmental Conservation (DEC) Wild Scenic and Recreational Rivers (WSRR) Permit; Town of Brookhaven Site Plan approval and relief from the Town Code of the Town of Brookhaven for a 41.5 percent parking variance; relief from the Suffolk County Sanitary Code for the increase in 985.5 gpd sanitary flow over the existing flow of 1,762 gpd for a total projected flow of 2,748.5 gpd and retirement of 3.29 sanitary wastewater credits; and Suffolk County Department of Public Works review and approval for modifications to the existing curb cut and driveway on a County Road 46; and

**Whereas,** the DEC, by letter dated July 8, 2010, stated, "[o]n April 1, 2010, we advised this property owner that a DEC permit was necessary. However, we have not received an application from the landowner. At this time we have no comments regarding their proposal due to the lack of sufficient information about the project;" and

**Whereas,** the Suffolk County Department of Health Services (SCDHS) Office of Wastewater Management has issued APS a "Notice of Incomplete Application" dated April 30, 2010 for the Project; and

**Whereas,** the SCDHS Notice of Incomplete Application referenced the use of Pine Barrens Credits (PBCs) to exceed the allowable on site density; however, the Commission finds that the redemption of PBCs on a project site in the Core Preservation Area is contrary to the spirit and intent of the Act and the Comprehensive Land Use Plan and recommends that APS purchase and retire a minimum of 3.29 sanitary wastewater credits to comply with Article 6; and

**Whereas,** the Commission has indicated in policy preference that PBCs not be redeemed in the Core in Section 6.5.3.2.3 of the CLUP, which states, "No ROD may include any land within the Core Preservation Area or any Critical Resource Area," and

**Whereas,** pursuant to the Town of Brookhaven Town Code Article XXXVII Central Pine Barrens District §85-451, Incentive Zoning (B)(2), "The redemption of Pine Barrens development credits may be utilized to obtain an increase in density or intensity of development in connection with development proposals for parcels, lots and assemblages located outside of the Core Preservation Area subject to the review and approval by the Town Board or Planning Board as the case may be;" and

**Whereas,** APS' attorney stated during the public hearing on the Project, "[w]e are well aware of the question of Pine Barrens credits. We have had conversations with the Health Department and County with regard to the ability to find other sanitary credits in hydrological zone three. We're attempting to do so that so the issue of Pine Barrens Credits as a redemption would not have to be considered. We have not been able to find them yet, but that does not mean



we won't still try so that the additional septic sewage expansion can be done in a way that meets the criteria of the Health Department yet does not force the Commission to issue a ruling on something that may have a precedent. We don't want to have to set a precedent if we don't have to," and

**Whereas**, APS, in its June 10, 2010 letter, stated that they acknowledged the position of the Pine Barrens Credit Clearinghouse and were actively pursuing sanitary credits under the SCDHS Division of Environmental Quality TDR program; and

**Whereas**, the Project is an Unlisted Action pursuant to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act, SEQRA), and the Commission performed a coordinated review for Lead Agency status; and

**Whereas**, no objections were raised by Involved Agencies concerning the Commission's desire to assume Lead Agency status; and

**Whereas**, the Commission has considered the application and all related documents, including the Full Environmental Assessment Form (EAF) submitted by APS and the EAF Part II; and

**Whereas**, pursuant to the criteria contained in ECL §57-0121(10), APS has satisfied the conditions for and has demonstrated extraordinary hardship as the Project is unique as the site contains a pre-existing commercial building continuously occupied by the same owner since prior to the enactment of ECL Article 57; and

**Whereas**, pursuant to APS' demonstration of extraordinary hardship as per ECL §57-0121(10)(a), APS has satisfied the conditions for demonstrating extraordinary hardship as APS designed the proposal in harmony with the project site's physical surroundings and boundary constraints due to the site's location in the Core Preservation Area, with the objective to minimize disturbance to existing natural vegetation to the greatest extent practicable, and in accordance with the condition imposed by the Commission in its December 14, 1994 resolution to accommodate future expansions of the building on a vertical plane rather than expanding the existing building laterally, which would result in a greater amount of disturbance and adverse impacts to the site than the current proposal; and

**Whereas**, the Project is consistent with the Act which contemplated continuation of pre-existing uses within the Core Preservation Area, and pursuant to ECL §57-0121(10)(a)(i) through (iii), APS has satisfied the conditions for and has demonstrated extraordinary hardship as the project site was originally developed in 1979 with subsequent expansions, including one since the enactment of Article 57, for which APS was granted the 1994 Waiver; APS has owned and occupied the facility since 1979, APS, a publisher of physics journals, has invested more than 30 years in this location as their headquarters, established their editorial staff in proximity to and close association with nearby Brookhaven National Laboratory, a major physics research facility, and the surrounding community, and employs skilled scientists with an objective toward the dispersion of the findings of scientific research to the benefit the knowledge and awareness of the scientific community and others; and

**Whereas**, pursuant to ECL §57-0121(10)(iii), the Commission granted the 1994 Waiver which stated that any future additions be accommodated by vertical expansion; and therefore the inability to have a beneficial use was not the result of action or inaction by APS or prior owners; and

**Whereas**, pursuant to ECL §57-0121(10)(c), the Project will not be materially detrimental or injurious to other property or improvements in the area or result in endangering public safety or substantial impairment of the resources of the Core; APS has met these additional standards for granting a hardship permit in the Core due to the concentration of the majority of disturbance in areas of the site which were already developed, the containment of all physical activity within the subject site, and the minimal amount of on site disturbance in areas not formerly disturbed, and

**Whereas**, pursuant to ECL §57-0121(10)(c)(ii), the waiver is not inconsistent with the purposes, objectives or general spirit and intent of this title; the waiver is consistent with the purposes, objectives, and general spirit of Article 57 as the project site was developed prior to the Act and the current plan preserves existing natural vegetation, ecologic, and hydrologic functions of the Pine Barrens through the restoration of 0.41 acres, which is more than six times the 0.06 acres area that is proposed for disturbance, and the additional septic flow as a result of the expansion is offset and mitigated through a no net increase in flow upon the sterilization of 3.29 sanitary wastewater credits in the region; and

**Whereas**, pursuant to ECL §57-0121(10)(iii), the waiver is the minimum relief necessary to relieve the extraordinary hardship on behalf of APS to meet their needs and minimize adverse impacts on the project site in the Core Preservation Area to the greatest extent practicable and in accordance with the condition previously established by the Commission in the grant of the 1994 Waiver; and

**Whereas**, the Commission has considered all materials submitted in connection with the application, now, therefore, be it,

**Resolved**, that pursuant to the New York State Environmental Conservation Law (ECL) Article 8 (State Environmental Quality Review Act (SEQRA)) 6 NYCRR Part 617, the Commission hereby adopts a Negative Declaration pursuant to SEQRA for the Project, and be it further

**Resolved**, that the Commission hereby determines the application, as submitted, meets the criteria for Core Preservation Area Hardship based on extraordinary hardship pursuant to New York State ECL §57-0121 (10) (a) and (c) and be it further

**Resolved**, the Commission finds that based on the 1994 Waiver, which identified and contemplated the potential for future vertical expansion, the instant Waiver is not inconsistent with the purposes, objectives, or general spirit and intent of ECL Article 57; and be it further

**Resolved**, the Commission finds that APS has designed the proposal in harmony with the project site's physical surroundings and boundary constraints, with minimal disturbance to existing natural vegetation to the greatest extent practicable, and in accordance with the condition imposed by the Commission in its 1994 Waiver resolution to accommodate future expansions of the building on a vertical plane rather than expanding the existing building laterally; and be it further

**Resolved**, pursuant to ECL §57-0121(10)(a)(i) through (iii), the Commission finds that APS has satisfied the conditions for and has demonstrated extraordinary hardship as the project site was developed in 1979, owned, and operated by one continuous owner, APS, a publisher of scientific journals, which has established their headquarters and scientific staff in proximity to

**SUFFOLK COUNTY DEPARTMENT OF HEALTH SERVICES**  
**DIVISION OF ENVIRONMENTAL QUALITY**  
**BOARD OF REVIEW**  
**ARTICLE 2, SECTION 220, SUFFOLK COUNTY SANITARY CODE**

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To: James L. Tomarken, MD, MSW, MPH, MBA, Commissioner

From: Patricia A. Floria, P.E., Chair, Board of Review

Subject: Findings and Recommendations of the Review Board Regarding: C02-10-0017 ~ American Physical Society ~ n/w/c William Floyd Parkway and Research Road, Ridge – t/o Brookhaven – SCTM: 0200-45900-0100-001004

Hearing Date: February 16, 2012

Board Members: Christopher Lubicich, P.E., Mary LaFlair

Reviewer: Jennifer Niemczyk

**Statement of Problem**

The project sewage design flow exceeds population density equivalent as required by Article 6, §760-607 A.1 and B.1 of the Suffolk County Sanitary Code (Sanitary Code).

**Findings and Facts**

1. Parcel is 5.0 acres located in Groundwater Management Zone 3, and appears as one lot on the 1981 tax maps.
2. The yield at density is 1,500 gallons per day (gpd) of sanitary density flow.
3. The property is currently improved with an existing 31,062 square foot (sf) non-medical office building, which was granted a variance by the Board of Review on January 27, 1997, for a sanitary density flow of 1,762 gpd (SCDHS Ref. C02-96-0123).
4. The applicant is proposing to construct a 14,989 sf second floor addition and a 720 sf mezzanine addition to the non-medical office building, and to create a 958 sf open court in the existing first floor portion of the building.
5. The proposed total building area after the modifications is 45,813 sf, with a proposed sewage design flow of 2,749 gpd, all of which is sanitary density flow. The sanitary density flow is 183 percent of the allowable flow under density requirements.
6. The proposed sanitary density flow exceeds the sanitary density flow previously approved by the Board by 987 gpd, equivalent to 3.29 density credits.
7. The proposed sanitary density flow exceeds the yield at density for the parcel by 1,249 gpd, equivalent to 4.16 density credits.
8. Soil conditions are acceptable, with SP/SW graded sand from 10 feet to 35 feet below grade.
9. Depth to groundwater is at 17 feet below grade, as per the submitted test boring.

James L. Tomarken, MD, MSW, MPH, MBA, Commissioner

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10. The existing sewage disposal system is proposed to remain to serve the first floor of the building, and the proposed second floor is to be served by a new sewage disposal system consisting of a 2,500 gallon septic tank and three 10-foot diameter by 8-foot effective depth leaching pools, with room for two expansion pools.
11. No variances from the Department's construction standards have been requested for the proposal, and the Board notes that the parcel is of an adequate size and has groundwater conditions which will permit the proposed building expansion to be designed and built in accordance with all Department construction standards.
12. Direction of groundwater flow is to the south.
13. The parcel is located approximately 0.7 miles north of a public well.
14. Based upon the location of the subject parcel in Groundwater Management Zone 3, the Department's Transfer of Development Right (TDR) Standards would allow the applicant to utilize Pine Barrens Credits (PBC) for the subject site up to a maximum of 3,000 gpd of sanitary density flow 'as-of-right', without the need for a variance from the Board of Review.
15. The parcel lies in the Pine Barrens Core Area, requiring the applicant to obtain a hardship exemption from the Central Pine Barrens Joint Planning & Policy Commission (the 'CPB Commission') for any new construction on the parcel.
16. On July 21, 2010, the CPB Commission granted a hardship exemption for the new construction; however, a condition was imposed specifically prohibiting the use of PBC for the project, and directing the applicants to obtain and transfer 3.29 credits from Groundwater Management Zone 3 to the satisfaction of this Department.
17. The applicant indicated that significant time and research were required in order to locate a suitable sending parcel in Groundwater Management Zone 3.
18. In order to mitigate the excess sanitary density at the subject site, and to satisfy the requirements of the CPB Commission, the applicant is proposing a Transfer of Development Rights (TDR) from a parcel approximately 6.3 miles to the southeast identified as SCTM: 0200-67700-0200-009000.
19. The proposed TDR sending parcel is a vacant 4.72 acre lot located in Groundwater Management Zone 3, and is zoned A-2 Residential by the Town.
20. The proposed TDR sending parcel was approved by the Department on December 2, 2011, for a four lot residential land division known as 'Maresca, John' (SCDHS Ref. S02-05-0110), equivalent to a total of 1,200 gpd of sanitary density flow.

James L. Tomarken, MD, MSW, MPH, MBA, Commissioner

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21. The applicant indicated during the hearing that the intent was to sterilize the TDR sending parcel with a conservation easement, as is typically done by the CPB Commission when Pine Barrens Credits from parcels located in the Pine Barrens Core Preservation Area are redeemed. However, the proposed sending parcel in this case is not within the Pine Barrens Core Preservation Area.
22. The Board indicated during the hearing that a TDR sending parcel which is to be sterilized is required to be donated to a municipality or an organization such as the Nature Conservancy, or, in some circumstances, such a sterilized sending parcel can be merged with a neighboring parcel with appropriate covenants restricting overall sewage flow.
23. The CPB Commission issued a SEQRA Negative Declaration for the proposal on July 21, 2010.

#### **Determination**

It was a 3 to 0 determination of the Board to grant the request for the variance provided that the following conditions are met:

- The applicant shall submit to the Board for consideration and approval an acceptable plan for sterilization and transfer of density from the proposed sending parcel, including a letter from the entity agreeing to accept the sterilized sending parcel.
- After approval by the Board of a plan for sterilization and transfer of density from the proposed sending parcel, covenants and/or deeds shall be prepared and filed, in language acceptable to the County Attorney, that:
  - Accomplish the increase of density with the transfer of sanitary density flow from the TDR sending parcel identified as SCTM: 0200-67700-0200-009000.
  - Establish a new maximum allowable total sewage flow of 2,749 gpd for the subject receiving parcel.
  - Accomplish the sterilization and dedication of the sending parcel, as determined by the Board at the time that a sterilization proposal is deemed acceptable.

Article 6 is intended to protect surface and groundwater quality by establishing limits on population density. The site is of an adequate size and has soil and groundwater conditions that will permit the proposed building expansion to be constructed in conformance with all Department construction standards and requirements for sewage disposal systems, and with the specified limitations on sewage flow and uses for the site, the proposal should not result in any degradation of groundwater quality. The Board realizes that had the Central Pine Barrens Commission not prohibited the use of Pine Barrens Credits for this application, there would be no need for a variance from this Board, and that the applicant has attempted to comply with the

James L. Tomarken, MD, MSW, MPH, MBA, Commissioner


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conditions imposed by the Central Pine Barrens Commission. Approval of this variance will not affect the overall groundwater resource since the proposed total sewage flow for the parcel is within twice that which would be permitted under Sanitary Code density limitations, and less than two dwelling units per acre, and an equivalent parcel will be sterilized within the same Groundwater Management Zone, which would compensate for the shortage in area and would be in compliance with §760-609A(1)(d) of the Suffolk County Sanitary Code (Sanitary Code), in that it conforms to a comprehensive groundwater management plan.

The granting of this variance is not a formal approval to construct an addition to the existing building, or to install a new sewage disposal system on the subject site. Rather, it is a determination on the specific variance requested, based upon factors noted in §760-609 of the Sanitary Code. In compliance with §760-609A(1)(a), the variance is in general conformity with the Sanitary Code. The variance should not impair groundwater, surface water and drinking water supplies, taking into account the direction of groundwater flow, and as such, is consistent with criteria specified in §760-609A(1)(b). The granting of the requested variance will not adversely affect the design of an adequate on-site water supply and/or sewage disposal system, taking into account soil conditions, depth to groundwater, direction of groundwater flow, and site-specific physical conditions, and as such, is consistent with criteria specified in §760-609A(1)(e). As per §760-609 of the Sanitary Code, the approval of the variance with the specified conditions is in harmony with the general purpose and intent of the Sanitary Code to protect groundwater and drinking water supplies, surface water and other natural resources, and public health, safety and welfare.

March 20, 2012

 3/23/12  
Patricia A. Floria, P.E.  
Chair ~ Board of Review

Brookhaven National Laboratory, a major physics research facility, employs scientists with the objective to maintain awareness of emerging and important scientific research to the scientific community, and desires to continue to maintain their presence and close ties to BNL and the community from their pre-existing and current location in the Core, which is consistent with this title; and be it further

**Resolved**, pursuant to ECL §57-0121(10)(c), the Commission finds that APS has satisfied the conditions for and has demonstrated extraordinary hardship as the majority of proposed minimal site disturbance is in areas of the project site that are formerly disturbed and were planned to be developed under prior approvals, therefore, the project will not be materially detrimental or injurious to other property or improvements in the area or result in endangering public safety or substantial impairment of the resources of the Core; and

**Resolved**, pursuant to ECL §57-0121(10)(c)(ii), the Commission finds that APS has satisfied the conditions for and has demonstrated extraordinary hardship as the pre-existing nature of development on the project site and the current proposal aim to preserve existing natural resources and hydrologic functions of the Pine Barrens through the restoration of 0.41 acres of previously disturbed area and the sterilization of 3.29 sanitary wastewater credits resulting in no net groundwater impacts in Hydrogeologic Zone III, the waiver is not inconsistent with the purposes, objectives or general spirit and intent of this title; and be it further

**Resolved**, pursuant to ECL §57-0121(10)(iii), the waiver is the minimum relief necessary to relieve the extraordinary hardship on behalf of APS to meet the needs of the existing American Physical Society headquarters and to minimize adverse impacts on the Core and in accordance with the condition previously established by the grant of the 1994 Waiver; and

**Resolved**, that APS plans to minimize the impact on the resources of the Core Preservation Area to the maximum extent practicable and mitigates such impacts by the implementation of a restoration plan; and

Now therefore be it resolved

**Resolved**, that the application is for a Core Preservation Area hardship exemption based on extraordinary hardship approved by the Commission, on this day, July 21, 2010, in accordance with the Vegetation Plan prepared by Cameron Engineering dated June 2010 and date stamped received July 12, 2010, subject to the following specific conditions:

1. Obtain a DEC WSRR Permit and forward a copy to the Commission prior to site disturbance; and
2. Obtain SCDHS approval prior to site disturbance and forward a copy to the Commission prior to site disturbance and include proof of the retirement of 3.29 sanitary credits; and
3. APS must implement mitigation measures identified in this decision as conditions to the Waiver granted herein and APS must adopt, implement, and strictly comply with the same; and
4. APS shall purchase and retire a minimum of 3.29 sanitary wastewater credits, which must not be in the form of Pine Barrens Credits, at the Suffolk County Department of Health Services, to comply with Suffolk County Sanitary Code Article 6. Submit proof of this transaction to the Commission prior to site disturbance; and
5. The project site is not eligible for a credit allocation in the Pine Barrens Credit Program; and

6. Submit to the Commission for review and receive Commission approval of a restoration plan for 0.41 acres with specifications for planting including native species, spacing, maintenance, and irrigation requirements; and
7. Submit for Commission approval a draft Declaration of Covenants and Restrictions (C & Rs) to protect a minimum of a total of 1.96 acres of the project site, which APS proposed as the total area to remain natural (i.e., 1.55 acres of existing natural area and 0.41 acres of restored area). The C & Rs shall include a requirement for APS to ensure the survivability and maintenance of the restored area for a minimum of three years, at which time the Commission will perform a compliance inspection of the restored area; and
8. Notify the Commission within 48 hours in advance of the commencement of site disturbance activity on the project site to provide for Commission inspection of the site disturbance limits; and
9. Restore 0.41 acres of the project site, excluding the existing 1.55 acres to remain natural; and
10. Upon completion of the restoration work, notify the Commission to allow the Commission to perform a compliance inspection of the restored area; and
11. Record the C & Rs after the Commission approves the same.

now therefore be it

**Resolved**, if any changes occur in the elements of the project including, but not limited to, the proposal to sterilize 3.29 sanitary credits at the Health Department to exceed the current wastewater flow, APS must notify the Commission and submit an amended application, subject to review and approval; and be it further

**Resolved**, a copy of this resolution shall be filed with the Suffolk County Clerk indexed against the property; and be it further

**Record of Motion:**

Motion by: M. Lesko

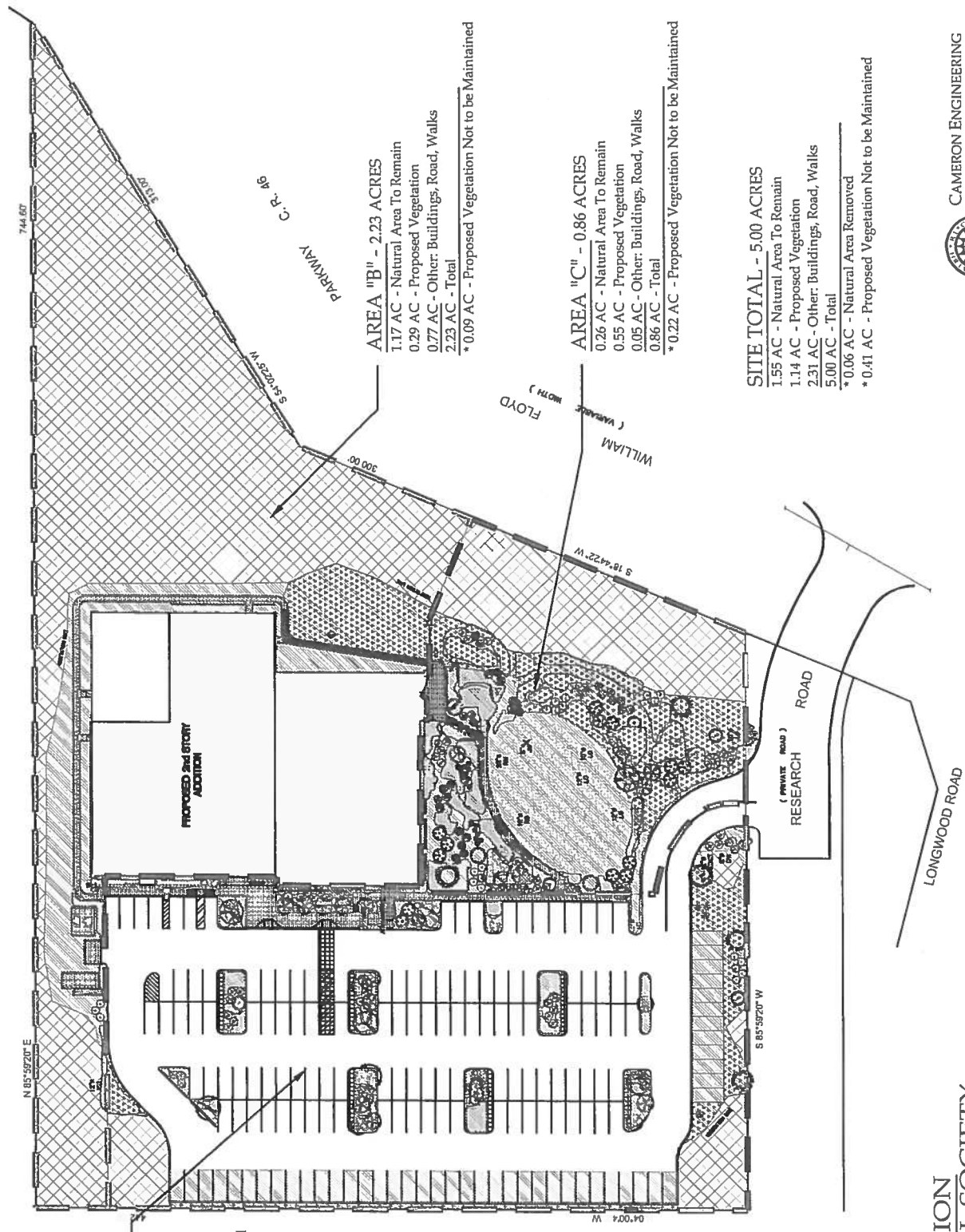
Seconded by: C. Gallagher

In Favor: 4

Opposed: 0

Abstention: 1 (P. Scully)






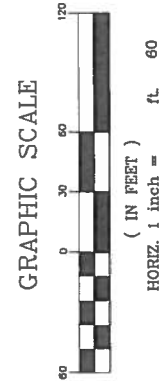


**AREA "A" - 1.91 ACRES**  
 0.12 AC - Natural Area To Remain  
 0.30 AC - Proposed Vegetation  
 1.49 AC - Other: Buildings, Road, Walks  
 1.91 AC - Total  
 \* 0.06 AC - Natural Area Removed  
 \* 0.10 AC - Proposed Vegetation Not to be Maintained

Exhibit C

**KEY**

	Proposed Vegetation
	Area to Remain Natural
	Proposed Vegetation Not to be Maintained



**AREA "B" - 2.23 ACRES**  
 1.17 AC - Natural Area To Remain  
 0.29 AC - Proposed Vegetation  
 0.77 AC - Other: Buildings, Road, Walks  
 2.23 AC - Total  
 \* 0.09 AC - Proposed Vegetation Not to be Maintained

**AREA "C" - 0.86 ACRES**  
 0.26 AC - Natural Area To Remain  
 0.55 AC - Proposed Vegetation  
 0.05 AC - Other: Buildings, Road, Walks  
 0.86 AC - Total  
 \* 0.22 AC - Proposed Vegetation Not to be Maintained

**SITE TOTAL - 5.00 ACRES**  
 1.55 AC - Natural Area To Remain  
 1.14 AC - Proposed Vegetation  
 2.31 AC - Other: Buildings, Road, Walks  
 5.00 AC - Total  
 \* 0.06 AC - Natural Area Removed  
 \* 0.41 AC - Proposed Vegetation Not to be Maintained

**PROPOSED VEGETATION**  
**AMERICAN PHYSICAL SOCIETY**  
 RIDGE, SUFFOLK COUNTY, NEW YORK  
 DATE: JUNE 2010



**CAMERON ENGINEERING & ASSOCIATES, LLP**  
 1000 West 10th Street  
 New York, NY 10011  
 Tel: (212) 512-1000  
 Fax: (212) 512-1001  
 E-mail: info@cameroneng.com