

CENTRAL PINE BARRENS JOINT
PLANNING AND POLICY COMMISSION

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In the Matter of the Violations of Articles 49 and 57 of the
Environmental Conservation Law of the State of
New York ("ECL")

ORDER ON CONSENT

No. CPBJPPC 2-2021

by

Cristina and Michael Spindler

PECONIC RIVER HERB FARM

(Suffolk County) Respondents.

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WHEREAS

1. The Central Pine Barrens Joint Planning and Policy Commission (hereinafter referred to as "the Commission"), and with offices at 624 Old Riverhead Road, Westhampton Beach, New York, has jurisdiction over land use activities within the Central Pine Barrens as defined in Article 57 of the ECL and has jurisdiction over land use activities on properties in the Core Preservation Area.
2. Respondents Cristina and Michael Spindler Peconic River Herb Farm (hereinafter referred to as "Respondents"), located at 2749 River Road, Calverton, New York, operate Peconic River Herb Farm on a parcel of real property on the south side of River Road and west of Edwards Avenue in the hamlet of Calverton in the Town of Riverhead identified as Suffolk County Tax Map Number District 600, Section 144, Block 1, Lot 27.6, consisting of approximately 13.0131 acres, as per the Boundary Survey last dated November 12, 2003, prepared by Young and Young.
3. The parcel, hereinafter referred to as the "Property," is owned by Respondents who purchased the land in 1982 and established the PRHF in 1986.
4. The Property is located in the "core preservation area" of the Central Pine Barrens area as defined in ECL §57-0107(11), and as such is under the jurisdiction of the Commission.
5. ECL §57-0107(13) defines categories of activities which constitute development, including *"the making of any material change in the use or intensity of use of any structure or land..."* ECL §57-0107(13) (b) further describes development as including *"a material increase in the intensity of use of land or environmental impacts as a result thereof..."* and ECL §57-0107(13) (c) describes development as *"commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land..."*
6. Pursuant to ECL §57-0121(3) (c) the Central Pine Barrens Comprehensive Land Use Plan (hereinafter the "Plan") *"with respect to the core preservation area shall be designed to protect and preserve the ecologic and hydrologic functions of the Pine Barrens by: prohibiting or redirecting new construction or development."*

7. Pursuant to Article 57 of the ECL, the Commission has promulgated the Plan which, among other things, describes in Chapter 4, Section 4.5, the Commission's jurisdiction over development in the Core Preservation Area and procedures and requirements for Commission review of such development. Chapter 5, Section 5.2 of the Plan states: *"Allowable uses within the Core Preservation Area shall be limited to those operations or uses which do not constitute development, or hardship exemptions granted by this Commission pursuant to the Act."*
8. On May 14, 2020, Commission staff became aware of activities which were conducted on the Property including clearing of natural vegetation and grading. An investigation was initiated.
9. On June 19, 2020, Commission staff conducted a second inspection of the Property
10. On July 15, 2020, the Commission issued a Notice of Violation.
11. On July 29, 2020, Commission staff met with Ms. Spindler at the Property. The inspection revealed that the following activities had been conducted on the Property:
 - Clearing of natural vegetation, grading and ground disturbance on approximately 8,100 square feet

As a result of the aforesaid investigation, Commission staff confirmed that Respondents caused or permitted to be caused clearing of natural vegetation and grading.

12. On September 18, 2020, the Commission received a letter from Cristina Spindler. The letter stated that in winter 2020, she cleared an area of 50 feet x 100 feet on the Property.
13. In her September 18, 2020 letter, Ms. Spindler stated her "intention was to remove these hazards and create a field to allow for a sunny area to produce the small container grown native trees and shrubs that [I] sell at my herb and native plant nursery."
14. The Commission finds that the clearing of natural vegetation and grading on the Property constitutes development and has verified that these activities were neither authorized nor approved by the Commission, via the granting of a hardship waiver exemption, prior to their commencement. Therefore, the aforesaid activities represent violations of Article 57 of the ECL and the Plan.
15. Respondents admit to clearing of vegetation and grading on the Property, which is in violation of Article 57 of the ECL and the Plan.
16. ECL §57-0136(2-a), states for any civil violation that takes place in the "core preservation area" of the Central Pine Barrens area, any person who violates any provision of ECL Article 57, the land use plan adopted by the Commission, any regulation promulgated by the Commission, or the terms or conditions of any order, permit, or determination issued by the Commission pursuant to ECL Article 57 shall be liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation and an additional civil penalty of not more than one thousand dollars (\$1,000) for each day that such violation continues.

17. Respondents desire to resolve the violations through this Order on Consent rather than to engage in litigation on the issues.
18. The Commission agrees to settle the within matter through this order on Consent with Respondents rather than to engage in litigation on the issues.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. **Cease and Desist.** Respondents shall immediately cease and desist any and all further activities in violation of any provision of the Act and the Plan on the Property except as authorized herein.

II. **Relief.**

A. **Penalty.** With respect to the violations identified in paragraphs “10” through “15” of this Order, the Commission assesses against Respondents Cristina and Michael Spindler a civil penalty in the sum of FIVE THOUSAND DOLLARS (\$5,000), of which TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) is suspended pending complete compliance with the terms and conditions of this Order on Consent.

B. **Method of Payment.** Payment shall be made in accordance with the following three paragraphs.

- i. The payable portion of the penalty, TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) is to be paid by bank check made payable to "Central Pine Barrens Joint Planning and Policy Commission,"
- ii. Payment to the Commission must have written on its face: CPBJPPC 2-2021/ PECONIC RIVER HERB FARM.
- iii. Payment to the Commission shall be delivered to:

Central Pine Barrens Joint Planning and Policy Commission
624 Old Riverhead Road, Westhampton Beach, NY 11978

Via certified mail no later than THIRTY (30) DAYS following the
Effective Date of this Order.

C. **Remedy.** Revegetation Plan and Implementation.

- i. Respondents shall implement the Revegetation Plan as per the plan dated and submitted on February 17, 2021 that includes the cleared area. The Revegetation Plan consists of both a map of the Revegetation Plan and a Plant list. The Revegetation Plan identifies the locations of plantings, species, sizes and spacing of new plants to be installed.
- ii. The Revegetation Plan was prepared by the Respondent who is a horticulturist.

- iii. Respondents identified on the aforesaid Revegetation Plan map the currently unvegetated area and its acreage, which is suitable for revegetation. This must be reviewed in the field by the Commission staff and deemed acceptable by the Commission staff prior to revegetation commencing.
- iv. The Revegetation Plan shall only utilize species of trees, shrubs, groundcovers and other vegetation which are native to the Central Pine Barrens and which should be of Long Island genotype, and in particular those which are found on and adjacent to the Property, and at sufficient densities, sizes and diverse arrangements (no monocultures) to approximate and mimic natural conditions within existing natural vegetation communities in the Central Pine Barrens unless a substitute is otherwise approved by the Commission. The native species used for planting shall be in accordance with the specifications provided in this plan. The source of plant material shall be provided and must be approved by the Commission prior to use.
- v. The Revegetation Plan shall provide planting specifications including that plant material stock size shall consist of appropriately sized trees with a minimum size of two (2) gallon pot size, and shrubs to achieve effective restoration and based on available nursery stock sizes for native genotypes as specified by the Respondent and based on Commission review and approval of the Revegetation Plan. Trees shall be planted in a staggered grid or naturalistic planting design with spacing to be determined based on selected species (but no less than 30 feet on center), specifications by Respondent and Commission review and approval of the Revegetation Plan. Understory, shrubs and groundcovers shall be proposed for and planted in areas between trees. Shrub plant and groundcover size and spacing shall be appropriate to achieve the restoration goals based on the selected species as specified by the Respondent and the approved Revegetation Plan.
- vi. The Revegetation Plan shall provide for appropriate ground preparation including amelioration of existing soil compaction prior to revegetation in order to render the soil in the area to be revegetated as conducive as possible to growth and regrowth of native species in the revegetated areas.
- vii. Vegetation shall be planted on or after April 15, 2021 and completed by October 31, 2021. If planting of vegetation cannot be accomplished within that time frame, Respondents shall submit a request with reasoning to the Commission for its consideration.
- viii. Supplemental watering shall be required for planted trees during the first year, especially during dry periods.
- ix. The boundaries of the revegetated areas shall be marked and delineated with fencing and/or stakes to ensure revegetated areas are not disturbed after completion of planting. The type of fencing and/or stakes must be sturdy and durable, must first be approved by the Commission and shall be shown on the Revegetation Plan map. Said fencing and stakes shall remain in place for the duration of the 3-year time period commencing after the last plant is planted. The revegetated area must remain natural in perpetuity including in the event the Property changes ownership, use, and/or is redeveloped.
- x. Respondents shall guarantee survival of 85% of the revegetated plants for a period of 3 years (with the 3-year time period commencing after the last plant is planted). If complete failure occurs prior to the end of the 3-year time period, the failed area shall be revegetated again and a new 3-year time period for the failed area will

commence, again, after the last plant is planted in the failed area. Dead, dying, and diseased plants shall be removed and replaced in-kind during the three-year guarantee period.

- xii. The Revegetation Plan shall include provisions for the identification, prevention, early detection, monitoring, control and eradication of invasive plant species throughout the entire restoration period and Respondents shall monitor for, control and eradicate invasive plants in the revegetation areas. Invasive plants shall be removed using only non-chemical methods, unless otherwise approved by the Commission.
- xiii. Respondents shall monitor the revegetation areas and, on an annual basis for (3) three years following completion of the revegetation, shall submit to the Commission annual reports concerning the status and success of the revegetation. The initial reporting plan shall confirm the list of plantings that were installed and the date they were planted. Every subsequent annual report shall track and identify if, when and where plants that did not achieve survival were removed and replaced with new plantings and their three year monitoring period commenced from said time. Said reports shall be submitted to the Commission on or after June 15 but prior to June 30, following initial revegetation completion, and shall include, but not be limited to, the date and time of inspection, name and qualifications of person conducting inspection, color digital photographs of the revegetated area taken at the time of each inspection, relative health of revegetated area including whether or not any of the plants in the revegetated area are dead, dying or diseased and, if so, corrective methods to be employed and whether or not invasive species are present and, if so, name of invasive species and corrective methods to be employed. Photo-monitoring may serve as documentation of the general vegetation composition and diversity, as well as revegetation success. Three or more photo-monitoring points shall be established at strategic locations within the revegetated area, with photo-documentation taken prior to revegetation, immediately following installation of the last plant required by the Revegetation Plan, including revegetation plants and then every year between May 15 and June 15 of the then current year for (3) three consecutive years or until 85% survival of revegetation plants is achieved. The Photo monitoring reports shall include a descriptive narrative and hard copy and electronic versions of the monitoring reports shall be provided to the Commission at the intervals noted herein.
- xiv. Respondents shall submit the Revegetation Plan to the Commission for its review and approval within 30 days of the Effective Date of this Order. The Commission will review and provide comments on any revisions required. Respondents shall revise the Revegetation Plan in accordance with the Commission's comments and submit the revision within thirty (30) days. This cycle shall continue until the Revegetation Plan is deemed acceptable by the Commission. Until approved by the Commission, no physical work activity on such Revegetation Plan may commence on the Property.
- xv. When the Respondent prepares the layout of the woodchipped paths and area to be revegetated, as shown in the Revegetation Plan, notify the Commission office for an inspection.
- xvi. Respondents, after the Revegetation Plan is approved by Commission staff, shall commence implementation of the Revegetation Plan for the Property and shall

complete the revegetation by October 31, 2021. Following completion of the revegetation, Respondents shall immediately undertake, or cause to be undertaken, monitoring of the site as prescribed herein. Respondents are required to complete and report on all revegetation activities including monitoring and reporting to the Commission.

- xvi. Respondents shall notify the Commission office a minimum of seventy-two (72) hours in advance of initial revegetation work and shall notify the Commission office no more than seventy-two (72) hours after completion of revegetation planting
- xvii. Respondents shall certify on an annual basis to the Commission that the plantings have achieved the required survival rate
- xviii. After three years, the area restoration shall remain natural in perpetuity. If the site is sold or the use changes, the revegetated area shall remain natural and undisturbed.

D. Certification Order Satisfied

At the completion of the tasks described in Sections B and C, Respondents shall certify to the Commission that the conditions of this Order have been fulfilled. Upon review by the Commission and adoption of a resolution certifying that the tasks have been completed pursuant to this Order, the terms of this Order shall have been satisfied.

III. Settlement and Reservation of Rights.

- A. Upon completion of all obligations created in the Order, this Order settles only all claims for civil and administrative penalties concerning the violations described in Paragraphs “10” through “15” this Order against Respondents and its successors (including successors in title) and assigns.
- B. Except as provided in Subparagraph III.A. of this order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Commission or authorities with respect to any party, including Respondents.

IV. Failure, Default and Violation of Order.

- A. Respondents’ failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL and shall be deemed to be a violation of both this Order and the ECL, and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to Respondents by the Commission as well as additional enforcement action to be undertaken. Upon such failure to comply, the suspended penalty shall be due immediately and the Commission may commence any other action deemed appropriate.

V. Indemnification.

Respondents shall indemnify and hold harmless to the extent permitted by law the Commission and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondents and its successors (including successors in title) and assigns.

- VI. Binding Effect.** The provisions of this Order shall inure to the benefit of and be binding upon the Commission and Respondents and Respondents' successors (including successors in title) and assigns.
- VII. Modification.** In those instances in which Respondents desires that any of the provisions, terms or conditions of this Order be changed, Respondents shall make written application, setting forth the grounds for the relief sought, to the Commission at 624 Old Riverhead Road, Westhampton Beach, NY 11978. No change or modification to this order shall be made or become effective except as set forth by a written order of the Commission.
- VIII. Access and verification.** For the purpose of insuring compliance with this Order, and with applicable provisions of the ECL and regulations promulgated thereunder, representatives of the Commission shall be permitted access to the Property upon prior notice at reasonable hours and intervals in order to inspect and determine the status of the Property, as well as access to relevant records in order to inspect and/or perform such tests as may be deemed appropriate to determine the status of Respondents' compliance. Notice shall not be required if the Commission has information to reasonable believe a violation is occurring that may cause substantial impairment of the resources of the Pine Barrens.
- IX. Force Majeure.** Respondents shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or relief, if it cannot comply with any requirements of the provisions hereof, because of an Act of God, war, riot or other catastrophe as to which negligence or willful misconduct on the part of Respondents was not a proximate cause, provided; however, that Respondents shall immediately notify the Commission in writing when Respondents obtains knowledge of any such condition and request an extension or modification of the provisions hereof.
- X. Entire Order.** The provisions of this Order constitute the complete and entire Order issued to Respondents concerning resolution of the violations identified in Paragraphs "9" through "13" of this Order. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to paragraph VII of this Order. No informal oral or written advice, guidance, suggestion or comment by the Commission regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondents shall be construed as relieving Respondents of its obligations to obtain such formal approvals as may be required by

this Order.

- XI. Effective Date.** The Effective Date of this Order shall be the date upon which it is signed by the individual authorized by the Commission to do so on behalf of the Commission.

Dated: April 21, 2021

Central Pine Barrens Commission
624 Old Riverhead Road
Westhampton Beach, New York 11968

CENTRAL PINE BARRENS JOINT PLANNING
AND POLICY COMMISSION

By: Judith Jakobsen

Name: Judith Jakobsen

Title: Interim Executive Director

CONSENT BY RESPONDENT

Respondent, PECONIC RIVER HERB FARM, acknowledges the authority and jurisdiction of the Central Pine Barrens Joint Planning and Policy Commission to issue the foregoing Order, waives public hearing or other proceedings in the matter, accepts the terms and conditions set forth in the Order and consents to the issuance thereof and agrees to be bound by the provisions, terms and conditions contained therein.

PECONIC RIVER HERB FARM

Respondent

By: Cristina Spindler

Name: Cristina Spindler

Title: Owner

Date: March 15, 2021

RESPONDENT ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss.:

COUNTY OF SUFFOLK)

On the 15th day of March in the year 2021, before me personally came Cristina Spindler, to me known, who, being duly sworn did depose and say that she resides at 2749 River Road, Calverton NY that she is the Owner of the respondent described herein and which executed the above instrument; and that she signed ¹¹⁹³³ ~~his~~ ^{her} name thereto with full authority to do so.

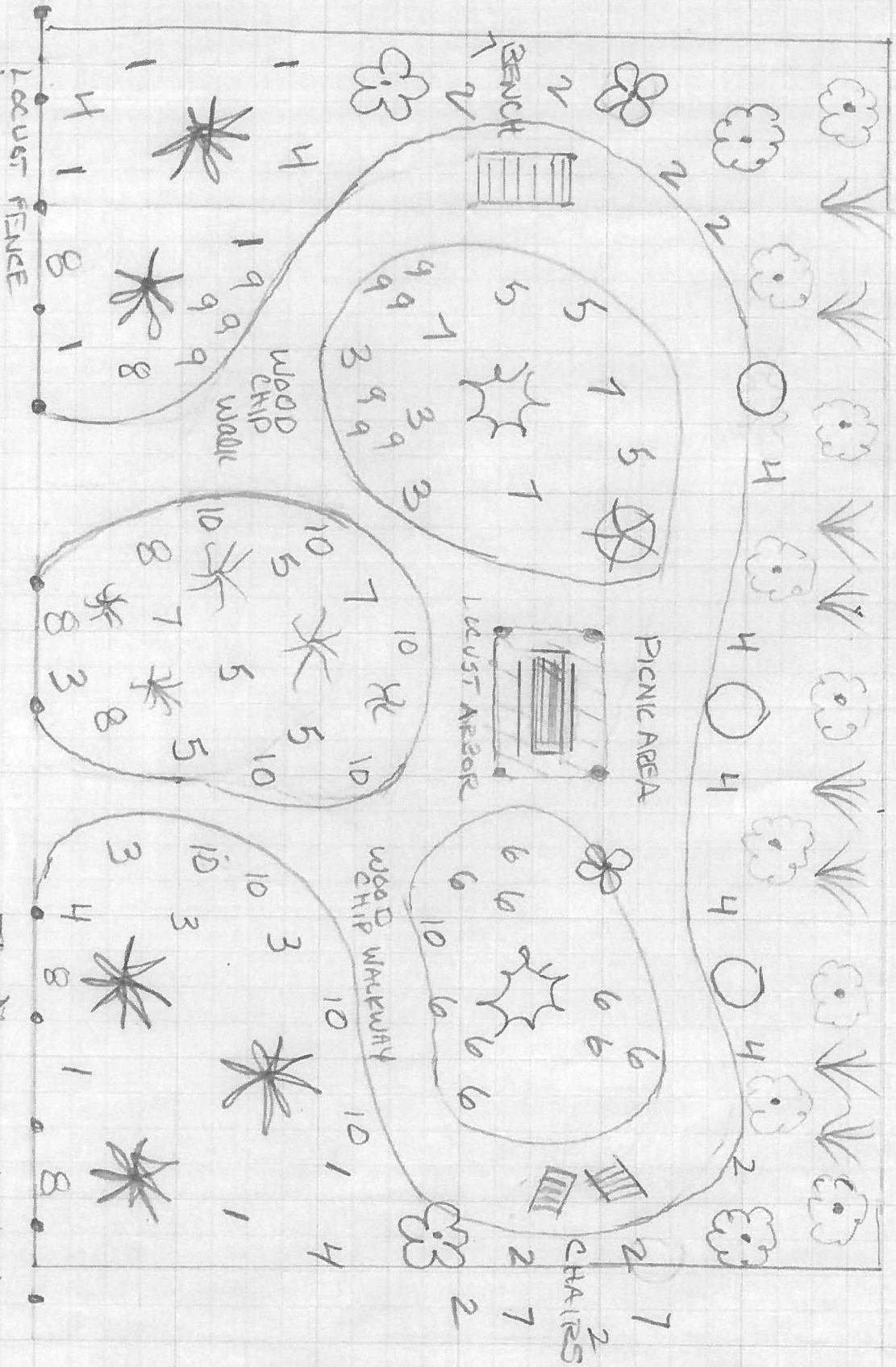
Sworn to before me this

15th day of March, 2021

Cynthia Gannon
Notary Public

CYNTHIA GANNON
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01GA4508729
QUALIFIED IN SUFFOLK COUNTY
COMMISSION EXPIRES, MARCH, 30 2023

RR TRACKS SPINDLER REVEGETATION 2 2/17/2021



DIRT DRIVEWAY 50' x 100' 5000'

SPINDLER REVEG. PLANT LIST 2

NATIVE TREES

38 TOTAL

2/17/2021

- | | | QUAN. |
|----|--|--------|
| 1) |  A BLACK GUM
B FAGUS AMER. BEECH | 5
5 |
| 2) |  HORNBEAM | 8 |
| 3) |  WHITE OAK | 3 |
| 4) |  AMERICAN HOLLY | 5 |
| 5) |  GRAY BIRCH | 5 |
| 6) |  RED MAPLE | 2 |
| 7) |  WITCH HAZEL | 1 |
| 8) |  DOG WOOD | 4 |

NATIVE SHRUBS 7-9 ea TOTAL 90

- | | |
|----------------|-----------------------|
| 1) WINTERBERRY | 6) SWAMP AZALEA |
| 2) CLETHRA | 7) ELDERBERRY |
| 3) COMPTONIA | 8) STEEPLEBUSH |
| 4) BAYBERRY | 9) LOW BUSH BLUEBERRY |
| 5) SWAMP ROSE | 10) FETTERBUSH |

Young & Young
400 Overlander Avenue
Buffalo, New York 14203
631-227-2800
Howard W. Young, Lead Surveyor
Thomas G. Robert, Professional Engineer
Ronald E. Ffiah, Landscape Architect

NOTE
AREA = 19.031 ACRES

SURVEYOR'S CERTIFICATION
• WE HEREBY CERTIFY TO MICHAEL SPINDLER & CRISTINA SPINDLER THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH THE CODE OF PRACTICE FOR LAND SURVEYING AND THE STANDARDS AND ETHICS OF THE PROFESSIONAL LAND SURVEYORS

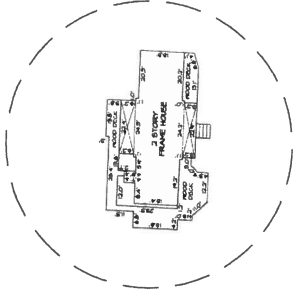
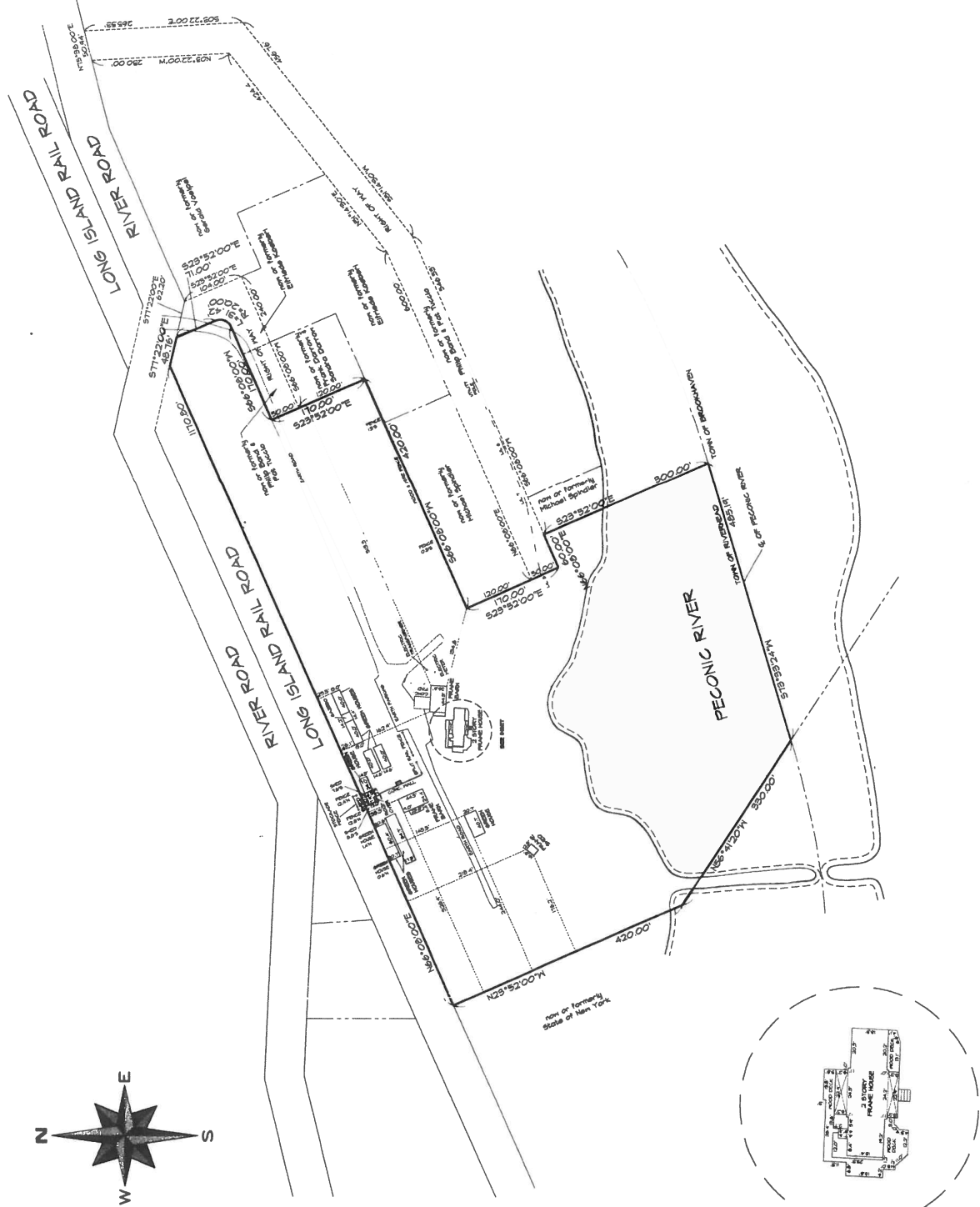
Howard W. Young
HOWARD W. YOUNG, N.Y.S. L.S. NO. 48008

SURVEY FOR
MICHAEL SPINDLER
& **CRISTINA SPINDLER**
At Calverton, Town of Riverhead
Suffolk County, New York

County Tax Map Date: 600 Section 144 Block 1 Lot 21.6
BOUNDARY SURVEY

MAP PREPARED
NOV. 13, 2008
SEPT. 24, 2008
SCALE: 1"=100'
JOB NO. 2008-0441
DWG. 2008_0441.DWG

□ - adjacent RT ■ - adjacent road ▲ - state road



INSET
SCALE 1"=50'