Town of East Hampton
300 Pantigo Place – Suite 105
East Hampton, New York 11937-2684

Planning Department
JoAnne Pahwul, Director, AICP
Fax (631) 324-1476

Telephone (631) 324-2178

July 01, 2020

To: Planning Board

From: Fabiha Mubassirah FM
Planner

Re: 180 SB LLC Minor Site Plan
SCTM#300-74-5-30.5

Attached is a memorandum prepared by Thomas Crouch, Assistant Town Attorney subsequent to the initial evaluation of the 180 SB LLC application. A legal question was raised regarding the appropriate clearing limit for the property. The initial evaluation states that the clearing level of 110,715 sq.ft. is pre-existing but exceeds the C&R (Covenants and Restrictions) conditions and the permitted clearing under HPOD (Harbor Protection Overlay District) regulations. The attached memorandum determined the maximum allowable clearing limit for this property to be the clearing level of 110,715 sq.ft. existing at the time of the subdivision and the filing of the Declaration of Covenants and Restrictions and recommends that the Planning Board amend the 35% clearing restrictions required by the C&R.

TOWN OF EAST HAMPTON
OFFICE OF THE TOWN ATTORNEY
159 Pantigo Road
East Hampton, New York 11937
Phone: (631) 324-8787 Fax: (631) 329-5371

JOHN C. JILNICKI
Town Attorney
NANCYLYNN THIELE
Assistant Town Attorney

JAMESON L. McWILLIAMS
Assistant Town Attorney
DAVID T. McMASTER
Assistant Town Attorney
THOMAS R. CROUCH
Assistant Town Attorney

MEMORANDUM

TO: Sam Kramer, Chairman of Planning Board

FROM: Thomas Crouch, Attorney for Planning Board

RE: Clearing Issue regarding 180 SB, LLC

DATE: 7/1/2020

The Planning Board has asked for a legal opinion regarding the appropriate clearing for pending 180 SB, LLC application. This property, popularly known as the Duke Estate, was the subject of a subdivision waiver approval in 1994. The 1994 approval resolution created three lots, each subject to no more than 35% clearing of natural vegetation (see paragraph 16.18, Waiver of Subdivision Approval dated June 16, 1994). Additionally, the same paragraph required the property to comply with more restrictive clearing regulations, should the Town adopt them in the future. According to a Planning Department memo by Lisa D'Andrea, the then-existing clearing was 110,715 sq. ft. The resolution did not require any revegetation.

In 2002, the Planning Board amended the 1994 subdivision waiver approval, requiring the clearing on all lots to meet the restrictions in the Town's Harbor Protection Overlay District (HPOD). Once again, the resolution did not require any revegetation. (See Resolution Amending Approval dated January 30, 2002).

Subsequently, the clearing restrictions from the 1994 subdivision waiver approval and the 2002 resolution amending approval were combined in a covenant filed with the Suffolk County Clerk on June 15, 2002 (see paragraph 10 of Declaration of Covenants and Restrictions). The covenant requires each lot to comply with a 35% clearing restriction, a more restrictive restriction if imposed in the Town Code, and the restrictions required by HPOD.

Once again, there is no evidence that revegetation was required or undertaken in light of these restrictions. Therefore, it is likely that a court would find that the appropriate clearing is

TOWN OF EAST HAMPTON
OFFICE OF THE TOWN ATTORNEY
159 Pantigo Road
East Hampton, New York 11937
Phone: (631) 324-8787 Fax: (631) 329-5371

JOHN C. JILNICKI
Town Attorney
NANCYLYNN THIELE
Assistant Town Attorney

JAMESON L. McWILLIAMS
Assistant Town Attorney
DAVID T. McMASTER
Assistant Town Attorney
THOMAS R. CROUCH
Assistant Town Attorney

the then-existing clearing at the time of the 1994 approval and the 2002 amendment, 110,715 sq. ft.

It appears that the then-overcleared status (by HPOD standards) was not raised by either the applicant or the Town, but was clearly the existing condition at the time the covenant was submitted and approved, it is our recommendation that the Planning Board consider the amendment of the covenant to reflect the appropriate, then-existing clearing level of 110,715 sq. ft. According to the filed covenant, the Planning Board can amend the clearing restriction "with written consent of a majority plus one of the Planning Board . . . after a public hearing held on ten (10) days notice" (see paragraph 19, Declaration of Covenants and Restrictions).

Town of East Hampton
300 Pantigo Place – Suite 105
East Hampton, New York 11937-2684

Planning Department
JoAnne Pahwul
Director

Telephone (631) 324-2178
Fax (631) 324-1476

SITE PLAN/SPECIAL PERMIT EVALUATION
180 SB LLC Minor Site Plan
SCTM#300-74-5-30.5

Prepared by: Fabiha Mubassirah, Planner F.A.M
Date: June 03, 2020

1. APPLICATION INFORMATION

A. INFORMATION RECEIVED:

- Environment Assessment Short Form Part 1 (EAF)
- Site Plan Map prepared by George Walbridge Surveyors, P.C. dated January 8, 2020
- Subject Covenant filed on June 11, 2003
- Covenants & Restrictions and Easements
- Stage 1 Report prepared by Tracker Archeology, Inc., dated February, 2020.
- Site Plan Map prepared by George Walbridge Surveyors, P.C. revised May 11, 2020.
- Revegetation Plan prepared by LaGuardia Design Group Landscape Architecture, dated May 7, 2020.

B. DATE SUBMITTED: January 21, 2020; Stage 1 Report submitted on March 24, 2020; Revegetation Plan and Revised Site Map submitted on May 26, 2020

C. OWNER: 180 SB LLC

D. APPLICANT/AGENT: Alice Cooley- Matthews, Kirst & Cooley, PLLC

E. SCHOOL DISTRICT: East Hampton

F. STREET NAME: 180 Springy Banks Road

G. TYPE OF STREET: Town Road

H. ZONING DISTRICT: A2, Harbor Protection Overlay District

I. SEQRA - TYPE OF ACTION: Type II

J. INVOLVED AGENCIES: N/A

K. OTHER REVIEW: N/A

2. **DESCRIPTION OF PROJECT**

A. **PROPOSED USE(S) AS CLASSIFIED BY TOWN CODE:** Single Family Residence

B. **EXISTING USE(S) AS CLASSIFIED BY TOWN CODE:** Single Family Residence

C. **ARE THE EXISTING & PROPOSED USES PERMITTED OR SPECIAL PERMITTED BY THE TOWN CODE?** Permitted

D. **AREA OF PARCEL (SQUARE FEET):** 359,055 square feet to tie line and 192,039 square feet to top of bluff and excluding driveway easement

E. **MOST RECENT CERTIFICATE OF OCCUPANCY:**
1/16/19- C/O/ 34517 – Anthony D. Duke et als- 2511 sq. ft. first floor, 1873 sq. ft. second floor, frame, one family single family residence having one kitchen only, containing a total of (6) six bedrooms only; 1068 sq. ft. covered porches; 364 sq. ft. screened porch; 100 sq. ft. deck; 1400 sq. ft. in place in kind roof deck; 720 sq. ft. Gunite swimming pool with proper fencing and patio; tennis court; 192 sq. ft. shed; 144 sq. ft. gazebo; generator.

F. **DESCRIPTION OF EXISTING STRUCTURES:** See most recent Certificate of Occupancy.

G. **DESCRIPTION OF PROPOSED STRUCTURES:** Construction of a new single family dwelling outside of natural resource jurisdiction, demolition of existing house, installation of a nitrogen-reducing sanitary system, removal of the pool in the bluff crest setback, construction of a tennis house and improvements to the existing tennis court and drainage structures in the driveway.

H. **EXISTING & PROPOSED LOT COVERAGE:** N/A

I. **EXISTING & PROPOSED TOTAL COVERAGE:** N/A

J. **HEIGHT OF PROPOSED STRUCTURES:** N/A

K. **NUMBER OF STORIES OF PROPOSED STRUCTURES:** N/A

L. **NUMBER OF EXISTING PARKING SPACES:** N/A

M. **NUMBER OF PARKING SPACES REQUIRED:** N/A

N. **TOTAL PARKING SPACES PROVIDED:** N/A

O. **VARIANCES REQUIRED:** No

P. **DOES EXISTING & PROPOSED LIGHTING COMPLY WITH BOARD POLICY?** N/A

Q. **DISTANCE TO PUBLIC WATER:** 12" Water Mains on Springy Banks Road

R. **SOURCE OF WATER SUPPLY:** Public water

S. **TYPE OF SANITARY SYSTEM:** Individual sanitary system

T. **ARE EXISTING & PROPOSED SANITARY SYSTEMS DEPICTED:** N/A

U. **DO SANITARY CALCULATIONS COMPLY WITH SCDHS STANDARDS?** N/A

V. **NUMBER OF ACCESS POINTS:** One

W. **IS SIGHT DISTANCE ACCEPTABLE?** N/A

X. **IS THE PROPOSAL ADA COMPLIANT?** N/A

3. **SUBMISSION REQUIREMENTS PURSUANT TO CHAPTER 255 (LIST**

ITEMS AND SECTION FOR THOSE ITEMS NOT SUBMITTED) : Revised revegetation plan and revised clearing calculations with titles that reflect the name of the application

4. **SITE ANALYSIS:**
   A. **SOIL TYPE:** Carver and Plymouth sands, 0 to 3 percent slopes (CpA), Carver and Plymouth sands, 3 to 15 percent slops (CpA).
   B. **FLOOD HAZARD ZONE:** X & VE
   C. **DESCRIPTION OF VEGETATION:** Existing clearing- 143,095 sq. ft.; pre-existing – 110,715 sq. ft.
   D. **RANGE OF ELEVATIONS:** 10'-45'
   E. **NATURE OF SLOPES:** level to steeply sloping terrain
   F. **TYPE OF WETLANDS WITHIN NRSP JURISDICTION:** Tidal wetland (Three Mile Harbor)
   G. **SETBACK FROM ANY WETLAND OR WATER BODY:** ~130'
   H. **ARE THERE TRAILS ON SITE?** Yes
   I. **DEPTH TO WATER TABLE:** Not identified
   J. **DOES THE SITE CONTAIN HISTORIC OR ARCHAEOLOGICAL RESOURCES?** Yes
   K. **AGRICULTURAL DATA STATEMENT REQUIRED:** No
   L. **IS THE SITE CONTAINED WITHIN:**

NYS Significant Coastal Fish & Wildlife Habitat	No
Local Significant Coastal Fish & Wildlife Habitat	No
US Fish & Wildlife Significant Ecological Complex	No
PEP CLPS list	No
Town Community Preservation Fund List	No
Recommended Scenic Area of Statewide Significance	No
Suffolk County designated Pine Barrens	No
South Fork Special Groundwater Protection Area	No
Town Overlay District	No

Other Background Information:
The subject property is referred to as Lot 2 of the Minor Subdivision Map of Anthony D. Duke. It is located at 180 Springy Banks Road and is bordered by Three Miles Harbor to the northeast and residential properties on other surrounding sides. The parcel consists of 4.409 acres or 192,039 square feet of lot area. The subject parcel is zoned A5: Residence and within Harbor Protection Overlay District (HPOD). The project area contains level to steeply sloping terrain with well drained soils.

The property was subdivided in 2002 and is subject to Declaration of Covenants and Restrictions (C&R) recorded on June 15, 2002 as a part of the Planning Board's final approval of the Map of Anthony D. Duke. The site plan application is submitted in accordance with the paragraph six (6) of the C&R, which states the following-

"6. Future improvements on Lot No 2 which require the excavation of land, such as construction of house additions which enlarge the footprint of the existing dwelling,

installation of new septic components, etc. shall require site plan review and approval by the Planning Board of the Town of East Hampton. The purpose of said site plan review shall be to insure that any damage to archeological remains on the subject lot area avoided or mitigated".

The application proposes such work requiring excavation, including the construction of a new single family dwelling outside of natural resources jurisdiction, demolition of the existing house, installation of a nitrogen-reducing sanitary system, removal of the pool in the bluff crest setback, construction of a tennis house and improvements to the existing tennis court, and drainage structures in the driveway.

The subject parcel holds archeological significance with numerous prehistoric sites reported nearby the subject area. The applicant has submitted a Stage 1 Archeological report for the project as required of the C&R's to ensure that any new constructions or excavations does not have an impact on the archeological remains on the subject lot.

Subject parcel on Town's GIS system

Issues:

Archeology Findings

The Stage I Archeological report indicates that the property was seen as having an above potential for recovering prehistoric sites, based upon the distance to three mile harbor, other prehistoric sites, Indian trails, the terrain and well drained soils. During the field testing for the report, 62 ST's (Shovel Test) were excavated. The Planning Department finds the test

holes and excavated areas to be acceptable and covered the areas as depicted on the site plan as potential areas for excavations.
Findings from the field tests indicate –

- One prehistoric artifact a quartzite tertiary flake was encountered in the gravel parking lot, not in situ.
- No historic artifacts or features were encountered.
- Soils and landscape appeared to have been, at least partially, graded or filled.

Thus according to the archeological report, no further archaeological work is recommended for the remainder of the project area.

Location of shovel tests on site

Clearing

- The paragraph ten (10) of the C&R states that the clearing limit of this property to be 35% as quoted below-
  "10. In accordance with the requirements of the Suffolk County Planning Commission, no more than thirty-five percent (35%) of each lot shown on the map may be cleared of its natural vegetation. If more restrictive regulations regarding clearing are imposed in the future by Town Code or other law, the more restrictive regulation shall be applied. All clearing on the lots in the map shall also comply with Town of East Hampton regulations governing properties in the Harbor Protection Overlay District (HPOD)."

- The Certificate of Occupancy of 01/16/19 references a survey dated January 09, 2019 that indicates that the clearing at that time was 110,715 s.f. which exceeds the 35% clearing limit conditioned by the C&R which is 67,213.65 s.f. in area and the permitted clearing under the HPOD regulations.

- A memorandum dated March 3, 2016, revised June 1, 2018 from Lisa D'Andrea, Environmentalist I in the Planning Department, advises that the clearing existing at that time, 110,715 s.f. was consistent with clearing shown on the 1994, 1998, 2001, 2004, 2010 and 2013 aerials and should be considered to be pre-existing, nonconforming.

- The survey submitted with the application, prepared by George Walbridge Surveyors and dated May 11, 2020 indicates that the current clearing is 143,095 s.f.

- A revegetation plan has been submitted for the clearing occurred for the improvements done around the tennis court. The map dated revised on May 11, 2020 depicts an area of 30,745 square feet of understory to be revegetated or allowed to revegetate naturally, reducing clearing to 112,350 s.f. However, this exceeds the clearing depicted on the map referenced in the Certificate of Occupancy of 01/16/19 and the clearing determined to be pre-existing.

Revegetation Plan
The revegetation plan should be revised to reflect the attached Town of East Hampton standards for revegetation and should reflect the native oak forest found in this area, rather than the field and successional species proposed. The plan should also provide for reducing the clearing to that determined to be pre-existing. The title of the map should also be revised to reflect the title of the application.

Map Revisions
The area that will be revegetated to reduce the clearing to that permitted as pre-existing should be indicated on the revised map along with revised clearing calculations. The title of the map should be revised to reflect the title of the application.

Minor Site Plan
The applicant has requested that the Planning Board consider granting the approval of the site plan without a public hearing in accordance with §255-6-45, based on the limited scope of the site plan review of this application and the archeologist's recommendation of no further archeological work, along with the present restrictions in place preventing public gatherings.
The Board should consider the attached criteria in § 255-6-45 of the Town Code and determine if the project can be considered a minor site plan, and if so whether to waive the public hearing. The Planning Department notes that the project will not require a variance if the clearing is brought into conformance, additional parking, or approval from the Suffolk County Department of Health.

SEQRA
The project is a Type II Action pursuant to SEQRA and Chapter 128 of the Town Code. It is recommended that the Planning Board request lead agency status for the project.

Title of Plans

The plans submitted to date do not provide the title of the application, 180 SB LLC Minor Site Plan. All plans submitted for this application, including but not limited to site plans, drainage plans, and landscaping and lighting plans, must be labeled with the title of the project. This title must be consistent with the title that the application was filed under unless an official request is made to modify the application name. All correspondence submitted should also be consistent with this title. This consistency is essential for record keeping purposes and any plans not so labeled will be required to be revised accordingly.

Planning Board Consensus

The Planning Board should discuss if the Stage I Archeological report findings are sufficient and satisfy that the proposed excavations would not have any impact on the archeological remains on the subject lot.

Additional comments: _____

The Board should discuss whether a revised revegetation plan should be submitted.

Additional comments: _____

The Board should advise the applicant whether revised clearing information as discussed above should be depicted on the map.

Additional comments: _____

The Board should determine if the project can be classified as minor site plan pursuant to §255-6-45 of the Town Code and to waive the public hearing

Additional comments: _____

Additional Board Comments:

§ 255-6-45 Minor site plans.
Notwithstanding the provisions of § 255-6-40 hereof, the Planning Board may waive the holding of a public hearing on a site plan application which is classified as a Tier Two personal wireless service facility application or which meets each and every one of the following conditions:

A. Conformance to chapter. The proposed structure does not require a variance from any provision of this chapter.

B. Health Department approval. The proposed structure does not require approval of the Suffolk County Department of Health Services.

C. Area and habitability. The proposed structure is not habitable and covers no more than 500 square feet in area.

D. Parking. No additional parking is required under this chapter.

E. Planning considerations. The proposed structure will not create a visual detriment to surrounding properties or to the general public and will not cause drainage problems, impede traffic circulation or interfere with the proper overall planning of the site.

F. Public controversy. The application has caused no significant public controversy.

JAN 2 1 2003

Hampton Town Board has been obtained, the said areas shall be otherwise left in their natural state forever.

5. Lot No 2 of the Minor Subdivision Map of Anthony D. Duke is encumbered by a large lot scenic easement, providing that the said lot may be used for the construction or erection of not more than one (1) single family residence plus accessory buildings and structures, and may never be subdivided.

6. Future improvements on Lot No 2 which require the excavation of land, such as construction of new buildings, construction of house additions which enlarge the footprint of the existing dwelling, installation of new septic system components, etc. shall require site plan review and approval by the Planning Board of the Town of East Hampton. The purpose of said site plan review shall be to insure that any damage to archeological remains on the subject lot are avoided or mitigated.

7. No buildings or structures, except fences, shall be constructed within ten (10) feet of the boundary of any scenic easement or within ten (10) feet of the boundary of the conservation easement on Lot 1.

8. Prior to the commencement of clearing, grading or construction activities on Lots 1 or 3 of the Minor Subdivision of Anthony D. Duke, project-limiting fencing shall be installed along the perimeters of the areas proposed to be cleared. This fencing shall remain in place until all clearing, grading or construction activity on the particular lot or lots

has been completed.

9. No grading or excavation may be undertaken on any portion of Lot No 1 unless a qualified archaeologist is present on site at the time of such grading or excavation. Prior to the commencement of such grading or excavation, at least forty-eight (48) hours advance notice of the proposed grading or excavation, together with the name and qualifications of the archeologist supervising the work shall be given in writing to the Town Planning Director.

10. In accordance with the requirements of the Suffolk County Planning Commission, no more than thirty-five percent (35%) of each lot shown on the map may be cleared of its natural vegetation. If more restrictive regulations regarding clearing are imposed in the future by Town Code or other law, the more restrictive regulation shall be applied. All clearing on the lots in the map shall also comply with Town of East Hampton regulations governing properties in the Harbor Protection Overlay District (HPOD).

11. In accordance with the requirements of the Suffolk County Planning Commission, no grading of land shall hereafter be permitted within fifty (50) feet of the bluff edge on Lot No 2, except as necessary to control or remedy erosion or to prevent storm water from flowing over the edge of the bluff and provided that all necessary permits are first obtained.

12. All swimming pools hereinafter constructed on the lots shall be set back as far

PLANT SPACING TABLE

Number of of plants needed for an area based on spacing

		Planting area (sqft)							
		500	1,000	2,000	3,000	4,000	5,000	10,000	20,000
Spacing (ft)	1	500	1,000	2,000	3,000	4,000	5,000	10,000	20,000
	1.5	222	444	888	1,333	1,777	2,222	4,444	8,888
	2	125	250	500	750	1,000	1,250	2,500	5,000
	3	55	111	222	333	444	555	1,111	2,222
	4	31	62	125	187	250	312	625	1,250
	5	20	40	80	120	160	200	400	800
	6	13	27	55	83	111	138	277	555
	8	7	15	31	46	62	78	156	312
	9	6	12	24	37	49	61	123	246
	10	5	10	20	30	40	50	100	200
	12	3	6	13	20	27	34	69	138

Plant Type	Size	Planting distance- on center
trees	8-10ft	10 ft
shrubs	3-4 ft	5 ft

1 gal

4. **Revegetation Details**: The revegetation must consist of a canopy and understory as outlined below. The canopy is required to consist of trees selected from the list below that measuring a minimum of 12' in height (from the base of the trunk to the top of the crown) established on 15'centers (1 per 255 sq. ft.) throughout the area that must be revegetated.

Area of Revegetation (sq. ft.)	/225	= # of trees required
	/225	=

Trees Permitted for Use in Water Recharge Overlay Revegetation Projects:

Common Name	Latin Name	# proposed
American Holly	*Ilex opaca*	
Black Oak	*Quercus velutina*	
Pitch Pine	*Pinus rigida*	
Post Oak	*Quercus stellata*	
Sassafras	*Sassafras albidium*	
Scarlet Oak	*Quercus coccinea*	
Shad	*Amelanchier canadenses*	
White Pine	*Pinus strobus*	
	Total #	=

Shrubs Permitted for Use in Water Recharge Overlay Revegetation Projects:

The understory must be selected from the shrubs listed below. The minimum size of each shrub must be a one-gallon container. The shrubs must be planted on 3' centers beneath the canopy to a distance of within 5' of each tree within the revegetation area.

Common Name	Latin Name
Bayberry	*Myrica pensylvanica*
Black Huckleberry	*Gaylussacia baccata*
Lowbush Blueberry	*Vaccinium angustifolia*

5. **Inspection requirements:** Please contact the Building Department once the revegetation has been completed. If you have any questions regarding the requirements of the Water Recharge Overlay District, please feel free to call the Building Department at (631)324-4145 or the Planning Department at (631)324-2178.

*****Permitted clearing formulas**

Residence Districts:

Lot Area (sq. ft.)	Maximum Clearing Permitted
Up to and including 39,999 sq. ft.	10,000 sq. ft. or 35% of lot area, whichever is greater
From 40,000 to and including 280,000 sq. ft.	10,000 sq. ft. + (lot area x 12.5%)
Greater than 280,000 sq. ft.	45,000 sq. ft.

Commercial Districts: All lots: 10,000 square feet or 50% of lot area, whichever is greater