



Central Pine Barrens Joint Planning and Policy Commission
Meeting of April 20, 2022
Adopted Decision

Sunrise Wind LLC Core Preservation Area Compelling Public Need Hardship

Present:

Mr. Freleng, for the Suffolk County Executive
Mr. Romaine, Brookhaven Town Supervisor
Ms. Aguiar, Riverhead Town Supervisor
Mr. Shea, for the Southampton Town Supervisor

I. The Project, Project Site, and Application

Yvette Aguiar
Member

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Sunrise Wind LLC (the Applicant) by their representatives Derrik Berg, Eversource, and attorney John Anzalone, Harris Beach, PLLC, propose development in the Core Preservation Area to construct 0.6 mile of an underground electric onshore transmission cable (OTC) (the Project). The OTC is part of a 924 megawatt offshore wind energy installation by the Applicant.

The Project will cause 0.2 acres of temporary clearing of natural vegetation and 0.37 acres of permanent clearing in the Core. Areas where temporary clearing occurs will be replanted with native trees and other vegetation and areas of permanent clearing will not be replanted with trees and instead replanted with other native vegetation. The permanently cleared area will require access for regular maintenance.

The OTC project site is in the vicinity of Victory Avenue and Southaven County Park on the north side of Sunrise Highway, west of William Floyd Parkway in the hamlet of Yaphank in the Town of Brookhaven (the Project Site).

On January 26, 2022, the Applicant submitted a request to the Central Pine Barrens Joint Planning and Policy Commission (the Commission) for a Core Preservation Area Compelling Public Need Hardship. Prior submissions were made on June 1 and November 3, 2021. Extensions were requested by the Applicant and granted by the Commission due to the Applicant's continued coordination with and seeking authorization from Suffolk County to install infrastructure within the boundaries of Southaven County Park.

The offshore wind facility requires installation of a 17.5 mile OTC that extends from the coastline at Smith Point (outside of the Central Pine Barrens), travels under the Great South Bay via horizontal directional drill to William Floyd Parkway northward and northwestward to a connection at the LIPA Holbrook substation. Alternative routes were explored by the

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Applicant, but the Project was selected as the preferred route to minimize significant adverse environmental impacts on subjects including wetland habitats, cultural resources, residential neighborhoods, businesses and traffic.

The March 27, 2020 correspondence received from the New York Natural Heritage Program (NHP) reported a number of rare animals, plants and natural communities on the Project Site including the Federal and New York State-listed Threatened Northern Long-eared Bat. The project must adhere to clearing windows prescribed by the New York State Department of Environmental Conservation.

The September 1, 2020 correspondence from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) is inconclusive. The project will adhere to the requirements of OPRHP to protect archaeological, historic and cultural resources.

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.”

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

The Application included a letter and review of the compelling public need hardship criteria, maps of the Project and an Appendix titled “Revised Exhibit 4 Environmental Impact.”

On January 19, 2022, the Commission scheduled a public hearing on the Application that was held on February 16. At the hearing, a Commission Staff Report with Exhibits was introduced into the record. The Applicant, under sworn testimony, addressed concerns and comments from the Commission and in the Staff Report.

Prior to the hearing, one member of the public submitted a written letter of support. Two members of the public provided comments at the hearing. The written comment period was held open until 12 pm on March 11. No written comments were received. The hearing record was left open until the March 16 meeting when the Commission would determine 1) to close the hearing or 2) the need to continue the hearing on April 20. A stenographic transcript was made of the hearing.

On March 3, the Applicant submitted a written response to the Staff Report focusing on the review of alternative routes considered for the OTC. The Applicant explained the reasons alternative routes were rejected including the desire to minimize traffic impacts and road closures on busy transportation thoroughfares and to avoid densely developed residential neighborhoods and natural resources including wetland habitats and areas of cultural resource sensitivity. On March 16, the Commission closed the hearing.

VI. The Project Site and the Study Area

The Staff Report described the Project Site and defined a Study Area that extends half mile from the project site in all directions. The Study Area describes the land use pattern in the vicinity of the Project Site.

The Carmans River bisects the Study Area. Land uses in the Study area comprise suburban residential development and natural public open space. Starting in the southeast quadrant of the Study Area, the unincorporated hamlet of Shirley is developed with suburban residential uses. Commercial development is present in the transportation corridors of William Floyd Parkway and Montauk Highway.

Residential development occurs in the northeast quadrant, west of William Floyd Parkway and east of Carmans River. The northwest and southwest quadrants in the Study Area are largely comprised of public open space including Southaven County Park and Wertheim National Wildlife Refuge. The western portion of the Study Area contains residentially developed land uses.

The OTC will enter the Core on Victory Avenue for approximately 0.6 mile and cross the Carmans River via trenchless methods. Construction laydown areas will be used on Victory Avenue. The route travels west on Victory Avenue to a work area on the west side of the Carmans River in Southaven County Park.

Passive and active recreational use opportunities are available in Southaven County Park including hiking trails, kayaking and camping.

IV. State Environmental Quality Review Act (SEQRA) and Other Agency Jurisdictions

The Public Service Commission (PSC) is presently reviewing an Article VII application for “The Certification Review Process For Major Electric and Fuel Gas Transmission Facilities.” The State Environmental Quality Review Act (SEQRA) regulations defines a project of this type as a Type II Action as per Part 617.5(44).

Approximately 2.4 miles of the OTC is in the Compatible Growth Area (CGA). The PSC will review the CGA segment for conformance with the Central Pine Barrens Comprehensive Land Use Plan, as per Section 57-0123(3)(a) of the Environmental Conservation Law.

The Project requires permits and/or approvals from other agencies including the Town of Brookhaven, Suffolk County and New York State Department of Environmental Conservation (NYSDEC).

V. Commission Review of the Compelling Public Need Hardship Request

In accordance with ECL Article 57 Section 57-0121(10), the Applicant explained their request in reference to the criteria outlined in the Act.

In accordance with Section 57-0121(10)(a)(i), the Project does not apply to or affect other property in the Study Area. The project is unique because it is one segment in a larger project that was planned with specific starting and ending locations. Alternative routes were considered but the Applicant rejected them due to their potential to cause adverse environmental impacts on residential neighborhoods, road closures and traffic and natural and cultural resources. The alternative routes required the OTC to cross the Carmans River, via horizontal directional drill, and the Core Preservation Area at some point in the route but the preferred route causes the least amount of adverse environmental impacts to the Core. No other area exists for the Project in the Study Area. The Project is unique as distinguished from other projects.

In accordance with Section 57-021(10)(b)(i), the Project Site must occur in the proposed location in the Core and cannot be moved elsewhere in Suffolk County or out of the Core due to a variety of constraints that include the fact that the Holbrook substation is the terminating location. A new converter station will be constructed roughly one mile from the Holbrook Substation to convert direct current (DC) electricity to alternating current (AC) electricity.

The applicant’s alternatives analysis compared OTC routes. The alternative routes also intersect the Core. With fixed points beginning at landfall at Smith Point and the connection at Holbrook Substation, the preferred route is the shortest distance and causes the least impact on the resources of the Core including limited clearing requirements and

constructability constraints. Therefore, the Project cannot be accommodated elsewhere but the Project Site. No feasible alternatives are available for the Project.

The Project Site serves more than one municipality including the Town of Brookhaven and Suffolk County. The public benefits of the project are of a character that override the importance of the protection of the minimal amount of natural vegetation that will be removed for the Project. The Project achieves New York State's Climate Leadership Community Protection Act renewable energy goals. The goals include 100% zero-carbon electricity by 2040, 70 percent electricity from renewable sources by 2030 and target of 9,000 megawatts of offshore wind by 2035.

In accordance with ECL Article 57 Section 57-021(10)(b)(i), the application explained that the Project will serve an essential health need for the community. The Project moves toward New York State's renewable energy targets.

The Project is designed to minimize adverse environmental impacts. This is demonstrated by the minimal disturbance to natural vegetation, use of directional drilling and previously disturbed roadside areas to the greatest extent practicable. The Project achieves the minimum relief necessary to ensure the integrity and continued protection of the Project Site and the Core Preservation Area.

VI. Conclusion

The Project entitled Sunrise Wind Core Preservation Area Compelling Public Need Hardship application is entitled to a hardship exemption for the foregoing reasons and therefore is approved, subject to the following conditions.

1. Fencing
 - a. Install snow fencing prior to and during construction.
 - b. Maintain fencing during construction and remove as soon as work is complete.
 - c. Notify the Commission office when work is complete.
2. Revegetation within one year of completion of work in the disturbance area:
 - a. Revegetate the 0.2 acre area of temporary disturbance due to construction with a mix of native tree and shrub species.
 - b. Revegetate the 0.37 acre area of permanent disturbance with native grasses at a minimum.
3. Employ an on site environmental monitor to ensure environmental protection during construction.
4. Fulfill the requirements of the NY State Historic Preservation Office to protect archaeological, historic and cultural resources that may be present in the project site.
5. Adhere to NYSDEC tree clearing restrictions in the project site area to protect the Federal and State-listed Northern Long-eared Bat and its habitat.
6. Conform with all other local, County and State regulatory permit requirements and obtain all other permits as required.
7. This approval is valid for five (5) years from the date of this Resolution. The applicant must commence construction in that timeframe.

8. Any changes of the Project, as approved, must be reviewed and approved by the Commission.

Motion to Approve

Sunrise Wind Core Preservation Area Compelling Public Need Hardship

Date: April 20, 2022

Motion By: Mr. Shea

Seconded: Mr. Romaine

Vote:

Yes: 4 (Mr. Freleng, Mr. Romaine, Ms. Aguiar, Mr. Shea)

No: None

Abstain: None

Absent: None

Copies of This Decision Will be Sent To:

New York State Public Service Commission

New York State Department of Environmental Conservation, Division of Environmental Permits, Region 1

New York State Department of State

New York State Department of Transportation

Suffolk County Parks

Suffolk County Department of Public Works

Town of Brookhaven Supervisor

Town of Brookhaven Town Clerk

Town of Brookhaven Department of

Town of Brookhaven Building Department

Applicant