

CENTRAL PINE BARRENS JOINT  
PLANNING AND POLICY COMMISSION

In the Matter of the Violation of Article 57 of the  
Environmental Conservation Law of the State of  
New York (ECL)

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ORDER ON CONSENT

No. CPBJPPC 3-2021

by

R.N. Middle Island LLC and Rocky Point Road LLC  
Respondents

-----X-----

WHEREAS:

- I. The Central Pine Barrens Joint Planning and Policy Commission (the Commission), with offices at 624 Old Riverhead Road, Westhampton Beach, New York, has jurisdiction over development as the term is defined in Article 57 of the Environmental Conservation Law in the Central Pine Barrens area.
- II. Respondents R.N. Middle Island LLC and Rocky Point Road LLC (7 Eleven Middle Island) (hereinafter referred to as Respondents), own property located at 910 Middle Country Road, Middle Island, New York developed with a 7 Eleven convenience store and gas station. The property consists of three separate parcels of land on the northeast corner of the intersection of Middle Country Road and County Route 21 in the hamlet of Middle Island, Town of Brookhaven. The parcels are identified as Suffolk County Tax Map Number as District 200, Section 378, Block 2, Lot 37.2 and District 200, Section 403, Block 1, Lots 2.1 and 2.3 (the "Property"). In total the Property contains 1.54 acres of area. The Property is shown on a Revegetation Plan dated June 11, 2017 prepared by Nelson, Pope & Voorhis. The Revegetation Plan is attached hereto as Exhibit A.
- III. The Property is in the Compatible Growth Area of the Central Pine Barrens as defined in ECL §57-0107, and as such is under the jurisdiction of the Commission.
- IV. On August 16, 2017, the Commission granted a Hardship Waiver Exemption, pursuant to ECL Section 57-0121(9), authorizing Respondents to clear 100 percent of the Property and to construct the 7 Eleven. The terms or conditions of the Hardship Waiver Exemption required the Respondents to revegetate 35% of the Property, or 0.539 acres, after construction was complete. The Hardship Waiver Exemption also required the Respondents to prepare and file a Declaration of Covenants and Restrictions on the Property setting forth certain conditions on the Property's use.
- V. On March 18, 2020, Commission staff inspected the portion of the Property that was to be revegetated. Staff determined that the area was revegetated to satisfy the conditions of the Hardship Waiver Exemption.

VI. On November 4, 2020, Commission staff became aware of disturbance on the Property and met with Michael McAteer of Gemstar Construction Corporation, Construction Manager, for the Respondents, at the Property to inspect it. The inspection revealed that the following activities had been conducted on the Property:

Disturbance of 0.539 acres of the Property including all of the area that was to be revegetated under the Hardship Waiver Exemption.

VII. On February 23, 2021, Michael McAteer of Gemstar Construction submitted a letter to the Commission. The letter stated, “We identified some plantings were disturbed by landscape maintenance. This maintenance was in response to a complaint 7 Eleven received by the Town. The “maintenance” has ceased, and positive growth was observed in the area that was disturbed prior to the plantings going into the dormant phase. We will reevaluate the health of these plantings in the Spring and determine if any replacement is required. At this time, we are requesting that the Central Pine Barrens Commission issue a letter approving the revegetation, as requested by the Town of Brookhaven Planning Department for issuance of the Certificate of Occupancy.”

VIII. On March 17, 2021, the Commission issued a Notice of Violation because Respondent did not comply with the terms of the Hardship Waiver Exemption. The Respondent improperly caused or allowed to be cause the disturbance of the Revegetation area.

IX. On April 1, 2021, a remote meeting occurred via Zoom with the Commission staff and the Respondent to discuss the violation.

X. Respondents admit to causing or permitting to cause the disturbance on the Property that is in violation of the terms or conditions of their Hardship Waiver Exemption and the Declaration of Covenants and Restrictions recorded on the Property, which are violations of Article 57 of the ECL and the Plan.

XI. The Commission finds that the disturbance activity was neither authorized nor approved by the Commission prior to commencement and it violates the terms of the terms and conditions of the Hardship Waiver Exemption.

XII. ECL §57-0136(2-b), provides that “any person who violates any provision of ECL Article 57, the land use plan adopted 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 ten thousand dollars (\$10,000) for each violation and an additional civil penalty of not more than one thousand dollars (\$1,000) for each day that such violation continues.”

XIII. Respondents desire to resolve the violation through this Order on Consent rather than engage in litigation on the issues.

XIV. The Commission agrees to settle the within matter through this Order on Consent with Respondents rather than 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 all further activities in violation of any provision of the Act, the Plan or the terms or conditions of the Hardship Waiver Exemption or any combination of the three on the Property except as authorized herein.

II. Relief

A. **Penalty.** With respect to the violations identified in this Order, the Commission assesses against Respondents a civil penalty jointly and severally payable in the sum of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500), of which ONE THOUSAND DOLLARS (\$1,000) 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.

1. The payable portion of the penalty, FIVE HUNDRED DOLLARS (\$500) is to be paid by bank check made payable to "Central Pine Barrens Joint Planning and Policy Commission,"
2. Payment to the Commission must have written on its face: CPBJPPC 3-2021.
3. 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.**

1. Respondents shall implement the Revegetation Plan dated June 11, 2017 prepared by Nelson Pope & Voorhis on the Property.
2. Respondents shall complete work identified in the Revegetation Plan by October 31, 2021.
3. After implementation of the Revegetation Plan, the revegetated area must remain natural in perpetuity including in the event the Property changes ownership, use and/or is redeveloped.

4. Respondents shall guarantee survival of 85% of the planting made under the Revegetation Plan for a period of 3 years with the 3-year time period commencing after the last plant is planted. To achieve this survival rate, dead plants shall be replaced each year within the 3-year time period.

D. Monitoring.

1. The Respondents shall monitor, identify and remove invasive plants if detected in the revegetated area during the 3-year survival period. Invasive plants shall be removed using only non-chemical methods unless otherwise approved by the Commission.
2. Annually for three (3) years following completion of the Revegetation Plan, the Respondents shall submit to the Commission a report that provides the status of revegetation conditions and survival rate success. The initial reporting plan shall confirm the list of plantings that were installed and the date they were planted. The report shall indicate if dead plants were replaced during the monitoring period. The initial report shall be submitted to the Commission on or after June 15 but prior to June 30, following initial revegetation completion.
3. The report shall include 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, an assessment of the 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 shall serve as documentation of the general vegetation composition and diversity, as well as survival rate 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 and then every year between May 15 and June 15 for (3) three consecutive years. 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.
4. 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 the revegetation planting.
5. The restored area shall remain natural in perpetuity. If the site is sold or the use changes, the revegetated area shall remain natural and undisturbed.

6. Respondents shall install signage to protect and identify the Revegetated Area.
  - a. No more than six signs, on posts no more than six (6) feet tall and with maximum sign dimensions of 9 inches by 12 inches, shall be installed where the revegetated area meets adjacent developed areas (e.g., sidewalks, parking lot).
  - b. The signs should state “Natural Revegetation Area” to deter encroachment and notify the public of the natural state in which that portion of the project site must remain.

E. Certification Order Satisfied

At the completion of the tasks described in Sections B ,C, and D 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 in 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

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 desire 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 to inspect and determine the status of the Property, as well as access to relevant records 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 that provides a 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 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.

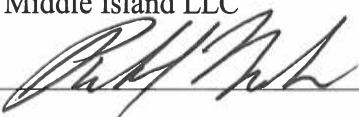
XI. Effective Date

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.

XII. Consent by Respondents

R.N. Middle Island LLC and Rocky Point Road LLC acknowledge 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.

R.N. Middle Island LLC

By: 

Name: RICHARD NIELIN

Title: MEMBER

Date: 5/10/2021

Rocky Point Road LLC

By: 

Name: RICHARD NIELIN

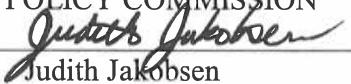
Title: MEMBER

Date: 5/10/2021

XIII. Acceptance by the Commission

The Commission authorizes entering into this Order on Consent.

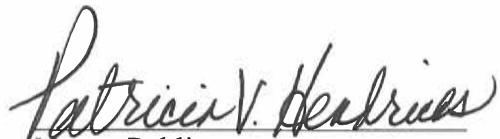
CENTRAL PINE BARRENS JOINT PLANNING  
AND POLICY COMMISSION

By:   
Judith Jakobsen  
Interim Executive Director

## Acknowledgments

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

On the 12<sup>th</sup> day of May in the year 2021 before me, the undersigned, personally appeared Richard Velin, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Patricia V. Hendries

Notary Public

PATRICIA V. HENDRIES  
NOTARY PUBLIC, State of New York  
No. 07MEB038810  
Qualified in Suffolk County  
Commission Expires April 20, 2022

STATE OF NEW YORK )  
COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2021 before me, the undersigned, personally appeared \_\_\_\_\_, 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, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## Exhibit A

