

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E N T R A L P I N E B A R R E N S
C O M M I S S I O N M E E T I N G

-----x

CVE US NY Southampton 243 LLC

-----x

April 17, 2024
3:00 p.m.

116 Hampton Road
Southampton, New York

TRANSCRIPT OF PROCEEDINGS

April 17, 2024

2

A P P E A R A N C E S:

ROBERT T. CALARCO, Governor's Representative

SARAH LANSDALE, Suffolk County Representative

TIMOTHY C. HUBBARD, Riverhead Supervisor

MICHELLE DI BRITA, Brookhaven Representative

JANICE SCHERER, Southampton Representative

MATTHEW CHARTERS, Riverhead Representative

MARIA Z. MOORE, Southampton Town Supervisor

JUDITH E. JAKOBSEN, Executive Director

JULIE HARGRAVE, Joint Planning and Policy Manager

JOHN C. MILAZZO, Commission Counsel

ANGELA BROWN-WALTON, Administrative Assistant

ALSO PRESENT:

Steven Engelmann

Charles Voorhis

PUBLIC SPEAKERS:

Nina Leonhardt

Daniel Sullivan

1
2 MR. CALARCO: We're going to reopen
3 and move into our public hearing portion of
4 the meeting. Our first public hearing is the
5 CVE US NY Westhampton 243 LLC at Westhampton
6 property, Core Preservation Area Hardship
7 Waiver Application.

8 Do I have to give the notice, Judy.

9 MS. JAKOBSEN: You can just say it's
10 been provided to the stenographer and noted
11 in the record.

12 MR. CALARCO: For the record, we have
13 the notice of public hearing, it's been
14 provided to the stenographer, and for the
15 purposes, we have a full quorum of the
16 members or their representatives here for
17 today's public hearing.

18 MS. JAKOBSEN: If they can state
19 their names.

20 MR. CALARCO: We're going to start
21 over here. State your names. I guess,
22 Janice, do you want to start.

23 MS. SCHERER: Janice Scherer, Town
24 Planning and Development Administrator.

25 MS. DI BRITA: Michelle DiBrita,

Chief Deputy of Planning for the Town of
Brookhaven, representing Supervisor Dan
Panico.

MR. HUBBARD: Tim Hubbard,
Supervisor, Town of Riverhead.

MR. CALARCO: Rob Calarco,
representing Governor Hochul.

MS. MOORE: Maria Moore, Town
Supervisor for Southampton.

MS. LANSDALE: Sarah Lansdale
representing County Executive Ed Romaine.

MR. CHARTERS: Matt Charters, Senior
Planning for the Town of Riverhead.

MS. JAKOBSEN: Judy Jakobsen,
Executive Director, Central Pine Barrens
Commission.

MR. CALARCO: John Milazzo, counsel,
is not in the room at the moment but should
be here momentarily.

With that, I think we can get
started. Ms. Hargrave, if you want to kick
it off and then we'll hear from the
applicant.

MS. HARGRAVE: Thank you very much.

1
2 Good afternoon. So, everyone should have the
3 staff report that was distributed and posted
4 on the website. The applicant has it as
5 well. I'm just going to go through the
6 history of the site, the current application,
7 and the prior hardship of the presence of the
8 conservation easement. I'm just going to
9 read the main parts of the staff report, and
10 then the applicant is here to represent
11 themselves as well.

12 So again, this is the CVE US NY
13 Southampton 243 LLC Hardship Waiver
14 Application and the proposed modification of
15 the conservation easement. The owner of the
16 site is Westhampton Property Associates,
17 Giuseppe Giaquinto. His representative is
18 Charles Voorhis of Nelson Pope and Voorhis
19 and Steven Engelmann are the representatives,
20 and David is the attorney.

21 This application was received last
22 August and there was a public hearing
23 September 20th. There were extensions and
24 the supplemental material received on
25 March 7th of this year, 2024, and April 4th

1
2 as well. The commission commenced a SEQRA
3 coordination on March 20th and scheduled this
4 public hearing.

5 The site is east of Speonk Riverhead
6 Road in the Town of Southampton, south of
7 Sunrise Highway in the Core Preservation
8 Area. The project site is 50 acres to lease,
9 or to be leased by CVE of the 91 acre sand
10 mine located on 115 acres owned by
11 Westhampton Property Associates. It's two
12 parcels, and it's in the Country Residence
13 200 -- CR200 five acre residential zoning
14 district.

15 The applicant proposes a request for
16 a hardship wavier, core hardship waiver to
17 develop 50 acres of an existing 91 acre sand
18 mine to build a solar facility, and a request
19 for modified conservation easement reported
20 on the property that was a condition under
21 approval for a 2012 core hardship waiver
22 granted by the commission to allow the sand
23 mine to be increased in depth.

24 The application states the project
25 represents compliant public need. It

discusses support by Southampton Town and New York State regarding renewable energy goals as it relates to climate change. It states that the uniqueness of the property supports the fact that there are no better alternatives in the town or county for this opportunity. It continues that this is an adaptive reuse of a disturbed site and it meets some of the requirements of a hardship and the environmental benefits are unique.

The applicant proposes to convey a conservation easement on the remaining 24 acres of the project site currently not protected by the easement previously granted to the commission. At the the end of the project, the entire 115 acres would be protected by the easement.

The applicant also proposes to shorten the life of the mine by five years by terminating mining activity in 2039 instead of 2044 as currently proposed. The application does not indicate whether this represents a reduction in the amount of material excavated from the site or an

acceleration of the approved mining activity.

The project proposes 11,154 solar modules, each 15 feet apart, 10 feet high, with dimensions at 75 feet each with energy of 480 watts. There is also an approximately 1,000 square foot storage -- battery storage area and it accesses is the private road from Speonk Riverhead Road.

Site history, the site was a sand mine. It was permitted in 1981 by New York State DEC. The current owner purchased the mine in 2006. In 2012 the owner applied for, and the Commission granted, a core hardship waiver to vertically extend the depth of the sand mine to an elevation of approximately 45 feet above sea level to an elevation of approximately 26 feet above sea level. The waiver required a conservation easement to be recorded and committed the owner to habitat restoration once the mining is completed.

The easement permitted the owner or any of its successor from applying to the Commission for another hardship exemption for the project site. The application stated in

2012 the end result will be the permanent preservation through the conservation easement of 91 acres of the site, which will provide for improved continuous open space with other natural lands in the area. The schedule of the mine restoration plan, the owner committed to restore the mine to a pitch pine oak forest and successful field habitat. Thermal pools were also expected to form in low elevations of the site. The restoration plan is in eight phases and it is expected to be completed in 2047.

Just a brief review of the study area around the project site. The approximate 68 acres of the project site is in the core preservation area and 47 acres in the compatible growth area. The properties around the site include an animal shelter and natural open space, public open space. There are also industrial land uses on Speonk Riverhead Road in the plan. Residential uses aren't present at the south end of Speonk Riverhead Road.

The study area zone is CR 200 with

1 the exception of site LI40 on Speonk
2 Riverhead Road. Also, there is a residential
3 one acre zone in that area.
4

5 I won't to go through all the
6 existing conditions. The project requires
7 review and approval of other agencies,
8 including the Town of Southampton and the DEC
9 and might require a modification of mine
10 permits that would be ending this project and
11 change the mine reclamation plan, the core
12 hardship modification of easement under
13 New York State Article 49. Those are some of
14 the requirements and approvals.

15 The hardship criteria include -- I'll
16 briefly review these -- that the proposed
17 development will server an essential health
18 or safety need of the municipality, or in the
19 case of the application serving one or more
20 of the municipalities of the public health
21 and safety require the requested waiver, that
22 the public benefits from the proposed use are
23 of a character that override the importance
24 of the protection of the core preservation
25 area as established in this article, that the

1
2 proposed use is to serve existing needs of
3 the residents and that no feasible
4 alternatives exist outside of the core
5 preservation area to meet the established
6 public need and that no better alternatives
7 exist within the county.

8 The proposed development constitutes
9 an adaptive reuse of an historic resource.
10 That's another one of the criteria.

11 The hardship criteria continues: An
12 application for the core shall only be
13 approved if it's determined the additional
14 following standards are met:

15 The granting of the permit will not
16 be materially detrimental or injurious to
17 other property or improvements in the area.

18 The waive will not be inconsistent
19 with the purposes, objectives or the general
20 spirit and intent of the article, and

21 The waiver is a minimum relief
22 necessary to relieve the hardship.

23 The application included the
24 resolution for the Sunrise Wind compelling
25 public need hardship waiver to support this

project

The compelling public waiver criteria were discussed in the March submission. It is not clear if and how the applicant would qualify for this type of waiver. Regardless, it is not clear that the project could demonstrate hardship since the compelling public need criteria are stricter and require that there is no other site in the county where the project could be developed. Since there are other sand mines available that are not restricted by conservation easements, this criterion cannot be met. The applicant has not indicated to whom the project will supply energy, although it is noted that energy, once delivered to the grid, is fungible.

The applicant states the project site is unique and no other sites exist in the county or town for the project. However, no substantive information or analysis was submitted to support this statement. The applicant did not provide any documentation to support their conclusory

statement that such alternatives analysis or description of applicant's efforts to locate another suitable site for the project.

Onto the easement modification.

The project is inconsistent with the easement the applicant granted to the Commission in 2012. The easement was designed to enable the creation of a pitch pine oak forest and successional field habitat protected in perpetuity. The project would delay or prevent development of such ecological resource.

Conservation easements accepted by the commission and the modification of the same are governed by Title 3 of Article 49 of the Environmental Conservation Law of the.

The Environmental Conservation Law provides: The legislature hereby finds and declares that in order or implement the state policy of conserving, preserving and protecting its environmental assets and natural and man-made resources, the preservation of open space, preservation, development and improvement of agricultural

land forest lands, the preservation of areas which are significant because of their scenic or natural beauty or wetland, shoreline, geological or ecological, including old growth forest, character and the preservation of areas which are significant because of their historical, archaeological, architectural or cultural amenities, is fundamental both to the maintenance, enhancement and improvement of recreational opportunities, tourism, community attractiveness, balanced economic growth and the quality of life in all areas of the state.

This continues with the purpose of Article 49. The conservation easement was designed to conform to the provisions of Title 3 of Article 49 by preserving or maintaining the scenic, open, historic, archaeological, architectural or natural condition, character, significance or amenities of the real property in a manner consistent with the public policy and purpose set forth in Section 49-0301. The

1
2 applicant must demonstrate that the project
3 does not conflict with the statutory
4 requirement that the easement protect a
5 scenic, open, historical, archaeological,
6 architectural or natural condition,
7 character, significance or amenities of the
8 real property in a manner consistent with the
9 public policy and purpose.

10 The conservation easement may be
11 modified pursuant to Article 49 as provided
12 in the instrument creating the easement.
13 Paragraph 5 of the miscellaneous section of
14 the Westhampton Mining Easement provides:

15 The commission and Westhampton
16 property shall mutually have the right, in
17 their sole discretion, to agree to amendments
18 to this conservation easement which are not
19 inconsistent with the basic purpose of this
20 conservation easement, provided, however,
21 that the commission shall have no right or
22 power to agree to any amendments hereto that
23 would result in this conservation easement
24 failing to qualify as a valid conservation
25 easement under Article 49 as the same may be

hereafter amended.

Independently, the applicant needs to modify the easement to apply for the relief it seeks because Paragraph 5 of the miscellaneous section provides:

Westhampton Property and Westhampton Property's lessees, representatives, successors or heirs and assigns shall not apply to the Commission or the Pine Barrens Credit Clearinghouse for a hardship, other permits or Pine Barrens Credits under the plan or under Article 57 pertaining to the property. Westhampton Property understands and intends to sever the right to develop the property. The applicant must demonstrate the proposed modification necessary to accommodate the project is consistent with the basic purpose of the easement, and, if modified, continues to protect the resource identified in Article 49. As a threshold matter, the applicant must receive permission to modify the easement simply to make this request.

As noted, the Commission has modified

an easement in the past on the Boy Scout Camp that was once after the dining hall was rebuilt after a fire one square foot larger, and other to increase the size of an existing cabin while reducing the size of a cabin that the Scouts can build in the future.

The consistency of the application with the 2012 core hardship waiver.

The applicant must address the apparent inconsistency with several conditions of the 2012 waiver, including conditions 5, 7, 8a and 8b. These prohibited a change in land use and stated development activity was subject to a discretionary decision by the Commission. Additionally, the easement was intended to protect the project site from future development once mining activity ceased under the current proposal. Proposing to undertake development activity directly contradicts three conditions of the 2012 waiver. By undertaking development activity, the project site does not fulfill its protection as natural open space, an essential purpose of

the conservation easement.

This goes on to explain the hardship criteria, which is that the use was expanded in the past to extend the beneficial use of sand mining activity from 2012 to 2044. The project continues -- seeks to continue to extract mineral resources from the site and develop a second land use of a solar facility for the financial benefit of the applicant. As part of the 2012 application, the applicant demonstrated that if it did not receive the waiver it would suffer financial damages because it had executed long term supply contracts.

The hardship criteria requires the hardship to not arise from the personal situation of the applicant rather than the characteristics of the property. The project is a private facility by a private entity and does not arise out of the characteristics of the property.

There are some comments and questions at the end, basically looking for more information on how the project demonstrates

1
2 hardship, if they have provided an updated
3 site plan with the 50 acre build-out. The
4 location relative to the core NCGA
5 boundaries, because it does pass through the
6 site and it needs to be clear on what part of
7 the project is in the core and what is in the
8 CPA. How many acres is left to be mined, how
9 much is left to be restored, how much is to
10 be extracted? What is the decommissioning
11 plan and the current status of restoration?

12 The Town of Southampton responded to
13 the SEQRA coordination, referral deferring
14 lead agency to the Commission and provided
15 some comments. Those are at the end, so that
16 should be Exhibit I, an additional exhibit.

17 For your reference, the exhibits
18 include a location map; photographs of the
19 site; the sand mine plan and the reclamation
20 plan, which shows that more than 30 acres of
21 pitch pine forest, meadow, vernal ponds and
22 other habitats; the site plan for the solar
23 project; the Westhampton Property Associates
24 decision; Conservations easement recorded on
25 the property; the study area map; and the

1
2 applicant's hardship materials that was
3 submitted in March and April; and again the
4 Town of Southampton responses.

5 MR. CALARCO: Thank you. Any
6 questions for Ms. Hargrave?

7 Seeing none, I'll call the applicant
8 or their representative.

9 MR. ENGELMANN: Good afternoon
10 Members of the Commission. My name is Steven
11 Engelmann. I'm with CVE North America her to
12 speak to you about the mining reclamation
13 solar project. I'll try to be as brief as I
14 can. There is a lot of detail.

15 Just a quick little background. CVE
16 is an independent power producer that focuses
17 on community solar in States where programs
18 are actionable. Our North America Division
19 is located here in New York. We have about
20 58 megawatts of community solar projects in
21 operation, and have another 57 megawatts in
22 construction for 2024, and another over 200
23 megawatts in various stages of
24 pre-construction development.

25 There's information on the board

1
2 there, in terms of ISO certifications. We
3 are a certified B Corp, which is a vigorous
4 process to become ISO certified with 9001 and
5 14,001 standards, as well as a certified B
6 Corporation. There is a a lot there, but
7 just to give you an idea that we propose
8 quality and when we are done the project is
9 going to be -- the ISO certifications have to
10 do with supply chain, employees and any kind
11 of balancing profit against a company's
12 purpose.

13 So-to-speak briefly, some of our
14 projects you'll see in the State of New York,
15 mostly in the upstate region, that's about 40
16 megawatts of our installed capacity right
17 now. They happen to reside in upstate
18 New York for a particular reason, because
19 there is a bit of a capacity at the utility.
20 When you make these solar projects and
21 produce power, you are sending them back to
22 the grid in reverse direction; kind of
23 against the flow of the power plant. So,
24 there is the capacity to do that in some of
25 the upstate utilities. It's been very

1
2 challenging in the downstate utilities. So,
3 we're a little more active upstate than
4 downstate, but we're always looking for
5 projects, always looking for site that have
6 that ability to get permission by the utility
7 to even operate and provide clean power to
8 the grid.

9 The State of Massachusetts another 40
10 megawatts. We have an operation there. We
11 have three or four projects that we cannot
12 build and there are several hundred that are
13 also in queue, because this State embraced
14 the community solar program and there's three
15 different utilities -- actually four
16 different utilities in the State. All of
17 those utilities have now dried up for being
18 able to accept any more energy to be fed into
19 their utility grid. There's just more
20 power -- it really has to do with substation
21 capacity, age of the equipment sort of thing.
22 Essentially, Massachusetts was a very active
23 solar market, and now it's been really very
24 quiet for about two years with many projects
25 unable to be built.

The cap program that Southampton has recommends evaluating rated and underutilized sites for repurposing to low carbon energy production which, again, is what we're proposing here.

New York State goals, the climate leadership and community protection law that's been in place a while, both New York State and DEC support these goals. It's a 70

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

8
9
10
11
12
13
14

L5
L6
L7
L8
L9
20
21
22
23
24
25

1 understand how that works.

2
3 Community Solar is a program where
4 energy will be injected into the local grid.
5 In this case, into PSEG LI's grid. We have
6 gone through a complete Caesars study, a
7 coordinated electrical review study, an
8 interconnection study, to ensure that the
9 infrastructure that PSEG has in this area can
10 handle it. That means the wires and the
11 switch gear and transformers, all the way
12 back to substation, that it can handle
13 reverse power from this project. It's a long
14 process and we were approved for this. This
15 is an extremely rare case. It doesn't exist
16 anymore in Massachusetts, it's very limited
17 elsewhere in downstate New York. So, this
18 project and this site is a particularly
19 unique site, just for that reason alone.
20 There's many stories we can tell about
21 projects that have not been able to move
22 forward for that reason alone.

23 So the site has a -- there was a
24 conversation about the beneficial use by the
25 applicant, and I want to make sure everybody

1 understood that when we provide this power
2 back to the grid, this power will provide
3 energy credits to local residents, government
4 buildings, school buildings, so that they can
5 save money on electricity cost. We can do
6 this in a mine site where the value of the
7 land is a little bit less than you might
8 imagine at the bottom of the sand mine than
9 other properties. We own the property. It's
10 scarce on Long Island. Open space that can
11 development is even more scarce. Anything
12 that is available is very expensive and
13 there's a lot of other uses that can be
14 applied. We're able to do a community solar
15 project on a site like this because of the
16 value of the land is a little bit less
17 because there's limited uses for that land.
18 So, it's unique in that regard too.

19 We propose considerable savings on
20 the LI community, low income communities.
21 So, we try to identify homes that need help
22 and we try to get people to subscribe to the
23 program and save money on electricity bills.
24 That would be offered to any government
25

1
2 buildings in Riverhead, Southampton,
3 Brookhaven, County of Suffolk, and even the
4 Suffolk County Water Authority to be able to
5 utilize and democratize the benefits of solar
6 energy on PSEG utility costs.

7 It will not only help the folks I
8 mentioned there, it's going to create greater
9 biodiversity and more favorable habitat for
10 plants, insects and wildlife in the base of
11 the mine by providing shade, by providing
12 opportunity for vernal pools, and all of the
13 vegetation that was proposed a number of
14 years ago is still in this plan, and this
15 project allows for all of the vegetation to
16 happen just the way it was planned, and we
17 even made it more robust.

18 So, I'm asking for the Commission to
19 look at our hardship application and the case
20 that we provided here, but also to look at
21 the greater good here. This is not a project
22 that just benefits the applicant, this is a
23 project that is designed to provide community
24 benefit and benefit to the government offices
25 for everyone at the dais today. And the

1
2 plan, again, helps with biodiversity, and the
3 shade of the solar panels creates a habitat
4 for wildlife that wouldn't be there without a
5 solar project. So, we're trying to consider
6 all of those efforts.

7 So, the site is extremely unique and
8 will provide clean energy. The
9 interconnection that I talked about, the
10 value of the land and the solar from
11 Southampton. But also, the site has been
12 cleared. It's a completely environmentally
13 impacted site. It's been cleared of
14 wildlife, it's been cleared of vegetation for
15 many, many decades. This will be an
16 opportunity to rebuild that site and reforest
17 that site and be able to build clean energy,
18 which is going to cut down more greenhouse
19 gasses, 60 times more greenhouse gasses than
20 trees can do alone. This project can reduce
21 greenhouse gasses through the generation of
22 clean energy and reforest the site, so that
23 it can capture a lot of those greenhouse
24 gasses.

25 So, I'm going to hand it off to

1
2 "Chick" Voorhis here who will follow up with
3 some of the more environmental factors.
4 Thank you so much for your time, I appreciate
5 it.

6 MR. VOORHIS: Good afternoon.

7 "Chick" Voorhis of NPV representing the
8 applicant on the application. Steve was
9 talking very quickly, and we do want to get
10 to the points. He has really covered a lot
11 of ground and material, so I'll just be
12 emphasizing a few things, perhaps introducing
13 a couple of additional items, but I really
14 just want to slow down for a second and say
15 we're talking about solar in a sandpit.
16 That's really what we're talking about here.
17 I hope that there's a way that the laws and
18 regulations that were adopted in 1993 and
19 1995 can be adapted for this type of use; and
20 that's really what we're saying.

21 Steve was talking about the greater
22 good, the uniqueness of the site, the
23 uniqueness of the use, the passive nature of
24 it. So, let's not get in our way, when we're
25 really trying to do something good for the

1
2 environment and we're trying to do something
3 good for the residents of the Town of
4 Southampton. We're meeting energy goals at
5 local, regional and State levels and
6 basically providing the benefit overall.

7 So, we'll go through very quickly.
8 You know the team. Mr. Gilmartin is here if
9 you have any questions. Steven will stick
10 around if there are any further questions.
11 After our prior hearing, we submitted
12 additional information. That consisted of
13 additional hardship justification,
14 consistency with Town, State and County
15 initiatives. Environmental and community
16 benefits, and land owner hardship additional
17 information, much of which has been covered.

18 You know the site. It's 115 acres.
19 It's between east of Speonk Riverhead Road,
20 south of Sunrise Highway and North Country
21 Road. The project has been characterized in
22 the staff report and discussed, and many of
23 these things Steven covered. It's isolated
24 from view. It does allow CVE to tie into the
25 grid. It's a sandpit. It's a passive and

1
2 temporary use of the site, and ultimately it
3 will be decommissioned and the site will
4 return to complete open space. But this plan
5 does allow us to continue re-vegetation and
6 restoration of site with native species to
7 the benefit of the environment.

8 This was one of the questions in the
9 staff report, but this looks at what would
10 potentially be the overall project with the
11 northern portion, which is not guaranteed
12 because they have to evaluate -- CVE has to
13 evaluate energy needs at some point in the
14 future. That's why we have been emphasizing
15 Phase 1. But we will answer that and address
16 that question from the staff report.

17 This has been covered, it was talked
18 about previously. As I said, the site is
19 extremely unique for the reasons that have
20 been outlined.

21 Similarly, the use. There's no
22 sanitary waste, there's no traffic, there's
23 no population. There's nothing taking place
24 on the site except the passive installation
25 of the solar panels. We believe, and this is

1
2 part of the relief that's requested, that we
3 are at least consistent with the spirit and
4 intent of the the conservation easement. Of
5 course the easement will be fully observed
6 after the decommissioning of this temporary
7 use, but this allows us to re-vegetate the
8 property, continue that re-vegetation, and
9 basically establish a basis for open space on
10 the property now, under this passive
11 temporary use, and in the future.

12 This was already covered. This is
13 essentially the re-vegetation plan showing
14 some of the vernal pools. These you have
15 seen or some of the commissioners that were
16 here for the previous commission and the
17 prior meeting had seen these images of solar
18 installations that our firm worked on in
19 various parts of Suffolk County where
20 wildlife is thriving underneath and within
21 the solar array. So, these are actual
22 photographs from projects that we have been
23 involved with, and this is what we are
24 looking to achieve on this site.

25 As Steven said, and we emphasized in

our supplemental submission, the allowance for shading does enable vegetation to grow in a more healthy way and in a more rapid way than unshaded areas in the Pine Barrens. We have seen this through restorations where you may have vegetation that comes up next to certain trees that are -- that carry their leaves or needles all year round, those protect the vegetation. So, we feel this will help establish the re-vegetation on the property in a way that will benefit the environment and benefit the restoration plan.

So, this re-vegetation plan builds on the successful restoration to date. It achieves the goals of the restoration that was originally approved. It's consistent with the Pine Barrens Commission guidelines, and those take effect in July. It will provide habitat for pollinators, reptiles, birds and mammals, and establish a permanent habitat that will continue on the property. So, we believe it's consistent with the basic purpose of the conservation easement.

Your mission talks about partnerships

1 and stewardship initiatives for environmental
2 protection and benefitting the Pine Barrens.
3 We believe that this is consistent and in
4 line with the basic charge of the Commission,
5 based on that mission statement. We believe
6 there is at least some precedent for energy
7 related projects and their approvals that we
8 feel are important to have as part of the
9 record.
10

11 This has been covered by Steven.
12 This is the Town of Southampton CAP - Climate
13 Action Plan. We don't need to repeat that.
14 The State has similar plans. Again, Steven's
15 slide covered this.

16 There's also the Long Island solar
17 roadmap which is an effort by the Nature
18 Conservancy and Defenders of Wildlife to look
19 for low impact sites for solar arrays. We
20 believe that we're very much in keeping with
21 this and also very consistent with public
22 opinion surveys regarding solar alternative
23 energy.

24 This was outlined in the staff
25 report. The applicant seeks to shorten the

1 length of the mining period from 2044 to
2 2039, a period of five years. It will not --
3 this is based on the staff report question.
4 It won't change the amount of material that
5 comes out, but it could and will speed up the
6 removal of the material. It will also allow
7 the re-vegetation efforts to take place five
8 years earlier. So, we feel that's a
9 significant offering that just further
10 benefits the environment, as far as this
11 application is concerned.
12

13 MS. MOORE: Chick, can you go back
14 two slides? You said there's a roadmap.

15 MR. VOORHIS: Solar roadmap was this
16 third one.

17 MS. MOORE: What is that roadmap, low
18 impact site.

19 MR. VOORHIS: There is information on
20 the web. It's an effort by the Nature
21 Conservancy and Defenders of Wildlife have
22 taken authorship of this. It's a roadmap
23 that identifies low impact sites for
24 commercial and utility scale solar arrays.
25 Again, when you look at the criteria that

1 they outlined, we are consistent with that.
2 They also seek to have local governments,
3 LIPA, PSEG on Long Island to help with
4 identifying and supporting low impact siting
5 of solar arrays. So again, this is very much
6 consistent with that. If I covered that too
7 quickly.
8

9 MS. LANSDALE: Just to follow on that
10 question. Were specific sites identified in
11 that solar roadmap?

12 MR. VOORHIS: I will look again. I
13 don't believe specific sites were identified.
14 We'll double check that.

15 MS. LANSDALE: My follow up question
16 would be, was this site identified?

17 MR. CALARCO: That was my memory that
18 the Commission identified sites and
19 identified enough sites to provide all the
20 solar.

21 MS. LANSDALE: That was my memory
22 too.

23 MR. CALARCO: I don't know if this
24 site is in that list or not, but that was my
25 memory from the presentation as I recall.

1
2 MR. VOORHIS: I will get the answer
3 to that. I don't have it with me at this
4 time. I don't think it was specifically
5 identified, but I'll clarify that.

6 I covered the land owner commitment,
7 also placing areas of the property that are
8 not currently in a conservation easement.
9 So, this is the south wooded portion of the
10 property, essentially. But that would be
11 offered to be added to the conservation
12 easement for permanent protection, and that
13 aligns with other conservation easements in
14 the area. So, that's additional since the
15 last hearing.

16 Environmental benefits I think we
17 covered this. I don't need to go through it
18 in too much detail, but there are a couple of
19 interesting facts that, essentially, both
20 phases of the project would enable the
21 powering of 2,200 homes, just based on the
22 output of this solar array and would avoid
23 over 13,000 tons of CO2 emissions and offset
24 emissions of 2,680 passenger vehicles, just
25 by implementing this project in total, and,

again, the other benefits that we mentioned.

Public and social benefits. Again, State and governmental energy goals, we feel that's very important and needs to be considered. It's not something that was really available or known about in detail in the 90's when these laws and regulations were adopted. There will be a prioritization of low to moderate income households and local small businesses. Energy credits will go to over 5,000 residents. Customers will save five to ten percent on monthly utility bills. CVE employs green imitatives and makes donations to local non-profit organizations. So, we we do feel there is a compelling public need, based on all of this information.

I know there was some emphasis in the staff report about alternatives, but Steven covered that. His company has been looking for siting of facilities actively throughout the entire northeast, if not the nation and the world, as he showed in some of his slides.

1
2 With the nature of the site as a
3 sandpit and the connection to the energy grid
4 that is facilitated by this site, it is a
5 unique site. They did not identify other
6 alternatives. I'm not sure how much addition
7 information we can provide, but certainly the
8 work that CVE did to identify this site is
9 important. If there's any further
10 information, we do plan to respond to the
11 staff report.

12 Again, there are rate increases
13 proposed that this would help to offset.
14 This does go into a little more detail on
15 alternatives, but I believe I covered that,
16 and Steven also talked about it. We will
17 review the staff report and provide
18 information.

19 In summary, it's been a mine since
20 1981. It's permitted through 2044, based on
21 our land reclamation plan filed with the DEC.
22 The adoption of the CLUP essentially created
23 this as part of the core and compatible
24 growth area in the 90's. It's a disturbed
25 site and it has grid connection abilities.

So, there were a couple of questions. Again, we'll follow up with a written submission. We believe that the hardship is supported by the presentation materials provided. There's a typo up there, but the revised plan will depict the full project. I showed you an image of that. It will also indicate the boundaries.

Based on our assessment, phase 1, approximately 50 percent of that phase 1 area is within the core preservation area and the other half is in the compatible growth area. We do have the GIS coverage for those boundaries, and we'll make sure that they're

1 mapped on the updated plan. Phase 2 is
2 entirely within the compatible growth area on
3 the northern part of the property.
4

5 To date, 45 acres have been mind.
6 And we'll have to get the quantity of
7 extracted material, but again it's in
8 conformance with the DEC mining plan. We
9 filed reports, I believe it's yearly, with
10 renewals as needed to reach the full life of
11 the mine, based on the reclamation plan. 45
12 acres re left to mine. Again, that quantity
13 will have to be a follow up item.

14 We're committed to establish a
15 conservation easement; that's the 24 acre
16 area on the southern part of the site. Seven
17 of the comments from the staff, the DEC, and
18 the governor's office are supportive of mine
19 to solar project reclamations. We understand
20 there's a process for this and we understand
21 there would be support at the State level
22 based on these initiatives.

23 Some of this may be a repeat, but
24 I'll go through it quickly. 45 acres is the
25 area of mining that's completed. An

1 additional 45 acres in the process of being
2 mined. Habitat restoration has been
3 completed on 26 acres of the property. I'd
4 be happy to arrange a field visit. It is a
5 harsh environment, Pine Barrens. Soils that
6 aren't nutrient rich; that's why the
7 vegetation grows there. So, areas that were
8 planted a longer number of years ago have
9 come in more fully, and the more recent
10 re-vegetation areas are taking shape. So,
11 again, we can supplement it based on our
12 revised plan to improve the re-vegetation.
13

14 It's sound as though the Town has
15 responded for the Commission to be lead
16 agency, based on lead agency coordination,
17 and we will provide a decommission plan.

18 So, we have covered all of this. I
19 really appreciate your attention and letting
20 us get through some of that material. I will
21 be here if there are any questions, as well
22 as the team members.

23 MR. CALARCO: Thank you, Chick. Is
24 there anybody else from the applicant who
25 wants to present?

1
2 MR. VOORHIS: Mr. Gilmartin is here,
3 if there are questions.

4 MR. CALARCO: Anybody on the Board
5 have questions?

6 MR. HUBBARD: Part of the hardship is
7 you having to show that there's no other
8 location in the town or the county that you
9 could put this project on.

10 Do you feel you have demonstrated
11 that to us?

12 MR. ENGELMANN: So, we certainly can
13 demonstrate that. I would make note that in
14 order for the town, county or State to meet
15 their energy goals. This is not a case of
16 this site or that site, it's a case of this
17 site and many other sites outside of the Pine
18 Barrens that will need to be built for solar
19 projects. So again, if there's four
20 megawatts that can be built in the State and
21 most of that is happening upstate, we need to
22 find sites on Long Island that can be built
23 to meet these goal.

24 We can certainly demonstrate in our
25 response some of the work we have done to

1
2 look at alternative sites. In many cases,
3 those sites are restricted by the utility,
4 they are restricted by zoning in terms of
5 neighbors having access and seeing it. This
6 site is unique in the sense that it doesn't
7 have an impact on neighbors and abutting
8 residential or commercial neighbors, and it's
9 got the ability to interconnect. And the
10 value of the land has a certain value that
11 allows this project to be developed. We can
12 certainly demonstrate a number of other sites
13 where solar is not able to be built, and
14 certainly provide that in our response.

15 Does that answer the question?

16 MR. HUBBARD: It answers the question
17 without an answer. It was supposed to be
18 provided to us. This is your chance at the
19 hearing to show us why this hardship should
20 be granted, simply because there's no other
21 available site to do this, I don't think you
22 demonstrated that at all.

23 MR. ENGELMANN: I will say that the
24 document that was received yesterday, the
25 staff report midday yesterday. We got that

1
2 at 12:30 yesterday. So, we didn't have a
3 whole lot of time to be able to put together
4 a thorough response in a 24 hour window, but
5 it is something we certainly can provide to
6 you.

7 MR. HUBBARD: This is the second
8 hearing you have been granted on the same
9 property, correct?

10 MR. ENGELMANN: It is the second
11 hearing, yes, sir.

12 MR. HUBBARD: Okay.

13 MR. CALARCO: Any other questions?

14 (No response was heard.)

15 MR. CALARCO: I have a couple of
16 questions.

17 First in the reclamation plan that
18 has been presented to us, it's clear that
19 there are areas that are supposed to be
20 planted with pitch pine trees, as I
21 understand it, which is really the core of
22 what the Pine Barrens are.

23 So, I don't believe that works with
24 solar panels. Could you explain how that
25 meshes for me?

1
2 MR. VOORHIS: Sure. So, Pine Barrens
3 are many types of vegetation. Obviously,
4 Pine Barrens would directly state that pine
5 trees are part of that. But there's meadows,
6 there's wetlands, there's oak forest, there's
7 many types of natural areas. It is true that
8 pitch pine trees would not be compatible with
9 solar because they would shade the panels.
10 We believe that the native restoration will
11 more fully develop and establish ground cover
12 to a greater extent with the shade of the
13 panels. So, pitch pine trees would have to
14 come at a later date, or they would come in
15 naturally as a result of seed stock in the
16 area, native genotype seed stock, as they
17 have been on the side walls of the mine.

18 So, over time over this will
19 definitely become native successional. Pine
20 trees will exist after the cessation of the
21 solar use. But it is true that they are not
22 consistent with the panels because they would
23 shade them.

24 MR. CALARCO: So you would not be
25 planting those areas with pitch pines, as

1
2 proposed in the current reclamation plan and
3 the property owner would be relieved of that
4 financial burden.

5 MR. VOORHIS: One of the things we
6 can do, and the Giaquintos have been, really,
7 I just want to say, advanced in cultivating
8 pitch pine trees. They basically set up a
9 nursery to retain pitch pine trees. So, we
10 could harvest some of those trees and put
11 them in stock for future re-vegetation or
12 plant them on the side slopes of the mine so
13 they have the ability to, again, bring in
14 natural seed stock.

15 MR. CALARCO: Are you committing to
16 implementing the plan as presented in the
17 reclamation now in the future, once the solar
18 panels are removed?

19 MR. VOORHIS: That's a good question.
20 I'd like to follow up on that just to -- it's
21 not part of the plan as we show it now. As I
22 indicated, I expect that natural seed stock
23 will help take over, especially through the
24 control of invasives and other things. But I
25 will ask our mutual land owners, as well as

1
2 CVE is that is something we could look at for
3 the future.

4 The Giaquintos have been amazing to
5 me in cultivating a lot of the natural
6 materials. I mean, we all recognize that the
7 southern pine needle is affecting areas of
8 pitch pine trees, but that doesn't mean we
9 don't have pine barrens in those areas. It's
10 essentially a habitat community that will
11 evolve based on some of these environmental
12 specimens. This property we're helping along
13 for natural restoration, and it would
14 re-vegetate naturally in the future based on
15 the species that are adapted. But I will
16 specifically find out an answer to that, if
17 we can implement pine tree plantings after
18 solar.

19 MR. CALARCO: That would be great,
20 because the other question I do have is, you
21 say that the solar panels have a lifespan and
22 the solar project then will be dismantled, I
23 guess, at the end. How do we know that at
24 that time you will not come back to the
25 Commission for authority to install a few set

1 of panels for another 30 years? Obviously,
2 the grid is going to need power, as we move
3 towards more and more electrification of how
4 we power things; vehicles and what have you,
5 homes. We're going to need that power, we're
6 going to need renewable sources. I
7 understand that fully. That's certainly the
8 goal the State is putting us on.

9
10 My question would be, are you saying
11 in 30 years you won't need that power anymore
12 that you are producing, or the grid will have
13 to adjust as time goes on?

14 MR. ENGELMANN: A little more of the
15 latter. We have a lease agreement and we
16 have equipment lifespan that we would be
17 working with, which will be in that 30 year
18 bracket. So, our plan is to decommission and
19 disassemble the system after 30 years. I
20 guess we'll cross the road in terms of what
21 the utility need is at that time, what the
22 energy need is at that time. Our intention
23 is to only use this site for a period of 30
24 years that we have secured the site.

25 MR. VOORHIS: That sounds like a

1
2 commitment to not seek any further use bonds
3 that what is requested.

4 MR. CALARCO: You said that the life
5 of the mine is going to basically end five
6 years earlier than anticipated, but it's not
7 from a lack of or removing less material. Is
8 this just a fact that their rate of removal
9 now has them on pace to end in five years?
10 In that case, I'm not sure how that is a
11 benefit to the environment, to the ecosystem
12 or to the Commission, in terms of a giveback
13 to us, because they're still removing sand.
14 They're not doing anything different, it's
15 just they are removing it faster.

16 Obviously, they have a dept that they
17 are permitted to go to. Whether they hit
18 that depth tomorrow or in ten years is really
19 irrelevant in terms of the impact of mining
20 that would have.

21 MR. VOORHIS: Obviously, the removal
22 of sand is market driven. If there's not an
23 outlet for material, they can't sell it.
24 They have looked and projected and believe
25 that they can either accelerate or continue

1
2 what they are doing now and end five years
3 earlier. So again, it is permitted up to
4 2044; that was reflected in the prior
5 approval. We're saying it will not go past
6 2039, and that will allow us to fully
7 re-vegetate the property at an earlier date.

8 Again, it's market driven. This is
9 just an iron clad five years earlier than
10 what was originally proposed and allowed
11 under the permits.

12 MR. ENGELMANN: The existing schedule
13 does see them removing sand for the full
14 term. They would be adjusting their schedule
15 to accommodate.

16 MR. CALARCO: So my last question,
17 and "Chick" you know this program better than
18 I do.

19 MR. VOORHIS: I wouldn't count on it.

20 MR. CALARCO: You certainly do. You
21 know a hardship requires economic -- showing
22 there is an economic burden on the property
23 as well. You need to demonstrate to us that
24 the property has no other value economic
25 value. I don't believe you have addressed

1
2 that in any fashion to date. Certainly, this
3 is really irrelevant on the solar company.
4 The property owner is a sand mine and they're
5 extracting economic value from the property
6 as we speak. So, I'm not sure how you hit
7 that threshold or addressed that threshold.

8 MR. VOORHIS: I think we are looking
9 to hopefully adapt some of the laws that were
10 adopted in the 90's for current
11 opportunities. We can look at that again, to
12 the extent there is anything more we can do.

13 MR. CALARCO: I don't think this body
14 has the authority to adapt the laws. The
15 laws are the laws that are written. There's
16 another entity you go to, if you want to
17 change those laws. I need you to address
18 that proviso, so that we can better
19 understand. I'm not saying this is a bad
20 project, I'm just trying to figure out how it
21 fits into the statutes that we operate under.

22 MR. VOORHIS: We made our case in
23 several submissions. As we go through the
24 response, certainly Number 1 of the staff
25 comments. If there is any further

information we can provide, we will.

MR. CALARCO: That's all my questions. Anybody else have any other questions?

(No response was heard.)

MR. CALARCO: Seeing none, I know mentioned that you want to get us addition information. As is usual, we try to leave the record open for a period of time so that folks can get -- I have few people public speakers. Is that is from the applicant?

MR. VOORHIS: Yes.

MR. CALARCO: I do have a public speaker signed up. I apologize. Nina Leonhardt.

MS. LEONHARDT: Nina Leonhardt, Lone Island Pine Barrens Society.

So, we do appreciate the staff report and the comments that the Town provided in the supplemental letter that staff received, and we do appreciate the questions that have come up here. We have a few comments to go along with all of that and none of them should be surprising. Some refer to the

1 conservation easement, so I'll start with
2 that one.

3
4 It's interesting that the
5 conservation easement was provided as part of
6 the condition of the hardship waiver, when
7 last this came before this body. And the
8 owner at that time agreed that the easement
9 prohibited the owner or any successor from
10 applying to the Commission for another
11 hardship exemption. So, that's where the
12 easement and the hardship exemption come
13 together.

14 The nature of an easement, of course,
15 a conservation easement is also a question.
16 As mentioned in the last comment -- thank
17 you, chairman -- what's to stop this group,
18 never mind CVE. CVE might remove the panel,
19 but the property owner could get another
20 solar entity or another business totally. We
21 don't know what the state of electric
22 generation will be in 30 years. It's
23 probably not going to be the solar panels
24 that CVE is installing today. What's to stop
25 the property owner from asking for another

1 conservation easement to again do something
2 with this sand mine property? And what's to
3 stop the property owner from looking for some
4 type of conservation easement on properties
5 that they are now telling us will be
6 protected with conservation easement? We
7 don't have any evidence of that. In fact, we
8 have just the opposite. We see a continuing
9 pattern of going back for conservation
10 easement hardship. So, that is something
11 that concerns us.
12

13 The hardship, and thank you
14 Supervisor Hubbard and Chairman Calarco for
15 bringing up the hardship criteria. In fact,
16 for those of you with long memories, you
17 might recall that the society brought legal
18 action to stop some of these actions way back
19 in 2012. It was finally, the final decision
20 was handed down at the state appellate court
21 in 2016, and carefully noted that hardship
22 could not be a result of a self-created
23 situation. That's what this seems to be, a
24 self-created situation, because the applicant
25 promised certain things and is now saying no,

1
2 I want to go another way. They agreed -- the
3 applicant agreed to those terms and is now
4 looking for something else. That sounds
5 self-created to me.

6 We do not object to solar. We agree
7 that solar is a very important element of the
8 governor's and the country's and the world's
9 approach to energy at this time, and the
10 community benefits and that whole program is
11 absolutely wonderful. But again, this is
12 piggybacking on Chairman Calarco's statement,
13 you still have to follow the law. Thank you.

14 MR. CALARCO: Thank you Nina. Any
15 questions?

16 Is there anybody else in the audience
17 who would like to address us on this
18 particular public hearing?

19 Please state your name.

20 MR. SULLIVAN: Daniel Sullivan.
21 Westhampton Beach Village.

22 Just a few point on the solar
23 roadmap. When it was put out, I looked at it
24 because it's a lot of what I do. They didn't
25 take into effect wetlands set by zoning

1 capacity. Capacity is major, right? That's
2 the whole key to this. If everything else
3 works, does the capacity provide? Can we
4 utilize the grid? It wasn't taken into
5 effect. Quite frankly, it would be extremely
6 expensive, it would take a very long time and
7 the grid is never changing. If it's going to
8 be here today, it's going to be around
9 tomorrow. When they did that, they had the
10 best of intentions, but it's really very hard
11 to apply, as a developer. I'll check into it
12 and make sure that we provide when this site
13 was put there. I was excited when they put
14 it out, but they really didn't take in all of
15 those factors. So, that's kind of what they
16 are saying with this site, it does take in
17 those factors, it does work. We know that.
18 Guaranteed we have a spot in line for this to
19 work.
20

21 For instance, the rooftop. On the
22 solar roadmap they put out rooftops and said
23 put it all over here. Again, no capacity.
24 They didn't check that. And they didn't
25 check the status of the roof; can it hold the

1
2 load, is the insurance there and all the rest
3 of it.

4 So, it is quite complicated to find
5 places to put these, because there are so
6 many things that apply to it, but we have
7 found one. I wanted to address that with the
8 solar roadmap taken into effect.

9 MR. CALARCO: Thank you.

10 MS. SCHERER: I have one question to
11 clarify. This was a mine before the Pine
12 Barrens Act; is that true? It was
13 pre-existing?

14 MR. CALARCO: This is pre-existing.

15 MS. SCHERER: They are mining to
16 2044?

17 MR. CALARCO: Their initial mining
18 permit authorized a certain depth, elevation,
19 and they did receive a hardship to develop
20 it.

21 MS. SCHERER: Thank you. I just
22 wanted to get those facts.

23 MR. CALARCO: Anybody else? Seeing
24 none, I guess what we'll do is entertain a
25 motion to --

1
2 MR. MILAZZO: I think the Commission
3 should consider closing the public portion of
4 the hearing, allowing them two weeks. I
5 think they wanted to provide additional
6 information. We'll give them two weeks to
7 provide information and we'll have a return
8 date of the Friday after the Commission
9 meeting. The Commission will post on the
10 web, give people a chance to respond within a
11 week, and then everything will be complete by
12 the May meeting, and the decision deadline is
13 June.

14 So, close public hearing, two weeks
15 is the 24th, and then one week for anyone
16 else to submit, so everyone has a chance to
17 review materials.

18 MS. SCHERER: Is that enough time to
19 get back that stuff.

20 MR. MILAZZO: Well, then we'll need
21 an extension, because the deadline is the
22 June meeting. If you return all of your
23 information by May 1st. So, close the public
24 hearing today. May 1st is the deadline for
25 the applicant to supply any additional

1
2 information, and then anybody else that wants
3 to supply information has to submit it by
4 May 10th, Commission meeting is the following
5 week. We'll have everything to review and
6 then have a conversation, maybe we need an
7 extension past the June meeting.

8 MS. SCHERER: Should you have the
9 hearing open to review that stuff so then
10 you're closed out again? Do you want to have
11 it open so the members can review that
12 testimony or no?

13 MR. MILAZZO: E have done it both
14 ways.

15 MR. CALARCO: Are you suggesting we
16 leave the public hearing open until the May
17 meeting?

18 MS. SCHERER: Just so they can submit
19 that information.

20 MS. MOORE: That's part of the
21 record.

22 MR. MILAZZO: You would close the
23 hearing portion and leave the record open.
24 We have done that in the past. You could
25 leave it open. What does the council do

here?

MS. SCHERER: We usually go either way. A lot of times we leave it open to get that testimony because somebody might want to have some dialog about it. So we have a chance to talk about it.

MR. CALARCO: I'm open to whatever the Board;s preference is.

MS. DI BRITA: I think it's smart to do it that way.

MR. CALARCO: Can I take that as a motion to recess the public hearing to the May 15th meeting?

MR. MILAZZO: With a request that any information the applicant wants to submit it submitted by May 1st, so that it can be put up on the web and people can have that, so they can make a presentation based on the information.

MR. CALARCO: So we can try to close this on the May 15th meeting and have a decision by June.

MR. MILAZZO: Yes. We may be asking for an extension at the May meeting. We'll

see where we are.

MR. CALARCO: Is that okay? Does that work for everyone?

MR. ENGELMANN: It's a tight timeline, but we'll take it.

MR. CALARCO: I have a motion to recess the public hearing to the May 15 meeting at 2:30. I have a motion from Ms. DiBrita, seconded by Commissioner Lansdale.

All those in favor.

(WHEREUPON, there was a unanimous affirmative vote of the Board.)

MR. CALARCO: Opposed?

(No response was heard.)

MR. CALARCO: The public hearing is recessed until May 15th at 2:30.

* * *

April 17, 2024

63

C E R T I F I C A T E

I, BETHANNE MENNONNA, a Notary Public
within and for the State of New York do
hereby certify that the foregoing is a true
and accurate transcript of the proceedings,
as taken stenographically by myself to the
best of my ability, at the time and place
aforementioned.

IN WITNESS WHEREOF, I have hereunto
set my hand this 30th day of April, 2024.



BETHANNE MENNONNA