

CENTRAL PINE BARRENS JOINT PLANNING
AND POLICY COMMISSION

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

-----X-----
ORDER ON CONSENT
No. CPBJPPC 1-2019

By

Estate of Peter Guyder by Joan A. Shwonik and Therese Southworth as Executors and
David T. Fink and Michelle A. Fink as Lessees, Respondents

-----X-----

WHEREAS

1. The Central Pine Barrens Joint Planning and Policy Commission (hereinafter referred to as "the Commission") has jurisdiction over land use activities within the Central Pine Barrens as defined in the Long Island Pine Barrens Protection Act of 1993, as amended (hereinafter the "Act").
2. The Respondents executing this Consent Order are the Estate of Peter Guyder, by Joan A. Shwonik and Therese Southworth as Executors, and David T. Fink and Michelle A. Fink as Lessees.
3. The Estate of Peter Guyder (a "Respondent") owns the 21.5 acre Property located on the northeast corner of Middle Country Road and Wading River Road, in the hamlet of Wading River, in the Town of Riverhead. The parcel is identified as Suffolk County Tax Map ("S.C.T.M.") parcel number (#) 600-115.00-01.00-009.000 (the "Property").
4. Respondents David T. Fink and Michelle A. Fink lease the Property for agricultural use.
5. The Property is located in the "Compatible Growth Area" ("CGA") of the Central Pine Barrens area as defined in the Act and as described in Article 57 of the New York State Environmental Conservation Law ("ECL"), §57-0107(11), and, as such is under the jurisdiction of the Commission.
6. The Act and the Central Pine Barrens Comprehensive Land Use Plan (the "Plan"), adopted by the Commission in 1995, prohibit certain activities, including development, unless such activity has first received a hardship waiver from the Commission pursuant to ECL §57-0123.
7. On June 21, 2017, the Commission granted a CGA Hardship Waiver to the Respondents (the "Decision"). See Exhibit 1 for a copy of the Decision.
8. The Decision authorized the clearing of the Property to a limit of 90% or 19.35 acres for agricultural use, leaving 10% or 2.15 acres to remain in its existing natural state in a vegetated buffer on the east side of the Property. The natural buffer was identified as area 'D' in the survey prepared by Howard W. Young dated January 27, 2017. See Exhibit 2 for a copy of the survey.
9. The natural buffer requirement was also established by the Respondents in the recording of a Declaration of Covenants and Restrictions ("C&Rs") on January 23, 2018 which was filed in

the Office of the Suffolk County Clerk. See Exhibit 3 for a copy of the C&Rs.

10. On January 7, 2019, the Commission was notified that woody debris and soil was placed in the natural buffer. The encroachment was confirmed and identified as an “Earth Berm” in a survey prepared by Land Design Associates dated November 20, 2018 (the “LDA Survey”). See Exhibit 4 for a copy of the County Survey.
11. On January 17, 2019, the Commission alleged that the Respondents had committed a violation and directed that a Notice of Violation be issued to the Respondents. A Notice of Violation letter dated January 23, 2019 was issued to the Respondents.
12. On January 30, 2019, Respondents notified the Commission that they intend to resolve the alleged Violation.
13. On February 6, 2019, Commission staff met the Respondents at the Property and observed and confirmed that an encroachment in the natural buffer area.
14. Commission staff and the Respondent discussed remedies including removing the debris material from the buffer area and allowing the buffer area to restore itself through a natural process without active restoration or revegetation.
15. Respondents Fink hereby acknowledge that disturbance of the Property occurred and Respondent Estate of Guyder acknowledge the violation occurred in contravention of the Decision and C&Rs.
16. Respondents desire to resolve the within matter through this Order on Consent rather than to engage in litigation.
17. Commission agrees to settle the within matter through this order on Consent with Respondents rather than to engage in litigation on the issues.
18. Respondents affirmatively waive their rights to a public hearing in this matter in the manner provided by law, and consent to the entering and issuing of this order, and agree to be bound by the terms and conditions contained here.

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

- I. Cease and Desist. Respondents shall immediately cease and desist any and all further activities in violation of any provision of the ECL in relation to disturbance activity on the Property not in accordance with the Decision and the C&Rs, unless such activities are in furtherance of the remedies provided in this Order.
- II. Relief.
 - A. Suspended Penalty. With respect to the violations identified in paragraphs “10” and “11” of this Order, the Commission assesses against Respondents a civil penalty in the sum of TEN THOUSAND (\$10,000) DOLLARS, of which TEN THOUSAND (\$10,000) DOLLARS is suspended pending complete compliance with the terms and conditions of this Order on Consent.
 - i. Method of Payment. If payment should become due and payable, payment shall be made in accordance with the following three paragraphs.

- a. The payable portion of the penalty is to be paid by bank check made payable to "Central Pine Barrens Joint Planning and Policy Commission," as the case may be.
- b. Payment to the Commission must have written on its face: CPBJPPC 1-2019/ Estate of Peter Guyder and David T. Fink and Michelle A. Fink.
- c. Payment to the Commission shall be delivered to:
Central Pine Barrens Joint Planning and Policy Commission
624 Old Riverhead Road
Westhampton Beach, NY 11978

B. Respondents shall remove the existing land clearing debris, consisting of branches, natural woody material, cleared vegetation and excess soil, from within the natural buffer and shall avoid and retain any standing extant natural vegetation remaining within the natural buffer, to the maximum extent practicable.

C. Land clearing debris and excess soil removed from the buffer may be screened, used, processed and distributed elsewhere on the Property but in no case shall any of the aforesaid removed material be placed in any portion of the natural buffer areas on the Property.

D. Once the land clearing debris and excess soil has been removed from the natural buffer area, the portion of the natural buffer previously covered and occupied by the land clearing debris shall be allowed to naturally revegetate and Respondents shall not cause any further disturbance of or encroachment upon the aforesaid natural buffer.

E. Once the land clearing debris and excess soil has been removed from the natural buffer area, Respondents shall provide proof of same in a letter to the Commission, sent via certified mail within two (2) weeks of completion of the land clearing debris removal process.

F. Once the land clearing debris and excess soil has been removed from the natural buffer area, Respondents shall install along the western boundary of the natural buffer area, markers of sufficient height and visibility so as to ensure the location of the natural buffer area is clearly discernible. Said markers shall be placed no less than 500 feet apart. The size, manufacturer and type of marker selected by Respondents shall first be submitted to the Commission for its review and approval. Respondents shall not purchase nor install said markers unless and until the Commission has issued a written approval to Respondents.

G. Removal of the aforesaid land clearing debris from the natural buffer area shall commence no later than thirty (30) days following the effective date of this Order and shall be completed no more than thirty (30) days after removal commences.

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 activities described in this Order against Respondents and their 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 parties, including Respondents.

IV. Failure, Default and Violation of Order.

A. Failure of Respondents 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 Respondent by the Commission and further action as deemed appropriate by the Commission.

V. Indemnification.

Respondent 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 Respondent 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 Respondent and their successors (including successors in title) and assigns.

VII. Modification. In those instances in which Respondent desires that any of the provisions, terms or conditions of this Order be changed, Respondent shall make written application, setting forth the grounds for the relief sought, to the Commission at 624 Old Riverhead Road, Westhampton Beach, New York 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, with prior notice, shall be permitted access to the Property, for which consent shall not be unreasonably withheld or conditioned, at least twice a year for two (2) years at reasonable hours and intervals, in order to inspect and determine the status of Respondents' compliance or as deemed appropriate in the event of a potential violation in which case, notice and consent shall not be required. The two (2) year period shall commence on the effective date of this Order.

IX. Confirmation of Compliance. At the completion of the two (2) year period described herein, and after receiving confirmation by Commission staff that the conditions of this Order have been adhered to by Respondents, the Commission may authorize the issuance, by Commission staff, of a written declaration to Respondents that that Respondents have complied with all conditions of this Order.

X. 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 they 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 obtain knowledge of any such condition and request an extension or modification of the provisions hereof.

XI. Entire Order. The provisions of this Order constitute the complete and entire Order issued to Respondent concerning resolution of the violations identified herein. 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 Respondent shall be construed as relieving Respondents of their obligations to obtain such formal approvals as may be required by this Order.

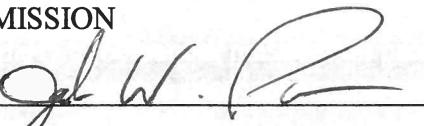
XII. Counterparts and Execution. This Order may be executed in any number of counterparts and will be final and binding upon signature of all Parties. Faxed, scanned, e-mailed, and digital signatures shall be acceptable as original signatures.

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

Dated: Westhampton Beach, New York

March 21, 2019

CENTRAL PINE BARRENS JOINT PLANNING AND POLICY
COMMISSION

By: 

Name: John W. Pavaoza

Title: Executive Director

COMMISSION ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss.:

COUNTY OF SUFFOLK)

On the 21st day of March in the year 2019, before me personally came John W. Pavaoza, to me known, who, being duly sworn did depose and say that he/she resides at 624 Riverhead Road, Westhampton Beach, NY 11795 that he/she is the Executive Director of the CENTRAL PINE BARRENS JOINT PLANNING AND POLICY COMMISSION the entity described herein and which executed the above instrument; and that he/she signed his/her name thereto with full authority so to do.

Sworn to before me this
21st day of March, 2019

Notary Public

Carol A. Sholl

CAROL A. SHOLL
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SH6180927
Qualified in Nassau County
My Commission Expires January 22, 2020

CONSENT BY RESPONDENT

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

ESTATE OF PETER GUYDER, Respondent

By: Theresa Southworth
Name: TERESA SOUTHWORTH
Title: Co-EXECUTRIX
Date: 3/13/19

RESPONDENT ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss.:

COUNTY OF SUFFOLK)

On the 13 day of March in the year 2019, before me personally came Theresa Southworth, to me known, who, being duly sworn did depose and say that he/she resides at Stony Brook Rd that he/she is the respondent described herein and which executed the above instrument; and that he/she signed his/her name thereto with full authority so to do.

MARYLOUISE GAMBELLA
Notary Public - State of New York

No. 01GA6221527

Qualified in Suffolk County
My Commission Exp. 05/03/2022

Sworn to before me this
15 day of March, 2019

Notary Public

ESTATE OF PETER GUYDER, Respondent

By: _____
Name: _____
Title: _____
Date: _____

RESPONDENT ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss.:

COUNTY OF SUFFOLK)

On the _____ day of _____ in the year 2019, before me personally came _____, to me known, who, being duly sworn did depose and say that he/she resides at _____ that he/she is the respondent described herein and which executed the above instrument; and that he/she signed his/her name thereto with full authority so to do.

Sworn to before me this
_____ day of _____, 2019

Notary Public

CONSENT BY RESPONDENT

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

ESTATE OF PETER GUYDER, Respondent

By: Joan Shwonik
Name: JOAN SHWONIK
Title: EXECUTOR
Date: 3/13/2019

RESPONDENT ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss.:

COUNTY OF SUFFOLK)

On the 13 day of March in the year 2019, before me personally came Joan Shwonik, to me known, who, being duly sworn did depose and say that he/she resides at 5338 Rte 25A, Calverton that he/she is the respondent described herein and which executed the above instrument; and that he/she signed his/her name thereto with full authority so to do.

Sworn to before me this

13 day of March, 2019

Notary Public

Patricia Genovese

Patricia Genovese
Notary Public, State of New York
No. 01GE6043821
Qualified in Suffolk County
Commission Expires 6/26/22

ESTATE OF PETER GUYDER, Respondent

By: Joan Shwonik
Name: JOAN SHWONIK
Title: EXECUTOR
Date: 3/13/19

RESPONDENT ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss.:

COUNTY OF SUFFOLK)

On the 13 day of March in the year 2019, before me personally came Joan Shwonik, to me known, who, being duly sworn did depose and say that he/she resides at 5338 Rte 25A, Calverton that he/she is the respondent described herein and which executed the above instrument; and that he/she signed his/her name thereto with full authority so to do.

Sworn to before me this

13 day of March, 2019

Notary Public

Patricia Genovese
Patricia Genovese
Notary Public, State of New York
No. 01GE6043821
Qualified in Suffolk County
Commission Expires 6/26/22

CONSENT BY RESPONDENTS

Respondents, DAVID T. FINK and MICHELLE T. FINK, 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.

DAVID T. FINK, Respondent

By: David T. Fink
Name: Fink's Country Farm, Inc.
Title: Vice President
Date: 03/19/19

DA

RESPONDENT ACKNOWLEDGMENT

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

On the 19 day of March in the year 2019, before me personally came David T Fink, to me known, who, being duly sworn did depose and say that he/she resides at 6242 Middle Catey Rd 11949 that he/she is the respondent described herein and which executed the above instrument; and that he/she signed his/her name thereto with full authority so to do.

Sworn to before me this
19 day of March, 2019

Notary Public

Notary Public - State of New York
No. 01GA6221527
Qualified in Suffolk County
My Commission Exp. 05/03/2022

MICHELLE T. FINK, Respondent

By: Michele A Fink
Name: Michele A Fink, Pres.
Title: President
Date: 3/19/19

RESPONDENT ACKNOWLEDGMENT

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

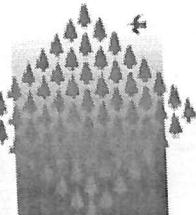
On the 19 day of March in the year 2019, before me personally came Michele Fink, to me known, who, being duly sworn did depose and say that he/she resides at 6242 Middle Catey Rd 11949 that he/she is the respondent described herein and which executed the above instrument; and that he/she signed his/her name thereto with full authority so to do.

Sworn to before me this
19 day of March, 2019

Notary Public

MARYLOUISE GAMBELLA
Notary Public - State of New York
No. 01GA6221527
Qualified in Suffolk County
My Commission Exp. 05/03/2022

Exhibit 1
Finks Farm CGA Hardship Waiver Decision



**CENTRAL
PINE
BARRENS**
JOINT
PLANNING
&
POLICY
COMMISSION

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Sean M. Walter
Member

**Commission Meeting of June 21, 2017
Town of Riverhead Town Hall**

Present: Ms. Carrie Meek Gallagher (State of New York),
Mr. Andrew Freleng (Suffolk County), Mr. Edward P. Romaine (Brookhaven),
Mr. Sean Walter (Riverhead),
Mr. Jay H. Schneiderman (Southampton)

**Approved Resolution
Shwonik/Guyder Farm (Finks Country Farm, Inc.)
Compatible Growth Area Hardship Waiver Application
SCTM # 600-115-1-9**

I. The Project

Whereas, Michelle and David Fink (the Applicant), lessee of the property owned by the Estate of Shwonik Guyder, by their Attorney, Nicholas Rigano, LLC proposes to clear 90% of a 21.5 acre parcel for agricultural use (the Project), located on the east side of Wading River Manorville Road, north side of New York State Route 25, south of Hidden Pond Path, in the Compatible Growth Area of the Central Pine Barrens, in the Town of Riverhead (the Project Site); and

Whereas, at the time of the adoption of the Central Pine Barrens Comprehensive Land Use Plan (CLUP), the Project Site was in the Riverhead Residence A Zoning District and the Project Site was subsequently placed into the RB80 Zoning District, and

Whereas, an 11.4 acre portion of the Project Site or 53% is cleared and presently used for agriculture, and the remaining area, 10.1 acres or 47%, is presently wooded with natural vegetation; and

Whereas, because the Project Site was in the A Residence District at the time of the adoption of the CLUP pursuant to the CLUP Standard, its total site clearance is limited to 53% or 11.4 acres; and

II. The Act and the Commission

Whereas, the New York State Legislature passed the Long Island Pine Barrens Protection Act (the "Act") which was signed into law on July 13, 1993 and codified in Article 57 of the Environmental Conservation Law (ECL). The Act created the Central Pine Barrens Joint Planning and Policy Commission (the "Commission"), to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area; and

Whereas, in furtherance of its mission and in compliance with the directives set forth in the Act, the Commission drafted the Central Pine Barrens

624 Old Riverhead Road
Westhampton Beach, NY
11978

Phone (631) 288-1079
Fax (631) 288-1367
www.pb.state.ny.us

Comprehensive Land Use Plan (the “CLUP”), which was officially adopted on June 28, 1995; and

Whereas, Section §57-0107 of the ECL defines development to be the “performance of any building activity, . . . , the making of any material change in use or intensity of use of any structure or land. Without limitation the following uses shall be taken for the purposes of this article to involve development . . . (b) a material increase in the intensity of use of land or environmental impacts as a result thereof; . . . (c) commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities;” and

Whereas, Section §57-0123 of the ECL provides that “no application for development within the Central Pine Barrens area shall be approved by any municipality, or county or agency thereof or the [C]ommission . . . unless such approval or grant conforms to the provisions” of the CLUP and Environmental Conservation Law Section; and

Whereas, the Project constitutes development as defined in the Long Island Pine Barrens Protection Act and requires a Commission waiver because it exceeds the CLUP’s Standard 5.3.3.6.1 Vegetation Clearance Limits and Standard 5.3.3.6.2 Fertilizer-dependent vegetation limit.

III. The Project Site, Materials Submitted to the Commission, and Relief Sought

Whereas, the Applicant leases the Project Site; the current lease period is three years; and

Whereas, the Applicant submitted a CGA Hardship Waiver application on February 1, 2017 and submitted additional information on March 8, 2017 (the Application); and

Whereas, a layout of the Project Site is illustrated in the Site Plan prepared by Howard W. Young last dated January 27, 2017; the Plan identifies conditions on the site prior to when the Applicant cleared to a limit of 53% by Town of Riverhead Building Permit # ZB160169 issued on March 9, 2016; and

Whereas, pursuant to the CLUP Standard and the Site’s Zoning District, the total site clearance is limited to 53% or 11.4 acres of the Project Site; and

Whereas, the Project would remove an additional 37% or 7.95 acres of existing natural vegetation on the Project Site, which is currently 53% cleared, thereby resulting in a total of 90% or 19.35 acres of existing natural vegetation having been removed from the site in order to expand the agricultural use on the Project Site; and

Whereas, the Applicant has applied to the Commission for an extraordinary hardship to clear 37% and apply fertilizer to the Project Site.

IV. Public Process

Whereas, on March 15, 2017, the Commission held a public hearing on the Project at which the Commission reviewed the Staff Report and Exhibits prepared for the hearing; heard testimony and received exhibits from the Applicant and heard testimony from the public; subsequently, a transcript of the hearing was distributed to the Commission; and

Whereas, the Applicant stated in their testimony that it is their goal to seek Suffolk County's acquisition of the Project Site's development rights under the Farmland Preservation Program, and if that occurs, the property value would be reduced and the Fink family would be enabled to subsequently purchase the Project Site. At this time, with development rights intact, the Project Site's value is too expensive for the Finks to purchase it for agricultural use; and

Whereas, during the public hearing, the Commission requested additional information from the Applicant; and

Whereas, the record was held open until the April 19th Commission Meeting when the hearing was closed; and

V. The Study Area

Whereas, the Staff Report defined a Study Area which consisted of all of the property within a one-half mile radius of the Project Site; and the Study Area contains land in the CGA and in the Core Preservation Area, south of Route 25; and

Whereas, the dominant land use in the CGA in the Study Area is residential and agricultural. Two, 16-acre parcels opposite the Project Site, on the west side of Wading River Manor Road, each developed with only a single-family dwelling, contain additional development potential. Remaining parcels in the CGA portion of the Study Area are developed with residential, agricultural or commercial land uses. The Core portion of the Study Area is largely composed of preserved land, with the exception of five lots with road front on Wading River Manor Road that are residential, commercial or industrial; and

Whereas, the Project Site is within an area identified as archaeologically sensitive according to the New York State Cultural Resource Information System (CRIS) database; and

Whereas, notwithstanding the Project Site's location in an archaeologically sensitive area, the Commission received a response from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) by letter dated March 3, 2017 which stated the project will have no impact on cultural resources in or eligible for inclusion in the State and National Register of Historic Places; and

Whereas, the New York Natural Heritage Program (NHP) responded to the Commission's request for information on rare, threatened or endangered animal and plant species on the Project Site by letter dated March 24, 2017. The NHP provided a report entitled "Report on State-Listed Animals" and listed Tiger Salamander (*Ambystoma tigrinum*), a State-listed Endangered amphibian, and Northern Long-eared Bat (*Myotis septentrionalis*), a State-listed Threatened species. The species are noted as documented near the Project Site, within 1.5 miles. The report states potential onsite and offsite impacts from the project may need to be addressed. The NHP response contained a report entitled, "Report on Rare Animals, Rare Plants and Significant Natural Communities" that listed Slender Pinweed, a State-listed Threatened species, the coastal barrens buckmoth, a State-listed species of Special Concern, and a wetland/aquatic community, specifically a coastal plain pond shore, Corey Pond; and

Whereas, the Project Site is ½-mile east of Corey Pond, and at this distance, the Project will not impact the resources or habitat of Corey Pond.

VI. Other Required Approvals

Whereas, the Project is an Unlisted Action pursuant to the State Environmental Quality Review Act (SEQRA); and

Whereas, the Commission coordinated the application with NYSDEC and the Town of Riverhead, pursuant to 617.6(b)(4) of the SEQRA regulations; and

Whereas, both the Town of Riverhead and NYSDEC declined Lead Agency in response to the SEQRA Coordination; and

Whereas, the NYSDEC responded on June 16, 2017 and stated that NYSDEC Wildlife staff have reviewed the documentation and are of the opinion that it would be possible to avoid any impacts to any of the noted species and therefore preclude the need for any NYSDEC permits if recommendations and guidance were adhered to. The NYSDEC letter continued with comments on two items pursuant to the NHP letter. In regard to the historical tiger salamander breeding pond within 535 feet of the Project Site, the NYSDEC will perform a field inspection of the habitat and confirm the pond, which was modified and converted to a rip-rapped drainage ditch, subsequent to its designation as a tiger salamander breeding pond, is dry and no longer holds water. In that case, it is not expected to be viable breeding habitat for this species. If the field inspection results are to the contrary, NYSDEC staff will coordinate with the Applicant to ensure habitat protection for this species. In regard to the Northern Long-eared Bat, the letter indicates that for projects requiring tree removal to convert forest habitat to another land use and that are conducted between April 1 and October 31 and are within five miles of an occupied hibernaculum or 1.5 miles of a documented summer occurrence, conditions would include leaving uncut all snag and cavity trees and leaving uncut all known and documented roost trees; and

Whereas, the alternative to restrictions on the cutting of trees and adherence to strict cutting conditions is to avoid tree cutting from April 1 to October 31; and

Whereas, the Project Site does not contain suitable habitat for the coastal barrens buckmoth, which requires scrub oak which does not appear to be present on the Project Site; and

Whereas, the Applicant is required to obtain any other approvals or permits required for the Project.

VII. Potential Adverse Environmental Impacts

Whereas, the Commission did not identify significant adverse environmental impacts as a result of the Project; and

Whereas, no significant adverse impacts on groundwater or surface waters were identified as the Project will not generate wastewater and is not located adjacent to any wetlands; and the Project is not within the groundwater contributing area of a public water supply wellfield; and

Whereas, the Applicant's agricultural practices require fertilizer and other chemically derived compounds to be applied on the Project Site; however, the Applicant expects to control and minimally use fertilizer products due to the cost of such products and to protect groundwater resources; and

Whereas, no significant adverse impacts on historic and cultural resources is expected as the State Historic Preservation Office did not identify any significant cultural resources as being present on the Project Site, and the Project Site does not contain nor is it adjacent to any historic sites or structures; and

Whereas, the Project will not result in potential adverse impacts on transportation because the Project Site will be used to grow crops and the lease agreement states the Project Site cannot be used for parking. The Project will not generate high volume traffic nor significantly alter the present pattern of movement of people or goods; and

Whereas, the Project will not generate significant air emissions and therefore will not result in any significant adverse impacts on air resources; and

Whereas, no significant adverse impacts on land are expected as the Project does not involve construction on land where the depth to water table is less than three feet. No soil resources will be removed from the site. No erosion is expected from vegetation removal and

no hard structures, drainage basin, or retaining walls are proposed for stormwater protection. The Project is not located in a Coastal Erosion Hazard Area; and

Whereas, no adverse impacts on natural resources, plant and wildlife habitat will occur. The Applicant will avoid cutting of trees to ensure protection of habitat and endangered species including northern long eared bat. Prior to cutting, the Applicant will obtain and submit to the Commission written confirmation from NYSDEC that the drainage pond is dry and no longer supports tiger salamander breeding habitat. No adverse impacts will occur to buckmoth since no suitable habitat to support the species occurs on the Project Site. Therefore, no significant adverse impacts to endangered or threatened species of animals and plants are anticipated; and

Whereas, no adverse impacts are expected on community character and aesthetic resources since the Project Site presently contains an active agricultural use and is in a community developed with other agricultural uses.

VIII. Commission Review of the Act's Extraordinary Hardship Criteria and Applicant's Materials

Whereas, pursuant to the Act, to determine whether an Applicant has demonstrated the existence of a hardship, the Commission shall consider, among other things, the criteria set forth in New York State Town Law §267-b and determine whether the Project is consistent with the purposes and provisions of the Act and whether the Project will result in a substantial impairment of the resources of the Central Pine Barrens area and consider the criteria in ECL §57-0123(3)(b); and

Whereas, the Applicant alleges that it cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. The Applicant's financial analysis indicates a yearly profit amount of \$5,415 derived from the Project Site in its current state. If the waiver is granted, the profit increases to \$15,852.25; and without the waiver, the Applicant will need to cease operations on the Project Site; and

Whereas, the Applicant alleges the "Project is unique as the Applicant cannot realize a reasonable rate of return by farming the Property due to the vegetation growing on the uncleared portion of the land. The hardship does not apply to a substantial portion of the applicable district or neighborhood;" and

Whereas, the Applicant alleges, "The variance will not alter the essential character of the neighborhood. The variance, if granted, will enable the Applicant to expand its farm by an additional 7.95 acres;" and

Whereas, the Applicant alleges it "Will continue to comply with best management practices as stated in the Agricultural Management Practices Catalogue for Nonpoint Source Pollution Prevention and Water Quality Protection in New York State, June 2007;" and

Whereas, the Applicant alleges, "The requested variance would not alter the essentially character of the neighborhood or district as agriculture has been a mainstay in the Pine Barrens;" and

Whereas, the Applicant alleges the Project Site was farmed 35 years ago by the Fink family; and

Whereas, the Applicant alleges, "The Hardship has not been self-created. The vegetation that currently exists in Area B and Area C is native to the Pine Barrens. Without clearance of this vegetation, the Applicant cannot realize a reasonable rate of return;" and

Whereas, the Commission has considered all of the materials submitted in connection with the application including the transcript of the public hearing; and

Whereas, the Commission finds the Applicant has established the existence of a hardship and that the Project is designed to be compact, efficient and orderly development in the CGA, consistent with the purposes and provisions of the Act. The proposed agricultural use of the site is consistent with the character of the area; and

Whereas, the Commission finds the Applicant has established the existence of a hardship because the Project is unique and does not apply to a substantial portion of the district or neighborhood because with the exception of the two parcels with development potential remaining in the Study Area, each approximately 16 acres with one single-family residence, activities similar to those which will occur pursuant to the Project are not expected to occur on other parcels in the Study Area; and

Whereas, in considering the second waiver criteria, the Commission finds that the hardship, as it relates to the Project Site, is unique because of the historic farming activity that occurred on the Project Site prior to the Act; it is one of only three parcels in the Study Area with development potential and does not apply to a substantial portion of the district or neighborhood because of the lack of land that remains available to farm; and

Whereas, the Commission, in analyzing the third waiver criteria, finds that granting the requested exemption will not alter the essential character of the neighborhood because the clearing is for an existing agricultural use and is consistent with the historic use of the Project Site for agriculture and pattern of development surrounding the Project Site, and that the Project is consistent with existing established land use and community character, and

Whereas, the Project accommodates development that is compact, efficient, and orderly as it retains an agricultural use in the CGA and in proximity to other land comprising approximately 40 acres that is currently farmed by the Applicant; and

Whereas, the Commission finds the Applicant has established the existence of a hardship which has not been self-created because the existing natural vegetation on the Project Site has created a financial hardship preventing the Applicant from realizing a reasonable rate of return and without the waiver would force the closure of operations on the Project Site; and

Whereas, the Commission has considered the application, the Staff Report and Exhibits, and the transcripts of the hearings and its prior decisions; and

Whereas, due to the Project's nonconformance with the CLUP standards, the Applicant applied to the Commission for a waiver from strict compliance pursuant to Environmental Conservation Law Section 57-0123(3)(b), and

Whereas, the goals and objectives of the Act, outlined in ECL Section 57-0121, encourages and promotes appropriate patterns of compatible agricultural development in order to accommodate regional growth influences; and

Whereas, the Project will comply with all other Standards of the CLUP, and

Whereas, the Commission has considered all of the materials submitted in connection with the application including the transcript of the public hearing.

IX. Mitigation

Whereas, if the agricultural use ceases on the Project Site, an unfragmented block of 47% of the site shall be left to undergo natural restoration and revegetation, now, therefore, be it,

X. Commission Determinations

Resolved, the foregoing recitals are incorporated herein and made a part hereof; and be it further

Resolved, that pursuant to SEQRA, a Negative Declaration is adopted for the Project as the Commission has determined that the Project will not result in significant adverse environmental impacts provided that the Applicant adheres to the conditions outlined below regarding endangered species protection; and be it further

Resolved, the Commission finds the Applicant has demonstrated an extraordinary hardship for the reasons set forth above and is approved; and be it further

Resolved, the Commission finds that the Project is not inconsistent with the purposes and provisions of the Act, including but not limited to, the goals and objectives to "[p]reserve the functional integrity of the Pine Barrens ecosystem, protect the quality of surface water and groundwater, discourage piecemeal and scattered development, [to] accommodate development in a manner consistent with the long-term integrity of the Pine Barrens ecosystem and to ensure that the pattern of development is compact, efficient, and orderly;" and be it further

Resolved, the Project is unique as it seeks to reestablish an agricultural use where the use previously existed 35 years ago; and be it further

Resolved, the granting of this hardship exemption will not result in a substantial impairment of the resources of the Central Pine Barrens because the Project will occur on a Project Site that was previously disturbed for agricultural activity, and be it further

Resolved, if agricultural activity ceases on the project site, the owner shall cause 47% of the site, in an unfragmented pattern, to succeed to a naturally vegetated state with no active restoration requirements; and be it further

Resolved, the Applicant shall obtain additional permits and approvals, as required by law, prior to commencement of the Project, and be it further

Resolved, that the Commission hereby determines the Application, as submitted, meets and satisfies the criteria for a Compatible Growth Area Hardship pursuant to the Act; that the requested use variance, if granted, will not alter the essential character of the neighborhood, as the Applicant presently cultivates approximately 40 acres in the Study Area and agricultural uses are consistent with the community character; and be it further

Resolved, the Commission hereby determines the waiver is the minimum variance deemed necessary and adequate to address the unnecessary hardship proven by the Applicant, and with mitigation, preserves the essential character of the Central Pine Barrens pursuant to ECL Section 57-0121; be it further

Resolved, that the Application is approved, subject to the following specific conditions:

1. Clearing authorized by this resolution shall occur between November 1 and March 31.
2. 10% of the Project Site, on the east side of the Project Site, as shown on the survey prepared by Young and Young last dated January 27, 2017 shall remain in its existing natural state.
3. Prior to conducting any clearing activity on the Project Site, the Applicant shall first submit a written notice to the Commission office notifying the Commission of the commencement of clearing at least 5 days prior to said activity. Prior to clearing, the Applicant shall submit a letter from NYSDEC confirming the tiger salamander habitat is no longer viable breeding habitat.
4. Within 45 days of clearing to a limit of 90% of the Project Site, the Applicant shall submit a plan to the Commission that is certified by a surveyor that demonstrates 90% of the site was cleared.
5. **Declaration of Covenants and Restrictions:**

The Applicant shall submit draft Covenants and Restrictions (C&Rs) to Commission counsel for review and approval. The C&Rs must be granted to the Commission. Once approved, the C&Rs must be recorded against the Project Site and filed in the Office of the Suffolk County Clerk with proof of filing provided

to the Commission office no less than one week prior to site disturbance or any other activity on the project site, and prior to the issuance of clearing or other permits by the Town. In any case, the C&Rs must be filed with the Suffolk County Clerk no more than six months after the date of this resolution.

The objective of the C&Rs are to ensure that if the use of the site for an agricultural use, as defined by New York State Agricultural Markets Law, ceases or changes, an unfragmented block of 47% of the site shall be set aside for natural restoration to its prior naturally-vegetated state to occur. No active planting or landscaping is required in order to re-establish the natural vegetation. If a future owner seeks to utilize any portion of the 47% area to remain natural, review by and a decision from the Commission is required, including but not limited to a CGA Hardship Waiver. The C&R must state specifically:

- a. The hardship waiver is approved solely to utilize the project site for an agricultural use, as defined by New York State Agriculture and Markets Law. The agricultural use is permitted to continue in perpetuity on 90% of the Project Site, with 10% remaining in its existing natural state.
- b. If the agricultural use ceases on the Project Site, an unfragmented block of 47% or 10.1 acres of the site shall be protected and required to revert to natural vegetation. No active replanting is required, but 47% of the Project Site must be set aside to naturally restore itself if and when cessation of agricultural activity occurs on the Project Site. The site shall be deemed no more than 53% cleared for the purposes of the application of the CLUP clearing standard.
- c. Any and all future owner(s) of the Project Site are hereby notified that the Project Site must comply with this decision. Development as defined in the Act shall be subject to Article 57 of the New York State Environmental Conservation Law and the Central Pine Barrens Comprehensive Land Use Plan.

6. Any modifications to the existing Site Plan must first be reviewed and approved by the Commission.
7. The Applicant shall obtain additional permits and approvals, as required by law, prior to commencement of the Project.

Resolved, this decision applies only to the instant Project and is subject to change if any element of the Project is modified; and be it further

Resolved, this approval shall expire five years from the date of adoption by the Commission; therefore, if the Applicant has not achieved the clearing permitted by this waiver, in accordance with conditions of approval, the decision will be considered expired, and the Applicant must seek an extension of time or re-approval providing a status report of the Project; and be it further

Resolved, a copy of this resolution shall be recorded in the Office of the Suffolk County Clerk within one year of the date of approval and indexed against the property.

Record of Motion: Fink's Farm (Shwonik/Guyder Farm) Compatible Growth Area

Hardship Waiver, Wading River, Town of Riverhead; SSTM # 600-115-1-9

Decision to Approve

Motion by: Mr. Walter

Seconded by: Mr. Romaine

In Favor: 4

Opposed: 0

Abstention: 1 (Mr. Freleng)

Exhibit 2
Survey Prepared by Howard W. Young dated January 27, 2017

Exhibit 3
Declaration of Covenants and Restrictions filed on January 23, 2018 in the
Office of the Suffolk County Clerk

Number of pages

17

This document will be public record. Please remove all Social Security Numbers prior to recording.

RECORDED
2018 Jan 23 11:22:46 AM
JUDITH A. PASCALE
CLERK OF
SUFFOLK COUNTY
L D00012947
P 158

Deed / Mortgage Instrument	Deed / Mortgage Tax Stamp	Recording / Filing Stamps
3	FEES	
Page / Filing Fee	85 -	Mortgage Amt. _____
Handling	20. 00	1. Basic Tax _____
TP-584	_____	2. Additional Tax _____
Notation	_____	Sub Total _____
EA-52 17 (County)	_____	Spec./Assit. _____
EA-5217 (State)	_____	or _____
R.P.T.S.A.	200 00	Spec. /Add. _____
Comm. of Ed.	5. 00	TOT. MTG. TAX _____
Affidavit	_____	Dual Town _____ Dual County _____
Certified Copy	11 05	Held for Appointment _____
NYS Surcharge	15. 00	Transfer Tax _____
Other	_____	Mansion Tax _____
	Sub Total 231.05	The property covered by this mortgage is or will be improved by a one or two family dwelling only.
	Grand Total 336.05	YES _____ or NO _____
		If NO, see appropriate tax clause on page # _____ of this instrument.



4	Dist. 3562235 0600 11500 0100 009000	5 Community Preservation Fund
Real Property Tax Service Agency Verification		Consideration Amount \$ _____
6 Satisfactions/Discharges/Releases List Property Owners Mailing Address RECORD & RETURN TO:		CPF Tax Due \$ _____
<p>Joan Shwonik 5338 Rte 25A Calverton NY 11933</p>		Improved _____
		Vacant Land _____
		TD _____
		TD _____
		TD _____

Mail to: Judith A. Pascale, Suffolk County Clerk 310 Center Drive, Riverhead, NY 11901 www.suffolkcountyny.gov/clerk	7 Title Company Information
	Co. Name _____
	Title # _____

8 Suffolk County Recording & Endorsement Page

This page forms part of the attached Declaration (SPECIFY TYPE OF INSTRUMENT) made by:

The Estate of Peter Guyder
by Joan A. Shwonik + Therese Southworth

The premises herein is situated in

SUFFOLK COUNTY, NEW YORK.

TO

In the TOWN of

In the VILLAGE

or HAMLET of

BOXES 6 THRU 8 MUST BE TYPED OR PRINTED IN BLACK INK ONLY PRIOR TO RECORDING OR FILING.

IMPORTANT NOTICE

If the document you've just recorded is your SATISFACTION OF MORTGAGE, please be aware of the following:

If a portion of your monthly mortgage payment included your property taxes, *you will now need to contact your local Town Tax Receiver so that you may be billed directly for all future property tax statements.

Local property taxes are payable twice a year: on or before January 10th and on or before May 31st. Failure to make payments in a timely fashion could result in a penalty.

Please contact your local Town Tax Receiver with any questions regarding property tax payment.

Babylon Town Receiver of Taxes
200 East Sunrise Highway
North Lindenhurst, N.Y. 11757
(631) 957-3004

Brookhaven Town Receiver of Taxes
One Independence Hill
Farmingville, N.Y. 11738
(631) 451-9009

East Hampton Town Receiver of Taxes
300 Pantigo Place
East Hampton, N.Y. 11937
(631) 324-2770

Huntington Town Receiver of Taxes
100 Main Street
Huntington, N.Y. 11743
(631) 351-3217

Islip Town Receiver of Taxes
40 Nassau Avenue
Islip, N.Y. 11751
(631) 224-5580

Riverhead Town Receiver of Taxes
200 Howell Avenue
Riverhead, N.Y. 11901
(631) 727-3200

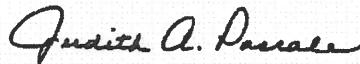
Shelter Island Town Receiver of Taxes
Shelter Island Town Hall
Shelter Island, N.Y. 11964
(631) 749-3338

Smithtown Town Receiver of Taxes
99 West Main Street
Smithtown, N.Y. 11787
(631) 360-7610

Southampton Town Receiver of Taxes
116 Hampton Road
Southampton, N.Y. 11968
(631) 283-6514

Southold Town Receiver of Taxes
53095 Main Street
Southold, N.Y. 11971
(631) 765-1803

Sincerely,



Judith A. Pascale
Suffolk County Clerk



**COUNTY CLERK'S OFFICE
STATE OF NEW YORK
COUNTY OF SUFFOLK**

I, JUDITH A. PASCALE, Clerk of the County of Suffolk and the Court of Record thereof do hereby certify that I have compared the annexed with the original
DECLARATION

recorded in my office on 01/23/2018 under Liber D00012947 and Page 158 and, that the same is a true copy thereof, and of the whole of such original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said County and Court this 01/23/2018

SUFFOLK COUNTY CLERK

Judith A. Pascale

JUDITH A. PASCALE

SEAL



SUFFOLK COUNTY CLERK
RECORDS OFFICE
RECORDING PAGE

Type of Instrument: DECLARATION

Recorded: 01/23/2018

Number of Pages: 17

At: 11:22:46 AM

Receipt Number : 18-0013049

LIBER: D00012947

PAGE: 158

District:

Section:

Block:

Lot:

0600

115.00

01.00

009.000

EXAMINED AND CHARGED AS FOLLOWS

Received the Following Fees For Above Instrument

Exempt

Exempt

Page/Filing	\$85.00	NO	Handling	\$20.00	NO
COE	\$5.00	NO	NYS SRCHG	\$15.00	NO
TP-584	\$0.00	NO	Notation	\$0.00	NO
Cert.Copies	\$11.05	NO	RPT	\$200.00	NO
			Fees Paid	\$336.05	

THIS PAGE IS A PART OF THE INSTRUMENT

THIS IS NOT A BILL

JUDITH A. PASCALE
County Clerk, Suffolk County

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this 22 day of January, 2018, by THE ESTATE OF PETER GUYDER, by JOAN SHWONIK and THERESE SOUTHWORTH AS EXECUTORS, with addresses of 5338 Route 25A, Calverton, New York, 11933, and P.O. Box 534, Stony Brook, New York, 357 Randall Rd., Ridge NY 11961, hereinafter referred to as the "DECLARANTS."

WITNESSETH:

WHEREAS, the DECLARANTS are the owners in fee simple of certain real property situate, lying on the northeast corner of the intersection of Route 25 and Wading River-Manorville Road, Town of Riverhead, County of Suffolk and State of New York, designated as Suffolk County Tax Map Number 600-115-1-9, as shown on the plan prepared by Howard W. Young last dated January 27, 2017, and

WHEREAS, the Declarants, along with their lessee, Fink's County Farm, Inc. David T. Fink and Michelle A. Fink, and made an application for and on June 21, 2016 received a Compatible Growth Area Hardship Waiver (the "Hardship Waiver") from the Central Pine Barrens Joint Planning and Policy Commission (hereinafter referred to as the "COMMISSION"), see the Resolution in Schedule A, and

WHEREAS, for and in consideration of the granting of said approval, the Commission has deemed it to be for the best interests of the Commission and the owners that the within covenants and restrictions be imposed on the Property, and as a condition of approval, said Commission has required that the within Declaration be recorded in the Suffolk County Clerk's Office, and

WHEREAS, the DECLARANTS have considered the foregoing and have determined that same will be in the best interests of the DECLARANTS and subsequent owners of said property,

NOW, THEREFORE, THIS DECLARATION WITNESSETH:

That the DECLARANTS for the purpose of carrying out the intentions above expressed, do hereby make known, admit, publish, covenant, and agree that the property, as identified in Schedule B annexed hereto and made a part hereof (the "Property") shall hereafter be subject to the covenants and restrictions as herein cited, which shall run with the Property and shall be biding upon all purchasers and holders of the Property, their heirs, executors, legal representatives, distributees, successors and assigns, to wit:

- a. The Hardship Waiver is approved solely to utilize the Property for agricultural uses, as defined by New York State Agriculture and Markets Law. The agricultural use is permitted to continue in perpetuity on 90% of the Property and 10% of the Property shall remain in its existing natural state.
- b. If the agricultural use ceases on the Property, an unfragmented block of 47% or 10.1 acres of the Property shall be protected and required to revert to natural vegetation. No active replanting is required, but 47% of the Property shall be set aside to naturally restore itself if and when cessation of agricultural activity occurs on the Property. Thereafter the Property shall be deemed no more than 53% cleared for the purposes of the application of any Commission standard including those within the Commission's Central Pine Barrens Comprehensive Land Use Plan.
- c. Any and all future owner(s) of the Property are hereby notified that the Property shall comply with this decision. Development as defined in the Act shall be subject to Article 57 of the New York State

Environmental Conservation Law and the Commission's Central Pine Barrens Comprehensive Land Use Plan.

These covenants and restrictions contained herein shall be construed to be in addition to and not in derogation or limitation upon any local, state or federal laws, ordinances, regulations or provisions in effect at the time of execution of this agreement, or at the time such laws, ordinances, regulations and/or provisions may hereafter be revised, amended or promulgated.

These covenants and restrictions contained herein shall be enforceable by the Commission by injunctive relief or by any other remedy in equity or at law. The failure of the Commission to enforce same shall not be deemed to affect the validity of this covenant nor to impose any liability whatsoever upon the Commission or any officer or employee thereof.

If any section, subsection, paragraph, clause, phrase or provision of these covenants and restrictions shall, by a Court of competent jurisdiction, be adjudged illegal, unlawful, invalid or held to be unconstitutional, the same shall not affect the validity of these covenants as a whole, or any other part or provisions hereof other than the part so adjudged to be illegal, unlawful, invalid, or unconstitutional.

The within Declaration is made subject to the provisions of all laws required by law or by their provisions to be incorporated herein and they are deemed to be incorporated herein and made a part hereof, as though fully set forth.

The within Declaration shall run with the land and shall be binding upon the Declarants, his, her, their successors, and assigns, and upon all persons or entities claiming under them, and may not be annulled, waived, changed, modified, terminated, revoked or amended unless and until approved by the Commission or its successor, following a public hearing.

IN WITNESS WHEREOF, the Declarants above named have duly executed the foregoing Declaration the day and year first above written.

In Presence of:

(Owners)

Joan Shwopik
By: Joan Shwopik, Executor

Therese Southworth
By: Therese Southworth, Executor

CENTRAL PINE BARRENS JOINT PLANNING AND POLICY COMMISSION

By: John W. Pavacic
Name: John W. Pavacic

Title: Executive Director

STATE OF NEW YORK)

)ss.:

COUNTY OF SUFFOLK)

On the 22 day of January, in the year 2018, before me, the undersigned, personally appeared Joan A. Shwartz 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.

Pauline Mary Jenkins

Notary Public

PAULINE MARY JENKINS
NOTARY PUBLIC, State of New York
No. 01JE8157327
Qualified in Suffolk County
Commission Expires December 04, 2018

STATE OF NEW YORK)

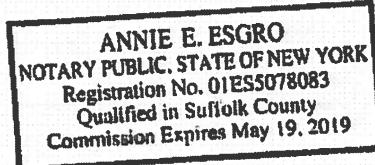
)ss.:

COUNTY OF SUFFOLK)

On the 22nd day of January, in the year 2018, before me, the undersigned, personally appeared Theresa Southworth, 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/they executed the same in his/her/their capacity(ties), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Annie Esgro

Notary Public



STATE OF NEW YORK)

)ss.:

COUNTY OF SUFFOLK)

On the 23rd day of January, in the year 2018, before me, the undersigned, personally appeared John K. Pavacic, 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.

Carol A. Sholl

Notary Public

CAROL A. SHOLL
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SH6180927
Qualified in Nassau County
My Commission Expires January 22, 2020

Schedule A

Commission Meeting of June 21, 2017 Town of Riverhead Town Hall



Present: Ms. Carrie Meek Gallagher (State of New York),
Mr. Andrew Freileng (Suffolk County), Mr. Edward P. Romaine (Brookhaven),
Mr. Sean Walter (Riverhead),
Mr. Jay H. Schneiderman (Southampton)

Approved Resolution Shwonik/Guyder Farm (Flinks Country Farm, Inc.) Compatible Growth Area Hardship Waiver Application SCTM # 600-115-1-9

I. The Project

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Sean M. Walter
Member

Whereas, Michelle and David Fink (the Applicant), lessee of the property owned by the Estate of Shwonik Guyder, by their Attorney, Nicholas Rigano, LLC proposes to clear 90% of a 21.5 acre parcel for agricultural use (the Project), located on the east side of Wading River Manorville Road, north side of New York State Route 25, south of Hidden Pond Path, in the Compatible Growth Area of the Central Pine Barrens, in the Town of Riverhead (the Project Site); and

Whereas, at the time of the adoption of the Central Pine Barrens Comprehensive Land Use Plan (CLUP), the Project Site was in the Riverhead Residence A Zoning District and the Project Site was subsequently placed into the RB80 Zoning District, and

Whereas, an 11.4 acre portion of the Project Site or 53% is cleared and presently used for agriculture, and the remaining area, 10.1 acres or 47%, is presently wooded with natural vegetation; and

Whereas, because the Project Site was in the A Residence District at the time of the adoption of the CLUP pursuant to the CLUP Standard, its total site clearance is limited to 53% or 11.4 acres; and

II. The Act and the Commission

624 Old Riverhead Road
Westhampton Beach, NY
11978

Phone (631) 288-1079
Fax (631) 288-1367
www.np.state.ny.us

Whereas, the New York State Legislature passed the Long Island Pine Barrens Protection Act (the "Act") which was signed into law on July 13, 1993 and codified in Article 57 of the Environmental Conservation Law (ECL)., The Act created the Central Pine Barrens Joint Planning and Policy Commission (the "Commission"), to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area; and

Whereas, in furtherance of its mission and in compliance with the directives set forth in the Act, the Commission drafted the Central Pine Barrens

Comprehensive Land Use Plan (the "CLUP"), which was officially adopted on June 28, 1995; and

Whereas, Section 557-0107 of the ECL defines development to be the "performance of any building activity, . . . , the making of any material change in use or intensity of use of any structure or land. Without limitation the following uses shall be taken for the purposes of this article to involve development . . . (b) a material increase in the intensity of use of land or environmental impacts as a result thereof; . . . (c) commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities;" and

Whereas, Section 557-0123 of the ECL provides that "no application for development within the Central Pine Barrens area shall be approved by any municipality, or county or agency thereof or the [C]ommission . . . unless such approval or grant conforms to the provisions" of the CLUP and Environmental Conservation Law Section; and

Whereas, the Project constitutes development as defined in the Long Island Pine Barrens Protection Act and requires a Commission waiver because it exceeds the CLUP's Standard 5.3.3.6.1 Vegetation Clearance Limits and Standard 5.3.3.6.2 Fertilizer-dependent vegetation limit.

III. The Project Site, Materials Submitted to the Commission, and Relief Sought

Whereas, the Applicant leases the Project Site; the current lease period is three years; and

Whereas, the Applicant submitted a CGA Hardship Waiver application on February 1, 2017 and submitted additional information on March 8, 2017 (the Application); and

Whereas, a layout of the Project Site is illustrated in the Site Plan prepared by Howard W. Young last dated January 27, 2017; the Plan identifies conditions on the site prior to when the Applicant cleared to a limit of 53% by Town of Riverhead Building Permit # ZB160169 issued on March 9, 2016; and

Whereas, pursuant to the CLUP Standard and the Site's Zoning District, the total site clearance is limited to 53% or 11.4 acres of the Project Site; and

Whereas, the Project would remove an additional 37% or 7.95 acres of existing natural vegetation on the Project Site, which is currently 53% cleared, thereby resulting in a total of 90% or 19.35 acres of existing natural vegetation having been removed from the site in order to expand the agricultural use on the Project Site; and

Whereas, the Applicant has applied to the Commission for an extraordinary hardship to clear 37% and apply fertilizer to the Project Site.

IV. Public Process

Whereas, on March 15, 2017, the Commission held a public hearing on the Project at which the Commission reviewed the Staff Report and Exhibits prepared for the hearing; heard testimony and received exhibits from the Applicant and heard testimony from the public; subsequently, a transcript of the hearing was distributed to the Commission; and

Whereas, the Applicant stated in their testimony that it is their goal to seek Suffolk County's acquisition of the Project Site's development rights under the Farmland Preservation Program, and if that occurs, the property value would be reduced and the Fink family would be enabled to subsequently purchase the Project Site. At this time, with development rights intact, the Project Site's value is too expensive for the Finks to purchase it for agricultural use; and

Whereas, during the public hearing, the Commission requested additional information from the Applicant; and

Whereas, the record was held open until the April 19th Commission Meeting when the hearing was closed; and

V. The Study Area

Whereas, the Staff Report defined a Study Area which consisted of all of the property within a one-half mile radius of the Project Site; and the Study Area contains land in the CGA and in the Core Preservation Area, south of Route 25; and

Whereas, the dominant land use in the CGA in the Study Area is residential and agricultural. Two, 16-acre parcels opposite the Project Site, on the west side of Wading River Manor Road, each developed with only a single-family dwelling, contain additional development potential. Remaining parcels in the CGA portion of the Study Area are developed with residential, agricultural or commercial land uses. The Core portion of the Study Area is largely composed of preserved land, with the exception of five lots with road front on Wading River Manor Road that are residential, commercial or industrial; and

Whereas, the Project Site is within an area identified as archaeologically sensitive according to the New York State Cultural Resource Information System (CRIS) database; and

Whereas, notwithstanding the Project Site's location in an archaeologically sensitive area, the Commission received a response from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) by letter dated March 3, 2017 which stated the project will have no impact on cultural resources in or eligible for inclusion in the State and National Register of Historic Places; and

Whereas, the New York Natural Heritage Program (NHP) responded to the Commission's request for information on rare, threatened or endangered animal and plant species on the Project Site by letter dated March 24, 2017. The NHP provided a report entitled "Report on State-Listed Animals" and listed Tiger Salamander (*Ambystoma tigrinum*), a State-listed Endangered amphibian, and Northern Long-eared Bat (*Myotis septentrionalis*), a State-listed Threatened species. The species are noted as documented near the Project Site, within 1.5 miles. The report states potential onsite and offsite impacts from the project may need to be addressed. The NHP response contained a report entitled, "Report on Rare Animals, Rare Plants and Significant Natural Communities" that listed Slender Pinweed, a State-listed Threatened species, the coastal barrens buckmoth, a State-listed species of Special Concern, and a wetland/aquatic community, specifically a coastal plain pond shore, Corey Pond; and

Whereas, the Project Site is $\frac{1}{2}$ -mile east of Corey Pond, and at this distance, the Project will not impact the resources or habitat of Corey Pond.

VI. Other Required Approvals

Whereas, the Project is an Unlisted Action pursuant to the State Environmental Quality Review Act (SEQRA); and

Whereas, the Commission coordinated the application with NYSDEC and the Town of Riverhead, pursuant to 617.6(b)(4) of the SEQRA regulations; and

Whereas, both the Town of Riverhead and NYSDEC declined Lead Agency in response to the SEQRA Coordination; and

Whereas, the NYSDEC responded on June 16, 2017 and stated that NYSDEC Wildlife staff have reviewed the documentation and are of the opinion that it would be possible to avoid any impacts to any of the noted species and therefore preclude the need for any NYSDEC permits if recommendations and guidance were adhered to. The NYSDEC letter continued with comments on two items pursuant to the NHP letter. In regard to the historical tiger salamander breeding pond within 535 feet of the Project Site, the NYSDEC will perform a field inspection of the habitat and confirm the pond, which was modified and converted to a rip-rapped drainage ditch, subsequent to its designation as a tiger salamander breeding pond, is dry and no longer holds water. In that case, it is not expected to be viable breeding habitat for this species. If the field inspection results are to the contrary, NYSDEC staff will coordinate with the Applicant to ensure habitat protection for this species. In regard to the Northern Long-eared Bat, the letter indicates that for projects requiring tree removal to convert forest habitat to another land use and that are conducted between April 1 and October 31 and are within five miles of an occupied hibernaculum or 1.5 miles of a documented summer occurrence, conditions would include leaving uncut all snag and cavity trees and leaving uncut all known and documented roost trees; and

Whereas, the alternative to restrictions on the cutting of trees and adherence to strict cutting conditions is to avoid tree cutting from April 1 to October 31; and

Whereas, the Project Site does not contain suitable habitat for the coastal barrens buckmoth, which requires scrub oak which does not appear to be present on the Project Site; and

Whereas, the Applicant is required to obtain any other approvals or permits required for the Project.

VII. Potential Adverse Environmental Impacts

Whereas, the Commission did not identify significant adverse environmental impacts as a result of the Project; and

Whereas, no significant adverse impacts on groundwater or surface waters were identified as the Project will not generate wastewater and is not located adjacent to any wetlands; and the Project is not within the groundwater contributing area of a public water supply wellfield; and

Whereas, the Applicant's agricultural practices require fertilizer and other chemically derived compounds to be applied on the Project Site; however, the Applicant expects to control and minimally use fertilizer products due to the cost of such products and to protect groundwater resources; and

Whereas, no significant adverse impacts on historic and cultural resources is expected as the State Historic Preservation Office did not identify any significant cultural resources as being present on the Project Site, and the Project Site does not contain nor is it adjacent to any historic sites or structures; and

Whereas, the Project will not result in potential adverse impacts on transportation because the Project Site will be used to grow crops and the lease agreement states the Project Site cannot be used for parking. The Project will not generate high volume traffic nor significantly alter the present pattern of movement of people or goods; and

Whereas, the Project will not generate significant air emissions and therefore will not result in any significant adverse impacts on air resources; and

Whereas, no significant adverse impacts on land are expected as the Project does not involve construction on land where the depth to water table is less than three feet. No soil resources will be removed from the site. No erosion is expected from vegetation removal and

no hard structures, drainage basin, or retaining walls are proposed for stormwater protection. The Project is not located in a Coastal Erosion Hazard Area; and

Whereas, no adverse impacts on natural resources, plant and wildlife habitat will occur. The Applicant will avoid cutting of trees to ensure protection of habitat and endangered species including northern long eared bat. Prior to cutting, the Applicant will obtain and submit to the Commission written confirmation from NYSDEC that the drainage pond is dry and no longer supports tiger salamander breeding habitat. No adverse impacts will occur to buckmoth since no suitable habitat to support the species occurs on the Project Site. Therefore, no significant adverse impacts to endangered or threatened species of animals and plants are anticipated; and

Whereas, no adverse impacts are expected on community character and aesthetic resources since the Project Site presently contains an active agricultural use and is in a community developed with other agricultural uses.

VIII. Commission Review of the Act's Extraordinary Hardship Criteria and Applicant's Materials

Whereas, pursuant to the Act, to determine whether an Applicant has demonstrated the existence of a hardship, the Commission shall consider, among other things, the criteria set forth in New York State Town Law §267-b and determine whether the Project is consistent with the purposes and provisions of the Act and whether the Project will result in a substantial impairment of the resources of the Central Pine Barrens area and consider the criteria in ECL §57-0123(3)(b); and

Whereas, the Applicant alleges that it cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. The Applicant's financial analysis indicates a yearly profit amount of \$5,415 derived from the Project Site in its current state. If the waiver is granted, the profit increases to \$15,852.25; and without the waiver, the Applicant will need to cease operations on the Project Site; and

Whereas, the Applicant alleges the "Project is unique as the Applicant cannot realize a reasonable rate of return by farming the Property due to the vegetation growing on the uncleared portion of the land. The hardship does not apply to a substantial portion of the applicable district or neighborhood;" and

Whereas, the Applicant alleges, "The variance will not alter the essential character of the neighborhood. The variance, if granted, will enable the Applicant to expand its farm by an additional 7.95 acres;" and

Whereas, the Applicant alleges it "Will continue to comply with best management practices as stated in the Agricultural Management Practices Catalogue for Nonpoint Source Pollution Prevention and Water Quality Protection in New York State, June 2007;" and

Whereas, the Applicant alleges, "The requested variance would not alter the essentially character of the neighborhood or district as agriculture has been a mainstay in the Pine Barrens;" and

Whereas, the Applicant alleges the Project Site was farmed 35 years ago by the Fink family; and

Whereas, the Applicant alleges, "The Hardship has not been self-created. The vegetation that currently exists in Area B and Area C is native to the Pine Barrens. Without clearance of this vegetation, the Applicant cannot realize a reasonable rate of return;" and

Whereas, the Commission has considered all of the materials submitted in connection with the application including the transcript of the public hearing; and

Whereas, the Commission finds the Applicant has established the existence of a hardship and that the Project is designed to be compact, efficient and orderly development in the CGA, consistent with the purposes and provisions of the Act. The proposed agricultural use of the site is consistent with the character of the area; and

Whereas, the Commission finds the Applicant has established the existence of a hardship because the Project is unique and does not apply to a substantial portion of the district or neighborhood because with the exception of the two parcels with development potential remaining in the Study Area, each approximately 16 acres with one single-family residence, activities similar to those which will occur pursuant to the Project are not expected to occur on other parcels in the Study Area; and

Whereas, in considering the second waiver criteria, the Commission finds that the hardship, as it relates to the Project Site, is unique because of the historic farming activity that occurred on the Project Site prior to the Act; it is one of only three parcels in the Study Area with development potential and does not apply to a substantial portion of the district or neighborhood because of the lack of land that remains available to farm; and

Whereas, the Commission, in analyzing the third waiver criteria, finds that granting the requested exemption will not alter the essential character of the neighborhood because the clearing is for an existing agricultural use and is consistent with the historic use of the Project Site for agriculture and pattern of development surrounding the Project Site, and that the Project is consistent with existing established land use and community character, and

Whereas, the Project accommodates development that is compact, efficient, and orderly as it retains an agricultural use in the CGA and in proximity to other land comprising approximately 40 acres that is currently farmed by the Applicant; and

Whereas, the Commission finds the Applicant has established the existence of a hardship which has not been self-created because the existing natural vegetation on the Project Site has created a financial hardship preventing the Applicant from realizing a reasonable rate of return and without the waiver would force the closure of operations on the Project Site; and

Whereas, the Commission has considered the application, the Staff Report and Exhibits, and the transcripts of the hearings and its prior decisions; and

Whereas, due to the Project's nonconformance with the CLUP standards, the Applicant applied to the Commission for a waiver from strict compliance pursuant to Environmental Conservation Law Section 57-0123(3)(b), and

Whereas, the goals and objectives of the Act, outlined in ECL Section 57-0121, encourages and promotes appropriate patterns of compatible agricultural development in order to accommodate regional growth influences; and

Whereas, the Project will comply with all other Standards of the CLUP, and

Whereas, the Commission has considered all of the materials submitted in connection with the application including the transcript of the public hearing.

IX. Mitigation

Whereas, if the agricultural use ceases on the Project Site, an unfragmented block of 47% of the site shall be left to undergo natural restoration and revegetation, now, therefore, be it,

X. Commission Determinations

Resolved, the foregoing recitals are incorporated herein and made a part hereof; and be it further

Resolved, that pursuant to SEQRA, a Negative Declaration is adopted for the Project as the Commission has determined that the Project will not result in significant adverse environmental impacts provided that the Applicant adheres to the conditions outlined below regarding endangered species protection; and be it further

Resolved, the Commission finds the Applicant has demonstrated an extraordinary hardship for the reasons set forth above and is approved; and be it further

Resolved, the Commission finds that the Project is not inconsistent with the purposes and provisions of the Act, including but not limited to, the goals and objectives to "[p]reserve the functional integrity of the Pine Barrens ecosystem, protect the quality of surface water and groundwater, discourage piecemeal and scattered development, [to] accommodate development in a manner consistent with the long-term integrity of the Pine Barrens ecosystem and to ensure that the pattern of development is compact, efficient, and orderly;" and be it further

Resolved, the Project is unique as it seeks to reestablish an agricultural use where the use previously existed 35 years ago; and be it further

Resolved, the granting of this hardship exemption will not result in a substantial impairment of the resources of the Central Pine Barrens because the Project will occur on a Project Site that was previously disturbed for agricultural activity, and be it further

Resolved, if agricultural activity ceases on the project site, the owner shall cause 47% of the site, in an unfragmented pattern, to succeed to a naturally vegetated state with no active restoration requirements; and be it further

Resolved, the Applicant shall obtain additional permits and approvals, as required by law, prior to commencement of the Project, and be it further

Resolved, that the Commission hereby determines the Application, as submitted, meets and satisfies the criteria for a Compatible Growth Area Hardship pursuant to the Act; that the requested use variance, if granted, will not alter the essential character of the neighborhood, as the Applicant presently cultivates approximately 40 acres in the Study Area and agricultural uses are consistent with the community character; and be it further

Resolved, the Commission hereby determines the waiver is the minimum variance deemed necessary and adequate to address the unnecessary hardship proven by the Applicant, and with mitigation, preserves the essential character of the Central Pine Barrens pursuant to ECL Section 57-0121; be it further

Resolved, that the Application is approved, subject to the following specific conditions:

1. Clearing authorized by this resolution shall occur between November 1 and March 31.
2. 10% of the Project Site, on the east side of the Project Site, as shown on the survey prepared by Young and Young last dated January 27, 2017 shall remain in its existing natural state.
3. Prior to conducting any clearing activity on the Project Site, the Applicant shall first submit a written notice to the Commission office notifying the Commission of the commencement of clearing at least 5 days prior to said activity. Prior to clearing, the Applicant shall submit a letter from NYSDEC confirming the tiger salamander habitat is no longer viable breeding habitat.
4. Within 45 days of clearing to a limit of 90% of the Project Site, the Applicant shall submit a plan to the Commission that is certified by a surveyor that demonstrates 90% of the site was cleared.

5. Declaration of Covenants and Restrictions:

The Applicant shall submit draft Covenants and Restrictions (C&Rs) to Commission counsel for review and approval. The C&Rs must be granted to the Commission. Once approved, the C&Rs must be recorded against the Project Site and filed in the Office of the Suffolk County Clerk with proof of filing provided

to the Commission office no less than one week prior to site disturbance or any other activity on the project site, and prior to the issuance of clearing or other permits by the Town. In any case, the C&Rs must be filed with the Suffolk County Clerk no more than six months after the date of this resolution.

The objective of the C&Rs are to ensure that if the use of the site for an agricultural use, as defined by New York State Agricultural Markets Law, ceases or changes, an unfragmented block of 47% of the site shall be set aside for natural restoration to its prior naturally-vegetated state to occur. No active planting or landscaping is required in order to re-establish the natural vegetation. If a future owner seeks to utilize any portion of the 47% area to remain natural, review by and a decision from the Commission is required, including but not limited to a CGA Hardship Waiver. The C&R must state specifically:

- a. The hardship waiver is approved solely to utilize the project site for an agricultural use, as defined by New York State Agriculture and Markets Law. The agricultural use is permitted to continue in perpetuity on 90% of the Project Site, with 10% remaining in its existing natural state.
- b. If the agricultural use ceases on the Project Site, an unfragmented block of 47% or 10.1 acres of the site shall be protected and required to revert to natural vegetation. No active replanting is required, but 47% of the Project Site must be set aside to naturally restore itself if and when cessation of agricultural activity occurs on the Project Site. The site shall be deemed no more than 53% cleared for the purposes of the application of the CLUP clearing standard.
- c. Any and all future owner(s) of the Project Site are hereby notified that the Project Site must comply with this decision. Development as defined in the Act shall be subject to Article 57 of the New York State Environmental Conservation Law and the Central Pine Barrens Comprehensive Land Use Plan.

6. Any modifications to the existing Site Plan must first be reviewed and approved by the Commission.
7. The Applicant shall obtain additional permits and approvals, as required by law, prior to commencement of the Project.

Resolved, this decision applies only to the instant Project and is subject to change if any element of the Project is modified; and be it further

Resolved, this approval shall expire five years from the date of adoption by the Commission; therefore, if the Applicant has not achieved the clearing permitted by this waiver, in accordance with conditions of approval, the decision will be considered expired, and the Applicant must seek an extension of time or re-approval providing a status report of the Project; and be it further

Resolved, a copy of this resolution shall be recorded in the Office of the Suffolk County Clerk within one year of the date of approval and indexed against the property.

Record of Motion: Fink's Farm (Shwonik/Guyder Farm) Compatible Growth Area Hardship Waiver, Wading River, Town of Riverhead; SCTM # 600-115-1-9

Decision to Approve

Motion by: Mr. Walter

Seconded by: Mr. Romaine

In Favor: 4

Opposed: 0

Abstention: 1 (Mr. Freling)

"SCHEDULE B"

All that certain piece, parcel or tract of land with the buildings and improvements thereon situate, laying and being near Town of Riverhead, County of Suffolk and State of New York, bounded and described as follows:

North by land now or formerly belonging to Stephen Polakevicz; east by land now or formerly of Hannah Woodhull; south by the Country Road (now known as Route 25), and west by the south road (now known as Manor Road).

Exhibit 4
Survey prepared by Land Design Associates dated November 20, 2018 and
authorized by Suffolk County Real Property (the “County Survey”)

