

CENTRAL PINE BARRENS JOINT
PLANNING AND POLICY COMMISSION

In the Matter of the Violations of Articles 49 and 57 of the
Environmental Conservation Law of the State of
New York ("ECL")

-----X-----
ORDER ON CONSENT

No. CPBJPPC 1-2020

by

PECONIC RIVER SPORTSMAN'S CLUB

(Suffolk County) Respondents.

-----X-----

WHEREAS

1. The Central Pine Barrens Joint Planning and Policy Commission (hereinafter referred to as "the Commission"), and with offices at 624 Old Riverhead Road, Westhampton Beach, New York, has jurisdiction over land use activities within the Central Pine Barrens as defined in Article 57 of the ECL and has jurisdiction over land use activities on properties for which it is a grantee of conservation easements, as defined in Article 49 of the ECL.
2. Respondent Peconic River Sportsman's Club (hereinafter referred to as "PRSC"), with offices at 389 River Road, Manorville, New York, owns a parcel of real property in the Peconic River Park area on the south side of River Road and west side of Connecticut Avenue in the hamlet of Manorville in the Town of Riverhead identified as Suffolk County Tax Map Number District 600, Section 142, Block 2, Lot 1.1, consisting of approximately 59.8 acres.
3. The parcel owned by PRSC, hereinafter referred to as the "Property," is located in the "core preservation area" of the Central Pine Barrens area as defined in ECL §57-0107(11), and as such is under the jurisdiction of the Commission.
4. ECL §57-0107(13) defines categories of activities which constitute development, including "*the making of any material change in the use or intensity of use of any structure or land...*" ECL §57-0107(13) (b) further describes development as including "*a material increase in the intensity of use of land or environmental impacts as a result thereof...*" and ECL §57-0107(13) (c) describes development as "*commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land...*"
5. Pursuant to ECL §57-0121(3) (c) the Central Pine Barrens Comprehensive Land Use Plan (hereinafter the "CLUP") "*with respect to the core preservation area shall be designed to protect and preserve the ecologic and hydrologic functions of the Pine Barrens by: prohibiting or redirecting new construction or development.*"
6. Pursuant to Article 57 of the ECL, the Commission has promulgated the CLUP which, among other things, describes in Chapter 4, Section 4.5, the Commission's jurisdiction over development in the Core Preservation Area and procedures and requirements for Commission review of such development. Chapter 5, Section 5.2 of the CLUP states: "*Allowable uses within the Core Preservation Area shall be limited to those operations or uses which do not*

constitute development, or hardship exemptions granted by this Commission pursuant to the Act.”

7. On March 10, 2005, PRSC granted a conservation easement to the Commission on the Property (the “Easement”). The easement was recorded in the offices of the Suffolk County Clerk on April 4, 2005 and is indexed at Liber D00012380 Page 440.
8. The Easement prohibits PSRC from undertaking development activities on the Property as follows:
 - “1. *There shall be no alteration of vegetation or change in topography, no development as defined by ECL Section 57-0107(13) and no operations or uses not constituting development pursuant to ECL Section 57-0107(13)(i-xiv), unless otherwise expressly reserved herein.*
 2. *There shall be no storing, dumping, discharging or placing of any substance in or on the Property in contravention of any applicable federal, state or local law or ordinance.*”
9. The Easement also enumerates reserved rights, but with qualifying conditions, which specifically state:
 - “2. *The right to use the Property for passive recreational activities such as, but not limited to, hunting, fishing, camping, and hiking so long as such activities conform to local zoning regulations and do not constitute development as defined in ECL Section 57-0107(13) and do not involve the material alteration of vegetation.*”
(emphasis added)
 - “4. *The right to use and maintain, by mowing or cutting, the existing fields including maintaining the existing cleared areas used for hunting game birds and shooting clay targets and to maintain and replace in kind (without increasing the foot print or generating any additional sanitary waste) existing buildings and equipment. The areas that may be maintained are the areas which are cleared as shown on the aerial photograph taken by AeroGraphics Corp. dated March 7, 2000 and depicted as such on the survey by Young and Young entitled "Map of Property Peconic River Sportsman Club, Inc.," dated December 12, 2003.*”
10. On February 27, 2020, during an inspection of the Property Commission staff became aware of activities which were conducted on the Property, including clearing of native vegetation, grading, construction of new structures and movement of existing structures to new locations, and conducted an investigation.
11. On June 30, 2020, Commission staff conducted a second inspection of the Property accompanied by officers of the PRSC’s board of directors. The inspection revealed that, since the last full inspection of the site on December 8, 2016, the following activities had been conducted on the property:

- Clearing of native vegetation in an area of approximately 13,000 square feet
- Grading
- Excavation
- Importation and placement of a gravel surface
- Relocation of an existing fuel tank onto a new concrete pad with installation of a surrounding concrete block containment wall
- Installation of a replacement fuel tank on a concrete pad
- Installation of steel canopies, on steel posts, over the two fuel tanks
- Extension of electrical service to the fuel tanks
- Installation of two steel storage containers with connecting roof

As a result of the aforesaid investigation, Commission staff confirmed that PRSC caused or permitted to be caused clearing of native vegetation, construction of new structures and the movement of existing structures to new locations on the Property.

12. The Commission finds that the clearing of native vegetation, grading, construction of new structures and movement of existing structures to new locations which occurred on the Property constitutes development and has verified that these activities were neither authorized nor approved by the Commission, via the granting of a hardship waiver exemption nor via an amendment to the conservation easement, prior to their commencement. The Commission finds that these activities also violate the terms of the Easement. Therefore, the aforesaid activities represent violations of Articles 57 and 49 of the ECL and the CLUP.
13. PRSC, by its officers, admits to causing or allowing to cause the clearing of native vegetation, grading, conducting of excavation, construction of new structures and the moving of existing structures on the Property in violation of Article 57 of the ECL, the CLUP and the Easement.
14. ECL §57-0136(2-a), states for any civil violation that takes place in the "core preservation area" of the Central Pine Barrens area, any person who violates any provision of ECL Article 57, the land use plan adopted by the Commission, any regulation promulgated by the Commission, or the terms or conditions of any order, permit, or determination issued by the Commission pursuant to ECL Article 57 shall be liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation and an additional civil penalty of not more than one thousand dollars (\$1,000) for each day that such violation continues.
15. PRSC desires to resolve the violations through this Order on Consent rather than to engage in litigation on the issues.
16. The Commission agrees to settle the within matter through this order on Consent with PRSC rather than to engage in litigation on the issues.

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

- I. **Cease and Desist.** PRSC shall immediately cease and desist any and all further activities in violation of any provision of the Act, the CLUP or the Easement on the Property except as authorized herein.

II. Relief.

A. **Penalty.** With respect to the violations identified in paragraphs "9" through "13" of this Order, the Commission assesses against PECONIC RIVER SPORTSMAN'S CLUB a civil penalty in the sum of TEN THOUSAND DOLLARS (\$10,000), of which SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) is suspended pending complete compliance with the terms and conditions of this Order on Consent.

B. **Method of Payment.** Payment shall be made in accordance with the following three paragraphs.

- i. The payable portion of the penalty, TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) is to be paid by bank check made payable to "Central Pine Barrens Joint Planning and Policy Commission,"
- ii. Payment to the Commission must have written on its face: CPBJPPC 1-2020/ PECONIC RIVER SPORTSMAN'S CLUB.
- iii. Payment to the Commission shall be delivered to:

Central Pine Barrens Joint Planning and Policy Commission
624 Old Riverhead Road, Westhampton Beach, NY 11978

Via certified mail no later than THIRTY (30) DAYS following the Effective Date of this Order.

C. **Annual Activities:**

- i. In the first quarter of every calendar year PRSC board members shall conduct an on-site meeting on the Property with Commission representatives to discuss PRSC current status, operations and any future projects. The date and time of the meeting shall be determined by mutual consent of PRSC and the Commission staff.

D. **REMEDY Fuel Tanks, New Construction and Relocated Infrastructure**

The two fuel tanks, associated concrete pads, associated concrete block containment wall, canopies; two storage containers with new roof, gravel surface and new dock shall be allowed to remain subject to the following conditions:

- i. PRSC shall apply, within 30 days of the Effective Date of this Order, to the Suffolk County Department of Health Services for a permit or other applicable form of written approval for the two fuel tanks. PRSC shall obtain said permit or written approval within 9 months of its application to the Suffolk County Department of Health Services.
- ii. PRSC shall apply, within 30 days of the Effective Date of on this Order, to the Town of Riverhead Fire Marshal and, if applicable, to the Town of Riverhead Building Department, for a permit or other applicable form of written approval

for the two fuel tanks. PRSC shall obtain said permit or written approval within 9 months of its application to the Town of Riverhead Fire Marshal (and, the Town of Riverhead Building Department, as applicable), within 6 months of the date of last signature on the Order.

- iii. PRSC shall apply, within 30 days of Effective Date of this Order, to the New York State Department of Environmental Conservation for a Wild, Scenic and Recreational Rivers permit for the two fuel tanks. PRSC shall obtain said permit, Notice of No Permit Necessary or notice of No Jurisdiction, within 9 months of the date of last signature on this order.
- iv. Within 2 weeks of having received them PRSC shall submit to the Commission office copies of all approvals and permits described in II. D., paragraphs i through iii.
- v. Following any non-appealable judgment denying one or more of the aforementioned approvals described in II. D., paragraphs i through iii, PRSC shall remove from the Property the two fuel tanks, the concrete pads on which they rest and their canopies within 30 days of the date PRSC received notice of the non-appealable judgment denying any approval or permit described in II. D., paragraphs i through iii. Said removal shall be conducted in accordance with all applicable Federal, state and local laws and regulations and the Commission shall be notified within 48 hours that these structures have been removed so that it may conduct an additional inspection of the Property.

E. Revegetation Plan and Implementation

- i. PRSC shall prepare a Revegetation Plan, consisting of native vegetation, for revegetation of no less than 1 acre of the Property. The Revegetation Plan shall consist of both a map of the property which depicts locations and sizes of areas to be revegetated, location, species, size and spacing of new plants to be installed and all specifications described herein in E; and a descriptive written narrative.
- ii. PRSC shall hire a Registered Landscape Architect, who possesses restoration ecology expertise and who is familiar with Central Pine Barrens native plant species and their propagation, planting and care, to prepare the Revegetation Plan. Said Registered Landscape Architect shall also oversee the implementation of the Revegetation Plan on behalf of the Commission. Prior to hiring, PRSC shall submit the name, credentials and curriculum vitae of the Registered Landscape Architect to the Commission for approval. No hiring shall occur until the Registered Landscape Architect has been approved by the Commission.
- iii. PRSC shall identify on the aforesaid Revegetation Plan map currently unvegetated areas, along with their acreage, which may be suitable for revegetation. The prospective revegetation areas may be comprised of several smaller sites which collectively total a minimum of one acre in size. PRSC must identify in the field all areas that are proposed for revegetation to ensure they are suitable and appropriate. These must first be reviewed in the field by the Commission office and deemed acceptable by the Commission office prior to revegetation commencing.

- iv. The Revegetation Plan shall only utilize species of trees, shrubs, groundcovers and other vegetation which are native to the Central Pine Barrens and which should be of Long Island genotype, and in particular those which are found on and adjacent to the Property, and at sufficient densities, sizes and diverse arrangements (no monocultures) to approximate and mimic natural conditions within existing natural vegetation communities in the Central Pine Barrens unless a substitute is otherwise approved by the Commission. The native species used for planting shall be in accordance with the specifications provided in this plan. The source of plant material shall be provided and must be approved by the Commission prior to use.
- v. The Revegetation Plan shall provide planting specifications including that plant material stock size shall consist of appropriately sized trees with a minimum size of two (2) gallon pot size, and shrubs to achieve effective restoration and based on available nursery stock sizes for native genotypes as specified by the Landscape Architect and based on Commission review and approval of the Revegetation Plan. Trees shall be planted in a staggered grid or naturalistic planting design with spacing to be determined based on selected species (but no less than 30 feet on center), specifications by the Landscape Architect and Commission review and approval of the Revegetation Plan. Understory, shrubs and groundcovers shall be proposed for and planted in areas between trees. Shrub plant and groundcover size and spacing shall be appropriate to achieve the restoration goals based on the selected species as specified by the Landscape Architect and the approved Revegetation Plan.
- vi. The Revegetation Plan shall provide for appropriate ground preparation including amelioration of existing soil compaction prior to revegetation in order to render the soil in the area to be revegetated as conducive as possible to growth and regrowth of native species in the revegetated areas.
- vii. Vegetation shall be planted on or after April 1, 2021 and completed by May 31, 2021. If revegetation cannot be accomplished within that time frame, PRSC shall have its Registered Landscape Architect propose an alternative time period for the Fall of 2021 which time period must first be presented to and approved by the Commission.
- viii. Supplemental watering shall be required for planted trees during the first year, especially during dry periods.
- ix. The boundaries of the revegetated areas shall be marked and delineated with fencing and/or stakes to ensure revegetated areas are not disturbed after completion of planting. The fencing and/or stakes shall be shown on the Revegetation Plan map.
- x. PRSC shall guarantee survival of 85% of the revegetated plants for a period of 3 years (with the 3-year time period commencing after the last plant is planted). If complete failure occurs prior to the end of the 3-year time period, the failed area shall be revegetated again and a new 3-year time period for the failed area will commence, again, after the last plant is planted in the failed area. Dead, dying, and diseased plants shall be removed and replaced in-kind during the three-year guarantee period.
- xi. The Revegetation Plan shall include provisions for the identification, prevention, early detection, monitoring, control and eradication of invasive plant species throughout the entire restoration period and PRSC shall monitor

for, control and eradicate invasive plants in the revegetation areas. Invasive plants shall be removed using only non-chemical methods, unless otherwise approved by the Commission.

xii. PRSC shall monitor the revegetation areas and, on an annual basis for (3) three years following completion of the revegetation, shall submit to the Commission annual reports concerning the status and success of the revegetation. Said reports shall be submitted to the Commission on or after June 15 but prior to June 30, following initial revegetation completion, and shall include, but not be limited to, the date and time of inspection, name and qualifications of person conducting inspection, color digital photographs of the revegetated area taken at the time of each inspection, relative health of revegetated area including whether or not any of the plants in the revegetated area are dead, dying or diseased and, if so, corrective methods to be employed and whether or not invasive species are present and, if so, name of invasive species and corrective methods to be employed. Photo-monitoring may serve as documentation of the general vegetation composition and diversity, as well as revegetation success. Three or more photo-monitoring points shall be established at strategic locations within each revegetated area, with photo-documentation taken prior to revegetation, immediately following installation of the last plant required by the Revegetation Plan, including revegetation plants and then every year between June 1 and June 15 of the then current year for (3) three consecutive years or until 85% survival of revegetation plants is achieved. The Photo monitoring reports shall include a descriptive narrative and hard copy and electronic versions of the monitoring reports shall be provided to the Commission at the intervals noted herein.

xiii. PRSC shall submit the Revegetation Plan to the Commission for its review and approval within 30 days of the Effective Date of this Order. The Commission will review and provide comments on any revisions required. PRSC shall revise the Revegetation Plan in accordance with the Commission's comments and submit the revision within thirty (30) days. This cycle shall continue until the Revegetation Plan is deemed acceptable by the Commission. Until approved by the Commission, no physical work activity on such Revegetation Plan may commence on the Property.

xiv. PRSC, within thirty (30) days of approval of the Revegetation Plan by the Commission, shall commence implementation of the Revegetation Plan for the Property and shall complete the revegetation within thirty (30) days of its commencement. However, if the date of Commission approval of the Revegetation Plan is too late to allow PRSC to complete revegetation by May 31, 2021, PRSC shall notify the Commission in writing within 5 days of Commission Revegetation Plan approval and shall commence implementation of the Revegetation Plan no more than thirty (30) days following the beginning of any Fall 2021 planting time frame that has been approved by the Commission. Following completion of the revegetation, PRSC shall immediately undertake, or cause to be undertaken, monitoring of the site as prescribed herein. In implementing the Revegetation Plan, PRSC shall authorize their Registered Landscape Architect, or his or her designee, to serve as the on-site coordinator and shall grant him or her the authority to direct all

work associated with the revegetation.

xv. PRSC shall notify the Commission office a minimum of seventy-two (72) hours in advance of initial revegetation work and shall notify the Commission office no more than seventy-two (72) hours after completion of revegetation planting.

F. Update Survey and Easement.

- i. After all initial revegetation planting has been completed and agency permits and approvals have been obtained for the two aforementioned fuel tanks, PSRC shall have the survey of the site updated to depict the new tanks and associated infrastructure, storage containers, gravel area, all revegetated areas, all docks, existing boneyards/junkyards/equipment graveyards and all other structures not shown on the current survey.
- ii. PRSC shall only be required to update the survey to show only those portions of the Property which have been altered subsequent to the date of the most recent prior survey. PRSC shall not be required to undertake and prepare a complete new survey of the entire Property.
- iii. PRSC shall work with the Commission office to identify all additional items that must be shown on the updated survey.
- iv. PRSC shall submit a copy of the revised survey to the Commission for its records.
- v. The Commission office shall then prepare an amended Conservation Easement, which references the updated survey, and shall provide the amended conservation easement to PRSC.
- vi. The Parties shall execute the Conservation Easement Amendment and cause the same to be recorded in the offices of the Suffolk County Clerk within 30 days of its full execution.

G. Certification Order Satisfied

At the completion of the tasks described in II, paragraphs A, B, D, E and F, and after the first Annual Activities meeting between PRSC and the Commission has been conducted pursuant to II, paragraph C of this Order, PRSC shall certify to the Commission that the conditions of this Order have been fulfilled. Upon review by the Commission and adoption of a resolution certifying that the tasks have been completed pursuant to this Order, the terms of this Order shall have been satisfied.

III. Settlement and Reservation of Rights.

- A. Upon completion of all obligations created in the Order, this Order settles only all claims for civil and administrative penalties concerning the violations described in Paragraphs "9" through "13" this Order against Respondent PRSC and its successors (including successors in title) and assigns.
- B. Except as provided in Subparagraph III.A. of this order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Commission or authorities with respect to any party, including Respondent PRSC.

IV. Failure, Default and Violation of Order.

A. PRSC's failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL and shall be deemed to be a violation of both this Order and the ECL, and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to PRSC by the Commission as well as additional enforcement action to be undertaken. Upon such failure to comply, the suspended penalty shall be due immediately and the Commission may commence any other action deemed appropriate.

V. Indemnification.

PRSC 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 PRSC 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 PRSC and its successors (including successors in title) and assigns.

VII. Modification. In those instances in which PRSC desires that any of the provisions, terms or conditions of this Order be changed, it shall make written application, setting forth the grounds for the relief sought, to the Commission at 624 Old Riverhead Road, Westhampton Beach, NY 11978. No change or modification to this order shall be made or become effective except as set forth by a written order of the Commission.

VIII. Access and verification. For the purpose of insuring compliance with this Order, and with applicable provisions of the ECL and regulations promulgated thereunder, representatives of the Commission shall be permitted access to the Property upon prior notice at reasonable hours and intervals in order to inspect and determine the status of the Property, as well as access to relevant records in order to inspect and/or perform such tests as may be deemed appropriate to determine the status of PRSC's compliance. Notice shall not be required if the Commission has information to reasonable believe a violation is occurring that may cause substantial impairment of the resources of the Pine Barrens.

IX. Force Majeure. PRSC shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or relief, if it cannot comply with any requirements of the provisions hereof, because of an Act of God, war, riot or other catastrophe as to which negligence or willful misconduct on the part of PRSC was not a proximate cause, provided; however, that PRSC shall immediately notify the Commission in writing when PRSC obtains knowledge of any such condition and request an extension or modification of the provisions hereof.

X. **Entire Order.** The provisions of this Order constitute the complete and entire Order issued to PRSC concerning resolution of the violations identified in Paragraphs "9" through "13" of this Order. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to paragraph VII of this Order. No informal oral or written advice, guidance, suggestion or comment by the Commission regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by PRSC shall be construed as relieving PRSC of its obligations to obtain such formal approvals as may be required by this Order.

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

Dated: Westhampton Beach, New York

November 30, 2020

CENTRAL PINE BARRENS JOINT PLANNING
AND POLICY COMMISSION

By: 

Name: John W. Parricic

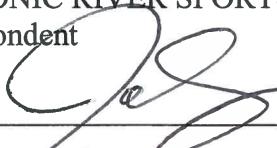
Title: Executive Director

CONSENT BY RESPONDENT

Respondent, PECONIC RIVER SPORTSMAN'S CLUB, 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.

PECONIC RIVER SPORTSMAN'S CLUB

Respondent

By: 

Name: JOSEPH E HOCKER JR

Title: VICE - PRESIDENT

Date: 11-25-2020

RESPONDENT ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss.:

COUNTY OF SUFFOLK)

On the 25 day of November in the year 2020, before me personally came Joseph E. Hocker Jr, to me known, who, being duly sworn did depose and say that he resides at 21 Moore St Smithtown NY that he is the Vice President of the respondent described herein and which executed the above instrument; and that he signed his name thereto with full authority to do so.

Sworn to before me this

25 day of November, 2020

Notary Public

JOHN C. ARMENTANO
Notary Public, State of New York
No. 02AR6143390
Qualified in Suffolk County
Commission Expires May 14, 2023