

CENTRAL PINE BARRENS JOINT
PLANNING AND POLICY COMMISSION

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

ORDER ON CONSENT

No. CPBJPPC 6-2021

by

AVR – SP Brookhaven JV LLC
Respondent

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WHEREAS:

1. The Central Pine Barrens Joint Planning and Policy Commission (the Commission) has jurisdiction over development, as the term is defined in Article 57 of the New York Environmental Conservation Law, in the Central Pine Barrens region. Article 57 is the Long Island Pine Barrens Protection Act (the “Act”). The Commission adopted and now implements the Central Pine Barrens Comprehensive Land Use Plan (the “Plan”). The Act and the Plan govern “Development” as defined in the Act, in the Central Pine Barrens region.

2. AVR – SP Brookhaven JV LLC (hereinafter referred to as Respondent), is the owner of 47.26 acres of undeveloped property in the hamlet of Yaphank, Town of Brookhaven, New York (the “Property”) in the Central Pine Barrens. Respondent proposes a three-lot subdivision and site plan to construct three buildings containing approximately 505,300 square feet of area in total (the “Project”) on the Property.

3. The Project constitutes “Development.” The Project is also a Development of Regional Significance, as defined in the Plan, given its size requiring review by the Commission. As such, no development associated with the Project, may occur until the Project is reviewed by the Commission and deemed to conform to the Plan or receives a hardship exemption authorizing it despite its non-conformance. On November 3, 2021, the Respondent submitted a Development of Regional Significance (DRS) application for the Project to the Commission.

4. On December 1, 2021, Commission staff inspected the site in preparation of a public hearing on the DRS application scheduled for December 15 and observed clearing activity on the Property. At the time of the discovery of the clearing, Respondent had not received any approval for the Project from the Commission, or the Town and the environmental review of the Project under the New York State Environmental Quality Review Act was not complete.

5. On December 13, Commission staff had a conference call with the Respondent representatives and its counsel, J. Timothy Shea, of Certilman Balin, to discuss the clearing and

whether it constituted regulated development. During the call, Respondent advised staff without any admission of guilt or liability that the alleged site disturbance occurred in December 2020 and consisted of soil borings. Respondent without any admission of guilt or liability that it performed or caused to be performed percolation tests on the Property in November 2021.

6. On December 15, the Commission issued a Notice of Violation to the Respondent for engaging in Development, including material alteration of grade and vegetation on the Property, without Commission approval, and therefore in violation of Article 57 and the Plan. The Notice was issued pursuant to Environmental Conservation Law Section 136.

7. The Commission finds that the Respondent engaged in proscribed conduct by commencing development on the Property prior to an authorizing decision by the Commission on Respondent's Development of Regional Significance application. The soil borings and percolation tests required clearing and constitute Development.

8. In total, Respondent improperly caused, or allowed to be caused, the clearing of 1.08 acres of the Property. All of the areas cleared are proposed to be cleared if the Project is approved.

9. In order to avoid the costs and uncertainties of litigation, the parties have agreed to the terms of a settlement as set forth below.

NOW, therefore, it is hereby stipulated and agreed as follows:

10. Respondent's execution and complete satisfaction of the terms of this Consent Order shall resolve the Notice of Violation for unauthorized Development in the Central Pine Barrens Compatible Growth Area by Respondent issued by the Commission at its December 15, 2021 meeting.

11. Respondent AVR SP Brookhaven JV LLC shall surrender to the Commission one unredeemed Brookhaven Pine Barrens Credit or its current cash equivalent as determined by the Commission based on Brookhaven Pine Barrens Credit sales or contracts for sale in 2021. Upon receipt, the Commission shall mark the Credit "Retired" and ineligible for use.

12. Respondent shall tender the Pine Barrens Credit to the Commission or the cash equivalent of \$92,760 on or before January 7, 2022.

13. Respondent shall immediately cease and desist all further activities in violation of any provision of the Act or the Plan or both on the Property.

14. Respondent's compliance with this Consent Order settles only the claims for civil and administrative penalties concerning the violations noted in this Order.

15. Except for the resolving the matters described herein, nothing contained in this Consent Order shall be construed as barring, diminishing, adjudicating or in any way affecting any civil, administrative, or criminal right of the Commission with respect to action of the Respondent that violates the Act or the Plan or both.

16. Respondent's failure to comply fully and in timely fashion with any provision, term, or condition of this Consent Order shall constitute a default under the Act and shall be deemed to be a violation of both this Consent Order and the Act. Upon such failure to comply, the Commission may commence any action it deems appropriate.

17. Respondent shall indemnify and hold harmless to the extent permitted by law the Commission and its 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 Consent Order by Respondent and its successors (including successors in title) and assigns.

18. If Respondent desires that any of the provisions, terms or conditions of this Consent 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.

19. 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 Respondent of its obligations under this Consent Order to obtain required the approvals or consents required for the Project.

20. The Effective Date of this Order shall be the date upon which it is signed by the Commission's Executive Director or her designee.

21. AVR – SP Brookhaven JV LLC acknowledge the authority and jurisdiction of the Commission to issue the Notice of Violation and enter this Consent Order, accepts the terms and conditions set forth in the Consent Order and consents to the issuance thereof and agrees to be bound by the provisions, terms and conditions contained therein.

22. Each of the undersigned persons represents and warrants that he or she is fully authorized to enter into the terms and conditions of this Consent Order and execute this Consent Order on his or her own behalf and on behalf of the Party or Parties he or she represents.

AVR – SP Brookhaven JV LLC

By: Milka Jpn

Name: Michael Jacobs

Title: Authorized Signature

Date: 1/6/22

Acceptance by the Commission

The Commission authorizes entering this Order on Consent.

CENTRAL PINE BARRENS JOINT PLANNING AND POLICY COMMISSION

By: Judith Jakobsen
Judith Jakobsen, Executive Director

Date: 1/10/2022