



Central Pine Barrens Commission Public Hearing  
April 17, 2024  
Southampton Town Hall  
116 Hampton Road, Southampton, NY

**CVE US NY Westhampton 243 LLC**  
Core Preservation Area Hardship Waiver Application  
Westhampton, Town of Southampton  
SCTM Numbers 900-276-3-1 and 2

A. Location Map

B. Photographs

Robert T. Calarco  
*Chairman*

C. Sand mine site plan and reclamation plan

Timothy C. Hubbard  
*Member*

D. Site plan for solar

Maria Z. Moore  
*Member*

E. Westhampton Property Associates 2012 decision

Daniel J. Panico  
*Member*

F. Conservation Easement and Non-Disturbance agreement

Edward P. Romaine  
*Member*

G. Study Area Map

H. Applicant hardship letter for the solar facility

624 Old Riverhead Road  
Westhampton Beach, NY  
11978

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**Central Pine Barrens Joint Planning and Policy Commission  
Staff Report**

Meeting of April 17, 2024  
Southampton Town Hall

**I. INTRODUCTION**

**Project Name: CVE US NY Southampton 243 LLC**

Core Preservation Area Extraordinary Hardship Waiver and  
Proposed modification of a Conservation Easement pursuant to ECL Article 49

**Owner:** Westhampton Property Associates, Giuseppe Giaquinto representative

**Representative:** Charles J. Voorhis, Nelson Pope and Voorhis and Steven Englemann,  
CVE Group

**Lessee:** CVE US NY Southampton 243 LLC (CVE)

**Project Timeline:**

- 8/8/23 Received application
- 8/16/23 Scheduled Public Hearing
- 9/20/23 Public Hearing
- 11/29/23 Decision Deadline
- 3/7/24 Supplemental material received
- 3/20/24 SEQRA Lead Agency Coordination, scheduled public hearing
- 4/18/24 Public Hearing
- 6/26/24 Decision Deadline

**Project Site Location:**

East of Speonk Riverhead Road, north of Old Country Road (CR 71), South of New York State Route 27, Eastport, Town of Southampton, Core Preservation Area, see Exhibit A

**Project Site:** 50 acres, leased or to be leased by CVE, of a 91-acre sand mine located on 115 acres owned by Westhampton Property Associates.

**Tax Map Numbers:** 900-276-3-1 and 2

**Zoning District:** Country Residence 200 (five acre residential zoning category)

**Proposal:**

The Applicant's proposal includes:

- Request for a Core hardship waiver to develop 50 acres of an existing 91-acre sand mine to build a solar facility

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- Request to modify a conservation easement recorded on the property that was a condition of approval for a 2012 core hardship waiver granted by the Commission which allowed the sand mine to be increased.

The application states the project represents a compelling public need. It discusses support by Southampton Town and New York State regarding renewable energy goals as it relates to climate change. It states the, “uniqueness of the property supports the fact that there are no better alternatives in the Town or County for this opportunity.” It continues that it is an adaptive reuse of a disturbed site, that it meets the minimum requirements for a hardship and the environmental benefits make it unique.

The Applicant proposes to convey a conservation easement on the remaining 24 acres of the Project Site, currently not protected by the easement previously granted to the Commission. At the end of the Project, the entire 115 acre will be protected by an easement.

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

The Project proposes 11,154 solar modules, each 15 feet apart, 10 feet high and with dimensions 7 feet x 4 feet, and each with energy of 480 watts.

## **II. Project Site and the Application**

### **Existing Conditions**

The Project Site contains a 91-acre sand and gravel mine. See Exhibit B for photographs of the site and Exhibit C for the sand mine site plan and reclamation phases through 2047.

See Exhibit D for the proposed project's site plan.

### **Site History**

The sand mine was permitted by NYSDEC in 1981. The current owner purchased the mine in 2006.

In 2012, the owner applied for a core and the Commission granted a core hardship waiver to vertically expand the depth of the sand mine from an elevation of approximately 45 feet above sea level to an elevation of approximately 26 feet above sea level. See Exhibit E for the decision.

The waiver required a conservation easement to be recorded that committed the owner to habitat restoration once the mining is completed. A copy of the easement, dated June 10, 2014 is provided as Exhibit F. The easement prohibited the owner or any of its successors from applying to the Commission for another hardship exemption for the project site.

In 2012 the applicant stated in their application:

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“The end result will be the permanent preservation (through a conservation easement) of 91 acres of the site, which will provide for improved contiguous open space with other natural lands in the area.”

The mine restoration plan committed the owner to restore the mine to a pitch pine oak forest and successional field habitat. Vernal pools were expected to form in low elevations of the site. The restoration plan had 8 phases to be completed in 2047, as per the schedule in this summary.

Phase	Year Mining Begun	Year Mining Complete & Restoration Installed	Year Restoration Monitoring Complete
1	2026	2029	2032
2	2030	2032	2035
3	2030	2034	2037
4	2034	2037	2040
5 North	2038	2041	2044
5 South	2041	2044	2047
6	2023	2026	2029
7	2020	2023	2026
8	2015	2019	2022

### Study Area Land Use

A Study Area of approximately one-half mile surrounding the Project Site was reviewed to characterize the land use development pattern and zoning in the area. See Exhibit G for the Study Area map.





Westhampton Property Associates owns the Project Site which is located in both the Core and the CGA. The southern end of the property has frontage on County Route 71 (Old Country Road). There is a Critical Resource Area (CRA) in the CGA portion.

The CGA portion of the property extends approximately 4,000 feet north of CR 71. North of the CGA boundary is the Core Preservation Area which extends approximately 5,600 feet to State Route 27 (Sunrise Highway). North of the SR 27 is undeveloped wooded pine barrens land owned by the County of Suffolk.

The properties east of the Project Site include an animal shelter and publicly owned natural open space. Developed land uses in the vicinity of the Project Site along Old Country Road include a senior living complex known as Westhampton Senior Housing and a large impound facility operated by the Suffolk County Police Department.

West of the site, in the CGA, there are industrial land uses present including warehouses, sand mines and an asphalt plant.

Residential land uses are present at the southerly end of Speonk Riverhead Road. There is a 36 acre block of open space on the southwest corner of Speonk Riverhead Road and Old Country Road that is owned by Southampton Town.

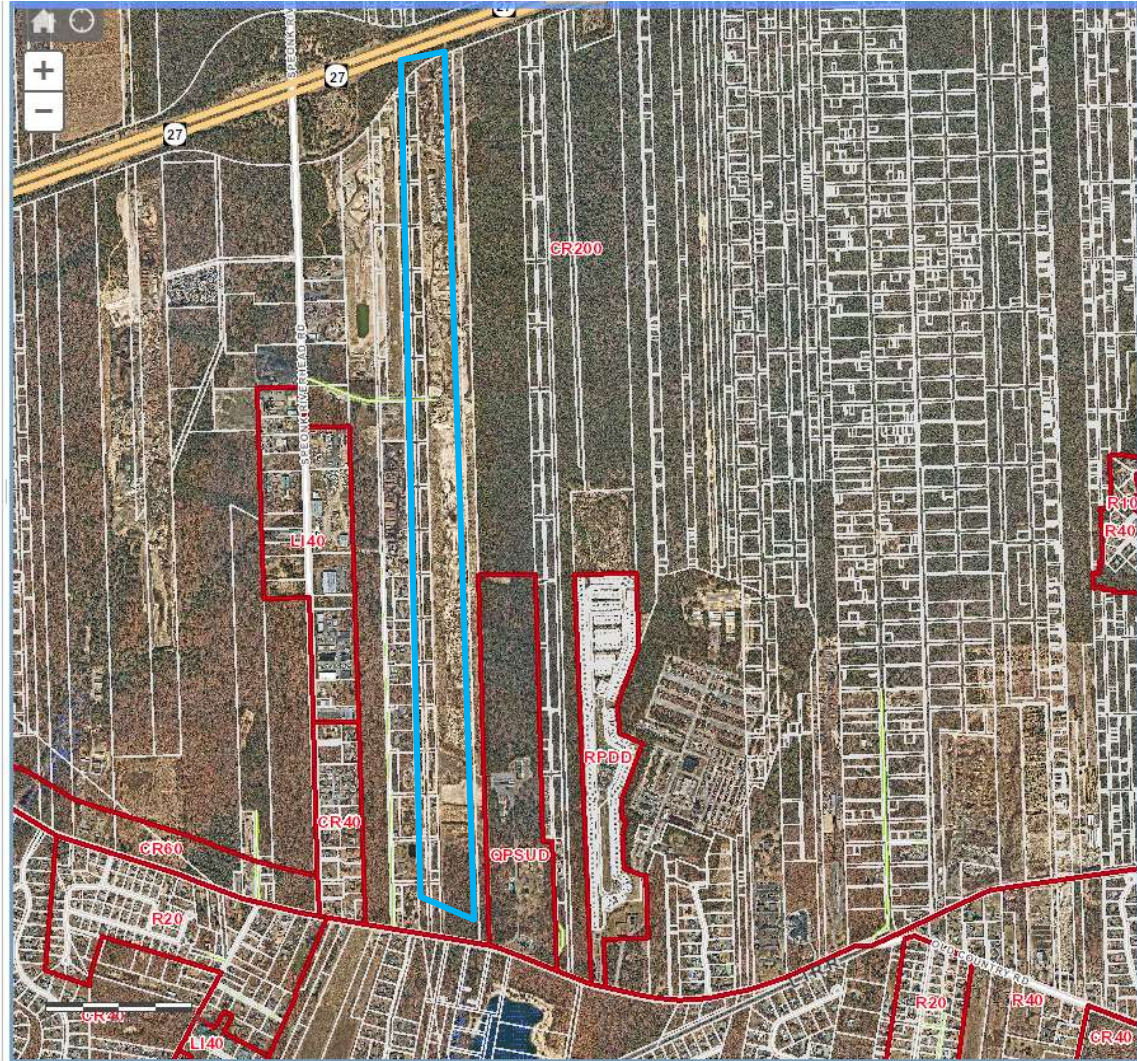
## **Zoning**

The Study Area is zoned CR 200 with exception of sites zoned LI40 directly on Speonk Riverhead Road. The southeast side of Speonk Riverhead Road is in the CR 40 zoning district (1 acre residential). Southampton has designated significant portions of the Study Area as receiving areas for development that could be transferred through the Pine Barrens Credit Program, the



Commission's transferable rights program. See figure below for zoning districts present in the Study Area. See Figure 1.

Figure 1 zoning in the Study Area



## Site Description

Topography/Elevation: The northerly end of the site is higher in elevation at approximately 73 feet than the southern portion at approximately 39 feet. The site's grade has been significantly altered due to mining activity.

Soils: Soils on site have been significantly altered by the presence of the sand and gravel mine.

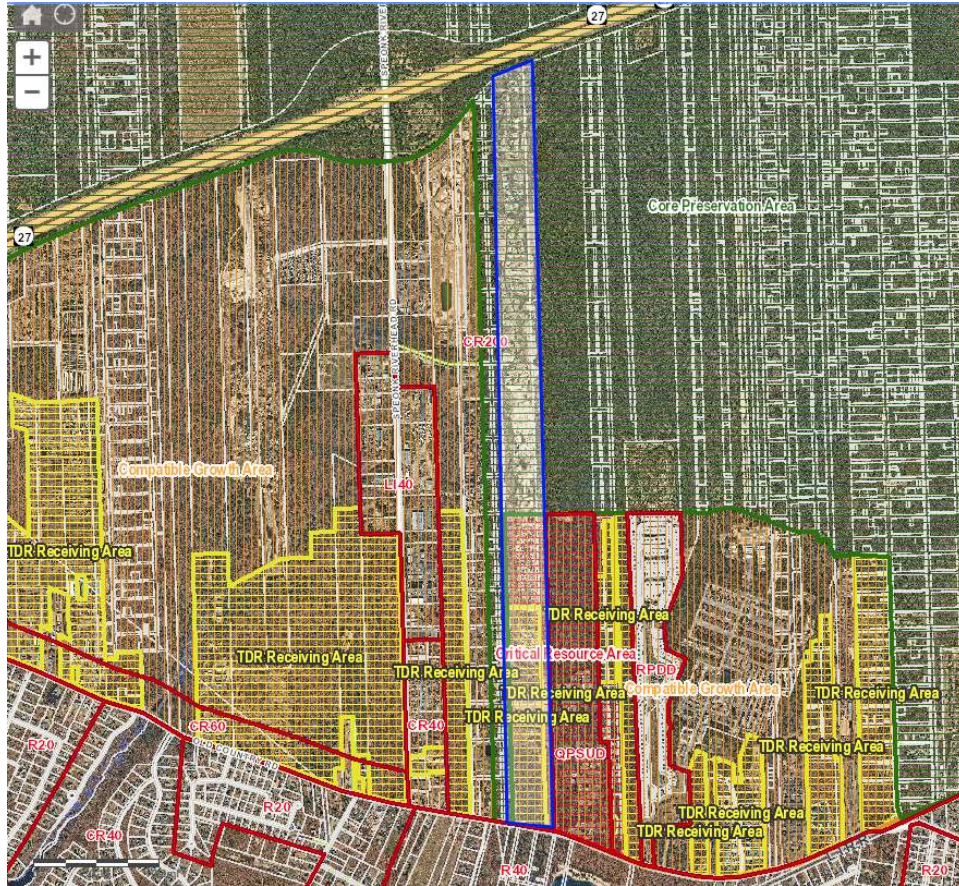
Hydrology: Hydrogeologic Zone III. Depth to groundwater varies on the Project Site. Three groundwater elevation monitoring wells were installed on the project site as per the 2012 waiver. The most recent report, March 2024, indicated 6 feet to groundwater at the north end, 30 feet in the center and 6 feet at the south end of the mine.



Vegetation: Natural vegetation is present on the south side of the Project Site in the CGA. Areas of the sand mine have been restored. More information is needed on the current status of reclamation including habitat restoration. See Exhibit B photographs.

Rare, Endangered, & Threatened Species and Species of Concern: Coordination occurred with NYSDEC , waiting for response.

Figure 2 shows the boundaries of the Core, CGA and CRA in the Study Area. Receiving areas for Pine Barrens Credits, as defined in the Comprehensive Land Use Plan, are also illustrated.



Cultural/Archeological: By letter dated September 5, 2023, the NYS Office of Parks Recreation and Historic Preservation indicated that the project will not impact cultural resources in or eligible for inclusion in the State and National Register of Historic Places.

Scenic Resources: Sunrise Highway is a scenic resource described in Volume 2 of the Plan.

Wastewater: The flow capacity is 115 acres x 300 gpd or 34,500 gpd. Confirm if any sewage generating uses are proposed such as an office with a restroom.

### **Involved and Interested Agencies and Other Required Approvals**

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- SEQRA Type I Action. Coordinated review with DEC and Southampton Town.
- NYSDEC – may require permit modification on mine reclamation
- Central Pine Barrens Commission Core Hardship Permit
- NYS ECL Article 49 easement modification request
- Southampton Town applications, permits, approvals, variances

### Public Comments

To be received at the Hearing

### Extraordinary Hardship Criteria

The applicant is required to demonstrate Hardship in accordance with ECL 57-0121(10). The applicant submitted a petition addressing Section 57-0121(10) of the Act for the proposed extraordinary hardship waiver. See Exhibit H for the applicant's petition on the hardship.

This section provides an outline of the waiver criteria.

10. Any person, the state or a public corporation upon a showing of hardship caused by the provisions of subdivision eight of this section on development in the core preservation area, may apply to the commission for a permit exempting such applicant from such subdivision eight in connection with any proposed development in the core preservation area. Such application for an exemption pursuant to the demonstration of hardship within the core preservation area shall be approved only if the person satisfies the following conditions and extraordinary hardship or compelling public need is determined to have been established under the following standards or for development by the state or a public corporation or proposed for land owned by the state or a public corporation compelling public need is determined to have been established under the following standards:

\*\*\*\*

(b) An applicant shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, one of the following:

(i) The proposed development will serve an essential health or safety need of the municipality or, in the case of an application serving more than one of the municipalities that the public health and safety require the requested waiver, that the public benefits from the proposed use are of a character that override the importance of the protection of the core preservation area as established in this article, that the proposed use is required to serve existing needs of the residents, and that no feasible alternatives exist outside the core preservation area to meet the established public need and that no better alternatives exist within the county; or

(ii) The proposed development constitutes an adaptive reuse of an historic resource designated by the commission and said reuse is the minimum relief necessary to ensure the integrity and continued protection of the designated historic resource and further that the designated historic

resource's integrity and continued protection cannot be maintained without the granting of a permit.

(c) An application for a permit in the core preservation area shall be approved only if it is determined that the following additional standards also are met:

(i) The granting of the permit will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire, endanger public safety or result in substantial impairment of the resources of the core preservation area;

(ii) The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of this article; or

(iii) The waiver is the minimum relief necessary to relieve the extraordinary hardship, which may include the granting of a residential development right to other lands in the compatible growth area that may be transferred or clustered to those lands to satisfy the compelling public need.

The Application included the resolution for the Sunrise Wind compelling public need hardship waiver to support the Project.

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

The Applicant states that the Project Site is unique and no other site exists in the county or town for the Project. However, no substantive information or analysis was submitted to support this statement. The Applicant did not provide any documentation to support their conclusory statement such as an alternatives analysis or description of Applicant's efforts to locate another suitable site for the Project.

### **III. The Easement Modification Request**

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

Conservation easements accepted by the Commission and the modification of the same are governed by Title 3 of Article 49 of the Environmental Conservation Law. ECL §49-301 provides:

The legislature hereby finds and declares that in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and man-made resources, the preservation of open spaces, the

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

ECL §49-0303(1) provides:

“Conservation easement” means an easement, covenant, restriction or other interest in real property, created under and subject to the provisions of this title which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property in a manner consistent with the public policy and purpose set forth in section 49-0301 of this title, provided that no such easement shall be acquired or held by the state which is subject to the provisions of article fourteen of the constitution.

The conservation easement was designed to conform to the provisions of Title 3 of Article 49 by “preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property in a manner consistent with the public policy and purpose set forth in [ECL] section 49-0301 of this title.” The Applicant must demonstrate that the Project does not conflict with the statutory requirement that the easement protect a scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property in a manner consistent with the public policy and purpose.

The conservation easement may be modified pursuant to ECL §49-0307 “as provided in the instrument creating the easement.” Paragraph 5 of the Miscellaneous Section of the Westhampton Mining Easement provides in part:

the Commission and Westhampton Property shall mutually have the right, in their sole discretion, to agree to amendments to this Conservation Easement which are not inconsistent with the basic purpose of this Conservation Easement, provided, however, that the Commission shall have no right or power to agree to any amendments hereto that would result in this Conservation Easement failing to qualify as a valid conservation easement under ECL, Title 3, Article 49 as the same may be hereafter amended.

Independently, the Applicant needs to modify the easement to apply for the relief it seeks because Paragraph 5 of the Miscellaneous Section provides:

Westhampton Property and Westhampton Property’s lessees, representatives, successors, heirs[,] and assigns, shall not apply to the Commission or the Pine Barrens Credit Clearinghouse for a hardship, other permit or Pine Barrens Credits under the Plan or under ECL Article 57 pertaining to the Property. Westhampton Property understands and intends to sever the right to develop the Property from the Property.

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Thus, the Applicant must demonstrate that the proposed modification necessary to accommodate the Project is consistent with the basic purpose of the Easement, and if modified, continues to protect a resource identified in Article 49. As a threshold matter, the Applicant must receive permission to modify the easement simply to make its request.

As noted, the Commission has modified an easement granted to you twice in its history. Information on both occurrences was placed into the record following the hearing and each involves a conservation easement granted to the Commission on a Boy Scout Camp in Riverhead.

To address more fully the easement modification request, on October 18, 2023, the Commission reopened the hearing record for two weeks to add an addendum to the draft staff report to provide additional information about the two instances when it consented to modifying a conservation easement granted to it. In the first, although the easement permitted existing structures to be rebuilt - provided their footprint or size was not varied - the Commission agreed to amend its easement to allow the Scout's dining hall to be rebuilt after a catastrophic fire. The easement needed to be modified because the new hall was one square foot larger.

In the second instance, the Commission permitted the Scouts to increase the size of an existing cabin while reducing the size of a cabin that the Scouts can build in the future. The combined square footage of the two cabins is the same but the location of the area is different. This change minimized the amount of clearing required for the future cabin because it will be smaller than what was originally authorized.

The Applicant must address the potential inconsistency between its proposal and the statutory strictures concerning conservation easements.

### **IV. Consistency of the Application with the 2012 Core Preservation Area Hardship Waiver**

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

### **V. Hardship Criteria Elements**

The site has a beneficial use. The use was expanded to extend the beneficial use of sand mining activity from 2012 to 2044. The Project seeks to continue to extract mineral resources from the site and develop a second land use of a solar facility for the financial benefit of the Applicant. As part of its 2012 application, the Applicant demonstrated that if it did not receive the waiver it would suffer financial damages because it had executed long term supply contracts.

The hardship criteria requires that the hardship to not arise from the personal situation of the applicant rather than characteristics of the property. The Project is a private facility by a private entity and does not arise out of the characteristics of the property. ECL §57-0121.10(a)(ii)

## **VI. Precedent**

The proposal is inconsistent with the scope of the easement modifications approved in connection with the easement it received from the Boy Scout Council. The Commission has not modified any other of its easements.

No core hardship waivers or development has been approved by a waiver request on protected open space, a conservation easement, or a site with a prior hardship where future development was strictly prohibited.

## **VII. Discussion/Comments**

1. Requesting the applicant discuss how the project demonstrates hardship given the 2012 waiver requestions and protected open space.
2. Submit an updated site plan with the 50 acre buildout
3. Clarify the location on the site relative to the CGA and Core boundaries
4. Confirm number of acres mined to date and the amount of material extracted
5. Confirm number of acres left to mine and the amount left to be extracted
6. Explain assurance that another development proposal will not be proposed when solar is decommissioned. Will the site then be committed as open space?
7. Explain whether this will require a change to the mine land reclamation permit and DEC approval. Explain the process to change the reclamation plan, close the mine, allow a new land use on the mine. We should require the applicant to get a letter from DEC that states whether there will need to be a change to the mine land reclamation permit and require DEC review and approval?
8. Restoration, mine reclamation plan. Discuss the current status of restoration as it relates to the schedule presented in the 2012 waiver application. How many acres have been restored, how much is left, what is the present schedule to complete mining and to complete restoration. Provide plans on current and future restoration plans.
9. SEQRA process, Type I Action. Coordinated review with Southampton Town and NYSDEC. Waiting for responses from the coordinated material to establish lead agency and make a determination of significance pursuant to section 617.6(b)(5)(iv) of the SEQRA regulations. Received response from Southampton on April 12 deferring lead agency and providing comments.
10. Discuss the decommissioning plan, schedule, bond and other requirements. Submit a decommissioning plan to the commission for review prior to a decision. A plan has not been prepared or submitted to date.
11. Further comments and recommendations may be necessary after the public hearing or receipt of additional information.

## **Exhibits**

- A. Location Map
- B. Photographs
- C. Sand mine site plan and reclamation plan
- D. Site plan for solar
- E. Westhampton Property Associates 2012 decision
- F. Conservation Easement and Non-Disturbance agreement
- G. Study Area Map
- H. Applicant hardship letter for the solar facility





Find address or place

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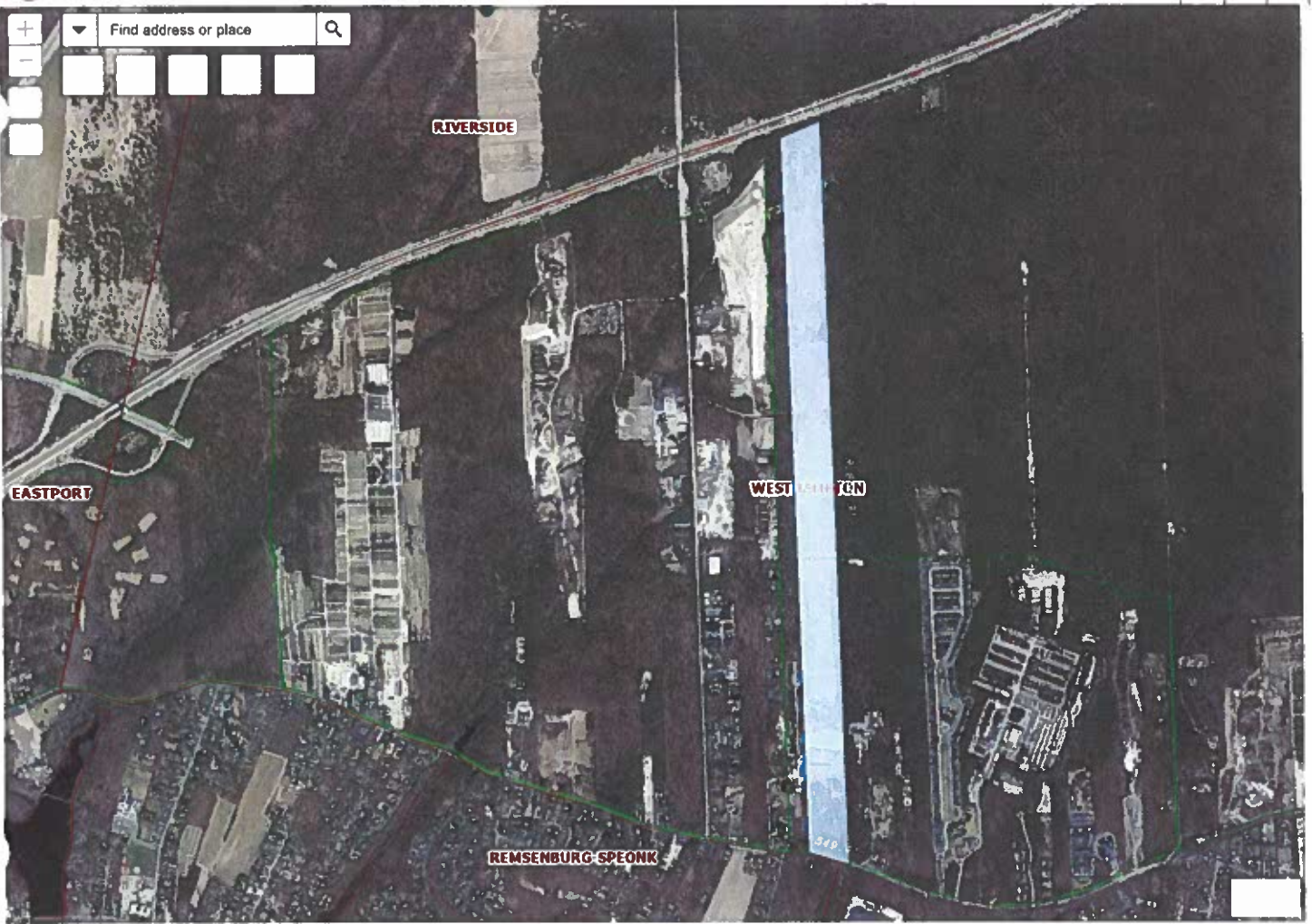
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Westhampton Property Associates sand mine site conditions  
August 2023





Westhampton Property Associates sand mine site conditions  
August 2023



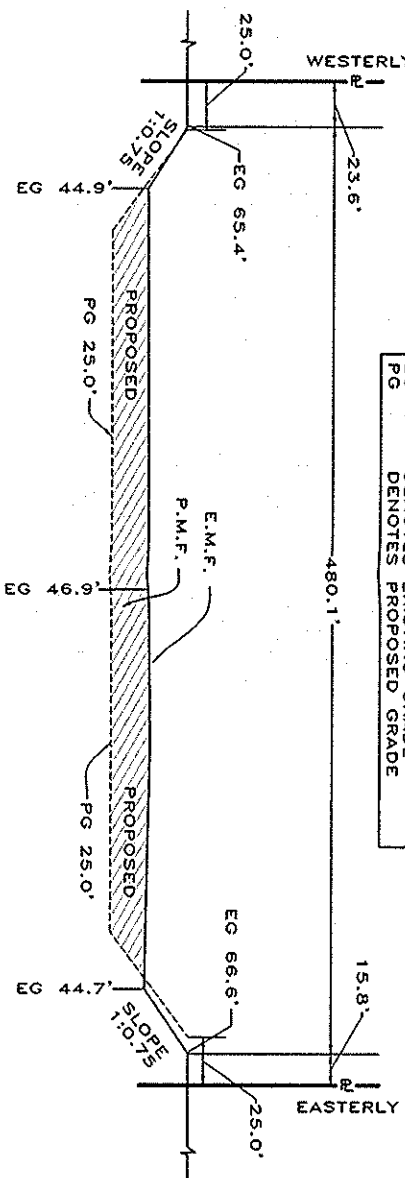
Westhampton Property Associates sand mine site conditions  
August 2023







TAX MAP	
DISTRICT	0900
SECTION	276
BLOCK	003
LOT	1.0 & 2.0



TYPICAL SECTION OF:  
& PROPOSED EXCAVATION  
AT 37+00  
SCALE: 1" INCH= 100' FEET

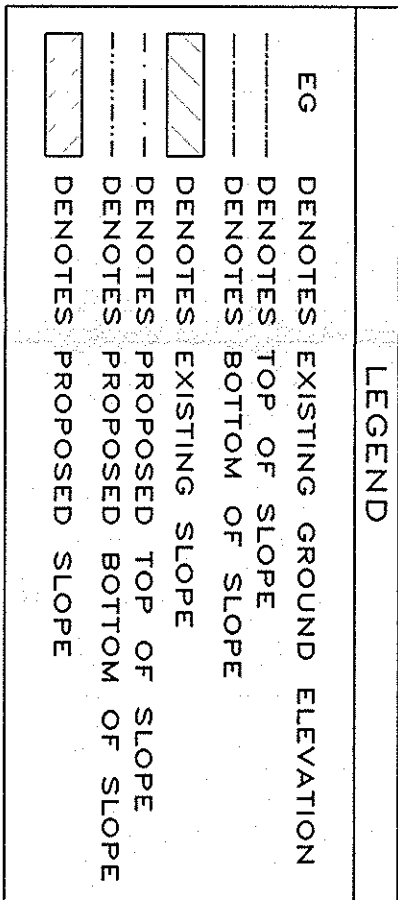
# SAND MINE PLAN & PROFILE

WESTHAMPTON PROPERTY ASSOCIATES

## SITUATE

# WESTHAMPTON

TOWN OF SOUTHAMPTON - SUFFOLK COUNTY, N.Y  
SURVEYED: MARCH 31, 2003 - SCALE: AS NOTED  
PIT LOCATION: AUGUST 19-SEPTEMBER 2, 2010  
PIT LOCATION: AUGUST 4, 2011



SCALE: 1" INCH = 100' FEET

S09°47'20"W

EXISTING PROFILE: CENTER LINE OF PILE  
SCALE: HORZ.: 1" INCH= 100' FEET  
VERT.: 1" INCH= 10' FEET

VERT.: 1" INCH= 10' FEET

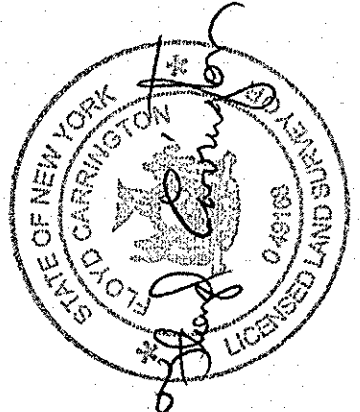
VERT.: 1" INCH= 10' FEET

SHEET 2 OF 3  
D3-66-SP2-4-11  
0/19/11  
DRAWN BY:TK  
(ARCHIV40 WHASSOC-SP2 PROP 4)

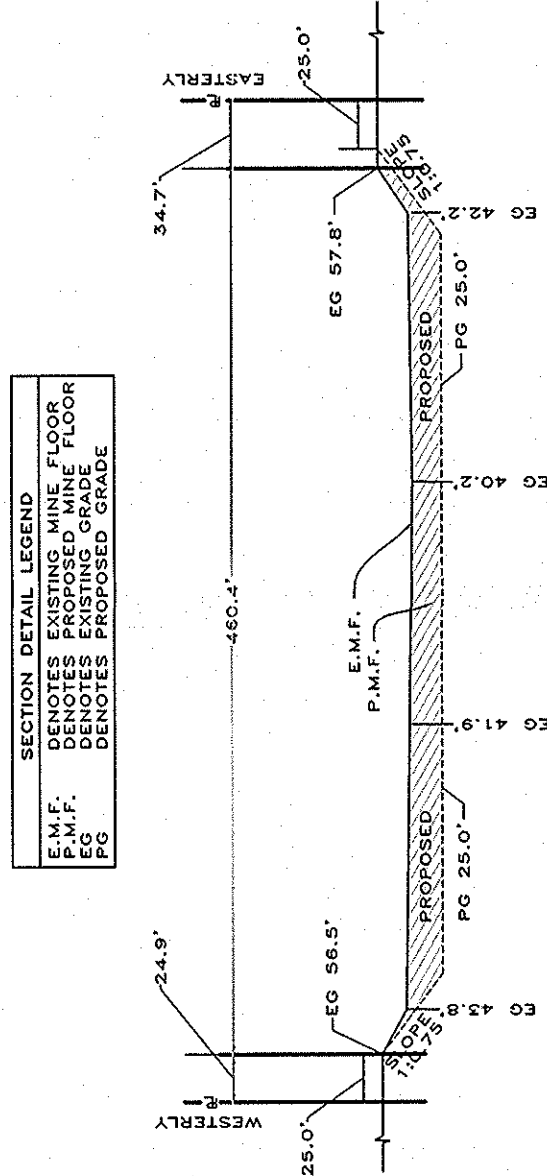


TAX MAP  
DISTRICT 0900  
SECTION 276  
LOT 1.0 & 2.0

RAYNOR & MARCKS  
CARRINGTON  
SURVEYING  
QUOGUE, N.Y.  
631-653-4066



TYPICAL SECTION OF:  
EXISTING & PROPOSED EXCAVATION  
SCALE: 1" INCH= 100' FEET

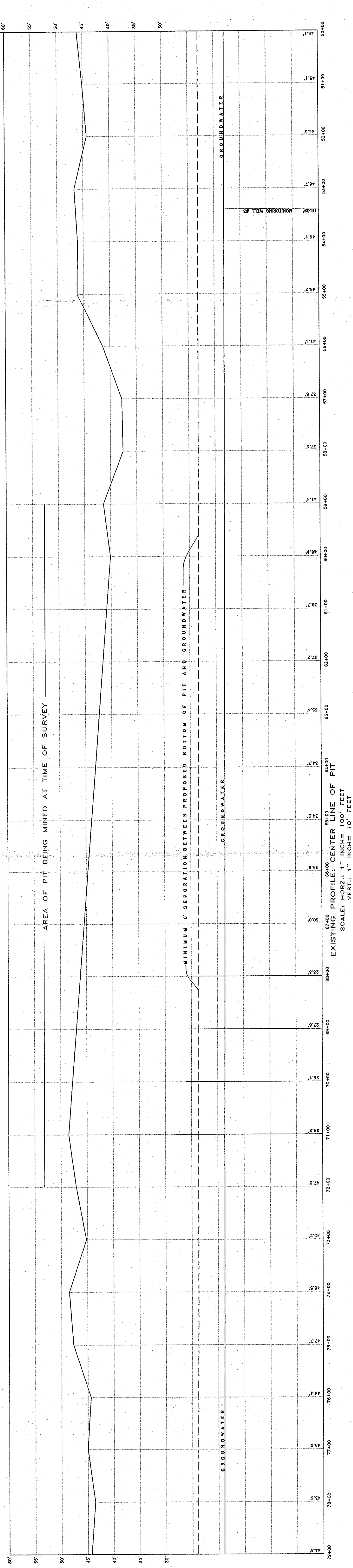
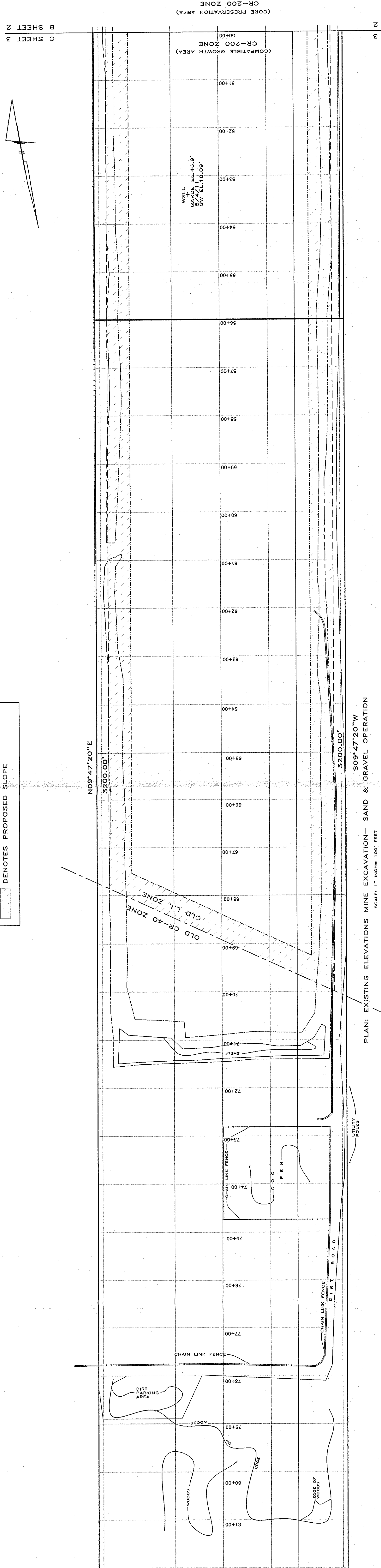


SAND MINE PLAN  
& PROFILE  
FOR  
*WESTHAMPTON PROPERTY ASSOCIATES*  
SITUATE

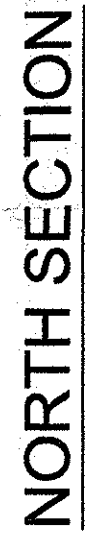
TOWN OF SOUTHAMPTON - SUFFOLK COUNTY, N.Y.  
SURVEYED: MARCH 31, 2003 - SCALE: AS NOTED  
PIT LOCATION: AUGUST 19-SEPTEMBER 2, 2010  
PIT LOCATION: AUGUST 4, 2011

LEGEND

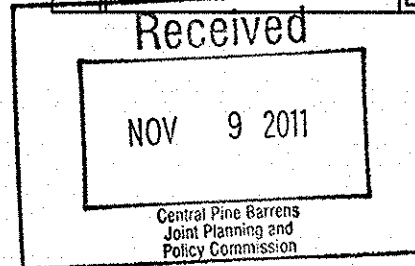
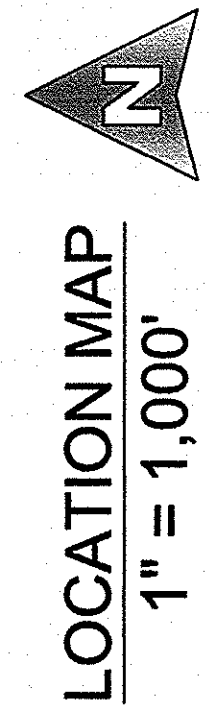
- EG DENOTES EXISTING GROUND ELEVATION
- ET DENOTES TOP OF SLOPE
- EB DENOTES BOTTOM OF SLOPE
- PT DENOTES PROPOSED TOP OF SLOPE
- PB DENOTES PROPOSED BOTTOM OF SLOPE
- PG DENOTES PROPOSED GROUND





1.2% Autumn Bontgrass, AP3 (*Agrostis peruviana*, AP3)

1. Remove topsoil and invasive plants from side slope areas.

[illegible]









**Commission Meeting of October 17, 2012  
Brookhaven Town Hall**

Present: Mr. Scully (New York State), Ms. Lansdale (Suffolk County),  
Ms. Prusinowski (Brookhaven), Mr. Walter (Riverhead),  
Ms. Throne-Holst (Southampton)

**Adopted Resolution  
Westhampton Property Associates Core Preservation Area Hardship and  
Compatible Growth Area Critical Resource Area Application**

Property located on the south side of Sunrise Highway (SR 27), north side of  
Old Country Road (CR 71), 500 feet east of 5<sup>th</sup> Avenue, in the hamlet of  
Remsenburg/Speonk, Town of Southampton,  
Suffolk County Tax Map #: 900-276-3-1 and 2

Peter A. Scully  
*Chair*

Steven Bellone  
*Member*

Kathleen A. Walsh  
*Member*

Anna E. Throne-Holst  
*Member*

Sean M. Walter  
*Member*

**Whereas**, on November 9, 2011, Westhampton Property Associates, LLC (the Applicant) by its representative Nelson Pope & Voorhis, LLC, filed with the Commission an application for development to expand the depth of an existing 91-acre sand and gravel mine (the Project); and

**Whereas**, the 91-acre mine is part of a 115 acre project site comprised of two parcels owned by the Applicant, in the Country Residence 200 (CR 200) Zoning District, in the Town Aquifer Protection Overlay District, hamlet of Remsenburg/Speonk, Town of Southampton, identified on the Suffolk County Tax Map as parcels 900-276-3-1 and 2, as per the map entitled "Sand Mine Plan and Profile" prepared by Raynor, Marcks & Carrington last dated August 4, 2011 (Sheets 1, 2, and 3); and

**Whereas**, 68.07 acres of the project site is located in the Core Preservation Area of the Central Pine Barrens; and

**Whereas**, 46.93 acres of the project site is located in the Compatible Growth Area and is designated as part of a Critical Resource Area (CRA) identified as S10 in Figure 4-6 in Chapter 4.5.4.1 of the Central Pine Barrens Comprehensive Land Use Plan (CLUP); and

**Whereas**, the features of CRA S10 are described in the CLUP as "Open space on northerly portion of site complements adjacent open space;" and

**Whereas**, the Project is a depth expansion of an existing sand mine, which is currently at an elevation of approximately 45 feet above sea level, to an elevation of approximately 26 feet above sea level, which will be a minimum of four feet and a maximum of six feet above the elevation of the groundwater table, depending on the seasonally varying height of the

P.O. Box 587  
3525 Sunrise Highway  
2<sup>nd</sup> Floor  
Great River, NY  
11739-0587

Phone (631) 224-2604  
Fax (631) 224-7653  
[www.pb.state.ny.us](http://www.pb.state.ny.us)

groundwater table; and

**Whereas**, other Project elements include the preparation and recording of a Conservation Easement on the 91-acre mine to preserve it when mining is completed; and restoration of the mine in accordance with a reclamation plan prepared by Nelson, Pope & Voorhis dated July 18, 2011; and

**Whereas**, the current New York State Department of Environmental Conservation (NYSDEC) mine permit expires in the year 2016; and a permit modification for the depth expansion was filed by the Applicant with NYSDEC; and

**Whereas**, the Project expands the area of mining on site and extends mining activity on site to the year 2041; and

**Whereas**, the Applicant submitted a Mine Restoration Plan for the site prepared by Nelson Pope & Voorhis dated July 18, 2011 and a narrative entitled “Mine Reclamation Plan” prepared by Nelson Pope and Voorhis. The Plan describes the implementation of an eight phase mine land reclamation plan. The Plan schedule indicates Phase 1 will commence in 2019, and Phase 8 will commence in 2041. Restoration monitoring spans from the year 2022 to 2047. The Plan legend lists the habitat types to be created as follows: 38.24 acres of pitch pine oak forest, 30.17 acres of meadow, 3.91 acres of wet meadow, 2.06 acres of vernal pools, and 16.32 acres of slope restoration area. The total area of reclamation is 90.7 acres; and

**Whereas**, the Project will not intercept groundwater elevation under the mine floor and will maintain a maximum vertical buffer of six feet to groundwater but which shall be no less than four feet; and

**Whereas**, the Project constitutes development pursuant to Environmental Conservation Law (ECL) §57-0107(13)(b) and (c), which states development includes, “*a material increase in the intensity of use of land or environmental impacts as a result thereof;*” and “*commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities,*” respectively; and

**Whereas**, the Project requires a Core Preservation Area Extraordinary Hardship, a discretionary action of the Commission; and

**Whereas**, the CRA portion is subject to the Review Procedures of the CLUP in Chapter 4 Section 4.5.5, *Development located within the Compatible Growth Area which is also located within a Critical Resource Area*, which states, “*The Act sets forth the jurisdiction for the Commission's review of development within the Compatible Growth Area of the Central Pine Barrens. Such review includes development that is located in Critical Resource Areas. The Act also authorizes the Commission, by majority vote, to waive strict compliance with this Plan upon finding that such waiver is necessary to alleviate a demonstrated hardship;*” and

**Whereas**, a public hearing was held on January 18, 2012, continued on February 15, 2012 and stenographic transcripts of the hearings were made available to the Commission; and

**Whereas**, on June 15, 2012, the Applicant submitted supplemental information including a report entitled “*Fiscal and Economic Impact Analysis and Assessment of Needs and Benefits*” prepared by Nelson, Pope & Voorhis, LLC dated June 15, 2012; and

**Whereas**, a second public hearing was held on July 18, 2012; and a stenographic transcript of the hearing was made available to the Commission; and

**Whereas**, at the July 18<sup>th</sup> hearing, the Commission inquired about potential impacts on the owner’s business with respect to the availability of material to contractors; and

**Whereas**, on August 14, 2012, the Applicant submitted copies of letters received from contractors in support of the hardship waiver as it relates to their continued business with the Applicant and potential impacts if the hardship were not granted; and the letters were entered into the record for the Project in response to the Commission’s inquiry at the public hearing; and

**Whereas**, the Town of Southampton submitted a copy of a letter to NYSDEC dated June 20, 2008 indicating the pre-existing nonconforming use of a sand mine and mining activities on site pre-date the Town Zoning Code, and the site’s existing and continued use as a mine is grandfathered, and

**Whereas**, pursuant to the criteria contained in ECL §57-0121(10) (a) (i) through (iii), the Applicant has satisfied the conditions for and has demonstrated extraordinary hardship as the Project is unique since the site contains a pre-existing sand mine permitted and developed in 1981, prior to the Long Island Pine Barrens Protection Act of 1993 (the “Act”), with no disturbance to existing native vegetation or clearing beyond the existing extent of the currently permitted mine; and

**Whereas**, pursuant to the Applicant’s demonstration of extraordinary hardship as per ECL §57-0121(10)(a), the Applicant has satisfied the conditions for demonstrating extraordinary hardship as the Applicant contends the business is family operated and planning for future business is an imminent concern; although the current permit term expires in 2016, the 16 acres of material left to mine will be extracted sooner than the current permit term extends; and, as shown in the record, the Applicant has no other beneficial use of the site if not used as a mine; and

**Whereas**, pursuant to the Applicant’s demonstration of extraordinary hardship as per ECL §57-0107(1)(a)(i), the Project does not apply to or affect other properties in the immediate vicinity since other sand and gravel mines in the vicinity are in the CGA,

and much of the Core property in the vicinity of the site is preserved under public ownership; and

**Whereas**, the Applicant submitted an Environmental Assessment Form (EAF) Part I; and

**Whereas**, the Project is a Type I Action pursuant to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act, SEQRA), and the Commission performed a coordinated review for Lead Agency status with other Involved Agencies including the New York State Department of Environmental Conservation (NYSDEC) and the Town of Southampton Planning Board and requested to serve as Lead Agency by letter dated January 4, 2012, as per the Central Pine Barrens Comprehensive Land Use Plan Chapter 4 Section 4.5.1.1, *Lead Agency Assertion*; and

**Whereas**, no objection was raised by the NYSDEC or Town of Southampton concerning the Commission's request to assume Lead Agency status, and the Commission assumed Lead Agency; and

**Whereas**, an EAF Part II was prepared and reviewed by the Commission; and no significant adverse environmental impacts were identified in the SEQRA process; and

**Whereas**, pursuant to New York State Environmental Conservation Law (ECL) Article 8 (State Environmental Quality Review Act (SEQRA) and its implementing regulations 6 NYCRR Part 617, the Commission has considered the relevant areas of potential environmental impacts applicable to the Project and has applied the Criteria for Determining Significance contained in 6 NYCRR Part 617, section 617.7(c), and

**Whereas**, the Project will not generate objectionable odors, will not install any stationary sources of air emissions and will continue to manage the mine within its current operating parameters using the same machinery as before with no significant increase in air emissions; therefore, as a result, the Project will not result in any significant adverse impact on air quality, and

**Whereas**, although the Project will decrease the vertical distance to groundwater, the review of the record indicates the Project will not generate sanitary flow which will obviate the potential for groundwater contamination by constituents in effluent; will not create sources of nitrate-nitrogen as it will exclude fertilizer-dependent vegetation that could potentially enter groundwater; will not engage in any industrial processes, storage of toxic materials or fueling operations that could adversely impact groundwater; will not generate significant discharges of effluent; is not located near any public water supply wells and the project site does not contain a private well; therefore the Project will not result in any adverse impacts to groundwater and complies with CLUP Standard 5.3.3.1.1 regarding Suffolk County Sanitary Code Article 6 compliance, Standard 5.3.3.1.2 regarding Sewage treatment plant discharge, Guideline 5.3.3.1.3 regarding Nitrate-nitrogen goal, Standard 5.3.3.2.1 regarding Suffolk County Sanitary Code Articles 7 and

12 compliance, Standard 5.3.3.3.1 regarding Significant discharges and public supply well locations and Guideline 5.3.3.3.2 regarding Private well protection, and

**Whereas**, the Project will not result in any adverse impacts to groundwater located in Hydrogeologic Zone III, a deep-recharge zone, as the Project preserves the hydrologic functions and groundwater quality of the Core, pursuant to the goals and objectives in Environmental Conservation Law Article 57, §57-0121(3), and

**Whereas**, the record indicates there are no wetlands or surface waters located either on or in proximity to the project site and the project site is not located within a Wild, Scenic and Recreational River corridor; therefore, the Project will not result in any significant adverse impacts on wetlands, surface waters or a Wild, Scenic and Recreational River corridor and, as a result, CLUP Standard 5.3.3.4.1 regarding Nondisturbance buffers, Standard 5.3.3.4.2 regarding Buffer delineations, covenants and conservation easements, Standard 5.3.3.4.3 regarding Wild, Scenic and Recreational Rivers Act compliance and Guideline 5.3.3.4.4 regarding Additional nondisturbance buffers are not applicable to the Project, and

**Whereas**, according to the record, all stormwater generated on the project site will be recharged on site, will be controlled during mining operations and will not impact adjacent properties nor any surface waters or wetlands; no drainage systems or recharge basins are proposed on the project site and vernal pools to be created by the project will be perched above the groundwater table and will serve to receive stormwater runoff as well as to establish new habitat areas; therefore, the Project will not result in any significant adverse impacts due to stormwater runoff, will not increase the potential for erosion, will not cause flooding and will not cause drainage problems, and, as a result, the project will comply with CLUP Standard 5.3.3.5.1 regarding Stormwater recharge, Guideline 5.3.3.5.3 regarding the creation of ponds and Guideline 5.3.3.5.5 regarding Soil erosion and stormwater runoff control during construction while Guidelines 5.3.3.5.2 regarding Natural recharge and drainage and 5.3.3.5.4 regarding Natural topography in lieu of recharge basins are not applicable, and

**Whereas**, as the Project will be managed within its current operating parameters, there will be no substantial net increase in traffic generation, truck trips and noise nor a significant net increase in solid waste production and

**Whereas**, the project site was legally approved for mining prior to the adoption of the Long Island Pine Barrens Protection Act and, as a result, the majority of the project site was previously disturbed, cleared, and excavated, and

**Whereas**, that portion of the project site within the Core Preservation Area was one of the areas that was previously cleared and excavated and is therefore devoid of any existing natural vegetation and wildlife habitat, and

**Whereas**, the Project will clear an additional area of 10 acres comprised of commercial nursery vegetation pursuant to the life of mine permit issued by the New York State Department of Environmental Conservation and which predates the Act, and

**Whereas**, a 3.08 acre portion of the existing nursery, that is not approved for mining under the existing life of mine permit, will remain in its current state and will revert to natural conditions to provide new natural habitat in the future and an existing 10.92 area of pine barrens habitat on the southern end of the property will remain intact under the Project, and

**Whereas**, no rare, endangered, threatened or special concern species of plants or animals nor their habitats have been identified on the project site, and

**Whereas**, as a result of the lack of vegetation in that portion of the project site located in the Core Preservation Area and in the majority of the Compatible Growth Area and the lack of native vegetation on the affected 10-acre nursery area, the Project will not result in significant adverse impacts on vegetation, and

**Whereas**, due to the lack of native-vegetated habitat within the project site, the Project will not result in the removal or destruction of large quantities of fauna; will not cause substantial interference with any resident or migratory wildlife; will not adversely impact a significant habitat area nor cause significant adverse impacts to rare, endangered, threatened or special concern species of plants or animals; and

**Whereas**, when reclaimed at the end of mining activity, the Project will provide a replanted natural habitat area comprised of native pine barrens plant material which is consistent with the surrounding pine barrens vegetational communities in which no fertilizer-dependent vegetation is to be installed and which will allow for connections to be made with nearby open space areas, and, as a result, the Project will be consistent with CLUP Standard 5.3.3.6.1 regarding Vegetation Clearance Limits, Standard 5.3.3.6.2 regarding unfragmented open space, Standard 5.3.3.6.3 regarding fertilizer-dependent vegetation and Standard 5.3.3.6.4 regarding native plantings, and

**Whereas**, although the project site is not located within a Critical Environmental Area and will therefore not result in significant adverse impacts on said area's designated environmental characteristics, a portion of the project site within the Compatible Growth Area also lies within Critical Resource Area S10, "Upland Forest Westhampton," which was designated as such because "*Open space on northerly portion of site complements adjacent open space,*" and

**Whereas**, pursuant to Section 4.5.4.2 of the CLUP, the Commission is required to address "*the protection for the critical resource feature(s)*" of the Critical Resource Area designated in the Plan, and

**Whereas**, because the majority of the project site has already been previously disturbed and cleared and is privately owned, there is no existing protected open space on

the project site to complement any adjacent open space, and therefore, the Project will not result in any significant adverse impacts to the critical resource features of Critical Resource Area S10, and

**Whereas**, the natural pitch pine-oak woodland in the southern end of the Compatible Growth Area portion of the project site will remain in its current natural state and will continue to complement the open space within the Critical Resource Area, and

**Whereas**, the record indicates that the mine reclamation that will occur upon completion of the Project will complement the contiguous open space through revegetation with native pine barrens vegetation and by “expanding the unfragmented open space continuum,” and

**Whereas**, the Project is consistent with community plans, including the CLUP, will not result in a major change in use in the quantity or type of energy, will not create a hazard to human health, will not result in a substantial change in use, will not induce the attraction of large numbers of persons and will not cause significant adverse or cumulative impacts, and

**Whereas**, the record indicates the project site does not contain any significant archaeological or historical resources, in particular because of the significant amount of prior ground disturbance that previously occurred prior to the Act; therefore, the Project will not result in any significant adverse impacts to archaeological or historical resources, and

**Whereas**, the project site does not contain any significant aesthetic resources due to its previously-disturbed conditions and will not have any significant adverse impacts on aesthetic or scenic resources as a result and also due to the fact that the Project will preserve the character of the Core Preservation Area, as it will retain the existing naturally-vegetated buffer adjacent to New York State 27, a Scenic Road identified in Volume 2 of the CLUP, and will continue to not be visible from Route 27 and adjacent roadways, and

**Whereas**, the Commission has considered all materials submitted in connection with the application, now, therefore, be it,

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

**Resolved**, that pursuant to New York State Environmental Conservation Law (ECL) Article 8 (State Environmental Quality Review Act (SEQRA)) and its implementing regulations 6 NYCRR Part 617, the Commission hereby adopts a Negative Declaration pursuant to SEQRA for the Project, for the reasons set forth in this resolution, and be it further

## **I. Core Preservation Area Hardship Determination**



**Resolved**, that the Commission hereby determines the application, as submitted, meets the criteria for Core Preservation Area Hardship based on extraordinary hardship pursuant to New York State ECL §57-0121(10) (b) and (c); and be it further

**Resolved**, the Commission finds the instant Core Hardship Waiver is not inconsistent with the purposes, objectives, or general spirit and intent of the Act; and be it further

**Resolved**, pursuant to ECL §57-0121(10)(a)(i) through (ii), the Commission finds that the Applicant has satisfied the conditions for and has demonstrated extraordinary hardship as the project site was developed and permitted as a sand mine prior to the Act; the Project will occur in the existing disturbed area of the project site, which was developed prior to the Act; the hardship does not apply to other properties in the immediate vicinity, since many other properties in the Core are under public ownership and other developed properties in the vicinity are in Compatible Growth Area; the development activity arises out of the characteristics of the subject property rather than the personal situation of the Applicant; and based on the review of existing regulations in effect on the project site and through the recording of a Conservation Easement on the 91 acre mine, the mine site will be protected from future development, especially that which could impact the environment and that once mining activity has ceased and restoration will occur in accordance with the Reclamation Plan, the Project is not expected to result in significant adverse environmental impacts; and be it further

**Resolved**, pursuant to ECL §57-0121(10)(c)(i), the Commission finds that the Applicant has satisfied the conditions for and has demonstrated extraordinary hardship as the Project involves no disturbance to existing natural vegetation; therefore, the Project will not be materially detrimental or injurious to other property or improvements in the area because the property in the vicinity of the site is also in the Core, is under public ownership, already developed, or not developable; the Project does not result in endangering public safety or substantial impairment of the resources of the Core; and the Applicant has met these additional standards for granting a Hardship Waiver in the Core due to site development as a mine prior to the Act and the continued use of the site as a sand mine, and the Project avoids disturbance to existing natural vegetation in the Core; and be it further

**Resolved**, no groundwater impacts in Hydrogeologic Zone III shall occur as the record demonstrates the Project will maintain a vertical buffer of 4 to 6 feet above the groundwater table, will not intercept groundwater below the mine floor elevation, will not generate sewage or discharge effluents that could contaminate groundwater, will not engage in the storage of toxic materials so as to adversely impact the underlying aquifer, will store all fuel in accordance with all local, County and State regulations and will adequately control stormwater and the Project preserves the hydrologic functions and groundwater quality of the Core, pursuant to the goals and objectives in ECL §57-0121(3), and be it further

**Resolved**, the Project will preserve the character of the Core Preservation Area, as the Project will not result in the removal of any natural vegetation from the Core Preservation Area; will retain the existing naturally vegetated buffer to NYS Route 27, a Scenic Road identified in Volume 2 of the CLUP, and it will continue to not be visible from Route 27 and adjacent roadways and will establish a new revegetated area upon cessation of mining which will further bolster the Route 27 buffer; and be it further

**Resolved**, pursuant to ECL §57-0121(10)(c)(iii), the waiver is the minimum relief necessary to relieve the extraordinary hardship on behalf of the Applicant and meets the needs of the business as the Project will not result in a lateral expansion beyond the existing NYSDEC life of mine permitted boundaries, will not expand the mine into the Compatible Growth Area beyond the existing NYSDEC life of mine permitted boundaries, will not expose groundwater and will not vertically expand the mine below the groundwater table; the Project avoids significant adverse environmental impacts, continues a pre-existing industrial land use in the Core, and avoids new construction and disturbance to natural vegetation in the Core via the applicant's offer to subject the project area to a Conservation Easement which obviates further development after cessation of the mining activity approved herein; and be it further

**Resolved**, the Applicant has demonstrated that the mined materials from the project site represent a commodity which is valuable and necessary to the local and regional economy and has demonstrated that there are specific commercial entities which are dependent on supplies of mined materials generated by the mine and which are particular to its geographic location and quality and grade of material; and be it further

**Resolved**, the Commission finds that the project site does not have a beneficial use other than a sand mine due to the location of the site, its lack of proximity to certain utilities and highway access, adjacent uses, zoning, the Applicant's investment in equipment and support services required for mining and market forces, and the interruption or cessation in the mine operation would result in financial hardship to the Applicant and contractors to whom it supplies materials; and be it further

**Resolved**, the Commission acknowledges that the Applicant offered to the Commission a Conservation Easement on the 91-acre sand mine site and the Commission accepts said Conservation Easement from the Applicant on the 91 acre sand mine which will be granted to the Commission, will be recorded on the 91 acre mine and will aim to preserve the resources of the project site in the Core and in the CGA-CRA, with the Applicant reserving rights to the current and continued use of the existing 91 acre mining land use through to the end of the expansion approved herein; and be it further

**Resolved**, no other use, development activity, or expansion of existing use on the 91-acre mine is permitted; and no future development activity beyond this Waiver is permitted on the 91 acre site mine; and be it further

**Resolved**, the Commission finds that the Project is consistent with Article 57 of the New York State Environmental Conservation Law, and the Applicant has

demonstrated it has met the criteria necessary for the issuance of a Core hardship waiver; and be it further

## **II. Critical Resource Area and Compatible Growth Area**

**Resolved**, the Commission determines that the Applicant has demonstrated compliance with the standards and guidelines set forth in Volume 1, Chapter 5 of the Central Pine Barrens Comprehensive Land Use Plan (“the CLUP”), and the area of the CRA that is not subject to past and currently permitted mining activity will remain subject to the provisions that require Commission review of a CRA; and be it further

**Resolved**, the sand mine pre-dates the Act and the CLUP; therefore, the CRA portion of the 91 acre mine will continue to be mined and will be expanded in depth under the Project; the existing open space of the CRA, to which the project site is partially connected, will continue in its existing state, and once the Conservation Easement is recorded, that portion of the project site within the CRA will be protected from future development; and be it further

**Resolved**, the remaining 24 acres in the CRA are currently wooded and no development activity is proposed under the Project; therefore, it will remain in its natural state under the Project; in the future if development activity, as per the Act, is proposed in the CRA, it is subject to Commission review in accordance with the CLUP; and be it further

## **III. Plans and Monitoring**

**Resolved**, the Commission accepts the Project’s Mine Restoration Plan prepared by Nelson Pope & Voorhis dated July 18, 2011 and a narrative entitled “Mine Reclamation Plan” prepared by Nelson Pope and Voorhis and requires the applicant to submit to the Commission, within 30 days of any changes, any and all revised versions of the Reclamation Plan and narrative in the future; and be it further

**Resolved**, based on current plans, mining is expected to cease completely on the project site by 2041, with reclamation occurring until the year 2048; and if the Applicant applies to NYSDEC for permit extensions or renewals to complete mining to the permitted depth, no additional deepening of the mine floor elevation shall be permitted below the Project elevation of six feet above groundwater; and be it further

**Resolved**, the Commission accepts the Applicant’s offer to submit monitoring reports that would provide quarterly and annual monitoring reports to document seasonal groundwater elevations and requires the applicant to submit monitoring reports quarterly and to also submit an annual report based on the prior year’s four quarters. In the event groundwater is intercepted at any time during mining operations, the Applicant shall immediately stop its mining operations, shall immediately notify the Commission and

shall not recommence mining operations until it has received written Commission authorization to do so; and be it further

#### **IV. Conditions of Approval**

**Resolved**, that the Commission approves the Project in accordance with the Sand Mine Plan and Profile prepared by Raynor, Marcks & Carrington last dated August 4, 2011 (Sheets 1, 2, and 3) and all application materials and submissions to date, subject to the following specific conditions:

1. Obtain other permits and approvals, as required by law, prior to commencement of the project. Copies of other agency approvals shall be forwarded to the Commission office within 30 days of their issuance.
2. Prior to commencement of new mining authorized by this approval, the applicant shall submit, at that time, the most current version of the Project's Mine Restoration Plan and Mine Reclamation Plan narrative and the applicant shall submit to the Commission, within 30 days of any changes, any and all revised versions of the Reclamation Plan and narrative in the future.
3. Mining activity on the existing 91 acre mine will continue and be expanded in depth to a maximum mine floor elevation of approximately 26 feet above sea level and a minimum of 4 feet and a maximum of six feet above groundwater, based on seasonal groundwater elevation.
4. Groundwater monitoring
  - a. Maintain a minimum six foot buffer from the mine floor to existing groundwater elevation to preserve the hydrologic functions of the Pine Barrens.
  - b. Conduct quarterly monitoring of fluctuating groundwater elevations to ensure the six foot buffer is maintained.
  - c. Submit quarterly and annual groundwater elevation monitoring reports to the Commission through the end of mining activity on the project site, which is currently projected to end in the year 2041.
  - d. In the event groundwater is intercepted at any time during mining operations, the Applicant shall immediately stop its mining operations, shall immediately notify the Commission and shall not recommence mining operations until it has received written Commission authorization to do so.
5. No change in land use or zoning on the project site.

6. No expansion of the mine, existing mine use, depth of mine, lateral or vertical extent beyond the current proposal on the 91-acre sand mine.
7. Any other development activity on the project site, as per the Act, is subject to Commission jurisdiction, review, and a discretionary decision. However, this statement does not constitute an approval of or recommendation for said future development activity.
8. Conservation Easement
  - a. Prepare a Conservation Easement (CE) for the 91 acre mine site, and record the Conservation Easement in the Office of the Suffolk County Clerk within six months of the date of this resolution after the Commission approves the same. Prior to filing with the County Clerk, the Applicant shall submit a draft of same to the Commission for its approval. If approved by the Commission the CE shall be filed promptly with the Suffolk County Clerk. If rejected, the Applicant shall revise the draft CE as per the Commission's comments and re-submit the same for its approval. This cycle shall continue until the Commission approves the CE. The Applicant shall record the Commission-approved CE with the Suffolk County Clerk within six months of the date of this resolution.
  - b. The Commission accepts the owner's proposal to record a conservation easement on the project site to protect it from future development once mining activity has ceased under the current proposal. As a result, once mining has ceased, the current owner, future owner, or successor shall not seek relief in the form of a hardship application for a development project on the project site, engage in development activity on the project site, nor apply for Pine Barrens Credits to obtain financial return on the project site. Development activity will not be permitted, and Pine Barrens Credits will not be issued on the project site. The property is effectively sterilized of its development rights at the time of this Waiver. The owner shall be allowed to deed the property to a municipal agency, non-profit organization or equivalent to obtain value for the underlying fee title. The restrictions herein shall be included in the language of the Conservation Easement.
  - c. At the expiration of 6 months following the date of this resolution, if the language of a Conservation Easement has not been accepted by the Commission and a Conservation Easement acceptable to the Commission has not been filed with the Suffolk County Clerk, then the applicant shall cease all development activity on the site, including all mining activity, until a Conservation Easement is accepted by the Commission and filed in the Office of the Suffolk County Clerk.

- d. Provide copies of the Conservation Easement and mined land reclamation plans to the Town of Southampton and Suffolk County Department of Health Services, and file copies of the reclamation plans, with the Conservation Easement attached to the deed, in the Office of the Suffolk County Clerk.
9. Install a split rail fence on the “edge of clearing” on the south side of the site, adjacent to the area outside of the permitted 91 acre mine area to avoid disturbance, dumping, and encroachment into the existing, remaining 24 acres of natural wooded lands in the CGA-CRA.
10. Implement Best Management Practices on the project site, in accordance with the materials submitted in the application.

**Resolved**, a copy of this resolution shall be filed with the Suffolk County Clerk indexed against the property.

Record of Motion:

Decision (Approval):

Motion by: Ms. Throne-Holst

Seconded by: Mr. Walter

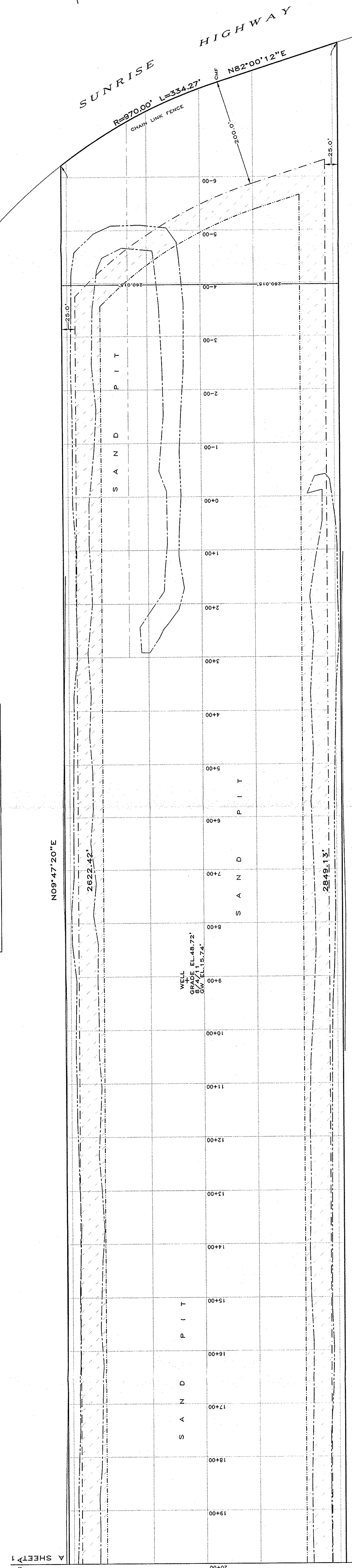
Yea Votes: 4

Nay Votes: 0

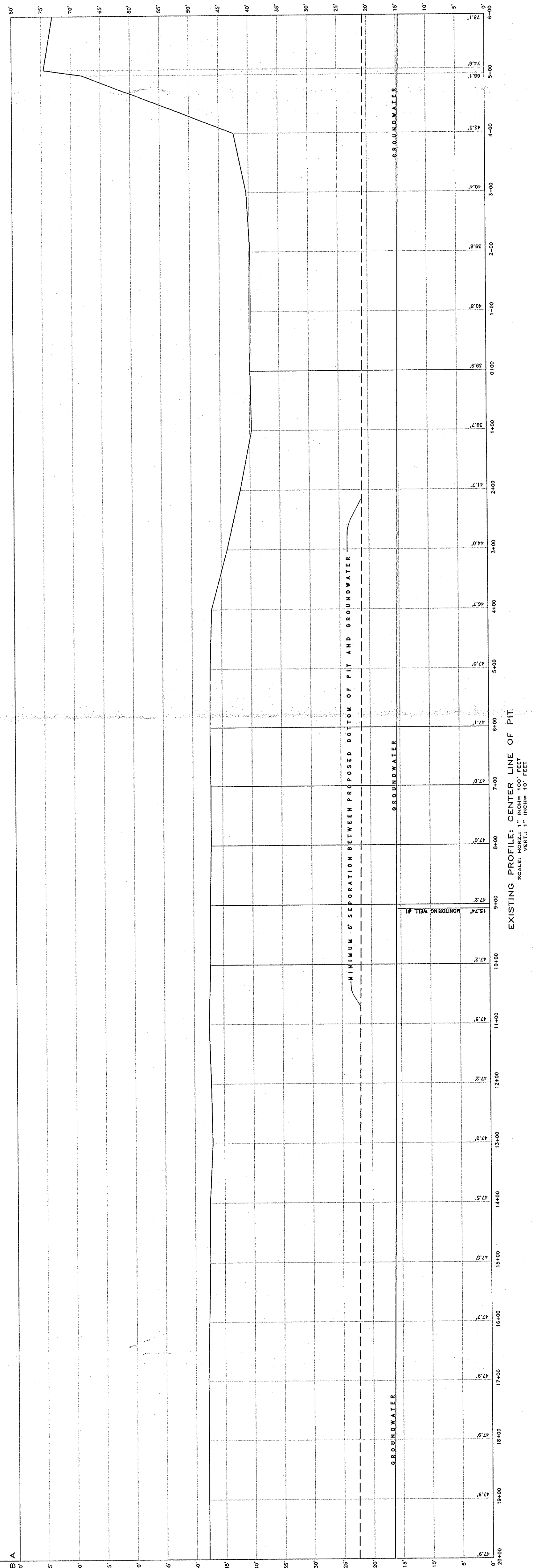
Abstain: Mr. Scully

LEGEND

- EG DENOTES EXISTING GROUND ELEVATION
- DENOTES TOP OF SLOPE
- DENOTES BOTTOM OF SLOPE
- DENOTES EXISTING SLOPE
- DENOTES PROPOSED SLOPE
- DENOTES EXISTING BOTTOM OF SLOPE
- DENOTES PROPOSED BOTTOM OF SLOPE
- DENOTES EXISTING SLOPE
- DENOTES PROPOSED SLOPE



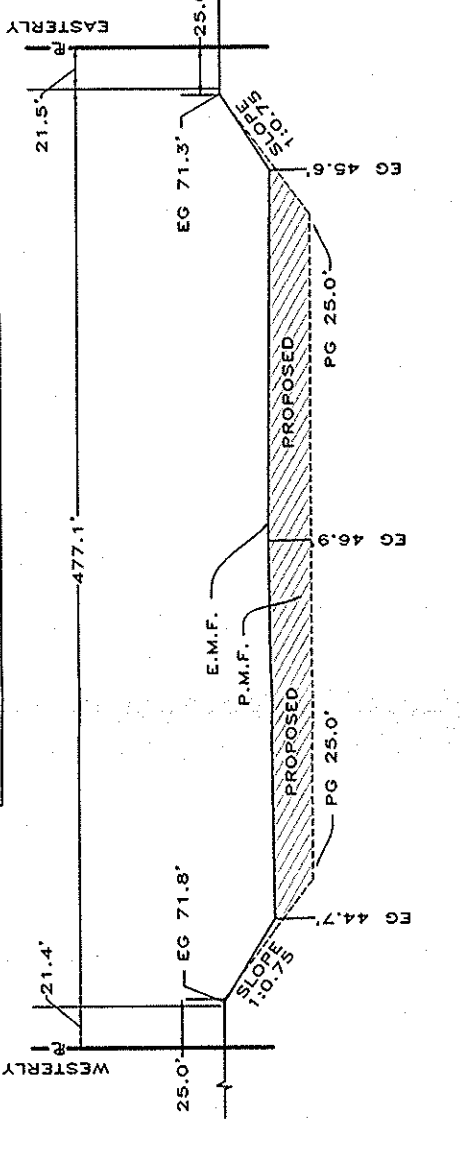
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SCALE: 1" = 100' HORIZ 100' VERT



EXISTING PROFILE: CENTER LINE OF PIT  
SCALE: 1" = 100' HORIZ 100' VERT

SECTION DETAIL LEGEND

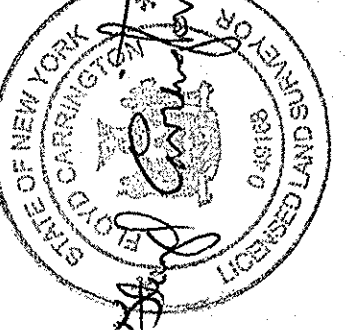
- EG DENOTES EXISTING GROUND ELEVATION
- DENOTES TOP OF SLOPE
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- DENOTES PROPOSED BOTTOM OF SLOPE
- DENOTES EXISTING SLOPE
- DENOTES PROPOSED SLOPE



TYPICAL SECTION OF:  
EXISTING & PROPOSED EXCAVATION  
AT 12+00  
SCALE: 1" = 100' HORIZ 100' VERT

SAND MINE PLAN  
& PROFILE  
FOR  
SITUATE  
WESTHAMPTON PROPERTY ASSOCIATES  
WESTHAMPTON

TOWN OF SOUTHAMPTON - SUFFOLK COUNTY, N.Y.  
SURVEYED: MARCH 31, 2001  
SCALE: AS NOTED  
PIT LOCATION: AUGUST 19-20 SEPTEMBER 2, 2010  
PIT LOCATION: AUGUST 4, 2011



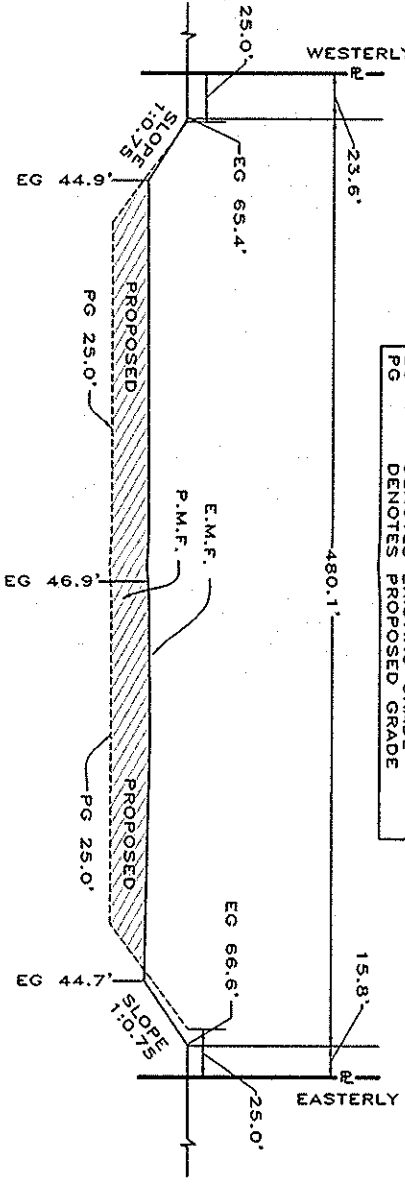
Received  
NOV 14 2011

RAYNOR, MARCKS  
&  
CARRINGTON  
SURVEYING  
QUOGUE, N.Y.  
631-653-4066

TAX MAP  
DISTRICT 0000  
SECTION 206  
LOT 1.0 & 2.0



TAX MAP	
DISTRICT	0900
SECTION	276
BLOCK	003
LOT	1.0 & 2.0



TYPICAL SECTION OF:  
 & PROPOSED EXCAVATION  
 AT 37+00  
 SCALE: 1" INCH= 100' FEET

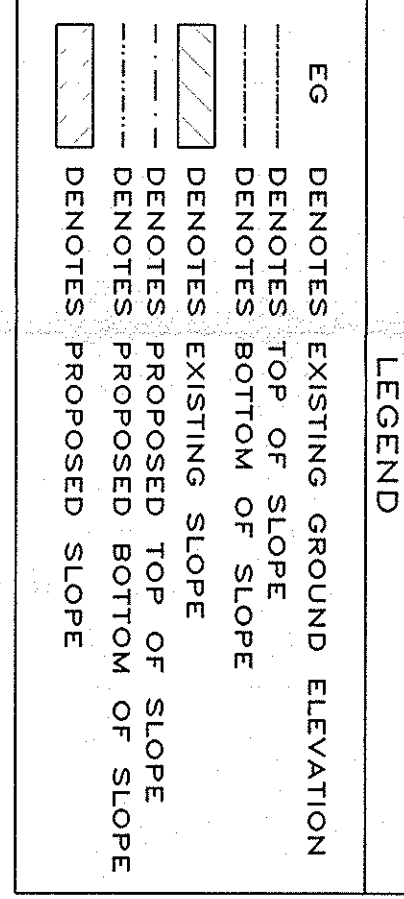
# SAND MINE PLAN & PROFILE

WESTHAMPTON PROPERTY ASSOCIATES

## SITUATE

WESTHAMPTON

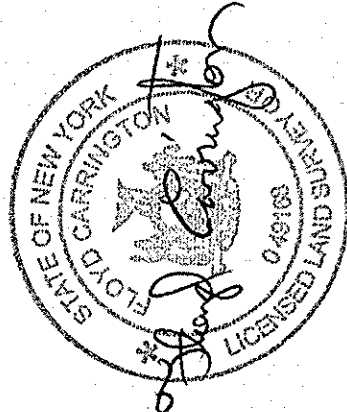
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SURVEYED: MARCH 31, 2003 - SCALE: AS NOTED  
PIT LOCATION: AUGUST 19-SEPTEMBER 2, 2010  
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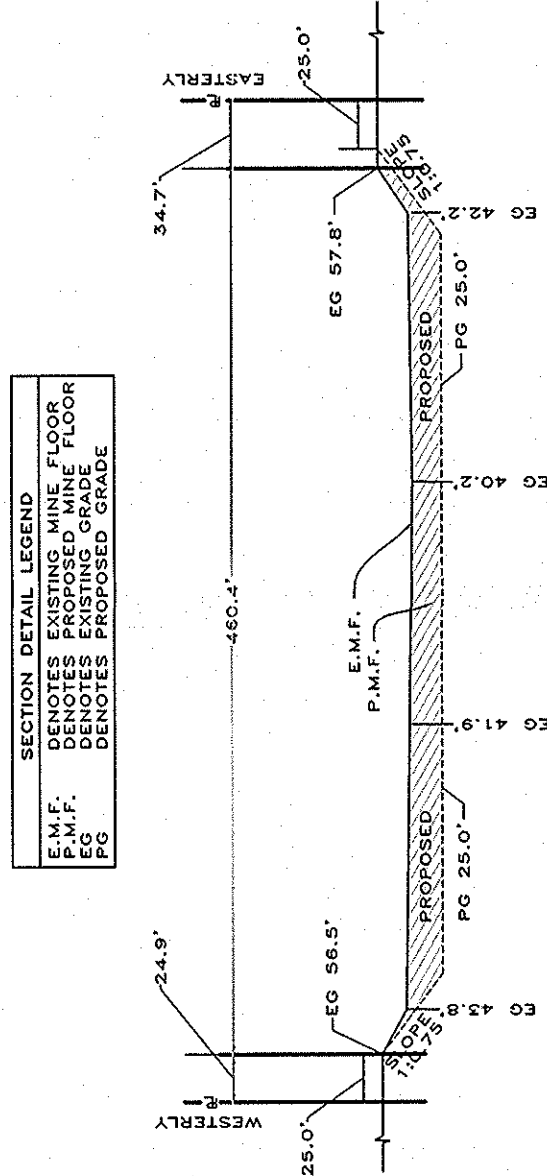


TAX MAP  
DISTRICT 0900  
SECTION 276  
LOT 1.0 & 2.0

RAYNOR & MARCKS  
CARRINGTON  
SURVEYING  
QUOGUE, N.Y.  
631-653-4066



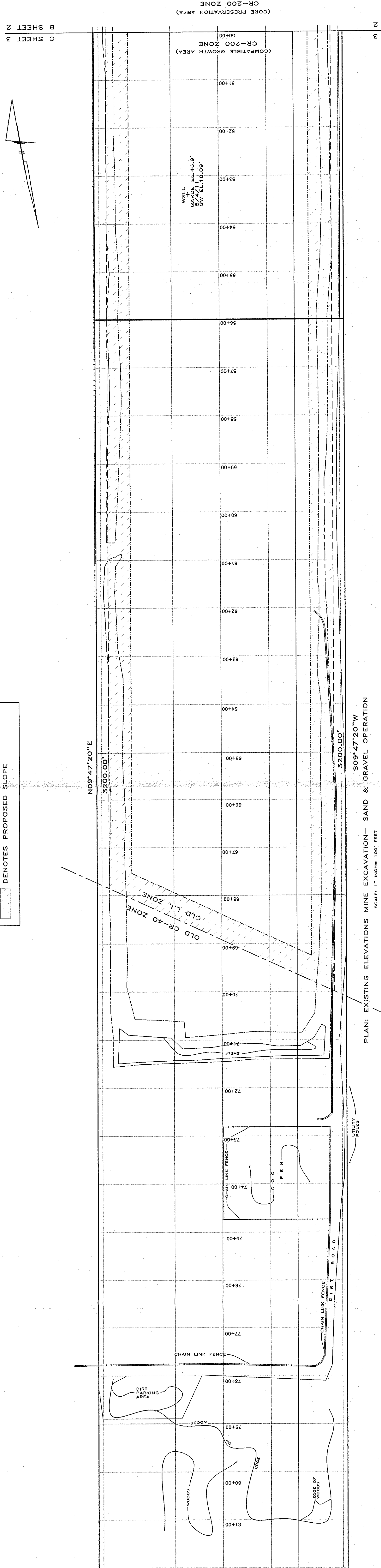
TYPICAL SECTION OF:  
EXISTING & PROPOSED EXCAVATION  
SCALE: 1" INCH= 100' FEET



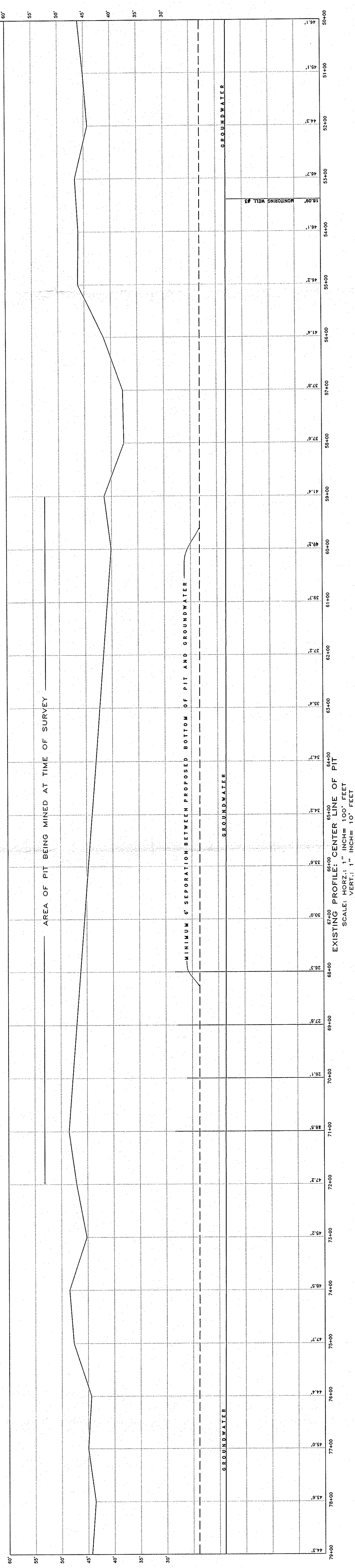
SAND MINE PLAN  
& PROFILE  
FOR  
*WESTHAMPTON PROPERTY ASSOCIATES*  
SITUATE

TOWN OF SOUTHAMPTON - SUFFOLK COUNTY, N.Y.  
SURVEYED: MARCH 31, 2003 - SCALE: AS NOTED  
PIT LOCATION: AUGUST 19-SEPTEMBER 2, 2010  
PIT LOCATION: AUGUST 4, 2011

- LEGEND
- EG DENOTES EXISTING GROUND ELEVATION
  - DENOTES TOP OF SLOPE
  - DENOTES BOTTOM OF SLOPE
  - DENOTES EXISTING SLOPE
  - DENOTES PROPOSED SLOPE
  - DENOTES PROPOSED BOTTOM OF SLOPE
  - DENOTES PROPOSED SLOPE



PLAN: EXISTING ELEVATIONS MINE EXCAVATION- SAND & GRAVEL OPERATION  
SCALE: 1" INCH= 100' FEET



EXISTING PROFILE CENTERLINE OF PIT  
SCALE: HORIZ: 1" INCH= 100' FEET  
VERT: 1" INCH= 10' FEET

# Conservation Easement

THIS INDENTURE, made this 10<sup>th</sup> day of June, 2014,

## Witnesseth:

Whereas, Westhampton Property Associates, Inc., ("Westhampton Property"), having its principal address at 928 Long Island Avenue, Deer Park, New York 11729, owns 115 acres of real property located in the Town of Southampton; and

Whereas, the Central Pine Barrens Joint Planning and Policy Commission (the "Commission"), with offices at 624 Old Riverhead Road, Westhampton Beach, New York 11978, was created pursuant to the Long Island Pine Barrens Protection Act of 1993 and codified in New York Environmental Conservation Law Article 57 ("Article 57"); and

Whereas, Westhampton Property operates a commercial sand mine enterprise that operates on the 91 acre portion of its property more particularly described in Schedule A attached hereto and made a part hereof (the "Property"); and

Whereas, the Property is located within the Central Pine Barrens as delineated in Article 57; and

Whereas, the Commission adopted the Central Pine Barrens Comprehensive Land Use Plan (the "Plan") pursuant to Article 57 and has jurisdiction over certain types of activities within the Central Pine Barrens; and

Whereas, Westhampton Property, pursuant to Article 57 and the Plan applied to the Commission for a combined Core Preservation Area and Compatible Growth Area Critical Resource Area hardship exemption authorizing Westhampton Property to undertake certain activities on the Property related to its current use; and

Whereas, the Commission, by resolution dated October 17, 2012 issued a hardship exemption to Westhampton Property authorizing it to undertake certain activities on the Property as more fully described in the resolution which is set forth in Schedule B, attached hereto and made a part hereof; (the "Approval"); and

Whereas, the Approval contained certain conditions, which, among other things, required Westhampton Property to implement a restoration plan, at its own cost and expense, to improve and restore the Property's ecological, scientific, groundwater recharge, scenic, educational, recreational and aesthetic values after completion of the activities authorized by the Approval (the "Mine Restoration Plan") and to convey a conservation easement on the Property to ensure its use is consistent with the terms of the Approval and the Mine Restoration Plan; and

MAY 21 2014

Whereas, Westhampton Property wishes to grant to the Commission this Conservation Easement pursuant to Title 3 of Article 49 of the Environmental Conservation Law ("ECL"), or its similar successor statute, and this Conservation Easement is intended to comply with said statute; and

Now, therefore, Westhampton Property, for and in consideration of the facts above and hereinafter recited including, but not limited to, grant of the Approval and the mutual covenants, terms, conditions and restrictions herein contained, does hereby give, grant, bargain, sell and convey unto the Commission, its successors and assigns forever a Conservation Easement in perpetuity over the Property consisting of the following:

1. The right of visual access to and view of the Property in its natural, scenic and open condition.
2. Westhampton Property's forbearance from taking any of those actions constituting development pursuant to ECL Section 57-0107(13) and Westhampton Property's forbearance from operations or uses pursuant to ECL Section 57-0107(13)(i-xiv) unless such operations or uses are otherwise expressly reserved herein.
3.
  - a. The right of the Commission, its respective agents, employees or other representatives, to enforce this Conservation Easement in an action at law or in equity or both.
  - b. The right of the State of New York, the County of Suffolk, the Town of Southampton or their respective agents, employees or other representatives, exercising a third party enforcement right, to enforce this Conservation Easement in an action at law or in equity or both.

Enforcement pursuant to (a) and (b) hereinabove shall not be defeated because of any subsequent adverse possession, laches, estoppel or waiver. The Commission or any party with a third party enforcement right or its respective agents, employees or other representatives shall be permitted access, if necessary, to cross other lands retained by Westhampton Property and to enter upon the Property at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions herein contained. The Commission, its agents, employees or other representatives, agree to give Westhampton Property reasonable advance notice of its intention to enter and inspect the Property, and further such entrance and inspection shall be in a reasonable manner and at reasonable times. Furthermore, Westhampton Property shall provide any third party with enforcement rights, or its agents, representatives or employees, access to cross other lands retained by Westhampton Property, and permission to enter upon the Property, upon receipt of advance notice of such third party's intention to enter and inspect. Such entrance and inspection shall be in a reasonable manner and at reasonable times.

### **Covenants**

In furtherance of the foregoing affirmative rights, Westhampton Property makes the following covenants, on behalf of itself, its successors, heirs and assigns, lessees, personal representatives and other successors in interest, which covenants shall run with and bind the Property in perpetuity:

1. There shall be no construction activity, 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 authorized by the Approval.
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.
3. Westhampton Property shall implement the Mine Restoration Plan and comply with the Provisions contained therein.

### **Reserved Rights**

Nevertheless, and notwithstanding any of the foregoing provisions to the contrary and as expressly limited herein, Westhampton Property reserves for itself, its heirs, successors and assigns the following reserved rights in addition to all those rights previously retained, reserved and defined herein, which may be exercised without written notice to the Commission unless otherwise required by the Approval or the Mine Restoration Plan.

1. The right of exclusive possession of the Property.
2. The right to use the Property consistent with the terms of the Approval.
3. The right to implement the Mine Restoration Plan.
4. The right to use the Property for passive recreational activities such as, but not limited to, hunting, fishing, camping, hiking and activities associated therewith so long as such activities conform to local zoning regulations and do not constitute development as defined in ECL Section 57-0107(13).
5. The right to use the Property for operations or uses described in ECL Section 57-0107 (13) (i, ii and vi) upon approval of applicable Federal, State, and local agencies and upon the approval of the Commission, or environmental restoration projects commenced by Westhampton Property or its heirs, successors or assigns upon approval of applicable Federal, State, and local agencies and upon the approval of the Commission.

6. The right to sell, give or otherwise convey the Property or, consistent with the Covenants herein, any portion or portions of the Property, subject to the terms of this Conservation Easement. Westhampton Property, upon the sale, gift or other conveyance of its fee interest in the Property, shall have no further obligations or liabilities under this Conservation Easement. Westhampton Property shall promptly notify Commission of any conveyance of any interest in the Property, including the full names and mailing addresses of all grantees, and the individual principals thereof, under any such conveyance. The instrument of any such conveyance shall specifically set forth that the interest thereby conveyed is subject to this Conservation Easement, without modification or amendment of the terms of this Conservation Easement, and shall incorporate this Conservation Easement by reference, specifically setting forth the date, office, liber and page of the recording thereof. The failure of any such instrument to comply with the provisions hereof shall not affect the Commission's rights hereunder.

### **Rights of the Public**

Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Conservation Easement except as may be granted by Westhampton Property herein or their successors.

### **Miscellaneous**

1. The parties hereto understand and agree that all the terms and provisions of ECL, Title 3, Article 49, as the same may be hereafter amended, entitled Conservation Easements, shall apply to this Conservation Easement.
2. This Conservation Easement contains the entire understanding between its parties concerning its subject matter. Any prior agreement between the parties concerning its subject matter shall be merged into this Conservation Easement and superseded by it.
3. Any provision of this Conservation Easement restricting Westhampton Property's activities, which is determined to be invalid or unenforceable by a court, shall not be rendered a nullity. Instead, that provision shall be reduced or limited to whatever extent that the court determines will make it enforceable and effective. Any other provision of this Conservation Easement which is determined to be invalid or unenforceable by a court shall be severed from the other provisions, which shall remain enforceable and effective.
4. Regardless of any contrary rule of construction, no provision or alleged ambiguity of this Conservation Easement shall be construed in favor of one of the parties because it was drafted by the other party's attorney. If any provision of this



Conservation Easement is ambiguous or shall be subject to two or more interpretations, one of which would render that provision invalid, then that provision shall be given such interpretation as would render it valid and consistent with the purposes of this Conservation Easement as intended by Westhampton Property. Any rule of strict construction designed to limit the breadth of the restrictions on use of the Property shall not apply in the construction or interpretation of this Conservation Easement, and, this Conservation Easement shall be interpreted broadly to effect the purposes of this Conservation Easement as intended by Westhampton Property. The parties intend that this Conservation Easement, which is by nature and character primarily negative in that Westhampton Property has restricted and limited Westhampton Property's right to use the Property, except as otherwise recited herein, be construed at all times and by all parties to effectuate its purposes.

5. This Conservation Easement can be terminated only in accordance with the law of the State of New York applicable to the termination of easements and covenants running with the land. This Conservation Easement may be modified only upon the written consent of both Westhampton Property and the Commission, or their successors, heirs, representatives or assigns. Westhampton Property and the Commission recognize that circumstances could arise which would justify the modification of certain of the restrictions contained herein. To this end, the Commission and Westhampton Property shall mutually have the right, in their sole discretion, to agree to amendments to this Conservation Easement which are not inconsistent with the basic purpose of this Conservation Easement, provided, however, that the Commission shall have no right or power to agree to any amendments hereto that would result in this Conservation Easement failing to qualify as a valid conservation easement under ECL, Title 3, Article 49 as the same may be hereafter amended.
6. Westhampton Property agrees that the terms, conditions, restrictions and purposes of this Conservation Easement shall continue as a servitude running in perpetuity with the Property and will be incorporated by reference in any subsequent deed or other legal instrument by which Westhampton Property divests itself of either the fee simple title to, or its possessory interest in, the Property or any portion thereof specifically setting forth the date, and the liber and page of the Suffolk County Clerk's records of the recording hereof.
7. Any notices required in this Conservation Easement shall be written. Notices shall be given either by manual delivery or by mailing in a mail receptacle maintained by the United States Postal Service. Mailed notices must be contained in an accurately addressed, sealed envelope, marked for delivery by first class registered or certified mail, with sufficient prepaid postage affixed and with return receipt requested. Mailed notice to Westhampton Property shall be addressed to Westhampton Property's address as recited herein or to any such other address as

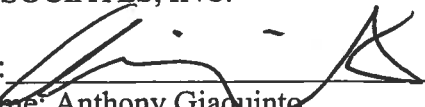
Westhampton Property may designate by notice in accordance with this section. Mailed notice to the Commission shall be addressed to the Commission's address as recited herein or to any such other address as the Commission may designate by notice in accordance with this section.

8. It is understood and agreed by the Parties hereto that the Westhampton Property, its successors, heirs and assigns, shall not be liable for any changes to the Property caused by any natural disaster or Act of God.
9. Westhampton Property and Westhampton Property's lessees, representatives, successors, heirs and assigns, shall not apply to the Commission or the Pine Barrens Credit Clearinghouse for a hardship, other permit or Pine Barrens Credits under the Plan or under ECL Article 57 pertaining to the Property. Westhampton Property understands and intends to sever the right to develop the Property from the Property.
10. Westhampton Property does further covenant and represent that Westhampton Property is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement, that the Property is free and clear of any and all encumbrances, other than those of record, and that the Commission shall have the use of, and enjoy all of the benefits derived from and arising out of, the aforesaid Conservation Easement.
11. The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, and the Commission hereby covenants and agrees that any transferee or assignee will be an organization or public body qualified to hold a Conservation Easement pursuant to ECL, Title 3, Article 49, as the same may be hereafter amended, and the regulations promulgated thereunder.
12. All references to statutory provisions of Article 57 shall be as such provisions were in effect on the date of execution of this Conservation Easement.

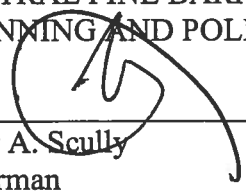
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IN WITNESS WHEREOF, Westhampton Property has executed and delivered and Commission has accepted and received this Grant of Conservation Easement on the day and year set forth above.

WESTHAMPTON PROPERTY  
ASSOCIATES, INC.

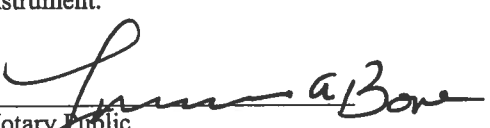
By:   
Name: Anthony Giaquinto  
President *Pres. and*

CENTRAL PINE BARRENS JOINT  
PLANNING AND POLICY COMMISSION

By:   
Peter A. Scully  
Chairman

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

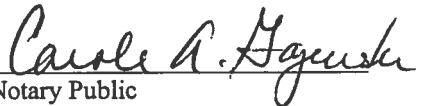
On the 30<sup>th</sup> day of April in the year 2014  
before me, the undersigned, a notary public in and  
for said state, personally appeared Anthony  
Giaquinto, personally known to me or proved to me  
on the basis of satisfactory evidence to be the  
individual(s) whose name(s) is (are) subscribed to  
the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their  
capacity(ies), 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.

  
Notary Public

FRANCINE A. BOVE  
Notary Public, State of New York  
No. 01BO6046059  
Qualified in Suffolk County  
Commission Expires Aug. 7, 2014

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

On the 10<sup>th</sup> day of June in the year 2014  
before me, the undersigned, a notary public in and  
for said state, personally appeared Peter A. Scully,  
personally known to me or proved to me on the basis  
of satisfactory evidence to be the individual(s) whose  
name(s) is (are) subscribed to the within instrument  
and acknowledged to me that he/she/they executed  
the same in his/her/their capacity(ies), 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.

  
Notary Public

CAROLE A. GAJEWSKI  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01-GA6192849  
QUALIFIED IN SUFFOLK COUNTY  
COMMISSION EXPIRES SEPT 02, 2016

## SCHEDULE A

### **RAYNOR, MARCKS and CARRINGTON SURVEYING**

P.O. BOX 5037 - 77 JESSUP AVENUE  
QUOGUE, N.Y. 11959  
(531) 853-4068  
(531) 853-8175 Fax

FLOYD CARRINGTON, L.S., CPESC, CPSWC  
L.S. No. 49188  
CPESC No. 5758  
CPSWC No. 0849

Description of a parcel of land situate in the hamlet of Westhampton, Town of Southampton, County of Suffolk, State of New York and more particularly described as follows:

Beginning at a point said point being the following two courses and distances from the intersection of the northerly side of Old Country Road and the easterly side of Speonk-Riverhead Road:

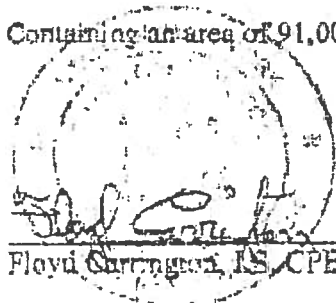
- 1) South  $68^{\circ} 31' 00''$  East 1343.25ft
- 2) North  $09^{\circ} 47' 20''$  East 1965.50ft

Thence North  $09^{\circ} 47' 20''$  East 7490.00ft along the easterly line of Map of Oishei Road Estate Company filed July 25, 1906 as Map number 451 to a point; Thence the following two courses and distances along the southerly side of the Sunrise Highway to a point:

- 1) along a curve to right in a northeasterly direction with a radius of 970.00ft and a length of 334.27ft.
- 2) North  $82^{\circ} 00' 12''$  East 236.74ft

Thence South  $09^{\circ} 47' 20''$  West 7716.71ft along lands now or formerly Bide-A-Wee House Association Inc. to a point; Thence North  $80^{\circ} 12' 40''$  West 520.04ft to the point of beginning.

Containing an area of 91.00000 acres

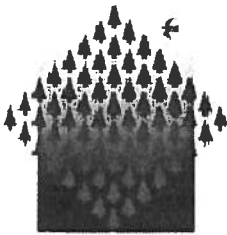


Floyd Carrington, L.S., CPESC, CPSWC

## SCHEDULE B

### Commission Meeting of October 17, 2012 Brookhaven Town Hall

Present: Mr. Scully (New York State), Ms. Lansdale (Suffolk County),  
Ms. Prusinowski (Brookhaven), Mr. Walter (Riverhead),  
Ms. Throne-Holst (Southampton)



CENTRAL  
PINE  
BARRENS  
JOINT  
PLANNING  
&  
POLICY  
COMMISSION

Peter A. Scully  
*Chair*

Steven Bellone  
*Member*

Kathleen A. Walsh  
*Member*

Anna E. Throne-Holst  
*Member*

Sean M. Walter  
*Member*

#### Adopted Resolution

#### Westhampton Property Associates Core Preservation Area Hardship and Compatible Growth Area Critical Resource Area Application

Property located on the south side of Sunrise Highway (SR 27), north side of  
Old Country Road (CR 71), 500 feet east of 5<sup>th</sup> Avenue, in the hamlet of  
Remsenburg/Speonk, Town of Southampton,  
Suffolk County Tax Map #: 900-276-3-1 and 2

**Whereas**, on November 9, 2011, Westhampton Property Associates, LLC (the Applicant) by its representative Nelson Pope & Voorhis, LLC, filed with the Commission an application for development to expand the depth of an existing 91-acre sand and gravel mine (the Project); and

**Whereas**, the 91-acre mine is part of a 115 acre project site comprised of two parcels owned by the Applicant, in the Country Residence 200 (CR 200) Zoning District, in the Town Aquifer Protection Overlay District, hamlet of Remsenburg/Speonk, Town of Southampton, identified on the Suffolk County Tax Map as parcels 900-276-3-1 and 2, as per the map entitled "Sand Mine Plan and Profile" prepared by Raynor, Marcks & Carrington last dated August 4, 2011 (Sheets 1, 2, and 3); and

**Whereas**, 68.07 acres of the project site is located in the Core Preservation Area of the Central Pine Barrens; and

**Whereas**, 46.93 acres of the project site is located in the Compatible Growth Area and is designated as part of a Critical Resource Area (CRA) identified as S10 in Figure 4-6 in Chapter 4.5.4.1 of the Central Pine Barrens Comprehensive Land Use Plan (CLUP); and

**Whereas**, the features of CRA S10 are described in the CLUP as "Open space on northerly portion of site complements adjacent open space;" and

**Whereas**, the Project is a depth expansion of an existing sand mine, which is currently at an elevation of approximately 45 feet above sea level, to an elevation of approximately 26 feet above sea level, which will be a minimum of four feet and a maximum of six feet above the elevation of the groundwater table, depending on the seasonally varying height of the

P.O. Box 587  
3525 Sunrise Highway  
2<sup>nd</sup> Floor  
Great River, NY  
11739-0587

Phone (631) 224-2604  
Fax (631) 224-7653  
[www.pb.state.ny.us](http://www.pb.state.ny.us)



groundwater table; and

**Whereas**, other Project elements include the preparation and recording of a Conservation Easement on the 91-acre mine to preserve it when mining is completed; and restoration of the mine in accordance with a reclamation plan prepared by Nelson, Pope & Voorhis dated July 18, 2011; and

**Whereas**, the current New York State Department of Environmental Conservation (NYSDEC) mine permit expires in the year 2016; and a permit modification for the depth expansion was filed by the Applicant with NYSDEC; and

**Whereas**, the Project expands the area of mining on site and extends mining activity on site to the year 2041; and

**Whereas**, the Applicant submitted a Mine Restoration Plan for the site prepared by Nelson Pope & Voorhis dated July 18, 2011 and a narrative entitled "Mine Reclamation Plan" prepared by Nelson Pope and Voorhis. The Plan describes the implementation of an eight phase mine land reclamation plan. The Plan schedule indicates Phase 1 will commence in 2019, and Phase 8 will commence in 2041. Restoration monitoring spans from the year 2022 to 2047. The Plan legend lists the habitat types to be created as follows: 38.24 acres of pitch pine oak forest, 30.17 acres of meadow, 3.91 acres of wet meadow, 2.06 acres of vernal pools, and 16.32 acres of slope restoration area. The total area of reclamation is 90.7 acres; and

**Whereas**, the Project will not intercept groundwater elevation under the mine floor and will maintain a maximum vertical buffer of six feet to groundwater but which shall be no less than four feet; and

**Whereas**, the Project constitutes development pursuant to Environmental Conservation Law (ECL) §57-0107(13)(b) and (c), which states development includes, "*a material increase in the intensity of use of land or environmental impacts as a result thereof;*" and "*commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities,*" respectively; and

**Whereas**, the Project requires a Core Preservation Area Extraordinary Hardship, a discretionary action of the Commission; and

**Whereas**, the CRA portion is subject to the Review Procedures of the CLUP in Chapter 4 Section 4.5.5, *Development located within the Compatible Growth Area which is also located within a Critical Resource Area*, which states, "*The Act sets forth the jurisdiction for the Commission's review of development within the Compatible Growth Area of the Central Pine Barrens. Such review includes development that is located in Critical Resource Areas. The Act also authorizes the Commission, by majority vote, to waive strict compliance with this Plan upon finding that such waiver is necessary to alleviate a demonstrated hardship;*" and

**Whereas**, a public hearing was held on January 18, 2012, continued on February 15, 2012 and stenographic transcripts of the hearings were made available to the Commission; and

**Whereas**, on June 15, 2012, the Applicant submitted supplemental information including a report entitled "*Fiscal and Economic Impact Analysis and Assessment of Needs and Benefits*" prepared by Nelson, Pope & Voorhis, LLC dated June 15, 2012; and

**Whereas**, a second public hearing was held on July 18, 2012; and a stenographic transcript of the hearing was made available to the Commission; and

**Whereas**, at the July 18<sup>th</sup> hearing, the Commission inquired about potential impacts on the owner's business with respect to the availability of material to contractors; and

**Whereas**, on August 14, 2012, the Applicant submitted copies of letters received from contractors in support of the hardship waiver as it relates to their continued business with the Applicant and potential impacts if the hardship were not granted; and the letters were entered into the record for the Project in response to the Commission's inquiry at the public hearing; and

**Whereas**, the Town of Southampton submitted a copy of a letter to NYSDEC dated June 20, 2008 indicating the pre-existing nonconforming use of a sand mine and mining activities on site pre-date the Town Zoning Code, and the site's existing and continued use as a mine is grandfathered, and

**Whereas**, pursuant to the criteria contained in ECL §57-0121(10) (a) (i) through (iii), the Applicant has satisfied the conditions for and has demonstrated extraordinary hardship as the Project is unique since the site contains a pre-existing sand mine permitted and developed in 1981, prior to the Long Island Pine Barrens Protection Act of 1993 (the "Act"), with no disturbance to existing native vegetation or clearing beyond the existing extent of the currently permitted mine; and

**Whereas**, pursuant to the Applicant's demonstration of extraordinary hardship as per ECL §57-0121(10)(a), the Applicant has satisfied the conditions for demonstrating extraordinary hardship as the Applicant contends the business is family operated and planning for future business is an imminent concern; although the current permit term expires in 2016, the 16 acres of material left to mine will be extracted sooner than the current permit term extends; and, as shown in the record, the Applicant has no other beneficial use of the site if not used as a mine; and

**Whereas**, pursuant to the Applicant's demonstration of extraordinary hardship as per ECL §57-0107(1)(a)(i), the Project does not apply to or affect other properties in the immediate vicinity since other sand and gravel mines in the vicinity are in the CGA,

and much of the Core property in the vicinity of the site is preserved under public ownership; and

**Whereas**, the Applicant submitted an Environmental Assessment Form (EAF) Part I; and

**Whereas**, the Project is a Type I Action pursuant to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act, SEQRA), and the Commission performed a coordinated review for Lead Agency status with other Involved Agencies including the New York State Department of Environmental Conservation (NYSDEC) and the Town of Southampton Planning Board and requested to serve as Lead Agency by letter dated January 4, 2012, as per the Central Pine Barrens Comprehensive Land Use Plan Chapter 4 Section 4.5.1.1, *Lead Agency Assertion*; and

**Whereas**, no objection was raised by the NYSDEC or Town of Southampton concerning the Commission's request to assume Lead Agency status, and the Commission assumed Lead Agency; and

**Whereas**, an EAF Part II was prepared and reviewed by the Commission; and no significant adverse environmental impacts were identified in the SEQRA process; and

**Whereas**, pursuant to New York State Environmental Conservation Law (ECL) Article 8 (State Environmental Quality Review Act (SEQRA) and its implementing regulations 6 NYCRR Part 617, the Commission has considered the relevant areas of potential environmental impacts applicable to the Project and has applied the Criteria for Determining Significance contained in 6 NYCRR Part 617, section 617.7(c), and

**Whereas**, the Project will not generate objectionable odors, will not install any stationary sources of air emissions and will continue to manage the mine within its current operating parameters using the same machinery as before with no significant increase in air emissions; therefore, as a result, the Project will not result in any significant adverse impact on air quality, and

**Whereas**, although the Project will decrease the vertical distance to groundwater, the review of the record indicates the Project will not generate sanitary flow which will obviate the potential for groundwater contamination by constituents in effluent; will not create sources of nitrate-nitrogen as it will exclude fertilizer-dependent vegetation that could potentially enter groundwater; will not engage in any industrial processes, storage of toxic materials or fueling operations that could adversely impact groundwater; will not generate significant discharges of effluent; is not located near any public water supply wells and the project site does not contain a private well; therefore the Project will not result in any adverse impacts to groundwater and complies with CLUP Standard 5.3.3.1.1 regarding Suffolk County Sanitary Code Article 6 compliance, Standard 5.3.3.1.2 regarding Sewage treatment plant discharge, Guideline 5.3.3.1.3 regarding Nitrate-nitrogen goal, Standard 5.3.3.2.1 regarding Suffolk County Sanitary Code Articles 7 and

12 compliance, Standard 5.3.3.3.1 regarding Significant discharges and public supply well locations and Guideline 5.3.3.3.2 regarding Private well protection, and

**Whereas**, the Project will not result in any adverse impacts to groundwater located in Hydrogeologic Zone III, a deep-recharge zone, as the Project preserves the hydrologic functions and groundwater quality of the Core, pursuant to the goals and objectives in Environmental Conservation Law Article 57, §57-0121(3), and

**Whereas**, the record indicates there are no wetlands or surface waters located either on or in proximity to the project site and the project site is not located within a Wild, Scenic and Recreational River corridor; therefore, the Project will not result in any significant adverse impacts on wetlands, surface waters or a Wild, Scenic and Recreational River corridor and, as a result, CLUP Standard 5.3.3.4.1 regarding Nondisturbance buffers, Standard 5.3.3.4.2 regarding Buffer delineations, covenants and conservation easements, Standard 5.3.3.4.3 regarding Wild, Scenic and Recreational Rivers Act compliance and Guideline 5.3.3.4.4 regarding Additional nondisturbance buffers are not applicable to the Project, and

**Whereas**, according to the record, all stormwater generated on the project site will be recharged on site, will be controlled during mining operations and will not impact adjacent properties nor any surface waters or wetlands; no drainage systems or recharge basins are proposed on the project site and vernal pools to be created by the project will be perched above the groundwater table and will serve to receive stormwater runoff as well as to establish new habitat areas; therefore, the Project will not result in any significant adverse impacts due to stormwater runoff, will not increase the potential for erosion, will not cause flooding and will not cause drainage problems, and, as a result, the project will comply with CLUP Standard 5.3.3.5.1 regarding Stormwater recharge, Guideline 5.3.3.5.3 regarding the creation of ponds and Guideline 5.3.5.5 regarding Soil erosion and stormwater runoff control during construction while Guidelines 5.3.3.5.2 regarding Natural recharge and drainage and 5.3.3.5.4 regarding Natural topography in lieu of recharge basins are not applicable, and

**Whereas**, as the Project will be managed within its current operating parameters, there will be no substantial net increase in traffic generation, truck trips and noise nor a significant net increase in solid waste production and

**Whereas**, the project site was legally approved for mining prior to the adoption of the Long Island Pine Barrens Protection Act and, as a result, the majority of the project site was previously disturbed, cleared, and excavated, and

**Whereas**, that portion of the project site within the Core Preservation Area was one of the areas that was previously cleared and excavated and is therefore devoid of any existing natural vegetation and wildlife habitat, and

**Whereas**, the Project will clear an additional area of 10 acres comprised of commercial nursery vegetation pursuant to the life of mine permit issued by the New York State Department of Environmental Conservation and which predates the Act, and

**Whereas**, a 3.08 acre portion of the existing nursery, that is not approved for mining under the existing life of mine permit, will remain in its current state and will revert to natural conditions to provide new natural habitat in the future and an existing 10.92 area of pine barrens habitat on the southern end of the property will remain intact under the Project, and

**Whereas**, no rare, endangered, threatened or special concern species of plants or animals nor their habitats have been identified on the project site, and

**Whereas**, as a result of the lack of vegetation in that portion of the project site located in the Core Preservation Area and in the majority of the Compatible Growth Area and the lack of native vegetation on the affected 10-acre nursery area, the Project will not result in significant adverse impacts on vegetation, and

**Whereas**, due to the lack of native-vegetated habitat within the project site, the Project will not result in the removal or destruction of large quantities of fauna; will not cause substantial interference with any resident or migratory wildlife; will not adversely impact a significant habitat area nor cause significant adverse impacts to rare, endangered, threatened or special concern species of plants or animals; and

**Whereas**, when reclaimed at the end of mining activity, the Project will provide a replanted natural habitat area comprised of native pine barrens plant material which is consistent with the surrounding pine barrens vegetational communities in which no fertilizer-dependent vegetation is to be installed and which will allow for connections to be made with nearby open space areas, and, as a result, the Project will be consistent with CLUP Standard 5.3.3.6.1 regarding Vegetation Clearance Limits, Standard 5.3.3.6.2 regarding unfragmented open space, Standard 5.3.3.6.3 regarding fertilizer-dependent vegetation and Standard 5.3.3.6.4 regarding native plantings, and

**Whereas**, although the project site is not located within a Critical Environmental Area and will therefore not result in significant adverse impacts on said area's designated environmental characteristics, a portion of the project site within the Compatible Growth Area also lies within Critical Resource Area S10, "Upland Forest Westhampton," which was designated as such because "*Open space on northerly portion of site complements adjacent open space,*" and

**Whereas**, pursuant to Section 4.5.4.2 of the CLUP, the Commission is required to address "*the protection for the critical resource feature(s)*" of the Critical Resource Area designated in the Plan, and

**Whereas**, because the majority of the project site has already been previously disturbed and cleared and is privately owned, there is no existing protected open space on



the project site to complement any adjacent open space, and therefore, the Project will not result in any significant adverse impacts to the critical resource features of Critical Resource Area S10, and

**Whereas**, the natural pitch pine-oak woodland in the southern end of the Compatible Growth Area portion of the project site will remain in its current natural state and will continue to complement the open space within the Critical Resource Area, and

**Whereas**, the record indicates that the mine reclamation that will occur upon completion of the Project will complement the contiguous open space through revegetation with native pine barrens vegetation and by “expanding the unfragmented open space continuum,” and

**Whereas**, the Project is consistent with community plans, including the CLUP, will not result in a major change in use in the quantity or type of energy, will not create a hazard to human health, will not result in a substantial change in use, will not induce the attraction of large numbers of persons and will not cause significant adverse or cumulative impacts, and

**Whereas**, the record indicates the project site does not contain any significant archaeological or historical resources, in particular because of the significant amount of prior ground disturbance that previously occurred prior to the Act; therefore, the Project will not result in any significant adverse impacts to archaeological or historical resources, and

**Whereas**, the project site does not contain any significant aesthetic resources due to its previously-disturbed conditions and will not have any significant adverse impacts on aesthetic or scenic resources as a result and also due to the fact that the Project will preserve the character of the Core Preservation Area, as it will retain the existing naturally-vegetated buffer adjacent to New York State 27, a Scenic Road identified in Volume 2 of the CLUP, and will continue to not be visible from Route 27 and adjacent roadways, and

**Whereas**, the Commission has considered all materials submitted in connection with the application, now, therefore, be it,

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

**Resolved**, that pursuant to New York State Environmental Conservation Law (ECL) Article 8 (State Environmental Quality Review Act (SEQRA)) and its implementing regulations 6 NYCRR Part 617, the Commission hereby adopts a Negative Declaration pursuant to SEQRA for the Project, for the reasons set forth in this resolution, and be it further

#### **I. Core Preservation Area Hardship Determination**

**Resolved**, that the Commission hereby determines the application, as submitted, meets the criteria for Core Preservation Area Hardship based on extraordinary hardship pursuant to New York State ECL §57-0121(10) (b) and (c); and be it further

**Resolved**, the Commission finds the instant Core Hardship Waiver is not inconsistent with the purposes, objectives, or general spirit and intent of the Act; and be it further

**Resolved**, pursuant to ECL §57-0121(10)(a)(i) through (ii), the Commission finds that the Applicant has satisfied the conditions for and has demonstrated extraordinary hardship as the project site was developed and permitted as a sand mine prior to the Act; the Project will occur in the existing disturbed area of the project site, which was developed prior to the Act; the hardship does not apply to other properties in the immediate vicinity, since many other properties in the Core are under public ownership and other developed properties in the vicinity are in Compatible Growth Area; the development activity arises out of the characteristics of the subject property rather than the personal situation of the Applicant; and based on the review of existing regulations in effect on the project site and through the recording of a Conservation Easement on the 91 acre mine, the mine site will be protected from future development, especially that which could impact the environment and that once mining activity has ceased and restoration will occur in accordance with the Reclamation Plan, the Project is not expected to result in significant adverse environmental impacts; and be it further

**Resolved**, pursuant to ECL §57-0121(10)(c)(i), the Commission finds that the Applicant has satisfied the conditions for and has demonstrated extraordinary hardship as the Project involves no disturbance to existing natural vegetation; therefore, the Project will not be materially detrimental or injurious to other property or improvements in the area because the property in the vicinity of the site is also in the Core, is under public ownership, already developed, or not developable; the Project does not result in endangering public safety or substantial impairment of the resources of the Core; and the Applicant has met these additional standards for granting a Hardship Waiver in the Core due to site development as a mine prior to the Act and the continued use of the site as a sand mine, and the Project avoids disturbance to existing natural vegetation in the Core; and be it further

**Resolved**, no groundwater impacts in Hydrogeologic Zone III shall occur as the record demonstrates the Project will maintain a vertical buffer of 4 to 6 feet above the groundwater table, will not intercept groundwater below the mine floor elevation, will not generate sewage or discharge effluents that could contaminate groundwater, will not engage in the storage of toxic materials so as to adversely impact the underlying aquifer, will store all fuel in accordance with all local, County and State regulations and will adequately control stormwater and the Project preserves the hydrologic functions and groundwater quality of the Core, pursuant to the goals and objectives in ECL §57-0121(3), and be it further

**Resolved**, the Project will preserve the character of the Core Preservation Area, as the Project will not result in the removal of any natural vegetation from the Core Preservation Area; will retain the existing naturally vegetated buffer to NYS Route 27, a Scenic Road identified in Volume 2 of the CLUP, and it will continue to not be visible from Route 27 and adjacent roadways and will establish a new revegetated area upon cessation of mining which will further bolster the Route 27 buffer; and be it further

**Resolved**, pursuant to ECL §57-0121(10)(c)(iii), the waiver is the minimum relief necessary to relieve the extraordinary hardship on behalf of the Applicant and meets the needs of the business as the Project will not result in a lateral expansion beyond the existing NYSDEC life of mine permitted boundaries, will not expand the mine into the Compatible Growth Area beyond the existing NYSDEC life of mine permitted boundaries, will not expose groundwater and will not vertically expand the mine below the groundwater table; the Project avoids significant adverse environmental impacts, continues a pre-existing industrial land use in the Core, and avoids new construction and disturbance to natural vegetation in the Core via the applicant's offer to subject the project area to a Conservation Easement which obviates further development after cessation of the mining activity approved herein; and be it further

**Resolved**, the Applicant has demonstrated that the mined materials from the project site represent a commodity which is valuable and necessary to the local and regional economy and has demonstrated that there are specific commercial entities which are dependent on supplies of mined materials generated by the mine and which are particular to its geographic location and quality and grade of material; and be it further

**Resolved**, the Commission finds that the project site does not have a beneficial use other than a sand mine due to the location of the site, its lack of proximity to certain utilities and highway access, adjacent uses, zoning, the Applicant's investment in equipment and support services required for mining and market forces, and the interruption or cessation in the mine operation would result in financial hardship to the Applicant and contractors to whom it supplies materials; and be it further

**Resolved**, the Commission acknowledges that the Applicant offered to the Commission a Conservation Easement on the 91-acre sand mine site and the Commission accepts said Conservation Easement from the Applicant on the 91 acre sand mine which will be granted to the Commission, will be recorded on the 91 acre mine and will aim to preserve the resources of the project site in the Core and in the CGA-CRA, with the Applicant reserving rights to the current and continued use of the existing 91 acre mining land use through to the end of the expansion approved herein; and be it further

**Resolved**, no other use, development activity, or expansion of existing use on the 91-acre mine is permitted; and no future development activity beyond this Waiver is permitted on the 91 acre site mine; and be it further

**Resolved**, the Commission finds that the Project is consistent with Article 57 of the New York State Environmental Conservation Law, and the Applicant has

demonstrated it has met the criteria necessary for the issuance of a Core hardship waiver; and be it further

## **II. Critical Resource Area and Compatible Growth Area**

**Resolved**, the Commission determines that the Applicant has demonstrated compliance with the standards and guidelines set forth in Volume 1, Chapter 5 of the Central Pine Barrens Comprehensive Land Use Plan ("the CLUP"), and the area of the CRA that is not subject to past and currently permitted mining activity will remain subject to the provisions that require Commission review of a CRA; and be it further

**Resolved**, the sand mine pre-dates the Act and the CLUP; therefore, the CRA portion of the 91 acre mine will continue to be mined and will be expanded in depth under the Project; the existing open space of the CRA, to which the project site is partially connected, will continue in its existing state, and once the Conservation Easement is recorded, that portion of the project site within the CRA will be protected from future development; and be it further

**Resolved**, the remaining 24 acres in the CRA are currently wooded and no development activity is proposed under the Project; therefore, it will remain in its natural state under the Project; in the future if development activity, as per the Act, is proposed in the CRA, it is subject to Commission review in accordance with the CLUP; and be it further

## **III. Plans and Monitoring**

**Resolved**, the Commission accepts the Project's Mine Restoration Plan prepared by Nelson Pope & Voorhis dated July 18, 2011 and a narrative entitled "Mine Reclamation Plan" prepared by Nelson Pope and Voorhis and requires the applicant to submit to the Commission, within 30 days of any changes, any and all revised versions of the Reclamation Plan and narrative in the future; and be it further

**Resolved**, based on current plans, mining is expected to cease completely on the project site by 2041, with reclamation occurring until the year 2048; and if the Applicant applies to NYSDEC for permit extensions or renewals to complete mining to the permitted depth, no additional deepening of the mine floor elevation shall be permitted below the Project elevation of six feet above groundwater; and be it further

**Resolved**, the Commission accepts the Applicant's offer to submit monitoring reports that would provide quarterly and annual monitoring reports to document seasonal groundwater elevations and requires the applicant to submit monitoring reports quarterly and to also submit an annual report based on the prior year's four quarters. In the event groundwater is intercepted at any time during mining operations, the Applicant shall immediately stop its mining operations, shall immediately notify the Commission and

shall not recommence mining operations until it has received written Commission authorization to do so; and be it further

#### **IV. Conditions of Approval**

**Resolved**, that the Commission approves the Project in accordance with the Sand Mine Plan and Profile prepared by Raynor, Marcks & Carrington last dated August 4, 2011 (Sheets 1, 2, and 3) and all application materials and submissions to date, subject to the following specific conditions:

1. Obtain other permits and approvals, as required by law, prior to commencement of the project. Copies of other agency approvals shall be forwarded to the Commission office within 30 days of their issuance.
2. Prior to commencement of new mining authorized by this approval, the applicant shall submit, at that time, the most current version of the Project's Mine Restoration Plan and Mine Reclamation Plan narrative and the applicant shall submit to the Commission, within 30 days of any changes, any and all revised versions of the Reclamation Plan and narrative in the future.
3. Mining activity on the existing 91 acre mine will continue and be expanded in depth to a maximum mine floor elevation of approximately 26 feet above sea level and a minimum of 4 feet and a maximum of six feet above groundwater, based on seasonal groundwater elevation.
4. Groundwater monitoring
  - a. Maintain a minimum six foot buffer from the mine floor to existing groundwater elevation to preserve the hydrologic functions of the Pine Barrens.
  - b. Conduct quarterly monitoring of fluctuating groundwater elevations to ensure the six foot buffer is maintained.
  - c. Submit quarterly and annual groundwater elevation monitoring reports to the Commission through the end of mining activity on the project site, which is currently projected to end in the year 2041.
  - d. In the event groundwater is intercepted at any time during mining operations, the Applicant shall immediately stop its mining operations, shall immediately notify the Commission and shall not recommence mining operations until it has received written Commission authorization to do so.
5. No change in land use or zoning on the project site.



6. No expansion of the mine, existing mine use, depth of mine, lateral or vertical extent beyond the current proposal on the 91-acre sand mine.
7. Any other development activity on the project site, as per the Act, is subject to Commission jurisdiction, review, and a discretionary decision. However, this statement does not constitute an approval of or recommendation for said future development activity.
8. Conservation Easement
  - a. Prepare a Conservation Easement (CE) for the 91 acre mine site, and record the Conservation Easement in the Office of the Suffolk County Clerk within six months of the date of this resolution after the Commission approves the same. Prior to filing with the County Clerk, the Applicant shall submit a draft of same to the Commission for its approval. If approved by the Commission the CE shall be filed promptly with the Suffolk County Clerk. If rejected, the Applicant shall revise the draft CE as per the Commission's comments and re-submit the same for its approval. This cycle shall continue until the Commission approves the CE. The Applicant shall record the Commission-approved CE with the Suffolk County Clerk within six months of the date of this resolution.
  - b. The Commission accepts the owner's proposal to record a conservation easement on the project site to protect it from future development once mining activity has ceased under the current proposal. As a result, once mining has ceased, the current owner, future owner, or successor shall not seek relief in the form of a hardship application for a development project on the project site, engage in development activity on the project site, nor apply for Pine Barrens Credits to obtain financial return on the project site. Development activity will not be permitted, and Pine Barrens Credits will not be issued on the project site. The property is effectively sterilized of its development rights at the time of this Waiver. The owner shall be allowed to deed the property to a municipal agency, non-profit organization or equivalent to obtain value for the underlying fee title. The restrictions herein shall be included in the language of the Conservation Easement.
  - c. At the expiration of 6 months following the date of this resolution, if the language of a Conservation Easement has not been accepted by the Commission and a Conservation Easement acceptable to the Commission has not been filed with the Suffolk County Clerk, then the applicant shall cease all development activity on the site, including all mining activity, until a Conservation Easement is accepted by the Commission and filed in the Office of the Suffolk County Clerk.

- d. Provide copies of the Conservation Easement and mined land reclamation plans to the Town of Southampton and Suffolk County Department of Health Services, and file copies of the reclamation plans, with the Conservation Easement attached to the deed, in the Office of the Suffolk County Clerk.
9. Install a split rail fence on the “edge of clearing” on the south side of the site, adjacent to the area outside of the permitted 91 acre mine area to avoid disturbance, dumping, and encroachment into the existing, remaining 24 acres of natural wooded lands in the CGA-CRA.
10. Implement Best Management Practices on the project site, in accordance with the materials submitted in the application.

**Resolved**, a copy of this resolution shall be filed with the Suffolk County Clerk indexed against the property.

Record of Motion:

Decision (Approval):

Motion by: Ms. Throne-Holst

Seconded by: Mr. Walter

Yea Votes: 4

Nay Votes: 0

Abstain: Mr. Scully



**Combined Real Estate  
Transfer Tax Return,  
Credit Line Mortgage Certificate, and  
Certification of Exemption from the  
Payment of Estimated Personal Income Tax**

Recording office time stamp

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Print or type.

**Schedule A — Information relating to conveyance**

<b>Grantor/Transferor</b> <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantor)	Social security number
	Westhampton Property Associates, Inc.	
	Mailing address	Social security number
	429 Carls Path	
	City State ZIP code	Federal EIN
Deer Park NY 11729	20-5029516	
	Single member's name if grantor is a single member LLC (see instructions)	Single member EIN or SSN
<b>Grantee/Transferee</b> <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantee)	Social security number
	Central Pine Barrens Joint Planning and Policy Commission	
	Mailing address	Social security number
	624 Old Riverhead Road	
	City State ZIP code	Federal EIN
Westhampton Beach NY 11978	11-3286762	
	Single member's name if grantee is a single member LLC (see instructions)	Single member EIN or SSN

## Location and description of property conveyed

Tax map designation – Section, block & lot (include dots and dashes)	SWIS code (six digits)	Street address	City, town, or village	County
900-276-3-1 and 2	473689	S/s Sunrise Highway	Southampton	Suffolk

## Type of property conveyed (check applicable box)

1 <input type="checkbox"/> One- to three-family house	5 <input type="checkbox"/> Commercial/Industrial	Date of conveyance <table border="1"> <tr> <td>month</td> <td>day</td> <td>year</td> </tr> </table>	month	day	year	Percentage of real property conveyed which is residential real property _____ % (see instructions)
month	day		year			
2 <input type="checkbox"/> Residential cooperative	6 <input type="checkbox"/> Apartment building					
3 <input type="checkbox"/> Residential condominium	7 <input type="checkbox"/> Office building					
4 <input type="checkbox"/> Vacant land	8 <input checked="" type="checkbox"/> Other <u>Easement</u>					

## Condition of conveyance (check all that apply)

a. <input type="checkbox"/> Conveyance of fee interest	f. <input type="checkbox"/> Conveyance which consists of a mere change of identity or form of ownership or organization (attach Form TP-584.1, Schedule F)	i. <input type="checkbox"/> Option assignment or surrender
b. <input type="checkbox"/> Acquisition of a controlling interest (state percentage acquired _____ %)	g. <input type="checkbox"/> Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584.1, Schedule G)	m. <input type="checkbox"/> Leasehold assignment or surrender
c. <input type="checkbox"/> Transfer of a controlling interest (state percentage transferred _____ %)	h. <input type="checkbox"/> Conveyance of cooperative apartment(s)	n. <input type="checkbox"/> Leasehold grant
d. <input type="checkbox"/> Conveyance to cooperative housing corporation	i. <input type="checkbox"/> Syndication	o. <input checked="" type="checkbox"/> Conveyance of an easement
e. <input type="checkbox"/> Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest (attach Form TP-584.1, Schedule E)	j. <input type="checkbox"/> Conveyance of air rights or development rights	p. <input type="checkbox"/> Conveyance for which exemption from transfer tax claimed (complete Schedule B, Part III)
	k. <input type="checkbox"/> Contract assignment	q. <input type="checkbox"/> Conveyance of property partly within and partly outside the state
		r. <input type="checkbox"/> Conveyance pursuant to divorce or separation
		s. <input type="checkbox"/> Other (describe) _____

For recording officer's use	Amount received	Date received	Transaction number
	Schedule B., Part I \$		
	Schedule B., Part II \$		

**Schedule B – Real estate transfer tax return (Tax Law, Article 31)****Part I – Computation of tax due**

- 1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III) ..... ☒ **Exemption claimed**
- 2 Continuing lien deduction (see instructions if property is taken subject to mortgage or lien) .....
- 3 Taxable consideration (subtract line 2 from line 1) .....
- 4 Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3 .....
- 5 Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G) .....
- 6 Total tax due\* (subtract line 5 from line 4) .....

1.		
2.		
3.		
4.		
5.		
6.		

**Part II – Computation of additional tax due on the conveyance of residential real property for \$1 million or more**

- 1 Enter amount of consideration for conveyance (from Part I, line 1) .....
- 2 Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...
- 3 Total additional transfer tax due\* (multiply line 2 by 1% (.01)) .....

1.		
2.		
3.		

**Part III – Explanation of exemption claimed on Part I, line 1 (check any boxes that apply)**

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) ..... a ☒
- b. Conveyance is to secure a debt or other obligation..... b ☐
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c ☐
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts ..... d ☐
- e. Conveyance is given in connection with a tax sale..... e ☐
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F..... f ☐
- g. Conveyance consists of deed of partition..... g ☐
- h. Conveyance is given pursuant to the federal Bankruptcy Act ..... h ☐
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property ..... i ☐
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j ☐
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, section 1401(e) (attach documents supporting such claim) ..... k ☐

\*The total tax (from Part I, line 6 and Part II, line 3 above) is due within 15 days from the date conveyance. Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, make check(s) payable to the **NYC Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule C – Credit Line Mortgage Certificate (Tax Law, Article 11)****Complete the following only if the interest being transferred is a fee simple interest.**

I (we) certify that: (check the appropriate box)

1. ☐ The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2. ☐ The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
- ☐ The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
- ☐ The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
- ☐ The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
- ☐ The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.
- Please note:** for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.
- ☐ Other (attach detailed explanation).
3. ☐ The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
- ☐ A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
- ☐ A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4. ☐ The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City but not in Richmond County, make check payable to the **NYC Department of Finance**.)

**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

**Westhampton Property Associates, Inc.**

By: \_\_\_\_\_

Grantor signature

Title

\_\_\_\_\_

Grantee signature

Chairman

Title

Grantor signature

Title

Grantee signature

Title

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, to the **NYC Department of Finance**? If no recording is required, send your check(s), made payable to the **Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule D - Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, section 663)**

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part II, and check the second box under *Exemptions for nonresident transferor(s)/seller(s)* and sign at bottom.

**Part I - New York State residents**

If you are a New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), you must sign the certification below. If one or more transferors/sellers of the real property or cooperative unit is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law, section 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Note:** A resident of New York State may still be required to pay estimated tax under Tax Law, section 685(c), but not as a condition of recording a deed.

**Part II - Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Schedule A of Form TP-584 (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law, section 663(c), check the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under Tax Law, section 663. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on page 1 of Form TP-584-I.

**Exemption for nonresident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law, section 663 due to one of the following exemptions:

- ☐ The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from \_\_\_\_\_ Date \_\_\_\_\_ to \_\_\_\_\_ Date \_\_\_\_\_ (see instructions).
- ☐ The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- ☐ The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date



Combined Real Estate Transfer Tax Return  
Credit Line Mortgage Certificate, and  
Certification of Exemption from the  
Payment of Estimated Personal Income Tax

**Conservation Easement  
Additional Grantors**

Consent Agreement between Westhampton Property Associates, Inc., Giovanni Giaquinto a/k/a John Giaquinto, Giaquinto Masonry, Inc., Giaquinto Brothers, LLC, Tristate Capital Bank, and Central Pine Barrens Joint Planning and Policy Commission

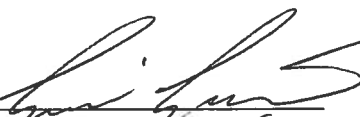
SCTM #900-276-3-1 and 2

**Grantors**

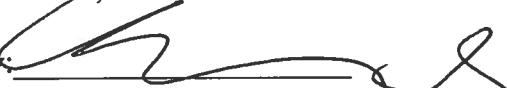
Giovanni Giaquinto a/k/a John Giaquinto  
429 Carlls Path  
Deer Park, New York 11729



Giaquinto Masonary, Inc.  
429 Carlls Path  
Deer Park, New York 11729

By:   
Name: Giovanni Giaquinto  
Title: President  
Federal Identification Number: 112493746

Giaquinto Brothers, LLC  
429 Carlls Path  
Deer Park, New York 11729

By:   
Name: Anthony Giaquinto  
Title: Managing Member  
Federal Identification Number: 113547876

**Grantee**

Central Pine Barrens Joint Planning and Policy Commission  
624 Old Riverhead Road  
Westhampton Beach, New York 11978  
Federal Identification Number: 11-3286762

Central Pine Barrens Commission Public Hearing April 17, 2024  
CVE Solar at Westhampton Property Associates  
Core Preservation Area Hardship Waiver Application  
(CVE US NY Westhampton 243 LLC)  
Study Area Map



0 1,000 2,000 4,000 6,000 8,000 Feet

reference map for discussion  
purposes only





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**Supplemental Hardship Justification and  
Environmental & Public Benefit Program Summary**

**CVE US NY Westhampton 243 LLC  
(Solar Repurposing of Westhampton Mine)**

**Central Pine Barrens Joint Planning & Policy Commission  
Core Preservation Area (CPA)/Compatible Growth Area (CGA) Hardship**

NPV No. 11010

Prepared for: Central Pine Barrens Commission (CPBC)  
624 Old Riverhead Road  
Westhampton Beach, NY 11978

CVE US NY Westhampton 243 LLC

Prepared by: Nelson, Pope & Voorhis, LLC  
70 Maxess Road  
Melville, NY 11747

Date: March 7, 2024

## **1.0 INTRODUCTION**

CVE US NY Westhampton 243 LLC has a pending application with the Central Pine Barrens Commission (“Commission” or “CPBC”) for a CPA/CGA hardship. The Applicant submitted full application materials for a complete application and presented the case to the CPBC on September 20, 2023. Supporting materials have been submitted to the Commission during the application and hearing/post-hearing periods.

This submission specifically outlines the hardship justification, consistency with State and Town climate initiatives, and the substantial environmental and community benefits of the pending application in order to provide further support for the proposed action. This submission also includes hardship benefits directly from the landowner in order to further support the hardship.

This document includes a summary of the original hardship justification, since a number of new members are now on the Commission (**Section 2.0**). **Section 3.0** includes new supplemental information about the community energy savings and environmental benefits of the project and conformance with host Town,

regional and State climate/energy initiatives. **Section 4.0** includes additional hardship support from the landowner.

## 2.0 ORIGINAL APPLICATION HARDSHIP JUSTIFICATION

The initial application presented to the CPBC on September 20, 2023, outlined the key hardship justifications, summarized herein and reiterated in the bulleted list below. The subject property has been utilized as a permitted sand mine since 1981 and consists of disturbed/mined land and no natural vegetation. Mining operations on the subject property are permitted through 2044 and the permitting agency (New York State Department of Environmental Conservation/NYSDEC) allows extensions. Operations on the subject property are not visible from nearby roads or residential areas.

The proposed project consists of a community solar project, and includes 11,154 ground-mounted solar modules, situated on 25± acres of the 91±-acre mine site (part of an overall 115±-acre parcel) as part of Phase I, all of which has been previously disturbed and does not contain natural vegetation. The proposed project involves a temporary use of a previously disturbed site as the solar installation has a limited functional lifespan as will be described further herein. The solar panels will extend a maximum of 10 feet high above the ground and will not be visible from off-site due to the sunken, flat bottom valley design of the mine. Side slopes of the mine site will not be impacted by the proposed project. A proposed second phase of the project ("Phase II") would involve a duplicate of the Phase I project located on the northern section of the 91±-acre property and would be constructed based on available capacity of the infrastructure. Phase II would occupy a similar 25±-acre portion of the 91±-acre property.

Land beneath solar panels would be restored with a native restoration plan. The revegetation plan would expand upon successful restoration to date with supplemental vegetation. The proposed project is consistent with the basic purpose of the 2014 Conservation Easement and achieves the natural restoration goals of the prior approved plan. Supporting findings are outlined below:

- **The site is unique**
  - The subject property includes disturbed/mined land with no natural vegetation.
  - Mining is permitted through 2044 and was permitted by NYSDEC prior to enactment of the Pine Barrens Protection Act. Placement of the mine site into the CPA/CGA created a hardship. NYSDEC allows extension of mining permits where appropriate.
  - The location of the proposed site is in a sand pit, which is not visible and will have no aesthetic or ecological impact.
  - The proximity to utility grid infrastructure with capacity to supply renewable energy to local energy demand is extremely unique and critical to PSEG approval.

Based on these factors, the property is uniquely ideal for solar array. There are no better alternatives for the proposed project, based on the uniqueness of this property.

- **Proposed use of the site is unique.**
  - Provides a beneficial and temporary adaptive reuse of a disturbed site. At the end of the projects' life, solar panels/equipment will be removed.

- The current community solar energy savings solution did not exist at the time of the Conservation Easement.
- No differing experience for other properties in area from current use due to the solar use and the property topography.
- The use is a passive use. There is no wastewater or water use, no population, no density impacts, no public service needs.
- There are only positive environmental impacts given the passive use and the revegetation of the site. The addition of the solar array will not detract from the open space nature of the site. Animal and plant life will have full ability to access the entire site.
- Does not apply to or affect other property in the immediate vicinity, and arises out of the unique characteristics of the subject property rather than the personal situation of the Applicant.

The proposed use is unique with no density impacts and passive use for clean energy generation.

- **Consistency with the Conservation Easement.**

- The Conservation Easement requires passive use of the site for open space, recognizing that the site is an active mine and that mining and revegetation will occur over time, after which the site will become open space.
- The revegetation of the site will continue. The revegetation plan is supplemented to ensure success with the solar installation.
- The solar array has a limited functional lifespan and will be removed after it's useful life, thereby leaving the site in a passive use, with full natural vegetative restoration.
- The Revegetation Plan will create a more compatible environment for vegetative growth given the shading offered by the panels.
- The Revegetation Plan increases the diversity of plantings beneath the panels. All species are native and will be more shade tolerant and will have a competitive edge given the shading provided by the panels. During the site visit, the shade requiring species of blueberry, huckleberry, and others have limited abundance due to the lack of shade on the property currently, which are the keystone understory plants within a Pine Barrens Community.
- This will allow the Revegetation Plan to become established more quickly within the challenging soil and full sun environment.
- After cessation of solar use and removal of the arrays, vegetation will have become established and since the plant species are Pine Barrens-compatible, will continue to flourish.

The proposed project provides all of the benefits that are outlined, and provides consistency with the Conservation Easement.

- The proposed project will provide direct energy cost relief to area residents, and will address **local renewable energy goals** (see subsequent sections including consistency analysis and public need). The public need for the proposed project is heavily substantiated by the New York and Southampton climate goals, as outlined in subsequent sections. This project will help the area communities to address the high cost of living through utility bill relief.

In summary, the proposed project represents a retained ecological benefit through the life of the beneficial solar use and beyond. Specifically, no impact to the Pine Barrens will occur, as activity would be limited to prior impact areas. The land beneath panels will be restored with a native restoration plan. After a maximum 35-year lifespan, solar panels will be removed and the site will be restored to a natural state. The proposed project achieves the natural restoration goals of the prior approved plan, and is consistent with the basic purpose of the Conservation Easement. In addition, the proposed project will deliver clean energy, and has the added benefit of energy cost relief for area residents as well as conformance with NY State and Southampton Town renewable energy goals.

### 3.0 SUPPLEMENTAL HARDSHIP JUSTIFICATION

The following sections offer supplemental justification for the hardship relief, based on consistency with policies and initiatives of local jurisdictions, and a summary of an environmental/public benefit program offered by the project.

#### 3.1 Central Pine Barrens Commission

Environmental and public benefits as well as stewardship are important factors for consideration by the Commission based on the CPBC mission statement, as well as based on past precedent in arriving at favorable decisions on prior applications that involve such benefits.

##### Mission Statement and Work of the Commission

The CPBC mission statement identifies stewardship initiatives as a major role in the Commission's work, through cooperative partnerships. The Commission's mission statement states the following:

*To manage land use within the Central Pine Barrens to protect its vital groundwater and surface water and the region's vast and significant natural, agricultural, historical, cultural and recreational resources for current and future Long Island residents.<sup>1</sup>*

Since the Commission doesn't own land, this cooperative partnership is an opportunity to ensure the Commission is able to accomplish its stewardship mission by supporting a renewable energy project directly benefiting residents. Specifically, the work of the Commission involves the following:

Preserving these natural resource services is accomplished through the Commission mission to protect, restore and enhance natural, historic, cultural, water, and scenic resources within the Pine Barrens region, while improving public access and promoting scientific research. Stewardship initiatives play a major role in the Commission's work, which is accomplished through cooperative partnerships with public landowners within the multi-jurisdictional Central Pine Barrens area. The Commission itself does not own land, and therefore these cooperative partnerships with public landowners are important to ensure the Commission is able to accomplish its stewardship mission.<sup>2</sup>

<sup>1</sup> <https://pb.state.ny.us/about-us/mission/>

<sup>2</sup> <https://pb.state.ny.us/our-work/land-management/stewardship/>



Contributing to energy savings is consistent with the Commission's mission statement and goals.

### Precedent

There is precedent for the Commission's consideration of renewable energy projects within CPA. The 63 Sunrise Wind Approval which was approved on April 20, 2022, specifically identifies a number of important environmental and public factors that supported the approval of the Sunrise wind project. These factors include meeting the following needs:

- Public benefits
- Health need for the community
- New York State's renewable energy targets
- Project Site serves more than one municipality

Please refer to **Attachment A** which provides the full decision and information used to support the Commission approval of the Sunrise Wind project. The decision notes that the "public benefits of the proposed project are of a character that will override the importance" of the interim site disturbance. This supports the proposed Conservation Easement amendment, especially since the project still meets the goals of the original Conservation Easement and there will be no impact to Pine Barrens. In the precedent example attached, the public benefit was determined to outweigh the temporary clearing of 0.2 acres of natural vegetation, and the permanent clearing of 0.37 acres in the Core.

When comparing this precedential case with the proposed project, it is noteworthy that there is zero (0) proposed disturbance of natural vegetation associated with the proposed project and extensive restoration of environmental conditions will occur. Similar to the 63 Sunrise Wind example, the proposed project will serve local resident energy, health and safety, and environmental needs and no better feasible alternatives exist to meet the established public need.

The CVE solar project at the Westhampton Mine serves more than one municipality, including both Southampton Town and Suffolk County as well as New York State clean energy goals. The site is uniquely situated in proximity to the necessary energy grid, and the subject site is a former mine site which does not contain natural vegetation other than restored vegetation which will be enhanced as a result of the project.

This decision further supports the finding that environmental and public benefits are appropriate to weigh as part of a decision and are consistent factors to consider based on the mission statement and work of the Commission.

The precedential impact and amendment of the conservation impact is addressed in a letter prepared by Greenberg Traurig, LLP in **Attachment B**.

### 3.2 Town of Southampton

The Town of Southampton developed a Climate Action Plan (CAP), dated December 2023, to supplement the 2013 Southampton 400+ Sustainability Element and provide roadmap to achieve the Town’s targeted carbon emissions reductions by focusing specifically on strategies to reduce greenhouse gas emissions (GHG) within the Town’s borders. Town committed to meet 100 percent of the community’s electricity consumption through renewable energy and achieve carbon neutrality by 2040. The CAP focuses on seven interrelated climate priorities including Buildings, Clean Energy, Low-Carbon Transportation, Sustainable Design and Land Use Planning, Materials and Waste, Carbon Sequestration and Removal, and Capacity Building. The recommendations in the CAP are expected to reduce carbon emissions in Southampton by 47 percent by 2040, in addition to the 34 percent reduction that is expected to occur from state and federal policies, such as the greening of the New York State electric grid. The additional 19 percent of emissions will need to be met through sequestration, carbon offsets, and/or emerging technologies.

Under the CAP’s Clean Energy Goal, the plan identifies a key strategy of assessing public-private-partnerships to develop large-scale solar arrays that offset costs/provide community distributed energy opportunities. The CAP recommends evaluating degraded/underutilized sites for repurposing for low carbon energy protection. The proposed project would directly assist the Town in achieving the Clean Energy Goal via these two strategies. The below table provides a summary of key consistencies between the Town of Southampton CAP and the proposed project.

**Table 1**  
**Consistency Analysis with Town of Southampton CAP**

<b>Sustainability Goal Topic</b>	<b>Sustainability Goal</b>	<b>Proposed Project Benefit/Consistency</b>
Education	Use fact-based education as a tool to advance awareness, generate civic engagement and support meaningful change; Conduct education activities that will fuel government action, and promote sustainable lifestyles on the part of residents and visitors	See “CVE Green Initiative.” CVE supports local environmental issues and donates \$1 for every panel installed to a local nonprofit organization working towards tree planting, land and water conservation, protection of local wildlife and biodiversity, and education in sustainability and clean energy.
Water	Restore and protect the Town’s ground and surface waters to ensure their ability to support public health and the maritime, recreational and resort activities that underpin Southampton’s way of life and economy	The proposed project will not use any water or generate any sewage. There will be a negligible addition to impervious surfaces, no increase in intensity of use, and no change in water recharge.
Economics	Achieve a resilient and diversified local economy where economic benefits are shared across the community; Recognizing that the economy and environment are inextricably linked, pursue economic health through	<ul style="list-style-type: none"> <li>• Community solar subscribers can expect to save 5-10% on monthly PSEG utility bills</li> <li>• Saves significant energy costs for area residents and small businesses over its lifespan</li> </ul>

	sustainable practices for existing economic sectors, continued development of green businesses, and increased reliance on locally produced goods and services	<ul style="list-style-type: none"> <li>• Prioritizes low-to-moderate income households in subscription efforts</li> <li>• Contributes substantial PILOT revenue to the Town and Suffolk County</li> </ul>
Waste	Achieve net zero waste production by minimizing waste production and treating waste as a resource rather than a byproduct	<ul style="list-style-type: none"> <li>• The proposed project involves a passive energy solution that does not involve the use, storage, or generation of wastes including hazardous substances or petroleum products.</li> </ul>
Land Use	Achieve land development and redevelopment that preserves Southampton's rural and maritime heritage, and reinforces the interdependence of traditional development patterns characterized by the interdependence of compact and walkable village and hamlet centers with surrounding open space and managed landscapes, agricultural uses, and accessible coastal areas	<ul style="list-style-type: none"> <li>• Prioritize placement of large-scale solar to promote residential and commercial energy production</li> <li>• Positive repurposing of a mining site to benefit community and ecosystem</li> <li>• Project is sited on an existing, environmentally distressed mining site</li> </ul>
Energy/Carbon	<ul style="list-style-type: none"> <li>• Become carbon neutral through a combination of conservation, efficiency, and alternative energy sources.</li> <li>• Target generating at least 5 MW of solar power annually by 2040</li> <li>• Target having at least 5,000 homes with solar photovoltaic systems, generating 70 MW of solar power annually by 2040</li> </ul>	<ul style="list-style-type: none"> <li>• Residential energy consumption is responsible for the largest amount of emissions at 48% of overall CO<sub>2</sub> emissions for the Town of Southampton. The proposed project generates enough clean energy to power over 1,100 homes in the community.</li> <li>• As noted in the CAP, the most impactful climate priorities are reducing building energy and clean energy.</li> <li>• The solar project will provide 8,500,000kWh of clean energy per year</li> <li>• Preserve acreage for conservation: The project aims to slightly amend the current Conservation Easement to allow the existing and robust vegetative plan to coexist with the solar project</li> </ul>

### 3.3 New York

The New York State Climate Leadership and Community Protection Act (Climate Act) was signed into law in 2019. Per the Scoping Plan developed under the direction of a 22-member Climate Action Council, dated December 2022, the goals of the Climate Act involve:

- 70% renewable energy by 2030
- 100% zero-emission electricity by 2040
- 40% reduction in statewide GHG emissions from 1990 levels by 2030
- 85% reduction in statewide GHG emissions from 1990 levels by 2050

- Net zero emissions statewide by 2050

As of December 2023, more than two gigawatts (GW) of community solar have been installed in New York – enough to power nearly 400,000 homes<sup>3</sup>. This marks progress towards achieving New York’s goal to install six GW of distributed solar by 2025.

The proposed project will directly assist in achieving the New York Climate Act goals, as it is projected to provide 8,500,000kWh of clean energy per year, which is enough clean renewable energy to sustainably power 1,100 Long Island homes and avoid 6,640 tons of carbon dioxide emissions<sup>4</sup>.

### 3.4 Long Island Solar Roadmap

The Long Island Solar Roadmap (Roadmap) was prepared in response to the New York State Climate Act of 2019 by The Nature Conservancy and Defenders of Wildlife and supported by a diverse group of Long Island stakeholders. The Roadmap identified low-impact sites for commercial and utility-scale solar arrays and shows their energy generation potential. Results of the analysis indicate that Long Island has enough low-impact sites – large rooftops, parking lots, and previously disturbed lands – for locating nearly 19,500 megawatts of solar without impacting forests, wetlands, and other ecologically important areas. That’s enough solar energy capacity to power 4.8 million New York homes per year<sup>5</sup>. Although not directly identified by the Roadmap plan, the subject property meets the criteria as a low-impact site, and directly achieves the vision of the Roadmap:

- Strategy 2: local governments, LIPA, and PSEG Long Island should create and implement mechanisms to support low-impact siting.
- Strategy 6: solar should be encouraged on commercial and industrial properties.
- Strategy 7: LIPA, PSEG Long Island, the business sector, and community organizations should coordinate to advance community solar, with a focus on working more closely with communities of color and low- and moderate-income communities.

Additionally, public opinion research conducted as part of the Roadmap indicated that the vast majority (92%) of Long Islanders surveyed, support mid- to large-scale energy development in their communities.

### 3.5 Environmental and Public Benefit Program

The proposed project results in substantial environmental and public/social benefits that will accrue substantial benefits to benefit Pine Barrens ecology, energy efficiency, NYS energy plan conformity, carbon footprint reduction, financial relief to area residents, and donations to green initiatives, all

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<sup>3</sup> <https://www.nyserda.ny.gov/Featured-Stories/New-York-Leads-on-Community-Solar>

<sup>4</sup> USEPA Greenhouse Gas Equivalencies Calculator

<sup>5</sup> [https://f9sdb1.p3cdn1.secureserver.net/wp-content/uploads/2021/05/LongIslandSolarRoadmapReport\\_2020\\_LowRes.pdf](https://f9sdb1.p3cdn1.secureserver.net/wp-content/uploads/2021/05/LongIslandSolarRoadmapReport_2020_LowRes.pdf)

without having an impact on any natural vegetation due to the use of a former mine site for the solar installation. The following key environmental and public benefits are offered by the Applicant and additional details concerning a number of these program elements are included in **Attachment C**:

1. Environmental

- a. The proposed project will be strategically situated on this unique site in a manner that will not impact any natural vegetation. The entirety of the proposed project area has been disturbed.
- b. Reduction of carbon footprint in accordance with the Commission's stewardship goals. The proposed project provides *both* the benefit of carbon avoidance by generating electricity from a fossil-free source as well as carbon sequestration from native plants and vegetation. The proposed project will provide the following projected emission avoidance over the 35-year project:
  - i. 189,601 metric tons of CO<sub>2</sub> – otherwise released through the burning of fossil fuels to generate this electricity.
  - ii. The equivalent of 6,490 acres of additional U.S. forests would be needed to offset these CO<sub>2</sub> emissions.
- c. Annually, as per calculations by the EPA Greenhouse Gas Equivalencies Calculator, this project is anticipated to:
  - i. Power 1,100 homes
  - ii. Avoid 6,640 tons of carbon dioxide emissions
  - iii. Offset the emissions of 1,340 gasoline-powered passenger vehicles
- d. Management of invasive species: pockets of invasives were observed on-site that could be managed of mugwort and phragmites to improve the natural habitat on the subject property, beyond the current restoration efforts.
- e. Diversity of plant communities: By providing instant shade, better shade habitat can be provided in both wet and dry zones.

2. Public/social benefits of the project include:

- a. Addresses State/government energy goals
  - i. NYS-mandated clean energy goals under the *Climate Leadership and Community Protection Law (CLCP)*
  - ii. Zero emission electricity sector by 2040
  - iii. 70% renewable energy generation by 2030
  - iv. 6 MWs of solar energy in NYS by 2025
- b. Provides direct energy cost relief to area residents through PSEG billing program within multiple towns (Southampton, Riverhead and Brookhaven)
- c. Democratizes the beneficiaries of clean energy development in a fair and equitable manner. CVE will prioritize low to moderate income households and local small businesses for bill crediting subscription. Project could provide energy credit to over 5,000 area residents. On average, customers can expect to save 5-10% on their monthly utility bills.
- d. CVE Green Initiative – Supporting Local Environmental Issues: CVE donates \$1 for every panel installed to a local nonprofit organization working towards tree planting, land and

water conservation, protection of local wildlife and biodiversity, and education in sustainability and clean energy. Of note, this project proposes the installation of 11,154 solar modules.

### 3.6 Compelling Public Need

The proposed project represents a compelling public need. The public need for the proposed project is heavily substantiated by the New York and Town of Southampton climate goals. Per the Town of Southampton CAP:

- Early action is critical to avoid significant cost and social and environmental burdens to the community, in addition to longer-term planning for larger scale initiatives.
- According to the 2022 Special Report by the Intergovernmental Panel on Climate Change (IPCC), the world is set to reach the 1.5°C level within the next two decades, reporting that only the most drastic cuts in carbon emissions will help prevent an environmental disaster (IPCC, 2022).
- Southampton, therefore, recognizes the need to act and embrace this opportunity to take bold steps to address climate change at the local level.

The uniqueness of the property supports the fact that there are no better alternatives in the Town or County for this opportunity.

The cost of living on Long Island is a considerable public hardship, and Long Island Power Authority (LIPA) recently announced an 11% rate increase in energy costs<sup>6</sup>, which would directly impact Long Island Residents. As outlined above in Section 3.5., the proposed project would provide direct cost relief to area residents and would lessen the burden of rate increases.

The proposed project constitutes an adaptive reuse of a disturbed and mined site and is consistent with the basic purpose of the current Conservation Easement. The Applicant feels that the proposed project meets the minimum requirements for hardship criteria and that the environmental benefit, which is in direct accordance with the mission statement of CPBC and goals of local jurisdictions, in addition to public benefit, make the project unique.

### 4.0 ADDITIONAL HARDSHIP JUSTIFICATION FROM LANDOWNER

As outlined above, the proposed project satisfies the hardship criteria, directly aides local jurisdictions in achieving goals pertaining to clean energy and climate change, and provides various environmental and public benefits.

In further support of the proposed project, the landowner offers the following:

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<sup>6</sup> <https://www.newsday.com/long-island/lipa-board-of-trustees-2024-budget-sts730je>



- The establishment of a Conservation Easement on the undeveloped and wooded south portion of the subject property near Old Country Road to further assist the CPBC in conservation efforts. As set forth in the current Conservation Easement, this area proposed for conservation includes the remaining 24± acres of the 115±-acre property, of which 91± acres encompasses the current mine site.
- Reducing the active soil removal activities associated with the operation of the existing permitted sand mine from 2044 to 2039 (less 5 years). Revegetation following the active soil removal activities would occur in accordance with the approved plan.

The Conservation Easement on the undeveloped and wooded part of the site to the south would provide permanent open space protection of this land and also aligns with other protected land in the area, offering contiguous preserved land. The reduction of the life of the mine will more quickly transition the disturbed site to the proposed beneficial use and associated restoration.

## 5.0 CONCLUSION

The CVE solar installation at Westhampton Mine is consistent with the mission statement and stewardship goals of the Commission, as well as climate initiatives in the Town of Southampton and New York State. The proposed project will not impact natural vegetation and will result in enhanced environmental conditions on the site of a former mine, thereby providing consistency with the existing Conservation Easement.

The proposed project is consistent with precedent set by the Commission in approving a wind energy project based on consideration of public benefit. The proposed project provides benefit to the Town of Southampton and Suffolk County, two governmental jurisdictions, as well as providing conformity with the New York State energy program and energy dependence goals (specifically the *Climate Leadership and Community Protection Law*.) The subject site is uniquely suited for the proposed project based on its proximity to the necessary energy grid and the fact that it is a former mine site.

Substantial environmental and public benefits resulting from the project include:

- Pine Barrens ecology
- Energy efficiency & energy plan conformity
- Carbon footprint reduction
- Financial relief to area residents,
- Benefit to Town, County State government
- Promotion of green initiatives

The Applicant respectfully requests that the initial hardship justification be fully considered, in combination with the environmental and public benefit program presented herein, as well as the additional hardship justification provided by the landowner. Substantial project-created benefits will accrue as a result of this project, and it is respectfully requested that the Commission give full consideration to the proposed project as outlined herein as part of the pending CPA/CGA hardship application on behalf of CVE US NY Westhampton 243 LLC.

**David Gilmartin**  
Shareholder

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March 7, 2024

Via Electronic Delivery

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

Re: Application of CVE North America to Repurpose Property of Westhampton  
Property Associates, Inc. to a Community Solar Benefit Site (“CVE”)  
SCTM#: 900-276-3-1 and 2

Dear Honorable Members of the Commission:

We represent CVE North America in connection with the above application. We submit this letter to address two issues with the application. First, this letter discusses the possible precedential effect of the applications approval. Next, the letter addresses the question of whether the Conservation Easement can be legally amended.

## **I. PRECEDENTIAL EFFECT**

During the public hearing process it was suggested that an approval would result in a dangerous precedent that would allow grantors in other Conservation Easements to amend those easements.

To the extent the Commission is concerned about the precedential impact of a positive decision to the CVE application we submit that the Subject Property and the Project are unique and incapable of setting precedent for future applications. The general concern from a Commission standpoint is that “a decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the

same facts is arbitrary and capricious.” *Matter of Charles A. Field Delivery Serv., Inc.*, 66 N.Y.2d 516, 516–17 (1985); see also *London Leasing Ltd. P'ship v. Div. of Hous. & Cmty. Renewal*, 153 A.D.3d 709, 711 (2d Dep’t 2017). That concern must be tempered after consideration of a couple of significant factors. First, the legal instrument under consideration in this case is a conservation easement that was given to the Commission based upon an approval by the Commission. The easement boiler plate language states in Miscellaneous Section #5 “that the Conservation Easement may be modified only upon written consent of the parties”. The power to the Commission is absolute and it has full discretion to deny any application to amend a Covenant.

If an applicant can overcome the Conservation Easement language itself, the Commission only has to provide: “*a rational explanation for reaching a different result on similar facts, the determination will not be viewed as either arbitrary or capricious.*” *Cnty. of Nassau v. Nassau Cnty. Interim Fin. Auth.*, 33 Misc. 3d 227, 254 (Nassau Cty. Sup. Ct. 2011) citing *In re Waidler*, 63 A.D.3d 953, 954 (2d Dep’t 2009). Thus, because the circumstances presented here are unique – the repurposing of a barren mining site into a community benefit solar project in furtherance of the *Climate Leadership and Community Protection Law* (the “CLCP”)– it is unlikely that the Commission will be faced with a similar factual situation and the Commission will easily be able to distinguish this application from others presented in the future. It should be noted, however, that there is no requirement that it “*unequivocally distinguish every previous decision presenting debatably similar factual circumstances.*” *Isaacs v. Fleet Fin. Servs.*, 8 A.D.3d 879, 880, 780 N.Y.S.2d 186, 188 (2004).

The Project will positively repurpose an environmentally distressed mining site while at the same time providing a much needed – and state mandated renewable energy benefit to the community. The project will further the New York State mandated clean energy goals provided

under the CLCP as it is projected to generate enough clean renewable energy to sustainably power over 800 Long Island homes. To that end, the Project plays a crucial role in the broader energy transition needed to safeguard the Pine Barrens from the numerous challenges posed by climate change. These facts alone will distinguish the Project from other potential requests in the future to modify conservation easements.

Further distinguishing the Project, the subject property currently has no natural vegetation and the applicant has submitted a Solar Array Revegetation Plan (the “Plan”) that incorporates the vegetation management plan previously approved for this site achieving the same natural restoration goals. The Plan will utilize native restoration methods consistent with Commission guidelines; will provide a habitat for pollinators, herptiles, birds and other mammals; and will establish a permanent habitat that will continue after solar decommissioning. In addition, it must be emphasized that no natural areas of the site will be disturbed by the Project. These facts, which are incredibly unique and specific to the Subject Property, can be relied upon by the Commission in the future should a similar request arise.

Last, as will be discussed further below, the within request to modify the Conservation Easement is not a matter of first impression of the Commission.

## **II. AMENDMENT OF THE CONSERVATION EASEMENT**

In a October 18, 2023 Staff Report, the Staff recognized 2 prior instances where the Commission has modified an existing Conservation Easement. Both instances occurred on a parcel owned by the Nassau County Council Boy Scouts of America Incorporated (“Boy Scouts”) which is located on the southerly side of Port Jefferson/Riverhead Road.

The first instance involved a reconstruction of a fire damaged structure on the property and the second instance involved a modification of an existing cabin plan. Both instances included a written acknowledged modification of an existing Conservation Easement.

Although the two prior situations – like the present situation - can be distinguished on a substantive basis, it is clear that the Boy Scouts decisions provided a procedural basis on which the Commission could rely to amend the Westhampton Property Conservation Easement.

A closer review of the easements indicate that they are strikingly similar with respect to the operative paragraphs. The operative paragraphs include paragraphs 5 and 9 of both easements in the section entitled “Miscellaneous”.

#### **A. Nassau County Council Boy Scouts of America Easement**

First, in a Document dated December 18, 2008, the Boy Scouts gave a Conservation Easement to the Pine Barrens Commission in exchange for Pine Barrens Credits.

That Conservation Easement in paragraphs 5 and 9 of the Miscellaneous Section specifically provides:

5. *“This Conservation Easement can be terminated only in accordance with the law of the State of New York applicable to the termination of easements and covenants running with the land. This Conservation Easement may be modified only upon the written consent of both Granter and Grantee, or their successors, heirs, representatives or assigns. Grantor and Grantee recognize that circumstances could arise which would justify the modification of certain of the restrictions contained herein. To this end, Grantee and Grantor shall mutually have the right, in their sole discretion, to agree to amendments to this Conservation Easement which are not inconsistent with the basic purpose of this Conservation Easement, provided, however, that the Grantee shall have no right or power to agree to any amendments hereto that would result in this Conservation Easement failing to qualify as a valid conservation easement under ECL, Title 3, Article 49 as the same may be hereafter amended.” (See Conservation Easement Pg. 6, Section #5)*

9. *“The Grantor and Grantor's lessees, representatives, successors, heirs and assigns, shall not apply to the Commission or the Pine Barrens Credit Clearinghouse for a hardship, other permit or Pine Barrens Credits under the Plan or under ECL Article 57 pertaining to the "Schedule A" premises.” (See Conservation Easement, pg. 7, Section #9)*

Subsequent to the execution of the Conservation Easement, the Boy Scouts applied for and were granted approval to build a new dining hall which had been destroyed by a fire.

Notably, the application “proposes to amend the Conservation Easement”. (Emphasis added) (See adopted Resolution Core Preservation Area Schiff Scout Reservation (Camp Wanupex), Wading River, Town of Riverhead, SCTM# 600-75-3-10.3 (Pg. #2)(March 20, 2013 Adopted Resolution)

Later in that same Resolution, the Commission required that “within 60 days of the completion of the Project the Applicant shall submit to the Commission an amendment to the Conservation Easement for the Commission’s review and approval that incorporates by reference the new As Built Survey and explains the reason for the amendment.” (See March 20, 2023 Adopted Resolution pgs. 2 & 3) Clearly an amendment to the Conservation Easement was applied for and granted by the Commission.

Some seven years later in September of 2020, the Boy Scouts again sought permission to amend the easement. This amendment involved construction of a 1,000 square foot addition to an existing cottage. That request was granted by the Pine Barrens Commission with the condition that the Nassau County Boy Scouts “File the amended Conservation Easement with the Suffolk County Clerk after the Commission first reviewed the amended Conservation Easement and issued a written approval to the applicant which determines that the Conservation Easement is in acceptable form.” (See adopted Resolution Core Preservation Area Schiff Scout Reservation (Camp Wanupex), Wading River, Town of Riverhead, SCTM# 600-75-3-10.3) (September 16, 2020)

In both instances the Boy Scouts requested a change to the Conservation Easement where the Miscellaneous Section 9 seemingly prohibited such any application for an “other permit”. In both instances the Pine Barrens Commission ignored Section 9 and granted approval.

## **B. Westhampton Property Associates Easement**



So it is with the Westhampton Property Associates Easement which provides as follows in Miscellaneous Section 5:

*“This Conservation Easement can be terminated only in accordance with the laws of the State of New York applicable to the termination of easements and covenants running with the land. This Conservation Easement may be modified only upon the written consent of both Westhampton Property and the Commission, or their successor heirs, representatives or assigns. Westhampton Property and the Commission recognize that circumstances could arise which would justify the modification of certain of the restrictions contained herein. To this end, the Commission and Westhampton Property shall mutually have the right, in their sole discretion, to agree to amendments to this Conservation Easement which are not inconsistent with the basic purpose of this Conservation Easement, provided, however, that the Commission shall have no right or power to agree to any amendments hereto that would result in this Conservation Easement failing to qualify as a valid conservation easement under ECL, Title 3, Article 49 as the same may be hereafter amended.” (See Conservation Easement Pg. 5, Section #5)*

Additionally, Miscellaneous Section 9 provides:

*“Westhampton Property and Westhampton Property’s lessees, representatives, successors, heirs and assigns, shall not apply to the Commission or the Pine Barrens Credit Clearinghouse for a hardship, other permit or Pine Barrens Credits under the Plan or under ECL Article 57 pertaining to the Property. Westhampton Property understands and intends to sever the right to develop the Property from the Property.” (See Conservation Easement Pg. 6, Section #9)*

A side-by-side comparison readily shows that the language of paragraph 5 in the Miscellaneous Section of the Boy Scouts and Westhampton Property Associates Easements are exactly the same and provides an avenue to amend the easement. Paragraph 9 in the Miscellaneous Section of both documents is essentially the same. This paragraph purports to limit the ability of the grantor to make any sort of application to the Commission concerning the property. The paragraph 9 limitation is not qualified in either document.

Ultimately in the Boy Scout circumstance, the Commission had to necessarily determine that Miscellaneous Section 5 had to prevail over Miscellaneous Section 9 for the Commission to

approve the Boy Scout request. Indeed, as noted above the operative language of Paragraph 5 specifically states:

*“This Conservation Easement may be modified only upon written consent of both Westhampton Property and the Commission or their heirs, successors and assigns. Westhampton Property and the Commission recognize that circumstances could arise which would justify the modification of certain restrictions contained herein.” (See Conservation Easement Pg. 5, Section #5)(Emphasis Added)*

Therefore, based upon the clear language of the covenant and prior precedent it is clear that the Commission may amend the covenant procedurally and any determination to the contrary is undermined by the Nassau County Boy Scouts determinations.

### **Conclusion**

Based on the foregoing, CVE requests that the Commission grant its approval.

Sincerely,

/s/ David J. Gilmartin

David J. Gilmartin, Jr.

Cc: John Milazzo, Esq.  
Steven Engelman

## **Company Background - CVE North America ("CVE")**

CVE is an Independent Clean Energy Power Producer (IPP) focused on the development and operations of solar energy projects, most often dedicated to community solar markets. We have deep experience in the development, financing, ownership & long-term operation and maintenance of renewable solar energy assets. CVE strives to execute each project with integrity and transparency, while delivering a positive impact for the local community.

### **Capabilities:**

Considerable experience developing, financing, and operating solar projects across the U.S. with a focus on New York State and the Northeast

- 9 self-developed projects totaling 37 megawatts of solar projects in operation under the Massachusetts SMART program since 2020
- Development pipeline of 450+ MW across NY, NM, VA, PA, OH and MI, more than 250 MW are under site control and in the development process
- Since 2022 CVE NA has financed and commenced construction of a 73 MW portfolio consisting of:
  - 41 MW of acquired pre-construction projects
  - 32 MW of self-developed projects

### **Our Community Solar Approach:**

CVE focuses on building renewable power production systems close to where power is consumed. This is the essence of "Distributed Generation", in contrast with the more traditional large power plants requiring substantial transmission to deliver power to consumers. The idea is simple: designing renewable energy solutions that fit the various needs of local governments, conservation bureaus, landowners, local industry, investors, and financial partners.

CVE is committed to providing long-term ecological solutions to meet the energy needs of businesses and communities. Competitiveness, energy efficiency and sustainability are key objectives which underpin the group's activities and drive the ambitions of its members.

### **What is Community Solar?**

Community Distributed Generation (CDG) is the NY State community solar program that allows homeowners, renters, municipalities, and businesses to have access to the benefits of solar energy without having to install solar panels on their buildings. Subscribers benefit from local renewable energy produced in their region and save money every month on their electricity bill.

New York is one of 22 states that currently allow and incentivize community solar, and more states are currently considering bills to broaden community solar in the country. CVE is actively developing Community Solar projects throughout the country under its brand Halo. New York's Climate Leadership and Community Protection Act (CLCPA) has a stated goal for 70% of the state's electricity generation to be sourced from renewable energy sources by 2030, including 6 gigawatts of solar by 2025 on a path to 10 gigawatts by 2030. Community Distributed Generation (CDG) has and will continue to play a key role in achieving the states' target. Importantly CDG has been advanced to democratize the beneficiaries of clean energy development in a fair and equitable way.

### CVE Recognized for Environmental and Quality Practices

1. Certified B-Corp: After a rigorous assessment of its operations and supply chain across the entire group, CVE obtained a B corp certification in June 2023.

The B-Corp, or Benefit Corporation, certification is an international accreditation awarded by the non-profit B Lab to businesses that meet strict social and environmental performance, accountability, and transparency standards. It is recognized as the gold standard for companies striving to balance profit and purpose.

Our dedication to environmental and social responsibility has been recognized with a remarkable score of 97.5 points for our B-Corp certification. This internationally recognized label is a testament to our commitment and sets us apart in our industry.

2. Since the inception of CVE, we have placed quality at the core of our operations. To stay compliant with the most recent version, CVE North America obtained ISO 9001 certification in 2018 and renews it every year. CVE finished its environmental management training in early 2020 to earn ISO 14001 certification.
  - ISO 9001 is a family of quality management systems, a set of guidelines that aid businesses in ensuring that they satisfy the needs of customers and other stakeholders while adhering to all applicable legal and regulatory requirements for a given service or product
  - ISO 14001 is a series of environmental management standards that exists to assist firms in reducing the impact of their operations on the environment

### Ground Mount Solar Solutions

- Ground mounted solar farms consist of a series of solar panels installed above the ground across large areas.
- Instead of directly providing power to a local consumer like a residential rooftop, solar farms provide power to the electric grid and are part of the utility's energy mix.
- There are different types of ground mounted PV projects, like community solar and utility-scale solar farms. All of CVE's ground-mount installations in the United States are community solar farms, benefiting nearby residents and businesses.

### CVE Partnerships with Townships and Landowners

- CVE works hand in hand with Towns, Municipalities, Conservation Districts and Landowners to develop ground mounted PV installations that respect the environment and the concerns of communities.
- Our experienced Solar Site Originators first identify land parcels suitable for solar. Then they work directly with landowners to either lease or purchase the land, in an effort to forge a lasting relationship that is beneficial for all parties.
- Landowners benefit from a reliable source of revenue from a long-term lease or land purchase without having to bear any cost, as all expenses related to the construction, operation and maintenance of each installation are borne by CVE.

### Pollinator Friendly Solar –

- CVE is committed to creating a pollinator-friendly habitat at each site, making every effort to incorporate the industry best-practices.
- A 'Pollinator Friendly' solar facility incorporates land use and management practices beneficial to pollinators by planting native wildflowers, limiting the use of pesticides, and installing cavity nesting for bee habitats.

### CVE Green Initiative – Supporting Local Environmental Issues

- CVE donates \$1 for every panel installed to a local nonprofit organization working towards:
  - Tree planting
  - Land and Water conservation
  - Protection of local wildlife and biodiversity
  - Education in sustainability and clean energy

### Key CVE NA Financing Partners:

**FOSS & COMPANY**  
TAX CREDIT SPECIALISTS



**LiveOakBank**

**The Seminole Companies**



## **CVE Community Solar Project - Project Description**

CVE North America, Inc. (Applicant), proposes to construct and operate the CVE US NY Southampton 243 LLC (Project); a ground mounted, tracking photovoltaic (PV) community solar facility, with 5.00 MWac capacity. The Project is proposed to be located on two privately-owned parcels located off Speonk-Riverhead Road, Westhampton, NY in Suffolk County.

Suffolk County Tax Map Parcel No.:

- 900-276.00-03.00-001.000
- 900-276.00-03.00-002.000

### Purpose and Need

CVE proposes a positive re-use of a disturbed and scarred, long-standing sand mining operation located on the border of the Central Pine Barrens area, largely located within the Compatible Growth Area and partially in the Core Preservation Area.

The site is comprised of two adjacent land parcels: 0900-276.00-03.00-001.000 & 002.00. The solar project would reside about 1400' to the east of Speonk-Riverhead Road, 1500' south of Sunrise Hwy. and 2200' north of Old Country Road in Westhampton. Both parcels are owned by Westhampton Property Associates, Inc.

We are respectfully requesting permission from the Central Pine Barrens Commission (CPBC) to construct and operate a PV solar facility that would generate clean renewable energy and benefit residents and small businesses within the area of the project. The project is proposed under the Community Distributed Generation (CDG) NYSEERDA Program, which provides direct financial relief to PSEG-LI customers who subscribe to the project through an established PSEG-LI billing program. While the Program targets at least 30% of customer offtake be subscribed by low-moderate (LMI) income households, CVE will base our efforts on ensuring that at least 60% of subscribers are Low-Moderate Income households. Small businesses seeking relief through local and state programs can also be serviced through this program. A monthly bill savings is applied directly to their PSEG-LI account, commensurate with their participation in the program. As an additional societal benefit to show Hardship, this clean energy project, built to scale, positively impact the Town, County and the State's ability to reach their stated renewable energy goals to reduce reliance on fossil fuel sources to power our electricity grid.

Based on CVE's commitment to providing renewable energy, we propose to develop the site described below to maximize its solar energy potential. In order to best determine optimal location within the site, the following factors have been analyzed:

- Site accessibility
- Significant solar radiation (insolation)
- Very limited tree and vegetative impact



- Limited visibility from offsite locations
- Lowest impact development in the Compatible Growth and Core Protection Areas
- Ideal land use for disturbed mining sites, with negligible impact on ground water recapture

Given the high property values and scarcity of large parcels of land in the area of Westhampton, New York, CVE understands that residents of this area are displaced from this state program benefit – another community hardship. There is a great imbalance between the amount of community members seeking to participate in these cost savings programs and solar projects that deliver community energy savings in Suffolk County.

In order to build projects that provide utility savings to the surrounding community, projects need to be built at a scale and on land that doesn't support the high valuations present throughout the east end of Suffolk County, NY. This site is ideal in its ability to deliver a significant scale renewable energy project, its proximity to utility grid infrastructure and the ability to positively reuse an already disturbed mining site.

This sand mining site has a sunken, flat bottom valley design which is ideal for solar development for a few reasons. The land has no other intrinsic value for commercial or residential use, it's already cleared of vegetation, and it would be completely out of the view of any neighbors or area residents. The property is already located far back from area roads and any residential neighborhoods.

Ground mounted solar projects have little to no impact on local town resources like sewage, water, lighting, roads, road maintenance or transportation needs of any kind. CVE will present in greater detail the beneficial impact that a solar project provides to groundwater recapture and replenishment. There would be a negligible addition to impervious surfaces as the existing dirt access roads to the property would not need to be significantly altered.

Environmental Conservation Law 57-0121 was intended to reduce the negative impact to groundwater recapture from residential and commercial buildings and parking lots. Ground mounted solar energy projects are a completely different type of development, which has nearly no negative impact on groundwater recapture.

Community Distributed Generation (CDG) projects differ in notable ways from "utility" scale projects. A primary difference is that residents within the Southampton, Riverhead and Brookhaven townships can receive a direct benefit by subscribing to the CDG program for this project and to reduce their electricity bills. Participation makes them eligible to receive a credit on their electricity bills from PSE&G LI, and they can cancel anytime. There are no costs to subscribe, and on average, customers can expect to save 5-10% on their monthly utility bills.

CDG projects are also less impactful to conserved land. Due to their smaller overall land requirements, a community solar energy facility requires less land disturbance, has fewer stormwater impacts, and can be more effectively screened from public view. Moreover,

throughout the life of the project, the land beneath the panels can be planted with native species of grasses, flowers, and other landscaping materials. At the end of the project's life, the solar energy panels and related equipment can be easily removed.

### Equipment Description

CVE is seeking a hardship declaration from the CPBC for this proposed community solar project based on the community and societal benefits described in the 'Purpose and Need' section above, as well as the positive repurposing of this preexisting disturbed mining site. If approved by CPBC the solar facility would be developed over the next 3 years. CVE and the Pine Barrens Commission will potentially have the opportunity to consider expanding the project when remaining mining activities may cease (7-10 years).

We hope to demonstrate the societal and community benefit of the project as well as the positive reuse to be in alignment with what ECL 57-0121 was intended to preserve. Description of all equipment can be found below.

#### Solar Project to Include:

- 11,154 solar modules (panels)
- Total AC System Size 5 MW
- (2) 2500 KVA Transformers
- (2) DC to AC Inverters, 2,500 KW each
- (4) 2752 KW Sungrow or alternate Battery Energy Storage containers
- Utility Switchgear Located at Speonk-Riverhead Rd.:
  - Pad mounted transformers, reclosers, meters, communication reclosers,

#### Equipment Dimensions:

- Total Parcel Area =114.305 acres
- Solar Array Footprint Area: 25 acres (includes inter row spacing)
- Area of Land Disturbed by Solar Facility: 0 Acres
- Inverter Area: 112 Square Feet
- Battery Energy Storage System: 1045 Square Feet
- Transformer = 100 Square Feet

#### Safety, Fire and Electrical Code

- Entire system design will be compliant with the most recent version of the New York State Fire Code
- All electrical plans will be third party stamped by a NY licensed EE using the most recent version of the National Electrical Code (currently v.2020)
- System will be located far from residential homes and neighborhoods, compliant with the Towns' code and preference.
- Since the inception of CVE, we have placed quality at the core of our operations.

## Solar Modules

The proposed Project will utilize approximately 11,154 solar modules. The modules are manufactured offsite and will be delivered to the site by truck in wooden crates or cardboard boxes. Each module will measure approximately 7 feet by 4 feet and will be rated at 480 watts.

Solar modules will be configured into metal frames and oriented in rows running north to south. The frames of solar modules will be mounted on steel racking posts that rotate to track the sun throughout the day – facing east in the morning and west in the evening. Approximately 15 feet of space will be maintained between each row of solar modules for operations and maintenance access.

The maximum height of the modules will be approximately 10 feet high (in the mornings and evenings when the racking posts are fully tilted).

## Balance of System Equipment

Balance of System Equipment including but not limited to inverters, DC combiner boxes, transformers, and/or medium voltage switchgear may be installed near the solar array within the project's fence line. The Balance of System Equipment will be installed on H-Frames and concrete pads and in compliance with equipment manufacturer instructions. Full details of Balance of System Equipment will be included as part of the Project's electrical design plan-set submitted for ministerial permits.

## Access Roads

The site will be accessed from Speonk-Riverhead Road, an existing private access road which will extend into the Project parcel(s) and into the Project's proposed fence line. The access road will extend to the Project's equipment pads, as well as the furthest sections of modules, with hammerhead turnarounds to accommodate maintenance vehicles. The road will be wide enough to accommodate emergency vehicles and designed in compliance with County standards.

## Fencing

The solar array and all balance of system equipment will be enclosed in an eight-foot-tall wildlife-friendly, agricultural fencing. The fence will have at least one vehicle access gate at the boundary of the array, which will always remain locked, except during operations and maintenance activities.

## Transportation and Traffic

Materials for the proposed Project (e.g., solar modules, supporting racks, foundation materials, electrical gear) will be brought to the site by truck over the course of construction. It is not expected that the additional vehicles associated with construction will have an impact of overall traffic in Suffolk County. Once construction is complete, vehicles will be on site sparingly for operations and maintenance activities.

## Stormwater

CVE will be impacting over 1 acre(s), therefore we will be required to draft a Stormwater Pollution Prevention Plan (SWPPP). This will be drafted in accordance with NYS DEC guidelines and will be reviewed and approved during site Plan engineering with the Town of Southampton. Per the SWPPP Stormwater BMPs will be implemented on site such as stormwater basins, vegetative filter strips and level spreaders will be used convert concentrated to sheet flow, where applicable.

## Employment and Construction

A typical construction workforce for a solar facility of this size consists of approximately 80 workers during the construction period, which should last approximately 6 months. Construction personnel will be divided between civil and electrical services and based on the phasing of construction it is not anticipated that all workers will be present on site at the same time. Workers will be transported to the site via construction trucks and will park in an established staging area.

## Water Use

No water will be required for construction activities, and no water infrastructure is proposed in association with the project.

## Sewer and Solid Waste

Sewer services will not be needed. Temporary sanitary facilities will be placed onsite during construction.

## Decommissioning

Applicant will record a bond with Suffolk County equal to the cost to decommission the Project and restore the site to pre-existing conditions (estimated to be \$200,000 - \$300,000). The decommissioning cost estimate will be prepared by a third-party engineering firm. A decommissioning plan outlining all decommissioning efforts and timelines will be provided to the host community having jurisdiction - the Town of Southampton.

In general, decommissioning efforts include:

- Remove all panels
- Remove posts, racking, and fence
- Remove concrete equipment pads
- Disassemble wiring, conduits, inverters
- Excavate access road
- Restore site conditions to pre-construction conditions
  - Soils de-compacted
  - Fill excavations with native soils
  - Reseed disturbed areas

## Conclusion

In conclusion, the Applicant requests the approval to proceed with the proposed project that will deliver many benefits with the positive reuse of a disturbed mining site. this renewable energy development will help the Town, State and Federal governments meet their clean energy goals. Equally important, the economic benefits this renewable energy project can deliver to area residents and businesses stranded from community solar projects align with the intent and requirements of the CPBC's definition of Hardship. We would be pleased to meet the CPBC at the next meeting on August 16<sup>th</sup> to be considered for development in the Compatible Growth and Core Preservation areas of the Pine Barrens.

- Uniquely sited on a property currently used for sand mining/quarry, with feasible utility interconnection, and zoned appropriately (Zoned Quasi-Public Service Use District – QPSUD solar is allowable by way of a Conditional Use Permit).
- Driving significant tax revenues to the County
- Significantly reducing local residents' energy costs for 30+ years
- Minimal addition of impervious surface, maintains the sites ability to recapture rainwater and recharge the aquifer
- Not impact on traffic counts in the neighborhood
- Not demanding County services such as water, sewer, roads or school

A community solar facility is a low-intensity, harmonious use of the property.

Thank you for your time and attention to this matter. We look forward to working with the Central Pine Barrens Commission, Suffolk County and the Community as the application progresses.

Sincerely,

*Steven Engelmann*

Steven Engelmann, Senior Business Developer

[Steven.Engelmann@cvegroupp.com](mailto:Steven.Engelmann@cvegroupp.com)

631-445-4145

