

CENTRAL PINE BARRENS JOINT
PLANNING AND POLICY COMMISSION

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

ORDER ON CONSENT

No. CPBJPPC 1-2024

by

4 Old Country Road, LLC

x

WHEREAS:

1. The Central Pine Barrens Joint Planning and Policy Commission (the Commission) has jurisdiction over development, as the term is defined in Article 57 of the New York Environmental Conservation Law, in the Central Pine Barrens region. Article 57 is the Long Island Pine Barrens Protection Act (the "Act"). The Commission adopted and now implements the Central Pine Barrens Comprehensive Land Use Plan (the "Plan"). The Act and the Plan govern "Development" as defined in the Act, in the Central Pine Barrens region.
2. 4 Old Country Road (the "Respondent") own 0.28 acre of property, east of Summit Boulevard, north of the Long Island Railroad tracks, in the hamlet of Westhampton, Town of Southampton, New York (the "Property") in the Core Preservation Area of the Central Pine Barrens. The Property is identified as Suffolk County Tax Map Number 900-332-3-29.
3. On September 7, the Commission office received notification of alleged clearing activity on the Property. Commission staff observed the Property and took a photograph on this date.
4. On October 4, the Commission issued a Notice of Violation to the Respondent for engaging in Development, including clearing and disturbance activity on the Property. The Notice was issued pursuant to Environmental Conservation Law Section 136.
5. On October 12, Commission staff held a compliance conference with the Respondent's legal counsel George C. D. Duke of Connell Foley, LLP, to discuss the Notice of Violation. During the call, staff advised Mr. Duke of the alleged site disturbance.
6. The Commission finds that the Respondent engaged in proscribed conduct by commencing Development on the Property.
7. Pursuant to Section 57-0107.13(c) of the Act, the activities constituted Development activity.

8. As development, the Project requires Commission review of a Core Preservation Area Hardship Waiver pursuant to Section 57-0121(10) of the Act. No hardship application was submitted for this activity.
9. In total, Respondent improperly caused, or allowed to be caused, the clearing of 0.28 acres of the Property.
10. In order to avoid the costs and uncertainties of litigation, the parties have agreed to the terms of a settlement as set forth below.

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

11. Respondents' execution and complete satisfaction of the terms of this Consent Order shall resolve the Notice of Violation issued by the Commission on October 4, 2023 for Respondent's clearing violation.
12. Respondent shall submit to the Commission an appropriate revegetation plan ("Revegetation Plan") for the Property. The Revegetation Plan must comport with the revegetation guidelines (the "Guidelines") attached hereto as Schedule A. The Plan must be received within sixty (60) days of the full execution of this Consent Order.
13. The Commission, through its Executive Director, shall review, approve, or required modifications to the Revegetation Plan within twenty (20) days of its receipt. If modifications are required, Respondent shall have twenty (20) days to make them and submit a modified Revegetation Plan to the Commission. This cycle shall continue until the Commission approves the Revegetation Plan.
14. Upon approval, the Respondent shall, at its own cost and expense, implement the Revegetation Plan. Respondent's failure to comply with any provision of the Revegetation Plan shall constitute a violation of this Consent Order. Respondent may implement the Revegetation Plan without further satisfying the conditions of the Decision. Respondent may not undertake any other activity of the Property. Respondent agrees to, within Thirty (30) Days of the full execution of this Consent Order, pay to the Commission a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000), of which TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) is suspending pending complete compliance with the terms and conditions of this Order on Consent and pursuant to the limit prescribed in ECL § 57-0136.2(a):
 - a. The payment shall be paid by bank check made payable to:
Central Pine Barrens Joint Planning and Policy Commission.
 - b. The payment to the Commission must have written on its face:
CPBJPPC I-2024/4 Old Country Road, LLC
 - c. The payment to the Commission shall be delivered via certified mail, overnight express delivery, or hand delivery no later than Thirty (30) Days following the Effective Date of this Consent Order to:
 - i. Central Pine Barrens Joint Planning and Policy Commission

624 Old Riverhead Road, Westhampton Beach, New York 11978.

For each and every day after Thirty (30) Days from the full execution of this Consent Order, that the fine is not paid, a fine of \$1,000 per day will be levied against the Property and Respondent. Respondent agrees to pay such fines within five days of each levy. The fine will be in addition to any other right the Commission possesses and any remedy it may seek for the violation.

15. Respondent shall immediately cease and desist all further activities in violation of any provision of the Act or the Plan or both on the Property.
16. Respondent's compliance with this Consent Order settles only the claims for civil and administrative penalties concerning the violations noted in this Order.
17. Except for the resolving the matters described herein, nothing contained in this Consent Order shall be construed as barring, diminishing, adjudicating or in any way affecting any civil, administrative, or criminal right of the Commission with respect to action of the Respondent that violates the Act or the Plan or both.
18. Respondent's failure to comply fully and in timely fashion with any provision, term, or condition of this Consent Order shall constitute a default under the Act and shall be deemed to be a violation of both this Consent Order and the Act. Upon such failure to comply, the Commission may commence any action it deems appropriate.
19. Respondent shall indemnify and hold harmless to the extent permitted by law the Commission and its representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Consent Order by Respondent and its successors (including successors in title) and assigns.
20. If Respondent desires that any of the provisions, terms or conditions of this Consent Order be changed, Respondent shall make written application, setting forth the grounds for the relief sought, to the Commission at 624 Old Riverhead Road, Westhampton Beach, New York 11978. No change or modification to this order shall be made or become effective except as set forth by a written order of the Commission.
21. No informal oral or written advice, guidance, suggestion, or comment by the Commission regarding any report, proposal, plan, specification, schedule, comment, or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations under this Consent Order to obtain required the approvals or consents required for the Project.
22. The Effective Date of this Order shall be the date upon which it is signed by the Commission's Executive Director or her designee.
23. Respondent acknowledges the authority and jurisdiction of the Commission to issue the Notice of Violation and enter this Consent Order, accepts the terms and conditions set forth in the Consent Order and consents to the issuance thereof and agrees to be bound by

the provisions, terms and conditions contained therein.

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

25.

4 Old Country Road LLC

By: 

Name: Grant Hendricks

Title: Member

Date: 29 February 2024

Acceptance by the Commission

The Commission authorizes entering this Order on Consent.

CENTRAL PINE BARRENS JOINT PLANNING AND POLICY COMMISSION

By: 

Judith Jakobsen, Executive Director

Date: 3/1/2024

Schedule A - Revegetation Plan Guidelines

Revegetation Plan and Implementation

1. Prepare a Revegetation Plan to remediate the impacts caused by the clearing.
2. The Plan shall depict the surveyed area of disturbance that will be revegetated.
3. The Plan shall identify the plantings that remain and have survived from prior revegetation activities.
4. Provide the amount of area (square feet or acres) that will be revegetated
5. The Plan shall be reviewed by Commission staff and revised until it is approved by the Commission.
6. Timeline
 - a. Submit the plan to Commission by March 31, 2024.
 - b. Commence planting activity by May 15, 2024 and complete by June 15, 2024.
7. Plantings
 - a. Utilize species native to the Central Pine Barrens, composed of species similar to that which was removed and likely to be found in ecological communities on or in the vicinity of the property and at sufficient densities, sizes and diverse arrangements to mimic natural conditions.
 - b. Identify locations of each species, sizes and spacing.
 - c. List the source(s) of plant material.
 - d. Quantify the number of plants to be installed.
 - e. Trees shall be at a minimum of two (2) gallon container size. Trees shall be planted in a staggered grid or naturalistic planting design with spacing to be determined based on selected species (but no less than 30 feet on center).
 - f. Understory shrubs and groundcovers shall be planted between trees in a naturalistic planting design.
 - g. Plant specifications including gallon size and spacing information will be provided by the Commission office.
8. Survival and maintenance
 - a. Identify a temporary water source, if necessary.
 - b. Guarantee 85% survival of plantings for three years.
 - c. Remove and replace dead, dying, and diseased plants during the three-year guarantee period as necessary.
 - d. Monitor and control invasive species in the revegetation area. Invasive plants shall be removed by hand with non-chemical methods.
9. Reporting
 - a. Notify the Commission in writing when revegetation commences and when it is complete.
 - b. Submit reports by June 30 of each year for three years
 - c. Upon completion of revegetation, submit an 'As Built' survey to confirm the list and locations of plantings that were installed. Minimal substitutions are acceptable. Significant changes require review.
 - d. Report replacements when survival requirements are not met. No extension of the reporting period shall be necessary regardless of replaced plantings. Respondent is expected to ensure survival and quality of revegetation.
 - e. Monitor the area and submit to the Commission an annual narrative report for three

years concerning the status and success of the revegetation.

f. Color photographs shall be included and taken from the same viewpoint each year to show progression.

g. Annually certify that the 85% survival rate is achieved.

h. Commission staff will perform a physical inspection with two days advance notice once per year between spring and fall seasons.

10. Protection. Install a split fence around the Property.