

## Hargrave, Julie

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**From:** Steven ENGELMANN <steven.engelmann@cvegroup.com>  
**Sent:** Wednesday, August 2, 2023 3:54 PM  
**To:** Hargrave, Julie  
**Cc:** Florence MASSON; Iyoluwu OKUNLOLA  
**Subject:** Hardship Application - Westhampton Property Assoc., Inc., Solar Energy Project  
**Attachments:** Westhampton-Property-Owners\_Solar-Project-Narrative\_v20230802-Final.docx; Westhampton-Property-Owners\_Short EAF Form\_Final.pdf; Westhampton-Property-Assoc-CVE\_Owners Affidavit v20230710.pdf

**CAUTION:** This email originated from outside of SCWA. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Ms. Hargrave and thank you for your patience and guidance on the application process.

CVE North America is working with the aforementioned owners of the Westhampton Property Owners Inc. sand mining site east of Speonk-Riverhead Road in Westhampton. We have filled out and attached the necessary EAF and provided a detailed Project Narrative to indicate our proposed intent.

CVE has come to the CPBC as the first agency to propose the project to. Our proposal seeks permission from the Central Pine Barrens Commission to positively redevelop this previously disturbed mining site to a renewable energy project, offering significant community and broad societal benefits. The Owners Affidavit is also attached for your review.

We would like to request the opportunity to meet the Commission at the next meeting on August 16<sup>th</sup> to provide further detail and discuss our proposal. Please let me know if you need anything further from me at this point or if there are any immediate questions.

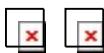
Thank you so much for your consideration of this application, I look forward to meeting you and the rest of the Commissioners to review this proposal.

Best Regards,



**Steven Engelmann**  
Senior Business Developer

[cvenorthamerica.com](http://cvenorthamerica.com)



Direct: 631 445 4145

[steven.engelmann@cvegroup.com](mailto:steven.engelmann@cvegroup.com)

## Hargrave, Julie

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**From:** Steven ENGELMANN <steven.engelmann@cvegroup.com>  
**Sent:** Thursday, August 3, 2023 4:29 PM  
**To:** Hargrave, Julie  
**Subject:** Questions

**CAUTION:** This email originated from outside of SCWA. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Julie,

Below are answers to your questions from this morning which I hope helps to clarify our proposed project.

The solar project as proposed occupies roughly 25-26 acres, the remainder of the site will remain as is.

The solar project would be constructed in the previously disturbed mining area. All solar arrays and most electrical equipment would be located at the current bottom of the mine pit. Therefore, we are not 'disturbing' that area as it is already disturbed. There will be a small area near Speonk-Riverhead Rd. to be disturbed for the placement of utility required equipment. We can discuss that further if you would like more clarification on the area by the road which is in the Compatible Growth Area.

The applicant is leasing the property for this project.

We approached the Town Planning Dept. to discuss the project and zoning of this site. The Town feels this is a good use of a disturbed, excavated mining site and is in support of its positive redevelopment. They suggested we seek approval from CPBC first and then come back to them to apply for a Planning Board Special Permit and site plan approval - no change of zone is required for the proposed use. While the Southampton Town Code does supplement the list of Type I and Type II actions, the proposed action does not fit within either so yes, we are viewing this project as an Unlisted Action.

Hope that helps and please let me know if any other questions arise or clarification is needed.

Best Regards,

**Steven Engelmann**  
Senior Business Developer



## Hargrave, Julie

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**From:** Steven ENGELMANN <steven.engelmann@cvegroup.com>  
**Sent:** Friday, August 4, 2023 3:44 PM  
**To:** Hargrave, Julie  
**Subject:** Re: two things on the solar app

**CAUTION:** This email originated from outside of SCWA. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Julie,

Yes, I do plan to attend the meeting and hope to discuss our proposal with the rest of the Commission. I assumed we were meeting at your offices in Westhampton but can come to the NWR site in Shirley instead.

Over the next two weeks I will work with my team to understand the mine reclamation plan better so we can relate our proposed project to that plan. Does the Conservation Easement go into effect when the mine project ceases?

As we get a better understanding of these documents, I will have further questions of you so we can be prepared to discuss the relevant points with the Commission.

I'll also follow up on Monday regarding the questions you posed on the utility equipment area in a separate email.

Thank you and have a great weekend,  
Steven

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**From:** Hargrave, Julie <Julie.Hargrave@SCWA.com>  
**Sent:** Friday, August 4, 2023 11:10 AM  
**To:** Steven ENGELMANN <steven.engelmann@cvegroup.com>  
**Subject:** two things on the solar app

Warning: This email is from someone outside of your organization. Do not click on links or open attachments if you do not know the sender and are unsure of the content.

Dear Steven,

Will you or someone representing the application be present at the August 16 meeting? It is at 2:00 PM at Wertheim National Wildlife Refuge in Shirley.

And would you be able to provide some information on how the project relates to the mine reclamation plan pursuant to the conservation easement that I provided to you that was required and recorded after the mining project?

Thank you  
Julie Hargrave  
631-218-1192

**OWNER'S AFFIDAVIT**  
(Use this form if property is owned by a corporation)

STATE OF New York

COUNTY OF Suffolk )ss:

I, Giuseppe Giaquinto, being duly sworn, deposes and says that I am  
(Authorized Officer's Name)

Owner of the Westhampton Property Associates, Inc corporation  
(Official Title) (Landowner's Name)

Located at 928 Long Island Ave, Deer Park, NY 11729  
(Landowner's Address)

in the County of Suffolk State of New York, and that

this corporation is the owner in fee of the property located at 80 Sunrise Highway and 0 Sunrise Highway, Westhampton  
(Property Address)

which is also designated as Suffolk County Tax Map Number(s) \_\_\_\_\_

0900-276.00-03.00-001.000 & 900-276.00-03.00-002.000 and that this corporation has been the

owner of this property continuously since 10/02/2006, and that I have  
(Date)

authorized CVE North America, Inc to make a permit application to the  
(Applicant's Name)

Central Pine Barrens Joint Planning and Policy Commission for this property. I make this  
Statement knowing that the Central Pine Barrens Joint Planning and Policy Commission will rely upon  
the truth of the information contained herein.

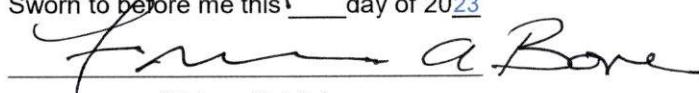


(Authorized Officer's Signature)

Giuseppe Giaquinto  
(Officer's Name – Please Print)  
18/11/2023

Date

Sworn to before me this 1<sup>st</sup> day of 2023

  
(Notary Public)

AUGUST  
FRANCINE A. BOVE  
Notary Public, State of New York  
No. 01BO6046059  
Qualified in Suffolk County  
Commission Expires Aug. 7, 2026

## **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 (please add language)
2. ISO 9001 and ISO 14001 certified (with annual renewal).
  - 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**

  
**AVANA CAPITAL**  
PRESERVING WEALTH. CREATING GROWTH.

  
**REA**  
RENEWABLE ENERGY ALTERNATIVES

## 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) NYSERDA 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 Paracel 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 has been provided to Suffolk County, and the Authority 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
  - Soils de-compacted
  - Fill excavations with 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 site's 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@cvegroup.com](mailto:Steven.Engelmann@cvegroup.com)

631-445-4145



# ***Short Environmental Assessment Form***

## ***Part 1 - Project Information***

### **Instructions for Completing**

**Part 1 – Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 – Project and Sponsor Information</b>			
Westhampton Property Associates, Inc. - Solar Project			
Name of Action or Project: CVE US NY Southampton 243 LLC			
Project Location (describe, and attach a location map): 80 Sunrise Highway, Westhampton, NY, 11977 - Resides to the east of Speonk-Riverhead Road			
Brief Description of Proposed Action: Construction of a new community solar energy facility (solar photo-voltaic array system) consisting of solar panels, associated equipment and a grass surfaced access road on the portion of a 114.305 acre parcel(s) located off Speonk-Riverhead Road in the Town of Southampton, NY.  Solar arrays will consist of photo-voltaic modules, typically 81.9" x 40.6", mounted on a galvanized metal racking system anchored to the ground using helical ground screws.			
Suffolk County Tax Map Parcel Numbers: 900-276.00-03.00-001.000 & 900-276.00-03.00-002.000			
Name of Applicant or Sponsor: CVE North America, Inc.		Telephone: 631-445-4145 E-Mail: David.Froelich@cvegroup.com	
Address: 8th Floor, 109 W 27th Street			
City/PO: New York		State: NY	Zip Code: 10001
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?			
If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			
2. Does the proposed action require a permit, approval or funding from any other government Agency?			
If Yes, list agency(s) name and permit or approval: Town of Southampton Planning Board Special Permit and site plan approval; Town of Southampton Building permits; NYS DEC			
3. a. Total acreage of the site of the proposed action? _____ 25 acres b. Total acreage to be physically disturbed? _____ 0 acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ 114.305 acres			
4. Check all land uses that occur on, are adjoining or near the proposed action: <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input checked="" type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input checked="" type="checkbox"/> Other(Specify): Mining/Quarry operation <input type="checkbox"/> Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?	NO	YES	
If Yes, identify: <u>Central Suffolk Pine Barrens</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation services available at or near the site of the proposed action?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements?	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies:		<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Will the proposed action connect to an existing public/private water supply?	NO	YES	
If No, describe method for providing potable water: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
No water will be required for construction activities, and no water infrastructure is proposed in association with the project.			
11. Will the proposed action connect to existing wastewater utilities?	NO	YES	
If No, describe method for providing wastewater treatment: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Wastewater will not be generated at the site. Temporary sanitary facilities will be placed on-site during construction.			
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____			

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:

Shoreline  Forest  Agricultural/grasslands  Early mid-successional  
 Wetland  Urban  Suburban

15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?

NO	YES
<input checked="" type="checkbox"/>	<input type="checkbox"/>

16. Is the project site located in the 100-year flood plan?

NO	YES
<input checked="" type="checkbox"/>	<input type="checkbox"/>

17. Will the proposed action create storm water discharge, either from point or non-point sources?

If Yes,

a. Will storm water discharges flow to adjacent properties?

b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?

If Yes, briefly describe:

A Stormwater Pollution Prevention Plan (SWPPP) will be drafted in accordance with NYS DEC guidelines and will be reviewed and approved during site plan review by the Town of Southampton. Measures will be implemented to retain stormwater on-site.

18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)?

If Yes, explain the purpose and size of the impoundment:

NO	YES
<input checked="" type="checkbox"/>	<input type="checkbox"/>

19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?

If Yes, describe:

NO	YES
<input checked="" type="checkbox"/>	<input type="checkbox"/>

20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?

If Yes, describe:

NO	YES
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE**

Applicant/sponsor/name: David Froelich Date: 08/02/2023

Signature: David Froelich David Froelich Title: Director, Business Development

September 13, 2023

**VIA FEDEX & EMAIL**

Julie Hargrave  
The Central Pine Barrens Commission Office  
624 Old Riverhead Road (CR 31)  
Westhampton Beach, NY 11978

**RE: CVE US NY Southampton 243 LLC (Solar Repurposing of Westhampton Mine)  
Restoration Plan, dated September 5, 2023  
NPV#23247**

Dear Ms. Hargrave,

Please see the enclosed one (1) hard copy of the Restoration Plan dated September 5, 2023, in support of the Core Preservation Area (CPA)/Compatible Growth Area (CGA) Hardship Application dated August 16, 2023, for the above referenced project. The Restoration Plan features the following:

- Builds on successful restoration to date with supplemental vegetation
- Achieves natural restoration goals of prior approved plan
- Utilizes native restoration methods consistent with CPBC guidelines
- Provides habitat for pollinators, herptiles, birds and mammals
- Will establish permanent habitat that will continue after solar decommissioning

I will email you a copy of the same today. I can be reached via cell phone at (631) 513-8594 or by email at [cvoorhis@nelsonpopevoorhis.com](mailto:cvoorhis@nelsonpopevoorhis.com).

Very Truly Yours,  
**Nelson, Pope & Voorhis, LLC**



Charles Voorhis, CEP, AICP  
Principal

cc: Judy Jakobsen (CPBJPPC) (via email only)  
John Milazzo (CPBJPPC) (via email only)  
Steven Engelmann (CVE Group) (via email only)  
Brianna Sadoski (NPV) (via email only)



PLANT SCHEDULE - SUN AREAS (DRY) - 773,758 SF					
SYM	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING
<b>SHRUBS</b>					
ArUv	500	<i>Arctostaphylos uva-ursi</i>	Bearberry	1 Gal.	24" O.C.
CoPe	500	<i>Comptonia peregrina</i>	Sweetfern	1 Gal.	24" O.C.
RoVi	1,000	<i>Rosa virginiana</i>	Virginia Rose	1 Gal.	24" O.C.

SYMBOL	
<b>Seed Mix - Sunny Dry</b>	
<b>Grass seed - spread at rate of 15 lbs/acre</b>	
10%	<i>Andropogon gerardi</i>
10%	<i>Andropogon virginicus</i>
20%	<i>Deschampsia flexuosa</i>
50%	<i>Schizachyrium scoparium</i>
10%	<i>Sorghastrum nutans</i>
<b>Flower seed - spread at rate of 1 lbs/acre</b>	
15%	<i>Asclepias tuberosa</i>
15%	<i>Baptisia tinctoria</i>
15%	<i>Ionactis linarifolia</i>
8%	<i>Lupinus perennis</i>
7%	<i>Monarda didyma</i>
8%	<i>Monarda fistulosa</i>
7%	<i>Monarda punctata</i>
10%	<i>Solidago nemoralis</i>

PLANT SCHEDULE - SHADE AREAS (DRY) - 300,939 SF						
SYM	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	NOTES
<b>SHRUBS</b>						
ArUv	500	<i>Arctostaphylos uva-ursi</i>	Bearberry	1 Gal.	24" O.C.	
CoPe	500	<i>Comptonia peregrina</i>	Sweetfern	1 Gal.	24" O.C.	
GaBa	1,000	<i>Gaylussacia baccata</i>	Black Huckleberry	1 Gal.	24" O.C.	

VaAn	1,000	Vaccinium angustifolium	Lowbush Blueberry	1 Gal.	24" O.C.
<b>PERENNIALS</b>					
AqCa	1,000	Aquilegia canadensis	Wild Columbine	plug	12" O.C.
CaPe	3,000	Carex pensylvanica	Pennsylvania Sedge	plug	12" O.C.
DePu	1,000	Dennstaedtia punctilobula	Hay-scented Fern	quart	24" O.C.
DrCr	1,000	Dryopteris cristata	New York Fern	quart	24" O.C.
GeMa	500	Geranium maculatum	Wild Geranium	plug	24" O.C.
PtAg	3,000	Pteridium aquilinum	Bracken Fern	quart	24" O.C.

<b>Seed Mix - Shade Dry</b>	
<b>Grass seed - spread at rate of 15 lbs/acre</b>	
10%	<i>Andropogon gerardi</i>
10%	<i>Andropogon virginicus</i>
35%	<i>Carex pensylvanica</i>
25%	<i>Deschampsia flexuosa</i>
20%	<i>Schizachyrium scoparium</i>
<b>Flower seed - spread at rate of 1 lbs/acre</b>	
15%	<i>Aquilegia canadensis</i>
20%	<i>Geranium maculatum</i>
7%	<i>Monarda didyma</i>
8%	<i>Monarda fistulosa</i>
7%	<i>Monarda punctata</i>
13%	<i>Solidago caesia</i>
10%	<i>Solidago odora</i>
20%	<i>Sympphytum cordifolium</i>

## KEY MAP

**KEY MAP**

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**1" = 1,000'**





PLANT SCHEDULE - SHADE AREAS (WET) - 22,011 SF					
SYM	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING
<b>PERENNIALS</b>					
LoCa	500	<i>Lobelia cardinalis</i>	Cardinal Flower	plug	18" O.C.
LoSi	500	<i>Lobelia siphilitica</i>	Great Blue Lobelia	plug	18" O.C.
OnSe	1,000	<i>Onoclea sensibilis</i>	Sensitive Fern	quart	24" O.C.
OsCi	1,000	<i>Osmunda cinnamomea</i>	Cinnamon Fern	quart	24" O.C.
OsRe	1,000	<i>Osmunda regalis</i>	Royal Fern	quart	24" O.C.

<b>Seed Mix - Shade Wet</b>	
<b>Grass seed - spread at rate of 15 lbs/acre</b>	
40%	<i>Carex grayii</i>
30%	<i>Carex vulpinodea</i>
10%	<i>Deschampsia flexuosa</i>
20%	<i>Elymus hystrix</i>
 <b>Flower seed - spread at rate of 1 lbs/acre</b>	
20%	<i>Aster novi-angliae</i>
20%	<i>Helianthus giganteus</i>
20%	<i>Lobelia cardinalis</i>
20%	<i>Symphyotrichum cordifolium</i>
20%	<i>Scrophularia nodosa</i>

PLANT SCHEDULE - SUN AREAS (WET)					
SYM	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING
<b>SHRUBS</b>					
RoPa	1,000	Rosa palustris	Swamp Rose	1 Gal.	24" O.C.
<b>PERENNIALS</b>					
AsNo	2,000	Aster novae-angliae	New England Aster	plug	18" O.C.
LoCa	2,000	Lobelia cardinalis	Cardinal Flower	plug	18" O.C.

<b>Seed Mix - Sunny Wet</b>	
<b>Grass seed - spread at rate of 15 lbs/acre</b>	
40%	<i>Carex grayii</i>
30%	<i>Carex vulpinodea</i>
10%	<i>Deschampsia flexuosa</i>
20%	<i>Elymus hystrix</i>
<b>Flower seed - spread at rate of 1 lbs/acre</b>	
20%	<i>Aster novi-angliae</i>
20%	<i>Helianthus giganteus</i>
20%	<i>Lobelia cardinalis</i>
20%	<i>Sympphyotrichum cordifolium</i>

PLANTING NOTES

## PLANTING NOTES

1. ALL PLANT MATERIAL SUPPLIED AND INSTALLED SHALL BE IN ACCORDANCE WITH CURRENT A.A.N. (AMERICAN ASSOCIATION OF NURSERYMEN), AND ACCEPTED INDUSTRY STANDARDS. NO SUBSTITUTION OF MATERIAL SHALL BE MADE WITHOUT THE APPROVAL OF THE LANDSCAPE ECOLOGIST/ ARCHITECT.
2. CULTIVATE AND RAKE OVER FINISHED PLANTING AREA AND LEAVE IN AN ORDERLY CONDITION.
3. FORM A SHALLOW BASIN AROUND EACH PLANT SO AS TO HOLD WATER AND MULCH.
4. PLANT MATERIAL WILL BE PRIMARILY SOURCED FROM WARRENS NURSERY AND LONG ISLAND NATIVE PLANT INITIATIVE (LINPI) WHO CAN PROVIDE ECOTYPIC SPECIES. LIST WILL BE SUPPLEMENTED BY GLOVER PERENNIALS, PINELANDS NURSERY, COUNTRY GARDENS AND ON-SITE TRANSPLANT SPECIES.
5. TEMPORARY DEER FENCE OR STAKING SHOULD BE INSTALLED PRIOR TO INSTALLATION TO DELINEATE THE BOUNDARY OF THE REVEGETATION AREA. IT IS RECOMMENDED THAT THE DEER FENCE REMAIN IN PLACE UNTIL FULL ESTABLISHMENT OF SPECIES.
6. ALL PRECAUTIONS SHALL BE TAKEN IN CARTING, STORING, AND PLANTING OF MATERIALS.
7. ALL PLANTS SHALL BE LABELED BY PLANT NAME, LABELS SHALL BE ATTACHED SECURELY TO ALL PLANTS, BUNDLES AND CONTAINERS WHEN DELIVERED.
8. SUBSTITUTIONS OF PLANT MATERIALS WILL NOT BE PERMITTED UNLESS AUTHORIZED IN WRITING BY THE LANDSCAPE ECOLOGIST/ARCHITECT.
9. PLANT INSTALLATIONS:
  - 9.1. CONTAINER PLANTS SHALL HAVE THE CONTAINER AND TAGS REMOVED BEFORE INSTALLATION. ROOTS SHALL BE CUT THROUGH THE SURFACE IN AN "X" FORMATION AT BASE OF BALL AND CUT ALONG THE SIDES OF THE BALL AT LEAST SIX TIMES TO FREE ROOTS AND ENCOURAGE NEW GROWTH, ESPECIALLY IF IT IS ROOT BOUND. FINE ROOTS OF SMALLER CONTAINER PLANTS SHOULD BE TEASED DELICATELY WITH BY HAND OR WITH A HAND CULTIVATOR.
  - 9.2. PLUGS: SHALL HAVE TAGS REMOVED BEFORE INSTALLATION IF HEAVILY ROOT BOUND, DELICATELY LOOSEN ROOTS BY HAND OR HAND CULTIVATOR, TAKING CARE TO NOT BREAK SOIL-TO-ROOT CONTACT. SPACE PLANTS EQUALLY ON TRIANGULAR OR GRID SPACING.
  - 9.3. NO FERTILIZER APPLICATION SHALL BE USED DURING OR AFTER PLANT INSTALLATION.
10. ALL ARES WILL BE PLANTED WITH BOTH CONTAINER/ PLUG MIX AND OVERSEEDED WITH THE DESIGNATED SEED MIXES. SEED PERCENTAGE MY VARY BASED ON AVAILABILITY. FINAL MIX SHOULD BE VERIFIED BY A LANDSCAPE ARCHITECT OR LANDSCAPE ECOLOGIST PRIOR TO INSTALLATION.

## MAINTENANCE NOTES

## Maintenance Notes

1. THE CONTRACTOR SHALL BE HELD RESPONSIBLE FOR THE MAINTENANCE OF ALL WORK AND PARTS THEREOF TO FINAL ACCEPTANCE.
2. THE CONTRACTOR SHALL REPLACE ALL PLANT MATERIAL THAT ARE DEAD, IN UNSIGHTLY CONDITION, UNHEALTHY, WITHIN THE THREE YEAR PERIOD FROM THE COMPLETION AND FINAL ACCEPTANCE OF THE COMPLETE CONTRACT. THE WARRANTY PERIOD SHALL BE 3 YEAR FROM DATE OF FINAL ACCEPTANCE OF WORK TO A SURVIVAL RATE OF 85% AS PER CPB GUIDELINES.
3. SHOULD IRRIGATION BE NEEDED WITHIN THE THREE YEAR PERIOD FROM COMPLETION, A WATER TRUCK WILL BE UTILIZED TO IRRIGATE THE PLANTING AREAS.
4. REMOVAL METHODOLOGY
  - 4.1. INVASIVE SPECIES INCLUDING BUT NOT LIMITED TO PHRAGMITES, LESPEDEZA CUNEATA, AND MUGWORT CURRENTLY PRESENT WITHIN THE RESTORATION AREA SHALL BE COMPLETED AS SPECIFIED.
  - 4.2. EXISTING INVASIVE UNDERSTORY AND/OR VINE SPECIES WITHIN THE PLANTING AREA WILL BE REMOVED BY HAND. NO CHEMICALS OR HERBICIDES WILL BE UTILIZED IN THE REMOVAL OF INVASIVE SPECIES..
5. BUFFER MAINTENANCE
  - 5.1. REVEGETATION TO BE MONITORED BY OWNER FOR INVASIVE SPECIES
  - 5.2. ALL EMERGING INVASIVE SPECIES ARE TO BE REMOVED BY HAND AROUND EXISTING NATIVE VEGETATION.
  - 5.3. A QUALIFIED PROFESSIONAL IS TO PERFORM A FIELD INSPECTION ONCE A YEAR FOR THE INITIAL THREE-YEAR PERIOD, TO VERIFY AND ENSURE THE VARIABILITY OF ALL NEW PLANTS UPON INSTALLATION.

O.	DATE:	REVISIONS:	BY:
<p style="text-align: center;"><b>RESTORATION PLAN</b> FOR <b>SOLAR REPURPOSING OF</b> <b>WESTHAMPTON MINE</b> SITUATED AT <b>SPEONK-RIVERHEAD ROAD, SPEONK</b> <b>TOWN OF SOUTHAMPTON, SUFFOLK COUNTY, NEW YORK</b></p>		DRAWN BY:	JS/SR
		DATE:	09/05/2023
		CHECKED BY:	RS
		DATE:	09/05/2023
		FILE NO.:	FILE NO.
		PROJECT NO.:	<b>11010</b>
CADD: 11010_RESTORATIONPLANS			
SCALE: 1" = 50'			

**David Gilmartin**  
Shareholder

Greenberg Traurig, LLP  
2317 Montauk Hwy | Bridgehampton, NY 11932  
T +1 631.994.2407 | F +1 516.706.9111  
[David.Gilmartin@gtlaw.com](mailto:David.Gilmartin@gtlaw.com) | [www.gtlaw.com](http://www.gtlaw.com)

October 4, 2023

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

Re: Amendment to Conservation Easement between Westhampton Property Associates and the Central Pine Barrens Joint Planning and Policy Commission

Dear Commission:

At the September 20, 2023 meeting of the Commission, a question was raised as to whether a certain Conservation Easement (“Easement”) dated June 10, 2014 between Westhampton Property Associates and the Central Pine Barrens Joint Planning and Policy Commission allows for the present application to move forward.

In short, it is CVE’s position that the easement itself allows for its amendment and that allowance is not limited in any way within the document and therefore applies to the entire Easement.

By way of background, conservation easements – like the one at issue here – are instruments created by statute. That statute is Article 49 of the Environmental Conservation Law (“ECL”). Creation by statute is significant because it governs the existence of conservation easements as opposed to common law easements which are governed by common law. This is especially important as the ECL provides specific direction for the amendment of conservation easements.

Indeed, ECL 49-0307 provides the procedure for modifying a conservation easement. Relative to the present application, ECL 49-0307 states:

“A conservation easement held by a public body outside the Adirondack Park or Catskill Park, as defined in Section 9-0101 of this Chapter, may only be modified or extinguished: (a) As provided in the instrument creating the easement; or (b) in a proceeding pursuant to section nineteen hundred fifty-one of the real property actions and proceedings law; or (c) upon the exercise of the power of eminent domain; or (d) where land subject to conservation easement or an interest in such land is required for a major utility transmission facility which has received a certificate of environmental compatibility and public need pursuant to article seven of the public service law or is required for a major steam electric generating facility which has received a certificate of environmental compatibility and public need pursuant to article eight of the public service law, upon the filing of such certificate in a manner prescribed for recording a conveyance of real property pursuant to section two hundred and ninety-one of the real property law or any other applicable provision of law.” (NY Env Conservation Law §49-0307)

Section 2(a) applies here since the Commission is a public body according to the ECL and an amendment to a conservation easement is permitted in these instances where the amendment is consistent with the easement itself.<sup>1</sup>

Turning then to the Easement, the two operative clauses here are Sections #5 and Section #9. Section #5 specifically allows for an amendment to the Easement (See Conservation Easement at #5) Further, Section #5 compellingly states that the parties (to the easement) “recognize that circumstances could arise which would justify the modification of certain of the restrictions contained herein”. (See Conservation Easement at #5) Since the Easement predates the economic feasibility (in New York) of the community solar solution contemplated herein, CVE submits that this application was the exact type of “circumstance” that the Easement envisioned.

---

<sup>1</sup> In *Argyle Farms and Properties, LLC. v. Watershed Agricultural Council of the New York City Watersheds*, the Appellate Division, Third Department recognized the ECL §49-0307 and the ability of parties to a conservation easement to amend the easement.

Also, Section #9 contains a prohibition against a further application for a hardship to the Commission.

It is CVE's contention that Section #5 controls in this instance since nowhere in the Easement is the right to amend the Easement restricted. In essence the argument is that Section #5 overrides the restrictions in Section #9.

Certainly, CVE recognizes that the Commission in its sole discretion could decline to amend the Easement and therefore the application. However, CVE submits that this application is consistent with the basic purpose of the Easement and is ultimately a benefit to the environment.

As more fully set forth in the Nelson Pope submission, CVE presented evidence that the location of a solar farm will allow for ecological productivity and provide the property the opportunity to further advance environmental health by providing an alternate energy source.

If the Commission should have any further requirements, it should feel free to contact us.

Sincerely,

*/s/ David J. Gilmartin*  
David J. Gilmartin, Jr.

cc: John Milazzo, Esq.



## TRANSMITTAL FORM

**TO:** Julie Hargrave  
Central Pine Barrens Commission Office  
624 Old Riverhead Road (CR 31)  
Westhampton Beach, NY 11978

**FROM:** Chic Voorhis  
**DATE:** October 4, 2023  
**PROJECT:** CVE US NY Southampton 243 LLC  
(Solar Revitalization of  
Westhampton Mine)  
**NPV No.:** 11010  
**REF:**

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**VIA:**

**Regular Mail**       **Overnight**       **Messenger**       **Email**

COPIES	Document	DESCRIPTION
1	Response to Pine Barrens Commission Questions 9/20/2023 Meeting	
1	Conservation Easement Management Letter Greenberg Traurig, LLP 10/4/2023	
1	Project Attributes Summary	Summarizes key project features, alignment with Town and State laws and ordinances, intent of the allowance to amend the Conservation Easement
1	Environmental Benefits Summary	Provides direct responses to questions/concerns raised by the Commissioners, and a summary of Environmental Benefits associated with the Proposed Project.
1	Detailed Site Layout, prepared by E.E. Castillo, dated 5/12/2023	Referenced within the response to Commissioners for review of electrical equipment pads, added utility poles, and underground wire runs, no substation
1	Letter of Support from GGV	
1	Community Solar & CVE Approach Flyer	Provides a description of Community Solar, and how it and CVE help LMI communities.

To Ms. Hargrave,

Please see the enclosed documentation, submitted in support of the pending Core Preservation Area/Compatible Growth Area Hardship Waiver Application, submitted September 20, 2023. Additionally, we are expecting receipt of letters of support from affordable housing and LMI community groups, which will be submitted upon receipt separately.

cc:      Judy Jakobsen (CPBJPPC) (via email only)  
John Milazzo (CPBJPPC) (via email only)  
Steven Engelmann (CVE Group) (via email only)  
Brianna Sadoski (NPV) (via email only)

CVE Response to the Pine Barrens Commission Hearing  
Westhampton Mine, Solar Revitalization Project

The intent of this document is to compile input from internal teams and our outside legal, land use and environmental engineering partners regarding points and questions raised by the Pine Barrens Commission at our meeting on September 20, 2023. This document provides answers to specific questions, follow up detail on any concerns and is an opener to CVE's response package submitted to the commission. It provides accurate detail, and where appropriate, supporting information to further our case for permission to locate a Community Benefit Solar array at the Westhampton Mine Site.

CVE responses to questions and points raised during the hearing from Commissioners:

1. DEC – Inquired about use of the solar project past the 35-year timeline.
  - ✓ CVE has no plans nor intent to extend the 35-year leased timeframe
  - ✓ CVE agrees that no extension of time will be requested
2. Southampton Town – Inquired about visual impact of utility required system equipment and if there would be a need for an onsite electrical substation.
  - ✓ Detailed system layout – submitted with this response package which clearly shows this system will have very nominal visual impact.
  - ✓ All onsite cabling will be run underground to eliminate any visual impact.
  - ✓ Utility required switchgear:
    - Located 50' back from Speonk-Riverhead Rd., along the existing industrial entrance / roadway.
    - Four concrete pads – each with a length and width of 6'x6' to be installed.
    - Electrical equipment mounted to the top of the pads, not to exceed 6' in height.
    - Addition of two standard utility poles to the existing pole run, identical in height and appearance to all others along Speonk-Riverhead Rd.
      1. These 'riser poles' connect the solar output to the existing grid infrastructure.
    - No addition of overhead cables on the site, other than one section by the road where existing overhead cabling is ubiquitous, referenced in the previous bullet.
    - See Solar Array Site Plan document included.
  - ✓ There will not be a substation built for this project nor one added to this site.
  - ✓ This project will connect to an existing PSEG substation using existing infrastructure

**David Gilmartin**  
Shareholder

Greenberg Traurig, LLP  
2317 Montauk Hwy | Bridgehampton, NY 11932  
T +1 631.994.2407 | F +1 516.706.9111  
[David.Gilmartin@gtlaw.com](mailto:David.Gilmartin@gtlaw.com) | [www.gtlaw.com](http://www.gtlaw.com)

October 4, 2023

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

Re: Amendment to Conservation Easement between Westhampton Property Associates and the Central Pine Barrens Joint Planning and Policy Commission

Dear Commission:

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In short, it is CVE’s position that the easement itself allows for its amendment and that allowance is not limited in any way within the document and therefore applies to the entire Easement.

By way of background, conservation easements – like the one at issue here – are instruments created by statute. That statute is Article 49 of the Environmental Conservation Law (“ECL”). Creation by statute is significant because it governs the existence of conservation easements as opposed to common law easements which are governed by common law. This is especially important as the ECL provides specific direction for the amendment of conservation easements.

Indeed, ECL 49-0307 provides the procedure for modifying a conservation easement. Relative to the present application, ECL 49-0307 states:

“A conservation easement held by a public body outside the Adirondack Park or Catskill Park, as defined in Section 9-0101 of this Chapter, may only be modified or extinguished: (a) As provided in the instrument creating the easement; or (b) in a proceeding pursuant to section nineteen hundred fifty-one of the real property actions and proceedings law; or (c) upon the exercise of the power of eminent domain; or (d) where land subject to conservation easement or an interest in such land is required for a major utility transmission facility which has received a certificate of environmental compatibility and public need pursuant to article seven of the public service law or is required for a major steam electric generating facility which has received a certificate of environmental compatibility and public need pursuant to article eight of the public service law, upon the filing of such certificate in a manner prescribed for recording a conveyance of real property pursuant to section two hundred and ninety-one of the real property law or any other applicable provision of law.” (NY Env Conservation Law §49-0307)

Section 2(a) applies here since the Commission is a public body according to the ECL and an amendment to a conservation easement is permitted in these instances where the amendment is consistent with the easement itself.<sup>1</sup>

Turning then to the Easement, the two operative clauses here are Sections #5 and Section #9. Section #5 specifically allows for an amendment to the Easement (See Conservation Easement at #5) Further, Section #5 compellingly states that the parties (to the easement) “recognize that circumstances could arise which would justify the modification of certain of the restrictions contained herein”. (See Conservation Easement at #5) Since the Easement predates the economic feasibility (in New York) of the community solar solution contemplated herein, CVE submits that this application was the exact type of “circumstance” that the Easement envisioned.

---

<sup>1</sup> In *Argyle Farms and Properties, LLC. v. Watershed Agricultural Council of the New York City Watersheds*, the Appellate Division, Third Department recognized the ECL §49-0307 and the ability of parties to a conservation easement to amend the easement.

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It is CVE's contention that Section #5 controls in this instance since nowhere in the Easement is the right to amend the Easement restricted. In essence the argument is that Section #5 overrides the restrictions in Section #9.

Certainly, CVE recognizes that the Commission in its sole discretion could decline to amend the Easement and therefore the application. However, CVE submits that this application is consistent with the basic purpose of the Easement and is ultimately a benefit to the environment.

As more fully set forth in the Nelson Pope submission, CVE presented evidence that the location of a solar farm will allow for ecological productivity and provide the property the opportunity to further advance environmental health by providing an alternate energy source.

If the Commission should have any further requirements, it should feel free to contact us.

Sincerely,

*/s/ David J. Gilmartin*  
David J. Gilmartin, Jr.

cc: John Milazzo, Esq.

**Introducing the Solar Revitalization of the Westhampton Mine:** *Unlocking the Potential of an Impacted Mining Site to Power a Sustainable Future.*

The **Solar Revitalization of the Westhampton Mine** (The Project) intends to transform a previously disturbed, long-standing sand mining site into a 5 MW Community Benefit Solar project. The project is located on Speonk-Riverhead Road in Westhampton, NY.

**Integrating Renewable Energy within the intent and allowance of the Conservation Easement**

The Conservation Easement makes clear the Commission's priority: the safekeeping of the Pine Barrens ecosystem and restricting further mining or industrial development, which is vastly different than this proposed renewable energy project.

- A specific clause was included in the Easement stating: "The Conservation Easement may be modified only upon the written consent of both Westhampton Property and the Commission..."
- It goes on to say, "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..."

This clause clearly anticipates the allowance of future low impact uses of the site which aligns with the Commission's environmental and societal goals. We firmly believe our solar revitalization project will complement and coexist seamlessly with the Conservation Easement's intent.

This community benefit solar project represents the type of low-impact opportunity the easement clause intended to allow. The renewable project will provide significant benefits to the community, foster diverse habitat for native wildlife and plant species, and places minimal demands on the host Town and the County's municipal resources.

**Key Project Features**

- 1. Positive Repurposing of a Mining Site:** The Project promotes sustainability through a low-impact strategy.
  - Project is sited on an existing, environmentally distressed mining site. Solar's low impact will prevent disturbing the land and instead, positively repurpose it to benefit the community and the ecosystem.
  - Complies with / specifically sited to meet the host communities' solar energy code and their guidance to positively repurpose sand mining sites within the Pine Barrens for clean energy benefit to be provided to the community.
  - Southampton has placed considerable effort to support solar energy projects on sand mining sites in the Pine Barrens per their Solar Code 330-183 and 330-122 Sect. B subsection 2, dedicated to permitting projects at Sand Mines.
- 2. Promoting Biodiversity:** The Project aims to slightly amend the current Conservation Easement to allow the existing and robust vegetative plan to coexist with the solar project. A vegetation management plan developed and approved in 2017 will continue to be implemented featuring the robust planting of native species within the solar project's footprint, fostering a habitat for local pollinators, native plants and Pine Barrens wildlife species.
- 3. Centering the Needs of Long Island Residents:** The project is proposed under the Community Distributed Generation (CDG) NYSERDA Program, which provides direct financial relief to PSEG-LI customers who subscribe to the project through an established PSEG billing program. CVE will prioritize low-to-moderate income households in our subscription efforts.
  - The Project will deliver consistent, long-term, clean renewable energy benefits to the local community and the PSEG utility grid.

- Critical in the fight against climate change to reduce the use of fossil fuels in the generation of electricity and the associated greenhouse gas emissions.
- Positively impacts air quality and the health of the wider community.
- Saves significant energy costs for area residents and small businesses over its lifespan.
- Contributes substantial PILOT revenue to the host Town and Suffolk County.

**4. Preserving the Rural Quality of Suffolk County:** The Project is strategically located below ground level within the excavated boundaries of a resource depleted sand mine, completely hidden from public view.

- It will remain obscured even to the closest neighbors in any direction, preserving the town's character and the beauty of the Pine Barrens'
- Additionally, the positive repurposing of this environmentally impacted site as a renewable energy project, inherently avoids generating additional traffic, or use of municipal water, sewage, lighting or other town and county resources.

**5. Powering a Sustainable Future:**

- This solar project is an essential clean energy project for New York State to meet its mandated clean energy goals under the *Climate Leadership and Community Protection Law (CLCP)*.
- This law was established to set a course for the State to achieve its mandated goals of zero emission electricity sector by 2040 including 70% renewable energy generation by 2030.
- The solar project is projected to generate enough clean renewable energy to sustainably power over 800 Long Island homes.
- Plays a crucial role in the broader energy transition needed to safeguard the Pine Barrens from the numerous challenges posed by climate change.

**Environmental and Safety Assurance:** Every facet of this Project prioritizes the utmost safety for the environment, individuals, and the existing onsite vegetation. The solar modules employed on-site are entirely encapsulated and devoid of harmful chemicals. As we reach the culmination of the solar project's lifecycle, its decommissioning will be funded through a fully funded bond provided by CVE. Furthermore, the panels and associated equipment can be reused and recycled, ensuring minimal environmental impact.

#### **Guidance from the Host Township and Utility**

- Southampton has actively contemplated the future of several sand mine sites within the Town.
- Town Planning and Development Administrator, Janice Scherer, stated "sand mines are a unique opportunity because here you have a situation where we are looking for places for renewable energy, for solar arrays, where we're not trading green for green, not clearing trees."
- This sand mine to solar project revitalization project is in precise alignment with zoning code guidance from the host community, and CVE has meticulously sited the project within the sand mine specifically for this reason.

Another critical site characteristic is proximity to **existing PSEG electrical grid infrastructure**, a fundamental element required for project feasibility. This infrastructure advantage sets this site apart, recognizing that many other locations face daunting cost hurdles and interconnection uncertainties due to grid infrastructure upgrades, which often render projects unviable.

#### **CVE and Our Community Solar Approach**

CVE is an Independent Clean Energy Power Producer (IPP) focused on the development and operations of community benefit solar energy projects throughout the northeast. 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.

CVE has partnered with the well-respected environmental & ecological engineering firm, Nelson Pope & Voorhis and legal consultants Greenberg Traurig. They have expanded the existing vegetation management plan to ensure the project complies and is consistent with the purpose and intent of the Conservation Easement and the Pine Barrens goals.

## **Environmental Benefits Summary**

In the spirit of environmental stewardship and sustainable land use, CVE North America (CVE NA) presents this Environmental Benefits Summary to the Central Pine Barrens Commission for your consideration. Our aim is for this document to equip you with scientifically supported information to help in your decision to support the project.

### **Solar Power & Forests: Working Together to Reduce Carbon**

The Westhampton Mine – Solar Revitalization 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.

Generating clean, affordable, and renewable electricity from a solar photovoltaic (PV) project avoids carbon emissions otherwise generated from fossil fuel sources.

- Recent studies reveal that energy generation from solar photovoltaic facilities have a far greater ability to offset CO<sub>2</sub> emissions compared to an equivalent area of untouched forest. ([Source](#))
- Another study found that one acre of solar panels with a capacity of 250,000 watts can be expected to offset more carbon emissions than 6,500 trees ([Source](#)). This proposed project is over 6,000,000 watts, the equivalent of 156,000 trees.
- The combination of the fully vegetated mine site and a solar PV system at this location provides the greatest ability to reduce carbon in our region.

Using the research data noted above and a conservative estimate of 400 trees per acre:

- Nearly 400 acres of mature forest would be needed to sequester the same amount of carbon that the Westhampton Solar Revitalization Project alone avoids in carbon otherwise emitted by fossil fuel generated power plants.
- In fact, a single acre of solar panels offsets at least 16 to 65 times more emissions than a forest of the same size.

While some solar projects sited on forested land must wrestle with the pros and cons of cutting down mature trees to make way for emissions-free energy, the Westhampton Mine Solar project is located on an existing, environmentally distressed mining site.

This allows the project to positively repurpose a brownfield site, providing:

- Clean Energy - carbon avoidance by generating electricity from a fossil free source.
- Carbon Sequestration – from revegetation
- Community savings - equity and justice benefits through reduced residential electricity costs prioritizing low- and moderate-income families.
- Ecosystem Benefits - native revegetation, additional nesting / habitat establishment, restoration of soil health for the pine barrens.

## **Benefits of the Revegetation Plan: Low-impact Solar**

In addition to generating clean, affordable, equitable, emissions-free electricity, the Westhampton Mine Solar Project includes a robust revegetation plan. This plan is a modification of the original plan created by environmental consulting firm Nelson Pope, Voorhis for this site that was approved in 2017.

Highlights of this plan:

- Contribute to habitat restoration, increase long-term soil health, and carbon sequestration.
- Play an important role in reversing degradation processes in areas that have been subject to mining activities.
- Use native grasses and forbs whose deep root systems create the potential for improved soil stabilization and reduced water runoff.
- Establish native plants species which can also increase soil microbial activity and nutrient cycling, allowing for the soil to replenish and sequester carbon.

## **Community Equity and Affordability Benefits**

Community solar is a New York State sponsored energy equity program that allows residents to benefit from clean, affordable energy, produced from an off-site solar installation without the need to install solar panels on their homes.

Annually, as per calculations by the EPA Greenhouse Gas Equivalencies Calculator, this project is anticipated to:

- Power 1,100 homes
- Avoid 6,640 tons of carbon dioxide emissions
- Offset the emissions of 1,340 gasoline-powered passenger vehicles





# GEORGICA GREEN VENTURES, LLC

50 Jericho Quadrangle, Suite 118 Jericho, NY 11753

Phone: 516-470-9100 Fax: 516-256-3510

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October 4, 2023

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

RE: Matter of the Application of CVE

To Whom It May Concern:

On behalf of Georgica Green Ventures, LLC (“GGV”), we wish to express our full support for the above referenced application to the Central Pine Barrens Joint Planning & Policy Commission.

GGV is a Long Island based real estate development company that specialized in the acquisition, development, construction, and management of affordable housing. Since 2012, our team has developed over 1,500 homes for New York families. GGV was founded on the principles that affordable housing has a place in all communities and that the diversity of income, race, religion, ethnicity, age, and gender makes those communities stronger and smarter.

Our team is actively developing in this region and has current and future projects located in the Town of Brookhaven, Town of Riverhead and the Town of Southampton that may benefit from the Community Energy Credits.

Thank you for your time and consideration.

Sincerely,



Allison Giosa-Ekblom  
Vice President of Development  
Georgica Green Ventures, LLC  
[agiosa@georgicagreen.com](mailto:agiosa@georgicagreen.com)  
516-521-6304



# cve

• North  
America  
Certified



# Putting people and the planet at the heart of tomorrow's energy

## WHO WE ARE

1

CVE North America is a dedicated local solar power producer based in the heart of New York City. Established in 2017, we harmonize the personal touch of a small company with the robust expertise and financial stability of a large group.

## OUR FOOTPRINT

2

With 9 solar projects in operation and 13 under construction, our ambitions soar high. We aim to expand to over 450 MW across the United States by 2026, leveraging the global expertise of our B-Corp certified parent company, CVE Group.

## OUR COMMITMENT

3

Prioritizing people and the planet, we envision leading the renewable energy frontier, fostering a cleaner and healthier world. Certified with ISO 9001 and ISO 14001, we uphold the highest standards in quality and environmental management.

## CONTACT US

# What is Community Solar?

A New York State sponsored energy equity program that allows residents to benefit from clean, affordable energy, produced from an off-site solar installation without the need to install solar panels on their homes

## How it Works:



### STEP 1

We BUILD solar installations to generate clean energy, respect the environment and provide benefit to the community.

### STEP 2

WE PRODUCE CLEAN ENERGY that is distributed through local electric utilities to power nearby homes.

### STEP 3

LMI COMMUNITIES receive solar credits through energy produced by the off-site solar installation.

### STEP 4

YOU SAVE! Solar credits are applied to subscribers utility bills, saving residents money and enabling more renewable energy use in the community.

## Westhampton Mine - Solar Community Benefit Project

### Project Overview:

- Project Size: 5MW AC
- Community Benefits:
  - Community solar subscribers can expect to save 10% on monthly PSEG utility bills
  - Generates enough clean electricity to power over 1,100 homes in the community

### Environmental Impact:

- This solar project will provide 8,500,000kWh\* of clean energy per year, which is equal to:
  - Avoiding 6,640 tons of carbon emissions annually
  - Planting 9,960 seedling trees annually for 10 years
  - Taking 1,340 gasoline-powered vehicles off the road annually



\*The numbers above are estimations, made using the Environmental Protection Agency's (EPA) Greenhouse Gas Equivalencies Calculator, Assuming this solar installation produces the projected 8,500,000kWh of energy per year\*

**CENTRAL PINE BARRENS JOINT PLANNING & POLICY  
COMMISSION (CPBJPPC)**

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

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

Suffolk County Tax Map Numbers: 0900-276-03-1 and 2  
Hamlet of Westhampton, Town of Southampton, Suffolk County, New York

***Applicant:*** CVE US NY Westhampton 243 LLC  
109 West 27<sup>th</sup> St, 8<sup>th</sup> Floor  
New York, NY 10001  
(631) 445-4145

***For Submission To:*** Central Pine Barrens Joint Planning & Policy Commission  
624 Old Riverhead Road  
Westhampton Beach, New York 11978  
Contact: Judy Jakobsen; Executive Director  
(631) 288-1079

***Prepared by:*** Nelson, Pope & Voorhis, LLC  
70 Maxess Road  
Melville, New York 11747  
Contact: Charles Voorhis, CEP, AICP; Principal  
(631) 427-5665

NP&V #11010

**March 7, 2024**

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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**

Sustainability Goal Topic	Sustainability Goal	Proposed Project Benefit/Consistency
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.

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## ATTACHMENTS

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## ATTACHMENT A

### 63 SUNRISE WIND DOCUMENTS

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Central Pine Barrens Joint Planning and Policy Commission  
Meeting of April 20, 2022  
Adopted Decision

Sunrise Wind LLC Core Preservation Area Compelling Public Need Hardship

**Present:**

Mr. Freleng, for the Suffolk County Executive  
Mr. Romaine, Brookhaven Town Supervisor  
Ms. Aguiar, Riverhead Town Supervisor  
Mr. Shea, for the Southampton Town Supervisor

**I. The Project, Project Site, and Application**

Yvette Aguiar  
*Member*

Steven Bellone  
*Member*

Edward P. Romaine  
*Member*

Jay H. Schneiderman  
*Member*

Sunrise Wind LLC (the Applicant) by their representatives Derrik Berg, Eversource, and attorney John Anzalone, Harris Beach, PLLC, propose development in the Core Preservation Area to construct 0.6 mile of an underground electric onshore transmission cable (OTC) (the Project). The OTC is part of a 924 megawatt offshore wind energy installation by the Applicant.

The Project will cause 0.2 acres of temporary clearing of natural vegetation and 0.37 acres of permanent clearing in the Core. Areas where temporary clearing occurs will be replanted with native trees and other vegetation and areas of permanent clearing will not be replanted with trees and instead replanted with other native vegetation. The permanently cleared area will require access for regular maintenance.

The OTC project site is in the vicinity of Victory Avenue and Southaven County Park on the north side of Sunrise Highway, west of William Floyd Parkway in the hamlet of Yaphank in the Town of Brookhaven (the Project Site).

On January 26, 2022, the Applicant submitted a request to the Central Pine Barrens Joint Planning and Policy Commission (the Commission) for a Core Preservation Area Compelling Public Need Hardship. Prior submissions were made on June 1 and November 3, 2021. Extensions were requested by the Applicant and granted by the Commission due to the Applicant's continued coordination with and seeking authorization from Suffolk County to install infrastructure within the boundaries of Southaven County Park.

The offshore wind facility requires installation of a 17.5 mile OTC that extends from the coastline at Smith Point (outside of the Central Pine Barrens), travels under the Great South Bay via horizontal directional drill to William Floyd Parkway northward and northwestward to a connection at the LIPA Holbrook substation. Alternative routes were explored by the

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<https://pb.state.ny.us/>

Applicant, but the Project was selected as the preferred route to minimize significant adverse environmental impacts on subjects including wetland habitats, cultural resources, residential neighborhoods, businesses and traffic.

The March 27, 2020 correspondence received from the New York Natural Heritage Program (NHP) reported a number of rare animals, plants and natural communities on the Project Site including the Federal and New York State-listed Threatened Northern Long-eared Bat. The project must adhere to clearing windows prescribed by the New York State Department of Environmental Conservation.

The September 1, 2020 correspondence from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) is inconclusive. The project will adhere to the requirements of OPRHP to protect archaeological, historic and cultural resources.

## **II. The Long Island Pine Barrens Protection Act of 1993, the Commission, Development and the Central Pine Barrens Comprehensive Land Use Plan**

The Commission was created by the Long Island Pine Barrens Protection Act (the “Act”) adopted in 1993 and codified in Article 57 of the Environmental Conservation Law (ECL). The Act empowered the Commission to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area. Section §57-0107(13) of the ECL defines development to be the “performance of any building activity, . . . , the making of any material change in the use or intensity of use of any . . . land and the creation . . . of rights of access.”

ECL Section §57-0123(3)(a) provides that, “[s]ubsequent to the adoption of the land use plan, the provisions of any other law, ordinance, rule or regulation to the contrary notwithstanding, no application for development within the Central Pine Barrens area shall be approved by . . . the [C]ommission . . . unless such approval or grant conforms to the provisions of such land use plan; provided, however, that the [C]ommission by majority vote is hereby authorized to waive strict compliance with such plan or with any element or standard contained therein, for an application for development of any person, upon finding that such waiver is necessary to alleviate hardship for proposed development in the core preservation area according to the conditions and finding of extraordinary hardship . . . pursuant to subdivision ten of section 57-0121 of this title, and every application is consistent with the purposes and provisions of this article and would not result in substantial impairment of the resources of the Central Pine Barrens.”

## **III. The Application, Staff Report, Public Process, Testimony and Supplemental Materials**

The Application included a letter and review of the compelling public need hardship criteria, maps of the Project and an Appendix titled “Revised Exhibit 4 Environmental Impact.”

On January 19, 2022, the Commission scheduled a public hearing on the Application that was held on February 16. At the hearing, a Commission Staff Report with Exhibits was introduced into the record. The Applicant, under sworn testimony, addressed concerns and comments from the Commission and in the Staff Report.

Prior to the hearing, one member of the public submitted a written letter of support. Two members of the public provided comments at the hearing. The written comment period was held open until 12 pm on March 11. No written comments were received. The hearing record was left open until the March 16 meeting when the Commission would determine 1) to close the hearing or 2) the need to continue the hearing on April 20. A stenographic transcript was made of the hearing.

On March 3, the Applicant submitted a written response to the Staff Report focusing on the review of alternative routes considered for the OTC. The Applicant explained the reasons alternative routes were rejected including the desire to minimize traffic impacts and road closures on busy transportation thoroughfares and to avoid densely developed residential neighborhoods and natural resources including wetland habitats and areas of cultural resource sensitivity. On March 16, the Commission closed the hearing.

## **VI. The Project Site and the Study Area**

The Staff Report described the Project Site and defined a Study Area that extends half mile from the project site in all directions. The Study Area describes the land use pattern in the vicinity of the Project Site.

The Carmans River bisects the Study Area. Land uses in the Study area comprise suburban residential development and natural public open space. Starting in the southeast quadrant of the Study Area, the unincorporated hamlet of Shirley is developed with suburban residential uses. Commercial development is present in the transportation corridors of William Floyd Parkway and Montauk Highway.

Residential development occurs in the northeast quadrant, west of William Floyd Parkway and east of Carmans River. The northwest and southwest quadrants in the Study Area are largely comprised of public open space including Southaven County Park and Wertheim National Wildlife Refuge. The western portion of the Study Area contains residentially developed land uses.

The OTC will enter the Core on Victory Avenue for approximately 0.6 mile and cross the Carmans River via trenchless methods. Construction laydown areas will be used on Victory Avenue. The route travels west on Victory Avenue to a work area on the west side of the Carmans River in Southaven County Park.

Passive and active recreational use opportunities are available in Southaven County Park including hiking trails, kayaking and camping.

#### **IV. State Environmental Quality Review Act (SEQRA) and Other Agency Jurisdictions**

The Public Service Commission (PSC) is presently reviewing an Article VII application for “The Certification Review Process For Major Electric and Fuel Gas Transmission Facilities.” The State Environmental Quality Review Act (SEQRA) regulations defines a project of this type as a Type II Action as per Part 617.5(44).

Approximately 2.4 miles of the OTC is in the Compatible Growth Area (CGA). The PSC will review the CGA segment for conformance with the Central Pine Barrens Comprehensive Land Use Plan, as per Section 57-0123(3)(a) of the Environmental Conservation Law.

The Project requires permits and/or approvals from other agencies including the Town of Brookhaven, Suffolk County and New York State Department of Environmental Conservation (NYSDEC).

#### **V. Commission Review of the Compelling Public Need Hardship Request**

In accordance with ECL Article 57 Section 57-0121(10), the Applicant explained their request in reference to the criteria outlined in the Act.

In accordance with Section 57-0121(10)(a)(i), the Project does not apply to or affect other property in the Study Area. The project is unique because it is one segment in a larger project that was planned with specific starting and ending locations. Alternative routes were considered but the Applicant rejected them due to their potential to cause adverse environmental impacts on residential neighborhoods, road closures and traffic and natural and cultural resources. The alternative routes required the OTC to cross the Carmans River, via horizontal directional drill, and the Core Preservation Area at some point in the route but the preferred route causes the least amount of adverse environmental impacts to the Core. No other area exists for the Project in the Study Area. The Project is unique as distinguished from other projects.

In accordance with Section 57-021(10)(b)(i), the Project Site must occur in the proposed location in the Core and cannot be moved elsewhere in Suffolk County or out of the Core due to a variety of constraints that include the fact that the Holbrook substation is the terminating location. A new converter station will be constructed roughly one mile from the Holbrook Substation to convert direct current (DC) electricity to alternating current (AC) electricity.

The applicant’s alternatives analysis compared OTC routes. The alternative routes also intersect the Core. With fixed points beginning at landfall at Smith Point and the connection at Holbrook Substation, the preferred route is the shortest distance and causes the least impact on the resources of the Core including limited clearing requirements and

constructability constraints. Therefore, the Project cannot be accommodated elsewhere but the Project Site. No feasible alternatives are available for the Project.

The Project Site serves more than one municipality including the Town of Brookhaven and Suffolk County. The public benefits of the project are of a character that override the importance of the protection of the minimal amount of natural vegetation that will be removed for the Project. The Project achieves New York State's Climate Leadership Community Protection Act renewable energy goals. The goals include 100% zero-carbon electricity by 2040, 70 percent electricity from renewable sources by 2030 and target of 9,000 megawatts of offshore wind by 2035.

In accordance with ECL Article 57 Section 57-021(10)(b)(i), the application explained that the Project will serve an essential health need for the community. The Project moves toward New York State's renewable energy targets.

The Project is designed to minimize adverse environmental impacts. This is demonstrated by the minimal disturbance to natural vegetation, use of directional drilling and previously disturbed roadside areas to the greatest extent practicable. The Project achieves the minimum relief necessary to ensure the integrity and continued protection of the Project Site and the Core Preservation Area.

## **VI. Conclusion**

The Project entitled Sunrise Wind Core Preservation Area Compelling Public Need Hardship application is entitled to a hardship exemption for the foregoing reasons and therefore is approved, subject to the following conditions.

1. Fencing
  - a. Install snow fencing prior to and during construction.
  - b. Maintain fencing during construction and remove as soon as work is complete.
  - c. Notify the Commission office when work is complete.
2. Revegetation within one year of completion of work in the disturbance area:
  - a. Revegetate the 0.2 acre area of temporary disturbance due to construction with a mix of native tree and shrub species.
  - b. Revegetate the 0.37 acre area of permanent disturbance with native grasses at a minimum.
3. Employ an on site environmental monitor to ensure environmental protection during construction.
4. Fulfill the requirements of the NY State Historic Preservation Office to protect archaeological, historic and cultural resources that may be present in the project site.
5. Adhere to NYSDEC tree clearing restrictions in the project site area to protect the Federal and State-listed Northern Long-eared Bat and its habitat.
6. Conform with all other local, County and State regulatory permit requirements and obtain all other permits as required.
7. This approval is valid for five (5) years from the date of this Resolution. The applicant must commence construction in that timeframe.

8. Any changes of the Project, as approved, must be reviewed and approved by the Commission.

Motion to Approve

Sunrise Wind Core Preservation Area Compelling Public Need Hardship

Date: April 20, 2022

Motion By: Mr. Shea

Seconded: Mr. Romaine

Vote:

Yes: 4 (Mr. Freleng, Mr. Romaine, Ms. Aguiar, Mr. Shea)

No: None

Abstain: None

Absent: None

Copies of This Decision Will be Sent To:

New York State Public Service Commission

New York State Department of Environmental Conservation, Division of Environmental Permits, Region 1

New York State Department of State

New York State Department of Transportation

Suffolk County Parks

Suffolk County Department of Public Works

Town of Brookhaven Supervisor

Town of Brookhaven Town Clerk

Town of Brookhaven Department of

Town of Brookhaven Building Department

Applicant

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**ATTACHMENT B**  
**GREENBERG TRAURIG, LLP LETTER REGARDING**  
**PRECEDENTIAL IMPACT AND CONSERVATION**  
**EASEMENT AMENDMENT**

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**David Gilmartin**  
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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. & Cnty. 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 Grantor 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

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## ATTACHMENT C

### KEY ENVIRONMENTAL AND PUBLIC BENEFITS

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**CVE Response to the Pine Barrens Commission Hearing**  
**Westhampton Mine, Solar Revitalization Project**

The intent of this document is to compile input from internal teams and our outside legal, land use and environmental engineering partners regarding points and questions raised by the Pine Barrens Commission at our meeting on September 20, 2023. This document provides answers to specific questions, follow up detail on any concerns and is an opener to CVE's response package submitted to the commission. It provides accurate detail, and where appropriate, supporting information to further our case for permission to locate a Community Benefit Solar array at the Westhampton Mine Site.

CVE responses to questions and points raised during the hearing from Commissioners:

1. DEC – Inquired about use of the solar project past the 35-year timeline.
  - ✓ CVE has no plans nor intent to extend the 35-year leased timeframe
  - ✓ CVE agrees that no extension of time will be requested
2. Southampton Town – Inquired about visual impact of utility required system equipment and if there would be a need for an onsite electrical substation.
  - ✓ Detailed system layout – submitted with this response package which clearly shows this system will have very nominal visual impact.
  - ✓ All onsite cabling will be run underground to eliminate any visual impact.
  - ✓ Utility required switchgear:
    - Located 50' back from Speonk-Riverhead Rd., along the existing industrial entrance / roadway.
    - Four concrete pads – each with a length and width of 6'x6' to be installed.
    - Electrical equipment mounted to the top of the pads, not to exceed 6' in height.
    - Addition of two standard utility poles to the existing pole run, identical in height and appearance to all others along Speonk-Riverhead Rd.
      1. These 'riser poles' connect the solar output to the existing grid infrastructure.
  - No addition of overhead cables on the site, other than one section by the road where existing overhead cabling is ubiquitous, referenced in the previous bullet.
  - See Solar Array Site Plan document included.
- ✓ There will not be a substation built for this project nor one added to this site.
- ✓ This project will connect to an existing PSEG substation using existing infrastructure

## **Environmental Benefits Summary**

In the spirit of environmental stewardship and sustainable land use, CVE North America (CVE NA) presents this Environmental Benefits Summary to the Central Pine Barrens Commission for your consideration. Our aim is for this document to equip you with scientifically supported information to help in your decision to support the project.

### **Solar Power & Forests: Working Together to Reduce Carbon**

The Westhampton Mine – Solar Revitalization 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.

Generating clean, affordable, and renewable electricity from a solar photovoltaic (PV) project avoids carbon emissions otherwise generated from fossil fuel sources.

- Recent studies reveal that energy generation from solar photovoltaic facilities have a far greater ability to offset CO<sub>2</sub> emissions compared to an equivalent area of untouched forest. ([Source](#))
- Another study found that one acre of solar panels with a capacity of 250,000 watts can be expected to offset more carbon emissions than 6,500 trees ([Source](#)). This proposed project is over 6,000,000 watts, the equivalent of 156,000 trees.
- The combination of the fully vegetated mine site and a solar PV system at this location provides the greatest ability to reduce carbon in our region.

Using the research data noted above and a conservative estimate of 400 trees per acre:

- Nearly 400 acres of mature forest would be needed to sequester the same amount of carbon that the Westhampton Solar Revitalization Project alone avoids in carbon otherwise emitted by fossil fuel generated power plants.
- In fact, a single acre of solar panels offsets at least 16 to 65 times more emissions than a forest of the same size.

While some solar projects sited on forested land must wrestle with the pros and cons of cutting down mature trees to make way for emissions-free energy, the Westhampton Mine Solar project is located on an existing, environmentally distressed mining site.

This allows the project to positively repurpose a brownfield site, providing:

- Clean Energy - carbon avoidance by generating electricity from a fossil free source
- Carbon Sequestration – from revegetation
- Community savings - equity and justice benefits through reduced residential electricity costs prioritizing low and moderate income families
- Ecosystem Benefits - native revegetation, additional nesting / habitat establishment, restoration of soil health for the pine barrens.

### **Benefits of the Revegetation Plan: Low-impact Solar**

In addition to generating clean, affordable, equitable, emissions-free electricity, the Westhampton Mine Solar Project includes a robust revegetation plan. This plan is a modification of the original plan created by environmental consulting firm Nelson Pope, Voorhis for this site that was approved in 2017.

Highlights of this plan:

- Contribute to habitat restoration, increase long-term soil health, and carbon sequestration.
- Play an important role in reversing degradation processes in areas that have been subject to mining activities.
- Use native grasses and forbs whose deep root systems create the potential for improved soil stabilization and reduced water runoff.
- Establish native plants species which can also increase soil microbial activity and nutrient cycling, allowing for the soil to replenish and sequester carbon.

### **Community Equity and Affordability Benefits**

Community solar is a New York State sponsored energy equity program that allows residents to benefit from clean, affordable energy, produced from an off-site solar installation without the need to install solar panels on their homes.

Annually, as per calculations by the EPA Greenhouse Gas Equivalencies Calculator, this project is anticipated to

- Power 1,100 homes
- Avoid 6,640 tons of carbon dioxide emissions
- Offset the emissions of 1,340 gasoline-powered passenger vehicles