

**FINDINGS STATEMENT FOR
ARTIST LAKE PLAZA
COMPATIBLE GROWTH AREA DEVELOPMENT OF REGIONAL SIGNIFICANCE**

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

JULY 20, 2011

CERTIFICATE OF FINDINGS TO APPROVE

This notice is issued pursuant to 6 NYCRR Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law (“ECL”) of New York State. This Findings Statement has been prepared pursuant to the requirements of 6 NYCRR Part 617.9, which states that no agency shall make a decision on an action which has been the subject of a final Environmental Impact Statement (EIS) until a written Findings Statement has been prepared concerning the facts and conclusions of the draft and final EIS and any supplemental EIS relied on to support its decision. The Town Board of the Town of Brookhaven (the “Town”) is the lead agency under SEQRA for this project and has coordinated its review with the Central Pine Barrens Joint Planning and Policy Commission (“the Commission”), which is an involved agency under SEQRA. This Findings Statement, prepared by the Commission, is for the proposed Artist Lake Plaza (“the Project”) for which a Compatible Growth Area Development of Regional Significance (CGA-DRS) application has been submitted to and is under review by the Commission. The project site is 74.24 acres and is located at 1075 Middle Country Road (New York State Route 25), in the hamlet of Middle Island, Town of Brookhaven, New York, identified as Suffolk County Tax Map Numbers 200-379-1-3.1, 5.1, and 12.

INTRODUCTION AND BACKGROUND

Existing Conditions

The 74.24 acre project site is partially developed with a vacant 123,275 square foot structure formerly occupied by K-Mart, a national retail chain, and an extensive paved parking lot. The site contains approximately 26.04 acres of cleared area. Approximately 48.20 acres of the project site contains existing natural pine barrens vegetation, the majority of which is in the northern portion of the project site.

Currently, 58.05 acres of the project site are zoned A-1 Residence and 16.19 acres are zoned J-2 Business. The project site currently provides access through an easement to a Town-owned dog park, which is adjacent to the Project Site on the easterly side.

Project Description

The Project involves a change of zone of 32.89 acres, of the 74.24 acre project site, from its current A-1 Residence zone to J Business 2. The rezoning area is comprised of:

- 23.51 acres from SCTM #: 200-379-1-3.1,
- 1.81 acres from SCTM #: 200-379-1-5.1 (the existing recharge basin area), and
- 7.57 acres from SCTM #: 200-379-1-12.

Of the remaining project site area, 16.19 acres will remain in its current J Business 2 zoning resulting in a total of 49.08 acres of J Business 2 zoning after project completion. The remaining project site area of 25.16 acres will remain in its current A Residence 1 zone.

The Applicant proposes the development of a total of 379,411 square feet of commercial land uses in two large anchor stores that will occupy 314,330 square feet and seven retail buildings comprising a total square footage of 65,081; active recreational ballfields and related facilities, and associated infrastructure.

Other site development related to the commercial uses includes 2,021 parking spaces (100 of which are to be landbanked initially), individual conventional sanitary systems to accommodate sanitary wastewater generated by the Project, internal site driveways, and drainage infrastructure. Project amenities include a public pedestrian promenade, water features, landscaped seating areas, sidewalks, and other aesthetic improvements.

An area covering 5.62 acres of the project site will be dedicated to the Town of Brookhaven for active recreation area including three athletic fields consisting of two baseball fields and a soccer field. Other facilities associated with the proposed active recreation area include parking for 75 cars, fencing, lighting, concession stand, spectator stands, landscaping, a maintenance building encompassing 1,800 to 2,000 square feet, and a restroom facility. These recreational facilities are to be constructed by the applicant.

An area encompassing 9,460 square feet (0.22 acres) along State Route 25 will be dedicated to the New York State Department of Transportation (DOT) for road widening purposes. The DOT may also utilize a portion of the southeastern part of the project site for a new recharge basin to contain runoff generated on Middle Country Road.

The total cleared area will encompass 44.83 acres (60.4%) of the Project Site. The Applicant proposes clearing 18.79 acres of existing vegetation from the Project Site, which includes the clearing occurring on the 5.62 acres of recreational area to be dedicated to the Town. An existing cleared area containing 26.04 acres will be maintained on the Project Site. The Project proposes to retain 29.41 acres (39.6%) of existing natural area as open space.

As shown on the “Conceptual Pine Barrens Clearing Limit Plan” #A004.3 prepared by Hepler Associates last dated October 27, 2009 (the “Hepler Plan”), a subdivision of the project site is proposed, which generally divides the project site into two halves, north and south. The three proposed ballfields, associated recreational infrastructure, and areas of natural open space will be located on the northerly parcel and the southern half will contain the majority of commercial development and natural open space areas.

A very conceptual mitigation proposal identified for the Project entails the offsite restoration of 3,000 square feet of the shoreline of Artist Lake (in an area 300 linear feet by 10 feet wide). A

related preliminary idea has been proposed for an off-site public improvement at Artist Lake consisting of the construction of a boardwalk, pedestrian access, gazebo, landscaping and parking area. However, these proposals have not been developed in any meaningful or sufficient detail or specificity, are dependent on theoretical funding mechanisms and have not been advanced further by the Town at this time. Accordingly, although they are not considered part of the subject Project as a result, any such offsite improvements referenced would be subject to ECL Article 57 and the Central Pine Barrens Comprehensive Land Use Plan (CLUP), as applicable. If these proposals are advanced in the future, separate detailed plans would be required to be submitted to the Commission, subject to its review and action, prior to commencement of work. As any such activity also falls under the jurisdiction of ECL Article 24, Freshwater Wetlands, a freshwater wetlands permit would be required from the New York State Department of Environmental Conservation (DEC).

The Project requires multiple local, County, and State agency approvals and variances including but not limited to those from the Town of Brookhaven, Suffolk County Department of Health Services (SCDHS), and New York State Department of Transportation. The Project requires Town Board of Zoning Appeals relief for: parking spaces, dimensions of parking spaces, parking in front yard, dimensional relief including side yard, setback to residential zoning, front yard setback, front yard buffer, landscaping in a front yard.

SEQRA Process and SEQRA Record

On February 26, 2010, the owners of the project site, Breslin Realty Associates LLC, Colin Realty Co., LP, and Poly Jaz Realty LLC, by their agent, Nelson, Pope & Voorhis (the “applicant”), submitted a CGA-DRS application to the Commission. On March 11, 2010, Commission staff notified the applicant in writing that the application was incomplete, as per Section 4.3.1 of the CLUP. On August 2, 2010, the Commission received the information for a complete application, which included the Town’s accepted Draft Supplemental Environmental Impact Statement (DSEIS) for the Project. (Pursuant to the GEIS and SEQRA Findings previously adopted by the Town for its Middle Country Road Land Use Plan, a supplemental EIS was required to supplement the generic environmental impact review.) On August 11, 2010, the Commission adopted a resolution scheduling a public hearing to occur on September 15, 2010.

The Commission held a public hearing on September 15, 2010 at Brookhaven Town Hall, Farmingville, New York. The comment period was held open until the second public hearing, which was held on November 17, 2010 at Riverhead Town Hall, Riverhead, New York. The public portion of the second hearing was closed and the comment period was left open until the applicant submitted additional information regarding the supplemental groundwater testing in March of 2011 for which an additional public comment period of two weeks was provided. At the request of the applicant, extensions of the decision deadline have been granted by the Commission on a monthly basis since the original deadline of November 29, 2010.

The Town, as Lead Agency, coordinated review with the Commission, a SEQRA involved agency. The applicant prepared a Draft Supplemental Environmental Impact Statement (DSEIS) to the Town’s Generic Environmental Impact Statement for the Middle Country Road Land Use

Plan. On July 20, 2010, the Town Board accepted the DSEIS. On August 17, 2010, the Town Board held a public hearing on the DSEIS.

On April 12, 2011, the Town Board accepted a Final Supplemental Environmental Impact Statement (FSEIS) for the Project. On April 15, 2011, the Commission received a copy of the FSEIS from the applicant. On April 25, 2011, the Commission office received a copy of the FSEIS from the Town. On June 14, 2011 the Town Board adopted SEQRA Findings for approval of the Project.

The DSEIS, FSEIS and associated SEQRA documents are referenced from this point forward in these Findings and are collectively known as the “SEQRA Record.”

The Findings made by the Commission comply with the requirements of SEQRA 6 NYCRR §617.11(d), by relying on the SEQRA Record to:

- 1) consider the relevant environmental impacts, facts and conclusions disclosed in the SEQRA Record;
- 2) weigh and balance relevant environmental impacts with social, economic and other considerations;
- 3) provide a rationale for the agency’s decision;
- 4) certify that the requirements of this Part have been met;
- 5) certify that consistent with social, economic and other essential considerations from among the reasonable alternatives analyzed, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision, those mitigation measures that were identified as practicable.

FACTS AND CONCLUSIONS CONTAINED WITHIN THE SEQRA RECORD TO SUPPORT AN INVOLVED AGENCY DECISION

The discussion below identifies the potential environmental impacts related to the Project based upon the information provided in the SEQRA record.

Pursuant to Section 4.5.5 of the Central Pine Barrens Comprehensive Land Use Plan (CLUP), the Commission’s jurisdiction extends to the review of development that meets the threshold(s) constituting a Development of Regional Significance (DRS) as numerated in Section 4.5.5.1 of the CLUP. The Project is defined as a DRS as set forth in Section 4.5.5.1 of the CLUP because the Project is a commercial, industrial or office development project exceeding 300,000 square feet of gross floor area. According to Section 4.5.5.2 of the CLUP, when reviewing a DRS, the Commission must determine whether the project complies with the Standards and Guidelines set forth in Volume 1, Chapter 5 of the CLUP.

Discussion of Impacts, Development Standards and Guidelines, and Mitigation Measures

The SEQRA record discussed potential impacts that may occur to natural resources as a result of the project. In addition, the SEQRA Record evaluated the Project's potential environmental impacts including groundwater, traffic, and cultural resources. The SEQRA Record also identified mitigating measures for potential impacts. It should be noted that the aforementioned off-site concept to restore a portion of the Artist Lake shoreline and to establish additional recreational amenities there is considered speculative and hypothetical at this time as no detailed, definitive plans have been prepared in sufficient detail or put forth and no absolute commitment to the proposal has occurred. Furthermore, the Town has not directly undertaken, funded or formally approved this proposal. Accordingly, this conceptual proposal is therefore not considered to be part of the subject Project. Furthermore, as a result, no unwarranted, impermissible segmentation has occurred due to the lack of a defined proposal and lack of an absolute commitment to undertake the proposal. Nevertheless, if such definitive plans are proposed in the future, they will be subject to ECL Article 57 and other applicable statutes and regulations, including SEQRA.

The following sections measure the project's impacts against the CLUP's standards and guidelines.

I. Water Resources

The Central Pine Barrens Development Standards and Guidelines related to water resources are set forth below. Also included is a discussion of the project's potential impacts to water resources, mitigating measures and conformance to applicable standards and guidelines.

A. Nitrate-nitrogen

1. Standards and Guidelines

a. Standard 5.3.3.1.1 - Suffolk County Sanitary Code Article 6 compliance

The standard states "All development proposals subject to Article 6 of the Suffolk County Sanitary Code shall meet all applicable requirements of the Suffolk County Department of Health Services. Projects which require variances from the provisions of Article 6 shall meet all requirements of the Suffolk County Department of Health Service's Board of Review in order to be deemed to have met the requirements of this standard."

b. Standard 5.3.3.1.2 - Sewage treatment plant discharge

The standard states "Where deemed practical by the County or State, sewage treatment plant discharge shall be outside and downgradient of the Central Pine Barrens. Denitrification systems that are approved by the New York State Department of Environmental Conservation or the Suffolk County Department of Health Services may be used in lieu of a sewage treatment plant."

c. Guideline 5.3.3.1.3 - Nitrate-nitrogen goal

The guideline states “A more protective goal of two and one half (2.5) ppm may be achieved for new projects through an average residential density of one (1) unit per two (2) acres (or its commercial or industrial equivalent), through clustering, or through other mechanisms to protect surface water quality for projects in the vicinity of ponds and wetlands.”

d. Standard 5.3.3.2.1 -Suffolk County Sanitary Code Articles 7 and 12 compliance

The standard states “All development projects must comply with the provisions of Articles 7 and 12 of the Suffolk County Sanitary Code, including any provisions for variances or waivers if needed, and all applicable state laws and regulations in order to ensure that all necessary water resource and wastewater management infrastructure shall be in place prior to, or as part of, the commencement of construction.”

2. Compliance with the Standards and Guidelines

The SEQRA record discussed potential impacts to water resources from onsite disposal of sanitary waste and nitrate-nitrogen generated by the Project. The allowable flow under Article 6 of the Suffolk County Sanitary Code is 300 gallons per day per acre (gpd/acre). The projected flow rate falls below the requirements for connection to a Sewage Treatment Plant (STP); therefore, an on site septic system is permitted and is therefore proposed. Pursuant to Article 6, up to 22,272 gpd of wastewater could be treated onsite in conventional septic systems. The applicant proposes to install conventional systems to treat its projected sanitary flow of 15,436 gpd, an amount below the limit permitted on the project site as of right by the Suffolk County Sanitary Code. Furthermore, it should be noted that the Article 6 regulatory requirements and the applicable Central Pine Barrens Standard, only require review and consideration of the wastewater and nitrogen concentrations generated by a new project, not the nitrogen conditions already existing on a site. Based on the above, the Project will conform to Standard 5.3.3.1.1 concerning SCDHS Article 6.

Standard 5.3.3.2 is not applicable since a Sewage Treatment Plant is not proposed.

The CGA-DRS application presented data on the Project’s proposed nitrate nitrogen levels in recharge to groundwater, as per the result of the applicant’s computer model Simulation of Nitrogen in Recharge (SONIR). The SONIR model result for the nitrate nitrogen concentration in groundwater from wastewater generated by the Project is 1.95 mg/l, which is below the CLUP Guideline of 2.5 mg/l stated in Guideline 5.3.3.1.3 for projects in proximity to wetlands as well as below the NYS Drinking Water Standard of 10 mg/l.

The SEQRA Record contains the test results of two piezometers (PZ) installed on the project site by the applicant and sampled for nutrient and other water quality parameters in January and February 2010. The two tests performed on January 28, 2010 detected nitrate concentrations of 0.0 mg/l and 8.61 mg/l in PZ-1 and PZ-2, respectively. Due to the detection of elevated nitrate levels in PZ-2, additional follow-up tests were performed on February 9, 2010. The February test revealed a nitrate level of 13.7 mg/l, confirming the presence of elevated groundwater nitrogen on site. As also discussed below, the SEQRA Record attributes elevated levels of nitrogen-based compounds to the presence of suspended sapric hydric soils (rich in organic content) naturally occurring on the project site as they comprised the remnants of a previously-existing natural wetland. The suspended sapric hydric soils were detected in two groundwater sampling locations on site.

The results also revealed the presence of several VOC's, metals, and other water quality constituents. Of these detected compounds, the VOC bis(2-Ethylhexyl)phthalate as well as the metals, arsenic, chromium, and lead were found to exceed their respective DEC ambient groundwater quality standards for Class GA groundwaters, which are typically used for drinking water purposes. The compound bis(2-Ethylhexyl)phthalate is a common laboratory contaminant and therefore is attributed to this cause. According to the DSEIS, the elevated levels of arsenic and chromium can be attributed to local stormwater sources, residual stormwater sediments in catch basins within the parking lot, and/or are naturally occurring in geological material that has dissolved in the aquifer.

At the public hearing, the Commission discussed the results of groundwater monitoring data provided in the SEQRA Record. At the request of the Commission, the applicant consented to conduct additional groundwater sampling on site. A proposal was submitted to the Commission office for review on December 3, 2010, which showed five additional sampling well sites including a control site near the central border of the wooded, undeveloped area.

On March 9, 2011, the applicant submitted a Groundwater Monitoring Report. The Report concluded that samples retrieved from wells identified as MW-4 and MW-5, on the south side of the project site, were found to contain a significant quantity of suspended material consisting of sapric hydric soils (soils comprised of organic materials comprised of highly-decomposed former natural wetland plant material), which are naturally high in nitrogen due to their organic content. The soils are remnants of a former wetland, associated with Artist Lake, which previously spanned Route 25 decades ago and has since been filled. There is no Federal, State or local statutory or regulatory protocol or requirement to treat or mitigate elevated levels of nitrogen in groundwater on a project site. Nevertheless, as required in the redevelopment process, the applicant will remove and backfill pre-existing septic systems in accordance with Suffolk County Department of Health Sanitary Services (SCDHS) Code Standard Operating Procedure (SOP) No. 9-95 revised August 2010. This action will serve to remove some continuing sources of the aforementioned constituents.

At the Commission meeting of March 16, 2011, the applicant presented a summary of the results of the Report. On April 4, 2011, Commission staff requested clarification from the applicant on some of the conclusions in the Report. On April 13, 2011, the applicant submitted responses to the staff's request for clarification of groundwater sampling data supplied in the Report including the depths of sampled wells, the standard operating procedures that will occur in removing underground structures and existing implementing regulations to test and abandon septic systems on site. Furthermore, as previously noted, the nitrate-nitrogen generated by the Project will be at a concentration of 1.95 mg/l, below the applicable guideline of 2.5 mg/l. Based on the above analysis and discussion, the Project will conform to Standard 5.3.3.1.3 regarding nitrate-nitrogen.

There will be no industrial uses on the project site. The project will conform to SCDHS requirements and will therefore conform to the Pine Barrens Standard 5.3.3.2.1.

B. Wellhead Protection

1. Standards and Guidelines

a. Standard 5.3.3.3.1 - Significant discharges and public supply well locations

The standard states *"The location of nearby public supply wells shall be considered in all applications involving significant discharges to groundwater, as required under the New York State Environmental Conservation Law Article 17."*

b. Guideline 5.3.3.3.2 - Private well protection

The guideline states *"The Suffolk County Department of Health Services' guidelines for private wells should be used for wellhead protection."*

2. Compliance with the Standards and Guidelines

The nearest public water supply well, which is owned and operated by Suffolk County Water Authority (SCWA), is Bailey Road Wellfield, located approximately 1,100 feet west of the project site. According to the Source Water Assessment Program (SWAP) discussed in the Suffolk County Comprehensive Water Resources Management Plan, Task 5.5, Suffolk County, NY (2009), the project site is not within the zone of contribution nor above the Source Water for the Bailey Road Wellfield. The Project will be served by the Suffolk County Water Authority (SCWA) via existing mains adjacent to the site.

The discussion in this Findings Statement and CGA-DRS application concerning sanitary waste and nitrate nitrogen loading from the project indicate there will be no impacts to public and private water supplies since the project will comply with

SCDHS Article 4 (regarding private water supply systems) and Article 6. The SONIR models used to evaluate potential nitrate nitrogen loading in groundwater recharge indicate the amount of nitrate nitrogen generated by the project will be below the Guideline of 2.5 mg/l and below the NYS drinking water standard of 10 mg/l for nitrates. Therefore, the Project complies with CLUP Standard 5.3.3.3.1 and Guideline 5.3.3.3.2 and will not result in any significant adverse impacts on groundwater and potable drinking water supplies.

C. Wetlands, Surface Waters and Stormwater Runoff

1. Standards and Guidelines

a. Standard 5.3.3.4.1 - Nondisturbance buffers

The standard states “Development proposals for sites containing or abutting freshwater or tidal wetlands or surface waters must be separated by a nondisturbance buffer area which shall be no less than that required by the New York State Tidal Wetland, Freshwater Wetland, or Wild, Scenic and Recreational Rivers Act or local ordinance. Distances shall be measured horizontally from the wetland edge as mapped by the New York State Department of Environmental Conservation, field delineation or local ordinance. Projects which require variances or exceptions from these state laws, local ordinances and associated regulations, shall meet all requirements imposed in a permit by the New York State Department of Environmental Conservation or a municipality in order to be deemed to have met the requirements of this standard.”

b. Standard 5.3.3.4.2 - Buffer delineations, covenants and conservation easements

The standard states “Buffer areas shall be delineated on the site plan, and covenants and/or conservation easements, pursuant to the New York State Environmental Conservation Law and local ordinances, shall be imposed to protect these areas as deemed necessary.”

c. Standard 5.3.3.4.3 - Wild, Scenic and Recreational Rivers Act compliance

The standard states “Development shall conform to the provisions of the New York State Wild, Scenic and Recreational Rivers Act, where applicable. Projects which require variances or exceptions under the New York State Wild, Scenic and Recreational Rivers Act shall meet all requirements imposed by the New York State Department of Environmental Conservation in order to be deemed to have met the requirements of this standard.”

d. Guideline 5.3.3.4.4 - Additional nondisturbance buffers

The guideline states “Stricter nondisturbance buffer areas may be established for wetlands as appropriate.”

D. Stormwater Runoff

1. Standards and Guidelines

a. Standard 5.3.3.5.1 - Stormwater recharge

The standard states “*Development projects must provide that all stormwater runoff originating from development on the property is recharged on site unless surplus capacity exists in an off-site drainage system.*”

b. Guideline 5.3.3.5.2 - Natural recharge and drainage

The guideline states “*Natural recharge areas and/or drainage system designs that cause minimal disturbance of native vegetation should be employed, where practical, in lieu of recharge basins or ponds that would require removal of significant areas of native vegetation.*”

c. Guideline 5.3.3.5.3 - Ponds

The guideline states “*Ponds should only be created if they are to accommodate stormwater runoff, not solely for aesthetic purposes.*”

d. Guideline 5.3.3.5.4 - Natural topography in lieu of recharge basins

The guideline states “*The use of natural swales and depressions should be permitted and encouraged instead of excavated recharge basins, whenever feasible.*”

e. Guideline 5.3.3.5.5 - Soil erosion and stormwater runoff control during construction

The guideline states “*During construction, the standards and guidelines promulgated by the New York State Department of Environmental Conservation pursuant to state law, which are designed to prevent soil erosion and control stormwater runoff, should be adhered to.*”

2. Compliance with the Standards and Guidelines

The project site contains a 0.91 acre recharge basin on the southeast corner of the site, which is not a mapped New York State Department of Environmental Conservation (DEC) wetland but which is classified as a freshwater wetland pursuant to Chapter 81, Wetlands Law, of the Town Code of the Town of Brookhaven. As activity is proposed within 150 feet of this recharge basin, the adjacent area defined in Chapter 81, the Project therefore falls within the jurisdiction of Chapter 81 of the Town Wetlands Law.

According to the SEQRA Record, currently, pavement exists both within and near this recharge basin. The Project includes the partial removal of pavement from within the recharge basin and also within 150 feet of the recharge basin and will create drainage bio-filtration areas (rain gardens) to contain runoff from the new parking areas before it overflows to the recharge basin. Therefore, a natural nondisturbance buffer will be created, to reduce volume of runoff and improve water quality of runoff entering the recharge basin. According to the SEQRA Record, natural areas will also remain to the north and east of the recharge basin. The Project results in a net improvement to water quality in these adjacent wetlands, as it reduces the stormwater input due to the proposed natural stormwater attenuation installations and improves water quality of the stormwater input to the recharge basin. Moreover, as this recharge basin is a closed system and is not connected to Artist Lake, the aforementioned work proposed will not contribute to any adverse impacts on Artist Lake as a result.

The Town Findings Statement indicates that the project will conform to Chapter 81, Wetlands Law. Conformance to local laws including Chapter 81 will be a condition of approval. The Project's conformance with any and all other applicable laws will also be a condition of approval. As a result of the aforementioned analysis, the Project therefore conforms to CLUP Standard 5.3.3.4.1.

The Project includes the filing of a conservation easement for all of the areas to remain natural including buffers on the project site. A metes and bounds description to define all of the natural areas will be required in the filing. This will be a condition of approval. Based on the previous analysis, the Project will conform to CLUP Standard 5.3.3.4.2.

CLUP Standard 5.3.3.4.3 is not applicable as the site is located outside the Wild, Scenic and Recreational Rivers boundary.

In regard to CLUP Guideline 5.3.3.4.4 pertaining to additional nondisturbance buffers, the Project is subject to Town and DEC freshwater wetlands regulations due to the presence of the Town-regulated wetland, the recharge basin, and the DEC-regulated wetland, Artist Lake, located south of the Project site. The applicant proposes natural buffers to the north and east to border the recharge basin. The Project will retain existing vegetation on the Currans Road frontage in three areas, B, C and D, noted on the Hepler Plan. Area B is 0.32 acres (14,034.59 square feet). Area C is 1.48 acres (64,328.35 square feet). Area D is 0.38 acres (16,554.77 square feet). As a result, the Project will conform to Guideline 5.3.3.4.4 because a non-disturbance buffer stricter than that required by the DEC will be imposed.

In regard to Guidelines 5.3.3.5.1 through 5.3.3.5.5, Stormwater runoff, the project will use the existing recharge basin to collect and store stormwater from the project site and will enhance the quality of stormwater runoff before it enters the recharge basin. As stated in the SEQRA record innovative handling methods will be utilized where possible such as rain gardens for bio-filtration in initial surface collection areas of the

parking lots and prior to overflow to subsurface leaching structures. Furthermore, a Stormwater Pollution Prevention Plan (SWPPP) will be prepared for the project and submitted to the reviewing agency in accordance with DEC SPDES Permit regulations and The Project is required to obtain a General Permit for Stormwater Discharges from Construction Activities under the DEC SPDES program and as implemented by the Town. This permit will not allow for direct overland flow of runoff from newly developed areas to the on-site wetland nor to Artist Lake, which is located off the site. Based on this analysis, including the project's compliance with the aforementioned stormwater pollution management requirements, the Project will conform to CLUP Guidelines 5.3.3.5.1 through 5.3.3.5.5.

E. Conclusions

According to the SEQRA record, the Project will not result in significant adverse impacts to groundwater, wetlands or surface water.

II. Land Use and Ecology

The Central Pine Barrens Development Standards and Guidelines concerning natural vegetation and plant habitat are set forth below along with a discussion on potential impacts to natural vegetation and wildlife habitat, mitigating measures and conformance to applicable standards and guidelines.

A. Natural Vegetation and Plant Habitat

1. Standards and Guidelines

a. Standard 5.3.3.6.1 - Vegetation Clearance Limits

The standard states “the clearance of natural vegetation shall be strictly limited. Site plans, surveys and subdivision maps shall delineate the existing naturally vegetated areas and calculate those portions of the site that are already cleared due to previous activities.

Areas of the site proposed to be cleared combined with previously cleared areas shall not exceed the percentages in Figure 5-1. These percentages shall be taken over the total site and shall include, but not be limited to, roads, building sites and drainage structures. The clearance standard that would be applied to a project site if developed under the existing residential zoning category may be applied if the proposal involves multi-family units, attached housing, clustering or modified lot designs. Site plans, surveys and subdivision maps shall be delineated with a clearing limit line and calculations for clearing to demonstrate compliance with this standard.

To the extent that a portion of a site includes Core property, and for the purpose of calculating the clearance limits, the site shall be construed to be the combined Core

and CGA portions. However, the Core portion may not be cleared except in accordance with Section 5.2 of the CLUP.”

b. Standard 5.3.3.6.2 - Unfragmented open space

The standard states “Subdivision and site design shall support preservation of natural vegetation in large unbroken blocks that allow contiguous open spaces to be established when adjacent parcels are developed. Subdivision and site designs should also be configured in such a way so as to prioritize the preservation of native pine barrens vegetation to the maximum extent practicable.

For the purpose of this paragraph, native pine barrens vegetation shall include pitch pines and various species of oak trees, understory and ground cover plants such as blueberry, wintergreen, bearberry and bracken fern, grasses and sedges such as little bluestem, Pennsylvania sedge and Indian grass as well as those ecological communities listed in sections 5.6 and 5.7 in Chapter 5, Volume 2 of the CLUP.

It is recognized that the preservation of nonnative but ecologically important habitats may be consistent with the intent and goals of the CLUP when such action would result in the creation of large contiguous natural open space areas and or the protection of rare, threatened or endangered species or their habitat.”

c. Standard 5.3.3.6.3 - Fertilizer-dependent vegetation limit

The standard states “No more than 15% of an entire development project site shall be established in fertilizer-dependant vegetation including formalized turf areas. Generally, nonnative species require fertilization therefore, planting of such nonnative species shall be limited to the maximum extent practicable. The use of the nonnative plants in Figure 5-2 is specifically not recommended.”

d. Standard 5.3.3.6.4 - Native Plantings

The standard states “Development designs shall consider the native planting suggestions contained in Figure 5-2 of the Central Pine Barrens Comprehensive Land Use Plan.”

2. Compliance with the Standards and Guidelines

The SEQRA record discussed impacts to natural vegetation. The project site is composed of three lots in three different zoning districts as per the Town’s 1995 zoning map:

- Lot 3.1: D-1 (48.67 acres),
- Lot 5.1: J-2 Business (16.19 acres),
- Lot 5.1 and Lot 12: A-1 Residence (9.38 acres).

Lot 5.1 spans two zoning districts—J-2 Business (16.19 acres) and A-1 Residence (1.81 acres). Each different zoning district has an applicable clearing Standard, as per Figure 5-1 of the CLUP. The applicable Standard in each district is listed in the table below.

Lot	Zoning District	Area of Project Site		Allowable clearing		Natural area remaining	
		acres	%	acres	%	acres	%
3.1	D-1	48.67	65.56%	34.07	70%	24.68	33.24%
5.1	J-2	16.19	21.81%	10.52	65%		
5.1	A-1	1.81	2.44%	0.96	53%		
12	A-1	7.57	10.20%	4.01	53%		
Total		74.24	100.00%	49.56	66.76%	24.68	33.24%

The majority of the project site area contains pitch pine oak forest habitat encompassing 46.65 acres (62.84% of the project site). An area of successional field habitat covers an estimated 0.64 acres (0.86% of the project site). The total amount of existing natural area on the project site is 47.29 acres (63.7%). The project site also contains existing clearing encompassing 26.95 acres (36.3% of the project site), which is composed of unvegetated/dirt, impervious surfaces/paved, buildings, lawn, and a recharge basin.

Based on the amount of land area in each different zoning district, the total amount of clearing permitted on the project site is 49.56 acres (66.76%). This amount includes the existing cleared area covering 26.95 acres, the additional clearing needed for the commercial development, and the 5.62 acre area devoted to active recreational areas. Based on this analysis, a remaining area of no less than 24.68 acres (33.24% of the project site), must be retained in its existing natural state. The Applicant proposes to retain 29.41 acres of existing natural vegetation (39.6%). Any area subdivided as part of the Project and/or dedicated to the Town for any use must comply with the Standard including clearing and natural areas, as discussed herein.

According to the Hepler Plan, the following areas will be protected in the Project.

Protected Area	Acreage	Area (square feet)	Percent
A	19.85	864,979.32	67.52%
B	0.32	14,034.59	1.09%
C	1.48	64,328.35	5.03%
D	0.38	16,554.77	1.29%
E	7.37	321,153.14	25.07%
Total	29.41	1,281,050.17	100.00%

As noted in this table, the project will preserve a total of 29.41 acres of existing naturally-vegetated area and results in the preservation of 4.73 acres more than the minimum required. In addition to the above-listed natural areas to be preserved, the Project includes the revegetation of 1.89 acres of existing disturbed or impervious surfaces, as well as

additional 0.5 acres on the east side of the site. These areas are not included in the amount of existing natural vegetation to remain on the project site as open space, which will be restricted for use by the filing of a Declaration of Covenants and Restrictions.

The project site currently permits access under an easement to the easterly adjacent Town-owned public dog park. The Town approval resolution for the Project dated June 14, 2011 was subject to a condition for the applicant/owner to submit an access agreement to permit access to the existing Town Park on SCTM # 200-347-3-13.2. Any development on the Town park property, and establishment of the access to the Town Park, must also comply with the Standards and Guidelines of the CLUP.

In regard to CLUP Standard 5.3.3.6.2, Unfragmented open space, the site design clusters development in the southern two-thirds of the project site and retains natural open space in its current location in the northern portion of the project site.

The Project will protect existing natural vegetation on the project site including the areas on the west side noted as areas B, C, and D, and an area noted as E around the recharge basin on the east side to remain natural. Although areas B, C, D, and E are not contiguous to the bulk of natural area in the northern portion, area A, the Commission determined that it was important to protect existing natural vegetation in its current place rather than disturb and remove it to accommodate the Project. The Project will conform to CLUP Standard 5.3.3.6.2 as the Project retains the existing natural vegetation in its current place and minimizes fragmentation to the maximum extent practicable.

The Project includes landscaping that will cover 4.5 acres (6%) of the project site, which will contain fertilizer dependent vegetation. As this is 9% less than the standard's maximum limit of 15%, the Project will conform to CLUP Standard 5.3.3.6.3.

The SEQRA record indicates that a complete Landscape Plan will be submitted at the time of Site Plan review. The dominant vegetation proposed in the Landscape Plan must be composed of native plantings. Any proposed plantings, landscaping and revegetation, shall be native. This will be a condition of approval. Based on the preceding review and analysis, the Project will conform to CLUP Standard 5.3.3.6.4.

B. Species and Communities of Special Concern

1. Standard

a. Standard 5.3.3.7.1 - Special species and ecological communities

The standard states “Where a significant negative impact upon a habitat essential to those species identified on the New York State maintained lists as rare, threatened, endangered or of special concern, or upon natural communities classified by the New York State Natural Heritage Program as G1, G2, G3 or S1, S2 or S3, or on any federally listed endangered or threatened species is proposed, appropriate mitigation

measures as determined by the appropriate state, county or local government agency shall be taken to protect these species.”

2. Compliance with the Standard

The SEQRA record contains an analysis of resources based on information the applicant received by letter dated February 23, 2009 from the New York Natural Heritage Program (NHP). According to NHP, ecological communities and species identified as occurring in the vicinity of the northwestern property boundary included three ecological communities of significance, one endangered amphibian, one special concern moth species, three endangered plants, five threatened plants species, and one rare plant species.

As a result of the findings of the NHP data, Artist Lake and the natural areas surrounding the Lake were inspected by Nelson Pope & Voorhis ecologists during the summer season of 2010 to determine the presence/absence of rare, threatened and/or endangered species listed in the NHP correspondence. Inspections occurred on June 17, 2010, July 13, 2010, and September 16, 2010. During inspections, only one of the listed plant species was identified in Artist Lake, small floating bladderwort, a threatened species. It was observed along the northern shoreline of both the eastern and western lobes of the lake. No additional rare, threatened or endangered species were encountered during the site inspections.

NHP listed the tiger salamander as occurring at a DEC freshwater pond known as MD-12 located approximately 630 feet northwest of the boundary of the project site. The Project has been designed to avoid disturbance to and protect the land on the project site within a 1,000 foot radius of the tiger salamander pond. Therefore, the Project will not result in a “taking” according to DEC and will not require a DEC Environmental Conservation Law Article 11 Permit for impacts to endangered species. The protection of upland tiger salamander habitat on the project site within the 1,000-foot radius of the pond will be a condition of approval. As a result of the preceding review and analysis, the Project will conform to Standard 5.3.3.7.1.

C. Coordinated Design for Open Space Management

1. Standards and Guidelines

a. Standard 5.3.3.9.1 - Receiving entity for open space dedications

The standard states “*Applications must specify the entity to which dedicated open space will be transferred.*”

b. Guideline 5.3.3.9.2 – Clustering

The guideline states “*Municipalities are strongly urged to maximize the use of the clustering technique where its usage would enhance adjacent open space or provide contiguous open space connections with adjacent open space parcels.*”

c. Guideline 5.3.3.9.3 - Protection of dedicated open space

The guideline states “*Proposed open space should be protected with covenants, conservation easements or dedications that specify proper restrictions on its use and contingencies for its future management.*”

2. Compliance with the Standards and Guidelines

In regard to CLUP Standard 5.3.3.9.1 Receiving entity for open space dedications, the Project results in open space comprised of 29.41 acres of existing natural area. The proposed active recreation area/athletic facilities are not included in the open space requirement. The natural area must be protected through the filing of a conservation easement. This will be a condition of approval. The Project will therefore conform to CLUP Standard 5.3.3.9.1.

With respect to CLUP Guideline 5.3.3.9.2 (Clustering), the proposed site layout is designed to cluster development to the southern portion of the site and the proposed open space/natural area to the north, with the exception of three small areas to remain natural on the Currans Road frontage, identified on the “Conceptual Pine Barrens Clearing Limit Plan” as B, C, and D, and Area E that encompasses the existing recharge basin, a Town regulated wetland.

The proposed active recreational area including three athletic fields covering 5.62 acres of the project site will be developed between the commercial development on the south side of the site and open space on the north side of the site. Land managed by DEC exists to the north. The Project was clustered to the south to retain the largest block of unfragmented open space where it currently exists on the northerly half of the site.

The minimum amount of the 74.24 acre project site area required to remain in its existing natural state is 24.68 acres, however, the applicant will provide 29.41 acres of existing natural area to remain on site, the majority of which is clustered in the northern portion of the property identified as Area ‘A’ in the “Conceptual Clearing Limit Plan.” This will be a condition of approval. Accordingly, the Project will conform to CLUP Guideline 5.3.3.9.2.

In regard to CLUP Guideline 5.3.3.9.3 (Protection of dedicated open space) a conservation easement will be filed to ensure the protection of the required amount of open space for the Project. Any clearing on dedicated land or for facilities including active recreational uses will not be counted toward the area required to remain natural. The Project will therefore conform to CLUP Guideline 5.3.3.9.3.

D. Agriculture and Horticulture

1. Guideline

a. Guideline 5.3.3.10.1 - Best management practices

The guideline states “Any existing, expanded, or new activity involving agriculture or horticulture in the Compatible Growth Area should comply with best management practices, as defined herein, and relevant requirements including local law. Best management practices are, for purposes of this CLUP, the same practices stated in the most recent version of Controlling Agricultural Nonpoint Source Water Pollution in New York State (Bureau of Technical Services and Research, Division of Water, New York State Department of Environmental Conservation, 1991 and as later amended).”

2. Compliance with the Guideline

The project site does not contain any active agricultural or horticultural activity and the Project does not involve agriculture or horticulture; therefore Guideline 5.3.3.10.1 does not apply to this Project.

E. Commercial and Industrial Development

1. Standard

a. Standard 5.3.3.12.1 - Commercial and industrial compliance with Suffolk County Sanitary Code

All commercial and industrial development applications shall comply with the provisions of the Suffolk County Sanitary Code as applied by the Suffolk County Department of Health Services, and all other applicable federal, state or local laws. Projects which require variances from the provisions of the Suffolk County Sanitary Code shall meet all requirements of the Department of Health Service's Board of Review in order to be deemed to have met the requirements of this standard.

2. Compliance with the Standard

No industrial uses or other uses are proposed that would be subject to the Suffolk County Sanitary Code for such uses. The Project will conform to the Suffolk County Department of Health Standards Administration of Article 12 of the Suffolk County Sanitary Code SOP No. 9-95 revised August 2010 to remove and abandon existing septic systems and drainage basins. The Project will conform to Standard 5.3.3.12.1.

F. Conclusions

The Commission finds that based on the project's SEQRA record as discussed in this Findings Statement, the project will not result in significant adverse impacts to land use or ecology.

III. Slopes and Soils

A. Slopes

1. Guidelines

a. Guidelines 5.3.3.8.1 Clearing envelopes

Clearing envelopes should be placed upon lots within a subdivision so as to maximize the placement of those envelopes on slopes less than ten percent (10%).

b. Guideline 5.3.3.8.2 Stabilization and erosion control

Construction of homes, roadways and private driveways on slopes greater than ten percent (10%) may be approved if technical review shows that sufficient care has been taken in the design of stabilization measures, erosion control practices and structures so as to mitigate negative environmental impacts.

c. Guideline 5.3.3.8.3 Slope analyses

Project review is facilitated if submissions contain a slope analysis showing slopes in the ranges 0-10%, 11-15% and 15% and greater. In areas with steep slopes, slope analysis maps should be required. This can be satisfied with cross hatching or shading on the site plan for the appropriate areas.

B. Soil

1. Guidelines

a. Guideline 5.3.3.8.4 - Erosion and sediment control plans

The guideline states "*Erosion and sediment control plans should be required in areas of fifteen percent (15%) or greater slopes.*"

b. Guideline 5.3.3.8.5 - Placement of roadways

The guideline states "*Roads and driveways should be designed to minimize the traversing of slopes greater than ten percent (10%) and to minimize cuts and fills.*"

c. Guideline 5.3.3.8.6 - Retaining walls and control structures

The guideline states “*Details of retaining walls and erosion control structures should be provided for roads and driveways which traverse slopes greater than ten percent (10%).*”

2. Compliance with the Guidelines

The SEQRA record assessed impacts to soils and slopes from the construction of the Project.

Slopes within the central portion of the project site exceed 15%. In order to provide adequate building areas and create a grade transition for the parking lot, grading, cut and fill will be required. A net export of excavated soil of approximately 110,740 cubic yards is anticipated. This volume includes removal of existing pavement, but does not include soil removal for buildings, curbs, foundations, footings, and drainage systems which will be performed separately by trade contractors after overall site grading is complete. The maximum depth of cut is expected to be 15 feet. The maximum depth of fill is expected to be 12 feet.

The project site should be staked and flagged prior to site disturbance to ensure protection of steep slopes, vegetation, and other areas that are not approved for development during and after construction activity. This shall be a condition of approval. The Project will therefore conform to CLUP Guideline 5.3.3.8.1.

Grading operations are proposed on 44.83 acres of the project site. The Grading Plan in the DSEIS depicts the extent and details of grading to be performed during construction. The project will also utilize and redevelop existing cleared and developed areas for the project. According to the SEQRA record, development of the project site will result in an estimated 110,740 cubic yards of cut and fill. The depth of cut is 15 feet; the depth of fill is 11 feet.

An estimated 36,000 cubic yards of demolition debris will be removed from the project site prior to redevelopment. The debris consists of the existing vacant building on the project site, impervious surfaces, and other existing structures to be removed.

Construction on site will include the installation of erosion control measures to minimize or avoid erosion of sediments on adjacent roadways and in existing catch basins. A Stormwater Pollution Prevention Plan will be prepared for the Project. Prior to the onset of construction, the applicant will be required to obtain a DEC SPDES Phase II permit under the General Permit for Stormwater Discharges from Construction Activities, pursuant to program requirements as implemented by the Town. This permit program requires a detailed erosion and sediment control plan to manage stormwater generated on-site during construction activities. The erosion control plan will incorporate DEC Technical Guidance Manual measures such as silt fencing, storm drain inlet protection, hay bales, and good housekeeping measures.

The Project includes the construction of retaining walls which will diminish the amount of area subject to disturbance and grading. The maximum grade change to be addressed by retaining walls is 13 feet. Grade transitions will be made using slopes not to exceed 1:3 as well as the use of retaining walls to reduce the area and volume of soil requiring grading. The walls are estimated to be a maximum of 13 feet in height. The Project will conform to Guidelines 5.3.3.8.2 through 5.3.3.8.6.

Erosion control and stabilization measures are incorporated as part of the Project. The Project will be subject to a condition of approval to obtain a DEC Stormwater SPDES permit and comply with local Brookhaven Town Chapter 86 Stormwater Management and Control regulations including the preparation, submission, and approval of a Stormwater Pollution Prevention Plan (SWPPP), subject to Town approval.

C. Conclusions

The Commission finds that based on the project's SEQRA record, the Project will not result in significant adverse impacts to slopes or soils.

IV. Scenic, Historic and Cultural Resources

A. Cultural Resources

1. Guidelines

a. Guideline 5.3.3.11.1 - Cultural resource consideration

The guideline states "*Development proposals should account for, review, and provide protection measures for:*

- 1. Established recreational and educational trails and trail corridors, including but not limited to those trail corridors inventoried elsewhere in this CLUP.*
- 2. Active recreation sites, including existing sites and those proposed as part of a development.*
- 3. Scenic corridors, roads, vistas and viewpoints located in Critical Resource Areas, and along the Long Island Expressway, Sunrise Highway, County Road 111 and William Floyd Parkway.*
- 4. Sites of historical or cultural significance, including historic districts, sites on the State or National Registers of Historic Places, and historic structures listed on the State or National Registers of Historic Places, or recognized by local municipal law or statute.*
- 5. Sensitive archaeological areas as identified by the New York State Historic Preservation Office or the New York State Museum."*

b. Guideline 5.3.3.11.2 - Inclusion of cultural resources in applications

The guideline states “Development proposals should note established recreation and educational trails and trail corridors; active recreation sites; scenic corridors, roads, vistas and viewpoints located in Critical Resource Areas and undisturbed portions of the roadsides of the Long Island Expressway, Sunrise Highway, County Road 111 and William Floyd Parkway; sites on the State or National Register of Historic Places, and historic structures and landmarks recognized by municipal law or statute, or listed on the State or National Registers of Historic Places; and sensitive archaeological areas as identified by the New York State Historic Preservation Office or the New York State Museum within a five hundred (500) foot radius of the outside perimeter of the project site, including any project parcels which are physically separate from the bulk of the proposed development area.

A development proposal may be disapproved or altered if the local municipality determines that the development proposal, in its current form, may have a significant negative impact on any of the above resources.”

B. Scenic and Recreational Resources

1. Guidelines

a. Guideline 5.3.3.11.3 - Protection of scenic and recreational resources

The guideline states “Protection measures for scenic and recreational resources should include, but not be limited to, retention of visually shielding natural buffers, replacement of degraded or removed natural visual buffers using native species, use of signs which are in keeping in both style and scale with the community character, and similar measures.”

b. Guideline 5.3.3.11.4 - Roadside design and management

The guideline states “Undisturbed portions of the roadside should be maintained in a manner that protects the scenic features of these areas. Clearing (including that for aisles, driveways, access and parking) is not precluded within these roadside areas, provided that appropriate buffers are maintained, and that manmade structures meet standards consistent with the character of the area.”

2. Compliance with the Guidelines

The SEQRA record provided a discussion of cultural and archaeological resources for the project site. By letter dated March 18, 2010, the Commission received a response from SHPO which stated, “[a] Phase I archaeological survey was warranted for all portions of the project site to involve ground disturbance, unless substantial prior ground disturbance can be documented.”

The preparation of the DSEIS included a Phase IA and a Phase IB cultural resources analysis. With regard to prehistoric potential, the DSEIS concluded, “The project area has

an above average potential for the recovery of prehistoric sites on any intact soil.” With respect to historic sites, the DSEIS states, “[t]he study area has a higher than average potential for the recovery of historic sites on any intact soil.” The Phase IB survey resulted in the excavation of 488 shovel tests across the project area. No prehistoric artifacts or features were encountered. No historic artifacts or archaeological features were encountered. No future archaeological work is therefore recommended.”

The project site is adjacent to Artist Lake, which is designated as a Scenic Resource in Chapter 8 of Volume 2 of the CLUP. The existing topographic features on site provide scenic views of Artist Lake when one is on the project site looking south. The Project is expected to enhance the opportunity to view Artist Lake from the project site.

The Project provides active recreation areas in the form of athletic ballfields. The proposed site design includes architectural features and other design elements which are consistent with the surrounding area and which are in accordance with the CLUP.

The southern half of the project site was previously developed with a big box store and a large parking lot. The northern portion contains existing natural pine barrens habitat. Street trees were planted and exist on the Middle Country Road frontage and flank the entrance to the site from NYS Route 25.

The project site is visible from NYS Route 25. The Currans Road frontage contains some existing natural vegetation, which will remain in three pocket areas identified on the Hepler Plan as B, C, and D.

Based on the above analysis, the Project will conform to CLUP Guidelines 5.3.3.11.1 through 5.3.3.11.4.

C. Conclusions

The Commission finds that based on the SEQRA record, the project will not result in significant adverse impacts to cultural, scenic or recreational resources.

V. Final Conclusion and Conditions of Approval

The Commission finds that the project complies with the Central Pine Barrens Standards and Guidelines for development and therefore no hardship waiver is necessary. In making this finding, the Commission has:

- 1) considered the relevant environmental impacts, facts and conclusions disclosed in the final EIS as they pertain and are within the purview of the Commission’s review of the CGA-DRS application for this project.
- 2) weighed and balanced the relevant environmental impacts with social, economic and other considerations.
- 3) provided a rationale for its decision by the written facts and conclusions contained herein based on the project’s SEQRA record and CGA-DRS application.

- 4) certifies that the requirements of this Part have been met.
- 5) certifies that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures that were identified as practicable.

The Commission finds there will be no significant adverse environmental impacts as a result of this Project and therefore approves the Artist Lake Plaza CGA-DRS subject to the following conditions of approval:

CONDITIONS OF APPROVAL

1. This Commission approval is for the Artist Lake Plaza CGA-DRS Project as depicted in the Conceptual Pine Barrens Clearing Limit Plan #A004.3 prepared by Hepler Associates dated October 27, 2009, and in accordance with the SEQRA record, subject to the following:
 - a. Land use
 - i. No change in the intensity of land uses.
 - ii. No increase in wastewater flow above the maximum as of right wastewater flow of 22,272 gallons per day on the 74.24 acre project site as per the Suffolk County Department of Health Services (SCDHS) Article 6 of the Sanitary Code. Any change(s) in land use density or intensity that constitute development pursuant to ECL 57 or that require SCDHS Board of Review variance(s) will be subject to Commission review and action.
 - iii. Any change to the project including an increase or decrease in development intensity and the respective Plan must be submitted to the Commission and is subject to Commission review and action.
 - iv. Submission of a copy of the final subdivision map to the Commission office with copies of recorded Covenants and Restrictions (C&Rs) granted to the Commission within two weeks of filing. Any resulting lots must be placed on notice in the C&Rs that all lots are subject to this approval and conditions. Any deviation from the instant proposal is subject to Commission review and action.
 - b. Protection of natural vegetation and clearing
 - i. The amount of area to remain in its existing natural state shall be no less than 29.41 acres. This does not include any proposed revegetation, restoration, landbanked parking, active recreational areas, areas for road widening or dedication, or any other areas of the site modified by the Project during and after the Project.

- ii. No more than a total of 49.56 acres of the project site shall encompass the cleared portion of the site, which includes the existing cleared and developed area of 26.04 acres and an additional amount of 23.52 acres of clearing of existing vegetation.
- iii. No more than 23.52 acres of existing natural vegetation on the project site shall be cleared for the Project.
- iv. Any clearing on the adjacent Town-owned park in excess of the CLUP Standard 5.3.3.6.1 Vegetation Clearance Limit, or for the establishment of access to the Town-owned park which would exceed the clearing limit for the Project site, shall be subject to the provisions of ECL Article 57 and the CLUP.

c. Clearing

- i. Prior to the commencement of demolition and construction activities on the project site, a split rail fence shall be installed along the interior limit of clearing lines.
 - 1. Notify the Commission office in writing one week in advance of this activity.
 - 2. During the one week notification period and prior to demolition and site disturbance, a site inspection of the fence and clearing limits shall be performed by Commission staff.
- ii. Existing natural vegetation including trees and shrubs that are removed from the 23.52 acres of area to be cleared for the Project should be transplanted and reused on-site in areas where the 1.89 acres of restoration is proposed and where landscaping is planned.
- iii. The Standards and Guidelines were applied to the existing three parcels that comprise the 74.24 acre project site. Once the proposed subdivision is effective, the existing tax map parcel numbers will change. Regardless of the reconfiguration of parcels, change of zone, subdivision, or any other modification(s) to the parcels that currently comprise the 74.24 acre project site, no additional disturbance to natural vegetation is permitted on any tax map parcels, current or future, comprising the current project site. Neither the Town nor any other agency may grant a waiver for any clearing proposed in the future. Only the Commission has the authority to grant a waiver of the CLUP Standards.

d. A conservation easement

- i. Prepare and file a conservation easement to be granted to the Commission, to retain 29.41 acres of existing natural vegetation as depicted on the Hepler Plan. Submit the draft easement to Commission counsel for review and approval. File the easement within six months of the date of this resolution. The easement shall be recorded in the County Clerk's office with proof of filing provided to the Commission prior to site disturbance, construction, or any other activity on the project site, and prior to the issuance of demolition and other building permits by the Town.

- ii. Identify the protection of the 1,000 foot natural, undisturbed buffer to the DEC pond identified as MD-12, an endangered tiger salamander breeding pond.

2. Artist Lake

- a. Any future plans within or adjacent to the surface water wetlands of Artist Lake that constitute development pursuant to ECL Article 57 are subject to Commission review and action.

Prior to the commencement of the restoration of 3,000 square feet of shoreline on Artist Lake, submit a restoration plan to the Commission, subject to its review and action.

3. Prior to site work, disturbance, demolition or construction on the instant project site:

- a. The owner shall notify the Commission one week prior to the commencement of demolition, site disturbance and/or construction.
- b. A site inspection of the delineation of clearing limits will occur after notification and prior to commencement of demolition and site disturbance.
- c. The owner shall provide the Commission with a copy of any and all Town approvals, final approved Site Plan(s) signed by the Town Board of the Town of Brookhaven within two weeks of receiving Town approval and signature.
- d. At a minimum, snow fencing must be installed to delineate the areas to remain natural and the clearing limit lines.
- e. Stake the limits of the location of a split rail fence to be installed around the boundaries of all areas to remain natural shown as A, B, C, D, and E on the referenced Plan.
- f. Obtain any and all other permits including but not limited to Town change of zone, variances, wetlands permits, tree clearing permits; Suffolk County Department of Health Services approval; DOT roadway work approval; and DEC SPDES and freshwater wetlands permits.

4. Declaration of Covenants and Restrictions

- a. In order to ensure continuing conformance with the Central Pine Barrens Comprehensive Land Use Plan and the Long Island Pine Barrens Protection Act, a notice covenant must be filed with the Suffolk County Clerk setting forth that the project site, all existing and future parcels that encompass the 74.24 acre site as a result of the proposed subdivision, is in the Compatible Growth Area of the Central Pine Barrens and that any modification of the Site Plan and the current tax map parcels that comprise the current project site are subject to Commission review and action.
- b. Notice to the future owner(s) of the project site or any of its current and future tax map parcels that the Project must comply with this decision. If future redevelopment projects do not comply, they are subject to Commission review and action, as per ECL 57 and the CLUP.

5. Any modifications to the existing Site Plan must first be reviewed and approved by the Commission.

6. Any change(s) to the data provided in the SEQRA record is subject to review and action by the Commission to accurately reflect the proposal and the future condition of natural areas to remain and development on the project site.

The Commission pursuant to 6 NYCRR Part 617.11 has prepared the Findings stated herein and shall cause it to be filed in accordance with 6 NYCRR Part 617.12(b).

COPIES OF THIS FINDINGS STATEMENT WILL BE SENT TO:

Environmental Notices Bulletin (ENB)
NYSDEC, Division of Environmental Permits, Albany
NYSDEC, Division of Environmental Permits, Region 1
New York State Department of Transportation
Suffolk County Planning Commission
Suffolk County Department of Health Services
Suffolk County Water Authority
Suffolk County Department of Public Works
Suffolk County Sewer Agency
Supervisor, Town of Brookhaven
Brookhaven Town Clerk
Applicant/Agent/Attorney

This statement is not complete until authorized as follows.

MOTION TO ACCEPT THE FINDINGS STATEMENT FOR THE ARTIST LAKE PLAZA
COMPATIBLE GROWTH AREA DEVELOPMENT OF REGIONAL SIGNIFICANCE
PROJECT

MOTION BY: Mr. Lesko
SECONDED: Mr. McCormick

VOTE:
YES: 5
NO: 0

MOTION TO APPROVE THE ARTIST LAKE PLAZA COMPATIBLE GROWTH AREA
DEVELOPMENT OF REGIONAL SIGNIFICANCE PROJECT

MOTION BY: Mr. Lesko
SECONDED: Mr. McCormick

VOTE:
YES: 5
NO: 0

DATE: July 20, 2011