

**FINAL FINDINGS STATEMENT FOR  
BROOKHAVEN WALK REGIONAL MALL**

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

Dated: June 20, 2007

**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 of Brookhaven Planning Board 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”), that is an involved agency under SEQRA. This Findings Statement, prepared by the Commission is for the proposed Brookhaven Walk Regional Mall Project (“the Project”) that has a Compatible Growth Area Development of Regional Significance (CGA-DRS) application before the Commission. The Project will be located on the west side of William Floyd Parkway, north of the Long Island Expressway’s north service road in Yaphank, Town of Brookhaven, New York (S.C.T.M. 0200-553-1-1.1 & 0200-584-2-1.2). The construction of the majority of the project will occur within an area previously cleared in 1997, pursuant to prior approvals, that is undergoing natural revegetation.

**INTRODUCTION AND BACKGROUND**

**Project Name:** Brookhaven Walk

**Project Description:**

The original project, known as Brookhaven Town Center, involved the construction of a 1.38 million square foot, enclosed regional shopping mall on 150.1 acres, zoned J3 Business (rezoned to J-2 Business). The proposed project included a cinema, auto center, onsite recharge basin and sanitary waste to be disposed offsite at the Dorade Sewage Treatment Plant. Clearing for the project occurred in 1997, subsequently, legal challenges resulted in the Town of Brookhaven approvals for the Brookhaven Town Center being overturned.

Rose-Breslin, LLC, owners of the property, by its agent, Nelson, Pope & Voorhis, submitted a CGA-DRS application for a revised Brookhaven Town Center proposal, dated June 1, 2001 to the Commission. The Commission held a public hearing on Brookhaven Town Center on October 17, 2001. The public portion of the hearing was closed and the comment period was left open until the applicant submitted additional information. A decision deadline extension was granted by the Commission, at the applicant’s request, to November 28, 2001.

At the Commission meeting on November 28, 2001 another extension was granted for the application's decision deadline to January 31, 2002. On January 31, 2002, the Commission determined that the Dorade Sewage Treatment Plant should be included as part of the CGA-DRS application for the project because the project proposed to use the Dorade STP for sanitary waste disposal. The Town of Brookhaven Planning Board ("the Town"), as lead agency, coordinated review with the Commission, an SEQRA involved agency. The Town conducted scoping for the Draft Environmental Impact Statement(DEIS) and caused a DEIS to be prepared, that was accepted by the Town on March 21, 2002. The Town held a public hearing on the project on April 22, 2002. The Commission submitted comments to the Town on the DEIS for Brookhaven Town Center(BTC) on April 26, 2002. A Final Environmental Impact Statement(FEIS) for Brookhaven Town Center and a Draft Supplemental Environmental Impact Statement(DSEIS) for a preferred reduced yield alternative, identified as Brookhaven Walk, were prepared by the applicant and accepted by the Town in August 2003.

The Brookhaven Walk regional shopping center project involves the construction of 850,000 square feet of commercial floor area in free-standing retail structures (open air style mall), a recharge basin, associated parking with sanitary waste treated at the Dorade Sewage Treatment plant. The Town held a public hearing on the combined FEIS for Brookhaven Town Center and Brookhaven Walk DSEIS on October 6, 2003 with written public comments due on October 17, 2003. Commission staff submitted comments on the FEIS/DSEIS on October 17, 2003. The BTC DEIS, the combined BTC FEIS and Brookhaven Walk DSEIS, and the Brookhaven Walk FEIS are referenced from this point forward in these findings collectively known as the "SEQRA record".

Subsequently, the applicant submitted a revised CGA-DRS application for the Brookhaven Walk project on November 14, 2005. The revised CGA-DRS application indicated the following changes to the project: the sanitary waste would be disposed in conventional onsite septic systems instead of offsite discharge to a sewage treatment plant, proposed the use of a underground stormwater management system in lieu of a recharge basin, and proposed minor changes to parking and landscaping requirements. The application was further revised in a resubmittal on May 5, 2006(minor page revisions submitted June 5, 2006). The Commission held a public hearing on June 21, 2006, and a transcript was made available to the Commission.

The Town accepted the FEIS for Brookhaven Walk, as revised on September 25, 2006. Rose-Breslin and its agents, including Nelson, Pope and Voorhis and David Sloane, Esq.,the applicant's attorney, made a presentation to the Commission at its meeting on November 15, 2006 on the changes to the project and responded to staff comments that were submitted at the June 21, 2006 public hearing.

On May 21, 2007, the Town of Brookhaven Planning Board adopted SEQRA findings for the Brookhaven Walk project. The Town's findings are herein incorporated by reference into the Commission's Findings as they pertain to the Commission's jurisdiction for this CGA-DRS project.

According to the Town of Brookhaven's Finding Statement, the Brookhaven Walk project has a total building footprint of 775,000 SF and a total gross floor area (GFA) of 850,000 SF. The project has been designed as an open-air mall, integrating vehicle and pedestrian traffic

throughout and centered on a public plaza and fountain area. Walking paths adjoin the surrounding retail structures and will be landscaped. Traditional architecture will be incorporated through the use of gabled and hipped roofs, cupolas, weathervanes, arbors, entrance canopies, storefront awnings, pediments, decorative medallions, ornamental gates, lattice work, dormers, circular/semi-circular windows and arched openings. Roofing materials will include shakes, shingles and other traditional finishes with wall materials consisting of brick, wood, stone and/or stucco. Brick pavers, fountains, tree-lined walkways and parking areas, specialized lighting, graphics and signage will also be utilized to complement the overall theme.

The Town's Findings further indicates the project will result in a total of ten (10) structures forming an arch around centrally located retail buildings. Nine (9) of the structures are one story in height, with the remaining structure proposed at two stories in height (which will not exceed the 35-foot height limit of the J-2 zone). The anticipated uses include two (2) restaurants, five (5) anchor stores, three (3) mini-anchor stores, and seven (7) general retail uses. As proposed, no single restaurant will have more than 200 seats and no restaurant will have a floor area of more than 5,000 SF. On-site parking spaces for 3,825 cars will be provided and an additional 1,513 spaces will be landbanked, for a total of 5,338 parking spaces provided (4,999 spaces are required by Town Code). All spaces will be provided at a rate of 4.5 spaces/1,000 SF.

The Findings made herein by the Commission comply with the requirements of SEQRA 6 NYCRR §617.11(d), by relying on the EIS, SDEIS and FEIS record to:

- (1) consider the relevant environmental impacts, facts and conclusions disclosed in the FEIS;
- (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 potentially significant environmental issues related to the Brookhaven Walk project based upon the information provided in the SEQRA record.

The project is considered a Development of Regional Significance as set forth in the Central Pine Barrens Comprehensive Land Use Plan ("the CLUP") because the proposed project is greater than 300,000 sf of gross floor area. When reviewing a DRS, the Commission must determine whether the project complies with the standards and guidelines for development in the CLUP.

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

The SEQRA record for this project discussed potential impacts that may occur to natural resources as a result of the project. In addition, the SEQRA record evaluated the potential impacts that may occur if some of the retail space is converted to a theater or additional restaurant use. The DSEIS and FEIS for the Brookhaven Walk project also identified mitigating measures for potential impacts. 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 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**

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**

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**

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**

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 FEIS discussed potential impacts to water resources from onsite sanitary waste disposal and nitrate-nitrogen in Section 1.4.3 of the main document and in an Appendix F document entitled "On-site Sanitary System Impact Assessment". This assessment was included in the CGA-DRS application submitted to the Commission. The proposed project's density has been reduced from a 1.6 million square foot (SF) mall to an 850,000 SF mall. The change in project

intensity reduces the sanitary flow to less than 30,000 gpd or just less than 200 gpd/acre, which is substantially less than the allowable flow under Suffolk County Article 6 of 300 gpd/acre.

The project originally proposed to use the Dorade Sewage Treatment Plant(STP) located in the Compatible Growth Area, north of the project site. The Dorade STP is in disrepair and needs upgrading. The CLUP Standard 5.3.3.1.2 states where practical to have an STP discharge outside and downgradient of the Central Pine Barrens. The applicant explored various STP alternative locations in the FEIS(i.e. Arrow parcel, Suffolk County Yaphank Sewage Treatment Plant or Town Sewage Treatment Plant). Since these other sewage treatment options were in the preliminary planning stages, the applicant obtained a waiver from the Suffolk County Sewer Agency (SCSA) permitting the on-site wastewater disposal system for Brookhaven Walk.

As stated in the FEIS, on October 17, 2005, the applicant received a waiver from a covenant on the project site from the SCSA that prohibited onsite sanitary systems. The waiver of the covenant allowed the project sponsor to treat waste onsite, however, the waiver is temporary in nature. According to the SCSA resolution granting the waiver, the sponsor must connect to an off site STP when one becomes available, as determined by the SCSA. To facilitate the potential future connection to an off-site plant, “dry sewer” lines have been included in the proposed project.

Pursuant to Article 6 of the Suffolk County Sanitary Code, up to 44,812 gpd of wastewater could be treated onsite in conventional septic systems. The applicant proposes to install four (4) conventional systems to treat a sanitary flow of 29,993 gpd, an amount below the limit permitted as of right by the Suffolk County Sanitary Code. The SCDHS provided a letter dated March 6, 2006 to the Town of Brookhaven Planning Board and a similar letter to Commission staff, dated November 17, 2006, that stated the project design flow is below SCDHS Article 6 allowable sewage density requirements and they did not envision that a significant impact would occur from the use on onsite sanitary systems. This conclusion is based, according to SCDHS, on over 30 years of studies and monitoring conducted by the SCDHS and others. This letter was included in Appendix A-7 of the FEIS. Based on the above, the project will conform with Central Pine Barrens Standards 5.3.3.1 and 5.3.3.2.

The FEIS presented in Appendices D-3 and D-4, the results from two models that simulate nitrate nitrogen levels in recharge to groundwater, BURBS and Simulation of Nitrogen in Recharge(SONIR). Although the use of onsite sanitary systems will increase the concentration of nitrate nitrogen onsite in comparison to the former proposal of sending it to an offsite STP, the concentration is anticipated to be 1.6 mg/l which is still below the Guideline stated in G.5.3.3.1.3 of 2.5mg/l for projects in proximity to wetlands and the NYS Drinking Water Standard of 10mg/l. These models also indicated that if the project was to increase to its maximum allowed sanitary flow of 44,812 gpd, the nitrogen level would be 2.4 mg/l.

Impacts to water resources will be further mitigated by limiting the percentage of the site that may be covered by fertilizer dependent vegetation to 5.62% of the site, as indicated by the conceptual site plan (sheet C-1) prepared by Vollmuth and Brush, LLC with a revision date of May 7, 2007. This is significantly below the Pine Barrens standard that allows a maximum of 15% of fertilizer dependent vegetation for a project site. There will be no industrial uses on the

project site. The project will conform with SCDHS requirements and will therefore conform with the Pine Barrens Standard 5.3.3.2.1.

According to the SEQRA record, no significant adverse impacts are anticipated from sanitary waste and nitrate nitrogen.

## **B. Wellhead Protection**

### **1. Standards and Guidelines**

#### **a. Standard 5.3.3.3.1 Significant discharges and public supply well locations**

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 Suffolk County Department of Health Services' guidelines for private wells should be used for wellhead protection.

### **2. Compliance with the Standards and Guidelines**

The William Floyd Wellfield, owned by Suffolk County Water Authority(SCWA) is the closest public water supply to the project. It is located 1,900 feet northeast of the project site. The project will be served by the Suffolk County Water Authority(SCWA) via existing mains adjacent to the site. The applicant has received a Letter of Water Availability from SCWA.

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 Articles 4 and 6 of the SCDHS. The SONIR and BURBS models used to evaluate potential nitrate nitrogen loading in groundwater recharge indicate the amount of nitrate nitrogen would be well below the NYS drinking water standard of 10 mg/l for nitrates.

## **C. Wetlands, Surface Waters and Stormwater Runoff**

### **1. Standards and Guidelines**

#### **a. Standards 5.3.3.4.1 Nondisturbance buffers**

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**

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**

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**

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**

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. Guidelines 5.3.3.5.2 Natural recharge and drainage**

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**

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 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**

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 0.8 acre vernal wetland located within the northern buffer area of the project site. This wetland is not directly connected to the aquifer and is located upgradient of any sanitary discharge points. The applicant will protect the wetland by maintaining a minimum 175-foot buffer of natural upland and/or naturally landscaped vegetation. The project will be required to obtain a General Permit for Stormwater Discharges from Construction

Activities under the NYSDEC SPDES program. This permit will not allow for overland flow of runoff from newly developed areas to the on-site wetland. In addition, the extensive buffer areas around this wetland will allow it to continue to receive runoff from natural lands within its contributing area maintaining the current hydrologic properties of this system.

The DSEIS and CGA-DRS application contained a site plan for the project that indicated disturbance would occur within the Town's 150-foot regulated area for the wetland, however, a revised conceptual site plan prepared by Vollmuth and Brush with a revision date of May 7, 2007 that was provided to the Commission, indicates no construction, grading, clearing or ground disturbance will occur within 175 feet of the wetland limit. A Town wetland permit is therefore no longer required. The applicant proposes to re-vegetate currently disturbed areas within the 150 foot limit that were cleared in 1997, pursuant to prior approvals, to provide an attractive and uninterrupted viewscape for project patrons and also provide some natural habitat value. The applicant has obtained a letter of non-jurisdiction from NYSDEC and the Town's Division of Environmental Protection for these activities. The project will therefore conform to Guidelines 5.3.3.4.1, 5.3.3.4.2. and 5.3.3.4.4. The DSEIS and FEIS discussed impacts to this wetland and found that it will not be adversely impacted by hydrologic modifications, sanitary wastewater, fertilizer usage, nitrate nitrogen or stormwater flow.

All stormwater runoff generated on-site will be recharged in drywell fields distributed beneath the parking areas, in lieu of a recharge basin. The drainage system will be sized to accommodate a minimum of 2 inches of rainfall and is proposed to have a total of 488 drywells. The drainage system has been subject to the review and approval of the Town Engineering Department and conforms to all applicable drainage and grading requirements of the Town. The proposed management of stormwater onsite conforms with the Pine Barrens Standard 5.3.3.5.1. and indirectly with Guidelines 5.3.3.5.2. and 5.3.3.5.4 since a recharge basin will not be used. The project will implement an erosion control plan incorporating the NYSDEC Technical Guidance Manual measures such as silt fencing, storm drain inlet protection, hay bales, and good housekeeping measures. This would conform with the Guideline 5.3.3.5.5. The project would conform with Guideline 5.3.3.5.3 since it does not involve the construction of ponds.

The prior discussion of sanitary waste and nitrate nitrogen in these findings indicate that there will be no adverse impact to wetlands or surface waters from stormwater runoff. The project is not within the Wild Scenic and Recreational Rivers (WSRR) Corridor, therefore the Pine Barrens Standard 5.3.3.4.3 does not apply. The Carmans River is located 3,500 feet to the southwest of the project site and is considered to have scenic and recreational significance under the WSRR Act. Potential impacts to the Carmans River from sanitary discharge were evaluated in the SEQRA record. The SEQRA record found that there were no potential impacts to the Carmans River from sanitary waste from this project. As discussed in the FEIS, nitrate nitrogen levels in groundwater recharge would be 1.6 mg/l based on modeling performed.

## **E. Conclusions**

The Commission finds that based on the project's SEQRA record discussed in this findings statement, the project will not have any significant 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 plant habitat, mitigating measures and conformance to applicable standards and guidelines.

### **A. Natural Vegetation and Plant Habitat**

#### **1. Standards and Guidelines**

##### **a. Standards 5.3.3.6.1 Vegetation Clearance Limits**

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**

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**

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**

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 the impacts to natural vegetation. The construction of the majority of the project will occur within an area previously cleared in 1997, pursuant to prior approvals. The proposed project will clear 89.46 acres that is 59.58% of 150.1 acre site, of which 72.60 acres were formerly cleared areas. There will be 60.69 acres (or 40.42% of the site) that will remain as natural and undisturbed and 3.27 acres of formerly cleared areas will be naturally re-vegetated. The total amount of onsite natural vegetation (natural and revegetated) following development will be 63.96 acres, or 42.60% of the site. There will be an additional 3.72 acres disturbed off-site associated with the reconstruction of the existing private roadway (Yaphank Woods Boulevard) along the western property boundary. The total project impact area including the offsite road improvements totals 153.86 acres that will result in clearing a total of 93.18 acres, or 60.56% that is below the Pine Barrens vegetation clearing limit of 65%.

Since the project will be built primarily within the previously cleared area, the areas to remain natural will perimeter the developed portion of the site. Using the previously cleared area of the site instead of locating the project elsewhere on an undisturbed, wooded area, will balance the goal of minimizing additional clearing of natural vegetation, while maximizing the retention of existing unfragmented open space. The impacts to natural vegetation will be mitigated by reusing previously cleared areas. Thus given the site's constraints, this project will therefore satisfy the Pine Barrens Standard 5.3.3.6.4.

The proposed project will provide 17.15 acres (11.42% of the site) of turf and landscaped areas. There will be 8.71 acres of non-fertilizer dependent vegetation and 8.44 acres (5.62%) will be fertilizer dependent vegetation. The project will therefore conform to the Pine Barrens Standard 5.3.3.6.3 that limits the amount of fertilizer dependent vegetation onsite to 15%.

Landscaped areas will be located within islands in the parking areas, along the buildings, and adjacent to the preserved naturally vegetated areas along the outside of the internal ring road. Landscape vegetation will consist of species considered native to Long Island as recommended in Figure 5-2 of the Central Pine Barrens Land Use Plan or species compatible to regional climatic conditions and will not consist of invasive species. This will conform to the Pine Barrens 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**

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.

### **Compliance with the Standard**

The SEQRA record for this project contains a detailed impact analysis on these resources based on information received from the New York Natural Heritage Program. There was an endangered butterfly noted to have historical presence in the vicinity of the site, however, the site does not contain optimal habitat for this species. The Northern Harrier is a threatened species that is listed as potentially using the site and additional species of concern were identified as being likely on this site. There was one unprotected and one rare vascular plant that were historically identified in the vicinity of the project site. The Natural Heritage Program has no records of known occurrences of significant natural communities or other significant habitats on or in the vicinity of the subject site. A letter dated August 9, 2006 from the NYS Natural Heritage program was received by the consultant. The letter stated based on the information provided by the applicant's consultant, there is no indication that the project site is currently used to any significant degree by the rare butterfly or plants listed in the report that accompanied the consultant's letter to the NYS Natural Heritage Program. The NYS Natural Heritage Program, therefore, had no suggestions for mitigation measures, but did advise that the NYSDEC should be contacted should these species be found during construction. No potential impacts would therefore be anticipated to occur and the project will conform to the Pine Barrens Standard 5.3.3.7.1 based on the NY Natural Heritage Program's correspondence.

## **C. Coordinated Design for Open Space Management**

### **1. Standards and Guidelines**

#### **a. Standard 5.3.3.9.1 Receiving entity for open space dedications**

Applications must specify the entity to which dedicated open space will be transferred.

#### **b. Guidelines 5.3.3.9.2 Clustering**

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**

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**

There will be 60.69 acres (or 40.42% of the site) that will remain as natural and undisturbed and 3.27 acres of formerly cleared areas will be naturally re-vegetated. The natural areas are located along the perimeter of the developed portion of the project site and represent a relatively deep buffer of open space. The total amount of onsite natural vegetation (natural and revegetated) following development will be 63.96 acres, or 42.60% of the site. The applicant

did not identify a receiving entity for the open space to be transferred as required by the Pine Barrens Standard 5.3.3.9.1, however, the Commission will make it a requirement as part of these findings that a conservation easement shall be placed on the open space area (common natural area) as a condition of approval. Therefore the project will conform with the Pine Barrens Standard 5.3.3.9.1. and Guideline 5.3.3.9.3. The Pine Barrens Guideline 5.3.3.9.2 related to clustering would not apply since this is a commercial project.

## **D. Agriculture and Horticulture**

### **1. Guideline**

#### **a. Guideline 5.3.3.10.1 Best management practices**

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 does not involve agriculture or horticulture, therefore the 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**

The project will conform to Suffolk County Article 6, as previously presented in these findings under the discussion of potential impacts to water resources from sanitary waste and nitrate nitrogen and is therefore in conformance with Standard 5.3.3.12.1. The applicant has received the necessary waiver from the SCSA to use on-site septic systems until an offsite STP is available.

## **F. Conclusions**

The Commission finds that based on the project's SEQRA record as discussed in this findings statement, the project will not have any significant 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**

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**

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**

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 for this project discussed impacts to soils and slopes from the construction of the project. According to the CGA-DRS application, project construction will not occur on slopes greater than 10%. The Grading Plan provided with the FEIS depicts the extent and details of grading to be performed during construction. To allow for the construction of the buildings, paved areas and drainage structures, the FEIS indicated an estimated 63,000 cubic yards (CY) of material will be exported from the site. A maximum cut of 18 feet is required, located in the retail building between Anchor "A" and Anchor "B", and a maximum depth of fill is 17 feet located west of Anchor "E" at the point where the parking drive curves. Given the size of the project, the 63,000 cubic yards (CY) of material that will be exported from the site is not considered significant.

Prior to the onset of construction, the applicant will be required to obtain a NYSDEC SPDES Phase II permit under the General Permit for Stormwater Discharges from Construction Activities. 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 NYSDEC Technical Guidance Manual measures such as silt fencing, storm drain inlet protection, hay bales, and good housekeeping measures.

Erosion control measures will be used to minimize loss of soil during construction, particularly in areas of steep slopes, adjacent to the wetlands and other natural areas, as well as in locations where potential erosion and sedimentation could adversely impact adjoining properties and streets. Soils will be wetted if necessary to limit fugitive dust and planting of exposed soils will occur as rapidly as possible following construction. As long as erosion is controlled during grading and construction, the potential for sediment transport will be minimal, and no significant loss of soils is expected. The SEQRA record for this project demonstrated that the project site does not experience soil constraints with regards to stormwater recharge or building stability provided appropriate soil compaction and building construction techniques are used. No significant impacts on geological resources from the grading operation are anticipated and all reasonable and practical mitigation measures will be undertaken. The project will conform with the Pine Barrens Guidelines 5.3.3.8.2 through 5.3.8.5. Guideline 5.3.3.8.1 does not apply since this project is not a subdivision.

Approximately 3200 linear feet of retaining walls will be installed along the exterior side of the ring wall to reduce the amount of grading required. The details for the retaining wall are provided on the grading plan prepared by Vollmuth and Brush with the revision date of May 7, 2007. This conforms to the Pine Barrens Guideline 5.3.3.8.6.

### **C. Conclusions**

The Commission finds that based on the project's SEQRA record as discussed in this findings statement, the project will not have any significant impacts to slopes or soils.

## **IV. Scenic, Historic and Cultural Resources**

### **A. Cultural Resources**

#### **1. Guidelines**

##### **a. Guidelines 5.3.3.11.1 Cultural resource consideration**

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**

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**

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**

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.

**3. Conformance with the Guidelines**

The BTC EIS provided a discussion of cultural and archaeological resources for the project site. A Phase 1 A and 1 B archaeological investigation was performed for the project site and the results were included in a report in Appendix I of the EIS. The New York State Parks, Recreation and Historic Preservation provided a letter to the applicant's consultant, dated October 23, 2006, that indicated the project will not have an impact on cultural resources in or eligible for inclusion on the State and National Registers of Historic Places.

The BTC EIS discussed the visual character of the project site and adjacent properties, in particular the adjacent Whispering Pines/Colonial Woods condominiums. The project has been reduced in size and height from the original Brookhaven Town Center project. The deep setbacks, thick buffers of natural vegetation along the northern, eastern and southern property lines, the use of shrouds or "cut offs" on the pole-mounted, dark sky-compliant lighting fixtures, and extensive landscaping will minimize visual impacts from the project on the surrounding properties, along the roadside and on scenic and recreational resources in the area.

The project will therefore conform to the Pine Barrens Guidelines 5.3.3.11.1 through 5.3.3.11.4.

### **C. Conclusions**

The Commission finds that based on the SEQRA record for this project, as discussed in this findings statement, the project will not have any significant impact to cultural, scenic or recreational resources.

### **V. Final Conclusion and Conditions of Approval**

The Commission finds that the project meets 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 environmental impact to the environment from this project and therefore approves the Brookhaven Walk project subject to the following conditions of approval:**

### **CONDITIONS OF APPROVAL**

1. The Commission approval is for the Brookhaven Walk project as depicted in the Conceptual Site Plan prepared by Vollmuth and Brush with a revised date of May 7, 2007 with the following provisions:
  - a. The project approval is limited to a maximum of 850,000 sf Gross Floor Area (GFA) of commercial space.
  - b. 39% of the site shall remain natural and undisturbed. No more than 18.5 acres of new clearing is allowed.
  - c. No clearing is allowed in the northern portion of the site in the immediate vicinity of the wetlands and revegetation area that is located north of the ring road and extends from the access road to Yaphank Woods Boulevard westward.



- d. Any increase or change to the project and respective site plan must be submitted to the Commission for review and approval.
  - e. The owner shall provide to the Commission a final site plan stamped “Approved” and signed by the Town of Brookhaven Department of Planning within two weeks of receiving Town of Brookhaven approval and signature.
2. The owner shall notify the Commission one week prior to the commencement of construction of roadways and drainage.
  3. Prior to construction, construction fencing or superior must be installed along all interior limit of clearing lines.
  4. After construction, a 4 foot high, black chain link fence or superior must be installed along the interior limit of clearing lines that shall be indicated on the final site plan.
  5. Trees and shrubs from areas that will be cleared shall be reused onsite in areas to be revegetated and landscaping to the maximum extent possible.
  6. The owner shall submit one copy of the Suffolk County Department of Health Services approved site plan, a copy of the approved permit and SEQR Findings Statement.
  7. The owner shall provide the Commission with any and all of its agreements with the Suffolk County Department of Health Services that the Project will connect to an offsite sewage treatment plant if and when such connection is feasible.
  8. The owner must provide the Commission with copies of the New York State Department of Environmental Conservation State Pollution Discharge Elimination System (SPDES) permits, including any General Permit for Stormwater Discharges from Construction Activities and SPDES permit for discharge of sanitary waste greater than 1,000 gallons per day for the Project.
  9. To prevent future clearing of the site that may exceed the applicable clearing standard, the owner must covenant that in the event the Islander East Pipeline or successor project traverses the project site, the applicant or current owner of the project site must submit to the Commission a revised plan demonstrating whether the project site still conforms to the CLUP’s Standards and Guidelines after the pipeline is installed.
  10. 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 is in the Compatible Growth Area of the Central Pine Barrens and that any future development of the site must conform to the CLUP’s provisions.
  11. A conservation easement shall be placed on the open space (common natural areas) with a grantee acceptable to the Commission. The easement shall be recorded in the County Clerk’s office with proof of filing provided to the Commission prior to issuance of a CO by the Town.
  12. This approval is subject to all findings, conclusions and mitigation measures contained within the SEQR Findings Statement adopted by the Town of Brookhaven, and any involved agency.

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 Regulatory Services, Albany  
NYSDEC, Division of Regulatory Services, 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 BROOKHAVEN WALK  
REGIONAL MALL PROJECT

MOTION BY: Ms. Meek Gallagher

SECONDED: Ms. Prusinowski

VOTE: YES - 5            NO - 0

MOTION TO APPROVE THE BROOKHAVEN WALK REGIONAL MALL PROJECT

MOTION BY: Ms. Prusinowski

SECONDED: Mr. Shea

VOTE: YES - 5            NO - 0

DATE: June 20, 2007