

Central Pine Barrens Joint Planning and Policy Commission
Special Commission Meeting of February 3, 2022
Adopted Decision
RD Industrial Subdivision/Site Plan
Development of Regional Significance Compatible Growth Area
Ramsey Road/Precision Drive, Yaphank, Town of Brookhaven
Suffolk County Tax Map Numbers 200-554-3-4.41, 4.45 and 4.46

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

I. The Project, Project Site, and Application

AVR-SP Brookhaven JV LLC (the Applicant) owns three tax parcels identified as Suffolk County Tax Map Numbers 200-554-3-4.041, 4.045 and 4.046 that comprise 47.26-acres of property (the Project Site). The Project Site is known as RD Industrial and is in the Compatible Growth Area (CGA) of the Central Pine Barrens. The Project Site is located on the south side of the Long Island Long Island Expressway (New York State Route 495, LIE), the east side of Ramsey Road and Precision Drive, in Yaphank, in the Town of Brookhaven. The Project Site is in the L Industrial 1 Zoning District.

On November 3, 2021 the Applicant, through their attorney, J. Timothy Shea Jr. of Certilman Balin, and consultant Charles J. Voorhis of Nelson Pope & Voorhis, applied to the Central Pine Barrens Joint Planning and Policy Commission (the Commission) for a Development of Regional Significance (DRS) for a three-lot subdivision and site plan on the Project Site with 505,300 square feet (11.6 acres) of commercial/industrial land uses (the Project).

The Project is the development of three buildings including two one-story warehouse buildings and a three-story mini-storage use. Specifically, the Site Plan titled "Site Plan Showing Clearing Limits from December 9, 2021" prepared by Vollmuth & Brush, dated December 23, 2021, identifies a 150,000 square foot one-story industrial building (Building A) on the west side, a three-story 105,300 square foot mini-storage use building (Building B) on the north side, and a one-story 250,000 square foot building (Building C) on the east side of the Project Site. Other structures that will be developed on the Project Site include a 60-foot wide through-road, driveways, truck loading docks, drainage structures, retaining walls, utilities, and other infrastructure.

The Project Site is in Groundwater Management Zone III. The Project will connect to Sewer District Number 2 and will be connected to public water.

A Stormwater Pollution Prevention Plan (SWPPP) will be prepared and submitted to Town Engineer and New York State Department of Conservation for review and approval prior to

disturbance. The SWPPP is a requirement to manage stormwater and implement erosion controls during construction.

Approximately 93% or 43.88 acres of the 47.26 acre Project Site is naturally vegetated. Approximately 7% or 3.38 acres of the Project Site is cleared. Construction of the Project will occur on 30.44 acres or 64.4% of the Project Site. This area includes 27.06 acres of natural vegetation and 3.38 acres of existing cleared area. After clearing is complete, 16.82 acres or 35.59% of the Project Site as natural open space will be protected conservation easement.

One conservation easement will be prepared to protect open space. Five separate areas of open space are described and as shown in the Plan titled “Site Plan Showing Clearing Limits from December 9, 2021” prepared by Vollmuth & Brush dated December 23, 2021, including:

- Area A, 9.74 acres on the south side
- Area B, 5.69 acres on the north side
- Area C, 1.24 acres on the west side
- Area D1, 0.07 acres, on the north side of Building A
- Area D2, 0.08 acres, on the north side of Building A

The Project will be developed on slopes less than 10% grade to the greatest extent. No natural steep slope topographic features exist on the site. Manmade slopes greater than 15% grade are present on 1.85 acres of the Project Site. Retaining walls will be developed. Where feasible, planted slopes are preferred over hard structures such as retaining walls.

In its November 5, 2021 correspondence, the New York State Office of Parks, Recreation and Historic Preservation stated the Project will have no impact on archaeological and/or historic resources listed on or eligible for the New York State and National Registers of Historic Places.

In its January 5, 2022 correspondence, the New York Natural Heritage Program (NHP) reported that a Federal or State-listed Threatened mammal, the Northern Long Eared Bat (NLEB), is documented within one mile of the Project Site and individuals may travel 1.5 mile from documented locations. The impact of concern is for cutting and removal of potential roost trees outside of the December 1 to February 28 clearing window. To protect the NLEB habitat, the applicant will adhere to NYSDEC restricted tree clearing periods.

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

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

ECL Section §57-0123(3)(a)) provides that, “[s]ubsequent to the adoption of the land use plan, the provisions of any other law, ordinance, rule or regulation to the contrary notwithstanding, no application for development within the Central Pine Barrens area shall be approved by . . . the [C]ommission . . . unless such approval or grant conforms to the provisions of such land use plan.” The Act provides the Commission with authority to exempt a Project from compliance through the issuance of a Commission approved hardship exemption. The Act contains the standards to use to determine whether a hardship exists.

The Project is a Development of Regional Significance (DRS) as defined in Section 4.5.5.1 of the Central Pine Barrens Comprehensive Land Use Plan (“the Plan”) since it exceeds 300,000 square foot gross floor area for commercial/industrial development. As a DRS, the Applicant must demonstrate that the Project conforms to Standards and Guidelines, outlined in Chapter 5 of the Plan. If the Project does not conform, the Applicant cannot proceed unless it receives an hardship exemption or modifies the Project to make it conform.

The Applicant commenced proscribed regulated development of the Project site without Commission approval. On December 15, 2021, the Commission issued a Notice of Violation to the Applicant directing it to terminate the prohibited activity. The Applicant resolved the violation through an Order on Consent. During the pendency of the Notice of Violation, the Commission’s review of the Application was suspended. Review resumed on January 5, 2022 when the Commission scheduled a public hearing on the Application for January 19, 2022.

III. The Public Process, Testimony, and Supplemental Materials

The DRS Application includes Part I of the Full Environmental Assessment Form (EAF), a review of Standards and Guidelines for Land Use, Subdivision/Site Plan and a Slope Analysis Plan.

The Applicant supplemented its November 9, 2021 application with materials submitted on January 14, 2022. A hearing was held on January 19 on the Application to determine whether the Project conformed with the Plan’s Standards and Guidelines. A Commission Staff Report was provided to the Commission members and made available to the public through posting on the Commission’s website prior to the Hearing. Only one member of the public commented at the Hearing. The written comment period was held open until noon on January 28. No written comments were received. A stenographic transcript was made of the hearing and provided to Commission members.

On January 20, the Applicant submitted additional material including the site plan package with 26 sheets titled RD Industrial at Yaphank originally dated March 16, 2021 and last dated January 10, 2022. These materials were the same as presented at the Hearing and did not materially differ from the materials submitted on January 14. In the last set of materials, the Applicant provided a letter explaining the amended site plan in the application approved by the Town on January 10, 2022 and eight plans. Amendments to the plans included reducing widths of truck driveway aisles and modifications to truck entrances and utilities and the potential for two additional blocks of open space on the north side of Building A.

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

The Project is a Type I Action under the New York State Quality Review Act (SEQRA). On October 21, 2021, the Commission received the State Environmental Quality Review Act (SEQRA) Lead Agency Coordination from the Brookhaven Town Planning Board for the Project Action. The Commission deferred Lead Agency and on December 6, the Planning Board assumed Lead Agency, adopted a Negative Declaration and approved the Project with conditions and variances. The Planning Board approved a site plan modification on January 10, 2022. The Town approved Project was the same as described in the materials presented during the Commission's hearing.

The Project requires additional permits and/or approvals from other involved agencies including the Suffolk County Department of Health Services, NYSDEC and the Town of Brookhaven.

V. History of the Project Site

The project site is in the Brookhaven R&D Plaza, which is an industrial subdivision approved in the 1980s. A Generic Environmental Impact Statement was prepared and Findings Statement was adopted on September 14, 1982. The development of each lot is subject to its own site specific environmental review.

VI. The Project Site and the Study Area

At the Commission's public hearing, the Staff Report described the Project Site and defined a Study Area that extends half mile from the site in all directions. The Study Area describes the land use pattern in the vicinity of the Project Site.

VII. Development of Regional Significance Review and Plan Conformance

Summary

Chapter 4 of the Plan outlines the review process for DRS projects. The Commission's review is limited to compliance with the Standards and Guidelines set forth in Volume 1, Chapter 5 of the Plan.

Standards and Guidelines that are Not Applicable

The Standards and Guidelines that do not apply to the Project either because the Project does not include a facility, structure or use that will cause an impact, the resource is not present, or the activity is not occurring include Standard 5.3.3.4.1 because freshwater wetland habitat is not present; Standard 5.3.3.4.3 because the site is not within the jurisdiction of the Wild, Scenic and Recreational Rivers Act; and Guideline 5.3.3.5.3 because no ponds are proposed.

Applicable Standards and Guidelines

A summary of the Standards and Guidelines identifies the status of conformance. Details are provided where relevant and applicable to explain conclusions related to conformity. It is noted where conformance is deferred to other agencies such as the Suffolk County Department of Health Services or NYSDEC that regulate protection of public health, groundwater and other natural resources.

Since the proposed land use is commercial/industrial, the uses may be subject to regulations that pertain to the management and storage of chemicals and hazardous materials and control of stormwater runoff to minimize water pollution. Where the Plan defers to another agency for regulated activity, the Project must obtain the other agency's approval. If the Project as reviewed by the Commission, does not comply with or is unable to obtain other required approvals, the Applicant must either obtain a Commission hardship exemption or modify the Project to conform with the Standards and Guidelines.

Standard or Guideline	Title	Conformance
Standard 5.3.3.1.1	Suffolk County Sanitary Code Article 6 Compliance	The Project will generate 20,212 gallons of wastewater per day. Compliance to be demonstrated upon Suffolk County Department of Health Services approval.
Guideline 5.3.3.1.3	Nitrate-nitrogen goal of 2.5 mg/l	The Project's nitrogen concentration is 1.44 mg/l. Conformance is demonstrated.
Standard 5.3.3.2.1	Suffolk County Sanitary Code Articles 7 & 12 compliance	Compliance to be demonstrated upon Suffolk County Department of Health Services approval.
Standard 5.3.3.3.1	Significant discharges and public supply well locations	Compliance to be demonstrated upon Suffolk County Department of Health Services and New York State Department of Environmental Conservation approvals.
Guideline 5.3.3.3.2	Private well protection	Compliance to be demonstrated upon Suffolk County Department of Health Services and New York State Department of Environmental Conservation approvals.
Standard 5.3.3.5.1	Stormwater recharge	Compliance to be demonstrated upon other agency approval(s) of a Stormwater Pollution Prevention Plan
Guideline 5.3.3.5.2	Natural recharge and drainage	Obtain approval of the SWPPP. Compliance to be demonstrated upon other agency approval(s) of a Stormwater Pollution Prevention Plan
Guideline 5.3.3.5.4	Natural topography in lieu of recharge basins	The Project proposes to construct a water recharge area on the north side of Building A identified in the Site Plan as an "overflow low point storage swale". This is subject to Town Engineer approval.
Guideline 5.3.3.5.5	Soil erosion and stormwater runoff control during construction	Compliance to be demonstrated upon other agency approval of a Stormwater Pollution Prevention Plan.

Standard 5.3.3.6.1	Vegetation Clearance Limits	<ul style="list-style-type: none"> • The Project conforms with this Standard and does not exceed the maximum clearing limit of 65% in an industrial zoning district. • The Project will clear less than the maximum amount, 64.4%, including the area of prior disturbance, as directed by the Plan. • A maximum area of 16.82 acres or 35.59% of the Project Site will remain as natural open space. • Open space will be protected in a Conservation Easement granted to the Commission and monitored by Commission staff in the future. • Natural areas will be temporarily fenced prior to clearing and construction and subject to inspection • Temporary fencing shall remain in place and be maintained in a functional state during construction • When construction is complete, temporary fencing will be removed and permanent fencing such as split rail will be installed on the limits of natural open space
Standard 5.3.3.6.2	Unfragmented open space	<ul style="list-style-type: none"> ○ The Project prioritizes the preservation of native pine barrens vegetation as unfragmented open space to the maximum extent practicable due to the unique factors on the Project site including: ○ The site's location in an industrial subdivision that was planned and approved by the Town of Brookhaven in the 1980s. The three lots acquired by the applicant were merged and reconfigured to suit a regionally significant development plan that achieves conformance with the Plan Standards and Guidelines for land use. ○ The Town as Lead Agency, adopted a Negative Declaration for the Project finding no significant adverse environmental impacts as a result of the Project and the Project's consistency with the prior GEIS and Findings Statement for the 238 acre industrial subdivision. ○ The Town approved the Project with conditions in December 2021 and amended the approval with conditions on January 10, 2022 to recognize the applicant's amended proposal to reconfigure driveways and other infrastructure to increase the areas of blocks of open space and allow for improved truck circulation. ○ The Project reuses existed cleared areas of the site due to prior disturbance including a developed road that bisects the site. The road will be realigned and extended to the eastern boundary to accommodate a potential future passenger railroad station to the east, a vision that was supported by the Town of Brookhaven and Suffolk County during their reviews of the Project. ○ A former recharge basin on the site will be discontinued and the area will be reused for the Project. Upgraded stormwater structures will be developed to accommodate stormwater control on site. ○ No opportunities exist to connect open space on the Project Site with adjacent open space because there is no

		<p>designated contiguous open space. The site is surrounded by development on three sides—north, south and west including the New York State highway corridor of the Long Island Expressway to the north, the Long Island Rail Road train tracks to the south, and the industrial park to the west—and private land to the east. No open space adjacent to the site presently exists to achieve connectivity as supported in the Plan. Therefore, the site design has been configured within the Project Site in a way to prioritize the preservation of native pine barrens vegetation as unfragmented open space to the maximum extent practicable taking into account extenuating circumstances and limitations that presently exist due to the Project Site's history, layout and location.</p> <ul style="list-style-type: none"> ○ The project conforms to the unfragmented open space standard based on the aforementioned site considerations. ○ Open space will be protected in a conservation easement dedicated to the Commission.
Standard 5.3.3.6.3	Fertilizer-dependent vegetation limit	An area of 1.34 acres or 2.84% of the Project Site will be placed in fertilizer dependent vegetation, which is less than the maximum allowable limit of 15% or 7.09 acres of the Project Site.
Standard 5.3.3.6.4	Native Plantings	<ul style="list-style-type: none"> ● Native species will be planted except for a dense buffer of arborvitae to screen south side of Building C to buffer the view from residential communities on the south side of the adjacent railroad corridor. ● Transplanting of native plant material is encouraged. ● Flag trees to be protected in place during construction.
Standard 5.3.3.7.1	Special species and ecological communities	<ul style="list-style-type: none"> ● The Project will conform if it adheres to NYSDEC guidance to protect the Northern Long eared Bat, a New York State and Federal-listed Threatened species and its habitat as per the NHP letter and guidance from NYSDEC Region 1.
Guideline 5.3.3.8.1	Clearing envelopes	Stake and snow fence clearing envelopes prior to site disturbance and construction.
Guideline 5.3.3.8.2	Stabilization and erosion control	Obtain approval from the Town Engineer for soil erosion control and stabilization measures during and after construction.
Guideline 5.3.3.8.3	Slope analysis	The slope analysis showed 1.85 acres of slopes greater than 15%. The Applicant's testimony indicated these slopes are man-made mounds from prior site disturbance as opposed to natural topographic features.
Guideline 5.3.3.8.4	Erosion and sediment control plans	Obtain required approval of erosion and sediment control plans.
Guideline 5.3.3.8.5	Placement of roadways	Obtain approval for the proposed roads and driveways.
Guideline 5.3.3.8.6	Retaining walls and control structures	<ul style="list-style-type: none"> ● Retaining walls are proposed and shown in the site plan sheets. ● Obtain approval of the Town Engineer. ● Planted slopes are encouraged where feasible over hard structures.
Guideline	Clustering	Although greater clustering is always possible, as directed by the

5.3.3.9.2		Guideline, the Town has determined that the site design is acceptable to conform to Town Code regulations including dimensional areas for the Project Site and the Brookhaven R&D industrial subdivision.
Guideline 5.3.3.9.3	Protection of dedicated open space	<ul style="list-style-type: none"> • Open space will be protected in conservation easements dedicated to the Commission. • Record easements prior to construction activity and no more than six months after the date of this Resolution. Provide proof of recording to the Commission.
Guideline 5.3.3.11.1	Cultural resource consideration	<ul style="list-style-type: none"> • No signage, either free standing or on a building, shall be visible from the LIE. • A covenant should be recorded to avoid construction of signage visible from the LIE • Signs are proposed on the Project Site's interior roadways. Monument or other signage on site shall be no taller than 15 feet.
Guideline 5.3.3.11.2	Inclusion of cultural resources in applications	<ul style="list-style-type: none"> • Preserve the widest roadside buffer on the LIE • The Project will have no impact on archaeological and/or historic resources listed on or eligible for the New York State and National Registers of Historic Places.
Guideline 5.3.3.11.3	Protection of scenic and recreational resources	Preserve the widest roadside buffer on the LIE
Guideline 5.3.3.11.4	Roadside design and management	Preserve the widest roadside buffer on the LIE No new access roads shall be developed without commission review
Guideline 5.3.3.12.1	Commercial and industrial compliance with Suffolk County Sanitary Code	Compliance to be demonstrated upon Suffolk County Department of Health Services approval, as applicable.

VIII. Conclusion

The Project entitled RD Industrial Compatible Growth Area Development of Regional Significance is depicted in the plan titled “Site Plan Showing Clearing Limits from December 9, 2021” prepared by Vollmuth and Brush dated December 23, 2021 and the Site Plan package last dated January 10, 2022 and prepared by Vollmuth and Brush has demonstrated conformance for the foregoing reasons, is approved, and is subject to the following conditions.

1. No expansion of structures that increase building height, floor area, sewage flow or clearing on the Project Site or reduce the amount of open space required in this Resolution.
2. No on site septic will be installed. The Project will connect to the Suffolk County Sewer District No. 2 in the Brookhaven R&D Plaza. Suffolk County Department of Health Services approval is required.

3. No more than 27.06 acres of existing natural vegetation may be cleared. Combined with 3.38 acres of existing cleared area, no more than 30.44 acres (64.4%) of the site may be developed. No less than 16.82 acres or 35.59% must remain as natural open space and protected in a Conservation Easement.
4. Conservation Easement
 - a. Submit one draft Conservation Easement (CE) to protect 16.82 acres of open space that is granted to the Commission for review within two months of this Resolution. The Easement is subject to approval of the Commission's Executive Director.
 - b. A CE shall protect a 16.82 acres or 35.59% of the Project Site.
 - c. Areas where groundwater remediation equipment is installed on the Project Site constitute environmental restoration, as defined in the Act, and are not subject to Easement terms and may be included in the Reserved Rights section of the CE.
 - d. Commission shall have the right to inspect the CE areas of open space on an annual basis.
 - e. Easements shall be recorded in the Suffolk County Clerk's Office before grading activities commence on the Project Site.
 - f. Submit proof of recording to the Commission.
5. Record a Declaration of Covenants and Restrictions
 - a. No more than 15% fertilizer dependent vegetation on the Project Site.
 - b. No signage shall be visible from the north side of the site and from the Long Island Expressway including building signs, free standing signs and monument signs.
6. Prior to disturbance and construction on site, install temporary snow fencing on clearing limits. Maintain temporary fencing in a functional state until construction is complete then remove temporary fencing.
7. Notify the Commission for inspection of snow fencing that delineates the clearing limits 48 hours prior to disturbance. Where a tree is on the immediate border, stake the tree within the easement area to protect it and avoid removal.
8. Notify the Commission for inspection when clearing is complete.
9. When construction is complete:
 - a. Notify Commission in writing.
 - b. Submit an As Built Site Plan within one year of completion of the Project. This plan will be used by the Commission in future monitoring and conformance inspections.
 - c. Install split rail fencing on the boundaries of easement areas within one year of completion of construction.
10. Comply with all NYSDEC regulations and guidance to protect listed species including the Threatened Northern Long-eared Bat.
11. Retain a natural vegetated buffer on the LIE to the greatest extent.

12. Limit nighttime lighting and where it is necessary, install dark skies compliant lighting fixtures that face downward.
13. Comply with other local, Suffolk County and New York State regulations.
14. This approval shall expire five (5) years from the date of this Resolution.
15. Any changes of the Project, as approved, must be reviewed and approved by the Commission.

Motion to Determine Conformance with Standards and Guidelines for RD Industrial CGA-DRS

Date: February 3, 2022

Motion By: Mr. Romaine

Seconded: Mr. Dale

Vote:

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

No: None

Abstain: None

Absent: None

Copies of This Decision Will be Sent To:

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

New York State Department of Transportation

Suffolk County Planning Commission

Suffolk County Department of Health Services

Suffolk County Department of Public Works

Suffolk County Sewer Agency

Suffolk County Water Authority

Town of Brookhaven Supervisor

Town of Brookhaven Town Clerk

Town of Brookhaven Town Board

Town of Brookhaven Board of Zoning Appeals

Town of Brookhaven Planning Environment and Land Management

Town of Brookhaven Building Department

Town of Brookhaven Parks and Recreation Department

Applicant

Attorney

