

**Central Pine Barrens Joint Planning and Policy Commission**  
**June 17, 2020**  
**Adopted Decision to Approve**  
**Silver Corporate Park Industrial Subdivision**  
**Development of Regional Significance Compatible Growth Area Hardship**  
**Yaphank, Town of Brookhaven, Suffolk County Tax Map Number 200-662-2-5.16**

Present: Ms. Gallagher, for the Governor of the State of New York  
Mr. Dale, for the Suffolk County Executive  
Mr. Romaine, Brookhaven Town Supervisor  
Ms. Aguiar, Riverhead Town Supervisor  
Mr. Schneiderman, Southampton Town Supervisor

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

Angelo Silveri c/o Silver Corporate Park LLC (the Applicant) owns a 71.41-acre unimproved parcel of land identified as Suffolk County Tax Map Number 200-662-2-5.16 (the Project Site), in the Compatible Growth Area (CGA) of the Central Pine Barrens. The Project Site is located on the north side of the North Service Road of the Long Island Expressway (New York State Route 495, LIE), west of Sills Road, in Yaphank, Town of Brookhaven. The Project Site is in the L1 Industrial Zoning District.

On December 7, 2018, the Applicant, through their agent, Philip Butler of Farrell Fritz, P.C., applied to the Central Pine Barrens Joint Planning and Policy Commission (the Commission) for a Development of Regional Significance (DRS) and Compatible Growth Area (CGA) Hardship Exemption for development of a 12-lot subdivision with 550,000 square feet of commercial/industrial land uses. The Applicant seeks to have the Commission waive strict compliance with the Central Pine Barrens Comprehensive Land Use Plan (the Plan) to remove 18,948 square feet of steep slopes on the Project Site. The Application for the DRS and hardship waiver request are collectively referred to as the Project.

The Slope Analysis Plan, last dated April 21, 2020, prepared by Key Engineering, provides clearing data and slope analyses on each lot and on the overall Project Site. The Slope Plan identifies three lots, Lots 3, 6 and 7, that are the subject of the waiver request to remove 18,948 square feet of steep slopes. The same three lots (3, 6 and 7) also contain 1.74 acres of steep slopes that will remain undisturbed and be voluntarily protected by the Applicant.

Except for 1.74 acres of undisturbed area on Lots 3, 6 and 7, the 12 building lots, ranging in size from 2.76 acres to 4.93 acres, will be cleared in their entirety. The subtotal of clearing in building lots is 41.94 acres and 4.48 acres of clearing will occur to develop a new access road named Silver Corporate Park Boulevard. The total clearing limit on the Project Site is 46.41 acres or 65%. The open space is placed in Lots 13 and 14 totaling 25 acres or 35%. The Applicant is required to maintain 25 acres as natural. The Applicant exceeds that by 6.71 acres, for a total of 31.71 acres to remain natural. The additional voluntary natural areas are in a roadside buffer (4.93 acres) and undisturbed steep slopes (1.74 acres).

The Project Site is in Groundwater Management Zone III. Conventional sanitary systems will be constructed and discharge wastewater to groundwater. Each building lot has frontage on the new interior road, which terminates in a cul-de-sac. A 1.02-acre recharge basin with an 8" rainfall capacity will be constructed in the cul-de-sac.

Public water will be supplied to the Project Site by a new water main extension that will be constructed from Sills Road for a length of 4,038 feet on the North Service Road. The nearest public water supply well field is more than 1,500 feet away.

A Stormwater Pollution Prevention Plan (SWPPP) will be prepared and submitted to NYSDEC for review and approval prior to disturbance. The SWPPP is a requirement to manage stormwater and implement erosion controls during construction. Reinforcing silt fencing will be installed. Erosion and sediment control plans will be prepared to develop Lot 7 where steep slopes of 15% or greater are present.

Disturbance to steep slopes has been significantly minimized to cluster the extent of natural steep slopes in the open space, outside of building lots, except for the waiver request. The Slope Analysis Plan identifies categories of existing slopes, vegetation clearance limits, and steep slope disturbance. The Project Site area of slopes of 0 to 10% grade comprises 58.25 acres; the area of 10-15% slopes comprises 7.83 acres; and the area of slopes 15-59.8% comprises 5.32 acres. Construction on slopes greater than 10% will not occur, except in the steep slope waiver area including:

- Lot 3: 2,847 square feet (10 to 15% grade slopes)
- Lot 6: 3,514 square feet (10 to 15% grade slopes)
- Lot 7: 12,256.4 square feet including:
  - 11,218.52 square feet (10 to 15% grade slopes)
  - 1,368.35 square feet (15 to 59.8% grade slopes)
- Total disturbance: 18,947.87 square feet (0.43 acres) (17,579.52 square feet on 10 to 15% slopes and 1,368.35 square feet on slopes greater than 15%)

Silver Corporate Park Boulevard will be developed on slopes less than 10% grade. Details of retaining walls on slopes greater than 10% will be prepared and submitted to the Town Engineer. Where feasible, planted slopes are preferred over hard structures such as retaining walls.

In its correspondence dated January 18, 2019 and February 12, 2019, the New York Natural Heritage Program (NHP) reported that a Federal or State-listed Threatened mammal, specifically the Northern Long Eared Bat (NLEB), has been documented within one mile of the Project Site and may utilize the site's natural habitat. The impact of concern is for cutting and removal of potential roost trees. To protect the NLEB habitat, no clearing will occur on the Project Site from April 1 to October 31 of any given year. The NHP reported an historical documented occurrence of the Persius Duskywing, a New York State-listed Endangered butterfly species. NYSDEC recommended surveys be performed to determine the presence or absence of host plants for this species.

In its December 20, 2018 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 in or eligible for the New York State and National Registers of Historic Places.

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

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

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

The Project is a Development of Regional Significance (DRS) as defined in Section 4.5.5.1 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, and seek a hardship waiver to disturb the slopes as identified.

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

The Application includes a Part I of the Full Environmental Assessment Form (EAF), a review of Standards and Guidelines for Land Use, the Subdivision Map, a Slope Analysis Plan, Stipulation of Settlement dated 2014, and a narrative addressing the hardship exemption pursuant to the Act.

On December 19, 2018, the Commission scheduled a public hearing on the Application. The hearing was held on January 23, 2019. At the hearing, a Commission Staff Report with Exhibits was introduced into the record. The Applicant, under sworn testimony, expressed they would address the concerns in the Staff Report and provide responses. Only one member of the public commented. A stenographic transcript was made of the hearing and provided to Commission members.

On April 10, 2019, the Applicant submitted supplemental and revised materials, plans, a review of Standards and Guidelines and a response to items raised in the Staff Report. A Traffic Impact Study, dated and submitted on April 18, 2019, prepared by Stonefield Engineering and Design, concluded no significant level of service changes or increases occur from the Project.

On April 6, 2020, the Applicant submitted a copy of plans prepared by Key Engineering that were transmitted to the Town to address Town concerns on road design and lot layout. This revision affected and reduced the overall number of lots from 15 to 14. The Applicant prepared a revised Slope Analysis Map, dated April 21, 2020, and prepared by Key Engineering, to provide clearing and slope analysis data necessary to identify and assess impacts to steep slopes, as per the comments in the Staff Report.

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

On December 19, 2018, the Commission commenced the State Environmental Quality Review Act (SEQRA) process and performed a coordinated review with Involved Agencies for this Type I action. Additional material submitted on January 3, 2019 included Part I of the EAF and a revised slope analysis plan, in which a third lot was added to the steep slope waiver request.

On February 6, 2019, the Town of Brookhaven Planning Board coordinated Lead Agency with the Commission. On February 11, 2019, the Commission deferred Lead Agency to the Town which subsequently assumed Lead Agency status.

On July 2, 2019, the Town sent the Commission a revised Site Plan accompanied by a referral letter and indicated a Traffic Impact Study was underway, which once completed, would also conclude the SEQRA process. On July 17, 2019, Commission staff responded to the referral and provided comments on the referral materials for the Town's consideration.

The Town, as Lead Agency, prepared a Part II of the EAF, dated October 8, 2019, and Part 3 dated December 5, 2019, and adopted a Negative Declaration on January 13, 2020. On January 21, 2020 and February 10, 2020, the Applicant and the Town forwarded copies of the SEQRA documents to the Commission. Collectively, these materials constitute the SEQRA Record. Extensions of the decision deadline were submitted by the Applicant and granted by the Commission during this time, the latest of which was submitted on February 12, 2020 with the decision deadline extended to June 17, 2020.

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

#### **V. History of the Project Site**

The Applicant has made numerous proposals for the Project Site. In 2003 when a development proposal for a Planned Retirement Community on 192 acres and a request to change the zoning district from L1 and A1 to Planned Retirement Congregate Housing Community (PRCHC) was

submitted to the Town Board of the Town of Brookhaven. At that time, the proposals were under entitled Silver Island Pines, Silver Glen and Silver Corporate Park. The change of zone was approved on December 20, 2005 with a correction on December 30, 2005 to incorporate items omitted in the approval. In January 2006, the Town Board rescinded the approval.

In April 2006, the Applicant commenced an Article 78 proceeding against the Town. The Stipulation is the result of the litigation. The acquisition by the Town of 120 acres of the original 192-acre site area as natural public open space was a key element of the Stipulation. To date, approximately 63% of the original site has been protected. The Applicant proposes to protect 31.71 acres of the Project Site, resulting in 79% or 151 acres of the original site in open space.

## **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 one mile from the site in all directions. The Study Area describes the land use pattern in the vicinity of the Project Site.

The Project Site is presently undeveloped and contains a natural terrestrial habitat that is generally classified as a pitch pine-oak heath woodland ecological community type, except in the maintained overhead electric utility right of way corridor subject to a LIPA Easement. Historical aerial photography going back roughly 72 years to 1947, reveals the site has not been the subject of large-scale disturbance. It has remained the intact terrestrial woodland habitat it is today with a healthy dispersion of large pitch pine and oak trees, an understory of heath shrubs (e.g., huckleberry), natural leaf litter, and groundcover including spotted wintergreen and trailing arbutus.

In the immediate vicinity of the site, the south side borders on the North Service Road of the LIE. The west side adjoins a composting facility, and the northern and eastern boundaries adjoin public land. The LIE bisects the Study Area in half and forms the southern boundary of the Central Pine Barrens in this area. The area south of the LIE is outside of the Central Pine Barrens, although it is in the Study Area, and is therefore out of the Commission's jurisdiction. However, this area contains non-residential uses consistent with the proposed land use.

North of the LIE, on the east side of the Study Area and east of Sills Road, is an area of land that was placed in the Core Preservation Area in the 2014 expansion of the Central Pine Barrens to further protect the Carmans River and its watershed. The undeveloped, wooded Map of Enchanted Forest, located in this area, was subsequently protected by conservation easements through the Pine Barrens Credit Program.

The remainder of the Study Area is in the CGA. The north side of the Project Site adjoins natural open space owned by the Town. Residential land use development is located in the northerly portion of the Study Area. Adjoining the site to the west is a large agricultural/composting land use, beyond which are situated residentially developed communities.

## **VII. Development of Regional Significance Review and Plan Conformance**

## Summary

The Act authorizes the Commission, by majority vote, to waive strict compliance with the Plan upon finding that such waiver is necessary to alleviate a demonstrated hardship. Chapter 4 of the Plan outlines the review process for development that meets the thresholds constituting a DRS. The Commission's review is limited to compliance with the Standards and Guidelines set forth in Volume 1, Chapter 5 of the Plan.

The Application demonstrates conformance with Standards and Guidelines, except for the area that is the subject of a hardship waiver, i.e., removal of steep slopes on 18,948 square feet of the Project Site.

## Standards and Guidelines that are Not Applicable

Not all Standards and Guidelines apply to the Project. This section identifies the Standards and Guidelines that do not apply to the Project either because the Project does not include a facility or structure that will cause an impact, the resource is not present, or the activity is not occurring. Specifically, no sewage treatment plant is proposed (S5.3.3.1.2); freshwater wetland habitat is not present (S5.3.3.4.1); the site is not within the jurisdiction of the Wild, Scenic and Recreational Rivers Act (S5.3.3.4.3); no ponds are proposed (G5.3.3.5.3); the vegetation clearing limit is met (S5.3.3.6.1); open space is unfragmented to the maximum extent (S5.3.3.6.2); the Project maximizes the clustering technique (G5.3.3.9.2); no land dedications will occur therefore no receiving entity is identified, and covenants will be recorded to protect natural areas (G5.3.3.9.3).

## 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 of conformity. It is noted where conformance is deferred to other agencies such as the Suffolk County Department of Health Services or NYSDEC who regulates 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 management and storage of chemicals and hazardous materials and control of stormwater runoff to minimize water pollution. Site specific land uses for each lot and site plans have not been identified or prepared by the Applicant. The Applicant will adhere to these regulations and seek to obtain permits or seek a hardship waiver(s).

Standard or Guideline	Title	Conformance
Standard 5.3.3.1.1	Suffolk County Sanitary Code Article 6 Compliance	Compliance to be demonstrated upon Suffolk County Department of Health Services approval. Absent redemption of Pine Barrens Credits, the sewage flow is capped at 21,423 gallons per day.
Guideline 5.3.3.1.3	Nitrate-nitrogen goal of 2.5 mg/l	<ul style="list-style-type: none"><li>• The Applicant shall provide proof that this Guideline will be met in the full buildout of the Project, prior to disturbance and development on the Project Site.</li><li>• If conformance is not demonstrated, a waiver request must be submitted, subject to review and decision.</li></ul>

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 (SCDHS) and New York State Department of Environmental Conservation approval.
Guideline 5.3.3.3.2	Private well protection	Compliance to be demonstrated SCDHS and NYSDEC approval.
Standard 5.3.3.5.1	Stormwater recharge	Compliance to be demonstrated upon other agency approval of a Stormwater Pollution Prevention Plan
Guideline 5.3.3.5.2	Natural recharge and drainage	The Project conforms.
Guideline 5.3.3.5.4	Natural topography in lieu of recharge basins	A recharge basin will be constructed in a less steeply sloped area of the Project Site; however, natural wales and depressions are not proposed.
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"> <li>• The Project conforms</li> <li>• 65% or 46.41 acres of the site will be cleared</li> <li>• 35% or 21.79 acres will remain natural consisting of existing pitch pine oak ecological community in Lot 13 (11.41 acres) and Lot 14 (13.58 acres).</li> <li>• Voluntary protection of 6.71 acres including: <ul style="list-style-type: none"> <li>○ 4.97 acres in a 100-foot-wide natural roadside buffer on Lots 1, 8, 9, 10, 11 and 12</li> <li>○ 1.74 acres of undisturbed steep slopes on Lots 3, 6 and 7</li> </ul> </li> <li>• Natural areas will be fenced before, during, and after construction.</li> </ul>
Standard 5.3.3.6.2	Unfragmented open space	<ul style="list-style-type: none"> <li>• The Project conforms</li> <li>• Unfragmented open space on Lots 13 and 14 totals 25 acres</li> <li>• Connectivity of open space with the adjacent 120 acres of Town-owned open space</li> <li>• Open space protects natural ecological communities including terrestrial habitat and steep slope topographic features</li> </ul>
Standard 5.3.3.6.3	Fertilizer-dependent vegetation limit	The Project appears to demonstrate compliance with this Standard.
Standard 5.3.3.6.4	Native Plantings	<ul style="list-style-type: none"> <li>• Landscaping plans will be reviewed by the Town and submitted to the Commission office as necessary.</li> <li>• Utilize native species of local genotypes.</li> <li>• Transplanting is encouraged but not required.</li> <li>• Flag trees to be protected in place during construction.</li> </ul>
Standard 5.3.3.7.1	Special species and ecological communities	<ul style="list-style-type: none"> <li>• The Project conforms if the Applicant adheres to NYSDEC guidance.</li> <li>• In its correspondence dated January 18, 2019 and February 12, 2019, the New York Natural Heritage Program (NHP) reported that a Federal and New York State-listed Threatened mammal, specifically the Northern Long Eared Bat (NLEB) (<i>Myotis septentrionalis</i>), has been documented within one mile of the Project Site and may utilize the site's natural habitat. These bats may travel 1.5 miles or more from documented locations. The impact of concern for bats is the cutting or removal of potential roost trees. No clearing will occur on the Project Site from April 1 to October 31 of any given year to protect the habitat of the</li> </ul>

		<p><b>Northern Long-eared Bat.</b></p> <ul style="list-style-type: none"> <li>• The NHP reported an historical documented occurrence from 1979 of the Persius Duskywing, a New York State-listed Endangered butterfly species. NYSDEC recommended surveys be performed to determine the presence or absence of host plants for this species. If suitable habitat for this animal is present in the vicinity of the Project Site, it is possible that it may still occur there. Field Surveys are recommended to include a search for this species particularly at sites currently undeveloped that may contain suitable habitat. Seek NYSDEC Guidance.</li> </ul>
<b>Guideline 5.3.3.8.1</b>	<b>Clearing envelopes</b>	Each lot will be cleared in its entirety including steep slopes, except for 1.74 acres of undisturbed steep slopes on Lots 3, 6 and 7.
<b>Guideline 5.3.3.8.2</b>	<b>Stabilization and erosion control</b>	<p>Construction will not occur on slopes greater than 10% except for the waiver request to remove steep slopes including:</p> <ul style="list-style-type: none"> <li>• Lot 3: 2,847 square feet (10 to 15% slopes)</li> <li>• Lot 6: 3,514 square feet (10 to 15% slopes)</li> <li>• Lot 7: Total of 12,256.4 square feet <ul style="list-style-type: none"> <li>○ 11,218.52 square feet (10 to 15% slopes)</li> <li>○ 1,368.35 square feet (15% and greater slopes)</li> </ul> </li> <li>• Total steep slope disturbance: 18,947.87 square feet (0.43 acres) (17,579.52 square feet on 10 to 15% slopes and 1,368.35 square feet on 15% or greater slopes)</li> </ul>
<b>Guideline 5.3.3.8.3</b>	<b>Slope analysis</b>	<p>The Slope Analysis Plan contains a detailed analysis on the amount and location of disturbance and areas of lots left “undisturbed.” Disturbance to steep slopes has been significantly minimized in the Plan to 1) protect steep slopes where possible within building lots, and 2) to cluster building lots outside of steep slope areas and inversely cluster steep slopes in the open space.</p>
<b>Guideline 5.3.3.8.4</b>	<b>Erosion and sediment control plans</b>	Erosion and sediment control plans will be prepared where development occurs in areas of 15% slopes or greater.
<b>Guideline 5.3.3.8.5</b>	<b>Placement of roadways</b>	<ul style="list-style-type: none"> <li>• Development of the Boulevard and recharge basin will occur on slopes 10% or less. The activity will displace 11,229 cubic yards of topsoil. The cut material will be temporarily distributed over the lots in the 100-foot wide roadside buffer on the North Service Road. This equates to an estimated 0.75 inches per square foot within the buffer. No other disturbance will occur in the buffer.</li> <li>• Construction plans will be submitted to the Town Engineer.</li> </ul>
<b>Guideline 5.3.3.8.6</b>	<b>Retaining walls and control structures</b>	<ul style="list-style-type: none"> <li>• Details of retaining walls for development including roads on slopes greater than 10% will be prepared and submitted to the Town Engineer.</li> <li>• Disturbance of 1,368.35 square feet containing slopes 15 to 59.8% grade will occur on Lot 7. This is part of the waiver request.</li> <li>• Planted slopes are encouraged where feasible over hard structures.</li> </ul>
<b>Guideline 5.3.3.9.2</b>	<b>Clustering</b>	Conforms, clustering is maximized to enhance adjacent open space and provide contiguous open space connections
<b>Guideline 5.3.3.9.3</b>	<b>Protection of dedicated open space</b>	<ul style="list-style-type: none"> <li>• Open space will be protected with covenants, covenants should be provided for review prior to recording.</li> <li>• No dedications are proposed.</li> </ul>
<b>Guideline 5.3.3.11.1</b>	<b>Cultural resource consideration</b>	<ul style="list-style-type: none"> <li>• The Project provides protection measures for viewsheds, character and undisturbed roadsides and connects to adjacent open space, hiking trails.</li> <li>• SHPO concluded no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places.</li> </ul>
<b>Guideline</b>	<b>Inclusion of cultural</b>	• The existing undisturbed roadside character will be preserved in a

<b>5.3.3.11.2</b>	<b>resources in applications</b>	<b>100-foot wide natural buffer to protect the Project Site and regional resources.</b> • <b>No State or National Register resources are present.</b>
<b>Guideline 5.3.3.11.3</b>	<b>Protection of scenic and recreational resources</b>	• <b>The Project retains a visually shielding natural roadside buffer.</b> • <b>The future monument signage should be in keeping in both style and scale with the community character. Signage details shall be provided for review and comment.</b>
<b>Guideline 5.3.3.11.4</b>	<b>Roadside design and management</b>	<b>One ingress/egress curb cut for the access road is proposed on the North Service Road. The remaining roadside area will be undisturbed and protected in a 100-foot wide natural buffer. Manmade structures such as signage and lighting will be compliant and in keeping with the character of the CGA.</b>
<b>Guideline 5.3.3.12.1</b>	<b>Commercial and industrial compliance with Suffolk County Sanitary Code</b>	<b>Compliance to be demonstrated upon Suffolk County Department of Health Services approval, as applicable.</b>

## **VIII. Commission Review of the Hardship Exemption Request**

Pursuant to the Act, in determining whether to grant a CGA hardship exemption for the Project, the Commission shall consider, among other things, the criteria set forth in New York State Town Law §267-b(2) and determine whether the Project is consistent with the purposes and provisions of the Act and whether the Project will result in a substantial impairment of the resources of the Central Pine Barrens area.

In considering the criteria set forth in Town Law §267-b(2)(b)(1), the Applicant asserts that the Project requires the development of all 12 lots to be financially viable and the entire Project is jeopardized if the hardship is not granted. The Application states that fundamental to the Applicant's decision to sell 120 acres to the Town and the Town's decision to acquire land at the negotiated price was a collective expectation that the Applicant would be able to develop a 12 lot subdivision on the balance of the property without the need for relief, as per the Stipulation of Settlement. As engineering design progressed, the parties discovered that the Project would disturb steep slopes and require a hardship. After several attempts to redesign the layout, the alternative of leaving steep slopes undeveloped, would require that Lots 6 and 7 be underdeveloped or not developed at all. This would not only alter the expectations of the parties but could jeopardize the entire Project, which requires the development of all 12 lots in order the Project to be financially viable. The waiver area is strictly and significantly limited to specific isolated patches on building Lots 3, 6 and 7 and is 0.58% of the Project Site.

The majority of the 13 acres of existing natural steep slopes distributed on the Project Site is preserved in a clustered plan layout and contained in the area to remain as natural open space, outside of building lots and envelopes. The Applicant attempted to design the Project to avoid the waiver utilizing different layouts and adjusting lot lines, however, the Applicant asserts the financial viability of the Project cannot be achieved if not for a waiver that affects removal of steep slopes on 18,948 square feet or 0.58% of the Project Site.

In considering the criteria set forth in Town Law §267-b(2)(b)(2), the Commission finds that the hardship is unique due the Project Site's history. The Applicant asserts the waiver is the result of the Stipulation of Settlement to develop 12 lots on the Project Site. These circumstances and

history are unique to this Applicant and Project and does not apply to a substantial portion of the neighborhood. The Applicant further protects approximately 6.71 acres as natural open space in excess of the Stipulation resulting in protection of 79% or 151 acres of the original 192 acres.

Natural open space connectivity is accomplished by situating open space contiguous to the northerly adjacent natural, Town-owned open space. The subdivision layout creates protects terrestrial ecological communities and succeeds in connecting northerly adjacent public lands to adjoin natural resources. The clustering technique is maximized in the open space arrangement and building lot layout. The Application encourages compatible industrial development in the CGA to accommodate regional growth influences in an orderly way while protecting the pine barrens environment from the individual cumulative adverse impacts thereof. The roadside character of the CGA is protected through the 100-foot wide natural buffer.

In considering the criteria set forth in Town Law §267-b(2)(b)(3), as it relates to character of the neighborhood, the Project is consistent with the Study Area. The Project Site is on a major transportation corridor (the LIE). The Project mimics the industrial development and plan layout for sites in the Study Area, on the south side of the LIE. The Project adjoins the developed westerly adjacent cleared site of a composting facility.

The Project adjoins development on its west and south sides. And where open space is adjacent, the cluster plan connects open space uses. The presence of the overhead utility corridor causes an intrusive developed element in the Project Site. The Project's industrial land use is consistent with the existing zoning district and permitted uses; no Town Board action is needed such as a change of zone that deviates from the Town Code. The Project is not inconsistent with the existing character of the area, uses, and generally conforms to its surroundings and pattern of development and land uses. The Project may become a commercial/industrial distribution center that is well situated on a major highway. The Commission finds that the Project will not alter the essential character of the neighborhood.

Pursuant to Town Law §267-b(2)(b)(4), the Commission finds that the hardship is not self-created. The Applicant asserts the Project is the result of a process that included the sale of a large portion of the original 192 acre site to the Town to preserve open space, leaving the balance to the Applicant to develop 72 acres and the Applicant's expectation to realize a financially viable Project. The Applicant and Town have achieved protection of 120 acres and reduced the scale of development significantly from its inception to arrive at the Application. The Project is consistent with the current industrial zoning classification in effect since before the Act. Prior proposals required Town Board actions and resulted in greater development in size and scale than the Project.

## **IX. Conclusion**

The Project entitled Silver Corporate Park Compatible Growth Area Development of Regional Significance and Compatible Growth Area Hardship Waiver is depicted in the Slope Analysis Plan, Drawing No. SAP-1, and the Overall Site Plan, last dated April 21, 2020, and prepared by Key Civil Engineering is entitled to a hardship exemption for the foregoing reasons, is approved, and is subject to the following conditions.

1. General conditions

- a. Sewage flow is capped at 21,423 gallons per day.
- b. The final Subdivision Map and Site Plans identify clearing limits, open space, and fertilizer dependent vegetation limits.
- c. Copies of the recorded subdivision map and future approved site plans are provided to the Commission office.

2. Protection of natural vegetation and clearing

a. Open space

- i. The Project protects 31.71 acres of natural open space as identified on the map. The natural area must remain in its natural condition. No disturbance, clearing, encroachments, landbanked parking, other uses, emergency access, road widening, or other development shall occur in the natural area. The open space must remain protected and noted as sterilized and yielding no additional density or intensity, disturbance or wastewater flow, except as defined in the Application.
- ii. Protect large trees as street trees, where feasible, in their existing place. Delineate the road clearing limits and flag trees that may remain in place during and after construction.
- iii. The natural open space shall be identified in all maps for the Project.

b. Clearing

- i. No more than 46.42 acres of the Project Site will be cleared.
- ii. No clearing activity shall occur from November 1 to March 31 of any calendar year to protect the Federal and New York State-listed Threatened Northern Long Eared Bat and its habitat, unless otherwise directed by NYSDEC.

c. Declaration of Covenants and Restrictions shall protect a total of 31.71 acres of the site as natural open space. The Draft Covenants and Restrictions shall be prepared for review by the Commission Counsel and upon approval of Commission Counsel, filed with the Suffolk County Clerk within one year of this resolution, prior to disturbance on the Project Site. The Applicant shall provide proof of recording to the Commission

d. Prior to the commencement of development activities on the Project Site, the Applicant shall:

- i. Install and maintain snow fencing along the clearing limits/natural area to protect the area to remain natural during construction. Notify the Commission office within one week prior to disturbance to inspect the clearing limits. No clearing shall occur until the Commission office has field inspected and issued

written approval to the Applicant. Notify the Commission when all construction is completed on the Project Site.

- ii. Install and maintain permanent split rail fencing on the open space on the boundaries of Lots 13 and 14, as per the Map, which states “proposed split rail wood fence delineating unfragmented open space and areas of steep slopes” and including the undisturbed steep slopes on Lots 3, 6, and 7, as per the Map, which states “proposed split rail wood fence delineating unfragmented open space and areas of steep slopes” and “undisturbed area as per steep slope requirement to be protected with fencing and covenants and restrictions.”
  - iii. For efficient and expedited site plan review, consider uniform fencing and other design standards including signage color palette, material, height, and other details for when each of the 12 site plans is developed.
  - iv. Once development of each phase is complete, remove snow fencing and install split rail fencing in its place along clearing limit boundaries to delineate areas to remain natural.
3. Commission shall have the right to inspect the open space on an annual basis.
4. Prior to disturbance, contact NYSDEC for guidance on performing a survey to identify the presence or absence of Persius Duskywing butterfly habitat in the LIPA right of way easement area. Perform the survey as per NYSDEC guidelines. Submit results of the survey to NYSDEC and the Commission office. If the species and/or its habitat are present, wait for further instructions from NYSDEC before commencing development including clearing and preparation of the site for construction.
5. Lighting must be minimal and should not spill off site. It should consist of downward facing fixtures. The Lighting Plan, Sheet SD-5, contains specifications for illuminating the Project Site. Light posts are 25 feet tall. Reduce the pole height to a maximum of 12 feet to minimize excess lighting, energy, and cost to achieve the same amount of lighting necessary on site.
6. A maximum of 11,229 cubic yards of soil may temporarily be distributed over the 100-foot wide natural roadside buffer. Once this is complete, no further disturbance may occur in buffer.
7. Site specific landscaping and signage plans must be prepared, submitted to the Town for review and referred to the Commission office for approval.
  - a. Landscaping plans must be composed of native species of local genotypes. Transplanting is encouraged but not required. And where feasible, flagging of existing trees should be conducted to designate trees to be protected and kept in place during construction.
  - b. Space is reserved at the curb cut to accommodate a monument sign. Keep colors, materials, height, and lighting minimal and consistent with the landscape to protect the Central Pine Barren’s character and resources
  - c. If lighting is proposed on the sign or if it is backlit, it will be dark sky compliant in accordance with the Town Code and in keeping with the character of the CGA.

8. Submit a Stormwater Pollution Prevention Plan for review and approval to the NYSDEC. If not approved by NYSDEC, no activity may occur under this approval. Provide evidence of NYSDEC approval.
9. Construction phasing
  - a. Development of each of the 12 lots may occur individually or simultaneously, depending on interested tenants and needs.
  - b. This approval shall expire five (5) years from the date of this Resolution. The Applicant may seek an extension of this approval in one (1) year increments and reauthorization from the Commission, subject to its review.
10. Any changes of the Project, as approved, must be reviewed and approved by the Commission.

Motion to Approve Silver Corporate Park Compatible Growth Area Development of Regional Significance and Hardship Waiver

Date: June 17, 2020

Motion By: Mr. Romaine

Seconded: Ms. Gallagher

Vote:

Yes: Ms. Gallagher, Mr. Dale, Mr. Romaine, Ms. Aguiar and Mr. Schneiderman

No: None

Abstain: None

Absent: None

Copies of This Decision Will be Sent To:

New York State Department of Environmental Conservation, Division of 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 (PELM)  
Town of Brookhaven Building Department  
Town of Brookhaven Parks and Recreation Department  
Applicant/Attorney

