



Commission Meeting of October 17, 2012 Brookhaven Town Hall

Present: Mr. Scully (New York State), Ms. Lansdale (Suffolk County),
Ms. Prusinowski (Brookhaven), Mr. Walter (Riverhead),
Ms. Throne-Holst (Southampton)

Adopted Resolution

Westhampton Property Associates Core Preservation Area Hardship and Compatible Growth Area Critical Resource Area Application

Property located on the south side of Sunrise Highway (SR 27), north side of Old Country Road (CR 71), 500 feet east of 5th Avenue, in the hamlet of Remsenburg/Speonk, Town of Southampton, Suffolk County Tax Map #: 900-276-3-1 and 2

Whereas, on November 9, 2011, Westhampton Property Associates, LLC (the Applicant) by its representative Nelson Pope & Voorhis, LLC, filed with the Commission an application for development to expand the depth of an existing 91-acre sand and gravel mine (the Project); and

Whereas, the 91-acre mine is part of a 115 acre project site comprised of two parcels owned by the Applicant, in the Country Residence 200 (CR 200) Zoning District, in the Town Aquifer Protection Overlay District, hamlet of Remsenburg/Speonk, Town of Southampton, identified on the Suffolk County Tax Map as parcels 900-276-3-1 and 2, as per the map entitled "Sand Mine Plan and Profile" prepared by Raynor, Marcks & Carrington last dated August 4, 2011 (Sheets 1, 2, and 3); and

Whereas, 68.07 acres of the project site is located in the Core Preservation Area of the Central Pine Barrens; and

Whereas, 46.93 acres of the project site is located in the Compatible Growth Area and is designated as part of a Critical Resource Area (CRA) identified as S10 in Figure 4-6 in Chapter 4.5.4.1 of the Central Pine Barrens Comprehensive Land Use Plan (CLUP); and

Whereas, the features of CRA S10 are described in the CLUP as "Open space on northerly portion of site complements adjacent open space;" and

Whereas, the Project is a depth expansion of an existing sand mine, which is currently at an elevation of approximately 45 feet above sea level, to an elevation of approximately 26 feet above sea level, which will be a minimum of four feet and a maximum of six feet above the elevation of the groundwater table, depending on the seasonally varying height of the

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Chair

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Member

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groundwater table; and

Whereas, other Project elements include the preparation and recording of a Conservation Easement on the 91-acre mine to preserve it when mining is completed; and restoration of the mine in accordance with a reclamation plan prepared by Nelson, Pope & Voorhis dated July 18, 2011; and

Whereas, the current New York State Department of Environmental Conservation (NYSDEC) mine permit expires in the year 2016; and a permit modification for the depth expansion was filed by the Applicant with NYSDEC; and

Whereas, the Project expands the area of mining on site and extends mining activity on site to the year 2041; and

Whereas, the Applicant submitted a Mine Restoration Plan for the site prepared by Nelson Pope & Voorhis dated July 18, 2011 and a narrative entitled "Mine Reclamation Plan" prepared by Nelson Pope and Voorhis. The Plan describes the implementation of an eight phase mine land reclamation plan. The Plan schedule indicates Phase 1 will commence in 2019, and Phase 8 will commence in 2041. Restoration monitoring spans from the year 2022 to 2047. The Plan legend lists the habitat types to be created as follows: 38.24 acres of pitch pine oak forest, 30.17 acres of meadow, 3.91 acres of wet meadow, 2.06 acres of vernal pools, and 16.32 acres of slope restoration area. The total area of reclamation is 90.7 acres; and

Whereas, the Project will not intercept groundwater elevation under the mine floor and will maintain a maximum vertical buffer of six feet to groundwater but which shall be no less than four feet; and

Whereas, the Project constitutes development pursuant to Environmental Conservation Law (ECL) §57-0107(13)(b) and (c), which states development includes, "*a material increase in the intensity of use of land or environmental impacts as a result thereof;*" and "*commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities,*" respectively; and

Whereas, the Project requires a Core Preservation Area Extraordinary Hardship, a discretionary action of the Commission; and

Whereas, the CRA portion is subject to the Review Procedures of the CLUP in Chapter 4 Section 4.5.5, *Development located within the Compatible Growth Area which is also located within a Critical Resource Area*, which states, "*The Act sets forth the jurisdiction for the Commission's review of development within the Compatible Growth Area of the Central Pine Barrens. Such review includes development that is located in Critical Resource Areas. The Act also authorizes the Commission, by majority vote, to waive strict compliance with this Plan upon finding that such waiver is necessary to alleviate a demonstrated hardship;*" and

Whereas, a public hearing was held on January 18, 2012, continued on February 15, 2012 and stenographic transcripts of the hearings were made available to the Commission; and

Whereas, on June 15, 2012, the Applicant submitted supplemental information including a report entitled “*Fiscal and Economic Impact Analysis and Assessment of Needs and Benefits*” prepared by Nelson, Pope & Voorhis, LLC dated June 15, 2012; and

Whereas, a second public hearing was held on July 18, 2012; and a stenographic transcript of the hearing was made available to the Commission; and

Whereas, at the July 18th hearing, the Commission inquired about potential impacts on the owner’s business with respect to the availability of material to contractors; and

Whereas, on August 14, 2012, the Applicant submitted copies of letters received from contractors in support of the hardship waiver as it relates to their continued business with the Applicant and potential impacts if the hardship were not granted; and the letters were entered into the record for the Project in response to the Commission’s inquiry at the public hearing; and

Whereas, the Town of Southampton submitted a copy of a letter to NYSDEC dated June 20, 2008 indicating the pre-existing nonconforming use of a sand mine and mining activities on site pre-date the Town Zoning Code, and the site’s existing and continued use as a mine is grandfathered, and

Whereas, pursuant to the criteria contained in ECL §57-0121(10) (a) (i) through (iii), the Applicant has satisfied the conditions for and has demonstrated extraordinary hardship as the Project is unique since the site contains a pre-existing sand mine permitted and developed in 1981, prior to the Long Island Pine Barrens Protection Act of 1993 (the “Act”), with no disturbance to existing native vegetation or clearing beyond the existing extent of the currently permitted mine; and

Whereas, pursuant to the Applicant’s demonstration of extraordinary hardship as per ECL §57-0121(10)(a), the Applicant has satisfied the conditions for demonstrating extraordinary hardship as the Applicant contends the business is family operated and planning for future business is an imminent concern; although the current permit term expires in 2016, the 16 acres of material left to mine will be extracted sooner than the current permit term extends; and, as shown in the record, the Applicant has no other beneficial use of the site if not used as a mine; and

Whereas, pursuant to the Applicant’s demonstration of extraordinary hardship as per ECL §57-0107(1)(a)(i), the Project does not apply to or affect other properties in the immediate vicinity since other sand and gravel mines in the vicinity are in the CGA,

and much of the Core property in the vicinity of the site is preserved under public ownership; and

Whereas, the Applicant submitted an Environmental Assessment Form (EAF) Part I; and

Whereas, the Project is a Type I Action pursuant to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act, SEQRA), and the Commission performed a coordinated review for Lead Agency status with other Involved Agencies including the New York State Department of Environmental Conservation (NYSDEC) and the Town of Southampton Planning Board and requested to serve as Lead Agency by letter dated January 4, 2012, as per the Central Pine Barrens Comprehensive Land Use Plan Chapter 4 Section 4.5.1.1, *Lead Agency Assertion*; and

Whereas, no objection was raised by the NYSDEC or Town of Southampton concerning the Commission's request to assume Lead Agency status, and the Commission assumed Lead Agency; and

Whereas, an EAF Part II was prepared and reviewed by the Commission; and no significant adverse environmental impacts were identified in the SEQRA process; and

Whereas, pursuant to New York State Environmental Conservation Law (ECL) Article 8 (State Environmental Quality Review Act (SEQRA) and its implementing regulations 6 NYCRR Part 617, the Commission has considered the relevant areas of potential environmental impacts applicable to the Project and has applied the Criteria for Determining Significance contained in 6 NYCRR Part 617, section 617.7(c), and

Whereas, the Project will not generate objectionable odors, will not install any stationary sources of air emissions and will continue to manage the mine within its current operating parameters using the same machinery as before with no significant increase in air emissions; therefore, as a result, the Project will not result in any significant adverse impact on air quality, and

Whereas, although the Project will decrease the vertical distance to groundwater, the review of the record indicates the Project will not generate sanitary flow which will obviate the potential for groundwater contamination by constituents in effluent; will not create sources of nitrate-nitrogen as it will exclude fertilizer-dependent vegetation that could potentially enter groundwater; will not engage in any industrial processes, storage of toxic materials or fueling operations that could adversely impact groundwater; will not generate significant discharges of effluent; is not located near any public water supply wells and the project site does not contain a private well; therefore the Project will not result in any adverse impacts to groundwater and complies with CLUP Standard 5.3.3.1.1 regarding Suffolk County Sanitary Code Article 6 compliance, Standard 5.3.3.1.2 regarding Sewage treatment plant discharge, Guideline 5.3.3.1.3 regarding Nitrate-nitrogen goal, Standard 5.3.3.2.1 regarding Suffolk County Sanitary Code Articles 7 and

12 compliance, Standard 5.3.3.3.1 regarding Significant discharges and public supply well locations and Guideline 5.3.3.3.2 regarding Private well protection, and

Whereas, the Project will not result in any adverse impacts to groundwater located in Hydrogeologic Zone III, a deep-recharge zone, as the Project preserves the hydrologic functions and groundwater quality of the Core, pursuant to the goals and objectives in Environmental Conservation Law Article 57, §57-0121(3), and

Whereas, the record indicates there are no wetlands or surface waters located either on or in proximity to the project site and the project site is not located within a Wild, Scenic and Recreational River corridor; therefore, the Project will not result in any significant adverse impacts on wetlands, surface waters or a Wild, Scenic and Recreational River corridor and, as a result, CLUP Standard 5.3.3.4.1 regarding Nondisturbance buffers, Standard 5.3.3.4.2 regarding Buffer delineations, covenants and conservation easements, Standard 5.3.3.4.3 regarding Wild, Scenic and Recreational Rivers Act compliance and Guideline 5.3.3.4.4 regarding Additional nondisturbance buffers are not applicable to the Project, and

Whereas, according to the record, all stormwater generated on the project site will be recharged on site, will be controlled during mining operations and will not impact adjacent properties nor any surface waters or wetlands; no drainage systems or recharge basins are proposed on the project site and vernal pools to be created by the project will be perched above the groundwater table and will serve to receive stormwater runoff as well as to establish new habitat areas; therefore, the Project will not result in any significant adverse impacts due to stormwater runoff, will not increase the potential for erosion, will not cause flooding and will not cause drainage problems, and, as a result, the project will comply with CLUP Standard 5.3.3.5.1 regarding Stormwater recharge, Guideline 5.3.3.5.3 regarding the creation of ponds and Guideline 5.3.5.5 regarding Soil erosion and stormwater runoff control during construction while Guidelines 5.3.3.5.2 regarding Natural recharge and drainage and 5.3.3.5.4 regarding Natural topography in lieu of recharge basins are not applicable, and

Whereas, as the Project will be managed within its current operating parameters, there will be no substantial net increase in traffic generation, truck trips and noise nor a significant net increase in solid waste production and

Whereas, the project site was legally approved for mining prior to the adoption of the Long Island Pine Barrens Protection Act and, as a result, the majority of the project site was previously disturbed, cleared, and excavated, and

Whereas, that portion of the project site within the Core Preservation Area was one of the areas that was previously cleared and excavated and is therefore devoid of any existing natural vegetation and wildlife habitat, and

Whereas, the Project will clear an additional area of 10 acres comprised of commercial nursery vegetation pursuant to the life of mine permit issued by the New York State Department of Environmental Conservation and which predates the Act, and

Whereas, a 3.08 acre portion of the existing nursery, that is not approved for mining under the existing life of mine permit, will remain in its current state and will revert to natural conditions to provide new natural habitat in the future and an existing 10.92 acre area of pine barrens habitat on the southern end of the property will remain intact under the Project, and

Whereas, no rare, endangered, threatened or special concern species of plants or animals nor their habitats have been identified on the project site, and

Whereas, as a result of the lack of vegetation in that portion of the project site located in the Core Preservation Area and in the majority of the Compatible Growth Area and the lack of native vegetation on the affected 10-acre nursery area, the Project will not result in significant adverse impacts on vegetation, and

Whereas, due to the lack of native-vegetated habitat within the project site, the Project will not result in the removal or destruction of large quantities of fauna; will not cause substantial interference with any resident or migratory wildlife; will not adversely impact a significant habitat area nor cause significant adverse impacts to rare, endangered, threatened or special concern species of plants or animals; and

Whereas, when reclaimed at the end of mining activity, the Project will provide a replanted natural habitat area comprised of native pine barrens plant material which is consistent with the surrounding pine barrens vegetational communities in which no fertilizer-dependent vegetation is to be installed and which will allow for connections to be made with nearby open space areas, and, as a result, the Project will be consistent with CLUP Standard 5.3.3.6.1 regarding Vegetation Clearance Limits, Standard 5.3.3.6.2 regarding unfragmented open space, Standard 5.3.3.6.3 regarding fertilizer-dependent vegetation and Standard 5.3.3.6.4 regarding native plantings, and

Whereas, although the project site is not located within a Critical Environmental Area and will therefore not result in significant adverse impacts on said area's designated environmental characteristics, a portion of the project site within the Compatible Growth Area also lies within Critical Resource Area S10, "Upland Forest Westhampton," which was designated as such because "*Open space on northerly portion of site complements adjacent open space,*" and

Whereas, pursuant to Section 4.5.4.2 of the CLUP, the Commission is required to address "*the protection for the critical resource feature(s)*" of the Critical Resource Area designated in the Plan, and

Whereas, because the majority of the project site has already been previously disturbed and cleared and is privately owned, there is no existing protected open space on

the project site to complement any adjacent open space, and therefore, the Project will not result in any significant adverse impacts to the critical resource features of Critical Resource Area S10, and

Whereas, the natural pitch pine-oak woodland in the southern end of the Compatible Growth Area portion of the project site will remain in its current natural state and will continue to complement the open space within the Critical Resource Area, and

Whereas, the record indicates that the mine reclamation that will occur upon completion of the Project will complement the contiguous open space through revegetation with native pine barrens vegetation and by “expanding the unfragmented open space continuum,” and

Whereas, the Project is consistent with community plans, including the CLUP, will not result in a major change in use in the quantity or type of energy, will not create a hazard to human health, will not result in a substantial change in use, will not induce the attraction of large numbers of persons and will not cause significant adverse or cumulative impacts, and

Whereas, the record indicates the project site does not contain any significant archaeological or historical resources, in particular because of the significant amount of prior ground disturbance that previously occurred prior to the Act; therefore, the Project will not result in any significant adverse impacts to archaeological or historical resources, and

Whereas, the project site does not contain any significant aesthetic resources due to its previously-disturbed conditions and will not have any significant adverse impacts on aesthetic or scenic resources as a result and also due to the fact that the Project will preserve the character of the Core Preservation Area, as it will retain the existing naturally-vegetated buffer adjacent to New York State 27, a Scenic Road identified in Volume 2 of the CLUP, and will continue to not be visible from Route 27 and adjacent roadways, and

Whereas, the Commission has considered all materials submitted in connection with the application, now, therefore, be it,

Resolved, the above recitals are incorporated herein and made a part hereof; and be it further

Resolved, that pursuant to New York State Environmental Conservation Law (ECL) Article 8 (State Environmental Quality Review Act (SEQRA)) and its implementing regulations 6 NYCRR Part 617, the Commission hereby adopts a Negative Declaration pursuant to SEQRA for the Project, for the reasons set forth in this resolution, and be it further

I. Core Preservation Area Hardship Determination

Resolved, that the Commission hereby determines the application, as submitted, meets the criteria for Core Preservation Area Hardship based on extraordinary hardship pursuant to New York State ECL §57-0121(10) (b) and (c); and be it further

Resolved, the Commission finds the instant Core Hardship Waiver is not inconsistent with the purposes, objectives, or general spirit and intent of the Act; and be it further

Resolved, pursuant to ECL §57-0121(10)(a)(i) through (ii), the Commission finds that the Applicant has satisfied the conditions for and has demonstrated extraordinary hardship as the project site was developed and permitted as a sand mine prior to the Act; the Project will occur in the existing disturbed area of the project site, which was developed prior to the Act; the hardship does not apply to other properties in the immediate vicinity, since many other properties in the Core are under public ownership and other developed properties in the vicinity are in Compatible Growth Area; the development activity arises out of the characteristics of the subject property rather than the personal situation of the Applicant; and based on the review of existing regulations in effect on the project site and through the recording of a Conservation Easement on the 91 acre mine, the mine site will be protected from future development, especially that which could impact the environment and that once mining activity has ceased and restoration will occur in accordance with the Reclamation Plan, the Project is not expected to result in significant adverse environmental impacts; and be it further

Resolved, pursuant to ECL §57-0121(10)(c)(i), the Commission finds that the Applicant has satisfied the conditions for and has demonstrated extraordinary hardship as the Project involves no disturbance to existing natural vegetation; therefore, the Project will not be materially detrimental or injurious to other property or improvements in the area because the property in the vicinity of the site is also in the Core, is under public ownership, already developed, or not developable; the Project does not result in endangering public safety or substantial impairment of the resources of the Core; and the Applicant has met these additional standards for granting a Hardship Waiver in the Core due to site development as a mine prior to the Act and the continued use of the site as a sand mine, and the Project avoids disturbance to existing natural vegetation in the Core; and be it further

Resolved, no groundwater impacts in Hydrogeologic Zone III shall occur as the record demonstrates the Project will maintain a vertical buffer of 4 to 6 feet above the groundwater table, will not intercept groundwater below the mine floor elevation, will not generate sewage or discharge effluents that could contaminate groundwater, will not engage in the storage of toxic materials so as to adversely impact the underlying aquifer, will store all fuel in accordance with all local, County and State regulations and will adequately control stormwater and the Project preserves the hydrologic functions and groundwater quality of the Core, pursuant to the goals and objectives in ECL §57-0121(3), and be it further

Resolved, the Project will preserve the character of the Core Preservation Area, as the Project will not result in the removal of any natural vegetation from the Core Preservation Area; will retain the existing naturally vegetated buffer to NYS Route 27, a Scenic Road identified in Volume 2 of the CLUP, and it will continue to not be visible from Route 27 and adjacent roadways and will establish a new revegetated area upon cessation of mining which will further bolster the Route 27 buffer; and be it further

Resolved, pursuant to ECL §57-0121(10)(c)(iii), the waiver is the minimum relief necessary to relieve the extraordinary hardship on behalf of the Applicant and meets the needs of the business as the Project will not result in a lateral expansion beyond the existing NYSDEC life of mine permitted boundaries, will not expand the mine into the Compatible Growth Area beyond the existing NYSDEC life of mine permitted boundaries, will not expose groundwater and will not vertically expand the mine below the groundwater table; the Project avoids significant adverse environmental impacts, continues a pre-existing industrial land use in the Core, and avoids new construction and disturbance to natural vegetation in the Core via the applicant's offer to subject the project area to a Conservation Easement which obviates further development after cessation of the mining activity approved herein; and be it further

Resolved, the Applicant has demonstrated that the mined materials from the project site represent a commodity which is valuable and necessary to the local and regional economy and has demonstrated that there are specific commercial entities which are dependent on supplies of mined materials generated by the mine and which are particular to its geographic location and quality and grade of material; and be it further

Resolved, the Commission finds that the project site does not have a beneficial use other than a sand mine due to the location of the site, its lack of proximity to certain utilities and highway access, adjacent uses, zoning, the Applicant's investment in equipment and support services required for mining and market forces, and the interruption or cessation in the mine operation would result in financial hardship to the Applicant and contractors to whom it supplies materials; and be it further

Resolved, the Commission acknowledges that the Applicant offered to the Commission a Conservation Easement on the 91-acre sand mine site and the Commission accepts said Conservation Easement from the Applicant on the 91 acre sand mine which will be granted to the Commission, will be recorded on the 91 acre mine and will aim to preserve the resources of the project site in the Core and in the CGA-CRA, with the Applicant reserving rights to the current and continued use of the existing 91 acre mining land use through to the end of the expansion approved herein; and be it further

Resolved, no other use, development activity, or expansion of existing use on the 91-acre mine is permitted; and no future development activity beyond this Waiver is permitted on the 91 acre site mine; and be it further

Resolved, the Commission finds that the Project is consistent with Article 57 of the New York State Environmental Conservation Law, and the Applicant has

demonstrated it has met the criteria necessary for the issuance of a Core hardship waiver; and be it further

II. Critical Resource Area and Compatible Growth Area

Resolved, the Commission determines that the Applicant has demonstrated compliance with the standards and guidelines set forth in Volume 1, Chapter 5 of the Central Pine Barrens Comprehensive Land Use Plan (“the CLUP”), and the area of the CRA that is not subject to past and currently permitted mining activity will remain subject to the provisions that require Commission review of a CRA; and be it further

Resolved, the sand mine pre-dates the Act and the CLUP; therefore, the CRA portion of the 91 acre mine will continue to be mined and will be expanded in depth under the Project; the existing open space of the CRA, to which the project site is partially connected, will continue in its existing state, and once the Conservation Easement is recorded, that portion of the project site within the CRA will be protected from future development; and be it further

Resolved, the remaining 24 acres in the CRA are currently wooded and no development activity is proposed under the Project; therefore, it will remain in its natural state under the Project; in the future if development activity, as per the Act, is proposed in the CRA, it is subject to Commission review in accordance with the CLUP; and be it further

III. Plans and Monitoring

Resolved, the Commission accepts the Project’s Mine Restoration Plan prepared by Nelson Pope & Voorhis dated July 18, 2011 and a narrative entitled “Mine Reclamation Plan” prepared by Nelson Pope and Voorhis and requires the applicant to submit to the Commission, within 30 days of any changes, any and all revised versions of the Reclamation Plan and narrative in the future; and be it further

Resolved, based on current plans, mining is expected to cease completely on the project site by 2041, with reclamation occurring until the year 2048; and if the Applicant applies to NYSDEC for permit extensions or renewals to complete mining to the permitted depth, no additional deepening of the mine floor elevation shall be permitted below the Project elevation of six feet above groundwater; and be it further

Resolved, the Commission accepts the Applicant’s offer to submit monitoring reports that would provide quarterly and annual monitoring reports to document seasonal groundwater elevations and requires the applicant to submit monitoring reports quarterly and to also submit an annual report based on the prior year’s four quarters. In the event groundwater is intercepted at any time during mining operations, the Applicant shall immediately stop its mining operations, shall immediately notify the Commission and

shall not recommence mining operations until it has received written Commission authorization to do so; and be it further

IV. Conditions of Approval

Resolved, that the Commission approves the Project in accordance with the Sand Mine Plan and Profile prepared by Raynor, Marcks & Carrington last dated August 4, 2011 (Sheets 1, 2, and 3) and all application materials and submissions to date, subject to the following specific conditions:

1. Obtain other permits and approvals, as required by law, prior to commencement of the project. Copies of other agency approvals shall be forwarded to the Commission office within 30 days of their issuance.
2. Prior to commencement of new mining authorized by this approval, the applicant shall submit, at that time, the most current version of the Project's Mine Restoration Plan and Mine Reclamation Plan narrative and the applicant shall submit to the Commission, within 30 days of any changes, any and all revised versions of the Reclamation Plan and narrative in the future.
3. Mining activity on the existing 91 acre mine will continue and be expanded in depth to a maximum mine floor elevation of approximately 26 feet above sea level and a minimum of 4 feet and a maximum of six feet above groundwater, based on seasonal groundwater elevation.
4. Groundwater monitoring
 - a. Maintain a minimum six foot buffer from the mine floor to existing groundwater elevation to preserve the hydrologic functions of the Pine Barrens.
 - b. Conduct quarterly monitoring of fluctuating groundwater elevations to ensure the six foot buffer is maintained.
 - c. Submit quarterly and annual groundwater elevation monitoring reports to the Commission through the end of mining activity on the project site, which is currently projected to end in the year 2041.
 - d. In the event groundwater is intercepted at any time during mining operations, the Applicant shall immediately stop its mining operations, shall immediately notify the Commission and shall not recommence mining operations until it has received written Commission authorization to do so.
5. No change in land use or zoning on the project site.

6. No expansion of the mine, existing mine use, depth of mine, lateral or vertical extent beyond the current proposal on the 91-acre sand mine.
7. Any other development activity on the project site, as per the Act, is subject to Commission jurisdiction, review, and a discretionary decision. However, this statement does not constitute an approval of or recommendation for said future development activity.

8. Conservation Easement

- a. Prepare a Conservation Easement (CE) for the 91 acre mine site, and record the Conservation Easement in the Office of the Suffolk County Clerk within six months of the date of this resolution after the Commission approves the same. Prior to filing with the County Clerk, the Applicant shall submit a draft of same to the Commission for its approval. If approved by the Commission the CE shall be filed promptly with the Suffolk County Clerk. If rejected, the Applicant shall revise the draft CE as per the Commission's comments and resubmit the same for its approval. This cycle shall continue until the Commission approves the CE. The Applicant shall record the Commission-approved CE with the Suffolk County Clerk within six months of the date of this resolution.
- b. The Commission accepts the owner's proposal to record a conservation easement on the project site to protect it from future development once mining activity has ceased under the current proposal. As a result, once mining has ceased, the current owner, future owner, or successor shall not seek relief in the form of a hardship application for a development project on the project site, engage in development activity on the project site, nor apply for Pine Barrens Credits to obtain financial return on the project site. Development activity will not be permitted, and Pine Barrens Credits will not be issued on the project site. The property is effectively sterilized of its development rights at the time of this Waiver. The owner shall be allowed to deed the property to a municipal agency, non-profit organization or equivalent to obtain value for the underlying fee title. The restrictions herein shall be included in the language of the Conservation Easement.
- c. At the expiration of 6 months following the date of this resolution, if the language of a Conservation Easement has not been accepted by the Commission and a Conservation Easement acceptable to the Commission has not been filed with the Suffolk County Clerk, then the applicant shall cease all development activity on the site, including all mining activity, until a Conservation Easement is accepted by the Commission and filed in the Office of the Suffolk County Clerk.

- d. Provide copies of the Conservation Easement and mined land reclamation plans to the Town of Southampton and Suffolk County Department of Health Services, and file copies of the reclamation plans, with the Conservation Easement attached to the deed, in the Office of the Suffolk County Clerk.
9. Install a split rail fence on the “edge of clearing” on the south side of the site, adjacent to the area outside of the permitted 91 acre mine area to avoid disturbance, dumping, and encroachment into the existing, remaining 24 acres of natural wooded lands in the CGA-CRA.
10. Implement Best Management Practices on the project site, in accordance with the materials submitted in the application.

Resolved, a copy of this resolution shall be filed with the Suffolk County Clerk indexed against the property.

Record of Motion:

Decision (Approval):

Motion by: Ms. Throne-Holst

Seconded by: Mr. Walter

Yea Votes: 4

Nay Votes: 0

Abstain: Mr. Scully