



Central Pine Barrens Commission Meeting of June 26, 2024

Adopted Resolution

CVE US NY Southampton 243 LLC at Westhampton Property Associates Core Preservation Area Compelling Public Need Waiver 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 Numbers 900-276-3-1 and 2

Present:

Robert T. Calarco, for the New York State Governor

Jennifer Juengst, for the Suffolk County Executive

Daniel J. Panico, Brookhaven Town Supervisor

Timothy C. Hubbard, Riverhead Town Supervisor

Maria Z. Moore, Southampton Town Supervisor

Robert T. Calarco
Chair

Timothy C. Hubbard
Member

Maria Z. Moore
Member

Daniel J. Panico
Member

Edward P. Romaine
Member

I. The Project

CVE North America submitted an application to the Central Pine Barrens Commission to develop a solar electric facility on property in Remsenburg Speonk area of Southampton. The property is owned by Guisseppe Guiaquito and Westhampton Property Associates, a corporation he controls (collectively WPA). WPA operates a sand mine on it. While WPA owns 115 acres, 91 acres are actively being mined for sand, and 50 acres are the subject of CVE's application for CVE has a lease agreement to use this area for its solar facility.

The WPA property is in the Central Pine Barrens and portions lie in the Core Preservation Area and portions lie in the Compatible Growth Area. The Project Site, which is the 50 acres subject to the CVE lease, are in Southampton's Country Residence 200 (CR 200) Zoning District as well as the Town's Aquifer Protection Overlay District.

CVE proposal requires Commission approval because it is development as defined in the Long Island Pine Barrens Protection Act. CVE was represented by its attorneys, Greenberg Traurig LLP and its environmental consultant Nelson Pope and Voorhis on its application. The application was received on August 8, 2023. CVE also requests that the Commission modify an easement the Commission holds on the property to allow the Project to advance because the easement does not permit new development on the WPA property.

The sand mine predates the Commission, however, the property and WPA have been before the Commission in 2012 when WPA applied to the Commission to deepen its

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sand mine from an elevation of approximately 45 feet above sea level to an elevation of approximately 26 feet above sea level. This activity required both a Core extraordinary hardship exemption and Compatible Growth Area waiver. The Commission granted both and the deepening is ongoing.

As part of its decision, the Commission imposed conditions on WPA including requiring WPA record a conservation easement on the property and restore the mined areas as per certain restoration plans. In the end, when mining was complete, the conditions require that the property be restored and maintained as natural open space in perpetuity.

CVE applied to the Commission for approval of a two-phased plan to install 22,308 ground mounted solar panels (11,154 panels in each phase), 112 square foot inverter area, a 1,045 square foot battery energy storage system, and a 100 square foot transformer area on leased 50 acres (collectively the “Project”). The Project will be surrounded by an 8 foot tall fence. The installation will take approximately 3 years to complete. Once installed, the solar facility will generate 8,500,000 kWh of electricity. This energy has the capacity to power 1,100 homes per phase and offset approximately 13,280 tons carbon dioxide emissions.

While, the overall project has been defined, CVE has not yet provided a detailed phasing plan of the major elements, decommissioning, and ultimate restoration plan for the Project.

The Act and the Commission

The New York State Legislature passed the Long Island Pine Barrens Protection Act and codified it in Article 57 of the Environmental Conservation Law. The Act created the Central Pine Barrens Joint Planning and Policy Commission, to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area.

In furtherance of its mission and in compliance with the directives set forth in the Act, the Commission drafted the Central Pine Barrens Comprehensive Land Use Plan (the Plan), which was adopted on June 28, 1995.

ECL §57-0107 defines development to be the:

performance of any building activity, . . . , the making of any material change in use or intensity of use of any structure or land. Without limitation the following uses shall be taken for the purposes of this article to involve development

(c) commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land

(f) departure from the normal use for which development permission has been granted, or material failure to comply with the conditions of an ordinance, rule or order granting the development permission under which the development was commenced or is continued.

ECL §57-0123 provides that “no application for development within the Central Pine Barrens area shall be approved by any municipality, or county or agency thereof or the [C]ommission . . . unless such approval or grant conforms to the provisions” of the Plan and Article 57 of the Environmental Conservation Law.

The Commission finds that the Project constitutes development as defined in the Act because it will cause a material increase in the intensity of land use and is building activity.

The Commission may waive the generalized prohibition on development in the Core Preservation if an applicant can demonstrate that absent a waiver it would suffer an extraordinary hardship as distinguished from a mere inconvenience if the provisions of the Act are literally enforced. To make this showing, CVE must establish the existence of extraordinary hardship, based on specific facts, that the WPA property does not have any beneficial use if used for its present use or developed as authorized by the provisions of the Act, and that this inability to have a beneficial use results from unique circumstances peculiar to the WPA property according to certain elements in the Act or the Project serves an essential health or safety need of the municipalities in the Central Pine Barrens such that the public health and safety require the requested waiver, that the public benefits from the Project are of a character that override the importance of the protection of the core preservation area as established in the Act, and that the proposed use is required to serve existing needs of the residents, and that no feasible alternatives exist outside the core preservation area to meet the established public need and that no better alternatives exist within the county for the Project.

No Compatible Growth Area Hardship application is required since the Project occurs in a cleared portion of the CGA on the Project site and the Project does not lack conformance with one or more Standards outlined in Chapter 5 of the Plan. No disturbance to existing natural vegetation will occur for the Project. Additionally, the existing naturally wooded 24 acres in the CGA on the south side of the property, owned by WPA, will be protected in a conservation easement, as per an offer made by CVE.

II. Public Process

On September 20, 2023, the Commission held a public hearing on the Project. The hearing was closed and a two week written comment period was held open. A hearing transcript was prepared and provided to the Commission.

During the hearing, CVE’s representatives discussed aspects of the Project and the how the Project will advance New York State and Southampton Town community solar initiatives to meet New York renewable energy goals. They also reviewed a staff report that was provided to them and the Commission before hearing.

On October 4, 2023, the Applicant submitted supplemental materials including responses to the staff report, a narrative from Applicant's counsel on the proposal to amend the easement, an Environmental Benefits Summary, a letter of support from Georgica Green Ventures, and an aerial with plan overlay dated May 12, 2023.

To address the consistency of the Project with the conditions in WPA Hardship and the easement, Applicant's counsel wrote, “[i]t is CVE’s position that the easement itself allows for its amendment and that allowance is not limited in any way within the document and therefore applies to the entire Easement.” Its counsel noted that, “ECL 49-0307 provides the procedure for modifying a conservation easement” and that there are “two operative clauses in the [e]asement, Sections #5 and Section #9, that allow for amendments.” According to CVE’s counsel, “[s]ection #5 specifically allows for an amendment to the [e]asement. Further, Section #5 compellingly states that the parties recognize that circumstances could arise which would justify the modification of certain of the restrictions contained herein. Since the easement predates the economic feasibility (in New York) of the community solar solution contemplated herein, CVE submits that this application was the exact type of circumstance that the [e]asement envisioned. Also, Section #9 contains a prohibition against a further application for a hardship to the Commission.”

Applicant’s letter continued and further maintained that the Easement could be modified because:

It is CVE’s contention that Section #5 controls in this instance since nowhere in the [e]asement is the right to amend the [e]asement restricted. In essence the argument is that Section #5 overrides the restrictions in Section #9. Certainly, CVE recognizes that the Commission in its sole discretion could decline to amend the [e]asement and therefore the application. However, CVE submits that this application is consistent with the basic purpose of the [e]asement and is ultimately a benefit to the environment.

CVE points to an easement that was modified by the Commission in support of its request. Recognizing that a conservation easement granted to the Commission under its Pine Barrens Credit program was modified, the Commission at its October 18, 2023 meeting, reopened the hearing record for two weeks to append the staff report with information on the two instances when it modified one of its conservation easements. Both modifications were made to a Commission easement on a Boy Scout of America (BSA) camp in Riverhead. In the first instance, in 2013, the BSA easement was modified to recognize the rebuilding of the dining hall one square foot larger after a catastrophic fire occurred. In the second instance, in 2020, the BSA easement was modified to permit the Scouts to increase the size of an existing cabin while reducing the size of a future cabin that the Scouts would be allowed to build under the reserved rights provision of the easement. The combined square footage of the two cabins was the same but the location of the area is different and the change reduced the amount of land BSA could clear under the easement.

CVE requested and the Commission extended the decision deadline on the application until February 21, 2024. In January 2024, three new members joined the Commission. In light of this, at the February 21 Commission meeting, the Commission determined that since the new Board members were not present at the September 20, 2023 hearing, CVE should be provided an

additional opportunity to submit material for its consideration. CVE also granted an additional decision deadline extension to June 26, 2024.

On March 4, the Applicant submitted material titled “Supplemental Hardship Justification and Environmental and Public Benefit Program Summary.” This material addressed details of the Project and reported that the size of the Project had doubled to 50 acres from the original amount of 25 acres and a commensurate increase in the number of solar panels. A two-phased project titled Giaquinto 1 and 2 was identified in the Site Plan prepared by CVE, dated May 15, 2023, stamped received May 1, 2024. The phases include Giaquinto 1: 4.12 MW and Giaquinto 2: 6.07 MW. CVE’s March materials also included a discussion of the hardship criteria and the public benefits the Project will provide as well as letter from CVE’s counsel on the ability to modify the easement to allow the Project to advance.

Upon receipt of the March 4 materials, the Commission at its March 20 meeting commenced SEQRA and scheduled a public hearing for April 17, 2024.

On April 4, CVE submitted more materials addressing the community benefits of the solar program. This stated in part:

The project is proposed under the Community Distributed Generation (CDG) NYSERDA Program, which provides direct financial relief to PSEG-LI customers who subscribe to the project through an established PSEG-LI billing program. While the Program targets at least 30% of customer offtake be subscribed by low-moderate (LMI) income households, CVE will base our efforts on ensuring that at least 60% of subscribers are Low-Moderate Income households. Small businesses seeking relief through local and state programs can also be serviced through this program. A monthly bill savings is applied directly to their PSEG-LI account, commensurate with their participation in the program. As an additional societal benefit to show Hardship, this clean energy project, built to scale, positively impact the Town, County and the State’s ability to reach their stated renewable energy goals to reduce reliance on fossil fuel sources to power our electricity grid.

On April 17, the Commission held its third public hearing on the Project. One member of the public spoke on the history of the site including past litigation and mentioned general support for solar energy. The Applicant made a presentation on the Project and a transcript was prepared of the hearing and provided to the Commission Board. The hearing was recessed to May 15 to allow the Applicant to submit information in response comments received at the hearing by May 1 with a public comment deadline of May 10. No written comments were received.

At the continuation of the hearing on May 15, CVE presented an alternatives analysis of other potential sites in Brookhaven, Riverhead and Southampton that were evaluated for the Project. To be considered CVE scored potential sites against criteria that included a minimum project site area of 50 acres and proximity to the electric grid. Other factors considered included site condition such as the presence of natural vegetation and land use, conformance with zoning codes and regulations and available utility connections including available substation and circuit capacity. The Applicant prepared a study called a Coordinated Electric System Interconnection Review (CESIR) that

resulted in the WPA site being selected as the most suitable for meeting the Project's goals in terms of location, size and proximity to connect to the utility grid. As a result of its screening analysis, alternative sites were not deemed viable due to one or more deficiencies in meeting the CVE's criteria. CVE, concluded that WPA site was unique in all of the Pine Barrens towns and the County of Suffolk in its ability to achieve the Project goals of reducing carbon emissions, meeting State climate goals, and providing access to non-carbon based fuel.

The Applicant offered to expedite closure of the sand mine five years sooner than planned, in 2039 rather than 2044 and has offered to reduce the amount of sand mined by 100,000 cubic yards on 1.55 acres. This will shorten the impacts to the local community from the processing and transporting sand from the mine. Additionally, the Applicant offered to protect the remaining 24 acres of CGA property in the southerly portion of the Project Site as mitigation for the Project. A conservation easement will protect the 24 acres as natural open space and not be cleared, disturbed or developed.

III. The Study Area and State Historic Resources Determination

The Staff Report defined a Study Area which analyzed, in general, the land use and ownership of property within a one-half mile radius of the property. The Study Area contains a significant amount of public open space east and north of the site in the Core in the vicinity of Sunrise Highway. To the west and south are developed industrial uses including special trade contractors and residential uses further south on Speonk Riverhead Road and Old Country Road.

The Study Area includes property in the CR 200 zoning district and LI 40 zoning district and it includes area in the Core and in the CGA. The Speonk Riverhead Road corridor is located in the CGA. The industrial zoning reflects land uses developed in this corridor including special trade contractors, warehouses and sand and gravel mines.

The Commission requested information from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) on whether the Project would impact State listed historic or prehistoric resources. OPRHP replied by letter dated September 5, 2023 that, “[i]t is the opinion of OPRHP that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project.” Thus, the Project will not impact such resources.

IV. State Environmental Quality Review Act and Other Required Approvals

The proposal is a Type I action pursuant to New York State Environmental Conservation Law (ECL) Article 8 (State Environmental Quality Review Act (SEQRA)), and its implementing regulations 6 NYCRR Part 617.4(b)(6)(i) due to the extent of physical alteration. On March 20, 2024, the Commission commenced SEQRA coordination for Lead Agency with NYSDEC and Southampton Town. No other agency requested Lead Agency status. Southampton Town Planning Board provided comments in a letter dated April 11, 2024.

Environmental Assessment Forms Parts 2 and 3 were prepared by the Commission staff. The Applicant prepared the Part 1 of the EAF. No significant adverse environmental impacts were

identified in the EAF. The Project will not cause the removal of large quantities of natural vegetation or impacts to wildlife; it will not impact agricultural or cultural resources; no adverse traffic or air quality impacts will be produced by the Project; it will not generate solid waste or sewage; it will produce energy rather than consume it; the Project is not irreversible, and it will not cause adverse cumulative impacts when combined with one or more other projects. The Commission adopts a Negative Declaration for the Project.

The Project requires permits and approvals from other involved agencies including but not limited to the Town of Southampton and potentially New York State Department of Environmental Conservation to change the mined land reclamation plan on record. However, the Project does not achieve the 25 Megawatt threshold for an application and review by the New York State Public Service Commission.

V. History of the Project Site and Prior Commission Decisions

The WPA property was developed as a sand and gravel mine in the 1980s, prior to the Act. In 2011, a Core hardship waiver request was submitted to deepen the sand mine. After a public hearing and substantive information including financial records demonstrating economic hardship and long term contract requirements, the waiver was granted on October 17, 2012 (the WPA decision). WPA committed to the natural restoration of the site in accordance with a reclamation plan when mining is complete. The waiver contained conditions such as restoration of the site once mining ceases and that a conservation easement be placed on the property to ensure the property remains natural in perpetuity after its post mining restoration.

In the past, the Commission granted compelling public need waivers for energy related proposals including:

- On February 16, 2000, the Commission granted approval to KeySpan for construction of an underground electric transmission line 22.5 miles long. The proposed transmission line would serve the essential public health and safety of the residents and communities of eastern Long Island and in particular the South Fork by providing electric energy and electric capacity that otherwise could not be effectively supplied without the project.
- On June 15, 2005, the Commission adopted a Findings Statement and approved a hardship on the KeySpan gas pipeline through Brookhaven, Riverhead and Southampton Towns that would serve an existing public need in the municipalities containing the Central Pine Barrens and those of eastern Long Island. It was demonstrated that the increased growth in eastern Long Island demands more natural gas supply and KeySpan must provide those customers with the natural gas pursuant to Public Service Law. The project reinforced an existing energy system. No feasible alternatives existed outside the Core Preservation Area. This project served an existing public need within the municipalities containing the Central Pine Barrens and those of eastern Long Island. The selected route in the maintained road shoulder was determined to minimize disturbance and adverse impacts on natural vegetation.

- On November 19, 2008, the Commission granted approval to LIPA to expand its Riverhead Substation, an existing electrical substation in the Core in Southampton Town. It was demonstrated that the facility could not be moved and expansion was necessary to accommodate customer growth in the region. LIPA was required to restore other areas of the Pine Barrens as part of the approval.
- On April 20, 2022, the Commission granted approval to Sunrise Wind to develop a transmission cable through the Core in Southaven County Park in Brookhaven Town. It was demonstrated through an alternatives analysis that the cable could not go elsewhere due to location requirements and electrical grid connection capabilities.

Prior approved precedent matters are similar to the Project due to demonstrations of limitations and requirements to connect to the energy grid and the lack of sites, routes or relocation constraints to be developed elsewhere.

VI. Commission Review of the Act's Extraordinary Hardship and Compelling Public Need Waiver Criteria and Applicant's Materials

CVE discussed their waiver request with reference to both the extraordinary hardship criteria and the compelling public need criteria outlined in the Act.

The Commission finds that CVE has not demonstrated that an extraordinary hardship exists. CVE failed to establish extraordinary hardship due because WPA enjoys a beneficial use on the property, specifically, the use WPA sought in its 2011 application to the Commission.

However, the Commission finds that CVE has demonstrated that a compelling public need - meaningfully advancement of the New York Climate Leadership Community Protection Act - exists for its project and this overrides the protection of the property in the Core in a unique way, because the Core portion of the WPA property is a sand mine that will be restored upon completion of active sand mining. At that point, the Commission's WPA's decision requires that the property be restored to open space. This goal can be achieved under the CVE project albeit on a delayed schedule. If implemented the Project will serve an essential health or safety need of the municipalities in the Central Pine Barrens in that it will advance the State climate agenda and provide access to solar energy for the existing needs of the residents nearest to the Project site and its completion be restored to open space.

The Pine Barrens resource is the restoration of the sand mined area to pine barrens habitat through the implementation of the restoration plan. This goal will be achieved after the CVE project is complete. While the Project is ongoing many of the elements of the restoration plan will be implemented. This makes the Project unique.

To merit a compelling public need hardship, CVE demonstrated the property's uniqueness because it is cleared of natural vegetation, sunken and below grade that lacks direct visibility from the public roads, viewpoints, surrounding properties, and neighbors. This distinguishes it from other cleared sites at grade such as farms or formerly developed, vacant or abandoned properties with or without structures since development on a typical project site in that condition

would be visible from surrounding areas potentially causing adverse visual impacts, glare and impacts on scenic resources in the Central Pine Barrens. CVE's CESIR study identified the property as "extremely rare" in its ability to connect to the grid given very scarce "available substation and circuit capacity" within the utility which spans all of Suffolk County. The Project will also provide financial benefit to the public through a community solar program and generate renewable energy for 1,100 homes in each phase or a total of 2,200 homes, as per the Applicant's April 17 presentation.

Thirty-seven alternative sites were evaluated that included vacant, institutional and naturally vegetated properties that were located in commercial or industrial zoning categories. Each of these, did not satisfy CVE's criteria due to being active uses or conditions, zoning regulations and project needs including grid connection capabilities. In addition, Suffolk County and municipal requirements restrict and discourage the industry from implementing "green for green" projects whereby trees and other natural vegetation are removed to develop solar facilities. Thus, CVE only considered cleared sites. CVE stated in its May 1 materials that it has "negotiated with all landowners where zoning allow for commercial ground mounted solar projects, and all sites are ineligible in Southampton and other towns for these reasons and the inability to get permission from the utility to connect to the grid." CVE stated it could not secure another suitable property for its property or that scored as high as the WPA site.

Development on the property, when considered against the other sites considered, would cause the least amount of adverse environmental impacts to the Core due to its disturbed condition as an active sand mine.

CVE has demonstrated that the Project will serve an essential health or safety need for Central Pine Barrens municipalities and their residents by providing non-carbon based energy to the market. In line with the compelling public need demonstration, the CVE project serves more than one municipality and community by providing a renewable energy production source to the energy grid.. CVE, in its April 4 materials, stated that the Project is a community based project and energy produced by it will be made available to nearby residents with low to moderate income.

When weighed against the importance of the protection of the portion of the Core Preservation Area in the WPA property, the public benefits of the Project are of a character that override the importance of prohibiting development in the Core. The Project is proposed below grade in a sand mine. It will not disturb natural pine barrens vegetation, is not expected to impact groundwater or surface water resources, all of which are integral goals of the Act. Additionally, since the solar facility will be at a depth of 26 feet above mean sea level as opposed to a grade depth of 71 feet above mean sea level the development of a solar array will be visually out of direct view. This will avoid impacts on visual character and scenic resources from direct public view. Scenic and visual resources are features that are mentioned in the Act as resources worthy of protection. The below grade condition of the Project Site avoids the Project's visibility that could potential adversely impact visual character of the Central Pine Barrens.

The Project Site is below grade and due to its isolated location setback from nearby roadways and sunken condition, it lacks visibility from public property or public roads. This condition is

unlike a different type of cleared site that is visible to neighbors and passersby and potentially developable, but not out of direct view. This decision is not precedent setting on a site that is cleared and, for instance, contains a former development that was removed or abandoned, a farm, a vacant site, a disturbed or blighted property such as a formerly commercially developed site, or an empty paved or unpaved lot. Cleared sites of that nature would be expected to be visible or be in direct view of the public from adjacent roads and properties and are not suitable for solar development since doing so may cause adverse impacts from glare and on scenic roads, viewsheds and visual resources.

Resources that comprise the “character” of the region are goals outlined in the Act as characteristics of the Central Pine Barrens that the Plan is designed to protect. ECL Sections 57-0121 (2) and (4) seek to preserve and maintain the essential character of the existing pine barrens environment and accommodate development in a manner consistent with the long term integrity of the pine barrens ecosystem. Chapter 5 of the Plan refers to the protection of roadside character and scenic resources. Therefore, the Project site provides a unique set of conditions that are unlikely to be present in other sites and is atypical in the type of site available for reuse or redevelopment in the Central Pine Barrens. Sand mines as opposed to other land uses may represent a unique land use that could support redevelopment with solar facilities as opposed to other properties cleared of natural vegetation.

In contrast, had CVE proposed to clear, create a mine, a depressed area, or materially alter the grade, the public need would likely not override the importance of protecting the Core Preservation Area. Nothing in this decision is intended to convey support for or encourage sand mining or other “material alteration of grade or excavation” to accommodate or design or plan for this type of land use or development activity. The Commission finds that the site is unique because it has been a sand mine since the 1980s and its existing condition is suitable for redevelopment in this specific case of a solar array to meet New York State’s energy goals to reduce the adverse impacts of climate change related to the release and generation of fossil fuels and after the project is complete the entire WPA property will be better protected than currently because all 115 acres of the property will be under an easement rather than just 91 acres.

CVE’s project will contribute to achieving New York State’s CLCPA renewable energy goals. The CLCPA, enacted in 2019, is a comprehensive response to the climate change crisis that mandates carbon emissions reductions from all sectors of New York’s economy by 40% by 2030, and 85% by 2050 (both measured against 1990 levels). The CLCPA also requires that 100% of the electricity used in New York must come from clean energy sources by 2040.

Granting a compelling public need waiver to CVE is not inconsistent with the purposes, objectives, or the general spirit and intent of the Act. These can continue to be met with the Project’s goals of supporting the State’s climate action goals on the property because the grant delays the full implementation of the restoration plan on the entire 115 acre site, providing a net gain of 24 additional acres of protected pine barrens habitat.

The Application discussed that the Project will serve an essential public health and safety need for communities by providing and supporting sustainable renewable energy, in support of New York State’s renewable energy targets. The Project is designed to minimize adverse

environmental impacts since no disturbance to natural vegetation will occur since the Project site has been used as a sand mine since the 1980s. The Project achieves the minimum relief necessary to ensure the integrity and continued protection of the Project site and the Core Preservation Area. Native plant restoration will occur with plantings installed below the solar panels that will provide an interim level of restoration until the end of the solar project life when final restoration will allow the area to be retained as natural per the terms of the conservation easement. Mining operations will cease in 2039. After the 35 year lifespan of the solar facility the site will be fully restored with natural vegetation and protected as natural open space.

The Applicant will expedite closure of the sand mine five years sooner than planned, in 2039 rather than 2044, and has offered to reduce the amount of sand mined by 100,000 cubic yards on 1.55 acres of the Project Site. This will shorten the impacts to the local community from the processing and transporting sand from the mine. Additionally, the Applicant offered to protect the remaining 24 acres of CGA property in the southerly portion of the Project Site as mitigation for the Project. A conservation easement will protect the 24 acres as natural open space to never be cleared, disturbed or developed.

The Project site benefits from a long-term mining use that existed prior to the Act that will remain active until 2039 with the proposed Project. The beneficial use the site currently enjoys will have a set expiration date which enables the potential to plan for a beneficial reuse of a renewable energy production facility that will assist in achieving the State-wide energy goals. The solar use will have a life expectancy of 35 years and will be decommissioned at its end of life, therefore it will not remain permanently on the site and is not an irreversible commitment of resources or use of the Project Site.

Once the solar use is decommissioned, it will be removed from the property. The restoration plan will be implemented using native plants including pitch pine trees and pollinator friendly habitats, according to the Applicant. The decommissioning plan and a revised revegetation plan will be prepared and submitted to the Commission for review prior to commencing development for the Project.

The conditions unique to the property do not apply to other property in the vicinity due to its prior disturbance, active sand mine use, its area and size, the location, site condition lacking vegetation due to sandmining, lack of direct visibility and impacts on scenic views, the owner's willingness to support the Project and its proximity to connect to the electric grid.

Pursuant to ECL Section 57-0121(10)(c), the granting of a permit will not be materially detrimental to the property as it will be located in an area out of public view, at a low elevation in a sand pit and not visible to neighbors. It is not expected to increase the danger of fire or endanger public safety provided it is developed and operated with proper safety plans in place and the fact that it is located in the bottom of a sand pit.

The site is denuded due to its former and currently active sand mine land use, and as a result, the Project will not cause the substantial impairment of the resources of the Core. It will not generate sanitary sewage discharged to groundwater. No surface water resources are in proximity to the Project site to receive runoff from the Project site or to be adversely impacted by the Project.

Pollinator friendly plantings will be installed beneath the solar panels to provide habitat and to support a grassland type of pine barrens ecological community for wildlife including insects and birds. Due to shading impacts that would impact solar energy production, trees will not be planted during the Project's use and operation. When the solar use is decommissioned, pitch pine trees and other native tree species will be planted and the site will support a variety of ecological communities. CVE represented that it is committed to restoring the natural pine barrens habitat in accordance with the conservation easement recorded on the property.

CVE represents that WPA will record an additional conservation easement on the property to protect 24 acres of natural pine barrens habitat in the CGA at the south end of its property, which will provide a public benefit related to the protection of groundwater resources and ecological resources of the pine barrens. Once the solar facility is decommissioned, the entire 115 acres rather than the 91 acres currently protected will be protected forever in conservation easements for use as natural open space. No additional development or nondevelopment activities will be permitted or considered on the Project Site.

The waiver is not inconsistent with the purposes, objectives or the general spirit and intent of the Act as it does not impact groundwater and ecological resources in the Central Pine Barrens. The solar facility is proposed as a 35 year temporary use that will be removed after it has served its useful lifespan and the Site will be restored to natural pine barrens habitat.

Pursuant to ECL Section 57-0121(10)(c)(iii), the waiver is the minimum relief necessary to relieve the hardship. The Project's 50 acre size supports a significant contribution toward meeting the State's renewable energy goals. No other sites in the alternatives analysis could meet this minimum size criteria offering a compact and efficient use of the site and for the use in the region.

Easement Modification

The Commission finds that the easement can be modified to authorize the project while securing additional protection of the property. The modifications will reflect that 50 acres of the area protected by the easement are subject to new restrictions to reflect the presence of the Project. Second, they will establish the new protections for this area. Third, the easement should be modified to bifurcate its protective elements on the CVE project area and the remainder of the WPA property. The easement will be modified to establish that no further development projects will be considered on the WPA property in its entirety and no further modifications authorized. Once sandmining activity ceases in 2039 and the 35 year lifespan of the solar facility is completed, no other activity other than natural open space is permitted on the WPA property. The Commission is not alienating any easement interest. Rather it is delaying full implementation of the same. The property will remain under easement protection as is in its current state.

The Commission finds that the easement can be modified because the ultimate purpose of the easement remains the same, which is the protection of the entire 115 acre WPA site after restoration. When CVE implements the restoration plan on 50 acres, after decommissioning, it

will be consistent with the restoration proposed under the Mine Reclamation Plan and the easement's objectives will be obtained, albeit on a delayed schedule for the project area. Sandmining will continue on 41 acres of the 91 acre mine site until 2039. When mining is complete in the 41 acre area, restoration of will occur. It is not part of the Project and it remains protected under the 2014 conservation easement; no development or "non-development" activities will occur on it. The easement modification results in a net gain of 24 acres (26%) of natural open space protected by the easement on the WPA property.

The Commission notes that the easement was not an easement given under the Pine Barrens Credit Program, and WPA did not receive Pine Barrens Credits for the Project site. The Commission need not address if Pine Barrens Credits were issued, whether the easement would be modifiable, and nothing herein provides precedent for such a proposition for it may well not be.

The easement originated out of the WPA hardship approval. No Pine Barrens Credits were issued or will ever be issued on the portion of the 115-acre Project site that is in the Core Preservation Area. No additional development is proposed or permitted. With 50 acres of solar development, the remaining 41 acres of the 91-acre Project site will continue to be mined and restored in accordance with the restoration plan. No further expansion of the use or Project is allowed on the 41 acres. It will be protected in perpetuity during and after mining activity ceases in the current timespan of 2039. In the 115 acre Project site, the Applicant offered to protect 24 acres in the CGA, presently naturally vegetated, at the south end of the Project site and not currently sand mined. This area will be added to the conservation easement to be protected in its current natural state as open space and no development or non-development activity may occur on the 24 acres.

The Commission finds the Project will not be precedent setting for the conservation easements it holds related to the Credit Program and development projects. To date, no development project easements have been modified. The WPA project required the easement as a condition of approval to ensure the protection of the site when mining activity ceased and to eliminate the potential for the Applicant to seek Pine Barrens Credits. This continues to be achieved through the existing recorded conservation easement. No credits will be generated from the WPA property.

But for the two minor instances when the BSA easement was modified, no other Credit Program easements have been modified. Credit Program properties are, for the most part, naturally vegetated and no development or "non-development" activities pursuant to the definitions in the Act are permitted. The Credit Program is transactional whereby a private landowner in the Core agrees in return for removing the development potential from the land, places a conservation easement on the property that protects it from development. The landowner receives a Credit that represents this development potential which can be used under the provisions of the Plan or sold. The Project is not precedent setting for Credit Program easements as per this distinction. The Commission finds that CVE reliance on the BSA easement modification misplaced.

The Commission finds the conservation easement needs to be modified to recognize the delay the project will cause in implementing the restoration plan. The delay is not expected to interfere with

the full restoration of the property as designed in the restoration plan and will permanently protect 24 more acres than originally anticipated.

VII. Conclusion

Based on the foregoing the Commission approves the request for a compelling public need waiver for CVE. The Project is identified in the Site Plan titled “CVE Giaquinto 1 and 2” prepared by CVE dated May 15, 2023, stamp received on May 1, 2024, on the terms and conditions contained in this decision.

The Commission finds the approval of the hardship waiver application will not have a significant adverse environmental impact and hereby authorizes the issuance of a Negative Declaration 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 Project entitled CVE Core Preservation Area Compelling Public Need Waiver Application is entitled to a Compelling Public Need Waiver exemption for the foregoing reasons and therefore is approved to develop a 50 acre solar facility with a maximum of 8,500,000 kWh at the end of a two-phased buildout, during the active use of the sand mine on the Project Site, subject to the following conditions:

1. Prior to commencing development of the Project, submit for review:
 - a. A solar development phasing plan that aligns with areas already mined and areas that continue to be mined. The entire 50 acre area for solar cannot be completely developed until sandmining is complete which is currently planned to occur in 2039. Describe the sequence of completing mining on 50 acres and commencing solar development and completing solar development, commencing restoration and completing restoration of the total 50 acre Project.
 - b. A decommissioning plan to be implemented at the end of 35 year life of the solar project.
 - c. A revegetation plan for
 - i. after mining is complete and
 - ii. after the solar facility is decommissioned.
 - d. Submit a draft conservation easement granted to the Commission to protect the southerly 24 acres of naturally wooded area in the CGA on the Project Site. The document will be subject to review and revisions until acceptable by the Commission. No activity may commence until the easement is accepted by the Commission and recorded with the Suffolk County Clerk. Once the described 24 acres of property is protected in a conservation easement, the applicant may review whether to donate it to the Town or another public agency that will accept it for its protection as natural open space.
2. Submit a copy of Southampton Town’s decision on the Project.
3. Submit a copy of the amended NYSDEC Mined Land Reclamation Plan.

4. The Commission's approval is valid for five (5) years from the Commission's date of approval. The Applicant must initiate 50% of the Project, which is the Phase 1 development of a 25 acre solar array in operation on the Project Site.
 - a. Mining will cease in 2039
 - b. The Project must be decommissioned 35 years after full integration with the grid.
5. No further expansion of the use or Project is allowed on the 41 acres that is presently in the sandmining operation and not in this Project.
6. No modification of the activities permitted under the mined lands permit except forfeiture of right to extract 100,000 yards of materials from the WPA property.
7. Obtain approval of a Stormwater Pollution Prevention Plan (SWPPP) from the Town Engineer and/or NYSDEC.
8. Submit an As Built Site Plan within six months of completing the 25 acres in each phase.
9. This decision is valid only for the Project under review in this application. Any substantive changes require a new application including expansion of the project or substantial redesign is subject to Commission review discretion. No change in the project is allowed without review by the Commission and subject to the provisions of ECL Article 57 and the Comprehensive Land Use Plan.
10. The Project must conform to all other involved agency jurisdictions and permit requirements in effect on the Project Site.
11. Record a copy of this document including an 8.5"x11" black and white copy of the Site Plan in the Office of the Suffolk County Clerk and distribute to involved agencies.
12. To assure that the development of a solar facility produces the community benefits represented by the applicant in writing on April 4, 2024, the following shall be provided before commencing any physical aspect of the Project on the Project Site:
 - a. compliance with all requirements of the NYSERDA Community Distributed Generation (CDG) Program, together with any amendments thereto;
 - b. within 90-days upon a decision by the Commission, provision of the community engagement plan to secure LMI subscribers to the CDG program to the Commission;
 - c. definition of LMI households, as applicable, with a preference for LMI households within the boundaries of the Central Pine Barrens and then Suffolk County.
13. Confirmation to the Commission of the LMI subscription rate within 2 years of full operation of the two-phased project and how the applicant/operator will maintain the LMI subscription rate if households move or disengage from the CDG program.
14. Supply a report to the Commission and its members every two years of the anniversary of the community engagement plan compliance with NYSERDA standards and/or annual audit submitted to the Commission of CDG subscribers' electric invoices showing net actual charges and the costs after applying the NYSERDA program discount commencing with the first year of operation of the first phase of the project and through the end date of the two-phase project.
15. Every two years of the anniversary of the community engagement plan submit to the Commission and its members a demonstration of compliance with NYSERDA standards for LMI participation.
16. This decision does not set precedent for any project that is not visible in the Central Pine Barrens landscape, from direct or indirect public view, such as warehouses at, above or below grade or mean sea level or average ground level, at the bottom of a sand mine or anywhere else on a project site or any other land use or development project on a project site.

**Motion to Approve CVE North America Solar at Westhampton Property Associates
(CVE US NY Southampton 243 LLC)**

Core Preservation Area Compelling Public Need Waiver, Town of Southampton
Project Site Suffolk County Tax Map Numbers 900-276-3 1 and 2

DATE: June 26, 2024

RECORD OF MOTION

MOTION BY:

SECONDED:

VOTE:

YES: 4

NO: 0

ABSENT: 0

ABSTAIN: 1 - Mr. Panico

Present:

Mr. Calarco, for the New York State Governor

Ms. Juengst, for the Suffolk County Executive

Mr. Panico, Brookhaven Town Supervisor

Mr. Hubbard, Riverhead Town Supervisor

Ms. Moore, Southampton Town Supervisor

cc:

Southampton Town

New York State Department of Environmental Conservation Region 1

Guisseppe Guiaquinto, owner

Steven Engelmann, CVE North America

CVE US NY Westhampton 243 LLC

David Gilmartin Jr. Attorney

Charles J. Voorhis, Agent