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C E N T R A L P I N E B A R R E N S
C O M M I S S I O N M E E T I N G

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CVE US NY Southampton 243 LLC

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September 20, 2023
3:00 p.m.

200 Howell Avenue
Riverhead, New York

TRANSCRIPT OF PROCEEDINGS

A P P E A R A N C E S:

ROBERT T. CALARCO, Governor's Representative

YVETTE AGUIAR, Riverhead Supervisor

DORIAN DALE, Suffolk County Designated Representative

JANICE SCHERER, Southampton Designated Representative

MICHELLE DI BRITA, Brookhaven Designated Representative

DANIELLE HURLEY, Riverhead Designated Representative

JUDITH E. JAKOBSEN, Executive Director

JULIE HARGRAVE, Joint Planning and Policy Manager

JOHN C. MILAZZO, Commission Counsel

ANGELA BROWN-WALTON, Administrative Assistant

ALSO PRESENT:

Charles Voorhis, Esq..

Steven Englemann, CVE North America

David Gilmartin, Esq.

PUBLIC SPEAKERS:

NONE

MR. CALARCO: Welcome back, everyone. We have come out of the closed session. It is 3:00 and we will be starting the public hearing. We had a couple of public hearings schedules. The first one had been adjourned until next month, so we'll move to CVE North America Core preservation hardship waiver application.

Ms. Hargrave, do you want to start, and then we'll ask the applicant.

MS. HARGRAVE: The Commission should have received a copy of this staff report of exhibits, and the applicant has a copy as well. I'm just going to briefly go through this. The applicant is here to make a brief presentation as well.

MR. MILAZZO: You don't have to read the hearing notice.

MS. HARGRAVE: To remind the commission --

MR. MILAZZO: Can we just put appearances on?

MS. DiBRITA: Michelle DiBrita, Brookhaven Town.

MS. AGUIAR: Yvette Aguiar, Riverhead
Township.

MS. HURLEY: Danielle Hurley,
Riverhead Township.

MR. CALARCO: New York State DEC for
the governor.

MS. SCHERER: Janice Scherer,
Southampton Zoning supervisor, and Martin
Shea, also a designated representative.

MR. DALE: Dorian Dale,
representative of County Executive Steve
Bellone.

MS. HARGRAVE: Just to situate
everyone where the site it. It's in
Eastport/West Hampton area, east of Speonk
Riverhead Road. The two parcels are
landlocked. They are accessible by a road
with access on Speonk Riverhead Road over
some other property that is not part of this
project site. It's bounded by Sunrise
Highway on the north side and Old Country
Road on the south side in the Town of
Southampton.

The property that is under the

ownership of this owner is about 115 acres and, again, it spans the distance from Sunrise Highway to Old Country Road. It's two parcels, about 115 acres. There is a sand mine that's 91 acres. And this project is to lease -- the applicant CVE North America to lease and develop 25 acres, up to 91 acres, of sand mine to develop a solar facility. Again, the property, about 68 acres of it is in the Core Preservation area, and 46/47 acres are in the Compatible Growth Area and Critical Resource Area as well. This project, which is 25 acres, spans the Core and the CGA.

At this time, the applicant is submitted an application for a Core hardship. It may be determined that before this process is complete that a Compatible Growth Area and Critical Resource Area application may be necessary as well.

To explain the main items of this proposal, there are three main items:

One is the request for a core hardship to develop 25 acres with solar

1
2 installation.

3 The second thing is the critical part
4 of this application which is to modify a
5 conservation easement that exists on the
6 property.

7 The third main item is to modify the
8 mine land recommendation plan, which said
9 that this property would be restored to
10 natural vegetation and natural habitat after
11 the mining is complete.

12 So, a little bit of background on the
13 project site. In 2012 the Pine Barrens
14 Commission granted a hardship waiver to
15 expand the sand mine on the site to go
16 deeper, about 20 feet over 91 acres,
17 approximately. The decision is in this
18 package, and I'll go through the exhibits.

19 The decision that was granted had
20 requirements, some conditions and findings,
21 and most importantly that no development
22 could occur in the future on the site, and
23 that it had to be protected in a conservation
24 easement forever. So, it will be restored to
25 a natural habitat and it would be protected.

1
2 So, one of the conditions required the filing
3 of a conservation easement with those terms,
4 and this proposal is contrary to those terms.

5 The easement does allow for it to be
6 modified -- the easement to be modified, but
7 not in a way that contradicts the terms of
8 the easement which, again, allowed no
9 development and required the site to be
10 reclaimed as a natural habitat.

11 Those are the main elements of this
12 proposal. So, this would require your
13 approval to modify that easement and change
14 the terms and also change the outcome of this
15 sand mine which is to be re claimed again as
16 natural, and now there would be development
17 of the solar facility in the middle of the
18 sand mine.

19 So again, the project site is the
20 subject of the hardship in 2012. There is a
21 map in the staff report that shows the
22 location of sand mine. It is near Speonk
23 Riverhead Road and is significantly developed
24 with industrial commercial uses on tractor
25 buildings other sand mines and also an

1
2 asphalt plant. That's mainly to the west of
3 the project site.

4 To the east is a significant amount
5 of public land, natural open space.

6 To the southeast is some additional
7 development. On Old Country Road, there is
8 the Suffolk County Police facility, there is
9 a Bideawee complex, the animal shelter, and
10 Westhampton Senior Living and residential
11 uses as well, on the southeast side of Speonk
12 Riverhead Road.

13 This site is zoned CR-200, which is a
14 five acre residential zoning. Other zoning
15 districts in the immediate area and the study
16 area include LI-40, Light Industrial one acre
17 zoning district in East Hampton. And there
18 are transfer and receiving areas -- receiving
19 areas identified in the previous plan in the
20 vicinity of this site. Those allow for
21 increased density, and there was a
22 subdivision in the area that has taken
23 advantage of that allowance for density for
24 residential use nearby the site.

25 Some main items of the conditions of

1
2 this area. Again, the site is a sand mine,
3 so it's significantly degraded and altered
4 due to the presence of mining activity.

5 Since the application was -- since
6 the sand mine was deepened about 11 years
7 ago, one of the requirements of the decision
8 was to for the applicant to submit ground
9 water evaluation data from the monitoring
10 well every month; and they have been doing
11 that since the decision. And the depth of
12 the floor of the mine was not permitted to go
13 closer than four feet to ground water; and
14 there have been instances, since the
15 approval, where that limit was breached
16 slightly. So, we had put the applicant on
17 notice about that. So, they are monitoring
18 the ground water level to the site on the
19 southern portion of the property, which is
20 under the same ownership as the application
21 of the Westhampton property, which was the
22 mine that was deepened.

23 The southern portion of the property
24 is the Compatible Growth Area, and the owner
25 did not disturb the natural vegetation in

1
2 that area. That's a part of the Core police
3 source area as well. That is not being
4 disturbed for this application either. There
5 is some natural vegetation on the property
6 owned by the same owner, but they're not
7 disturbing the natural vegetation in that
8 area for this project.

9 The SEQRA activity that is in
10 coordination has not occurred yet. This is a
11 Type 1 action, more than ten acres of
12 nonresidential use. This will require town
13 permits, approvals and, obviously, the core
14 hardship which is before you, the easement
15 modification under Article 49 of the
16 Environmental Conservation Law.

17 We also have some questions about how
18 this -- how the DEC would amend this or
19 modify the permit on the reclamation plan
20 that the applicant committed to when the
21 hardship was granted in 2012, again, for
22 natural restoration. So, how does that fit
23 with that reclamation plan that we would
24 agree to.

25 I just want to read the end of the

1
2 report. It has some questions to clarify
3 before this process is complete. The
4 applicant submitted a really preliminary type
5 plan showing the location on the site, but
6 where the core boundary lines exist, we had
7 to generally find those. We would need a
8 more clear definition of how much area is in
9 the GGA and how much is in the core.

10 We would like to know the amount
11 mount of area where mining has been completed
12 and where it continues to occur. From our
13 understanding from the applicant, there is 25
14 acres under now for solar, but when the
15 mining is complete, they would like to
16 progress, expand the solar facility the next
17 phase that is complete for mining, and then
18 continue expanding the development of the
19 solar facility on this sand mine. Right now
20 it's 25 acres, but that could expand in the
21 future.

22 The area of the restoration that has
23 occurred to date on the sand mine. We're
24 trying to get a handle on the status. Again,
25 back in 2012 the applicant explained in the

1
2 restoration and reclamation plan showed that
3 mining would continue and restoration would
4 occur through 2047. So, we're trying to
5 understand the current status of that
6 restoration, what has been completed, what is
7 going to continue to be mined, and when it
8 will be completed in the current phasing of
9 the project. Areas of the site plan for
10 solar present and future phase, timeline of
11 phasing out mining activity, and a timeline
12 for phasing in solar facilities.

13 Again, a Critical Resource
14 application may be required. We would need
15 the applicant to explain, and I'm sure they
16 will today, how this proposal effects
17 easement -- we haven't received any written
18 information on that -- and how they propose
19 to modify the easement or propose to you how
20 you should modify the easement for them.

21 How this permit, the sand mine permit
22 is effected in the mine reclamation plan of
23 the DEC and how does that process play out.

24 The applicant is to explain -- we
25 need more information on their facility

1
2 equipment compounds, meaning office, is
3 proposed somewhere in the vicinity of this
4 site but not on this project site. So, we
5 need to know where that is and the clearing
6 or activity that is going to occur related to
7 that accessory or ancillary facility.

8 That's most of the comments that we
9 have. Again, I'll go through quickly the
10 exhibits. There's a location map. There's a
11 map of their solar installation, which you
12 can see stands before --

13 MR. MILAZZO: Off the record.

14 (Whereupon, a discussion was held off
15 the record, after which the following
16 transpired:)

17 MS. HARGRAVE: The staff report has
18 Exhibits A through K.

19 Exhibit A is the location map.

20 Exhibit B is the the solar facility
21 site plan.

22 Exhibit C is photographs the
23 applicant sent us recently. Since we haven't
24 had a chance to go to site lately before this
25 application yet, we would like to go before

1
2 the hearing is closed and before this project
3 is complete. We went to the site when it
4 under review many years ago.

5 Exhibit D is the sand mine
6 reclamation plan that was filed in 2012 when
7 the project was approved to deepen the mine.
8 And the phasing schedule is also part of that
9 exhibit.

10 The Westhampton property for hardship
11 waiver is Exhibit E, the resolution. Again,
12 to bring your attention to the resolution,
13 pages 8 and 9, explain that the mine site is
14 protected from future development and that
15 the project -- the applicant will avoid new
16 construction to serve vegetation, because
17 they are offering the conservation easement,
18 which the Commission accepted. They approved
19 a financial hardship at that time to expand
20 the mine to go deeper. So, they have
21 received one hardship already on this project
22 site.

23 The conservation and easement and the
24 non-disturbance agreement are Exhibit F.
25 We'll go through all of that.

1
2 The study area map is Exhibit G,
3 which shows the site and the surrounding open
4 space to the east and the north and the
5 Compatible Growth Area to the west.

6 The hardship letter is Exhibit H.
7 And that's the CVE letter that they submitted
8 in the application. So, it's a recent
9 submission by the applicant.

10 Exhibit I is a plan showing the
11 restoration plans for solar repurposing of
12 the Westhampton mines. That's Exhibit.

13 Exhibit J is the Article 49
14 procedures for modifying or extinguishing
15 conservation easement, and

16 Exhibit K is a map of the Critical
17 Resource Area and the listing of the Critical
18 Resource Area in the Pine Barrens land use
19 planning.

20 Does the Commission have any
21 questions for me?

22 MS. AGUIAR: There's an easement on
23 this property, correct? I tried to read it.
24 So, were there conditions attached to this
25 easement? I thought I heard you say that.

1
2 MR. MILAZZO: That's an essential
3 question that Julie raised. We're waiting to
4 hear from the applicant. The easement, the
5 two pertinent provisions of the easement are
6 represented by David Gilmartin. He will talk
7 to us about that today. So, paragraphs four
8 and nine, I think they are.

9 The easement can be modified, but the
10 modification has to be consistent with
11 Article 49 of the ECL. And also another
12 section of the easement, they gave up the
13 right to apply for a hardship on the property
14 forever. That's sort of the basic purpose of
15 an easement. So, it will be interesting to
16 hear Mr. Gilmartin's prospective and
17 explanation on how this is consistent with
18 the easement. I think that's an essential
19 question, because if the easement cannot be
20 modified, this project can't go forward.

21 MS. AGUIAR: I think it hangs on the
22 easement.

23 MR. MILAZZO: It's even harder than
24 that -- not harder. The second hurdle is, if
25 this easement can be modified, and we don't

1
2 know, then they still have to prove a
3 hardship. So, there are two hurdles in this
4 race for the applicant, and they're well
5 aware of them. They're represented by
6 superior counsel. So, we'll hear about it.

7 MR. CALARCO: So, we'll turn it over
8 to the applicant now.

9 MR. VOORHIS: Good afternoon
10 commissioners. Very good to see you in the
11 Town of Riverhead here. My name is Charles
12 Voorhis, "Chic" Voorhis from Nelson, Pope and
13 Voorhis with offices in Melville. I
14 represent the applicant on this matter.

15 We prepared a presentation. I hope
16 it's visible. Of course we'll submit this
17 after the hearing, and I'll be referring to
18 it for the purposes of my presentation.

19 So, we can advance to the next slide
20 and I'll introduce the team members. It's
21 not visible, but I introduced myself. With
22 us here today is Steven Engelmann of CVE
23 North America. He just stood up. He is
24 joined by Florence and Edie, some of the
25 technical folks in his group. We have David

1
2 Gilmartin here from GT Law who John Milazzo
3 just mentioned has been in touch with him for
4 the purpose of this hearing, and Dan Sullivan
5 of SKA is here.

6 So, we do see this as a Core
7 Preservation Area and Compatible Growth Area
8 hardship. Application was made on August 16,
9 2023. We will look to show you that we are
10 consistent with the basic purpose of the
11 conservation easement, which was one of
12 counsel's questions. We do recognize the
13 critical resource area on the south part of
14 the property. Again, to the extent my images
15 are visible, that will be addressed today.

16 We're happy to be before you to also
17 present the re-vegetation plan that Julie
18 mentioned in her introductory marks that was
19 submitted on September 5th. And it modifies
20 the re-vegetation that was previously
21 approved for the purpose of compatibility
22 with solar.

23 We're working off of PDF's, so, some
24 of these will be a little more visible.

25 As Julie said, it's a 115 acre site.

1
2 I'm not going to repeat all of the location
3 information. It is zoned under the
4 Quasi-public Use Service District in the Town
5 of Southampton. Our calculation are that 68
6 acres are in the Compatible Growth Area and
7 47 acres are in the Core Preservation area
8 and, of course, historically, this has been
9 used as a mine site.

10 Our records show the mining was
11 permitted as far back as 1981. The site is
12 disturbed in all areas that are the subject
13 of this application that do not contain prior
14 existing natural vegetation, other than what
15 has been restored, which I will talk about.

16 The site has been depressed, based on
17 the prior approval; particularly the south
18 side, where additional mining has been
19 completed, in accordance with the prior
20 commission approval. My office was involved
21 with that application. And we also had been
22 doing the ground water level monitoring that
23 was mentioned in the opening.

24 Mining operations are permitted to
25 occur on this site through the year 2044.

1
2 So, that's under the DEC permitting that was
3 recognized at the time of the prior Pine
4 Barrens approval and, ultimately, mining just
5 can't go past that date. That's the end of
6 the mine site approvals.

7 There's no other intrinsic value for
8 commercial or residential use on this
9 property, being it is in the Core. As Julie
10 mentioned, it is landlocked. It is a mine
11 site, and the site is not visible from any
12 roads. It's basically either residential or,
13 of course, the more industrial nature of
14 Speonk Riverhead Road to the west.

15 I don't need to dwell on this. Julie
16 covered this, but mining goes back to 1981.
17 There was the prior DEC plan from 2011 for
18 reclamation. The mentioned hardship that was
19 approved in 2012, and the conservation
20 easement filed in 2014.

21 So, the next slide talks about the
22 conservation easement. Those are the items
23 that John mentioned, John Milazzo mentioned.
24 They are directly out of that easement, so I
25 don't need to dwell on them.

1
2 The next slide essentially identifies
3 the area where we believe we have the ability
4 to be before you today for our application.
5 So, basically, there is miscellaneous item
6 number five where the conservation easement
7 can be terminated, in accordance with state
8 law, which is in the excerpt with your staff
9 package that the conservation easement may be
10 modified only upon written consent of the
11 Westhampton property and the Commission,
12 which is why we're here before you.

13 That Westhampton property and the
14 Commission recognize that circumstances could
15 arise which would justify the modification of
16 certain of the restrictions contained
17 therein, and that the Commission and the
18 Westhampton property shall mutually have the
19 right to agree to amend this conservation
20 easement, which are not inconsistent with the
21 basic purpose of this conservation easement.

22 So, I'll be speaking to them today.
23 David Gilmartin did have input into this
24 presentation, and all of our team members
25 that I mentioned before all are here to

1
2 assist with any questions and completion of
3 my remarks.

4 So, the next slide. Our basic
5 application is to seek a modification of the
6 easement for reasons that I'll outline today.
7 We are seeking the use of the site for a
8 community benefit, solar energy generation
9 project. I will talk about community
10 benefit. It's a really unique concept with
11 this evolving energy policies of the State of
12 New York and renewable energy resources
13 conservation and sustainability. Of course,
14 these things did not exist, at least in the
15 capacity that we understand them now, in 1993
16 when the Pine Barrens Act was adopted, or
17 1995 when the Conservation Land Use Plan was
18 adopted. So, there are a lot of unique
19 aspects of this project that I'll outline.

20 Of course, this is all within an area
21 that was permitted for mining previously. I
22 mentioned the date of the mine: 2044. This
23 site is uniquely situated for solar energy,
24 which is a renewable resource. It addresses
25 state and local and many levels of government

1
2 in terms of energy goals. It's in proximity
3 to the utility grid infrastructure. Again,
4 it speaks to the uniqueness suitability of
5 this site. It does provide for the
6 beneficial temporary use of a disturbed site,
7 as you know, and we'll talk about a little
8 more.

9 We have submitted a plan which will
10 provide ecological productivity, not unlike
11 what has already been approved for the site,
12 and we'll demonstrate that through a number
13 of images. And a very important point is
14 that after a maximum 35 year lifespan, this
15 use is removed and the site would be
16 completely natural. Again, not unlike
17 continued mining, until such times as mining
18 ceases. The site would be natural. In this
19 case, we're inserting a temporary use that
20 has many community benefits and environmental
21 benefits that has a lifespan. So, I think
22 that's an important aspect to understand.

23 I mentioned that there's no other
24 real value for the property, other than the
25 removal of the sand, which was previously

1
2 approved. This project provides direct
3 energy cost relief to residents of the area
4 through the PSEG billing program. Again,
5 part of that community benefit.

6 I specifically note here the energy
7 and renewable energy goals which are mandated
8 New York State under the Climate Leadership
9 and Community Protection Law with zero
10 emissions and electricity sector by 2040, and
11 goals for 70 percent renewable energy
12 generation by the year 2030. This will help
13 meet those goals.

14 We submitted our application based on
15 the community and societal benefits and
16 repurposing of disturbed mine site with no
17 impact to the Pine Barrens and activity
18 within the prior impacted area. Again, we'll
19 retain that ecological benefit.

20 We can go through these next slides
21 very quickly. This is just the site. It's a
22 little tough to see, but there is a red
23 outline in 1994, right between the Act and
24 the CLUP. The site was occupied by mining.

25 The next one just advances to 2001

1
2 and 2014, as mining was continuing under the
3 DEC permits.

4 The next one is 2016. Again, you see
5 the site is fully disturbed. You are all
6 quite familiar with it.

7 And the last one is 2023, which just
8 brings us to the most current available
9 aerial photograph.

10 I'll just frame out the project in a
11 little more detail on the next slide. There
12 will be over 11,000 ground mounted solar
13 models or panels on 25 acres. They have a
14 maximum height above the ground of ten feet.
15 Access will be from Speonk Riverhead Road and
16 the existing private access road that
17 currently provides access to the Westhampton
18 mine site.

19 There will be eight foot tall
20 security fencing raised at ground level so
21 that mammals and small animals can pass,
22 reptiles, etcetera, under the fence. But
23 security fencing is an important part of the
24 project.

25 There will be a decommissioning bond

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2 entered into with Suffolk County to restore
3 site conditions. And the facility will be
4 designed in accordance with New York State
5 Fire Code. It will be developed over the
6 next three years, after all approvals are
7 received, should they be received.

8 As was mentioned, there would be a
9 consideration, if it's found to be compatible
10 and beneficial, as we believe it is, that
11 additional areas of the mine would be used
12 similarly in the future, and we'll seek
13 appropriate approvals at that time. But this
14 phase of the project is not contingent upon
15 those additional potential approvals in the
16 future.

17 So, we see this as smart growth, as
18 opposed to using a green site. This is a
19 site that has been disturbed. It's a
20 temporary use, it has ecological benefit, and
21 it creates renewable energy.

22 Just a for more points on the
23 proposed project.

24 There's really no impact on this.
25 There is no sewage, there is no water use,

1
2 there's no lighting, there's no formal road.
3 There is an access road on the west side, but
4 it's minimal. There's no school impact,
5 obviously. We see those as just
6 demonstrating that this project is a minor
7 shift in the use of a property on a temporary
8 basis that still allows consistency with the
9 conservation easement.

10 There are negative impervious source
11 with no change in water recharge. The site
12 is screened from public view. Everything is
13 internal to the site and it's in the base of
14 the mine. There are slide slopes. You can
15 refer to Exhibit C for the existing
16 conditions on the site.

17 The land beneath the panel will be
18 restored with native vegetation. At the end
19 of the life, the equipment can be easily
20 removed and the site will become natural --
21 fully natural.

22 The next slide talks about CVE North
23 America. Again, representatives are here,
24 but there is a tremendous amount of
25 experience in developing and financing solar

1
2 projects such as this. The company focuses
3 on the northeast and New York State. They
4 are recognized for environmental quality
5 practices. They provide throughout the
6 company long-term ecological solutions to
7 meet energy needs. They support local
8 environmental initiatives. They are
9 certified as a B Corp. The slide after this
10 will talk a little bit more about the aspect
11 of community distributed energy.

12 So, this has some cool little
13 graphics, but basically community energy
14 provides solutions that meet the needs of
15 local governments, conservation bureaus,
16 landowners, local industry, investors and
17 financial planners; and that is through
18 community distributed generation. It allows
19 homeowners and renters, as well as
20 municipalities and businesses to have access
21 to the benefits of solar energy without
22 having to install solar panels on their
23 buildings.

24 The subscribers benefit from local
25 renewable energy and save money every month

1
2 on electricity bills. And this plays a key
3 role in achieving the State's targets. As I
4 mentioned before, it also democratizes the
5 beneficiaries of clean energy development in
6 a fair and equitable way. So, we feel that
7 that is something that is very unique in
8 terms of this use and provides a significant
9 benefit.

10 The next slide here just shows a
11 simple graphic of a much more detailed plan
12 that you have your in your package. That is
13 the solar re-vegetation plan. I was out to
14 the site. If you have it handy, you may want
15 to open to Exhibit C which talks briefly
16 about what we have out there now. Basically,
17 the first photograph on the top is looking
18 south from about the center of the restored
19 areas, and it shows how the till seeder set
20 the seed that is growing naturally within the
21 mine floor area.

22 We did inventory the side slopes of
23 the mine and they are well vegetated. This
24 shows tremendous natural re-vegetation that
25 is occurring. Because of the progression of

1
2 mining, the southern part was completed
3 first. So, as you look further south, the
4 first view shows it's more vegetated. There
5 are also red areas that occurred as a result
6 of low spots that we created in that
7 restoration plan that tiger soils or silky
8 soils that retained water, and there's
9 wetland vegetation in those areas that are
10 supplemented by our original restoration
11 plan.

12 Then as you go north, the slide
13 underneath that, you can see the higher
14 elevation areas that are to be mined, and you
15 see that the vegetation is a little more
16 sparse, but yet is coming in naturally. Keep
17 in mind that Pine Barrens are harsh
18 conditions, just in terms of low nutrient
19 soils, sunlight and dryness, and the
20 vegetation that we look to promote there is
21 consistent with those environmental
22 conditions.

23 That was the purpose of the original
24 restoration plan. It's not like you are
25 going to have a lush looking environment, but

1
2 you want to promote those natural species to
3 come in and retain that natural quality that
4 makes the Pine Barrens unique. That's
5 essentially what's taking place.

6 The next photograph shows a view
7 looking toward the northwest from roughly the
8 center, if not one of the wetter areas of the
9 property, showing the side slopes, the
10 natural Pine Barrens that have remained to
11 the west of the site and the re-vegetation
12 within the site.

13 And then page 2 of the photos series
14 is also looking south, but it's from the top
15 of the hill where the sand still remains.
16 So, this kind of exemplifies what I mentioned
17 about it's more sparse to the north because
18 it had less time to grow in but, the
19 re-vegetation is successful.

20 We're looking through this plan that
21 is on the screen and has been submitted.
22 We're looking to promote the existing growth
23 that is occurring, with the exception of
24 trees that would shade the solar panels,
25 which can certainly come in after the

1
2 lifespan of the solar facility. So to do
3 that, our plan looks to incorporate more
4 shade tolerate species under the panels, so
5 that we will get that natural growth but it
6 will be a suitable vegetation, and we will
7 promote the growth of the existing
8 vegetation, as well as the supplemental
9 vegetation that this plan provides for. The
10 wet areas can remain, and I think that's an
11 important feature. Just with the
12 installation of the panels, there is no
13 detriment to the solar use and no real
14 detriment to the wetlands that have been
15 created and will be sustained on the
16 property.

17 The next slide -- I hope you can see
18 these or at least get a sense. I will
19 describe them. Our office, NPV, has been
20 involved with several native restoration
21 projects involving solar. One is at the
22 Sisters of St. Joseph property in Brentwood
23 where they are very innovative caretakers of
24 their land and the environment. Done a lot
25 of work there, in terms of natural

1
2 restoration, solar restoration, southern pine
3 needle management and other things, because
4 of the innovative nature of that group.
5 Another one is Estee Lauder in Melville.

6 So, these photographs will be in the
7 full presentation that I'll send you
8 tomorrow, show on the left side a solar panel
9 now with natural re-vegetation occurring in
10 and around the solar panel. The upper right
11 slide, it's a little tough to see, but it is
12 a monarch chrysalis that is affixed to the
13 underside of one of the panels, and the lower
14 right slide is a bird's nest that was placed
15 in the joints and support of the panels. So,
16 after installation, we're finding that a
17 variety of species are able to coexist with
18 the installation.

19 The next slide on the left similarly
20 just shows natural restoration with solar
21 panels immediately proximate. Within those
22 area, the upper right slide is a carpenter
23 bee on flowering vegetation, pervasive
24 vegetation. And the lower slide is kind of a
25 set back view of the solar panel where

1
2 natural restoration is coexisting.

3 The next slide, similarly on the left
4 is natural vegetation with solar panels. On
5 the upper right is a monarch butterfly within
6 the flowering plants of the installation, and
7 the lower right is a tiger swallowtail also
8 in and amongst the vegetation.

9 The next slide, that left slide, is a
10 black swallowtail. Again, immediately
11 adjacent. The upper right is a box turtle,
12 eastern box turtle that's in the meadow
13 between the solar panels, and the lower right
14 is basically the natural restoration again in
15 the area.

16 So, this slide just summarizes what
17 we believe are the salient features of the
18 re-vegetation plan that was submitted on
19 September 8th. It builds on the successful
20 restoration to date, the supplemental
21 vegetation. It achieves natural restoration
22 goals of the prior approved plan. It
23 utilizes native restoration methods,
24 consistent with the new guidelines recently
25 adopted by the Pine Barrens Commission that

1
2 are incorporated into our re-vegetation plan.
3 It provides habitat for pollinators,
4 reptiles, birds and mammals and other species
5 of the Pine Barrens. It will establish
6 permanent habitat that will continue after
7 the solar is decommissioned. The plan is
8 consistent with the basic purpose of the
9 conservation easement, which as I mentioned
10 in the beginning is the critical factor in
11 modifying the conservation easement.

12 The next slide just really deals with
13 the critical resource area. Julie identified
14 it. It's upland forest on CRA that's about
15 153 acres in total. That image really is
16 tough to see, but you know the general area
17 to the south of the property is basically in
18 line with that open county property to the
19 east with the line going across the bottom of
20 our property. So, it does include parts of
21 the mine as well as the natural area that
22 will not be touched, that is part of the
23 Westhampton mine site.

24 And just with regard to the project,
25 there's no permanent development. It's only

1
2 a temporary use of disturbed site. We're
3 repurposing the disturbed mining site and
4 continuing activities within the previously
5 impacted areas. There's no impact in the
6 Pine Barrens other than natural vegetation,
7 and it will also be restored to natural
8 conditions, to the extent those area are
9 within the CRA. So, we request any approvals
10 that may be necessary with respect to that,
11 but there's really no impact and remains
12 consistent with the original goals.

13 Just in summary, the justification is
14 based on two key items: The site is very
15 unique. It's split between the Core and the
16 Compatible Growth Area. It's been mined with
17 permits since at least 1981, which predates
18 Article 57 in the CLUP. And mining is
19 permitted out to 2044. Unique aspects that
20 just don't exist with other properties in the
21 area.

22 There is a prior hardship that was
23 issued for the property, both within the CPA
24 and the CGA that allowed the deepening of the
25 mine, as Julie discussed. And, of course,

1
2 previous disturbances of the site with no new
3 natural areas being impacted. And the site
4 is uniquely ideal for solar because of the
5 grid connection opportunities that exist
6 here.

7 In terms of the use, I mentioned this
8 in the beginning, solar solutions such as
9 these just didn't exist at the time of the
10 conservation. And certainly at the time in
11 the 90's of Article 57 of the CLUP. That
12 because of the depressed -- topographically
13 depressed area, there's really no difference
14 in experience between this site and other
15 properties in the area from its current use.
16 It will remain very passive with no
17 environmental impact that I outlined.

18 It's consistent with state and county
19 and town energy goals. As I said before, the
20 Environmental Leadership and Community
21 Protection Act with the goal of six megawatts
22 of solar energy in New York State by 2025.
23 There is a community benefit to reduce
24 electrical bills, and this can be tailored
25 especially to low and moderate income

1
2 households. There's the ability to maintain
3 an ecological benefit to the site, consistent
4 with the basic purpose of the conservation
5 easement, and that future decommissioning
6 will allow for re-vegetated areas to revert
7 to natural.

8 So the next slide just touches on
9 some of the staff questions. We saw the
10 staff report posted yesterday. So, if there
11 is any further follow up, we will provide
12 that. We believe, looking at Julie's
13 comments on page 6 of the staff report, there
14 is no impact to the critical resource area.
15 We believe it relates to the 2011 decision
16 that we require amendment to the recorded
17 conservation area. That we have the same
18 goal for restoration of the property with
19 native vegetation. That there is no increase
20 in the intensity of use or change in the
21 water recharge character. There's a slight
22 alteration from the original mine reclamation
23 plan for shade tolerate ground cover, as I
24 mention, beneath the panels. That it builds
25 on the successful restoration of the mine to

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2 date and, again, is consistent with the basic
3 purpose of the conservation easement.

4 The mining in progress to come
5 comprises about 45 acres of the property.
6 The mining that's completed is basically the
7 southern portion, which is also about 45
8 acres of the property. The completed habitat
9 restoration areas involve 26 acres of the
10 property; that's based on the photographs
11 that I submitted that are in Exhibit C. And
12 the maximum lifespan of the project is 35
13 years.

14 We do expect that if we get a sense
15 of the Commission that you're in favor of
16 this, which we hope you will be, that we will
17 modify the mine land reclamation plan to
18 reflect the use on a temporary basis, and
19 that we will also file the amended
20 restoration plan that would ensure the native
21 vegetation that exists on the property.

22 There was one question having to do
23 with other facilities. There are no
24 restrooms. There's basically transformers
25 and connections that will be placed in open

1
2 areas along Speonk Riverhead Road. If more
3 detail is needed on that, we have technical
4 support here to speak to that. I believe, of
5 course, we recognize the SEQRA process will
6 have to take place prior to any decision by
7 this body, and we look to continue the
8 discussion toward approval.

9 In brief summary, permitted mining
10 since 1981. Developed site at that time,
11 developed for mining purposes and was placed
12 in the CPA and CGA in 1993. The site is
13 unique, the use is unique for the reasons I
14 outlined. No natural vegetation is being
15 impacted, complete restoration. Solar panels
16 are not visible and there's no added
17 activity. There's a tremendous community
18 benefit to energy sharing. It meets
19 renewable energy goals, and we believe it is
20 consistent with the conservation easement.
21 At the close today, we'll submit the full
22 presentation as part of your records to have
23 for your files. That concludes my remarks.
24 Myself and the team are happy to field any
25 questions that you may have.

1
2 MR. CALARCO: Does anybody have any
3 questions?

4 MR. DALE: I know the issue is the
5 easement. Out of curiosity, getting a little
6 bit into the solar component of it. Is there
7 some projection as to how this will interface
8 with the conceivable PSEG feed-in tariff? If
9 so, generally, is that part of, as they have
10 in the past, have community solar component,
11 primarily for those who can establish an
12 economic need? I recognize the gentleman,
13 Mr. Englemann.

14 MR. CALARCO: State your name for the
15 record.

16 MR. ENGLEMAN: Steven Englemann.
17 CVE North America.

18 If I understand your question,
19 commissioner, this project would interconnect
20 directly to the grid and the PSEG program.
21 We're not going to compete with their
22 program, but under the community generation
23 program, wherein energy is -- credits of
24 energy will be applied to the community
25 benefit beneficiaries, such as homeowners and

1
2 small businesses in the area. So, we
3 wouldn't be applying for a feed-in tariff
4 program, we would be applying for a community
5 solar program.

6 MR. DALE: Just out of curiosity,
7 what is the nearest substation where you are
8 plugging into?

9 MR. ENGLEMAN: We have applied to
10 the utility, and they are, at this point,
11 determining the best location for this to be
12 tied to a substation standpoint. We are
13 still waiting for feedback from the utility.
14 The infrastructure is there at the facility
15 and it has the capacity at more than one
16 substation. They are trying to determine
17 which is the best location.

18 MR. DALE: You would have a seizure
19 for that?

20 MR. ENGLEMAN: Correct. Yes, sir.
21 We have a seizure process. Seizure is a
22 coordinated process somebody goes through
23 from an electrical standpoint.

24 MS. SCHERER: There will be no
25 additional substation infrastructure required

1
2 on this parcel?

3 MR. ENGLEMAN: Not this parcel, no.
4 If there any updates to be made in the wires
5 that connect this facility back to a
6 substation at a remote location or utility
7 substation itself. Part of what "Chic" had
8 referred to, at the road, there would be two
9 concrete pads that we have utility required
10 enclosures safety equipment, transformers,
11 that sort of thing. Those would be located
12 along the opening clear easement that needs
13 to be on Speonk Riverhead Road.

14 MS. SCHERER: No other poles would be
15 sort of in the other locations in the Pine
16 Barrens?

17 MR. ENGLEMAN: No. We would be
18 looking to do complete underground, in terms
19 of our equipment. There is one pole. I
20 believe utility requires one pole at the
21 street, which wires come up that pole and tie
22 into existing poles that are there. This
23 will be one addition pole along the road
24 where there are several.

25 MR. CALARCO: I think Chic mentioned

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2 that if we found, that we would be willing to
3 approve this hardship, that this would be
4 temporary. Are you committing to only
5 installing these panels for 35 years until
6 they're expected lifespan expires and not
7 seeking to put new panels on?

8 MR. ENGLEMAN: That's correct. We
9 have, essentially, a lease period that would
10 cease at that time, and we would be fully
11 bonded to decommission the system fully and
12 remove the system at a period of 35 years.
13 That's the typical lifespan of the equipment.

14 MR. CALARCO: There is no expectation
15 that businesses in the future would make you
16 decide to try to expand that lease and use
17 the site moving forward? Is that a
18 commitment you are looking to make, I guess
19 is the question?

20 MR. ENGLEMAN: I'm sure we could
21 make that commitment, absolutely. If there
22 was consideration that it was beneficial to
23 the community to do something further, we
24 would consider it. Our point here is really
25 a 35 year temporary window.

1
2 MS. JAKOBSEN: I guess with Chic, you
3 proposed that you may use other portions of
4 the CMI in the future for solar panels as
5 well?

6 MR. ENGLEMAN: There is a northern
7 section of the parcel right now, what we
8 would consider 25 acres that are currently
9 being mined; they will be for several years.
10 There is some consideration that if that site
11 is suitable for solar system at that time and
12 there is capacity at the facility level, and
13 there was consideration of course from the
14 Pine Barrens, we would look to install
15 another similar project on a similar sized
16 parcel within the bounds of this same
17 property.

18 MS. JAKOBSEN: Thank you.

19 MS. SCHERER: There's no battery
20 component or future battery component?

21 MR. ENGLEMAN: The system, as
22 designed, relates to meet New York State
23 goals is designed as a battery energy system.
24 It's a relatively small battery energy
25 system. The idea there is utility is looking

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2 for projects like this in order to be able to
3 shade people toward the end of the day. So,
4 a battery energy system is designed in the
5 system, and really will comply with what the
6 utility is looking for.

7 We understand the battery moratorium
8 is within the township. So, we are looking
9 for approval here for the solar project to
10 move forward with battery storage and apply
11 then we would apply to those community terms
12 of what can be allowed from a code
13 standpoint. In the future, we've got a
14 long-term view on the project and we would
15 like to discuss with the town further how
16 this component will benefit the project and
17 benefit the community. In answer, PSEG calls
18 for this.

19 MS. SCHERER: Could you identify how
20 big that battery storage would be, relative
21 to the 11,000 panels?

22 MR. ENGLEMAN: In physical size?

23 MS. SCHERER: Megawatts, whatever.

24 MR. ENGLEMAN: Sure. The idea is
25 that it's a four hour duration of battery

1
2 storage, and it would be, as far as I
3 understand, a ten megawatt battery storage
4 over a four hour period.

5 MS. SCHERER: Thank you.

6 MR. CALARCO: Any other questions?

7 (No response was heard.)

8 MR. MILAZZO: Just so I understand,
9 staff indicated that a hardship was needed
10 and the easement had to be modified. Has the
11 hardship application and the information that
12 you need to provide, you think is sufficient
13 to demonstrate the hardship has been
14 provided.

15 MR. VOORHIS: That is our
16 application. We believe it meets the
17 requirement of Article 57 for the hardship.

18 MR. MILAZZO: Okay.

19 MR. CALARCO: Okay. Thank you. We
20 appreciate your time.

21 Is there anybody in the audience who
22 would like to address regarding the
23 application?

24 (No response was heard.)

25 MR. CALARCO: We'll close the

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2 hearing.

3 MR. MILAZZO: I would close the
4 public hearing, keep the record open for two
5 weeks so people can provide comments.

6 Chic, if you could submit the report
7 or anything else from your side, and then we
8 can review the information at the next
9 meeting.

10 MS. SCHERER: I think we should also
11 ask. There is a section in the procedure for
12 modifying the easement, that would be
13 beneficial to see how you're -- how you
14 intend to come forth with that procedure.

15 MR. GILMARTIN: Good afternoon. For
16 the applicant, David Gilmartin from Greenberg
17 Traurig, Bridgehampton, New York.

18 Janice, is the question what we would
19 propose how to change the easement?

20 MS. SCHERER: Yes. Well, first I
21 guess the question is the hardship
22 application, and then also it says you can
23 modify the easement based on whether or not
24 these things. So, have you responded to
25 those things?

1
2 MR. GILMARTIN: So, the ACL basically
3 [lip points to the document, right, and the
4 document specifically and expressly permits a
5 change to it. We would submit that you can
6 change the entirety of the document, as long
7 as the commission and property owner agree.
8 So, that would be our position. If you would
9 like us to propose how it would be changed,
10 we can do that.

11 MR. MILAZZO: How does that jive with
12 paragraph nine of the easement? The case law
13 is that you have to maintain the basic
14 purpose of the easement, which here was to
15 preserve the property after the sand mine is
16 complete. Paragraph nine of the easement
17 says that you can never apply for a hardship.
18 We just heard that you are making an
19 application for a hardship. Isn't that a
20 basic purpose of the easement: Not to apply
21 for a hardship?

22 MR. GILMARTIN: I would say that in
23 response to that, I understand that argument,
24 but I come back to paragraph 5 that permits
25 the amendment of the easement. And the

1
2 underlying argument that Chic made is that it
3 is consistent with the basic purpose of the
4 easement. So, I think our presentation was
5 purposeful in that, right? To understand the
6 amendment of the easement, you have to
7 understand what we're proposing, which isn't
8 your normal development. It isn't a strip
9 mall or that type of thing, it's a community
10 solar project. So, I think it's important to
11 consider the easement in relation to what's
12 being proposed here. That was the purposeful
13 part of our application.

14 MR. MILAZZO: The application is
15 complete. All of the hardship materials have
16 been provided, so this is where we are.

17 So, the not inconsistent with the
18 easement is that the solar panels really --
19 right now there's meadow there, and you're
20 going to be above it, the grass is all going
21 to grow and it really doesn't impact the
22 restoration plan. But it doesn't address the
23 inconsistency part of the easement that you
24 can't make a hardship. How is that
25 consistent, if you're making hardship? We

1
2 get in that circle, and that's where the
3 Commission's discretionary decision is on.
4 Fair enough.

5 MR. GILMARTIN: Do you want me to
6 provide those proposed changes to the
7 easement? Is that necessary, at this point?

8 MR. MILAZZO: No, because I don't
9 think -- so, I think what would happen, if
10 the Commission deemed that the easement can
11 be modified and deemed that a hardship has
12 been -- or decided that a hardship has been
13 demonstrated, we would then be subject to
14 negotiating several terms of the easement,
15 which is what we did the first time.

16 So, the applicant in the first
17 instance made the hardship request on the
18 sand mine based on, "I couldn't survive if I
19 don't get this extension." As the applicant
20 has no evidence of, we're good then. There's
21 no information from the applicant, do we have
22 the owner's consent.

23 MR. VOORHIS: Of course we have the
24 owner's consent.

25 MR. MILAZZO: I'm good.

1
2 MR. CALARCO: John, we would have to
3 make a decision on the easement before we
4 make a decision on the hardship; otherwise,
5 the easement in and of itself makes the
6 hardship decision for us.

7 MR. MILAZZO: There are two hurdles.
8 The first hurdle is the easement. The hurdle
9 would be -- you don't have to get to the
10 second hurdle, if the easement cannot be
11 modified. The argument is, if the easement
12 can be modified because the easement is
13 allowed to be modified as long as it's not
14 inconsistent, the argument is consistent.

15 MR. CALARCO: Okay. Anybody else?

16 Thank you very much. Seeing there is
17 nobody else, we are closing the hearing.

18 With that, we are done with business
19 and we are adjourned.

20 MR. MILAZZO: Motion from Janice,
21 seconded by Yvette.

22 MR. CALARCO: All in favor.

23 (WHEREUPON, there was a unanimous
24 affirmative vote of the Board.)

25 MR. CALARCO: Any opposed?

(WHEREUPON, there was no response
from the Board.)

(Time Ended: 4:05 p.m.)

* * *

C E R T I F I C A T E

I, BETHANNE MENNONNA, a Notary Public
within and for the State of New York do
hereby certify that the foregoing is a true
and accurate transcript of the proceedings,
as taken stenographically by myself to the
best of my ability, at the time and place
aforementioned.

IN WITNESS WHEREOF, I have hereunto
set my hand this 24th day of September, 2023.



BETHANNE MENNONNA