



Central Pine Barrens Joint Planning and Policy Commission

November 19, 2025

Adopted Decision to Deny

East End Flower Farm Compatible Growth Area Hardship Waiver Application

w/s Weeks Avenue, Manorville, Town of Brookhaven

SCTM Number 0200-58900-0100-00200

I. The Project and Project Site

East End Flower Farm Ltd. (EEFF), the Applicant, owns a property located on the west side of Weeks Avenue, in the Town of Brookhaven within the Compatible Growth Area of the Central Pine Barrens. The 5.0 acre property (the Project Site) is undeveloped and naturally vegetated in the A Residence 2 zoning district. It is identified as Suffolk County Tax Map Number 200-589-1-2. Marcos Ribeiro is Vice President of EEFF. EEFF purchased the property for \$450,000 on May 8, 2025.

Timothy C. Hubbard
Member

Maria Z. Moore
Member

Daniel J. Panico
Member

Edward P. Romaine
Member

On June 26, 2025, EEFF applied to the Central Pine Barrens Joint Planning and Policy Commission (the "Commission") for a Compatible Growth Area Hardship Exemption. EEFF seeks to clear 99.9% of the Project Site to develop an agricultural use to cultivate annuals, perennials, vegetables, microgreens and nursery stock. The Application states, "The project is wholly agricultural and conforms to the definition of a "farm operation" under New York State Agriculture and Markets Law Section 301(11)." The development involves clearing natural vegetation, grading steep slopes and construction of structures including two permanent structures, a 30,000 square foot greenhouse and a 10,000 square foot barn, and a 56,000 square foot temporary hoop house. Other activities involved with the Project include the excavation and removal of 40,000 cubic yards of natural soil material off-site and construction of two curb cuts on Weeks Avenue, retaining walls, a parking lot and a concrete pad for a dumpster. Planting a row of 248 non-native arborvitae is proposed on the northern property boundary. The Project Site is not in an Agricultural District.

The Project is depicted in a Site Plan prepared by Professional Design dated May 25, 2025. Steep slope topography is depicted in the map prepared by Aerial Land Surveying DPC dated January 28, 2025.

The Project is "development," as defined by Article 57 of the Environmental Conservation Law (ECL) and therefore must conform with the standards outlined in Chapter 5 of the Central Pine Barrens Comprehensive Land Use Plan (the Plan). The Project requires waivers for conformance from two Plan standards, vegetation clearance limits (5.3.3.6.1) and open space (5.3.3.6.2).

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

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

ECL Section §57-0123(3)(a) provides that, “[s]ubsequent to the adoption of the land use plan, the provisions of any other law, ordinance, rule or regulation to the contrary notwithstanding, no application for development within the Central Pine Barrens area shall be approved by . . . the [C]ommission . . . unless such approval or grant conforms to the provisions of such land use plan; provided, however, that the [C]ommission by majority vote is hereby authorized to waive strict compliance with such plan or with any element or standard contained therein.”

The Project, the Act, and the Plan

The Project constitutes development activity, as defined in the Act in ECL Section §57-0107.13(b) and (c) as a material increase in the intensity of use of land and the commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land. The Application requires a demonstration of hardship as defined in the Act. The Project does not conform with one or more standards of the Plan including vegetation clearance limits and open space.

Section 5.3.3.6 of the Plan defines clearing as, “The removal, cutting or material alteration of any portion of the natural vegetation found on a development project site exclusive of any vegetation associated with active agricultural or horticultural activity or formalized landscape and turf areas.” The Project Site is naturally vegetated and does not contain any vegetation associated with active agricultural activity, as per the definition.

Figure 5-1 of the Plan permits clearing to a limit of 35% or 1.75 acres since it is zoned A2 Residential. The Project clears 99.9% of the Project Site. The Plan requires a minimum of 65% of natural open space or 3.25 acres. The Project provides no natural open space.

ECL Section §57-0107.13(v) defines as “non-development” activity as the use of any land for the purpose of agriculture or horticulture. The Project would establish a farm operation on a vacant wooded site where a farm does not presently exist. Section §57-0107.14 defines agriculture as including “production of plants or animals useful to man.” To achieve an agricultural use on the Project Site where none presently exists, the Applicant would need to undertake “development” activities as previously described. The development project lacks conformance with the Plan standards for land use development activity. Therefore, the Applicant requested a hardship waiver due to the lack of conformance with the Plan standards for vegetation clearance limits and open space.

III. The Application, SEQRA, Public Hearing, Public Process and Supplemental Materials

Application

On June 26, 2025, the Applicant submitted to the Commission the Application containing Part I of the State Environmental Quality Review Act (SEQRA) Full Environmental Assessment Form, a letter addressing the standards, a Site Plan and a survey identifying steep slopes on the property.

The Project Site, Immediate Vicinity and the Study Area

The Project Site is in the Town of Brookhaven’s A Residence 2 Zoning District. This zoning district provides for, among other things, residential development on parcels containing a minimum of 80,000 square feet. No developed land use is present on the site. The site is a terrestrial pine barrens woodland ecological community.

Low density residential land uses are present in the Commission’s Study Area, which contains 450 to 500 acres in the Compatible Growth Area. A limited number of non-residential uses are present in the Study

Area including a steel manufacturing shop, a children's school and a Christmas Tree Farm.

The Study Area contains one project decided by the Commission, Tommasino (2022), a CGA Hardship denial to clear natural vegetation to a limit of 45% where a covenant restricted clearing to 35%. The Tommasino project involved a request to construct a 9,600 square foot barn for the use of equine therapy on a 2.3 acre site with a single-family residence in the A Residence 2 zoning district.

State Environmental Quality Review Act (SEQRA)

The Project is classified as a Type I Action under SEQRA. On July 16, the Commission performed lead agency coordination to seek Lead Agency status as required under SEQRA. Brookhaven Town and the Suffolk County Department of Health Services each responded to the Commission's letter and did not object to the Commission intent to serve as Lead Agent. On September 17, the Commission assumed Lead Agency. The Project is not subject to Brookhaven Town requirements to review and approve a Site Plan but it must obtain Town Building Permits prior to construction.

The Project's Potential Impacts

To determine the Project's potential impact on historic or pre-historic resources in the immediate area of the Project Site, the Commission requested a report from New York State Parks, Recreation and Historic Preservation Office (SHPO). By letter dated July 23, 2025, SHPO noted that the Project is not adjacent to any historic property which is listed or eligible for listing in the National Register of Historic Places and will have No Effect on Historic Properties.

Correspondence from New York State Department of Environmental Conservation (NYSDEC) dated September 25, 2025 stated a review of the Project's impact on habitat used by the Northern Long-eared Bat (NLEB) should be undertaken and consultation with US Fish and Wildlife Service Information for Planning and Consultation (IPAC) the Bat is a New York State and Federal listed Northern Long-eared Bat. The Applicant would be required to consult with USFWS on potential impact s to the NLEBA NYSDEC mining permit is required to remove 40,000 cubic yards of soil material off the Project site. NYSDEC would require a Stormwater Pollution Prevention Plan to develop the 1.1 acres of roads, buildings and other paved and impervious surfaces.

Public Hearing, Public Process and Supplemental Materials

On September 17, 2025, a public hearing was held by the Commission on the Application. During the Hearing, a Commission Staff Report with seven Exhibits (A through G) was presented. The Staff Report described land use and environmental features located in a half mile radius from the Project Site (the "Study Area"). In addition, the Staff Report noted prior Commission decisions involving similar applications.

During the hearing, the Applicant addressed the Commission on elements of the Application. A stenographic transcript was made of the hearing. No member of the public commented. The hearing was held open to October 15 to allow time for the Applicant to submit more information for the record. The Applicant consented to an extension of the decision deadline to November 19.

On October 13, the Applicant submitted supplemental information including a financial analysis and a response to items from the September 17 hearing. The financial analysis included a profit analysis for the Project under two clearing scenarios: 35% and 60%. At its October 15 meeting, the public hearing continued, and the Applicant's supplemental information was added to the record as Applicant's Exhibits 1 and 2. One member of the public commented in opposition to a waiver for the Project.

IV. Applicant Statements in Support of the Application

Assertions made by the Applicant in the Application and hearing testimony included:

- In 1926, the site was used for agriculture and cleared for cordwood 99 years ago.
- The Applicant is a second generation farmer with roots in Holtsville and “this new site represents an expansion and continuation of a family farming tradition.”
- The Applicant acknowledged in his testimony, “On habitat, the Project would be a direct loss in acreage.”
- Potential willingness to provide off-site mitigation.
- In his testimony, the Applicant stated, “Although I purchased the property this year, the hardship is inherited with the land, not necessarily the operator. Without relief, it cannot reasonably support a viable farm operation on a minimal footprint necessary consisting of agriculture.”
- Under Suffolk County’s preservation law, farmland is considered open space.
- Alternative sites were explored including sites that were 1) cleared and 2) within EEFF’s \$1 million budget. Property was available in Riverhead but not in Brookhaven and Southampton.
- The Applicant seeks a hardship waiver on the basis that, without relief, the Project cannot yield a reasonable economic return.
- Financial analysis he prepared under two clearing scenarios indicate a conforming project that clears 35% would generate a profit of \$2,000 per year, and a nonconforming project that is the “minimum relief necessary” that clears 60% would generate a profit of \$80,000 per year
- A narrative with responses to comments in the Commission’s Staff Report.

The Applicant did not state its anticipated profit if the Project is approved.

VI. Potential Adverse Environmental Impacts

In reviewing the material contained in the Application and the testimony adduced at the public hearings, the Commission finds the Project would result in significant adverse environmental impacts on the ecological resources of the Central Pine Barrens. The Project would result in a direct loss of natural pine barrens habitat that is permanent, irreversible and long term. The Project removes trees that support the habitat of the Federal and New York State listed Endangered species, the Northern Long-eared Bat. The removal of natural vegetation and natural steep slope features may, absent robust mitigation measures, including retaining walls, cause erosion, flooding and adverse stormwater impacts on the Project Site, on neighboring properties including private residences and natural public open space.

VII. Commission Review of the Application and Findings

In reviewing a Compatible Growth Area Hardship exemption application, the Commission must consider the criteria set forth in ECL §57-0121(9) and determine whether or not the requested relief is consistent with the purposes and provisions of the Act and if granted, would not result in a substantial impairment of the resources of the Central Pine Barrens area and consider the criteria in ECL §57-0123(3)(b). The Commission has considered the Application and supplemental information in the Staff Report and Exhibits and the hearing transcripts to determine whether the Applicant satisfied the elements.

The Act requires an applicant for a use variance to demonstrate that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique,

and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created. (Town Law §267-b).

In considering the criteria set forth in Town Law §267-b2(b)(1), the Applicant's submission and testimony are deficient and lack evidence of hardship. Applicant did not provide competent financial evidence demonstrating that absent a hardship, it cannot realize a reasonable return. The Applicant did not provide any evidence of the financial evidence on its anticipated return if the Project is approved. Without this information, the Commission cannot determine and the Applicant has not established its lack of return. The Applicant knew of or should have known of the Act, the Plan and its restrictions at the time of purchase and this awareness foregoes the support of a waiver to contravene the Act and permit a non-conforming Project.

The Application lacks the required review of other permitted uses under the zoning regulations for the particular district and identifying where a hardship exists. In the Applicant's September 17 testimony, the Applicant confirmed an alternative site(s) may be available in Riverhead. The Applicant owns and manages a decentralized business with multiple separate parcels that are distant from each other on Eastern Long Island. The Project Site is not contiguous to land owned by the Applicant. The lack of a centralized operation would continue with the Project. The personal situation of the Applicant is not the result of uniqueness of the property to support the Application. No evidence was submitted demonstrating that the Project Site exhibits unique qualities that warrant a hardship rather than the personal situation of the Applicant.

In considering the criteria set forth in Town Law §267-b2(b)(2), the Applicant did not demonstrate hardship based on uniqueness of the site. The Application stated, "The hardship is inherited with the land, not necessarily the operator. Without relief, it cannot reasonably support a viable farm operation and the Brookhaven Town Code considers a farm operation to be no less than five acres." The Applicant's testimony acknowledged that a viable operation would require a five acre property. The Applicant purchased a site to construct buildings for a farm operation with knowledge that to develop a five acre farm operation on the property would require a discretionary waiver. The Applicant admits to and distinguishes the Application from precedent matters, stating, "EEFF differs in that it is a new farm on a previously undeveloped parcel." The Applicant knew the Project was different than the precedent matters that had a history of clearing and agricultural activities in the recent past. The Applicant's assertion that the County's preservation law for farmland as open space does not apply as the site is a vacant, wooded parcel with no farm use or operation. It is also not in a designated Agricultural District.

In considering the criteria set forth in Town Law §267-b2(b)(3), that the requested use variance, if granted, will alter the essential character of the neighborhood. The Applicant proposes to clear and materially alter 99.9% of the Project Site causing disturbance of land and to construct two permanent structures on the Project Site

The Project disturbs land, constructs structures but does not provide natural buffers to protect neighboring residential properties, natural public open space and the Study Area and to minimize adverse impacts from noise, dust, visual impacts, erosion and stormwater runoff which are not agricultural uses (see generally, *Town of Brookhaven v. Ball*, 239 A.D.3d 172, 230 N.Y.S.3d 755, leave to appeal denied, 44 N.Y.3d 904, 268 N.E.3d 375 (2025)). The Project does not achieve the goals of the Act, and it results in adverse impacts on the essential character of the Project Site and neighborhood.

Pursuant to Town Law §267-b2(b)(3), the Project alters the character of the neighborhood by exceeding clearing restrictions, removing natural vegetation, steep slopes and soils, lacking open space, grading and excavation activities. The Applicant suggested offsite mitigation, however, no specific mitigation was proposed. During the October hearing, the Applicant offered to reduce clearing from 99.9% to 60%. The

Applicant's rationale that a 60% clearing limit aligns with a nonresidential use category in Figure 5-1 is a misinterpretation of Figure 5-1 of the Plan. Implementation of Plan, Figure 5-1, is based on a site's zoning category not on its land use. The Project's reduction in clearing from 99.9% to 60% remains a non-conforming project that requires a waiver. The Applicant asserts that clearing 60% is the minimum relief necessary for the Project, however, the misinterpretation of Figure 5-1 does not provide evidence to support a hardship. Significantly, the Applicant did not provide financial evidence demonstrating the difference between its proposal and its other alternatives which disturbs less of the Project Site.

Pursuant to Town Law §267-b2(b)(4), the Commission finds that the hardship is self-created. The Applicant purchased the property in May 2025 and was aware of the Plan's restrictive clearing requirements and the Commission's discretionary hardship review. The Applicant was aware of the Town restrictions and minimum lot area requirements for a farm operation.

The Commission hereby determines that the Application does not meet the criteria to satisfy the requirements for a CGA Hardship pursuant to the Act. The alleged hardship is self-created because the Applicant stated on the record that when the property was purchased there was awareness of the Plan restrictions and Town Code farm operation requirements. The Application demonstrates no unique quality, features or circumstances to support the Project.

The Project contravenes the goals and objectives of the Act and the Plan that establishes the clearing limit threshold in the CGA for the purpose of maintaining the character of the Compatible Growth Area.

VIII. Precedent

The Commission finds a denial of the Hardship Exemption Waiver would be consistent with its prior decisions. The Applicant has not identified precedential matters that support the Application. The Application belies the request by stating, "Unlike many CGA parcels with long-standing agricultural use, this site lacks any prior clearing, existing infrastructure, graded surfaces or vehicular access." It continues the parcel's "significant elevation changes necessitate engineered grading and water management infrastructure to accommodate agriculture safely and sustainably." The Application continues, "The Commission has previously granted hardships to enable clearing of vegetated parcels for active farming operations." The Applicant's two precedential matters Metz (2005) and Finks Farm (2017) are distinguished from the Project by having a history of farming activity and demonstrated clearing in the recent past. The subject application could not prove same on the Project Site in 99 years of history.

IX. SEQRA

The Commission prepared Parts 2 and 3 of the EAF. The Commission finds the denial of the hardship waiver application will not have a significant adverse environmental impact and hereby authorizes the issuance of a Negative Declaration pursuant to the SEQRA regulations.

The Commission has considered all of the materials submitted in connection with the Application including the transcript of the public hearing and finds the Applicant has not established the existence of a hardship pursuant the criteria set forth in the Act is not consistent with the purposes and provisions of ECL §57-0123(3)(b) and would result in substantial impairment of the resources of the Central Pine Barrens area.

X. Conclusion

The Commission finds that the Applicant failed to establish or provide sufficient information to demonstrate a Hardship for the reasons set forth above. Therefore, the Commission declines to grant the

request hardship exemption.

East End Flower Farm CGA Hardship Waiver Application

Date: November 19, 2025

Present:

Edward P. Romaine, Suffolk County Executive
Michelle DiBrita, for the Brookhaven Town Supervisor
Matt Charters, for the Riverhead Town Supervisor
Marian Z. Moore, Southampton Town Supervisor

Record of Motion:

Motion by: Ms. DiBrita
Seconded by: Mr. Charters
In Favor: 4
Opposed: 0
Abstain: 0