

Resolution on the Tall Grass Village Planned Development District Application

East side of Randall Road, on the south side of NYS Route 25A, and on both the north and south sides of Cooper Street, in an area west of the William Floyd Parkway in the hamlet of Shoreham, Town of Brookhaven, New York.
Suffolk County Tax Map Parcel Numbers: 200-104-2-14.3,14.4, 15.1,16.1, & 21.3, 200-126-2-1.5 & 2, 200-127-1-3, 200-148-2-6

Central Pine Barrens Commission Meeting of May 21, 2008 Brookhaven Town Hall, Farmingville, NY

Commission members present:

Mr. Scully (for New York State),

Mr. Isles (for Suffolk County),

Mr. Foley (for Brookhaven Town),

Mr. McCormick (for Riverhead Town),

Mr. Shea (for Southampton Town).

Peter A. Scully
Chair

Philip J. Cardinale
Member

Brian X. Foley
Member

Linda A. Kabot
Member

Steve A. Levy
Member

Whereas, Tallgrass Properties, LLC and TGC Operating Co. (the “Applicant”) by their attorneys Farrell Fritz, submitted an amended Compatible Growth Area Development of Regional Significance application for Tall Grass Village Center at Shoreham Planned Development District, (the “Project”) to the Commission on November 30, 2007, and

Whereas, the Project is for a change of zone of 320 acres from A-1 Residence to Planned Development District to construct a large scale, mixed use development project that consists of: 352 single family and detached residential units, a 125,000 square foot Village Center, an on site 120,000 gallon per day sewage treatment plant, a 12,200 square foot community recreation center, and the retention and reconfiguration of the Tallgrass Golf Course with a 9,197 square foot clubhouse, as more fully described in the Commission’s Findings Statement and Decision dated May 21, 2008, and

Whereas, the Commission is required to review Developments of Regional Significance compliance with the Standards and Guidelines contained in the Central Pine Barrens Comprehensive Land Use Plan (the “CLUP”), and

Whereas, the Project is a Development of Regional Significance as set forth in the CLUP because the Project exceeds the DRS threshold for traffic impacts because the Project will result in traffic impacts that will reduce service at seven (7) intersections by two levels of service or more below existing conditions and will cause a drop in the level of service at eight (8) intersections

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to D or below, and

Whereas, the Project is a Development of Regional Significance because the Project exceeds the CLUP's DRS threshold of 200 single family residences, and

Whereas, the Commission's Findings Statement and Decision details the Project's procedural history and environmental review performed by the Town of Brookhaven, including the Town's October 16, 2007 conditional approval of the Project, and by the Commission's review of the Project, and

Whereas, the Project does not comply with two Standards and one Guideline of the CLUP, and

Whereas, the Applicant's CGA-DRS application includes the request that the Commission grant the Applicant a CGA hardship waiver from strict compliance with two of the CLUP Standards, and

Whereas, the Commission held two public hearings on the Application, and

Whereas, the Commission further discussed the Project at its March 19, 2008 meeting attended by the Applicant's representatives, and

Whereas, during the March meeting, the Commission at the request of the Applicant granted the Applicant until March 31, 2008 to provide additional information to the Commission, and

Whereas, the Applicant requested at the April 16, 2008 Commission meeting for the Commission to extend the deadline for making a determination on the Project for 30 days in order to submit information and rationale for offering additional Pine Barrens Credits for the project, and

Whereas, the Applicant submitted additional information on the Project and site plans on April 23, 2008, and

Whereas, the decision deadline was later extended to coincide with the May 21, 2008 Commission meeting, and

Whereas, the Commission has considered all information submitted by the Applicant for this Project, and

Whereas, the Applicant has not adequately demonstrated that there are no reasonable alternatives available, which would conform with the CLUP standards, including, among others, the possible reduction of the scale of the Project to a level or intensity below the DRS thresholds,

to address traffic impacts and reduce the number of residential units, as well as the possible incorporation of other mitigation measures, which could offset or compensate for the potential for substantial impairment of the resources of the Central Pine Barrens area, related to the project's non-compliance with those CLUP standards and guidelines for which a hardship waiver request is being sought, and

Whereas, the public record is insufficient with respect to adequately demonstrating that the CLUP's Standards and Guidelines cause an unnecessary hardship; and

Whereas, the Commission as an involved agency under SEQRA §617.11(c), has prepared the attached Findings Statement and Decision to satisfy its requirements as an Involved Agency under the New York State Environmental Quality Review Act and which also contains the Commission evaluation and denial of the Applicant's hardship waiver application, now therefore be it

Resolved that the Commission adopts and issues the attached Findings Statement and Decision, and be it further

Resolved, the Commission finds that Project neither complies with nor conforms to two CLUP Standards and one CLUP Guidelines, and be it further

Resolved, that the Commission denies the hardship waiver request and the Project's DRS application for the reasons set forth in the Findings Statement and Decision.

Motion by: Mr. Scully

Second by: Mr. Shea

Vote:

Yes: Mr. Scully, Mr. Isles, Mr. McCormick, Mr. Shea

No: Mr. Foley

Abstain: None

**FINDINGS STATEMENT AND DECISION FOR
TALL GRASS VILLAGE CENTER PLANNED DEVELOPMENT DISTRICT (PDD)**

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

May 21, 2008

CERTIFICATE OF FINDINGS TO DENY

This notice is issued pursuant to 6 New York Code Rules and Regulations Part 617, the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law ("ECL") of New York State. This findings statement has been prepared pursuant to the requirements of 6 NYCCR Part 617.9, which states that no agency shall make a decision on an action which has been the subject of a Final Environmental Impact Statement (EIS) until a written findings statement has been prepared concerning the facts and conclusions of the draft and final EIS and any supplemental EIS relied on to support its decision. The Town of Brookhaven Town Board (the "Town Board") is the lead agency pursuant to SEQRA for this Project and has coordinated its review with Central Pine Barrens Joint Planning and Policy Commission ("the Commission"), an involved agency under SEQRA for this Project. This Findings Statement, prepared by the Commission, is for the proposed Tall Grass Village Center PDD ("the Project") that has a Compatible Growth Area Development of Regional Significance (CGA-DRS) application before the Commission.

INTRODUCTION AND BACKGROUND

Project Name: Tall Grass Village Center Planned Development District (PDD)

Project Location:

The 320.2 acre Project site is located on the east side of Randall Road, on the south side of NYS Route 25A, and on both the north and south sides of Cooper Street, in an area west of the William Floyd Parkway in the hamlet of Shoreham, Town of Brookhaven, New York. The site has approximately 900 feet of frontage along NYS Route 25A and a total of approximately 3,142 feet of frontage on Cooper Street. The Project site on the north side of Cooper Street is currently occupied by an approximately 170 acre sod farm and the Project site on the south side of Cooper Street is occupied by an approximately 150 acre golf course (Tall Grass at Shoreham).

Suffolk County Tax Map Parcel Numbers: 200-104-2-14.3,14.4, 15.1,16.1, & 21.3, 200-126-2-1.5 & 2, 200-127-1-3, 200-148-2-6.

Zoning: A-1 Residential (Conditional change of zone to PDD was granted by the Town Board on October 16, 2007)

Project Applicants:

The Project applicants are Tall Grass Properties, LLC and TGC Operating Co., LLC. They own the golf course and are contract vendee to the DeLalio sod farm. The owner of the DeLalio sod farm has not provided an owner's affidavit that is part of the CGA-DRS application packet that grants permission for the Applicant to make a hardship on their behalf. The golf course property was part of the DeLalio Sod Farm prior to its construction. The development of the golf course was approved by the Town in 1998 and it was built in 2002. The Commission issued a determination of non-jurisdiction in 1997 for the construction of the golf course.

Project Site Service and Planning Districts:

The Project site is within and/or served by the following service and planning districts:

- Rocky Point Fire District
- Shoreham-Wading River Central School District (CSD)
- Suffolk County Water Authority (SCWA)
- Suffolk County Police Department (SCPD), 7th Precinct
- Groundwater Management Zone III
- Central Suffolk Special Groundwater Protection Area (SGPA)
- A-Residence-1 Zoning District
- Central Suffolk Pine Barrens (Compatible Growth Area (CGA))
- NYS Route 25A Corridor/Central Pine Barrens Critical Environmental Area

I. PROJECT AND SEQRA HISTORY**A. Town of Brookhaven's Project Review Process**

The Town has conditionally approved a change of use for the Project site to PDD. However, the change of zone does not take effect until the Commission approves the proposed Project and the applicant has satisfied the Town's conditions of approval. Therefore for purposes of the Commission's review the zoning of the site is A-1 Residence. The portion of the Project site that lies north of Cooper Street has been used for agricultural land for the past 40 years. The portion of the Project site that lies south of Cooper Street was also used for agricultural purposes prior to a special permit granted in 1998 that allowed the development of the Tall Grass at Shoreham golf course.

The Town Board's Findings Statement indicates the Applicant originally submitted plans to the Town Planning Board, in January 2005, for a 283-lot clustered subdivision for the Project site, known as Tall Grass at Shoreham Subdivision (the "Subdivision"). The number of units were based on a yield map of 285 lots, however, the yield according to the Town Planning Board could potentially be reduced to 268 lots because the Town classified the manmade ponds on the Project site as wetlands. The Application before the Town Planning Board was classified as a Type I Action under SEQRA (pursuant to Chapter 80 of the Brookhaven Town Zoning Code and as a result of the site's location within the NYS Route 25A Corridor/Central Pine Barrens Critical Environmental

Area) and a Positive Declaration was issued on November 21, 2005 that required a DEIS to be prepared. The DEIS for the Subdivision was submitted to the Town Planning Board on March 8, 2006. Subsequently, as stated in the Town Board's Findings, the Town requested that the Applicant submit a development application under the Town's Planned Development District (PDD) zoning category. A PDD, as defined by the Town of Brookhaven Zoning Code Section 85-338, "is a floating zone specifically designed... to allow the unified and coordinated development of parcels of land, including the transfer of density from the core area of the Central Pine Barrens...the granting of zoning incentives to achieve special public benefits, and other flexible design features." As set forth in Section 85-338 of the Brookhaven Town Code, the Applicant prepared the required PDD pre-application documents for the Project known as The Shoreham Village Center for a change of zone to PDD to construct 542 residences, 120,000 square feet (sf) of commercial, an onsite sewage treatment plant (STP) and to retain and reconfigure the 18 hole golf course. The documents were submitted to the Brookhaven Town Board on February 17, 2006, with the required Phase 1 PDD document submitted on March 29, 2006.

The two development proposals, the Tall Grass at Shoreham Subdivision (the "Subdivision") and the Shoreham Village Center PDD (the "SVC PDD") were submitted simultaneously to the Commission for review in May 2006. According to the Applicant's CGA-DRS application, the Subdivision was considered by the Applicant to be the primary Project submitted to the Commission since the property is zoned A-1 residential. The SVC PDD was identified as an additional development scenario for the site to be considered by the Commission. Both Projects were also under review by the Town. Both Projects would be Developments of Regional Significance according to Section 4.5.5. of the Central Pine Barrens Comprehensive Land Use Plan (the "CLUP") since each would exceed 200 units and either Project would result in a traffic impact which would reduce service by two (2) levels below existing conditions or to a level of service of D or below.

The Town coordinated review under SEQRA with involved agencies by letter dated April 18, 2006. The Commission responded to the coordination letter on May 19, 2006 that it had no objection to the Town Board assuming lead agency. The Town Board determined that the PDD application was a Type I Action, assumed lead agency and issued a Positive Declaration in June 2006. Issues of concern noted in the Town Board's Positive Declaration included: groundwater quality, traffic, community character, vegetation and wildlife, open space, community services, economics, conformance to applicable land use plans, construction activities, lighting, noise and odors, cumulative development, and alternative site development scenarios. The Project is now known as the Tall Grass Village PDD.

The Applicant, as stated in the Town's Findings Statement, has requested the Town Planning Board to suspend its review of the DEIS for the subdivision until such time as the PDD application is approved, at which time the Applicant will withdraw it, or if the PDD is denied, the Applicant will request the Town Planning Board to recommence its review of the Subdivision. The Subdivision development scenario and its impacts were analyzed as an alternative in the DEIS for the Tall Grass Village Center PDD application. The following summarizes the Town Board's SEQRA review of the Tall Grass Village Center PDD, based on the Town's Findings Statement: The Tall Grass Village

Center PDD Draft Environmental Impact Statement (DEIS) was submitted to the Town Board on March 22, 2007 and was accepted as complete by the Town Board on April 17, 2007. The DEIS evaluated the Project known as the Tall Grass Village Center PDD Application that consisted of 542 residences, 120,000 sf of commercial space in a Village Center, Tall Grass golf course to be retained and reconfigured, onsite sewage treatment plant (STP) and soccer fields. The DEIS included an evaluation of 6 out of 9 potential alternatives:

- Alternatives 1: Construction of 542 units, 120,000 sf commercial, onsite STP, and retention and reconfiguration of the golf course. It involves a different site layout and relocates the existing bus depot south and east of its current location within the Tall Grass Village Center PDD than the proposed Project.
- Alternative 2: same as Alternative 1 except, no golf course
- Alternative 6: As of right subdivision - 283 lot clustered subdivision, conventional individual septic systems, no golf course
- Alternative 7: Open space acquisition of sod farm and construction of a 130-lot subdivision on golf course portion, conventional onsite septic systems and no golf course
- Alternative 8: Construction of 352 unit PDD, 125,00 sf commercial, onsite STP, no golf course
- Alternative 9: Sod farm and golf course (no action alternative)
- Alternatives 3, 4 and 5 involved progressively reduced yields and layouts, however they were not considered feasible by the Applicant and therefore not evaluated in the DEIS.

The Town's SEQRA process included:

- The Commission submitted written comments to the Town on the DEIS on March 23, 2007
- A public hearing on the DEIS was held before the Brookhaven Town Board on May 15, 2007 and the Town Board accepted written public and agency comments through May 25, 2007.
- The Town Board held a public hearing on the change of zone from A-1 residence to PDD on May 29, 2007.
- The Final Environmental Impact Statement (FEIS) was accepted by the Town Board on July 24, 2007. According to the Town Finding's Statement, as a result of public and agency comments, the Tall Grass Village Center PDD Project plan was changed from what was described and analyzed in the DEIS to a 378 unit PDD with 175,00 square feet of commercial, an onsite STP, and the reconfigured golf course. The Findings stated there will be increased traffic due to changes in the mix of uses. This revised Project was described and analyzed in the FEIS.
- The period to consider the FEIS was established by the Town Board to be 30 days which ended on August 24, 2007. The Commission submitted written comments on the FEIS to the Town on August 24, 2007, with revised comments sent on September 4, 2007.

- The Town's Findings Statement and Decision dated October 16, 2007 granted a conditional approval of the change of zone from A-1 residential to PDD for the construction of 352 units, 125,00 sf of commercial space, an onsite STP and the reconfigured golf course. The Town granted its approval subject to the submittal of a PDD master plan that conforms with the covenants and conditions contained in the Town's Findings Statement and Decision. Among other things, the Town required the Applicant to obtain a hardship waiver and approval from the Commission.

B. The Commission's Project Review Process

The following chart summarizes the Commission's review of the Project.

Project Milestones

May 4, 2006	Original CGA-DRS Applications Received for the 283 lot Subdivision and 542 unit PDD
June 13, 2007	Revised CGA-DRS Application Received for 378 unit PDD
July 9, 2007	Revised CGA-DRS Application Received
July 18, 2007	Application Deemed Complete and Commission held a Public Hearing (hearing record left open)
September 14, 2007	Staff Report prepared
November 15, 2007	120 day -Decision Deadline
November 30, 2007	Amended CGA-DRS Application Received for 352 unit PDD
December 19, 2007	Application Deemed Complete for 352 unit PDD and Commission set hearing date for January 16, 2008. The 283 unit subdivision CGA-DRS application is no longer before the Commission.
January 15, 2008	Staff Report prepared
January 16, 2008	Public Hearing Held with hearing record left open until February 26, 2008
February 26, 2008	Received Applicant's Memorandum of Law and Applicant's Response to Central Pine Barrens Commission Staff Report on the Amended CGA-DRS application
February 27, 2008	Hearing record closed. Received Applicant's Revised Memorandum of Law.

March 18, 2008	Revised Staff Report prepared.
April 9, 2008	Applicant submitted additional information past the Commission's deadline for receipt of March 31, 2008.
April 16, 2008	Commission meeting. Draft Findings prepared. Decision deadline of April 17, 2008 was extended by 30 days to allow Applicant to submit additional information.
April 23, 2008	Applicant's representatives submitted additional information
May 21, 2008	Decision Deadline extended in correspondence received by the Commission dated April 23, 2008 from the Applicant's representative to enable the decision deadline to coincide with Commission's meeting date. Draft Findings revised with consideration of April 23, 2008 information provided by the Applicant's representatives.

C. Project Description

The proposed Project is a Development of Regional Significance that was granted conditional approval by the Town of Brookhaven Town Board on October 16, 2007, to construct a mixed use development Project that according to the Town's Finding Statement will consists of:

1. 352 mixed residential dwellings that including 281 market rate residential units, 71 (20%) workforce /affordable housing units (135 of the total units will be age-restricted senior units and 217 units will be non-age restricted). The 352 residential units consist of:
 - 71 - affordable 2 bedroom units
 - 20 - 5 bedroom detached homes
 - 50 - 4 bedroom detached homes
 - 25 - 3 bedroom detached
 - 10 - 2 bedroom detached homes
 - 21- 2 bedroom attached units
 - 20 - 3 bedroom attached units
 - 60 - senior attached units
 - 75 - senior golf villas
2. 125,000 sf Village Center - commercial uses occupying 3 acres of the 18.79 acres commercial area
3. Onsite Sewage Treatment Facility using Biologically Engineered Single Sludge Treatment (BESST) technology
4. Retention of the Tallgrass Golf Course and 9,197 square foot clubhouse and relocation of 3 holes north of Cooper Street.

5. Development of a 12,200 square foot community recreation center with 20 parking spaces and two swimming pools on the west side of the Project site, just north of Cooper Street
6. Potentially relocating the bus yard (not owned by Applicant) from a 4.73 acre site along the northern portion of the Project site on NYS Route 25A to a 5 acre portion of the Project site, the vacated bus site will remain zoned J-2 business
7. 1.6 acre Town parkland will be developed with a "Town Square" style public parkland, coordinated with the Project as recommended by the Town in the area of the bus yard and Town owned property along NYS Route 25A
8. Proposed relocation of the Village Center from the original proposed location to west of the existing bus site along NYS Route 25A
9. Not less than 17.8 acres dedicated for ball fields and construction of grass athletic fields (these areas are relocated to the northeastern portion of the site)
10. 75 foot buffers on east and west sides of the site
11. Retention of existing 3.9 acres of natural vegetation on site
12. Minimum of 35% or 112 acres will be natural and/or revegetated
13. Purchase and redemption of ten Pine Barrens Credits
14. Requirement that the Applicant make all practical efforts to obtain a hardship approval from the Central Pine Barrens Joint Planning and Policy Commission (CPBJPPC).

According to the Applicant's February 2008 submittals, the Project will manage stormwater runoff through wet meadow detention areas and an onsite recharge basin that connects to an offsite recharge basin owned by the Town of Brookhaven. No new ponds will be created. The pond on the existing golf course will remain and be used for stormwater runoff management.

Summary of Public Benefits as specified in the Town's Finding Statement:

- \$166, 239 annual surplus in school taxes
- 1.5 miles by 5 feet wide multi-use pasaeo
- not less than 17.8 acres dedicated for ball fields and construction of grass athletic fields
- village green and farmer's market structure
- high quality design features including street furniture, fountain, kiosks, and community gathering areas
- 20 percent of the units (71) will be affordable
- maintenance of the park and paseo paid for by the property owners
- road maintenance paid for by the property owners
- a Projected 117 increase in the number of school age children in the district compared to the estimated 428 base on the as of right development
- Purchase and redemption of 10 Pine Barren Credits

II. TOWN OF BROOKHAVEN FINDINGS AND APPROVAL

Conformance to Goals of Town PDD Legislation

The Town's PDD legislation as set forth in Section 85-337.1 (B) sets forth 22 specific goals of Planned Development Districts. A detailed analysis of the Tall Grass Village Center's conformance with the goals was presented in the DEIS. The Town Board determined that the Final Project meets the applicable goals.

The Town Board established the following covenants and conditions of approval.

Covenants contained in the Town's Findings Statement

Overall Plan

The Town imposed the following covenants:

1. Grading and removal of excess materials shall be in full conformance with the EIS. The removal of excess materials shall be in conformance with the Town Code, including payment of all applicable fees and be to the minimum amount feasible to implement the Project. No mining, as set forth in Chapter 53 of the Town Code, shall be permitted.
2. The Applicant shall submit a site plan application and subdivision application as required to implement the PDD to the Town Planning Board in full conformance with the Town's covenants and conditions contained herein, including payment of all applicable Town fees (application, review, recreation, inspection, excess materials, etc).
3. Grass athletic fields shall be constructed by the Applicant on lands encompassing not less than 17.8 acres and the final location shall be approved by the Planning Board. Athletic field lands shall be dedicated to the Town of Brookhaven within 90 days after site plan approval or subdivision approval and prior to the issuance of building permits or within 90 days or upon completion of construction of athletic fields by Applicant.
4. Construction of parks (12.39 acres), paved multi-use paseo (1.5 miles), farmers market, and village green shall be constructed by the Applicant in accordance with completion thresholds within the Town's conditions of approval and public access shall be maintained.

Residential

5. A total of not more than 352 total residential units (all sizes are maximums; smaller units shall be permitted):
 - a) Seventy-one (71) (20 percent) affordable units. One bedroom, two bedroom and three bedrooms units shall be permitted totaling not greater than 142 affordable bedrooms

- b) Twenty (20) 5-bedroom detached homes
 - c) Fifty (50) 4-bedroom detached homes
 - d) Twenty-five (25) 3-bedroom detached homes
 - e) Ten (10) 2-bedroom detached homes
 - f) Twenty (20) 3-bedroom attached dwellings
 - g) Twenty-one (21) 2-bedroom attached units
 - h) One hundred and thirty-five (135) age restricted senior attached units including not less than sixty attached units.
6. No segregated or gated communities shall be permitted. Use of roads, parks, paseo, and village green shall be unrestricted and available to the general public.
7. Residential taxes:
- a) Age restricted units and residential units within the Tall Grass Village Center PDD may be permitted to be condominiums and shall be assessed pursuant to RPL Section 339y, unless legislation is passed to the contrary.
 - b) None of the non age-restricted residential units (attached and detached) shall be permitted to convert to a condominium form of ownership, unless it is agreed that the Town Assessor shall continue to assess such units in the same manner as they were assessed prior to the conversion.
8. The Project shall provide at least 20% of its 352 residences (71 units) as affordable housing in perpetuity. One, two and three bedroom units shall be permitted provided the total number of affordable bedrooms shall not exceed 142. Each of the affordable units shall be priced for an amount affordable to occupants whose incomes are less than the one hundred twentieth (120) percentile of the median family income for the Town of Brookhaven as determined by the Suffolk County Planning Department based on family size. The Applicant is encouraged to offer the affordable units first to current residents within the Shoreham postal district and Rocky Point Fire district volunteers. The affordable housing units are to then be offered to residents who reside within the Town of Brookhaven before being offered to the general public.
9. The Applicant is encouraged to offer the age restricted units first to current residents within the Shoreham postal district. The age restricted housing units should then be offered to residents who reside within the Town of Brookhaven before being offered to the general

public.

10. All residential units (attached and detached) shall not exceed 35 feet in height. Single family detached residences shall be constructed on lots not less than 4,000 sf or greater than 20,000 square feet.
 - a) Detached residences on lots less than 5,000 square feet shall be limited to not greater than 1,000 square feet on the first floor and not greater than 800 square feet on the second floor.
 - b) Detached residences on lots less than 6,000 square feet shall be limited to not greater than 1,250 square feet on the first floor and not greater than 1,250 square feet on the second floor.
 - c) Detached residences on lots less than 7,500 square feet shall be limited to not greater than 1,600 square feet on the first floor and not greater than 1,300 square feet on the second floor.
11. The installation of private swimming pools, tennis courts and other large private recreational facilities shall be prohibited in conjunction with all attached housing types, and for single family detached residences on lots less than 9,000 square feet.
12. Construction of additions to residential units may only be made to single family detached units only. Such additions in no case shall exceed the permitted maximum unit sizes or maximum number of bedrooms.
13. A Homeowners Association (HOA) shall be established, which will be solely responsible for the following:
 - a) Maintenance of interior private streets including snow removal.
 - b) Maintenance of all interior park spaces, village green, paseo, preserved open space, vista, and all other communal spaces.
 - c) Regulation of the quantity of age restricted units and the quantity of affordable units within Tall Grass Village Center and who shall submit documentation of conformance with these covenants annually to the Town of Brookhaven Department of Housing, Community Development and Intergovernmental Affairs.
 - d) The owner(s) of the Village Center shall be a member of the Homeowners Association, unless another suitable separate owner's association is created for the Village Center.
 - e) At no time shall the Homeowners Association impede the Town's efforts to enforce the Code of the Town of Brookhaven.

Commercial

14. In order to create a mixed use pedestrian oriented Village Center, not more than 125,000 square feet of commercial space which must include office space, bank with or without drive thru, retail and uses permitted within the J-2 zoning district (retail uses totaling not greater than 85,000 square feet), and restaurants shall be developed within the Village Center. Variations in use categories shall be permitted provided the 125,000 square feet maximum is not exceeded. There shall be no single tenant space larger than 45,000 square feet and no secondary tenant greater than 30,000 square feet. Variations not to exceed 20% shall be permitted by the Town Board after a duly noticed public hearing provided the 125,000 square feet maximum is not exceeded. To encourage live/work units within the Village Center, they shall not be included in the total commercial square footage. Final configuration shall be determined by the Planning Board at the time of site plan.
15. Commercial Taxes - No owner or owners of any of the property used for commercial purposes shall be permitted to apply for any tax exemptions that exist under current law or any tax exemption that may be passed by the State or County legislatures or the Town Board in the future that, if granted, reduces the tax levy on such commercial property.

Golf Course

16. Provided that a hardship from the Commission is obtained, the eighteen hole golf course shall be operated for not less than 10 years in conformance with the following. If at any time after 10 years the owner chooses to end operations of the golf course, the golf course shall first be offered for dedication and operation to the Homeowners Association and then to Town or County agencies to remain an operational golf course.
 - a) The three holes to be relocated north of Cooper Street shall require cart and pedestrian crossings (at grade or grade separated) to the satisfaction of the Town of Brookhaven's Division of Traffic Safety and Highway Department
 - b) The user fees at the golf course shall be reduced for Town of Brookhaven residents by \$10.00 per round for a period of ten (10) years; the discount shall be increased in proportion to any future fee increases.
 - c) The existing clubhouse and catering facility shall be permitted to be maintained.
 - d) The clubhouse shall be opened for use as a Community Center unless another suitable community building is constructed for use by Tall Grass residents elsewhere within the PDD.
 - e) Irrigation of the golf course must be done through the use of the ponds created on the site with supplemental needs addressed by an on-site irrigation well.
 - f) The Applicant must prepare and implement an Integrated Pest Management (IPM) Plan, which will assist in reducing the amount of pesticides and fertilizers used to maintain the golf course. The IPM Plan must also include information as to the best management practices to be used in and near the maintenance area and in the pesticide mixing/storage area.

- g) No mechanical golf course maintenance (e.g., mowing) may occur later than 8:00 pm.
- h) Neither the golf course nor the driving range shall be lighted, nor shall there be nighttime play.
- i) Parking lots and walkways must have lighting for safety purposes and light poles shall be no greater than 20 feet in height and in conformance with the Town Code.
- j) A clubhouse with pro-shop, deli/snack bar, cart storage, lockers, and restrooms shall be considered customary accessory use related to the golf course. A maintenance building not to exceed 8,500 square feet shall also be considered a customary accessory use.

If the Applicant, after making all efforts to obtain a hardship from the Commission, is not successful then the golf course property shall be open space in accordance with the Town's covenants and conditions.

Roadways

- 17. That portion of Miller Avenue on the Project site shall be constructed to Town standards or as modified by the Planning Board and Highway Department. The Applicant is required to make a perpetual offer of dedication to the Town of Brookhaven Highway Department for said roadway.
- 18. Except for Miller Avenue, all internal roadways shall be constructed to Town standards (drainage, grading, paving, curbs, sidewalks, street trees) at widths approved by the Planning Board. It is anticipated that to achieve the walkable characteristics that roadway width will be reduced. All internal roadways shall be privately maintained including snow removal. If at any time the roads are not maintained to Town of Brookhaven standards, the Town reserves the right to protect the public health, safety and welfare by maintaining the roadways upon written notice and then charging the costs of such work to the Homeowners Association.
- 19. The covenants and conditions shall be and constitute covenants running with the land and shall be binding upon the declarant and any and all subsequent owners of said property or any part thereof, and upon their heirs, executors, and administrators, or their successors and assignees, subject, however, to the right of the Town of Brookhaven, after due public hearing, to amend, alter, annul or repeal any or all of the foregoing covenants and/or restrictions at any time.
- 20. Each of the above covenants is enforceable through all of the powers of the Town Attorney's Office.

Conditions of Approval set forth in the Town's Findings

1. Within six (6) months of this grant, and prior to this change of zone becoming effective, the Applicant shall submit a revised PDD master plan in conformance with all conditions of this approval to the satisfaction of the Commissioner of Planning, Environment and Land Management.
2. The Applicant shall conform to all conditions of the Suffolk County Planning Commission's approval contained in its letter dated August 1, 2007 and as follows:
 - a) "As there remain concerns with respect to the design of the "Village Center" the site plan for this proposed use shall be referred to the Suffolk County Planning Commission pursuant to GML 239 and the Suffolk County Administrative Code at the time it is submitted to the Town as the Phase 2 approval of the PDD."
 - b) "A significant number of Pine Barrens Credits shall be retired in conjunction with this Project."
 - c) "Final conceptual layout shall not be set until NYS Central Pine Barrens Joint Planning and Policy Commission issues related to clearing and fragmented open space is addressed."
 - d) "At least 20% of the overall final number of dwelling units shall be set aside for affordable housing purposes." and,
 - e) "Conceptual approval from the Suffolk County Sewer Agency for the location and design of the sewage treatment plant shall be required prior to approval of the PDD zone."
3. The Applicant shall seek to obtain a hardship from the Commission to construct the Project as per this approval. In the event that the Commission hardship is not granted, the Applicant shall retain all other community benefits and the Project will be remanded to the Planning Board to reconsider an site plan configuration.

If the Applicant, after making all efforts to obtain such waiver from the Commission, is not successful, then the golf course property shall become open space. In the event that the golf course is not part of the Project and the site design is modified to be fully conforming to Commission standards, all areas of additional open space shall require a revegetation plan which shall be submitted to the Planning Board for review and approval.

Public access shall be maintained to areas of open space that were previously golf course.

4. The Applicant shall purchase and retire not less than 10 Pine Barrens Credits for increased density and public benefit related to this Project. The purchase of Pine Barrens Credits shall be in conformance with the decision of the Commission.
5. The Applicant shall provide the public benefits specified in Table 1-1.

PUBLIC BENEFITS Table 1-1

Special Public Benefit	Unit Cost/Factor	Proposed Final Site Plan (FEIS)	
		Area/Units	Economic Benefit
School tax Surplus (10 yrs)	\$166,239/yr@4%	---	\$2,075,719 ⁽¹⁾
Community theater	\$150/square foot ⁽²⁾	---	Not included
Paved Multi-use paseo (1.5 miles, 5 feet wide)	\$10.70/square foot ⁽²⁾	39,600 square feet	\$423,720
Open space & park	\$300,000/acre ⁽²⁾⁽³⁾	12.39 acres	\$3,717,000
Dedication of land for ball fields and construction	\$300,000/acre ⁽²⁾⁽³⁾	17.80 acres	\$5,340,000
Village Green & farmer's market	\$300,000/acre ⁽²⁾⁽³⁾⁽⁴⁾	1.5 acres	\$450,000
High quality design features in commercial area	\$200,000/acre ⁽²⁾⁽³⁾⁽⁴⁾	13.6 acres	\$2,720,000
Purchase and Retirement of Pine Barren Credits	\$100,000/credit	10 (5)	1,000,000
20% affordable units	\$150,000/unit ⁽²⁾	71 units	\$10,650,000
Park & paseo maintenance (20 yrs)	\$100,000/yr at 9% ⁽²⁾	---	\$5,116,012
Road maintenance	\$50,000/yr at 9% ⁽²⁾	---	\$2,558,006
TOTAL	---	---	\$34,050,457

1. School tax benefit is based solely on the school tax surplus of the proposed PDD.
2. Estimated value provided by Applicant.
3. Value estimate includes land and site improvements (\$150,000 per acre for land and \$150,000 per acre for improvements).
4. To include: street furniture, fountain, kiosks, community gathering area, etc.
5. Final quantity of Pine Barrens Credits to be in conformance with Commission.
NOTE: Reduced fees at Tall Grass golf course will provide an additional benefit of \$1,000,000 if a Hardship from the Commission allows continued golf course use. Value is based on 10,000 rounds/yr at \$10/round.

6. Applicant to provide a one time lump sum contribution of not less than \$10,000 to the Rocky Point Fire District/EMS prior to issuance of the first building permit, to be used for equipment or supplies at the discretion of the Fire District.

Commercial Development

7. The following guidelines shall be utilized in the design and development of the "Village Center":
 - a) To enhance pedestrian-orientation and walkability, the Applicant should seek to construct second floor office, live/work units and/or residential units within the Village Center. To encourage live/work units within the Village Center, the live/work units shall not be included in the total commercial square footage.
 - b) The commercial site design shall be developed in accordance with the J-6 Main Street Business District standards and height limits and in accordance with the Main Street Business District Design Manual.
 - c) The Village Center shall access NYS Route 25A primarily via Miller Avenue and shall be located west of and adjacent to the Miller Avenue extension.
 - d) The Applicant shall continue to pursue the purchase of the lands presently occupied by Laid Law Bus Company known as SCTM# 0200-10400-0200-018000 for incorporation into the Village Center. If acquired, the Applicant shall submit an application to the Town Board for a change of zone in keeping with the development theme. At such time as the bus company terminates use of the property, the Applicant shall be permitted to provide alternate lands for the bus company of not more than five (5) acres including buffers (75 foot buffers including 5 rows of evergreen trees, solid fencing not less than 8 feet in height, and noise abatement) in conformance with Town Code and as determined by the Planning Board. The re-location of the bus company shall be in close proximity to the schools and with access to 25A, Randall Road or Miller Avenue to the satisfaction of the Planning Board.
 - e) Commercial buildings shall be constructed using green building technologies.
 - f) The locations of individual uses with different peak demands shall be sited to create opportunities for shared parking and mitigate traffic impacts. The Planning Board shall have jurisdiction to regulate the quantity of parking constructed based on anticipated shared parking and to provide variances from the Town Code related to parking or to further limit the quantity of commercial space if adequate parking can not be provided.

- g) The architecture of the commercial buildings shall be in keeping with the images, styles and materials proposed in the DEIS and FEIS and presented at the public hearings. Buildings shall be designed to have attractive architecture on all sides. The Historic District Advisory Committee shall have jurisdiction for review and approval of the architecture in an advisory capacity to the Planning Board. Such review shall occur at the time of and simultaneously with the review of site plan application.
- h) Municipal uses (library, post office, etc) located within the Village Center shall be encouraged and shall not be included within the 125,000 square feet maximum gross commercial floor area.

Residential Development

- 8. The Applicant shall develop the site with not more than 352 mixed housing units. The maximum residential density shall be in conformance with Table 1-2.

Table 1-2 Summary of PDD Characteristics

5- Bdrm detached homes	20 units
4- Bdrm detached homes	50 units detached homes
3- Bdrm detached homes	25 units detached homes
2- Bdrm detached homes	10 units detached homes
3- Bdrm attached dwellings	20 units attached dwellings
2 - Bdrm attached dwellings	attached dwellings
Senior attached dwellings*	21 units
Affordable dwellings (142 bedrooms)	71 units
Total residential units	352 units

*Per Town Code for PRC zoning, for seniors aged 55 years or older.

- 9. Housing types shall be designed and intermixed throughout. No segregated or gated communities shall be permitted. The residential component must be designed to have walkable distances to community shopping and recreational uses with higher density units, including age restricted units, to be located closer to the Village Center with lesser densities moving away from the Village Center.
- 10. Construction of a suitable community building within the Tall Grass PDD shall be provided for use of the residents of Tall Grass within the Project including installation of a community swimming pool(s).

11. All residential buildings shall be Energy Star compliant.
12. Standard mitigation to reduce water consumption on-site shall be implemented in the form of low flow fixtures.
13. The proposed architecture of the residential buildings shall be in keeping with the styles and materials proposed in the EIS in character. The Historic District Advisory Committee will have jurisdiction for review and approval of the architecture in an advisory capacity to the Planning Board. Such review shall occur at the time of and simultaneously with the review of site plan application.

Project Layout

14. The Project shall be constructed as analyzed in the FEIS with the following modifications based on options presented and analyzed in the DEIS:
 - a) The site layout shall provide buffers along the easterly and westerly boundaries of the Project not less than 75 feet in width with the exception of where roadways/ driveways are to be constructed. All buffers shall be revegetated in accordance with a revegetation plan approved by the Planning Board.
 - b) The clustering of the Project shall provide a minimum of 35% (112 acres) of natural or revegetated area and provide continuous unfragmented areas to the greatest extent practical. The Applicant shall modify the site layout to move toward compliance with Pine Barrens clearing standards to the greatest extent practical.
15. All buildings and structures along the northerly and southerly sides of Cooper Street shall maintain a minimum 50-foot front yard setback.
16. Residential streets adjacent to the golf course, athletic fields and vista shall be designed to have buildings fronting on one side only to promote unimpeded views of the golf course, athletic fields and vista from roadways consistent with the FEIS Plan.
17. Recreational facilities shall meet the quantities required by Town Code in the MF zoning district, including pocket parks, throughout as per the PDD Master Plan within the FEIS.
18. Grass athletic fields shall be constructed by the Applicant and shall encompass not less than 17.8 acres. Land for fields shall be dedicated to the Town of Brookhaven within 90 days after site plan or subdivision approval and prior to issuance of the first building permit or upon completion of construction of fields.
19. All lighting for buildings and uses to be "dark sky compliant" in conformance with Town Code.

Golf Course

20. Provided that a hardship from the Commission is granted, the eighteen hole golf course shall be developed and operated in conformance with the covenants contained in the Town's Findings Statement and Decision.

Completion Thresholds

21. a) As stated in the FEIS, the Project shall be constructed as one phase. If this cannot be accomplished, the entire Project shall be remanded back to the Town Board for further review, consideration and approval of any proposed phasing.
- b) The following elements shall be required to be completed in accordance with the following thresholds:
1. Construction of State Highway improvements as required prior to issuance of the first commercial certificate of occupancy (CO)
 2. The certificate of occupancy for a minimum of 50 percent of the commercial gross floor area (GFA) shall be issued prior to the issuance of the 50th residential certificate of occupancy with the exception of second floor residential units within the Village Center and housing intermixed within the Village Center.
 3. Golf course modifications shall be completed, issued a certificate of occupancy, and be open for play prior to the issuance of the 100th residential certificate of occupancy, provided a CPBJPPC hardship is granted.
 4. The certificate of occupancy for a minimum of 90 percent of the commercial gross floor area (GFA) of commercial development shall be issued and the village green, including the "Farmers Market" (see attachment #7), completed prior to the issuance of the 150th residential certificate of occupancy.
 5. Completion of all specified public benefits prior to the issuance of the 325th residential certificate of occupancy.

Transportation/Traffic Safety

22. Miller Avenue and all other internal roadways shall be developed, maintained, and operated in conformance with the covenants contained herein.
23. Traffic mitigation along all roadways negatively impacted by the proposed development shall be implemented by the Applicant in accordance with the existing and future traffic analyses as deemed appropriate. The Applicant shall provide all required roadway and traffic mitigation as required by the agencies having jurisdiction, including the New York State Department of Transportation, the Suffolk County Department of Public Works, the Town of Brookhaven Division of Traffic Safety and the Town's Highway Department.

Improvements include, but are not limited to, roadway and intersection widenings, additional traffic controls, and other related improvements deemed necessary.

- a) All access to this site shall be from State Route 25A, Randall Road, Cooper Street and Miller Avenue.
- b) Final design and implementation of required traffic controls shall be approved by the agency having jurisdiction.
- c) Final design of the transportation network as approved by the Planning Board shall consider provisions for pedestrian related features (i.e., crosswalks, pedestrian signal controls, curb extensions) that improve safety and pedestrian mobility.
- d) Final design and implementation as approved by the Planning Board regarding required alternative transportation related improvements shall consider provisions for bicycle lanes, bicycle racks, bus stops and bus shelters wherever appropriate.

24. The following traffic mitigation is required:

- a) The Applicant shall conduct a follow-up traffic study consisting of traffic volume flows, traffic operations analyses, and traffic control warrant analyses at locations to be determined by the Town's Division of Traffic Safety. This study will be conducted after substantial completion (approximately 85%) of the Project. The study shall recommend corrective measures where deemed appropriate and in accordance with the work permits issued by the agencies having jurisdiction for the location of traffic related improvements. The Applicant shall be responsible for the implementation of all required improvements deemed necessary and in accordance with the limits outlined herein.
- b) The Applicant shall provide a performance bond in the amount of \$200,000 to be deposited in an escrow account and dedicated toward traffic related studies and implementation of improvements deemed necessary as a result of the traffic study performed relative to the Tall Grass Village Center PDD. This escrow account and bond shall remain in effect for a period of time not to exceed three (3) years after 100% completion of the Project. Any remaining funds not utilized shall be returned to the Applicant upon written request.

General site plan mitigation measures

25. The Project shall utilize an on-site sewage treatment plant utilizing Biologically Engineered Single Sludge Treatment (BESST) technology, or equivalent, in full conformance with Suffolk County Health Department requirements. The facility shall be located to conform with all necessary setbacks and buffers.

26. All utilities shall be underground in conformance with Town Code.
27. At time of site plan, the Applicant shall submit a detailed Erosion Control Plan to the Planning Board containing erosion and sediment control measures and construction schedule as specified in the DEIS.
 - a) Existing on-site topsoil is to be temporarily stored in piles during the construction process and re-used throughout the site. Topsoil stockpiles and areas exposed by re-grading activities shall be stabilized and protected as per the erosion control measures identified and proposed in the DEIS.
 - b) The maximum slope utilized is to be three horizontal to one vertical (3:1) with the exception of small select locations as may be determined by the Planning Board. It is recommended that the actual design be reduced to a 4:1 maximum
28. The implementation of the Soil Management Plan shall be required in accordance with all applicable standards.
29. Bus shelters throughout (school bus and/or public bus) shall be provided throughout the site as appropriate.
30. The Applicant shall submit a landscaping plan as part of the Planning Board site plan approval process incorporating the following into the landscaping plan:
 - a) All buffer areas, areas to be revegetated and landscape areas with the exception of foundation plantings shall be planted utilizing native species and species from the Pine Barrens recommended plant list. In no case shall any plants be utilized within the Project that is contained within the 2006 Pine Barrens invasive plants report.
 - b) Low maintenance areas around the units (non-sod areas) will be planted with native shrubs, trees, ground covers and compatible vegetation.
 - c) Wetland species shall be planted along at least 40% of the shorelines of all new man-made ponds.
 - d) Fertilizer dependent vegetation for the overall site shall be limited to the athletic fields, golf course tees, fairways and hole areas and within high profile areas such as along roadways, entrance ways, and selected areas around the residential units.
 - e) All areas of existing wooded vegetation (3.9 acres) shall be protected and maintained.

III. THE COMMISSION FINDINGS AND DECISION

The Town's DEIS, FEIS, Findings and Decision for the Tall Grass PDD are collectively known as the "SEQRA Record." The Town's SEQRA Findings Statement and Decision shall be attached to this document for reference.

The Commission's Findings relies on the SEQRA Record to:

- (1) consider the relevant environmental impacts, facts and conclusions disclosed in the FEIS;
- (2) weigh and balance relevant environmental impacts with social, economic and other considerations;
- (3) provide a rationale for the agency's decision;
- (4) certify that the requirements of this Part have been met;
- (5) certify that consistent with social, economic and other essential considerations from among the reasonable alternatives analyzed, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision, those mitigation measures that were identified as practicable.

FACTS AND CONCLUSIONS CONTAINED WITHIN THE SEQRA RECORD TO SUPPORT THE COMMISSION'S DECISION

The discussion below identifies the potentially significant environmental issues related to the Tall Grass Village PDD Project based upon the information provided in the SEQRA record.

The Project is considered a Development of Regional Significance as set forth in the Central Pine Barrens Comprehensive Land Use Plan ("the CLUP) because the SEQRA Record notes that the traffic impact anticipated from the Project will reduce service by two levels below existing conditions and would cause a drop to a level of D or below. In addition, the Commission finds that the Project includes more than 200 single family detached units. This determination is based on the assumption that of the 71 units which are not classified as detached or attached 20 will be detached. When reviewing a DRS, the Commission must determine whether the Project complies with the standards and guidelines for development in the CLUP. Section 57-0123 states that the Commission must review and approve a DRS. If the Project cannot meet the CLUP's standards and guidelines, then a hardship waiver would be necessary from the Commission. The Town Board, as lead agency under SEQRA coordinated with the Commission, an involved agency under SEQRA. Each involved agency must make their own findings prior to their decision on a Project. If any involved agency under SEQRA issues a Findings Statement to deny a Project undergoing a coordinated review, the Project cannot move forward until this is resolved.

Discussion of Impacts, Development Standards and Guidelines

The SEQRA review of this Project has evolved. The DEIS analyzed a 542 unit PDD. The FEIS analyzed the impacts of a 378 unit PDD. The Town's Findings Statement analyzed the impact of a 352 unit PDD. The Town's Findings Statement and Decision imposed the conditions discussed above.

The Commission received applications for the Project in May 2006, June 2007, and November 2007. The Commission issued staff reports on the Project in September 2007, January 2008 and March 18, 2008. In response to the January 2008 staff report, the Applicant submitted a February 2008 document entitled "Applicant's Response to the Central Pine Barrens Joint Planning and Policy Commission Staff Report on the Amended Compatible Growth Area Hardship Application." Moreover, the Applicant has submitted materials for the Commission consideration on April 9, 2008 and April 23, 2008.

As a preliminary matter, the Commission notes its concern with the SEQRA review of the Project. Since the Town issued its Findings and Decision, the Applicant has submitted at least four items to the Commission that altered the Project from what was reviewed by the Town. Neither the Applicant nor the Town has performed a SEQRA analysis of the Project that was revised by the Applicant's submittals to the Commission on January 2008, February 2008, April 9, 2008 and April 23, 2008.

The Commission at its meeting on March 18, 2008 granted, at the Applicant's request, an opportunity for the Applicant to submit additional items in response to the Commission staff's March 18, 2008 revised report, and set a deadline of seven to ten days from the March 18, 2008 Commission meeting for this submittal. Subsequently, Commission staff, met with the Applicant's consultant, at their request, on March 28, 2008, whereby staff was informed by them that they would submit additional items by April 7, 2008. The additional items were received by the Commission on April 9, 2008, however since this submission was past Commission's deadline, they were not considered by the Commission nor incorporated into the April 16, 2008 Draft Findings Statement. At the Commission's April 16th meeting, the Commission granted a 30 day extension, at the Applicant's request, that was later extended to coincide with the Commission's May 21st meeting date, to enable the Applicant to again submit additional information. The following sections measure the Project's impacts based on all of the information submitted by the Applicant, including the April 9th and April 23rd submittals, against the CLUP's Standards and Guidelines.

STANDARDS AND GUIDELINES

I. Water Resources

The Central Pine Barrens Development Standards and Guidelines related to water resources are set forth below. Also included is a discussion of the Project's potential impacts to water resources, mitigating measures and conformance to the applicable standards and guidelines.

A. Nitrate-nitrogen

1. Standards and Guidelines

a. Standard 5.3.3.1.1 Suffolk County Sanitary Code Article 6 compliance

All development proposals subject to Article 6 of the Suffolk County Sanitary Code shall meet all applicable requirements of the Suffolk County Department of Health Services. Projects which require variances from the provisions of Article 6 shall meet all requirements of the Suffolk County Department of Health Service's Board of Review in order to be deemed to have met the requirements of this standard.

b. Standard 5.3.3.1.2 Sewage treatment plant discharge

Where deemed practical by the County or State, sewage treatment plant discharge shall be outside and downgradient of the Central Pine Barrens. Denitrification systems that are approved by the New York State Department of Environmental Conservation or the Suffolk County Department of Health Services may be used in lieu of a sewage treatment plant.

c. Guideline 5.3.3.1.3 Nitrate-nitrogen goal

A more protective goal of two and one half (2.5) ppm may be achieved for new Projects through an average residential density of one (1) unit per two (2) acres (or its commercial or industrial equivalent), through clustering, or through other mechanisms to protect surface water quality for Projects in the vicinity of ponds and wetlands.

d. Standard 5.3.3.2.1 Suffolk County Sanitary Code Articles 7 and 12 compliance

All development Projects must comply with the provisions of Articles 7 and 12 of the Suffolk County Sanitary Code, including any provisions for variances or waivers if needed, and all applicable state laws and regulations in order to ensure that all necessary water resource and wastewater management infrastructure shall be in place prior to, or as part of, the commencement of construction.

2. Compliance with the Standards and Guidelines

a. Standard 5.3.3.1.1 Suffolk County Sanitary Code Article 6 compliance

Article 6 of the Suffolk County Department of Health Services Sanitary Code establishes thresholds for the method of sanitary waste disposal based on the population density equivalent of a Project and the Project's location. The population density equivalent of the Project requires the use of a community sewage system.

The Commission is unable to determine based on the SEQRA Record how the Applicant determined the Project site's yield. The Department of Health Services has issued General Guidance Memorandum #17 that states for Projects containing golf courses, the area within the golf course may not be used to generate yield. This prevents a double use of the same area. The rationale for this policy is based on the fact that the golf course use would generate nitrogen. The PDD has no

density maximum in Town Code and there has been no basis for the density requested other than statements by the Applicant that the Town specified the density for this Project.

In order to comply with Article 6, the Applicant is proposing to construct a sewage treatment plant on the Project site. The onsite STP will be located in the north-central portion of the site, east of Miller Avenue and adjacent to the ball fields and relocated bus yard. The design, installation and operation of the WWTF will be subject to approval by the SCDHS that according to the FEIS will ensure the proper level of groundwater protection is provided.

Based on the Applicant's November 2007 and subsequent February 2008 submittal, the residential and commercial land use elements of the Project have been revised to 352 units and 125,000 square feet, respectively (a reduction of 23 units and 50,000 sqd, respectively). The FEIS analyzed a sewage generation rate of 97,617 gallons per day (gpd), based on the development of 378 residential units and 175,000 square feet of commercial uses. The Applicant's February 2008 submittal indicates the proposed sewage flow rate as 100,620 gpd, or an increase of 3,620 gpd (3.5%) over the amount analyzed in the SEQRA record. The sewage flow will be generated from proposed land uses on site including, but not limited to, 352 residential units, 125,000 square feet of commercial uses, a 9,770 square foot golf course clubhouse/catering facility, and a 12,200 square foot community building. The current sewage and water flow calculations do not include the rates generated from the commercial portion of the live-work units (estimated total of 30,000 sf) and the 10,000 square foot municipal use building.

Since the Applicant is proposing the use of an onsite STP to manage the Project's sanitary waste, the Commission finds that the Project will conform to CLUP Standard 5.3.3.1.1.

b Standard 5.3.3.1.2 Sewage treatment plant discharge

The STP will be sized at 120,000 gpd to ensure capacity for the variety of wet uses for restaurants, retail, office space and residential uses. There will be enough land available for the STP to meet SCDHS requirements to enable 100% expansion of its capacity. This could also provide enough capacity for other development Projects to connect to this facility. The Applicant proposes the construction of a STP implementing Biologically Engineered Single Sludge Treatment (BESST) technology to treat the sewage generated from the proposed Project.

The CLUP Standard requires the discharge of the effluent from the STP to be outside and downgradient of the Central Pine Barrens when deemed practicable by either the State or the County (agencies with jurisdiction of STPs). The Applicant's February 2008 submittal states, "The proposed WWTF and its recharge facilities would be located on site, within the CGA. The Pine Barrens Plan promotes locating points of sanitary discharge outside and downgradient of the CGA where deemed practicable by the County and State. However, the EIS also notes that the direction of groundwater flow beneath the site is northeastward...sanitary effluent recharged on site will flow immediately out of the CGA, in compliance with the intent of the Pine Barrens Plan...there are no existing STPs outside the CGA and to the north to which the proposed Project could connect, and no areas of sufficient size to the north are available for use as off-site recharge."

The Suffolk County Sewer Agency (SCSA) Resolution No. 24-2007 granted conceptual certification for an on-site STP with an anticipated flow of 120,000 gpd (this was the Projected flow for the FEIS Project). The conceptual approval indicates the method of wastewater disposal the SCSA recommends for the Project. The conceptual approval is not an approval to construct the STP, nor is it an approval of the proposed STP treatment technology (i.e., BESST). SCSA's conceptual certification letter states there is no Suffolk County Sewer District or any other municipal sewer district in the vicinity of Tall Grass Subdivision with available capacity to serve the developer's sanitary needs. This was further documented by a letter from SCDHS (correspondence from W. Hilbert to C. Voorhis, dated April 23, 2008) that was included as an attachment to the Applicant's April 23, 2008 submittal. The Hilbert letter stated it is not practicable to locate the discharge outside the Central Pine Barrens.

The Applicant has indicated in its April 9th submittal and again in its April 23rd submittal that the proposed BESST treatment technology has been approved by SCDHS for other constructed Projects in Suffolk County.

Initially, the STP would be operated and maintained by the Home Owners Association (HOA) to be established by the Applicant. If the HOA conveys the STP to the County Department of Public Works, the HOA would provide the County with sufficient funds to operate the STP for one year. During the year, a special district would be established to provide revenues for the operation and maintenance of the STP.

The Commission finds that the Project will conform with CLUP Standard 5.3.3.1.2.

c. *Guideline 5.3.3.1.3 Nitrate-nitrogen goal*

The April 9th and April 23rd submittals projects that the nitrate nitrogen levels in recharge from the Project using the SONIR model for the full capacity of the STP (120,000 gpd) to be 2.47 mg/l and therefore meets this Guideline for the nitrate-nitrogen goal of 2.5 mg/l.

The Commission finds the Project will conform with Guideline 5.3.3.1.3.

d. *Standard 5.3.3.2.1 Suffolk County Sanitary Code Articles 7 and 12 compliance*

The existing bus yard located along NYS Route 25A is proposed to be relocated into the Project site adjacent to the ball fields, according to the Town's Findings Statement. The Applicant's submittals indicate that the bus yard may store or use hazardous or toxic materials and is located within a deep recharge area. The relocation of the site would continue this use within a deep flow recharge area, however according to the Applicant's April 23, 2008 submittal the new bus facility will need to comply with Article 7 and 12. The Commission finds that no contract of sale has been executed between the Applicant and bus yard owners to ensure that the relocation of the bus yard will occur. If the relocation of the bus yard does not occur, the bus yard would not be apart of this Project site. The Commission further finds that should the relocation of the bus yard occur, that the new facility will be required to conform to CLUP Standard 5.3.3.2.1 Suffolk County Sanitary Code Articles 7

and 12 compliance.

B. Wellhead Protection

1. Standards and Guidelines

- a. *Standard 5.3.3.3.1 Significant discharges and public supply well locations.*
The location of nearby public supply wells shall be considered in all applications involving significant discharges to groundwater, as required under the New York State Environmental Conservation Law Article 17.
- b. *Guideline 5.3.3.3.2 Private well protection*
The Suffolk County Department of Health Services' guidelines for private wells should be used for wellhead protection.

2. Compliance with Standards and Guidelines

- a. *Standard 5.3.3.3.1 Significant discharges and public supply well locations*
The proposed location of a new Suffolk County Water Authority well field onsite was not part of the FEIS analysis. The Applicant in its April 23, 2008 submittal identifies the potential location of the public wellfield. would be within the southwest corner of the sod farm parcel, adjacent to the community center. The Site Plan dated April 18, 2008 indicates the proposed well field facility location.

The wellfield would be located 1,800 feet upgradient of the STP, therefore the Commission finds the Project will comply with CLUP Standard 5.3.3.3.1 Significant discharges and public supply well locations.

- b. *Guideline 5.3.3.3.2 Private well protection*
This guideline is not applicable to the proposed Project since the Project site will use public water supply.

C. Wetlands, Surface Waters and Stormwater Runoff

1. Standards and Guidelines

- a. *Standards 5.3.3.4.1 Nondisturbance buffers*
Development proposals for sites containing or abutting freshwater or tidal wetlands or surface waters must be separated by a nondisturbance buffer area which shall be no less than that required by the New York State Tidal Wetland, Freshwater Wetland, or Wild, Scenic and Recreational Rivers Act or local ordinance. Distances shall be measured horizontally from the wetland edge as mapped by the New York State Department of Environmental Conservation, field delineation or local ordinance. Projects which require variances or exceptions from these state laws, local ordinances

and associated regulations, shall meet all requirements imposed in a permit by the New York State Department of Environmental Conservation or a municipality in order to be deemed to have met the requirements of this standard.

*b. Standard 5.3.3.4.2 Buffer delineations, covenants and conservation easements
Buffer areas shall be delineated on the site plan, and covenants and/or conservation easements, pursuant to the New York State Environmental Conservation Law and local ordinances, shall be imposed to protect these areas as deemed necessary.*

*c. Standard 5.3.3.4.3 Wild, Scenic and Recreational Rivers Act compliance
Development shall conform to the provisions of the New York State Wild, Scenic and Recreational Rivers Act, where applicable. Projects which require variances or exceptions under the New York State Wild, Scenic and Recreational Rivers Act shall meet all requirements imposed by the New York State Department of Environmental Conservation in order to be deemed to have met the requirements of this standard.*

*d. Guideline 5.3.3.4.4 Additional nondisturbance buffers
Stricter nondisturbance buffer areas may be established for wetlands as appropriate.*

2. Compliance with Standards and Guidelines

a.. Standards 5.3.3.4.1 Nondisturbance buffers, b. Standard 5.3.3.4.2 Buffer delineations, covenants and conservation easements and d. Guideline 5.3.3.4.4 Additional nondisturbance buffers

For the first time, the Site Plan in the Applicant's February 2008 submittal illustrates the proposed construction of a recharge basin in the southeast corner of the Project site, just north of Cooper Street. In addition, proposed "wet meadow detention basins" would be excavated and constructed throughout the site. It is unclear if the "wet meadows" would be classified as "wetlands," as defined by the Town and DEC, either after they are constructed or in the future when they become established in the environment and exhibit characteristics of a wetland habitat ecological community (e.g., vegetation and wildlife). The proposed "wet meadow" areas have been described as created recharge areas that would be planted with native grasses. Depending on their future classification and succession, future construction (e.g., residential accessory structures) adjacent to wet meadows may be subject to minimum wetland setbacks. Since it is unclear if the "wet meadows" would be considered wetland habitat and/or surface waters, it is not clear if non-disturbance buffers should be delineated in adjacent areas and shown on the current Site Plan. Determinations of jurisdiction from the Town's Environment Division and the DEC may be required to determine compliance with this CLUP Standards 5.3.3.4.1 and 5.3.3.4.2. and Guideline 5.3.3.4.4 Additional nondisturbance buffers. It should be noted that the changes to the stormwater management system to use wet meadow detention basins, on site and off site recharge basins was not evaluated in the SEQRA documents.

The Town Findings state, "The Town has classified the manmade ponds as wetlands..." The existing pond on the golf course may be subject to Town wetland setbacks and other buffer regulations, as

applicable. This conflicts with the FEIS that states, "As there are no natural surface water bodies or wetlands on or adjacent to the subject property, no impacts to surface water are anticipated. The construction of the drainage improvements will minimize adverse impacts from stormwater."

The Commission finds that the Project may not conform to these Standards and Guideline related to buffers and setbacks for wetlands since it is unknown whether the wet meadow detention areas will be classified by the Town as wetlands, nor were they evaluated in the Town's SEQRA documents. It is clear from the Town's Findings, however, that the Town considers the existing pond to be a wetland.

c. Standard 5.3.3.4.3 Wild, Scenic and Recreational Rivers Act compliance

This standard does not apply to this Project since it is not within the Wild, Scenic and Recreational Rivers corridor.

D. Stormwater Runoff

1. Standards and Guidelines

a. Standard 5.3.3.5.1 Stormwater recharge

Development Projects must provide that all stormwater runoff originating from development on the property is recharged on site unless surplus capacity exists in an off site drainage system.

b. Guidelines 5.3.3.5.2 Natural recharge and drainage

Natural recharge areas and/or drainage system designs that cause minimal disturbance of native vegetation should be employed, where practical, in lieu of recharge basins or ponds that would require removal of significant areas of native vegetation.

c. Guideline 5.3.3.5.3 Ponds

Ponds should only be created if they are to accommodate stormwater runoff, not solely for aesthetic purposes.

d. Guideline 5.3.3.5.4 Natural topography in lieu of recharge basins

The use of natural swales and depressions should be permitted and encouraged instead of excavated recharge basins, whenever feasible.

e. Guideline 5.3.3.5.5 Soil erosion and stormwater runoff control during construction

During construction, the standards and guidelines promulgated by the New York State Department of Environmental Conservation pursuant to state law, which are designed to prevent soil erosion and control stormwater runoff, should be adhered to.

2. Compliance with Standards and Guidelines

a. Standard 5.3.3.5.1 Stormwater recharge

The proposed Project is a high-density mixed use development that involves the construction of a significant and extensive amount of impervious surfaces (roads, parking lots, buildings, etc.) on the 320-acre Project site. The DRS-CGA application states that full drainage retention would be provided through surface and subsurface storage designed to conform to Town drainage requirements. The existing pond on the golf course would be retained for retention and recharge of stormwater supplemented with additional drainage system features and subsurface leaching pools.

The Town Findings state, "...The total volume of water recharged on site will increase by approximately 25% from existing conditions. It is anticipated that the Tall Grass Village Center PDD will recharge approximately 250 million gallons per year (MGY), which is an increase of approximately 68 MGY over the existing onsite recharge of approximately 180 MGY."

The FEIS states, "In conformance with Town of Brookhaven requirements, all stormwater runoff generated by impervious surfaces will be retained on-site, to be recharged to groundwater in a comprehensive stormwater system designed for specific drainage areas of the property. The drainage system will include all or a combination of catch basins, leaching pools, conveyance systems, recharge basins and pond systems. The drainage system will be maintained by the HOA along with the road system. The drainage system will be designed to accommodate the Town-required storage for stormwater runoff."

The Applicant's submissions on April 9th and April 23rd, 2008 further confirm that all stormwater runoff will be contained onsite. The Commission, therefore finds that the Project will conform with CLUP Standard 5.3.3.5.1.

b. Guidelines 5.3.3.5.2 Natural recharge and drainage

Nearly the entire site, with the exception of portions of the existing golf course, would be excavated and re-graded to construct stormwater collection basins termed by the Applicant as "wet meadow detention ponds." The existing sod farm is generally flat and does not exhibit significant natural topographic features. The Commission finds therefore, the CLUP Guidelines 5.3.3.2 Natural recharge and drainage and 5.3.3.5.4 Natural topography in lieu of recharge basins do not apply since the wet meadow detention basins would be created through extensive excavation and regrading of the site and therefore are not "natural drainage areas".

c. Guideline 5.3.3.5.3 Ponds

The DEIS proposed multiple ponds. The development of traditional "ponds" is currently not part of the proposed Project. The detention ponds are proposed to provide retention of stormwater overflow. The Commission finds therefore that the Project will conform to CLUP Guideline 5.3.3.5.3 Ponds.

d. Guideline 5.3.3.5.4 Natural topography in lieu of recharge basins

See response under b. Guidelines 5.3.3.5.2 Natural recharge and drainage

e. Guideline 5.3.3.5.5 Soil erosion and stormwater runoff control during construction

According to the FEIS, the Project would be subject to the preparation and approval of a Stormwater Pollution Prevention Plan under the guidelines established and regulated by the NYS Department of Environmental Conservation. The Applicant would be required to file a Stormwater Pollution Discharge Elimination System (SPDES) GP-02-01 Notice of Intent and a Stormwater Pollution Prevention Plan (SWPPP). These plans would have to include the excavation and regrading of the site for the wet meadow detention areas and recharge basin in order to conform with CLUP Guideline 5.3.3.5.5 Soil erosion and stormwater runoff control during construction. Since the wet meadow detention areas were not included in the Town's SEQRA review for soil erosion and stormwater runoff control, the Commission finds that it can not determine conformance with this guideline.

E. Conclusions

The Commission finds based on the Project's SEQRA record and the Applicant's submittals discussed in this Findings statement, the Project may have potential significant impacts to groundwater because the amount of fertilizer dependent vegetation that requires chemical maintenance will continue to be exceeded. It is uncertain whether it will have impacts on surface water and wetlands since the Town identified the existing pond as a wetland and currently it is not known whether there will be setbacks and buffers required by the Town to protect these wetlands. It is also unknown whether the wetland meadow detention areas would be considered wetlands and also be required to have setbacks and buffers by the Town.

II. Land Use and Ecology

The Central Pine Barrens Development Standards and Guidelines concerning natural vegetation and plant habitat are set forth below along with a discussion on potential impacts to natural vegetation and plant habitat, mitigating measures and conformance to applicable standards and guidelines.

A. Natural Vegetation and Plant Habitat

1. Standards and Guidelines

a. Standards 5.3.3.6.1 Vegetation Clearance Limits

The clearance of natural vegetation shall be strictly limited. Site plans, surveys and subdivision maps shall delineate the existing naturally vegetated areas and calculate those portions of the site that are already cleared due to previous activities.

Areas of the site proposed to be cleared combined with previously cleared areas shall not exceed the percentages in Figure 5-1. These percentages shall be taken over the total site and shall include, but not be limited to, roads, building sites and drainage structures. The clearance standard that would be applied to a Project site if developed under the existing residential zoning category may

be applied if the proposal involves multi-family units, attached housing, clustering or modified lot designs. Site plans, surveys and subdivision maps shall be delineated with a clearing limit line and calculations for clearing to demonstrate compliance with this standard.

To the extent that a portion of a site includes Core property, and for the purpose of calculating the clearance limits, the site shall be construed to be the combined Core and CGA portions. However, the Core portion may not be cleared except in accordance with Section 5.2 of the CLUP.

b. Standard 5.3.3.6.2 Unfragmented open space

Subdivision and site design shall support preservation of natural vegetation in large unbroken blocks that allow contiguous open spaces to be established when adjacent parcels are developed. Subdivision and site designs should also be configured in such a way so as to prioritize the preservation of native pine barrens vegetation to the maximum extent practicable.

For the purpose of this paragraph, native pine barrens vegetation shall include pitch pines and various species of oak trees, understory and ground cover plants such as blueberry, wintergreen, bearberry and bracken fern, grasses and sedges such as little bluestem, Pennsylvania sedge and indian grass as well as those ecological communities listed in sections 5.6 and 5.7 in Chapter 5, Volume 2 of the CLUP.

It is recognized that the preservation of nonnative but ecologically important habitats may be consistent with the intent and goals of the CLUP when such action would result in the creation of large contiguous natural open space areas and or the protection of rare, threatened or endangered species or their habitat.

c. Standard 5.3.3.6.3 Fertilizer-dependent vegetation limit

No more than 15% of an entire development Project site shall be established in fertilizer-dependant vegetation including formalized turf areas. Generally, nonnative species require fertilization therefore, planting of such nonnative species shall be limited to the maximum extent practicable. The use of the nonnative plants in Figure 5-2 is specifically not recommended.

d. Standard 5.3.3.6.4 Native Plantings

Development designs shall consider the native planting suggestions contained in Figure 5-2 of the Central Pine Barrens Comprehensive Land Use Plan.

2. Compliance with Standards

a. Standards 5.3.3.6.1 Vegetation Clearance Limits

The Project site is zoned A-1 and subject to a maximum clearing limit of 53%, as per CLUP Standard 5.3.3.6.1 Vegetation Clearance Limits. The Project site is currently over cleared, as per this Standard, due to its past and existing land uses (sod farm and golf course). The Project site contains a total of 3.9 acres of existing pitch pine-oak woodland in two areas-one area in the northeast corner of the site and one in the southwest corner of the site. The DEIS proposed the elimination of the

existing 3.9 acres of wooded area, however, the Town Findings state, "All areas of existing wooded vegetation (3.9 acres) shall be protected and maintained." The Applicant's February 2008 submittal states, "It is noteworthy that the site currently has only 17.40 acres (5.43%) established in natural open space." The Commission finds that the proposed Project does not involve the removal of the remaining existing natural vegetation on site and therefore will conform with CLUP Standard 5.3.3.6.1 Vegetation Clearance Limits.

b. Standard 5.3.3.6.2 Unfragmented open space

The Project does not meet CLUP Standard 5.3.3.6.2 Unfragmented open space since the majority of the Project's open space areas contains active uses such as ball fields and athletic fields, community center, STP, recharge basin, golf course and golf course clubhouse. In addition, wet meadow detention areas are proposed throughout the open areas on site. The Site Plan illustrates/notes areas proposed as "open space" or "passive open space" or "buffers." The Applicant explained that the areas would be excavated and constructed to contain man-made wet meadow detention areas that collect excess stormwater runoff. Furthermore, the Applicant in its April 23rd, 2008 submission states "It is recognized that Unfragmented Open Space is one of the Standards with which the Project does not comply. As a result, a Hardship is requested for non-conformance with this Standard."

The proposed Project does not contain open space either in a fragmented or an unfragmented configuration. Moreover, the Commission finds that the proposed areas for active recreational uses do not constitute open spaces for the purposes of this Standard, therefore this Standard is not met.

c. Standard 5.3.3.6.3 Fertilizer-dependent vegetation limit

The Project site (existing sod farm and golf course) contains a total of 277.80 acres or 86.7% fertilizer dependent vegetation. The proposed Project contains a minimum of approximately 106.85 acres or 33.37% fertilized dependent vegetation. The Applicant in its April 23, 2008 submittal (at Page 2 of 20) states "It is recognized that fertilizer dependent vegetation, is one of the Standards with which the Project does not comply". The Applicant has included in its CGA-DRS application a hardship waiver request from CLUP Standards 5.3.3.6.2 and 5.3.3.6.3. The Applicant contends that the hardship waiver is sought to retain the golf course and that if the golf course were allowed to go fallow, that the Project could conform to these CLUP Standards.

The Commission finds that the proposed Project does not comply with CLUP Standard 5.3.3.6.3. Fertilizer-dependent vegetation limit of 15%.

d. Standard 5.3.3.6.4 Native Plantings

The Commission finds that the Project will conform to this Standard.

B. Species and Communities of Special Concern

1. Standard

a. Standard 5.3.3.7.1 Special species and ecological communities

Where a significant negative impact upon a habitat essential to those species identified on the New York State maintained lists as rare, threatened, endangered or of special concern, or upon natural communities classified by the New York State Natural Heritage Program as G1, G2, G3 or S1, S2 or S3, or on any federally listed endangered or threatened species is proposed, appropriate mitigation measures as determined by the appropriate state, county or local government agency shall be taken to protect these species.

2. Compliance with the Standard

Any known or expected presence of New York State or Federally listed species on or in proximity to the Project site should be protected as per DEC and other regulations that apply. The Project's DEIS(at Page 2-30) identified a NYSDEC regulated woodland pond (MD-14) located 260 feet south of the Project site that was noted by Cryan(1984) as containing several adult tiger salamanders and two egg masses. The Hastings Drive recharge basin was identified as another location for tiger salamanders, however it is located 3,000 feet south of the Project site. The DEIS stated there were no known tiger salamanders present onsite. The Applicant's February 2008 submittal states, "...No change or disturbance is proposed on the southern half of that part of the Project site located south of Cooper Street." The Applicant lists "factors that preclude the proposed Project being subject to tiger salamander conservation policies."

The Commission finds that since there would be no changes on the portion of the Project site within 1000 feet of the pond according to the site plans dated April 18, 2008 and the fact that there are existing subdivisions also within 200 to 300 feet of the woodland pond, that the Project will conform with CLUP Standard 5.3.3.7.1.

C. Coordinated Design for Open Space Management

1. Standards and Guidelines

a. Standard 5.3.3.9.1 Receiving entity for open space dedications

Applications must specify the entity to which dedicated open space will be transferred.

b. Guidelines 5.3.3.9.2 Clustering

Municipalities are strongly urged to maximize the use of the clustering technique where its usage would enhance adjacent open space or provide contiguous open space connections with adjacent open space parcels.

- c. *Guideline 5.3.3.9.3 Protection of dedicated open space*
Proposed open space should be protected with covenants, conservation easements or dedications that specify proper restrictions on its use and contingencies for its future management.

2. Compliance with Standards and Guidelines

- a. *Standard 5.3.3.9.1 Receiving entity for open space dedications*

The Applicant indicates in its application materials that the Town of Brookhaven will be the receiving entity for the 17.8 acres of ballfields and that the remaining 239.88 acres of green space onsite will not be transferred and therefore no receiving entity is identified. Some of this land will be privately held and some maintained by the HOA and protected by deed restriction and HOA operating agreements. The Commission finds this would conform with CLUP Standard 5.3.3.9.1.

There are no protection measures currently proposed for the golf course as open space in the event the HOA, the Town, or County does not accept the golf course after 10 years, and the golf course operator no longer wishes to operate the facility since the development rights of the golf course remain in tact.

The Applicant included the existing golf course parcel in the Project site for purposes of developing the PDD. Thus, it appears the development yield was extracted from the golf course and that yield (number of residential units permitted as-of-right) is included in the total number of proposed residential dwelling units. Although the existing golf course contains an active land use, the development rights from the golf course were used at least twice upon inclusion in the Project site—once to retain and continue the existing active land use of a golf course, and the second time to extract the residential density (yield) from the parcel.

The potential for a third "use" of the density from said "golf course" parcel remains, which is the potential for it to be developed under the as-of-right zoning as a residential subdivision, when the 10 year golf course use expires. The fact that the golf course parcel has been stripped of its development rights should have been part of a covenant and noted as such by the Suffolk County Real Property Division, Brookhaven Town, Suffolk County Department of Health Services, and any other applicable agencies.

The Town Findings required a covenant to set aside the golf course area as open space if the Commission does not grant a hardship. The Town Findings discuss provisions to have the golf course revert to natural if a hardship permit is not granted by the Commission and requires a revegetation plan for the golf course. The Commission finds that if the Applicant places a covenant on the golf course to remain as open space should it no longer continue as a golf course, that this would conform to CLUP Standard 5.3.3.9.1.

- b. *Guidelines 5.3.3.9.2 Clustering*

It should be noted that the FEIS also states, "Communication with the Applicant finds that the

Applicant would in many ways prefer to construct a single-family as-of-right development in conformance with existing zoning. This could easily be accomplished and in fact an application for a clustered subdivision is pending with the Town Planning Board. This would involve 283 homes and would be a DRS as defined by the Pine Barrens Plan. Allowing the golf course to go fallow and configuring the lots to retain open space would be consistent with a strict interpretation of the Pine Barrens Plan's open space." The Applicant's preference to construct the as-of-right development is mentioned at least three times in the FEIS (pages 2-28, 2-25, 2-33). The as-of-right development would be, at a minimum, subject to compliance with the CLUP Standards and Guidelines.

The proposed Project involves the development of the entire 320-acre Project site with commercial, residential, and active recreational uses and requires active maintenance of nearly every acre of the site. No area of the site would remain natural and undisturbed, other than the existing 3.9 acres of woodlands. The proposed development has not been clustered to contain developed areas on the Project site to enable the set aside of one contiguous unfragmented area of open space. The proposed Project will not conform to CLUP Guideline 5.3.3.9.2 Clustering.

c. Guideline 5.3.3.9.3 Protection of dedicated open space

The Applicant proposes to encumber portions of the site considered "green space" that is not developed with buildings with a Conservation Easement. This would be in keeping with the premise of CLUP Guideline 5.3.3.9.3, however the green spaces are not considered "open space" by the Central Pine Barrens Commission due to their active uses.

D. Agriculture and Horticulture

1. Guideline

a. Guideline 5.3.3.10.1 Best management practices

Any existing, expanded, or new activity involving agriculture or horticulture in the Compatible Growth Area should comply with best management practices, as defined herein, and relevant requirements including local law. Best management practices are, for purposes of this CLUP, the same practices stated in the most recent version of Controlling Agricultural Nonpoint Source Water Pollution in New York State (Bureau of Technical Services and Research, Division of Water, New York State Department of Environmental Conservation, 1991 and as later amended).

2. Compliance with the Guideline

Although the Project site contains an existing sod farm under active cultivation, the proposed Project does not involve the retention and continuance of an active agricultural land use through the establishment of an agricultural reserve (Agricultural Easement). Since the proposed Project does not involve proposed agriculture or horticulture land uses, Guideline 5.5.3.10.1 does not apply to the proposed Project.

The Applicant's July 2007 submittal states, "The loss of Haven-Riverhead soils by cessation of the sod farm is an unavoidable impact on approximately 110 acres of the Project site." The Town Findings also state, "The 110 acre sod farm has Haven-Riverhead soils which will be unavoidable adversely impacted by its development."

E. Commercial and Industrial Development

1. Standard

a. Standard 5.3.3.12.1 Commercial and industrial compliance with Suffolk County Sanitary Code

All commercial and industrial development applications shall comply with the provisions of the Suffolk County Sanitary Code as applied by the Suffolk County Department of Health Services, and all other applicable federal, state or local laws. Projects which require variances from the provisions of the Suffolk County Sanitary Code shall meet all requirements of the Department of Health Service's Board of Review in order to be deemed to have met the requirements of this standard.

2. Compliance with the Standard

The Town Findings indicate that the commercial area would contain commercial uses such as those permitted within the J-2 zoning district. It states, "Variations in use categories shall be permitted..." It is unclear if special exception uses would also be permitted without additional approvals from the Planning Board. The Applicant indicated the uses permitted would be consistent with those listed under the J6 Zoning District, as per the Town Code of the Town of Brookhaven. However, no documentation or conditions to this effect have been submitted to date.

All sewage generated from the proposed commercial uses would be directed to the proposed STP. The application contains calculations on the SCDHS sewage flow rates for each type of commercial use, as per the Suffolk County Department of Health regulations.

The commercial portion of the Project site contains areas set aside for potential construction of a municipal use building with a maximum size of 10,000 square feet. The sewage from the municipal use has not been factored into the proposed sewage and water use calculations, both of which would increase with the development of the municipal use. See the discussion under S.5.3.3.2.1 regarding the relocation of the bus yard.

The Commission finds that the Project will conform with with CLUP 5.3.3.12.1 provided the commercial uses and relocated bus yard conform with Article 7 and 12 regulations.

F. Conclusions

The Commission finds based on the Project's SEQRA record and the Applicant's submittals discussed in this Findings statement, the Project that the Project will have significant impacts to land use. The Project will have unavoidable impacts to 110 acres of agricultural soils.

III. Slopes and Soils

A. Slopes

1. Guidelines

a. Guidelines 5.3.3.8.1 Clearing envelopes

Clearing envelopes should be placed upon lots within a subdivision so as to maximize the placement of those envelopes on slopes less than ten percent (10%).

b. Guideline 5.3.3.8.2 Stabilization and erosion control

Construction of homes, roadways and private driveways on slopes greater than ten percent (10%) may be approved if technical review shows that sufficient care has been taken in the design of stabilization measures, erosion control practices and structures so as to mitigate negative environmental impacts.

c. Guideline 5.3.3.8.3 Slope analyses

Project review is facilitated if submissions contain a slope analysis showing slopes in the ranges 0-10%, 11-15% and 15% and greater. In areas with steep slopes, slope analysis maps should be required. This can be satisfied with cross hatching or shading on the site plan for the appropriate areas.

B. Soil

1. Guidelines

a. Guideline 5.3.3.8.4 Erosion and sediment control plans

Erosion and sediment control plans should be required in areas of fifteen percent (15%) or greater slopes.

b. Guideline 5.3.3.8.5 Placement of roadways

Roads and driveways should be designed to minimize the traversing of slopes greater than ten percent (10%) and to minimize cuts and fills.

c. Guideline 5.3.3.8.6 Retaining walls and control structures

Details of retaining walls and erosion control structures should be provided for roads and driveways

which traverse slopes greater than ten percent (10%).

2. Compliance with Guidelines

A. Slopes

a. Guideline 5.3.3.8.1 Clearing envelopes

The Applicant's November 2007 submittal states the construction on the property will be conducted on steep slopes on the southern portion of the property. These slopes are limited in area and are man-made for the golf course. The Project will conform with CLUP Guidelines 5.3.3.8.1 Clearing envelopes.

b. Guideline 5.3.3.8.2 Stabilization and erosion control

See response to a. Guidelines 5.3.3.8.1 Clearing envelopes.

The Project will conform with CLUP Guideline 5.3.3.8.2 Stabilization and erosion control

c. Guideline 5.3.3.8.3 Slope analyses

See response to a. Guidelines 5.3.3.8.1 Clearing envelopes.

The Project will conform with Guideline 5.3.3.8.3 Slope analyses.

B. Soil

a. Guideline 5.3.3.8.4 Erosion and sediment control plans

According to the Applicant's application materials, there will be localized areas of steep slopes on the southern portion of the related to fairway swales, where construction will occur. According to the FEIS, "At time of site plan, the Applicant shall submit a detailed Erosion Control Plan to the Planning Board containing erosion and sediment control measures and construction schedule as specified in the DEIS." The Project will conform to CLUP Guideline 5.3.3.8.4 Erosion and sediment control plans.

b. Guideline 5.3.3.8.5 Placement of roadways

According to the Applicant's application materials, access roadways will be constructed on the northern and central portion of the site, in areas with slopes less than 10%, therefore it is anticipated that the Project will conform to CLUP Guideline 5.3.3.8.5 Placement of roadways.

c. Guideline 5.3.3.8.6 Retaining walls and control structures

According to the Applicant's application materials, access roadways will be constructed on the northern and central portion of the site, in areas with slopes less than 10%, therefore it is anticipated that the Project will conform to CLUP Guideline 5.3.3.8.6 Retaining walls and control structures.

According to the Applicant's application materials, no retaining walls area anticipated to be required given the flat topography in the proposed development areas of the site. To date, the Applicant has not submitted plans including construction details and drainage design elements of the proposed

Project. The February 2008 submissions by the Applicant indicate nearly the entire Project site will be regraded, not only for the construction of homes, roadways, commercial area and golf course, but a recharge basin and wet meadow detention areas within the remaining "green" areas of the site. The Applicant's April 23, 2008 submittal states no retaining walls will be required for the wet meadow detention areas. The FEIS did not contain information on the details of proposed re-grading of nearly the entire Project site nor was potential impacts evaluated. It is anticipated that a potentially large amount of cut and fill (amount unspecified by the Applicant) could occur under the proposed Project. The Town's Findings prohibit mining activity on the Project site, therefore the regrading of the site cannot result in the removal of significant amounts of soil. It should also be noted that because of the prior agricultural use of the site, the soils contain contaminants that require them to be properly managed during the construction activities at the site under a Soil Management Plan provided as an attachment to the SEQRA record and application materials.

Existing on-site topsoil will be excavated and temporarily stored in piles during the construction process and re-used throughout the site. Topsoil stockpiles and areas exposed by re-grading activities will be stabilized and protected as per the erosion control measures identified and proposed in the DEIS.

In addition, it is unknown whether the Project site's soils would be restricted based on the golden nematode maps prepared by the U.S. Department of Agriculture Animal and Plant Health Inspection Service from removal and transportation of soil, import and export of soil from the Project site in use and distribution throughout and off Long Island.

The SEQRA documents note that the Project will result in unavoidable impacts to 110 acres of agricultural soils (Haven - Riverhead soils).

C. Conclusion

The Commission finds based on the Project's SEQRA record and the Applicant's submittals discussed in this Findings statement, the Project will not have significant impacts to slopes, however, it may have significant impacts to soils.

IV. Scenic, Historic and Cultural Resources

A. Cultural Resources

1. Guidelines

*a. Guidelines 5.3.3.11.1 Cultural resource consideration
Development proposals should account for, review, and provide protection measures for:*

1. Established recreational and educational trails and trail corridors, including but not limited

to those trail corridors inventoried elsewhere in this CLUP.

2. *Active recreation sites, including existing sites and those proposed as part of a development.*
3. *Scenic corridors, roads, vistas and viewpoints located in Critical Resource Areas, and along the Long Island Expressway, Sunrise Highway, County Road 111 and William Floyd Parkway.*
4. *Sites of historical or cultural significance, including historic districts, sites on the State or National Registers of Historic Places, and historic structures listed on the State or National Registers of Historic Places, or recognized by local municipal law or statute.*
5. *Sensitive archaeological areas as identified by the New York State Historic Preservation Office or the New York State Museum.*

b. Guideline 5.3.3.11.2 Inclusion of cultural resources in applications

Development proposals should note established recreation and educational trails and trail corridors; active recreation sites; scenic corridors, roads, vistas and viewpoints located in Critical Resource Areas and undisturbed portions of the roadsides of the Long Island Expressway, Sunrise Highway, County Road 111 and William Floyd Parkway; sites on the State or National Register of Historic Places, and historic structures and landmarks recognized by municipal law or statute, or listed on the State or National Registers of Historic Places; and sensitive archaeological areas as identified by the New York State Historic Preservation Office or the New York State Museum within a five hundred (500) foot radius of the outside perimeter of the Project site, including any Project parcels which are physically separate from the bulk of the proposed development area.

A development proposal may be disapproved or altered if the local municipality determines that the development proposal, in its current form, may have a significant negative impact on any of the above resources.

B. Scenic and Recreational Resources

1. Guidelines

A. Cultural Resources

a. Guideline 5.3.3.11.3 Protection of scenic and recreational resources

Protection measures for scenic and recreational resources should include, but not be limited to, retention of visually shielding natural buffers, replacement of degraded or removed natural visual buffers using native species, use of signs which are in keeping in both style and scale with the community character, and similar measures.

b. Guideline 5.3.3.11.4 Roadside design and management

Undisturbed portions of the roadside should be maintained in a manner that protects the scenic features of these areas. Clearing (including that for aisles, driveways, access and parking) is not

precluded within these roadside areas, provided that appropriate buffers are maintained, and that manmade structures meet standards consistent with the character of the area.

2. Compliance with Guidelines

A. Cultural Resources

a. Guidelines 5.3.3.11.1 Cultural resource consideration

The FEIS stated there were no known or suspected historic buildings or sensitive archaeological areas on the Project site. The majority of the site had been the subject of a Cultural Resources Assessment (CRA) that determined that no cultural resources were present and the FEIS acknowledged that the Applicant was preparing a Phase IB CRA for the portion of the site that had not previously been analyzed.

The Commission received a letter from the New York Office of Parks, Recreation and Historic Preservation dated October 2, 2007, which stated that the Project will have no impact on cultural resources in or eligible for inclusion in the State and National Register of Historic Places and therefore the Project conforms to CLUP Guidelines 5.2.2.11.1 Cultural resource consideration #4 and 5 and 5.2.2.11.2 Inclusion of cultural resources in applications.

The FEIS addressed the impact on Scenic, Historic and Cultural Resources. The FEIS and the Town Findings state, "It is acknowledged that the character of that portion of the site along NYS Route 25A will be significantly changed under the Proposed Final Project as this area will become a Village Center featuring multiple community-based commercial uses including specialty retail shops, office spaces, and a restaurant. The FEIS states, "Scenic vistas will also be changed from agricultural to development. Thus, motorists traveling along NYS Route 25A will have a significantly different experience from those at present."

The FEIS continues, "The residential development along with the reconfigured Tall Grass golf course will also change the character of the central and southern portions of the site from agricultural to residential. The Proposed Final Project, however, will not introduce a land use which is not already present in this community; in fact, the Proposed Final Project proposes to introduce improved examples of commercial and residential development to this community, while addressing expressed community needs and desires, and retaining/improving the major recreational use (the golf course) in a way that enhances its availability to this community. It is expected that supplemental buffering and screening vegetation for the open space areas will provide enhanced views of the site's interior."

The FEIS continues, "It is anticipated that observers traveling on the adjacent roadways will have views of the Project site. Motorists on Randall Road will have partial views when looking eastward towards the Project site, especially when traveling northbound. Southbound motorists will have views of the rear yards that will be screened with plantings. The second story of the residential development will be visible within and outside the Project site."

The FEIS continues, "Residential streets adjacent to the golf course, athletic fields and vista shall be designed to have buildings fronting on one side only to promote unimpeded views of the golf course, athletic fields and vista from roadways consistent with the FEIS Plan." This would partially conform to provisions of CLUP Guideline 5.3.3.11.3 Protection of scenic and recreational resources.

The FEIS states, "It is acknowledged that the character of that portion of the site along NYS Route 25A will be significantly changed under the proposed Final Project, as this area will become a Village Center featuring multiple community-based commercial uses including specialty retail shops, office spaces, and a restaurant."

According to the application, scenic vistas would be retained by landscaped setbacks along adjacent roadways and internal roads. The Village Center, a retail area, will be set back from Randall Road, and recreational areas would be situated along Route 25A. In addition, the application references significant areas of buffers that will be revegetated and new landscaping installed along all site borders north of Cooper Street.

The Applicant proposes to significantly alter the existing golf course through the development of approximately 100 residential dwelling units, parks, roads and other infrastructure in place of three existing golf holes, which would be relocated to north of Cooper Street. Portions of the existing golf course south of Cooper Street would be retained. Therefore, although the Applicant proposes to retain an active recreational use in the form of a golf course on the Project site, it would not remain in its existing configuration. Thus, protection of an "active recreational use" would occur, however, the existing active recreational use on the Project site and existing viewshed would be changed and different than it currently exists.

Potential adverse impacts would be expected to occur to the existing viewshed of the Project site south of Route 25A. The current viewshed of a sod farm would be "significantly changed under the Final Project" with the view of a commercial center, 352 residential dwellings, active recreational uses (ballfields), and the distant view of a golf course surrounded by residential development. Active recreational facilities would also be visible along the proposed paseo.

The entire existing viewshed from Route 25A and Cooper Street, which provides an open vista of the sod farm would be eliminated and replaced with a significantly different view corridor with high density development and active uses in place of an existing open farm field. Although the Applicant proposes minimal buffers along roadways adjoining the Project site, the existing vista would be "significantly changed." As such, significant adverse impacts would occur to existing scenic resources.

The existing sod farm is one of the last remaining agricultural land uses that exist in the community, which provides distant open vistas from publicly traveled corridors including Route 25A, Cooper Street, and Randall Road. Public comments received included recommendations to preserve the existing scenic resources provided on the Project site.

The Project will, therefore, not conform to CLUP Guidelines 5.3.3.11.1 Cultural resource consideration #1 and 2 and 5.3.3.11.2 Inclusion of cultural resources in applications and 5.3.3.11.3 Protection of scenic and recreational resources since there will be impacts to the scenic vista and character of the area and the existing golf course, an active recreational resource.

b. Guideline 5.3.3.11.2 Inclusion of cultural resources in applications

See response under Guideline 5.3.3.11.1

B. Scenic and Recreational Resources

a. Guideline 5.3.3.11.3 Protection of scenic and recreational resources

See response under Guideline 5.3.3.11.1

b. Guideline 5.3.3.11.4 Roadside design and management

The Project will conform to CLUP Guideline 5.3.3.11.4 Roadside design and management by maintaining buffers along the roadway on SR 25A and if successful in relocating the bus yard from SR 25A to within the Project site.

C. Conclusion

The Commission finds based on the Project's SEQRA record and the Applicant's submittals discussed in this Findings statement, the Project will have significant impacts to scenic and recreational resources.

V. Commission Findings

Based on the Town's SEQRA Record and the foregoing discussion concerning the Project's compliance with the CLUP Standards and Guidelines, the Commission makes the following Findings pursuant to SEQRA.

A. Impacts to Ground or Surface Water Quality and Quantity

CLUP Standard 5.3.3.1.2 requires, where deemed practicable by either the State or the County, that effluent from new STPs be discharged outside and downgradient of the Central Pine Barrens. Standard 5.3.3.1.2 implements ECL §57-0121(2) requirement that the Commission create a plan designed to "protect the quality of [] groundwater." As noted above, the Project complies with CLUP Standard 5.3.3.1.2. since the SCDHS has provided information to the Applicant that it is not practicable to discharge the effluent from the STP outside and downgradient of the Central Pine Barrens (correspondence from W. Hilbert to C. Voorhis, dated April 23, 2008). This letter was included as an attachment to the Applicant's April 23, 2008 submittal and stated, "Considering that the present location for the discharge is near the northern boundary of the site, little would be gained from moving the discharge to the north of this property. In addition, 3 well fields exist to the north

of this property. Moving the discharge to the LIPA site would place the discharge with the zone of capture of one of these well fields." The letter went on to state "it is therefore our opinion that present site chosen for the sewage treatment plant is acceptable and that it is not practical to require that it be relocated."

The anticipated volume of effluent from the proposed STP has increased since the Town's Findings Statement was prepared from 96,060 gpd to 110,620 gpd. (Applicant's February, 2008 and April, 2008 submittals). The effluent will not be discharged outside nor downgradient of the Central Pine Barrens. Although it is not practicable to relocate the effluent, its discharge in the Central Pine Barrens will cause impacts to groundwater.

The CLUP is designed to protect the quality of surface water through the implementation of Guideline 5.3.3.1.3. This Guideline was adopted to satisfy the Commission's charge as set forth in ECL §57-0119 (2)(b) and (4)(b) to protect the quality of surface water in the Central Pine Barrens and the Compatible Growth Area. The Applicant in its April 23, 2008 submission indicates the anticipated level of nitrate nitrogen in onsite recharge will be 2.47 mg/l based on the SONIR model using the full capacity of the STP. The Commission finds that the Project will conform to the CLUP Guideline 5.3.3.1.3 and therefore will not have a significant impact on surface water quality due to nitrate nitrogen.

The Commission acknowledges that the amount of fertilizer dependent vegetation on the Project site will decrease with the development of Project. Nevertheless, the proposed Project will exceed the Standard 5.3.3.6.3 and will have a significant, albeit incrementally reduced, impact on groundwater and surface water resources.

In the event that the wet meadow detention areas revert to wetlands with ecological features requiring their classification as regulated wetlands, as occurred with the former water hazard, the Commission finds that the Applicant has not provided sufficient information to determine whether the Project will cause significant adverse impacts to these areas since the Applicant has not demonstrated that the buffer between the developable portions of the site and the wet meadow detention areas would exceed minimum setback requirements. Therefore the potential for significant adverse environmental impacts to surface waters from the Project cannot be fully determined.

The Commission cannot determine whether the wet meadow detention system will cause a substantial increase in potential for erosion, flooding, leaching or drainage problems because the efficacy of the system was not reviewed in the SEQRA Record and because the Applicant proposed the system after the Town completed its SEQRA review.

Finally, with regard to impacts to groundwater quantity, the Commission finds there will be no significant adverse environmental impacts as a result of the Project.

B. Impacts to Use or Intensity of Use of Land

The Commission finds that the Project will cause a substantial change in the use and intensity of use of land. This change will occur as agricultural lands are converted to non-agricultural uses through conversion of the sod farm to the Tall Grass Village Center. Currently, 150 acres of the site is used as a sod farm. The loss of the agricultural lands is significant, and for all intents and purposes, irreversible.

The magnitude of the change in the use of the existing sod is matched by the resultant change in intensity of use. The Project will replace the sod farm with, among other things, 352 residential units, 125,000 square feet of commercial development, a STP, and a 12,200 square foot community center. The Applicant has not proposed any measures for mitigating the impacts associated with the change in intensity of the use of the site because the Applicant has been steadfast in seeking the additional intensity of use to the point of offering to allow the existing golf course to go fallow. Even if the golf course were to go fallow, the change in intensity would still occur.

C. Impacts to Aesthetic Resources

Development of the Project will significantly impair the aesthetic resources of the existing community and of the community and neighborhood character. The Project does not conform to Considerations 1 and 2 of CLUP Guideline 5.3.3.11.1 nor does it conform to Guidelines 5.3.3.11.2 or 11.3 due to its potential impact to the scenic vista and character of the existing area. These impacts will occur from the conversion of the sod farm to the Village Center. The Applicant also concedes that its proposal does not satisfy the CLUP's Unfragmented Open Space Standard (§5.3.3.6.2).

D. Other Impacts

The Project is deemed a Development of Regional Significance because the traffic impact of the Project will reduce service at seven (7) intersections by two levels of service or more below existing conditions and will cause a drop in the level of service at eight (8) intersections to D or below. The Commission finds this will be a substantial adverse change in the traffic service in the area.

E. Town's SEQRA Review Process and Consistency of the Project with the CLUP

1. SEQRA Process

The Commission finds the project has undergone significant revisions since it was first proposed. The current iteration was created by the Town's Findings Statement. Prior to the issuance of the Findings Statement, the Applicant's proposal in the Town's DEIS to develop 352 residential units on the site did not propose the retention of the golf course. Thus the impacts of this proposal were not adequately addressed in the Town's SEQRA process.

The Commission finds that subsequent to the Town's Findings Statement, the Applicant has proposed a further significant revision to the Project by proposing the use of wet meadow detention areas to manage storm water recharge on the site. The environmental impacts of these areas were not analyzed in the Town's SEQRA process.

2. Consistency with the Long Island Pine Barrens Protection Act and the CLUP

In determining whether to waive strict compliance with the CLUP, the Commission, among other things, must consider whether a waiver is necessary to alleviate a hardship and if the proposed waiver is "consistent with the purposes and provisions" of the Article 57 and would "not result in substantial impairment of the resources of the Central Pine Barrens area." (ECL §57-0123(3)(b)). In reviewing a Development of Regional Significance the Commission's review is "limited to compliance with the standards and guidelines" in the CLUP. (CLUP at §4.5.5.2.)

Article 57 required the preparation of a land use plan for the Central Pine Barrens Area. Article 57 enumerated the objectives for the plan. Thus, the plan shall be designed to "protect, preserve and enhance the functional integrity of the Pine Barrens ecosystem and the significant natural resources, . . . thereof;" to "protect the quality of surface water and groundwater;" "discourage piecemeal and scattered development;" and to "accommodate development in a manner consistent with the long term integrity of the Pine Barrens ecosystem and to ensure that the pattern of development is compact, efficient and orderly." (ECL 57-0121(2)(a),(b),(c)and (e)).

There are different objectives for the plan for the Compatible Growth Area. The plan was required to "preserve and maintain the essential character of the existing Pine Barrens environment;" "protect the quality of surface and groundwaters;" "discourage piecemeal and scattered development;" "encourage appropriate patterns of compatible residential, commercial, agricultural, and industrial development on order to accommodate regional growth influences in an orderly way while protecting the Pine Barrens environment from the individual and cumulative adverse impacts thereof;" accommodate a portion of development redirected from the preservation area;" and to "allow appropriate growth consistent with the natural resource goals" of Article 57. (ECL 57-0121(4)(a),(b),(c),(d),(e)and (f)).

The Project is a Developments of Regional Significance according to Section 4.5.5. of the CLUP since it exceeds the DRS threshold of 200 units and as discussed in Section V.D. of this Findings Statement, would result in a traffic impact which would reduce service by two (2) levels below existing conditions or to a level of service of D or below.

The Project is substantially inconsistent with Article 57, since it is a DRS that results in significant adverse and permanent traffic impacts through a decline in two or more levels of service (LOS) or to a LOS of D or below at eight intersections. These declines in LOS under the Project result in permanent and long-term significant adverse impacts in traffic congestion on the existing roadway network surrounding the Project site that would permanently affect the daily activities and business of existing and future residents of the area. This negative result diminishes the quality of life for

residents of the community, reduces the efficient movement of people and goods, results in loss of productivity, and may deter tourists and visitors from doing business in the area. Therefore, the development is not compact, efficient or orderly.

The Commission finds that the Project is substantially inconsistent with the purposes and provisions of Article 57 because it does not comply with the CLUP's standards for unfragmented open space and fertilizer dependent vegetation as discussed in this Findings Statement. The Project is substantially inconsistent with the CLUP's standard for unfragmented open space because its layout does not support the preservation of a large contiguous open space area, which is feasible on a Project site of this size and in a Project of this magnitude. The allowance of increased residential development density, expected resident population, and visitors to the site associated with commercial and recreational land uses on site, warrant compliance with this Standard.

Furthermore, the Project is substantially inconsistent with Article 57's objective of protecting the quality of surface water and groundwater because it exceeds the CLUP's fertilizer dependent vegetation standard. The Standard permits 15% of a project to be maintained in fertilized dependent vegetation. The Applicant seeks a waiver of this Standard to permit the 33.4% of the site to be maintained with fertilizer dependent vegetation.

The Commission cannot determine whether the Project conforms with Guideline 5.3.3.5.5 Soil erosion and storm water runoff because the impacts of constructing the wet meadow detention areas were not analyzed in the Town's SEQRA review. In addition, because the wet meadow detention areas were not analyzed in the Town's SEQRA review, the Commission cannot determine whether such system will protect the quality of surface water and groundwater.

The Project does not conform to the CLUP's Guidelines for Clustering and Cultural and Scenic Resources as discussed above. Lack of conformity with these guidelines demonstrates inconsistency with the Act and the Plan because these Guidelines ensure that new development preserve and maintain the essential character of the existing Pine Barrens environment. Conformity with these Guidelines also ensure new development is compatible residential and commercial development which accommodates regional growth in an orderly way while protecting the Pine Barrens environment from the individual and cumulative adverse impacts from such development. The Project does not achieve these objectives because there will be impacts to the scenic vista and character of the area, agricultural lands, and the existing golf course, an active recreational resource. The Project does not provide for compact, orderly efficient development required by the Guideline for Clustering since the Project involves the development of the entire 320-acre Project site with commercial, residential, and active recreational uses and requires the maintenance of nearly every acre of the site. No area of the site would remain natural and undisturbed, other than the existing 3.9 acres of woodlands.

The Project is substantially inconsistent with the CLUP's Guideline for protection of scenic and recreational resources which seeks to preserve community character. The Project results in the permanent loss of historically and actively cultivated agricultural resources and the permanent loss

of Pine Barrens character in the region and impairment of these resources. This does not comply with the requirements of Article §57-0121(4)(a) which required the Plan to be designed to “preserve and maintain the essential character of the existing Pine Barrens environment” and Article §57-0121(4)(d) which required the Plan to “encourage appropriate patterns of compatible residential, commercial, agricultural, and industrial development in order to accommodate regional growth influences in an orderly way while protecting the Pine Barrens environment from the individual and cumulative adverse impacts thereof;”.

The Project is substantially inconsistent with the CLUP’s Guideline to protect scenic resources. It will result in significant adverse impacts on important existing community scenic resources due to the dense development proposed on the Project site that would permanently alter the existing views of the site from its surroundings. The Project will result in the substantial impairment and detracting of scenic resources. It will permanently alter the existing scenic resources and vistas on roadway corridors traveled by residents of the area and visitors to the region. This change in scenic views is a significant adverse impact on the local community character and on the region.

The Project results in the substantial impairment, permanent loss and non-compliance with the CLUP’s Standard for unfragmented open space. Rather than provide unfragmented open space the Applicant has simply classified any area of the site that is not developed with a structure as open space.

The Project, which spreads built land uses in one form or another including residential, commercial, stormwater detention, and active recreational land uses over the entire 320 acre Project site is not compact, efficient and orderly. The Project does not provide an area of unfragmented open space on site to preserve and maintain the essential character of the Pine Barrens environment for the long term.

Both Article 57 and the CLUP seek to promote development in a manner consistent with the long term integrity of the Central Pine Barrens and that accommodates a portion of development redirected from the Core Preservation Area through the redemption of Pine Barrens Credits. (ECL §57-0119). Indeed, the CLUP recognized that the Town of Brookhaven would use innovative strategies to redeem Pine Barrens Credits, including the use of Planned Development Districts. (CLUP at 91). The Project is inconsistent with these goals because the redemption of 30 Pine Barrens Credits will not mitigate the impacts that will occur from this Project as discussed in Section V.A. through V.E. of this Findings Statement, nor is it consistent with maintaining the long term integrity of the Pine Barrens.

VI. Denial of Hardship Request

For those Projects in the Compatible Growth Area which do not conform to the provisions of the CLUP, the Commission, by majority vote, may waive strict compliance with any element or standard of the CLUP upon a finding that such waiver is necessary to alleviate "hardship" to the Project's

sponsor. (ECL §57-0123(3)(b)). In determining whether a Project sponsor has demonstrated a hardship the Commission shall: (1) consider the criteria for a use variance pursuant to New York Town Law, (2) determine that the waiver is consistent with purposes and provisions of Article 57, and (3) determine that the waiver will not result in substantial impairment of the resources of the Central Pine Barrens. (ECL §57-0123(3)(b)).

The Project sponsor has requested a hardship waiver from strict compliance with two CLUP Standards relating to Unfragmented Open Space and Fertilizer Dependent Vegetation (CLUP §5.3.3.6.2 and §5.3.3.6.3). The Applicant maintains that but for these two Standards, the Project conforms with all of the other CLUP Standards and Guidelines. As demonstrated above, this assertion is belied by the Applicant's submittals.

The Commission denies the Applicant's hardship waiver. Town Law Section 267-b 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).

The Applicant addressed the use variance criteria in its Amended CGA-DRS application dated November, 2007 (the "Amended Application"), in the Applicant's Memorandum of Law and the Applicant's Response document to the Central Pine Barrens Commission Staff Report on the Amended CGA-DRS application, both received by the Commission on February 26, 2008, with a revised Memorandum provided on February 27, 2008 and additional submittals by the Applicant on April 9th and 23rd, 2008.

In applying for the hardship waiver the Applicant has attempted to segment its Project into two pieces. The first is the Tall Grass Golf Course and the other portion is the rest of the Project containing substantially all of the development proposed for the site. The Applicant maintains that the portions of the site to be developed meet all or exceed the provisions of the CLUP. Thus, according to the Applicant, the only portion of the Project that requires a hardship waiver is for the maintenance of the existing Tall Grass Golf Course. And if the Commission were to deny the hardship waiver application, the Applicant offers to allow the golf course to go fallow and to create, according to the Applicant, a conforming Project. The Commission rejects this narrow application of Article 57.

In considering whether the Applicant has established the first element of the use variance criteria the Commission notes that the Applicant's submittals are replete with statements indicating that the Applicant may realize a reasonable return on its investment by developing the site under its residential zoning classification. For example, the Applicant in its SEQRA documents stated that the golf course was "not a significant revenue producer." (FEIS at page 2-39). While the Applicant

does note that development of the PDD would "potentially increase his rate of return" the costs associated with the development of the PDD "tend to significantly reduce [its] profitability." (Amended Application at 7). However, the Applicant notes that as-of-right development under the prior residential zoning "would have been the preferred option" and the potential economic return "would have been substantial." (Amended Application at 9).

Furthermore, the Applicant notes in the FEIS response at page 2-25, under 2.33, "[c]ommunication with the Applicant finds the Applicant would in many ways prefer to construct a single-family as-of-right development in conformance with existing zoning. This could easily be accomplished and in fact an application for a clustered subdivision is pending with the Town Planning Board." It is further stated "[t]his form of development (FEIS is referring to as the "as of right" development) conforms with zoning, has the least risk to the developer, provides the necessary revenue on investment in land, can be designed to conform to the Pine Barrens Plan, is marketable and is consistent with other developments in the area. The Applicant can and would build such a Project, and actually prefers this scenario given the factors noted above." Similar statements are made elsewhere in the FEIS.

Even in the Applicant's February submittal to the Commission, the Applicant acknowledges "that as-of-right-development under the prior [sic] A-1 zoning would produce a reasonable profit." (February 2008 at 11). The Applicant concedes that it can realize a reasonable return on its investment under the current residential zoning.

The Applicant's attorney in correspondence dated April 23, 2008 further indicates the viability of the 283 as of right subdivision by stating, "You [the Commission] must weigh this proposal against the as of right development of 283 single family houses that will be built if the mixed use Project does not go forward." It should be noted the as of right subdivision would be considered a Development of Regional Significance that has to meet standards and guidelines and therefore would require an application to be submitted to the Commission for review and decision. The May 2007 application for the as of right subdivision Project was determined to be no longer before the Commission when the Applicant's November 2008 submittal was deemed complete by the Commission for review at their December 19, 2007 meeting.

Thus the Applicant has not satisfied the first use variance criterion.

In considering the second element of the use variance criteria the Commission determines that the hardship is not unique to the Project for two reasons. First, there are, other large parcels in the CGA that are currently used for agricultural purposes or as golf courses. The owners of those parcels could seek changes of zone to PDD, as the Applicant did, to allow large-scale development. Thus, the Project is not unique given the existence of such similar parcels. Second, the hardship results from the attempt to maintain the existing golf course and to undertake a development at a density that exceeds the as-of-right yield or the yield possible with the as-of-right redemption of Pine Barrens Credits. The receipt of a conditional change of zone to a Planned Development District highlights that the Project is not unique. Owners of other properties in the Central Pine Barrens may seek similar changes of zone as a method to increase the density or intensity of a development without

a concomitant redemption of Pine Barrens Credits which could cause non-compliance with the CLUP's provisions. Such a scenario is not unique.

In considering the third element of the use variance criteria the Commission determines that the requested hardship waiver to enable the development of the Project will alter the essential character of the neighborhood. The Applicant has failed to demonstrate how the conversion of a large sod farm to a mixed use development will not alter the essential character of the neighborhood. The Applicant claims that the character of the neighborhood will not change because the golf course will remain. It should be noted that the character of the area comprising the golf course will significantly change since it will be reconfigured to accommodate the construction of 100 residential units that currently do not exist after 3 holes of the golf course holes are relocated north of Cooper Street.

More importantly, while the golf course would remain in a reconfigured manner, the overall Project site will be transformed from sod farm and golf course to large mixed use development and golf course. The Project would introduce, among other things, 352 residential units, 125,000 square feet of commercial space, a 12,200 square foot municipal center to the area. This development will generate "substantial amounts of traffic during peak hours when compared to development under current zoning." (Town Findings at 17). This will change the essential character of the neighborhood.

In considering the fourth element of the use variance criteria the Commission determines that the need for a hardship waiver has been self-created by the Applicant. The Applicant has not demonstrated that the hardship waiver is not the result of its application to change the zoning of the Project site nor its design of the Project. The hardship waiver is requested because the Project has been designed in a manner that does not comply with the CLUP. The hardship is truly self created and could be ameliorated by modifications to the Project's scope.

In addition to considering the four elements of the use variance criteria, the Commission must also determine whether the waiver is consistent with purposes and provisions of Article 57, and determine that the waiver will not result in substantial impairment of the resources of the Central Pine Barrens.

As noted in Section IV(E) above, the Commission determined the Project is not consistent with the purposes and provisions of Article 57 and the CLUP. The Commission also determines that the requested hardship waiver is not consistent with the purposes of Article 57 or the CLUP because the grant of the waiver would cause the significant adverse environmental impacts detailed in this Findings Statement to occur to the resources of the Central Pine Barrens.

Lastly, the Commission determines for all of the reasons set forth in Subsections A, B, C, D, and E, of Section IV if the hardship waiver is granted the Project will cause a substantial impairment of the resources of the Central Pine Barrens.

The Commission has weighed and balanced the potentially significant adverse environmental impacts reasonably related to the Project against the Commission's duty to implement the CLUP. The

Project's substantial inconsistency with the CLUP, its potential to substantially impair the resources of the Central Pine Barrens and the ability of the Applicant to modify its proposal to lessen such impacts militate against a Commission approval of the Project's hardship exemption request. In reaching this conclusion, the Commission has considered, but not required strict compliance with, the use variance criteria in evaluating the Applicant's hardship waiver request.

VII. Certification

The Commission certifies that in issuing this Findings Statement it has:

1. Considered the relevant environmental impacts, facts and conclusions disclosed in the Final EIS.
2. Weighed and balanced the relevant environmental impacts with social, economic and other considerations.
3. Provided a rationale for its decision.
4. Certifies that the requirements of this Part have been met and
5. Certifies that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures that were identified as practicable.

The Commission finds the Tall Grass Village Center PDD will cause significant adverse environmental impacts to the resources of the Central Pine Barrens. The Commission denies the hardship waiver exemption application of the Tall Grass Village Center PDD.

The Commission pursuant to 6 NYCRR Part 617.11 has prepared the Findings stated herein and shall cause it to be filed in accordance with 6 NYCRR Part 617.12(b).

COPIES OF THIS FINDINGS STATEMENT WILL BE SENT TO:

Environmental Notices Bulletin (ENB)
NYSDEC, Division of Regulatory Services, Albany
NYSDEC, Division of Regulatory Services, Region 1
New York State Department of Transportation
Suffolk County Planning Commission
Suffolk County Department of Health Services
Suffolk County Water Authority
Suffolk County Department of Public Works
Suffolk County Sewer Agency
Supervisor, Town of Brookhaven
Brookhaven Town Clerk
Applicant/Agent/Attorney

THIS STATEMENT IS NOT COMPLETE UNTIL AUTHORIZED AS FOLLOWS:

FINDINGS STATEMENT

MOTION TO ACCEPT THE FINDINGS STATEMENT FOR THE TALL GRASS VILLAGE CENTER PLANNED DEVELOPMENT DISTRICT PROJECT

MOTION BY:

SECONDED:

VOTE: YES - NO -

DECISION

MOTION TO DENY THE TALL GRASS VILLAGE CENTER PLANNED DEVELOPMENT DISTRICT PROJECT

MOTION BY:

SECONDED:

VOTE: YES - NO -

DATE: