

## **4. Review Procedures and Jurisdiction**

### **4.1 Introduction\***

The following sets forth the procedures to be used by the Central Pine Barrens Joint Planning and Policy Commission for review of development in the Central Pine Barrens as provided for in the Long Island Pine Barrens Protection Act.

This process does not exempt any development project from the provisions of the New York State Environmental Quality Review Act, the National Environmental Policy Act and other regulatory requirements and applicable federal, state, county, or local laws. For development that adheres to the standards for land use contained herein and the Statement of Findings adopted upon completion of the Generic Environmental Impact Statement prepared pursuant to the Act, the cumulative impact analysis pursuant to the State Environmental Quality Review Act will be deemed to be satisfied.

### **4.2 Intent**

It is the intent of the Central Pine Barrens Joint Planning and Policy Commission to provide for effective environmental review of proposed development in the Central Pine Barrens, and to avoid duplicate reporting and review requirements and unnecessary delays. Municipalities are encouraged to develop streamlined review procedures for development proposals that conform with the land use and development standards contained herein. It is the further intent of the Commission to provide timely reviews and input which are concurrent with the New York State Environmental Quality Review Act, the National Environmental Policy Act and other regulatory requirements and applicable federal, state, county, or local laws.

These procedures are intended to coordinate Commission guidance and provide regulatory review of development located in the Central Pine Barrens area as defined and delineated in the New York State Environmental Conservation Law, Article 57. The Central Pine Barrens is a "critical environmental area" pursuant to New York State Environmental Conservation Law Article 8 and its implementing regulations.

For development subject to review pursuant to the Act and defined in this Plan, the Commission shall hold only one (1) hearing on a development proposal, unless the Commission by majority vote deems it necessary to hold an additional hearing.

### **4.3 Definitions**

For the purposes of these procedures, the following terms and phrases shall have the meaning listed.

#### **4.3.1 Complete application**

A "complete application" shall consist of the following:

1. a completed standard application form, as supplied by the Commission;
2. a copy of the local municipal application package with all supporting materials, and any approvals that have been issued as of the date of the application; and,
3. as required and accepted with respect to scope and content, a Long Form Environmental Assessment or Draft Supplemental draft supplemental Environmental Impact Statement, in addition to any other documentation prepared or issued pursuant to the State Environmental Quality Review Act or equivalent local laws, as of the date of the application.

#### **4.3.2 Plan**

"Plan" shall mean the Central Pine Barrens Comprehensive Land Use Plan, Volume 1.

#### **4.3.3 Commission\***

"Commission" shall mean the Central Pine Barrens Joint Planning and Policy Commission as defined within the New York Environmental Conservation Law Article 57.

#### **4.3.4 Act\***

"Act" shall mean New York State Environmental Conservation Law, Article 57 as may be amended from time to time.

#### **4.3.5 Development**

"Development" shall have the meaning set forth in Section 57-0107 (13) of the Act.

#### **4.3.6 Central Pine Barrens\***

"Central Pine Barrens" shall have the meaning set forth in Section 57-0107 (10) of the Act.

#### **4.3.7 Core Preservation Area\***

"Core Preservation Area" shall have the meaning set forth in Section 57-0107 (11) of the Act.

#### **4.3.8 Compatible Growth Area\***

"Compatible Growth Area" shall have the meaning set forth in Section 57-0107 (12) of the Act.

#### **4.4 Development subject to review by the Commission**

The following types of development shall be the subject of review by the Commission as provided for in the Act:

##### **4.4.1 Development located within the Core Preservation Area**

This includes all development proposed within the Core Preservation Area.

##### **4.4.2 Nonconforming development within the Compatible Growth Area**

This includes all development within the Compatible Growth Area that does not conform to the standards for land use set forth in Volume 1, Chapter 5 of this Plan.

##### **4.4.3 Compatible Growth Area development over which the Commission asserts jurisdiction**

This includes development within the Compatible Growth Area for which the Commission, by an individual Commissioner's petition and a majority vote, asserts review jurisdiction as provided for in the Act.

##### **4.4.4 Compatible Growth Area development within Critical Resource Areas**

This includes all development within the Compatible Growth Area which is also within a Critical Resource Area as provided for in the Act and defined in this Plan.

##### **4.4.5 Developments of Regional Significance**

This includes development within the Compatible Growth Area which constitutes a Development of Regional Significance as provided for in the Act and defined in this Plan.

#### **4.5 Review procedures**

##### **4.5.1 Development located within the Core Preservation Area (“Core development”)\***

The Act requires the prohibition or redirection of development in the Core Preservation Area and sets forth the jurisdiction of the Commission over, and certain requirements for processing, hardship exemptions. The Act authorizes the Commission, by majority vote, to waive strict compliance with this Plan upon finding that such waiver is necessary to alleviate hardship according to the conditions and finding of extraordinary hardship or compelling public need pursuant to subdivision 10 of Section 57-0121 of the Act.

#### **4.5.1.1 Core development: Lead agency assertion\***

The Commission shall seek lead agency status for development proposed in the Core Preservation Area pursuant to the State Environmental Quality Review Act.

#### **4.5.1.2 Core development: Filing of an application\***

The application shall be filed with the Commission by the project sponsor. A municipal application to the Town is not required for an application under this subsection.

#### **4.5.1.3 Core development: Hearing\***

Within thirty (30) days of an application being submitted to the Commission, a public hearing on the development shall be held. At this time, the project sponsor and any other person shall have an opportunity to comment on the development proposal.

#### **4.5.1.4 Core development: Statutory basis for the Commission's decision\***

The decision by the Commission on the application shall be based upon the standards in subdivision 10 of Section 57-0121 of the Act, which describes the criteria for determining that a hardship has been demonstrated.

#### **4.5.1.5 Core development: Decisions, default decisions and extensions of decisions\***

The time within which the Commission must decide a Core Preservation Area hardship application for which a negative declaration has been made by the Commission pursuant to Environmental Conservation Law Article 8 is one hundred twenty (120) days from receipt of such application. The time within which the Commission must decide a Core Preservation Area hardship application for which a positive declaration has been made by the Commission pursuant to Environmental Conservation Law Article 8 is sixty (60) days from issuance of a findings statement by the Commission pursuant to Environmental Conservation Law Article 8. If the Commission fails to make a decision within the aforesaid time periods, the development shall be deemed to be approved by the Commission, unless such time periods are extended by mutual agreement of the applicant and the Commission.

#### **4.5.2 Development located within the Compatible Growth Area which does not conform to the standards contained in Volume 1, Chapter 5 of the Plan**

The Act sets forth the jurisdiction for the Commission's review of development within the Compatible Growth Area of the Central Pine Barrens area. Such review includes development that does not conform to the standards in Volume 1, Chapter 5 of this plan. The Act also authorizes the Commission, by majority vote, to waive strict compliance with the standards upon finding that such waiver is necessary to alleviate a demonstrated hardship. The Commission

shall not review conformance or nonconformance with guidelines in Volume 1, Chapter 5 in evaluating hardship provisions under this section.

#### **4.5.2.1 Filing of an application**

For projects that are not consistent with the standards, a complete application shall be filed with the Commission by the project sponsor.

#### **4.5.2.2 Nonconforming development: Changes in consistent projects\***

If, during the local review, a proposed development project is modified such that the local municipality finds that it becomes inconsistent with any standard in Volume 1, Chapter 5, the local municipality shall notify the Commission and the project sponsor immediately. Upon receipt of said notice, the project sponsor shall be notified that an application for hardship relief as provided herein shall be required. Alternatively, the project sponsor shall be afforded an opportunity to revise the development project so that it is consistent with the standards.

#### **4.5.2.3 Completeness determination deadline**

The Commission shall make a determination as to whether an application is complete within thirty (30) days of receipt of the application.

#### **4.5.2.4 Nonconforming development: Review standards\***

The Commission's standard for review pursuant to this section shall be the hardship standard provided in Section 57-0123(3) of the Act, as amended from time to time.

#### **4.5.2.5 Nonconforming development: Hearing\***

Within thirty (30) days of the application being deemed complete, a public hearing on the development proposal shall be held. The Commission shall provide the project sponsor and any other person an opportunity to be heard as provided for, and in accordance with the procedures provided in the Act.

#### **4.5.2.6 Nonconforming development: Decisions, default decisions and extensions of decisions\***

The time within which the Commission must make a decision on a Compatible Growth Area application which does not conform to the standards contained within Volume 1, Chapter 5 of the Plan is one hundred twenty (120) days from said application being deemed complete. If the Commission fails to make a decision within the aforesaid time period, the application shall be deemed to be approved by the Commission, unless such time period is extended by mutual agreement of the applicant and the Commission.

### **4.5.3 Development located within the Compatible Growth Area which has been subjected to a petition by the Commission pursuant to ECL Section 57-0123(2)**

The Act sets forth the jurisdiction for the Commission's review of development within the Compatible Growth Area of the Central Pine Barrens. The Act authorizes the Commission, through petition by an individual commissioner and an affirmative vote of the Commission, to review any project which has a significant adverse impact on the goals of the Plan.

#### **4.5.3.1 Assertion of jurisdiction by the Commission over the project\***

Upon a majority vote of the commissioners, the Commission may assert review jurisdiction over said project.

#### **4.5.3.2 Hearings and assertion of review jurisdiction**

Assertion of review jurisdiction by the Commission shall not be deemed to require a public hearing unless the Commission, by a majority vote, so specifies.

#### **4.5.3.3 Review standards**

Should the Commission assert review jurisdiction pursuant to this subdivision, the jurisdiction of the Commission shall be limited to the standards and guidelines set forth in Volume 1, Chapter 5 of this Plan which the Commission identified in the vote on jurisdictional assertion. The Commission shall review conformance with guidelines set forth in Volume 1, Chapter 5 of this Plan.

#### **4.5.3.4 Assertion development: Hearing\***

The Commission shall request necessary information from the project sponsor. Within sixty (60) days of the Commission asserting review jurisdiction, a public hearing on the development proposal shall be held, unless the Commission by majority vote deems a hearing unnecessary, in accordance with the procedures provided in the Act. If a hearing is held, the Commission shall provide the project sponsor and any other person an opportunity to be heard as provided for, and in accordance with, the procedures provided in the Act.

#### **4.5.3.5 Assertion development: Decision on projects over which jurisdiction is asserted by the Commission\***

The decision of the Commission on any project which is before it by virtue of the assertion of jurisdiction by the Commission shall be made within one hundred twenty (120) days of the date of said assertion of jurisdiction.

#### **4.5.3.6 Assertion development: Default decisions\***

In the event that the Commission fails to make a decision within one hundred twenty (120) days, the development proposal shall be deemed to be approved by the Commission.

#### **4.5.4 Development located within the Compatible Growth Area which is also located within a Critical Resource Area**

The Act sets forth the jurisdiction for the Commission's review of development within the Compatible Growth Area of the Central Pine Barrens. Such review includes development that is located in Critical Resource Areas. The Act also authorizes the Commission, by majority vote, to waive strict compliance with this Plan upon finding that such waiver is necessary to alleviate a demonstrated hardship.

##### **4.5.4.1 Definition of Critical Resource Areas**

Commission review pursuant to this section shall apply only to the Critical Resource Areas identified in Figures 4-1 through 4-6.

**Figure 4-1: Summary of Critical Resource Areas in the Central Pine Barrens**

*(Resolved by the Commission at its 12/14/94 meeting. All sites are within the Compatible Growth Area.)*

<b>Name and Description</b>	<b>Tax Map Number and Approximate Size</b>	<b>Feature(s)</b>
<p>Carmans River West Middle Island West bank of Carmans River, opposite Carmans River East site. <i>See B1 on Figure 4-2</i></p>	<p>0200-528-06-16 Approx. 24.5 acres.</p>	<p><i>Sending area.</i> Steep slopes (entire site), cultural resources, atypical wetland vegetation association on upland portion, exploitably vulnerable species (e.g., prickly pear, spotted wintergreen, trailing arbutus, mountain laurel), large hardwood forest, DEC freshwater wetland (B-3), riverfront open space.</p>
<p>Carmans River East Middle Island East bank of Carmans River, opposite Carmans River West site. <i>See B2 on Figure 4-2</i></p>	<p>0200-548-02-1.4 and 1.6 Approx. 28 acres.</p>	<p><i>Sending area.</i> Steep slopes (especially from 60 foot contour to the west and the river, steeply sloped swales (possibly an early Holocene drainage formation), cultural resources with high archaeological potential, and extensive freshwater wetlands with associated vegetation (e.g., pepperbush, red maple, black gum) exist on this site.</p>
<p>South Manorville Site 1 South of Hot Water Street, west of CR 111. <i>See B3 on Figure 4-3</i></p>	<p>0200-510-02-01, 2.2, 3,4 Approx. 82 acres.</p>	<p>The partially county-owned Cranberry Pond to the immediate north of this site is a documented tiger salamander habitat, and this site contains much of the upland portion of that habitat (generally estimated as approximately 1000 feet from the southern shore). This hilly site also contains the area known as Punk's Hole, a Revolutionary War bivouac site.</p>
<p>South Manorville Site 2 South of Hot Water Street, west of CR 111. <i>See B4 on Figure 4-3</i></p>	<p>0200-561-01-12, 13 Approx. 18 acres.</p>	<p>This site enhances the adjacent open space tracts.</p>
<p>Flanders Ponds Southwest corner of CR 105 and NYS Rt 24 <i>See S1 on Figure 4-4</i></p>	<p>0900-142-01-1.42, 53, 54.3 Approx. 90 acres</p>	<p>Extensive surface waters.</p>



Pleasure Drive West Flanders South of NYS Rt 24, west of Pleasure Drive. <i>See S2 on Figure 4-4</i>	0900-166-04-01 0900-167-03-09 Approx. 128 acres.	Archaeological and wetland areas.
Red Creek Site 1: Wehrman Pond South side of Red Creek Rd, opposite Red Creek Pond. <i>See S3 on Figure 4-5</i>	0900-151-01-06, 10.2 Approx. 19 acres.	<i>Sending area.</i> Wehrman Pond and the adjacent uplands comprise an eastern mud turtle habitat.
Red Creek Site 2 North side of Old Squires Rd, west of Red Creek Road. <i>See S4 on Figure 4-5</i>	0900-173-02-1.2 Approx. 46 acres.	Mixed deciduous forest complements existing open space on adjacent parcels.
Red Creek Site 3 West of Red Creek Road <i>See S5 on Figure 4-5</i>	0900-173-02-8.1 Approx. 41 acres.	Part of the corridor for the proposed Paumanok Path segment heading towards Squire Pond.
Red Creek Site 4 North of NYS Rt 24 and South of Old Squires Road. <i>See S6 on Figure 4-5</i>	0900-173-01-01 0900-205-01-01 Approx. 79 acres.	Open space area complementing adjacent parkland.
Munns Pond Vicinity Hampton Bays North side of Montauk Highway, adjacent to east side of Munn's Pond parkland, west of Bellows Pond Road. <i>See S7 on Figure 4-5</i>	0900-221-02-10 Approx. 10 acres.	Open space area buffering the adjacent Munn's Pond site.
Henry's Hollow Region East Quogue Lies between Sunrise Highway and the railroad tracks <i>See S8 on Figure 4-5</i>	0900-220-01-40-86 0900-220-01-p/o 87, 88.1, 92 0900-220-01-p/o 98.1, 99.24 0900-220-01-99.1-99.22 0900-220-03-1-82 0900-220-04-1-7 0900-251-01-68 0900-251-01-p/o 90, 91.1, 92 0900-251-01-98 0900-289-02-1-38 (p/o refers to that part located in CGA) Approx. 985 acres.	Buck moth habitat generally north of 100 foot contour.
Dwarf Pines Gabreski Airport Westhampton Contains the northwesternmost corner of Gabreski Airport. <i>See S9 on Figure 4-6</i>	0900-312-01-p/o 01 Approx. 34 acres.	Dwarf pine plains.

<p>Upland Forest Westhampton East of Speonk-Riverhead Rd and 5th Ave., north of Montauk Highway. <i>See S10 on Figure 4-6</i></p>	<p>0900-276-03-p/o 01, 02, 5.1 0900-305-01-6,7 0900-329-01-01, 1.2, 3, 3.1, 4, 5, 6, 7, 8.1 0900-329-01-p/o 9, 10 0900-330-01-02, 4.1 (p/o refers to that part located in CGA and not in a receiving area) Approx. 153 acres.</p>	<p>Open space on northerly portion of site complements adjacent open space.</p>
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Figure 4-2: Map of Critical Resource Areas along the Carmans River

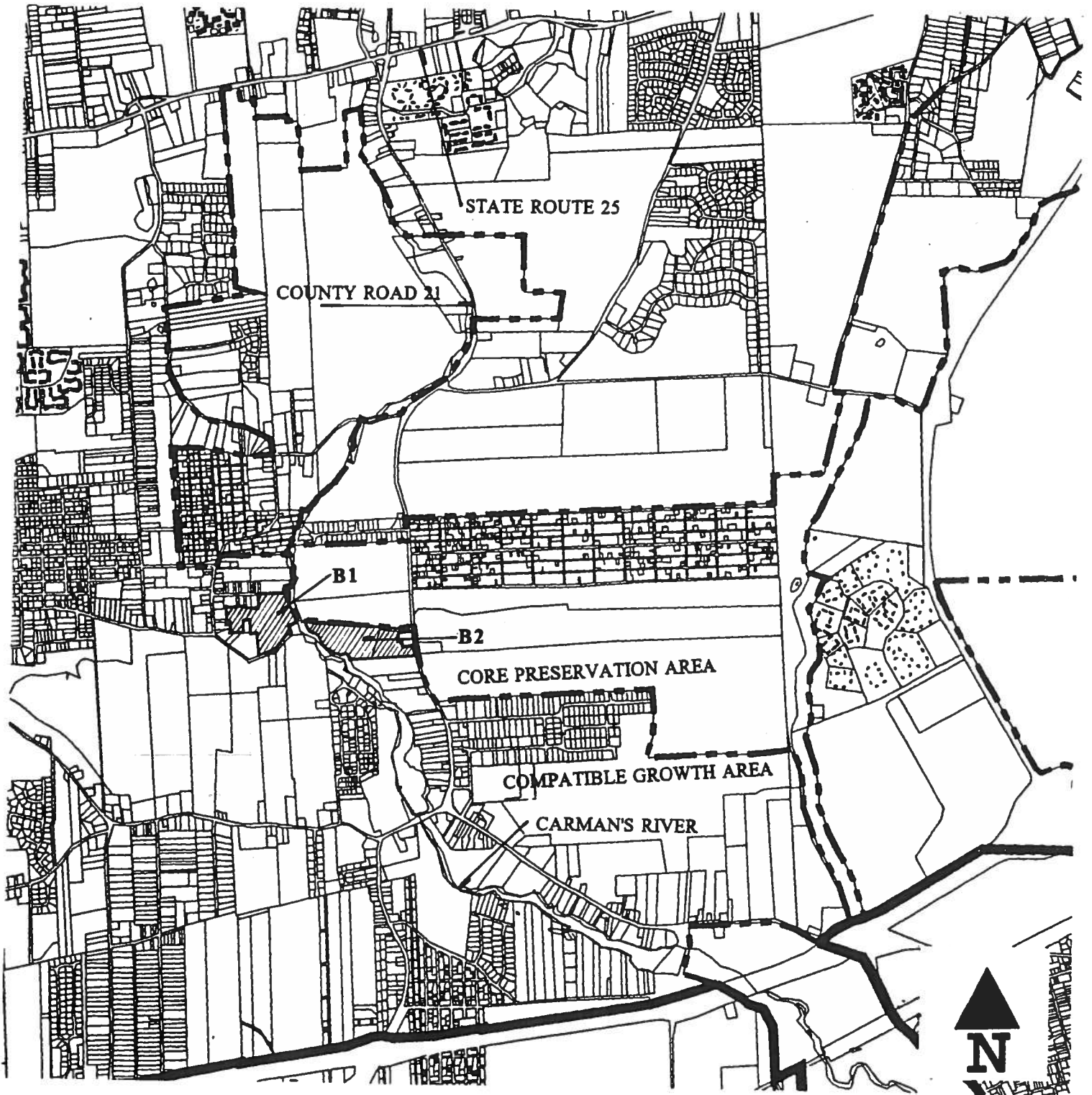
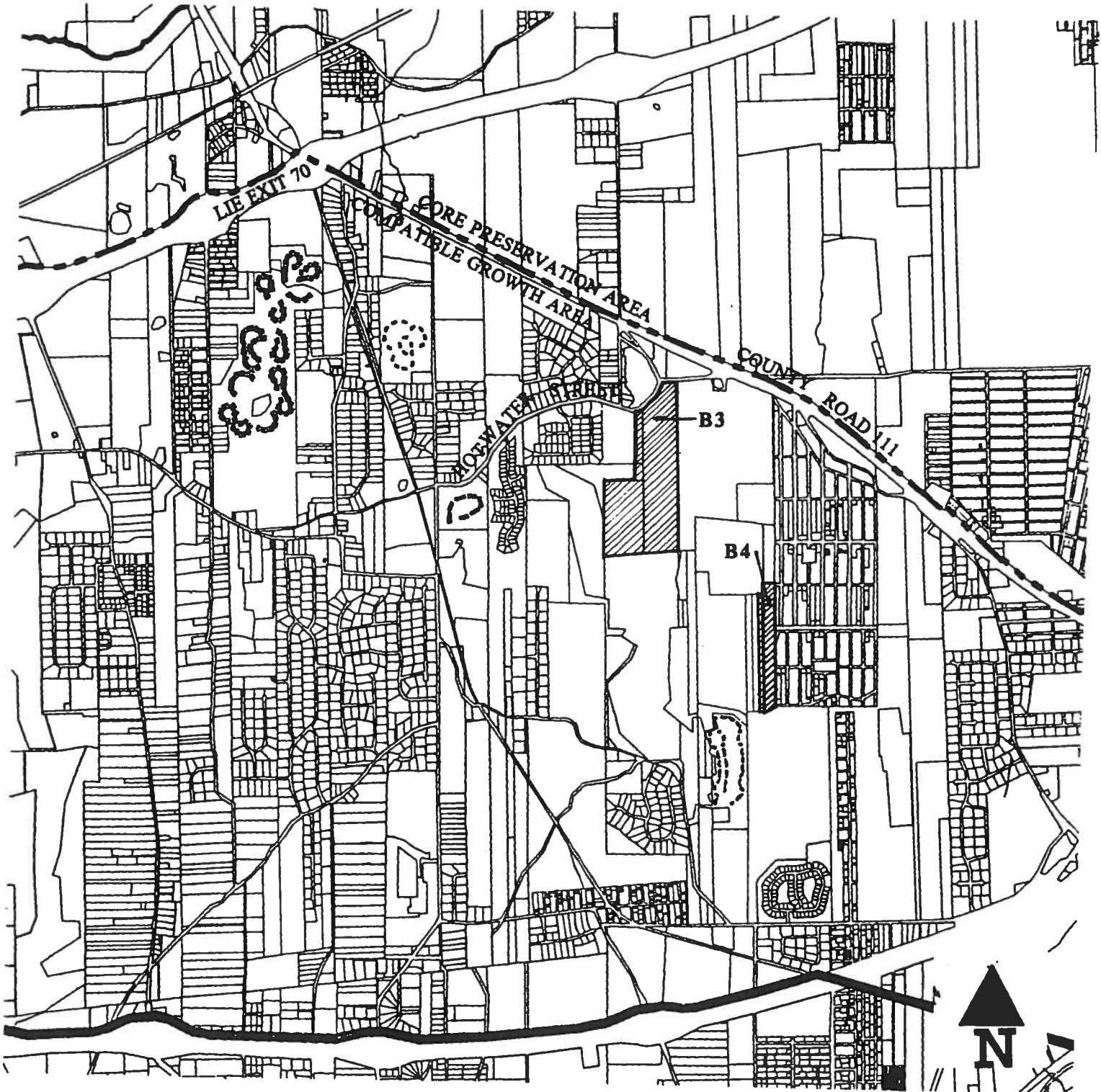


Figure 4-3: Map of Critical Resource Areas south of County Route 111



**Figure 4-4: Map of Critical Resource Areas in Riverside-Flanders**

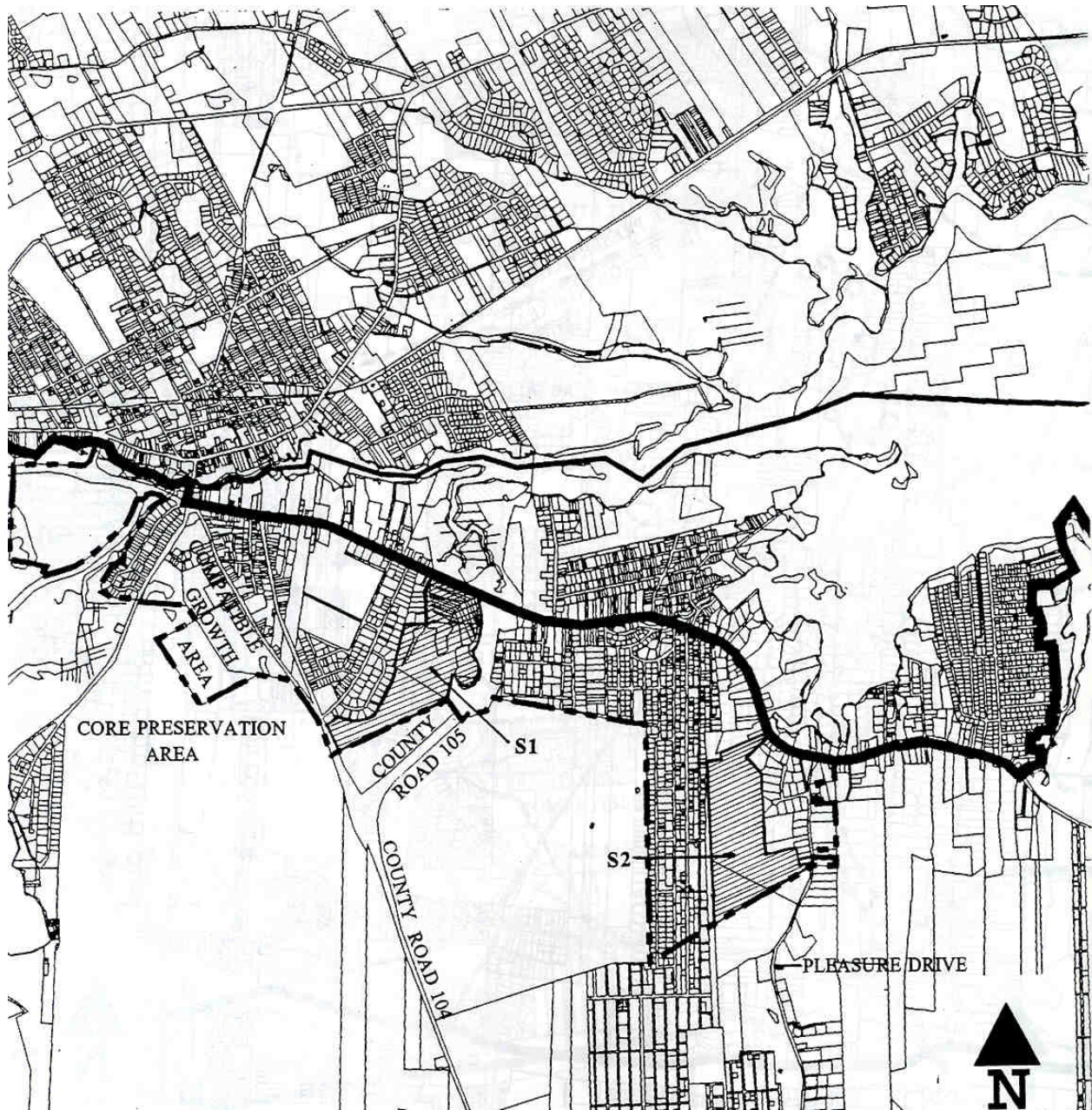




Figure 4-5: Map of Critical Resource Areas in Red Creek vicinity

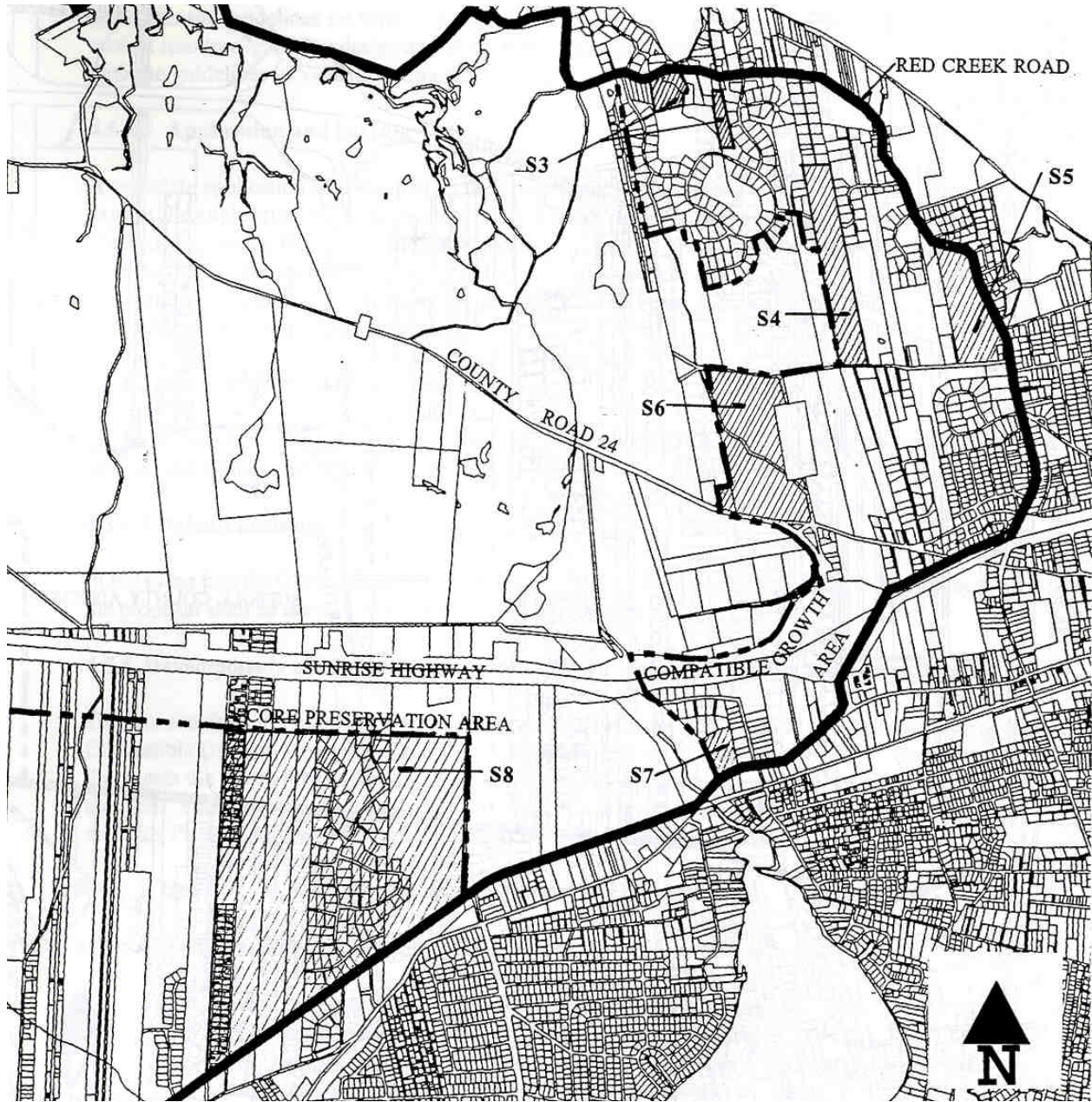
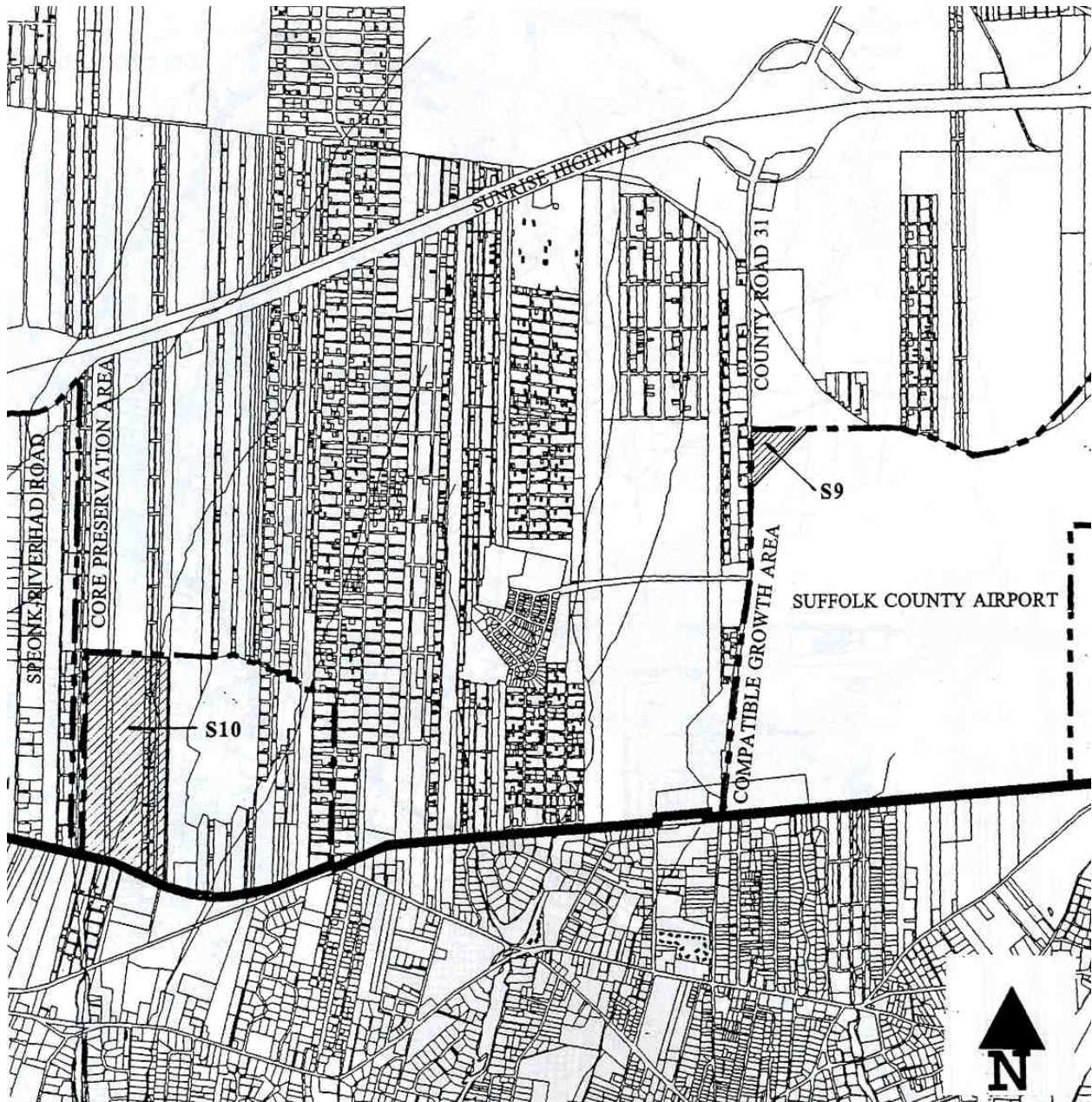




Figure 4-6: Map of Critical Resource Areas in Westhampton vicinity



#### **4.5.4.2 Review standards**

The Commission's review pursuant to this section shall be limited to compliance with the standards and guidelines set forth in Volume 1, Chapter 5 of this Plan and the protection for the critical resource feature(s) designated in the Plan. The Commission shall review conformance with guidelines set forth in Volume 1, Chapter 5 of this Plan.

#### **4.5.4.3 Application and hearing**

A complete application shall be filed by the project sponsor as defined in 4.3.1. Within sixty (60) days of the application being deemed complete, a public hearing on the development proposal shall be held, unless the Commission by majority vote deems a hearing unnecessary, in accordance with the procedures specified in the Act. If a hearing is held, the Commission shall provide the project sponsor and any other person an opportunity to be heard as provided for, and in accordance with the procedures provided in the Act.

#### **4.5.4.4 Decision on the application**

A decision on the application shall be made by the Commission within one hundred twenty (120) days of said application being deemed complete.

#### **4.5.4.5 Default decisions**

In the event that the Commission fails to make a decision within one hundred twenty (120) days, the proposal shall be deemed to be approved by the Commission.

### **4.5.5 Developments of Regional Significance located within the Compatible Growth Area**

The Act sets forth the jurisdiction for the Commission's review of development within the Compatible Growth Area of the Central Pine Barrens. This includes the review of development that meets the threshold(s) constituting a Development of Regional Significance as enumerated in the Plan. The Act also authorizes the Commission, by majority vote, to waive strict compliance with this Plan upon finding that such waiver is necessary to alleviate a demonstrated hardship.

#### **4.5.5.1 Definition of a Development of Regional Significance**

The following developments are defined as Developments of Regional Significance.

1. A commercial, industrial or office development project exceeding 300,000 square feet of gross floor area, or an addition to an existing commercial, industrial or office development where the addition is 100,000 square feet or more and that addition causes the total square footage to exceed 300,000 square feet.



2. A multifamily residential development project consisting of three hundred (300) or more units.
3. A single family, detached residential development project consisting of two hundred (200) or more units.
4. A development project resulting 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.

Development projects which meet all of the following three criteria are not Developments of Regional Significance:

1. the development project is situated within a designated receiving area pursuant to this Plan, and
2. the development project results from a transfer of development rights from a sending area as defined in this Plan, and
3. the development project contains a minimum of fifteen percent (15%) of residential units, or a minimum of fifteen percent (15%) of commercial, industrial or office use square footage, which is a direct result of the transfer of development rights.

Additionally, the Calverton redevelopment project described in Chapter 9 is defined to not be a Development of Regional Significance.

#### **4.5.5.2 Review standards**

The Commission's review pursuant to this section shall be limited to compliance with the standards and guidelines set forth in Volume 1, Chapter 5 of this Plan. The Commission shall review conformance with guidelines set forth in Volume 1, Chapter 5 of this Plan.

#### **4.5.5.3 Application and hearing**

A complete application shall be filed by the project sponsor as defined in 4.3.1. Within sixty (60) days of the application being deemed complete, a public hearing on the development proposal shall be held unless the Commission by majority vote deems a hearing unnecessary, in accordance with the procedures provided in the act. If a hearing is held, the Commission shall provide the project sponsor and any other person an opportunity to be heard as provided for, and in accordance with the procedures provided in the Act.

#### **4.5.5.4 Decision on the application**

A decision on the application shall be made by the Commission within one hundred twenty (120) days of said application being deemed complete.

#### **4.5.5.5 Default decisions**

In the event that the Commission fails to make a decision within one hundred twenty (120) days, the proposal shall be deemed to be approved by the Commission.

#### **4.5.6 Adoption of sense resolutions by the Commission for development projects\***

With respect to a development project undergoing review pursuant to the State Environmental Quality Review Act (SEQRA) by another government agency and which is also a pending application being processed and reviewed by the Commission, the Commission may elect to adopt a sense resolution expressing its review and evaluation to date of such project and forward the same to those other agencies. The primary purpose of such a sense resolution shall be to facilitate the completion of the other agencies' SEQRA review and thereby enable the Commission to make a final decision on such a development project.

\* Denotes May 16, 2012 Ministerial CLUP Amendments adopted by the Commission