

**AN ACT to amend the environmental conservation law, in relation to measures to improve Central Pine Barrens development review processes.**

Introduced by \_\_\_\_\_ -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to enhancing environmental protection in the Long Island central pine barrens

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

**Section 1.** Legislative findings.

The legislature finds that after nineteen years of experience with the implementation of the Long Island Pine Barrens Protection Act, there is a need to refine certain definitions and augment specific procedural requirements in order to maintain adequate protection for the resources of the Central Pine Barrens.

1. Experience with the application of the definitions of development and non-development in the Long Island Pine Barrens Protection Act has demonstrated that, in the case of minor land divisions and subdivisions of five or fewer lots which are currently deemed to not constitute

development, the current definition has resulted in unintended consequences in that a parcel of land may be subdivided and further subdivided over several cycles resulting in a development project that, had it been reviewed cumulatively and in its entirety at the outset, should have been subject to both the Long Island Pine Barrens Protection Act and the Central Pine Barrens Comprehensive Land Use Plan. Furthermore, the lack of applicability of the Long Island Pine Barrens Protection Act and the Central Pine Barrens Comprehensive Land Use Plan to such projects has forfeited the opportunity to have shaped and augmented such projects to ensure maximum protection of open space and Pine Barrens resources. As a result, it is necessary to refine the definition to prevent future occurrences of such situations and ensure that sufficient opportunities are provided to maximize protection of the resources of the Central Pine Barrens.

2. Currently, the term complete application applies only to certain categories of development projects reviewed by the Central Pine Barrens Joint Planning and Policy Commission. Having such a requirement ensures that applicants for such development projects provide a sufficient amount of information that permits a thorough analysis and review by the Commission in its deliberations and ensures that a resulting Commission decision is balanced and based on consideration of all applicable facts. This requirement also sets aside adequate time for the Commission to render its decisions.

However, the term complete application is not applied within the Long Island Pine Barrens Protection Act to other types of development applications subject to Commission review,

primarily those for which a hardship waiver is sought for exceedance of one or more development criteria contained in the Central Pine Barrens Comprehensive Land Use Plan. However, there have been a number of occasions, since the implementation of the Act, in which the Commission has received only partial application materials or incorrect application materials which have at times required several attempts by the Commission to rectify. Although applicants are responsible for the quality and adequacy of their application materials, the Commission has been forced to forfeit precious statutory review time as there is no current allowance in the one hundred twenty day application review time frame which authorizes the Commission to implement a formal but temporary suspension during which an applicant would rectify an incomplete application. Accordingly, a reasonable accommodation is sought, similar to that already available to other state agencies, which would allow the Commission to temporarily halt its review of a specific development project until such time as it receives a complete application.

EXPLANATION--Matter underscored is new; matter which is stricken (–) is old law to be omitted.

**Section 2.** Subdivision 13 of Section 57-0107 is amended and a new subdivision 16 is added to Section 57-0107 to read as follows:

13. "Development" shall mean the performance of any building activity or mining operation, the making of any material change in the use or intensity of use of any structure or land and the creation or termination of rights of access or riparian rights. Without limitation, the following activities or uses shall be taken

for the purposes of this title to involve development as defined in this subdivision:

- (a) a change in type of use of a structure or land or, if the ordinance or rule divides uses into classes, a change from one class of use designated in an ordinance or rule to a use in another class so designated;
- (b) a material increase in the intensity of use of land or environmental impacts as a result thereof;
- (c) commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities;
- (d) material alteration of a shore, bank or flood plain of a river, stream, lake, pond, or artificial body of water;
- (e) re-establishment of a use which has been abandoned for one year;
- (f) departure from the normal use for which development permission has been granted, or material failure to comply with the conditions of an ordinance, rule or order granting the development permission under which the development was commenced or is continued.

The following operations or uses do not constitute development for the purposes of this title:

- (i) public improvements undertaken for the health, safety or welfare of the public. Such public improvements shall be consistent with the goals and objectives of this title, and shall include, but not be limited to, maintenance of an existing road or railroad track;
- (ii) work by any utility not involving substantial engineering redesign for the purpose of inspection, maintenance or renewal on established utility rights-of-way or the likes, and any work pertaining to water supply for the residents of Suffolk county;
- (iii) work for the maintenance, renewal, replacement, reconstruction, improvement, or alteration of any existing structure or additions to an existing residence or residential property owned by an association formed for the common interest in real property;
- (iv) the use of any structure or land devoted to dwelling uses for any purposes

customarily incidental and otherwise lawful;

- (v) the use of any land for the purpose of agriculture or horticulture;
- (vi) work by a utility performed for the purpose of public health, safety, or welfare and consistent with the goals and objectives of this title;
- (vii) existing or expanded recreational use consistent with the purposes of this title including scouting activities, the maintenance or expansion of facilities associated with or necessary for such scouting activities including, but not limited to, the addition, modification, expansion or replacement of structures necessary for such activities and such clearing as may be reasonably required for the maintenance or expansion of scouting activities;
- (viii) a change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class;
- (ix) residential development on any subdivision, residential clustered development, land division or site plan which has received preliminary or final approval on or before June first, nineteen hundred ninety-three, providing the lots to be built upon conform to the lot area requirements of the current zoning, are subject to the three year exemption contained in section two hundred sixty-five-a of the town law, or are subject to an exemption from an upzoning adopted by a town board;
- (x) in the core preservation area, construction of one single family home and customary accessory uses thereto on those parcels identified in the comprehensive land use plan adopted by the commission in June of nineteen hundred ninety-five and as amended on February twenty-first, two thousand one;
- (xi) in the compatible growth area, construction of single family homes and customary accessory uses thereto on any lot held on June 1, 1993 in ownership singly and separately from adjacent lots;
- (xii) in the compatible growth area, continuation of existing non-conforming uses, and activities permitted by special permit or special exception, including renewals of said special permits or exceptions;
- (xiii) in the compatible growth area, ~~a land divisions or subdivisions in the compatible growth area consisting of a parcel into~~ five or fewer residential lots which conform to the lot area requirement of the existing

zoning for the subject parcel, provided that the land division or subdivision is not proposed for a parcel created under this subsection;

- (xiv) in the compatible growth area, renovations, reconstructions, additions or extensions to existing commercial or industrial uses providing the addition or extension conforms to the uses permitted in the zoning district in which said parcel is located and which does not increase existing square footage by more than twenty-five percent; or
- (xv) in the core preservation area, the state or public corporation projects on parcels identified in the comprehensive land use plan adopted by the commission in June of nineteen hundred ninety-five, as amended on February twenty-first, two thousand one and October twentieth, two thousand four.

Development as designated in an ordinance, rule, or development permit includes all other development customarily associated with it unless otherwise specified.

14. "Agriculture" or "horticulture" shall mean any production of plants or animals useful to man, including but not limited to: forage or sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, and including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds including wineries; vegetables; nursery, floral, ornamental and greenhouse products and farmstands for selling products raised or produced on site and other associated structures required for their production.

\* 15. "Carmans River watershed protection and management plan" shall mean the draft comprehensive land use plan prepared for the town of Brookhaven, by the Carmans River study group, dated February two thousand eleven.

\* NB Repealed 9 months after September 23, 2011 if the Central Pine Barrens Joint Policy Commission does not adopt the plan pursuant to chapter 538/2011 § 3

**16. Complete application shall mean an application for a Commission approval which is in a form approved by the Commission and which is determined by the Commission to be complete for the purpose of commencing review of the application but which may need to be supplemented during the course of its review as to matters contained in the application necessary for the Commission to make its findings and decisions required by law. A complete application shall include such draft environmental impact statement as may be required pursuant to article eight of this chapter.**

**Section 3.** Section 57-0121 of the environmental conservation law is amended to read as follows:

**§ 57-0121. Central Pine Barrens comprehensive land use plan; interim regulations.**

1. As soon as practicable and within twelve months of the effective date of this section, the commission shall, after consultation with the advisory committee, prepare or cause to be prepared a draft comprehensive land use plan and generic environmental impact statement thereon which shall be part of the plan for the Central Pine Barrens area. The land use plan shall be designed to preserve the Pine Barrens ecology and to ensure the high quality of groundwater within the Central Pine Barrens area and to balance the public and private interests in development and in protection of the Pine Barrens ecology consistent with the objectives of the land use plan. Where local plans exist, the commission shall evaluate and incorporate such plans as is appropriate in the land use plan.
2. The land use plan for the Central Pine Barrens area shall be designed to:
  - (a) protect, preserve and enhance the functional integrity of the Pine Barrens ecosystem and the significant natural resources, including plant and animal populations and communities, thereof;
  - (b) protect the quality of surface water and groundwater;
  - (c) discourage piecemeal and scattered development;
  - (d) promote active and passive recreational and environmental educational uses that are consistent with the land use plan; and
  - (e) 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.
3. The land use plan with respect to the core preservation area shall be designed to protect and preserve the ecologic and hydrologic functions of the Pine Barrens by:
  - (a) preserving the Pine Barrens area in their natural state thereby insuring the continuation of Pine Barrens environments which contain the unique and significant ecologic, hydrogeologic and other resources representative of such environments;
  - (b) promoting compatible agricultural, horticultural and open space recreational uses within the framework of maintaining a Pine Barrens environment and minimizing the impact of such activities thereon;
  - (c) prohibiting or redirecting new construction or development;
  - (d) accommodating specific Pine Barrens management practices, such as prescribed burning, necessary to maintain the special ecology of the preservation area;

- (e) protecting and preserving the quality of surface and groundwaters; and
  - (f) coordinating and providing for the acquisition of private land interests as appropriate and consistent with available funds.
4. The land use plan with respect to the compatible growth areas shall be designed to:
- (a) preserve and maintain the essential character of the existing Pine Barrens environment, including plant and animal species indigenous thereto and habitats therefor;
  - (b) protect the quality of surface and groundwaters;
  - (c) discourage piecemeal and scattered development;
  - (d) 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;
  - (e) accommodate a portion of development redirected from the preservation area. Such development may be redirected across municipal boundaries; and
  - (f) allow appropriate growth consistent with the natural resource goals pursuant to this title.
5. Preparation of the land use plan shall be based on the following planning studies and reports:
- (a) Previously undertaken and current groundwater and ecological studies pertaining to the reserve, generally, and the Central Pine Barrens area, specifically;
  - (b) General planning studies of the reserve, generally, and the Central Pine Barrens area, specifically, including but not limited to:
    - (i) population and population distribution;
    - (ii) amount, type, intensity, and general location of commerce, industry and agricultural production;
    - (iii) amount, type, quality, and general location of housing;
    - (iv) general location and extent of existing or currently planned major transportation, utility, and community facilities;
    - (v) amount, general location, and interrelationship of different categories of land use;



- (vi) areas, sites, or structures of historical, archaeological, architectural, or scenic significance;
  - (vii) natural resources, including air, water, open spaces, forests, soils, rivers, wetlands and other waters, shorelines, fisheries, wildlife, vegetation, threatened species, and minerals; and
  - (viii) any other matter found to be important to preservation and future development.
- (c) Scientific research prepared for other hydrological or ecological areas analogous to the reserve, generally, and the Central Pine Barrens area specifically. Such studies and reports may include, but are not limited to those undertaken by the New Jersey Pinelands commission or Cape Code commission.
- (d) Public improvement studies including but not limited to the area or subareas within the Central Pine Barrens area or outside such area having an aggregation of sites with development potential to facilitate application of transfer of development rights that could create the need for new public improvements and/or public improvement expansions;
- (e) Advisory committee recommendations or reports.
6. The land use plan shall provide for, address and include but not be limited to the following:
- (a) Statements of objectives, policies and standards as they pertain to the purposes of this title and the land use plan.
  - (b) A map depicting the core preservation area.
  - (c) A map depicting compatible growth areas in the Central Pine Barrens area where orderly and environmentally compatible development can be encouraged and to which development potential within the preserve may be transferred.
  - (d) A phased public improvement element for providing the public facilities necessary for carrying out the goals for the core preservation and compatible growth areas.
  - (e) Identification and mapping of critical resource areas within the Central Pine Barrens area which are of regional or statewide significance. Such areas shall include fragile lands, significant shorelands of rivers, lakes, and streams; freshwater wetlands; significant wildlife habitats; unique scenic or historic features; and rare or valuable ecosystems and geological formations which are of regional or statewide significance.
  - (f) Identification of sending districts in core preservation and compatible growth areas and receiving districts in compatible growth areas and outside the Central Pine Barrens area for the purpose of providing for the transfer of development rights and

values to further the preservation and development goals of the land use plan and methodologies and standards for procedural equity and appropriate values in establishing rights and values consistent with the provisions of section two hundred sixty-one-a of the town law.

- (g) Identification of land suitable for agricultural use and necessary and appropriate strategies to protect land capable of agricultural production.
- (h) Development criteria and performance standards.
- (i) An intergovernmental coordination and consistency component establishing the ways in which state and local programs and policies may best be coordinated to promote the goals and implement the policies of the land use plan.
- (j) A financial component analyzing the public and private costs of developing and implementing the land use plan which shall include:
  - (i) detailed costs including those for infrastructure improvements, acquisition of fee simple or other interests in lands for preservation or recreation purposes, compensation guarantees, general administrative costs and any anticipated extraordinary or continuing costs; and
  - (ii) the source of revenue for covering such costs, including, but not limited to, grants, donations and loans from local, state and federal departments and agencies and from the private sector.
- (k) A program for state, county and local governmental implementation of the comprehensive land use plan and the various elements thereof in a manner that will insure the continued, uniform, and consistent protection of the Pine Barrens ecosystem and development objectives including:
  - (i) minimum standards for the adoption, as required in this title, of municipal and county plans, codes and ordinances concerning the development and use of land including, but not limited to, standards for minimum lot sizes, site clearance and wetland setbacks, appropriate population and densities and regulated or prohibited uses for specific portions of the Pine Barrens area and procedures for determining hardship consistent with the purposes and provisions of this title;
  - (ii) guidelines and standards for review of projects of regional significance which because of scale of intensity of use or location are likely to impede implementation of the land use plan; and
  - (iii) guidelines for consistency with the land use plan by state, county and local agencies.
- (l) Professional staffing requirements necessary to carry out the land use plan.

- (m) Land protection mechanisms, including, but not limited to, acquisition, conservation easements, rights and values transfers, purchase of development rights, donations and clustering, planned unit development, land trusts, exchanges between privately and publicly owned lands, or other zoning activities consistent with the provisions of this title.
- (n) Provisions for use of best management practices, in all natural resource-dependent commercial and industrial activities, including agriculture, horticulture and related activities.
- (o) Provisions for restoration of natural and cultural resources where such resources have been damaged, lost, or otherwise impaired. Such work shall address restoration of Pine Barrens habitats, stream and shore revitalization, historic structures, traditional industries demonstration programs, and strengthening of community character which will be consistent with the provisions of the comprehensive management plan pursuant to section 57-0115 of this title.
- (p) Provisions for cumulative impact analyses, both environmental and economic, for the effects of development, preservation, financial policies and related factors upon the Central Pine Barrens area, its private and public open space, its residents and constituents, school and other special districts, and other pertinent aspects or demographic sectors.
- (q) Recommendations for further legislation at the state, county, and local levels as may be necessary to fully implement the provisions of this title.
- (r) Provisions for management and stewardship of natural and cultural resources which shall include coordination by owners of public lands which will be consistent with the provisions of the comprehensive management plan pursuant to section 57-0115 of this title.
- (s) Provisions for appropriate and relevant scientific research relating to the species, ecological communities and processes, natural landscape features, and surface and groundwater resources of the Central Pine Barrens necessary to ensure and enhance the long-term management of the preserve. Such research may be addressed in a cooperative effort with the state university of New York at Stony Brook through its biological research station, established by the department of ecology and evolution.
- (t) Provisions for fire management for controlled, prescribed burning, and responses to unanticipated fires. This shall include coordination among the department and local fire departments.
- (u) Description of developments of regional significance.

The land use plan shall also, as funds permit, provide for a follow-up plan to be undertaken by the commission for a partnership infrastructure and sustainable development plan for the

reserve. Based on the land use plan and the comprehensive management plan, such follow up plan shall be designed to

- (i) coordinate the activities of all governmental entities in the provision of infrastructure necessary to support orderly development in the compatible growth areas and support of sustainable development in the reserve outside of the preserve; and
  - (ii) coordinate and focus investment in sustainable development efforts.
7. Notwithstanding any provision contrary to any other provisions of article eight of this chapter, the commission shall be the lead agency for the generic environmental impact statement which is part of the land use plan. Such generic environmental impact statement shall be prepared in accordance with the provisions of article eight of this chapter.
8. In order to effectuate the purposes and provisions of this title, no person, public corporation or the state shall undertake or otherwise engage in development within the Central Pine Barrens area prior to approval and implementation of the land use plan except as provided by this section. No amendments to the existing town or village zoning laws, ordinances or regulations affecting development within the Central Pine Barrens area shall take effect prior to the approval of the land use plan as provided in this chapter except that a town may as part of a zoning ordinance adopted pursuant to article sixteen of the town law or by local law pursuant to other enabling law, provide for a planned unit development or planned development district ordinance for a development for which the designated lead agency, on or before June first, nineteen hundred ninety-three, accepted a draft environmental impact statement or draft generic environmental impact statement under article eight of this chapter. The provisions of this section shall not apply to development in the compatible growth area for which:
- (a) the designated lead agency, on or before June first, nineteen hundred ninety-three, accepted a draft environmental impact statement or draft generic environmental impact statement or issued a conditioned negative declaration or a negative declaration under article eight of this chapter, or
  - (b) all required municipal and state permits and approvals were issued on or before June first, nineteen hundred ninety-three (except that a building permit need not have been issued by said date), or
  - (c) The designated lead agency, after June first, nineteen hundred ninety-three and prior to ninety days immediately following adoption of this section or as extended at the discretion of the commission in its interim rules and regulations adopted pursuant to section nine herein, issues on an active application a conditioned negative declaration or a negative declaration under article eight of this chapter and which does conform to the use and lot area requirements of the zoning in effect in the relevant municipality on June first, nineteen hundred ninety-three, and does not necessitate a use variance. Notwithstanding the foregoing, in the event a commissioner within thirty days of receiving notice of said issuance requests review of the action by the full commission,

the development shall be subject to the interim rules and regulations and reviewed as provided for in section nine herein.

In the event that an event referred to herein (acceptance of a draft environmental impact statement or draft generic environmental impact statement; issuance of a conditioned negative declaration or negative declaration; or issuance of a required permit or approval) is annulled or vacated by a court of competent jurisdiction and such judicial action has not been reversed by a superior court, then, for purposes of this section, such event shall be deemed not to have taken place.

Notwithstanding any other provision of law, any development which includes land within the core preservation area for which the designated lead agency, on or before June first, nineteen hundred ninety-three, accepted a draft environmental impact statement or draft generic environmental impact statement shall not require a supplemental draft or generic environmental impact statement under article eight of this chapter solely because such development includes land within the core preservation area.

9. Within three months of the effective date of this section, the commission shall publish interim goals and standards for development and for hardship before the land use plan is implemented in compatible growth areas identified in the map. The commission may vary the procedures and time periods for compliance with article eight of this chapter as necessary and appropriate to comply with the three month deadline of this subdivision. Upon such publication, development may proceed in such compatible growth areas subject to existing laws, regulations and approval procedures and subject to the review and approval of the commission. Any person, the state or a public corporation applying for development in such compatible growth areas who has received all necessary local and state approvals may petition the commission for approval of the development. Within thirty days of application being received, the commission shall provide the applicant and any other interested party an opportunity to be heard. Notice of such hearing shall be published in a newspaper having a general circulation in the Central Pine Barrens area, and notice of such hearing shall also be given by registered mail to the chief administrative officer of each town and village within whose boundary any proposed development is located. If the proposed development is consistent with the commission's interim goals and standards, the commission shall approve the development and may include conditions for approval. If the applicant seeks an exemption based upon a demonstration of hardship, the commission may approve development in the compatible growth area upon the finding that such interim goals and standards cause an unnecessary hardship. In making such finding the commission shall consider the criteria for a use variance pursuant to section two hundred sixty-seven-b of the town law. The commission must make a decision within one hundred twenty days of receipt of a complete application. If the commission fails to make a decision within one hundred twenty days, the development shall be deemed to be approved by the commission, unless extended by mutual agreement of the applicant and commission.
10. Any person, the state or a public corporation upon a showing of hardship caused by the provisions of subdivision eight of this section on development in the core preservation

area, may apply to the commission for a permit exempting such applicant from such subdivision eight in connection with any proposed development in the core preservation area. Such application for an exemption pursuant to the demonstration of hardship within the core preservation area shall be approved only if the person satisfies the following conditions and extraordinary hardship or compelling public need is determined to have been established under the following standards or for development by the state or a public corporation or proposed for land owned by the state or a public corporation compelling public need is determined to have been established under the following standards:

- (a) The particular physical surroundings, shape or topographical conditions of the specific property involved would result in an extraordinary hardship, as distinguished from a mere inconvenience, if the provisions of this act are literally enforced. A person shall be deemed to have established the existence of extraordinary hardship only if he or she demonstrates, based on specific facts, that the subject property does not have any beneficial use if used for its present use or developed as authorized by the provisions of this title, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which:
  - (i) Do not apply to or affect other property in the immediate vicinity;
  - (ii) Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; or
  - (iii) Are not the result of any action or inaction by the applicant or the owner or his or her predecessors in title including any transfer of contiguous lands which were in common ownership on or after June 1, 1993.
- (b) A person, the state or a public corporation shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, one of the following:
  - (i) The proposed development will serve an essential health or safety need of the municipalities in the Central Pine Barrens such that the public health and safety require the requested waiver, that the public benefits from the proposed use are of a character that overrides the importance of the protection of the core preservation area as established in this title, that the proposed use is required to serve existing needs of the residents, and that no feasible alternatives exist outside the core preservation area to meet the established public need and that no better alternatives exist within the county; or
  - (ii) The proposed development constitutes an adaptive reuse of an historic resource designated by the commission and said reuse is the minimum relief necessary to ensure the integrity and continued protection of the designated historic resource and further that the designated historic resource's integrity and continued protection cannot be maintained without the granting of a permit.

- (c) An application for a permit in the core preservation area shall be approved only if it is determined that the following additional standards also are met:
- (i) The granting of the permit will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire, endanger public safety or result in substantial impairment of the resources of the core preservation area;
  - (ii) The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of this title; or
  - (iii) The waiver is the minimum relief necessary to relieve the extraordinary hardship, which may include the granting of a residential development right to other lands in the compatible growth area that may be transferred or clustered to those lands to satisfy the compelling public need.

Any waiver or exemption granted under the provisions of this part shall only be considered an exemption or waiver of the particular standard of this title which the commission waived. It shall not constitute an approval of the entire development proposal. Nor shall it constitute a waiver from any requirements contained within any local, county or state law or ordinance.

Within thirty days of the **complete** application being received, the commission shall provide the applicant and any other interested party an opportunity to be heard. Notice of any public hearing conducted in connection with an application for such a permit shall be published in a newspaper of general circulation in the Central Pine Barrens area. If the proposed development is not contrary to the policy or any provision of this title and meets the standards of extraordinary hardship or public need herein, and the commission so finds, it may issue a permit allowing the development or such development subject to appropriate conditions or modifications to occur, provided that permission may be revoked by the commission if its terms are violated, and provided further that any such hardship permit issued by the commission shall be in addition to, and not in lieu of, such permit or permits as may be required by any state agency or municipality within whose boundary such development is located. The time within which the commission must decide a **complete core preservation area hardship** application for which a negative declaration has been made by the commission pursuant to article eight of this chapter is one hundred twenty days from receipt of such application. The time within which the commission must decide a **complete core preservation area hardship** application for which a positive declaration has been made by the commission pursuant to article eight of this chapter is sixty days from issuance of a findings statement by the commission pursuant to article eight of this chapter. 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 extended by mutual agreement of the applicant and commission.

11. In preparation of the land use plan, the commission shall:

- (a) consult with appropriate officials of any regional, state or federal agency which has jurisdiction over lands and waters within the Central Pine Barrens area;
  - (b) consult with the officials of any municipality which has jurisdiction over lands and waters within the Central Pine Barrens area;
  - (c) consult with interested professional, scientific and citizens' organizations; and
  - (d) consult with citizens' committees.
12. Following consultation with the advisory committee and within the twelve month period established therefor, the commission shall publish the draft land use plan. Within three months of such publication, the commission shall hold public informational meetings in the towns of Brookhaven, Riverhead and Southampton and at least one public hearing within the Central Pine Barrens area. During this period the commission shall receive and review comments on the draft land use plan-generic environmental impact statement from state and local governments and the public and within three months, the commission shall recommend a revised comprehensive land use plan pursuant to this title to the respective town boards of such towns for their ratification and adoption. Within two months of the commission recommending the plan to the respective town boards, the town boards shall perform a comprehensive review of the plan and shall provide final comments to the commission. The commission at its discretion may modify the plan as requested by the town representatives. After modifying the plan as necessary, the commission shall prepare a draft supplemental generic environmental impact statement and a final generic environmental impact statement, and the towns and commission shall adopt the necessary statement of findings pursuant to article eight of this chapter. Ratification and adoption of the plan by the town boards of Brookhaven, Riverhead, and Southampton shall represent commitment to implementation of the provisions contained therein. Upon ratification and adoption by such three towns, the commission itself will formally adopt the plan-generic environmental impact statement and its provisions shall be in full force. Adoption by the commission shall only be upon the signature of the governor, county executive of Suffolk county, supervisor of the town of Brookhaven, supervisor of the town of Riverhead and supervisor of the town of Southampton.
13. Not less than once every five years after the land use plan has become effective, the commission shall review and, if appropriate, make amendments to the land use plan and update the generic impact statement. Within each such period, the commission shall hold a public hearing and shall receive comments on the effectiveness of implementation of the land use plan. Not less than thirty days before voting on an amendment to the land use plan, the commission shall publish notice thereof in a newspaper of general circulation in the Central Pine Barrens area.

**Section 4.** Section 57-0123 of the environmental conservation law is amended to read as follows:

**§ 57-0123. Implementation of the Central Pine Barrens comprehensive land use plan.**



1. Within three months after the land use plan has been adopted by the commission, each town board and village board with jurisdiction within the Central Pine Barrens area shall adopt and amend as necessary land use and zoning regulations, by local law or ordinance, rule or regulation to conform their land use regulations to the land use plan. Such action shall not be subject to the provisions of article eight of this chapter if it is in conformance with the conditions and thresholds of the land use plan. At least thirty days before adoption thereof, the town or village board shall submit the proposed regulations to the commission for its review and approval. Within ten days of receipt of such proposed regulations, the commission shall review and approve such proposed regulations, or if it does not approve them, return them with comments on what needs to be done to make them approvable. For each jurisdiction, the land use plan shall be deemed to be implemented upon adoption by the town or village board of approved land use regulations. The interim regulation provisions of subdivisions eight, nine, and ten of section 57-0121 of this title shall remain in effect for each town or village until it has adopted approved land use regulations to conform to the adopted comprehensive management plan. Within villages that were incorporated on or before June 30, 1993, whose land use and zoning regulations are approved by the commission consistent with the land use plan pursuant to section 57-0121 of this title, development which conforms to such land use and zoning regulations and does not have significant adverse impacts on the goals of the land use plan shall not be subject to review by the commission. After town or village land use regulations have been approved and upon a finding that a town or village has changed such regulations in a manner substantially inconsistent with the land use plan or has administered its approved land use regulations in a manner substantially inconsistent with the land use plan, the commission shall withdraw approval of such land use regulations and the provisions of subdivisions eight, nine and ten of section 57-0121 of this title shall be reinstated. Such withdrawal of approval shall be made not before fourteen days after the commission holds a public hearing in the affected town or village on the proposed withdrawal. Notice of such hearing shall be published in a newspaper having general circulation in the Central Pine Barrens area and notice of such hearing shall also be given by registered mail to the affected supervisor or mayor.
2. (a) The commission shall have jurisdiction to review and approve all proposed development in critical resource areas and developments of regional significance as identified in the land use plan and proposed developments found by the commission after petition by a commissioner to have significant adverse impact on the land use plan. Any commissioner may petition the commission to assert review jurisdiction over a proposed development outside of a critical resource area or which is other than a project of regional significance which has a significant adverse impact on the goals of the land use plan. If the commissioner by majority vote asserts jurisdiction, such project or action shall be subject to review by the commission. For the purposes of review and identification of projects coming under the jurisdiction of the commission by virtue of critical resource area or area of regional impact or at the request of any commission member, the commission shall designate the responsible planning entity or staff for the purposes of advising the commission with respect to such applications or projects.

To the fullest extent possible, the commission shall consolidate and coordinate its review with the appropriate local government. A person, the state or a public corporation proposing development in a critical resource area or development of regional significance shall apply to the commission for approval of the development. Applications shall be made to the commission on forms and in such manner as the land use plan and commission shall designate.

- (b) The commission must make a decision, on a complete application, within the time periods established pursuant to subdivision ten of section 57-0121 of this title. 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 extended by mutual agreement of the applicant and the commission. The aforesaid time period and the processing and review of an application shall be suspended by the commission with notice to the applicant where a proceeding pursuant to section 57-0136 of this title is pending against the applicant with respect to the property at issue or otherwise arising out of the ownership or use of such property.

~~The commission must make a decision within one hundred twenty days of the receipt of a complete application. If the commission fails to make a decision within one hundred twenty days, the development shall be deemed to be approved by the commission, unless extended by mutual agreement of the applicant and the commission. The commission must make a decision within one hundred twenty days of asserting jurisdiction over a project that is before the commission based on the petition by a commissioner. If the commission fails to make a decision within one hundred twenty days of the date of asserting jurisdiction, the development shall be deemed to be approved by the commission, unless extended by mutual agreement of the applicant and the commission.~~

3. (a) Subsequent to the adoption of the land use plan, the provisions of any other law, ordinance, rule or regulation to the contrary notwithstanding, no application for development within the Central Pine Barrens area shall be approved by any municipality or county or agency thereof or the commission, and no state approval, certificate, license, consent, permit, or financial assistance for the construction of any structure or the disturbance of any land within such area shall be granted, unless such approval or grant conforms to the provisions of such land use plan; provided, however, that the commission by majority vote is hereby authorized to waive strict compliance with such plan or with any element or standard contained therein, for an application for development of any person, upon finding that such waiver is necessary to alleviate hardship for proposed development in the core preservation area according to the conditions and finding of extraordinary hardship or compelling public need pursuant to subdivision ten of section 57-0121 of this title, or for an application for development by the state or public corporation or proposed for land owned by the state or public corporation finding that such waiver is necessary to alleviate hardship for proposed development in the core preservation area according to the conditions and finding of compelling public need pursuant to subdivision ten of section 57-0121 of this title, and every application is consistent with the purposes and provisions of this article and would not result in substantial impairment of the resources of the Central Pine Barrens area.

- (b) The commission by majority vote is also authorized to waive strict compliance with such plan or with any element or standard contained therein, upon finding that such waiver is necessary to alleviate hardship for development proposed by any person, the state or a public corporation in the compatible growth area according to the conditions and findings of hardship pursuant to subdivision nine of section 57-0121 of this title, is consistent with the purposes and provisions of this title and would not result in substantial impairment of the resources of the Central Pine Barrens area.
  - (c) The commission must make a decision, **on a complete application**, within the time periods established pursuant to subdivision ten of section 57-0121 of this title. 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 extended by mutual agreement of the applicant and the commission. The aforesaid time period and the processing and review of an application shall be suspended by the commission with notice to the applicant where a proceeding pursuant to section 57-0136 of this title is pending against the applicant with respect to the property at issue or otherwise arising out of the ownership or use of such property.
4. Notwithstanding any inconsistent provisions in article eight of this chapter and within towns and villages with approved land use regulations, actions wholly within the Central Pine Barrens area in conformance with the conditions and thresholds of the land use plan and the generic environmental impact statement thereof shall require no further environmental impact statement with respect to impacts addressed in such generic environmental impact statement. Further project-specific compliance with article eight of this chapter may be required. Upon ratification by the towns and adoption of the land use plan by the commission, the consistency provisions of article fifty-five are no longer required.
  5. Notwithstanding any other provision of law, any state agency may provide in implementing a ranking system for allocating funds for infrastructure, land acquisition, farmland preservation or park assistance projects a preference not to exceed the equivalent of an advantage of five percent for such projects which are identified in a land use plan.
  6. For the county of Suffolk, and each town or village implementing regulations wholly within the Central Pine Barrens area approved by the commission, there may be defense by and shall be indemnity from the state in the event of legal actions or proceedings brought against any such municipalities or their agents, servants, officials or employees that may result from the municipal acquisition of land consistent with the land use plan or comprehensive management plan or the adoption or implementation of any land use control including, but not limited to, the provisions of a zoning law, ordinance, or regulation consistent with this title or required by the minimum standards and criteria of the land use plan. Indemnity shall not apply to any such claim in which a final court determination results in a finding of intentional wrongdoing, recklessness, or an unlawful discriminatory practice including the finding that the land use control was intended to exclude a particular group or individual, or gross negligence on the part of such municipality or its agents, servants, officials, or employees. Actions or proceedings brought under subdivisions two, two-a, three-b, four, paragraphs (a) and (b) of subdivision five and subdivisions six, seven, fourteen, and eighteen

of section two hundred ninety-six of the executive law and 42 U.S.C. 55 1981, 1983, 1988 shall be indemnified by the state only so far as the grievance alleged in such action or proceeding was the result of an act consistent with this title or the plan.

- (a) Such indemnity shall apply only to the extent that any such claim exceeds any insurance coverage obtained by the commission from revenues in the Pine Barrens fund.
  - (b) Such indemnity shall be conditioned upon (i) delivery by the governing body or its agent against whom the legal action or proceeding was commenced to the attorney general or an assistant attorney general at an office of the department of law in the state the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen days after such document is served upon such governing body or its agent, and (ii) the full cooperation of the governing body or its agents against whom the action or proceeding was commenced in the defense of such action or proceeding and in defense of any action or proceeding against the state based upon the same act or omission, and in the prosecution of any appeal.
  - (c) There shall be no indemnity in the event of a settlement between or among the parties to such legal action or proceeding in those instances in which the attorney general is not providing the defense for the governing body or its agents, unless such settlement is approved by the commission with the concurrence of the attorney general.
7. Notwithstanding any other provision of law to the contrary and in addition to any existing authority therefor, a town or village in implementing regulations approved by the commission and acting in furtherance of the land use plan may enter into an agreement to condition a zoning amendment.