

**Unofficial compilation of references to “development”
(in the context of land use)
in the NY Environmental Conservation Law Article 57,
the Long Island Pine Barrens Maritime Reserve Act**

§ 57-0103. Legislative declaration.

. . . In addition, it is further in the public interest to establish a commission made up of a governor's appointee, the county executive of Suffolk county and the supervisors of the towns of Brookhaven, Riverhead and Southampton to prepare, oversee and participate in the implementation of a comprehensive land use plan for the Central Pine Barrens area to guide development therein in a manner suitable to the needs for preservation of the core preservation area and compatible growth and development in the compatible growth area.

§ 57-0105. Legislative findings and intent.

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The legislature further finds that a portion of the system known as the Central Pine Barrens area requires the preparation and implementation of a state supported regional comprehensive land use plan that will provide for the preservation of the core preservation area, protection of the Central Pine Barrens area and for the designation of compatible growth areas to accommodate appropriate patterns of development and regional growth with recognition of the rights of private land owners and the purpose of preservation of the core area.

The legislature recognizes that the provisions of this article may restrict the beneficial use of some lands currently in private ownership. These restrictions are deemed to be necessary and desirable to protect and preserve the hydrologic and ecologic integrity of the Central Pine Barrens area as well as the public's health and welfare for future generations. The legislature intends that a comprehensive regional land use plan be implemented whereby private landowners whose property is located within the Central Pine Barrens area are afforded an opportunity to receive benefits from the plan such as transferable development rights, conservation easements, rights and values transfers, purchase of development rights and/or fee acquisition with monetary compensation.

§ 57-0107. Definitions.

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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 article 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 article:

- (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 article, 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 an utility performed for the purpose of public health, safety, or welfare and consistent with the goals and objectives of this article;
- (vii) existing or expanded recreational use consistent with the purposes of this article 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, land divisions or subdivisions in the compatible growth area consisting of five or fewer residential lots which conform to the lot area requirement of the existing zoning for the subject parcel; or

(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.

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

§ 57-0109. Establishment of Long Island Pine Barrens maritime reserve; core preservation area and compatible growth area.

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2. Within the reserve and within forty-five days of the effective date of this subdivision, the commission shall file with the secretary of state the maps of the Central Pine Barrens area classifying and depicting the core preservation area as defined, which comprises the largest essentially intact areas of undeveloped pine barrens ecology, and the compatible growth area where appropriate patterns of development and regional growth shall be permitted and shall file a certified copy thereof with the county clerk of Suffolk county and the clerk of each town or village whose boundaries are included within the Central Pine Barrens area. . . .

§ 57-0111. Long Island Pine Barrens maritime reserve council.

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2. The council shall be composed of seventeen voting members. The governor shall appoint three members. The county executive of the county of Suffolk, with the advice and consent of the county legislature, shall appoint four members. The town supervisors of the towns of Riverhead, Southold, Shelter Island, Southampton, East Hampton and Brookhaven shall each appoint one member. The commissioner or his or her designee, the commissioner of parks, recreation and historic preservation or his or her designee, the secretary of state or his or her designee for purposes of matters related to coastal resources and the commissioner of economic development or his or her designee for purposes of tourism shall serve as ex-officio members. All members, except ex-officio members shall be residents of the county of Suffolk and shall have demonstrated expertise in the functional areas to be addressed by the commission. All initial appointments shall be made within sixty days of the effective date of this article.

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§ 57-0115. Comprehensive management plan. *(Note: this section refers to the Maritime Reserve Council and Plan, not the Pine Barrens Plan.)*

...

1. The council shall, after holding public hearings, prepare and adopt a comprehensive management plan for the Long Island Pine Barrens maritime reserve, which the state and local governments may adopt. Such plan shall include, but not be limited to:

...

g. a plan for protection and management for dedicated land in the Long Island Pine Barrens preserve including:

(1) A survey or inventory of the following, together with the establishment of management priorities therefor:

...

(iv) trails, trail development and use;

§ 57-0119. Central Pine Barrens joint planning and policy commission.

...

6. The commission shall have the power:

...

(j) To establish regulations, values, and standards which may include a system of bonuses and incentives in order to purchase, sell, hold and trade development rights as defined in paragraph a of subdivision one of section two hundred sixty-one-a of the town law; such transfers may cross municipal and special district boundaries;

...

7. The commission shall within six months of the first meeting of the commission:

(a) Inventory all private parcels within the core preservation area.

(b) Upon completion of the inventory, notify property owners and assign and calculate the development yield for each property located in the core preservation area. Development yield may be calculated in accordance with such factors as area, floor area, floor area ratios, density, height limitations or other criteria that will effectively quantify a value for establishing development rights in a reasonably and uniform manner that will carry out the objectives of this article.

...

8. The commission shall within twelve months of the first meeting of the commission:

(a) Identify receiving districts within and without the Central Pine Barrens sufficient to receive and transfer of rights and values of the core preservation area and for the continuation of an adequate program of development rights or development values.

(b) Consider the fiscal impact of the established transfer of development rights and values system.

...

9. There is hereby created a Central Pine Barrens advisory committee to actively assist and advise the commission in the preparation, adoption and implementation of the Central Pine Barrens

comprehensive land use plan. The committee shall consist of not more than twenty-eight members which shall include representatives of environmental groups, economic development and real estate interests, farmers, water suppliers, civic groups, planners, biologists, water quality scientists and recreational interests. The members of the committee shall serve without compensation. The initial members of the advisory committee shall include a representative of the Long Island Association, Long Island Builders Institute, Association For A Better Long Island, Long Island Board of Realtors, Long Island Farm Bureau, Suffolk County Water Authority, SUNY at Stony Brook, Regional Plan Association, Long Island Pine Barrens Society, Group For The South Fork, The Nature Conservancy, North Fork Environmental Council, Open Space Council, Long Island Greenbelt Trail Conference, Environmental Defense Fund, Eastern Suffolk Board of Realtors, Southampton Alliance, South Fork Promotion Committee or their successors and interests, a member from the Long Island regional planning board, two members from the New York state legislative commission on water resource needs of Long Island and a civic representative from each of the towns of Southampton, Brookhaven and Riverhead designated by the supervisor thereof. The committee may be expanded as necessary to incorporate other interests in the development and preservation of the Central Pine Barrens preserve. Each member shall serve at the pleasure of the entity which designated it. . . .

§ 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:

. . .

(c) discourage piecemeal and scattered development;

. . .

(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:

. . .

(c) prohibiting or redirecting new construction or development;

. . .

4. The land use plan with respect to the compatible growth areas shall be designed to:

- (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 article.

5. Preparation of the land use plan shall be based on the following planning studies and reports:

(b) General planning studies of the reserve, generally, and the Central Pine Barrens area, specifically, including but not limited to:

...

(viii) any other matter found to be important to preservation and future development.

...

(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;

...

6. The land use plan shall provide for, address and include but not be limited to the following:

...

(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.

...

(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.

...

(h) Development criteria and performance standards.

...

(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 article, 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 article;
(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.

...

(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 article.

...

(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.

...

(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.

...

8. In order to effectuate the purposes and provisions of this article, no person 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. An applicant 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 an application being received, the commission shall provide the applicant and any other person 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 caused an unnecessary hardship. In making such finding the commission shall consider the criteria for a use variance pursuant to section two hundred seventy-six-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, 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 person 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 applicant satisfies the following conditions and extraordinary hardship or 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. An applicant shall be deemed to have established the existence of extraordinary hardship only if he 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 article, 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 predecessors in title including any transfer of contiguous lands which were in common ownership on or after June 1, 1993.

(b) An applicant 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 municipality or, in the case of an application serving more than one of the municipalities that the public health and safety require the requested waiver, that the public benefits from the proposed use are of a character that override the importance of the protection of the core preservation area as established in this article, 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 article; 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 article 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 application being received, the commission shall provide the applicant and any other person 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 article 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 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 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.

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§ 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 article 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 article, 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 article 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. An applicant for 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 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, 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 article, 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 proposed development in the compatible growth area according to the conditions and findings of hardship pursuant to subdivision nine of section 57-0121 of this article, 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.

(c) The commission must make a decision within the time periods established pursuant to subdivision ten of section 57-0121 of this article. 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 article is pending against the applicant with respect to the property at issue or otherwise arising out of the ownership or use of such property.