

## Chapter 5 Preamble in the CPB CLUP January 15, 2014 Worksession

Chapter 5 of the CLUP contains a preamble in Section 5.3.1 which discusses the applicability of standards and guidelines to projects within the Compatible Growth Area. The following is the current section 5.3.1, excerpted from the CLUP:

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CURRENT LANGUAGE  
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**5.3 Compatible Growth Area**

**5.3.1 Applicability**

*The Central Pine Barrens Joint Planning and Policy Commission adopts the following standards and guidelines for development in the Compatible Growth Area in accordance with applicable state law.*

*These standards shall be incorporated into local land use and development review procedures, ordinances and laws by the local municipalities. The Commission shall also apply these standards to those projects that it directly reviews within the Compatible Growth Area.*

*These guidelines shall be incorporated into land use and development procedures, and utilized by municipalities and municipal agencies on a discretionary basis. All standards and guidelines for land use in this section are based on the best available scientific evidence and municipal laws and practices.*

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The current version of this section in the proposed CLUP amendments adds some clarifying language in regard to development. The following is the proposed new version with the new language underlined below:

PROPOSED LANGUAGE

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**5.3 Compatible Growth Area**

**5.3.1 Applicability and other policies**

*The Central Pine Barrens Joint Planning and Policy Commission adopts the following standards and guidelines for development and development project sites within the Compatible Growth Area in accordance with applicable state law. (Source: Guidelines are incorporated into standards (former) and staff recommendation for clarification (latter).)*

*These standards shall be incorporated into local land use and development review procedures, ordinances and laws by the local municipalities. The Commission shall also apply these standards to those development projects that it directly reviews within the Compatible Growth Area. (Source: Staff recommendation for clarification.)*

*These guidelines shall be incorporated into land use and development procedures, and utilized by municipalities and municipal agencies on a discretionary basis.*

*All standards and guidelines for land use in this section are based on the best available scientific evidence and municipal laws and practices.*

*Agriculture or horticulture in the Compatible Growth Area is encouraged to comply with best management practices. Best management practices are, for purposes of this Plan, the same practices stated in the most recent version of Controlling Agricultural Nonpoint Source Water Pollution in New York State (Bureau of Technical Services and Research, Division of Water, New York State Department of Environmental Conservation, 1991 and as later amended). (Source: Relocated from 5.3.3.10 and reworded as a policy statement. This document reference may need to be updated.)*

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In many of the standards in the CLUP, new language the amendments proposed to add the following statement:

*“Compliance with this standard shall only be determined to exist by the Commission upon receipt of final, official copies of all New York State Department of Environmental Conservation and municipal permit(s) and satisfaction of any conditions on such permits.”*

During the technical worksessions with Commission member planning and environmental staffs conducted in 2010 and 2011, some suggestions were made in regard to this proposed language which included moving this proposed sentence to the beginning of Chapter 5 so that it would apply to the entire Chapter 5 or modifying it so that it would refer only to non-conforming

projects under Commission review (i.e. only those projects requiring a Commission Hardship Waiver), not the majority of CLUP-conforming projects seen only by the Towns. Other comments expressed concern that this new sentence could cause a default approval in some cases. Another issue that was raised is that this new proposed language would potentially obligate the Commission to enforce the permits of other agencies.

The Advisory Committee subsequently adopted a resolution, at its meeting of December 15, 2011, to recommend that the Commission add language to the CLUP which would state that the Commission's vote of approval for a project is essentially a conditional approval.

A more recent suggestion, which was generated during the Commission's CLUP Worksessions of 2012 and 2013 is that the following language could be added to the Chapter 5 Preamble to address this issue:

*"Projects proposed in the Compatible Growth Area must conform to all other involved agency jurisdictions and permit requirements in effect on the project site."*

or

*"Projects proposed in the Compatible Growth Area must conform to all other involved agency jurisdictions and permit requirements in effect on the project site and, for projects which have received a Hardship Waiver approval from the Commission, their applicants shall send final copies of all permits and approvals from other agencies to the Commission for its records."*

By placing this language in the preamble, the proposed language becomes an advisory to project applicants, not a mandatory standard, but provides sufficient notice that there are requirements and regulations of other agencies, other than those of the Commission, with which a project applicant must comply.

The following is language which the NYSDEC routinely places in a "notifications" section of its permits:

- *"Nothing in this permit relieves the owner or operator from a requirement to obtain any other permits required by law."*
- ***"Permittee Responsible for Obtaining Other Required Permits***  
*The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of way that may be required to carry out the activities that are authorized by this permit."*

Modified versions of this language could also be considered.