

Wetlands Not Under NYSDEC or Town Jurisdiction New Concept for Consideration in the CPB CLUP

January 15, 2014 Worksession

At its April 17, 2013 CLUP Worksession, the Commission indicated that Section 5.3.3.4 should be advanced as proposed and that all of section 5.3.3.4.1 should be advanced as proposed, with the exception of the 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 Town permit(s) and satisfaction of any conditions on such permits”

which the Commission determined should be revised or addressed in some other way.

The following is the aforementioned wetlands section, excerpted from the proposed CLUP amendments:

5.3.3.4 ~~Wetlands and surface waters~~ Wetlands, surface waters and stormwater runoff (Source: Sections 5.3.3.4 (originally titled “Wetlands and surface waters”) and 5.3.3.5 (originally titled “Stormwater runoff”) were combined for clarity due to their topical overlap. Standards and former guidelines were therefore relocated and renumbered as described below and on succeeding pages.)

Freshwater wetlands that exist within the Central Pine Barrens are considered to be an important natural resource, providing flood and erosion control, the filtering of contaminants and sediments from stormwater runoff, and habitat for plants and wildlife.

Tidal wetlands existing within the marine environment bordering portions of the Central Pine Barrens are equally valuable natural resources. These wetlands support the reproduction of finfish and shellfish, provide habitat for waterfowl, and contribute a scenic quality that supports recreational economies.

Surface waters, including freshwater ponds, lakes, streams, rivers, and creeks, occur throughout the Central Pine Barrens. These are considered to be resources of significant value in economic, aesthetic and ecological terms. Their protection is judged to be vital to the dynamics of the pine barrens.

Development of lands within the pine barrens inevitably results in an increase of runoff water following precipitation. Runoff water originating from the roofs of buildings, from driveways and from parking lots is usually discharged directly to subsurface dry wells situated on the building lot. However, the great volume of runoff water originating from paved streets and roads is usually discharged by pipes into large open recharge basins or sumps, as also sometimes occurs in regard to parking lots. These basins may cover several acres and require the removal of considerable native vegetation to the detriment of the site's

ecology and aesthetics. (Source: Pre-existing text relocated from original 5.3.3.5., addition of parking lots is a staff recommendation)

Standards

5.3.3.4.1 Nondisturbance buffers

Development proposals for sites containing or abutting freshwater or tidal wetlands or surface waters ~~must~~ shall be separated by a nondisturbance buffer area which shall be ~~no less than~~ at least that required by the New York State Tidal Wetland, Freshwater Wetland, or Wild, Scenic and Recreational Rivers Act or local ordinance, whichever is greater. The Commission reserves the right to require a stricter and larger nondisturbance buffer as warranted in a specific instance. Distances shall be measured horizontally from the wetland edge as mapped or determined by the New York State Department of Environmental Conservation, ~~field delineation or~~ and/or the local municipality, as applicable. ~~Development P~~projects which require variances or exceptions from these state laws, local ordinances and associated regulations, shall meet all requirements imposed in a permit by the New York State Department of Environmental Conservation or a municipality in order to be deemed to have met the requirements of this standard. 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 ~~Town~~ permit(s) and satisfaction of any conditions on such permits. (Source: Staff recommendations for clarification.)

~~5.3.3.4.2 Buffer delineations, covenants and conservation easements~~

~~Buffer areas shall be delineated on the site plan, and covenants and/or conservation easements, pursuant to the New York State Environmental Conservation Law and local ordinances, shall be imposed to protect these areas as deemed necessary.~~ (Source: Relocated to Section 5.3.3.6, "Coordinated design for open space and habitat protection", with text change to broaden its applicability, and restated as 5.3.3.6.7.)

Section 5.3.3.4.1 refers to wetlands which are under the jurisdiction of either NYSDEC and/or a municipality, generally one of the three Towns. NYSDEC regulates wetlands primarily through two statutes, Article 24 of the ECL, which pertains to Freshwater Wetlands, and Article 25 of the ECL, which pertains to Tidal Wetlands. NYSDEC's implementing regulations for these two statutes are chiefly 6 NYCRR Part 663 (Freshwater Wetlands) and 6 NYCRR Part 661 (Tidal Wetlands). The Town of Brookhaven regulates wetlands via Chapter 81 of its Town Code, the Town of Riverhead via Chapter 107 of the Town Code and the Town of Southampton via Chapter 325 of the Town Code.

There are certain situations, though, in which a wetland may not be subject to review by either NYSDEC or one of the three Towns. For example, in the case of freshwater wetlands, NYSDEC

generally only regulates those which have been officially mapped by that agency and those which have not been mapped may not be regulated. Also, there may be certain circumstances in which a wetland in one of the three towns is either not regulated by the Town or the jurisdiction of the Town is not recognized or is disputed, as in the case of another governmental entity such as a library district, school district, etc. As a result, there may be limited situations which arise in which neither NYSDEC nor a Town have regulatory authority over a wetland.

Accordingly, if a project application meets all of the following criteria:

- The project site contains a wetland, and
- The wetland on the project site is not regulated by NYSDEC or a Town, and
- The project requires a Hardship Waiver from the Commission

does the Commission wish to add language to CLUP Section 5.3.3.4.1, Nondisturbance buffers, that in such limited cases the Commission would assert jurisdiction over the wetland (or not)?