

CLUP Worksession Discussion Outline

2/13/12

1. Ministerial Additions and Revisions and Minor Refinements

It is believed the itemized proposed amendments to the following sections, as enumerated below, are considered either ministerial or minor as they include “codification “ or memorializing of past resolutions, policies and decisions issued by the Commission regarding these matters but which were never formally added to the CLUP. Or, these propose minor text additions or revisions which are intended to clarify, to minimize misunderstanding or misinterpretation, to update outdated information, to make corrections and for general “housekeeping.”

CHAPTER 4: REVIEW PROCEDURES AND JURISDICTION

- Section 4.1 – Introduction: *insertion of one word for clarity*
- Section 4.3.3 – Commission: *clarifying plan definition of*
- Section 4.3.4 – Act: *clarifying plan definition of*
- Section 4.3.6 – Central Pine Barrens: *clarifying plan definition of*
- Section 4.3.7 – Core Preservation Area: *clarifying plan definition of*
- Section 4.3.8 – Compatible Growth Area: *clarifying plan definition of*
- Section 4.5.1 – Development located with the Core Preservation Area: *minor title addition*
- Section 4.5.1.1 - Core development Lead agency assertion: *minor title addition*
- Section 4.5.1.2 - Core development filing of an application: *minor title addition*
- Section 4.5.1.3 - Core development Hearing: *minor title and text addition*
- Section 4.5.1.4 - Core development Statutory basis for the Commission’s decision: *minor title addition*
- Section 4.5.1.5 - Core development Decisions, default decisions and extensions of decisions: *minor title addition*
- Section 4.5.2.2 - Nonconforming development Changes in consistent projects: *minor title addition*
- Section 4.5.2.4 - Nonconforming development Review standards: *minor title addition*
- Section 4.5.2.5 - Nonconforming development Hearing: *minor title addition*
- Section 4.5.2.6 - Nonconforming development Decisions, default decision and extensions of decisions: *minor title addition*
- Section 4.5.3.1 - Assertion development Assertion of jurisdiction by the Commission over the project: *minor title addition*
- Section 4.5.3.4 - Assertion development Hearing: *minor title addition*
- Section 4.5.3.5 - Assertion development Decision on projects over which jurisdiction is asserted by the Commission: *minor title addition*
- Section 4.5.3.6 - Assertion development Default decisions: *minor title and text addition*
- Section 4.5.6 – Adoption of sense resolutions: *new text which memorializes current Commission practice*

CHAPTER 5: STANDARDS AND GUIDELINES FOR LAND USE

- Section 5.3.3 – Intent and Compatible Growth Area standards: *minor text addition*
- Section 5.3.3.2 - Reserved: *new blank section reserved for future need yet to be defined*

CHAPTER 6: PINE BARRENS CREDIT PROGRAM

- Section 6.3.1.1 - Development yield factors and computation for single family residentially zoned property: *minor text additions to acknowledge existing Southampton Town exceptions for old filed map parcels*
- Section 6.3.1.1.4 - If zoning allows one dwelling unit per forty thousand square feet: *minor text additions to acknowledge existing Southampton Town exceptions for old filed map parcels*
- Section 6.3.1.1.5 - If zoning allows one dwelling unit per sixty thousand square feet: *minor text additions to acknowledge existing Southampton Town exceptions for old filed map parcels*
- Section 6.3.1.1.6 - If zoning allows one dwelling unit per eighty thousand square feet: *minor text additions to acknowledge existing Southampton Town exceptions for old filed map parcels*
- Section 6.3.1.1.7 - If zoning allows one dwelling unit per one hundred twenty thousand square feet: *minor text additions to acknowledge existing Southampton Town exceptions for old filed map parcels*
- Section 6.3.1.1.9 - If zoning allows one dwelling unit per two hundred thousand square feet: *minor text additions to acknowledge existing Southampton Town exceptions for old filed map parcels*
- Section 6.3.1.1.12 - A fractional allocation of a Pine Barrens Credit shall be rounded upward: *minor single word addition*
- Section 6.3.1.1.13 - If zoning allows one dwelling unit per thirty thousand square feet: *codifying prior Commission resolution*
- Section Figure 6-1 - Pine Barrens Credit Program development yield factors for single family residentially zoned property: *minor text additions for clarification*
- Section Figure 6-1a - Pine Barrens Credit allocation examples for single family residentially zoned property: *minor addition to title for clarity*
- Section 6.3.3.4 - Partially improved parcels shall receive a decreased allocation: *minor text addition for clarity (was part of Commission 3/16/11 hearing)*
- Section 6.3.3.5 - In situation where a development project site contains a parcel that is split: *codification of prior Commission resolution (was part of Commission 3/16/11 hearing)*
- Section 6.3.3.6 - Pine Barrens Credits can only be allocated to partially developed parcels when the parcel size is at least twice the minimum: *codification of prior Credit Clearinghouse resolution (was part of Commission 3/16/11 hearing)*
- Section 6.3.3.7 - In allocating Credits to portion(s) of an otherwise eligible parcel: *new text added for additional clarification (was part of Commission 3/16/11 hearing)*
- Section 6.3.3.8 - No allocation of Credits shall be made to any parcel or portion thereof upon which an ownership overlap condition: *codification of Current Commission practice and prior policy ruling (was part of Commission 3/16/11 hearing)*
- Section 6.4.2.1 - Brookhaven Pine Barrens Credit Program overview: *minor text addition for clarity*
- Section 6.4.2.2 - Brookhaven “As of Right” Residential Overlay district specifications: *minor addition to title*
- Section 6.4.2.2.2 - Brookhaven total yield: *correction to text*
- Section 6.4.2.2.3 - Brookhaven approval subject to criteria: *minor text addition for clarity*
- Section 6.4.2.4.1 - Transfers from Hydrogeologic Zone 3 to Hydrogeologic Zone 6: *minor text addition for clarity*
- Section 6.4.2.4.3 - Brookhaven townwide policy: *minor text addition for clarity*
- Figure 6-3 - Brookhaven Residential Overlay district as of right receiving area map: *minor text addition to map title for clarity*
- Figure 6-4 - Riverhead as of right receiving area map Area “A” and Area “B”: *minor text addition to map titles for clarity*

- Section 6.4.4.1 - Overview of the Southampton Pine Barrens Credit Program: *minor text addition to codify policy established in Commission decision*
- Figure 6-7 - Southampton as of right receiving area map: *minor text additions to map titles for clarity*
- Figure 6-8 - Southampton receiving area parcels: *correction to receiving area parcel list to eliminate Core areas*
- Section 6.4.5 - Suffolk County Sanitary Code: *minor revision to text to reflect correct status of SCDHS authority*
- Section 6.6.2.2 - Authority of the Board of Advisors: *revised and additional text for clarity*
- Section 6.6.2.9 - To issue Letters of Interpretation: *to clarify and codify current Credit Clearinghouse policies and procedures*
- Section 6.7.3.3 - Extensions of deadline for filing an appeal: *codification of current practice*
- Section 6.7.3.5 – The Commission shall decide the appeal: *codification of current practice*
- Section 6.7.3.4 - LOI appeal hearing: *codification of current practice*
- Section 6.7.4 - Detail of Step 1: Applying for a Pine Barrens Credit Certificate: *minor text addition to title for clarity*
- Section 6.7.4.1 - After receiving a Letter of Interpretation: *elimination of outdated text to codify current practice*
- Section 6.7.4.3 - The Clearinghouse will provide to the applicant a conservation easement: *codification of current Commission practice*
- *** Section 6.7.4.4 - The Clearinghouse will utilize a current survey: *codification of prior Commission resolution (text is fine but section really belongs in LOI section and therefore should be moved to Section 6.7.3.)*
- Section 6.7.4.5 - The Commission will issue and update policies on title insurance: *codification of current Commission practice*
- Section 6.7.5.3 - The conservation easement will then be recorded with the County Clerk: *additional text for clarity*
- Section 6.7.6.1 - Expiration of the Letters of Interpretation: *minor revision to reflect current practice and need*
- ***Section 6.7.6.3 - Notification of the Clearinghouse of Pine Barrens Credit usage: *codification of current Commission practice (prior to approving add phrase “used as security” as this also reflects current experience and practice)*
- ***Section 6.7.6.4 - Tax status of the subject property: *codification of prior Commission decision (leave text as is in original 1995 version)*
- Section 6.7.6.6 - Issuance of a full Pine Barrens Credit for certain roadfront parcels: *codification of existing Commission policy and prior decisions*
- Section 6.7.6.7 - Minimum Pine Barrens Credit allocation: *minor text addition for clarity*
- Section 6.8 - Registry, Reports, and Other Publicly Accessible Information for Pine Barrens Credits: *minor text addition to title for clarity*
- Section 6.8.1 - Establishment and maintenance of the Pine Barrens Credit Registry: *revisions to reflect current Commission practice*
- Section 6.8.3 - Distribution of the annual report: *revision to reflect current Commission practice*

2. Chapter 6: Non-residential Pine Barrens Credit allocations

Pine Barrens Credit allocations are made for properties located in the Core. Heretofore, the only formal schedule for Pine Barrens Credit allocations was the existing allocation schedule for properties in the Core which have residential zoning. Although in a prior resolution the Commission adopted a schedule for non-residentially zoned properties, e.g. commercially and industrially zoned parcels, the CLUP has not been formally amended to include one. The proposed schedule, previously the subject of the Commission’s March 16, 2011 public hearing, is similar to the one previously adopted by the Commission on August 7, 1996. The proposed new amendments would revise the following sections:

- Section 6.3.2 - Allocation for property zoned for other than single family residential use
- Figure 6-2 - Pine Barrens Credit program development yield factors for property zoned for other than single family residential use

3. Chapter 5: Mandatory 15% Pine Barrens Credit Redemption requirement

A new Section 5.3.3.5 entitled “*Development in the Compatible Growth Area that requires Pine Barrens Credit Redemptions*” has been proposed. This was first before the Commission as a subject of the Commission’s March 16, 2011 public hearing. The proposed new standard would mandate Pine Barrens Credit redemption when a project increases land use development density or intensity in an amount equal to fifteen percent (15%) of the increase.

4. Upgrading of Guidelines to Standards

In the current CLUP, guidelines are not mandatory for non-conforming development projects (those which require a hardship waiver from the Commission) but they are mandatory for development projects for which the Commission has asserted jurisdiction, projects within Critical Resource Areas (CRAs) and Developments of Regional Significance (DRSs). Existing guidelines are listed below:

5.3.3.1 Nitrate-nitrogen

Guideline

5.3.3.1.3 Nitrate-nitrogen goal

5.3.3.3 Wellhead protection

Guideline

5.3.3.3.2 Private well protection

5.3.3.4 Wetlands and surface waters

Guideline

5.3.3.4.4 Additional nondisturbance buffers

5.3.3.5 Stormwater runoff

Guidelines

5.3.3.5.2 Natural recharge and drainage

5.3.3.5.3 Ponds

5.3.3.5.4 Natural topography in lieu of recharge basins

5.3.3.5.5 Soil erosion and stormwater runoff control during construction

5.3.3.8 Soils

Guidelines

5.3.3.8.1 Clearing envelopes

5.3.3.8.2 Stabilization and erosion control

5.3.3.8.3 Slope analyses

5.3.3.8.4 Erosion and sediment control plans

5.3.3.8.5 Placement of roadways

5.3.3.8.6 Retaining walls and control structures

5.3.3.9 Coordinated design for open space management
{ TC \14 "5.3.3.9 Coordinated design for open space management}

Guidelines

- 5.3.3.9.2 **Clustering**
- 5.3.3.9.3 **Protection of dedicated open space**

5.3.3.10 Agriculture and horticulture

Guideline

- 5.3.3.10.1 **Best management practices**

5.3.3.11 Scenic, historic and cultural resources{ TC \14 "5.3.3.11 Scenic, historic and cultural resources}

Guidelines

- 5.3.3.11.1 **Cultural resource consideration**
- 5.3.3.11.2 **Inclusion of cultural resources in applications**
- 5.3.3.11.3 **Protection of scenic and recreational resources**
- 5.3.3.11.4 **Roadside design and management**

As part of the amendments to the CLUP, it has been proposed that all of the currently existing guidelines be upgraded to standards. Some guidelines have been combined with others and language to a number of these has been revised, in some cases to specify that upgraded guidelines applies only to particular circumstances and projects. Such is the case with the revised guideline, now standard, 5.3.3.1.3 pertaining to Nitrate-nitrogen in which the new standard states the 2.5 mg/l nitrogen requirement applies only to projects for which the Commission has asserted jurisdiction, projects within CRAs and DRs.

The Commission may wish to discuss this overall proposed change at this point but may also wish to examine the transformation of each individual guideline into a standard as each chapter 5 section is reviewed to determine whether or not the guideline is warranted or not.

5. Clearing Standard alteration in Section 5.3.3.6

A number of changes are proposed to the clearing standard proposed for section, 5.3.3.6, which is proposed to be entitled "*Coordinated design for open space, habitat and soil protection.*" One of the most important is in Figure 5-1 which contains the clearing schedule, as based on zoning. More restrictive clearing percentages are proposed for a number of the single-family residential categories and the large-lot single family residential category with some questions raised as to whether or not this is necessary and if it will cause undue hardship for the development community. The existing "Commercial, Industrial and Other or Mixed Use" category is proposed to be replaced with a more universal category which also includes publicly-owned properties. A more restricted overall clearing percentage is also proposed for this revised category. Some questions were raised about the prefatory portion of this section, including suggestions for it to be rewritten. Additional clarifications are also added to Figure 5-1 to emphasize that the zoning category in existence at the inception of the original CLUP in 1995 is to be used.

We seek the Commission's position and direction in regard to these matters.

6. Open Space, Unfragmented Open Space, Habitat and Conservation Design Standards

Currently, Standard 5.3.3.6.2 entitled “**Unfragmented open space**” states that:

“Subdivision and site design shall support preservation of natural vegetation in large unbroken blocks that allow contiguous open spaces to be established when adjacent parcels are developed. Subdivision and site designs should also be configured in such a way so as to prioritize the preservation of native pine barrens vegetation to the maximum extent practicable.”

Section 5.3.3.9 entitled “**Coordinated design for open space management**”{ TC \14 "5.3.3.9 Coordinated design for open space management} states that:

“Comprehensive, coordinated planning and design of development proposals within the pine barrens is essential to ensure maximum preservation of open space and habitat linkages.”

However, heretofore, there was never an absolute, empirical definition as to what the quantity of the preserved open space should be (i.e. what is “to the extent practicable”).

Therefore, in addition to addressing clearing of vegetation, the revised Section 5.3.3.6 also proposes to resolve this question for the first time by defining the obverse or “flip” side of the clearing equation regarding that land which is not be cleared which is sometimes known as open space. Part of this proposal includes adding a column to the clearing percentages in Figure 5-1 to show the amount of open space required. Another matter concerns the configuration and location of the open space area so as to maximize large contiguous blocs of such preserved areas, especially adjacent to preserved open space on other properties nearby. Developing a definition of open space and what can and cannot be counted as open space is another open question (e.g. should landscaped or turf areas be counted toward the required open space quantity). Suggestions have also been made as to whether or not diagrams and actual pictographic figures should be added to aid developer and reviewers in determining whether or not a project adheres to the standard. Finally, the theory of conservation design, its utility and its applicability to this portion of the CLUP has been raised.

7. General Condition/Preamble to all Standards

In both the technical worksessions and the Advisory Committee’s December 2011 meeting, it was noted that several of the reworked standards contain a requirement which states something to the effect that “*Compliance with this standard shall only be determined to exist by the Commission upon its receipt of a final, official copy of the (permit or approval from other applicable agency).*” There was a recommendation that this requirement be placed at the beginning of the land use standards section and made applicable to all standards that follow to avoid repetition.

However, some concern was raised as to the enforceability of this requirement (e.g. would the Commission be required to issue “conditional” approvals, conditioned on the receipt of final approvals from all other agencies) and difficulties applicants may have in meeting this requirement. In addition, concern was expressed that this language presupposes that only the

Commission would be applying this requirement when in reality the Towns and other applicable municipalities would be employing this as well.

8. Revisions to ECL Article 57 suggested as a result of amendments proposed to the CLUP

Several proposed amendments to the CLUP led to the suggestion that perhaps there should first be an amendment to ECL Article 57 to ensure the Commission has the authority to undertake certain actions. One key area concerns the question of whether or not an application is complete or incomplete. Currently, Article 57 applies the term “complete application” only to a subset of applications, such as those for a Development of Regional Significance. The term complete application is not used for the largest category of application (by volume), those projects which do not conform to one or more standards. A concern is that if Commission staff reject an application as incomplete or continue to find certain application materials deficient, the 120-day Commission review time may be exceeded and an applicant could request a default. It is thought, therefore, that applying the complete application requirement to all applications would obviate this occurrence and would ensure a minimum standard of quality for all applications. DEC has just such a requirement that was originally enacted by the Legislature in the 1970s.

Several other Article 57 amendments have been suggested including clarifications to the development/non-development criteria, including the criteria regarding subdivision into 5 or fewer lots.

9. Soils and Topography – Section 5.3.3.8

Clarifications and guidance needed in regard to maximum slope allowed to be disturbed, rewriting of section and references to be used. Some changes propose to be more restrictive than current requirements, as in the case of the proposal to prohibit disturbance or creation of slopes greater than 15%.

10. Developments of Regional Significance (DRSs) – Chapter 4

Clarification and guidance is needed in regard to proposed definitions (which includes an expansion of the types of projects and development to be defined as DRSs), thresholds, scope, exemptions and mining.

11. STPs – Chapter 5, Section 5.3.3.1.2

Provide guidance regarding location of discharges in regard to the Central Pine Barrens and whether or not an amendment to Article 57 may be required.

12. Wetlands, Surface Waters and Stormwater Runoff, Chapter 5, Section 5.3.3.4

Clarification and direction is sought in regard to establishment of buffers, restoration of buffers, revegetation, impervious surfaces, natural recharge and how to count and interplay

of EPA Phase 2 requirements, including implementation by New York State and municipalities.

13. Wellhead and Groundwater Protection, Chapter 5, Section 5.3.3.3

Guidance and direction is needed in regard to obtaining access to and utilizing Source Water Assessment Plan (SWAP) maps and data as replacement for current requirements.

14. Traffic, Chapter 4 Regarding DRS and Chapter 5, Section 5.3.3.12

Commission's authority to regulate traffic needs to be discussed.

15. Scenic and Cultural Resources, Chapter 5, Section 5.3.3.11

Previously, this section was comprised of guidelines. Additional clarity and direction is sought, including extent to which these criteria are desired and if current language should be rewritten, including whether or not it should be made more empirical.

16. Birds, Chapter 5, Section 5.3.3.7.2

New proposal to address bird impacts on buildings and other structures. LIBI and others have indicated concerns in regard to current proposal, particularly the standard and have suggested additional research, discussion and deliberation.

17. Other Changes Not Included Above

18. New Proposals which were not proposed as part of the original proposed amendments

These are recommendations which were not originally proposed as part of these amendments and which were suggested for the first time during the technical worksessions. These include:

- Fees
- Generic Exemption for the EPCAL property to be incorporated throughout Chapters 4, 5 and 6