



Central Pine Barrens Comprehensive Land Use Plan Amendments

Commission Worksession
February 15, 2012

CPB CLUP Amendments

- ECL Article 57, Section 57-0121.13 calls for review of the Central Pine Barrens Comprehensive Land Use Plan (CLUP) every 5 years and, if warranted, adoption of amendments.
- In September of 2010, Commission staff brought forward to the Commission a comprehensive subset of a body of amendments to the land use and development sections of the CLUP (Chapters 4, 5 and 6) which had been proposed, drafted and compiled over the past 7 years.
- In the Fall of 2010, Commission staff provided an overview to the Commission of this amendment subset.
- The Commission subsequently outlined a process to be followed which consisted of undertaking a series of worksessions with the professional planning and environmental staffs of each of the member entities to be followed by review, consideration and action by the Commission.



CPB CLUP Amendments

- A series of 4 such worksessions was conducted at Southaven County Park on:

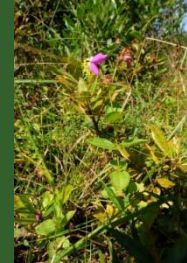
- November 8, 2010
- December 3, 2010
- September 27, 2011
- November 29, 2011



- Each proposed amendment was vetted, aired, discussed and debated. Background materials, including previously adopted Commission resolutions and prior recommendations of advisory groups including the Advisory Committee and Credit Clearinghouse, were provided. As a result of some of the worksessions, additional research was undertaken by Commission staff and disseminated to participants at subsequent worksessions.
- Issues for which consensus was not achieved, issues considered unresolvable at the staff level, proposals which required additional clarification and review or matters which were considered new items not previously proposed were placed in a “parking lot” during the technical worksessions with the November 29, 2011 meeting devoted to discussion, framing and potential resolution of these matters.
- Parallel to this effort, in 2011 the Commission broke out a subset of this subset, conducted a public hearing on a Mandatory Pine Barrens Credit Redemption amendment to Chapter 5 and a proposed non-residential credit allocation schedule and several clarifying text changes to allocation criteria in Chapter 6. These specific amendments are still pending final action.
- The Advisory Committee subsequently met on December 15, 2011 to review the “Parking Lot” issues and provided its recommendations to Commission

Where Are We Now In the CLUP Amendment Process?

- Guidance, input and direction is sought from the Commission as to how to dispense with each proposed amendment.
- Possible dispositions may include:
 - Adopting the amendment as proposed
 - Altering the amendment and then adopting the revised version
 - Directing staff to revise a section
 - Requesting additional staff review and analysis
 - Seeking legal analysis from counsel
 - Retaining the existing section language and rejecting the proposed amendment
 - Proposing an amendment to ECL Article 57 instead, which may in turn provide the legal foundation to then adopt or provide the impetus for a subsequent section amendment



1. Ministerial Additions and Revisions and Minor Refinements

- Specific proposed amendments considered either ministerial or minor due to:
 - “Codifying “ or Memorializing past Commission resolutions, policies and decisions
 - Or, propose minor text additions or revisions for clarity, reduction of misunderstandings, update outdated information, correct errors and implement general “housekeeping.”
- Encompasses specific sections from Chapters 4, 5 and 6



Chapter 6: Non-residential Pine Barrens Credit allocations

- The only formal schedule for Pine Barrens Credit allocations in the CLUP is the existing allocation schedule for residentially-zoned properties in the Core. Although a prior Commission resolution adopted a non-residential (i.e. commercial and industrial) schedule, 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

Chapter 5: Mandatory 15% Pine Barrens Credit Redemption requirement

- 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.
- The redemption formula is tied to sewage flow.

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:
 - 5.3.3.1.3 Nitrate-nitrogen goal (*in section 5.3.3.1 Nitrate-nitrogen*)
 - 5.3.3.3.2 Private well protection (*in section 5.3.3.3 Wellhead protection*)
 - 5.3.3.4.4 Additional nondisturbance buffers (*in section 5.3.3.4 Wetlands and surface waters*)
 - 5.3.3.5.2 Natural recharge and drainage (*in section 5.3.3.5 Stormwater runoff*)
 - 5.3.3.5.3 Ponds (*in section 5.3.3.5 Stormwater runoff*)
 - 5.3.3.5.4 Natural topography in lieu of recharge basins (*in section 5.3.3.5 Stormwater runoff*)
 - 5.3.3.5.5 Soil erosion and stormwater runoff control during construction (*in section 5.3.3.5 Stormwater runoff*)
 - 5.3.3.8.1 Clearing envelopes (*in section 5.3.3.8 Soils*)
 - 5.3.3.8.2 Stabilization and erosion control (*in section 5.3.3.8 Soils*)
 - 5.3.3.8.3 Slope analyses (*in section 5.3.3.8 Soils*)
 - 5.3.3.8.4 Erosion and sediment control plans (*in section 5.3.3.8 Soils*)
 - 5.3.3.8.5 Placement of roadways (*in section 5.3.3.8 Soils*)
 - 5.3.3.8.6 Retaining walls and control structures (*in section 5.3.3.8 Soils*)
 - 5.3.3.9.2 Clustering (*in section 5.3.3.9 Coordinated design for open space management*)
 - 5.3.3.9.3 Protection of dedicated open space (*in section 5.3.3.9 Coordinated design for open space management*)
 - 5.3.3.10.1 Best management practices (*in section 5.3.3.10 Agriculture and horticulture*)
 - 5.3.3.11.1 Cultural resource consideration (*in section 5.3.3.11 Scenic, historic and cultural resources*)
 - 5.3.3.11.2 Inclusion of cultural resources in applications (*in section 5.3.3.11 Scenic, historic and cultural resources*)
 - 5.3.3.11.3 Protection of scenic and recreational resources (*in section 5.3.3.11 Scenic, historic and cultural resources*)
 - 5.3.3.11.4 Roadside design and management (*in section 5.3.3.11 Scenic, historic and cultural resources*)

Upgrading of Guidelines to Standards (cont'd)

- The CLUP amendments propose that all current 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.
- Example of a revised guideline, now standard, is 5.3.3.1.3 pertaining to Nitrate-nitrogen. This 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.
- 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 upgrade is warranted or not.

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.*”
- A significant change 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 (e.g. underlying zoning would no longer be applied to publicly-properties to determine the clearing percentage allowed; instead the use would define this). 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 proposed to be 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.
- Commission position and direction in regard to these matters is sought.

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

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

“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**” 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.”

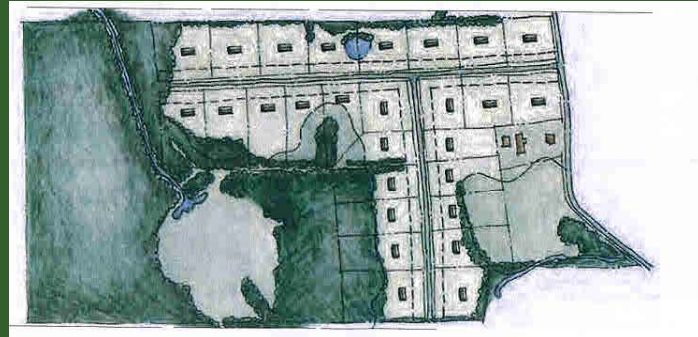
- There is no absolute definition of what quantity of preserved open space should be preserved (i.e. what is “to the extent practicable?”).
- The revised Section 5.3.3.6 proposes to resolve this question by defining the obverse or “flip” side of the clearing equation regarding that land which is not 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.

Open Space, Unfragmented Open Space, Habitat & Conservation Design Standards (cont'd)

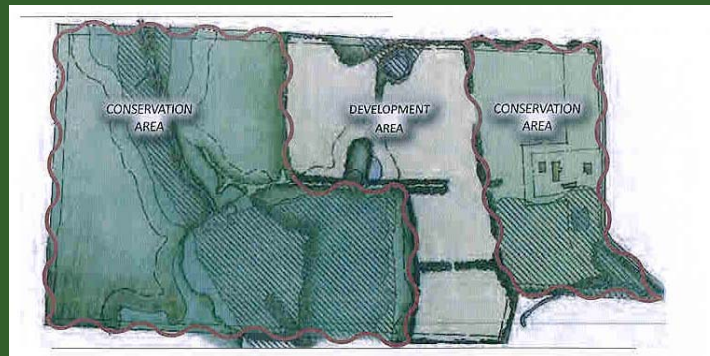
- Questions remain as to how to determine the configuration and location of open space area to maximize creation large contiguous blocs, especially adjacent to preserved open space on other properties nearby.
- Need to develop an open space definition. What can and cannot be counted as open space ? (e.g. 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.

Conservation Design Standards

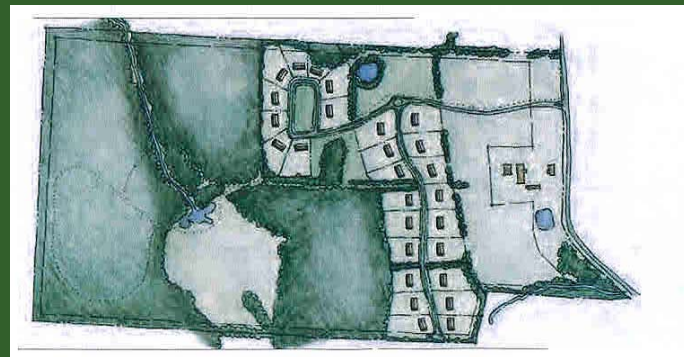
Conventional design



Conservation design requires first identifying and accounting for key natural resources



The resulting conservation designed layout maximizes natural resource protection while allowing for development



General Condition/Preamble to all Standards

- Several of the proposed reworked standards contain a requirement which states (paraphrased):

“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.

- Some concern raised regarding enforceability (e.g. would the Commission be required to issue “conditional” approvals, conditioned on the receipt of final approvals from all other agencies), difficulties applicants may have in meeting this requirement and additional burden placed on staff.
- Additional concern expressed the 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.

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

- 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 concern is 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.
- Concern 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 receive a default approval. 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 such a requirement , through Legislative enactment in the 1970s.
- Several other Article 57 amendments suggested including clarifications to the development/non-development criteria, such as subdivision into 5 or fewer lots.

Soils and Topography – Section 5.3.3.8

- Clarifications and guidance needed in regard to maximum slope allowed to be disturbed.
- Clarifications and guidance needed in regard to rewriting of section.
- Clarifications and guidance needed in regard to 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%.

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)
- Clarification and guidance is needed in regard to thresholds.
- Clarification and guidance is needed in regard to scope
- Clarification and guidance is needed in regard to exemptions
- Clarification and guidance is needed in regard to mining.

STPs – Chapter 5, Section 5.3.3.1.2

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

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.

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.

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

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

Scenic and Cultural Resources, Chapter 5, Section 5.3.3.11

- Currently, this section is 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.

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.

Other Changes Not Included Above

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

