

**CLUP Chapters 4, 5, and 6 Technical Staff Worksession
Items held in the “Parking Lot”
Monday, November 8, 2010, 9:00 a.m., Southaven Lodge**

The following items were discussed at the November 8, 2010 CPB CLUP amendment worksession with technical and professional staff and are those for which no consensus was achieved and/or those for which questions or concerns were raised.

Chapter 4: Review Procedures and Jurisdiction

1. Section 4.3.1 - Complete Application

Application Fees for Hardships and DRS Applications

A new amendment was introduced, which was not previously proposed as part of this current set of CLUP amendments, to require application fees for certain projects. The following enumerates the proposal:

- Application Fees are not currently required, although Central Pine Barrens Commission has authority to require fees.
- Fees recommended for Hardship Exemption, Critical Resources Area and Development of Regional Significance (DRS) applications.
- Fees not recommended for requests for Determinations of Non-Jurisdiction or for Letters of Interpretations (LOIs).
- Fees intended to offset administrative/technical review costs, in light of fiscal constraints.
- Language would be inserted in CLUP, granting the Commission the authority to require reasonable application fees, with fee schedules to be adopted by Commission resolution.
- Fee amounts to be commensurate with staff time needed for application review.

**2. Section 4.3 - Definitions (including 4.3.1 Complete Application)
Section 4.5 - Review Procedures**

Consider legislative change in and statutory amendments to ECL Article 57 that require time frames for review of applications and default approvals and completeness of applications are subject to and in compliance with ECL Article 8 (SEQRA). It was felt

that without such statutory authority, an applicant could obtain a default approval even if their application did not comply with the CLUP's completeness requirements.

Accordingly, amendments proposed in the following sections would be tabled until such time as the aforementioned legislative changes were enacted:

Section 4.3.1 Complete Application

Section 4.5.2.1 Nonconforming development: Filing of an application

Section 4.5.2.3 Nonconforming development: Completeness deadline

3. Section 4.3.5.1 - Interpretation of "nondevelopment" provision 57-0107(13)(xiii)

Propose tabling second sentence of amendment which states: *"the Commission further clarifies that Article 57-0107(13)(xiii), as a whole, shall be applied to any compliant parcel once and shall not be applied to parcels that are capable of further subdivision which result from this land division or subdivision."* (Parcels existing as of 1993.)

Section Article 57-0107(13)(xiii) states that non-development includes *"...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 requirements of the existing zoning for the subject parcel."* The proposed CLUP amendment sentence was based on a Commission resolution dated 7/19/06 which was prompted by the matter of the Middle Island Country Club.

4. Section 4.3.11 - Tall Structure

Commission Counsel to provide a legal interpretation to Town of Riverhead as to whether or not the Commission has authority to regulate tall structures

5. Section 4.4.1 - Development located within the Core Preservation Area

Section 4.4.2 - Nonconforming development within the Compatible Growth Area

Section 4.4.3 - Compatible Growth Area development over which Commission asserts...

Section 4.4.4 - Compatible Growth Area development within Critical Resource Areas

Section 4.4.5 - Developments of Regional Significance

A new amendment was introduced by the Town of Riverhead, which was not previously proposed as part of this current set of CLUP amendments, requesting that a clause be added to the end of the aforementioned sections which states: *"except all properties delineated in Section 9.2 of this Plan entitled Calverton Redevelopment Policy."* It was also requested that this language be inserted throughout the CLUP wherever development language exists and/or wherever development standards are described. Town of Riverhead was to submit a written document which described these proposed amendments.

6. Section 4.5.3 - Development located within the CGA which has been subjected to a

petition by the Commission pursuant to ECL Section 57-0123(2) “assertion development”

Clarify assertion of jurisdiction as it relates to “development” definition. Does an assertion of jurisdiction mean that the Commission is also simultaneously declaring an application to be development or not (e.g. as in the case of Trap and Skeet). That is, does an “assertion of jurisdiction” mean that the commission is also asserting that a project is development?

7. Section 4.5.5.1 - Definition of a Development of Regional Significance

As per Section 57-0123 (2)(a) (*implementation of the Central Pine Barrens comprehensive land use plan*) the commission “...shall have jurisdiction to review and approve ...developments of regional significance as identified in the land use plan.”

Clarify how and why thresholds are proposed for traffic impacts (e.g. for special events, transient events) and occupancy thresholds (e.g. large-scale recreational or entertainment proposals) as Town professional staff are already reviewing such impacts. Traffic criteria need to be re-visited and revised. Vehicle trip generation criteria may perhaps be deleted, and/or clarifying language may be inserted, stating that such criteria is simply being used as an indicator of potential project size and environmental impacts as the intent is not to have the Commission regulate traffic in and of itself. Special events may also be excluded from regulation. References should be provided.

It is important to note that any Commission review of a development project’s potential to result in significant traffic impacts will only occur in the case of an applicant’s submission of a proposal for a project defined by the CLUP as a Development of Regional Significance. For your use, the following excerpts from ECL 57 contain general references that relate to potential traffic impacts as a result of a project:

§ 57-0121 (5)(b)(iv):

(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: (iv) general location and extent of existing or currently planned major transportation, utility, and community facilities;

§ 57-0121 (2)(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.

§ 57-0121 (4)(c) discourage piecemeal and scattered development;

§ 57-0121 (4)(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;

§ 57-0121 (4)(f) allow appropriate growth consistent with the natural resource goals pursuant to this article.

§ 57-0121 (6)(u)(i) and (ii): 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. Section 4.5.5.1 - Definition of a Development of Regional Significance

Clarify definition of the threshold regarding mining activity (i.e., at what point does excavation and removal of excess material from a site, as in a commercial agreement; removal of material for creation of a pond, as in residential development; as well as clearing for mining, constitute a DRS or development in general (as per Article 57).

“New mining” needs to be defined, as it relates to pre-existing, non-conforming mining sites.

9. Section 4.5.5.1 - Definition of a Development of Regional Significance

Clarifying language is needed, stating that a project is defined as a DRS, if any of the listed thresholds and criteria are satisfied.

10. Section 4.5.5.1 - Definition of a Development of Regional Significance

PDD criteria may need to be re-visited and revised. PDD definitions should be cross referenced to mandatory credit redemption requirement (proposed Section 5.3.3.5 in Chapter 5) and within the DRS definition section such as to proposed definitions 1 (Non-Residential Floor Area), 2 (Traffic), 5 (Residential) and 6 (Mixed Use Floor Area). Should there be incentives for Pine Barrens Credit redemption, such as exclusions from DRS review, if a certain threshold of Pine Barrens Credits are redeemed? Are there concerns that regardless of the level of Pine Barrens Credit redemption, projects of a certain size and scale must always receive DRS review?

Chapter 6: Pine Barrens Credit Program

1. Section 6.3.2 - Allocation for property zoned for other than single family residential use

Check the Defense Institutional District allocation. This zoning district existed in the Town of Riverhead in 1995 when the CLUP was adopted.

2. Section 6.5.2.3 - Pine Barrens Credit receiving capacity Plan certification requirement
Section 6.5.2.4 - Certification of Pine Barrens Credit receiving capacity plan upon utilization of designated as of right receiving areas

A request was made by Town of Southampton that the proposed PBC receiving capacity plan certification requirements, as set forth in the aforementioned new sections, be deleted from the CLUP. These sections would have required that the Towns certify to the Commission continued compliance with the required 1:1 sending to receiving credit ratio, both through an annual report, and within 90 days of approving any increases in density within designated as-of-right receiving areas. This section is also believed to be unnecessary by the Town for areas within its borders, in light of the Town's proposed new receiving areas in the Riverhead School District as well as its recent updated credit analysis. The Town also believes the proposed language is unnecessarily accusatory and inflammatory and sends the wrong message to the public, as it may imply that the credit program is flawed. The Town of Southampton indicated that the ultimate goal should be a coordinated credit database which the public can access to obtain updates. The Town also believes that the Credit Clearinghouse and Commission office need to work in cooperation with the three Towns in order to achieve this goal.

However, another participant asked how would the public know whether or not a Town had affected its designated receiving districts.

The Credit Program tracks all Credits from "cradle to grave" in a database, which means Credits are tracked from the date the easement is placed on the parcel and the Credit certificate is issued, and includes any transfer or sale of the Credit (conveyance) and its final disposition or use (redemption). This information is available in pdf form on the Commission's website at http://www.pb.state.ny.us/chart_pbc_main_page.htm under the section entitled Credits, Certificates and Parcels with Conservation Easements. There is a separate pdf file for each of the following: certificates issued, certificates conveyed, credit certificates redeemed (also includes the Suffolk County tax map number of the parcel where the Credit(s) have been redeemed), and parcels protected by Credit program easement. The database does not track the status of receiving areas as this is not feasible without receiving constant updates of this information from the Towns as to when a receiving area is developed using Credits or is developed without the use of Credits.

3. Section 6.5.5 - Permanency of Pine Barrens Credit Redemptions

Concern was expressed in regard to the second paragraph of this section as to whether or not it would constrain a Town from taking enforcement, such as when a property had been used illegally and in violation of a Town's codes.

4. Section 6.7.3.6 - New Section

A proposal was made to add a new section to the CLUP which provided additional notification in regard to legal remedies available. The proposed language stated: "*A Property owner may challenge the Commission determination (appeal) in the New York State Supreme Court pursuant to Article 78 of New York State Civil Practice Laws and Rules*"