

## **4. Review Procedures and Jurisdiction**

### **4.1 Introduction**

The following sets forth the procedures to be used by the Central Pine Barrens Joint Planning and Policy Commission for review of development in the Central Pine Barrens as provided for in the Long Island Pine Barrens Protection Act.

This process does not exempt any development project from the provisions of the New York State Environmental Quality Review Act, the National Environmental Policy Act and other regulatory requirements and applicable federal, state, county, or local laws. For development that adheres to the standards for land use contained herein and the Statement of Findings adopted upon completion of the Generic Environmental Impact Statement prepared pursuant to the Act, the cumulative impact analysis pursuant to the State Environmental Quality Review Act will be deemed to be satisfied.

### **4.2 Intent**

It is the intent of the Central Pine Barrens Joint Planning and Policy Commission to provide for effective environmental review of proposed development in the Central Pine Barrens, and to avoid duplicate reporting and review requirements and unnecessary delays. Municipalities are encouraged to develop streamlined review procedures for development proposals that conform with the land use and development standards contained herein. It is the further intent of the Commission to provide timely reviews and input which are concurrent with the New York State Environmental Quality Review Act, the National Environmental Policy Act and other regulatory requirements and applicable federal, state, county, or local laws.

These procedures are intended to coordinate Commission guidance and provide regulatory review of development located in the Central Pine Barrens area as defined and delineated in the New York State Environmental Conservation Law, Article 57. The Central Pine Barrens is a "critical environmental area" pursuant to New York State Environmental Conservation Law Article 8 and its implementing regulations.

For development subject to review pursuant to the Act and defined in this Plan, the Commission shall hold only one (1) hearing on a development proposal, unless the Commission by majority vote deems it necessary to hold an additional hearing.

### **4.3 Definitions**

Within this Central Pine Barrens Comprehensive Land Use Plan, the following terms and phrases shall have the meaning listed.

#### **4.3.1 Complete application**

A "complete application" shall consist of the following:

1. a completed standard application form, as supplied by the Commission;
2. a copy of the local municipal application package with all supporting materials, and any approvals that have been issued as of the date of the application; and,
3. as required and accepted with respect to scope and content, a Long Form Environmental Assessment or Draft Supplemental draft supplemental Environmental Impact Statement, in addition to any other documentation prepared or issued pursuant to the State Environmental Quality Review Act or equivalent local laws, as of the date of the application.

#### **4.3.2 Plan**

"Plan" shall mean the Central Pine Barrens Comprehensive Land Use Plan.

#### **4.3.3 Commission**

"Commission" shall mean the Central Pine Barrens Joint Planning and Policy Commission as defined within the New York Environmental Conservation Law Article 57.

#### **4.3.4 Act**

"Act" shall mean New York State Environmental Conservation Law, Article 57 as may be amended from time to time.

#### **4.3.5 Development**

"Development" shall have the meaning set forth in Section 57-0107 (13) of the Act.

##### **4.3.5.1 Interpretation of “nondevelopment” provision 57-0107(13)(xiii)**

The Commission hereby clarifies that Article 57-0107(13)(xiii) only regulates the lot area requirement as indicated by the square footage required within the applicable zoning district and does not include any other dimensional variances associated with the subdivision. The Commission further clarifies that Article 57-0107(13)(xiii), as a whole, may only be applied to a parcel once and may not be applied to subdivide a resultant parcel created by its prior application.

#### **4.3.6 Central Pine Barrens**

"Central Pine Barrens" shall have the meaning set forth in Section 57-0107 (10) of the Act.

#### **4.3.7 Core Preservation Area**

"Core Preservation Area" shall have the meaning set forth in Section 57-0107 (11) of the Act.

#### **4.3.8 Compatible Growth Area**

"Compatible Growth Area" shall have the meaning set forth in Section 57-0107 (12) of the Act.

#### **4.3.9 Project Site**

"Project site" shall be defined as all parcels and portion(s) of parcel(s) located within the Central Pine Barrens, whether contiguous or not, that are associated with a proposed development.

#### **4.3.10 Self Restoration**

Self Restoration: A natural restoration process to allow existing seed banks, roots, etc. in the soil to re-colonize a previously disturbed site. Under this process, active monitoring and management for invasive plant species is undertaken for a prescribed period of years to prevent invasive plants from overtaking the restoration area.

#### **4.3.11 Tall Structure**

"Tall structure" shall be defined as any structure, whether a new structure or one resulting from a height extension of an existing structure, which meets or exceeds a total height of seventy-five (75) feet from average unaltered grade of the project site.

### **4.4 Development subject to review by the Commission**

The following types of development shall be the subject of review by the Commission as provided for in the Act:

#### **4.4.1 Development located within the Core Preservation Area**

This includes all development proposed within the Core Preservation Area.

#### **4.4.2 Nonconforming development within the Compatible Growth Area**

This includes all development within the Compatible Growth Area that does not conform to the standards for land use set forth in Volume 1, Chapter 5 of this Plan.

#### **4.4.3 Compatible Growth Area development over which the Commission asserts jurisdiction**

This includes development within the Compatible Growth Area for which the Commission, by an individual Commissioner's petition and a majority vote, asserts review jurisdiction as provided for in the Act.

#### **4.4.4 Compatible Growth Area development within Critical Resource Areas**

This includes all development within the Compatible Growth Area which is also within a Critical Resource Area as provided for in the Act and defined in this Plan.

#### **4.4.5 Developments of Regional Significance**

This includes development within the Compatible Growth Area which constitutes a Development of Regional Significance as provided for in the Act and defined in this Plan.

### **4.5 Review procedures**

#### **4.5.1 Development located within the Core Preservation Area (“Core development”)**

The Act requires the prohibition or redirection of development in the Core Preservation Area and sets forth the jurisdiction of the Commission over, and certain requirements for processing, hardship exemptions. The Act authorizes the Commission, by majority vote, to waive strict compliance with this Plan upon finding that such waiver is necessary to alleviate hardship according to the conditions and finding of extraordinary hardship or compelling public need pursuant to subdivision 10 of Section 57-0121 of the Act.

##### **4.5.1.1 Core development: Lead agency assertion**

The Commission shall seek lead agency status for development proposed in the Core Preservation Area pursuant to the State Environmental Quality Review Act.

##### **4.5.1.2 Core development: Filing of an application**

The application shall be filed with the Commission by the project sponsor. A municipal application to the Town is not required for an application under this subsection.

##### **4.5.1.3 Core development: Hearing**

Within thirty (30) days of an application being submitted to the Commission, a public hearing on the development shall be held. At this time, the project sponsor and any other person shall have an opportunity to comment on the development proposal.



#### **4.5.1.4 Core development: Statutory basis for the Commission's decision**

The decision by the Commission on the application shall be based upon the standards in subdivision 10 of Section 57-0121 of the Act, which describes the criteria for determining that a hardship has been demonstrated.

#### **4.5.1.5 Core development: Decisions, default decisions and extensions of decisions**

The time within which the Commission must decide a Core Preservation Area hardship application for which a negative declaration has been made by the Commission pursuant to Environmental Conservation Law Article 8 is one hundred twenty (120) days from receipt of such application. The time within which the Commission must decide a Core Preservation Area hardship application for which a positive declaration has been made by the Commission pursuant to Environmental Conservation Law Article 8 is sixty (60) days from issuance of a findings statement by the Commission pursuant to Environmental Conservation Law Article 8. If the Commission fails to make a decision within the aforesaid time periods, the development shall be deemed to be approved by the Commission, unless such time periods are extended by mutual agreement of the applicant and the Commission.

#### **4.5.2 Development located within the Compatible Growth Area which does not conform to the standards contained in Volume 1, Chapter 5 of the Plan (“nonconforming development”)**

The Act sets forth the jurisdiction for the Commission's review of development within the Compatible Growth Area of the Central Pine Barrens area. Such review includes development that does not conform to the standards in Volume 1, Chapter 5 of this plan. The Act also authorizes the Commission, by majority vote, to waive strict compliance with the standards upon finding that such waiver is necessary to alleviate a demonstrated hardship. The Commission shall not review conformance or nonconformance with guidelines in Volume 1, Chapter 5 in evaluating hardship provisions under this section.

##### **4.5.2.1 Nonconforming development: Filing of an application**

For projects that are not consistent with the standards, a complete application shall be filed with the Commission by the project sponsor.

##### **4.5.2.2 Nonconforming development: Changes in consistent projects**

If, during the local review, a proposed development project is modified such that the local municipality finds that it becomes inconsistent with any standard in Volume 1, Chapter 5, the local municipality shall notify the Commission and the project sponsor immediately. Upon receipt of said notice, the project sponsor shall be notified that an application for hardship relief as provided herein shall be required. Alternatively, the project sponsor shall be afforded an opportunity to revise the development project so that it is consistent with the standards.

#### **4.5.2.3 Nonconforming development: Completeness determination deadline**

The Commission shall make a determination as to whether an application is complete within thirty (30) days of receipt of the application.

#### **4.5.2.4 Nonconforming development: Review standards**

The Commission's standard for review pursuant to this section shall be the hardship standard provided in Section 57-0123(3) of the Act, as amended from time to time.

#### **4.5.2.5 Nonconforming development: Hearing**

Within thirty (30) days of the application being deemed complete, a public hearing on the development proposal shall be held. The Commission shall provide the project sponsor and any other person an opportunity to be heard as provided for, and in accordance with the procedures provided in the Act.

#### **4.5.2.6 Nonconforming development: Decisions, default decisions and extensions of decisions**

The time within which the Commission must make a decision on a Compatible Growth Area application which does not conform to the standards contained within Volume 1, Chapter 5 of the Plan is one hundred twenty (120) days from said application being deemed complete. If the Commission fails to make a decision within the aforesaid time period, the application shall be deemed to be approved by the Commission, unless such time period is extended by mutual agreement of the applicant and the Commission.

#### **4.5.3 Development located within the Compatible Growth Area which has been subjected to a petition by the Commission pursuant to ECL Section 57-0123(2) (“assertion development”)**

The Act sets forth the jurisdiction for the Commission's review of development within the Compatible Growth Area of the Central Pine Barrens. The Act authorizes the Commission, through petition by an individual commissioner and an affirmative vote of the Commission, to review any project which has a significant adverse impact on the goals of the Plan.

##### **4.5.3.1 Assertion development: Assertion of jurisdiction by the Commission over the project**

Upon a majority vote of the commissioners, the Commission may assert review jurisdiction over said project.

#### **4.5.3.2 Assertion development: Hearings and assertion of review jurisdiction**

Assertion of review jurisdiction by the Commission shall not be deemed to require a public hearing unless the Commission, by a majority vote, so specifies.

#### **4.5.3.3 Assertion development: Review standards**

Should the Commission assert review jurisdiction pursuant to this subdivision, the jurisdiction of the Commission shall be limited to compliance with the standards and guidelines set forth in Volume 1, Chapter 5 of this Plan which the Commission identified in the vote on jurisdictional assertion. The Commission shall review conformance with guidelines set forth in Volume 1, Chapter 5 of this Plan as per Section 57-0123(2)(a) of the Act.

#### **4.5.3.4 Assertion development: Hearing**

The Commission shall request necessary information from the project sponsor. Within sixty (60) days of the Commission asserting review jurisdiction, a public hearing on the development proposal shall be held, unless the Commission by majority vote deems a hearing unnecessary, in accordance with the procedures provided in the Act. If a hearing is held, the Commission shall provide the project sponsor and any other person an opportunity to be heard as provided for, and in accordance with, the procedures provided in the Act.

#### **4.5.3.5 Assertion development: Decision on projects over which jurisdiction is asserted by the Commission**

The decision of the Commission on any project which is before it by virtue of the assertion of jurisdiction by the Commission shall be made within one hundred twenty (120) days of the date of said assertion of jurisdiction.

#### **4.5.3.6 Assertion development: Default decisions**

In the event that the Commission fails to make a decision within one hundred twenty (120) days, the development proposal shall be deemed to be approved by the Commission.

#### **4.5.4 Development located within the Compatible Growth Area which is also located within a Critical Resource Area (“CRA development”)**

The Act sets forth the jurisdiction for the Commission's review of development within the Compatible Growth Area of the Central Pine Barrens. Such review includes development that is located in Critical Resource Areas. The Act also authorizes the Commission, by majority vote, to waive strict compliance with this Plan upon finding that such waiver is necessary to alleviate a demonstrated hardship.

#### **4.5.4.1 CRA development: Definition of Critical Resource Areas**

Commission review pursuant to this section shall apply only to the Critical Resource Areas identified in Figures 4-1 through 4-7.

Section 57-0121(6)(e) of the Act requires that this Plan include “Identification and mapping of critical resource areas within the Central Pine Barrens area which are of regional or statewide significance. Such areas shall include fragile lands, significant shorelands of rivers, lakes, and streams; freshwater wetlands; significant wildlife habitats; unique scenic or historic features; and rare or valuable ecosystems and geological formations which are of regional or statewide significance.”

#### 4.5.4.1.1 Brookhaven Town Critical Resource Areas

Figure 4-1 depicts existing Critical Resource Areas in the Town of Brookhaven.

<b>Figure 4-1: Summary of Critical Resource Areas in the Central Pine Barrens</b> <i>(Resolved by the Commission at its 12/14/94 meeting. All sites are within the Compatible Growth Area.)</i>		
<b>Name and Description</b>	<b>Tax Map Number and Approximate Size</b>	<b>Feature(s)</b>
Carmans River West Middle Island West bank of Carmans River, opposite Carmans River East site. <i>See B1 on Figure 4-2</i>	0200-528-06-16.2 Approx. 24.5 acres.	<i>Sending area.</i> Steep slopes (entire site), cultural resources, atypical wetland vegetation association on upland portion, exploitably vulnerable species (e.g., prickly pear, spotted wintergreen, trailing arbutus, mountain laurel), large hardwood forest, DEC freshwater wetland (B-3), riverfront open space. Ownership: Suffolk County.
Carmans River East Middle Island East bank of Carmans River, opposite Carmans River West site. <i>See B2 on Figure 4-2</i>	0200-548-02-1.4 and 1.6 Approx. 28 acres.	<i>Sending area.</i> Steep slopes (especially from 60 foot contour to the west and the river, steeply sloped swales (possibly an early Holocene drainage formation), cultural resources with high archaeological potential, and extensive freshwater wetlands with associated vegetation (e.g., pepperbush, red maple, black gum) exist on this site. Ownership status: Unknown.
South Manorville Site 1 South of Hot Water Street, west of CR 111. <i>See B3 on Figure 4-3</i>	0200-510-02-01, 2.2, 3,4 Approx. 82 acres.	The partially county-owned Cranberry Pond to the immediate north of this site is a documented tiger salamander habitat, and this site contains much of the upland portion of that habitat (generally estimated as approximately 1000 feet from the southern shore). This hilly site also contains the area known as Punk's Hole, a Revolutionary War bivouac site. Ownership: Suffolk County.
South Manorville Site 2 South of Hot Water Street, west of CR 111. <i>See B4 on Figure 4-3</i>	0200-561-01-12, 13 Approx. 18 acres.	This site enhances the adjacent open space tracts. Ownership: Suffolk County .

Figure 4-2: Map of Critical Resource Areas along the Carmans River

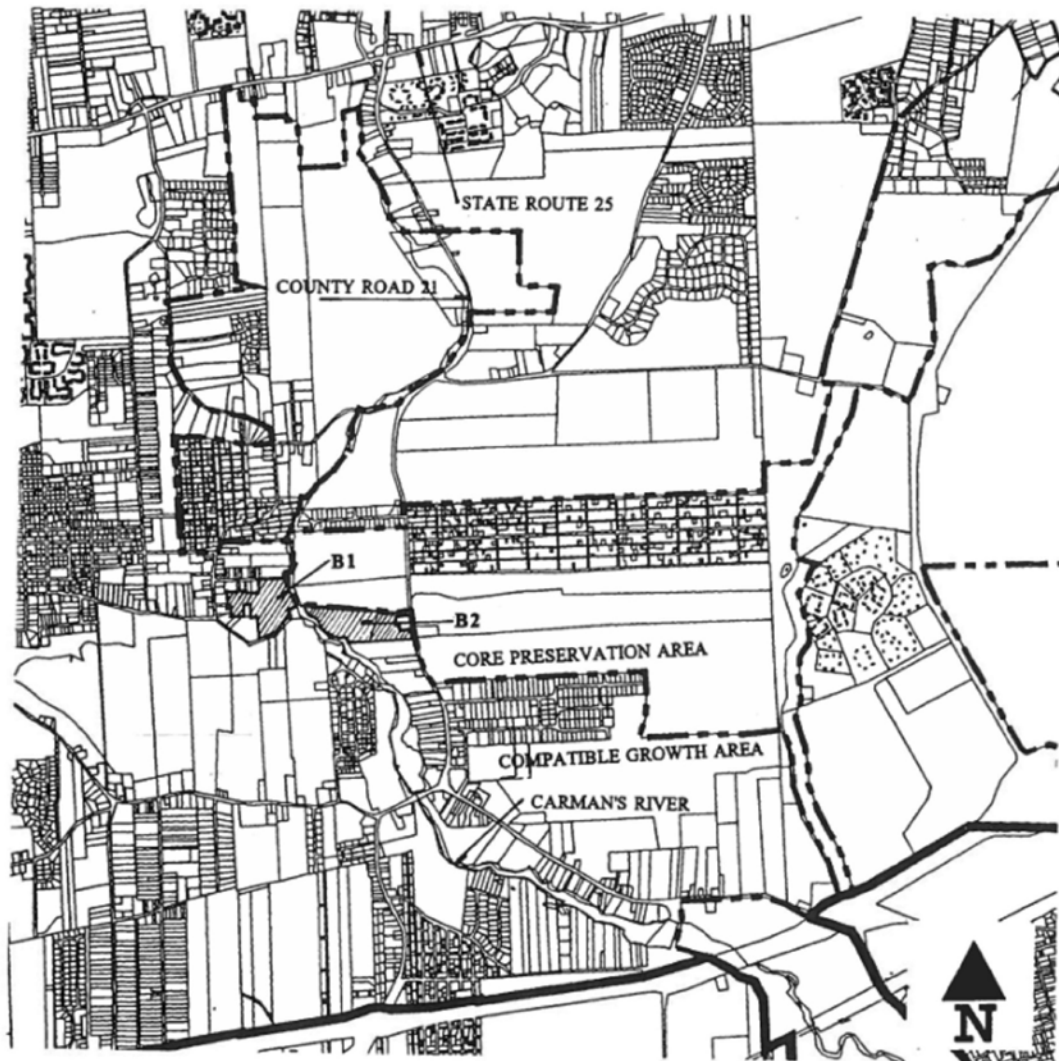
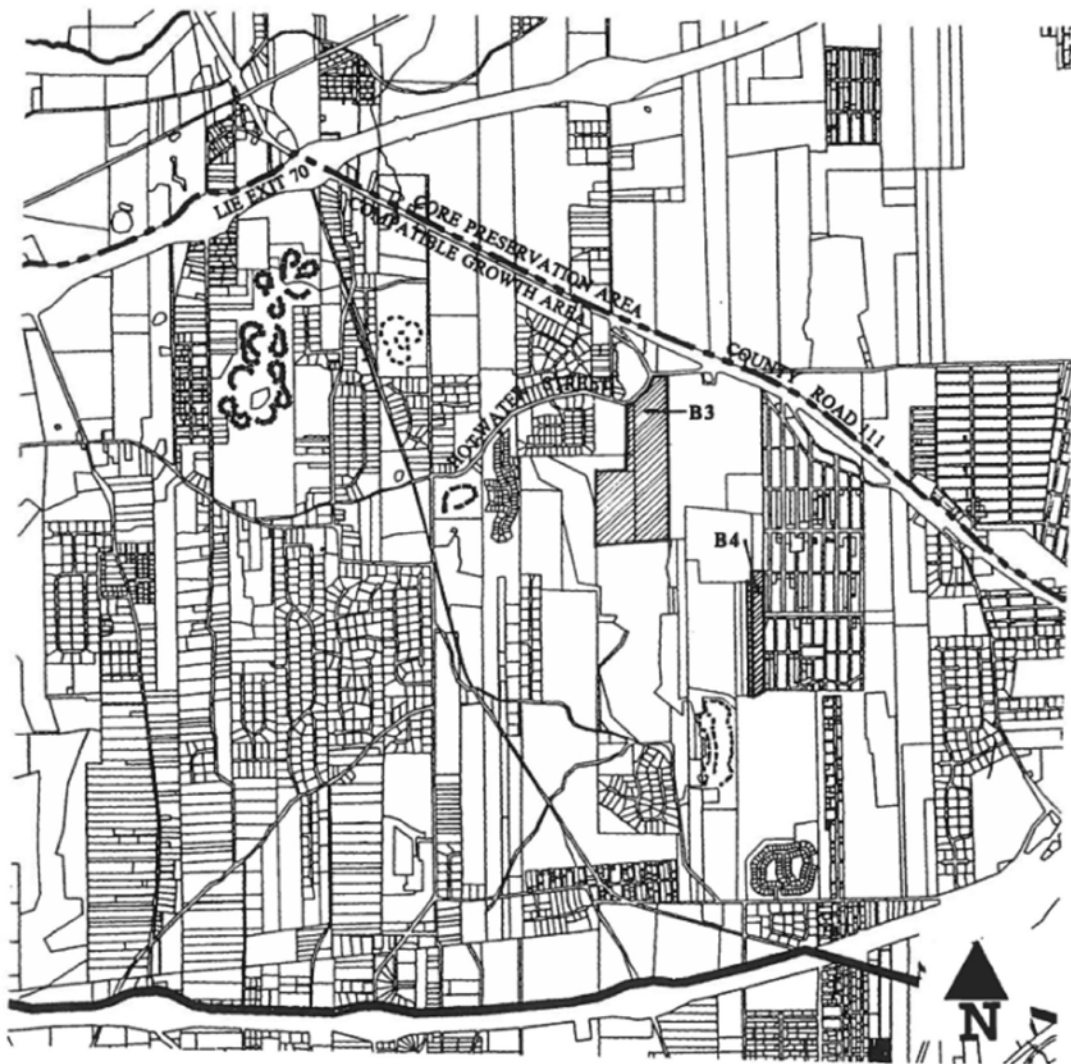


Figure 4-3: Map of Critical Resource Areas south of County Route 111



#### 4.5.4.1.2 Southampton Town Critical Resource Areas

There are ten Critical Resource Areas within Southampton Town's CGA, identified in Figure 4-2, totaling approximately 1,585 acres.

<b>Figure 4-4: Critical Resource Areas in the Southampton Town CGA</b>		
<b>Name and Description</b>	<b>Tax Map Number(s) and Approximate Size</b>	<b>Feature(s)</b>
Flanders Ponds Southwest corner of CR 105 and NYS Rt 24 <i>See S1.</i>	0900-142-01-1.42, 53, 54.3  Approx. 86.3 acres	Extensive freshwater wetlands, adjacency to Core Area, large block of preserved lands, rare fauna and flora, critical Peconic Bay watershed lands.
Pleasure Drive West Flanders South of NYS Rt 24, west of Pleasure Drive. <i>See S2.</i>	0900-167-03-09.1  Approx. 86.2 acres.	Archaeological areas, extensive freshwater wetlands, pristine pine and oak woods, rare fauna and flora, contiguous block of preserved lands.
Red Creek Site 1: Wehrman Pond South side of Red Creek Rd, opposite Red Creek Pond. <i>See S3.</i>	900 - 151 - 1 - 6.1 and 10.5 p/o 900 - 151 - 1 - 10.3 and 10.4 900 - 151 - 1 - 6.2  Approx. 18.8 acres.	<b><i>This is also a voluntary Pine Barrens Credit Sending area.</i></b> Wehrman Pond and the adjacent uplands comprise an eastern mud turtle habitat.
Red Creek Site 2 North side of Old Squires Rd, west of Red Creek Road. <i>See S4.</i>	900 - 151 - 4 - 1 through 7 900 - 173 - 2 - 1.3 through 1.11  Approx. 45.8 acres.	Mixed deciduous forest complements existing open space on adjacent <u>Core</u> parcels.
Red Creek Site 3 West of Red Creek Road <i>See S5.</i>	0900-173-02-8.2, 8.3  Approx. 40.9 acres.	Part of the corridor for the proposed Paumanok Path segment heading towards Squire Pond.
Red Creek Site 4 North of NYS Rt 24 and South of Old Squires Road. <i>See S6.</i>	900 - 205 - 1 - 1.1 through 1.3, 3 900 - 173 - 1 - 1.1 through 1.3  Approx. 77.2 acres.	Open space area complementing adjacent parkland.



<p>Munn's Pond Vicinity Hampton Bays North side of Montauk Highway, adjacent to east side of Munn's Pond parkland, west of Bellows Pond Road. <i>See S7.</i></p>	<p>0900-221-02-10</p> <p>Approx. 9.8 acres.</p>	<p>Open space area buffering the adjacent Munn's Pond site.</p>
<p>Henry's Hollow Region East Quogue Lies between Sunrise Highway and the railroad tracks <i>See S8.</i></p>	<p>900 - 220 - 1 - 103 p/o 900 - 220 - 1 - 112 900 - 220 - 1 - 53, 56 through 87 900 - 220 - 1 - 88.1, 88.2, 89 p/o 900 - 220 - 1 - 90 900 - 220 - 1 - 98.10 through 98.16, and 98.2 through 98.9 900 - 220 - 1 - 99.1 900 - 220 - 1 - 99.10 through 99.14 p/o 900 - 220 - 1 - 99.15 900 - 220 - 1 - 99.16 through 99.18 900 - 220 - 1 - 99.2 900 - 220 - 1 - 99.20 p/o 900 - 220 - 1 - 99.21 p/o 900 - 220 - 1 - 99.23 p/o 900 - 220 - 1 - 99.24 900 - 220 - 1 - 99.3 through 99.9 900 - 251 - 1 - 10 through 35 900 - 251 - 1 - 36.1 900 - 251 - 1 - 37 through 49 900 - 251 - 1 - 4 through 9 900 - 251 - 1 - 50.1, 50.2 900 - 251 - 1 - 51 through 69 900 - 251 - 1 - 90 p/o 900 - 251 - 1 - 91.1</p>	<p>Buck moth habitat generally north of 100 foot contour.</p>

	<p>900 - 251 - 1 - 92.1 through 92.8  900 - 251 - 1 - 96, 98  900 - 251 - 3 - 1 through 83  900 - 251 - 4 - 1 through 7  900 - 251 - 5 - 1 through 43  900 - 289 - 2 - 1 through 5  900 - 289 - 2 - 19 through 39  (p/o refers to part within CGA)</p> <p>Approx. 539.6 acres.</p>	
<p>Dwarf Pines  Gabreski Airport  Westhampton  Contains the  northwesternmost  corner of Gabreski  Airport.  <i>See S9.</i></p>	<p>p/o 900 - 312 - 1 - 4.2</p> <p>Approx. 23.96 acres.</p>	<p>Dwarf pine plains.</p>
<p>Upland Forest  Westhampton  East of Speonk-  Riverhead Rd and 5th  Ave., north of Montauk  Highway.  <i>See S10.</i></p>	<p>900 - 305 - 1 - 6, 7.1  900 - 330 - 1 - 3.1, 4.1  900 - 329 - 1 - 1, 2.1, 3, 4, 5, 6,  7, 8.1  p/o 900 - 276 - 3 - 1  p/o 900 - 276 - 3 - 2  p/o 900 - 276 - 3 - 5.2  p/o 900 - 305 - 1 - 4  p/o 900 - 305 - 1 - 5  p/o 900 - 329 - 1 - 9  p/o 900 - 329 - 1 - 10</p> <p>(p/o refers to that part located in  CGA and not in a receiving  area)</p> <p>Approx. 151.9 acres.</p>	<p>Open space on northerly portion of  site complements adjacent open space.</p>

Figure 4-5: Critical Resource Areas in Riverside - Flanders area of Southampton Town

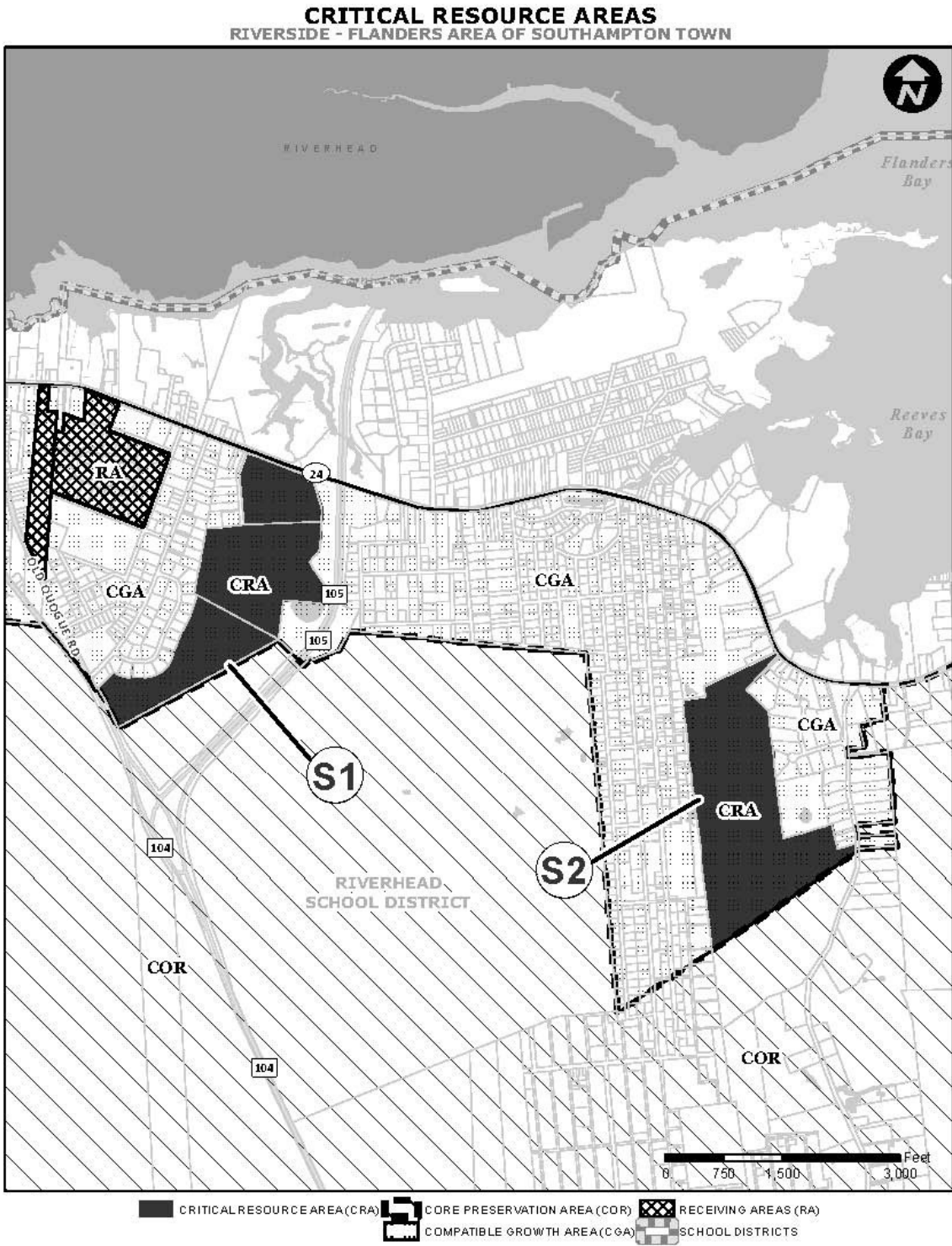
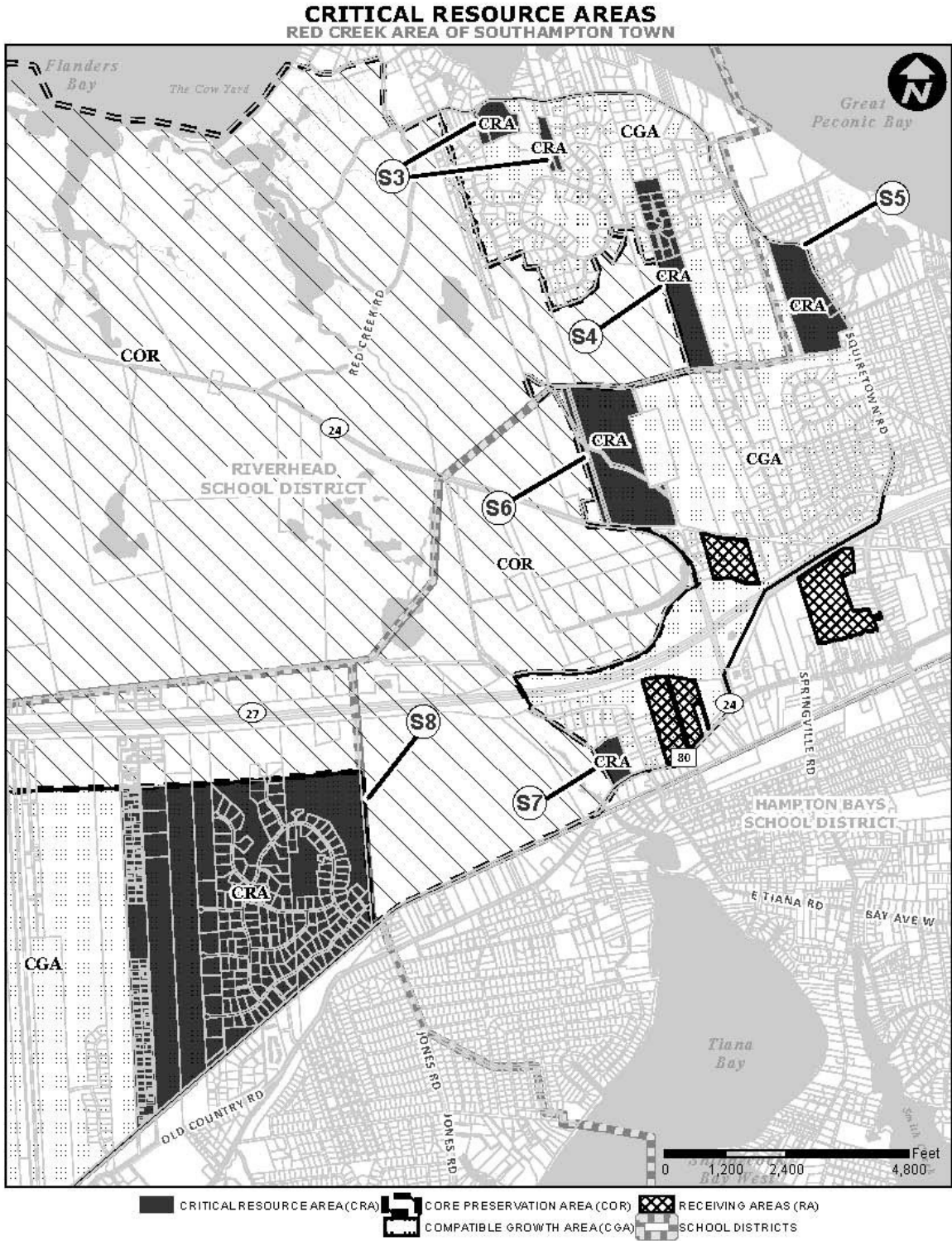
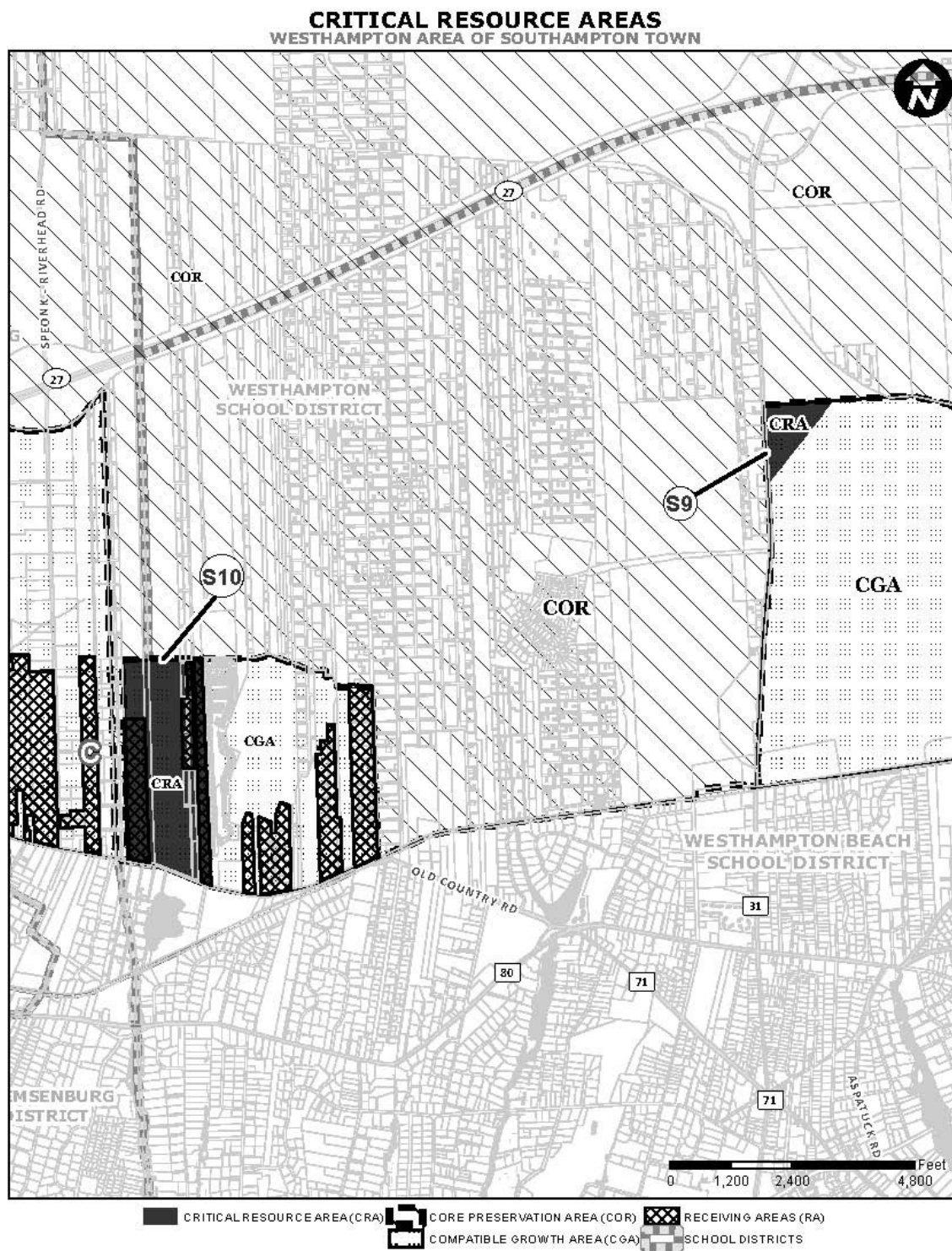


Figure 4-6: Critical Resource Areas in Red Creek area of Southampton Town



**Figure 4-7: Critical Resource Areas in Westhampton area of Southampton Town**



#### **4.5.4.2 CRA development: Review standards**

The Commission's review pursuant to this section shall be limited to compliance with the standards and guidelines set forth in Volume 1, Chapter 5 of this Plan and the protection for the critical resource feature(s) designated in the Plan. The Commission shall review conformance with guidelines set forth in Volume 1, Chapter 5 of this Plan.

#### **4.5.4.3 CRA development: Application and hearing**

A complete application shall be filed by the project sponsor as defined in 4.3.1. Within sixty (60) days of the application being deemed complete, a public hearing on the development proposal shall be held, unless the Commission by majority vote deems a hearing unnecessary, in accordance with the procedures specified in the Act. If a hearing is held, the Commission shall provide the project sponsor and any other person an opportunity to be heard as provided for, and in accordance with the procedures provided in the Act.

#### **4.5.4.4 CRA development: Decision on the application**

A decision on the application shall be made by the Commission within one hundred twenty (120) days of said application being deemed complete.

#### **4.5.4.5 CRA development: Default decisions**

In the event that the Commission fails to make a decision within one hundred twenty (120) days, the development proposal shall be deemed to be approved by the Commission.

#### **4.5.5 Developments of Regional Significance located within the Compatible Growth Area (“DRS development”)**

The Act sets forth the jurisdiction for the Commission's review of development within the Compatible Growth Area of the Central Pine Barrens. This includes the review of development that meets the threshold(s) constituting a Development of Regional Significance as enumerated in the Plan. The Act also authorizes the Commission, by majority vote, to waive strict compliance with this Plan upon finding that such waiver is necessary to alleviate a demonstrated hardship.

##### **4.5.5.1 DRS development: Definition of a Development of Regional Significance**

The following developments are defined as Developments of Regional Significance

1. A non-residential project that proposes development which exceeds 300,000 square foot of gross floor area, or an addition to an existing commercial, industrial, office, educational institution or health care facility development where the addition is 100,000 square feet or more

and that addition causes the total square footage to exceed 300,000 square feet.

2. A residential project that proposes the development of the development of two hundred (200) residential development units or more or causes the total number of existing residential units on a project to exceed 200 units. A unit shall include any mixture of residential dwelling units such as attached single family units or homes, detached single family units or homes, apartments, condominiums, cooperative units.

3. A mixed use project that proposes a mixed use development of 400,000 square feet or greater of any type of use.

4. A project that causes groundwater to be open to the atmosphere and be subject to surface runoff if proposed surface water area meets or exceeds the three acre threshold pursuant to the requirements of New York State Environmental Conservation Law Article 23, Title 27 and its implementing regulations 6 NYCRR Parts 420-425 pertaining to Mined Land Reclamation. Lined ponds that do not expose subsurface groundwater.

Development projects which meet all of the following three criteria are not Developments of Regional Significance:

1. the development project is situated within a designated receiving area pursuant to this Plan, and
2. the development project results from a transfer of development rights from a sending area as defined in this Plan, and
3. the development project contains a minimum of fifteen percent (15%) of residential units, or a minimum of fifteen percent (15%) of commercial, industrial or office use square footage, which is a direct result of the transfer of development rights.

Additionally, the Calverton redevelopment project described in Chapter 9 is defined to not be a Development of Regional Significance.

#### **4.5.5.2 DRS development: Review standards**

The Commission's review pursuant to this section shall be limited to compliance with the standards and guidelines set forth in Volume 1, Chapter 5 of this Plan. The Commission shall review conformance with guidelines set forth in Volume 1, Chapter 5 of this Plan.

#### **4.5.5.3 DRS development: Application and hearing**

A complete application shall be filed by the project sponsor as defined in 4.3.1. Within sixty (60) days of the application being deemed complete, a public hearing on the development proposal shall be held unless the Commission by majority vote deems a hearing unnecessary, in accordance with the procedures provided in the act. If a hearing is held, the Commission shall

provide the project sponsor and any other person an opportunity to be heard as provided for, and in accordance with the procedures provided in the Act.

#### **4.5.5.4 DRS development: Decision on the application**

A decision on the application shall be made by the Commission within one hundred twenty (120) days of said application being deemed complete.

#### **4.5.5.5 DRS development: Default decisions**

In the event that the Commission fails to make a decision within one hundred twenty (120) days, the development proposal shall be deemed to be approved by the Commission.

#### **4.5.6 Adoption of sense resolutions by the Commission for development projects**

With respect to a development project undergoing review pursuant to the State Environmental Quality Review Act (SEQRA) by another government agency and which is also a pending application being processed and reviewed by the Commission, the Commission may elect to adopt a sense resolution expressing its review and evaluation to date of such project and forward the same to those other agencies. The primary purpose of such a sense resolution shall be to facilitate the completion of the other agencies' SEQRA review and thereby enable the Commission to make a final decision on such a development project.



## **5. Standards and Guidelines for Land Use**

### **5.1 Central Pine Barrens overall area**

The following sets forth the standards and guidelines for land use within the Central Pine Barrens.

Standards are to be implemented, and are enforceable, by municipalities, municipal agencies and the Commission, or any other agency with enforcement powers within the Central Pine Barrens. Discretionary decisions regarding standards are to be made by the Commission, under the provisions set forth in Volume I, Chapter 4 of this Plan. These standards are in addition to all other regulatory requirements and do not exempt any entity from complying with applicable federal, state, county, or local laws.

Guidelines are to be utilized by municipalities and municipal agencies with discretionary decisions determined at the municipal level, unless a project is before the Commission due to its location within a Critical Resource Area, because it is a Development of Regional Significance or because there was an assertion of jurisdiction as described in Volume I, Chapter 4 of this Plan.

The municipalities may adopt standards and guidelines which are more restrictive than those contained in this Plan.

Pre-existing structures or uses that comply with existing laws, including legal non-conforming uses, may be continued in accordance with their current approved use(s).

### **5.2 Core Preservation Area**

The Core Preservation Area is to be preserved by a strategy of government land acquisition, the transfer of development rights, conservation easements, gifts, land swaps, and donations. Development in the Core Preservation Area shall be prohibited or redirected, and hardship exemptions granted by this Commission as provided for in the Act.

Allowable uses within the Core Preservation Area shall be limited to those operations or uses which do not constitute development, or hardship exemptions granted by this Commission pursuant to the Act.

Any existing, expanded, or new activity involving agriculture or horticulture in the Core Preservation Area is an allowable use if it does not involve material alteration of native

vegetation. The erection of agricultural buildings, including but not limited to barns, greenhouses and farm stands, required for the production of plants or animals as reflected under ECL Section 57-0107(14), shall constitute an allowable use. If such activity does involve material alteration of native vegetation, the use will require a hardship exemption from the Commission.

### **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 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.

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 document entitled *Agricultural Management Practices Catalogue for Nonpoint Source Pollution Prevention and Water Quality Protection in New York State*, prepared by the New York State Nonpoint Source Management Practices Task Force, New York State Department of Environmental Conservation, 2007.

#### **5.3.2 State Environmental Quality Review Act (SEQRA)**

A generic environmental impact statement (GEIS) has been completed for the Plan, including the standards and guidelines for land use set forth in this section.

A supplemental environmental impact statement may be required for individual development projects by the appropriate town or other governmental agency, if a significant environmental

effect is identified that is outside the scope of the standards and guidelines set forth in this chapter. If a potentially significant environmental effect is not identified, a Supplemental Environmental Impact Statement or an Environmental Impact Statement should not be required. The scope of the supplemental EIS should be limited to subjects that are not addressed by the standards or guidelines or the GEIS.

### **5.3.3 Intent and Compatible Growth Area standards**

The Commission recognizes the need for balanced growth and development consistent with the water resource protection and habitat preservation goals provided for in the Act.

Development projects in the Compatible Growth Area are required to meet all of the standards in this chapter unless a permit has been issued under the provisions of Volume I, Chapter 4 of this Plan.

Where standards contained in the Plan differ from state, county, local law or regulation, the stricter standard(s) shall apply.

#### **5.3.3.1 Sanitary waste, nitrate-nitrogen and other chemicals of concern**

Nitrate-nitrogen, a contaminant that emanates from numerous types of land uses, is a recognized indicator of groundwater quality. The Suffolk County Department of Health Services abides by the New York State nitrate-nitrogen standard for drinking water. In addition to the specific standards for nitrate-nitrogen, other contaminants of concern may be relevant in specific applications or in specific areas.

#### ***Standards***

##### **5.3.3.1.1 Suffolk County Sanitary Code Article 6 compliance**

All development proposals subject to Article 6 of the Suffolk County Sanitary Code (“Realty Subdivisions, Developments and Other Construction Projects”) shall meet all applicable requirements of the Suffolk County Department of Health Services. Projects which require variances from the provisions of Article 6 shall meet all requirements of the Suffolk County Department of Health Service's Board of Review in order to be deemed to have met the requirements of this standard.

**5.3.3.1.2 Sewage treatment plant discharge**

Where deemed practical by the County or State, sewage treatment plant discharge shall be outside and downgradient of the Central Pine Barrens. Treatment systems that are approved by the New York State Department of Environmental Conservation or the Suffolk County Department of Health Services may be used in lieu of a sewage treatment plant.

**5.3.3.1.3 Suffolk County Sanitary Code Articles 7 and 12 compliance**

All projects must comply with the provisions of Articles 7 and 12 of the Suffolk County Sanitary Code, including any provisions for variances or waivers if needed, and all applicable state laws and regulations in order to ensure that all necessary water resource and wastewater management infrastructure shall be in place prior to, or as part of, the commencement of construction.

**5.3.3.1.4 Commercial and industrial compliance with the Suffolk County Sanitary Code**

All commercial and industrial development applications shall comply with the provisions of the Suffolk County Sanitary Code as applied by the Suffolk County Department of Health Services, and all other applicable federal, state or local laws. Development projects which require variances from the provisions of the Suffolk County Sanitary Code shall meet all requirements of the Department of Health Service's Board of Review in order to be deemed to have met the requirements of this standard.

***Guideline***

**5.3.3.1.5 Nitrate-nitrogen**

A more protective goal of two and one half (2.5) ppm shall be achieved for new development projects through an average residential density of one (1) unit per two (2) acres (or its non-residential equivalent), through clustering or through other mechanisms to protect surface water quality for projects in the vicinity of ponds and wetlands.

For purposes of this section, in the vicinity of ponds and wetlands means that the project site contains areas subject to review by the state or a local municipality under their respective tidal or freshwater wetland, or both, regulations or other provision regulating activities in a surface or tidal wetland.

**5.3.3.2 Reserved**

### **5.3.3.3 Wellhead and groundwater protection**

The New York State Department of Health requires minimum separation distances for public water supply wells from contaminant sources pursuant to Appendix 5D of 10 NYCRR Part 5, Subpart 5-1 Public Water Supply Systems in order to protect these public water supplies from contamination. Although this may have been considered adequate to prevent the rapid drawdown of bacterial contamination or its entry into groundwater through poorly constructed wells, it does not necessarily ensure an adequate level of protection against the suite of organic and inorganic pollutants that may threaten community water supplies.

#### ***Standard***

##### **5.3.3.3.1 Significant discharges and public supply well locations**

The location of public supply wells shall be considered in all applications involving significant discharges to groundwater, as required under the New York State Environmental Conservation Law Article 17.

#### ***Guideline***

##### **5.3.3.3.2 Private well protection**

The Suffolk County Department of Health Services' guidelines for private wells should be used for wellhead protection.

### **5.3.3.4 Wetlands and surface waters**

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 species which are designated as rare, endangered, threatened or special concern, 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.

## ***Standards***

### **5.3.3.4.1 Nondisturbance buffers**

Development proposals for sites containing or abutting freshwater or tidal wetlands or surface waters must be separated by a nondisturbance buffer area that is no less than th required by the New York State Tidal Wetland, Freshwater Wetland, or Wild, Scenic and Recreational Rivers Act or local ordinance. The Commission reserves the right to require a stricter and larger nondisturbance buffer for development projects not subject to municipal review. Distances shall be measured horizontally from the wetland edge as mapped by the New York State Department of Environmental Conservation, field delineation or local ordinance. 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.

### **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.

### **5.3.3.4.3 Wild, Scenic and Recreational Rivers Act compliance**

Development shall conform to the provisions of the New York State Wild, Scenic and Recreational Rivers Act, where applicable. Projects which require variances or exceptions under the New York State Wild, Scenic and Recreational Rivers Act shall meet all requirements imposed by the New York State Department of Environmental Conservation in order to be deemed to have met the requirements of this standard.

## ***Guideline***

### **5.3.3.4.4 Additional nondisturbance buffers**

Stricter nondisturbance buffer areas may be established for wetlands as appropriate.

### **5.3.3.5 Stormwater runoff**

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 and from driveways 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. These basins may cover several acres and require the removal of considerable native vegetation to the detriment of the site's ecology and aesthetics.

#### ***Standards***

##### **5.3.3.5.1 Stormwater recharge**

Development projects must provide that all stormwater runoff originating from development on the property is recharged on site unless surplus capacity exists in an off site drainage system.

##### **5.3.3.5.2 Natural recharge and drainage**

Natural recharge areas and/or drainage system designs that cause minimal disturbance of native vegetation should be employed, where practical, in lieu of recharge basins or ponds that would require removal of significant areas of native vegetation.

##### **5.3.3.5.3 Ponds**

Ponds should only be created if they are to accommodate stormwater runoff, not solely for aesthetic purposes.

##### **5.3.3.5.4 Natural topography in lieu of recharge basins**

The use of natural swales and depressions should be permitted and encouraged instead of excavated recharge basins, whenever feasible.

##### **5.3.3.5.5 Soil erosion and stormwater runoff control during construction**

During construction, the standards and guidelines promulgated by the New York State Department of Environmental Conservation pursuant to state law, which are designed to prevent soil erosion and control stormwater runoff, should be adhered to.

### **5.3.3.6 Coordinated design for open space, habitat and soil protection**

Comprehensive, coordinated planning and design of development proposals within the pine barrens is essential to ensure maximum preservation of open space and habitat linkages. Development projects must be designed with full consideration of existing development and known future plans for the adjacent parcels. otherwise, inefficient road patterns may require unnecessary clearing and lot layout that may hinder or entirely prevent the preservation of large, unbroken blocks of open space.

Conservation design principles must be used when creating development project plans to ensure that the most valuable natural features and functions of a project site are retained and set aside as open space. All development projects are required to meet the open space and clearing requirements specified in Figure 5-1.

Open space is defined as any undeveloped and unimproved, publicly or privately-owned open area, which can be comprised of either land or water, that remains in its natural state and may include agricultural areas that are permanently preserved and will not be developed. Open space is intended to be available, where applicable, for low-intensity recreational activities which have nominal environmental impact and have no effect on the environmental integrity of the open space, including hiking, hunting, nature study, bird watching and orienteering. In no case does open space mean active recreational facilities such as golf courses, amusement parks and ballfields. Proper management of these areas, including assignment of responsibility for such management, is essential in order to protect open spaces from illegal dumping, clearing, motor vehicle trespass and other abuses.

Buffer areas are defined, for the purposes of this section, as areas incorporated into a development project site design for purposes including, but not limited to, conservation area compliance, habitat preservation, open space protection, separation between wetlands and development, visual consideration, or mitigation of environmental impacts. These buffer areas must be properly managed and protected to prevent damage and deterioration.

Clearing is defined as the removal, cutting or material alteration of any portion of the natural vegetation found on a development project site exclusive of any vegetation associated with active agricultural or horticultural activity or formalized landscape and turf areas.

Excessive clearing of natural vegetation can result in severe soil erosion, excessive stormwater runoff, and the destruction or reduction of pine barrens plant and wildlife habitat, and shall be minimized on development project sites through the provisions of this section. Revegetation of a development project site to meet open space requirements may be accomplished through the self-heal restoration process instead of planting horticulturally



derived native plants from off-site sources depending on site conditions.

Further, the Long Island Comprehensive Waste Treatment Management Plan (the "208 Study"; Long Island Regional Planning Board, Hauppauge, NY, (1978)) indicated that fertilizers are a significant source of nitrogen and phosphorous contamination to ground and surface waters. Due to their low fertility, soils common to the pine barrens (e.g., Carver, Haven, Plymouth and Riverhead) require both irrigation and fertilizer application for establishment and maintenance of turf and nonnative vegetation. As native pine barrens vegetation is replaced with turf through development, increased contamination and a general change in the ecosystem may be expected.

### ***Standards***

#### **5.3.3.6.1 Vegetation clearance limits**

The clearance of natural vegetation shall be strictly limited. Site plans, surveys and subdivision maps shall delineate the existing naturally vegetated areas and calculate those portions of the site that are already cleared due to previous activities.

Areas of the site proposed to be cleared combined with previously cleared areas shall not exceed the percentages in Figure 5-1. These percentages shall be taken over the total site and shall include, but not be limited to, roads, building sites, drainage structures and landbanked parking. The clearance standard that would be applied to a development project site if developed under the existing residential zoning category may be applied if the proposal involves multi-family units, attached housing, clustering or modified lot designs. Site plans, surveys and subdivision maps shall be delineated with a clearing limit line and calculations for clearing to demonstrate compliance with this standard.

To the extent that a portion of a development project site includes Core property, and for the purpose of calculating the clearance limits, the site shall be construed to be the combined Core and CGA portions. However, the Core portion may not be cleared except in accordance with Section 5.2 of the Plan.

5.3.3.6.1.1 Development project sites which consist of non-contiguous parcels shall be treated as if the parcels were contiguous for purposes of determining conformance.

5.3.3.6.1.2 Development project sites which consist of parcel(s) that are split among two or more zoning categories shall have a total clearing allowance for the entire site which is the sum of the individual clearances for each separately zoned portion

of the site.

- 5.3.3.6.1.3 Development project sites in Residential Overlay Districts that include the redemption of Pine Barrens Credits shall apply Figure 5-1 based on the resulting average lot size after the redemption of Credits, rather than the base zoning lot size. To determine the amount of clearing allowed, interpolate the maximum site clearance percentage using Figure 5-1, as long as the requirements of the Town Code and of Section 6.4 of the Plan are met.
- 5.3.3.6.1.4 Land cleared for purposes of conducting environmental restoration pursuant to ECL 57-0107(13)(c), shall be considered “natural vegetation,” and shall not be considered “cleared” or “previously cleared” land in determining conformance.
- 5.3.3.6.1.5 Persons seeking relief from clearing requirements on development project sites must file a CGA hardship application.
- 5.3.3.6.1.6 For a project site which is split between the Core Preservation Area and the Compatible Growth Area, and within which Pine Barrens Credits have been issued for the Core Preservation Area portion, only the Compatible Growth Area acreage shall be used to determine the amount of clearing allowed according to Figure 5-1.

**Figure 5-1: Clearance and Open Space Standards**

This table shows total overall development project site clearance and requirement for open space including lots, roads, drainage and other improvements.

<b>Zoning lot size (see Notes at end of table)(*)</b>	<b>Maximum overall development project site clearance (**)</b>	<b>Minimum open space requirement (**)</b>
10,000 square feet residential (1/4 acre)	90 %	10 %
15,000 square feet residential (1/3 acre)	70 %	30 %
20,000 square feet residential (1/2 acre)	60 %	40 %
30,000 square feet residential (2/3 acre)	58 %	42 %
40,000 square feet residential (1 acre)	53 %	47 %
60,000 square feet residential (1.5 acre)	46 %	54 %
80,000 square feet residential (2 acres)	35 %	65 %
120,000 square feet residential (3 acres)	30 %	70 %
160,000 through 200,000+ square feet residential (4 - 5+ acres)  The total amount of disturbance of natural vegetation shall not exceed the clearance percentage, except on flagpole lots where the area of the pole shall be exempt from the total lot area and the total amount of clearing permitted.	25 %	75%
Other defined residential zoning lot size	Interpolate from entries above.	Interpolate from entries above.
All other zoning categories, including those categories without defined zoning lot sizes and parcels owned by the State or a public corporation	60 %	40 %

**Notes:**

(\*) These entries are the minimum lot sizes required by zoning as of June 28, 1995 or the date the parcel is added to the Central Pine Barrens if later or the current zoning, whichever is more protective of the environment by minimizing clearing or maximizing open space, not the size of the subject parcels.

(\*\*) In calculating the percentage of land cleared and the percentage of open space to be retained, the preserved areas in a development should preferably be existing native vegetation. These are maximum clearance and minimum open space standards, and more restrictive standards may be imposed during the review by the Commission, involved agency, or local municipality due to consideration of other standards, especially those addressing preservation of rare or endangered species, or unique flora or vegetation.

**5.3.3.6.2 Open space standard requirement, unfragmented open space and habitat**

Development project sites must meet at a minimum the percentages of open space specified in Figure 5-1 regardless of existing physical site conditions. Applicants must prioritize first the use of existing cleared areas for development on a project site prior to clearing areas of natural vegetation. Site plans, surveys and subdivision maps must delineate the open space boundary lines and include the calculation of open space areas to demonstrate conformance with this standard. Applicants must identify the receiving entity to which dedicated open space will be transferred as required by Standard 5.3.3.6.5.

Conservation design promotes the creation of open space that permanently protects the significant natural and cultural resources and environmental features of a site by concentrating development into compact areas. This will be required for development projects and accomplished through the use of conservation design methods that include clustering, reduced density development design, or similar methods that achieve the requirements of this section.

In determining which areas of a development project site to set aside as open space, the order of priority, from highest to lowest, shall be as follows:

- Areas that include any species, habitats or significant attributes required to be protected under existing regulations. This includes, but is not limited to, wetlands; the habitats of endangered; threatened and special concern species; floodplains; archaeological sites and burial grounds and cemeteries.
- Areas that contain woodlands followed by other natural areas.
- Areas that contain woodlands and other natural areas adjacent to existing open space, that will connect open space areas into large contiguous, unbroken blocks of habitat. This should include consideration of existing and planned future development of adjacent properties.

Project sites that do not have sufficient existing natural areas to meet the open space requirement specified in Figure 5-1 due prior development or use, will be required to revegetate areas to satisfy this standard. This will include sites that do not meet the open space requirement due to pre-existing clearing or disturbance, formalized landscaped and turf areas and/or impervious surfaces.

A range of one or more restoration methods may be required that include, but are not limited to, the “Self-Heal” approach, active restoration with nursery stock, and/or transplantation activities. The "Self-Heal" approach should be the first approach used for restoration of areas to be set aside as open space, unless otherwise prevented by site conditions. The “Self-Heal” approach is preferable because it allows existing live seed banks, rhizomes, roots, etc. to naturally recolonize a disturbed area rather than using active restoration with nursery stock grown offsite. The transplanting of natural vegetation from areas proposed to be developed should also be considered and implemented where feasible.

The restoration of these areas will require the preparation of a restoration plan that will be subject to the review and approval of the approving agency. The plan will include at a minimum, a description of the restoration method, map of areas to be restored, site preparation work, schedule for implementation, monitoring and reporting requirements to guarantee a success rate of 85% after three to five years, and invasive species management, and reporting requirements. Since site conditions can vary, the approving agency may require other provisions in the restoration plan to ensure successful restoration of these areas to serve as open space. If the Self-Heal approach fails to successfully restore the areas, a restoration plan will need to be developed and approved by the reviewing agency that provides for active restoration with native species.

The restoration area once it has been successfully restored with native species must be protected as the open space area in accordance with Standard 5.3.3.6.5, Receiving entity and protection for open space areas.

#### **5.3.3.6.3 Fertilizer-dependent vegetation limit**

No more than 15% of an entire development project site shall be established in fertilizer-dependent vegetation including formalized turf areas. Generally, nonnative species require fertilization therefore, planting of such nonnative species shall be limited to the maximum extent practicable. Development designs shall be in conformance with Standard 5.3.3.6.4 Native plantings.

#### **5.3.3.6.4 Native plantings**

Development designs shall incorporate the species listed as “recommended” in Figure 5-2 “Planting Recommendations.” Landscaping and restoration plans shall strive to use Long Island native genotypes, unless the plants are not available. A more extensive list of acceptable and unacceptable plants is available from the Commission office.

### Figure 5-2: Planting recommendations

(Native plants are more drought tolerant than nonnative species, are adapted to our local environment, maintain natural ecological diversity, perpetuate fast disappearing native genotypes, and comprise a form of habitat restoration.)

Scientific name (In alphabetic order)	Common name
Recommended native plants	
<i>Andropogon gerardi</i> <i>Andropogon scoparius</i> <i>Betula lenta</i> <i>Betula populifolia</i> <i>Celtis occidentalis</i> <i>Dennstaedtia punctilobula</i> <i>Epigea repens</i> <i>Hamamelis virginia</i> <i>Ilex glabra</i> <i>Ilex opaca</i> <i>Myrica pensylvanica</i> <i>Parthenocissus quinquefolia</i> <i>Pinus rigida</i> <i>Populus tremuloides</i> <i>Prunus maritima</i> <i>Prunus serotina</i> <i>Pteridium aquilinum</i> <i>Quercus alba</i> <i>Quercus coccinea</i> <i>Quercus rubra</i> <i>Rosa virginiana</i> <i>Rubus allegheniensis</i> <i>Salix discolor</i> <i>Sassafras albidum</i> <i>Solidago species</i> <i>Spirea latifolia</i> <i>Vaccinium angustifolium</i> <i>Vaccinium corymbosum</i>	Big bluestem Little bluestem White Birch Grey birch Hackberry Hay scented fern Trailing arbutus Witch hazel Inkberry American holly Northern bayberry Virginia creeper Pitch pine Quaking aspen Beach plum Black cherry Bracken fern White oak Scarlet oak Red oak Virginia rose Northern blackberry Pussy willow Sassafras Goldenrod Spirea Lowbush blueberry Highbush blueberry
Continued ...	

Invasive, nonnative plants specifically <u>not</u> recommended	
<i>Acer platinoides</i> <i>Acer pseudoplatanus</i> <i>Ampelopsis brevipedunculata</i> <i>Berberis thunbergii</i> <i>Celastrus orbiculatus</i> <i>Coronilla varia</i> <i>Eleagnus umbellata</i> <i>Lespedeza cuneata</i> <i>Ligustrum sinense</i> <i>Lonicera japonica</i> <i>Lonicera maackii</i> <i>Lonicera tartarica</i> <i>Lythrum salicaria</i> <i>Miscanthus sinensis</i> <i>Pinus nigra</i> <i>Polygonum cuspidatum</i> <i>Pueraria lobata</i> <i>Robina pseudoacacia</i> <i>Rosa multiflora</i> <i>Rosa rugosa</i> <i>Rudbeckia hirta</i>	Norway maple Sycamore maple Porcelain berry vine Japanese barberry Asiatic bittersweet Crown vetch Autumn olive Himalayan bushclover Chinese privet Japanese honeysuckle Amur honeysuckle Tartarian honeysuckle Purple loosestrife Eulalia Black pine Mexican bamboo Kudzu Black locust Multiflora rose Rugosa (salt spray) rose Black eyed susan

#### 5.3.3.6.5 Receiving entity and protection for open space areas

The use, maintenance and management of open space shall be considered when protecting open space areas. The project applicant must specify the entity to which the open space will be dedicated. The protection of the open space shall be guaranteed by dedicating the open space to a government entity, private not for profit, land conservation management organization, homeowner's association or similar entity through the transfer of title or a permanent conservation easement or covenant recorded with the Suffolk County Clerk, or similar mechanism to ensure open space protection.

#### 5.3.3.7 Protection and conservation of species and communities

The pine barrens ecosystem hosts several species of rare, endangered or threatened animals and plants, as well as species of special concern. The State of New York has identified such species and has enacted laws to protect their number and habitat. The New York State Natural Heritage Program has also identified unique natural communities and habitats of special concern.

The U.S. Fish and Wildlife Service estimates that bird strikes with buildings, windows and

other structures account for up to several million bird deaths per year. Bird collisions occur because birds perceive glass and reflections of vegetation, landscapes or sky to be real and they attempt to reach habitat, open spaces or other attractive features visible through either glass surfaces or free-standing glass. Many of these collisions are preventable with appropriate building design.

### ***Standards***

#### **5.3.3.7.1 Special species and ecological communities**

Where a significant impact is proposed upon a habitat essential to those species identified on the New York State maintained lists as rare, threatened, endangered or of special concern, or upon natural communities classified by the New York State Natural Heritage Program as G1, G2, G3 or S1, S2 or S3, or on any federally listed endangered or threatened species, appropriate mitigation measures as determined by the appropriate state, county or local government agency shall be taken to protect these species.

#### **5.3.3.7.2 Bird conservation and protection**

Development projects shall incorporate bird friendly structures, design and site planning elements to reduce bird strikes and mortality to the greatest extent feasible. Seek guidance provided in the American Bird Conservancy et al publication “Bird Friendly Building Design,” available from their website.

### **5.3.3.8 Soils**

Disturbance of, and construction on, steep slopes within the pine barrens involves considerable removal of native vegetation resulting in excessive surface water runoff and severe soil erosion. Steeply sloped areas are also subject to more rapid spread of wildfire than flat ground.

### ***Guidelines***

#### **5.3.3.8.1 Clearing envelopes**

Clearing envelopes-should be placed upon lots within a subdivision so as to maximize the placement of those envelopes on slopes less than ten percent (10%).

#### **5.3.3.8.2 Stabilization and erosion control**

Construction of structures on slopes greater than ten percent (10%) may be



approved if technical review shows that stabilization measures, erosion control practices and structures are implemented to mitigate negative environmental impacts and no alternative location exists on the project site.

**5.3.3.8.3 Slope analyses**

Project review is facilitated if submissions contain a slope analysis showing slopes in the ranges 0-10%, 11-15% and 15% and greater. In areas with steep slopes, slope analysis maps should be required. This can be satisfied with cross hatching or shading on the site plan for the appropriate areas.

**5.3.3.8.4 Erosion and sediment control plans**

Erosion and sediment control plans should be required in areas of fifteen percent (15%) or greater slopes.

**5.3.3.8.5 Placement of roadways**

Roads and driveways should be designed to minimize the traversing of slopes greater than ten percent (10%) and to minimize cuts and fills.

**5.3.3.8.6 Retaining walls and control structures**

Details of retaining walls and erosion control structures should be provided for roads and driveways which traverse slopes greater than ten percent (10%).

**5.3.3.9 Dark sky compliance**

Light pollution is caused by inefficient or unnecessary use of artificial light that may cause light trespass on properties, over illumination and glare that can cause discomfort to the eyes, light clutter and sky glow that diminishes the ability to view the night sky and may disrupt wildlife behavior. This standard applies to projects not subject to local municipal review.

***Standard***

**5.3.3.9.1 Light pollution prevention**

This standard applies only to projects which are not subject to local municipal review and approval. The candlepower distribution from lighting fixtures and installations shall be cut off at all angles beyond those required to restrict direct illumination to the specific area or surface being illuminated. Development shall utilize full cutoff lighting that directs all light downward and eliminates spill light and direct upward light. Fixtures must be noted on the proposed site plan as

dark-sky compliant fixtures. Existing exterior fixtures on a development project site shall be retrofitted accordingly.

#### **5.3.3.10 Reserved**

#### **5.3.3.11 Scenic, historic and cultural resources**

The Long Island Pine Barrens Protection Act specifies that the Plan shall consider and protect unique scenic, cultural or historic features. Volume 2 of the Plan includes an inventory of many of these resources, and separate inventories for these items exist in local, state, county, federal or private inventories.

The Commission's policy is to protect and enhance those landscape based features of a community which define it, provide for its distinction from neighboring communities, provide for natural areas among the communities which complement the protection of the pine barrens ecosystem, and contribute to a regional diversity, both natural and cultural. The standards and guidelines in this section will promote the protection of these features in the Central Pine Barrens.

#### ***Standard***

##### **5.3.3.11.1 Tall structures and scenic resources**

This standard applies to projects not subject to local municipal review. A development project subject to this standard must not exceed the height definition for tall structures in Chapter 4, Section 4.3.11. This standard requires, in part, the adaptive use and reuse of existing tall structures rather than the construction and placement of new ones when and where feasible and appropriate.

#### ***Guidelines***

##### **5.3.3.11.2 Cultural resource consideration**

Development proposals should account for, review, and provide protection measures for:

1. Established recreational and educational trails and trail corridors, including but not limited to those trail corridors inventoried elsewhere in this Plan.
2. Active recreation sites, including existing sites and those proposed as part of a development.
3. Scenic corridors, roads, vistas and viewpoints as documented in Volume 2 of

this Plan, and which are listed in Figure 5-3, which may be amended from time to time, in Volume I of this Plan and may be located in Critical Resource Areas, and along the Long Island Expressway, Sunrise Highway, County Road 111 and William Floyd Parkway.

4. Sites of historical or cultural significance, including historic districts, sites on the State or National Registers of Historic Places, and historic structures listed on the State or National Registers of Historic Places, recognized by local municipal law or statute.
5. Sensitive archaeological areas as identified by the New York State Historic Preservation Office or the New York State Museum.

#### 5.3.3.11.3 **Inclusion of cultural resources in applications**

Development proposals should note established recreation and educational trails and trail corridors; active recreation sites; scenic corridors, roads, vistas and viewpoints located in Critical Resource Areas and undisturbed portions of the roadsides of the Long Island Expressway, Sunrise Highway, County Road 111 and William Floyd Parkway; sites on the State or National Register of Historic Places, and historic structures and landmarks recognized by municipal law or statute, or listed on the State or National Registers of Historic Places; and sensitive

archaeological areas as identified by the New York State Historic Preservation Office or the New York State Museum within a five hundred (500) foot radius of the outside perimeter of the project site, including any project parcels which are physically separate from the bulk of the proposed development area.

A development proposal may be disapproved or altered if the local municipality determines that the development proposal, in its current form, may have a significant negative impact on any of the above resources.

#### 5.3.3.11.4 **Protection of scenic and recreational resources**

Protection measures for scenic and recreational resources should include, but not be limited to, retention of visually shielding natural buffers, replacement of degraded or removed natural visual buffers using native species, use of signs which are in keeping in both style and scale with the community character, and similar measures.

#### 5.3.3.11.5 **Roadside design and management**

Undisturbed portions of the roadside should be maintained in a manner that protects the scenic features of these areas. Clearing (including that for aisles, driveways, access and parking) is not precluded within these roadside areas, provided that appropriate buffers are maintained, and that manmade structures meet standards consistent with the character of the area.

### **Figure 5-3: Scenic Roads and Areas in the Central Pine Barrens\***

*(Standards and guidelines shall apply only to the portion of these areas  
and roadways located in the Compatible Growth Area)*

#### ***Scenic Roads in the Central Pine Barrens Area***

- **Sunrise Highway (NYS 27)** from CR 51 intersection east to NYS 24 intersection.
- **Riverhead -Moriches Road (CR 51) and Center Drive** from CR 111 north to Riverhead County Center.
- **Riverhead –Moriches Road (CR 63)** from CR 51 north toward Riverhead
- **Riverhead-Westhampton Road (CR 31) and Riverhead-Quogue Road (CR 104)** from Suffolk Airport north to Riverhead
- **Flanders Road (NYS 24)** from approximately Cross River Drive (CR 105) east to Jackson Avenue
- **Yaphank hamlet and Yaphank-Middle Island Road (CR 21)** from Lower Lake north to Cathedral and Prosser Pines
- **William Floyd Parkway** from northerly edge of Brookhaven Laboratory to Route 25A
- **Rocky Point Road (CR 21)** from approximately Whiskey Road north to northern edge of state preserve
- **North Street and Mill Road** through Manorville hamlet
- **Schultz Road and Wading River-Manorville Road**

#### ***Scenic Areas in the Central Pine Barrens***

- **NYS Rocky Point Natural Resource Management Area**
- **Prosser Pines County Nature Preserve**
- **Southaven County Park and Carmans River**
- **Brookhaven State Park**
- **Peconic River and associated Coastal Plain Ponds** from Middle Country Road (NYS 24) south to Schultz Road and east towards Connecticut Avenue
- **Swan Pond County Parkland**
- **Manorville-Riverhead Hills** from roughly the Long Island Expressway extending along an arc running southeast and east to CR 51

- **Riverhead Hills**, an extension of the above “arc”, running from CR 51 east past Suffolk Community College, Speonk-Riverhead Road to CR 104
- **Cranberry Bog County Nature Preserve** located south of Riverhead County Center
- **Sears Bellows/Maple Swamp/ Flanders Hills County parkland** from Flanders Road (NYS 24) south to Sunrise Highway; from Pleasure Drive east to Bellows Pond Road
- **South Flanders and Henry’s Hollow region**
- **Dwarf Pine Barrens**
- **Flanders and Hubbard County Parks, Southampton Town Red Creek Parkland**
- **Quogue Wildlife Refuge**
- **Peconic River** from Connecticut Avenue east to Riverhead hamlet and Flanders Bay
- **Paumanok Path** (Pine Barrens Trail portion) from Rocky Point south, southeast, and east to Sears Bellows County Park, the Red Creek region, and outside the Central Pine Barrens towards Montauk Point
- **Wildwood Lake** south of Riverhead hamlet
- **Artist Lake** immediately south of Middle Country Road in Middle Island
- **Lake Panamoka** approximately one mile north of Middle Country Road, between Ridge and Calverton

\*A more complete description of each of the scenic resources listed is provided in the Central Pine Barrens Comprehensive Land Use Plan, Volume 2: Existing Conditions, Chapter 8: Scenic Resources, 6/28/1995, reprinted 8/96.

### 5.3.3.12 Reserved

## **6. Pine Barrens Credit Program**

### **6.1 Purpose of the Pine Barrens Credit Program**

As required in the Long Island Pine Barrens Protection Act, the Plan is designed to preserve the pine barrens ecology and to ensure the high quality of surface and groundwater within the Central Pine Barrens. The Act states that the Plan shall discourage piecemeal and scattered development, and accommodate development in a manner consistent with the long term integrity of the pine barrens ecosystem. The Act further states that the Plan should ensure a compact, efficient and orderly plan of development. The Legislature recognized that the Plan may restrict the use of some lands currently in private ownership and that these restrictions are necessary and desirable to protect and preserve the hydrologic and ecologic integrity of the Central Pine Barrens area, as well as the public health and welfare of future generations.

It is the primary purpose of the Pine Barrens Credit Program to maintain value in lands designated for preservation or protection under the Plan by providing for the allocation and use of Pine Barrens Credits (PBCs). The Pine Barrens Credit Program will also promote development which is compact, efficient and orderly, and which is designed to protect the quality and quantity of surface water and groundwater and the long term integrity of the pine barrens ecosystem.

### **6.2 Pine Barrens Credit Certificate defined**

A Pine Barrens Credit (PBC) Certificate is a document issued on behalf of the Commission which indicates the number of Pine Barrens Credits to which the owner of a particular parcel of land is entitled and which attests to the fact that the development rights of a particular parcel of land in a sending district of the Central Pine Barrens have been severed from the land by the recording of a conservation easement, and that these rights are available for sale or use.

### **6.3 Allocation of Pine Barrens Credits**

For the purpose of computing the allocation of Pine Barrens Credits, a parcel of land is defined as a separately assessed Suffolk County Real Property Tax Parcel which is within the Core Preservation Area and existed on the Central Pine Barrens Comprehensive Land Use Plan initial adoption date of June 28, 1995 or the date the parcel is added to the Core Preservation Area or sending area, if later.

#### **6.3.1 Method of allocation**

One (1) Pine Barrens Credit shall be allocated for each single family dwelling permitted on a residentially zoned parcel of land located within the Core Preservation Area or a designated sending area designated within this Plan or the date the parcel is added to the Core Preservation

Area or sending area, if later, based upon the development yield set forth in Sections 6.3.1.1.1 through 6.3.1.1.9 of this Plan under the zoning regulations in existence when this Plan is adopted in June, 1995.

Development yield is established by multiplying the gross lot area of the parcel by the development yield factor for each residential zoning category. The development yield factors for the various residential zoning categories are enumerated in Section 6.3.1.1 below, in which one acre equals 43,560 square feet.

### **6.3.1.1 Development yield factors and computation for single family residentially zoned property**

- 6.3.1.1.1 If zoning allows one (1) dwelling unit per ten thousand (10,000) square feet, the development yield factor is 2.70 Pine Barrens Credits per acre.
- 6.3.1.1.2 If zoning allows one (1) dwelling unit per fifteen thousand (15,000) square feet, the development yield factor is 2.00 Pine Barrens Credits per acre.
- 6.3.1.1.3 If zoning allows one (1) dwelling unit per twenty thousand (20,000) square feet, the development yield factor is 1.60 Pine Barrens Credits per acre.
- 6.3.1.1.4 If zoning allows one (1) dwelling unit per forty thousand (40,000) square feet, the development yield factor is 0.80 Pine Barrens Credit per acre except for Southampton Town old filed map parcels for which it is 1.00 PBC per acre.
- 6.3.1.1.5 If zoning allows one (1) dwelling unit per sixty thousand (60,000) square feet, the development yield factor is 0.60 Pine Barrens Credit per acre except for Southampton Town old filed map parcels for which it is 0.66 PBC per acre.
- 6.3.1.1.6 If zoning allows one (1) dwelling unit per eighty thousand (80,000) square feet, the development yield factor is 0.40 Pine Barrens Credit per acre except for Southampton Town old filed map parcels for which it is 0.50 PBC per acre.
- 6.3.1.1.7 If zoning allows one (1) dwelling unit per one hundred twenty thousand (120,000) square feet, the development yield factor is 0.27 Pine Barrens Credit per acre except for Southampton Town old filed map parcels for which it is 0.33 PBC per acre.
- 6.3.1.1.8 If zoning allows one (1) dwelling unit per one hundred sixty thousand (160,000) square feet, the development yield factor is 0.20 Pine Barrens Credit per acre.
- 6.3.1.1.9 If zoning allows one (1) dwelling unit per two hundred thousand (200,000) square feet, the development yield factor is 0.16 Pine Barrens Credit per acre except for Southampton Town old filed map parcels for which it is 0.20 PBC per acre.
- 6.3.1.1.10 If zoning allows one (1) dwelling unit per four hundred thousand (400,000) square feet, the development yield factor is 0.08 Pine Barrens Credit per acre.
- 6.3.1.1.11 One (1) acre as used in 6.3.1.1.1 through 6.3.1.1.10 equals forty three thousand five hundred sixty (43,560) square feet.
- 6.3.1.1.12 A fractional allocation of a Pine Barrens Credit shall be rounded upward to the nearest one hundredth ( $1/100\text{th} = 0.01$ ) of a Pine Barrens Credit.
- 6.3.1.1.13 If zoning allows one (1) dwelling unit per thirty thousand (30,000) square feet, the development yield factor is 1.20 Pine Barrens Credits per acre.



These development yield factors and sample computations are summarized in Figure 6-1 and Figure 6-1a.

<b>Figure 6-1: Pine Barrens Credit Program development yield factors for single family residentially zoned property</b>		
<b>Provision</b>	<b>If zoning allows:</b>	<b>Then the development yield factor (*) is:</b>
6.3.1.1.1	1 (one) dwelling unit per 10,000 sq ft	2.70 PBCs per acre(**)
6.3.1.1.2	1 (one) dwelling unit per 15,000 sq ft	2.00 PBCs per acre(**)
6.3.1.1.3	1 (one) dwelling unit per 20,000 sq ft	1.60 PBCs per acre(**)
6.3.1.1.4	1 (one) dwelling unit per 40,000 sq ft	0.80 PBC per acre(**) except Southampton Town old filed map parcels which receive 1.00 PBC per acre
6.3.1.1.5	1 (one) dwelling unit per 60,000 sq ft	0.60 PBC per acre(**) except Southampton Town old filed map parcels which receive 0.66 PBC per acre
6.3.1.1.6	1 (one) dwelling unit per 80,000 sq ft	0.40 PBC per acre(**) except Southampton Town old filed map parcels which receive 0.50 PBC per acre
6.3.1.1.7	1 (one) dwelling unit per 120,000 sq ft	0.27 PBC per acre(**) except Southampton Town old filed map parcels which receive 0.33 PBC per acre
6.3.1.1.8	1 (one) dwelling unit per 160,000 sq ft	0.20 PBC per acre(**)
6.3.1.1.9	1 (one) dwelling unit per 200,000 sq ft	0.16 PBC per acre(**) except Southampton Town old filed map parcels which receive 0.20 PBC per acre

6.3.1.1.10	1 (one) dwelling unit per 400,000 sq ft	0.08 PBC per acre(**)
6.3.1.1.13	1 (one) dwelling unit per 30,000 sq ft	1.20 PBC per acre(**)
<p>(*) These development yield factors are augmented by section 6.3.1.1.12: fractional allocations are rounded upward to the nearest one hundredth (<math>1/100 = 0.01</math>) of a Pine Barrens Credit (PBC).</p> <p>(**) One acre equals 43,560 sq ft.</p> <p>“Southampton Town old filed map parcels” are defined in Southampton Town Code Section 330-53, including any amendments by the Town to this provision in the future.</p>		

Figure 6-1a Pine Barrens Credit allocation examples for single family residentially zoned property	
<b>Example 1:</b>	A 1.00 acre parcel zoned one unit per 40,000 square feet. 1.00 acre X 0.80 Pine Barrens Credit per acre = 0.80 PBC
<b>Example 2:</b>	A 3.25 acre parcel zoned one unit per 40,000 square feet. 3.25 acres X 0.80 PBC per acre = 2.60 PBCs
<b>Example 3:</b>	A 7.89 acre parcel zoned one unit per 80,000 square feet. 7.89 acres X 0.40 PBC per acre = 3.156 PBCs This is then rounded upward to 3.16 PBCs as per section 6.3.1.1.12.
<b>Example 4:</b>	A 10.53 acre parcel zoned one unit per 120,000 square feet. 10.53 acres X 0.27 PBC per acre = 2.8431 PBCs This is then rounded upward to 2.85 PBCs as per section 6.3.1.1.12.
<b>Example 5:</b>	A 0.25 acre parcel zoned one unit per 200,000 square feet. 0.25 acre X 0.16 PBC per acre = 0.04 PBC This is then increased to the minimum allocation of 0.10 PBC as per section 6.7.6.7.

### 6.3.2 Allocation for property zoned for other than single family residential use

The Commission establishes the allocations in Figure 6-2 for property in the Core Preservation Area, which is designated as a sending area, as well as for sending area property within the Compatible Growth Area which is 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.**

*(Note: Although some of the following zoning classes are now obsolete, those have been retained here in the event that a parcel in a sending area had one of those zoning categories on its relevant record date listed in Section 6.3.)*

<b>Zoning Class</b>	<b>Pine Barrens Credits per acre</b>
Defense Institutional District	1.00 PBC per acre*
Industrial A District	1.00 PBC per acre*
Highway Business	1.00 PBC per acre*
J Business 2 District	1.00 PBC per acre*
J Business 3 District	0.20 PBC per acre*
J Business 4 District	1.00 PBC per acre*
J Business 5 District	1.00 PBC per acre*
Light Industrial 1 District	1.00 PBC per acre*
Light Industrial 3 District	0.27 PBC per acre*
Light Industrial 200 District	0.20 PBC per acre*
Light Industrial 40 District	1.00 PBC per acre*
Brookhaven Multi-Family 1 District	0.27 PBC per acre*
Brookhaven PRC	0.10 PBC per acre*
Riverhead Natural Resource Preservation District	0.20 PBC per acre*
Riverhead Open Space Conservation District	0.25 PBC per acre*
All Other Districts	0.10 PBC per acre*

\*One acre equals 43,560 square feet; fractional allocations are rounded upward to the nearest one hundredth ( $1/100 = 0.01$ ) of a Pine Barrens Credit (PBC). No fewer than 0.10 (one tenth) Pine Barrens Credit shall be allocated by the Clearinghouse for any parcel of land, regardless of its size or road accessibility.

### **6.3.3 Limitations on allocation**

The following limitations shall apply to the allocation of Pine Barrens Credits:

- 6.3.3.1 No allocation shall be made for any property owned or held by a public agency, municipal corporation or governmental subdivision, including property held by reason of tax default.
- 6.3.3.2 No allocation shall be made for any property for which the development rights have previously been fully used, or allocated for use, under this Plan or any other program.
- 6.3.3.3 No allocation shall be made for any property owned or held for the purpose of land protection, preservation or conservation.
- 6.3.3.4 Partially improved parcels shall receive a decreased allocation based upon the extent of improvement. Furthermore, there shall be a proportional decrease in allocation based upon the receipt of all discretionary permits for improvement of a parcel or hardship permits issued by the Commission. The Pine Barrens Credit allocation for a parcel of land shall be reduced by one (1) Pine Barrens Credit for each existing single family unit on the parcel or equivalent as such equivalent is described in the document entitled *Standards for Approval of Plans and Construction for Sewage Disposal Systems for Other Than Single Family Residences*, approved by the Suffolk County Department of Health Services, Division of Environmental Quality, on June 15, 1982, revised March 5, 1984 and December 1, 2009, and as implemented prior to February 5, 1988, as amended from time to time (hereinafter referred to as the "Suffolk County Health Department Standards").
- 6.3.3.5 In situations where a development project site contains a parcel that is split between the Core Preservation Area and Compatible Growth Area, and where the entire project site's acreage (i.e., Core and Compatible Growth Area acreage added together) was used for determining the amount of clearing that can occur on the Compatible Growth Area portion, then no Pine Barrens Credits can be obtained on the Core Preservation Area portion.
- 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 lot size for the zoning district to which that parcel belongs and the parcel is otherwise eligible for a Credit allocation under this Plan.
- 6.3.3.7 In allocating Credits to portion(s) of an otherwise eligible parcel, the Clearinghouse shall consider the extent of any prior public acquisition of that parcel or any portion thereof.
- 6.3.3.8 No allocation of Credits shall be made to any parcel or portion thereof upon which an ownership overlap condition exists among more than one competing owners unless and until such ownership overlap condition is resolved by the applicant to the satisfaction of the Commission. In addition, applications for Credits on such parcels where the overlap condition includes as one of the competing owners any governmental agency or body, the Commission shall communicate in writing to the relevant governmental agency or body a request for guidance on resolving the overlap condition.

## **6.4 Designated receiving districts for Pine Barrens Credits**

### **6.4.1 Definitions**

For the purposes of Chapter 6 of this Plan, the following definitions shall apply.

#### **6.4.1.1 As of right Pine Barrens Credit redemption**

"As of right" means that the redemption of Pine Barrens Credits entitles a person to an increase in intensity or density in accordance with this Plan. Town Planning Boards, and, in the Town of Riverhead, the Riverhead Town Board performing the function of site plan review, may determine compliance with this Plan as part of the subdivision or site plan review procedures, and shall approve such use of Pine Barrens Credits with no additional special permit required.

Pine Barrens Credits generated in any area in the Central Pine Barrens within any town shall be redeemable for any as of right Pine Barrens Credit uses in each respective town as described in this Plan subject only to the restrictions expressed herein.

#### **6.4.1.2 Increased density and increased intensity**

"Increased density" means an increase in the number of residential units. "Increased intensity" means an increase in the gross floor area of a nonresidential structure and/or use. Development in accordance with existing zoning regulations is not considered an increase in permitted land use intensity or density.

## **6.4.2 Town of Brookhaven designated Pine Barrens Credit receiving districts**

### **6.4.2.1 Brookhaven Pine Barrens Credit Program overview**

The Pine Barrens Credit Program for the Town of Brookhaven is designed to redirect development for residentially zoned lands within the Core Preservation Area to receiving districts throughout the Town utilizing two basic approaches. These are:

1. "As of right" Credit Redemption: The transfer of development rights through Residential Overlay Districts (RODs) to one (1) and two (2) acre residentially zoned lands with increased density through approval of the Planning Board pursuant to the definition in Section 6.4.1.1 of this Plan, and
2. "Non as of right" Credit Redemption: The use of innovative planning techniques such as Planned Development Districts (PDDs), Planned Retirement Communities (PRCs), and other zoning incentives.

#### **6.4.2.2 Brookhaven "As of Right" Residential Overlay District specifications**

The Town of Brookhaven has identified Residential Overlay Districts to receive Pine Barrens Credits from the Core Preservation Area where increased density shall be allowed in those

residential districts set forth in a map contained in Figure 6-3.

#### **6.4.2.2.1 Brookhaven density increase**

Under the Brookhaven transfer of development rights program, a single Pine Barrens Credit shall permit an increase in density equal to one (1) single family dwelling as defined in the Brookhaven Town Code.

#### **6.4.2.2.2 Brookhaven total yield**

Under the Brookhaven transfer of development rights program, the total yield in all eligible one (1) and two (2) acre residentially zoned receiving districts shall be equal to the square footage of the total parcel contained within the receiving site divided by the minimum square footage allowed under the Brookhaven Town Code in the appropriate residential zone. The minimum lot size in such eligible residentially zoned receiving districts shall allow for the construction of necessary roads and recharge basins, and the possible dedication of open space.

Notwithstanding the above, the minimum lot size shall be as necessary to assure compliance with Section 6.5.2 of this Plan. However, such decrease in the minimum lot size below the formula set forth above shall only be authorized where absolutely necessary to comply with Section 6.5.2 of this Plan, and in no instance shall the average lot size be less than 30,000 square feet in A-1 zoning districts and 60,000 square feet in A-2 zoning districts.

#### **6.4.2.2.3 Brookhaven approval subject to criteria**

This “as of right” increase shall be allowed, subject to the approval of the Town of Brookhaven Planning Board during the subdivision and site plan approval processes, based upon the criteria set forth below and those contained within Section 85-450(D) of the Brookhaven Town Code.

#### **6.4.2.2.4 Brookhaven criteria**

The following two criteria shall apply:

1. An area of a parcel shall be constituted ineligible as a Residential Overlay District where the area of the parcel is located within:
  - a. five hundred (500) feet of any stream, bluff, surface water, or wetlands regulated by the New York State Department of Environmental Conservation or the Town of Brookhaven;
  - b. hurricane inundation zones as defined by the Federal Emergency Management Agency and the New York State Emergency Management Office (including, but not limited to, Fire Island), and Special Flood Hazard Areas as determined by the National Flood Insurance Rate Maps;
  - c. the South Setauket Special Groundwater Protection Area (South Setauket SGPA);
  - d. the state's Wild, Scenic and Recreational River corridors as mapped by the New York

- State Department of Environmental Conservation;
- e. publicly or privately owned parcels held for, or dedicated to, conservation or agricultural preservation purposes, including, but not limited to, parklands, parcels with conservation or agricultural preservation easements and parcels whose development rights or development potential have been removed or restricted;
  - f. the Core Preservation Area.
2. A parcel shall be ineligible as a Residential Overlay District where forty percent (40%) or more of the land area of the parcel contains steep slopes of fifteen percent (15%) or greater.
  3. A parcel shall be ineligible as a Residential Overlay District where the parcel does not conform to the requirements for such Districts contained within Section 85-450(D) of the Brookhaven Town Code.

#### **6.4.2.3 Innovative strategies for the redemption of Brookhaven Pine Barrens Credits**

In addition to the Planning Board approval process as described in Section 6.4.1.1 of this Plan, the Town of Brookhaven intends to use creative techniques to provide additional mechanisms for the use of Pine Barrens Credits during the life of the Pine Barrens Credit Program. The use of Planned Development Districts, subject to the approval of the Town Board, will allow for the conversion of residential development rights into commercial, industrial and/or other uses, which will serve to limit the final number of residential dwelling units to be built while avoiding a negative tax impact.

In addition, the Town of Brookhaven will seek to utilize the following initiatives, through approval of the Brookhaven Town Board, for redemption of Pine Barrens Credits where appropriate:

1. Use of residential districts, consisting of currently residentially zoned parcels, which are too small for Planned Development District use, but which are more appropriately zoned for commercial and industrial use;
2. The use of Planned Retirement Communities as already set forth in the current Brookhaven Town Code;
3. Other innovative zoning incentives.

#### **6.4.2.4 Additional Brookhaven Pine Barrens Credit Program policies**

##### **6.4.2.4.1 Transfers from Hydrogeologic Zone 3 to Hydrogeologic Zone 6**

The Town of Brookhaven may also seek the support of the Commission to obtain a ruling from the Suffolk County Board of Health to allow for the transfer of development rights from the Core Preservation Area, which is located in Hydrogeologic Zone 3, to selected portions of Hydrogeologic Zone 6. This transfer would utilize the increased bonus density formula set forth above, and transfer Pine Barrens Credits to the northern portions of Hydrogeologic Zone 6 (i.e., north of Sunrise Highway, NYS Route 27) so as not to increase nitrogen loadings to the Great

South Bay, Moriches Bay or their tributary streams or wetlands.

#### **6.4.2.4.2 Brookhaven acquisition priorities**

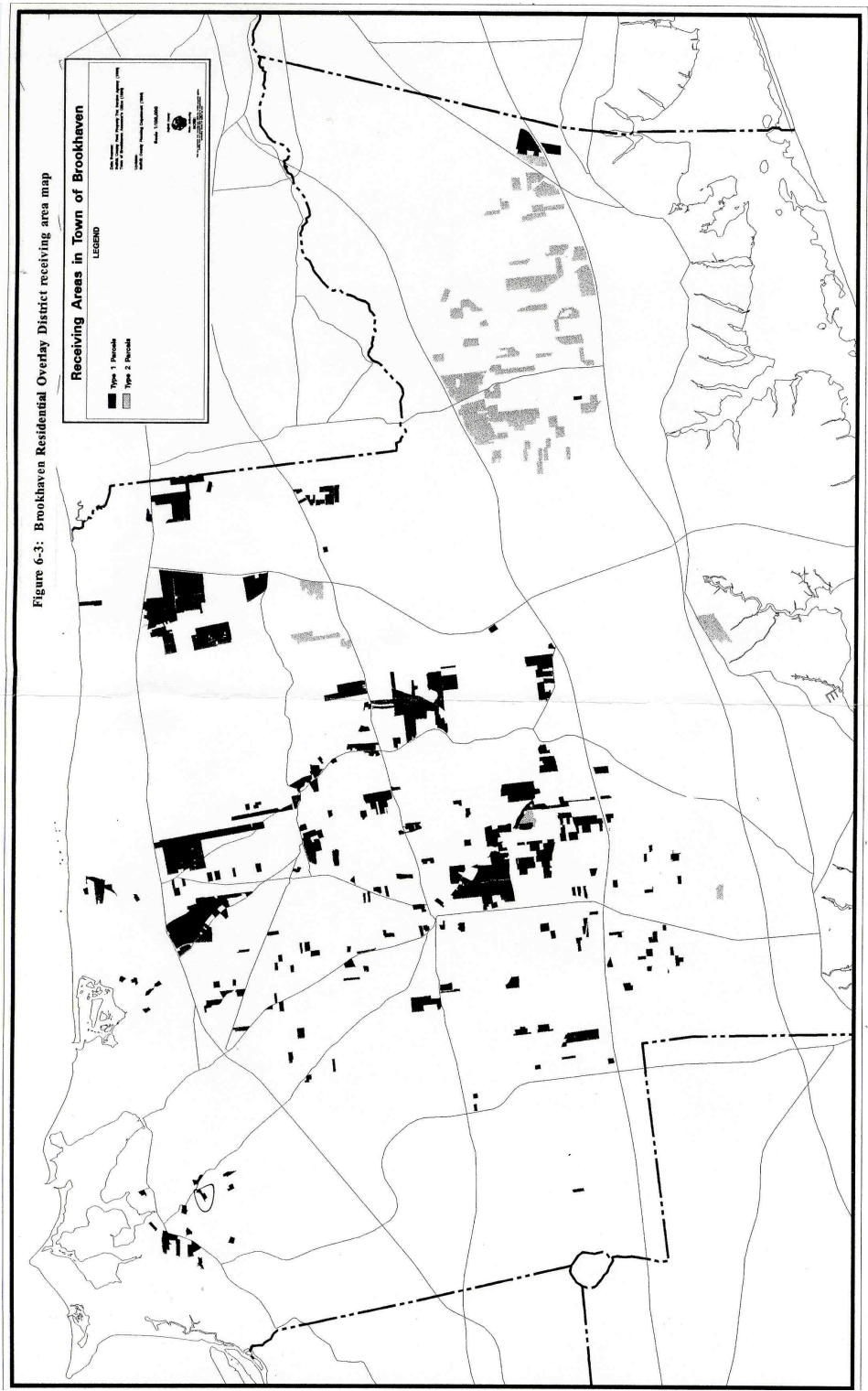
The Town of Brookhaven, in addition, requests that the Commission prioritize acquisition of Brookhaven residential parcels within the Core Preservation Area in those school districts which are most adversely impacted by the Plan.

#### **6.4.2.4.3 Brookhaven townwide policy**

It is the intent of the Town of Brookhaven to utilize transfers of development rights in a manner which will allow for the preservation of the Core Preservation Area without a significant negative environmental or economic impact on the rest of the Town.



**Figure 6-3: Brookhaven Residential Overlay District as of right receiving area map**



### **6.4.3 Town of Riverhead designated Pine Barrens Credit receiving districts**

The Town of Riverhead has identified receiving districts which are eligible to receive Pine Barrens Credits in an as of right manner from the Core Preservation Area, and in which increased intensity shall be allowed. These receiving districts are described in Figures 6-4 and 6-5.

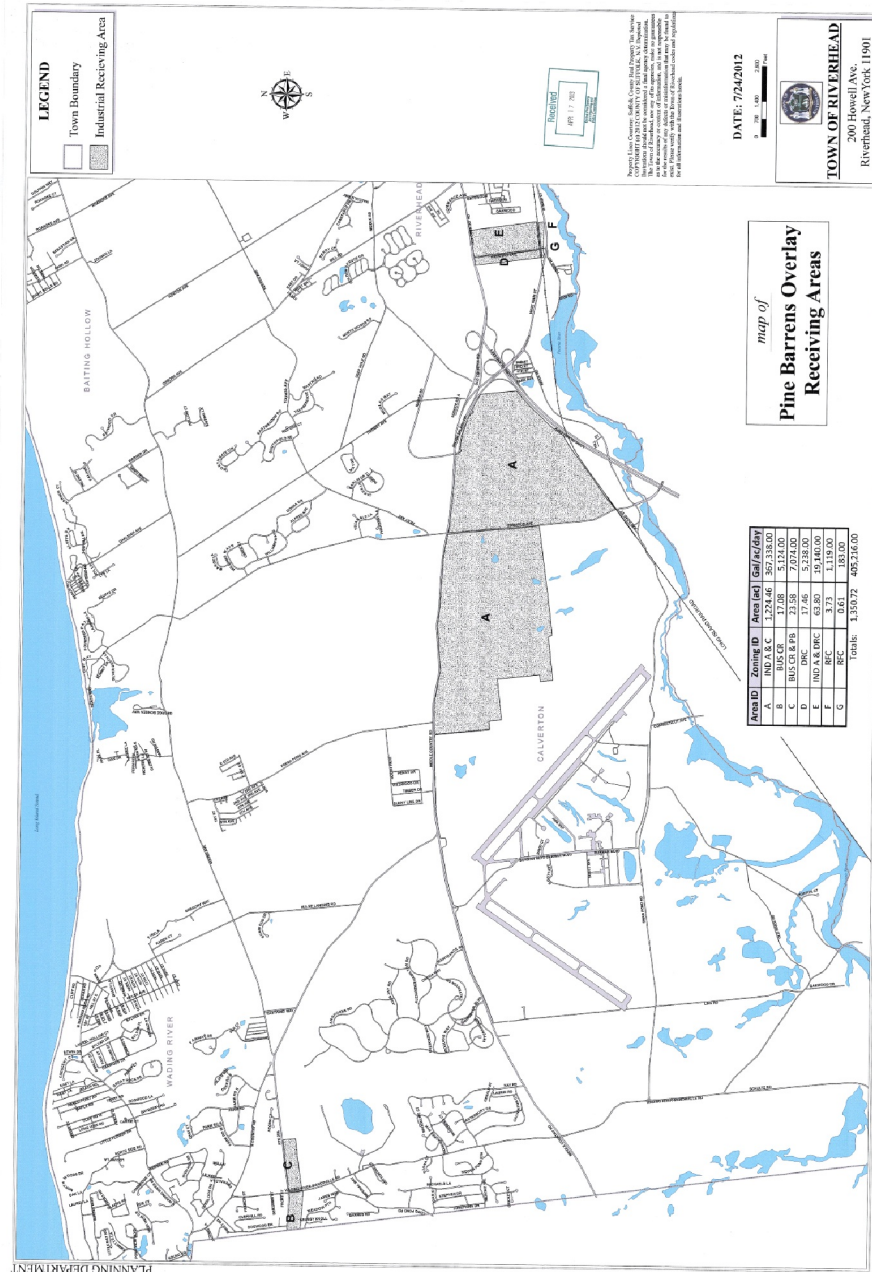
#### **6.4.3.1 Riverhead intensity increase**

A single Pine Barrens Credit shall permit an increase in intensity equal to three hundred (300) gallons per day per acre or the equivalent rated sewage flow as described in the Suffolk County Health Department Standards.

#### **6.4.3.2 Riverhead as of right policy**

The increased intensity shall be available as of right for those receiving districts identified in Figures 6-4 and 6-5.

**Figure 6-4: Riverhead as of right receiving area map**



### Figure 6-5: Riverhead receiving area parcels

*(All parcels which are within the receiving areas are listed here, regardless of their current land use. All Riverhead parcels are within the same school district.)*

Tax map number	Acreage	Tax map number	Acreage
<b>Receiving Area "A": Calverton; Receiving Areas "B" and "C": Wading River</b>			
0600-73-1-1.2	1.4	0600-116-1-4	22.5
0600-73-1-1.4	0.58	0600-116-1-7.1	113.3
0600-73-1-1.6	0.44	0600-116-2-1.1	25.1
0600-73-1-1.9	3.1	0600-116-2-2	25.1
0600-73-1-1.12	1.1	0600-116-2-3	25.4
0600-73-1-1.15	1.3	0600-116-2-4	24.5
0600-73-1-1.16	1.3	0600-116-2-5	48.3
0600-73-1-1.17	1.3	0600-117-1-1.2	36.39
0600-73-1-1.18	1.3	0600-117-1-2	8.86
0600-73-1-1.19	1.7	0600-117-1-3	41.98
0600-73-1-1.20	0.43	0600-117-1-4	22.73
0600-73-1-1.22	0.16	0600-117-1-5	41.43
0600-73-1-1.75	2.6	0600-117-1-6	24.16
0600-75-3-3.2	0.81	0600-117-1-8.4	30.18
0600-75-3-3.7	13.5	0600-117-2-2.3	3.9
0600-75-3-18.3	1.8	0600-117-2-2.5	9.5
0600-97-2-37	0.46	0600-117-2-2.6	2.0
0600-98-1-4	1.0	0600-117-2-3.1	4.49
0600-98-1-7	1.0	0600-117-2-3.2	3.0
0600-98-1-8	1.9	0600-117-2-4.1	8.0
0600-98-1-10	1.0	0600-117-2-5	0.78
0600-98-1-11	0.5	0600-117-2-6	1.0
0600-98-1-17	2.0	0600-117-2-7.2	4.9
0600-98-1-20	4.4	0600-117-2-8.2	52
0600-98-1-21	10.3	0600-117-2-9.1	37.53
0600-98-1-22	0.85	0600-117-2-11	116.30
0600-99-1-2.2	0.90	0600-117-2-12.3	121.91
0600-99-1-3	7.45	0600-117-2-13	14.37
0600-99-2-9	1.0	0600-117-2-14	0.62
0600-99-2-14.1	0.48	0600-118-1-1	0.49
0600-99-2-27	0.77	0600-118-1-2.1	31.84
0600-116-1-1	50.5	0600-118-1-2.2	32.76
0600-116-1-2	30.2	0600-118-1-3.1	27.86
0600-116-1-3.1	28.2	0600-118-1-4	0.33
		0600-118-1-13	0.73

### Figure 6-5 (p.2): Riverhead receiving area parcels

*(All parcels which are within the receiving areas are listed here, regardless of their current land use. All Riverhead parcels are within the same school district.)*

Tax map number	Acreage	Tax map number	Acreage
<b><i>Receiving Areas "D, E, G and F": West Main Street</i></b>			
0600-118-3-2.2	4	0600-119-1-35.5	2.4
0600-118-3-2.3	7.6	0600-119-1-36	1.6
0600-118-3-3	4	0600-119-1-37	16.7
0600-119-1-22.1	21	0600-119-1-40	3.6
0600-119-1-23	46.9	0600-119-2-1	0.5
0600-119-1-24	24.8	0600-119-2-2	0.1
0600-119-1-25	6.6	0600-119-2-4.1	1.7
0600-119-1-26.1	2.5	0600-119-2-5	0.4
0600-119-1-28.2	2.3	0600-119-2-7.1	3.6
0600-119-1-28.4	2.3	0600-119-2-8	0.2
0600-119-1-28.5	2.3	0600-119-2-10.1	0.4
0600-119-1-28.6	3.7	0600-119-2-11	0.3
0600-119-1-29	3.5	0600-119-2-12	0.6
0600-119-1-30	1.5	0600-119-2-13	0.5
0600-119-1-31.2	1.9	0600-119-2-14	0.3
0600-119-1-32.1	3.9	0600-119-2-15	0.1
0600-119-1-32.2	3	0600-119-2-16	0.6
0600-119-1-35.3	9.3	0600-119-2-17	0.4
0600-119-1-35.4	4	0600-119-2-18	0.4
		0600-137-1-7	2
		0600-137-1-8	1.6
		0600-137-1-32	51.4
		0600-137-2-10	12.1

#### 6.4.4 Town of Southampton designated Pine Barrens Credit receiving districts

The Town of Southampton has identified receiving districts which are eligible to receive Pine Barrens Credits as of right from the Core Preservation Area and the Compatible Growth Area and in which increased density shall be allowed. These receiving districts are described in Figures 6-7 and 6-8.

##### 6.4.4.1 Overview of the Southampton Pine Barrens Credit Program

The Pine Barrens Credit Program in Southampton is designed to redirect development from all residentially zoned lands within the Core Preservation Area and to preserve other key areas within the Compatible Growth Area.

Two primary approaches are to be used:

1. Redirection of development to other areas of the Town on an as of right basis through residential overlay districts, and
2. Use of innovative planning areas referred to as Planned Development Districts to creatively accommodate Pine Barrens Credits through a variety of development schemes. These approaches would convert Pine Barrens Credits to highly tax ratable uses such as resort and tourism, commercial and retail, senior housing and care centers, and medical centers.

The zoning and total acreage of residential lands which would be eligible for Pine Barrens Credit allocation are shown in Figure 6-6.

Figure 6-6: Southampton zoning and Pine Barrens Credit illustration						
Statutory zone	R-20 acreage	R-40 acreage	CR-60 acreage	R-80 acreage	CR-120 acreage	CR-200 acreage
Core Preservation Area	13	16	169	0	265	3367
Compatible Growth Area	48	0	10	42	221	1015
Totals	61	16	179	42	486	4382
<i>Note:</i> R-20 is a Residence District with a 20,000 square feet minimum lot size. CR-60 is a Country Residence District with a 60,000 square feet minimum lot size.						

Pine Barrens Credits would be allocated to owners of these lands using the method outlined in this chapter of this Plan. However, in the case of old filed map lots, allocation of Pine Barrens Credits does not include a yield factor, since these lots were platted with infrastructure allowances. This coincides with the Town's existing old filed map regulations and results in a slightly higher allocation of Pine Barrens Credits for these lots, as defined within Section 6.3.1.1 and Figure 6-1. Southampton Town old filed map parcels are defined in Southampton Town Code Section 330-53, and that definition is adopted in this Plan for purposes of the Pine Barrens Credit Program, including any amendments by the Town to this provision in the future.

Within the Core Preservation Area, is it vital to have as much of the Towns' industrially zoned land protected by acquisition as possible, due to the difficulty in allocating Pine Barrens Credits. The Town therefore requests the prioritization of these lands for acquisition through the present state and county programs, especially since many of these parcels fall within ecologically sensitive areas such as the dwarf pine plains. However, the Town does recognize that some owners of industrially zoned land may wish to sell or utilize Pine Barrens Credits for such development. In such cases, the Commission may exercise the right to allocate Pine Barrens Credits on a plan basis.

#### **6.4.4.2 As of right redemption of Southampton Pine Barrens Credits**

The primary strategy for the redirection of development from the Core Preservation Area is through Residential Overlay Districts. In these districts, a single Pine Barrens Credit shall allow an increase in density equal to one (1) dwelling unit, as defined by the Southampton Town Code. The end result is an incremental increase in density in selected residentially zoned areas of the Town.

This does not result in a net gain of dwelling units or population within the Town, but simply redirects development and channels growth in order to preserve more ecologically sensitive lands. The as of right receiving areas are designed to accommodate those Pine Barrens Credits from the Core Preservation Area within the same school district. In no case will it be necessary to cross school district boundaries on an as of right basis.

In Southampton, where most of the receiving areas are presently zoned one (1) unit per five acres, the creation of Residential Overlay Districts will allow the redemption of Pine Barrens Credits through an average of one (1) unit per acre. In certain school districts, in order to accommodate all Pine Barrens Credits, the Southampton Town Planning Board may need to require lot sizes less than one (1) unit per acre, though not lower than one (1) unit per one half (0.5) acre.

Where it was necessary to designate receiving sites within areas that are presently zoned one (1) unit per acre, the establishment of densities higher than one (1) unit per one half (0.5) acre may be essential for full redemption of Pine Barrens Credits within that school district. For those sites, incorporation of a sewage treatment plant would be required by the Suffolk County Sanitary Code.

The net result of these Southampton Town policies is compact and efficient development that will protect Central Pine Barrens lands without significant public expenditure. The designation of

receiving sites coincides with those areas where infrastructure and municipal services already exist. Thus, the cost to municipalities and taxpayers with regard to new road construction, water main extension and the provision of police, fire and other services is thereby lowered.

#### **6.4.4.3 Other strategies for the redemption of Southampton Pine Barrens Credits**

The redemption of Pine Barrens Credits through mechanisms other than as of right uses may be possible through the many strategies that were outlined in *The Comprehensive Plan Initiative for Groundwater and Pine Barrens Forest Preservation* (the Southampton "Western Generic Environmental Impact Statement" or WGEIS; 1993), and which continue to be outlined through the update of the Town Comprehensive Plan. An overview of possible strategies which will be given future consideration by the Town is listed below, along with the potential areas where such redemption may take place.

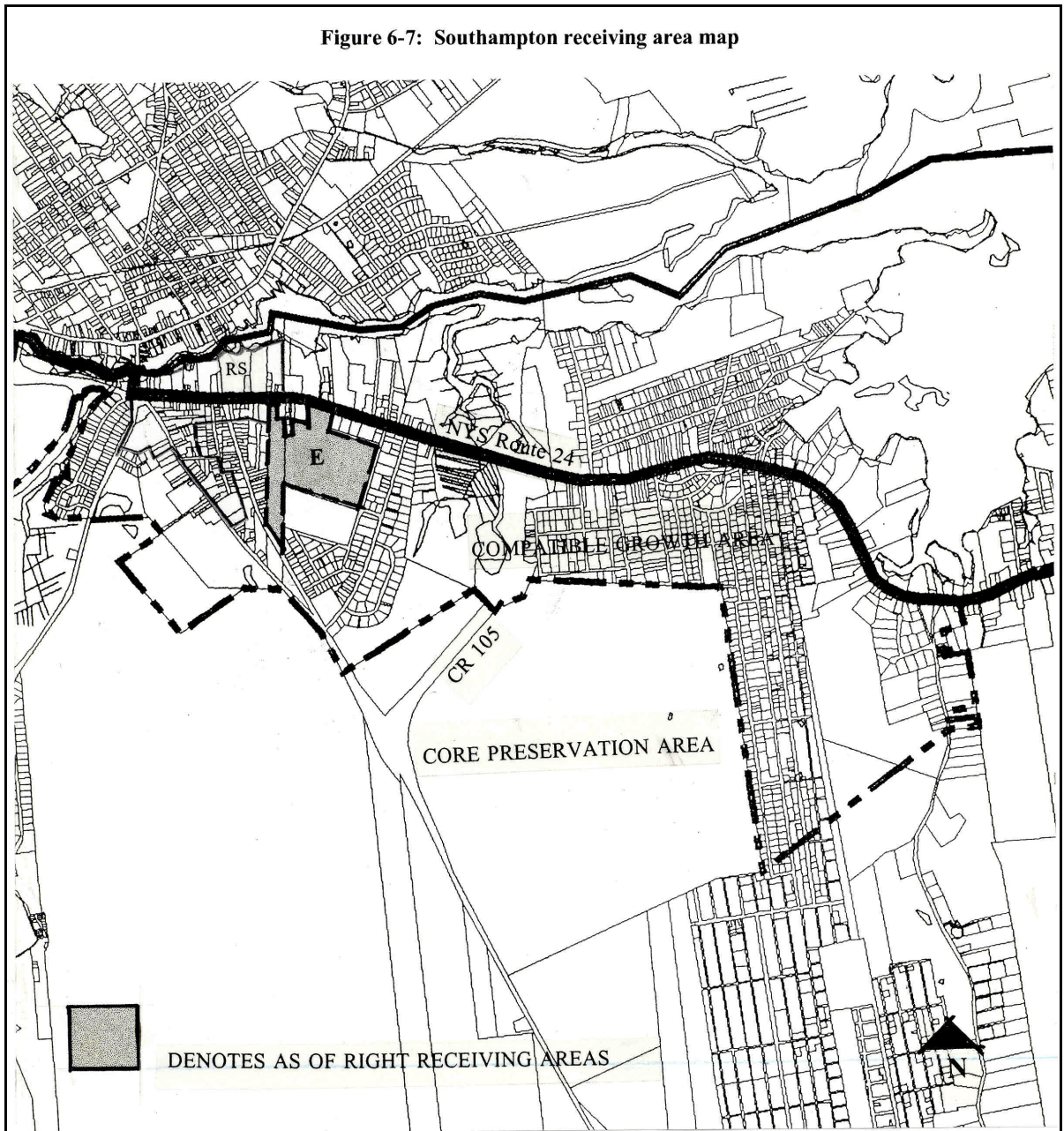
These areas would serve to provide more opportunities for future use of Pine Barrens Credits. Furthermore, the use of Planned Development Districts would allow for the conversion of residential development rights into commercial, industrial, tourism, or other uses. These would serve to limit the ultimate amount of residential dwelling units that could be built while still providing for a strong tax base.

The following potential strategies may be employed in the future by Southampton Town, as approved by the Town Board, for the redemption of Pine Barrens Credits. Geographical areas that may be suitable for such redemption mechanisms are also noted.

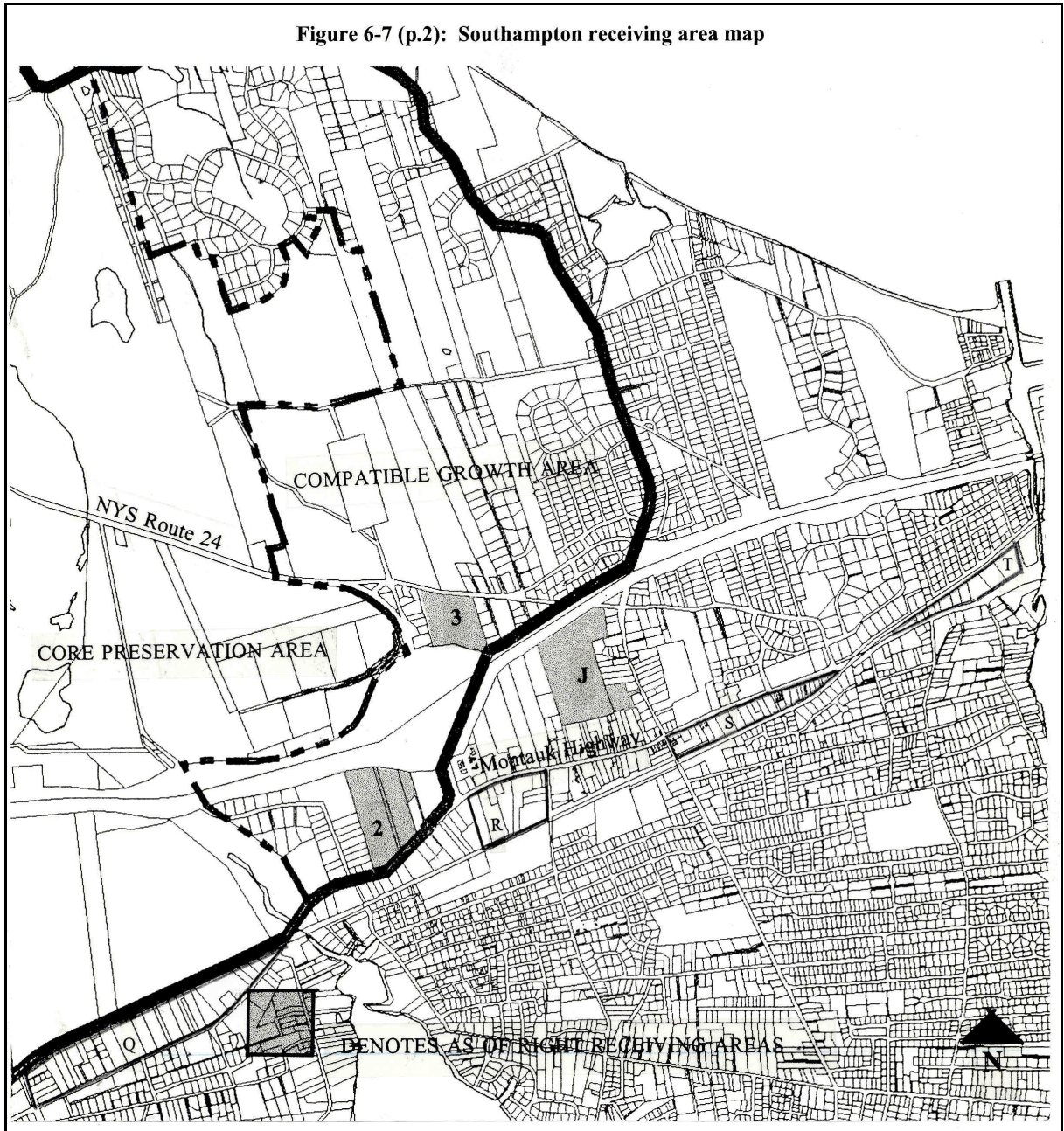
1. Use of Pine Barrens Credits could permit density increases for senior citizen housing and elder care facilities.
2. Overlay districts along the Montauk Highway and Long Island Railroad corridors could promote revitalization and concentrated development patterns within existing hamlet centers. Potential locations for such activity include, but are not limited to, areas L, R and S.
3. Use of Pine Barrens Credits could allow accessory apartments within existing residential zoning districts.
4. Mixed use overlay districts along existing commercial corridors could allow for alternative uses to counteract strip development. Locations that could be suitable for these receiving districts are Q, T, R and 2.
5. Appropriate industrial development areas have been identified at the Suffolk County airport for the redirection of Pine Barrens Credits from industrially zoned land located in the Core Preservation Area, and for the conversion of residential Pine Barrens Credits.
6. Use of Pine Barrens Credits could promote tourism uses and related facilities. Areas M, I, P, EQ, and RS are identified as suitable for this.
7. Use of Pine Barrens Credits could allow multifamily, or more compact, residential development. Sites that could accommodate this activity include K, J, 2, E, and the county's Bomarc site along Old Country Road in Westhampton.



**Figure 6-7: Southampton as of right receiving area map**

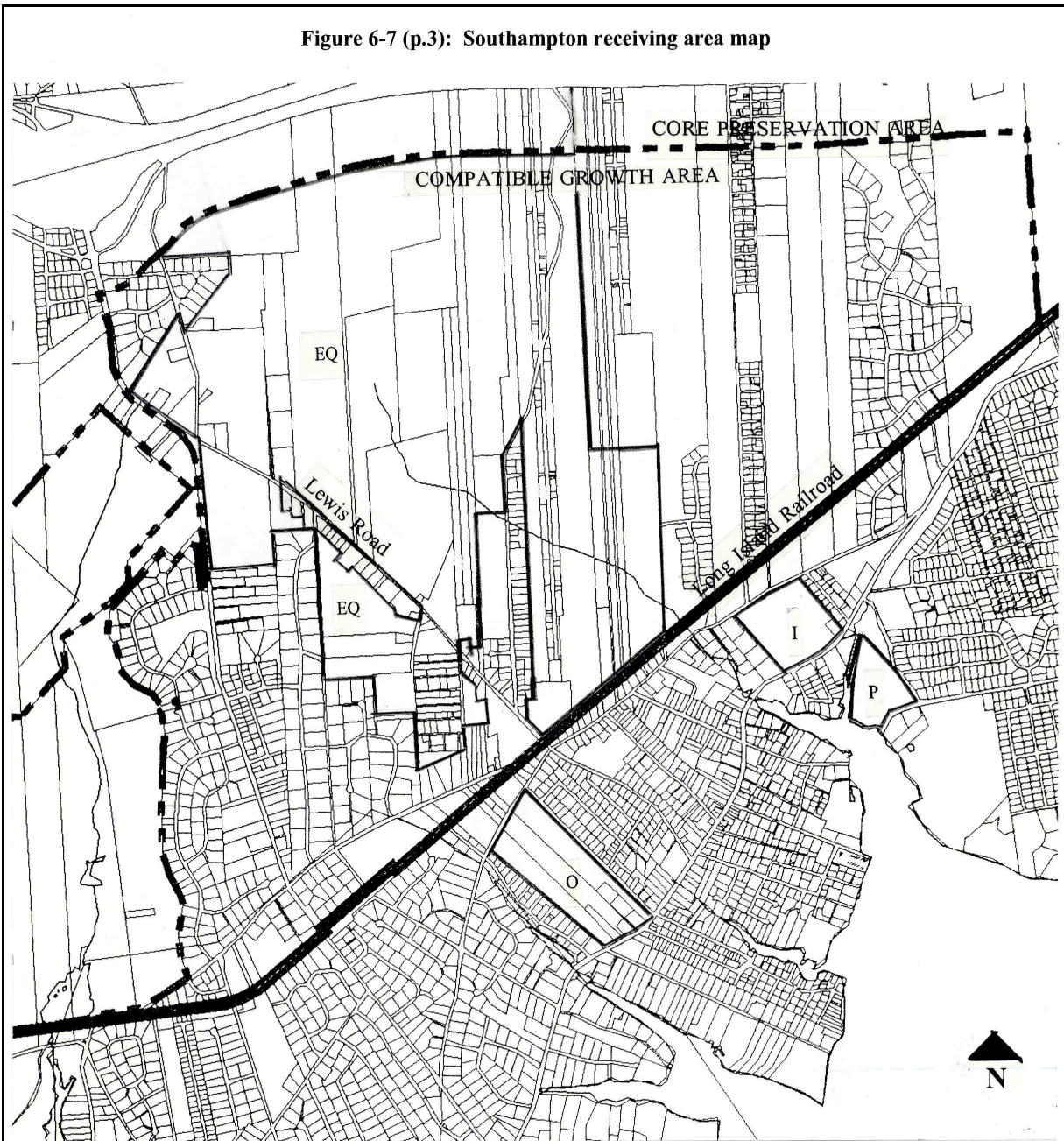


**Figure 6-7 (p.2): Southampton as of right receiving area map**

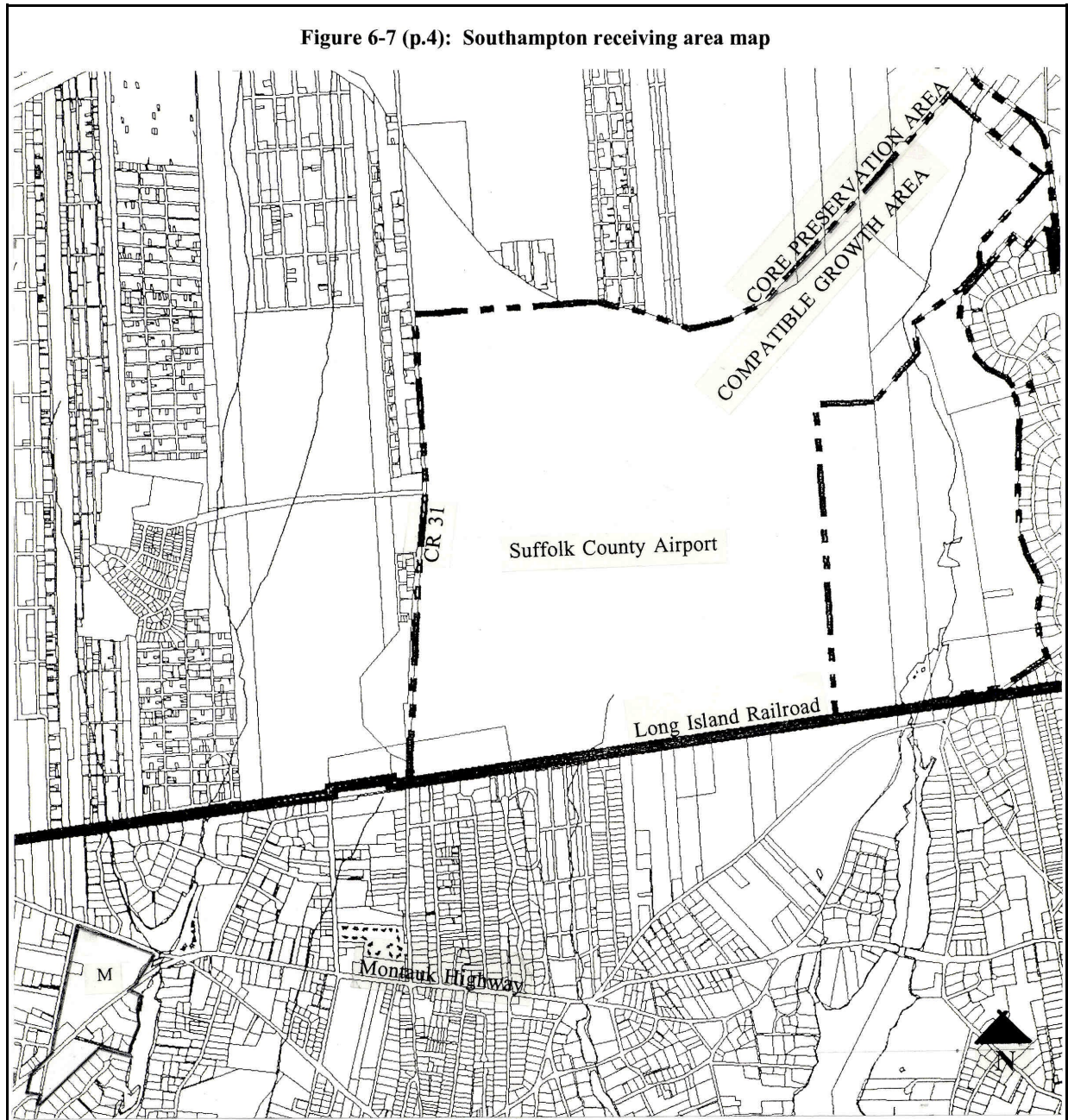




**Figure 6-7 (p.3): Southampton as of right receiving area map**

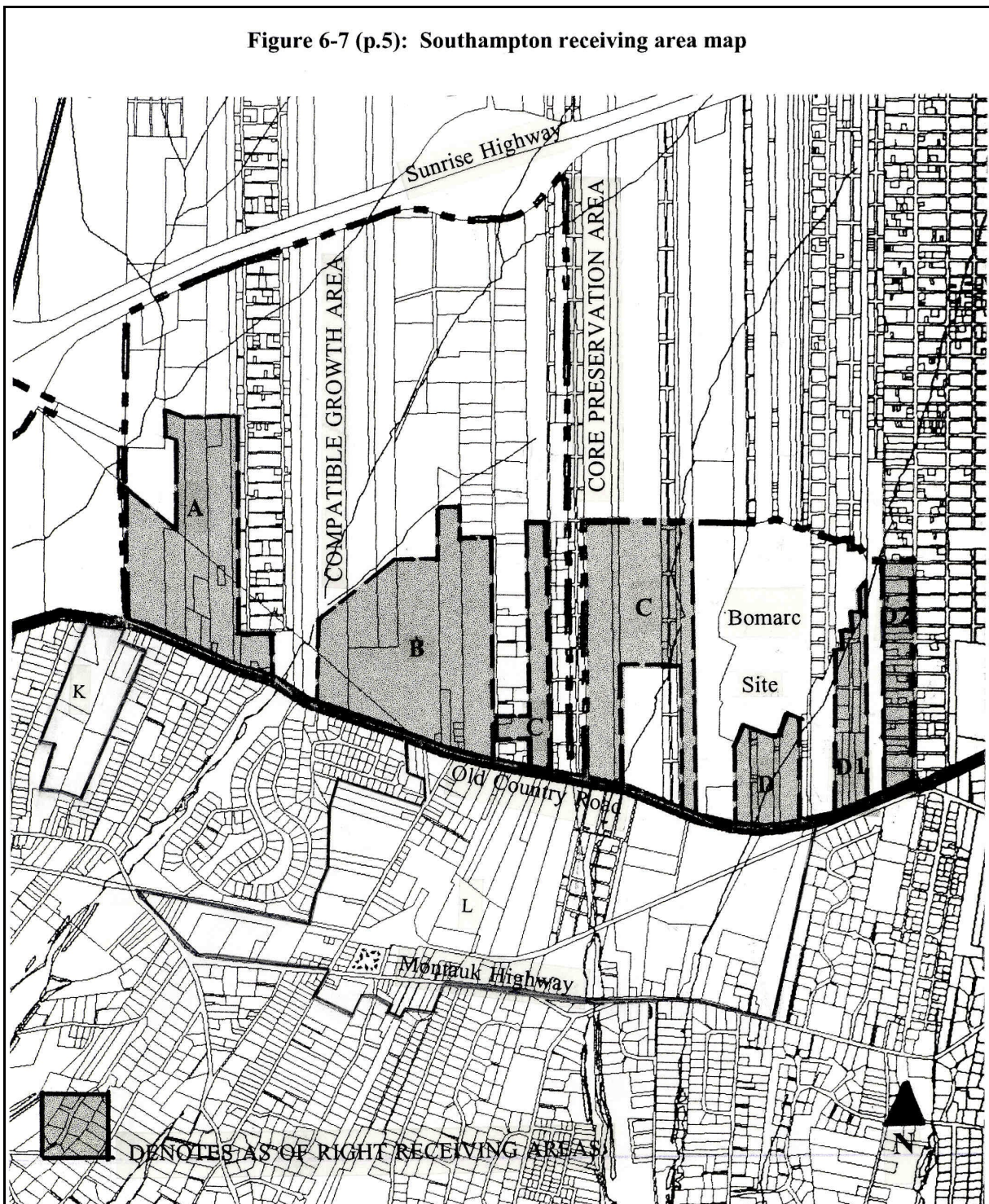


**Figure 6-7 (p.4): Southampton as of right receiving area map**





**Figure 6-7 (p.5): Southampton as of right receiving area map**



**Figure 6-8: Southampton receiving area parcels**

*(All parcels which are within the receiving areas are listed here, regardless of their current land use.)*

Receiving Area	Tax map number	Acreage	Receiving Area	Tax map number	Acreage
<b><i>Riverhead school district</i></b>					
E	900-139-3-10.2	12.5	E	900-141-1-9.2	35
<b><i>Hampton Bays school district</i></b>					
2	900-221-3-12.1	12.5	3	900-205-3-12.1	16.3
2	900-221-3-16.1	7.6	J	900-225-1-1	33.5
2	900-221-3-18	2.5	J	900-225-1-21	3.5
<b><i>Eastport school district</i></b>					
A	900-325-1-2.2	26.0	A	900-325-1-8.2	17.4
A	900-325-1-3.2	11.8	A	900-325-1-34.1	5.3
A	900-325-1-4.2	5.6	A	900-325-1-47.1	1.2
A	900-325-1-6.3	1.5	B	900-326-1-3.2	5.5
A	900-325-1-7.3	12.0	B	900-326-1-5.2	6.3
<b><i>Speonk-Remsenburg school district</i></b>					
A	900-325-1-3.1	6.0	B	900-326-1-p/o 5.1	55.5
A	900-325-1-4.1	15.7	B	900-326-1-p/o 6	22.9
A	900-325-1-p/o 7.2	16.4	B	900-326-1-10	36.7
A	900-325-1-p/o 8.1	5.6	B	900-326-1-p/o 17	7.8
A	900-325-1-43	2.3	C	900-276-3-p/o 1	36
B	900-326-1-p/o 3.1	8.8	C	900-327-1-p/o 6	28.9
B	900-326-1-p/o 4	8.4	C	900-328-1-4	3.3

**Figure 6-8 (p.2): Southampton receiving area parcels**

*(All parcels which are within the receiving areas are listed here, regardless of their current land use.)*

Receiving Area	Tax map number	Acreage	Receiving Area	Tax map number	Acreage
<i>Westhampton Beach school district</i>					
C	900-305-1-7 (ofm)	1.6	D2	900-331-3-1 (ofm)	1.93
C	900-329-1-1	1.49	D2	900-331-3-2 (ofm)	1.93
C	900-329-1-2	1.49	D2	900-331-3-5	1.84
C	900-329-1-3	1.49	D2	900-331-3-6 (ofm)	1.93
C	900-329-1-4	0.69	D2	900-331-3-7 (ofm)	0.96
C	900-329-1-6	0.57	D2	900-331-3-8 (ofm)	0.96
C	900-329-1-p/o 10	20.2	D2	900-331-3-9	1.33
D	900-330-2-11	8.2	D2	900-331-3-12 (ofm)	0.96
D	900-330-2-14.1	3.2	D2	900-331-3-14 (ofm)	0.64
D	900-330-2-16.2	10.5	D2	900-331-3-16 (ofm)	1.61
D1	900-331-2-4 (ofm)	1.26	D2	900-331-3-17	1.41
D1	900-331-2-7 (ofm)	2.30	D2	900-331-3-28 (ofm)	1.70
D1	900-331-2-8 (ofm)	1.12	D2	900-331-3-29 (ofm)	1.79
D1	900-331-2-9 (ofm)	1.49	D2	900-331-3-31 (ofm)	1.93
D1	900-332-2-1 (ofm)	1.15	D2	900-332-3-3 (ofm)	1.93
D1	900-332-2-2 (ofm)	0.92	D2	900-332-3-6 (ofm)	0.54
D1	900-332-2-3 (ofm)	0.92	D2	900-332-3-7 (ofm)	0.96
D1	900-332-2-4 (ofm)	1.72	D2	900-332-3-8 (ofm)	0.96
D1	900-332-2-5	3.20	D2	900-332-3-9 (ofm)	1.93
D1	900-332-2-6	2.5	D2	900-332-3-10 (ofm)	2.30
D1	900-332-2-7	2.5	D2	900-332-3-11 (ofm)	0.96
D1	900-332-2-10	5	D2	900-332-3-12 (ofm)	0.90
			D2	900-332-3-13 (ofm)	1.70
			D2	900-332-3-15 (ofm)	1.93
<p><i>Note:</i>  <i>"ofm" indicates an "old filed map" parcel.</i></p>					

#### **6.4.5 Suffolk County Sanitary Code**

The Suffolk County Health Department has amended Article 6 of the Suffolk County Sanitary Code to permit the Department of Health to perform functions heretofore performed by the Board of Review. Insofar as it applies to the Central Pine Barrens, this amendment should be applied so as to facilitate implementation of each town's Pine Barrens Credit program in accordance with this Plan and should sunset no later than the date when the last Pine Barrens Credit allocated in that town is extinguished unless the Commission endorses an earlier sunset date during the five year Plan update as provided in 57-0121(13). Each town, in its Findings Statement, may designate a more restrictive standard, i.e., less than 600 gallons per day per acre.

### **6.5 Pine Barrens Credit use planning**

#### **6.5.1 Amendment of zoning and land use regulations**

In order for a town to comply with ECL Section 57-0123, it must amend its land use and zoning regulations to conform to this Plan within three (3) months of the Commission's adoption of this Plan. Such amendments shall include the final adoption by each town of a Planned Development District ordinance designed to accommodate Pine Barrens Credits. Each town shall propose a draft Planned Development District ordinance by June 30, 1995.

#### **6.5.2 Establishment of a receiving capacity plan by each town**

Each town shall, within three (3) months of the Commission's adoption of this Plan, submit a plan to the Commission demonstrating the manner in which each town will identify Pine Barrens Credit uses of sufficient quantity and quality within such town to accommodate at least two and one half (2.5) times the number of Pine Barrens Credits available for allocation within the town at that time.

##### **6.5.2.1 One to one receiving capacity to sending credit ratio requirement**

Each town shall include enough absorption capacity in receiving districts that meet the as of right definition set forth in Section 6.4 of this Plan so as to absorb all of the Pine Barrens Credits on a one to one (1:1) ratio that the Commission estimates it may allocate in that town pursuant to this Plan. The Commission recognizes that a change in zoning upon a town board's own motion that would decrease the receiving capacity so as to reduce this ratio below 1:1 would have an adverse effect on the Pine Barrens Credit program.

##### **6.5.2.2 Review by the Commission of the absorption capacity estimates**

Each town shall present to the Commission its best estimate of the number of Pine Barrens Credits that could be transferred to, and absorbed in, its as of right Residential Overlay Districts, Planned Development Districts, or other kinds of receiving districts, or through incentive zoning



strategies with a supporting analysis. The Commission shall review, and then confirm or modify, such estimates based upon the best evidence available to it. In reviewing and approving this plan, the Commission shall consider each town's compliance with Section 6.5.2 of this Plan based upon such estimates.

### **6.5.3 Establishment of additional receiving districts**

In addition to the receiving districts identified above and the approaches identified by each town for adding additional receiving districts, each town may adopt additional receiving districts to accommodate Pine Barrens Credits as set forth below:

#### **6.5.3.1 Planned Development Districts**

The following policies shall apply to the use of Planned Development Districts for the redemption of Pine Barrens Credits.

##### **6.5.3.1.1 Designation of Planned Development Districts as receiving districts**

Each town may designate receiving districts that are Planned Development Districts (PDDs). Each PDD shall be mapped by the municipality, or otherwise designated by criteria that the town describes in its PDD regulations. Pine Barrens Credits may be redeemed for residential, commercial and other uses in PDDs. Each plan or scheme must include a redemption schedule, a table of densities or a change of use schedule, as appropriate.

##### **6.5.3.1.2 Requirements of the Suffolk County Sanitary Code**

Each PDD must conform to the requirements of the Suffolk County Sanitary Code.

##### **6.5.3.1.3 Regulations regarding the timing of development**

Each town may establish regulations regarding the timing of development within each PDD in order to minimize any adverse fiscal impacts on any taxing jurisdiction, except that any such phasing should not apply to any development allowed under existing zoning. To offset the impact of residential development, commercial and industrial development should occur first whenever possible.

##### **6.5.3.1.4 Inclusion of Planned Development District capacity within townwide Pine Barrens Credit absorption capacity estimate**

A town may include the absorption capacity of its Planned Development Districts as part of the plan that must be submitted to the Commission under section 6.5.2 above by estimating the number of Pine Barrens Credits that it reasonably expects may be absorbed in its PDDs. However, the estimate must be based upon a local PDD ordinance that shall have been fully adopted in final form within three (3) months of the Commission's adoption of this Plan.

### **6.5.3.2 Residential Overlay Districts**

The following policies shall apply to the use of Residential Overlay Districts for the redemption of Pine Barrens Credits.

#### **6.5.3.2.1 Designation of additional Residential Overlay Districts as receiving districts**

Each town may establish additional receiving districts that are residential overlay districts (RODs) within the town.

#### **6.5.3.2.2 Requirements for designation of additional Residential Overlay Districts**

Each ROD shall be mapped or otherwise designated based on objective geographic criteria.

#### **6.5.3.2.3 Criteria for restricting locations of Residential Overlay District density increases**

No ROD may include any land within the Core Preservation Area or any Critical Resource Area.

#### **6.5.3.2.4 Types of projects in which the Residential Overlay District increase applies**

The ROD yield would apply to subdivisions, land divisions, flag lot clusters, and mother and daughter units.

#### **6.5.3.2.5 Requirements of the Suffolk County Sanitary Code**

The ROD must conform to the requirements of the Suffolk County Sanitary Code.

#### **6.5.3.2.6 Prohibition of unreasonable school district burdens**

Redemption of Pine Barrens Credits in RODs may not produce an unreasonable burden on the receiving school district.

#### **6.5.3.2.7 Inclusion of the Residential Overlay Districts' capacity within the townwide Pine Barrens Credit absorption capacity estimate**

A town may include the absorption capacity of its RODs as part of the plan that must be submitted to the Commission under Section 6.5.2.1 of this Plan only if the ROD meets the definition "as of right" set forth above.

### **6.5.3.3 Incentive Zoning districts**

The following policies shall apply to the use of Incentive Zoning Districts for the redemption of Pine Barrens Credits.

#### **6.5.3.3.1 Designation of receiving districts pursuant to incentive zoning or municipal home rule laws**

Each town may establish receiving districts pursuant to the incentive zoning provisions contained in New York Town Law Section 261-b or pursuant to New York Municipal Home Rule Law. Pine Barrens Credits may be redeemed for a change in land use, or an increase in intensity or density in such receiving districts.

#### **6.5.3.3.2 Requirements for incentive zoning or municipal home rule receiving districts**

For each incentive zoning district designated under Section 6.5.3 of this Plan, the town shall establish a redemption schedule, a table of densities or a change of use schedule, as appropriate. Pine Barrens Credits shall be redeemable in accordance with the specified incentive zoning for each receiving district designated. Upon application to the appropriate jurisdiction(s), additional Pine Barrens Credits may be used to exceed the incentive zoning of a receiving district with the redemption of these additional Pine Barrens Credits.

#### **6.5.3.3.3 Requirements of the Suffolk County Sanitary Code**

Each incentive zoning district must conform to the requirements of the Suffolk County Sanitary Code.

#### **6.5.3.3.4 Increases above incentive zoning**

As part of its incentive zoning ordinance, a town may provide that any additional increases over and above that provided by the incentive zoning schedule may be conditional upon the purchase of additional Pine Barrens Credits.

#### **6.5.3.4 Additional Overlay Districts, Special Permit Uses or Special Exemption Uses**

Additional overlay districts, special permit uses, or special exemption uses may be adopted by the towns to accommodate Pine Barrens Credits.

#### **6.5.4 Intermunicipal redemptions of Pine Barrens Credits**

Intermunicipal redemption of Pine Barrens Credits is defined as the redemption of Credits in a town or village in Suffolk County other than the one from which it was generated. Approval from both the receiving and generating town or village is required for the redemption to occur. Such intermunicipal redemptions may, in some instances, involve the redemption of Pine Barrens Credits in municipalities outside the Central Pine Barrens area. Intermunicipal redemptions include, but are not limited to, the redemption of Credits in satisfaction of the requirements of the Suffolk County Department of Health Services anywhere within that Department's jurisdiction.

### **6.5.5 Permanency of Pine Barrens Credit Redemptions**

Absent unanimous commission action to the contrary each Pine Barrens Credit redemption shall be irrevocable.

### **6.5.6 Redemption of Pine Barrens Credits within the Core Preservation Area prohibited**

Pine Barrens Credits may not be redeemed in the Core Preservation Area or other sending area under this Plan.

## **6.6 Establishment of the Pine Barrens Credit Clearinghouse and the Board of Advisors**

The Commission finds that in order to implement the Pine Barrens Credit Program, steps must be taken to promote the use and sale of the Pine Barrens Credits established under the program and that the best means of providing this assurance is through the establishment of a Pine Barrens Credit Clearinghouse that will purchase, sell, and track Pine Barrens Credits. The Commission further finds that it is appropriate to establish a board to perform the functions of a clearinghouse, subject to the provisions set forth below.

### **6.6.1 Structure and operation of the Board of Advisors**

The Pine Barrens Credit Clearinghouse, referred to as the "Clearinghouse", shall be governed by a Board of Advisors (the "Board") consisting of five (5) members. Each ex officio member of the Commission, and the Governor, shall each appoint one (1) member of the Board. The members of the Board shall serve without compensation. The Commission shall appoint one (1) of these five members as Chairperson of the Board and shall also appoint one (1) other member as a Vice-chair. Four (4) members of the Board shall constitute a quorum for the transaction of services or the exercise of any Board function. An affirmative vote of three (3) or more Board members shall be required to pass a resolution or exercise a function of the Board.

### **6.6.2 Authority of the Board of Advisors**

The Board shall have the authority:

- 6.6.2.1 To advise and make recommendations to the Commission as to the monetary value of Pine Barrens Credits to be purchased by the Clearinghouse.
- 6.6.2.2 To purchase Pine Barrens Credits from owners of eligible sending area parcels which have received Credits and from successive owners of Credits to further the objectives of the Pine Barrens Protection Act.
- 6.6.2.3 To sell, exchange or convey Pine Barrens Credits previously purchased by the Clearinghouse to entities willing to purchase such Pine Barrens Credits from the Clearinghouse, and to establish the monetary value of those Pine Barrens Credits which are sold by the Clearinghouse.

- 6.6.2.4 To adopt and, from time to time, amend and repeal suitable bylaws for the management of its affairs;
- 6.6.2.5 To apply for, receive, accept, and utilize, with the approval of the Commission, from any federal, state, or other public or private source, grants or loans for, or in aid of, the Board's authorized purposes;
- 6.6.2.6 To utilize funds allocated for Clearinghouse purposes and to implement appropriate fiscal and accounting practices;
- 6.6.2.7 To appoint such officers, employees and agents as the Board may require for the performance of its duties;
- 6.6.2.8 To call to its assistance, and to avail itself of the services of, employees of any state, county or municipal department, board, commission or agency as may be required and may be made available for these purposes;
- 6.6.2.9 To issue Letters of Interpretation (LOIs) to owners of eligible sending area parcels, and to establish appropriate administrative procedures for such issuance, including, but not limited to, defining what documentation is acceptable for LOI application information.

## **6.7 Pine Barrens Credit Certificates**

The following procedures shall apply to the issuance of Pine Barrens Credit Certificates by the Clearinghouse.

### **6.7.1 Issuance of Pine Barrens Credit Certificates by the Clearinghouse**

All Pine Barrens Credit Certificates shall be issued by the Clearinghouse.

### **6.7.2 Overview of the issuance procedure**

Issuance of a Pine Barrens Credit Certificate encompasses the following three steps:

1. A property owner obtains a Letter of Interpretation from the Clearinghouse stating the number of Pine Barrens Credits allocated to the parcel of land.
2. The property owner applies to the Clearinghouse for a Pine Barrens Credit Certificate by submitting a valid Letter of Interpretation, a standard title report, and other necessary documents as determined by the Clearinghouse.
3. A Pine Barrens Credit Certificate is issued when the Clearinghouse receives proof of filing and recording of the conservation easement from the title insurance company.

### **6.7.3 Detail of Step 1: Obtaining a Letter of Interpretation**

The Clearinghouse will utilize a current survey made in the last ten (10) years, if such a survey is available and provided, to establish the acreage figure to be utilized in the formula determining Credit allocation. If such a survey is available, the survey's acreage figure shall be used, regardless of the acreage shown on the tax bills. If such a survey is unavailable, the acreage figure

will be obtained from the publicly available tax bill information.

- 6.7.3.1 A property owner requests a Letter of Interpretation on a form to be supplied by the Clearinghouse.
- 6.7.3.2 The Clearinghouse staff may conduct an analysis of the property and will allocate Pine Barrens Credits based upon the allocation formula and any unique features of a particular parcel of land. The Clearinghouse staff mails the Letter of Interpretation to the property owner.
- 6.7.3.3 The property owner has thirty (30) days from the date of the Letter of Interpretation to appeal the allocation to the Commission in writing. Extensions of this deadline for filing an appeal may be granted at the Commission's discretion upon written request of the property owner.
- 6.7.3.4 The Commission shall consider the written appeal request within a timeframe of sixty (60) days or by the end of two consecutive regularly scheduled Commission meetings, whichever date comes first after the receipt of an appeal, and shall schedule and hold a hearing within that period of time. The appellant shall be given an opportunity to present arguments and relevant material at the hearing.
- 6.7.3.5 After the appeal hearing, the Commission shall decide the appeal within a timeframe of sixty (60) days or by the end of two consecutive regularly scheduled Commission meetings, whichever date comes first, and may seek the advice of the Clearinghouse Board. The Commission may confirm, increase, or decrease the allocation to be received from the Clearinghouse. A new Letter of Interpretation containing the Commission's final allocation(s) to the subject parcel(s) will be issued following such a decision. An appeal shall be deemed denied if the Commission fails to make a decision in this timeline.

#### **6.7.4 Detail of Step 2: Applying for a Pine Barrens Credit Certificate**

- 6.7.4.1 After receiving a Letter of Interpretation, a property owner may request a Pine Barrens Credit Certificate from the Clearinghouse by submitting:
  - 1. The Letter of Interpretation, and
  - 2. A title report, and
  - 3. A completed Pine Barrens Credit Certificate Application Form, which shall be supplied by the Clearinghouse.
- 6.7.4.2 If the title report indicates that the applicant does not have marketable title, that the applicant is not qualified to encumber the property with a conservation easement, or that there are liens on the property, a Pine Barrens Credit Certificate may not be issued until these matters are resolved by the applicant.
- 6.7.4.3 The Clearinghouse will provide to the applicant a conservation easement to sign once accepted title has been established to the satisfaction of the Clearinghouse.
- 6.7.4.4 The Commission will issue, and update as necessary, a policy on titles and title insurance for use by the Clearinghouse.

### **6.7.5 Detail of Step 3: Recording a conservation easement and obtaining a Pine Barrens Credit Certificate**

- 6.7.5.1 The conservation easement may not be recorded until all title issues are resolved and Clearinghouse staff has approved the conservation easement as to its form.
- 6.7.5.2 The Clearinghouse will issue a preliminary approval concerning the title report and the proposed conservation easement.
- 6.7.5.3 The conservation easement will then be recorded with the Suffolk County Clerk, and a copy of it submitted along with proof of its recording, to the Clearinghouse. The title report must be updated to ensure that there has been no conveyance of the property since the report was received and that no liens have been placed upon the property.
- 6.7.5.4 The Clearinghouse will then issue a Pine Barrens Credit Certificate certifying that the holder of the Certificate is entitled to a specified number of Pine Barrens Credits.

### **6.7.6 Other provisions relating to the issuance of Pine Barrens Credit Certificates**

#### **6.7.6.1 Expiration of the Letters of Interpretation**

A Letter of Interpretation shall expire three(3) years following its issuance. A property owner is not required to apply for a Pine Barrens Credit Certificate upon receipt of a Letter of Interpretation. However, if such application is not made within three(3) years, the Letter of Interpretation will expire and the property owner will be required to reapply for a new Letter of Interpretation.

#### **6.7.6.2 Delayed issuance of a Pine Barrens Credit Certificate**

After receipt of a Letter of Interpretation, a property owner may seek to negotiate the sale of the Pine Barrens Credits described in the letter, and delay obtaining the Pine Barrens Credit Certificate until after reaching an agreement with a prospective buyer of the Pine Barrens Credits.

#### **6.7.6.3 Notification of the Clearinghouse of Pine Barrens Credit usage**

A Pine Barrens Credit Certificate shall state that the recipient of the certificate and any party purchasing the Pine Barrens Credits described in the certificate must notify the Clearinghouse of any transaction involving the sale of the Pine Barrens Credits or utilization of the Pine Barrens Credits as security for a loan. The original Certificate must be sent to the Clearinghouse when all or any portion of the Credits associated with that Certificate are conveyed, transferred, or sold prior to redemption. The Clearinghouse shall then issue one or more new Certificate(s), as appropriate, in the name(s) of the new Credit owner(s).

#### **6.7.6.4 Tax status of the subject property**

No Pine Barrens Credit Certificates shall be issued for any parcel of land until all real property

taxes and ad valorem levies have been paid in full as certified by the town's tax receiver.

#### **6.7.6.5 Liability for real property taxes on subject property**

If a transferor of Pine Barrens Credits owns Pine Barrens Credits on the tax status date under the Suffolk County Tax Act, and such Pine Barrens Credits are transferred subsequent to the tax status date, the transferor shall be liable for all real property taxes on such property from the tax status date until the date of transfer of the Pine Barrens Credits.

#### **6.7.6.6 Issuance of a full Pine Barrens Credit for certain roadfront parcels**

The Pine Barrens Credit Clearinghouse may elect to allocate one (1) full Pine Barrens Credit for a parcel of land consisting of at least 4,000 square feet with frontage on an existing public improved road. Parcel frontage on the main lines (as opposed to any improved service roads) of Sunrise Highway (NY State Route 27), the Long Island Expressway (Interstate 495), and similarly limited access highways shall not qualify a parcel for this provision.

#### **6.7.6.7 Minimum Pine Barrens Credit allocation**

No fewer than 0.10 (one tenth) Pine Barrens Credit shall be allocated by the Clearinghouse or the Commission for any parcel of land which is eligible for a Credit allocation, regardless of its size or road accessibility.

#### **6.7.6.8 Issuance of Pine Barrens Credits to a Parcel with a Land Use Violation**

No Pine Barrens Credits shall be issued for any property where land use conduct has occurred or is occurring that violates the Act, this Plan, any regulation promulgated by the Commission, or any order, determination or permit condition issued by the Commission for which a notice of violation has been issued and not resolved or a Commission enforcement action is pending until the violation is resolved to the satisfaction of the Commission.

#### **6.7.6.9 Transactions involving Pine Barrens Credits**

Pine Barrens Credits that are involved in any transaction, whether it involves the selling, buying, redeeming or conveying of Pine Barrens Credits, must be rounded up to the nearest one hundredth ( $1/100 = 0.01$ ) of a Pine Barrens Credit and the final sum of all Credits involved in the transaction shall not exceed the total Credit value of the original Credit Certificate(s) involved in the transaction. Any certificate or transaction that causes a certificate to fail to comply with this section will not be processed by the Commission.

All Credit sale transactions must include a sworn attestation certifying the consideration amount on the certificate and provide written evidence of the sale (i.e., Bill of sale or contract of sale).



## **6.8 Registry, Reports, and Other Publicly Accessible Information for Pine Barrens Credits**

### **6.8.1 Establishment and maintenance of the Pine Barrens Credit Registry**

The Board shall establish and maintain a registry of Pine Barrens Credits and a publicly available set of reports, which shall include, at a minimum, the following information:

1. The name, property, contact, and address of every owner to whom a Pine Barrens Credit certificate is issued pursuant to the Plan, the date of its issuance, the tax district, section, block and lot identification of the parcel of land to which the Pine Barrens Credit has been assigned, the number of Pine Barrens Credits or fraction thereof assigned to each parcel, the total number of Pine Barrens Credits assigned, and the total acreage to which Pine Barrens Credits have been assigned, and
2. The name and address of every person to whom a Pine Barrens Credit is sold or otherwise conveyed, the date of the conveyance, and the consideration, if any, received therefore, and
3. The name and address of any person who pledged a Pine Barrens Credit as security on any loan or other obligation, and the name and address of the lender, and
4. The name and address of any person who has sold or otherwise transferred a Pine Barrens Credit, the purchaser(s) to whom the Pine Barrens Credit was transferred, and the date of the sale; and
5. A record of every redemption of a Pine Barrens Credit including, at a minimum, the person(s) redeeming the Credit(s), the tax district, section, block and lot identification of the parcel(s) of land on which the Credits have been redeemed, the school district(s) from which and to which the transfer occurred, the redeeming agency, and the date of redemption; and
6. The total number of Pine Barrens Credits purchased and transferred. This report shall list the municipality and school district of each tract of land for which Pine Barrens Credits were issued and the municipality and school district to which the Pine Barrens Credits were transferred.

### **6.8.2 Notification of the Board of certain actions involving Pine Barrens Credits**

No person shall purchase or otherwise acquire, encumber, or sell any Pine Barrens Credit without notifying the Board in writing within ten business days thereof.

### **6.8.3 Distribution of the annual report**

The Board shall make available an annual report of the Pine Barrens Credit Program and the activities of the Board as part of the Commission's annual report required under ECL Article 57.

## **6.9 Municipal functions exclusive of state financial assistance**

Nothing in this section shall be construed to prohibit, or in any other way interfere with, the carrying out by any municipality of functions substantially similar to those described and

authorized in this Chapter of this Plan.

#### **6.10 Other development rights transfer programs**

Nothing herein shall serve to limit, affect or prohibit the establishment or continuance of any other municipal program for transferring or redirecting development rights.