

Hargrave, Julie

From: Brad Hammond <bhammond@westhamptonbeach.org>
Sent: Thursday, March 31, 2022 11:56 AM
To: PB Jakobsen, Judy
Cc: Hargrave, Julie; Elizabeth Lindtvit
Subject: CPB Comp Plan Update

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Ms Jakobsen:

The Village of Westhampton Beach is in receipt of your coordination material for the proposed Central Pine Barrens Comprehensive Plan Amendments dated March 16, 2022. After review of the amendments, the Village has no objection or further comments to the proposed changes, which seem appropriate for our relatively small footprint within the Core Preservation & Compatible Growth Areas. I hope this email can suffice for our solicited SEQR comments but please feel free to reply or call me if you need anything further.

Good luck with the amendments and your ongoing efforts.
Thank you,

Brad Hammond
Building & Zoning Administrator
Village of Westhampton Beach
(631) 288-3483

Hargrave, Julie

From: John Turner <jturner@seatuck.org>
Sent: Thursday, May 26, 2022 10:45 AM
To: PB Info; Jakobsen, Judith
Cc: Hargrave, Julie; Enrico Nardone; Christine Sheppard
Subject: Incorporation of a "Bird Friendly Building Design" requirement into the revised Comprehensive Land Use Plan for the Central Pine Barrens

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Dear Executive Director Jakobsen:

The Seatuck Environmental Association is a not-for-profit wildlife conservation organization whose mission is to protect wildlife species native to Long Island and the habitats upon which they depend. We appreciate the opportunity to comment on the above-referenced topic and ask that these comments be incorporated into the Commission's public record established regarding the Land Use Plan amendments.

Wild birds face a number of significant threats to their existence. These include, but are not limited to, habitat destruction and degradation, predation by feral and free-roaming pet cats, poisoning by pesticides and other chemicals, and collisions with building windows.

Based on a comprehensive, peer-reviewed 2014 study, which was a detailed synthesis of many previously published reports, between 365 and 988 million wild birds die annually by flying into building windows in the United States. Tens of millions more die in Canada. A few hundred bird species are known collision victims including many species that migrate through, or breed or overwinter within, the Central Pine Barrens. Indeed, all of the top dozen "collision victim" species, based on an analysis from 1998-2011 - White throated sparrow, Common yellowthroat, Ovenbird, Dark-eyed Junco, Ruby-crowned Kinglet, Hermit Thrush, Golden-crowned Kinglet, Black-and-White Warbler, American Woodcock, Grey Catbird, Song Sparrow, and Blackpoll warbler - are common migrant or seasonally resident bird species occurring in the Central Pine Barrens. Many other Pine Barrens indigeneous species such as Rufous-sided towhees, Whip-poor-will, and Cooper's Hawk have, unfortunately, also been window collision victims at buildings located within the Central Pine Barrens.

The Central Pine Barrens Joint Policy & Planning Commission recognizes the serious threat to the welfare of birds posed by highly reflective and transparent windows through the proposal to establish a new "Bird Conservation and protection" guideline, as part of the current proposed amendments to the Central Pine Barrens Land Use Plan. This proposal is a step in the right direction but we strongly urge that this measure be changed from a "land use guideline" to a "land use standard" affecting all new commercial, industrial, institutional, public, mixed use, and tall structures (as defined in the Plan). Leaving it as a voluntary guideline will mean countless more birds killed from window collisions on new buildings constructed in the Compatible Growth Area by developers who choose to not comply with the guideline. Further, we would strongly encourage, as with New York City's recently adopted ordinance, that the standard also include or capture significant exterior alterations to existing buildings.

Upon adoption, the Central Pine Barrens Joint Policy & Planning Commission will be joining dozens of other cities, towns, and other municipalities like New York, San Francisco, Chicago, Toronto, and Minneapolis, to name a few, that have stepped up to the plate to safeguard wild birds.

While there are many different ways to proscribe a "Bird Friendly Building Design" standard (as evidenced by the variety of differing laws around the country), the language provisions in the Minneapolis, Minnesota ordinance are

especially helpful in that they provide for greater flexibility by: 1) qualifying any material with a Threat Factor below 25 or 2) by complying with certain specific design requirements for the window surface. This greater flexibility should help in achieving less costs to building developers.

Here is the excerpt of the Minneapolis ordinance (with my addition of the American Bird Conservancy Threat Factor added):

Bird-safe glazing. Bird-safe glazing includes one (1) of the following: Façade materials with a Leadership in Energy and Environmental Design (LEED) Material or American Bird Conservancy Bird Collision Deterrence Material Threat Factor less than or equal to twenty-five (25); or Physical structures or glass patterns that are visible from the outside and the resulting pattern creates spaces no wider than four (4) inches horizontally or two (2) inches high vertically, also known as the "2x4 rule"; or A glass pattern that is white to medium gray, visible from the outside, and shall meet at least one (1) of the specific standards below: Horizontal line patterns shall be one-eighth ($\frac{1}{8}$) inch wide with two (2) inch on-center spacing; or Vertical line patterns shall be one-eighth ($\frac{1}{8}$) inch wide with four (4) inches on-center spacing; or Dot patterns with dots one-quarter ($\frac{1}{4}$) inch wide with two (2) inch on-center spacing each way; or Dot patterns with dots three-eighths ($\frac{3}{8}$) inch wide arranged in horizontal lines with two (2) inch on-center spacing or vertical lines with four (4) inch on-center spacing.

To aid in compliance we urge the standard contain language requiring that blueprints for any site plan filed with the Towns of Southampton, Brookhaven, or Riverhead be required to include the window material/product proposed, its associated Threat Factor, or if it relates to window surface design requirements which ones will be utilized. This should ease the work of the town review staff in determining compliance with the standard.

On behalf of Seatuck I appreciate the opportunity to submit these comments for your consideration. Please let me know if you have any questions.

Sincerely,

John Turner
Senior Conservation Policy Advocate
Seatuck Environmental Association

Hargrave, Julie

From: Jim Brown <jrb398@yahoo.com>
Sent: Friday, May 27, 2022 9:37 PM
To: PB Info; Jakobsen, Judith
Cc: Hargrave, Julie; John Turner; Brien Weiner
Subject: Bird Friendly Building Design for Pine Barrens

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South Shore Audubon

**Post Office Box Thirty-One
Freeport, New York 11520**

Judy Jakobsen
Executive Director
Central Pine Barrens Joint Planning
and Policy Commission

Dear Executive Director Jakobsen,

On behalf of the South Shore Audubon Society I welcome the opportunity to comment on an important amendment to the Land Use Plan proposed by the Seatuck Environmental Association dealing with "Bird Friendly Building Design" for any development that may occur within the Compatible Growth Area of the Pine Barrens (See below). The South Shore Audubon Society is a local chapter of the National Audubon Society, representing approximately 1300 household in southern Nassau County. Our mission is to promote environmental education, conduct research pertaining to local bird populations, wildlife, and habitat; and to preserve and restore our environment through responsible activism, for the benefit of both people and wildlife.

Given the severe threats to bird populations on Long Island, and throughout North America, including collisions with building windows, we strongly support Seatuck's recommendations for Bird Friendly Building [Design.in](#) the Pine Barrens. We especially support the idea of "standards" rather than "voluntary guidelines" to mandate bird friendly building design in the Compatible Growth Area of the Pine Barrens.

Sincerely,

Jim Brown
Vice President and
Conservation Co-Chair
South Shore Audubon Society

jrb398@yahoo.com
516-608-1446

Seatuck Environmental Association suggestions for a Bird Friendly Design Amendment to Land Use Plan:

The Seaturck Environmental Association is a not-for-profit wildlife conservation organization whose mission is to protect wildlife species native to Long Island and the habitats upon which they depend. We appreciate the opportunity to comment on the above-referenced topic and ask that these comments be incorporated into the Commission's public record established regarding the Land Use Plan amendments.

Wild birds face a number of significant threats to their existence. These include, but are not limited to, habitat destruction and degradation, predation by feral and free-roaming pet cats, poisoning by pesticides and other chemicals, and collisions with building windows.

Based on a comprehensive, peer-reviewed 2014 study, which was a detailed synthesis of many previously published reports, between 365 and 988 million wild birds die annually by flying into building windows in the United States. Tens of millions more die in Canada. A few hundred bird species are known collision victims including many species that migrate through, or breed or overwinter within, the Central Pine Barrens. Indeed, all of the top dozen "collision victim" species, based on an analysis from 1998-2011 - White throated sparrow, Common yellowthroat, Ovenbird, Dark-eyed Junco, Ruby-crowned Kinglet, Hermit Thrush, Golden-crowned Kinglet, Black-and-White Warbler, American Woodcock, Grey Catbird, Song Sparrow, and Blackpoll warbler - are common migrant or seasonally resident bird species occurring in the Central Pine Barrens. Many other Pine Barrens indigenous species such as Rufous-sided towhees, Whip-poor-will, and Cooper's Hawk have, unfortunately, also been window collision victims at buildings located within the Central Pine Barrens.

The Central Pine Barrens Joint Policy & Planning Commission recognizes the serious threat to the welfare of birds posed by highly reflective and transparent windows through the proposal to establish a new "Bird Conservation and protection" guideline, as part of the current proposed amendments to the Central Pine Barrens Land Use Plan. This proposal is a step in the right direction but we strongly urge that this measure be changed from a "land use guideline" to a "land use standard" affecting all new commercial, industrial, institutional, public, mixed use, and tall structures (as defined in the Plan). Leaving it as a voluntary guideline will mean countless more birds killed from window collisions on new buildings constructed in the Compatible Growth Area by developers who choose to not comply with the guideline. Further, we would strongly encourage, as with New York City's recently adopted ordinance, that the standard also include or capture significant exterior alterations to existing buildings.

Upon adoption, the Central Pine Barrens Joint Policy & Planning Commission will be joining dozens of other cities, towns, and other municipalities like New York, San Francisco, Chicago, Toronto, and Minneapolis, to name a few, that have stepped up to the plate to safeguard wild birds.

While there are many different ways to proscribe a "Bird Friendly Building Design" standard (as evidenced by the variety of differing laws around the country), the language provisions in the Minneapolis, Minnesota ordinance are especially helpful in that they provide for greater flexibility by: 1) qualifying any material with a Threat Factor below 25 or 2) by complying with certain specific design requirements for the window surface. This greater flexibility should help in achieving less costs to building developers.

Here is the excerpt of the Minneapolis ordinance (with my addition of the American Bird Conservancy Threat Factor added):

Bird-safe glazing. Bird-safe glazing includes one (1) of the following: Façade materials with a Leadership in Energy and Environmental Design (LEED) Material or American Bird Conservancy Bird Collision Deterrence Material Threat Factor less than or equal to twenty-five (25); or Physical structures or glass patterns that are visible from the outside and the resulting pattern creates spaces no wider than four (4) inches horizontally or two (2) inches high vertically, also known as the "2x4 rule" or A glass pattern that is white to medium gray, visible from the outside, and shall meet at least one (1) of the specific standards below: Horizontal line patterns shall be one-eighth ($\frac{1}{8}$) inch wide with two (2) inch on-center spacing; or Vertical line patterns shall be one-eighth ($\frac{1}{8}$) inch wide with four (4) inches on-center spacing; or Dot patterns with dots one-quarter ($\frac{1}{4}$) inch wide with two (2) inch on-center spacing each way; or Dot patterns with dots three-eighths ($\frac{3}{8}$) inch wide arranged in horizontal lines with two (2) inch on-center spacing or vertical lines with four (4) inch on-center spacing.

To aid in compliance we urge the standard contain language requiring that blueprints for any site plan filed with the Towns of Southampton, Brookhaven, or Riverhead be required to include the window material/product proposed, its associated Threat Factor, or if it relates to window surface design requirements which ones will be utilized. This should ease the work of the town review staff in determining compliance with the standard.

On behalf of Seatuck I appreciate the opportunity to submit these comments for your consideration. Please let me know if you have any questions.

Sincerely,

John Turner
Senior Conservation Policy Advocate
Seatuck Environmental Association

Hargrave, Julie

From: Patrice Domeischel <patrice5421@hotmail.com>
Sent: Saturday, May 28, 2022 8:53 PM
To: PB Info
Cc: Jakobsen, Judith; Hargrave, Julie
Subject: Support "Bird Friendly Building Design" Amendment to Land Use Plan

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May 28, 2022

Dear Long Island Pine Barrens Commission members:

I strongly support the inclusion of a "Bird Friendly Building Design" amendment to your Land Use Plan. The number of bird deaths in the United States alone from window strikes is astronomical; it is estimated to be between 365 and 988 million EACH year. A bird friendly building design would help to mitigate the problem of bird mortality resulting from window collisions. I hope you will join others, such as New York City, San Francisco, and other major cities in the U. S., in mandating bird friendly building design, thus taking a step forward in the protection of our local birds.

Thank you for the opportunity to comment on this important issue. Please incorporate my comments into the Commission's public record regarding the Land Use Plan amendments.

Sincerely,

Patrice Domeischel
25 Bluetop Road
Setauket, NY 11733
(631) 553-6862

Hargrave, Julie

From: Richard Amper <amper@pinebarrens.org>
Sent: Saturday, May 28, 2022 2:03 PM
To: PB Info
Cc: Hargrave, Julie; Nina Leonhardt
Subject: Support for Bird Friendly Building Design Requirement in the Revised Comprehensive Land Use Plan for the Central Pine Barrens

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Dear Executive Director Jakobsen:

The Long Island Pine Barrens Society appreciates the opportunity to comment on the bird-friendly design section of the proposed Land Use Plan amendments.

Wild birds face a number of significant threats to their existence. These include, but are not limited to, habitat destruction and degradation, poisoning by pesticides and other chemicals, and collisions with building windows.

The ecological balance necessary to maintain Pine Barrens habitat depends in part on populations of bird species being present. The literature documents that millions of birds die annually by flying into building windows. A few hundred bird species are known collision victims including many species that migrate through, or breed or overwinter within, the Central Pine Barrens. Many "collision victim" species, based on an analysis from 1998-2011 - White throated sparrow, Common yellowthroat, Ovenbird, Dark-eyed Junco, Ruby-crowned Kinglet, Hermit Thrush, Golden-crowned Kinglet, Black-and-White Warbler, American Woodcock, Grey Catbird, Song Sparrow, and Blackpoll warbler - are common migrant or seasonally resident bird species in the Central Pine Barrens. Many other Pine Barrens indigeneous species such as Rufous-sided towhees, Whip-poor-will, and Cooper's Hawk have, unfortunately, also been window collision victims at buildings located within the Central Pine Barrens.

The Central Pine Barrens Joint Policy & Planning Commission recognizes the serious threat to the welfare of birds posed by highly reflective and transparent windows through the proposal to establish a new "Bird Conservation and protection" guideline, as part of the current proposed amendments to the Central Pine Barrens Land Use Plan. This proposal is a step in the right direction but we strongly urge that this measure be changed from a "land use guideline" to a "land use standard," affecting all new construction. A voluntary guideline does not require adherence; it will lead to more birds killed from window collisions on new buildings constructed in the Compatible Growth Area by developers who choose to not comply with the guideline. To aid in compliance we urge that blueprints for any site plan filed with the Towns of Southampton, Brookhaven, or Riverhead be required to document that its construction is bird-friendly.

Upon adoption, the Central Pine Barrens Joint Policy & Planning Commission will be joining many municipalities such as New York City, San Francisco and Chicago that are safeguarding wild birds.

We appreciate the opportunity to submit these comments for your consideration. Please let me know if you have any questions.

Richard Amper, Executive Director
Long Island pine Barrens Society

Hargrave, Julie

From: Joyous C <joyous01@yahoo.com>
Sent: Monday, May 30, 2022 2:45 PM
To: PB Info
Cc: Jakobsen, Judith; Hargrave, Julie
Subject: Comment for: Incorporation of a "Bird Friendly Building Design" requirement into the revised Comprehensive Land Use Plan for the Central Pine Barrens

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Re: Incorporation of a "Bird Friendly Building Design" requirement into the revised Comprehensive Land Use Plan for the Central Pine Barrens

Dear Executive Director Jakobsen:

The Four Harbors Audubon Society is a not-for-profit wildlife conservation organization whose mission is to protect and preserve birds, wildlife, and the places and resources they need, for now and the future. We appreciate the opportunity to comment on the above-referenced topic and ask that these comments be incorporated into the Commission's public record established regarding the Land Use Plan amendments.

Native birds and other wildlife face a number of serious threats to their existence. These include, but are not limited to, habitat fragmentation, toxic pesticides, herbicides and other chemicals in the environment, falling prey to pet cats allowed to roam outdoors and feral cat predation, habitat loss, habitat degradation, competition with invasive avian species, dusk to dawn light pollution which creates issues with nocturnal migration, and collisions with building windows.

A 2014 study by the US Fish and Wildlife Service and the Smithsonian Institution estimated that between 365 million to one billion birds are killed annually by building collisions in the U.S. Many species that migrate through, breed or overwinter within the Central Pine Barrens are known to have issues with window collisions. All of the top twelve "collision victim" species - American Woodcock, Black-and-White Warbler, Blackpoll Warbler, Common Yellowthroat, Dark-eyed Junco, Golden-crowned Kinglet, , Grey Catbird, Hermit Thrush, Ovenbird, Ruby-crowned Kinglet, Song Sparrow, and White-throated Sparrow - are common migrant or seasonal resident avian species of the Long Island Central Pine Barrens. To date, many other Pine Barrens species have also been window collision victims at buildings located within the Central Pine Barrens, including Whippoorwill, which are in steep decline.

Four Harbors Audubon Society is thankful that The Central Pine Barrens Joint Policy & Planning Commission recognizes the serious threat to the welfare of birds posed by both transparent and also highly reflective windows and has proposed guidelines to establish Bird Conservation and protection, as part of the current proposed amendments to the Central Pine Barrens Land Use Plan. Four Harbors Audubon Society feels this proposal is a good standard land use policy, but we strongly urge that this measure be changed from a "land use guideline" to a "land use standard" affecting all new structures, as defined in the Plan. Creating a voluntary

guideline will mean innumerable more birds killed from window collisions on new buildings constructed in the Compatible Growth Area, by developers who choose to not comply with the guidelines. Further, we would strongly promote an ordinance similar to New York City's recently adopted ordinance, that the standard also include alterations to existing buildings being updated.

Upon adoption, the Central Pine Barrens Joint Policy & Planning Commission will be joining dozens of other cities, towns, and other municipalities like New York, San Francisco, Chicago, Toronto, and Minneapolis, to name a few, that have stepped up to the plate to safeguard wild birds.

While there are many different ways to proscribe a "Bird Friendly Building Design" standard (as evidenced by the variety of differing laws around the country), we would suggest using the Minneapolis ordinance as a working template, with the American Bird Conservancy Threat Factors used as threat assessment documentation.

To aid in compliance we would advocate that the standard contain language requiring that blueprints for any site plan filed with the Towns of Southampton, Brookhaven, or Riverhead be required to include the window material/product proposed, its associated Threat Factor, or if it relates to window surface design requirements which ones will be utilized. This should reduce the work of the town review staff in determining compliance with the standard.

On behalf of Four Harbors Audubon Society, I appreciate the opportunity to submit these comments for your consideration. Please feel free to contact me with additional comments or questions at (631) 766-3075.

Best regards,

Joyann Cirigliano

President – Four Harbors Audubon Society

Chair – Audubon Council of New York State

Director – Audubon NY/CT

Joyann Cirigliano
Proprietor/Ecoscaper
Joy's Forever Endeavor Design/Consult
(631)766-3075
Bringing Nature Back-One Yard at a Time

From: [Jessica Wilson](#)
To: [PB Info](#)
Cc: jturner@seatuck.org; [Jakobsen, Judith](#); [Hargrave, Julie](#); [Marsilia Boyle](#)
Subject: Support for "Bird Friendly Building Design" requirement into revised Comprehensive Land Use Plan for Central Pine Barrens
Date: Wednesday, June 01, 2022 9:01:53 AM
Attachments: [NYC Audubon letter of support 2022-06-01.pdf](#)

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Dear Commission Members,

New York City Audubon is a grassroots community that works for the protection of wild birds and habitat in the five boroughs, improving the quality of life for all New Yorkers. A major focus for NYC Audubon is reduction of bird collisions with buildings/windows, which is the third-leading anthropogenic cause of bird mortality (after habitat loss and cat predation), killing between three million and one billion birds per year in the United States.

We stand with our fellow Audubon Chapters and the Seatuck Environmental Association in urging the adoption of mandated standards of Bird Friendly Design and Material for new construction in the Central Pine Barrens area.

NYC Audubon supports the Central Pine Barrens Joint Planning & Policy Commission's efforts to incorporate Bird Conservation and protection measures into its Land Use Plan. We also urge you to change the current proposal from a "land use guideline" to a "land use standard" affecting all new commercial, industrial, institutional, public, mixed use, and tall structures (as defined in the Plan). Leaving it as a voluntary guideline will mean countless more birds killed from window collisions on new buildings constructed in the Compatible Growth Area by developers who choose to not comply with the guideline.

As you may know, New York City recently adopted a local ordinance mandating that all new construction and significant exterior alterations to existing structures comply with elements of Bird Friendly Building Design and materials. By mandating the use of Bird Friendly Design and materials the Pine Barrens will join the vanguard of leadership in this area with other major cities in the United States and Canada.

We hope you will incorporate a "Bird Friendly Building Design" requirement into the revised Comprehensive Land Use Plan for the Central Pine Barrens. Thank you for your consideration.

Sincerely,
Jessica G. Wilson
Executive Director
New York City Audubon

71 West 23rd Street, Suite 1523
New York, NY 10010
jwilson@nycaudubon.org
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212.691.7483

NYCAUDUBON.ORG



June 1, 2022

Central Pine Barrens Joint Planning & Policy Commission
624 Old Riverhead Road
Westhampton Beach, NY 11978
by email to info@pb.state.ny.us

Dear Commission Members:

New York City Audubon is a grassroots community that works for the protection of wild birds and habitat in the five boroughs, improving the quality of life for all New Yorkers.

A major focus for NYC Audubon is reduction of bird collisions with buildings/windows, which is the third-leading anthropogenic cause of bird mortality (after habitat loss and cat predation), killing between three million and one billion birds per year in the United States.

We stand with our fellow Audubon Chapters and the Seatuck Environmental Association in urging the adoption of mandated standards of Bird Friendly Design and Material for new construction in the Central Pine Barrens area.

NYC Audubon supports the Central Pine Barrens Joint Planning & Policy Commission's efforts to incorporate Bird Conservation and protection measures into its Land Use Plan. We also urge you to change the current proposal from a "land use guideline" to a "land use standard" affecting all new commercial, industrial, institutional, public, mixed use, and tall structures (as defined in the Plan). Leaving it as a voluntary guideline will mean countless more birds killed from window collisions on new buildings constructed in the Compatible Growth Area by developers who choose to not comply with the guideline.

As you may know, New York City recently adopted a local ordinance mandating that all new construction and significant exterior alterations to existing structures comply with elements of Bird Friendly Building Design and materials. By mandating the use of Bird Friendly Design and materials the Pine Barrens will join the vanguard of leadership in this area with other major cities in the United States and Canada.

We hope you will incorporate a "Bird Friendly Building Design" requirement into the revised Comprehensive Land Use Plan for the Central Pine Barrens.

Sincerely,



Jessica Wilson
Executive Director



LONG ISLAND
BUILDERS INSTITUTE

Advocating Responsible Building & Remodeling

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JUN 06 2022

Central Pine Barrens Joint
Planning & Policy Commission

May 31, 2022

Ms. Judith Jacobsen
Executive Director
Central Pine Barrens Commissioner

Re: Comments of the Long Island Builders Institute regarding proposed amendments to the comprehensive land use plan amendments.

The Long Island Builders Institute, the largest residential home building trade association in New York State, wishes to provide comments upon the proposed land use amendments of the central pine barrens commission. We make the following comments:

I. GENERAL AND GLOBAL COMMENTS

The 1993 Long Island Pine Barrens Protection Act (the "Act") mandates that the Central Pine Barrens Commission (the "Commission") review, adopt amendments to the CLUP, and update the Generic Environmental Impact Statement (the "GEIS") that was prepared in connection with the adoption of the CLUP. The DEIS confirms that the Act mandates that the Commission review and adopt amendments to the CLUP and update the GEIS every five years.¹ The GEIS was completed in 1995, whereupon the CLUP was adopted.² Apparently, the Commission did not follow the Act because the DEIS confirms that the Commission did not initiate a review process until 2010, which was 12 years after the Commission was to have concluded its initial CLUP review.³ The proposed amendments to the CLUP were generated from the review process begun in 2010. Accordingly, it appears that contrary to the mandate of the Act, the CLUP amendments are the first proposed CLUP update since the Act was adopted in 1993 -- a clear violation of the mandatory 5-year review provision of the Act.

¹ DEIS, Executive Summary, Ch. 1, pg. 1.

² *Id.*

³ *Id.*

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The DEIS purports to be a supplement to the GEIS and so, technically, the DEIS is a draft supplemental generic environmental impact statement (an SGDEIS),⁴ but for simplicity it will be referred to herein as the DEIS. Nowhere in the DEIS does it discuss whether the GEIS is too old to be supplemented. The data and analysis in the GEIS are now 27 years old. Yet the DEIS simply assumes that the DEIS can be supplemented and is not outdated. The Commission, as lead agency, is required to assess whether the GEIS is capable of being supplemented or whether its data and analyses are too old. This is a fundamental flaw in the DEIS.

For amendments that are purportedly primarily ministerial,⁵ the environmental review process undertaken by the Commission has been absurdly protracted. The amendments were circulated seven years ago, in April 2015, which was when the Commission declared itself lead agency under the New York State Environmental Quality Review Act (SEQRA).⁶ Scoping was completed on February 17, 2016,⁷ which means that the Commission has taken 6 years to generate the DEIS, which is an in explicably protracted time period for preparation of a DEIS the purports to analyze primarily ministerial amendments.

The protracted time period for preparation of the DEIS is particularly perplexing given the fact that the DEIS does not include any detailed technical analyses or appendices. Indeed, the DEIS is largely a rubber-stamp conclusory document that repeatedly substitutes conclusory statements for actual environmental analyses. This is true in environmental impact category after environmental impact category. These will be detailed in the last section of this Memorandum. Put succinctly, the DEIS is a lackluster and dilatory effort that analyzes little, and is essentially a “go through the motions” document that delves into nothing in detail and is defective. Not least in these defects is the failure of the Commission to even inquire as to whether the 27-year-old GEIS is antiquated and out of date.

The last 27 years have seen profound changes in Suffolk County, generally, and in the vicinity of the Central Pine Barrens in particular. Population has grown, development patterns have changed, traffic volumes and patterns have changed, communities have amended their zoning laws, and communities have revised and updated their comprehensive plans. None of these circumstances are even referenced, no less analyzed. The DEIS assumes that none of these or any of the other changes which have occurred in the past 27 years are even appropriate to acknowledge, no less analyze. The conclusions in the DEIS that none of the amendments has the potential to generate a single significant adverse environmental impact is predicated upon an indefensible assumption that nothing of significance has changed in 27 years vis-à-vis the matters addressed in the GEIS and the DEIS. This is fundamentally flawed, renders the DEIS violative of SEQRA and its implementing regulations, and precludes lawful adoption of the amendments by the Commission.

In addition, what is particularly disturbing, is the acknowledgment that a number of the amendments are to codify the Commission’s past practices.⁸ The question that is not raised, therefore never answered, is by what authority did the Commission adopt practices that require

⁴ *Id.*

⁵ DEIS, Executive Summary, Ch. 1, pg. 3.

⁶ *Id.*

⁷ *Id.*

⁸ DEIS, Executive Summary, Ch. 1, pp. 4-5.

amendments to the CLUP. The Commission appears to believe that it can simply proceed as it likes and then, when it gets around to it, many years later, adopt CLUP amendments to validate its past practices. The Commission has the process backwards. If the Commission believes that changes need to be made in the CLUP in order to enable it to act differently, the Commission is required to amend the CLUP first in order to authorize the changes. It is shocking that the Commission would confirm that it has done whatever it wanted over many years and never amended the CLUP once to grant the Commission whatever different review authority or powers it believed it needed. The Commission wields tremendous power, and it is very disturbing that the Commission has so blatantly disregarded the most fundamental rule of law that an agency of government operates within its applicable rules and regulations. The catch-phrase in the DEIS confirming that amendments are to “codify” past practices, does not either acknowledge or discuss how these “past practices” came to be, or whether they were ever allowed in the absence of the amendments now proposed.

The DEIS is silent as to the applicability of the amendments to pending projects that may have received one or more preliminary or partial approvals. Are those projects grandfathered? There is no way to know which projects may be affected, and to what degree. This is a serious omission from both the amendments and the DEIS.

The DEIS assumes that an amendment which it deems “ministerial” inherently will have no potential significant adverse environmental impacts. Thus, it does not even summarize or describe those “ministerial” amendments in the DEIS. Moreover, the entire DEIS assumes that the proposed amendments require no mitigation measures of any kind because they have supposedly been built into the amendments themselves. In essence, without any analysis or even recitation of the mitigation measures supposedly built into the amendments, the DEIS assumes none of the proposed amendments could possibly generate any significant adverse environmental impacts and thus no mitigation is deemed necessary:

Because this is an environmental protection plan, mitigation measures have been incorporated into the planning process to minimize environmental impacts in the Central Pine Barrens area.

The majority of amendments are essentially ministerial in nature. Development in the CGA, pursuant to the Act, is subject to conformance with standards for land use. The Plan standards are essentially unchanged in the Amendments and for the most part merely reflect past and current practice and policy of the Commission established since the inception of the Act in 1993 and in decisions and resolutions adopted since then.

DEIS, Executive Summary, Ch. 1, pg. 16.

This passage is truly remarkable. The amendments are deemed an “environmental protection plan” and it is stated that mitigation measures have been “incorporated into the planning process” whatever that actually means. Labeling the amendments an “environmental protection plan” does not exempt the amendments from SEQRA and its required analyses, or deem it inherently

protective of the environment. There is no identification of mitigation measures and no discussion of how these mystery mitigation measures eliminate all potential significant adverse environmental impacts. In addition, none of the prior decisions, resolutions, practices, or policies of the Commission are identified that supposedly give rise to those amendments deemed ministerial. These omissions and circular reasoning render the DEIS unlawful and would cause the amendments to be voidable by a reviewing court.

The Commission is required to identify all changes, ministerial and non-ministerial. It is required to analyze the potential environmental impacts of all of the amendments. In undertaking such an analysis, the Commission cannot assume that it can merely supplement a 27-year old GEIS. Even if it determines it can supplement, the Commission is required to identify the proposed action properly and identify the resolutions, past practices and prior decisions that supposedly create the context for “ministerial” amendments. Those prior decisions, resolutions, and practices cannot be deemed a “base line” for analysis if those prior decisions, resolutions, and practices were not authorized under the existing Commission rules. As to all amendments, the DEIS must identify the mitigation measures built into the amendments and which potential significant adverse environmental impacts those built-in measures are intended to mitigate.

None of the foregoing is included in the DEIS. Instead, the DEIS is a series of stated assumptions designed to eliminate or preclude any meaningful environmental analysis of the amendments. A more detailed analysis follows.

II. COMMENTS ON PROPOSED AMENDMENTS

A. General Comments

Town of Southampton Water Quality Improvement Project Plan not listed in list of approved relevant plans, but it probably should be due to changes in language relating to wetlands and surface waters.

There are several proposed numerical changes to various standards without any scientific basis or other data stated to support the changes. Examples are the clearing percentage for commercial projects, the size of projects to be designated as a DRS, and the height of tall structures.

There are several SCDHS and DEC permits now required as a prerequisite to Commission approval, such as an Article 12 permit. These now are required much later in the timeline of project approval by the Commission.

B. Chapter 4 Comments - Note: *Comments are in italics.*

4.2 Intent

The Commission will participate and sponsor, where appropriate, intergovernmental agency coordination, including but not limited to interagency data sharing and license agreements, in order to provide efficient application review and further the goals and objectives of Article 57.

What is appropriate? What does sponsorship mean? What data is shareable?

The Commission encourages cooperative efforts with local, state, federal and not-for-profit agencies for the use of Geographic Information Systems (GIS) and other mapping alternatives in order to track development permits and analyze land use patterns within the Central Pine Barrens.

Why are not-for-profit agencies included? What is the purpose for such cooperative efforts?

4.3.5.1. Interpretation of “nondevelopment” provision 57-0107 (13)...

The Commission hereby clarifies that Article 57-0107 (13)..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...

What is the issue here? As is the case with many amendments, its context, purpose, need, and effect are not discernible from either the proposed amendment or the DEIS.

4.3.10.11 Tall Structure

....exceeds a height of ~~fifty~~ seventy-five feet from average unaltered grade of the project site.

This is a 50% increase in height. What are the implications? Lesser review of structures less than 75' tall?

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 The Commission shall review conformance with guidelines set forth in Vol 1, Chapter 5 of this Plan and whether the project is in conformance with Article 57-0123(2)(a).

Does the last clause proposed to be inserted expand the jurisdiction of the Commission? If so, how? How would this apply to a project that has received an approval or partial approval from the Commission, and which requires additional review by the Commission?

4.5.5.1 DRS development: Definition of a Development of Regional Significance

The proposed amendment merges multifamily and single family into one category with a maximum of 200 units for any mix of residential units and includes expansion of existing residential developments. This is a 33% reduction in multi-family units to be considered a DRS. What is the purpose of making these changes? How much acreage and how many projects are governed by or are projected to be governed by this change and brought under Commission jurisdiction? What is the potential impact on provision of affordable housing?

The proposed amendment proposes a mixed use development of 400,000 sq ft or greater. How is 400K sq ft to be calculated? What is included and excluded in determining size? What is

considered mixed use? Commercial and residential? What about mixed types of commercial or commercial and industrial uses? What about commercial and institutional/not-for-profit combinations?

B. Chapter 5 Comments - Note: *Comments are in italics.*

5.3.1 Applicability and other policies

Agriculture and horticulture in the Compatible Growth Area is encouraged to comply with best management practices.

Why is such compliance encouraged and not mandated? Agriculture and horticulture are a huge source of groundwater contamination due to pesticides and fertilizers. The Commission mandates strict compliance in the CGA by all other land uses, but one of the largest, if not THE largest, groundwater polluting industry gets a free pass. How is this possibly fair? The DEIS does not attempt to analyze the potential impact of merely encouraging compliance, as opposed to mandating compliance.

5.3.3.1.1 Article 6 Compliance

Adds: Commission approval shall require submission of a final official copy of the SCDHS permit.

How will this impact project approval schedules? This rule should be clarified to confirm that a submission of the SCDHS permit shall be a condition imposed by the grant of Commission approval, not a condition that is a prerequisite to granting of Commission approval. This change should be made in all rules that are proposed to be amended to include this sentence.

5.3.3.1.2 Sewage Treatment plant discharge

Removes “denitrification” and just says “Treatment” for systems in this Standard.

How will this change affect development going forward?

5.3.3.1.3 and 5.3.3.1.4

Commission approval shall require submission of a final official copy of the SCDHS permit.

How will this impact projects? Article 12 applications are often submitted long after other land use approvals are received. This has the potential to seriously disrupt project approvals if this rule requires .

5.3.3.1.5 Nitrate-Nitrogen goal

.....2.5 PPM for new dev projects with density of....

The amendment would apply the standard far more widely, not just in the vicinity of ponds and wetlands. What is the potential impact of this change on pending and future projects?

5.3.3.4 Wetlands, ~~and~~ surface waters and 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, from driveways and from parking lots is usually discharged directly to subsurface dry wells situated on the building lot. However, the great volume of runoff water originating from paved streets and roads is usually discharged by pipes into large open recharge basins or sumps, as also sometimes occurs in regard to parking lots. These basins may cover several acres and require the removal of considerable native vegetation to the detriment of the site's ecology and aesthetics.

There is no basis for assuming that drainage basins would cause the removal of considerable native vegetation. Any significant development will require, at minimum, an environmental assessment, and more likely a full environmental impact statement. The potential significant adverse environmental impacts of stormwater runoff from any development must be fully analyzed in any project. There is no reason why this provision is being included in the rules, especially given the necessity of environmental review of every project.

5.3.3.4.1 Nondisturbance buffers

... The Commission reserves the right to require a stricter and larger nondisturbance buffer as warranted in a specific instance....

What is stricter and larger? What makes it warranted? What limits, if any, are placed on the Commission's decisionmaking?

Commission approval, where applicable, shall require submission of a final official copy of all NYS DEC and municipal permits.

What impact does the permit requirement have on the project schedule? When is this "applicable" and when not? This cannot be a prerequisite to Commission approval, but only a condition to be satisfied post-Commission approval.

5.3.3.4.2 Wild, Scenic and Recreational Rivers Act compliance

Commission approval shall require submission of a final official copy of the NYSDEC permit

Same as prior comment.

5.3.3.4.4 Reduction of Impervious Surfaces

...Permanent waiver of required parking spaces..... may be counted towards meeting the open space standard.

How can the CPBC void required parking spaces of a municipality? Unless a variance is granted, this would appear to be impossible.

5.3.3.6 Natural vegetation and plant habitat. Coordinated design for open space, habitat and soil protection

...Open Space is defined as any essentially undeveloped and unimproved, publicly or privately owned open area which can be comprised of either land or water, that either remains in its natural state or is used for agriculture and is permanently preserved and will not be developed.

...In no case does open space mean active recreational facilities such as golf courses, amusement parks and ballfields.

...Clearing is defined, for the purposes of this standard, as the removal, cutting or material alteration of any portion of the natural vegetation found on a development project site....

...However, revegetation may not be used to meet the clearing standard.

What does "essentially" mean in the first clause? Why is agriculture included as open space? It is not a natural environment, does not preserve or enhance the local ecology, and is a continual source of nitrogen and pesticide pollution? Why are naturally preserved areas within or near golf courses excluded from open space? Such areas provide wildlife habitat and can be a place for native flora to be maintained. It should be the character of the land that determines open space, not whether that open space is within or near a golf course. Does the last clause mean that an error in clearing and required mitigation will count against the clearing standard going forward?

5.3.3.6.2 Open space standard requirement, unfragmented open space and habitat

...On development project sites for which either new or expanded development has been requested and which are cleared or were cleared pursuant to a nondevelopment provision of the Act, and where no violation of the clearing standard has occurred, the area previously cleared shall be revegetated.... in order to bring the site into compliance with the applicable open space standard ...

What if a clearing violation has been officially resolved? What if some clearing was a result of nondevelopment?

5.3.3.6.5 Receiving entry and protection for open space areas.

...Protection of open space areas shall be guaranteed through one of the following three options .. easement grantee being either a governmental land preservation and management entity or a not for profit conservation land management organization...

What about privately controlled open space areas?

Figure 5-1 - Clearance and Open Space Standards

Changed 160K-200K sq ft residential to 25% max site clearance from 20%. Changed Commercial to 60% from 65%. What is the scientific basis for these changes? Why are they needed?

C. Chapter 6 Comments - Note: *Comments are in italics.*

6.5.4 Intermunicipal redemption of Pine Barrens Credits

Intermunicipal redemption of Pine Barrens Credits is defined as the redemption of Credits within a town or village within Suffolk County other than the one from which it was generated.

...It is the policy of the Commission to encourage intermunicipal redemptions of Pine Barrens Credits as long as the redemption is in conformance with the zoning of the receiving area.

What is the implication on local school districts? What is capacity of each Town to take on additional redemptions above those in that Town?

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.

This is draconian and unfair. A violation of the Act can be minor and due to an innocent mistake. This creates an additional penalty to whatever penalty is imposed for the violation itself, which is unfair, especially since there are no qualifiers or exceptions in the proposed rule. In addition, what authority vests the Commission with the power to adopt such a rule and impose such a penalty? It is the State Legislature which establishes penalties for violation of the Act, not the Commission. This proposed rule is illegal.

III. DEIS COMMENTS

The changes to the DRS thresholds are not properly analyzed. The assumption is that by capturing more potential development, the environment is protected and therefore no significant adverse impacts are possible. This is a false assumption. Further restricting development in the Compatible Growth Area by the proposed amendments will have the effect of inducing growth elsewhere. Nowhere in the DEIS is the increase in DRS thresholds quantified to project the amount and kind of development that would not occur or would occur at a reduced level, and what the potential is for induced growth elsewhere.

The foregoing applies equally to the extension of the 2.5 ppm nitrate nitrogen requirement. The DEIS needs to map and quantify the acreage of land whose development would be precluded or limited. Only then can the potential impact of this restriction be evaluated. This analysis cannot be evaded by the statement that the restriction will be more protective of the environment, and therefore no further analysis is necessary. Rules that protect groundwater can displace and induce growth elsewhere and these impacts cannot be evaluated until it is unknown just how much land, and where, will be affected by this significant change in the rules. It is also remarkable that the



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Commission continues to favor agriculture and not impose any similar restrictions on its polluting activities.

It appears that the Commission intends to extend its jurisdiction outside the Core Preservation Area and Compatible Growth Area onto portions of a project site that are outside these areas, but are part of the same property being developed. The Commission has no jurisdiction to amend the Rules to give it jurisdiction over lands outside the Core Preservation Area and Compatible Growth Area.

The alternatives analyses are flawed. The ministerial amendments are all assumed, without analysis, to be inherently protective of the environment. This assumption renders the alternatives analysis inherently flawed because no such assumption can be made.

Similarly, all of the Plan Amendments are assumed to establish stricter environmental controls, as if that is all of the analysis that is necessary. The potential of the amendments to redirect and induce growth elsewhere is ignored.

The DEIS recognizes that groundwater contamination from individual poor performing old septic systems is a very serious problem. However, the Commission does nothing to direct development in the Compatible Growth Area to address this problem. Such development should be encouraged if it includes county-approved central sewage treatment systems that would enable existing septic systems to be eliminated. Density bonuses or credits should be issued so that Compatible Growth Area development is directed to solving existing groundwater pollution from poorly performing septic systems.

Finally, the continual favoring of agriculture is counter to the mission of the Commission. If the Commission is serious about curing groundwater pollution, it cannot any longer favor agriculture over other forms of land use which pollute groundwater less, and which preserve native flora and fauna more.

The Long Island Builders Institute wishes to thank the Central Pine Barrens Commission for giving us the opportunity to comment upon these most important recommended changes.

Mitchell Pally
Chief Executive Officer