

ORIGINAL

STATE ENVIRONMENTAL QUALITY REVIEW FINDINGS STATEMENT

Pursuant to Article 8 (State Environmental Quality Review Act - SEQRA) of the Environmental Conservation Law and 6 New York Codes, Rules, and Regulations (NYCRR) Part 617, the Central Pine Barrens Joint Planning & Policy Commission (hereinafter "Commission"), as an involved agency, makes the following findings:

NAME OF ACTION: Spring Meadow at Wading River

LOCATION OF ACTION: South side of NYS Route 25A, east of Wading River High School, Wading River, Town of Brookhaven, Suffolk County

LEAD AGENCY: Town of Brookhaven
Planning Board
3233 Route 112
Medford, NY 11763

INVOLVED AGENCY: Central Pine Barrens Joint Planning & Policy Commission
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SEQRA STATUS: Type I Action

DATE FINAL SUPPLEMENTAL EIS FILED: January 7, 2002

AGENCY JURISDICTION: On March 20, 2002, the Commission asserted jurisdiction pursuant to Environmental Conservation Law Article 57-0123(2) of the Long Island Pine Barrens Act and Section 4.5.3 of the Central Pine Barrens Comprehensive Land Use Plan.

DESCRIPTION OF ACTION: Proposed subdivision of 59.4 acres into 75 single-family residential lots, located in the Central Pine Barrens Compatible Growth Area in the A-Residence-1 Zoning District.

BACKGROUND:

- April 13, 1992 - The Town of Brookhaven originally granted preliminary approval for a different subdivision layout on 189 acres after conducting a SEQRA review through a DEIS/FEIS. The preliminary approval expired 6 months later.
- September 15, 1997 - The applicant requested an extension of the preliminary approval which was denied by the Town.
- March 24, 1998 - A new and different application for preliminary map approval was submitted to the Town. The Town required a Supplemental DEIS (DSEIS).
- July 17, 2000 - The Commission received DSEIS (Entitled "Spring Meadow at Wading River Draft Supplemental Environmental Impact Statement, Town of Brookhaven, NY" prepared by Coastal Environmental Corporation and dated April 2000. This DSEIS included a preliminary subdivision plan (entitled "General Layout Spring Meadow" prepared by John Schnurr, L.S. last revised on Feb. 9, 2000) showing a 165 lot cluster subdivision on 189 acres. The 189 acre subdivision consisted of Sections 1, 2, and 3, and an additional open space area "to be dedicated to the Town of Brookhaven".
- September 18, 2000 - Town held a Preliminary/Final Subdivision/SEQRA hearing (according to FSEIS pg. iii).
- February 13, 2001 - Suffolk County purchased just shy of 130 acres of the original 189 acre site for \$ 4,500,000.
- The Suffolk County Real Property Tax Service Agency mapped the parcels as follows: Tax Map #'s: 200-128-1-15, 200-128-1-16.1 (formerly p/o 16), 200-128-1-16.2 (formerly p/o 16), 200-150-1-1, and 200-151-3-40. Lot No. 16.2 is approximately 59.3 acres and is now the subject of the amended subdivision proposal. The remainder of these tax map parcels make up the 130± acres purchased by Suffolk County.
- January 7, 2002 - the Town of Brookhaven Planning Board, as Lead Agency, issues Notice of Completion of the FSEIS for the "Map of Spring Meadow @ Wading River Section 1 only".
- February 13, 2002 - The Commission received a FSEIS (Entitled "Spring Meadow at Wading River Final Supplemental Environmental Impact Statement, Town of Brookhaven, NY" prepared by Coastal Environmental Corporation and date stamped received by the Town of Brookhaven on January 22, 2002). This FSEIS included a revised subdivision plan (entitled "General Layout Spring Meadow" prepared by Howard W. Young, L.S. last revised on Oct. 11, 2001) showing a 75 lot proposed subdivision on what appears to be Lot No. 16.2 (the 59± acre area closest to 25A). The remaining area of the original 189 acre subdivision is indicated on the revised plan as "Land acquired

(sic) or to be acquired by Suffolk County”.

- February 25, 2002 - Staff responded to the Town of Brookhaven with comments on the FSEIS that the project does not comply with the CGA standards (53% max. clearing, 15% max. fertilizer dependent vegetation, requirement for clustering...). The applicant uses the 130 acre area sold to the County as credit toward meeting CGA standards.
- March 20, 2002 - Commission asserted jurisdiction and also asserted that the project was subject to all standards and guidelines. A hearing date was set for May 8, 2002.
- March 25, 2002 - Notified applicant (by fax and certified letter to contact listed in the FSEIS) and the Town (via fax and letter) that the Commission asserted jurisdiction over the project, that an application is needed, and advised of hearing date.
- April 15, 2002 - Return receipt had not been received from 3/25/02 mailing. A phone call by staff to the Great River Post Office revealed that the letter has been forwarded to the Islandia Post Office and had not been picked up. Two additional certified letters were sent to different addresses for the applicant (one found on the subdivision map, and the other from phone call to the Town Tax Receiver).
- April 18, 2002 - One certified letter mailed on 4/15/02 was returned to the Commission, stamped “Refused”.
- April 26, 2002 - The second certified letter mailed on 4/15/02 was returned to the Commission, stamped “Refused”.
- May 2, 2002 - Return receipt had not been received from 3/25/02 mailing. A phone call by staff to the Great River Post Office revealed that this letter had still not been picked up from the Islandia Post Office.
- May 8, 2002 - Commission held public hearing, after being duly advertised. A transcript was thereafter made available to the Commission. The information requested by the Commission had not been received from the applicant, and the applicant was not present or represented at the public hearing.
- May 22, 2002 - The Commission, by resolution, narrowed its review to the following Standards and Guidelines:
 - 5.3.3.1 - Nitrate Nitrogen
 - 5.3.3.4 - Wetlands and Surface Waters
 - 5.3.3.5 - Stormwater Runoff
 - 5.3.3.6 - Natural Vegetation and Plant Habitat
 - 5.3.3.9 - Coordinated Design for Open Space Management
- July 18, 2002 - Commission decision deadline pursuant to ECL Article 57.

CONCLUSIONS AND FINDINGS:

INTRODUCTION:

Review of the FSEIS reveals that the project, as currently proposed, does not adequately minimize or avoid impacts to the Central Pine Barrens to the maximum extent practicable. The Commission has attempted to consolidate and coordinate its review of the proposed action to the fullest extent possible in compliance with Article 57 of the Environmental Conservation Law and with SEQRA.

A project change occurred in 2001 when there was a significant reduction in the area of the project site when approximately 130 acres of the project site were sold to Suffolk County. The project site described in the DSEIS consisted of an assemblage of parcels totaling 189.1 acres. The new 59.4 acre revised project site is described in the FSEIS.

Potentially significant impacts that were identified in the DSEIS for the former projects are:

1. Impacts on groundwater in a sensitive deep recharge area
2. Loss of significant open space
3. Significant impacts on wildlife
4. Impacts on vegetation
5. Impacts to topography, including erosion
6. Impacts to visual resources
7. Impacts to cultural resources
8. Traffic impacts
9. Cumulative impacts in conjunction with other projects

The Commission asserted jurisdiction over this project because the development, as currently proposed, has a significant adverse impact on the goals of the land use plan. The proposal could result in substantial impairment of the resources of the Central Pine Barrens area.

Standards and Guidelines for Development in the Central Pine Barrens Compatible Growth Area

The following is an analysis of the facts presented in the FSEIS with regard to the Standards and Guidelines from the the Central Pine Barrens Comprehensive Land Use Plan ("Plan") identified by the Commission as applicable. The language from the Plan is set forth below in italics.

5.3.3.6 - Natural Vegetation and Plant Habitat

Clearing is defined, for the purposes of this standard, as the removal of any portion of

the natural vegetation found on a 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.

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 the 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.

Standard 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. [Note: Figure 5-1 indicates that the maximum permitted site clearance is 53% in a 1 acre zoning district.] These percentages shall be taken over the total site and shall include, but not be limited to, roads, building sites and drainage structures. The clearance standard that would be applied to a 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 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.

The current proposal does not comply with the 53% maximum clearing limit required by this standard. The FSEIS (page iv) computes the proposed maximum clearing at approximately 31%. This computation is based on the assumption the entire 59 acres will be completely (100%) cleared. The clearing computation presented in the FSEIS uses the entire former 189 acre project site to derive a proposed maximum clearing of 31%. The FSEIS (page 3) states that "It would be physically and mathematically impossible to assume 100% clearing of each lot and accomplish 53% "overall clearing limits" for Section One as a "stand alone" development."

The computation in the FSEIS is incorrect. The entire 189 acre project site cannot be used since about 130 acres were acquired by the County. Only the 59 acres that represent the project site may be used.

Impacts of vegetation loss in the Pine Barrens area could be mitigated by modifying the proposal to comply with this standard by reducing the number of proposed dwellings and by redesigning the subdivision to cluster the development within the 59 acre project site.

Standard 5.3.3.6.2 - Unfragmented open space

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

For the purpose of this paragraph, native pine barrens vegetation shall include pitch pines and various species of oak trees, understory and ground cover plants such as blueberry, wintergreen, bearberry and bracken fern, grasses and sedges such as little bluestem, Pennsylvania sedge and indian grass as well as those ecological communities listed in sections 5.6 and 5.7 in Chapter 5, Volume 2 of the Plan.

It is recognized that the preservation of nonnative but ecologically important habitats may be consistent with the intent and goals of the plan when such action would result in the creation of large contiguous natural open space areas and or the protection of rare, threatened or endangered species or their habitat.

There are no large unbroken blocks of preserved natural vegetation proposed on the 59 acre site. The subdivision design could be modified to provide a large block of open space contiguous to the 130 acre County land to the south that was formerly part of this project and contiguous to the Town of Brookhaven Nature Preserve to the east. Compliance with this standard and other mitigation measures to protect natural vegetation and plant habitat described in Section 5.3.3.6 of the Plan would result in approximately 28 or more acres of the 59 acre site remaining as unfragmented, preserved, naturally vegetated open space situated adjacent to existing preserved open space areas.

Standard 5.3.3.6.3 Fertilizer-dependent vegetation limit

No more than 15% of an entire development project site shall be established in fertilizer-dependant vegetation including formalized turf areas. Generally, nonnative species require fertilization therefore, planting of such nonnative species shall be limited to the maximum extent practicable. The use of the nonnative plants in Figure 5-2 is specifically not recommended.

The FSEIS does not provide calculations of the area proposed to be established in fertilizer-dependant vegetation for the current proposal. However, it may be reasonable to conclude from information provided in impact statements for the previous projects on the 189 acre site that the current proposal does not comply with this standard.

The DEIS (Page III-12) estimates the amount of irrigated and fertilized landscaped area which will be present on the original 189 acre site under post development conditions was determined to be approximately 25 % of the total lot area, plus 15% of the total site area due to the landscaped areas in the road right-of-ways. Neither a preliminary or final plat was made available to the Commission showing proposed lot areas. Roughly estimating that the 75 proposed lots are .5 acre each, it may be reasonable to conservatively conclude that at least 31% of the 59 acre site is to be established in fertilizer-dependent vegetation.

It is apparent that the current proposal does not meet the standard for fertilizer-dependent vegetation. The project could be modified to comply with this standard by reducing the number of proposed building lots and by clustering the design of the subdivision.

5.3.3.9 - Coordinated Design for Open Space Management

Comprehensive, coordinated planning and design of development proposals within the pine barrens is essential to ensure maximum preservation of open space and habitat linkages. Developments should not be designed without adequate consideration of the 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 prevent the preservation of large, unbroken blocks of open space.

The use of the clustering technique within the Central Pine Barrens preserves open space, preserves habitat, protects important resource areas, improves infrastructure efficiency and furthers the statute's goals of compact, efficient and orderly development in the Central Pine Barrens.

Additionally, proper management of these areas is essential in order to protect open spaces from illegal dumping, clearing, motor vehicle trespass and other abuses.

The road design and lot layout is inefficient since consideration was not given in the FSEIS to the road design and lot configuration in relation to abutting public lands. The subdivision design was not revised when future road connections to formerly proposed residences on the southerly side of the subdivision were no longer anticipated due to the sale of 130 acres to the County.

Guideline 5.3.3.9.2 - Clustering

Municipalities are strongly urged to maximize the use of the clustering technique where its usage would enhance adjacent open space or provide contiguous open space connections with adjacent open space parcels.

This preliminary subdivision application is not a cluster design because there is no contiguous block of open space being preserved on this 59 acre project site.

Compliance with this guideline and other mitigation measures to protect natural vegetation and plant habitat described in Section 5.3.3.6 of the Plan would result in approximately 28 or more acres of the 59 acre site remaining as unfragmented, preserved, naturally vegetated open space situated adjacent to existing preserved open space areas.

Guideline 5.3.3.9.3 - Protection of dedicated open space

Proposed open space should be protected with covenants, conservation easements or dedications that specify proper restrictions on its use and contingencies for its future management.

The subdivision plan included with the FSEIS (entitled “General Layout Spring Meadow”, prepared by Howard W. Young, L.S. last revised on Oct. 11, 2001 and date stamped by the Commission on Feb. 13, 2002) show no portion of the 59 acre site as proposed protected open space.

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 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.

Standard 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 which shall be no less than that required by the New York State Tidal Wetland, Freshwater Wetland, or Wild, Scenic and Recreational Rivers Act or local ordinance. 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.

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.

Guideline 5.3.3.4.4 - Additional nondisturbance buffers

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

The DSEIS (page 22) and the original DEIS (page II-48 and 50) indicate that the Eastern Tiger Salamander (*Ambystoma tigrinum tigrinum*), a NY State Endangered Species, are “potentially using the site because of confirmed sightings on adjoining lands or because of the existence of suitable habitats”. The site contains a small freshwater wetland located in a topological depression in or near the proposed drainage area where standing water and wetland vegetation were observed during a site inspection by Commission staff on June 25, 2002. Past disturbance in the wetland area was also observed. The DEIS (page II-27 and 28) describes this area as a “moist area” and a “wet spot” based on field inspections at least 12 years ago. The vegetation in this wetland area has had several decades to succeed since the surrounding farmland was abandoned several decades ago. The wetland or associated species of concern may exist on this property.

5.3.3.1 - Nitrate-Nitrogen

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.

Guideline 5.3.3.1.3 - Nitrate-nitrogen goal

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

The DSEIS (pg 10) states that “The Spring Meadow project may produce a loading to groundwater of from 5.9 mg/l. Accordingly, nitrogen loading may at time exceed the Pine Barrens Review Commission standard of 6 mg/l. However, there is a 90% probability that the 10 mg/l drinking water standard will never be exceeded.” The nitrogen loading of this project, as currently proposed, exceeds the protective goal of 2.5 ppm in this guideline. Furthermore, the average residential density is 75 units on 59.4 acres, or 1 unit per .8 acre, which exceeds this guideline.

The proposed subdivision layout is not a cluster design, and no wetland protection mechanisms are proposed.

EVALUATION OF MITIGATION MEASURES IDENTIFIED IN FSEIS:

The 1995 Generic Environmental Impact Statement for the Central Pine Barrens Comprehensive Land Use Plan found that the Standards and Guidelines for Land Use in Chapter 5 of the Plan provide the Commission with adequate means to mitigate adverse impacts associated with development. There have been no attempts to modify the current project to bring it into compliance with the requirements in Chapter 5 of the Plan and the potential impacts of the proposal on the Central Pine Barrens are not adequately mitigated.

EVALUATION OF ALTERNATIVES:

Alternatives Identified in FSEIS:

The alternatives identified in the FSEIS are as follows:

1. No Build Alternative - This alternative was evaluated in the DSEIS using the original 189± acres site, not the current 59± acre site.
2. Previously approved layout (1992) - This alternative is not feasible because of the sale of part of the original site to Suffolk County. The FSEIS (page v.) states that "Suffolk County's purchase of proposed Sections Two and Three cause this alternative to no longer remain feasible".
3. Conventional A-1 subdivision (not clustered) - This alternative was evaluated in the 1990 DEIS, which was a much larger project site than the current proposal. This alternative was not evaluated in the FSEIS for the current proposal. A conventional A-1 non-clustered subdivision on 59 acres would likely yield roughly 47 single family homes; a density of .8 units per acre. This estimate is based on a convention commonly used by planning professionals whereby a typical yield in a one acre zoning district may be estimated as 80% of the land area, due to infrastructure and design considerations.

Alternatives not identified in FSEIS:

1. Revise the proposal to comply with the CGA Standards and Guidelines including clustering on the 59 acre site.
2. Use of pine barrens credits to increase density above that which is permitted in the A-Residence-1 zoning district.
3. No build alternative on the 59 acre site.

CONCLUSION:

The proposed action does not adequately avoid or minimize adverse environmental effects of this non-compliance with the Plan to the maximum extent practicable. The proposal is not consistent with the purposes and provisions of ECL Article 57 and the findings in the 1995 Generic Environmental Impact Statement for the Central Pine Barrens Comprehensive Land Use Plan and cumulatively would result in substantial impairment of the resources of the Central Pine Barrens area.

Based upon the information contained in the Draft and Final Supplemental EIS, and the public hearing record, and as outlined in these Findings, the Commission, as an involved agency, finds that the proposed action does not minimize potential environmental impacts and does not provide the necessary balance between the protection of the environment and the need to accommodate social and economical considerations. Accordingly, the proposed action cannot be approved.

CERTIFICATION OF FINDINGS TO DENY

Having considered the Draft and Final Supplemental EIS, and the public hearing record, and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR 617.11, this Statement of Findings certifies that:

1. The requirements of 6 NYCRR Part 617 have been met to the maximum extent possible;
2. The relevant environmental impacts, facts and conclusions disclosed in the FSEIS have been considered;
3. Relevant environmental impacts have been weighed with social, economic, and other considerations;
4. The foregoing findings provide a rational for the Commission's decision;
5. Consistent with the social, economic and other essential considerations from among the reasonable alternatives available, the action is one which fails to adequately avoid or minimize adverse environmental effects to the maximum extent practicable; and that adverse environmental effects cannot be adequately avoided or minimized by the mitigation measures identified as practicable.

The Commission, as an Involved Agency, pursuant to SEQRA Part 617.11, has prepared the Findings stated herein and shall cause it to be filed in accordance with Part 617.12.

Name and Address of Agency: Central Pine Barrens Joint Planning & Policy Commission
3525 Sunrise Hwy, 2nd Floor
PO Box 587
Great River, NY 11739

Signature of Responsible Official:

George Proios

Name of Responsible Official:

George Proios

Title of Responsible Official:

Acting Chairman

Date:

July 10, 2002

COPIES OF THIS FINDINGS STATEMENT HAVE BEEN FILED WITH:

- Ray Cowen, Commissioner, NYSDEC
- Edward Carrera, c/o Mars, Sloane, & Conlon
- Steve Costa, Suffolk County Department of Health Services
- ~~Environmental Notice Bulletin, NY State Department of Environmental Conservation~~ (a)
- Brenda Prusinowski, Town of Brookhaven Dept. of Planning, Environment, & Development
- Thomas Isles, Suffolk County Department of Planning
- John J. LaValle, Town of Brookhaven
- Thomas Oelerich, NY State Department of Transportation
- John Pavacic, NY State Department of Environmental Conservation
- ~~Ruth Pierpont, NYSOPRHP Field Services Bureau~~ (a)