

DRAFT

Violation Determinations and Remedies

Section 1.0 Definitions. The following terms shall have the stated meanings when used in this Part and/or documents prepared or reviewed by the Commission:

- (a) The “Act” means the Long Island Pine Barrens Protection Act of 1993 and amendments thereto codified in Article 57 of the Environmental Conservation Law.
- (b) “Central Pine Barrens” means the area described in Section 57-0107 of the Environmental Conservation Law.
- (c) “Commission” means the Central Pine Barrens Joint Planning and Policy Commission established by the Act.
- (d) “Compliance Conference” means a process between the Commission’s Executive Director, or its designee, to resolve a Violation with a Respondent alleged to have caused the Violation.
- (e) “Consent Order” means a document entered into by the Commission and a Respondent, whereby the latter agrees to discontinue or remedy the acts or practices which violate or will violate the Act, the Plan, any regulation promulgated by the Commission, or the terms or conditions of any order, permit, or determination issued by the Commission and may provide such other and further relief to which the Commission may require and the Respondent may agree. Such Consent Order shall be admissible as evidence to provide the basis for a finding or fact in any subsequent proceeding brought by the Commission against such Respondent involving the same or similar violation(s).
- (f) “ECL” means the Environmental Conservation Law of the State of New York.
- (g) “Executive Director” means the Commission’s Executive Director.
- (h) “Executive Director’s Report” means the report prepared by the Executive Director following a Compliance Conference with a Respondent.
- (i) “Notice” shall be made by first class mail, return receipt request to each Respondent. All other notices shall be by first class mail or as otherwise agreed to by the Parties.
- (j) “Notice of Violation” means a written instrument issued by the Commission or the Executive Director that alleges a violation of the Act, the Plan, any regulation promulgated by the Commission or the terms or conditions of any order, permit or decision issued by the Commission has occurred or is imminent.

DRAFT

(k) “Party” means the Commission and any Person designated as a Respondent in any proceeding taken under these Rules.

(l) “Person” means a human being, a public or private corporation, a cooperative, club, trust, firm, company, an unincorporated association, a partnership, a government or a governmental instrumentality.

(m) “Plan” means the Central Pine Barrens Comprehensive Land Use Plan as adopted by the Commission and any amendments, rules or regulations issued thereto.

(n) “Respondent” means a Person who is issued a Notice of Violation.

(o) “Violation” means an action or actions by a Person that caused, or will imminently cause a contravention of a provision or provisions of the Act, the Central Pine Barrens Comprehensive Land Use Plan, any regulation promulgated by the Commission, or the terms or conditions of any order, permit or decision issued by the Commission.

(p) “Violation Determination” means the Commission’s written decision determining whether a Violation occurred, or is imminent, after an Informal Administrative Proceeding or a Formal Administrative Proceeding, and remedial measures as necessary.

Section 2.0 Applicability. Whenever the Commission determines, after investigation, or upon receipt of a Notice of Violation, that a Person caused, or will imminently cause, a contravention of a provision, or provisions, of the Act, the Central Pine Barrens Comprehensive Land Use Plan, any regulation promulgated by the Commission, or the terms or conditions of any order, permit or decision issued by the Commission, the Commission shall commence an Informal Administrative Proceeding under Section 4.0, an Formal Administrative Process under Section 5.0 or both to determine if a Violation has occurred or will imminently occur.

Section 3.0. Issuance of a Notice of Violation.

The Commission or its Executive Director may issue a Notice of Violation to a Person who has caused, or will imminently cause, a Violation based on a reasonable showing of evidence of same. A Notice of Violation does not establish a Violation has occurred.

Section 4.0 Informal Administrative Proceeding

(a) Upon the mutual consent of the Commission and the Respondent, an Informal Administrative Proceeding may be initiated to resolve an alleged Violation. If the Informal Administrative Proceeding is commenced and does not result in the issuance of Final Determination and Order as per Section 4.3, the Commission may proceed pursuant to Section

DRAFT

5.0 to resolve the Violation.

(b) A Respondent may elect not to participate in an Informal Administrative Proceeding, by providing a written notification of the same to the Commission, within Fifteen (15) days of the Commission notice of an Informal Administrative Proceeding. If a Respondent elects not to participate in an Informal Administrative Proceeding, the Commission will resolve the Violation under the provisions of Section 5.0 below.

Section 4.1 Compliance Conference

The Commission shall schedule a Compliance Conference to discuss the alleged Violation within Thirty (30) days of its notice to Respondent. During the Compliance Conference, the Executive Director, or its designee, shall meet with the Respondent and discuss the alleged Violation. The Executive Director, or its designee, or the Respondent may propose a Consent Order to resolve the alleged Violation.

Section 4.2 Executive Director's Report

Within Thirty (30) days of the Compliance Conference, the Executive Director, or its designee, shall prepare and forward a Executive Director's Compliance Conference Report to the Commission. The Report shall contain a summary of the alleged Violation and the Compliance Conference. If the Respondent and the Executive Director have preliminary agreed on the terms of a proposed Consent Order to resolve the Violation, the same is to be included with the Report.

Section 5.0 Formal Administrative Process

Section 5.1 Notice of Hearing

(a) If a Notice of Violation cannot be resolved pursuant to an Informal Administrative Process, or an Informal Administrative Process was not held, the Commission shall commence a Formal Administrative Process to determine whether the Respondent caused, or will imminently cause, a Violation.

(b) The Commission shall scheduled a hearing to receive evidence concerning the Violation from the Respondent and interested Person.

(b) The Commission, on its own motion set a reasonable time for the hearing and give public notice thereof, and notice to the Respondent. The notice of hearing shall specify the time and place of the hearing, and shall set a date for a hearing not earlier than Twenty (20) days after service of the notice.

DRAFT

(e) The failure to provide evidence or the failure by the Respondent to appear at the hearing and provide evidence of the Violation shall constitute a default upon proof of service of a notice of the hearing and a copy of the Notice of Violation delivered to the Respondent.

Section 5.2 The Hearing.

(a) Appearances.

(1) A Respondent may appear in person, by a representative, or by counsel.

(2) Any Person appearing on behalf of a Respondent in a representative capacity may be required to show its authority to act in such capacity.

(b) Evidence.

(1) Each Person shall, before testifying, be sworn or make an affirmation its testimony, under the penalties of perjury, shall be true.

(2) Prefiled, written testimony may be presented by any Party with permission of and subject to the discretion of the Commission. Prefiled testimony shall be sworn to by the Person and subject to review during the Hearing. To be considered, such testimony must be provided to the Commission no later than Ten (10) days prior to the date of the Hearing.

(3) When necessary, in order to prevent undue prolongation of the Hearing, the Commission may limit the number of times any Person may testify, the repetitious examination or cross-examination of witnesses, or the amount of corroborative or cumulative testimony.

(4) The rules of evidence shall not be strictly applied; provided, however, the Commission may exclude irrelevant, immaterial or unduly repetitious evidence and shall give effect to the rules of privilege recognized by law.

(5) All written statements, charts, tabulations and similar data offered at the Hearing shall, upon a showing satisfactory to the Commission of their authenticity, relevancy and materiality, shall constitute a part of the record of the Hearing.

(f) Adjournment. A request for an adjournment of the Hearing shall be in writing and submitted to the Commission prior to the Hearing. A Respondent shall be entitled to one adjournment without cause and thereafter provide reasonable cause an adjournment request.

(g) Record.

DRAFT

- (1) Testimony given and other proceedings had at a hearing shall be recorded by the Commission, at its own expenses, by whatever means it deems appropriate.
- (2) The record of the hearing shall include: the notice of hearing, the Notice of Violation, Executive Director Report, if prepared, the transcript or recording of the testimony taken at the hearing; exhibits submitted and filed therein;
- (3) A copy of the stenographic transcript of the hearing or, if the hearing is recorded, a copy of the tape or a transcript of the recording, shall be available to any party upon request to the Commission, as appropriate, and upon payment of the fees allowed by law.

Section 5.3 Burden and Standard of Proof

- (1) Burden of proof.
 - (a) The Commission bears the burden of proof on all matters which they affirmatively assert in the Notice of Violation which initiated the proceeding.
 - (b) The Respondent bears the burden of proof regarding all affirmative defenses.
- (2) Standard of proof. Whenever factual matters are involved, the Person bearing the burden of proof must sustain that burden by a preponderance of the evidence. This subdivision does not modify or supplement the questions that may be raised in a proceeding brought pursuant to CPLR Article 78.

Section 5.4 Post Hearing Submission

Either Party may submit within Thirty (30) days of the Hearing a post hearing brief. There shall be no reply briefs.

Section 6.0 Commission's Violation Determination

- (a) In all matters, the Commission shall make a Violation Determination which shall provide:
 - (1) the factual record concerning the Violation and each Party's evidence, testimony, and assertions, concerning the the Violation,
 - (2) the dismissal of the Notice of Violation, in part or whole,
 - (3) determination that the Violation has occurred or is imminent, in part or in whole, and

DRAFT

(4) if the Violation has occurred or is imminent:

- (i) an assessment of penalties consistent with applicable provisions of the ECL Article 57;
- (ii) a direction for abatement;
- (iii) order prohibiting the Respondent from causing the Violation,
- (iv) a combination of any or all of the foregoing; or
- (v) any determination deemed appropriate under the circumstances, consistent with applicable provisions of the Act, the Plan, any regulation promulgated by the Commission, or the terms or conditions of any order, permit, or determination issued by the Commission.

(c) A copy of the Commission's Violation Determination shall be served on the Respondent in the same manner as is provided in the Section.

Section 7.0 Waiver of Rules. Any of the foregoing rules affecting a period of time or notice may be waived by stipulation upon the consent of the Commission

Section 8. No Waiver of the Jurisdiction, Authority, or Power Provided by the Act.

(a) Notwithstanding the foregoing, no action hereunder or the Commission's decision not to exercise its powers provided herein, shall affect or limit, the independent jurisdiction a town, village or the Attorney General established under the Act.

(b) Nothing herein shall modify the provisions of the Act and in an event of conflict between the two, the provisions of the Act control.