

ARTICLE XXXV Pine Barrens Overlay District [Added 5-7-1996; amended 5-20-1997; 9-16-1998; 4-15-2003 by L.L. No. 4-2003]

§ 108-175. Findings and purpose.

- A. In 1993, New York State adopted § 57-0119 of the Environmental Conservation Law ("ECL") entitled "Central Pine Barrens Joint Planning and Policy Commission." This Commission consists of five voting members: a member appointed by the Governor, the County Executive of Suffolk County and the Supervisors of the Towns of Riverhead, Brookhaven and Southampton. This Commission was formed to implement, manage and oversee land use within the Central Pine Barrens area on Long Island. ECL 57-0119(6)(a) gives the Commission the power to prepare, adopt and insure implementation of the Comprehensive Land Use Plan. ECL Article 57 recognizes the importance of the three local towns in regulating the implementation of the plan within the Central Pine Barrens region. The authority to establish a Comprehensive Land Use Plan is contained in ECL § 57-01021. In conformance with ECL Article 57 and the Comprehensive Land Use Plan, the Town Board of the Town of Riverhead enacted § 108-175 of the Town Code of the Town of Riverhead entitled "Pine Barrens Overlay District." The intention of the original legislation adopted in 1995 and the resulting plan was that the local planning board and zoning powers and authority to regulate land uses by local municipalities within the Central Pine Barrens area would not be affected by said legislation and plan.
- B. It is the purpose of this article to provide consistency with the goals of the Central Pine Barrens Comprehensive Land Use Plan adopted by the Town Board on June 28, 1995, pursuant to the provisions of Article 57 of the New York State Environmental Conservation Law, as follows:
- (1) To protect, preserve and enhance the functional integrity of the Pine Barrens ecosystem and the significant natural resources thereof.
 - (2) To protect the quality of surface water and groundwater.
 - (3) To discourage piecemeal and scattered development.
 - (4) To promote active and passive recreational and environmental educational uses that are consistent with the Land Use Plan.
 - (5) To accommodate development in a manner consistent with the long-term integrity of the pine barrens ecosystem and to ensure that the pattern of development is efficient and orderly.
 - (6) To protect the pine barrens ecosystem from illegal activity within the boundaries of the Central Pine Barrens Area, in particular clearing of large tracts of land without the necessary approvals.
- C. The particular objectives for land use with respect to the Central Pine Barrens Core Preservation Area include:
- (1) Preserving the pine barrens in their natural state thereby ensuring the continuation of the unique and significant ecologic, hydrogeologic and other resources representative of such environments.
 - (2) Promoting compatible agricultural, horticultural and open space recreational uses within the framework of maintaining a pine barrens environment and minimizing the impact of such activities thereon.
 - (3) Prohibiting or redirecting new construction or development.
 - (4) Accommodating specific pine barrens management practices, such as prescribed burning, necessary to maintain the special ecology of the preservation area.
 - (5) Protecting and preserving the quality of surface water and groundwater.

- (6) Protecting the pine barrens ecosystem from illegal activity within the boundaries of the Central Pine Barrens Area, in particular clearing of large tracts of land without the necessary approvals.
- D. The particular objectives for land use with respect to the Central Pine Barrens Compatible Growth Area include:
- (1) Preserving and maintaining the essential character of the existing pine barrens environment, including plant and animal species indigenous thereto and habitats thereof.
 - (2) Protecting the quality of surface water and groundwater.
 - (3) Discouraging piecemeal and scattered development.
 - (4) Encouraging appropriate patterns or compatible residential, commercial, agricultural and industrial development in order to accommodate regional growth influences in an orderly way while protecting the pine barrens environment from the individual and cumulative adverse impacts thereof.
 - (5) Accommodating a portion of the development redirected from the Core Preservation Area.
 - (6) Allowing appropriate growth consistent with stated natural resource goals.
 - (7) Protecting the pine barrens ecosystem from illegal activity within the boundaries of the Central Pine Barrens Area, in particular clearing of large tracts of land without the necessary approvals.
- E. Although each of the zoning codes of the respective three towns contains penalty provisions for violations of the Code, no specific provisions are included for violations of regulations within the Central pine barrens area. Article 57 of the ECL does not specifically provide for an enforcement or penalty provision. The Towns of Riverhead, Brookhaven and Southampton desire to discourage and prevent unauthorized and illegal land clearing activities, illegal dumping and other unauthorized uses within the core area and the compatible growth area of the Long Island Central Pine Barrens region. Any amendment to Article 57 of the ECL should be consistent with existing code enforcement provision in each of the three towns.
- F. This article, in addition to the purposes outlined above, is necessary to raise the potential penalties under the authority of the respective Town codes for unauthorized and illegal land clearing activities, as well as provide enforcement of other provisions of the respective Town code regarding the Long Island Central Pine Barrens region.

§ 108-176. Applicability.

- A. The provisions of this article shall apply to those lands in Town located within the boundaries of the Central Pine Barrens Area as defined in § 57-0107, Subdivision 10, of the New York State Environmental Conservation Law, as the same may be amended from time to time.
- B. While the fine amounts set forth herein are significant, they are not out of proportion to the nature of the violation. Violations occurring within the Central Pine Barrens Area may threaten groundwater and the endangered and threatened plants and animals found within the Central Pine Barrens. Through the enactment of Article 57 of the ECL, the State Legislature has seen fit to protect this environmentally sensitive area. This article is adopted pursuant to the home rule authorization found within § 10(4)(b) of the Municipal Home Rule Law and is intended to supersede § 268 of the Town Law.

§ 108-177. Definitions.

The terms and words used in this article shall be ascribed the meanings and uses generally attributable to them in the other sections of this chapter unless otherwise specifically interpreted or defined. As used in this chapter, the following terms shall have the meanings as indicated:

CENTRAL PINE BARRENS AREA — The area of the Town defined in § 57-0107, Subdivision 10, of the New York State Environmental Conservation Law, as the same may be amended from time to time.

COMPATIBLE GROWTH AREA — The area of the Town within the Pine Barrens Area, but outside the Core Preservation Area, as defined in § 57-0107, Subdivision 12, of the New York State Environmental Conservation Law, as the same may be amended from time to time.

CORE PRESERVATION AREA — The area of the Town within the Central Pine Barrens Area which contains the largest intact areas of undeveloped pine barrens as defined in § 57-0107, Subdivision 11, of the New York State Conservation Law, as the same may be amended from time to time.

DEVELOPMENT — The performance of any building activity or mining operation, the making of any material changes in the use or intensity of use of any structure or land and the creation or termination of rights of access or riparian rights, as defined in § 57-0107, Subdivision 13, of the New York State Environmental Conservation Law, as the same may be amended from time to time.

DEVELOPMENT RIGHT — The legal interest and rights permitted to a lot, parcel or area of land under this chapter respecting permissible use, area, density, bulk or height improvements executed thereon.

PINE BARRENS CREDIT — A development right allocated for lands within the Central Pine Barrens Area.

PINE BARRENS CREDIT CERTIFICATE — An instrument issued on the behalf of the Central Pine Barrens Joint Planning and Policy Commission which indicates the number of Pine Barrens credits associated with a particular parcel of land and which attests that development rights have been severed from such real property by the recording of a conservation easement and that such rights are available for sale or use.

PLAN — The Central Pine Barrens Comprehensive Land Use Plan ratified by the Town Board on June 28, 1995, and adopted by the Central Pine Barrens Joint Planning and Policy Commission, pursuant to the provisions of Article 57 of the New York State Environmental Conservation Law.

RECEIVING DISTRICT — One or more designated districts to which development rights or Pine Barrens credits generated from one or more sending areas may be transferred, and in which increased development is permitted to occur, as set forth in Article XXXVI of this chapter, by reason of such transfer.

SENDING AREA — One or more designated areas of land in the Core Preservation Area for which development rights or Pine Barrens credits are allocated for use in one or more Receiving Districts.

TRANSFER OF DEVELOPMENT RIGHTS — The process by which development rights or Pine Barrens credits are transferred from a lot or parcel located in any sending area to another lot or parcel located in one or more Receiving Districts.

§ 108-178. Development within Core Preservation Area.

- A. Development within the Core Preservation Area shall be prohibited unless a hardship exemption is issued by the Central Pine Barrens Joint Planning and Policy Commission pursuant to § 57-0121 of the New York State Environmental Conservation Law. Land uses which do not constitute development may be permitted, provided that the use complies with all

other applicable provisions of this chapter.

- B. Notwithstanding the provisions of the aforementioned Subsection A, any legally existing, expanded or new activity involving agricultural or horticultural production may be permitted in the Core Preservation Area, provided that the agricultural or horticultural production does not involve the material alteration of native vegetation and that the land use complies with all other applicable provisions of this chapter. The erection of accessory agricultural or horticultural buildings or structures required for agricultural or horticultural production may be permitted, provided that said buildings or structures comply with all other applicable provisions of this chapter. Uses, buildings or structures that require the material alteration of native vegetation shall be prohibited as provided in Subsection A of this section.
- C. A land use in the Core Preservation Area that lawfully exists at the effective date of this article or any amendment thereto may be continued in its present form except that the aforementioned Subsections A and B shall apply to any change, alteration, expansion, restoration or modification to said land use constituting development as defined herein.

§ 108-179. Development within Compatible Growth Area.

- A. Development within the Compatible Growth Area (CGA) shall comply with the following standards:
 - (1) All development subject to the provisions of Article 6 of the Suffolk County Sanitary Code shall meet the applicable requirements of the Suffolk County Department of Health.
 - (2) As determined by the State of New York or the County of Suffolk, any new public or private sewage treatment plant discharge shall be outside of the Core Preservation Area and shall be located north of the groundwater divide, as defined by the Suffolk County Department of Health Services, as site conditions permit.
 - (3) All development shall comply with the provisions of Articles 7 and 12 of the Suffolk Sanitary Code.
 - (4) All development involving significant discharges to groundwater and located proximate to public water supply wells shall require measures to mitigate impacts upon water quality as required under Article 17 of the New York State Environmental Conservation Law. The Suffolk County Department of Health Services' guidelines for private wells should be used for private wellhead protection.
 - (5) Development proposals for sites containing or abutting freshwater wetlands shall be separated by a non-disturbance buffer area which shall be in accordance with Article 24 of the New York State Environmental Conservation Law, the Wild, Scenic and Recreational Rivers Act (the Rivers Act) and Chapter 107 of the Code of the Town of Riverhead, whichever is most restrictive. 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. Stricter buffer areas may be established for wetlands as appropriate. Buffer areas shall be delineated on development plans with conditions imposed to assure the preservation of the freshwater wetland resource. Said conditions shall be set forth in a declaration of covenants, conservation easement or similar instrument.
 - (6) Development proposals for sites within the regulated area of the New York Wild, Scenic and Recreational Rivers Act shall conform to the standards of the Act. Variances from the Act shall meet all requirements imposed by the State of New York in order to be deemed to have met the requirements of this standard. Additional relief from the Town of Riverhead Zoning Board of Appeals shall not be required.
 - (7) All stormwater generated by development shall be recharged on site unless surplus capacity exists in an off-site drainage system. In the review of development plans, the

Town Board shall encourage the use of natural recharge areas or drainage system design which result in minimal disturbance of native vegetation with the use of natural swales and depressions as an alternative to excavated recharge basins where feasible. Development plans should include the use of ponds only if such ponds are designed to retain stormwater and are not merely constructed for aesthetic purposes. Adequate measures should be employed to control soil erosion and stormwater runoff during construction, as per guidelines promulgated by the New York State Department of Environmental Conservation.

- (8) Clearance.
 - (a) The proposed disturbance to natural vegetation, combined with previously disturbed areas, shall conform to the following clearance standards: **[Amended 7-19-2005 by L.L. No. 24-2005]**

| Zoning Use District | Maximum Site Clearance (percentage) |
|----------------------------|--|
| RB-80 | 53% |
| APZ | 53% |
| IA | 65% |
| IC | 65% |
| Business CR | 65% |

- (b) The applicable clearance percentage shall be calculated over the area of the entire parcel, including but not limited to public highways, roadways, building sites, parking areas, drainage structures and recharge areas. Development plans shall delineate the existing naturally vegetated areas, shall calculate those portions of the site that are already cleared due to previous activities and shall contain calculations for the amount of disturbance of native vegetation and indicate the clearing limits thereof.
 - (c) To the extent that a portion of a site includes Core property, and for the purpose of calculating the clearing limits, the site shall be construed to be the combined Core and CGA portions. However, the Core portion may not be cleared without a hardship exemption.
- (9) Land subdivision maps and site plans shall be designed to encourage the preservation of large unbroken blocks that provide for contiguous open spaces to be established when adjacent parcels are developed. Applications for subdivision and site plan shall contain calculations for clearing, and these limits shall become part of the filed map or approved drawings. Nonnative vegetation species to be avoided are contained in Figure 5-2 of the plan.
- (10) Development projects shall place no more than 15% of the entire site in fertilizer-dependent vegetation. Development designs shall consider native planting suggestions made part of the plan.
- (11) Development which will have a significant negative impact upon a habitat essential to those species identified on the New York State maintained lists as rare, threatened or of special concern, or upon the communities classified by the New York State Natural Heritage Program as G1, G2 or G3 or as S1, S2 or S3 or upon any federal listed endangered or threatened species, appropriate mitigation measures, as determined by the state, county or local government agency, shall be imposed to protect such species.
- (12) Development projects shall minimize disturbance of the natural grade and/or natural vegetation where slopes exceed 10%. Construction in areas with slopes exceeding 10% may be approved if the site design incorporates adequate soil stabilization and erosion

control measures so as to mitigate negative environmental impacts. Where applicable, non-disturbance buffers shall be placed on those portions of the site where slopes exceed 10%. Development plans shall include a slope analysis depicting existing slopes in the ranges of 0% to 10%, 11% to 15% and 15% or greater. Erosion and sediment control plans and details of retaining walls and erosion control structures shall be referred for construction in areas where slopes exceed 15% and for roads and driveways traversing slopes of 10%.

- (13) In order to provide for orderly development and the efficient provision of infrastructure, applications for development projects depicting either open space or reserve areas shall specify the conditions of ownership and the use of such lands, and such conditions shall be set forth in the deed of dedication, declaration of covenants, conservation easement or similar instrument.
 - (14) Where applicable, the use of a planned residential development or use of cluster design pursuant to Article XIX of this chapter shall be encouraged to preserve open space. Further, the use of planned industrial park development pursuant to the provisions of Article XX of this chapter shall be encouraged to preserve open spaces.
 - (15) Any existing, expanded or new activity involving agricultural production or horticulture shall comply with best management practices as set forth in the plan, as may be amended from time to time.
 - (16) Development plans shall indicate established recreational and educational trails and trail corridors, active recreational sites, scenic corridors, roads, vistas and viewpoints, sites of historical or cultural significance, including historic districts, sites on the State or National Registers of Historic Places and historic structures listed on the State or National Registers of Historic Places, or recognized by local law or statute, sensitive archeological sites as identified by the New York State Historic Preservation Officer or the New York State Museum, within 500 feet of the proposed development, and shall provide adequate measures to protect such natural resources. The use of existing natural buffers or the restoration of degraded buffer areas, the use of signs or other man-made structures, consistent in style and scale with the community character, or other similar measures shall be taken to protect roadside areas as well as scenic and recreational resources.
 - (17) All commercial or industrial development shall comply with the applicable provisions of the Suffolk County Sanitary Code and all other applicable federal, state or local laws.
- B. A land use within the Compatible Growth Area that lawfully exists at the time of the effective date of this article or any amendment thereto may be continued in its present form except that the aforementioned standards shall apply to any change, structural alteration, expansion, restoration or modification to said land use constituting development as defined herein.
- C. Those economic development activities to occur upon those lands within the two-thousand-nine-hundred-acre tract of the Calverton Naval Weapons Industrial Reserve Plant as contemplated by Public Law 103-c337 (Suffolk County Tax Map parcels 0600-135-1-2, 0600-135-1-6 and 0600-135-1-7), the plan and its attending generic environmental impact statement shall not constitute development as defined by § 57-0107, Subdivision 13(i) of the New York State Environmental Conservation Law and by this article.
- D. Penalties for offenses.
- (1) In addition to the penalties provided for in elsewhere in Chapter 108 of the Town Code of the Town of Riverhead, any person or entity who shall violate any of the provisions here shall restore the subject premises or property or shall undertake any necessary remedial action, including but not limited to the posting of a performance and maintenance bond, as required by the Town Board in order to bring the subject premises into conformance with the requirements of this chapter and the Central Pine Barrens Comprehensive Land Use Plan or any permit, covenant or condition issued thereto.

- (2) Any person or entity who shall violate any of the provisions contained in this chapter or the Central Pine Barrens Comprehensive Land Use Plan or any permit covenant or condition issued pursuant thereto, shall be guilty of a violation of such, which shall be punishable by a fine not to exceed \$25,000 or not more than one year in jail, for violations occurring on premises or property located within the Core Preservation Area or \$10,000 or no more than one year in jail, for violations occurring on premises or property located within the Compatible Growth Area, and an additional fine of \$1,000 per day in both areas for each day that such violation continues. A violation of this section shall be classified as an unclassified misdemeanor.
- (3) Any fines or penalties collected pursuant Chapter 108 of the Town of Riverhead for violations of the provisions of the Town Code relating to the Pine Barrens Overlay District, when paid over to the Town, shall be maintained in a segregated account to be used exclusively for the continuation of the protection, preservation, enhancement and/or restoration of the natural resources and ecosystems of the Central Pine Barrens Region.
- (4) Where authorized by a duly adopted resolution of the Town Board, the Town Attorney shall bring and maintain a civil proceeding, in the name of the Town in the Supreme Court, pursuant to Town Law § 268, to enjoin the person or persons conducting or permitting any violation of this article for further conducting or permitting said violation.

§ 108-180. Transfer of development rights; Pine Barrens credit program.

A. It is the purpose of the Pine Barrens credit program to provide for the preservation of land within the Core Preservation Area while maintaining the value of those lands by providing for the transfer of Pine Barrens credits. Development rights shall be transferable from the Core Preservation Area to approved receiving sites outside the Core Preservation Area pursuant to Chapter 95A of the Town Code and the transfer of development rights standards of Article 6 of the Suffolk County Sanitary Code. Additionally, a landowner must obtain a Pine Barrens credit certificate from the Pine Barrens Credit Clearinghouse (the "Clearinghouse") as set forth in the plan, which Pine Barrens credit may be sold or used in accordance with the procedures set forth in this chapter.

B. General regulations.

- (1) Pine Barrens credits, or fractions thereof, shall be allocated for each parcel of land established as a separate tax lot as of the effective date of this chapter.
- (2) Pine Barrens credits shall be allocated for each single-family dwelling permitted on a parcel of land based upon the development yield established by multiplying the gross lot area (acres) of the parcel by the following development yield factor, such factor predicated upon that zoning use district in existence upon the adoption of the plan in June 1995. A fractional allocation of a Pine Barrens credit shall be rounded to the nearest one-hundredth of a Pine Barrens credit. **[Amended 7-19-2005 by L.L. No. 23-2005]**

| Zoning Use District | Minimum Lot Area (square feet) | Development Yield Factor |
|------------------------------|---|---|
| Natural Resources Protection | 160,000 | 0.20 |

- (3) One nonresidential Pine Barrens credit shall be allocated for each acre or gross lot area of real property within the Open Space Conservation Zoning Use District and the Defense Institutional District. A fractional allocation of a Pine Barrens credit shall be rounded to the nearest one-hundredth of a Pine Barrens credit.
- (4) Notwithstanding the aforementioned provisions, the Planning Board, upon the written request of the landowner, and subject to prior approval by the Commission, may elect to increase the allocation of Pine Barrens credits for a parcel of land if it can be

demonstrated to the satisfaction of the Planning Board that the potential development yield of the property, pursuant to Article XX, § 108-95C, is greater than the yield set forth herein.

- (5) No Pine Barrens credit shall be allocated for property owned or held by a public agency, municipal corporation or governmental subdivision, including property held by reason of tax default.
- (6) No Pine Barrens credit shall be allocated for property for which the development rights have previously been used or acquired, nor for lands which are encumbered by easement, covenant or other deed restriction for the purpose of land protection, preservation or conservation.
- (7) No Pine Barrens credits may be transferred into the Core Preservation Area. Pine Barrens credits originating in the Core Preservation Area may be transferred out of the Central Pine Barrens Area pursuant to the establishment of receiving areas. Pine Barrens credits shall not originate from lands within the Compatible Growth Area.