§ 57-0121. Central Pine Barrens comprehensive land use plan; interim regulations.

1. As soon as practicable and within twelve months of the effective date of this section, the commission shall, after consultation with the advisory committee, prepare or cause to be prepared a draft comprehensive land use plan and generic environmental impact statement thereon which shall be part of the plan for the Central Pine Barrens area. The land use plan shall be designed to preserve the Pine Barrens ecology and to ensure the high quality of groundwater within the Central Pine Barrens area and to balance the public and private interests in development and in protection of the Pine Barrens ecology consistent with the objectives of the land use plan. Where local plans exist, the commission shall evaluate and incorporate such plans as is appropriate in the land use plan.

2. The land use plan for the Central Pine Barrens area shall be designed to:

(a) protect, preserve and enhance the functional integrity of the Pine Barrens ecosystem and the significant natural resources, including plant and animal populations and communities, thereof;

(b) protect the quality of surface water and groundwater;

(c) discourage piecemeal and scattered development;

(d) promote active and passive recreational and environmental educational uses that are consistent with the land use plan; and

(e) 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 compact, efficient and orderly.

3. The land use plan with respect to the core preservation area shall be designed to protect and preserve the ecologic and hydrologic functions of the Pine Barrens by:

(a) preserving the Pine Barrens area in their natural state thereby insuring the continuation of Pine Barrens environments which contain the unique and significant ecologic, hydrogeologic and other resources representative of such environments;

(b) 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;

(c) prohibiting or redirecting new construction or development;

(d) accommodating specific Pine Barrens management practices, such as prescribed burning, necessary to maintain the special ecology of the preservation area;

(e) protecting and preserving the quality of surface and groundwaters; and

(f) coordinating and providing for the acquisition of private land interests as appropriate and consistent with available funds.

4. The land use plan with respect to the compatible growth areas shall be designed to:

(a) preserve and maintain the essential character of the existing Pine Barrens environment, including plant and animal species indigenous thereto and habitats therefor;

(b) protect the quality of surface and groundwaters;

(c) discourage piecemeal and scattered development;

(d) encourage appropriate patterns of 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;

(e) accommodate a portion of development redirected from the preservation area. Such development may be redirected across municipal boundaries; and

(f) allow appropriate growth consistent with the natural resource goals pursuant to this title.

5. Preparation of the land use plan shall be based on the following planning studies and reports:

(a) Previously undertaken and current groundwater and ecological studies pertaining to the reserve, generally, and the Central Pine Barrens area, specifically;

(b) General planning studies of the reserve, generally, and the Central Pine Barrens area, specifically, including but not limited to:

(i) population and population distribution;

(ii) amount, type, intensity, and general location of commerce, industry and agricultural production;

(iii) amount, type, quality, and general location of housing;

(iv) general location and extent of existing or currently planned major transportation, utility, and community facilities;

(v) amount, general location, and interrelationship of different categories of land use;

(vi) areas, sites, or structures of historical, archaeological, architectural, or scenic significance;

(vii) natural resources, including air, water, open spaces, forests, soils, rivers, wetlands and other waters, shorelines, fisheries, wildlife, vegetation, threatened species, and minerals; and

(viii) any other matter found to be important to preservation and future development.

(c) Scientific research prepared for other hydrological or ecological areas analogous to the reserve, generally, and the Central Pine Barrens area specifically. Such studies and reports may include, but are not limited to those undertaken by the New Jersey Pinelands commission or Cape Code commission.

(d) Public improvement studies including but not limited to the area or subareas within the Central Pine Barrens area or outside such area having an aggregation of sites with development potential to facilitate application of transfer of development rights that could create the need for new public improvements and/or public improvement expansions;

(e) Advisory committee recommendations or reports.

6. The land use plan shall provide for, address and include but not be limited to the following:

(a) Statements of objectives, policies and standards as they pertain to the purposes of this title and the land use plan.

(b) A map depicting the core preservation area.

(c) A map depicting compatible growth areas in the Central Pine Barrens area where orderly and environmentally compatible development can be encouraged and to which development potential within the preserve may be transferred.

(d) A phased public improvement element for providing the public facilities necessary for carrying out the goals for the core

preservation and compatible growth areas.

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

(f) Identification of sending districts in core preservation and compatible growth areas and receiving districts in compatible growth areas and outside the Central Pine Barrens area for the purpose of providing for the transfer of development rights and values to further the preservation and development goals of the land use plan and methodologies and standards for procedural equity and appropriate values in establishing rights and values consistent with the provisions of section two hundred sixty-one-a of the town law.

(g) Identification of land suitable for agricultural use and necessary and appropriate strategies to protect land capable of agricultural production.

(h) Development criteria and performance standards.

(i) An intergovernmental coordination and consistency component establishing the ways in which state and local programs and policies may best be coordinated to promote the goals and implement the policies of the land use plan.

(j) A financial component analyzing the public and private costs of developing and implementing the land use plan which shall include:

(i) detailed costs including those for infrastructure improvements, acquisition of fee simple or other interests in lands for preservation or recreation purposes, compensation guarantees, general administrative costs and any anticipated extraordinary or continuing costs; and

(ii) the source of revenue for covering such costs, including, but not limited to, grants, donations and loans from local, state and federal departments and agencies and from the private sector.

(k) A program for state, county and local governmental implementation of the comprehensive land use plan and the various elements thereof in a manner that will insure the continued, uniform, and consistent protection of the Pine Barrens ecosystem and development objectives

including:

(i) minimum standards for the adoption, as required in this title, of municipal and county plans, codes and ordinances concerning the development and use of land including, but not limited to, standards for minimum lot sizes, site clearance and wetland setbacks, appropriate population and densities and regulated or prohibited uses for specific portions of the Pine Barrens area and procedures for determining hardship consistent with the purposes and provisions of this title;

(ii) guidelines and standards for review of projects of regional significance which because of scale of intensity of use or location are likely to impede implementation of the land use plan; and

(iii) guidelines for consistency with the land use plan by state, county and local agencies.

(l) Professional staffing requirements necessary to carry out the land use plan.

(m) Land protection mechanisms, including, but not limited to, acquisition, conservation easements, rights and values transfers, purchase of development rights, donations and clustering, planned unit development, land trusts, exchanges between privately and publicly owned lands, or other zoning activities consistent with the provisions of this title.

(n) Provisions for use of best management practices, in all natural resource-dependent commercial and industrial activities, including agriculture, horticulture and related activities.

(o) Provisions for restoration of natural and cultural resources where such resources have been damaged, lost, or otherwise impaired. Such work shall address restoration of Pine Barrens habitats, stream and shore revitalization, historic structures, traditional industries demonstration programs, and strengthening of community character which will be consistent with the provisions of the comprehensive management plan pursuant to section 57-0115 of this title.

(p) Provisions for cumulative impact analyses, both environmental and economic, for the effects of development, preservation, financial policies and related factors upon the Central Pine Barrens area, its private and public open space, its residents and constituents, school and other special districts, and other pertinent aspects or demographic sectors.

(q) Recommendations for further legislation at the state, county, and local levels as may be necessary to fully implement the provisions of this title.

(r) Provisions for management and stewardship of natural and cultural resources which shall include coordination by owners of public lands which will be consistent with the provisions of the comprehensive management plan pursuant to section 57-0115 of this title.

(s) Provisions for appropriate and relevant scientific research relating to the species, ecological communities and processes, natural landscape features, and surface and groundwater resources of the Central Pine Barrens necessary to ensure and enhance the long-term management of the preserve. Such research may be addressed in a cooperative effort with the state university of New York at Stony Brook through its biological research station, established by the department of ecology and evolution.

(t) Provisions for fire management for controlled, prescribed burning, and responses to unanticipated fires. This shall include coordination among the department and local fire departments.

(u) Description of developments of regional significance.

The land use plan shall also, as funds permit, provide for a follow-up plan to be undertaken by the commission for a partnership infrastructure and sustainable development plan for the reserve. Based on the land use plan and the comprehensive management plan, such follow up plan shall be designed to (i) coordinate the activities of all governmental entities in the provision of infrastructure necessary to support orderly development in the compatible growth areas and support of sustainable development in the reserve outside of the preserve; and (ii) coordinate and focus investment in sustainable development efforts.

7. Notwithstanding any provision contrary to any other provisions of article eight of this chapter, the commission shall be the lead agency for the generic environmental impact statement which is part of the land use plan. Such generic environmental impact statement shall be prepared in accordance with the provisions of article eight of this chapter.

8. In order to effectuate the purposes and provisions of this title,

no person, public corporation or the state shall undertake or otherwise engage in development within the Central Pine Barrens area prior to approval and implementation of the land use plan except as provided by this section. No amendments to the existing town or village zoning laws, ordinances or regulations affecting development within the Central Pine Barrens area shall take effect prior to the approval of the land use plan as provided in this chapter except that a town may as part of a zoning ordinance adopted pursuant to article sixteen of the town law or by local law pursuant to other enabling law, provide for a planned unit development or planned development district ordinance for a development for which the designated lead agency, on or before June first, nineteen hundred ninety-three, accepted a draft environmental impact statement or draft generic environmental impact statement under article eight of this chapter. The provisions of this section shall not apply to development in the compatible growth area for which:

(a) the designated lead agency, on or before June first, nineteen hundred ninety-three, accepted a draft environmental impact statement or draft generic environmental impact statement or issued a conditioned negative declaration or a negative declaration under article eight of this chapter, or

(b) all required municipal and state permits and approvals were issued on or before June first, nineteen hundred ninety-three (except that a building permit need not have been issued by said date), or

(c) The designated lead agency, after June first, nineteen hundred ninety-three and prior to ninety days immediately following adoption of this section or as extended at the discretion of the commission in its interim rules and regulations adopted pursuant to section nine herein, issues on an active application a conditioned negative declaration or a negative declaration under article eight of this chapter and which does conform to the use and lot area requirements of the zoning in effect in the relevant municipality on June first, nineteen hundred ninety-three, and does not necessitate a use variance. Notwithstanding the foregoing, in the event a commissioner within thirty days of receiving notice of said issuance requests review of the action by the full commission, the development shall be subject to the interim rules and regulations and reviewed as provided for in section nine herein.

In the event that an event referred to herein (acceptance of a draft environmental impact statement or draft generic environmental impact statement; issuance of a conditioned negative declaration or negative declaration; or issuance of a required permit or approval) is annulled or vacated by a court of competent jurisdiction and such judicial action has not been reversed by a superior court, then, for purposes of this section, such event shall be deemed not to have taken place.

Notwithstanding any other provision of law, any development which includes land within the core preservation area for which the designated lead agency, on or before June first, nineteen hundred ninety-three, accepted a draft environmental impact statement or draft generic environmental impact statement shall not require a supplemental draft or generic environmental impact statement under article eight of this chapter solely because such development includes land within the core preservation area.

9. Within three months of the effective date of this section, the commission shall publish interim goals and standards for development and for hardship before the land use plan is implemented in compatible growth areas identified in the map. The commission may vary the procedures and time periods for compliance with article eight of this chapter as necessary and appropriate to comply with the three month deadline of this subdivision. Upon such publication, development may proceed in such compatible growth areas subject to existing laws, regulations and approval procedures and subject to the review and approval of the commission. Any person, the state or a public corporation applying for development in such compatible growth areas who has received all necessary local and state approvals may petition the commission for approval of the development. Within thirty days of an application being received, the commission shall provide the applicant and any other interested party an opportunity to be heard. Notice of such hearing shall be published in a newspaper having a general circulation in the Central Pine Barrens area, and notice of such hearing shall also be given by registered mail to the chief administrative officer of each town and village within whose boundary any proposed development is located. If the proposed development is consistent with

the commission's interim goals and standards, the commission shall approve the development and may include conditions for approval. If the applicant seeks an exemption based upon a demonstration of hardship, the commission may approve development in the compatible growth area upon the finding that such interim goals and standards caused an unnecessary hardship. In making such finding the commission shall consider the criteria for a use variance pursuant to section two hundred sixty-seven-b of the town law. The commission must make a decision within one hundred twenty days of receipt of a complete application. If the commission fails to make a decision within one hundred twenty days, the development shall be deemed to be approved by the commission, unless extended by mutual agreement of the applicant and commission.

10. Any person, the state or a public corporation upon a showing of hardship caused by the provisions of subdivision eight of this section on development in the core preservation area, may apply to the commission for a permit exempting such applicant from such subdivision eight in connection with any proposed development in the core preservation area. Such application for an exemption pursuant to the demonstration of hardship within the core preservation area shall be approved only if the person satisfies the following conditions and extraordinary hardship or compelling public need is determined to have been established under the following standards or for development by the state or a public corporation or proposed for land owned by the state or a public corporation compelling public need is determined to have been established under the following standards:

(a) The particular physical surroundings, shape or topographical conditions of the specific property involved would result in an extraordinary hardship, as distinguished from a mere inconvenience, if the provisions of this act are literally enforced. A person shall be deemed to have established the existence of extraordinary hardship only if he or she demonstrates, based on specific facts, that the subject property does not have any beneficial use if used for its present use or developed as authorized by the provisions of this title, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which:

(i) Do not apply to or affect other property in the immediate

vicinity;

(ii) Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; or

(iii) Are not the result of any action or inaction by the applicant or the owner or his or her predecessors in title including any transfer of contiguous lands which were in common ownership on or after June 1, 1993.

(b) A person, the state or a public corporation shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, one of the following:

(i) The proposed development will serve an essential health or safety need of the municipalities in the Central Pine Barrens such that the public health and safety require the requested waiver, that the public benefits from the proposed use are of a character that overrides the importance of the protection of the core preservation area as established in this title, that the proposed use is required to serve existing needs of the residents, and that no feasible alternatives exist outside the core preservation area to meet the established public need and that no better alternatives exist within the county; or

(ii) The proposed development constitutes an adaptive reuse of an historic resource designated by the commission and said reuse is the minimum relief necessary to ensure the integrity and continued protection of the designated historic resource and further that the designated historic resource's integrity and continued protection cannot be maintained without the granting of a permit.

(c) An application for a permit in the core preservation area shall be approved only if it is determined that the following additional standards also are met:

(i) The granting of the permit will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire, endanger public safety or result in substantial impairment of the resources of the core preservation area;

(ii) The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of this title; or

(iii) The waiver is the minimum relief necessary to relieve the extraordinary hardship, which may include the granting of a residential

development right to other lands in the compatible growth area that may be transferred or clustered to those lands to satisfy the compelling public need.

Any waiver or exemption granted under the provisions of this part shall only be considered an exemption or waiver of the particular standard of this title which the commission waived. It shall not constitute an approval of the entire development proposal. Nor shall it constitute a waiver from any requirements contained within any local, county or state law or ordinance.

Within thirty days of the application being received, the commission shall provide the applicant and any other interested party an opportunity to be heard. Notice of any public hearing conducted in connection with an application for such a permit shall be published in a newspaper of general circulation in the Central Pine Barrens area. If the proposed development is not contrary to the policy or any provision of this title and meets the standards of extraordinary hardship or public need herein, and the commission so finds, it may issue a permit allowing the development or such development subject to appropriate conditions or modifications to occur, provided that permission may be revoked by the commission if its terms are violated, and provided further that any such hardship permit issued by the commission shall be in addition to, and not in lieu of, such permit or permits as may be required by any state agency or municipality within whose boundary such development is located. The time within which the commission must decide a core preservation area hardship application for which a negative declaration has been made by the commission pursuant to article eight of this chapter is one hundred twenty days from receipt of such application. The time within which the commission must decide a core preservation area hardship application for which a positive declaration has been made by the commission pursuant to article eight of this chapter is sixty days from issuance of a findings statement by the commission pursuant to article eight of this chapter. If the commission fails to make a decision within the aforesaid time periods, the development shall be deemed to be approved by the commission, unless extended by mutual agreement of the applicant and commission.

11. In preparation of the land use plan, the commission shall:

(a) consult with appropriate officials of any regional, state or federal agency which has jurisdiction over lands and waters within the Central Pine Barrens area;

(b) consult with the officials of any municipality which has jurisdiction over lands and waters within the Central Pine Barrens area;

(c) consult with interested professional, scientific and citizens' organizations; and

(d) consult with citizens' committees.

12. Following consultation with the advisory committee and within the twelve month period established therefor, the commission shall publish the draft land use plan. Within three months of such publication, the commission shall hold public informational meetings in the towns of Brookhaven, Riverhead and Southampton and at least one public hearing within the Central Pine Barrens area. During this period the commission shall receive and review comments on the draft land use plan-generic environmental impact statement from state and local governments and the public and within three months, the commission shall recommend a revised comprehensive land use plan pursuant to this title to the respective town boards of such towns for their ratification and adoption. Within two months of the commission recommending the plan to the respective town boards, the town boards shall perform a comprehensive review of the plan and shall provide final comments to the commission. The commission at its discretion may modify the plan as requested by the town representatives. After modifying the plan as necessary, the commission shall prepare a draft supplemental generic environmental impact statement and a final generic environmental impact statement, and the towns and commission shall adopt the necessary statement of findings pursuant to article eight of this chapter. Ratification and adoption of the plan by the town boards of Brookhaven, Riverhead, and Southampton shall represent commitment to implementation of the provisions contained therein. Upon ratification and adoption by such three towns, the commission itself will formally adopt the plan-generic environmental impact statement and its provisions shall be in full force. Adoption by the commission shall only be upon the signature of the governor, county

executive of Suffolk county, supervisor of the town of Brookhaven, supervisor of the town of Riverhead and supervisor of the town of Southampton.

13. Not less than once every five years after the land use plan has become effective, the commission shall review and, if appropriate, make amendments to the land use plan and update the generic impact statement. Within each such period, the commission shall hold a public hearing and shall receive comments on the effectiveness of implementation of the land use plan. Not less than thirty days before voting on an amendment to the land use plan, the commission shall publish notice thereof in a newspaper of general circulation in the Central Pine Barrens area.