

Topic:	Zoning; Natural Resource Protection & Conservation; Wetlands & Watercourse Protection; Wildlife & Fish Habitat
Resource Type:	Regulations
State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of Brookhaven
Year (adopted, written, etc.):	1996
Community Type - applicable to:	Suburban; Rural
Title:	Town of Brookhaven Central Pine Barrens District
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Abstract

The Town of Brookhaven, New York, uses its zoning code to prevent floods, protect floodplains and other sensitive environmental areas. The zoning contains the Pine Barrens Credit Program, a transfer of development rights program, to maintain the value in lands designated for preservation and protection. Additionally, the program allows environmentally sensitive development to occur in an efficient and orderly fashion, which protects the quality and quantity of waters and the integrity of the Suffolk County Central Pine Barrens ecosystem(s). The Zoning defines the zones and the usages permitted in those zones. Under the program, the Core Preservation Area is the sending zone; receiving zones, where development credits may be redeemed for an increase in intensity or density of development, also have requirements and exceptions. A parcel or premises is ineligible to be a receiving district if the parcel is located within certain areas or the area of the parcel to be developed is located within certain areas including, but not limited to: within five hundred feet of any streams, bluffs, surface waters or wetlands regulated by the New York State Department of Environmental Conservation or the Town of Brookhaven; within a one-hundred-year floodplain; within a New York State wild, scenic, and recreation river corridor; or within other designated or protected areas.

Resource

Town of Brookhaven NY Central Pine Barrens District
Code of the Town of Brookhaven NY
Chapter 85: Zoning
Article XXXVII
General Code
[http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D085%2Ehtm%23ArticleXXXVII&cn=2058&n=\[1\]\[1343\]\[1478\]\[2058\]](http://www.codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D085%2Ehtm%23ArticleXXXVII&cn=2058&n=[1][1343][1478][2058])

[Note: Formulas at § 85-450 are omitted; see the online version]
ARTICLE XXXVII Central Pine Barrens District

[Added 4-2-1996 by L.L. No. 11-1996, effective 4-17-1996]

§ 85-443. Intent.

A. Purpose.

- (1) It is hereby found and determined by the Town Board of the Town of Brookhaven that this article is enacted pursuant to Article 57 of the State Environmental Conservation Law, the "Long Island Pine Barrens Protection Act" ("the Act"), which requires that each local government with land use jurisdiction over lands within the Central Pine Barrens area, enact land use regulations which conform to the Central Pine Barrens Comprehensive Land Use Plan. As required by the Act, the Central Pine Barrens Comprehensive Land Use Plan provides for: the preservation and protection of the Long Island Peconic Bay System (the largest single source of groundwater in New York State); the preservation and protection of endangered and threatened plants and animals; and, the protection of the unique natural resources and ecosystems of the Pine Barrens-Peconic Bay System.
- (2) This article is promulgated in accordance with the mandates of Article 57 of the Environmental Conservation Law with the express intent of providing planning mechanisms which permit conformance with the Central Pine Barrens Comprehensive Land Use Plan; implements the objectives of the Central Pine Barrens Comprehensive Land Use Plan through the redirection of development from the Core Preservation Area to eligible areas and by the establishment of reasonable and appropriate patterns of development in the Compatible Growth Area. This article is further intended to meet the goals of the Central Pine Barrens Comprehensive Land Use Plan whereby appropriate patterns of compatible residential, commercial, agricultural and industrial development are encouraged in order to accommodate regional growth influences in an orderly way while protecting the pine barrens environment from individual and cumulative adverse impacts and to promote development which is compact, efficient and orderly, and reasonably calculated to protect the quality and quantity of surface water, groundwater and the short-term and long-term integrity of the Pine Barrens ecosystem(s).
- (3) By this enactment, it is this Town Board's express intent to develop and employ creative planning techniques to implement the objectives of the Pine Barrens Credit Program, by and through the use of Residential Overlay Districts, Planned Development Districts and incentive zoning in order to insure the preservation of the Core Preservation Area while concomitantly avoiding significant adverse environmental or economic impacts to non-Core area(s) throughout the Town.

Further, it is this Board's intent to provide for effective environmental review of development proposals as appropriate; to avoid redundancy and duplication in reporting and project review requirements; and, to avoid unwarranted delay in the review of development proposals by streamlining review procedures and establishing standards for development consistent with the Central Pine Barrens Comprehensive Land Use Plan.

- (4) To the extent that this article herein is inconsistent with Article 16 of Town Law §§ 261-a, 261-b, 267, 267-b, 274-a, 276, 277(6) and 278, this article is hereby intended to amend and supersede said provisions in furtherance of the goals and objectives set forth herein and which are consistent with the Central Pine Barrens Comprehensive Land Use Plan duly adopted in accordance with the provisions of Article 57 of the Environmental Conservation Law.
- (5) In order to redirect development from lands located within the Core Preservation Area to receiving districts, the within article provides for two basic approaches:
 - (a) The recognition and use of Pine Barrens credits for the transfer of development rights through the use of the residential zoning category created herein and known as the Residential Overlay District (ROD) which provides for the transfer of development rights from lands located in the Core Preservation Area to lands located outside the Core Area and in the A-Residential 1 Zoning District and A-Residential 2 Zoning District, with an increase in density; and
 - (b) The employment of innovative planning techniques, including, but not limited to the use of Planned Development Districts (PDD's) and incentive zoning.
- (6) The Planned Development District (PDD), as set forth in this chapter, is a floating zoning district classification specifically designed as a mechanism or tool to allow for the unified and coordinated development of lands, utilizing the transfer of development rights from the Core Preservation Area to receiving districts, and which provides for zoning incentives in order to achieve special public benefits flexible design features.
- (7) The PDD zoning mechanism is intended and designed to facilitate the transfer of Pine Barren credits from the Core Preservation Area to sites in the receiving districts which are capable of accommodating increased intensity of development and increased density of development.

B. Goals and objectives.

- (1) The Central Pine Barrens Comprehensive Land Use Plan sets forth numerous goals for the Central Pine Barrens in accordance with the Long Island Pine Barrens Protection Act, including:
 - (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 education 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.

- (2) The Central Pine Barrens Comprehensive Land Use Plan sets forth goals for the Core Preservation Area, including:
 - (a) Preserving the Pine Barrens area in its natural state thereby insuring the continuation of Pine Barrens environments which contain the unique and significant ecologic, hydrogeological and other resource 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 therein;
 - (c) Prohibiting or redirecting new construction or development;
 - (d) Accommodating specific Pine Barrens management practices;
 - (e) Protecting and preserving the quality of surface waters and groundwaters; and
 - (f) Coordinating and providing for the acquisition of private land interests as appropriate and consistent with available funds.

- (3) The Central Pine Barrens Comprehensive Land Use Plan goals for the Compatible Growth Area are as follows:
- (a) Preserve and maintain the essential character of the existing Pine Barrens environment, including plant and animal species indigenous thereto and habitats thereof;
 - (b) Protect the quality of surface water and groundwater;
 - (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 the Plan.
- (4) An essential component of the Central Pine Barrens Comprehensive Land Use Plan, in the fulfillment and satisfaction of these goals and objectives, is the acquisition and conservation of undeveloped lands within the Core Preservation Area which all contribute to the protection and preservation of the ecologic and hydrologic functions of the Central Pine Barrens Area. In order to satisfy these goals, various planning tools, mechanisms and standards are created and established by this article in order to promote development which is environmentally sensitive, compact, efficient and orderly, and reasonably calculated to protect the quality and quantity of surface water and groundwater and the short term and long term integrity of the Pine Barrens ecosystems.

§ 85-444. Definitions.

As used in this article, the following terms shall have the meanings indicated:

CENTRAL PINE BARRENS — The land area described in Article 57 of the Environmental Conservation Law, as shall be amended from time to time, as the Central Pine Barrens Area.

CENTRAL PINE BARRENS COMPREHENSIVE LAND USE PLAN — The land use plan adopted by the Joint Policy and Planning Commission pursuant to Article 57 of the Environmental Conservation Law, together with all subsequent amendments thereto, also referred to in this chapter as the "Plan."

CENTRAL PINE BARRENS JOINT PLANNING AND POLICY COMMISSION — The Commission established by Article 57 of the Environmental Conservation Law also referred to in this chapter as the "Commission."

COMPATIBLE GROWTH AREA — The land area within the Town of Brookhaven described and defined by Article 57 of the Environmental Conservation Law located and situated in the Central Pine Barrens of Suffolk County.

CONSERVATION EASEMENT — As defined by Article 49 of the Environmental Conservation Law.

CORE PRESERVATION AREA — The land area described and defined in Article 57 of the Environmental Conservation Law together with subsequent amendments thereto.

CRITICAL RESOURCE AREAS — A land area located within the Compatible Growth Area identified in the Central Pine Barrens Comprehensive Land Use Plan as having significant environmental features for which development proposals are subject to review and approval by the Joint Planning and Policy Commission. (see Volume 1, Chapter 4 of the Plan for identification/location of specific critical resource areas).

DENSITY OF DEVELOPMENT — The residential unit yield (number of dwelling units) permitted under the existing zoning district classification for any given lot, parcel or assemblage.

DEVELOPMENT OF REGIONAL SIGNIFICANCE — Development projects in this article which meet the threshold set forth subject to review and approval of the Joint Planning and Policy Commission.

GUIDELINES — Planning recommendations set forth in this article applicable to development proposals at the discretion of the governmental board or body otherwise authorized to review and approve said development proposals.

INCENTIVE ZONING — An increase in development intensity or density, or change of use permitted under the existing zoning district classification, which may be available upon the redemption of Pine Barrens development credits.

INTENSITY OF DEVELOPMENT — An increase in the gross floor area or the uses permitted under the existing zoning district classification for nonresidential development of a given parcel, lot or assemblage.

NATURAL VEGETATION AND PLANT HABITAT CLEARING — The removal of any existing natural vegetation located on a lot, parcel or site, exclusive of vegetation associated with active agricultural or horticultural activity or formalized landscaped and/or turf areas.

PINE BARRENS CREDIT CERTIFICATE — A certificate issued by the Joint Planning and Policy Commission which establishes the number of Pine Barrens development credits attributable to a given lot, parcel or assemblage of lands located in the Core Preservation Area which verifies the severance of development rights from the subject premises as evidenced by a recorded written instrument, a conservation easement, and which renders said Pine Barrens development credits available for sale or transfer.

PINE BARRENS CREDIT PROGRAM — The allocation and subsequent transfer of Pine Barrens development credits derived from lands located within the Core Preservation Area for the purpose of redirecting development from the Core Preservation Area to eligible lots, parcels or assemblages located in receiving districts.

PLANNED DEVELOPMENT DISTRICTS — A floating zone specifically designed to provide for the unified and coordinated development of land and to encourage comprehensive and coordinated planning of new development employing the transfer of development rights from the Core Preservation Area through the use of Pine Barrens credits, including the transfer of density. (Refer to Article XXXIIA of this chapter.)

RECEIVING DISTRICT — An eligible zoning district within the Town which is located outside of the Core Preservation Area where Pine Barrens development credits may be redeemed for an increase in intensity or density of development.

REDEMPTION OF PINE BARRENS CREDITS — The application or utilization of a Pine Barrens credit for a particular development project.

RESIDENTIAL OVERLAY DISTRICT — All lots, parcels or assemblages of lands located in the A Residential 1 Zoning District and A Residential 2 Zoning District and outside of the Core Preservation Area, subject to the criteria set forth in this article.

RESIDUAL USES — The uses permitted on privately held parcels, lots or assemblages of land(s) located in the Core Preservation Area identified in a recorded conservation easement.

RETIREMENT OF PINE BARRENS CREDITS — The extinguishment of a Pine Barrens

credit without application of said credit to a particular development project.

STANDARDS — Mandatory parameters and requirements applicable to development within the Compatible Growth Area as established in this article.

TRANSFER OF DEVELOPMENT RIGHTS — The severance of existing development rights from a parcel, lot or assemblage of land(s) as evidenced by a written instrument (conservation easement) in recordable form and/or duly recorded.

§ 85-445. Nondevelopment; development.

A. Nondevelopment.

- (1) For the purposes of this article any uses or activities which constitute nondevelopment are not subject to the provisions of this article or compliance with the standards and guidelines set forth herein. Without limitation the following activities or uses constitute nondevelopment for the purposes of this article:
 - (a) Public improvements undertaken for the health, safety or welfare of the public. Such public improvements shall be consistent with the goals and objectives of the Long Island Pine Barrens Protection Act (ECL Article 57), and shall include, but not be limited to, maintenance of an existing road or railroad track;
 - (b) Improvements and or work by any utility not involving substantial engineering redesign for the purpose of inspection, maintenance or renewal on established utility rights-of-way or the like, and any work pertaining to water supply for the residents of the Town.
 - (c) Without limitation, the maintenance, renewal, replacement, reconstruction, improvement, or alteration of any existing structure or additions to an existing residence or residential property owned by an association formed for the common interest in real property;
 - (d) The use of any structure or land devoted to dwelling uses for any purposes customarily incidental and otherwise lawful;
 - (e) The use of any land for agriculture or horticulture so long as such use does not effectuate any material alteration of native vegetation;

- (f) Improvements, maintenance or other work by a utility undertaken in the interest of public health, safety, or welfare so long as consistent with the goals and objectives of the Long Island Pine Barrens Protection Act (ECL Article 57);
- (g) Existing or expanded recreational use consistent with the purpose of this article, including scouting activities, the maintenance or expansion of facilities associated with or necessary for such scouting activities, including, but not limited to, the addition, modification, expansion or replacement of structures necessary for such activities and such clearing as may be reasonably required for the maintenance or expansion of scouting activities;
- (h) A change in use of land or structure from a use within a class specified in this article to another use in the same class;
- (i) Residential development on any subdivision, residential cluster development, land division or site plan which has received preliminary or final approval on or before June 1, 1993, providing the lots to be built upon conform to the lot area requirements of the current zoning, are subject to the three-year exemption contained in § 265-a of Town Law, or are subject to an exemption from an upzoning adopted by the Town Board;
- (j) In the Compatible Growth Area, construction of single-family homes and customary accessory uses thereto on any lot held on June 1, 1993, in ownership singly and separately from adjacent lots;
- (k) In the Compatible Growth Area, continuation of existing nonconforming uses, and activities permitted by special permit or special exception, including renewals of said special permits or special exceptions;
- (l) In the Compatible Growth Area, land divisions or subdivisions in the Compatible Growth Area consisting of five or fewer residential lots which conform to the lot area requirements of the existing zoning for the subject parcel; or
- (m) In the Compatible Growth Area: renovations, reconstruction, additions or extensions to existing commercial or industrial uses providing the addition or extension conforms to the uses permitted in the zoning district in which said parcel is located and which does not increase existing square footage by more than 25%.

B. Development.

- (1) For the purposes of this article, development shall mean the performance of any building activity or mining operation, the making of any material change in the use or intensity of use of any structure or land and the creation or termination of rights of access or riparian rights; without limitation, the following activities or uses shall be construed as development:
 - (a) A change in type of use of a structure or land or, if the ordinance or rule divides uses into classes, a change from one class of use designated in an ordinance or rule to a use in another class so designated;
 - (b) A material increase in the intensity of use of land or environmental impacts as a result thereof;
 - (c) Commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land, excluding environmental restoration activities;
 - (d) Material alteration of a shore, bank or floodplain of a river, stream, lake, pond, or artificial body of water;
 - (e) Re-establishment of a use which has been abandoned for one year;
 - (f) Departure from the normal use for which development permission has been granted, or material failure to comply with the conditions of an ordinance, rule or order granting the development permission under which the development was commenced or is continued;
 - (g) All other development customarily permitted under this chapter unless otherwise specified.

- (2) In accordance with Article 57 of the Environmental Conservation Law and under the Plan, review of development proposals by the Joint Planning and Policy Commission is limited to:
 - (a) All development proposed within the Core Preservation Area;
 - (b) Development within the Compatible Growth Area which constitutes development of regional significance, as defined herein;
 - (c) A development project within the Compatible Growth Area by which an individual commissioner may petition for review and a majority vote asserts review jurisdiction over such development;

- (d) Development within the Compatible Growth Area that does not conform to the standards as set forth herein;
- (e) Development within the Compatible Growth Area which is also within a Critical Resource Area.

C. Development proposals of regional significance. Development proposals within the Compatible Growth Area which meet the threshold(s) of a development proposal of regional significance shall be subject to a full review by the Commission pursuant to Article 57 of the Environmental Conservation Law.

(1) Development applications which meet the following criteria are deemed development proposals of regional significance:

- (a) A commercial, industrial or office development project exceeding 300,000 square feet of gross floor area, or an addition to an existing commercial, industrial or office development where the addition is 100,000 square feet or more and that addition causes the total square footage to exceed 300,000 square feet.
- (b) A multifamily residential development project consisting of 300 or more units.
- (c) A single-family, detached residential development project consisting of 200 or more units.
- (d) A development project resulting in a traffic impact which would reduce service by two levels below existing conditions or to a level of service D or below.

(2) Exceptions to development proposals of regional significance are development applications which:

- (a) Are situated within a designated receiving district.
- (b) Result from a transfer of development rights from a sending area (the Core Preservation Area).
- (c) Contain a minimum of 15% of residential units or a minimum of 15% of commercial, industrial or office use square footage, as a direct result of the

transfer of development rights.

§ 85-446. Core Preservation Area.

The Core Preservation Area is designated by the Act to be preserved employing a strategy of governmental land acquisition, the transfer of development rights using conservation easements, gifts, land swaps, and donations. The Plan prohibits development within the Core Preservation Area. Under the Act, the Commission may grant hardship exemptions, and may waive strict compliance with the Plan upon a finding that such a waiver is necessary to alleviate a hardship.

A. Permitted uses.

(1) Allowable uses within the Core Preservation Area shall be limited to the following:

- (a) Activities or uses which have been exempted as nondevelopment pursuant to the provisions of Article 57 of the Environmental Conservation Law and by this article;
- (b) Residual uses remaining after severance of development rights;
- (c) Any existing, expanded or new agriculture or horticulture activity so long as such use and/or expansion of use does not result in any material alteration of native vegetation. The erection of agricultural buildings, including but not limited to barns, greenhouses and farm stands, required for the production of plants or animals, shall constitute an allowable use. If such activity involves material alteration of native vegetation, the use will require a hardship exemption from the Commission.

(2) Hardship exemption. Applicants may seek hardship exemptions from the Commission as provided for in Article 57 of the Environmental Conservation Law for those uses or activities which are otherwise prohibited.

B. Prohibited uses.

(1) The following uses are not permitted within the Core Preservation Area:

- (a) Development which has not received a hardship exemption permit from the Commission; and

- (b) Residual uses which are incompatible with the provisions of Article 57 of the Environmental Conservation Law.

§ 85-447. Compatible Growth Area.

Permitted uses within the Compatible Growth Area shall be compatible with protecting the essential character and natural resources of the Pine Barrens and in conformance with the standards set forth in this article.

A. Permitted uses.

- (1) Uses within the Compatible Growth Area shall conform to the standards set forth in this article, limited to the following:
 - (a) All uses permitted in and as regulated in the underlying zoning district classification and authorized by this chapter.
 - (b) Hardship exemption. Applicants may seek hardship exemptions from the Commission as provided for in Article 57 of the Environmental Conservation Law for those uses or activities which are otherwise prohibited.

§ 85-448. Standards.

All proposed development located within the Compatible Growth Area of the Central Pine Barrens shall comply with the following standards (as also set forth in the Plan) unless a hardship exemption has been issued by the Commission. The Town of Brookhaven shall insure compliance with these standards by requesting comments and/or analysis from the appropriate state, county and other agencies upon project application review pursuant to SEQRA. In the event that a proposed development project is inconsistent with the standards set forth in this article, or is rendered inconsistent due to modification or amendment, the Town shall notify the Commission and afford the applicant opportunity to either revise the development proposal to render it conforming to the applicable standards or obtain a hardship exemption from the Commission. Where standards contained in this article differ from state, county, or local law, the stricter standard(s) apply. The following standards are applicable to all proposed development in the Central Pine Barrens Area:

A. Nitrate-nitrogen.

- (1) Suffolk County Sanitary Code Article 6 compliance. All development proposals subject to Article 6 of the Suffolk County Sanitary Code shall meet all applicable requirements of the Suffolk County Department of Health Services. Projects which

require variances from the provisions of Article 6 shall meet all the requirements of the Suffolk County Department of Health Service's Board of Review in order to be deemed to have met the requirements of this standard.

(2) Sewage treatment plant discharge. Where deemed practical by the county or state, sewage treatment plant discharge shall be outside and downgradient of the Central Pine Barrens. Denitrification or other systems that are approved by the New York State Department of Environmental Conservation or the Suffolk County Department of Health Services may be used in lieu of sewage treatment plants.

(3) Suffolk County Sanitary Code Articles 7 and 12 compliance. All development projects must comply with the provisions of Articles 7 and 12 of the Suffolk County Sanitary Code, including any provisions for variances or waivers if needed, and all applicable state laws and regulations in order to ensure that all necessary water resource and watershed management infrastructure shall be in place prior to, or as part of, the commencement of construction.

B. Wellhead protection. Significant discharges and public supply well locations: The location of nearby public supply wells shall be considered in all applications involving significant discharges to groundwater, as required under the New York State Environmental Conservation Law Article 17.

C. Wetlands and surface waters.

(1) Nondisturbance buffers. Development proposals for sites containing or abutting freshwater or tidal wetlands or surface waters must be separated by a non-disturbance buffer area which shall be no less that required by the New York State Tidal Wetlands or Freshwater Wetlands, and/or Wild, Scenic and Recreational Rivers Act and/or Chapter 81 of the Town of Brookhaven Code, Wetlands and Waterways. Distances shall be measured horizontally from the wetland edge as mapped by the New York State Department of Environmental Conservation, and the Town of Brookhaven. Projects which require variances or exceptions from these laws, and associated regulations, shall meet all requirements imposed in a permit by the New York State Department of Environmental Conservation and the Town of Brookhaven in order to be deemed to have met the requirements of the standard.

(2) Buffer delineations, covenants and conservation easements. Buffer areas shall be delineated on the site plan or subdivision map, and covenants and/or conservation easements, pursuant to the New York State Environmental Conservation Law and Chapter 81 of the Town of Brookhaven Code, Wetlands and Waterways, shall be imposed to protect these areas as deemed necessary.

(3) Wild, Scenic and Recreational Rivers Act compliance. Development proposals shall conform to the provisions of the Wild, Scenic and Recreational Rivers Act, where applicable. Projects which require variances or exceptions under the New York State Wild, Scenic and Recreational Rivers Act shall meet all requirements imposed by the New York State Department of Environmental Conservation in order to be deemed to have met the requirements of this standard.

D. Stormwater runoff/stormwater recharge. Development projects must provide that all stormwater runoff originating from development on the property is recharged on site unless surplus capacity exists in an off-site drainage system.

E. Natural vegetation and plant habitat.

(1) Vegetation clearance limits. 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.

(a) 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.

(b) Areas of the site proposed to be cleared combined with previously cleared areas shall not exceed the percentages in Figure 5-1 **Editor's Note: Figure 5-1 is located at the end of this chapter.** herein. These percentages shall be taken over the total site, including, but not limited to, roads, building sites and drainage facilities. The clearance standard that would be applied to a project site if developed under the existing residential zoning category shall be applied if the proposal involves multifamily units, attached housing, clustering, planned retirement units or modified lot designs. Residential development within residentially zoned areas shall comply with the residential clearing limit categories contained in Figure 5-1. Commercial development in residentially-zoned areas shall comply with the "Commercial, Industrial and Other or Mixed Use" clearing limit category. Site plans, surveys and subdivision maps shall delineate the clearing limit line and calculations for clearing to demonstrate compliance with this standard.

(c) 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 Compatible Growth Area portions. However, the Core

portion may not be cleared except in accordance with Section 5.2 of the Plan.

(2) Unfragmented open space.

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

(b) For the purpose of this article, 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.

(c) It is recognized that the preservation of non-native 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 the protection of rare, threatened or endangered species or their habitat.

(3) Fertilizer-dependent vegetation limits. No more than 15% of an entire development project site shall be established in fertilizer-dependent vegetation, including formalized turf areas. Generally, non-native species require fertilization therefor, planting of such non-native species shall be limited to the maximum extent practicable. The use of the non-native plants in Figure 5-2 **Editor's Note: Figure 5-2 is located at the end of this chapter.** is specifically not recommended.

(4) Native plantings. Development projects shall consider the native planting suggestions contained in Figure 5-2.

F. Species and communities of special concern. Where a significant adverse impact upon a habitat essential to those species identified on the New York State maintained lists as rare, threatened, endangered or of special concern, or upon natural communities classified by the New York State Natural Heritage Program as G1, G2, G3 or S1, S2 or S3, or on any federally listed endangered or threatened species is proposed, the appropriate mitigation measures as determined by the appropriate state, county or Town agency shall be taken to protect these species.

- G. Coordinated design for open space management. All applications must specify the entity/agency to which dedicated open space will be transferred.

- H. Commercial and industrial development. All commercial and industrial development applications shall comply with the provisions of the Suffolk County Sanitary Code as applied by the Suffolk County Department of Health Services, and all other applicable federal, state or local laws. Projects which require variances from the provisions of the Suffolk County Sanitary Code shall meet all requirements of the Department of Health Service's Board of Review in order to be deemed to have met the requirements of this standard.

§ 85-449. Guidelines.

- A. The guidelines established herein are advisory in nature and shall be applied to development proposals within the Compatible Growth Area at the discretion of the Town body or agency having approval jurisdiction over the application for proposed development unless:
 - (1) The proposed project is subject to the jurisdiction based on its location within a Critical Resource Area;
 - (2) Constitutes a development of regional significance; or
 - (3) The Commission otherwise assumes jurisdiction under the Act (see Volume I, Chapter 4 of the Plan).

- B. Guidelines for development in the Compatible Growth Area. Where guidelines contained in this article differ from state, county, or local law, the Town may apply the stricter guideline. The following guidelines shall be applicable as deemed appropriate to development proposals in the Compatible Growth Area:
 - (1) Nitrate-nitrogen. A more protective goal of 2.5 ppm may be achieved on new projects through an average residential density of one unit per two 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.
 - (2) Wellhead protection. The Suffolk County Department of Health Services' guidelines for private wells can be used for wellhead protection.
 - (3) Wetlands and surface waters/additional nondisturbance buffers. Stricter nondisturbance buffer areas may be established for wetlands as deemed

appropriate.

(4) Stormwater runoff.

- (a) Natural recharge and basins. Natural recharge areas and/or drainage system designs that cause minimal disturbance of natural vegetation can be employed, where practical, in lieu of recharge basins or ponds that would require removal of significant areas of native vegetation.
- (b) Ponds. Ponds should only be created if they are to accommodate stormwater runoff, not solely for aesthetic purposes.
- (c) Natural topography in lieu of recharge basins. The use of natural swales and depressions can be permitted and encouraged instead of excavated recharge basins.
- (d) Soil erosion and stormwater runoff control during construction. During construction, the standards and guidelines promulgated by the New York State Department of Environmental Conservation pursuant to state law, which are designed to prevent soil erosion and control stormwater runoff, may be adhered to.

(5) Steep slopes.

- (a) Clearing envelopes. Clearing envelopes can be placed upon lots within a subdivision so as to maximize the placement of those envelopes on slopes less than 10%.
- (b) Stabilization and erosion control. Construction of homes, roadways and private driveways on slopes greater than 10% may be approved if technical review shows that sufficient care has been taken in the design of stabilization measures, erosion control practices and structures so as to mitigate negative environmental impacts.
- (c) Slope analysis. In areas with steep slopes, in the ranges of 11% to 15% and 15% and greater, slope analysis maps may be required. This can be satisfied with cross hatching or shading on the site plan/subdivision map for the appropriate areas.
- (d) Erosion and sediment control plans. Erosion and sediment control plans may be required in areas of 15% or greater slopes.

(e) Placement of roadways. Roads and driveways shall be designed to minimize the traversing of slopes greater than 10% and to minimize cuts and fills.

(f) Retaining walls and control structures. Details of retaining walls and erosion-control structures should be provided for roads and driveways which traverse slopes greater than 10%.

(6) Natural vegetation and plant habitat.

(a) Clustering. The maximization of the use of the clustering technique is encouraged where its usage would enhance adjacent open space or provide contiguous open space connections with adjacent open space parcels.

(b) Protection of dedicated open space. Proposed open space can be protected with covenants, conservation easements or dedications that specify proper restrictions on its use and contingencies for its future management.

(7) Agriculture and horticulture best management practices. Any existing, expanded, or new activity involving agriculture or horticulture in the Compatible Growth Area should comply with best management practices and relevant requirements, including local law. Best management practices are, for purposes of this article, the same practices stated in the most recent version of Controlling Agricultural Nonpoint Source Water Pollution in New York State (Bureau of Technical Services and Research Conservation, 1991 and as later amended).

(8) Cultural resource consideration.

(a) Development proposals should account for, review, and provide protection measures for:

[1] Established recreational and educational trails and trail corridors, including but not limited to those trail corridors as inventoried in the Plan.

[2] Active recreation sites, including existing sites and those proposed as part of a development.

[3] Scenic corridors, roads, vistas and viewpoints located in Critical Resource Areas, and along the Long Island Expressway, Sunrise Highway, County Road 111 and William Floyd Parkway.

[4] Sites of historical or cultural significance, including historic districts, sites on the State or National Register of Historic Places, or recognized by local law or statute.

[5] Sensitive archaeological areas as identified by the New York State Historic Preservation Office or the New York State Museum.

- (b) Inclusion of cultural resources in applications. Development proposals should note established recreation and educational trails and trail corridors; active recreation sites; scenic corridors, roads, vistas and viewpoints located in Critical Resource Areas and undisturbed portions of the roadsides of the Long Island Expressway, Sunrise Highway, County Route 111 and William Floyd Parkway; sites on the State or National Register of Historic Places, and historic structures and landmarks recognized by municipal law or statute, or listed on the State or National Register of Historic Places; and sensitive archaeological areas as identified by the New York State Historic Preservation Office or the New York State Museum within a five-hundred-foot radius of the outside perimeter of the project site, including any project parcels which are physically separate from the bulk of the proposed development areas. A development proposal may be disapproved or altered if the local municipality determines that the development proposal, in its current form, may have a significant negative impact on any of the above resources.
- (c) Protection of scenic and recreational resources. Protection measures for scenic and recreational resources should include, but not be limited to, retention of visually shielding natural buffers, replacement of degraded or removed natural visual buffers using native species, use of signs which are in keeping in both style and scale with the community character, and similar measures.
- (d) Roadside design and management. Undisturbed portions of the roadside should be maintained in a manner that protects the scenic features of these areas. Clearing (including that for aisles, driveways, access, and parking) is not precluded within these roadside areas, provided that appropriate buffers are maintained, and that man-made structures meet standards consistent with the character of the area.

§ 85-450. Pine Barrens Credit Program.

- A. Purposes and objectives. The purpose, goals and objectives of the Pine Barrens Credit Program created herein is the implementation of the Comprehensive Land Use Plan

adopted pursuant to Article 57 of the Environmental Conservation Law by the Central Pine Barrens Joint Planning and Policy Commission: to maintain the value in lands designated in the Plan for preservation and protection through the use and allocation of Pine Barrens development credits, and to promote environmentally sensitive development in an efficient and orderly fashion which shall protect the quality and quantity of surface waters, groundwater and the long- and short-term integrity of the Suffolk County Central Pine Barrens ecosystem(s).

B. Commissioner's report.

- (1) At least biannually, the Commissioner of the Department of Planning, Environment and Development, or his/her designee, shall report to the Town Board on the status of the Pine Barrens Credit Program created herein. Said report shall provide specific information and statistics with respect to approved development projects for which Pine Barrens Development Credits have been redeemed, or redeemed and retired; and the number of development credits which have been retired for each school district within the Town.
- (2) Based on an analysis thereof, the Commissioner may recommend that use of Pine Barrens development credits for single-family residential development be discontinued for any given school district within the Town; notwithstanding, the Commissioner may further recommend continued use of Pine Barrens development credits for nonresidential development within the Town.
- (3) Based on the Commissioner's report and recommendations, if any, the Town Board may undertake such action as it deems necessary and appropriate in respect thereof.

C. General provisions.

- (1) Pine Barrens development credits shall be derived solely from lands located in the Core Preservation Area within the Town for applicability to development within the Town.
- (2) Upon the Joint Planning and Policy Commission's determination that all Pine Barrens development credits attributable to lands located within the Core Preservation Area within the Town of Brookhaven have been redeemed or retired, the provisions of this section shall expire within 30 days thereafter, and shall be of no further force and effect; all pending applications incorporating unredeemed development credits shall be deemed withdrawn.
- (3) Pine Barrens development credits. One Pine Barrens development credit shall be equal to: one residential unit; or 1,000 square feet of gross floor area for a

nonresidential structure; or two beds for a NH-H facility; or two units for a PRCHC facility.

D. Residential Overlay District.

- (1) All parcels of land located outside the Core Preservation Area and within the A-Residential 1 and A-Residential 2 zoning districts are hereby deemed "receiving districts" subject to the eligibility criteria set forth herein. An increase in density shall be established by the Planning Board for any parcel (or assemblage of parcels) subject of an application therefor where such parcel is located within a receiving district so long as in conformance with the following criteria:
 - (a) The subject premises is four acres or more in size if located in the A-Residential 1 Zoning District;
 - (b) The parcel is eight acres or larger if located in the A-Residential 2 Zoning District;
 - (c) Preliminary approval has been granted by the Suffolk County Department of Health Services for any parcel or premises located within the A-Residential 1 Zoning District and within the Hydrogeologic Zone 6;
- (2) Exceptions to eligibility as receiving districts. A parcel or premises shall be ineligible for treatment and/or classification as an ROD in the event that:
 - (a) The parcel is located within a designated Critical Resource Area;
 - (b) The area of the parcel to be developed is located within:
 - [1] Five hundred feet of any streams, bluffs, surface waters or wetlands regulated by the New York State Department of Environmental Conservation or the Town of Brookhaven; or
 - [2] The one-hundred-year floodplain; or
 - [3] The South Setauket Special Groundwater Protection Area (South Setauket SGPA); or
 - [4] The New York State wild, scenic and recreation river corridors; or

[5] Existing public lands.

(c) Forty percent or more of the parcel contains steep slopes of 15% or greater.

E. Planning Board review and approval.

(1) The Planning Board is hereby authorized to review and approve, approve with modifications or disapprove applications for residential development utilizing the Residential Overlay District provisions created herein. All requirements set forth in this chapter applicable to development in the A-Residential 1 District or the A-Residential 2 District, as the case may be, shall be applicable to development proposals utilizing the Residential Overlay District created herein except that:

(a) The Planning Board may vary, modify or waive strict compliance with the dimensional requirements applicable to an application herein as set forth in this chapter; and

(b) The applicant shall be entitled to an increase in density calculated in accordance with the provisions of this article as calculated and determined by the Planning Board.

(c) The Planning Board may allow attached or semi-detached units in the utilization of a Residential Overlay District based on the following criteria:

[1] The project application site contains any of the following: kettle holes; steep slopes; wetlands; rare and endangered species; unique cultural resources; or

[2] In order to connect to existing open space systems.

(2) Additional requirements. An application for development for a Residential Overlay District shall include:

(a) A full long environmental assessment form (LEAF);

(b) A disclosure affidavit by the applicant or his attorney-in-fact;

(c) Calculation(s) demonstrating customary yield, Resident Overlay District (ROD) yield and the proposed number of Pine Barrens development credits available for the development proposal.

- (3) An application for a development proposal for any land division incorporating treatment as a Residential Overlay District shall be subject to review and approval by the Planning Board notwithstanding any other provision in this chapter or the Subdivision Regulations.
 - (4) Upon the Planning Board's grant of final conditional approval of an application for residential development as a Residential Overlay District, the applicant shall obtain from the Pine Barrens Credit Bank and Clearinghouse, a Pine Barrens credit certificate confirming the number of Pine Barren's credits incorporated in the approved application.
- F. Density increase in Residential Overlay District. Residential development pursuant to the within Residential Overlay District on an eligible parcel shall be entitled to an increase in density based on the addition of Pine Barrens development credits to the customary unit yield (customary yield) as permitted by this chapter. ...

[NOTE: FORMULAS OMITTED]

§ 85-451. Incentive zoning.

- A. Purpose. The purpose of incentive zoning is to advance the goals and objectives of the Central Pine Barrens Comprehensive Lane Use Plan.
- B. Applicability.
 - (1) For purposes of this article, the redemption of Pine Barrens development credits may be permitted in connection with all change of zoning district classification and special exception applications for all eligible lands located within the Town and outside the Core Preservation Area.
 - (2) The redemption of Pine Barrens development credits may be utilized to obtain an increase in density or intensity of development in connection with development proposals for parcels, lots and assemblages located outside of the Core Preservation Area subject to the review and approval by the Town Board or Planning Board as the case may be.
 - (3) The redemption of Pine Barrens development credits may also be permitted by the Town Board in connection with a development proposal made pursuant to Article

XXXIIA of this chapter for a Planned Development District.

- (4) The utilization of incentive zoning employing the redemption of Pine Barrens development credits shall be limited, under this article, to the following zoning districts:

D Residence 1

MF-1 Residence

MF-2 Residence

PRC Residence

PRC-3 Residence

PRCHC Residence

NH-H Residence

J Business

J Business 1

J Business 2

J Business 3

J Business 4

J Business 6

J Business 7

L Industrial

L Industrial 1

L Industrial 2

L Industrial 3

- (5) All applications for development proposals and/or change of zoning district classification shall comply with the requirements of Article 8 of the Environmental Conservation Law.

C. Change of zoning district classification (change of zone).

- (1) The redemption of Pine Barrens credits for all lands located within the Central Pine Barrens Designated Compatible Growth Area may be permitted for any parcels, lots and assemblage having an area of 40,000 square feet or greater which is located in an eligible zoning district as set forth in this section.
- (2) The Town Board may adjust the total number of Pine Barrens development credits permitted on a change of zone petition based upon the inclusion of any other special public benefit feature, as defined in Article XXXIIA of this chapter.
- (3) The Town Board may limit the Planning Board's authority to grant an increase in density or intensity, under existing zoning, upon its review of an otherwise eligible site plan. An increase in density or intensity granted upon a change of zone approval shall conform to the Schedule of Intensity set forth in this section.
Editor's Note: See Subsection G below.
- (4) Prior to the effective date of the zoning district classification enacted upon a petition and which incorporates the application of Pine Barrens development credits as a condition thereof, the applicant shall submit a Pine Barrens credit certificate for the number of Pine Barrens credits to be accepted by the Town Board as a condition of its grant.

D. Special exception. Special exception petitions for lands located in the Central Pine Barrens designated Compatible Growth Area may include the redemption of Pine Barrens credits consistent with the redemption schedule set forth herein for all lots, parcels and premises having an area of 40,000 square feet or greater.

- (1) For the review of any D-1 special exception petition, the applicant shall disclose whether any increase in density or intensity will be sought and shall apply the Schedule of Intensity provisions as set forth herein.
- (2) The Town Board may limit the Planning Board's authority to allow for an increase in density or intensity upon its site plan review of a project with a grant of a special exception. The Town Board may grant an increase in density upon its approval and in connection with its grant of a special exception in accordance with

the Schedule of Intensity set forth in this section.

- (3) The Town Board shall have the authority to adjust the total number of Pine Barrens credits required based upon the inclusion of any other special public benefit feature, as defined in Article XXXIIA of this chapter.
- (4) The Town Board may adjust the total number of Pine Barrens development credits required based upon the simultaneous submission of concurrent change of zone and special exception petitions.
- (5) In the event that a special exception is granted incorporating the application of Pine Barrens development credits as a condition thereof, the applicant shall submit a Pine Barrens credit certificate as confirmation that the number of Pine Barrens development credits, as proposed by the applicant, have been actually acquired by the applicant, and certification from the Pine Barrens Credit Bank and Clearinghouse confirming that said credits have been redeemed for the specific project application and/or petition, as an irrevocable condition of the grant.
- (6) All development proposals for parcels, lots and assemblages of land(s) located within the Compatible Growth Area shall conform to the standards set forth in this chapter unless a hardship exemption has been issued by the Joint Policy and Planning Commission.

E. Redemption schedule.

- (1) Commercial and industrial. Change of zone and special exception petitions for parcels, premises, lots or assemblages, subject to Commercial and/or Industrial Zoning District classification(s) and located within the Central Pine Barrens Designated Compatible Growth Area, may include the redemption of Pine Barrens development credits. The redemption of Pine Barrens development credits shall be as follows: a minimum of one Pine Barrens development credit per 40,000 square feet of lot area shall be included in such application.
- (2) Multifamily. Change of zone and special exception application/petitions for parcels, lots, premises, and assemblages subject to a multifamily zoning district classification and located within the Central Pine Barrens Designated Compatible Growth Area may include the redemption of Pine Barrens development credits. The redemption of Pine Barrens development credits shall be as follows: a minimum of one Pine Barrens credit per every two units, over and above that density which would typically be permitted under the existing underlying residential zoning district.

(3) Planned retirement community. Change of zone petitions for lands, premises and lots with the PRC and PRC-3 Residence District classifications located within the Central Pine Barrens Designated Compatible Growth Area may include the redemption of Pine Barrens development credits. The redemption of Pine Barrens development credits shall be as follows: a minimum of one Pine Barrens development credit for every three units, over and above that density which would typically be permitted under the existing underlying residential zoning district.

F. Site plan. All site plan applications for the zoning districts specified hereinabove in this section, with the exception of J Business, J Business 1 and J Business 6 may include a proposal for the redemption of Pine Barrens development credits, subject to the Planning Board's approval, consistent with the Schedule of Intensity as set forth herein.

(1) A site plan application shall be submitted pursuant to the site plan procedures set forth in this chapter.

(2) The minimum lot area required for an increase in density or intensity shall be 80,000 square feet or greater.

(3) The Planning Board, in determining the effects of such incentive, shall consider the potential impacts to the school districts, resources available in the project site area, including environmental quality, public facilities, transportation and infrastructure.

(4) As an irrevocable condition of the Planning Board's final conditional approval, the applicant shall submit a Pine Barrens credit certificate confirming the number of Pine Barrens credits incorporated into its grant of approval.

(5) The Planning Board is hereby authorized to modify or adjust the required dimensional setback requirements and parking requirements set forth in this chapter.

G. Intensity Schedule. An increase in intensity of development may be obtained from the Planning Board for development proposals located in the zoning districts specified in this section except for the J Business, J Business 1, and J Business 6 Zoning Districts, as follows:

(1) General commercial and industrial land uses and applications. For proposed general commercial and industrial development, an increase in intensity of development may be permitted by the redemption of Pine Barrens development credits to the extent of one Pine Barrens development credit per 1,000 square feet of additional building area so long as the proposed development conforms with

the applicable requirements set forth in this chapter and with the requirements of the Suffolk County Sanitary Code, subject to the following requirements:

- (a) Submission of a conceptual site yield plan demonstrating compliance with the requirements set forth hereinabove and which sets forth the customary yield for commercial or industrial development permitted under the existing zoning district classification or the yield for such development as determined by the Planning Board under the provisions of this article; and
 - (b) A site plan which otherwise complies with the requirements of this chapter and which indicates the total increase in intensity (building area) and the proposed number of Pine Barrens development credits to be incorporated therein.
- (2) Nursing home and congregate care. For all proposed NH-H residence and PRCHC residence developments, an increase in density (or intensity) may be permitted by the redemption of Pine Barrens development credits at the rate of one Pine Barrens development credit per two beds or units, added to the number of beds or units customarily permitted in the zoning district classification or as previously approved by the Town Board upon a change of zoning district classification.
- (3) Planned retirement community. For proposed development applications for PRC residence and PRC-3 residence, an increase in intensity may be permitted by the redemption of Pine Barrens development credits at the rate of one Pine Barrens development credit per one dwelling unit, added to the number of dwelling units customarily permitted under the existing zoning district classification or as previously approved by the Town Board upon a change of zoning district classification.