

CHAPTER 132

AN ACT authorizing establishment of the Dismal Swamp Preservation Commission, and supplementing Title 40 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.40:55D-88.1 Short title.

1. This act shall be known and may be cited as the “Dismal Swamp Preservation Act.”

C.40:55D-88.2 Findings, declarations relative to the Dismal Swamp Conservation Area.

2. The Legislature finds and declares that:

- a. The Dismal Swamp Conservation Area in Middlesex County is approximately 660 acres of freshwater wetlands, forested uplands, and meadows in a densely populated, highly developed central part of the State, offering unique natural habitat including federal priority wetlands;

- b. The Dismal Swamp Conservation Area is a birding oasis in a densely developed region of the State where over 175 different bird species have been spotted including the threatened and endangered grasshopper sparrow and yellow-crowned night-heron;

- c. In addition to over 175 bird species, 25 mammals and over a dozen reptile and amphibian species have been sighted in the Dismal Swamp Conservation Area;

- d. Archeological digs in the Dismal Swamp Conservation Area have uncovered at least five significant archeological sites, including one at least 10,000 years old;

- e. This area, spanning Edison Township, Metuchen Borough, and South Plainfield Borough in Middlesex County, represents one of the last remaining wetland ecosystems in a highly urbanized environment in the State;

- f. The area consists of privately and publicly owned parcels of land within three municipalities, each with its own planning and zoning authority, and as a result, decisions concerning development within the area are made without a coherent plan; and

- g. It is therefore appropriate and in the best interests of the State to encourage the local governing bodies of Edison Township, Metuchen Borough, and South Plainfield Borough, respectively, in Middlesex County to establish a Dismal Swamp Preservation Commission to provide comprehensive regulatory authority and regional planning for the area with a primary focus on protecting and preserving the ecological, historical, and recreational values of the area.

C.40:55D-88.3 Definitions relative to the Dismal Swamp Conservation Area.

3. As used in this act:

“Application for development” means the application form and all accompanying documents required by municipal ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or other permit as provided in the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.).

“Commission” means the Dismal Swamp Preservation Commission established pursuant to section 4 of this act upon adoption of authorizing resolutions by the local governing bodies of Edison Township, Metuchen Borough, and South Plainfield Borough in Middlesex County, respectively.

“Dismal Swamp” means the area located within Edison Township, Metuchen Borough, and South Plainfield Borough in Middlesex County as delineated by a metes and bounds description approved by resolution adopted by the respective local governing bodies of those municipalities.

“Project” means any structure, land use change, or public improvement for which a permit from, or determination by, the municipality is required, which shall include, but not be limited to, building permits, zoning variances, and excavation permits.

C.40:55D-88.4 Dismal Swamp Preservation Commission.

4. a. Upon adoption of an authorizing resolution by the local governing body of Edison Township, Metuchen Borough, and South Plainfield Borough, respectively, in Middlesex County, there is established the Dismal Swamp Preservation Commission. The commission shall consist of nine members, appointed and qualified as follows, provided however, that no more than five members shall be of the same political party and no more than three members shall be appointed from any one municipality:

(1) Two residents of Edison Township, appointed by the governing body of the municipality;

(2) Two residents of Metuchen Borough, appointed by the governing body of the municipality;

(3) Two residents of South Plainfield Borough, appointed by the governing body of the municipality;

(4) Two elected officials from Middlesex County, appointed by agreement of the local governing bodies of Edison Township, Metuchen Borough, and South Plainfield Borough; and

(5) one representative of the Edison Wetlands Association, appointed by agreement of the local governing bodies of Edison Township, Metuchen Borough, and South Plainfield Borough.

b. Each member shall serve for a term of five years. Each member shall serve for the term of the appointment and until a successor shall have been appointed and qualified. Any vacancy shall be filled in the same manner as the original appointment for the unexpired term only.

c. Any member of the commission may be removed by adoption of a resolution by the local governing bodies of Edison Township, Metuchen Borough, and South Plainfield Borough for cause after a public hearing.

d. Each member of the commission shall take and subscribe to an oath to perform the duties of the office faithfully, impartially, and justly to the best of their ability.

e. The members of the commission shall serve without compensation, but the commission may reimburse its members for necessary expenses incurred in the discharge of their duties.

f. The commission shall select from its members a chairperson and vice-chairperson, and may employ an executive director, who may also serve as secretary, and a treasurer. The commission may also appoint, retain and employ, without regard to the provisions of Title 11A, Civil Service, of the New Jersey Statutes, such officers, agents, employees and experts as it may require, and it shall determine their qualifications, terms of office, duties, services and compensation. The local governing bodies may provide administrative support to the commission.

g. The powers of the commission shall be vested in the members thereof in office from time to time, and a majority of the total authorized membership of the commission shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the commission at any meeting thereof by the affirmative vote of a majority of the total authorized membership; provided, however, that the commission may

designate one or more of its agents or employees to exercise such administrative functions, powers, and duties, as it may deem proper, under its supervision and control. No vacancy in the membership of the commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the commission.

h. No member, officer, employee, or agent of the commission shall be financially interested, either directly or indirectly, in any project, any part of a project area, or an application for development, other than a residence, or in any contract, sale, purchase, lease, or transfer of real or personal property located within the boundaries of the Dismal Swamp.

(1) Any contract or agreement knowingly made in contravention of this subsection is voidable.

(2) Any person who willfully violates the provisions of this subsection shall forfeit office or employment.

C.40:55D-88.5 Powers, duties of commission.

5. a. Upon establishment of the commission pursuant to section 4 of this act and appointment of its members, notwithstanding any provision of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), to the contrary, the commission shall review and approve, reject or modify all applications for development within the Dismal Swamp pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.). The commission shall exercise any or all of the powers and duties of a municipal planning board and any or all of the powers and duties of a county planning board for the Dismal Swamp.

No application for development shall be required to be reviewed and approved by both the commission and the planning board of a constituent municipality.

b. The commission shall review and approve, reject, or modify any State project planned within the Dismal Swamp, and submit its decision to the Governor and the commissioner of the department proposing the project.

c. The review of an application for development shall not be contingent upon the adoption of the master plan pursuant to section 6 of this act; however, upon adoption of the master plan, any application for development shall be reviewed to ensure that the actions proposed in the application also conform to the master plan.

Until the adoption of the master plan pursuant to section 6 of this act, the decisions of the commission shall be based upon the municipal master plans, ordinances, and resolutions of Edison Township, Metuchen Borough, and South Plainfield Borough, adopted pursuant to the provisions of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

d. The commission shall coordinate and support activities by citizens' groups to promote and preserve the Dismal Swamp, and shall actively seek funds for the purchase and preservation of lands within Dismal Swamp for recreation and conservation purposes.

e. In accordance with the provisions of section 4 of P.L.1975, c.291 (C.40:55D-8), the commission may establish and charge reasonable fees for the review of applications for development submitted to the commission and for other services the commission may provide. Fees collected pursuant to this subsection shall be deposited into a separate account, and shall be dedicated for use by the commission solely for the purposes of administering and enforcing its responsibilities pursuant to this act.

C.40:55D-88.6 Master plan for physical, economic and social development of Dismal Swamp.

6. a. The commission shall prepare, or cause to be prepared, after holding one public hearing in each of the three municipalities within Dismal Swamp, a master plan for the physical, economic and social development of the Dismal Swamp with elements similar to those provided for municipal master plans in section 19 of P.L.1975, c.291 (C.40:55D-28), as the commission determines to be appropriate for the preservation of the ecological and historical nature of the Dismal Swamp.

The master plan shall include a report presenting the objectives, assumptions, standards and principles which are embodied in the various interlocking portions of the master plan. In preparing the master plan or any portion thereof or amendment thereto the commission shall give due consideration to: existing historical sites and potential restorations or compatible development; the range of uses and potential uses of the area in the developed communities through which it passes; designated areas to be kept as undeveloped, limited-access areas restricted to conservation or passive recreation; and any other issues the commission deems appropriate for the protection and enhancement of the area. In preparing the master plan or any portion thereof or amendment thereto, the commission shall consider existing patterns of development and any relevant master plan or other plan of development, and shall ensure widespread citizen involvement and participation in the planning process.

b. The commission shall act in support of local suggestions or desires to complement the master plan. Consultation, planning, and technical expertise shall be made available to local planning bodies that wish to implement land-use policies to enhance the area. The commission shall act on or refer complaints by citizens' groups or private residents who discover hazardous situations, pollution, or evidence of noncompliance with use regulations.

C.40:55D-88.7 No approval extended, tolled within Dismal Swamp.

7. Notwithstanding any provision of P.L.2008, c.78 (C.40:55D-136.1 et seq.) to the contrary, no approval, as defined therein, within the Dismal Swamp shall be extended or tolled pursuant to the provisions of P.L.2008, c.78 (C.40:55D-136.1 et seq.).

8. This act shall take effect immediately.

Approved October 1, 2009.