

Case Notes

Regulations set forth the minimum standards for protection of the Pinelands. *Fine v. Galloway Twp. Committee*, 190 N.J.Super. 432, 463 A.2d 990 (Law Div.1983).

7:50-3.38 Effect on and responsibilities of municipality upon certification

Commission certification of a municipal master plan and land use ordinances shall authorize such municipality to grant, to the extent that it is so authorized by State law or municipal ordinance, any permits or approvals of development within its Pinelands Area jurisdiction subject to N.J.A.C. 7:50-4.31 through 4.42 or N.J.A.C. 7:50-3.81 through 3.85; provided, however, that all such permits or approvals granted, and any other action taken by such municipality with respect to the development or use of land within the Pinelands Area, shall be in strict conformance with the certified municipal master plan, land use ordinances and this Plan.

Amended by R.1995 d.449, effective August 21, 1995.
See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

7:50-3.39 Standards for certification of municipal master plans and land use ordinances

(a) Municipal master plans and land use ordinances, and any parts thereof, shall be certified only if:

1. They are based upon a current and comprehensive inventory and analysis of the natural resources of the municipality prepared by the municipality or any other source. A municipality may use the inventory provided by the Commission;

2. They include provisions which:

i. Regulate the character, location and magnitude of development within the Pinelands Area;

ii. Prescribe standards relating to lot layout, road design and construction, and public utility installation which conform to all similar standards contained in this Plan;

iii. Implement the overall development intensity standards contained in this Plan through minimum lot specifications or other appropriate means;

iv. Are adequate to ensure that all development of land in the Pinelands Area is in conformance with the development standards established by N.J.A.C. 7:50-5 and 6;

v. Encourage coordinated development along roadways by concentrating commercial development at transportation nodes, providing shared access points, encouraging comprehensive commercial planning and design and use of other appropriate techniques;

vi. Implement Pinelands management area and zoning district boundaries in a manner which provides

consistent treatment of similarly situated lands and considers the suitability of lands for their assigned management area and zoning district designations as they relate to the standards and objectives of this Plan;

vii. Enable permitted densities in each Regional Growth Area zoning district in which residential development is permitted to be reasonably achieved in most cases;

viii. Establish and implement a mitigation plan as part of any municipal stormwater management plan and ordinance adopted in accordance with N.J.A.C. 7:8-4.2(c)11 which:

(1) Identifies those measures necessary to offset the granting of exceptions to the standards set forth in N.J.A.C. 7:50-6.84(a)6i through v;

(2) Specifies that exceptions to the standards set forth in N.J.A.C. 7:50-6.84(a)6i through v will be considered only in cases where an applicant is able to demonstrate that such standards cannot be met on a particular parcel or where the municipality determines that stormwater management would more effectively be achieved through alternative measures;

(3) Requires that any off-site mitigation measures identified pursuant to (a)2viii(1) above occur within the Pinelands Area and within the same drainage area as the parcel proposed for development;

(4) Allows for monetary contributions to be made to the municipality in lieu of performing the off-mitigation measures identified pursuant to (a)2viii(1) above, with the amount of any such in-lieu contribution being equivalent to the cost of implementing and maintaining the stormwater management measures for which an exception is granted; and

(5) Requires that the municipality expend any contributions collected pursuant to (a)2viii(4) above within five years of their receipt;

ix. Are designed to implement a clear and straightforward process for the review of applications for residential cluster development in the Forest and Rural Development Areas, in accordance with the requirements for cluster development set forth in N.J.A.C. 7:50-5.19(c) and (d). The Commission may certify municipal clustering ordinances that contain different clustering standards than those set forth in N.J.A.C. 7:50-5.19(c) and (d) provided that those standards are supported through the application of sound land use planning principles, are based upon local conditions or circumstances that warrant such changes and do not undermine the overall goals and objectives of the Forest and Rural Development Area clustering program set forth at N.J.A.C. 7:50-5.19(c) and (d); and

x. Establish a program for the long-term maintenance of Pinelands alternate design wastewater treatment

systems which, at minimum, complies with and implements the provisions of N.J.A.C. 7:50-6.85(b) and (c), and N.J.A.C. 7:15-5.25(e)3. Said program may include the municipal collection of reasonable fees for the issuance of any required permits or other authorizations. The Commission may certify municipal ordinances that contain additional and/or different standards or procedures than those set forth in N.J.A.C. 7:50-6.85(b) and (c), provided those standards and procedures are based upon local conditions or circumstances that warrant such changes and will ensure the protection of surface and ground water quality consistent with N.J.A.C. 7:50-6, Part VIII.

3. They provide that no application for development within the Pinelands Area, except as provided in N.J.A.C. 7:50-3.81 through 3.85, shall be determined to be complete by any municipal department, body or agency unless it is accompanied by a Certificate of Filing issued by the Commission pursuant to N.J.A.C. 7:50-4.34 and contains at least the information required by the Commission pursuant to N.J.A.C. 7:50-4.2(b);

4. They provide that municipal review and approval or denial are required for all development in the Pinelands Area except where pre-empted by State or Federal laws or regulations;

5. They include provisions relative to the review and action on applications for forestry operations which:

i. Are designed to implement a clear and straightforward process for the review of forestry applications that does not involve municipal site plan approval;

ii. Require that forestry permits be approved or denied within 45 days after submission of a complete application to a municipality, or within such further time as may be consented to by the applicant;

iii. Provide that failure of a municipality to act within the period prescribed in (a)5ii above shall constitute municipal approval of the permit; and

iv. At the option of the municipality, provide for the establishment of reasonable application fees for forestry permits in accordance with N.J.S.A. 40:55D-8(b) and the posting of financial sureties in accordance with N.J.A.C. 7:50-6.47;

6. They provide that no local permit shall be effective, except as provided in N.J.A.C. 7:50-3.81 through 3.85, until the review procedures in N.J.A.C. 7:50-4.31 through 4.42 have been completed;

7. They include a capital improvements program which demonstrates that adequate and necessary facilities will be available to serve permitted development;

8. They provide for sufficient residentially zoned property to be eligible for an increase in density to accommo-

date transferred Pinelands Development Credits as provided for in N.J.A.C. 7:50-5, Part IV;

9. If the municipality has established an environmental commission, they provide for referral of applications for development approval to the environmental commission for review and comment;

10. They otherwise are in conformance with and contain all provisions necessary to implement the objectives of this Plan;

11. They demonstrate conformance to the energy conservation requirements of L. 1980, ch. 146;

12. They demonstrate that they are in compliance with the provisions of the Federal Act; and

13. In the event that the distribution and density of land uses at the boundary of a municipality are in conflict with or otherwise inconsistent with the distribution and density of land uses in adjacent municipalities, they include a description of steps which have been taken to resolve such conflicts including consultation with the county or counties in which the municipalities are located.

(b) Municipalities with areas outside the Pinelands Area but within the Pinelands may request review by the Commission of their land use ordinances and master plans for these areas to determine substantial compliance with the provisions of N.J.A.C. 7:50-5 and 6 of this Plan. Equivalent protection of the resources of the Pinelands will be the overall standard used in such compliance review rather than strict adherence to every standard in N.J.A.C. 7:50-5 and 6. Buffer requirements to wetlands will be evaluated based on the provisions of the Freshwater Wetlands Protection Act rather than on the standards set forth in N.J.A.C. 7:50-6.14. To encourage voluntary compliance, if the Commission determines that the municipality is in substantial compliance with the provisions of N.J.A.C. 7:50-5 and 6, the Commission will rely upon the complying master plans and ordinances, rather than a strict interpretation of this Plan, to provide comment to relevant state and federal regulatory agencies in its role as the planning entity for the Pinelands.

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d.449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Amended by R.1996 d.225, effective May 20, 1996.

See: 27 N.J.R. 3878(a), 28 N.J.R. 2596(a).

In (a) added requirement of provisions relative to review and action on applications for forestry operations.

Amended by R.1999 d.306, effective September 7, 1999.

See: 31 N.J.R. 1251(a), 31 N.J.R. 2609(a).

Inserted (a)14.

Amended by R.2000 d.232, effective June 5, 2000.

See: 32 N.J.R. 151(a), 32 N.J.R. 2082(a).

Deleted a former (a)14.

Amended by R.2001 d.103, effective April 2, 2001.

See: 32 N.J.R. 4037(a), 33 N.J.R. 1095(a).

In (a), added 2vi.

Amended by R.2002 d.67, effective March 4, 2002.

See: 33 N.J.R. 3399(a), 34 N.J.R. 1024(a).

In (a), added 2vii.

Amended by R.2006 d.159, effective May 1, 2006.

See: 37 N.J.R. 4133(a), 38 N.J.R. 1829(b).

In (a), deleted "and" from the end of 2vi; substituted "; and" for a period at the end of 2vii; and added 2viii.

Amended by R.2009 d.108, effective April 6, 2009.

See: 40 N.J.R. 4874(a), 41 N.J.R. 1405(a).

In (a)2vii, deleted "and" from the end; in (a)2viii(5), substituted "; and" for a period at the end; and added (a)2ix.

Amended by R.2010 d.079, effective June 7, 2010.

See: 41 N.J.R. 2392(a), 42 N.J.R. 1044(a).

In (a)2viii(5), deleted "and" from the end; in (a)2ix, substituted "; and" for a period at the end; and added (a)2x.

7:50-3.40 Submission to county planning board for preliminary review

When a county has, pursuant to the provisions of N.J.A.C. 7:50-3, Part III, been delegated preliminary review authority with respect to any municipal plan or land use ordinance, the submission required by N.J.A.C. 7:50-3.32 in connection with such plan or ordinance shall be made to such county. Within five days following the submission of the plan and land use ordinances, the county shall forward a copy of such application to the Commission.

7:50-3.41 Setting of hearing and procedures therefor

Within 15 days following the submission of a plan and land use ordinances, the clerk of the county shall set and give notice of, the date, time and place for a hearing thereon. Such hearing shall be held within 30 days following the submission of a plan and land use ordinances.

7:50-3.42 Recommendation of county board

After the hearing held pursuant to N.J.A.C. 7:50-3.41 is completed, the county planning board shall review the plan and land use ordinances and the record of the hearing and shall, within 60 days following receipt of the plan and land use ordinances, submit a report to the Commission setting forth its findings and recommendation as to whether the municipal master plan and land use ordinances are in conformance with the minimum standards of this Plan.

7:50-3.43 Recommendation of Executive Director

Upon receipt of the report of the county planning board with respect to the certification of any municipal master plan and land use ordinances, the Executive Director shall review the findings, conclusions and recommendation of the county planning board and the record of the hearing and shall, within

100 days following receipt of the plan and land use ordinances by the county planning board, submit a report to the Commission setting forth his recommendation as to whether the municipal master plan and land use ordinances should be certified as being in conformance with the minimum standards of this Plan.

7:50-3.44 Action by Commission

Within 120 days following the receipt of the plan and land use ordinances by the county planning board, and following the receipt of the reports of the Executive Director and the county planning board with respect to the certification of such municipal master plan and land use ordinances, the Commission shall review the reports and enter an order as provided in N.J.A.C. 7:50-3.35.

7:50-3.45 Submission and review of amendments to certified municipal master plans and land use ordinances

(a) Submission: No amendments to any part of a certified municipal master plan or land use ordinance shall be effective until the municipality shall have submitted such amendment to the Commission and either the Commission has certified such amendment pursuant to N.J.A.C. 7:50-3.35, or the Executive Director has, pursuant to (b) below notified the municipality that such amendment does not affect the prior certification of the master plan or land use ordinance.

(b) Decision not to review: Within 30 days following receipt of any amendment to a certified master plan or land use ordinance, the Executive Director shall determine whether or not the amendment raises a substantial issue with respect to the conformance of the municipal master plan or land use ordinances with this Plan. If the Executive Director determines that no such substantial issue is raised, he shall certify such fact to the municipal clerk and such amendment shall thereupon take effect in accordance with its terms and applicable law.

(c) Decision to review: If the Executive Director determines that the amendment raises a substantial issue with respect to the conformance of the amended municipal master plan or land use ordinance to this Plan, the amended municipal master plan or land use ordinance shall be reviewed pursuant to N.J.A.C. 7:50-3.33 through 3.44 and the Executive Director shall so inform the municipal clerk.

12. Public service infrastructure intended to primarily serve only the needs of the Pinelands. Centralized waste water treatment and collection facilities shall be permitted to service the Forest Area only in accordance with N.J.A.C. 7:50-6.84(a)2. Communication cables not primarily intended to serve the needs of the Forest Area may be permitted provided that they are installed within existing developed rights of way and are installed underground or are attached to road bridges, where available, for the purpose of crossing water bodies or wetlands.

13. Home occupations.

14. Signs.

15. Accessory Uses.

16. Airport facilities provided:

- i. The airport is publicly owned or serves a Pinelands Town; and
- ii. The airport was in existence on January 14, 1981; and
- iii. The area of the airport is limited in size to that which existed on January 14, 1981; and

iv. The use will not generate subsidiary or satellite development not otherwise permitted in the Forest Area, Preservation Area District or Special Agricultural Production Area.

17. Local communications facilities, provided that the standards of N.J.A.C. 7:50-5.4(c) are met.

18. Solar energy facilities, provided the standards of N.J.A.C. 7:50-5.36 are met.

(c) Minimum lot area and density requirements for residential development: No residential dwelling unit shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.19, 5.30, 5.31 and 5.32. The total number of dwelling units authorized by a municipality shall not exceed a density of one dwelling unit for every 15.8 acres of privately owned, undeveloped land which is not defined in this Plan as wetlands, except as provided in N.J.A.C. 7:50-5.19(d)1. The Executive Director shall maintain a current record of residential units zoned in each certified municipality pursuant to this section.

(d) Minimum lot areas for non-residential structures shall be determined by application of the standards contained in N.J.A.C. 7:50-6.84(a)4 whether or not the lot is to be served by a centralized waste water treatment or collection facility pursuant to (b)12 above, provided, however, that no such structure shall be located on a parcel of less than one acre.

Amended by R.1988 d.405, effective September 19, 1988.
See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

Added text to (b)12, "Communications cables not ..."; and added (d).
Amended by R.1990 d.170, effective March 19, 1990.
See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).
Added (b)16.

Amended by R.1992 d.91, effective March 2, 1992.
See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

Exception added at (c).
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
Amended by R.1995 d.449, effective August 21, 1995.
See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).
Added (b)17.

Amended by R.1996 d.225, effective May 20, 1996.
See: 27 N.J.R. 3878(a), 28 N.J.R. 2596(a).

In (b) substituted waste management facilities for landfills.
Amended by R.2007 d.372, effective December 3, 2007.
See: 39 N.J.R. 1970(a), 39 N.J.R. 5077(b).

In (b)8iv, inserted "provided the existing resource extraction operation or manufacturing facility is located within one mile of a Regional Growth Area or Pinelands Town"; in (b)11i, inserted "was not subsequently abandoned" and recodified "the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;" as new (b)11ii; in (b)11ii, substituted "The" for "the"; and recodified former (b)11iii and (b)11iii as (b)11iii and (b)11iv.
Amended by R.2009 d.108, effective April 6, 2009.
See: 40 N.J.R. 4874(a), 41 N.J.R. 1405(a).

In (a)1, substituted a semicolon for a period at the end; rewrote (a)2; added new (a)3; recodified former (a)3 through (a)5 as (a)4 through (a)6; in (a)6v, substituted "impervious" for "impermeable"; and rewrote (c).
Amended by R.2009 d.385, effective December 21, 2009.
See: 41 N.J.R. 2398(a), 41 N.J.R. 4786(a).

In (b)9, inserted "and wetlands management".
Amended by R.2012 d.012, effective January 3, 2012.
See: 43 N.J.R. 928(a), 44 N.J.R. 72(a).
Added (b)18.

Case Notes

Certification and approval of master plan which designated forest area as municipal reserve area was improper where municipal reserve area created was immediately adjacent to forest area. In Re: Certification of Master Plan and Land Use Ordinances of Berkeley Twp., 214 N.J.Super. 390, 519 A.2d 901 (App.Div.1986).

Sale of adjoining lot precluded existence of extraordinary hardship, even though property owner was elderly individual suffering from heart problems and diabetes and sought to sell or develop property in order to help support herself and two handicapped sons residing with her. Stark v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 34.

Residents living in former gun club were entitled to waiver of strict compliance from minimum lot size and water quality requirements. Swezeny v. Fulford, 92 N.J.A.R.2d (EPC) 1.

7:50-5.24 Minimum standards governing the distribution and intensity of development and land use in Agricultural Production Areas

(a) The following uses shall be permitted in an Agricultural Production Area:

- 1. Residential dwelling units in accordance with the cultural housing provisions of N.J.A.C. 7:50-5.32.
- 2. Residential dwelling units not to exceed a gross density of one unit per 10 acres provided that:
 - i. The dwelling is accessory to an active agricultural operation;
 - ii. The dwelling is for an operator or employee of the farm who is actively engaged in and essential to the agricultural operation;

- iii. The dwelling is located on a lot which is under or qualified for agricultural assessment;
 - iv. The dwelling is located on a lot which has an active production history or where a farm management plan has been prepared which demonstrates that the property will be farmed as a unit unto itself or as part of another farm operation in the area;
 - v. A residential lot has not been subdivided from the property within the previous five years unless the lot has been subdivided pursuant to N.J.A.C. 7:50-5.32; and
 - vi. No more than one lot may be created for a dwelling accessory to an active agricultural operation pursuant to this provision at any one time.
3. Residential dwelling units at a gross density of one unit per 40 acres, provided that:
- i. The unit(s) shall be clustered on one acre lots, unless the municipality determines that residential development is not compatible and interferes with the use of the remaining parcel and adjoining lands for agricultural use;
 - ii. The remainder of the parcel, including all contiguous lands in common ownership, which is not assigned to individual residential lots shall be permanently dedicated for agricultural uses through recordation of a restriction on the deed to the parcel; and
 - iii. The restriction on the deed to the parcel, including any rights to be redeemed for future residential development, shall be done in accordance with N.J.A.C. 7:50-5, Part IV, so as to sever any Pinelands Development Credits allocated to the parcel.
4. Agriculture.
5. Forestry.
6. Low intensity recreational uses, provided that:
- i. The parcel proposed for low intensity recreational use has an area of at least 50 acres;
 - ii. The recreational use does not involve the use of motorized vehicles except for necessary transportation;
 - iii. Access to bodies of water is limited to no more than 15 linear feet of frontage per 1,000 feet of water body frontage;
 - iv. Clearing of vegetation, including ground cover and soil disturbance, does not exceed five percent of the parcel; and
 - v. No more than one percent of the parcel will be covered with impervious surfaces.
7. Agricultural commercial establishments excluding supermarkets, restaurants and convenience stores, provided that:
- i. The principal goods or products available for sale were produced in the Pinelands; and
 - ii. The sales area of the establishment does not exceed 5,000 square feet.
8. Agricultural products processing facilities.
9. Pinelands Development Credits.
- (b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in an Agricultural Production Area:
1. Roadside retail sales and service establishments, provided that:
 - i. The parcel proposed for development has roadway frontage of at least 50 feet;
 - ii. No portion of any structure proposed for development will be more than 300 feet, measured along a line parallel to the roadway, from the closest part of a roadside retail sales and service establishment structure that was in existence on February 7, 1979; and
 - iii. The proposed use will not unduly burden public services, including but not limited to water, sewer and roads.
 2. Pinelands resource-related industries, excluding resource extraction and uses that rely on sand or gravel as raw products, provided that:
 - i. The parcel proposed for development has an area of at least five acres;
 - ii. The principal raw material for the proposed use is found or produced in the Pinelands; and
 - iii. The use does not require or will not generate subsidiary or satellite development in an Agricultural Production Area.
 3. Airports and heliports which are accessory to agricultural uses and are used exclusively for the storage, fueling, loading and operation of aircraft as a part of an ongoing agricultural operation.
 4. Light industrial uses within an area designated by a municipality in accordance with the following criteria:
 - i. The area adjoins a publicly owned airport;
 - ii. The area is predominantly developable under the provisions of subchapter 6; and
 - iii. The area is limited in size to that which is no greater in size than the airport.
 5. Fish and wildlife management and wetlands management.
 6. Agricultural employee housing as an element of, and accessory to, an active agricultural operation.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.65 Specific limitations in the Preservation Area

(a) No resource extraction operations shall be permitted in the Preservation Area District or Special Agricultural Production Areas other than those operations which were registered with the Pinelands Commission on or before January 21, 1981 and received all necessary development permits for resource extraction on or before December 31, 1985.

(b) In no case shall the area of extraction exceed the value given under the category "acreage to be mined" on the mine registration application submitted to the Department of Labor and Industry as of February 7, 1979, or that area approved by a valid municipal permit as of February 7, 1979 in the case of an operation exempted from registration with the Department of Labor and Industry.

(c) Resource extraction operations shall be considered nonconforming uses in the Preservation Area District and Special Agricultural Production Area and, as such, shall be subject to the requirements of N.J.A.C. 7:50-5.2(a).

Repealed by R.1990 d.170, effective March 19, 1990.

See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

Section was "Application requirements for resource extraction".

New Rule, R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.2007 d.372, effective December 3, 2007.

See: 39 N.J.R. 1970(a), 39 N.J.R. 5077(b).

Added (c).

7:50-6.66 Specific limitations in the Forest Area

(a) No development permit or other approval for resource extraction in the Forest Area shall be approved or issued after December 5, 1994 except as expressly authorized in (b) and (c) below.

(b) An operation which received a valid development approval pursuant to the provisions of this Plan for resource extraction on or after January 14, 1981 but prior to December 5, 1994 may continue to operate, subject to the terms and conditions of the approval. Upon expiration of the approval, extraction operations may be authorized to continue within the limits of the parcel or parcels which were identified in the resource extraction application which was approved pursuant to this Plan.

(c) Any land for which a valid development approval pursuant to the provisions of this Plan for resource extraction was not issued between January 14, 1981 and December 31, 1992 may be authorized to undertake extraction operations only if a development permit was approved prior to December 5, 1994. In such cases, extraction operations may operate subject to the terms and conditions of the approval. Upon expiration of the approval, extraction operations may continue only within the areas mined and not restored as of the expiration date of the approval.

(d) Resource extraction operations shall be considered nonconforming uses in the Forest Area and, as such, shall be subject to the requirements of N.J.A.C. 7:50-5.2(a).

New Rule, R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.2007 d.372, effective December 3, 2007.

See: 39 N.J.R. 1970(a), 39 N.J.R. 5077(b).

In (c), substituted "was not" for "has not been" following "extraction" and "was" for "is" following "permit"; and added (d).

7:50-6.67 Specific limitations in the Agricultural Production Area

No development permit or other approval for resource extraction in the Agricultural Production Area shall be approved or issued after November 2, 1987.

New Rule, R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Administrative Correction.

See: 28 N.J.R. 1379(a).

7:50-6.68 Resource extraction standards

(a) Resource extraction operations shall be approved only if the applicant can demonstrate that the proposed resource extraction operation:

1. Will not result in a substantial adverse impact upon those significant resources depicted on the Special Areas Map, Figure 7.1;

2. Is designed so that no area of excavation, sedimentation pond, storage area, equipment, or machinery or other structure or facility is closer than 200 feet to any property line; unless it can be demonstrated that a distance between 100 and 200 feet will not result in greater off-site environmental impacts;

3. Is to be located on a parcel of land of at least 20 acres;

4. Provides that all topsoil that is necessary for restoration will be stored on the site but not within 200 feet of any property line unless the area proposed for storage is unforested and will be restored; and that the topsoil will be protected from wind and water erosion;

5. Is fenced or blocked so as to prevent unauthorized entry into the resource extraction operation through access roads;

6. Provides ingress and egress to the resource extraction operation from public roads by way of gravel or porous paved roadways;

7. Is designed so that surface runoff will be maintained on the parcel in a manner that will provide for on-site recharge to ground water;

8. Will not involve excavation exceeding 65 feet below the natural surface of the ground existing prior to excavation unless it can be demonstrated that a depth greater

than 65 feet will result in no significant adverse impact relative to the proposed final use or on off-site areas;

9. Will be carried out in accordance with an extraction schedule which depicts the anticipated sequence, as well as anticipated length of time that each of the 20 acre units of the parcel proposed for extraction will be worked. This shall not preclude more than one 20 acre unit from being worked at any one time, provided that there is a demonstrated need for additional units, restoration is proceeding on previously mined units and the area of clearing does not exceed that specified in (a)11 below;

10. Will involve restoration of disturbed areas at the completion of the resource extraction operation in accordance with the requirements of N.J.A.C. 7:50-6.69, and the implementation of the restoration plan is secured by a letter of credit, surety bond or other guarantee of performance; and

11. Will not involve clearing adjacent to ponds in excess of 20 acres or an area necessary to complete scheduled operations; or will not involve unreclaimed clearing exceeding 100 acres or 50 percent of the area to be mined, whichever is less, for surface excavation at any time.

Recodified from 7:50-6.66 and amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.2014 d.143, effective September 2, 2014.

See: 46 N.J.R. 319(a), 46 N.J.R. 1877(b).

In (a)10, updated the N.J.A.C. reference.

7:50-6.69 Restoration standards

(a) All parcels of land which are used for resource extraction operations shall be restored as follows:

1. Restoration shall be a continuous process, and each portion of the parcel shall be restored such that ground cover be established within two years and tree cover established within three years after resource extraction is completed for each portion of the site mined;

2. Restoration shall proceed in the same sequence and time frame set out in the extraction schedule required in N.J.A.C. 7:50-6.68(a)9;

3. All restored areas shall be graded so as to conform to the natural contours of the parcel to the maximum extent practical. Grading techniques that help to control erosion and foster revegetation shall be utilized. The slope of surface of restored surfaces shall not exceed one foot vertical to three feet horizontal except as provided in (a)6 below;

4. Topsoil shall be restored in approximately the same quality and quantity as existed at the time the resource extraction operation was initiated. All topsoil removed shall be stockpiled and used for the next area to be restored unless it is immediately reused for reclamation that is currently underway;

5. Drainage flows, including direction and volume, shall be restored to the maximum extent practical to those flows existing at the time the resource extraction operation was initiated;

6. Any body of water created by the resource extraction operation shall have a shoreline not less than three feet above and three feet below the projected average water table elevation. The shoreline both above and below the surface water elevation shall have a slope of not less than five feet horizontal to one foot vertical. This requirement shall apply to any water body or portion of a water body created after December 5, 1994. For any water body or portion of a water body created prior to December 5, 1994, this requirement shall apply to the extent that it does not require grading of areas which have not been disturbed by mining activities. Where grading would require such disturbance, a reduction in the distance of the graded shoreline above and below the average water table elevation shall be permitted;

7. Slopes beyond a water body's shoreline shall be permitted at the natural angle of repose to the bottom of the pond;

8. All equipment, machinery and structures, except for structures that are useable for recreational purposes or any other use authorized in the area, shall be removed within six months after the resource extraction operation is terminated and restoration is completed;

9. Reclamation shall to the maximum extent practical result in the re-establishment of the vegetation association which existed prior to the extraction activity and shall include:

i. Stabilization of exposed areas by establishing ground cover vegetation; and

ii. Re-establishment of the composition of the natural forest and shrub types that existed prior to the extraction activity through one of the following:

(1) The planting of a minimum of 1,000 one-year-old pitch pine seedlings or other native Pinelands tree species per acre in a random pattern;

(2) Cluster planting of characteristic Pinelands oak species, such as blackjack oak, bear oak, chestnut oak and black oak, and shrubs such as black huckleberry, sheep laurel and mountain laurel, at a spacing sufficient to ensure establishment of these species;

(3) A combination of the planting techniques set forth in (a)9ii(1) and (2) above; or

(4) The use of other planting techniques or native Pinelands species as may be necessary to restore the vegetation association which existed prior to the extraction activity.

10. The letter of credit, surety bond, or other guarantee of performance which secures restoration for each section shall be released after the requirements of (a)1 through 9 above are determined by a certified municipality or the Commission, as appropriate, as being met and is replaced with a maintenance guarantee for a period of two years thereafter.

Recodified from 7:50-6.67 and amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.2014 d.143, effective September 2, 2014.

See: 46 N.J.R. 319(a), 46 N.J.R. 1877(b).

In (a)2, updated the N.J.A.C. reference.

7:50-6.70 (Reserved)

PART VII—WASTE MANAGEMENT

7:50-6.71 Purpose

Federal and State efforts to manage the use of hazardous and toxic substances and the disposition of wastes are recognized but the water and other natural resources of the Pinelands are particularly vulnerable to impacts from these substances and wastes. It is the purpose of this Part to protect the Pinelands from degradation by supplementing Federal and State requirements relative to the use and management of these substances and wastes.

occupancy of the building served or use of the alternative design wastewater treatment system until such time as the Pinelands Commission provides written authorization to the local board of health that such system may be authorized for use by the board of health;

vii. The manufacturer or its agent shall provide to each owner an operation and maintenance manual approved pursuant to (a)2iv above;

viii. Each system shall be covered by a five-year warranty and a minimum five-year maintenance contract that cannot be cancelled and is renewable and which includes a provision requiring that the manufacturer or its agent inspect the system at least once a year and undertake any maintenance or repairs determined to be necessary during any such inspection or as a result of observations made at any other time, including when effluent monitoring occurs or that is identified based on the results of any effluent monitoring. Said warranty and maintenance contract shall be consistent with the sample warranty and maintenance contract approved pursuant to (a)2v above. In addition to complying with the reporting requirements of N.J.A.C. 7:9A-3.4(b) concerning system malfunctions, the manufacturer or agent shall report to the Executive Director and local board of health on all necessary maintenance and repairs within 10 days and shall report to the Executive Director and local board of health semi-annually as to the inspections conducted during the preceding six months including a description of any maintenance and repairs that were undertaken and the success of those measures and their costs;

ix. The property owner shall record with the deed to the property a notice consistent with the sample deed notice approved pursuant to (a)2vi above that identifies the technology, acknowledges the owner's responsibility to operate and maintain it in accordance with the manual required in (a)6vi above, and grants access, with reasonable notice, to the local board of health, the Commission and its agents for inspection and monitoring purposes. The recorded deed shall run with the property and shall ensure that the maintenance requirements are binding on any owner of the property during the life of the system and that the monitoring requirements are binding on any owner of the property during the time period the monitoring requirements apply pursuant to this pilot program or any subsequent regulations adopted by the Commission that apply to said system;

x. The manufacturer or its agent shall make available for inspection by the Commission or its agents, upon reasonable notice, all records relating to each system installed in the Pinelands pursuant to this pilot program;

xi. June 5 and December 5 of each calendar year, until the conclusion of the pilot program, each manufacturer or its agent shall submit to the Executive Director a report which includes the number of systems

installed during the previous six months and since the beginning of the pilot program, a discussion of any installation problems and what has been done to address those problems, an analysis and evaluation of the monitoring results to date and a discussion of any operational or maintenance issues, including the number of systems requiring maintenance or repairs and the nature and success of such maintenance and repairs, and the number of times the automatic dialing system was set off and the reasons for each such occurrence;

xii. The system complies with the requirements of N.J.A.C. 7:50-6.84(a)4i through v; and

xiii. No more than six alternate design treatment technologies shall be approved for use in the Alternate Design Waste Water Treatment Systems Pilot Program at any one time.

(b) The property owner shall not be held liable for poor system performance if the system has been properly operated and maintained.

(c) The technology manufacturer or its agent shall troubleshoot and attempt to remediate substandard performance of any system that fails to meet effluent concentration targets after two consecutive sampling events by implementing measures including, but not limited to, homeowner education, process adjustments, and equipment retrofits. The technology manufacturer or its agent shall report to the Executive Director and local board of health semi-annually on all remedial measures undertaken, pursuant to (a)6viii above.

New Rule, R.2002 d.247, effective August 5, 2002.

See: 34 N.J.R. 722(a), 34 N.J.R. 2804(b).

Public Notice: Ashco-A-Corporation, RFS^{III} Wastewater Treatment System.

See: 35 N.J.R. 2750(b).

Public Notice: Amphidrome® Treatment System.

See: 35 N.J.R. 4135(b).

Public Notice: Ascho-A-Corporation, RFS^{III} Gravity Dosing Treatment System.

See: 35 N.J.R. 4136(a).

Public Notice: Approval of Aquapoint, Inc, Bioclere™ Treatment System.

See: 36 N.J.R. 221(c).

Public Notice: Approval of Cromaglass® Treatment System.

See: 36 N.J.R. 1238(a).

Petition for Rulemaking.

See: 37 N.J.R. 1237(a), 2707(a), 3074(c).

Amended by R.2006 d.159, effective May 1, 2006.

See: 37 N.J.R. 4133(a), 38 N.J.R. 1829(b).

Rewrote (a)6i.

Amended by R.2007 d.372, effective December 3, 2007.

See: 39 N.J.R. 1970(a), 39 N.J.R. 5077(b).

In the introductory paragraph of (a), substituted "in all municipalities" for "where the proposed lot size and density is consistent with the provisions of N.J.A.C. 7:50-5 and the municipal land use ordinance that has been certified by the Commission pursuant to N.J.A.C. 7:50-3 and"; rewrote (a)1; in (a)3, deleted "each Ashco RFS III system shall be located on a parcel containing at least 1.5 acres for each dwelling unit that will be served by the system and" preceding "each FAST"; and in (a)4, substituted "eight" for "five".

Amended by R.2010 d.235, effective October 18, 2010.

See: 42 N.J.R. 987(a), 42 N.J.R. 2422(a).

In (a)2i, inserted "or are determined to be consistent with record documents submitted for USEPA ETV and/or NSF/ANSI Standard 245 testing"; in (a)2iii, inserted "and" preceding and deleted "and chlorides"

following the first occurrence of "total kjeldahl" and added the last two sentences; rewrote (a)3 through (a)5; added new (a)6vi; recodified former (a)6vi through (a)6xi as (a)6vii through (a)6xii; in (a)6xi, substituted "June 5 and December 5 of each calendar year" for "By July 5, 2003 and every six months thereafter" and deleted "and" from the end; in (a)6xii, substituted "; and" for a period at the end; and added (a)6xiii; and (c).

Public Notice: Agency Action: Pilot Program for Alternate Design Wastewater Treatment Systems.

See: 43 N.J.R. 1380(b), 3200(b).

Public Notice: Agency Action: Pilot Program for Alternate Design Wastewater Treatment Systems.

See: 44 N.J.R. 2312(a).

Amended by R.2014 d.143, effective September 2, 2014.

See: 46 N.J.R. 319(a), 46 N.J.R. 1877(b).

In (a)3, deleted "or Cromaglass" following "FAST"; and in (a)4, deleted "Cromaglass and" preceding "FAST", substituted "system" for "systems" and "2018" for "2016", and deleted "are authorized to be installed until August 5, 2013" following "above".

Public Notice: Agency Action: Pilot Program for Alternate Design Wastewater Treatment Systems.

See: 46 N.J.R. 2115(c).

7:50-10.23 Pinelands Commission approval and evaluation

(a) If otherwise appropriate under N.J.A.C. 7:50-3, the Commission shall approve a municipal ordinance authorizing use of alternate design pilot program treatment systems if it finds that the standards of N.J.A.C. 7:50-10.22 are met.

(b) New technologies shall be approved pursuant to this subsection.

1. In order to be considered for participation in this pilot program, the manufacturer or agent of an alternate design treatment system that has attained verification and/or certification status through the USEPA ETV Verification Program or NSF/ANSI Standard 245 testing program must apply to the Commission. Any such application shall be accompanied by the following:

i. All laboratory test data and reports associated with the technology's participation in the USEPA ETV Verification Program or NSF/ANSI Standard 245 testing program;

ii. A description of the distribution and technical support system that the technology vendor will utilize to supply and support the treatment system in the Pinelands Area;

iii. An estimate of the cost of the technology including but not limited to equipment, shipping, warranty, operation and maintenance services, and effluent monitoring;

iv. The expected total nitrogen concentration to be achieved by the technology when serving residential development in the Pinelands Area; and

v. An escrow in the amount of \$2,500 pursuant to N.J.A.C. 7:50-1.7 to cover the cost of review for entry into the pilot program.

2. The Executive Director shall periodically establish a date by which completed applications in accordance with

(b)1 above must be received by the Commission in order to be considered for participation in this pilot program. Notification of the dates associated with any such round of applications shall be published in the New Jersey Register and posted and made available electronically on the Commission's website. The Executive Director may extend the deadline pursuant to N.J.A.C. 7:50-4.4(a).

3. Upon the conclusion of the application period established in (b)2 above, the Executive Director shall review the submitted documents for each technology seeking participation in the program. The Executive Director shall determine the eligibility of each technology to participate in the pilot program, based upon a comprehensive assessment of those items required for submission in (b)1 above. The Executive Director shall also determine the minimum lot size on which the technology could be authorized for residential use, subject to future modification, pursuant to N.J.A.C. 7:50-10.22(a)3.

4. Within 90 days after the deadline established for the receipt of complete applications or any extension thereto, the Executive Director shall submit a report to the Commission setting forth proposed findings and a recommendation as to whether each technology should be permitted to participate in this pilot program. The Executive Director shall evaluate the eligibility of each technology to participate in the pilot program based upon expected effluent quality, estimated costs and system availability. Any such recommendation shall specify the minimum lot size necessary for compliance with the water quality standards of N.J.A.C. 7:50-6, Part VIII.

5. Upon receipt of the Executive Director's report, the Commission shall review the findings, conclusion and recommendation of the Executive Director and shall, within 120 days of the deadline for receipt of complete applications, or any extension thereto, determine whether each technology should be approved for participation in this pilot program. All determinations of the Commission shall be published in the New Jersey Register and posted and made available electronically on the Commission's website.

(c) The Executive Director shall review this pilot program relative to the FAST treatment technology and any approved USEPA and NSF/ANSI Standard 245 treatment technologies no later than August 5, 2017, and shall report to the Commission within three months of that date on its implementation. The Executive Director shall determine whether the pilot program is successful in accordance with the following criteria:

1. The level of nitrogen in the effluent in each alternate design pilot program treatment system technology based on an evaluation of all monitoring results for that technology under this pilot program;

2. The maintenance required for each alternate design pilot program treatment system technology to meet the efficiency set forth in (b)1 above;