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CHAPTER 50

PINELANDS COMPREHENSIVE
MANAGEMENT PLAN

Authority

N.J.S.A. 13:18A-1 et seq.

Source and Effective Date

R.1981 d.13, effective January 14, 1981.

See: 12 N.J.R. 513(b), 13 N.J.R. 91(e).

Chapter Historical Note

Chapter 50, originally Pinelands Environmental Council, was repealed by R.1980 d.433, effective October 7, 1980. See: 12 N.J.R. 454(b), 12 N.J.R. 643(a). Chapter 50, Pinelands Comprehensive Management Plan, adopted as R.1981 d.13, superseded the interim rules at N.J.A.C. 7:1G, adopted by the Pinelands Commission as R.1980 d.370, effective September 23, 1980. See: 12 N.J.R. 309(a), 12 N.J.R. 575(c). See: Source and Effective Date. Chapter 50 was amended by R.1982 d.131, effective April 19, 1982; Emergency R.1985 d.399, effective July 15, 1985; R.1985 d.494, effective September 12, 1985, and R.1987 d.436, effective November 2, 1987. See: 13 N.J.R. 569(a), 14 N.J.R. 338(a); 17 N.J.R. 1918(a), 17 N.J.R. 2394(a); 18 N.J.R. 2239(a), 19 N.J.R. 2010(a). See, also, section annotations.

Public Notice: Pinelands Commission actions affected by Permit Extension Act, P.L. 1992, c.82. See: 24 N.J.R. 3560(c).

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SUBCHAPTER 1. GENERAL PROVISIONS

PART I—TITLE, AUTHORITY, PURPOSE,
APPLICABILITY, FEES AND
SEVERABILITY

7:50-1.1 Title

This chapter shall be known as the Implementation Element of Pinelands Comprehensive Management Plan.

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).

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).

7:50-1.2 Authority

This chapter is adopted pursuant to the Pinelands Protection Act, N.J.S.A. 13:18A-1 to 29, as amended by Laws of 1980, Chapter 65, adopted on July 10, 1980.

7:50-1.3 General purpose and intent

This chapter is adopted in order to implement, and is an exercise of the powers granted to the Pinelands Commission by, the Pinelands Protection Act and the Federal Act. The regulations and standards it contains are designed to promote orderly development of the Pinelands so as to preserve and protect the significant and unique natural, ecological, agricultural, archaeological, historical, scenic, cultural and recreational resources of the Pinelands.

7:50-1.4 Applicability

This chapter shall apply to all development within the Pinelands Area and shall supersede the interim rules and regulations adopted by the Pinelands Commission contained in N.J.A.C. 7:1G-1.1 et seq. and 2.1 et seq. and the Plan for the Preservation Area adopted by the Pinelands Commission on August 8, 1980. It shall be unlawful for any person to carry out any development in the Pinelands Area which does not conform to the minimum standards of this Plan.

Case Notes

Former N.J.A.C. 7:1G applied to any application for development between July 27, 1979 and January 14, 1981; regulations have no demonstrable effect on land values for property tax assessment purposes; regulatory history. *Riarano Inc. v. Weymouth Twp.*, 4 N.J.Tax 550 (Tax Ct.1982), affirmed 6 N.J.Tax 253.

7:50-1.5 Effective date

This chapter shall take effect as provided in Sections 5h and 7 of the Pinelands Protection Act, N.J.S.A. 13:18A-1 to 29, as amended by Laws of 1980, Chapter 65, adopted on July 10, 1980.

7:50-1.6 Fees

All applications required or permitted by any provision of this Plan other than applications filed by a public agency, shall be accompanied by a nonrefundable application fee, in such amount as shall from time to time be established by the Commission, to defray the actual costs of processing such application. No application filed pursuant to this Plan shall be considered complete unless all fees required by this Part have been paid. The Commission shall maintain a schedule of such fees and make such schedule available to all persons upon request. Such schedule shall, in addition to application fees, establish such other fees for Commission services or documents as are required by this Plan or determined by the Commission to be necessary or appropriate to equitably apportion the costs of such services or documents to the users thereof.

7:50-1.7 Severability

If any section, part, phrase, or provision of this Plan or the application thereof to any person be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, phrase, provision, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the validity of the remainder of this Plan or the application thereof to other persons.

7:50-1.8 through 7:50-1.10 (Reserved)

PART II—DUTIES AND POWERS
OF THE COMMISSION

7:50-1.11 Duties and powers

The Commission bears the ultimate responsibility for implementing and enforcing the provisions of the Pinelands

Protection Act and this Plan. In addition, it constitutes the planning entity provided for in the Federal Act and is responsible for achieving the purposes and provisions of the Federal Act. The Commission shall exercise the powers necessary to implement the objective of the Federal Act, the Pinelands Protection Act and this Plan.

7:50-1.12 Meetings, hearings and procedures

(a) The Commission shall fix the time and place for holding its regular meetings. Special meetings may be held at the call of the Chairman. All meetings of the Commission shall be held in accordance with the provisions of the "Open Public Meetings Act", N.J.S.A. 10:4-6.

(b) All hearings of the Commission shall be set, noticed and conducted in accordance with the provisions of N.J.A.C. 7:50-4.3.

(c) The Commission shall adopt its own procedures for the conduct of its business, meetings and hearings not inconsistent with the Pinelands Protection Act and this Plan. Copies thereof shall be available to any person upon request.

(d) A true copy of the minutes of every meeting of the Commission shall be delivered to the Governor. No action taken by the Commission shall have force or effect until 10 days, exclusive of Saturdays, Sundays and public holidays, following delivery of the minutes to the Governor.

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

In (c) deleted requirement that adoptions be made pursuant to the Administrative Procedure Act and be filed with the Executive Director.

Case Notes

Appeal based on "extraordinary hardship" (see for historical purposes, decisions based on interim rules of the Pinelands Commission). In re Pinnacle International Corp., 3 N.J.A.R. 9 (1980); Brenner v. Pinelands Commission, 1 N.J.A.R. 273 (1979).

7:50-1.13 through 7:50-1.20 (Reserved)

PART III—DUTIES AND POWERS OF THE EXECUTIVE DIRECTOR

7:50-1.21 Duties and powers

(a) The Executive Director shall be the chief administrative officer of the Commission and, subject to the approval of his actions by the Commission as provided herein, shall be charged with the administration and enforcement of this Plan. He shall supervise, manage and be responsible for the affairs and activities of the Commission staff, including, but not limited to, the exercise of the following duties and powers:

1. Rules and Regulations: The Executive Director shall, consistent with the express standards, purposes and intent of this Plan, establish administrative procedures and forms as are in his opinion necessary to the effective administration and enforcement of the provisions of this Plan and the rules and regulations of the Commission.

2. Records: The Executive Director shall maintain:

i. Permanent and current records of this Plan including all maps, amendments, development approvals and denials, interpretations and decisions rendered by the Commission or by the Executive Director together with relevant background files and materials.

ii. A current file of all certificates and approvals issued pursuant to this Plan for such time as necessary to ensure continuous compliance with the provisions of this Plan and such certificates and approvals.

iii. A current file of all letters of interpretation issued pursuant to N.J.A.C. 7:50-4 of this Plan.

iv. Permanent and current records of all meetings, hearings and proceedings, and the minutes and transcripts taken therein, held by the Commission or the Executive Director pursuant to this Plan.

SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS

PART I—INTERPRETATION

7:50-2.1 Provisions are minimum requirements

In their interpretation and application, the provisions of this Plan shall be held to be the minimum standards for the preservation of the Pinelands, as set forth in the provisions of this element. Where the provisions of this Plan are more restrictive than those of any other statute, ordinance or regulation, the provisions of this Plan shall control.

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).

Pinelands regulations set forth the minimum standards for protection of the Pinelands; municipality may adopt and enforce more restrictive standards; compliance with local ordinances required unless in conflict with regulations; proposed development approved by Pinelands Commission must be submitted to local planning board for review not inconsistent with regulations. Fine v. Galloway Twp. Committee, 190 N.J.Super. 432, 463 A.2d 990 (Law Div.1983).

7:50-2.2 Construction

This Plan, being necessary for the protection and preservation of the resources of the Pinelands, shall be construed liberally to effect the purposes of the Federal Act and the Pinelands Protection Act.

7:50-2.3 Word usage

(a) In the interpretation of this Plan, the provisions and rules of this section shall be observed and applied, except where the context clearly requires otherwise:

1. Words used or defined in one tense or form shall include other tenses and derivative forms.
2. Words in the singular shall include plural and words in the plural shall include the singular.
3. The masculine gender shall include the feminine and the feminine gender shall include the masculine.
4. The word "shall" is mandatory.
5. The word "may" is permissive.
6. In case of any difference of meaning or implication between the text of this Plan and any caption, the text shall control.

7:50-2.4 through 7:50-2.10 (Reserved)**PART II—DEFINITIONS****7:50-2.11 Definitions**

When used in this Plan, the following terms shall have the meanings herein ascribed to them.

"Accessory structure or use" means a structure or use which:

1. Is subordinate to and serves a principal building or a principal use, including but not limited to the production, harvesting, and storage as well as washing, grading and packaging of unprocessed produce grown on-site; and
2. Is subordinate in area, extent and purpose to the principal structure or principal building or a principal use served; and
3. Contributes primarily to the comfort, convenience or necessity of the occupants, business or industry of the principal structure or principal use served; and
4. Is located on the same parcel as the principal structure or principal use served, except as otherwise expressly authorized by the provisions of this Plan.

"Agricultural commercial establishment" means a retail sales establishment primarily intended to sell agricultural products produced in the Pinelands. An agricultural commercial establishment may be seasonal or year round and may or may not be associated directly with a farm; however

it does not include supermarkets, convenience stores, restaurants and other establishments which coincidentally sell agricultural products, nor does it include agricultural production facilities such as a farm itself, nor facilities which are solely processing facilities.

"Agricultural employee housing" means residential dwellings, for the seasonal use of employees of an agricultural or horticultural use, which because of their character or location are not to be used for permanent housekeeping units and which are otherwise accessory to a principal use of the parcel for agriculture.

"Agricultural or horticultural purpose or use" means any production of plants or animals useful to man, including, but not limited to: forages or sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, and including the breeding and grazing of any or all such animals; bees and apiary products; fur animals; aquatic organisms as part of aquaculture; trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or any land devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agency of the Federal Government.

"Agricultural products processing facility" means a facility designed, constructed, and operated for the express purpose of processing agricultural products grown in the Pinelands, including washing, grading, and packaging of those products.

"Amendment" is a means for making changes in this Plan as expressly authorized by the provisions of N.J.A.C. 7:50-7 or any change to a certified local master plan or land use ordinance.

"Ancillary" means a structure or use which:

1. Is located on the same parcel but is not necessarily related to a principal structure or use; and
2. Is subordinate in area, extent and purpose to the principal structure or principal building.

"Animals, threatened or endangered". See: N.J.A.C. 7:50-6.32.

"Application for development" means any application, filed with any permitting agency, for any approval, authorization or permit which is a prerequisite to initiating development in the Pinelands Area, except as provided in N.J.A.C. 7:50-4.1(a).

"Approval, final" means any approval to develop issued by a local permitting agency which represents the final action to be taken on the application for development by that agency, including but not limited to final approval of

major subdivisions and site plans, approval of minor subdivisions, and the issuance of zoning or construction permits.

“Approval, preliminary” means any approval to develop issued by a local permitting agency which is a prerequisite to the issuance of a final approval by that agency, including but not limited to preliminary approvals of major subdivisions and site plans.

“Aquaculture” means the propagation, rearing and subsequent harvesting of aquatic organisms in controlled or selected environments, and their subsequent processing, packaging and marketing, including, but not limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting and providing for protection from predators.

“Aquatic organisms” means and includes, but is not limited to, finfish, mollusks, crustaceans and aquatic plants which are the property of a person engaged in aquaculture.

“Assisted living facility” means a facility licensed by the New Jersey Department of Health and Senior Services pursuant to N.J.A.C. 8:36 which is designed and operated to provide apartment style housing and congregate dining while assuring that a coordinated array of supportive personal and health services are available, as needed, to four or more adult persons unrelated to the proprietor. Each unit in an assisted living facility shall offer, at minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance. For purposes of this Plan, assisted living facility shall include assisted living residences and assisted living programs as defined at N.J.A.C. 8:36-1.3.

“Building” means any structure, either temporary or permanent, having a roof and designed, intended or used for the sheltering or protection of persons, animals, chattel or property of any kind.

“Camper” means a portable structure, which is self propelled or mounted on or towed by another vehicle, designed and used for temporary living for travel, recreation, vacation or other short-term uses. Camper does not include mobile homes or other dwellings.

“Campsite” means a place used or suitable for camping, on which temporary shelter such as a tent or camper may be placed and occupied on a temporary and seasonal basis.

“Certificate of appropriateness”. See N.J.A.C. 7:50-6.156.

“Certificate of Completeness”. See N.J.A.C. 7:50-4.11 through 4.27.

“Certificate of filing”. See N.J.A.C. 7:50-4.34 and 4.82.

“Certified county master plan or regulation” means any county master plan or regulation certified by the Commission pursuant to N.J.A.C. 7:50-3, Part II as being in conformance with the minimum standards of this Plan.

“Certified municipal master plan or land use ordinance” means any municipal master plan or land use ordinance certified by the Commission pursuant to N.J.A.C. 7:50-3, Part IV as being in conformance with the minimum standards of this Plan.

“Collection facility” means a facility where source-separated or commingled waste is dropped off in a container and temporarily stored before transportation to another waste management facility.

“Commencement of construction” means actual construction on a parcel of land in accordance with a permit issued by the applicable jurisdiction if the cost of the physical improvements completed constitutes at least 25 percent of the projected total cost of the development or the completion of all required foundations, of a form and character such that the foundations are not usable for any other form of development except that authorized by the issued permit.

“Commission” means the Pinelands Commission created pursuant to Section 5 of the Pinelands Protection Act, as amended.

“Composting facility” means a waste management facility which utilizes a controlled biological process of degrading non-hazardous solid waste or sewage sludge. For purposes of this definition, composting facility shall include co-composting facility which utilizes a controlled biological process of degrading mixtures of non-hazardous solid waste, including sewage sludge.

“Comprehensive Management Plan” means the plan adopted by the Commission pursuant to Section 7 of the Pinelands Protection Act, as amended.

“Construction” means the construction, erection, reconstruction, alteration, conversion, demolition, removal or equipping of buildings or structures.

“Construction debris” means non-hazardous solid waste building material and refuse resulting from construction, remodeling, and repair operations on residences, commercial buildings, pavements and other structures.

“Contiguous lands” means land which is connected or adjacent to other land so as to permit the land to be used as a functional unit; provided that separation by lot line, streams, dedicated public roads which are not paved, rights-of-way, and easements shall not affect the contiguity of land unless a substantial physical barrier is created which prevents the land from being used as a functional unit.

“Continuing care retirement community” means a development regulated in accordance with the rules of the Department of Community Affairs pursuant to N.J.A.C. 5:19 which provides a continuum of accommodations and care, from independent living to assisted living to long-term bed care in a nursing facility, at the same or another location to an individual pursuant to an agreement effective for the life of the individual or for a period greater than one year.

“County” means the New Jersey counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Ocean.

“County master plan” means a composite of the master plan for the physical development of a New Jersey county with the accompanying maps, plats, charts and descriptive and explanatory matter adopted by the county planning board pursuant to N.J.S.A. 40:27-2 and 40:27-4 or their successor statutes.

“County planning board” means the governing authority responsible for the county planning and organized pursuant to N.J.S.A. 40:27-6.1, and defined therein.

“Day” means, for purposes of computing time limits, a calendar day; provided, however, that should the last day of a specified time limit be a Saturday, Sunday or holiday, then the time limit shall extend until the next working day following said Saturday, Sunday or holiday.

“Density” means the average number of housing units per unit of land.

“Developer” means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a development including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the change of or enlargement of any use or disturbance of any land, the performance of any building or mining operation, the division of land into two or more parcels, and the creation or termination of rights of access or riparian rights including, but not limited to:

1. A change in type of use of a structure or land;
2. A reconstruction, alteration of the size, or material change in the external appearance of a structure or land;
3. A material increase in the intensity of use of land, such as an increase in the number of businesses, manufacturing establishments, offices or dwelling units in a structure or on land;
4. Commencement of resource extraction or drilling or excavation on a parcel of land;
5. Demolition of a structure or removal of trees;
6. Commencement of forestry activities;

7. Deposit of refuse, solid or liquid waste or fill on a parcel of land;

8. In connection with the use of land, the making of any material change in noise levels, thermal conditions, or emissions of waste material; and

9. Alteration, either physically or chemically, of a shore, bank, or flood plain, seacoast, river, stream, lake, pond, wetlands or artificial body of water.

“Development approval” means any approval granted by the Commission pursuant to N.J.A.C. 7:50-4, Part II, Part III or Part IV.

“Development, major” means any division of land into five or more lots; any construction or expansion of any housing development of five or more dwelling units; any construction or expansion of any commercial or industrial use or structure on a site of more than three acres; or any grading, clearing or disturbance of an area in excess of 5,000 square feet.

“Development, minor” means all development other than major development.

“Development, public” means any development by a public agency.

“District” means a portion of the territory of the Pinelands Area within which certain regulations and requirements or various combinations thereof apply pursuant to the provisions of this Plan.

“Domestic treatment works” means a public or privately owned treatment works that processes primarily domestic wastewater and pollutants.

“Domestic wastewater” means wastewater which results from the discharge of household, commercial or other wastes from bathrooms, toilet facilities, home laundries and kitchens.

“Drainage” means the removal of surface water or ground water from land by drains, grading or other means including control of runoff to minimize erosion and sedimentation during and after construction or development and means necessary for water supply preservation or prevention or alleviation of flooding.

“Dwelling” means any structure or portion thereof which is designed or used for residential purposes.

“Dwelling unit” means any room or group of rooms located within a structure forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, eating and sanitation by one family. Dwelling unit shall include each separate apartment or unit where one or more individuals reside within an assisted living facility and each room, apartment, cottage or other

area within a continuing care retirement community set aside for the exclusive use or control of one or more individuals constituting a household unit.

“Electric distribution lines” means all electric lines other than electric transmission lines.

“Electric transmission lines” means electric lines which are part of an electric company’s transmission and subtransmission system, which provide a direct connection between a generating station or substation of the utility company and: (a) another substation of the utility company; (b) a substation of or interconnection point with another interconnecting utility company; (c) a substation of a high-load customer of the utility.

“Enlargement” means an addition to the floor area of an existing building, an increase in the size of any other existing structure or an increase in that portion of a tract of land occupied by an existing use.

“Erosion” means the detachment and movement of soil rock fragments by water, wind, ice or gravity.

“Executive Director” means the chief administrative officer of the Commission or any representative designated by such chief administrative officer to perform any functions delegated to such chief administrative officer pursuant to any provision of this Plan.

“Fair market value” means the value of a parcel based on what a willing buyer will pay a willing seller in an arms length transaction for the parcel if no Waiver of Strict Compliance is approved. For undersized lots, the determination of fair market value shall include consideration of the extent to which the parcel would contribute to the value of a developable parcel if combined with one or more parcels.

“Family” means one or more persons related by blood, marriage, adoption or guardianship, or any number of persons not so related occupying a dwelling unit and living as a single housekeeping unit.

“Family, immediate”. See “Immediate family”.

“Federal Act” means Section 502 of the National Parks and Recreation Act of 1978 (PL 95-625).

“First order stream” means that portion of a stream, as identifiable on the USGS 7½ foot quadrangle maps, from the point of upstream origin, downstream to the first point of intersection with another branch, stream or tributary.

“Fish and wildlife management” means the changing of the characteristics and interactions of fish and wildlife populations and their habitats in order to promote, protect and enhance the ecological integrity of those populations.

“Flood plain” means the relatively flat area adjoining the channel of a natural stream, which has been or may be hereafter covered by flood water.

“Floor area” means the sum of the gross horizontal areas of the several floors of a building, measured from the exterior faces of the exterior walls, or from the centerline of a wall separating two buildings.

“Forestry” means the planting, cultivating and harvesting of trees for the production of wood products, including firewood. It includes such practices as reforestation, site preparation and other silvicultural practices. For purposes of this Plan, the following activities shall not be defined as forestry:

1. Removal of trees located on a parcel of land one acre or less on which a dwelling has been constructed;
2. Horticultural activities involving the planting, cultivating or harvesting of nursery stock or Christmas trees;
3. Removal of trees necessitated by the development of the parcel as otherwise authorized by this Plan;
4. Removal of trees necessary for the maintenance of utility or public rights-of-way;
5. Removal or planting of trees for the personal use of the parcel owner; and
6. Removal of trees for public safety.

“Forestry management plan”. See N.J.A.C. 7:50-4.2(b)6ii.

“Forest stand” means a uniform group of trees of similar species, size, and age.

“Habitat” means the natural environment of an individual animal or plant, population, or community.

“Hazardous or toxic substances” means such elements, compounds and substances which pose a present or potential threat to human health, living organisms or the environment. They consist of all hazardous or toxic substances defined as such by the Department of Environmental Protection and the Environmental Protection Agency as of May 20, 1996 and any other substances defined as hazardous or toxic by the Department of Environmental Protection and the Environmental Protection Agency subsequent to May 20, 1996.

“Hazardous waste” means any waste or combination of wastes, including toxic, carcinogenic, corrosive, irritating, sensitizing, radioactive, biologically infectious, explosive or flammable waste, which poses a present or potential threat to human health, living organisms or the environment. They consist of all hazardous wastes defined as such by the Department of Environmental Protection and the Environmental Protection Agency as of May 20, 1996 and any other wastes defined as hazardous by the Department of Environmental Protection and the Environmental Protection Agency subsequent to May 20, 1996.

“Height of building” means the vertical distance measured from grade to the highest point of the roof for flat roofs, to the deck line for mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

“Historic Preservation Commission”. See N.J.A.C. 70:50-6.153.

“Historic resource” means any site, building, area, district, structure or object important in American history or prehistory, architecture, archaeology and culture at the national, state, county, local or regional level.

“Home occupations” means an activity for economic gain, carried out in a residential dwelling or accessory structure thereto, in which an occupant of the residence and no more than two other individuals are employed and which is clearly secondary to the use of the dwelling as a residence.

“Household hazardous waste” means any hazardous waste material derived from households, including single-family and multi-family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas.

“Hydrophytes” means any plant growing in water or in substrate that is at least periodically deficient in oxygen as a result of excessive water content.

“Immediate family” means those persons related by blood or legal relationship in the following manner: husbands and wives, great-grandparents, grandparents, great-grandchildren, grandchildren, parents, sons, daughters, brothers and sisters, aunts and uncles, nephews, nieces and first cousins.

“Impermeable surface” means any surface which does not permit fluids to pass through or penetrate its pores or spaces.

“Incinerator” means a thermal device in which waste is burned and results in volume reduction. For purposes of this definition, it shall include a facility used to obtain energy but shall not include a facility where methane gas burnoff occurs in association with an approved landfill closure and post-closure plan.

“Institutional use” means any land used for the following public or private purposes: educational facilities, including universities, colleges, elementary and secondary and vocational schools, kindergartens and nurseries; cultural facilities such as libraries, galleries, museums, concert halls, theaters and the like; hospitals, including such educational, clinical, research and convalescent facilities as are integral to the operation of the hospital; medical and health service facilities, including nursing homes, rehabilitation therapy centers and public health facilities; law enforcement facilities; military facilities; churches; public office buildings; cemeteries; and other similar facilities. For purposes of this Plan, insti-

tutional use shall not include medical offices which are not associated with hospitals or other medical or health service facilities, nor shall it include assisted living facilities.

“Interested person” means any persons whose right to use, acquire or enjoy property is or may be affected by any action taken under this Plan, or whose right to use, acquire or enjoy property under this Plan or under any other law of this State or of the United States has been denied, violated or infringed upon by an action or a failure to act under this Plan.

“Interim rules and regulations” means the regulations adopted by the Pinelands Commission pursuant to the Pinelands Protection Act to govern the review of applications from the adoption of the regulations until the Comprehensive Management Plan took effect on January 14, 1981. These regulations were formerly codified as N.J.A.C. 7:1G-1 et seq.

“Land” includes the surface and subsurface of the earth as well as improvements and fixtures on, above, or below the surface and any water found thereon.

“Landfill” means a site where any waste is disposed of by application on or into the land, with or without the use of management practices or soil covering. It does not include a site where land application of waste or waste derived material occurs in accordance with N.J.A.C. 7:50-6.79.

“Landscaping” means the installation of plant material or seed as part of development.

“Land use ordinance” or “land use regulation” means any county or municipal ordinance or regulation which, in any way, regulates or affects the development of land.

“Lawful use” means a use of land, building or structure, or portion thereof, that is permitted under all relevant local, State and Federal land use, nuisance and environmental statutes.

“Leachate collector”, for the purposes of this Plan, shall mean attributed to the phrase by, and each such “leachate collector” shall conform to the requirements of the New Jersey Solid Waste Administration.

“Local communications facility” means an antenna and any support structure, together with any accessory facilities, which complies with the standards in N.J.A.C. 7:50-5.4 and which is intended to serve a limited, localized audience through point to point communication, including cellular telephone cells, paging systems and dispatch communications. It does not include radio or television broadcasting facilities or microwave transmitters.

“Local permitting agency” means any county or municipal official, department agency or other body authorized to rule on any application for development.

“Lot” means a designated parcel, tract or area of land designated for use or development as a unit.

“Mobile home” means a dwelling unit manufactured in one or more sections, designed for long-term occupancy and which can be transported after fabrication to a site where it is to be occupied.

“Municipal master plan” means a composite of one or more written or graphic proposals for development of the municipality as set forth and adopted pursuant to N.J.S.A. 40:55-28.

“Municipality” means any city, borough, town or township wholly or partially located within the Pinelands Area or Pinelands National Reserve.

“Navigable waters” means water capable of being traversed by pleasure craft.

“Off-site commercial advertising sign” means a sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a location other than the premises on which the sign is located.

“Parcel” means any quantity of land, consisting of one or more lots, that is capable of being described with such definiteness that its location and boundaries may be established.

“Person” means an individual, corporation, public agency, business trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

“Pinelands” means the Pinelands National Reserve and the Pinelands Area.

“Pinelands Area” means that area designated as such by Section 10(a) of the Pinelands Protection Act.

“Pinelands Development Review Board” means the agency responsible from February 8, 1979 until June 28, 1979 for the review of and action on applications for development in the Pinelands Area which required approvals of other state agencies, except where the Pinelands Commission acted on applications during that time period.

“Pinelands National Reserve” means that area designated as such by Section 3(i) of the Pinelands Protection Act.

“Pinelands Protection Act”. See: N.J.S.A. 13:18A-1 to 29.

“Pinelands resource related use” means any use which is based on resources which are indigenous to the Pinelands including but not limited to forest products, berry agriculture and sand, gravel, clay or ilmenite.

“Plants, threatened or endangered” means a Pinelands plant species whose survival worldwide, nationwide, or in the state is in jeopardy.

“Plat” means one or more maps of a subdivision or a site plan which shows the location, boundaries and ownerships of individual properties.

“Plan” means the Comprehensive Management Plan for the Pinelands.

“Pre-application conference”. See N.J.A.C. 7:50-4.2.

“Preservation Area” means that area so designated by Section 10(b) of the Pinelands Protection Act.

“Protection Area” means all land within the Pinelands Area which is not included in the Preservation Area.

“Public agencies” means the government of the United States of America; the State of New Jersey or any other state; their political subdivisions, agencies or instrumentalities; and interstate and regional agencies exercising sovereign powers of government.

“Public services” means sewer service, gas, electricity, water, telephone, television and other public utilities, roads and streets and other similar services provided or maintained by any public or private entity.

“Public service infrastructure” means sewer service, gas, electricity, water, telephone, cable television and other public utilities developed linearly, roads and streets and other similar services provided or maintained by any public or private entity.

“Recommended management practice” means the management program which employs the most efficient use of available technology, natural, human and economic resources.

“Record tree” means the largest tree of a particular species in New Jersey based on its circumference at 4.5 feet above ground level. A listing of the largest known tree of each species and its location is maintained at the principal office of the Commission.

“Recreational facility, intensive” means any recreational facility which does not satisfy the definition of low intensive recreational facility including but not limited to golf courses, marinas, amusement parks, hotels, and motels.

“Recreational facility, low intensive” means a facility or area which complies with the standards in N.J.A.C. 7:50-5, Part III, utilizes and depends on the natural environment of the Pinelands and requires no significant modifications of that environment other than to provide access, and which has an insignificant impact on surrounding uses or on the environmental integrity of the area. It permits such low intensity uses as hiking, hunting, trapping, fishing, canoeing, nature study, orienteering, horseback riding, and bicycling.

“Recyclable material” means the following materials which would otherwise become solid waste and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products: source-separated non-putrescible metal, glass, paper, plastic containers, corrugated and other cardboard; vegetative waste; waste concrete; asphalt; brick; block; asphalt-based roofing scrap and wood waste; other waste resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings, pavements and other structures; whole trees, tree trunks, tree parts, tree stumps, brush and leaves that are not composted; scrap tires; petroleum contaminated soil that is delivered to a non-mobile in-State asphalt plant, concrete production plant or brick-making facility for incorporation as a raw material; and petroleum contaminated soil that is processed at its point of generation by mobile recycling equipment which produces asphalt, concrete or bricks by incorporating it as a raw material in its mobile production process.

“Recycling center” means a facility designed and operated solely for receiving, storing, processing or transferring recyclable materials, except that recycling center shall not include a manufacturer. For purposes of this definition, processing may include, but is not necessarily limited to, separating by type, grade or color, crushing, grinding, shredding or baling.

“Regulated medical waste” means any waste regulated pursuant to the New Jersey Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq.

“Remediation” means a process to remove or treat a waste or hazardous or toxic substance from soil or water but does not include any subsequent burial or land application of contaminated soil or other solids.

“Resource conservation plan” means a plan, prepared for review by the Soil Conservation District, which details the proposed use of agricultural recommended management practices.

“Resource extraction” means the dredging, digging, extraction, mining and quarrying of sand, gravel, clay, or ilmenite for commercial purposes, not including, however, the private or agricultural extraction and use of extracted material by a landowner.

“Scenic corridors”. See: N.J.A.C. 7:50-6.103.

“Seasonal high water table” means the level below the natural surface of the ground to which water seasonally rises in the soil in most years.

“Sewage sludge” means the solid residue and associated liquid resulting from the physical, chemical or biological treatment of wastewater in a domestic treatment works.

“Sign” means any object, device, display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images. Signs do not include the flag or emblem of any nation, organization of nations, state or city, or any fraternal, religious or civic organizations; merchandise, pictures or models of products or services incorporated in a window display; works of art which in no way identify a product; or scoreboards located on athletic fields.

“Structural alteration” means any change in either the supporting members of a building, such as bearing walls, columns, beams and girders, or in the dimensions or configurations of the roof or exterior walls.

“Structure” means a combination of materials to form a construction for occupancy, use or ornamentation having a fixed location on, above or below the surface of land or attached to something having a fixed location on, above or below the surface of land.

“Subdivision” means the division of a parcel of land into two or more lots, tracts, parcels or other divisions of land. The following shall not be considered subdivisions within the meaning of this Plan, if no development occurs or is proposed in connection therewith:

1. Divisions of property by testamentary or intestate provisions;
2. Divisions of property upon court order; and
3. Conveyances so as to combine existing lots by deed or other instrument.

The term “subdivision” shall also include the term “resubdivision”.

“Submerged land” means those lands which are inundated with water throughout the year.

“Suitable sewage sludge” means sewage sludge in which the concentrations of any metals, measured on a dry weight basis, do not exceed the following limits: 10 parts per million arsenic; 40 parts per million cadmium; 1,000 parts per million chromium; 1,200 parts per million copper; 4,800 parts per million lead; 10 parts per million mercury; 1,250 parts per million nickel; and 2,400 parts per million zinc. The metal concentration limits used to define suitable sewage sludge are identical to those set forth in the Department of Environmental Protection’s September 1993 draft Solid Waste Management State Plan Update for Class B sludge.

“Transfer station or facility” means a facility at which waste is transferred from one waste vehicle to another waste vehicle for transportation to a waste management facility.

"Uncertified municipality or county" means a municipality or county whose master plan and land use ordinances or regulations have not been certified by the Commission under N.J.A.C. 7:50-3.

"Utility distribution lines" means lines, conduits or pipes located in a street, road, alley or easement through which natural gas, electricity, telephone, cable television, water, sewage or storm water discharge is distributed to or from service lines extending from the main line to the distribution system of the building or premises served. Utility distribution lines do not include electric transmission lines.

"Vegetation" means any plant material including grasses, shrubs and trees.

"Vegetative waste" means leaves, grass clippings, twigs, shrubbery and residue from the raising of plants, such as stalks, hulls and leaves. It includes vegetative processing wastes which do not contain non-vegetative additives; and whole trees, branches, tree trunks and stumps processed through a wood chipper.

"Waste" means any hazardous waste, regulated medical waste, garbage, refuse, septage, sludge, discarded materials, and other by-products and substances which become unsuitable for their original purpose, resulting from industrial, commercial and agricultural operations and from domestic and community activities. They shall include solid and liquid waste materials. For purposes of this definition, liquids which are released from a sewage treatment plant or on-site septic waste water treatment system and solid animal and vegetable wastes collected by swine producers licensed by the New Jersey Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms shall not be considered waste.

"Waste derived material" means a waste which has been separated, collected or processed such that it is converted into an economically valuable raw material or product which is not hazardous.

"Waste management facility" means any property, site, system, equipment or structure which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, reclamation, recovery, reuse or disposal of waste. It includes, but is not necessarily limited to, landfills, composting facilities, recycling facilities and centers, incinerators, materials recovery facilities, reclamation facilities, resource recovery facilities, waste reuse facilities and transfer facilities.

"Waste water collection facility" means any part of a system used to carry waste water and includes laterals, mains, trunks, interceptors and other similar facilities.

"Wetlands". See N.J.A.C. 7:50-6.3.

"Wetlands, coastal". See N.J.A.C. 7:50-6.4.

"Wetlands, impaired" means any wetland that meets each of the following three tests:

1. The wetland meets at least one of the following two criteria:

- i. The entire wetland is less than one acre; or
- ii. The overall wetland area is larger than one acre but the portion of the wetland that is to be directly impacted is less than one acre and the impacted area is separated from the remainder of the wetland by a substantial hydrologic barrier; and

2. The wetland meets at least one of the following three criteria:

- i. The wetland is within an area that is predominantly developed, has direct access to a paved public road and is serviced by a municipal wastewater treatment system; or
- ii. The wetland was filled prior to February 8, 1979, the fill is at least one foot in depth, and the seasonal high water table is not within one foot of the altered land surface; or
- iii. The wetland is an actively cultivated non-berry agricultural field which was cleared and in production prior to February 8, 1979; and

3. The wetland is not:

- i. An Atlantic white cedar swamp;
- ii. A wetland which is frequently ponded or flooded for a period of at least seven days during the growing season;
- iii. A herbaceous or shrub dominated wetland type found in naturally occurring circular or nearly circular depressions within upland or wetland complexes;
- iv. Located within 300 feet of a lake, pond, river or permanent stream; or
- v. A wetlands supporting plant species which are designated as endangered pursuant to N.J.S.A. 13:1B-15.151 et seq. or a supporting plant or wildlife species designated as threatened or endangered pursuant to N.J.A.C. 7:50-6.27 and N.J.A.C. 7:50-6.33.

"Wetland soils" means those soils designated as very poorly drained or poorly drained by the Soil Conservation Service of the United States Department of Agriculture, including but not limited to Atsion, Bayboro, Berryland, Colemantown, Elkton, Keansbury, Leon, Muck, Othello, Pocomoke, St. Johns and Freshwater Marsh and Tidal Marsh soil types.

Emergency Amendment R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).

See: 17 N.J.R. 1918(a).

"Certificate of Compliance" added. "Certificate of Conformity" deleted.

Amended by R.1985 d.494, effective September 12, 1985.

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).
 Amended by R.1987 d.436, effective November 2, 1987.
 See: 18 N.J.R. 2239(a), 19 N.J.R. 2010(a).
 Substantially amended.
 Amended by R.1988 d.405, effective September 19, 1988.
 See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).
 Substantially amended.
 Amended by R.1990 d.170, effective March 19, 1990.
 See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).
 Corrected errors in "Parcel" and "Subdivision".
 Amended by R.1992 d.91, effective March 2, 1992.
 See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).
 Amended "Contiguous lands"; added "fair market value" and "wetland, impaired".
 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 "Agricultural employee housing", "Certified county master plan or ordinance", and "Uncertified municipality or county"; added "Local communications facility"; and deleted "Local review officer" and "Notice of filing".
 Amended by R.1996 d.225, effective May 20, 1996.
 See: 27 N.J.R. 3878(a), 28 N.J.R. 2596(a).
 Added "Collection facility", "Domestic treatment works", "Domestic wastewater", "Hazardous or toxic substances", "Hazardous waste", "Household hazardous waste", "Incinerator", "Lawful use", "Record tree", "Recyclable material", "Recycling center", "Regulated medical waste", "Remediation", "Sewage sludge", "Suitable sewage sludge", "Transfer station or facility", "Vegetative waste", "Waste", "Waste derived material", and "Waste management facility"; deleted "Solid waste transfer station" and "Specimen tree"; and amended "Forestry", "Landfill" and "Wetlands, impaired".
 Amended by R.2000 d.272, effective July 3, 2000.
 See: 32 N.J.R. 145(a), 32 N.J.R. 2435(a).
 Inserted "Assisted living facility" and "Continuing care retirement community"; in "Dwelling unit", added a second sentence; and in "Institutional use", deleted a reference to supervised residential institutions, and added a second sentence.
 Amended by R.2001 d.103, effective April 2, 2001.
 See: 32 N.J.R. 4037(a), 33 N.J.R. 1095(a).
 In "Agricultural or horticultural purpose or use", inserted "aquatic organisms as part of aquaculture;" following "fur animals;"; added "Aquaculture" and "Aquatic organisms".

Case Notes

Municipality without plan or ordinance has standing to challenge Commission's developmental approvals. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

Plotted but unbuilt street did not render non-contiguous commonly owned adjoining parcels of land; no hardship waiver from wetlands

requirement. *Bisignano v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 36.

SUBCHAPTER 3. CERTIFICATION OF COUNTY, MUNICIPAL AND FEDERAL INSTALLATION PLANS

PART I—PURPOSE

7:50-3.1 Purpose

(a) The Pinelands Protection Act is a legislative determination that management and protection of the essential character and ecological values of the Pinelands require a regional perspective in the formulation and implementation of land use policies and regulations. The Act also recognizes, as does this Plan, that local government participation in the management process is fundamental to achieving the goals and objectives of the Act. The Act and this Plan contemplate that local governments will be the principal management entities implementing the Plan, with the Pinelands Commission providing technical assistance to local authorities, monitoring development review and updating the Plan.

(b) The Act also contemplates that the Commission will achieve local participation in the implementation program and oversee implementation of the Plan. The Act provides for certification of local master plans and land use ordinances by the Commission, after which the certified plans and ordinances act as the governing regulations for the municipalities. However, if a local government should choose not to participate in the implementation program, then the Act requires that the Commission adopt and enforce such rules and regulations as are necessary to implement the minimum standards of this Plan.

(c) This Plan is intended, therefore, to serve two functions: as a general guide for local authorities in preparing master plans and land use ordinances for certification by the Commission, and as a planning and regulatory mechanism that can be adopted and enforced by the Commission if a county or municipality fails to secure certification.

7:50-3.83 Certification standards

(a) The Commission may certify a county regulation or municipal ordinance which contains an alternative permitting program only if the following standards are met, taking into account the type, magnitude, location or complexity of development for which the program applies:

1. The county or municipality has demonstrated capability to implement the program in an efficient and effective manner;
2. The program, including the procedures to be followed, standing alone or in combination with activities continuing to be administered by the Commission, ensures that application requirements and permit decisions are adequate to determine compliance with the relevant criteria and standards of N.J.A.C. 7:50-5 and 6 and the provisions of the relevant certified local regulation or ordinance;
3. The program ensures that adequate, qualified and capable personnel will administer the program and that safeguards exist to ensure that (a)2 above is met in the event of personnel changes;
4. The program ensures that applicants receive any necessary waivers of strict compliance from the Pinelands Commission; and
5. Either the program allows for Commission review of local approvals pursuant to N.J.A.C. 7:50-4.31 et seq. or includes an alternative procedure to ensure that periodic review of permits by the Commission may be conducted to assess consistency of the program with the standards of N.J.A.C. 7:50-5 and 6 and the provisions of the relevant certified local regulation or ordinance. The alternative procedure shall also include a requirement for all local approvals to be subject to review by the Commission pursuant to N.J.A.C. 7:50-4.31 through 4.42 in the event that the Executive Director makes a recommendation to the Commission pursuant to N.J.A.C. 7:50-3.85. In that event, the procedures for the review of local approvals set forth in N.J.A.C. 7:50-4.31 through 4.42 shall remain in effect until such time as the procedures in N.J.A.C. 7:50-3.61 through 3.65 have been followed.

New Rule, 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).

7:50-3.84 Assistance and monitoring

(a) The Executive Director is authorized to provide such assistance to counties and municipalities as he or she deems necessary and appropriate and within the means of the Commission to help implement and maintain an alternative permitting program.

(b) The Executive Director shall report on each alternative permitting program to the Commission and the appropriate county or municipality in accordance with a specific review program approved by the Commission concurrent with its certification of the alternative permitting program.

Such report shall describe the elements of the permitting program and evaluate their operation according to the standards of N.J.A.C. 7:50-3.83.

New Rule, 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).

7:50-3.85 Failure to implement

Should the Executive Director recommend that the Commission revoke, suspend, or modify its certification of a county regulation or municipal ordinance which institutes an alternative permitting program because one or more of the certification standards is not being adequately fulfilled, the procedures set forth in N.J.A.C. 7:50-3.61 through 3.65 shall be followed. In such cases, the revocation, suspension or modification shall affect the alternative permitting program and procedures and not the certification status of the substantive provisions of the certified county regulation or municipal land use ordinance, unless such county or municipality willfully ignores or refuses to implement such revocation, suspension or modification order.

New Rule, 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).

SUBCHAPTER 4. DEVELOPMENT REVIEW**INTRODUCTION**

The Pinelands Protection Act charges the Pinelands Commission with ensuring that the minimum standards, goals and objectives of this Plan are implemented and enforced. The procedures by which the Commission will discharge its development review responsibilities are set out in this subchapter, according to whether the applicant is a public or private entity and whether the proposed activity is located in a certified or uncertified municipality. Part I establishes a set of uniform application requirements which include a pre-application conference which is designed to afford an applicant the opportunity to informally resolve preliminary application problems and to determine the extent and form of the information and documentation which must be submitted in the application. Part I also establishes a uniform procedure for determining when an application for development approval is complete. N.J.A.C. 7:50-4 prescribes notice and public hearing requirements for development review as well as for the certification of municipal or county plans, regulations and ordinances (N.J.A.C. 7:50-3), the review of comprehensive plans submitted pursuant to N.J.A.C. 7:50-5.4, inter-governmental agreements (N.J.A.C. 7:50-4.52) and certain resource extraction issues (N.J.A.C. 7:50-6.64) or amendments to the Plan itself (N.J.A.C. 7:50-7).

Part II of this subchapter establishes the procedures for development review in uncertified jurisdictions. Part III of this subchapter sets forth the procedures for development

review in certified areas, including the Commission's authority to review development approvals at the local level. It is recognized that the specific provisions of this Part can be refined at the local level provided that the objective and goals the procedural requirements represent will be achieved. In addition, the procedures may be modified through the implementation of alternative permitting programs as provided in N.J.A.C. 7:50-3.81 through 3.85. Part IV contains those procedures applicable to review of public development in the Pinelands Area.

In addition, Part V of this subchapter contains provisions for the procedures to be employed in consideration of applications to waive strict compliance with the standards of the Plan. If a waiver is granted by the Commission, the applicant may proceed with the development review procedures in Part III, if in a certified area, or Part II, if in an uncertified area, or Part IV, if it is an application by a public agency.

Part VI sets forth a procedure whereby any person may secure a clarification or interpretation of the meaning or applicability of any provision of this Plan. Part VII provides for coordinated permitting with other state agencies.

Part VIII sets forth the procedures to follow if any applicant or other aggrieved person wishes to appeal a decision by the Executive Director or the Commission.

PART I—UNIFORM PROCEDURES

7:50-4.1 Applicability

(a) For the purposes of this subchapter only, the following shall not be considered development except for development of any historic resource designated by the Pinelands Commission pursuant to N.J.A.C. 7:50-6.154:

1. The improvement, expansion, or reconstruction within five years of destruction or demolition, of any single family dwelling unit or appurtenance thereto;
2. The improvement, expansion, construction or reconstruction of any structure accessory to a single family dwelling;
3. The improvement, expansion, construction or reconstruction of any structure used exclusively for agricultural or horticultural purposes;
4. The construction, repair or removal of any sign, except for the construction or replacement of any off-site commercial advertising sign;
5. The repair of existing utility distribution lines;
6. The installation of utility distribution lines, except for sewage lines, to serve areas which are effectively developed or development which has received all necessary approvals and permits;
7. The clearing of less than 1,500 square feet of land;

8. The construction of any addition or accessory structure for any non-residential use or any multi-family residential structure provided said addition or structure will be located on or below an existing impermeable surface and the existing use is served by public sewers and said addition or structure will cover an area of no more than 1,000 square feet;

9. The demolition of any structure less than 50 years old;

10. The repair or replacement of any existing on-site waste water disposal system;

11. The repaving of existing paved roads, provided no increase in the paved width of said roads will occur;

12. The clearing of land solely for agricultural purposes;

13. Fences, provided no more than 1,500 square feet of land is to be cleared;

14. Above-ground telephone equipment cabinets;

15. Tree pruning;

16. The following forestry activities:

i. Normal and customary forestry practices on residentially improved parcels of land that are five acres or less in size;

ii. Tree harvesting, provided that no more than one cord of wood per five acres of land is harvested in any one year and that no more than five cords of wood are harvested from the entire parcel in any one year;

iii. Tree planting, provided that the area to be planted does not exceed five acres in any one year, no soil disturbance occurs other than that caused by the planting activity and no trees other than those authorized by N.J.A.C. 7:50-6.25 are to be planted; and

iv. Forest stand improvement designed to selectively thin trees and brush, provided that no clearing or soil disturbance occurs and that the total land area on the parcel in which the activity occurs does not exceed five acres in any one year;

17. Prescribed burning and the clearing and maintaining of fire breaks; or

18. Normal and customary landscape plantings, unless a landscaping plan is required pursuant to N.J.A.C. 7:50-6.24.

(b) As of January 14, 1991, the provisions of this Plan shall apply to any proposed development or portion thereof which received approval from the Pinelands Commission pursuant to the Interim Rules and Regulations or which received approval from the Pinelands Development Review Board and said approvals expired as of that date or will expire subsequent to that date, without exception, unless the requirements in (b)1, 2 and either 3 or 4 below have been met and continue to be met:

1. All necessary municipal planning board or board of adjustment approvals were obtained by January 14, 1991;

2. No additional approval, extension, renewal or any other action whatsoever is required or received from either the municipal planning board or board of adjustment after January 14, 1991; and either

3. All necessary approvals, including all necessary construction permits, were obtained by January 3, 1995 or within 18 months of the expiration of any tolling pursuant to N.J.S.A. 40:55D-21 of the running of the period of the planning board or board of adjustment approval pursuant to N.J.S.A. 40:55D-47 or 40:55D-52, whichever is later; and no construction permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after the latter of said dates; or

4. All necessary approvals, including all necessary construction permits, are obtained by December 31, 1996 and no construction permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after said date, provided that the lot for which the approvals and permits are issued either fronts on a road that prior to January 3, 1995 was improved at least to the extent of the installation of a subbase or had a foundation or septic system lawfully constructed on said lot prior to January 3, 1995.

(c) The Commission shall determine that an application for the improvement or reconstruction of a single family dwelling or appurtenance thereto five years or more after destruction or demolition of the single family dwelling is in conformance with this Plan, provided the applicant demonstrates that:

1. The improvement or reconstruction does not involve a historic resource designated by the Commission pursuant to N.J.A.C. 7:50-6.154;

2. The improvement or reconstruction is performed within 25 years of the destruction or demolition of a single family dwelling unit or appurtenance thereto;

3. The foundation of the demolished or destroyed single family dwelling unit is intact, will be used for the development and will constitute the footprint of the improvement or reconstruction; and

4. The destroyed or demolished building was a single family dwelling.

(d) Nothing herein shall preclude any local or state agency from reviewing, in accordance with the provisions of any applicable ordinance or regulation, any proposed development which does not require an application to the Pinelands Commission pursuant to (a) or (b) above or which is determined by the Commission to be in conformance with this Plan pursuant to (c) above.

Amended by R.1988 d.405, effective September 19, 1988.

See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

In (a)7, added "or any multi-family residential structure" and "or below".

Amended by R.1993 d.211, effective May 17, 1993.

See: 25 N.J.R. 225(a), 25 N.J.R. 2119(a).

Established an expiration date coincident with P.L. 1993 c.82 (Permit Extension Act).

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).

In (b)3 changed the approval date; rewrote (b)4.

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 tree pruning, forestry activities and prescribed burning and fire breaks.

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

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

Added new (c); recodified former (c) as (d) and inserted "or which is determined by the Commission to be in conformance with this Plan pursuant to (c) above" following "(a) or (b) above".

7:50-4.2 Pre-application conference; application requirements

(a) Pre-application conference.

1. Request: Any applicant for any application provided for in this Plan may request an informal conference with the Executive Director prior to filing an application. However, an applicant seeking approval pursuant to the provisions of Part III of this subchapter is encouraged to discuss the application with the appropriate officials in the certified municipality prior to requesting a conference with the Executive Director. All requests for a pre-application conference shall include the name and address of the applicant, the legal description and street address, if any, of the parcel proposed for development, a brief description of the nature of any proposed development and the nature of the approval or waiver sought by the applicant.

2. Scheduling of conference: Within 15 days following receipt of any request for a pre-application conference, the Executive Director shall schedule a pre-application conference and notify the applicant of the time, date and location of the conference and specify any additional information which the Executive Director determines is necessary.

3. Conduct and purpose of conference: The Executive Director shall conduct the pre-application conference. The conference shall be informal and its purpose shall be to openly consider the proposals, views and concerns of the applicant and the Commission and to determine whether any of the application requirements of (b) below should be waived or any additional information should be required.

4. Pre-application conference orders: At the conclusion of the pre-application conference, the Executive Director shall inform the applicant in writing whether any of the application requirements contained in (b) below are to be waived or any additional information is to be submitted.

5. Representations of the Executive Director: No representation made by the Executive Director or any member of the staff designated by the Executive Director

during the course of any pre-application conference shall be binding on the Commission or the Executive Director with respect to any application subsequently submitted.

(b) Application requirements.

1. General requirements. All applications shall be submitted to the Executive Director at the principal office of the Commission in such form and number as he shall from time to time establish. The filing of an application shall be deemed to be authorization for the Executive Director or his staff to inspect the parcel which is the subject of the application. The application shall be accompanied by a sworn statement that the requirements of (b)2 below have been satisfied.

2. Notice: The applicant shall provide notice of all applications for development in uncertified municipalities, applications for waivers and applications for letters of interpretation filed with the Commission to the municipal and county clerk, and the environmental commission, if any, of the municipality.

3. Waiver of application requirements following pre-application conference: The Executive Director may waive or modify any of the application requirements contained in this subsection if, after a pre-application conference held pursuant to (a) above, he determines that any required information is either not relevant or not necessary to assure proper consideration of any application. Such waiver or modification shall be made in a pre-application order issued pursuant to (a)4 above.

4. Application for approval of minor development: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for approval of minor development shall include at least the following information:

- i. The applicant's name and address and his interest in the subject parcel;
- ii. The owner's name and address, if different from the applicant's, and the owner's signed consent to the filing of the application;
- iii. The legal description, including block and lot designation and street address, if any, of the subject parcel;
- iv. A description of all existing uses of the subject parcel;
- v. A brief written statement generally describing the proposed development;
- vi. A USGS Quadrangle map, or copy thereof, and a copy of the municipal tax map sheet on which the boundaries of the subject parcel and the Pinelands management area designation and the municipal zoning designation in a certified municipality are shown;

vii. A plat or plan showing the location of all boundaries of the subject parcel, the location of all proposed development, and existing or proposed facilities to provide water for the use and consumption of occupants of all buildings and sanitary facilities which will serve the proposed development. The following information shall be included with respect to existing or proposed sanitary facilities:

(1) On-Site Treatment Facilities: Location, size, type and capacity of any proposed on-site wastewater treatment facilities; and

(2) Soil Borings and Percolation Tests: If on-site sewage disposal is proposed, results of soil borings and percolation tests in accordance with N.J.S.A. 58:11-23 et seq. and the regulations adopted pursuant thereto shall be submitted at suitable location with a tract map showing location, logs, elevations of all test holes, indicating where ground water was encountered, estimating the seasonal high water table and demonstrating that such facility is adequate to meet the water quality standards contained in subchapter 6 of this Plan.

viii. A location map, including the area extending at least 300 feet beyond each boundary of the subject parcel, showing ownership boundary lines, the boundary of the proposed development, owners of holdings adjoining and adjacent to the subject parcel, existing facilities, buildings and structures on the site, all proposed development, wetlands, streams (including intermittent streams), rivers, lakes and other waterbodies and existing roads;

ix. A soils map including a county soils survey which conforms to the guidelines of the United States Department of Agriculture Soil Conservation Service, showing the location of all proposed development; and

x. A map showing existing vegetation, identifying predominant vegetation types in the area and showing proposed landscaping of the subject parcel, including the location of the tree line before and after development and all areas to be disturbed as a result of the proposed development.

5. Application for approval of major development: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for approval of major development, except for forestry and resource extraction operations, shall include at least the following information:

- i. All information required by (b)4i through iv;
- ii. A brief written statement generally describing the proposed development; the number of total units; and the floor area of all units to be included in the proposed development;

iii. A written statement addressing each of the standards or guidelines set forth in subchapters 5 and 6 of this Plan; and stating specifically how the proposed development meets each such standard or guideline;

iv. A plat or plan showing the location of all boundaries of the subject parcel, the location of all proposed development, and existing or proposed facilities to provide water for the use and consumption of occupants of all buildings and sanitary facilities which will serve the proposed development. The following information shall be included with respect to existing or proposed wastewater treatment facilities:

(1) Sanitary Sewer Distribution: Location, size and direction of flow of all existing and proposed sanitary sewer lines and pumping stations serving the proposed development and all existing and proposed connections to existing facilities;

(2) On-Site Treatment Facilities: Location, size, type and capacity of any proposed on-site wastewater treatment facilities including, except with respect to discharges into an individual residential septic system, quantities, composition, proposed pretreatment and ultimate means of disposal;

7:50-6.48 through 7:50-6.50 (Reserved)**PART V—AGRICULTURE****7:50-6.51 Purpose**

Agricultural activity is an important element of the Pinelands economy and plays a significant role in the conservation of the essential ecological character of the Pinelands. In particular, the dependency of berry agriculture on pristine water has contributed greatly to the ecological stability of the Pinelands. However, the long-term vitality of agricultural activity depends upon protection from competing land uses and continued use of agricultural practices that conserve the soil and water resources of the Pinelands.

7:50-6.52 Agricultural management program

In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal master plan and land use ordinance must contain a program to protect the integrity of agriculture in the Pinelands. It is not necessary that the municipal program incorporate the literal terms of this Part; rather, a municipality may adopt alternative and additional techniques which will achieve equivalent protection of agriculture as would be achieved under the provisions of this Part.

7:50-6.53 General agricultural standards

(a) All agricultural activities and fish and wildlife management activities, including the preparation of land and the planting, nurturing and harvesting of crops, shall be carried out in accordance with recommended management practices established for the particular agricultural activity by the New Jersey Department of Agriculture, the Soil Conservation Service, and the New Jersey Agricultural Experimental Station at Rutgers University.

(b) In Agricultural Production Areas and Special Agricultural Production Areas a Resource Conservation Plan shall be prepared by the operator of every agricultural use, or the appropriate Soil Conservation District, located in an area which has been designated by any agency of federal, state, or local government as having substandard surface or ground water. If prepared by the operator, such plan shall be submitted to the Soil Conservation District for review. The Resource Conservation Plan shall be reviewed, updated and revised as necessary and shall provide for the use of recommended management practices as found in, but not limited to, the following publications:

1. Erosion and runoff: Soil Conservation Service Technical Guide;
2. Animal waste: Soil Conservation Service Animal Waste Management Field Manual; and
3. Fertilizers and Pesticides: Rutgers University, Cook College, Cooperative Extension Service Annual Recommendations.

(c) Subject to the minimum standards set forth in N.J.A.C. 7:50-5 and 6, the following agriculturally-related land uses that involve the management of waste may be permitted by the State, a county or a municipality:

1. Vegetative waste landfills and vegetative waste composting facilities that are ancillary to an agricultural operation; and
2. The land application at accepted agronomic rates of liquid or dewatered sludge, sludge derived products, composted vegetative waste, vegetative waste and animal manure as part of an agricultural operation.

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

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

Added (c).

7:50-6.54 Exemption from nuisance ordinances ("Right-to-Farm")

As an element of its agricultural program each municipality shall exempt agricultural operations in any Agricultural Production or Special Agricultural Production Area from all municipal ordinances and regulations which inhibit efficient crop production, including but not limited to ordinances and regulations imposing time limits on operations, dust limits and odor restrictions, except those ordinances and regulations which are strictly necessary for the maintenance of public health.

7:50-6.55 through 7:50-6.60 (Reserved)**PART VI—RESOURCE EXTRACTION****7:50-6.61 Purpose**

Sand, gravel, clay, and ilmenite are important Pinelands resources that have been commercially utilized in the past. Such activity can provide a substantial economic benefit to landowners; however, it is critical that such activities do not conflict with other values of the Pinelands. This Part is intended to ensure that extraction activities do not adversely affect long-term ecological values in the Pinelands, and that abandoned extraction sites will be restored so that they will be a functional part of the Pinelands ecosystem.

7:50-6.62 Resource extraction management program

In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal master plan and land use ordinance must contain a program to manage resource extraction operations. It is not necessary that the municipal program incorporate the literal terms of the program set out in this Part; rather, a municipality may adopt alternative and additional techniques which will achieve equivalent protection of the Pinelands as would be achieved under the provisions of this Part.

7:50-6.63 General limitations

(a) Except as expressly authorized in this Plan, the extraction or mining of mineral resources other than sand, gravel, clay and ilmenite is prohibited.

(b) Nothing in this Part shall be construed to authorize resource extraction activities without receiving permits pursuant to this Plan or from complying with the standards of this subchapter.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Law Review and Journal Commentaries

Pinelands—Municipal Land Use. P.R. Chenoweth, 137 N.J.L.J. No. 18, 53 (1994).

Case Notes

Requiring owner of property to register preexisting nonconforming use for sand and gravel extraction did not violate due process. *Uncle v. New Jersey Pinelands Com'n*, 275 N.J.Super. 82, 645 A.2d 788 (A.D. 1994).

Pinelands Protection Act and regulations superceded Municipal Land Use Law. *Uncle v. New Jersey Pinelands Com'n*, 275 N.J.Super. 82, 645 A.2d 788 (A.D.1994).

7:50-6.64 Time limit and scope of resource extraction permits

(a) No permit authorizing resource extraction shall be issued for any period exceeding two years unless a program extending the duration of such permits has been established and certified by the Commission pursuant to N.J.A.C. 7:50-3.39. Such a program may allow permits authorizing resource extraction to be issued for periods exceeding two years, provided that:

1. No permit authorizing resource extraction shall be issued for any period exceeding five years;

2. Every such permit shall be issued subject to the following conditions to ensure conformance with the approved permit:

i. Operators shall be required to certify, in writing and on an annual basis, to the satisfaction of the local permitting agency and the Commission that all mining, restoration and other activities have been and continue to be conducted in accordance with the approved permit;

ii. If the local permitting agency or the Executive Director determines that any activity deviates from an approved permit, the operator shall be immediately notified of the deviation;

iii. The notice shall state the nature of the deviation, order the action necessary to correct it, and set forth the date, time and location of a meeting to be held within 10 days of the notice at which the operator **shall present all relevant information** concerning the deviation and the action taken or to be taken to correct it;

iv. The order to take corrective action shall specify any activity which must be immediately ceased to prevent direct or indirect aggravation of the deviation or to avoid a danger to the public health, safety or welfare. Such cessation shall continue until the deviation has been resolved to the satisfaction of the local permitting agency and the Executive Director or until an agreement to resolve the deviation has been reached;

v. Any interested person who is aggrieved by any determination of the Executive Director pursuant to (a)2iii or iv above may, within 15 days, appeal the Executive Director's determination to the Pinelands Commission as provided in N.J.A.C. 7:50-4.91(a). The Executive Director shall thereafter conduct a hearing pursuant to N.J.A.C. 7:50-4.3, unless the applicant requests a hearing before an Administrative Law Judge in which case the matter shall be referred to the Office of Administrative Law pursuant to N.J.A.C. 7:50-4.91(b), and submit a hearing report to the Pinelands Commission for a final determination;

vi. Failure to resolve a deviation or to adhere to the terms and conditions of any agreement to resolve a deviation shall constitute sufficient cause for revocation of the permit. Either the local permitting agency or the Executive Director may institute such proceedings. The local permitting agency shall institute such proceedings in accordance with its procedures relative to resource extraction permit approvals. The Executive Director shall institute revocation proceedings in accordance with the procedures of N.J.A.C. 7:50-4.41 and 4.42.

vii. Notwithstanding (a)2i through vi above, permit provisions may also be enforced either by the Pinelands Commission pursuant to the provisions of N.J.A.C. 7:50-8 or by the local permitting agency instituting appropriate enforcement proceedings.

(b) Nothing in (a) above shall be construed to prohibit any person from securing additional permits provided that the requirements of this Part are otherwise met.

(c) Municipalities may approve otherwise permitted structures and uses that are clearly accessory to a resource extraction operation and necessary for on-going operations without the need for a certificate of filing issued pursuant to N.J.A.C. 7:50-4.34, provided that all such structures or uses will be located in a discrete, disturbed area that is encompassed within or in close proximity to the processing area that supports the resource extraction operation. The area must be delineated as part of a resource extraction application that has been submitted to and approved by the local permitting agency and reviewed pursuant to N.J.A.C. 7:50-4.37 or 4.40. Any such local approval shall be subject to review by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.37 and 4.40.

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