

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Chapter 50, originally Pinelands Environmental Council, was repealed by R.1980 d.433, effective October 7, 1980.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 Chapter 50, Pinelands Comprehensive Management Plan, adopted as R.1981 d.13, superseded the interim rules at N.J.A.C. 7:1G, adopted by the Pinelands Commission as R.1980 d.370, effective September 23, 1980.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

(a) 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 calculated according to the fee schedule set forth in (b) through (l) below. No application filed pursuant to this Plan shall be reviewed or considered complete unless all fees required by this Part have been paid.

(b) The application fee for a residential development application submitted pursuant to N.J.A.C. 7:50-4.14 or 4.33 shall be calculated as follows:

1. There shall be no fee for a residential development consisting of only:

i. One dwelling unit on an existing lot of record as of April 5, 2004, provided that the applicant has not submitted another application for residential develop-

ment involving a single dwelling unit within the previous 12-month period;

ii. A two lot subdivision which results in the creation of only one vacant lot and proposes the development of only one new dwelling unit; or

iii. The demolition and reconstruction of one residential dwelling unit; and

2. The fee for all other residential developments shall be calculated based on the number of proposed dwelling units or lots, including those to be utilized for stormwater facilities, open space, recreational facilities or other accessory elements of a residential development, according to the following:

i. \$125.00 per dwelling unit or lot for the first 50 units or lots;

ii. \$100.00 per dwelling unit or lot for units/lots 51 through 150; and

iii. \$75.00 per dwelling unit or lot for all units/lots in excess of 150.

(c) The application fee for a commercial, institutional, industrial or other non-residential development application submitted pursuant to N.J.A.C. 7:50-4.14 or 4.33 shall be \$200.00 or the amount calculated in accordance with the following based on typical construction costs, whichever is greater, except as provided in (c)1 through 7 below: one percent of construction costs for the first \$500,000 of the total construction cost; three-fourths percent of construction costs for the portion of the construction costs between \$500,000 and \$1 million; and one-half percent of construction costs for the portion of the construction costs in excess of \$1 million. Typical construction costs shall include all costs associated with the development for which the application is being submitted, including, but not limited to, site improvement and building improvement costs, but shall not include interior furnishings, atypical features, decorative materials or other similar features. For fees calculated based on the percentage of construction costs, such costs shall be supported by the sworn statement of a licensed architect, licensed engineer, or other qualified individual, if an architect or engineer has not been retained for the project, as to the expected construction costs.

1. For an off-road vehicle event conducted in accordance with N.J.A.C. 7:50-6.143(a)4, the fee shall be \$5.00 per mile of the route proposed or a minimum of \$250.00;

2. For a forestry application or renewal application, submitted pursuant to N.J.A.C. 7:50-6.43(b) or (c), for forestry activities involving 10 or more acres, the fee shall be \$5.00 per acre that is subject to the forestry activities;

3. For the development of a golf course, the fee shall be \$100.00 per acre devoted to the golf course facility,

including, but not limited to, the golf course and associated forested areas, club house, putting greens, driving range, parking areas, locker rooms and accessory buildings, such as rest rooms, maintenance buildings, and other recreational areas depicted on the site plan submitted as part of the application. All areas associated with the planning, construction, operation or maintenance of a golf course facility, including those areas not directly associated with golfing or a recreational activity, must be included in the acreage used to calculate the applicable application fee for the development of a golf course;

4. For a proposed linear development, the application fee shall be \$100.00 per acre of all land included in the right of way of the proposed linear development project plus \$100.00 per acre located outside of the right of way that will be disturbed as part of a linear development project or a minimum of \$250.00. "Linear development" means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission or distribution lines, which have the basic function of connecting two points, the rights-of-way therefor, and any accessory structures or uses directly associated therewith. Linear development shall not include residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads;

5. For a resource extraction permit application or permit renewal application, the application fee shall be \$500.00 plus \$10.00 per acre to be mined within each permit period;

6. For a change of use with no additional development or home occupations, the application fee shall be \$200.00; and

7. For an application for a subdivision or resubdivision only, with no other development, the application fee shall be calculated according to the formula in (b)2 above, based on the total number of lots which will exist following the subdivision or resubdivision regardless of the number of lots that existed prior to the subdivision.

(d) The application fee for mixed residential and non-residential development shall be the sum of the residential and non-residential development fees as calculated according to the relevant fee schedules in (b) and (c) above.

(e) The application fee required at the time of submission of a development application in accordance with (a) through (d) above shall not exceed \$50,000.

(f) An application fee in accordance with (a) through (d) above shall be submitted for an application where a certificate of filing or a certificate of completeness has not been issued pursuant to N.J.A.C. 7:50-4.34 or 4.15 and either no direct

activity in furtherance of the Commission's application process has occurred for a period of two years or there has been a significant or material change in the proposed development that is the subject of the application.

(g) The application fee for a development application submitted by a qualified tax-exempt religious association or corporation or a qualified tax exempt non-profit organization shall be \$500.00 or the amount calculated in accordance with (a) through (d) above, whichever is less. For purposes of this provision, the term "qualified tax-exempt religious association or corporation" means a religious association or corporation which is exempt from Federal income taxation under Sections 501(c)(3) or (d) of the Internal Revenue Code, Title 26, Subtitle A, Chapter 1, Subchapter F, Part I, Sections 501(c)(3) and (d). For purposes of this provision, the term "qualified tax-exempt non-profit organization" means a non-profit organization which is exempt from federal income taxation under Sections 501(c)(3) of the Internal Revenue Code, Title 26, Subtitle A, Chapter 1, Subchapter F, Part I, Sections 501(c)(3).

(h) For a Letter of Interpretation or Amended Letter of Interpretation pursuant to N.J.A.C. 7:50-4, Part VI, which does not involve the allocation of Pinelands Development Credits, the application fee shall be \$200.00.

(i) The application fee for the review and processing of a request for a letter stating information that is available in a municipal land use ordinance or stating other information readily available to the public from a source other than the Pinelands Commission shall be \$100.00.

(j) The application fee for an Amended Certificate of Filing shall be \$150.00 or 10 percent of the original permit fee, whichever is greater, with a maximum fee of \$2,000. If a request for an Amended Certificate of Filing is submitted more than five years following the issuance of the original Certificate of Filing, the fee shall be calculated as if a new application had been submitted.

(k) The fee for the review of any study or survey prior to the submission of a development application pursuant to N.J.A.C. 7:50-4.14 or 4.33, including, but not limited to, any threatened or endangered species protocol, threatened or endangered species protocol results or a cultural resource survey, shall be one-third of the estimated application fee calculated in accordance with (b) through (d) above. Any fee submitted in accordance with this provision shall be deducted from the application fee due at the time of submission of the application for the proposed development for which the study or survey was prepared or conducted.

(l) Notwithstanding any other provision of this section, if the Executive Director determines that a development application, excluding an application for a minor residential development, involves complex issues which, either, because of the need for specialized expertise, necessitates the

retention of consultants to assist in the review of such application, or will require considerable staff review:

1. The Executive Director shall notify the applicant of such determination and the escrow amount to be submitted;

2. Monies submitted pursuant to (l)1 above shall be held in an escrow account and shall be used by the Commission to reimburse any costs it incurs either as a result of retaining any consultants for that application or for the considerable amount of staff time required to review such application;

3. Should the funds held in escrow be insufficient to defray such costs, the Executive Director will provide the applicant with a statement of the account and will request from the applicant the additional amount estimated to be required for the escrow account;

4. At the time that final municipal approval takes effect pursuant to N.J.A.C. 7:50-4, Part III, the Executive Director shall provide a statement of the account to the applicant and any funds remaining in the escrow account shall be returned to the applicant;

5. No additional review of the application will occur until the escrow amount requested pursuant to (l)1 or 3 above has been submitted;

6. An applicant who objects to the escrow amount requested pursuant to (l)1 or 3 above, shall notify the Executive Director, in writing, within 15 days of receipt of the Executive Director's determination, of such objection. Depending upon the basis for the escrow amount, the applicant shall submit with this notification either:

i. An estimate from a qualified professional, having the requisite knowledge and expertise required to address the issues raised by the application, to support the applicant's estimation of the appropriate amount to be assessed; or

ii. An estimate of the number of hours the applicant believes are required to complete a review of the submitted application and the rates and qualifications of professionals with the knowledge and expertise required to review such application; and

7. The Executive Director shall review the applicant's submission and notify the applicant within 10 days thereof, of the amount to be provided.

Amended by R.2004 d.136, effective April 5, 2004.

See: 35 N.J.R. 4411(a), 36 N.J.R. 1804(a).

Rewrote the section.

Administrative correction.

See: 36 N.J.R. 2240(a), 3117(a).

Amended by R.2006 d.220, effective June 19, 2006.

See: 38 N.J.R. 44(a), 38 N.J.R. 2708(a).

Substituted "(l)" for "(i)" in (a); rewrote (b) and (c); inserted "application" in (d); deleted (f); inserted present (e) through (g); recodified former (e) as (h), (g)-(h) as (i)-(j); inserted "application" in (j), in the first sentence; added (k); recodified former (i) as (l); and rewrote (l).

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 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.

“Alternate design pilot program treatment system” means an individual or community on site waste water treatment system that has the capability of providing a high level of treatment including a significant reduction in the level of total nitrogen in the wastewater and is one of the following systems, as described in the report prepared by Anish R. Jantrania, Ph.D., P.E., M.B.A. entitled “Performance Expectations for Selected On-site Wastewater Treatment Systems,” dated December, 2000, incorporated herein by reference, and available at the principal office of the Commission, that have been authorized for use for residential development by the pilot program established in N.J.A.C. 7:50-10 Part IV:

1. Ashco RFS III;
2. FAST;
3. Cromaglass;
4. Bioclere; or
5. Amphidrome.

“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.

“Consumer electronics” means any appliance used in the home or business that includes circuitry and contains hazardous substances. It includes the components and sub-assemblies that collectively make up the electronic products and may, when individually broken down, include batteries, mercury switches, capacitors containing PCBs, cadmium plated parts and lead or cadmium containing plastics. Examples include, but are not limited to, computers, printers, copiers, telefacsimiles, VCRs, stereos, televisions, and telecommunication devices.

“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;

"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. For agricultural or horticultural purpose or use, parcel includes noncontiguous lands in common ownership which have an active production history as a unit or where a farm management plan has been prepared which demonstrates that the parcels will be farmed as a unit.

"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 the extracted material on the same parcel by the landowner.

"Resource extraction, agricultural" means those resource extraction activities accessory to an existing agricultural or horticultural use which meet the standards contained in N.J.A.C. 7:50-6.55 or which do not require an application to the Pinelands Commission pursuant to N.J.A.C. 7:50-4.1(a)19.

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

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.

(3) Soil Borings and Percolation Tests: If on-site sewage disposal is proposed, results of soil borings and percolation tests in accordance with the requirements of N.J.S.A. 58:11-23 et seq. and the regulations adopted pursuant thereto shall be submitted with tract map showing location, logs and elevations of all test holes, indicating where ground water was encountered, and estimating the seasonal high water table; and

(4) The proposed hours and days of operation and number of employees of any non-residential facility.

v. A project site base map, at a scale of no less than one inch to 200 feet and including the areas 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, if any, 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;

vi. A soils map including a county soils survey in conformance with the guidelines of the United States Department of Agriculture Soil Conservation Service, at the same size and scale as the project site base map, delineating all soil series at an appropriate level of detail and, in sewered projects, sufficient soil borings to confirm the accuracy of the soils map;

vii. A slope map, at the same size and scale as the project site base map, indicating contour elevations at two foot intervals;

viii. A resource capability map, at the same size and scale as the project site map, indicating the cumulative limitations to development due to the standards and the guidelines contained in this Plan. This map should be prepared prior to any engineering, site layout or design work;

ix. A proposed development map, at the same size and scale as the project site base map, showing areas of proposed development; the location of surveyor's tape or other markers placed on the site delineating the boundaries of the parcel; the number of residential lots and other type of development in each general area, all proposed lot lines; areas proposed to be retained as open space; the applicable land use areas boundaries; the location of proposed facilities such as dams and impoundments, public or private water systems, storm drainage systems, public or private sewerage systems, public utilities, soil erosion and sedimentation control devices, industrial waste water discharges and solid waste disposal areas; sources of air pollution; the proposed primary road network; all areas to be disturbed by construction activities;

x. A stormwater management facilities map, at the same size and scale as the project site base map, showing existing topography at minimum one foot contour intervals, storm water drainage patterns and calculations and the applicant's proposed plan to manage stormwater, which shall contain results of all permeability tests and soil test pit logs performed in each recharge area including the estimated seasonal high water table. Details of all stormwater management facility designs, during and after construction, including discharge provisions, discharge capacity for each outlet at different levels of detention (if applicable) and emergency spillway provisions with the maximum discharge capacity of each spillway shall also be provided. In addition, a land use planning and source control plan shall be submitted, demonstrating how development of the parcel will comply with the standards of N.J.A.C. 7:50-6.84(a)6 through use of nonstructural techniques and source controls to the maximum extent practical. A detailed narrative and associated illustrative maps and/or plans which specifically address the nine nonstructural strategies for stormwater management identified in N.J.A.C. 7:8-5.3 must be included;

xi. Legal instruments evidencing the applicant's right, title or interest in any Pinelands Development Credits and any existing or proposed deed restrictions or easements relating to the subject parcel;

xii. A landscaping schedule and plan on a map, of the same size and scale as the project site base map, identifying the species of plants to be installed and the quantity and location of all plants proposed to be planted, demonstrating that the landscaping will be carried out within six months of the completion of construction and demonstrating that the landscaping will stabilize soils;

xiii. All public service infrastructure agreements, or other documentation, evidencing the availability of electric, gas, water, sewer and other necessary public service infrastructure;

xiv. The cultural resources survey described in N.J.A.C. 7:50-6, Part XV;

xv. A list of all permits required for the proposed development from county, municipal, state and federal agencies.

6. Application for resource extraction: 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 resource extraction shall include at least the following information:

i. All information required by (b)i through vi.

ii. A topographic map at a scale of one inch equals 200 feet, showing the proposed dimensions, location and operations on the subject parcel;

iii. The location, size and intended use of all buildings;

iv. The location of all points of ingress and egress;

v. A location map, including the area extending at least 300 feet beyond each boundary of the subject parcel, showing all streams, wetlands and significant vegetation, forest associations and wildlife habitats;

vi. The location of all existing and proposed streets and rights-of-way, including railroad rights-of-way;

vii. A soils map;

viii. A restoration plan which includes:

- (1) Method of stockpiling topsoil and overburden;
- (2) Proposed grading and final elevations;
- (3) Topsoil material application and preparation;
- (4) Type, quantity and age of vegetation to be used;
- (5) Fertilizer application including method and rates;
- (6) Planting method and schedules; and
- (7) Maintenance requirements schedule;

ix. A signed acknowledgement from both the owner and the applicant that they are responsible for any resource extraction activities which are contrary to any provision of this Plan or of the approved resource extraction plan done by any agent, employee, contractor, subcontractor or any other person authorized to be on the parcel by either the owner or the applicant;

x. A financial surety, guaranteeing performance of the requirements of N.J.A.C. 7:50-6.68 and 7:50-6.69 in the form of a letter of credit, certified check, surety bond or other recognized form of financial surety acceptable to the Commission. The financial surety shall be equal to the cost of restoration of the area to be excavated during the duration of any approval which is granted. The financial surety, which shall name the Commission and the certified municipality, if applicable, as the obligee, shall be posted by the property owner or his agent with the municipality if the municipality has had its master plan and ordinances certified pursuant to N.J.A.C. 7:50-3 or with the Pinelands Commission if the municipality has not had its master plan and ordinances so certified.

7. Application for waiver: An application for a waiver of strict compliance filed pursuant to N.J.A.C. 7:50-4, Part V shall include at least the following information:

i. All information required in an application for development approval as set out in (b)4 above;

ii. The waiver sought, the provisions or standards of this Plan from which a waiver is requested and a statement of the reasons for the waiver;

iii. At the option of the applicant, all other information required in (b)5 above;

iv. A demonstration of the existence of an extraordinary hardship based on the criteria set forth in N.J.A.C. 7:50-4.63(a) or (b) or a demonstration of the compelling public need for the proposed development based on the criteria set forth in N.J.A.C. 7:50-4.64(a)1 or 2; and

v. A demonstration of whether the requested waiver will meet the requirements set forth in N.J.A.C. 7:50-4.65.

8. Application for letter of interpretation: An application for a letter of interpretation pursuant to N.J.A.C. 7:50-4, Part VI shall include all information which, after a pre-application conference held pursuant to (a) above, the Executive Director determines is necessary for evaluation of the applicant's request.

9. Imposition of additional application requirements: At any time during the review of any application filed pursuant to this Plan, the Executive Director may require an applicant to submit any additional information which he determines is reasonably necessary to facilitate adequate review of the application. If the applicant does not submit the additional material within 30 days, or request an extension of time to do so, the application shall be deemed to be withdrawn.

(c) Determination of whether application is complete.

1. Determination by Executive Director:

i. Within 30 days following receipt of any application or any additional information concerning an application filed pursuant to this Plan except as provided in N.J.A.C. 7:50-4.34(b), the Executive Director shall determine whether such application is complete. If he determines that the application is not complete, he shall mail a written statement to the applicant specifying the deficiencies of the application. The Executive Director shall take no further action on the application until the deficiencies are remedied.

ii. Except for a completed application made pursuant to provisions of the subchapter which is exclusively to resolve an outstanding violation, no application shall be deemed complete by the Executive Director if there are outstanding unresolved violations of this Plan on the parcel which is the subject of the application. Where no application made exclusively to resolve a violation has been completed, a violation shall be deemed to be unresolved until such time as the violator has specifically agreed in writing to take all measures that have been specified by the Executive Director as being

necessary to eliminate the violation in a time period acceptable to the Executive Director.

iii. Any applicant who is aggrieved by any determination by the Executive Director pursuant to (c)1ii above may, within 15 days of that determination, appeal the Executive Director's determination to the Commission as provided by N.J.A.C. 7:50-4.91.

2. Remedy of deficiencies: Within 30 days following receipt of a statement of deficiencies from the Executive Director, or such extension as the Executive Director may grant, the applicant shall submit all additional information requested in such statement. The failure of the applicant to submit such additional information shall be deemed a withdrawal of the application.

3. Effect of determination: Any determination of completeness made by the Executive Director pursuant to (c)1 above shall not preclude any local permitting agency or other public agency from requiring additional information as a prerequisite to consideration of any application which must be filed with such agency.

Amended by R.1990 d.170, effective March 19, 1990.
See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

In (b)7viii, "restoration" was "reclamation". Added (c)1ii and iii.
Amended by R.1992 d.91, effective March 2, 1992.

See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

Corrections made upon adoption or (b), (b)8i, iii, iv and v.
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).

Changed "property" to "parcel" throughout the section.

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) deleted provisions for application for forestry.

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

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

Rewrote (b)5x.

7:50-4.3 Commission hearing procedures

(a) Applicability: The procedures set out in this section shall be applicable, except to the extent that they are specifically modified by other provisions of this Plan with respect to particular subject matters, to all public hearings held pursuant to this Plan.

(b) Notice of public hearing.

1. Content: All notices of public hearings shall include:

- i. The time and place of hearing;
- ii. The authority pursuant to which the hearing is held;
- iii. The name and address of the applicant;
- iv. A brief description of the subject matter to be considered at the hearing;

v. A statement that the application and supporting materials are available for public inspection and copying at the principal offices of the Commission; and

vi. A statement that any person may at such public hearing speak or submit a written statement.

2. Persons entitled to notice:

i. Notice of public hearings shall be given by the Commission:

(1) By sending a copy of the notice to the applicant by certified mail;

(2) By sending a copy of the notice, by mail to any person, organization or agency which has previously filed with the Commission a written request, together with an annual fee in an amount to be determined from time to time by the Commission to cover the actual cost of such notice.

(3) If the public hearing involves certification of a municipal master plan or land use ordinances, by sending a copy of the notice, by mail, to the municipal clerk and the planning board secretary of each Pinelands municipality bordering the municipality seeking certification and to the county clerk and the county planning board secretary of the county in which the municipality is located and of the adjacent county if the municipality borders another county.

(4) If the public hearing involves certification of a county master plan or regulations, by sending a copy of the notice, by mail, to the municipal clerk and the planning board secretary of each Pinelands municipality in the county seeking certification and to the county clerk and county planning board secretary of each Pinelands county bordering the county seeking certification.

(5) If the public hearing involves certification of a county or municipal master plan or municipal land use ordinance or county development ordinance, by publication of a copy of the notice, at least once, in an official newspaper of the Pinelands Commission having general circulation in the area.

(6) If the public hearing involves an amendment proposed by the Commission pursuant to N.J.A.C. 7:50-7, by sending a copy of the notice, by mail, to the mayor of each Pinelands municipality and to the freeholder director and county executive of each Pinelands county. In addition, a copy of the notice shall be published in all the official newspapers of the Pinelands Commission.

(7) If the public hearing involves an inter-governmental agreement pursuant to N.J.A.C. 7:50-4.52, by sending a copy of the notice, by mail, to the mayor of each Pinelands municipality and the freeholder director and county executive of each

Pinelands county that may be directly affected by the memorandum of agreement under consideration. In addition, a copy of the notice shall be published in those official newspapers of the Pinelands Commission having general circulation in the area that may be directly affected by the memorandum of agreement.

(8) If the public hearing involves a resource extraction issue arising pursuant to N.J.A.C. 7:50-6.64(a), by sending a copy of the notice, by mail, to the local permitting agency and the resource extraction operator.

(9) If the public hearing involves a comprehensive plan submitted to the Commission pursuant to N.J.A.C. 7:50-5.4(c)6, by sending a copy of the notice and the comprehensive plan, by mail, to the mayor of each Pinelands municipality and the freeholder director and county executive, if any, of each Pinelands county. In addition, a copy of the notice shall be published in all the official newspapers of the Pinelands Commission.

ii. Notice of public hearings shall be given by the applicant:

(1) If the public hearing relates to an application for development approval or an application for designation pursuant to N.J.A.C. 7:50-6.154, by sending a copy of the notice by certified mail to each owner of record, if different from the applicant, of any land on which development or designation is proposed;

(2) If the public hearing relates to an application for development approval or an application for a Waiver of Strict Compliance submitted pursuant to N.J.A.C. 7:50-4.64(a)1, by sending a copy of the notice, by mail, to:

(A) The secretary of the county and municipal planning board and environmental commission, if any, with jurisdiction over the parcel on which development has been proposed;

(B) Any landowners within 200 feet of any border of the parcel proposed for development, except as otherwise provided in N.J.A.C. 7:50-4.66(c).

(3) By publication of a copy of the notice, at least once, in a newspaper having general circulation in the area;

(4) By conspicuous posting on any parcel proposed for development or proposed for designation pursuant to N.J.A.C. 7:50-6.154.

3. Time of notice: All notices required by (b)2 shall be published, posted or mailed at least 10 days in advance of the hearing.

4. Notice to be given by applicant: The applicant shall file with the Executive Director, no less than seven days prior to the hearing for which notice was given, an affidavit that the requirements of (b)2ii have been satisfied.

(c) Duty of Commission staff:

1. Presentation of information: At the hearing the Commission staff shall present information concerning pertinent application considerations and the standards set out in this Plan. The Commission staff shall have the right to participate fully in the hearing process and shall act as an advocate for a full and complete record upon which an informed decision can be made.

2. Statement of pertinent considerations: The Commission staff shall state at the outset of the hearing which considerations and required findings it considers pertinent to the application and shall briefly outline the information it intends to present.

3. Production of additional information: Upon a sufficient showing by any person made at any time during the hearing, or on his own motion, the Executive Director may order the Commission staff to produce any additional information with respect to any of the required findings.

(d) Conduct of the hearing:

1. Submission of information: Any person may appear at a public hearing and submit information or written materials, either individually or as a representative of an organization. Each person who appears at a public hearing or who submits written materials shall identify himself and his address and state the name and mailing address of any organization he represents. The Executive Director may exclude information that he finds to be irrelevant, immaterial or unduly repetitious.

2. Continuance by Executive Director: The Executive Director may continue the hearing to a fixed date, time and place. Unless such continuance is publicly announced at a properly noticed and convened hearing, the Executive Director shall cause notice to be given to all persons originally entitled to notice of the date, time and place of such continued hearing in the same manner as specified in (b) above.

3. Record of hearing:

i. The Executive Director shall assure that the proceedings are recorded by any appropriate means and such record of proceedings shall be transcribed at the request of any person upon application to the Executive Director and payment of a fee to cover the cost of transcription, or on order of the Executive Director. If a sound recording is made, any person shall be entitled to listen to the recording at any reasonable time or to make copies at his own expense.

ii. The record of proceedings shall consist of the transcript of testimony, if ordered; all applications,

(c) Hearing: Within 15 days following receipt of a notice filed pursuant to (a) or (b) above, or of any demand for a hearing at which an Administrative Law Judge is to preside which is provided for in this Plan, the Executive Director shall initiate the procedures for assignment of an Administrative Law Judge to preside at the hearing pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the procedures established by the Office of Administrative Law. The time, date and location of such hearing shall be designated by the Office of Administrative Law.

(d) Burden: The person requesting the appeal or hearing shall have the burden of going forward and the burden of proof on all issues.

(e) Commission review of record: Within 45 days following receipt of the initial decision of the Administrative Law Judge, unless an extension has been approved pursuant to the Administrative Procedures Act, N.J.S.A. 52:15B-1 et seq. and the procedures adopted by the Office of Administrative Law, the Commission shall consider the hearing record and the initial decision only and issue a final order with respect to the matter in controversy.

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

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

Recodified from 4.81.

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

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

Case Notes

Discussion of reconsideration rights accorded under former N.J.A.C. 7:50-4.17 and 7:50-4.81. 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 vacated 103 N.J. 689, 512 A.2d 490 (1986).

7:50-4.92 Judicial review

Judicial review may be had of any final determination or order of the Commission as provided by Section 19 of the Pinelands Protection Act or any other provision of State law. All appeals of determinations of the Executive Director shall be made to the Office of Administrative Law pursuant to N.J.A.C. 7:50-4.91. If an appeal of a determination of the Executive Director is sought by any person pursuant to N.J.A.C. 7:50-4.91, all limitation periods provided by State law for seeking judicial review of any decision of the Commission shall be deemed to commence upon entry of the Commission's order on the appeal or hearing pursuant to N.J.A.C. 7:50-4.91(d).

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

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

Recodified from 4.82.

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

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

SUBCHAPTER 5. MINIMUM STANDARDS FOR LAND USES AND INTENSITIES

INTRODUCTION

The Pinelands Protection Act provides in part that the Comprehensive Management Plan is to "encourage appropriate patterns of compatible residential, commercial and industrial development in or adjacent to areas already utilized for such purposes, in order to accommodate regional growth influences in an orderly way while protecting the Pinelands environment from the individual and cumulative adverse impacts thereof" and to "discourage piecemeal and scattered development" while protecting the Pinelands environment. Subchapter 5 contains minimum standards for the development and use of land which the Pinelands Commission has determined are necessary to protect and maintain the essential character of the Pinelands environment and to accomplish the purposes of the Pinelands Protection Act and the Federal Act.

The provisions of this subchapter are intended to serve as minimum standards for the preparation and adoption of county and municipal master plans and land use ordinances and State agency plans. The provisions of this subchapter are also intended to serve as guidelines for the preparation of Federal installation plans. It is recognized that specific provisions of this subchapter, including the management area delineations, can be refined by local agencies provided that the objectives and goals the minimum standards represent will be achieved. In determining whether to certify a municipal or county master plan or land use ordinance under the provisions of N.J.A.C. 7:50-3 of this Plan, approve a State agency plan under the provisions of N.J.A.C. 7:50-4.52(e) of this Plan, or find a Federal installation master plan in substantial conformance under the provisions of N.J.A.C. 7:50-3, Part V, the Pinelands Commission will consider the extent to which the plan or land use ordinance ensures that all development of land will be in conformance with the minimum standards of this subchapter.

It is also recognized that a municipality, county, State, or Federal agency may adopt more restrictive regulations, provided that such regulations are compatible with the goals and objectives of this Plan. In such cases, all development must adhere to the more restrictive regulations.

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

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

PART I—STANDARDS OF GENERAL APPLICABILITY

7:50-5.1 Development in accordance with this plan

(a) No development shall be carried out by any person unless that development conforms to the minimum requirements and standards of this Plan.

(b) The extraction or underground storage of natural gas or other minerals not expressly authorized in this Plan is prohibited.

(c) Unless expressly permitted in a certified municipal land use ordinance, no more than one principal use shall be located on one lot, except for forestry, agriculture, horticulture, fish and wildlife management, and, on agricultural lands, recreation development.

(d) A municipality may include in its master plan and land use ordinance provisions which permit mobile homes or other similarly manufactured dwelling units as part of a government-sponsored program which provides housing for the elderly. Such mobile homes or manufactured dwelling units shall be exempt from the density limitations of this Part, provided that:

1. They are associated with existing single family dwellings; and

2. They are intended only for temporary housing and occupancy for no longer than three years.

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

Case Notes

Comprehensive Management Plan imposes detailed restrictions on construction and other activities in the Pinelands. *Pfeiffer v. Pinelands Commission*, 8 N.J.A.R. 317 (1985).

Lands located in Forest Area not entitled to Pinelands Development Credits. *Riorano, Inc. v. Weymouth Twp.*, 209 N.J.Super. 280, 507 A.2d 311 (App.Div.1986).

7:50-5.2 Expansion and changes of existing uses

(a) Notwithstanding the use restrictions contained in Part III of this subchapter, a municipality may permit the expansion or alteration of any use existing on January 14, 1981 that is currently non-conforming or any use which was constructed based upon an approval granted pursuant to this Plan which is currently non-conforming, other than intensive recreation facilities and those uses which are expressly limited in N.J.A.C. 7:50-6, provided that:

1. The use was not abandoned or terminated subsequent to January 14, 1981;

2. The expansion or alteration of the use is in accordance with all of the minimum standards of N.J.A.C. 7:50-6; and

3. The area of expansion does not exceed 50 percent of the floor area, the area of the use or the capacity of the use, whichever is applicable, on January 14, 1981 or which was approved pursuant to this Plan.

(b) A municipality may include in its ordinance a provision which, notwithstanding the use restrictions contained in Part III of this subchapter, permits a change in any use existing on January 14, 1981 that is currently non-

conforming or any use which was constructed based upon an approval granted pursuant to this Plan that is currently non-conforming, other than those uses which are expressly limited in N.J.A.C. 7:50-6, provided that:

1. The use was not abandoned or terminated subsequent to January 14, 1981;

2. The new use is in accordance with all of the minimum standards of N.J.A.C. 7:50-6 including N.J.A.C. 7:50-6.84(a)4, unless a new septic system permit will not be required as a result of the change in use, in which case the standards of N.J.A.C. 7:50-6.83(b) and (c) must be met; and

3. The area, capacity, and intensity of the new use is comparable to that of the existing use.

(c) A municipality may limit the application of (a) and (b) above to those uses which conformed to its zoning ordinance as of January 14, 1981.

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

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

In (b), added "and not subsequently abandoned".

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).

Case Notes

Waiver to subdivide a parcel of land denied by Pinelands Commission; petitioner failed to establish ownership of the land in compliance with N.J.A.C. 7:50-5.32(a)3i. *Gerber v. Pinelands Commission*, 11 N.J.A.R. 12 (1988).

7:50-5.3 Map status

(a) The following maps, the originals of which are maintained at the offices of the Commission, are hereby designated and established as a part of this Plan and shall be as much a part of this Plan as if they were set out in full in this Plan:

1. Pinelands Area Jurisdiction Boundaries, Plate 1, as amended as of August 21, 1995;

2. Surficial Geology, Plate 2, as amended as of August 21, 1995;

3. NW-SE Geologic Cross-Section, Plate 3;

4. Hydrogeologic Features, Plate 4, as amended as of August 21, 1995;

5. Surface Water Hydrology, Plate 5, as amended as of August 21, 1995;

6. Agricultural Soils, Plate 6, as amended as of August 21, 1995;

7. Depth to Seasonal High Water Table, Plate 7, as amended as of August 21, 1995;

3. The amount of the development proposed does not exceed that which would be permitted separately in each management area as determined by application of the standards contained in this subchapter and in N.J.A.C. 7:50-6.84;

4. The minimum lot area requirements of the management area in which the portion of the parcel to be developed is located are met; and

5. If any portion of the parcel is located within the Regional Growth Area, opportunities for the use of Pinelands Development Credits established pursuant to N.J.A.C. 7:50-5.28(a)3 are not reduced as a result of the cluster development.

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

7:50-5.20 (Reserved)

PART III—MINIMUM STANDARDS FOR LAND USE DISTRIBUTION AND INTENSITIES

7:50-5.21 Purpose

In order to ensure the long-term integrity of the Pinelands environment while accommodating regional growth influences, the Pinelands Commission finds that it is appropriate and necessary to establish minimum standard governing the character, location and magnitude of development and the use of land in the Pinelands.

7:50-5.22 Minimum standards governing the distribution and intensity of development and land use in the Preservation Area District

(a) The following uses shall be permitted in the Preservation Area District:

1. Residential dwelling units in accordance with the cultural housing provisions of N.J.A.C. 7:50-5.32.

2. Berry agriculture and horticulture of native plants and other agricultural activities compatible with the existing soil and water conditions that support traditional Pinelands berry agriculture.

3. Forestry.

4. Beekeeping.

5. Fish and wildlife management.

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 impermeable surfaces.

7. Pinelands Development Credits.

(b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in the Preservation Area District:

1. Agricultural employee housing as an element of, and accessory to, an active agricultural operation.

2. Expansion of intensive recreational uses, provided that:

i. The intensive recreational use was in existence on February 7, 1979 and the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;

ii. The use is necessary to achieve recreational use of a particular element of the existing Pinelands environment; and

iii. The use is environmentally and aesthetically compatible with the character of the Preservation Area District and the characteristics of the particular basin in which the use is to be located, taking into consideration the proportion of cleared and developed land, ambient water quality, ecologically sensitive areas and unique resources, and will not unduly burden available public services.

3. Campgrounds, in accordance with the standards of (a)6 above, provided that the parcel will contain no more than one campsite per two acres and that, if clustered, the campsites not exceed a net density of six per acre.

4. Public service infrastructure which is necessary to serve only the needs of the Preservation Area District uses. Centralized waste water treatment and collection facilities shall be permitted to service the Preservation Area District 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 Preservation Area District 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.

5. Continuation of existing resource extraction operations in accordance with the standards of N.J.A.C. 7:50-6, Part VI.

6. Signs.

7. Infill areas: Residential dwellings and commercial uses on lots existing as of January 14, 1981 of at least one acre in size within an area designated by a municipality in its ordinance in accordance with the following criteria:

i. The area must have direct access to an existing improved public road;

ii. The area must exhibit a compact pattern of existing development, generally exhibited by more than 20 principal structures and the boundary shall generally conform to that of the existing developed area so that extensive amounts of adjoining vacant land are not included;

iii. The area must contain vacant lots of at least one acre in size or smaller lots which could reasonably be assembled into one acre or greater lots; and

iv. Commercial uses shall be limited to those specific portions of the area which are predominantly occupied by existing commercial uses.

8. Accessory uses.

9. Home occupations.

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

11. The following waste management facilities in accordance with N.J.A.C. 7:50-6, Part VII:

i. Transfer stations, collection facilities and recycling centers located at closed landfills in accordance with N.J.A.C. 7:50-6.76(a);

ii. Petroleum waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(b);

iii. Household hazardous waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(c);

iv. Recycling centers accessory to an existing lawful resource extraction operation or asphalt or concrete manufacturing facility in accordance with N.J.A.C. 7:50-6.76(d);

v. Composting facilities located at closed landfills in accordance with N.J.A.C. 7:50-6.77(b); and

vi. Regulated medical waste facilities accessory to a generator of such waste in accordance with N.J.A.C. 7:50-6.78(b).

(c) No residential dwelling shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.32.

(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)4 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 in (b)4, "Communication cables not . . ."; added (c) and (d).

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)10.

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) added waste management facilities.

Case Notes

Application for operation of roadside produce stand denied as the owner of the proposed stand did not intend to engage in agricultural production on grounds near or attached to the proposed stand site. *Hanoverland Industries v. Pinelands Commission*, 8 N.J.A.R. 529 (1985).

7:50-5.23 Minimum standards governing the distribution and intensity of development and land use in Forest Areas

(a) The following uses shall be permitted in a Forest 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 at municipally designated densities provided that the total number of dwelling units authorized by a municipality does not exceed an average of one dwelling unit for every 15.8 acres of privately owned, undeveloped land which is not defined in this Plan as wetlands. The Executive Director shall maintain a current record of residential units zoned in each certified municipality pursuant to this section.

3. Agriculture;

4. Forestry;

5. 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 impermeable surfaces.

(b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in a Forest Area:

1. Institutional uses, provided that:

i. The use does not require or will not generate subsidiary or satellite development in the Forest Area;

- ii. The applicant has demonstrated that adequate public service infrastructure will be available to serve the use; and
 - iii. The use is primarily designed to serve the needs of the Forest Area in which the use is to be located.
2. Pinelands resource-related industrial or manufacturing uses, 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 a Forest Area.
3. Light industrial uses within an area designated by a municipality in accordance with the following criteria:
- i. The area adjoins an existing airport, and the airport is either publicly owned or serves a Pinelands Town;
 - ii. The area is predominantly developable under the provisions of subchapter 6 of this Plan; and
 - iii. The area is limited in size to that which received approval to develop pursuant to the Pinelands Protection Act prior to January 14, 1981.
4. Campgrounds, not to exceed one campsite per gross acre, provided that the campsites may be clustered at a net density not to exceed 10 campsites per acre.
5. 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.
6. 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.
7. Continuation of existing resource extraction operations in accordance with the standards of N.J.A.C. 7:50-6, Part VI.
8. The following waste management facilities in accordance with N.J.A.C. 7:50-6, Part VII:
- i. Transfer stations, collection facilities and recycling centers located at closed landfills in accordance with N.J.A.C. 7:50-6.76(a);
 - ii. Petroleum waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(b);
 - iii. Household hazardous waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(c);
 - iv. Recycling centers accessory to an existing lawful resource extraction operation or asphalt or concrete manufacturing facility in accordance with N.J.A.C. 7:50-6.76(d);
 - v. Composting facilities located at closed landfills in accordance with N.J.A.C. 7:50-6.77(b); and
 - vi. Regulated medical waste facilities accessory to a generator of such waste in accordance with N.J.A.C. 7:50-6.78(b).
9. Fish and wildlife management.
10. Agricultural employee housing as an element of, and accessory to, an active agricultural operation.
11. Expansion of intensive recreational uses, provided that:
- i. The intensive recreational use was in existence on February 7, 1979 and the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;
 - ii. The use is necessary to achieve recreational use of a particular element of the existing Pinelands environment; and
 - iii. The use is environmentally and aesthetically compatible with the character of the Forest Area and the characteristics of the particular basin in which the use is to be located, taking into consideration the proportion of cleared and developed land, ambient water quality, ecologically sensitive areas and unique resources, and will not unduly burden available public services.
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 Pine-lands 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.

(c) No residential dwelling unit shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.30, 5.31 and 5.32. When the residential density otherwise permitted on a particular parcel of land is clustered on 3.2 acre lots, the remainder of the parcel not assigned to individual residential lots shall be permanently dedicated through recordation of a restriction on the deed to the parcel as open space with no further development permitted. Recreational amenities may be permitted on the deed restricted lands insofar as they are consistent with the types of recreational amenities which could have been developed as accessory uses on the residential lots, absent clustering.

(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.

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

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.

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).

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 has not been issued between January 14, 1981 and December 31, 1992 may be authorized to undertake extraction operations only if a development permit is 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.

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

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

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. 7:50-6.67, 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).

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. 7:50-6.66(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).

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.

(b) Any intergovernmental memorandum of agreement approved by the Commission pursuant to N.J.A.C. 7:50-4.52(c)2 or 6.80(a), (c) or (d) shall, within five days following such approval, be submitted to the Secretary of the United States Department of the Interior.

Amended by R.2001 d.103, effective April 2, 2001.
See: 32 N.J.R. 4037(a), 33 N.J.R. 1095(a).
Rewrote the section.

7:50-7.10 Effective date of amendments

Amendments to this Plan shall be effective as provided in the Pinelands Protection Act, the Federal Act, and the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:50-7.11 Comprehensive review of plan by Commission

At least every five years after the adoption of this Plan, the Executive Director shall comprehensively review this Plan and all actions taken by the Commission or the Executive Director pursuant to N.J.A.C. 7:50-4 and shall submit a report to the Commission detailing any recommended amendments to the Plan. Such report shall be submitted by January 15 of every fifth year after adoption of this Plan and shall include an explanation of the reasons for any recommended amendment.

SUBCHAPTER 8. ENFORCEMENT

7:50-8.1 Civil enforcement

(a) Civil enforcement: In the event that any building or structure is erected, constructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this Plan, or in the event that construction is commenced on any building or structure in violation of this Plan, the Commission may, in addition to other remedies, institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent completion of construction of said building or structure, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

(b) Emergency enforcement: If the Executive Director determines that any action provided for in (a) above hereof need be initiated immediately in order to protect the Pinelands Area or the jurisdiction or authority of the Commission, he may initiate such action on behalf of the Commission and he shall notify the Commission of any action taken pursuant to this subsection.

SUBCHAPTER 9. ACQUISITION OF PROPERTIES WITH LIMITED PRACTICAL USE

Authority
N.J.S.A. 13:18A-6j.

Source and Effective Date
R.1995 d.379, effective July 17, 1995.
See: 27 N.J.R. 1572(a), 27 N.J.R. 1927(b), 27 N.J.R. 2741(a).

7:50-9.1 Purpose

Federal legislation has been enacted to authorize the acquisition of lands considered as having a limited practical use as set forth in section 502(k)(2)(C) of the National Parks and Recreation Act of 1978, Pub.L. 95-265 (16 U.S.C. Section 471i(k)(2)(C)). The Federal legislation required that the Federal funds appropriated for this purpose be matched by an equal state appropriation. The State of New Jersey has made matching funds available for this program. The purpose of this subchapter is to implement the program of purchasing parcels that have limited practical use, to the extent that Federal funds and matching state funds allow.

7:50-9.2 General standards

(a) The Department of Environmental Protection may acquire parcels of land which are located in the Pinelands Area and are found to be of limited practical use in accordance with the following:

1. The Commission has either denied a Waiver of Strict Compliance for the parcel in question pursuant to N.J.A.C. 7:50-4, Part V or has approved a Waiver of Strict Compliance for the parcel in question and granted a transferable residential development right to other lands in the Protection Area, in accordance with former N.J.A.C. 7:50-4.66(b)3 and 5.30(a), repealed effective March 2, 1992;
2. The parcel in question is less than 50 acres in size; and
3. The standards set forth in N.J.A.C. 7:50-9.3 relative to the ownership and the present and potential uses of the parcel in question have been met.

7:50-9.3 Standards for present and potential uses and ownership

(a) In order to be eligible for acquisition under the provisions of this subchapter, the owner of the parcel shall demonstrate and the Commission shall verify that all of the following conditions exist:

1. Present and potential uses, as follows:
 - i. The parcel, including all contiguous lands in common ownership on or after January 14, 1981, contains no residential dwelling unit;
 - ii. The parcel, including all contiguous lands in common ownership on or after January 14, 1981, con-

tains no substantial principal non-residential structure that has an economically viable use, except for structures that are used exclusively for agricultural purposes;

iii. The parcel, including all contiguous lands in common ownership on or after January 14, 1981, has not been approved for resource extraction pursuant to the provisions of this Plan;

iv. If the parcel, including all contiguous lands in common ownership on or after January 14, 1981, is entitled to at least 0.25 Pinelands Development Credits pursuant to N.J.A.C. 7:50-5.43, those Credits have been severed from the parcel pursuant to N.J.A.C. 7:50-5.47;

v. No approval for development of a residential dwelling or substantial principal non-residential structure on the parcel, including all contiguous lands in common ownership on or after January 14, 1981, has been granted pursuant to this Plan provided that approval is still valid; and

vi. The parcel, including all contiguous lands in common ownership on or after January 14, 1981, cannot be determined to meet all standards for the development of either a residential dwelling or a substantial principal non-residential structure in accordance with the provisions of this Plan absent a Waiver of Strict Compliance, taking into consideration the following factors:

(1) The availability of centralized waste water treatment and collection service;

(2) The certification of any municipal land use ordinance pursuant to N.J.A.C. 7:50-3.35 or 3.45; and

(3) The information used by the Commission in its review and action on the Waiver of Strict Compliance relative to the parcel in question.

2. Ownership, as follows:

i. The parcel has been in the same ownership since the date of the Commission's action on the Waiver of Strict Compliance, except that transfer in ownership solely through gift or inheritance shall not render the parcel ineligible for acquisition;

ii. The owner can transfer good title to the parcel which is currently owned in fee simple absolute; and

v. The owner owns less than 50 acres of land in the Pinelands, including the parcel in question, as of July 17, 1995. For purposes of determining whether this requirement is met, all lands in the Pinelands in which the owner has an ownership interest either directly or through a legal entity in which the owner has an ownership interest shall be included in the total acreage based upon the pro-rata share of the total acreage of such land owned by the owner of the parcel in question. Said land shall only be included if the owner owns at least a 10 percent share of said land or said land is owned by a corporation, partnership or other legal entity in which the owner has at least a 10 percent ownership interest.

7:50-9.4 Submission of questionnaires

(a) In order to have a parcel of land considered for acquisition, the owner of the parcel must complete and submit to the Commission the responses to the questionnaire developed by the Executive Director pursuant to N.J.A.C. 7:50-1.21. The questionnaire shall be designed to determine the eligibility of the parcel for acquisition based on the criteria set forth in N.J.A.C. 7:50-9.2 and 9.3. Copies of the questionnaire shall be available from the Commission and shall include any information necessary to enable landowners to contact the Commission for assistance in completing the questionnaire.

(b) If the owner of the parcel fails to submit the questionnaire required pursuant to (a) above or otherwise declines to participate or withdraws from the acquisition process at any time, the parcel shall not be considered for acquisition during the then current round of acquisitions. In order for the parcel to be considered eligible for a later acquisition round, the parcel owner must submit a new completed questionnaire pursuant to (a) above.

7:50-9.5 Notice of intent to acquire lands

The Commission shall publish notice of the intent to purchase parcels of land of limited practical use in all the official newspapers of the Commission. The notice shall include the date by which questionnaires must be submitted for consideration by the Commission during the then current round of acquisitions.

(2) Subtract from (b)li(1) above the number of Pinelands Development Credit redemption opportunities to be realistically afforded by the zoning provisions contained in Tabernacle Township's certified land use ordinances for any area being redesignated to a Regional Growth Area; and

(3) Multiply the remainder by two-thirds to calculate the number of Pinelands Development Credit redemption opportunities likely to be lost as a result of the redesignations.

ii. The effect on Pinelands Development Credit allocations is to be calculated as follows:

(1) The number of Pinelands Development Credits eligible for allocation to any area being redesignated to an Agricultural Production Area is to be estimated in accordance with N.J.A.C. 7:50-5, Part IV; and

(2) Subtract from (b)lii(1) above the estimated number of Pinelands Development Credits extinguished as a result of any redesignation of land from an Agricultural Production Area classification to another management area.

iii. The total number of Pinelands Development Credits to be purchased and redeemed equals the sum of (b)li and ii above.

New Rule, R.2000 d.232, effective June 5, 2000.
See: 32 N.J.R. 151(a), 32 N.J.R. 2082(a).

7:50-10.16 Pinelands Commission approval and evaluation

(a) In accordance with N.J.A.C. 7:50-3, the Commission approved management area changes and zoning provisions in Tabernacle Township and Pemberton Township through its certification of Tabernacle Township Ordinance 1999-1 and Pemberton Township Ordinance 17-1999 on September 10, 1999. This pilot program shall be evaluated based on the management area changes and zoning provisions implemented by those ordinances and any subsequent amendments or corrections which may be made to them in the future.

(b) The Executive Director shall review this pilot program and report to the Commission on its implementation three years following completion of construction of the public educational facility in Tabernacle Township. The Executive Director shall determine whether the pilot program is successful in accordance with the following criteria:

1. The purchase and redemption of Pinelands Development Credits in accordance with N.J.A.C. 7:50-10.15(b) has resulted in the permanent protection of approximately 1,000 acres of land in the Preservation Area District, Special Agricultural Production Area and/or Agricultural Production Area;

2. Development of the public educational facility has had no significant adverse impact on adjacent agricultural lands within Tabernacle Township's Agricultural Production Area;

3. Development of the public educational facility has not resulted in unanticipated or unintended development on adjacent and surrounding lands in Tabernacle Township's Rural Development Area or Regional Growth Area and has otherwise proven to be compatible with the existing character of the adjacent Pinelands Village;

4. Any lands included in the redesignated area in Tabernacle Township which were not utilized for the public educational facility continue to be put to those uses which existed prior to the redesignation, or, if not, have been converted to uses which are compatible with those of the surrounding area;

5. The redesignated lands in Pemberton Township have been permanently protected through the purchase of easements under the Farmland Preservation Program or other means;

6. Redesignation of the lands in Pemberton Township has contributed to the continued long-term viability of that municipality's Agricultural Production Area and land use conflicts with the remaining Regional Growth Area have not materialized; and

7. The pilot program, when viewed in its entirety, has served to further the purposes and objectives of the Pinelands Protection Act, the Federal Act and this Plan.

(c) If the Executive Director finds that this pilot program has not been implemented or has not been successful based on the criteria set forth in (b) above, the Executive Director shall, if appropriate, initiate the procedures set forth in N.J.A.C. 7:50-3.61 through 3.65 and, if necessary, propose an amendment to this subchapter, in accordance with N.J.A.C. 7:50-7, to repeal the pilot program. If the Pinelands Commission revokes, suspends or modifies the certification of this program, such action shall not affect the certification status of the remaining provisions of the municipal land use ordinances unless the municipalities ignore or refuse to implement such revocation, suspension or modification order.

(d) If the Executive Director finds that this pilot program has been successful based on the criteria set forth in (b) above, the Executive Director may propose an amendment to this Plan in accordance with N.J.A.C. 7:50-7 to broaden its applicability in the Pinelands; provided, however, that no such proposal shall be made until the Executive Director has submitted a report to the Commission which evaluates the potential for use of intermunicipal transfers for specified uses in defined situations throughout the Pinelands, as well as whether or not alternative techniques and processes exist or could be developed which might provide for the development of public educational facilities in a manner which better addresses the goals and objectives of this chapter and

the Pinelands Protection Act. The Executive Director's report shall specifically address the applicability of the changes required by the Secretary of the Interior to the now repealed N.J.A.C. 7:50-5.33 to any proposed amendment to this Plan that is recommended in the report.

New Rule, R.2000 d.232, effective June 5, 2000.
See: 32 N.J.R. 151(a), 32 N.J.R. 2082(a).

7:50-10.17 through 7:50-10.20 (Reserved)

PART IV—ALTERNATE DESIGN TREATMENT SYSTEMS PILOT PROGRAM

7:50-10.21 Purpose

(a) The high quality of surface and ground water resources in the Pinelands is one of the defining characteristics of the region. Both the Federal Act and the Pinelands Protection Act call for the preservation, protection and enhancement of the significant values of the land and water resources of the Pinelands and its unique ecosystem. Water resources in the Pinelands are protected by a combination of land use and water quality programs established in N.J.A.C. 7:50-5 and 6.

(b) The water quality requirements of N.J.A.C. 7:50-6, Part VIII, include provisions which are aimed at controlling the amount of nitrogen that enters the environment both because nitrogen in itself is a significant pollutant, but also because it often serves as an indicator of changes in overall water quality. To that end, N.J.A.C. 7:50-6.84(a) limits the concentration of nitrogen in wastewater to two parts per million at the property line. Based on the Pinelands Septic Dilution Model (found in N.J.A.C. 7:50-6 Appendix A), a standard septic system, to which no nitrogen removal is attributed, requires at least 3.2 acres to dilute the concentration of nitrogen to two parts per million at the property line for a single family dwelling. N.J.A.C. 7:50-5 authorizes residential development utilizing an on-site wastewater system on lots between one and 3.2 acres in certain circumstances. In those circumstances, N.J.A.C. 7:50-6.84(a)5 currently allows lots between 1.5 and 3.2 acres in size to be developed if a RUCK on-site wastewater treatment system is used. However, it has been several years since a RUCK system has been installed in the Pinelands Area. In those circumstances prior to August 5, 2002, pressure dosed septic systems were allowed to be utilized on lots between one and 3.2 acres in size. Studies undertaken by the Commission have found that the pressure dosed septic system being installed in the Pinelands Area has not been effective on lots smaller than 3.2 acres in meeting the water quality standards of N.J.A.C. 7:50-6, Part VIII.

(c) In 2000, the Commission formed a special committee to investigate alternate septic system technologies that would better meet the water quality requirements of N.J.A.C. 7:50-6, Part VIII, for residential development on lots smaller than 3.2 acres where such lots are currently authorized by N.J.A.C. 7:50-5. After conducting extensive research, the Committee identified five technologies that can be expected to meet these water quality requirements for residential development. The Committee recommended that an interim program be developed for the approval, installation and monitoring of the five technologies for use under certain conditions and safeguards. Based on the available information, the Committee recommended that the Ashco RFS III system be allowed on residential lots of at least 1.5 acres and the other four systems be allowed on residential lots of at least one acre. Residential development using any of these systems would still have to conform to the lot size and density requirements contained in the municipal land use ordinances that have been certified by the Commission pursuant to N.J.A.C. 7:50-3. The Alternate Design Waste Water Treatment Systems Pilot Program is authorized as a means to test whether these systems can be maintained and operated so as to meet the water quality standards contained in N.J.A.C. 7:50-6, Part VIII with maintenance requirements that a homeowner can be reasonably expected to follow. Since these systems do require maintenance beyond that which would be required for a standard septic system in order to optimize treatment efficiencies, municipalities will be encouraged to allow community systems to be installed in larger residential developments where densities between one and 3.2 acres are currently authorized. Since insufficient data is available to determine a particular efficiency of these alternate design pilot program treatment systems for non-residential development, the use of these systems for non-residential development will be evaluated on a case-by-case basis pursuant to N.J.A.C. 7:50-6.84(a)1 if any such system is proposed to reduce total nitrogen in the effluent for non-residential development.

New Rule, R.2002 d.247, effective August 5, 2002.
See: 34 N.J.R. 722(a), 34 N.J.R. 2804(b).

7:50-10.22 General standards

(a) Alternate design pilot program treatment systems shall be authorized for residential use 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 provided that the following standards are met:

1. Systems shall be authorized only in those municipalities which have adopted an ordinance that is in conformance with the requirements of this Part and has been certified by the Commission pursuant to N.J.A.C. 7:50-3.

2. The manufacturer of the alternate design pilot program treatment system has submitted to the Executive Director and the Executive Director has approved:

i. Detailed specifications and an engineering design for the system. Separate specifications and designs may be submitted for systems serving an individual dwelling and for community on-site systems. These specifications and designs may only be approved by the Executive Director if they are determined to be consistent with the description of the relevant technology contained in the report prepared by Anish R. Jantrania, Ph.D., P.E., M.B.A. entitled "Performance Expectations for Selected On-site Wastewater Treatment Systems," dated December, 2000, incorporated herein by reference, and available at the principal office of the Commission. Subsequent to that approval, manufacturers may submit modified specifications or engineering designs for the system which may then be utilized if the Executive Director determines the modifications are consistent with the originally approved specifications and engineering design and the modified system will be at least as effective as the originally approved system;

ii. A description of the automatic dialing system required in (a)6ii below, and a description of how and when that system will function;

iii. A monitoring protocol that ensures that sufficient data will be obtained to enable a determination of whether the technology complies with the two ppm nitrogen requirement and the water quality standards contained in N.J.A.C. 7:50-6, Part VIII. For each system being monitored, the protocol will provide at a minimum that the effluent will be sampled at least quarterly for a period of at least three years and that at least the following parameters will be analyzed: total nitrogen, nitrate-nitrogen, nitrite-nitrogen, ammonia-nitrogen, total kjeldahl nitrogen and chlorides;

iv. An operation and maintenance manual;

v. A sample warranty and maintenance contract; and

vi. A sample deed notice that is consistent with (a)6viii below.

3. Subject to being increased during the pilot program based on the results of a hearing conducted pursuant to (a)5 below, 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 each FAST, Cromaglass, Bioclere or Amphidrome system shall be located on a parcel containing at least one acre for each dwelling unit that will be served by the system.

4. The alternate design pilot program treatment systems identified in (a)3 above are authorized to be installed for a period of five years from August 5, 2002.

5. The Executive Director shall submit an annual report to the Commission describing installation, maintenance and performance data for each technology. The Executive Director also shall submit an interim report to the Commission if it is determined there is a significant installation, maintenance or performance issue with one or more technologies that needs to be addressed before the issuance of the next annual report. Copies of each annual and interim report shall be provided to each manufacturer and agent of a technology that is discussed in that report. If it is determined in a report either that a manufacturer or its agent is not adhering to any of the requirements of this pilot program or that any one of the technologies, based on maintenance or installation issues or on an evaluation of all the monitoring results for that technology under this pilot program, is not meeting the minimum water quality standards in N.J.A.C. 7:50-6.83 or the two parts per million total nitrogen requirement in (a)6x below on all lots smaller than 3.2 acres or on lots smaller than a particular size because the effluent exiting the system is higher than was anticipated in establishing the lot sizes in (a)3 above, then any subsequent local approvals for a development that is proposing use of said technology shall be determined to raise a substantial issue and shall be reviewed by the Commission pursuant to the provisions set forth in N.J.A.C. 7:50-4.31 through 4.42. Notice of any hearing scheduled pursuant to this paragraph and any subsequent determination on the application made by the Executive Director or the Commission pursuant to N.J.A.C. 7:50-4.31 through 4.42 shall be provided to the manufacturers of said system and any agent designated by said manufacturer. The annual or interim report issued by the Executive Director shall be part of the hearing record in any hearing conducted pursuant to this paragraph.

6. Conditions for use of alternate design pilot program treatment systems are as follows:

i. No more than 10 alternate design pilot program septic systems utilizing the same technology shall be installed in the development of any parcel if those systems are each serving one single family dwelling, except where the Executive Director determines that the use of additional pilot program systems on the parcel would not substantially alter the character of the certified zoning plan of the municipality in which the parcel is located, taking into account existing and planned infrastructure and the role of the parcel in the Pinelands Development Credit program. Should such a determination be made, the additional lots may be serviced, proportionately, by those alternate design pilot program technologies which have been certified by the Executive Director pursuant to (a)2 above and are commercially available for use in the Pinelands;

ii. Each system shall be equipped with automatic dialing capability to the manufacturer, or its agent, in the event of a mechanical malfunction. The manufacturer or its agent shall report to the Executive Director each such malfunction within five days of its occurrence, describing the nature of the mechanical malfunction, the measures taken to correct the malfunction and the success of those measures. Periodic dialing or some other fail safe mechanism shall be provided to ensure against unauthorized disconnections;

iii. Each system shall be designed and constructed so that samples of effluent leaving the alternate design pilot program septic system can be readily taken to confirm the performance of the technology;

iv. The manufacturer or its agent shall be responsible for providing resources for the collection and analysis of effluent samples in accordance with the protocol approved pursuant to (a)2iii above. The samples shall be taken from each system that is installed unless the manufacturer or agent of a particular technology demonstrates, and the Executive Director concurs, that samples from a specified representative number of systems of that technology will provide sufficient information to enable an evaluation of that technology. Each sample shall be analyzed by a New Jersey certified laboratory and the results of each analysis shall be reported to the Executive Director by the manufacturer or its agent within five days of receipt from the certified laboratory. The manufacturer or its agent shall also submit to the Executive Director a quarterly evaluation of all monitoring conducted prior to that evaluation;

v. The manufacturer or its agent shall certify to the Commission and the local board of health that installation of each system has been properly completed and shall include in the certification the cost of the installation and a description of any problem encountered during the installation;

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

vii. 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;

viii. 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;

ix. 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;

x. By July 5, 2003 and every six months thereafter 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; and

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

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

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.

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) The Executive Director shall review this pilot program four years after August 5, 2002 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;
3. The cost of installing and maintaining each alternate design pilot program treatment system technology;
4. The problems associated with the installation, operation and maintenance of each alternate design pilot program treatment system technology and the frequency with which each such problem occurs, the measures taken to eliminate any such problem and the success of those measures;
5. The number of systems of each technology that have been authorized under the pilot program; and
6. Whether the pilot program, when viewed in its entirety, has served to further the purposes and objectives of the Pinelands Protection Act, the Federal Act and this Plan.

(c) If the Executive Director finds that the number of monitoring events for any alternate design pilot program treatment system technology is not adequate to evaluate that technology under this pilot program in accordance with (b) above, the Executive Director shall so inform the Commission and, upon receiving the Commission's approval, initiate a second review to be completed within six years of August 5, 2002;

(d) If the Executive Director finds that this pilot program has not been implemented or has not been successful for one or more of the alternate design pilot program treatment system technologies based on the criteria set forth in (b) above, the Executive Director shall propose, within three months of the issuance of the report required in (b) above, an amendment to this subchapter, in accordance with N.J.A.C. 7:50-7, to repeal the pilot program as to that technology or technologies.

(e) If the Executive Director finds that this pilot program has not been successfully implemented for one or more of the alternate design pilot program treatment system technologies because insufficient numbers of that technology or technologies have been installed to fully evaluate any such technology but the available information indicates that the technology can significantly reduce the level of nitrogen in the effluent, the Executive Director may propose an amendment to this subchapter, in accordance with N.J.A.C. 7:50-7, to establish a new pilot program as to that technology or technologies.

(f) If the Executive Director finds that this pilot program has been successful for one or more of the alternate design pilot program treatment system technologies based on the criteria set forth in (b) above, the Executive Director shall propose, within three months of the issuance of the report required in (b) above, an amendment to this Plan in accordance with N.J.A.C. 7:50-7 to permit installation of said technology or technologies on a permanent basis. Prior to submitting that proposal, the Executive Director shall specify either in the report required in (b) above or in a separate report to the Commission the institutional and governmental arrangements necessary to ensure adequate maintenance and monitoring of each such technology and the minimum lot size required for each such technology to comply with the water quality standards of N.J.A.C. 7:50-6, Part VIII.

(g) Nothing in this section shall be construed to authorize the installation of an alternate design pilot program treatment system after August 5, 2007 as set forth in N.J.A.C. 7:50-10.22(a)4, unless a rule has been adopted by the Commission which expressly authorizes such installation pursuant to (e) or (f) above.

New Rule, R.2002 d.247, effective August 5, 2002.
See: 34 N.J.R. 722(a), 34 N.J.R. 2804(b).

7:50-10.24 through 7:50-10.27 (Reserved)**PART V—FORT DIX CONSUMER ELECTRONICS RECYCLING CENTER PILOT PROGRAM****7:50-10.28 Purpose**

(a) N.J.A.C. 7:50-6, Part VII, contains standards and requirements for waste management which apply throughout the Pinelands. These standards were last revised by the Pinelands Commission in 1996, in part to ensure that hazardous wastes, which were considered not to be recyclable because of the dangers they posed through contamination of the surrounding environment, not be stored, transferred, processed, discharged, disposed or otherwise used in the Pinelands. The Commission elected to adopt a definition of "hazardous waste" which included all hazardous wastes defined as such by the New Jersey Department of Environmental Protection and the Environmental Protection Agency as of May 20, 1996 and any other wastes defined as hazardous by that Department and Agency subsequent to May 20, 1996. The Commission further chose to write its

definition in such a way that if the State were to remove a waste from its list of hazardous wastes subsequent to May 20, 1996, such removal would not automatically affect the list of wastes which this Plan defines as hazardous in the Pinelands. In so doing, the Commission reserved for itself the ability to individually evaluate whether or not the State's decision to remove a waste from the list was appropriate for the Pinelands.

(b) Subsequent to the Commission's adoption of its revised waste management rules, the New Jersey Department of Environmental Protection began to reexamine its own approach to the handling of hazardous wastes. The Department came to the conclusion that advances in technology relating to the processing of certain types of hazardous wastes allowed for their safe and effective recycling, provided it was done according to a specific, controlled regime. Consequently, the Department adopted a series of rule changes between 1996 and 2003 that identified classes of hazardous wastes that could now be recycled and the procedures for doing so. The latest of these rules went into effect as recently as December 2002 and added "consumer electronics" to the category of "Class D Recyclables." Consumer electronics are household and business appliances that incorporate circuitry; they include, among other things, computers, printers, stereos, VCRs, televisions and telecommunication devices. Their reclassification by the Department was intended to permit a simpler and more economical means of processing their reusable components. At the same time, the Department devised a pilot program to test the overall efficiency of recycling such wastes and began issuing temporary "Research, Demonstration and Development Certificates" as part of the evaluation process. These certificates authorized the recycling of specific hazardous waste materials at newly established facilities.

(c) Pursuant to its pilot program, the Department of Environmental Protection granted a certificate allowing a consumer electronics recycling center to operate at the Federal prison at Fort Dix in 1999. The recycling center in question, as well as all of Fort Dix, is located within the Pinelands Area and included in a Military and Federal Installation Area on the Land Capability Map adopted as part of the Comprehensive Management Plan at N.J.A.C. 7:50-5.3(a)24. Consumer electronics continue to be defined in this Plan as a hazardous waste; therefore, their recycling is not permitted in any portion of the Pinelands pursuant to N.J.A.C. 7:50-6.73(b). In recognition of the Department's actions, however, the Commission determined that it would be appropriate to allow for the continued operation of the existing recycling center in order to determine whether the State's decision to reclassify consumer electronics as recyclable hazardous waste is appropriate for the Pinelands. The Fort Dix Consumer Electronics Recycling Center Pilot Program is therefore authorized as a means to test whether continued operation of the center, if effectively regulated and monitored, would reduce the waste stream to landfills and enhance protection of the natural resources of the Pinelands and its unique ecosystem.

New Rule, R.2005 d.171, effective June 6, 2005.
See: 36 N.J.R. 4401(a), 37 N.J.R. 172(a), 37 N.J.R. 2013(b).

7:50-10.29 General standards

(a) The consumer electronics recycling center currently in operation and located within the boundaries of Fort Dix in New Hanover Township is authorized to continue the recycling of cathode ray tubes and consumer electronics until June 6, 2010, provided its operation is otherwise consistent with the standards of N.J.A.C. 7:50-5 and 6 and subject to the following conditions:

1. The recycling center shall accept for repair and/or recycling only materials which are solid components of cathode ray tubes or consumer electronics. No other hazardous wastes of any kind, and in particular no liquid wastes, shall be accepted for transfer, storage, disposal or recycling or for any other purpose;
2. The recycling center shall at all times be maintained and operated in conformance with the January 22, 2003 amendment to the Burlington County District Solid Waste Management Plan, certified by the Commissioner of the New Jersey Department of Environmental Protection and dated June 25, 2003;
3. Transportation of cathode ray tubes and consumer electronics to and from the recycling center and disposition of the processed product shall be accomplished in accordance with N.J.A.C. 7:26A-7.6, except that a transporter may not store the materials in the Pinelands;
4. The waste importation limitations prescribed in N.J.A.C. 7:50-6.73(c) shall not apply;
5. The total amount of consumer electronics materials accepted for recycling shall not exceed 200 tons per day;
6. No materials intended for recycling or repair shall be stored at the center for more than three months and the total amount of recyclable materials on site at any time shall not exceed 1,000 tons;
7. The recycling center shall not be expanded or modified in any way, except as necessary to facilitate the recycling function prescribed herein and only after written notice has been provided to the Commission and an application for development, if required pursuant to N.J.A.C. 7:50-4, has been approved by the Commission;
8. Recyclable materials shall be stored in secure, enclosed, weather-tight buildings or containers and the design and operation of the recycling center shall be in accordance with the appropriate standards of N.J.A.C. 7:26A-4.1 through 4.6; and
9. The New Jersey Department of Environmental Protection and the Commission shall conduct annual joint inspections of the operations of the recycling center, as permitted by N.J.A.C. 7:26A-4.3, during the period the Fort Dix Consumer Electronics Recycling Center Pilot Program is in effect.