

**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.

"Abandonment" means the voluntary cessation or discontinuation of a use, not including temporary or short-term interruptions to a use during periods of remodeling, maintaining or otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure. Cessation or discontinuation of a use for two or more years shall constitute prima facie evidence of abandonment. An applicant may

rebut this presumption of abandonment by demonstrating, by a preponderance of the evidence, objective proof of intent to continue a use such that a reasonable person would believe there was no intent to abandon said use. Factors to be considered by the Commission in evaluating such intent may include, but are not limited to:

1. The length of time of cessation or discontinuation of the use;
2. Whether the owner of the use has allowed it to fall into disrepair;
3. Bills of lading, delivery records, phone records or utility bills affirmatively documenting continuation of the use; and
4. Any other record, bill or correspondence affirmatively documenting continuation of the use.

“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 includes the systems listed below, 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. In addition, alternate design pilot program treatment system shall also include any technology or technologies that have been approved by the Commission for participation in the alternate design wastewater treatment systems pilot program pursuant to N.J.A.C. 7:50-10.23(b). Detailed plans and specifications for each authorized technology are available at the principal office of the Commission.

1. FAST;
2. Cromaglass; or
3. Other nitrogen reducing technologies approved by the Commission pursuant to N.J.A.C. 7:50-10.23(b).

“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.

“Artificial regeneration” means the establishment of tree cover through direct or supplemental seeding or planting.

“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.

“Bedding” means a silvicultural practice involving the preparation of land before planting in the form of small mounds so

as to concentrate topsoil and elevate the root zone of seedlings above temporary standing water.

“Broadcast scarification” means a silvicultural practice involving the dragging of cut trees or other objects across a parcel to remove or reduce above-ground shrub cover, debris, leaf litter and humus without disturbance to mineral soil horizons and associated roots.

“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.

“Clearcutting” means a silvicultural practice involving removal of an entire forest stand in one cutting for purposes of regeneration either obtained artificially, by natural seed or from advanced regeneration. Clearcutting typically results in the removal of all woody vegetation from a parcel in preparation for the establishment of new trees; however, some trees may be left on the parcel.

“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.

“Coppicing” means a silvicultural practice involving the production of forest stands from vegetative sprouting by the trees that are harvested (stump sprouts, root suckers, and

naturally rooted layers). Coppicing typically involves short rotations with dense stands of short trees.

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

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

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

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

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

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

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

1. A change in type of use of a structure or land;
2. A reconstruction, alteration of the size, or material change in the external appearance of a structure or land;
3. A material increase in the intensity of use of land, such as an increase in the number of businesses, manufacturing establishments, offices or dwelling units in a structure or on land;
4. Commencement of resource extraction or drilling or excavation on a parcel of land;
5. Demolition of a structure or removal of trees;
6. Commencement of forestry activities;
7. Deposit of refuse, solid or liquid waste or fill on a parcel of land;
8. In connection with the use of land, the making of any material change in noise levels, thermal conditions, or emissions of waste material; and

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

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

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

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

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

“Disking” means a silvicultural practice involving the drawing of one or more heavy, round, concave, sharpened, freely rotating steel disks across a site for the purposes of cutting through soil and roots or cutting and turning a furrow over an area.

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

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

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

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

“Drum chopping” means a silvicultural practice involving the drawing of a large cylindrical drum with cutting blades mounted parallel to its axis across a site to break up slash, crush scrubby vegetation prior to burning or planting or to chop up and disturb the organic turf and roots in the upper foot of soil.

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

“Dwelling unit” means any room or group of rooms located within a structure forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, eating and sanitation by one family.

Dwelling unit shall include each separate apartment or unit where one or more individuals reside within an assisted living facility and each room, apartment, cottage or other area within a continuing care retirement community set aside for the exclusive use or control of one or more individuals constituting a household unit.

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

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

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

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

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

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

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

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

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

“First order stream” means that portion of a stream, as identifiable on the USGS 7 1/2 foot quadrangle maps, from the point of upstream origin, downstream to the first point of intersection with another branch, stream or tributary.

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

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

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

“Forestry” means the planting, cultivating and harvesting of trees for the production of wood products, including firewood, or for forest health. It includes such practices as reforestation, site preparation and other silvicultural practices, including, but not limited to, artificial regeneration, bedding, broadcast scarification, clearcutting, coppicing, disking, drum chopping, group selection, individual selection, natural regeneration, root raking, seed tree cut, shelterwood cut and thinning. For purposes of this Plan, the following activities shall not be defined as forestry:

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

“Forestry management plan”. See N.J.A.C. 7:50-6.44(b)7.

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

“Group selection” means a silvicultural practice whereby a group of trees is periodically selected to be removed from a large area so that age and size classes of the reproduction are mixed.

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

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

“Hazardous waste” means any waste or combination of wastes, including toxic, carcinogenic, corrosive, irritating,

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

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

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

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

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

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

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

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

“Impermeable surface” means any surface which does not permit fluids to pass through or penetrate its pores or spaces, typically having a maximum permeability for water of  $10^{-7}$  cm/second at the maximum anticipated hydrostatic pressure. The term “impermeable” is equivalent in meaning.

“Impervious surface” means any surface that has been compacted or covered with a layer of material so that it prevents, impedes or slows infiltration or absorption of fluid, including stormwater directly into the ground, and results in either reduced groundwater recharge or increased stormwater runoff sufficient to be classified as impervious in Urban Areas by the United States Department of Agriculture, Natural Resources Conservation Service Title 210 - Engineering, 210-3-1 - Small Watershed Hydrology (WINTR-

55) Version 1.0, incorporated herein by reference, as amended and supplemented, available with user guide and tutorials at [http://www.wsi.nrcs.usda.gov/products/W2Q/H&H/Tools\\_Models/WinTr55.html](http://www.wsi.nrcs.usda.gov/products/W2Q/H&H/Tools_Models/WinTr55.html) or at Natural Resources Conservation Service, 220 Davidson Avenue, Somerset, NJ 08873. Such surfaces may have varying degrees of permeability.

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

“Individual onsite subsurface sewage disposal system” means a system designed to treat and dispose of sanitary sewage as defined at N.J.A.C. 7:9A-2.1, with an engineering design flow no greater than 2,000 gallons per day, serving a single family detached residential dwelling unit. The term includes both traditional onsite wastewater subsurface sewage disposal systems and Pinelands alternate design wastewater treatment systems.

“Individual selection” means a silvicultural practice whereby single trees are periodically selected to be removed from a large area so that age and size classes of the reproduction are mixed.

“Institutional use” means any land used for the following public or private purposes: educational facilities, including universities, colleges, elementary and secondary and vocational schools, kindergartens and nurseries; cultural facilities such as libraries, galleries, museums, concert halls, theaters and the like; hospitals, including such educational, clinical, research and convalescent facilities as are integral to the operation of the hospital; medical and health service facilities, including nursing homes, rehabilitation therapy centers and public health facilities; law enforcement facilities; military facilities; churches; public office buildings; cemeteries; and other similar facilities. For purposes of this Plan, institutional use shall not include medical offices which are not associated with hospitals or other medical or health service facilities, nor shall it include assisted living facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Natural regeneration” means the establishment of a plant or plant age class from natural seeding, sprouting, suckering or layering.

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

“Nonconforming use” means a use or activity, which was lawful prior to the adoption or amendment of this Plan, but which fails to conform to the requirements of the municipal zoning district and/or Pinelands management area in which it is located by reasons of adoption or amendment of this Plan.

“Non-individual onsite subsurface sewage disposal system” means an onsite subsurface sewage disposal system designed to treat and dispose of sanitary sewage as defined at N.J.A.C. 7:9A-2.1 serving a property other than a single family dwelling with an engineering design flow no greater than 2,000 gallons per day. Such systems include, but are not limited to, those systems defined in N.J.A.C. 7:9A-1.8(a)2. Typical examples include, but are not limited to, systems serving: commercial buildings, restaurants, food establishments, commercial/residential mixed uses, and systems servicing multiple commercial or dwelling units. The term includes both traditional onsite wastewater subsurface sewage disposal systems and Pinelands alternate design wastewater treatment systems.

“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.

“Permeability” means the rate at which water moves through a unit area of soil, rock, or other material at hydraulic gradient of one.

“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 alternate design wastewater treatment system” means an individual or non-individual onsite subsurface wastewater treatment and disposal system authorized for use by the Pinelands Commission and intended to reduce the concentration of total nitrogen in sanitary sewage to meet the water quality standards of N.J.A.C. 7:50-6.84.

“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.

“Qualified service technician” means a person, firm or corporation authorized by a specific Pinelands alternate design wastewater treatment manufacturer or vendor to provide operation, maintenance, or repair services on said wastewater treatment system or a person who holds a valid public wastewater treatment works operators license issued by the New Jersey Department of Environmental Protection at a level of S2 or higher.

“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.

“Resource management system plan” means a plan, prepared in accordance with the United States Department of Agriculture, Natural Resources Conservation Service New Jersey Field Office Technical Guide, dated June 2005, incorporated herein by reference, as amended and supplemented and available at <http://www.nrcs.usda.gov/technical/efotg>. Such plans shall:

1. Prescribe needed land treatment and related conservation and natural resources management measures, including forest management practices, for the conservation, protection and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity, and the control and prevention of non-point source pollution; and
2. Establish criteria for resource sustainability of soil, water, air, plants and animals.

“Root raking” means a silvicultural practice involving the drawing of a set of tines, mounted on the front or trailed behind a tractor, over an area to thoroughly disturb tree and vegetation roots and/or to collect stumps and slash.

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

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

“Seed tree cut” means a silvicultural practice involving the removal of old forest stand in one cutting, except for a small number of trees left singly, in small groups or narrow strips, as a source of seed for natural regeneration.

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

“Shelterwood cut” means a silvicultural practice involving the establishment of a new, essentially even-aged forest stand from release, typically in a series of cuttings, of new trees started under the old forest stand. A shelterwood cut involves the establishment of the new forest stand before the old forest stand is removed.

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

“Solar energy facility” means a solar energy system and all associated components, including, but not limited to, panels, arrays, footings, supports, mounting and stabilization devices, inverters, electrical distribution wires and other on-site or off-site infrastructure necessary for the facility, which converts solar energy into usable electrical energy, heats water or produces hot air or other similar function.

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

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

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

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

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

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

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

"Thinning" means a silvicultural practice involving the removal of competing trees to favor certain species, sizes and qualities of trees.

"Traditional onsite subsurface sewage disposal system" means an individual or non-individual subsurface sewage disposal system which functions to treat and dispose of sanitary sewage in a manner that is not intended to reduce the total nitrogen concentration in the effluent but is intended to retain most of the settleable solids in a septic tank and to discharge the liquid effluent to a subsurface disposal field. Traditional onsite subsurface sewage disposal systems include gravity flow, gravity dosing and pressure dosing septic systems and may utilize septic tanks, dosing tanks, distribution boxes, disposal beds, disposal trenches and seepage pits. Existing privies and cesspools which are determined to be functioning properly shall also be considered to be traditional onsite subsurface sewage disposal systems.

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

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

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

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

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

"Waste" means any hazardous waste, regulated medical waste, garbage, refuse, septage, sludge, discarded materials, and other by-products and substances which become unsuit-

able for their original purpose, resulting from industrial, commercial and agricultural operations and from domestic and community activities. They shall include solid and liquid waste materials. For purposes of this definition, liquids which are released from a sewage treatment plant or on-site septic waste water treatment system and solid animal and vegetable wastes collected by swine producers licensed by the New Jersey Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms shall not be considered waste.

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

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

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

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

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

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

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

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

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

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

## 3. The wetland is not:

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

“Wetlands management” means the establishment of a characteristic wetland or the removal of exotic species or Phragmites from a wetland in accordance with the standards of N.J.A.C. 7:50-6.10. For purposes of this definition, exotic species are those that are not indigenous to North America.

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

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

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

“Certificate of Compliance” added. “Certificate of Conformity” deleted.

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Amended by R.1987 d.436, effective November 2, 1987.

See: 18 N.J.R. 2239(a), 19 N.J.R. 2010(a).

Substantially amended.

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

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

Substantially amended.

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

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

Corrected errors in “Parcel” and “Subdivision”.

Amended by R.1992 d.91, effective March 2, 1992.

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

Amended “Contiguous lands”; added “fair market value” and “wetland, impaired”.

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

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

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

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

Amended “Agricultural employee housing”, “Certified county master plan or ordinance”, and “Uncertified municipality or county”; added “Local communications facility”; and deleted “Local review officer” and “Notice of filing”.

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

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

Added “Collection facility”, “Domestic treatment works”, “Domestic wastewater”, “Hazardous or toxic substances”, “Hazardous waste”, “Household hazardous waste”, “Incinerator”, “Lawful use”, “Record

tree”, “Recyclable material”, “Recycling center”, “Regulated medical waste”, “Remediation”, “Sewage sludge”, “Suitable sewage sludge”, “Transfer station or facility”, “Vegetative waste”, “Waste”, “Waste derived material”, and “Waste management facility”; deleted “Solid waste transfer station” and “Specimen tree”; and amended “Forestry”, “Landfill” and “Wetlands, impaired”.

Amended by R.2000 d.272, effective July 3, 2000.

See: 32 N.J.R. 145(a), 32 N.J.R. 2435(a).

Inserted “Assisted living facility” and “Continuing care retirement community”; in “Dwelling unit”, added a second sentence; and in “Institutional use”, deleted a reference to supervised residential institutions, and added a second sentence.

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

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

In “Agricultural or horticultural purpose or use”, inserted “aquatic organisms as part of aquaculture;” following “fur animals;”; added “Aquaculture” and “Aquatic organisms”.

Amended by R.2001 d.454, effective December 3, 2001.

See: 33 N.J.R. 2005(a), 33 N.J.R. 4133(a).

Rewrote “Parcel”; in “Resource extraction” insert “on the same parcel” following “material”; added “Resource extraction, agricultural”.

Amended by R.2002 d.247, effective August 5, 2002.

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

Added “Alternate design pilot program treatment system”.

Amended by 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).

Added “Consumer electronics”.

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

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

Added definitions “Abandonment” and “Nonconforming use”; and in definition “Alternate design pilot program treatment system”, deleted paragraph 1 and recodified paragraphs 2 through 5 as paragraphs 1 through 4.

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

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

Rewrote definition “Impermeable surface”; and added definitions “Impervious surface”, “Permeability” and “Resource management system plan”.

Amended by R.2009 d.385, effective December 21, 2009.

See: 41 N.J.R. 2398(a), 41 N.J.R. 4786(a).

Added definition “Wetlands management”.

Amended by R.2010 d.029, effective March 1, 2010.

See: 41 N.J.R. 2402(a), 42 N.J.R. 629(a).

Added definitions “Artificial regeneration”, “Bedding”, “Broadcast scarification”, “Clearcutting”, “Coppicing”, “Disking”, “Drum chopping”, “Group selection”, “Individual selection”, “Natural regeneration”, “Root raking”, “Seed tree cut”, “Shelterwood cut” and “Thinning”; in the introductory paragraph of definition “Forestry”, inserted “, or for forest health” and “, including, but not limited to, artificial regeneration, bedding, broadcast scarification, clearcutting, coppicing, disk, drum chopping, group selection, individual selection, natural regeneration, root raking, seed tree cut, shelterwood cut and thinning”; in definition “Forestry management plan”, updated the N.J.A.C. reference; and in definition “Forest stand”, inserted “composition,” and “and similar forest structure”, and deleted “and” preceding “age”.

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

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

Added definitions “Individual onsite subsurface sewage disposal system”, “Non-individual onsite subsurface sewage disposal system”, “Pinelands alternate design wastewater treatment system”, “Qualified service technician” and “Traditional onsite subsurface sewage disposal system”.

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

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

In definition “Alternate design pilot program treatment system”, rewrote the introductory paragraph and paragraph 3, in paragraph 2, inserted “or” at the end, and deleted paragraph 4.

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

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

Amended by R.2012 d.012, effective January 3, 2012.

See: 43 N.J.R. 928(a), 44 N.J.R. 72(a).

Added definition “Solar energy facility”.

**Case Notes**

New Jersey Pinelands Commission was entitled to a preliminary injunction preventing construction of a solid waste transfer facility in the Pinelands National Reserve based on failure by a railroad and the purported owners and operators of the facility site to obtain regulatory approvals under the National Parks and Recreation Act of 1978, 16 U.S.C.S. § 471i et seq., the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and the Commission's Comprehensive Management Plan, N.J.A.C. 7:50-1.1 et seq.; the Commission was likely to succeed on its claim that regulation of the facility was not within the exclusive jurisdiction of the Surface Transportation Board pursuant to 49 U.S.C.S. § 10501(b). *J.P. Rail, Inc. v. New Jersey Pinelands Comm'n*, 404 F.Supp.2d 636, 2005 U.S. Dist. LEXIS 36411 (D.N.J. 2005).

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

Plotted but unbuilt street did not render non-contiguous commonly owned adjoining parcels of land; no hardship waiver from wetlands requirement. *Bisignano v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 36.

---

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

PART I—PURPOSE

**7:50-3.1 Purpose**

(a) The Pinelands Protection Act is a legislative determination that management and protection of the essential

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

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

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

**7:50-3.83 Certification standards**

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

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

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

**7:50-3.84 Assistance and monitoring**

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

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

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

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

**7:50-3.85 Failure to implement**

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

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

**SUBCHAPTER 4. DEVELOPMENT REVIEW****INTRODUCTION**

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

Part II of this subchapter establishes the procedures for development review in uncertified jurisdictions. Part III of this subchapter sets forth the procedures for development review in certified areas, including the Commission's authority to review development approvals at the local level. It is

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

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

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

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

#### PART I—UNIFORM PROCEDURES

##### 7:50-4.1 Applicability

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

1. The improvement, expansion, or reconstruction within five years of destruction or demolition, of any single family dwelling unit or appurtenance thereto;
2. The improvement, expansion, construction or reconstruction of any structure accessory to a single family dwelling;
3. The improvement, expansion, construction or reconstruction of any structure used exclusively for agricultural or horticultural purposes;
4. The construction, repair or removal of any sign, except for the construction or replacement of any off-site commercial advertising sign;
5. The repair of existing utility distribution lines;
6. The installation of utility distribution lines, except for sewage lines, to serve areas which are effectively developed or development which has received all necessary approvals and permits;
7. The clearing of less than 1,500 square feet of land;
8. The construction of any addition or accessory structure for any non-residential use or any multi-family residential structure provided said addition or structure will be located on or below an existing impervious surface and the existing use is served by public sewers and said addition or structure will cover an area of no more than 1,000 square feet;
9. The demolition of any structure less than 50 years old;
10. The repair or replacement of any existing on-site waste water disposal system;
11. The repaving of existing paved roads, provided no increase in the paved width of said roads will occur;
12. The clearing of land solely for agricultural purposes;
13. Fences, provided no more than 1,500 square feet of land is to be cleared;
14. Above-ground telephone equipment cabinets;
15. Tree pruning;
16. The following forestry activities:
  - i. Normal and customary forestry practices on residentially improved parcels of land that are five acres or less in size;
  - ii. Tree harvesting, provided that no more than one cord of wood per five acres of land is harvested in any one year and that no more than five cords of wood are harvested from the entire parcel in any one year;
  - iii. Tree planting, provided that the area to be planted does not exceed five acres in any one year, no soil disturbance occurs other than that caused by the planting activity and no trees other than those authorized by N.J.A.C. 7:50-6.25 are to be planted; and
  - iv. Forest stand improvement designed to selectively thin trees and brush, provided that no clearing or soil disturbance occurs and that the total land area on the parcel in which the activity occurs does not exceed five acres in any one year;
17. Prescribed burning and the clearing and maintaining of fire breaks;
18. Normal and customary landscape plantings, unless a landscaping plan is required pursuant to N.J.A.C. 7:50-6.24;
19. Agricultural resource extraction, provided that:
  - i. All of the removed soil remains in agricultural or horticultural use within the Pinelands Area;
  - ii. No more than 2,000 cubic yards of soil per calendar year are removed from any parcel; or
  - iii. No more than 20,000 cubic yards of soil per calendar year are removed from any parcel and a Farm Conservation Plan, designed in accordance with the United States Department of Agriculture, Natural Re-

sources Conservation Service New Jersey Field Office Technical Guide, section 4, dated May 2001, incorporated herein by reference, as amended and supplemented, is approved by the Soil Conservation District and submitted to the Pinelands Commission by the owner of the parcel, demonstrating that the proposed resource extraction is for one of the following agricultural purposes:

- (1) Agricultural irrigation ponds;
- (2) Blueberry/cranberry agriculture site preparation and horticulture of other wetland species, provided the activity is located on wetland soils or soil types that are somewhat poorly drained or moderately well drained with a seasonal high water table within 24 inches of the natural surface of the ground, as defined in the applicable county soil survey, published by the United States Department of Agriculture, Natural Resources Conservation Service, as amended and or supplemented; or

(3) The offsite removal of overlying soils to access underlying sand for cranberry management practices, provided the quantity of overlying soil removed offsite does not exceed the quantity of underlying sand to be used for the management practices listed in N.J.A.C. 7:50-6.55(a)4 and the quantity of overlying soil removed offsite does not exceed that reasonably necessary to provide access to underlying sand to be utilized within a three year period;

20. The installation of an accessory solar energy facility on any existing structure or impervious surface; or

21. The installation of a local communications facilities antenna on an existing communications or other suitable structure, provided such antenna is not inconsistent with any comprehensive plan for local communications facilities approved by the Commission pursuant to N.J.A.C. 7:50-5.4(c)6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In (a) added tree pruning, forestry activities and prescribed burning and fire breaks.

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

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

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

Amended by R.2001 d.454, effective December 3, 2001.

See: 33 N.J.R. 2005(a), 33 N.J.R. 4133(a).

In (a), added 19.

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

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

In (a)8, substituted "impervious" for "impermeable".

Amended by R.2012 d.012, effective January 3, 2012.

See: 43 N.J.R. 928(a), 44 N.J.R. 72(a).

In (a)18, deleted "or" from the end; in (a)19iii(3), substituted a semicolon for a period at the end; and added (a)20 and (a)21.

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

#### (a) Pre-application conference.

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

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

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

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

5. Representations of the Executive Director: No representation made by the Executive Director or any member of the staff designated by the Executive Director during the course of any pre-application conference shall be binding

on the Commission or the Executive Director with respect to any application subsequently submitted.

#### (b) Application requirements.

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

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

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

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

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

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

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

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

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

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

x. A map showing existing vegetation, identifying predominant vegetation types in the area and showing proposed landscaping of the subject parcel, including the

location of the tree line before and after development and all areas to be disturbed as a result of the proposed development.

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

i. All information required by (b)4i through iv;

ii. A brief written statement generally describing the proposed development; the number of total units; and the floor area of all units to be included in the proposed development;

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

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

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

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

(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 sewer 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 or undertake any direct activity in furtherance of the application process within two years, 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: upon receipt of a statement of deficiencies from the Executive Director, the applicant shall submit all additional information requested in such statement. The failure of the applicant to submit such additional information or undertake any direct activity in furtherance of the application process within two years 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)7vii, "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.

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

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

In (b)9, substituted "or undertake any direct activity in furtherance of the application process within two years" for "within 30 days, or request an extension of time to do so"; and in (c)2, substituted "upon" for "Within 30 days following"; deleted ", or such extension as the Executive Director may grant" following "from the Executive Director", and inserted "or undertake any direct activity in furtherance of the application process within two years".

### 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 Pine-

lands 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,

exhibits and papers submitted in any proceeding with respect to the matter being considered; and the summary and report or reports of the Executive Director.

iii. All summaries and reports of the Executive Director shall be public records, open to inspection at a reasonable time and upon reasonable notice.

(e) Content and service of decision of Executive Director or Commission:

1. All decisions and orders of the Executive Director or the Commission, and all recommendations of the Executive Director to the Commission, shall be in writing and shall include findings of fact, shall refer to the information in the record upon which such decision or order is based, shall specify the reason or reasons for such decision, and shall contain a conclusion or statement separate from the findings of fact which shall set forth any recommendation

or final approval, conditional approval, or denial of the application being considered.

2. Except as provided in N.J.A.C. 7:50-4 for letters of interpretation, notice of all decisions and orders of the Executive Director or the Commission shall be mailed to:

i. The applicant;

ii. 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 said notice;

iii. The secretary of the county and municipal planning board and environmental commission, if any, with jurisdiction over the property which was the subject of the decision or order;

iv. Any other person who has demonstrated an interest in the proceeding.

3. All decisions and orders of the Executive Director or the Commission shall be considered rendered three days after notice of such decisions and orders has been deposited in the United States Mail addressed to those persons identified in (e)2 above.

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)2i(5); corrected reference in (b)3.  
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).

Made provision for publication of public hearing notices in all official newspapers of the Pinelands Commission at (b)9.

**Case Notes**

Persons entitled to notice of public hearing should Pinelands Commission decide to review a local development approval. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985) certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490, certiorari vacated as moot 103 N.J. 689, 512 A.2d 490.

**7:50-4.4 Waiver of time limits**

(a) By agreement: Any time limit imposed by statute or by any subchapter of this Plan on the processing of any application may be waived or extended by agreement of the Executive Director and the applicant.

(b) Automatic waiver: Any applicant who requests a continuance of any hearing at which his application is being considered, or who requests any extension of any time limit imposed by statute or this Plan, shall be deemed to have waived the applicability of that time limit.

**7:50-4.5 Emergency provision**

Notwithstanding any other provisions of this subchapter, in any case where the Executive Director determines that immediate action pursuant to this plan is necessary to remedy or prevent a condition that is dangerous to life, health or safety, the Executive Director may, after consultation with the Commission Chairman, pursuant to such a finding, perform whatever action is minimally necessary to remedy or prevent the danger to life, health or safety. The Executive Director shall inform the Commission of any action taken pursuant to this provision at its next regularly scheduled meeting. Should action by the Commission be necessary, the Commission may take such action as it deems appropriate.

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

**7:50-4.6 through 7:50-4.10 (Reserved)**

**PART II—DEVELOPMENT IN AREAS WITHOUT CERTIFIED LOCAL PLANS**

**7:50-4.11 Purpose**

This Part establishes the procedures and standards for development review in a jurisdiction which has not received

certification of its master plan and land use ordinances. No development in such jurisdictions shall be carried out unless the Commission determines that the proposed development is in conformance with the minimum standards of this Plan, including adequate consideration of on-site and off-site engineering, planning and design elements, so as to preserve and maximize the benefits to the wide diversity of rare, threatened and endangered plant and animal species and the many significant and unique natural, ecological, agricultural, scenic and recreational resources found in the Pinelands Area. In particular, it is the purpose of this Part to ensure that all development which is not regulated by certified local master plans and land use ordinances is located, planned, designed, laid out, constructed and serviced in conformance with the minimum standards of this Plan.

**Case Notes**

Commission has power to approve landowner's development application if municipality has not produced a local zoning ordinance for certification. Riorano, Inc. v. Weymouth Twp., 209 N.J.Super. 280, 507 A.2d 311 (App.Div.1986).

Municipalities with land use ordinances not certified by the Pinelands Commission cannot approve or reject development proposal. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985) certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490, certiorari vacated as moot 103 N.J. 689, 512 A.2d 490.

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).

**7:50-4.12 Applicability**

The provisions of this Part shall be applicable to all development in any portion of the Pinelands Area located in any municipality where the master plan or land use ordinances have not been fully certified by the Commission and in any previously certified municipality whose certification has been revoked or suspended by the Commission pursuant to Part VI of subchapter 3 or which has failed to have any necessary changes to its master plan and land use ordinances certified by the Commission within one year after the effective date of any amendment to this Plan, except for those activities specifically excepted in N.J.A.C. 7:50-4.1.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).  
(a) deleted.  
Amended by R.1985 d.494, effective September 12, 1985.  
See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

**Case Notes**

Commission has power to approve landowner's development application if municipality has not produced a local zoning ordinance for certification. Riorano, Inc. v. Weymouth Twp., 209 N.J.Super. 280, 507 A.2d 311 (App.Div.1986).

Municipalities with land use ordinances not certified by the Pinelands Commission cannot approve or reject development proposals. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985) certiorari certification

granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490, vacated as moot 103 N.J. 689, 512 A.2d 490.

Local land-use approval power of municipalities without Certified Local Plans transferred to Pinelands Commission (citing former regulations). In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985) certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490, vacated as moot 103 N.J. 689, 512 A.2d 490.

#### 7:50-4.13 Compliance with this part required for development in uncertified areas

Subject to the provisions of N.J.A.C. 7:50-4.12, no person shall carry out any development in any portion of the Pinelands Area located within the jurisdiction of a municipality with an uncertified master plan or land use ordinance without first complying with all applicable procedures set out in this Part. Any decision made pursuant to this Part shall supersede any local decision. All development shall adhere to the terms of any decision made pursuant to this Part. No local decision shall impose any requirements which in any way contravenes any standard contained in this Plan. No decision by an uncertified county or any agency thereof shall in any way contravene any standard contained in a certified municipal land use ordinance.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).

#### Case Notes

Commission has power to approve landowner's development application if municipality has not produced a local zoning ordinance for certification. Riorano, Inc. v. Weymouth Twp., 209 N.J.Super. 280, 507 A.2d 311 (App.Div.1986).

Municipalities with land use ordinances not certified by the Pinelands Commission cannot approve or reject development proposals. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985) certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490, certiorari vacated as moot 103 N.J. 689, 512 A.2d 490.

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).

#### 7:50-4.14 Application for development approval in uncertified municipalities

(a) An application for development in uncertified municipalities shall be submitted to the Commission in accordance with the requirements of N.J.A.C. 7:50-4.2(b).

(b) In addition to the requirements of N.J.A.C. 7:50-4.2(b), an applicant for major development, as defined in N.J.A.C. 7:50-2.11 of this Plan, which will be located on a specific parcel, shall provide notice of the application for development as follows:

1. Notice shall be given to owners of all real property within 200 feet of the subject parcel as provided for in N.J.S.A. 40:55D-12(b). The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c). The applicant shall be entitled to rely upon the information contained in said certified list as provided in N.J.S.A. 40:55D-12(c); and

2. Notice shall be given by publication in the official newspaper of the municipality in which the parcel is located, if there is one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12; or

(c) In addition to the requirements of N.J.A.C. 7:50-4.2(b), an application for major development, as defined in N.J.A.C. 7:50-2.11 of the Plan, which will not be located on a specific parcel, including a proposed development located within a right-of-way or easement, shall provide notice of the application for development as follows:

1. Notice shall be given by publication in any official newspaper of the Pinelands Commission having general circulation in any municipality in which the proposed development is located; and

2. Notice shall be given by publication in the official newspapers, if any, of all municipalities in which the proposed development will be located or if there is no official newspaper in any such municipality then in a newspaper of general circulation in that municipality.

(d) The notice in (b) and (c) above shall state:

1. The nature of the application pending before the Pinelands Commission, including a description of the proposed development;

2. That action may be taken on the application after 10 days from the date the notice is published and mailed;

3. That written comments on the application may be submitted to the Pinelands Commission and that all such comments received within 10 days of the mailing or publication of the notice will be considered in the review of the application;

4. That the application is available for inspection at the office of the Pinelands Commission;

5. The address and phone number of the Pinelands Commission; and

6. That any person who provides comments or requests a copy of the Executive Director's determination shall be provided a copy of said determination.

(e) If the applicant significantly modifies the proposed development from that described in the most recent notice given pursuant to (b), (c) and (d) above, then the applicant shall again provide the notice mandated by said subsections so that the notice accurately describes the proposed development.

(f) No application for which the above notice is required, shall be deemed complete until proof that the requisite notice has been given is received.

(g) The Executive Director shall not issue a Certificate of Completeness for any application for which the above notice is required until five days after the 10 day comment period set forth herein has expired. If any public comments have been received concerning the application, the Executive Director shall inform the applicant that the public comments have been received prior to issuing a Certificate of Completeness.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).  
Amended by R.1985 d.494, effective September 12, 1985.  
See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).  
Amended by R.1994 d.590, effective December 5, 1994.  
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

#### Case Notes

Commission has power to approve landowner's development application if municipality has not produced a local zoning ordinance for certification. *Riorano, Inc. v. Weymouth Twp.*, 209 N.J.Super. 280, 507 A.2d 311 (App.Div.1986).

#### 7:50-4.15 Action by Executive Director on application

Within 90 days following the receipt of a complete application for development, the Executive Director shall review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review issue a Certificate of Completeness stating whether the application should be approved, approved with conditions or disapproved. The application may be approved or approved with conditions only if the development as proposed, or subject to any conditions which may be imposed, conforms to each of the minimum standards for development approval established by N.J.A.C. 7:50-4.16. The Executive Director may propose in said Certificate of Completeness any reasonable condition which he finds is necessary to achieve the objectives of this Plan. The Executive Director shall provide a copy of the Certificate of Completeness to the applicant, the Commission, interested persons, including all persons who have submitted information concerning the application, as well as all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).  
Amended by R.1985 d.494, effective September 12, 1985.  
See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).  
Amended by R.1994 d.590, effective December 5, 1994.  
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

#### Case Notes

Former regulation found to attempt to make the Executive Director's approval final notwithstanding statutory requirements. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985) certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490, certiorari vacated as moot 103 N.J. 689, 512 A.2d 490.

#### 7:50-4.16 Standards for uncertified areas

(a) No local approval may be granted by an uncertified municipality and no approval may be granted pursuant to this Part unless the proposed development:

1. Satisfies all of the criteria and standards established in N.J.A.C. 7:50-5 and 6 of this Plan, provided, however, that the optional land uses contained in N.J.A.C. 7:50-5 shall be permitted, that N.J.A.C. 7:50-5.28(a) shall not apply to exclusive non-residential uses, and that in N.J.A.C. 7:50-6 only the optional elements of N.J.A.C. 7:50-6.144 shall be mandatory for any jurisdiction which is uncertified; and

2. Is otherwise consistent with the objectives of the Federal Act, the Pinelands Protection Act and this Plan.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).  
Amended by R.1985 d.494, effective September 12, 1985.  
See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).  
Amended by R.1994 d.590, effective December 5, 1994.  
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

#### Case Notes

Cited as example of situation in which Executive Director could designate a representative to have final decision making power. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985) certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490, certiorari vacated as moot 103 N.J. 689, 512 A.2d 490.

Approval condition requiring waterless toilets on less-than-one-acre residential lots upheld as neither arbitrary, capricious nor unreasonable. *Country Village Homes, Inc. v. Pinelands Commission*, 8 N.J.A.R. 205 (1985).

Construction application approved; governing standards (citing former N.J.A.C. 7:1G) (decision vacated by Pinelands Commission; approval given and accepted with conditions). *Thompson v. Pinelands Commission*, 4 N.J.A.R. 359 (1980).

#### 7:50-4.17 Certificate of Completeness required for determination of completeness and action

No local permitting agency shall determine that any application for development is complete or take any action on any application for development unless the application is accompanied by a Certificate of Completeness issued pursuant to N.J.A.C. 7:50-4.15.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).  
Section deleted and new text substituted.  
Amended by R.1985 d.494, effective September 12, 1985.  
See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).  
Amended by R.1994 d.590, effective December 5, 1994.  
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

#### 7:50-4.18 Report requirements of local permitting agency with respect to applications for development

(a) General requirement: Every local permitting agency shall give notice to the Pinelands Commission, as hereinafter specified, of the filing of, and of any changes to, and of

any hearings and meetings concerning, and of the disposition of every application for development filed with it. Failure to provide said notices shall void any local decision for which such notices were not provided.

(b) Notice of application: Within seven days following a determination of completeness of an application for development, or any change to any application for development which was previously filed, notice of such application shall be given by the local agency, in writing, to the Commission. The notice shall be in such form as the Executive Director shall from time to time specify; but each such notice shall contain at least the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the parcel which the applicant proposes to develop;
3. A brief description of the proposed development, including uses and intensity of uses proposed;
4. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued;
5. The date on which the application, or change thereto, was filed and any application or other identifying number assigned to such application by the local permitting agency;
6. The local permitting agency with which the application or change thereto was filed;
7. The content of any change made to any such application since it was filed with the Commission; and
8. The nature of the local approval or approvals being sought.

(c) Notice of hearings and meetings: Notice of any hearing, public meeting or other formal proceeding at which an application for development is to be considered shall be given to the Commission by the local agency in writing not less than five days prior to such meeting, hearing or proceeding and shall be in such form as the Executive Director shall from time to time specify. Each notice shall contain at least the following information:

1. The name and address of the applicant;
2. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued;
3. The date, time and location of the meeting, hearing, or other formal proceeding;
4. The name of the local permitting agency or representative thereof which will be conducting the meeting, hearing, or other formal proceeding;

5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission; and

6. The purpose for which the meeting, hearing or other formal proceeding is to be held.

(d) Notice of preliminary approval: Notice of any grant of preliminary site plan or subdivision approval or any other preliminary approval of any application for development provided for by the Municipal Land Use Law or any county or municipal regulation or ordinance shall be given to the Commission by the local agency, by certified mail, within five days following such grant or approval. Such notice shall be in such form as the Executive Director shall from time to time specify, but shall contain at least the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the parcel which the applicant proposes to develop;
3. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued;
4. The date on which the preliminary approval was granted;
5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission;
6. A copy of the resolution or other documentation of the preliminary approval which was granted and a copy of the plans which were approved; and
7. The names and addresses of all persons who actively participated in the local proceedings.

(e) Notice of final determination: Notice of any final determination approving or denying any application for development shall be given to the Commission by the local agency, by certified mail, within five days following such determination and shall be in such form as the Executive Director shall from time to time specify; but such notice shall contain at least the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the parcel which the applicant proposes to develop;
3. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued; and

4. A copy of the resolution or other documentation of the local permitting agency approving or denying the applicant and, if the application was approved, a copy of any final site or subdivision plan or plat or similar plan which was approved by the local permitting agency.

(f) Nothing in this section shall provide for a tolling of time pursuant to N.J.S.A. 40:55D-21 due to the failure of the applicant or local permitting agency to meet the notice requirements of (a) through (e) above. No person shall carry out any development in the Pinelands Area prior to satisfying the notice requirements of (a) through (e) above.

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

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

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Deleted "by mail" and substituted "in writing".

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).

Substituted "parcel" for "property" throughout the section.

#### Case Notes

Development applicant possessing an Executive Director's approval issued under former rules must seek preliminary approval of local municipal planning agency. In re Application of John Madin/Lordland Development International, 201 N.J. Super. 105, 492 A.2d 1034 (App. Div. 1985) certification granted 102 N.J. 380, 508 A.2d 243, certiorari vacated as moot 103 N.J. 689, 512 A.2d 490, certification granted 102 N.J. 380, 508 A.2d 244, certification vacated 103 N.J. 689, 512 A.2d 490.

#### 7:50-4.19 Commission review following preliminary approval

(a) Decision to review local approval: Upon receipt of any notice of preliminary local approval given pursuant to N.J.A.C. 7:50-4.18(d), the Executive Director shall review the application for development and all other information in the file, the Certificate of Completeness and the local action and determine whether the local action conforms to the requirements of this Plan. If the Executive Director determines that the proposed development, as approved by the local agency, may not conform to the minimum standards set forth in N.J.A.C. 7:50-4.16, he shall initiate the review procedures set forth in this section. The preliminary approval shall also be reviewed pursuant to this section if the Executive Director determines that there is insufficient information to evaluate whether the proposed development conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16. If the Executive Director determines that the proposed development, as approved by the local agency, conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16 the preliminary approval will not be reviewed by the Commission.

(b) Notice of decision and hearing: Within 30 days following receipt of a notice of preliminary approval containing all the information specified in N.J.A.C. 7:50-4.18(d), the Executive Director shall give notice of his determination by mail to the applicant, the local permitting agency which

granted such preliminary approval, interested persons, including all persons who have individually submitted information concerning the application or who participated in the local approval process, as well as all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). If the Executive Director determines that the preliminary approval should be reviewed by the Commission, the notice shall be sent by certified mail to the applicant and the local agency which granted the approval. The notice shall indicate that the applicant, the local permitting agency or any interested person may, within 21 days of mailing of such notice, request that a hearing be held before an Administrative Law Judge pursuant to the procedures established by N.J.A.C. 7:50-4.91 for the purpose of reviewing such preliminary approval.

(c) Notices to interested persons: If the Executive Director determines that a preliminary approval shall be reviewed by the Commission and a hearing has been requested pursuant to (b) above, he shall notify all persons who actively participated in the proceedings before the local permitting agency and all persons who submitted information on the application to the Commission, that they may participate in any proceedings held pursuant to this Part.

(d) No action by applicant prior to receipt of notice: No person shall carry out any development pursuant to any preliminary approval granted by any local permitting agency until he has received notice provided for in (b) above. If such notice indicates that the Commission will conduct a review of such preliminary approval pursuant to this section, no development shall be carried out unless such review has been completed and the Commission has approved or approved with conditions the proposed development and the provisions of N.J.A.C. 7:50-4.20(d) have been fulfilled.

(e) Termination of review: For any application which has been called up for review by the Commission pursuant to the provisions of this section, the Executive Director may, at any time, terminate the review of the application if the applicant submits additional information to demonstrate that the local approval does not raise any issues with respect to the conformance of the proposed development with the minimum standards of the Plan. The Executive Director may also, at any time, terminate the review of the application if the local permitting agency whose approval has been called up for review modifies its approval so that the approval no longer raises any issues.

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

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

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Deleted "Notice of preliminary approval".

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).

Substituted "permitting agency" for "approval agency" in (e).

**7:50-4.20 Decision on review**

(a) If no hearing is requested pursuant to N.J.A.C. 7:50-4.19(b), the Executive Director shall, within 60 days after the time to request an appeal has expired, review the application, all other information in the file, the Certificate of Completeness and the local approval and determine whether the preliminary approval is in conformance with the minimum standards of this Plan. The Executive Director may recommend the Commission approve the preliminary approval, approve the preliminary approval with conditions or disapprove the preliminary approval. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local permitting agency, interested persons, including all persons who have individually submitted information concerning the application or who participated in the local approval process, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

(b) Review by the Commission: If a hearing is requested pursuant to N.J.A.C. 7:50-4.19(b), the Commission shall, upon receipt of the initial decision of the Administrative Law Judge, review the initial decision, the application, and the record of the hearing only, and approve, approve with conditions, or disapprove the preliminary approval. If no hearing is requested pursuant to N.J.A.C. 7:50-4.19(b), the Commission shall, after receipt of the Executive Director's recommendation, review said recommendation, the application, other material in the file, the Certificate of Completeness and the local approval only and approve, approve with conditions or disapprove the preliminary approval.

(c) Standards: Preliminary approvals shall be approved or approved with conditions only if the Commission determines that the development as proposed or with any conditions which are imposed, conforms with the minimum standards established in N.J.A.C. 7:50-4.16.

**(d) Effect of the determination:**

1. If the Commission disapproves any preliminary approval of an application for development, the local permitting agency shall within 30 days revoke such preliminary approval, and, thereafter, deny such application.

2. If the Commission approves a preliminary approval subject to conditions, the local permitting agency shall, within 30 days, modify its preliminary approval to include all conditions imposed by the Commission, and shall grant final approval only if the application for final approval demonstrates that such conditions have been or will be met by the applicant.

Emergency New Rule, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).  
Amended by R.1985 d.494, effective September 12, 1985.

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Deleted "Notice of Decision and Hearings" and inserted "initial decision".

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

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

**7:50-4.21 Notice of changes made subsequent to local preliminary approval**

(a) Each local permitting agency shall give notice to the Commission of any design, engineering or other changes made to any application for development by an applicant subsequent to any local preliminary approval reported to the Commission pursuant to N.J.A.C. 7:50-4.18(d), including changes made in response to conditions imposed by the Commission pursuant to N.J.A.C. 7:50-4.20, to the Executive Director, within five days of receipt of such changes. Such notice shall be in such form as the Executive Director shall from time to time specify but shall contain at least the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the parcel which the applicant proposes to develop;
3. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued;
4. Copies of any amended application, site or subdivision plans, plats and other documents reflecting such changes; and
5. A brief description of the nature of such changes.

(b) Any such changes shall be subject to review by the Commission pursuant to N.J.A.C. 7:50-4.19 and 7:50-4.20 in the same manner as the original preliminary approval.

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

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

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Cross reference changed from 7:50-4.18(b) to (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).

Substituted "parcel" for "property".

**Case Notes**

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. 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).

**7:50-4.22 Commission review following final local approval**

(a) Decision to review local approval: Upon receipt of any notice of final local approval given pursuant to N.J.A.C. 7:50-4.18(e), the Executive Director shall review the application for development, all other information in the file, the Certificate of Completeness and the local action and determine whether the local action conforms to the requirements of this Plan. If the Executive Director determines that the proposed development, as approved by the local agency, may not conform to the minimum standards set forth in N.J.A.C. 7:50-4.16, he shall initiate the review procedures set forth in this section. The Executive Director shall also initiate the review procedures set forth in this section if it is determined there is insufficient information to evaluate whether the proposed development conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16. If the Executive Director determines that sufficient information is available and that the proposed development, as approved by the local agency, conforms to the minimum standards set forth in N.J.A.C. 7:50-4.16 the final approval will not be reviewed by the Commission.

(b) Notice of decision and hearing: Within 15 days following receipt of a notice of final determination containing all the information specified in N.J.A.C. 7:50-4.18(e), the Executive Director shall give notice of his determination by mail to the applicant, the local permitting agency which granted such approval, interested persons, including all persons who have individually submitted information concerning the application or who participated in the local review process, as well as all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). If applicable, such notice shall set a date, time and place for public hearing as required by N.J.A.C. 7:50-4.23. Any notice scheduling a public hearing shall be sent by certified mail to the applicant and the local agency which granted the approval.

(c) No person shall carry out any development pursuant to an approval of an application for development which has been granted by any local permitting agency until he has received the notice provided for in (b) above. If such notice provides that the Commission intends to review such approval pursuant to N.J.A.C. 7:50-4.23 and 4.24, no development shall be carried out until such review has been completed and the Commission has approved or approved with conditions the proposed development and the provisions of N.J.A.C. 7:50-4.24(c) have been fulfilled.

(d) Termination of review: For any application which has been called up for review by the Commission pursuant to the provisions of this section, the Executive Director may, at any time, terminate the review of the application if the applicant submits additional information to demonstrate that the local approval does not raise any issues with respect to the conformance of the proposed development with the

minimum standards of the Plan. The Executive Director may also, at any time, terminate the review of the application if the local permitting agency whose approval has been called up for review modifies its approval so that the approval no longer raises any issues.

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

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

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Added text "and by regular mail to".

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).

Substituted "permitting agency" for "approval agency".

**Case Notes**

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. 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).

**7:50-4.23 Public hearing**

If the Executive Director determines that the approval should be reviewed by the Commission, he shall, within 45 days following receipt of a completed notice of final determination given pursuant to N.J.A.C. 7:50-4.18(e), conduct a public hearing to be held pursuant to the procedures set out in N.J.A.C. 7:50-4.3 of this Plan. The applicant shall have the burden of going forward and the burden of proof at the public hearing. Following conclusion of the public hearing, the Executive Director shall review the record of the public hearing and issue a report on the public hearing to the Commission. The Executive Director may recommend that the Commission approve the application, approve the application with conditions or disapprove the application. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local permitting agency, interested persons, including all persons who have individually submitted information concerning the application or who participated in the local review process, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). However, an applicant may, at his option, waive all time limits for review imposed by the Pinelands Protection Act or this Plan and request that the hearing be held by an Administrative Law Judge pursuant to the procedures established in N.J.A.C. 7:50-4.91.

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

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

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Deleted text "Within 45 days ... a final order."

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).  
Substituted "permitting agency" for "approval agency".

#### Case Notes

Municipalities located within the Pinelands but without zoning ordinances approved by the Pinelands Commission have standing to challenge the Commission's developmental approvals; notice and hearings on challenge are required by statute and in accordance with procedural due process. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985) certification granted 102 N.J. 380, 508 A.2d 243, certification vacated as moot 103 N.J. 689, 512 A.2d 490.

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. 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).

#### 7:50-4.24 Decision on review

(a) Determination by Commission: If a hearing is held pursuant to N.J.A.C. 7:50-4.3, the Commission shall, within 45 days following the notice given pursuant to N.J.A.C. 7:50-4.22(b), review the record of the hearing and the Executive Director's report only and make a determination as to whether the proposed development should be approved, approved with conditions or disapproved. If a hearing is held before an Administrative Law Judge pursuant to N.J.A.C. 7:50-4.91, the Commission shall within 45 days of receipt of the initial decision of the Administrative Law Judge, review the initial decision, the record of the hearing and the application only and approve, approve with conditions or disapprove the proposed development.

(b) Standards: The development shall be approved or approved with conditions only if the Commission determines that the development as proposed, or with any conditions which are imposed, conforms with the minimum standards established in N.J.A.C. 7:50-4.16.

#### (c) Effect of the Commission's decision.

1. If the Commission disapproves the final local approval of any such application, the local permitting agency shall within 30 days revoke such approval and, thereafter, deny final approval of such application.

2. If the Commission approves the local permitting agency's approval of any such application subject to conditions, the local permitting agency shall within 30 days modify its approval to include all conditions imposed.

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

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

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

#### Case Notes

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. 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).

#### 7:50-4.25 Commission review following local denial

(a) Decision to review local denial: Upon receipt of a notice of a local denial given pursuant to N.J.A.C. 7:50-4.18(e), the Executive Director shall review the application for development, all other information in the file, the Certificate of Completeness and the local action and determine whether the local action conforms to the requirements of this Plan. If the Executive Director determines that the proposed development may conform to the minimum standards set forth in N.J.A.C. 7:50-4.16 and that the local denial may be contrary to the standards of the Plan, he shall initiate the review procedures set forth in this section. If the Executive Director determines that the proposed development does not conform to the minimum standards set forth in N.J.A.C. 7:50-4.16 or that the local denial is based on matters not regulated by the Plan and is not contrary to any such standards, the local denial will not be reviewed by the Commission.

(b) Notice of decision and hearing: Within 30 days following receipt of a notice of a denial containing all the information specified in N.J.A.C. 7:50-4.18(e) the Executive Director shall give notice of his determination by mail to the applicant, the local permitting agency which denied the applicant, interested persons, including all persons who have individually submitted information concerning the application, as well as all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). If the Executive Director determines that the denial should be reviewed by the Commission, the notice shall be sent by certified mail to the applicant and the local agency which granted the approval. The notice shall indicate that the applicant, the local permitting agency or any interested person may, within 21 days of mailing of such notice, request that a hearing be held before an Administrative Law Judge pursuant to the procedures established by N.J.A.C. 7:50-4.91 for the purpose of reviewing the denial.

(c) Notices to interested persons: If the Executive Director determines that a denial shall be reviewed by the Commission and a hearing has been requested pursuant to (b) above, he shall notify all persons who actively participated in the proceedings before the local permitting agency and all persons who submitted information on the application to the Commission, that they may participate in any proceedings held pursuant to this Part.

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

See: 17 N.J.R. 1918(a).  
 Amended by R.1985 d.494, effective September 12, 1985.  
 See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).  
 Added "and by regular mail to".  
 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

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. 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).

#### 7:50-4.26 Decision on review

(a) If no hearing is requested pursuant to N.J.A.C. 7:50-4.25(b), the Executive Director shall, within 60 days after the time to request an appeal has expired, review the application and all other information in the file, the Certificate of Completeness and the local denial and determine whether the denial is in conformance with the minimum standards of this Plan. The Executive Director may recommend the Commission approve the application, approve the application with conditions, disapprove the application or allow the local denial to stand. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local permitting agency, interested persons, including all persons who have individually submitted information concerning the application or who participated in the local approval process, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

(b) Review by the Commission: If a hearing is requested pursuant to N.J.A.C. 7:50-4.25(b), the Commission shall, upon receipt of the initial decision of the Administrative Law Judge, review the initial decision, the application, and the record of the hearing only, and approve, approve with conditions, or disapprove the proposed development or let the local denial stand. If no hearing is requested pursuant to N.J.A.C. 7:50-4.25(b), the Commission shall after receipt of the Executive Director's recommendation, review said recommendation, the application, the Certificate of Completeness, other material in the file and the local denial only, and approve, approve with conditions or disapprove the proposed development or allow the local denial to stand.

(c) Standards: The development shall be approved or approved with conditions only if the Commission determines that the development as proposed, or with any conditions which are imposed, conforms with the minimum standards established in N.J.A.C. 7:50-4.16 and that the local denial is based on matters regulated by the Plan.

(d) Effect of the determination:

1. If the Commission approves an application which received a local denial, the local permitting agency shall revoke the denial, and, thereafter, approve of such application within 30 days.

2. If the Commission approves, subject to conditions, an application which received a local denial, the local permitting agency shall, within 30 days, revoke its denial and grant approval subject to the conditions imposed by the Commission.

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

See: 17 N.J.R. 1918(a).  
 Amended by R.1985 d.494, effective September 12, 1985.  
 See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).  
 (c) added; old (c) recodified to (d).  
 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

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. 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).

#### 7:50-4.27 Effect of Pinelands Development Approval

A Pinelands Development Approval issued pursuant to the provisions of this Part in effect prior to July 15, 1985 shall have the same effect as a Certificate of Completeness issued pursuant to N.J.A.C. 7:50-4.15 unless the applicant received a valid local approval prior to July 15, 1985. If such a valid local approval was granted, the Pinelands Development Approval shall continue to have the same force and effect as if this Part had not been amended effective July 15, 1985.

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

See: 17 N.J.R. 1918(a).  
 Amended by R.1985 d.494, effective September 12, 1985.  
 See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).  
 Deleted text "the adoption of ... into the plan." and substituted "July 15, 1985".  
 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

Development applicant possessing an Executive Director's approval issued under former rules must seek preliminary approval of local municipal planning agency. 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).

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. 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, certifica-

tion granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

**7:50-4.28 through 7:50-4.30 (Reserved)**

**PART III—REVIEW OF LOCAL PERMITS  
IN CERTIFIED MUNICIPALITIES**

**7:50-4.31 Purpose**

(a) It is the purpose of this Part to establish procedures and standards to govern Commission review of municipal or county approval of applications for development in certified municipalities in the Pinelands Area, to ensure that development will occur only to the extent that it is consistent with the objectives of this Plan, and to ensure that adequate consideration will be given to critical on-site and off-site engineering, planning and design elements so as to preserve and maximize the benefits to the wide diversity of rare, threatened and endangered plant and animal species and the many significant and unique natural, ecological, agricultural, scenic, archaeological, historic, cultural and recreational resources found in the Pinelands Area. In particular, it is the purpose of this Part to ensure that all development approved by local permitting agencies is located, planned, designed, laid out, constructed and serviced in accordance with the standards set forth in N.J.A.C. 7:50-5 and 6 and the objectives of this Plan.

(b) The procedures established in this Part provide for Commission review of all permits issued by local permitting agencies in certified municipalities except for activities specifically exempted by the Pinelands Protection Act or this Plan. Except where municipal review is pre-empted by State or Federal laws or regulations, municipal review and approval or denial shall occur for all development in the Pinelands Area. If development is proposed, but a permit from a local permitting agency is pre-empted by State or Federal laws or regulations, the provisions of Part VII of this subchapter shall apply. The standards of this Part are minimum standards to be met by all development in the Pinelands Area and are designed to assure that all such development will be adequately planned, designed and served to protect the unique environment of the Pinelands Area.

(c) In order to alert landowners at an early stage to any issues raised by a proposed development in regard to the conformance of the development with the minimum standards of this Plan, this Part also provides for Commission staff participation during the local permitting agency proceedings, as well as providing for Commission review of preliminary local approvals of applications for development.

(d) The provisions of this Part may be modified through the implementation of alternative local permitting programs as provided in N.J.A.C. 7:50-3.81 through 3.85.

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

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

Recodified from 4.21.

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**

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. 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).

**7:50-4.32 Applicability**

The provisions of this Part shall be applicable to development of land located within a certified municipality, except for those activities specifically excepted in N.J.A.C. 7:50-4.1. Unless otherwise provided through an alternative municipal permitting program which is implemented pursuant to N.J.A.C. 7:50-3.81 through 3.85, no person shall carry out any development in any portion of the Pinelands Area located within the jurisdiction of a municipality with a certified plan and land use ordinances without first complying with all applicable procedures set forth in this Part and the provisions of said certified ordinances. Any decision made pursuant to this Part shall supersede any local decision. No local decision shall impose any requirements which in any way contravene any standard contained in this Plan or the applicable certified land use ordinance.

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

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

Recodified from 4.22.

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**

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. 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).

**7:50-4.33 Applicant to submit copies of local applications to Commission**

Prior to filing any application for development of land in the Pinelands Area with any local permitting agency, the applicant shall complete an application with the Commission in accordance with the requirements of N.J.A.C. 7:50-4.2(b).

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

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

Recodified from 4.23.

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

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. 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).

#### 7:50-4.34 Certificate of Filing; required for determination of completeness

Upon determining that an application is complete, the Executive Director shall issue a Certificate of Filing. No local permitting agency shall determine that any application for development is complete unless it is accompanied by a Certificate of Filing issued pursuant to this section. Such certificate may identify any inconsistencies of the proposed development with the standards of this Plan or the local certified land use ordinances and may indicate that if such inconsistencies are not resolved by a local approval, that local approval will be subject to review by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.37 and 4.40. Any such information contained in the Certificate of Filing is for the guidance of the applicant and local permitting agency only. Such information in no way shall be considered a final determination by either the Executive Director or the Pinelands Commission.

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

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

Recodified from 4.24.

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).

#### 7:50-4.35 Report requirements of local permitting agency with respect to applications for development

(a) General requirement: Every local permitting agency shall give notice to the Commission, as hereinafter specified, of the filing of, and changes to, any application for development and of hearings and meetings concerning the filing and disposition of every application for development filed with it.

(b) Notice of application: Within seven days following a determination of completeness of an application for development, or any change to any application for development which was previously filed, notice of such application shall be given by the local agency, by mail, to the Commission. The notice shall be in such form as the Executive Director shall from time to time specify; but each such notice shall contain at least the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the parcel which the applicant proposes to develop;
3. A brief description of the proposed development, including uses and intensity of uses proposed;

4. The application number of the Certificate of Filing or Notice of Filing issued by the Executive Director and the date on which it was issued;

5. The date on which the application, or change thereto, was filed and any application or other identifying number assigned to such application by the local permitting agency;

6. The local permitting agency with which the application or change thereto was filed;

7. The content of any change made to any such application since it was filed with the Commission including a copy of any revised plan or reports; and

8. The nature of the local approval or approvals being sought.

(c) Notice of hearings and meetings: Notice of any hearing, public meeting or other formal proceeding at which an application for development is to be considered shall be given to the Commission by mail or delivery of the same to the principal office of the Commission not less than five days prior to such meeting, hearing or proceeding and shall be in such form as the Executive Director shall from time to time specify. Each notice shall contain at least the following information:

1. The name and address of the applicant;

2. The application number of the Certificate of Filing or Notice of Filing issued by the Executive Director and the date on which it was issued;

3. The date, time and location of the meeting, hearing or other formal proceeding;

4. The name of the local permitting agency or representative thereof which will be conducting the meeting, hearing or other formal proceeding;

5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission; and

6. The purpose for which the meeting, hearing or other formal proceeding is to be held.

(d) Notice of preliminary approval: Notice of any grant of preliminary site plan or subdivision approval or any other preliminary approval of any application for development provided for by the Municipal Land Use Law or any county or municipal regulation or ordinance shall be given to the Commission, by certified mail, within five days following such grant or approval. Such notice shall be in such form as the Executive Director shall from time to time specify, but shall contain at least the following information:

1. The name and address of the applicant;

2. The legal description and street address, if any, of the parcel which the applicant proposes to develop;

3. The application number of the Certificate of Filing or Notice of Filing issued by the Executive Director and the date on which it was issued;

4. The date on which the preliminary approval was granted;

5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission;

6. A copy of the resolution or other documentation of the preliminary approval and a copy of the submitted preliminary plans which were approved by the local permitting agency; and

7. The names and addresses of all persons who actively participated in the local proceedings.

(e) Notice of final determination: Notice of any final determination with respect to any application for development shall be given to the Commission by certified mail within five days following such determination and shall be in such form as the Executive Director shall from time to time specify; but such notice shall contain at least the following information:

1. The name and address of the applicant;

2. The legal description and street address, if any, of the parcel which the applicant proposes to develop;

3. The application number of the Certificate of Filing or Notice of Filing issued by the Executive Director and the date on which it was issued; and

4. A copy of the resolution or other documentation of the local permitting agency approving or denying the application and, if the application was approved, a copy of any final plan, plot or similar document which was approved by the local permitting agency.

(f) Nothing in this section shall provide for a tolling of time pursuant to N.J.S.A. 40:55D-21 due to the failure of the applicant or local permitting agency to meet the notice requirements of (a) through (e) above. No person shall carry out any development in the Pinelands Area prior to satisfying the notice requirements of (a) through (e) above.

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

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

Recodified from 4.25.

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).

#### 7:50-4.36 Commission staff participation in local review process

(a) Determination of degree of participation: Upon receipt of an application filed pursuant to N.J.A.C. 7:50-4.33 or any notice given pursuant to N.J.A.C. 7:50-4.35(b) or (c), the Executive Director may at his discretion, after reviewing the application for development, determine that, by reason of the nature of the development proposal, the site involved or any other factor, the Commission staff should participate in the local permitting process. The participation of the Commission staff may include, but is not limited to:

1. Submitting, in writing, either within the Certificate of Filing or Notice of Filing or in a separate document, an analysis of any concerns and opinions the Commission staff has with respect to the conformance of the proposed development with the minimum standards of this Plan, including a list of any conditions which it determines should be imposed in the event that a permit is granted; or

2. Submitting written evidence with respect to the satisfaction, by the proposed development, of any applicable standards for development contained in this Plan.

(b) Local permitting agency to allow Commission staff participation: Each local permitting agency granted permitting authority by N.J.A.C. 7:50-3.18 or 3.38, after certification of the jurisdiction's plan, shall permit the Commission staff to appear at any meeting or hearing described in N.J.A.C. 7:50-4.35(c) and present opinions and evidence in regard to the application being considered. At the option of the Executive Director, the opinions and evidence of the Commission staff may be submitted to the local permitting agency in written form in addition to actual appearance at such hearing or meeting.

(c) Conference with Commission staff: Subsequent to any submission by the Commission staff pursuant to (a) above, either the applicant or local permitting agency may request an informal conference with the Executive Director for the purpose of discussing any application for development. The Executive Director shall schedule such conference within 21 days following any such request.

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

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

Recodified from 4.26.

#### 7:50-4.37 Commission review following preliminary approval

(a) Decision to review local approval: Upon receipt of any notice of local approval given pursuant to N.J.A.C. 7:50-4.35(d), the Executive Director shall review the application for development submitted and any Commission staff recommendation made pursuant to N.J.A.C. 7:50-4.36 and determine whether the grant of preliminary approval raises substantial issues with respect to the conformance of the proposed development with the minimum standards of this Plan. If substantial issues are raised, the preliminary approval shall be reviewed pursuant to this section. The preliminary approval shall also be reviewed pursuant to this section if the Executive Director determines there is insufficient information to evaluate whether there is such a substantial issue. If substantial issues are not raised, the preliminary approval shall not be reviewed.

(b) Notice of decision and hearing: Within 30 days following receipt of a notice of preliminary approval containing all the information specified in N.J.A.C. 7:50-4.35(d), the Executive Director shall give notice of his determination by mail to the applicant, the local permitting agency which granted such preliminary approval and interested persons, including all persons who have individually submitted information concerning the application or who participated in the local review process, as well as all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). If the Executive Director determines that the preliminary approval should be reviewed by the Commission, the notice shall be sent by certified mail to the applicant and the local agency which granted the approval. The notice shall indicate that either the applicant, the local permitting agency or any interested person may, within 21 days of mailing of such notice, request that a hearing be held before an Administrative Law Judge pursuant to the procedures established by N.J.A.C. 7:50-4.91 for the purpose of reviewing such preliminary approval.

(c) Notices to persons participating in local permitting process; opportunity to comment: If the Executive Director decides to review a preliminary approval, he shall notify all persons who actively participated in the proceedings before the local permitting agency of such determination and inform them that they may participate in any proceedings held pursuant to this Part.

(d) No action by applicant prior to receipt of notice: No person shall carry out any development pursuant to a preliminary approval granted by any local permitting agency until he has received the notice provided for in (b) above. If such notice indicates that the Commission intends to conduct a review of such preliminary approval pursuant to this section, no development shall be carried out unless such review has been completed and the Commission has approved or approved with conditions the proposed development and the provisions of N.J.A.C. 7:50-4.38(d) have been fulfilled.

(e) Termination of review: For any application which has been called up for review by the Commission pursuant to the provisions of this section, the Executive Director may, at any time, terminate the review of the application if the applicant submits additional information to demonstrate that the local approval does not raise a substantial issue with respect to the conformance of the proposed development with the minimum standards of the Plan and the provisions of the relevant certified local ordinance. The Executive Director may also, at any time, terminate the review of the application, if the local permitting agency whose approval has been called up for review modifies its approval so that the approval no longer raises any substantial issues.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).

Recodified from 4.27.

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

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certification granted 102 N.J. 380, 580 A.2d 243, 244, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

Cited as example of situation in which Executive Director could designate a representative to have final decision making power (citing former N.J.A.C. 7:50-4.27). 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 244, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

#### 7:50-4.38 Decision on review

(a) Determination by Executive Director: If no hearing is requested by the applicant, the local permitting agency or any interested person pursuant to N.J.A.C. 7:50-4.37(b), the Executive Director shall, within 60 days after the time to request a hearing has expired, review the application, all other information in the file including any staff reports and the local approval and determine whether the preliminary approval is in conformance with the minimum standards of this Plan and the provisions of the relevant certified local ordinance. The Executive Director may recommend the Commission approve the preliminary approval, approve the preliminary approval with conditions or disapprove the preliminary approval. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local permitting agency, interested persons, including all persons who have individually submitted information concerning the application, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

(b) Review by the Commission: If a hearing is requested pursuant to N.J.A.C. 7:50-4.37(b), the Commission shall, upon receipt of the findings of fact and recommendations of the Administrative Law Judge, review such findings and recommendation, the application, the file and the record of the hearing only, and approve, approve with conditions or disapprove the preliminary approval. If no hearing is requested pursuant to N.J.A.C. 7:50-4.37(b), the Commission shall, after receipt of the Executive Director's recommendation, review said recommendation, the application, other material in the file including any staff reports and the local approval only and approve, approve with conditions or disapprove the preliminary approval.

(c) Standards: Preliminary approvals shall be approved or approved with conditions only if the Commission determines that the development as proposed, or with any conditions which are imposed, conforms to the minimum stan-

dards established by N.J.A.C. 7:50-4.16 and the provisions of the relevant certified local ordinance.

**(d) Effect of determination.**

1. If the Commission disapproves any preliminary approval of an application for development, the local permitting agency shall, within 30 days, revoke such preliminary approval and, thereafter, deny such application.

2. If the Commission approved a preliminary approval subject to conditions, the local permitting agency shall, within 30 days, modify its preliminary approval to include all conditions imposed by the Commission, and shall grant final approval only if the application for final approval demonstrates that such conditions have been or will be met by the applicant.

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

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

Recodified from 4.29.

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**

Cited as example of situation in which Executive Director could designate a representative to have final decision making power (citing former N.J.A.C. 7:50-4.28). In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App. Div.1985) certification granted 102 N.J. 380, 508 A.2d 243, certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 244, certification vacated 103 N.J. 689, 512 A.2d 490.

**7:50-4.39 Notice of changes made subsequent to local preliminary approval**

(a) Each local permitting agency shall give notice to the Commission of any design, engineering or other changes made to any application for development by an applicant subsequent to any local preliminary approval reported to the Commission pursuant to N.J.A.C. 7:50-4.35(d), including changes made in response to conditions imposed by the Commission pursuant to N.J.A.C. 7:50-4.38, to the Executive Director, by mail, within five days of receipt of such changes. Such notice shall be in such form as the Executive Director shall from time to time specify but shall contain at least the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the parcel which the applicant proposes to develop;
3. The application number of the Certificate of Filing or Notice of Filing issued by the Executive Director and the date on which it was issued;
4. Copies of any amended application, site plans, plats or other documents reflecting such changes; and
5. A brief description of the nature of such changes.

(b) Any such change shall be subject to review by the Commission pursuant to N.J.A.C. 7:50-4.37 and 4.38 in the same manner as the original preliminary approval.

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

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

Recodified from 4.29.

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).

**7:50-4.40 Commission review following final local approval**

(a) Decision to review local approval: Upon receipt of any notice given pursuant to N.J.A.C. 7:50-4.35(e), the Executive Director shall review the application for development submitted, any Commission staff recommendation made pursuant to N.J.A.C. 7:50-4.36 and any decision on preliminary review pursuant to N.J.A.C. 7:50-4.38 and determine whether the approval of the application for development raises substantial issues with respect to the conformance of the proposed development with the minimum standards of this Plan and the provisions of the relevant certified local ordinance. If substantial issues are raised, the approval shall be reviewed pursuant to N.J.A.C. 7:50-4.41 and 4.42. The final approval shall also be reviewed if the Executive Director determines that there is insufficient information to evaluate whether there is such a substantial issue. If sufficient information is available and substantial issues are not raised, the final approval shall not be reviewed by the Commission.

(b) Notice of decision and hearing: Within 15 days following receipt of a notice of final determination containing all the information specified in N.J.A.C. 7:50-4.35(e), the Executive Director shall give notice of his determination by certified mail to the applicant and the clerk of the local permitting authority which granted such approval, and interested persons, including all persons who have individually submitted information concerning the application or who participated in the local review process, as well as all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). If applicable, such notice shall set a date, time and place for public hearing, as required by N.J.A.C. 7:50-4.41. Any notice scheduling a public hearing shall be sent by certified mail to the applicant and the local agency which granted the approval.

(c) No action by applicant prior to receipt of notice: No person shall carry out any development pursuant to an approval of an application for development which has been granted by any local permitting agency until he has received the notice provided for in (b) above. If such notice provides that the Commission intends to review such approval pursuant to N.J.A.C. 7:50-4.41 and 4.42 of this Part, no development shall be carried out unless such review has been completed and the Commission has approved or approved with conditions the proposed development and the provisions of N.J.A.C. 7:50-4.42(c) have been fulfilled.

(d) Termination of review: For any application which has been called up for review by the Commission pursuant to the provisions of this section, the Executive Director may, at any time, terminate the review of the application if the applicant submits additional information to demonstrate the local approval does not raise a substantial issue with respect to the conformance of the proposed development with the minimum standards of the Plan and the provisions of the relevant certified local ordinance. The Executive Director may also, at any time, terminate the review of the application if the local permitting agency where approval has been called up for review modifies its approval so that the approval no longer raises any substantial issues.

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

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

Recodified from 4.30.

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

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

Deleted text in (b) "by regular mail to".

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

The Commission lacked jurisdiction to hear developer's appeal of his voluntary purchase of one-quarter Pinelands development credit. *Carino v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 7.

#### 7:50-4.41 Public hearing

If the Executive Director determines that the approval should be reviewed by the Commission, he shall, within 45 days following receipt of a completed notice of final determination given pursuant to N.J.A.C. 7:50-4.35(c), conduct a public hearing to be held pursuant to the procedures set out in N.J.A.C. 7:50-4.3. The applicant shall have the burden of going forward and the burden of proof at the public hearing. Applications from applicants who do not provide notice for any hearing and do not make a timely request for adjournment shall be recommended for denial. For applicants who do not appear at more than one scheduled public hearing, the Executive Director may determine that no further adjournment of the public hearing will be provided. Following conclusion of the public hearing, the Executive Director shall review the record of the public hearing and issue a report on the public hearing to the Commission. The Executive Director may recommend that the Commission approve the application, approve the application with conditions or disapprove the application. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local permitting agency, interested persons, including all persons who have individually submitted information concerning the application or who participated in the local review process, as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). However, an applicant may, at his option, waive all time limits

for review imposed by the Pinelands Protection Act or this Plan and request that the hearing be held by an Administrative Law Judge pursuant to the procedures established in N.J.A.C. 7:50-4.91.

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

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

Recodified from 4.31.

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

Cited as example of situation in which Executive Director could designate a representative to have final decision making power (citing former N.J.A.C. 7:50-4.31). In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App. Div.1985), certification granted 102 N.J. 380, 508 A.2d 243, 244, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

#### 7:50-4.42 Decision on review

(a) Determination by Commission: If a hearing is held pursuant to N.J.A.C. 7:50-4.3, the Commission shall, within 45 days following the notice given pursuant to N.J.A.C. 7:50-4.40(b) unless extended pursuant to N.J.A.C. 7:50-4.4, review the record of the hearing and the Executive Director's report only and make a determination as to whether the proposed development should be approved, approved with conditions or disapproved. If a hearing is held before an Administrative Law Judge pursuant to N.J.A.C. 7:50-4.91, the Commission shall, within 45 days of receipt of the initial decision of the Administrative Law Judge, review the initial decision, the record of the hearing and the application only and approve, approve with conditions or disapprove the proposed development. If no hearing is held because of the failure of the applicant to appear, the Commission shall, within 45 days following the notice given pursuant to N.J.A.C. 7:50-4.40(b) unless extended pursuant to N.J.A.C. 7:50-4.4, review the Executive Director's recommendation, the application, other material in the file including any staff reports and the local approval only and approve, approve with conditions or disapprove the proposed development. If no hearing is held because of the failure of the applicant to provide notice, the Commission shall deny the proposed development without prejudice.

(b) Standards: The permit shall be approved or approved with conditions only if the Commission determines that the development as proposed, or with any conditions which are imposed, conforms with the minimum standards established in N.J.A.C. 7:50-4.16 and the provisions of the relevant certified local ordinance.

#### (c) Effect of the Commission's decision:

1. If the Commission disapproves the final local approval of any such application, the local permitting agency shall revoke such approval and, thereafter, within 30 days, deny final approval of such application.

2. If the Commission approves the local permitting agency's approval of any such application, subject to conditions, the local permitting agency shall, within 30 days, modify its approval to include all conditions imposed.

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

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

Recodified from 4.32.

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

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

7:50-4.43 through 7:50-4.50 (Reserved)

## PART IV—PUBLIC DEVELOPMENT

### 7:50-4.51 Purpose

This Part establishes procedures and standards designed to assure that public development in the Pinelands Area is in conformance with the goals and provisions of this Plan.

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

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

Recodified from 4.41.

### 7:50-4.52 General requirements

(a) Conformance with minimum standards: All development within the Pinelands Area by any state or local public agency shall be in conformance with the minimum standards set out in N.J.A.C. 7:50-4.16 and all other standards and guidelines contained in this Plan, except as otherwise provided by memoranda of agreement between the Commission and such agency a state agency plan approved by the Commission pursuant to (e) below. All development within a Military and Federal Installation Area shall be in substantial conformance with the minimum standards and guidelines contained in this Plan, except where incompatible with national defense mission or other national security requirements as provided in (d) below.

(b) Commission approval required: Except as provided in an intergovernmental agreement, no development shall be initiated by any state or local public agency prior to conferring with and obtaining the approval of the Commission pursuant to the procedures established by this Part. Except as provided in an intergovernmental memorandum of agreement, the Commission shall review development within a federal military installation or development by another federal agency only where a state or local permit is required by Federal law or regulations. Such reviews shall be in accordance with the provisions of Part VII of this subchapter.

(c) Intergovernmental agreements:

1. The Commission may enter into intergovernmental memoranda of agreement with any agency of the Federal, State or local government which authorize such agency to carry out specified development activities without securing individual development approval from the Commission under this Part, provided the specified development activities are consistent with the provisions of N.J.A.C. 7:50-5 and 6.

2. The Commission may enter into intergovernmental memoranda of agreement with any agency of the Federal, State or local government which authorize such agency to carry out specified development activities that may not be fully consistent with the provisions of N.J.A.C. 7:50-5 and 6, provided such agency demonstrates and the Commission finds that variation from the standards of this Plan is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands than would be provided through strict application of the standards of this Plan. Any intergovernmental memorandum of agreement relating to waste management shall be consistent with the standards and provisions of N.J.A.C. 7:50-6.80.

3. Prior to the execution of any intergovernmental memorandum of agreement by the Commission, the Executive Director shall set the date, time and place of a public hearing for consideration of the agreement. The public hearing shall be noticed and held by the Executive Director in accordance with the provisions of N.J.A.C. 7:50-4.3.

(d) Exceptions for national defense are as follows:

1. Notwithstanding any provision of this Plan, if the commander of a military installation determines that compliance with the provisions of this Plan, the installation master plan or a memorandum of agreement with a military installation would be incompatible with the installation's mission, safety or other national defense requirements, the installation commander shall notify the Commission in writing.

2. Upon receipt by the Commission of such notification compliance with any provision of this Plan shall be deemed to be waived.

3. In time of war or when war is imminent or a national emergency is declared by Congress or the President, nothing in this Plan shall modify or limit any other provisions of law granting emergency powers to the President, the Secretary of Defense, or persons possessing such authority by delegation from the President or Secretary of Defense, to include but not be limited to acts of using property, mobilizing and training personnel, or acquiring property.

(e) State agency plans:

1. Any agency of the State of New Jersey may submit to the Commission for review and approval a comprehensive plan of its existing and planned land use, resource management and development activities within the Pinelands. Such plans shall:

- i. Be based upon a current and comprehensive inventory and analysis of the Pinelands natural resources. The Commission's natural resource inventory may be used as a basis for this purpose;
- ii. Set forth the character, location and magnitude of development within the Pinelands;
- iii. Be adequate to ensure that all development of land in the Pinelands is carried out in conformance with N.J.A.C. 7:50-5 and 6, provided, however, that alternative or additional techniques may be included if consistent with the goals and objectives of this Plan;
- iv. Prescribe standards for capital improvement siting, design and construction, including those necessary to ensure that adequate and necessary support facilities will be available to serve permitted development and proposed uses of lands;
- v. Identify resource management practices which conform to the objectives of this Plan, the Pinelands Protection Act, and the Federal Act;
- vi. Be compatible with surrounded land uses and certified municipal and county master plans; and
- vii. Be otherwise consistent with and contain all provisions necessary to implement this Plan.

2. Upon Commission approval of such plan, the Commission shall review any proposed development in accordance with the standards of this Plan as modified by specified provisions of the approved agency plan.

3. Each agency and the Commission may propose amendments to an approved plan from time to time. Such amendments shall be approved in the manner provided in this part and such amendments shall not require the revision or approval of the plan as a whole.

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

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

Recodified from 4.42.

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.1996 d.225, effective May 20, 1996.

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

In (c)2 required that memorandums of agreement be consistent with 7:50-6.80.

#### **7:50-4.53 Pre-application conference and submission requirements**

(a) Request for pre-application conference: Prior to initiating any development within the Pinelands Area, a public agency shall submit a request for a pre-application conference to the Executive Director pursuant to N.J.A.C. 7:50-4.2(a).

(b) Submission requirement: Following the completion of the pre-application conference, the public agency shall submit such information which the Executive Director determines is necessary to enable the Commission to review the proposed development for conformity with the standards of this Plan.

(c) In addition to the requirements of (a) and (b) above, a public agency seeking approval for major development, as defined in N.J.A.C. 7:50-2.11, which will be located on a specific parcel, shall provide notice of the application for public development as follows:

1. Notice will be given to owners of all real property within 200 feet of the subject parcel as provided for in N.J.S.A. 40:55D-12(b). The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c). The applicant shall be entitled to rely upon the information contained in said certified list as provided in N.J.S.A. 40:55D-12(c); and

2. Notice shall be given by publication in the official newspaper of the municipality in which the parcel is located, if there is one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12(a); or

(d) In addition to the requirements of (a) and (b) above, a public agency seeking approval for major development, as defined in N.J.A.C. 7:50-2.11, which either is for chemical control of vegetation in a water body where no permanent alteration of the water table is proposed or will not be located on a specific parcel, including a proposed development located within a right-of-way or easement, shall provide notice of the application for public development as follows:

1. Notice shall be given by publication in any official newspapers of the Pinelands Commission having general circulation in any municipality in which the proposed development is located; and

2. Notice shall be given by publication in the official newspaper, if any, of each municipality in which the proposed development will be located or if there is no official newspaper in any such municipality then in a newspaper of general circulation in that municipality.

(e) The notice in (c) and (d) above shall state:

1. The nature of the application pending before the Pinelands Commission, including a description of the proposed development;

2. That action may be taken on the application after 10 days from the date the notice is published and mailed;

3. That written comments on the application may be submitted to the Pinelands Commission and that all such comments received within 10 days of the mailing or publication of the notice will be considered in the review of the application;

4. That the application is available for inspection at the office of the Pinelands Commission;

5. The address and phone number of the Pinelands Commission; and

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested person who is aggrieved by said determination is entitled to a hearing by appealing the determination.

(f) If the applicant significantly modifies the proposed development from that described in the most recent notice given pursuant to (c), (d) and (e) above, then the applicant shall again provide the notice mandated by said subsections so that the notice accurately describes the proposed development.

(g) No application for which the above notice is required, shall be deemed complete until proof that the requisite notice has been given is received.

(h) The Executive Director's action on any application for which the above notice is required shall not be taken until five days after the 10 day period set forth herein has expired. If any public comments have been received concerning the application, the Executive Director shall inform the applicant that public comments have been submitted prior to making a recommendation on the application for public development.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).

Recodified from 4.43 and (c)-(h) added.  
Amended by R.1985 d.494, effective September 12, 1985.  
See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Substantially amended.  
Amended by R.1990 d.170, effective March 19, 1990.  
See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).  
In (d), added text regarding "chemical control of vegetation in a water body".  
Amended by R.1994 d.590, effective December 5, 1994.  
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

#### 7:50-4.54 Review of submission by Executive Director

Within 30 days following receipt of a completed application for public development, the Executive Director shall review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review make a determination whether the application should be approved, approved with conditions or disapproved. The application may be recommended for approval or approval with conditions only if the development as proposed, or subject to any conditions which may be imposed, conforms to each of the minimum standards for development approval established by N.J.A.C. 7:50-4.57. The Executive Director may attach to any determination to recommend approval of an application any reasonable condition which he finds is necessary to achieve the objectives of this Plan. The Executive Director shall give written notification of his findings and conclusion to the applicant, the Commission, interested persons, including all persons who have submitted information concerning the application, as well as all persons who have requested a copy of said decision, and any person, organization or agency which has registered under 7:50-4.3(b)2i(2).

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

See: 17 N.J.R. 1918(a).  
Recodified from 4.44 and substantially amended.  
Amended by R.1985 d.494, effective September 12, 1985.  
See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

#### Case Notes

Cited as example of situation in which Executive Director could designate a representative to have final decision making power (citing former N.J.A.C. 7:50-4.44). In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App. Div.1985), certification granted 102 N.J. 380, 508 A.2d 243, 244, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

#### 7:50-4.55 Rights of appeal

Any interested person who is aggrieved by any determination made by the Executive Director pursuant to this Part may within 15 days appeal the Executive Director's determination to the Commission as provided by N.J.A.C. 7:50-4.91. Additional information not included in the Executive Director's determination may only be presented to the Pinelands Commission by requesting a hearing pursuant to N.J.A.C. 7:50-4.91.

Amended by R.1985 d.494, effective September 12, 1985.  
See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

(b) Recodified to 7:50-4.56.  
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

Hardship waiver of strict compliance with lot size and buffer-to-wetlands requirements expired. Sonessa v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 39.

#### 7:50-4.56 Action by Commission

At the next regular Commission meeting after the time for appeal under N.J.A.C. 7:50-4.91 has expired and no interested person has requested a hearing, the Commission may approve the determination of the Executive Director or refer the determination of the Executive Director to the Office of Administrative Law. If the Pinelands Commission fails to take any action at said meeting, the determination of the Executive Director shall be referred to the Office of Administrative Law unless an extension of time for the Commission to act is approved pursuant to N.J.A.C. 7:50-4.4. If the Executive Director's determination is referred to the Office of Administrative Law, the referral shall be treated as a petition for appeal in accordance with the provisions of N.J.A.C. 7:50-4.91.

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

See: 17 N.J.R. 1918(a).  
Recodified from 4.45. Old text deleted and new text substituted.  
Amended by R.1985 d.494, effective September 12, 1985.  
See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).  
Recodified from N.J.A.C. 7:50-4.55(b).  
Amended by R.1994 d.590, effective December 5, 1994.  
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

**7:50-4.57 Standards for public development**

(a) The Commission shall approve or conditionally approve an application filed pursuant to this Part only if the development as proposed, or with any conditions which are imposed:

1. Satisfies all of the standards established by N.J.A.C. 7:50-5 and 6 or a certified local plan and if a local agency of a certified municipality or certified county is seeking approval, the provisions of the certified ordinances and master plan of that jurisdiction; and

2. If the proposed development includes any public roads, the applicant demonstrates that: alternative locations or transportation modes including mass transit and non-motorized methods cannot be employed to satisfy transportation needs; and public fishing, crabbing or canoe access facilities in association with bridge crossings will be provided as appropriate.

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

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

Recodified from 4.46.

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Recodified from 4.56.

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

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

**7:50-4.58 Limits on public agency actions**

No public agency shall carry out any development which has been disapproved by the Commission pursuant to this Part, nor shall any public agency initiate any proposed development which has been approved with conditions by the Commission pursuant to this Part unless the conditions imposed are incorporated into the proposed development.

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

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

Recodified from 4.47 and substantially amended.

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Recodified from 4.57.

**7:50-4.59 through 7:50-4.60 (Reserved)**

**PART V—WAIVER OF STRICT COMPLIANCE  
WITH PROVISIONS OF THE COMPRE-  
HENSIVE MANAGEMENT PLAN**

**7:50-4.61 Purpose**

This Part establishes procedures and standards pursuant to which the Commission may waive strict compliance with the Plan. Waivers from the standards of N.J.A.C. 7:50-5 or 6 may be granted in limited circumstances. Waivers granted pursuant to this Part are intended to provide relief where strict compliance with this Plan will create an extraordinary hardship or where the waiver is necessary to serve a compelling public need. The relief provided will be consistent with

the protection of the resources of the Pinelands. The relief granted will only be the minimum necessary to alleviate the extraordinary hardship or the compelling public need. For some extraordinary hardship cases, the minimum relief granted will allow the development of the parcel in question; in others the minimum relief will include an allocation of Pinelands Development Credits. These provisions are designed to provide all property owners with at least a minimum beneficial use of their parcels consistent with constitutional requirements. For some compelling public need cases, special measures may need to be taken so there will be an overall improvement to the resources of the Pinelands.

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

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

Recodified from 4.51.

Amended by R.1992 d.91, effective March 2, 1992.

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

Additional rationale for granting of relief explained.

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).

Substituted "parcel" for "property" throughout the section.

**Case Notes**

Pinelands Commission may consider application for waiver of strict compliance with Comprehensive Management Plan. *Riorano, Inc. v. Weymouth Twp.*, 209 N.J.Super. 280, 507 A.2d 311 (App.Div.1986).

Petitioner denied waiver of strict compliance with provisions of Comprehensive Management Plan for the Pinelands which establish minimum standards for septic wastewater treatment systems for failure to prove extraordinary hardship. *Kruckner v. New Jersey Pinelands Commission*, 10 N.J.A.R. 237 (1988).

Regulation provides for waiver of strict compliance with restrictions upon application where proposed use is not a permitted use in the zone (citing former N.J.A.C. 7:50-4.51). *Hanoverland Industries v. Pinelands Commission*, 8 N.J.A.R. 529 (1985).

Strict compliance with Pinelands restrictions may be waived in certain cases (citing former N.J.A.C. 7:50-4.51). *Pfeiffer v. Pinelands Commission*, 8 N.J.A.R. 317 (1985).

**7:50-4.62 General standards**

(a) Waivers may only be granted when either:

1. An extraordinary hardship has been established pursuant to N.J.A.C. 7:50-4.63(a) or (b); or

2. A compelling public need has been established pursuant to N.J.A.C. 7:50-4.64.

(b) Notwithstanding (a)1 above, the requested relief may not be granted if it will either result in a substantial impairment of the resources of the Pinelands or be inconsistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act or this Plan pursuant to the criteria set forth in N.J.A.C. 7:50-4.65.

(c) Notwithstanding (a) and (b) above, the requested relief may not be granted if it will involve trespass or create a public or private nuisance by being materially detrimental or injurious to other property or improvements in the area in which the subject parcel is located, increase the danger of fire or endanger public safety.

(d) When approved, the waiver may only grant the minimum relief necessary to relieve the extraordinary hardship or satisfy the compelling public need.

1. Any waiver which grants relief from the standards of this Plan to permit development of the parcel in question shall require:

i. The reduction as set forth in N.J.A.C. 7:50-5.43(b)3 of any Pinelands Development Credits which are allocated to the parcel pursuant to N.J.A.C. 7:50-5.43(b);

ii. The acquisition and redemption of any Pinelands Development Credits that are otherwise required pursuant to N.J.A.C. 7:50-5.27, 5.28 or 5.32;

iii. The acquisition and redemption of 0.25 Pinelands Development Credits for a waiver of one or more of the standards in N.J.A.C. 7:50-6. Nothing in this subparagraph shall be construed as relieving an applicant of the requirement to reduce a Pinelands Development Credit allocation or acquire and redeem Pinelands Development Credits pursuant to (d)1i and ii above. The requirements of this subparagraph shall not apply to the following:

(1) State projects located on and directly related to the management and use of State conservation lands;

(2) Projects essential for the remediation of a site contaminated with wastes or hazardous or toxic substances; and

(3) Projects which qualify for a Waiver of Strict Compliance based on compelling public need pursuant to N.J.A.C. 7:50-4.64 and which involve one or more of the criteria set forth in N.J.A.C. 7:50-4.65(b); and

iv. The development meets the criteria set forth in N.J.A.C. 7:50-4.65(c) if the waiver is based on compelling public need pursuant to N.J.A.C. 7:50-4.64 and involves one or more of the criteria set forth in N.J.A.C. 7:50-4.65(b).

2. Any parcel for which an extraordinary hardship otherwise exists pursuant to N.J.A.C. 7:50-4.63(b) but which is precluded from on-site development pursuant to N.J.A.C. 7:50-4.63(b)4 and 4.65(b) shall receive an additional use right of an allocation of Pinelands Development Credits based on the fair market value of the parcel. The allocation shall be based on the market value of the Pinelands Development Credits at the time the application for a waiver is completed, provided that the applicant shall be entitled to a minimum allocation of 0.25 Pinelands Development Credits. Unless severed from the parcel pursuant to N.J.A.C. 7:50-5.47, any conveyance, sale or transfer of the parcel shall include the Pinelands Development Credits allocated herein. The applicant shall be entitled to demonstrate that the allocation of Pinelands Development Credits based on fair market value in conjunction with the permitted uses on the parcel does not give the parcel a beneficial use. If the applicant believes that even considering this allocation of Credits the parcel does not have a beneficial use, the applicant is entitled to appeal the allocation pursuant to N.J.A.C. 7:50-4.68.

New Rule. R.1992 d.91, effective March 2, 1992.

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

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

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

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

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

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

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

Amended by R.1996 d.465, effective October 7, 1996.

See: 28 N.J.R. 2454(a), 28 N.J.R. 4478(a).

Amended by R.2000 d.272, effective July 3, 2000.

See: 32 N.J.R. 145(a), 32 N.J.R. 2435(a).

In (d)1iii, rewrote the first sentence.

#### Case Notes

Waiver of strict compliance with the Pinelands Comprehensive Management Plan, allowing development of a single-family dwelling within 300 feet of wetlands, granted. Hansen v. Pinelands Commission, 94 N.J.A.R.2d (EPC) 1.

#### 7:50-4.63 Standards for establishing extraordinary hardship

(a) An extraordinary hardship is deemed to exist when the applicant demonstrates based on specific facts and the Pinelands Commission verifies that all of the following conditions exist:

1. Except as provided in (a)1v below, the only relief sought is from one or more of the standards contained in N.J.A.C. 7:50-6 for one of the following:

i. Cultural housing pursuant to N.J.A.C. 7:50-5.32 on a parcel at least 1.0 acres in size;

ii. A single family dwelling or a permitted commercial use within an infill area designated pursuant to N.J.A.C. 7:50-5.22(b)7 and located on a parcel at least 1.0 acres in size;

iii. A single family dwelling on a substandard parcel containing at least 1.0 acres pursuant to N.J.A.C. 7:50-5.31;

iv. A single family dwelling on a parcel within a Regional Growth Area, Pinelands Town or Pinelands Village which will be served by a centralized waste water treatment system;

v. A single family dwelling on a parcel within a Regional Growth Area, Pinelands Town or Pinelands Village which is at least 20,000 square feet, excluding road rights of way, in size and is not served by a centralized waste water treatment system;

vi. A single family dwelling on a parcel within a Forest Area that complies with the density and lot area standards set forth in N.J.A.C. 7:50-5.23(a)2 and (c);

vii. A single family dwelling on a parcel within a Rural Development Area that complies with the density and lot area standards set forth in N.J.A.C. 7:50-5.26(a) and (c);

viii. A single family dwelling on combined properties in either the Forest Area or Rural Development Area which meets the density transfer standards of N.J.A.C. 7:50-5.30;

ix. A single family dwelling accessory to an active agricultural operation in an Agricultural Production Area pursuant to the criteria contained in N.J.A.C. 7:50-5.24(a)2;

x. A single family dwelling accessory to an active agricultural operation in a Special Agricultural Production Area pursuant to the criteria contained in N.J.A.C. 7:50-5.25(b)1;

xi. An agricultural commercial establishment with a gross floor area no greater than 500 square feet which is located on a parcel which otherwise qualifies for a single family dwelling accessory to an active agricultural operation pursuant to either N.J.A.C. 7:50-5.24(a)2 or 5.25(b)1; or

xii. Agricultural employee housing which is located on a parcel which otherwise qualifies for a single family dwelling accessory to an active agricultural operation pursuant to either N.J.A.C. 7:50-5.24(a)2 or 5.25(b)1;

2. The parcel includes all contiguous land in common ownership on or after January 14, 1981, including lands which are contiguous as a result of ownership of other contiguous lands;

3. Except as expressly provided in N.J.A.C. 7:50-5.1(c), the proposed use will be either the sole principal use or an accessory use to the sole principal use as permitted in (a)lix, (a)lx, (a)lxi or (a)lxii above on the entire contiguous parcel, as established in (a)2 above;

4. All necessary municipal use, lot area and density variances have been obtained if the parcel is located in a

municipality whose master plan and land use ordinances have been fully certified by the Pinelands Commission pursuant to N.J.A.C. 7:50-3; and

5. The development of the parcel will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b).

(b) An extraordinary hardship as distinguished from a mere inconvenience also exists when the applicant demonstrates and the Pinelands Commission verifies that all of the following conditions exist:

1. The parcel includes all contiguous lands in common ownership on or after January 14, 1981, including lands which are contiguous as a result of ownership of other contiguous lands;

2. The parcel includes all contiguous land with no substantial improvements which is available in whole or in part for purchase at fair market value, including lands which become contiguous as a result of the acquisition of other contiguous lands;

3. The parcel, including all contiguous lands which are available pursuant to (b)1 and 2 above, may not have a beneficial use considering the following factors:

i. The value of any existing development or use of the parcel, including any allocation of Pinelands Development Credits to the parcel pursuant to N.J.A.C. 7:50-5.43(b);

ii. The value of any use or development of the parcel that is authorized by the provisions of this Plan;

iii. The ability of the property owner to sell the subject parcel to the owner of a contiguous parcel, any governmental agency or to a nonprofit conservation group for its fair market value;

iv. The ability of the property owner to either buy non-contiguous land or sell the subject parcel to a non-contiguous property owner under a transfer of density provision contained in a certified municipal land use ordinance or pursuant to N.J.A.C. 7:50-5.30 in an uncertified municipality; and

v. Any inability to have a beneficial use relates to or arises out of the characteristics of subject parcel and results from unique circumstances peculiar to the subject parcel which:

(1) Are not the result of any personal situation of the applicant including the necessity of purchasing additional land to attempt to either meet the minimum lot size, density or management standards of the Plan or to increase the parcel size so it is capable of having a beneficial use; and

(2) Are not the result of any action or inaction by the applicant, the owner or any predecessor in title including any transfer of any contiguous lands which were in common ownership on or after January 14, 1981 or the refusal on or after January 14, 1981 of

the applicant, the owner or any predecessor-in-title to either sell the subject parcel for its fair market value at the time the offer was made or to buy a contiguous parcel for its fair market value at the time the offer was made; and

4. The development of the parcel will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b).

New Rule, R.1992 d.91, effective March 2, 1992.

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

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

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

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

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

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

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

In (a)1 added exception for (a)1v.

#### Case Notes

Cited as example of situation in which Executive Director could designate a representative to have final decision making power (citing former N.J.A.C. 7:50-4.53). In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App. Div.1985), certification granted 102 N.J. 380, 508 A.2d 243, 244, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

Family compound did not meet sole principal use condition for extraordinary hardship waiver of Pinelands land use requirements. Giordano v. New Jersey Pinelands Commission, 96 N.J.A.R.2d (EPC) 25.

No waiver of strict compliance with Pinelands Comprehensive Management Plan. Zaorski v. Pinelands Commission, 93 N.J.A.R.2d (EPC) 17.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with seasonal high water table requirement. Pappas v. Pinelands Commission, 93 N.J.A.R.2d (EPC) 13.

Parcel not have beneficial use; extraordinary hardship existed entitling property owner to waiver of Pinelands Comprehensive Management Plan requirements; conditions imposed. Christensen v. New Jersey Pinelands Commission, 93 N.J.A.R.2d (EPC) 5.

Purchase of lot after commonly owned land was subdivided; no extraordinary hardship allowing waiver of wetlands requirements. Harris v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 45.

Hardship waiver of strict compliance with lot size and buffer-to-wetlands requirements expired. Sonessa v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 39.

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.

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.

Extraordinary hardship; waiver of lot size requirement, seasonal high water table requirement, and ground water nitrate-nitrogen requirement. Eni v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 31.

Compelling health need; hardship waiver of nitrate-nitrogen discharge limitations; town permitted to build wastewater treatment facility. Adamucci, et al. v. Pinelands Commission and Town of Hammon-ton, 92 N.J.A.R.2d (EPC) 21.

Developer seeking to build residences on or near wetlands not entitled to hardship waiver; developer permitted to build one single family dwelling. Martino v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 15.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with density requirements, seasonal high water table requirement, and wetlands protection requirements. Summonte v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 9.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with lot size requirements. Egenstaffer v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 3.

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.

Development application approved based on extraordinary hardship (citing former N.J.A.C. 7:1G) (decision vacated by Pinelands Commission). Mayer v. Pinelands Commission, 4 N.J.A.R. 458 (1980).

Proposed project found to qualify for approval under extraordinary hardship exception: application denied due to petitioner's failure to establish that the project would not substantially impair a potentially essential habitat for a specific endangered species (citing former N.J.A.C. 7:1G). In Re: Berkeley Twp., 4 N.J.A.R. 319 (1980).

#### 7:50-4.64 Standards for establishing compelling public need

(a) An applicant shall be deemed to have established compelling public need if the applicant demonstrates based on specific facts and the Pinelands Commission verifies that one of the following conditions exist:

1. The proposed development will serve an essential health or safety need of the municipality or, in the case of an application serving more than one Pinelands municipality, the county in which the proposed development is located, and:

- i. The public health and safety require the requested waiver;
- ii. The public benefits from the proposed use are of a character that override the importance of the protection of the Pinelands as established in the Pinelands Protection Act or the Federal Act;
- iii. The proposed use is required to serve existing needs of the residents of the Pinelands; and
- iv. No feasible alternatives exist outside the Pinelands Area to meet the established public need and that no better alternatives exist within the Pinelands Area; or

2. The proposed development constitutes an adaptive reuse of a historic resource designated pursuant to N.J.A.C. 7:50-6.154, and:

- i. The reuse is the minimum relief necessary to ensure the integrity and continued protection of the designated historic resource; and
- ii. The designated historic resource's integrity and continued protection cannot be maintained without the granting of a Waiver of Strict Compliance.

(b) The applicant shall also demonstrate either that the development of the parcel will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b) or that if one or more of the criteria are violated that the development meets the requirements of N.J.A.C. 7:50-4.65(c).

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

**7:50-4.65 Substantial impairment and consistency**

(a) No Waiver of Strict Compliance which permits a parcel to be developed shall be approved unless such development will be consistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act and this Plan and will not result in a substantial impairment of the resources of the Pinelands Area.

(b) Unless alleviating measures are taken pursuant to (c) below for waivers based on compelling public need, the following circumstances do not comply with (a) above:

1. Development of any non-permitted use in the Preservation Area District, any Special Agricultural Production Area, any Forest Area or any Agricultural Production Area;

2. Any residential use in the Preservation Area District, any Special Agricultural Production Area or any Agricultural Production Area which does not meet the requirements set forth in N.J.A.C. 7:50-5.22(b)7, 5.24(a)2, (a)3 or (c), 5.25(b)1 or (c), 5.31 or 5.32;

3. Any residential use to be served by an on-site sewage disposal system where the overall density is greater than one dwelling unit per 20,000 square feet, excluding road rights of way, or where any dwelling will be located on a lot smaller than 20,000 square feet, excluding road rights of way;

4. Any non-residential use to be served by an on-site sewage disposal system where the nitrate-nitrogen level exceeds five parts per million at the parcel line;

5. Any development, except for development permitted in wetlands pursuant to N.J.A.C. 7:50-6, Part I, which will be located on any wetland unless that wetland is an impaired wetland;

6. Any development, except for development permitted in wetlands buffers pursuant to N.J.A.C. 7:50-6, Part I, which will be located within 50 feet of any wetland unless the wetland is either an impaired wetland or located in a Regional Growth Area, Pinelands Town or Pinelands Village;

7. Any development which will violate the threatened and endangered species protection requirements contained in N.J.A.C. 7:50-6.27 and 6.33;

8. Any development which will require the location of a waste water disposal field in an area where the seasonal high water table is within two feet of the natural ground surface or within 50 feet of any surface water body;

9. Any development which will result in a new direct discharge of storm water into any fresh water wetlands which are not impaired wetlands; or

10. In addition to the criteria specified above, the existence of special or unusual circumstances will be evaluated in determining whether a particular development complies with (a) above.

(c) If an application meets the criteria for establishing a compelling public need pursuant to N.J.A.C. 7:50-4.64, but one or more of the circumstances in (b) above exist, then the application does not meet the criteria of (a) above unless the applicant demonstrates, based on particular facts, that the development, when evaluated in its entirety, including any special measures that are part of the development proposal, will result in an overall improvement of the resources of the Pinelands Area.

(d) Even if an applicant does not violate any of the criteria contained in (b) above, the waiver may only grant the minimum relief necessary to relieve the extraordinary hardship or satisfy the compelling public need.

New Rule, R.1992 d.91, effective March 2, 1992.

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

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.1996 d.225, effective May 20, 1996.

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

In (b)7 substituted 7:50-6.27 for 7:50-6.24.

#### Case Notes

Cited as example of situation in which Executive Director could designate a representative to have final decision making power (citing former N.J.A.C. 7:50-4.54). In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App. Div.1985), certification granted 102 N.J. 380, 508 A.2d 243, 244, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

#### 7:50-4.66 Application

(a) An application for a waiver shall be submitted to the Commission in accordance with the requirements of

N.J.A.C. 7:50-4.2(b). An application for waiver may be filed prior to filing an application for development. If during review of an application for development it appears necessary to obtain a waiver, the applicant may apply for a waiver. Any application for a waiver shall stay the time period for review set forth in Parts II, III or IV of this subchapter as the case may be while the application for the waiver is pending.

(b) In addition to the requirements in (a) above, an applicant requesting a Waiver of Strict Compliance which involves a specific parcel shall provide notice of the application for a Waiver of Strict Compliance as follows:

1. Notice shall be given to owners of real property within 200 feet of the subject parcel as provided for in N.J.S.A. 40:55D-12(b). The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c). The applicant shall be entitled to rely upon the information contained in said certified list as provided in N.J.S.A. 40:55D-12(c).

2. Notice shall be given by publication in the official newspaper of the municipality in which the parcel is located, if there is one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12(a).

(c) In addition to the requirements in (a) and (b) above, an applicant requesting a Waiver of Strict Compliance which will not be located on a specific parcel, shall provide notice of the application for a Waiver of Strict Compliance as follows:

1. Notice shall be given by publication in any official newspaper of the Pinelands Commission having general circulation in any municipality in which the proposed Waiver of Strict Compliance shall apply; and

2. Notice shall be given by publication in the official newspaper, if any, of all municipalities in which the proposed Waiver of Strict Compliance shall apply or, if there is no official newspaper in any such municipality, then in a newspaper of general circulation in that municipality.

(d) The notice in (b) and (c) above shall state:

1. The nature of the application pending before the Pinelands Commission, including a description of the proposed development and a statement of all Waivers sought;

2. That action may be taken on the application after 10 days from the date the notice is published and mailed;

3. That written comments on the application may be submitted to the Pinelands Commission and that all such comments received within 10 days of the mailing or publication of the notice will be considered in the review of the application;

4. That the application is available for inspection at the office of the Pinelands Commission;

5. The address and phone number of the Pinelands Commission; and

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested person who is aggrieved by said determination is entitled to a hearing by appealing the determination.

(e) If the applicant significantly modifies either the proposed development or the requested Waivers from that described in the most recent notice given pursuant to (b), (c) and (d) above, then the applicant shall again provide the notice mandated by said subsections so that the notice accurately describes the proposed development and the requested Waivers.

(f) No application for a Waiver of Strict Compliance shall be deemed complete until proof that the requisite notice has been given is received.

(g) The Executive Director's action on any application for which the above notice is required, shall not be taken until five days after the 10 day comment period set forth herein has expired. If any public comments have been received concerning the application, the Executive Director shall inform the applicant that public comments have been submitted prior to making a recommendation on the application for a Waiver of Strict Compliance.

(h) For an application submitted pursuant to N.J.A.C. 7:50-4.63(a) for which a municipal use, lot area or density variance is required pursuant to N.J.A.C. 7:50-4.63(a)4, the notice required pursuant to (b) above shall not be separately required by the Pinelands Commission provided that the notice for the municipal variance is submitted to the Pinelands Commission and contains at least the information specified in (d) above and the application to the Pinelands Commission is completed within one year of the municipal approval of the variance.

(i) For an application submitted pursuant to N.J.A.C. 7:50-4.64(a)1, the Executive Director shall set the date, time and place for a public hearing for consideration of the application. The public hearing shall be noticed and held by the Executive Director in accordance with the provisions of N.J.A.C. 7:50-4.3. The applicant shall give notice of the hearing in accordance with N.J.A.C. 7:50-4.3(b)2ii and the notice required pursuant to (b) or (c) above may be incorporated therein.

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

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

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

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

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

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

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

Clarified text in (a)1.

Amended by R.1992 d.91, effective March 2, 1992.

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

Recodified from 7:50-6.2; new (h) added.

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).

#### Law Review and Journal Commentaries

Environmental Law—Solid Waste. P.R. Chenoweth, 137 N.J.L.J. No. 16, 51 (1994).

#### Case Notes

Pinelands Commission unreasonably refused to extend developer's waiver so as to allow developer additional time to secure local permits. Orleans Builders and Developers v. Pinelands Commission, 96 N.J.A.R.2d (EPC) 5.

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).

Development application denied to petitioners for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to offer information to establish an extraordinary hardship citing N.J.A.C. 1:1-11.2 (recodified as N.J.A.C. 1:11-8.3)—(Final Decision by the Pinelands Commission). Lavecchia v. Pinelands Commission, 10 N.J.A.R. 63 (1987).

Application for waiver denied to petitioners based on doctrine of res judicata where, in circumstances substantially similar, their predecessors in title to the property, were denied both the initial right to develop the property and a waiver of strict compliance (Final Decision by Pinelands Commission). Pagnotti v. Pinelands Commission, 10 N.J.A.R. 24 (1987).

Application to resubdivide two existing lots denied for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to establish extraordinary hardship (Final Decision by Pinelands Commission). Colon v. Pinelands Commission, 10 N.J.A.R. 14 (1987).

Absent evidence of unique or unusual nature of property, or inability of owner-applicant to obtain a reasonable rate of return on property under permitted uses, no extraordinary hardship found to permit waiver of strict compliance (citing former N.J.A.C. 7:50-4.55). Hanoverland Industries v. Pinelands Commission, 8 N.J.A.R. 529 (1985).

Denial of waiver of strict compliance with waterless toilet requirement found reasonable in light of adverse effects of continuing approval of conventional systems (citing former N.J.A.C. 7:50-4.55). Riggins v. Pinelands Commission, 8 N.J.A.R. 441 (1985).

Location of property between two single family dwellings in a subdivision does not qualify as an extraordinary hardship under N.J.A.C. 7:50-4.66(a)1 criteria (citing former N.J.A.C. 7:50-4.55). Pfeiffer v. Pinelands Commission, 8 N.J.A.R. 317 (1985).

#### 7:50-4.67 Action by Executive Director on application

Within 90 days following the receipt of a complete application for waiver, the Executive Director shall review the application and all information submitted by the applicant and any other person relating to the application and upon completion of such review make a determination whether the application should be approved, approved with conditions or disapproved. The application may be recommended for approval or approval with conditions only if the applicant, subject to any conditions which may be imposed, meets the standards for a Waiver of Strict Compliance established in N.J.A.C. 7:50-4.62. The Executive Director shall give written notification of his findings and conclusion to the applicant, the Commission, interested persons, including all persons who have submitted information concerning the application as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired  
September 13, 1985).  
See: 17 N.J.R. 1918(a).

Recodified from 4.53 and substantially amended.  
Amended by R.1985 d.494, effective September 12, 1985.  
See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).  
Recodified from 7:50-4.63 by R.1992 d.91, effective March 2, 1992.  
See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

#### 7:50-4.68 Rights of appeal

Any interested person who is aggrieved by any determination made by the Executive Director pursuant to this Part may within 15 days appeal the Executive Director's determination to the Commission as provided by N.J.A.C. 7:50-4.91. Additional information not included in the Executive Director's determination may be presented to the Pinelands Commission only by requesting a hearing pursuant to N.J.A.C. 7:50-4.91. If the appeal is based on an allegation that the parcel does not have a beneficial use even considering the allocation of Pinelands Development Credits pursuant to N.J.A.C. 7:50-4.62(c)2, the applicant must include specific documentation concerning the economic value of each of the permitted uses of the parcel once the Pinelands Development Credits are transferred and documentation of the value necessary to give the parcel a beneficial use as part of the appeal process. If the applicant demonstrates that the allocation of the Pinelands Development Credits based on fair market value along with the other permitted uses of the parcel does not result in the parcel having a beneficial use, the allocation of Pinelands Development Credits shall be increased to the number necessary to provide the parcel with a beneficial use.

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

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

Recodified from 4.57.

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Recodified from 4.67.

Amended by R.1992 d.91, effective March 2, 1992.

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

Recodified from 7:50-4.64; added language concerning consideration based on an allegation that a parcel does not have a beneficial use.

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

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

#### 7:50-4.69 Action by Commission

If at the next regular Commission meeting after the time for appeal under N.J.A.C. 7:50-4.91 has expired and no request for an appeal has been received, the Commission may approve the determination of the Executive Director or refer the determination of the Executive Director to the Office of Administrative Law. If the Commission fails to take any action at said meeting, the determination of the Executive Director shall be referred to the Office of Administrative Law unless an extension of time for the Commission to act is approved pursuant to N.J.A.C. 7:50-4.4. If the Executive Director's determination is referred to the Office of Administrative Law, the referral shall be treated as a petition for appeal in accordance with the provisions of N.J.A.C. 7:50-4.91.

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

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

Recodified from 4.54 and substantially amended.

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Recodified and substantially amended from 4.64.

Recodified from 7:50-4.65 by R.1992 d.91, effective March 2, 1992.

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

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

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

#### 7:50-4.70 Effect of grant of waiver; expiration; recordation; effective date

(a) Any waiver granted under the provisions of this Part shall only be considered a waiver of the particular standard of this Plan which the Commission waived. It shall not constitute an approval of the entire development proposal. Nor shall it constitute a waiver from any requirements contained within any certified local ordinance.

(b) Waivers approved under former N.J.A.C. 7:50-4.66(a)1ii, repealed effective November 2, 1987, and former N.J.A.C. 7:50-4.55(a)1iii, repealed effective September 12, 1985, shall expire as follows:

1. Any waiver previously approved under the final subdivision standard contained in the now repealed N.J.A.C. 7:50-4.55(a)1iii shall continue to be subject to the condition that the waiver shall expire after two years if substantial construction of improvements is not commenced, or if fewer than 10 percent of the total number of lots in the subdivision are sold or built upon within any succeeding 12 month period; and

2. Any waiver previously approved under the prior municipal development approval standard contained in the previously repealed N.J.A.C. 7:50-4.66(a)1ii has expired or will expire, without exception, unless the requirements in (b)2i, ii and one of iii, iv or v below have been and continue to be met:

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

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

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

iv. All necessary approvals, including all necessary construction permits, are obtained by December 31, 1996 and no construction permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after said date, provided

that the lot for which the approvals and permits are issued either fronts on a road that prior to January 3, 1995 was improved at least to the extent of the installation of a subbase or had a foundation or septic system lawfully constructed on said lot prior to January 3, 1995; or

v. All necessary approvals, including all necessary construction permits, are obtained by February 3, 2007 and no construction permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after said date, provided that development rights have been transferred from other lands in the Pinelands Area in accordance with the following conditions:

(1) Development rights shall only be transferred from lands located in the Preservation Area District, Special Agricultural Production Area or Forest Area, except as provided in (b)2v(4)(C) and (D) below;

(2) At least one of the qualifying parcels in the Preservation Area District, Special Agricultural Production Area or Forest Area from which development rights are to be transferred must be at least 500 acres in size and of conservation value;

(3) All lands to be utilized in the transfer must be:

(A) Deed restricted so as to preclude further development except fish and wildlife management, low intensity recreational uses and limited dedicated public rights-of-way for emergency access; or

(B) Conveyed to the State, a local jurisdiction or a not-for-profit conservation organization in fee simple absolute and deed restricted in accordance with (b)2v(3)(A) above;

(4) The number of development rights to be transferred to the parcel which received a waiver approval pursuant to the previously repealed N.J.A.C. 7:50-4.66(a)1ii shall not exceed the number of units which received all necessary municipal planning board and board of adjustment approvals by January 14, 1991 pursuant to (b)2i above or result in the development of more units on the parcel than were approved pursuant to the previously repealed N.J.A.C. 7:50-4.66(a)1ii and shall be determined based on the following:

(A) The permitted density for lands in the Forest Area;

(B) The number of dwelling units associated with the number of Pinelands Development Credits allocated to a parcel in the Preservation Area District or Special Agricultural Production Area pursuant to N.J.A.C. 7:50-5.43 and 5.45;

(C) For waiver parcels located in a Rural Development Area, the permitted density for other lands located in the Rural Development Area of the municipality in which the waiver parcel is located, provided that the development rights to be transferred from such land do not exceed 10 percent of the total number of units proposed to be transferred; and

(D) The density permitted pursuant to N.J.A.C. 7:50-5, unless, for waiver parcels located in a Forest Area or Rural Development Area, the certified municipal zoning is consistent with the density requirements of N.J.A.C. 7:50-5.23(a) or 5.26(a), for those undeveloped portions of the site which were designated for development in the original waiver approval. The undeveloped portion of the site will be determined by calculating that percentage of the total number of units approved pursuant to the previously repealed N.J.A.C. 7:50-4.66(a)1ii that will not be developed and applying that percentage to the area designated for development in the waiver approval.

(c) Any waiver approved pursuant to N.J.A.C. 7:50-4.63 which authorizes development of the parcel shall expire five years after the Waiver is approved unless all necessary construction permits have been issued within said five year period, the authorized work was commenced within 12 months after issuance of the permits and no such permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after said five year period.

(d) A copy of any approval of a Waiver of Strict Compliance by the Pinelands Commission shall be recorded in the office of the county recording officer of the county wherein the real estate that is subject to the Waiver is situated pursuant to N.J.S.A. 46:16-2 within 60 days of the approval of the Waiver. Said recording shall be notice to all subsequent judgment creditors, purchasers and mortgagees of the existence and contents of the approved Waiver of Strict Compliance.

(e) The N.J.A.C. 7:50-2.11 definitions of "contiguous lands," "fair market value" and "impaired wetlands," and N.J.A.C. 7:50- 4.2(b)7 and 4.61 through this section, as amended or adopted effective March 2, 1992, shall apply to all applications except for those applications on which an Executive Director's determination was issued prior to March 2, 1992. For those applications, the above-referenced provisions in effect prior to March 2, 1992 shall govern, provided that:

1. The Pinelands Commission action on the Waiver of Strict Compliance is based on information that was submitted to the Pinelands Commission prior to March 2, 1992;

2. The applicant has not requested that the application be reviewed pursuant to the N.J.A.C. 7:50-2.11 definitions of "contiguous lands," "fair market value" and "impaired wetlands," and N.J.A.C. 7:50-4.2(b)7 and 4.61 through this section, as amended or adopted effective March 2, 1992; and either

3. The Pinelands Commission acts on the application at its next regularly scheduled meeting after the time to appeal under N.J.A.C. 7:50-4.91 has expired and no request for appeal has been received; or

4. A timely request for an appeal is received under N.J.A.C. 7:50-4.91 or the Executive Director's determination is referred to the Office of Administrative Law by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.69 (formerly N.J.A.C. 7:50-4.65).

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

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

Recodified from 4.56 and text "or the Executive Director" was deleted.

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Recodified from 4.66.

Amended by R.1992 d.91, effective March 2, 1992.

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

Recodified from 7:50-4.67; added new (b) and (c).

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

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

Established an expiration date coincident with P.L. 1992 c.82 (Permit Extension Act).

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

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

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

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

Rewrote (b)2.iv.

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

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

In (e) and (e)2 substituted 7:50-4.2(b)7 for 7:50-4.2(b)8.

Amended by R.1997 d.55, effective February 3, 1997.

See: 28 N.J.R. 1458(a), 29 N.J.R. 507(a).

Added (b)2v.

## PART VI—LETTERS OF INTERPRETATION

### 7:50-4.71 Purpose

This Part is intended to provide an expeditious method by which any person may secure a clarification or interpreta-

tion of the meaning of any provision of this Plan, or any rule or regulation adopted pursuant to it.

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

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

Recodified from 4.61.

### 7:50-4.72 Authority

(a) The Executive Director may, subject to the procedures, standards and limitations set forth in this Part, issue letters of clarification or interpretation of any provision of this Plan, or any rule or regulation issued pursuant to it. No letter of clarification or interpretation shall have the effect of modifying, amending, abrogating or waiving any substantive requirement of this Plan. These interpretations may include:

1. A determination of whether a particular use, which is not expressly authorized in an area, is substantially similar to the uses authorized in the area and should be authorized; or

2. A determination of the definition or application of any provision of this Plan.

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

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

Recodified from 4.62.

### 7:50-4.73 Request for interpretation

(a) A request for a letter of clarification or interpretation shall be initiated by requesting a pre-application conference pursuant to N.J.A.C. 7:50-4.2(a). This request shall set forth the clarification or interpretation requested and the facts or the circumstances which are the basis for the request for an interpretation, together with any proposed clarification or interpretation desired by the applicant. The applicant shall include all information determined to be necessary by the Executive Director after the pre-application conference. Within 30 days after receipt of a request for a letter of clarification or interpretation, the Executive Director shall inform the applicant of any additional information which is required in order to make a determination of the requested clarification or interpretation.

(b) An applicant for a letter of clarification or interpretation involving a specific parcel, except where the letter of interpretation involves solely the question of the number of Pinelands Development Credits which are attributed to a specific parcel, shall provide notice of the application as follows:

1. Notice shall be given to owners of all real property within 200 feet of the subject parcel as provided for in N.J.S.A. 40:55D-12(b). The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c). The applicant shall be entitled to rely upon the information contained in said certified list as provided in N.J.S.A. 40:55D-12(c); and

2. Notice shall be given by publication in the official newspaper of the municipality in which the parcel is located, if there is one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12(a).

(c) An applicant for a letter of clarification or interpretation not involving a specific parcel, including a proposed development located within a right-of-way or easement, shall provide notice of the application as follows:

1. Notice shall be given by publication in any official newspaper of the Pinelands Commission having general circulation in any municipality in which the parcel that is the subject of the proposed interpretation or clarification is located or in all the official newspapers of the Pinelands Commission if the requested clarification or interpretation does not apply to a specific development proposal; and

2. Notice shall be given by publication in the official newspaper, if any, of the municipality in which the parcel subject to the proposed interpretation or clarification is located or, if there is no official newspaper in any such municipality, then in a newspaper of general circulation in that municipality.

(d) The notice in (b) and (c) above shall state:

1. The nature of the application pending before the Pinelands Commission, including a statement of the requested interpretation or clarification and, if known, a description of the proposed development;

2. That action may be taken on the application after 10 days from the date the notice is published and mailed;

3. That written comments on the application may be submitted to the Pinelands Commission and that all such comments received within 10 days of the mailing or publication of the notice will be considered in the review of the application;

4. That the application is available for inspection at the office of the Pinelands Commission;

5. The address and phone number of the Pinelands Commission; and

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested person who is aggrieved by said determination is entitled to a hearing by appealing the determination.

(e) If the applicant significantly modifies either the proposed development or the requested letter of interpretation or clarification from that described in the most recent notice given pursuant to (b), (c) and (d) above, then the applicant shall again provide the notice mandated by said subsections so that the notice accurately describes the proposed development or requested letter of interpretation or clarification.

(f) No application for which the above notice is required, shall be deemed complete until proof that the requisite notice has been given is received.

(g) The Executive Director's action on any application for which the above notice is required shall not be taken until five days after the 10 day comment period set forth herein has expired. If any public comments have been received concerning the application, the Executive Director shall inform the applicant that public comments have been submitted prior to issuing the letter of interpretation or clarification.

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

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

Recodified from 4.63 and substantially amended.

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

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Substantially amended.

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).

Substituted "parcel" for "property" throughout the section.

#### Case Notes

Letter of interpretation considered in rendering decision on issue raised by letter request (citing former N.J.A.C. 7:50-4.63). *Fine v. Galloway Twp. Committee*, 190 N.J.Super. 432, 463 A.2d 990 (Law Div.1983).

#### 7:50-4.74 Interpretation by Executive Director

Except as provided in N.J.A.C. 7:50-4.75, the Executive Director shall, within 45 days following the receipt of a completed request for clarification or interpretation review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review issue a letter of clarification or interpretation. Prior to the issuance of the letter, an analysis of all pending requests for letters of interpretation will be submitted to the Commission for its review at its regular monthly meeting. A copy of the letter shall be provided to the appropriate municipal or county planning

board, environmental commission, if any, interested persons, including all persons who have submitted information concerning the application as well as all persons who have requested a copy of said determination and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). The letter issued by the Executive Director shall specify the grounds, reasons and analysis upon which the clarification or interpretation is based. In the event the Executive Director fails to render a letter of clarification or interpretation within 45 days of receipt of a completed application or such longer period of time as may be agreed to by the applicant, the applicant is entitled to request a hearing pursuant to N.J.A.C. 7:50-4.91. Nothing in this section shall be construed to prevent any person from resubmitting a request for clarification or interpretation.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).  
Recodified and substantially amended from 4.64.

#### 7:50-4.75 Limitations on issuance of use interpretations

(a) No use interpretation shall permit a use listed as an authorized use in any area to be established in any area in which such use is not listed.

(b) No use interpretation shall permit any use in any area unless the Executive Director determines that the use will be in conformity with the minimum standards and requirements of this Plan.

(c) No use interpretations shall authorize any use in a particular area unless the use is substantially similar to other uses authorized in the area.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).  
Recodified from 4.65.

#### 7:50-4.76 Effect of and limitation on favorable interpretation

(a) No letter of clarification or interpretation shall authorize the establishment of a use or the carrying out of any development, but shall merely authorize the preparation, filing and processing of applications for any permits and approvals which may be required by the codes and ordinances of any local permitting agency with jurisdiction over the subject parcel or this Plan.

(b) No letter of clarification or interpretation shall be valid for a period longer than two years from the date of issuance, unless a final approval pursuant to this Plan has been granted within that period, and development is thereafter diligently pursued to completion, or the use is legally commenced within that period.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).  
Recodified from 4.66.

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

#### 7:50-4.77 Binding effect of interpretations

Any letter of clarification or interpretation issued by the Executive Director pursuant to this Part shall be binding so long as the applicant complies with all applicable conditions imposed by the provisions of this Part or other provisions of this Plan.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).  
Recodified from 4.67.

#### 7:50-4.78 Monthly report

The Executive Director shall keep a record of each clarification or interpretation rendered pursuant to this Part and shall file a monthly report of such clarifications or interpretations with the Commission. The report may include a recommendation of the Executive Director that this Plan be amended to add new uses to the various use lists established by this Plan to reflect any use interpretations given pursuant to this Part.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).  
Recodified from 4.68.

#### 7:50-4.79 Appeal

Any interested person who is aggrieved by any clarification or interpretation given by the Executive Director pursuant to this Part may within 15 days appeal the Executive Director's clarification or interpretation to the Commission as provided in N.J.A.C. 7:50-4.91.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).  
See: 17 N.J.R. 1918(a).  
Recodified from 4.69.  
Amended by R.1994 d.590, effective December 5, 1994.  
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

#### 7:50-4.80 (Reserved)

### PART VII—COORDINATED PERMITTING WITH STATE AGENCIES

#### 7:50-4.81 General requirements; applicant to submit application to Executive Director

(a) No department, board, bureau, official or other agency of the State of New Jersey shall issue any approval, certificate, license, consent, permit, or financial assistance for the construction of any structure or the disturbance of any land in the Pinelands Area unless such approval or grant is consistent with the minimum standards of this Plan.

ii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each existing dwelling unit on the parcel;

iii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each reserved right to build a dwelling unit on the parcel retained by the owner of the parcel pursuant to N.J.A.C. 7:50-5.44(b).

4. If the allocations established in (b)1 and 2 above are less than one-quarter of a Pinelands Development Credit, the allocation shall be increased to one-quarter of a Pinelands Development Credit if the owner of record of one-tenth or greater acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979 owns a vacant parcel of land that was not in common ownership with any contiguous land on or after February 7, 1979, and the parcel has not been sold or transferred except to a member of the owner's immediate family.

5. The provisions of (b)4 above shall also apply to owners of record of less than one-tenth acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979, provided that said owners acquire vacant, contiguous lands to which Pinelands Development Credits are allocated pursuant to (a) and (b) above which lands, when combined with the acreage of the parcel owned prior to February 7, 1979, total at least one-tenth of an acre.

6. The total allocations made pursuant to (b)4 and 5 above to any owner of record shall not exceed one-half of a Pinelands Development Credit. At such time as the application of (b)4 and 5 above would exceed a total allocation of one-half of a Pinelands Development Credit to an owner, all remaining lands of that owner in excess of that needed to yield the one-half Pinelands Development Credit allocation shall be entitled to an allocation of Pinelands Development Credits according to the allocation formulas specified in (b)1, 2 and 3 above.

(c) The owners of parcels of land which are smaller than 39 acres shall have fractional Pinelands Development Credits at the same ratio established in (b) above for the management area in which the parcel is located.

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

Added "District" to (b)1.

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)3, replaced old i and ii with new i through iii; in (b)4, added "less than one-quarter" of a PDC requirement.

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).

Substituted "parcel" for "property" throughout section and amended (b)5.

Amended by R.2000 d.43, effective February 7, 2000.

See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

Inserted (b)6.

#### Case Notes

Reduction of development credits in Pinelands Preservation Area District was justified due to existence of two dwellings on parcel. *Fas-Mac Associates v. Pinelands Commission*, 96 N.J.A.R.2d (EPC) 21.

#### 7:50-5.44 Limitations on use of Pinelands Development Credits

(a) No Pinelands Development Credit may be conveyed, sold, encumbered or transferred unless the owner of the land from which the credit has been obtained has received a Pinelands Development Credit Certificate from the New Jersey Pinelands Development Credit Bank pursuant to N.J.A.C. 3:42-3, and has deed restricted the use of the land in perpetuity to those uses set forth in N.J.A.C. 7:50-5.47(b) by recorded deed restriction which is in favor of a public agency or not for profit incorporated organization and specifically and expressly enforceable by the Commission.

(b) Notwithstanding the provisions of (a) above, an owner of a parcel from which Pinelands Development Credits are sold may retain a right for residential development on that parcel, provided that the recorded deed restriction expressly provides for same and that the total allocation of Pinelands Development Credits for that parcel is reduced by .25 Pinelands Development Credits for each reserved right to build a dwelling unit. Subdivision of the parcel shall not be required until such time as the residential development right is exercised.

(c) The bonus density of a parcel of land on which Pinelands Development Credits are used shall not exceed the upper limits of the density range of the municipal zone or district in which the parcel is located.

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 .25 PDC reduction for reserved rights.

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).

Substituted "parcel" for "property" throughout section.

#### 7:50-5.45 Pinelands Development Credit bonus multipliers

Pinelands Development Credits which are used for securing a density bonus for parcels of land located in a Regional Growth Area shall yield a bonus of four dwelling units per credit.

#### 7:50-5.46 Aggregation of Pinelands Development Credits

Pinelands Development Credits may be aggregated from different parcels for use in securing a bonus for a single parcel of land in a Regional Growth Area, provided that the density does not exceed the limits of the density range specified in the municipal district in which the parcel is located.

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).  
Substituted "parcel" for "property" throughout section.

### 7:50-5.47 Recordation of deed restriction

(a) No conveyance, sale or transfer of Pinelands Development Credits shall occur until the municipality with jurisdiction over the parcel of land from which the Pinelands Development Credits were obtained, the agency or organization to which the restriction is in favor, and the Commission have been provided with evidence of recordation of a restriction on the deed to the land from which the development credits were obtained.

(b) Such deed restriction shall specify the number of Pinelands Development Credits sold and that the parcel may only be used in perpetuity for the following uses:

1. In the Preservation Area District:

i. Berry agriculture; horticulture of native Pinelands plants; forestry; beekeeping; fish and wildlife management; wetlands management; low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not exceed five percent of the parcel, and no more than one percent of the parcel will be covered with impermeable surfaces; and accessory uses.

ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, agricultural employee housing as an accessory use may also be specifically permitted in such deed restriction.

2. In Special Agricultural Production Areas:

i. Berry agriculture; horticulture of native Pinelands plants; forestry; beekeeping; fish and wildlife management; wetlands management; and accessory uses.

ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, agricultural employee housing as an accessory use may also be specifically permitted in such deed restriction.

3. In Agricultural Production Areas:

i. Agriculture; forestry; low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not exceed five percent of the parcel, and no more than one percent of the parcel will be covered with impervious surfaces; agricultural commercial establishments, excluding supermarkets and

restaurants and convenience stores, where the principal goods or products available for sale were produced in the Pinelands and the sales area does not exceed 5,000 square feet; agricultural products processing facilities; and accessory uses.

ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, the following additional uses may be specifically permitted in such deed restriction: airports and heliports accessory to agricultural uses and which are used exclusively for the storage, fueling, loading, and operation of aircraft as part of an ongoing agricultural operation; fish and wildlife management; wetlands management; and agricultural employee housing as an accessory use.

4. In all other Pinelands management areas where Pinelands Development Credits have been allocated pursuant to N.J.A.C. 7:50-4.62(d)2:

i. Agriculture; forestry; and low intensity recreational uses.

(c) No development involving the use of Pinelands Development Credits shall be approved by a local permitting agency until the developer has provided the Commission and the municipality in which the parcel of land to be developed is located with evidence of his ownership and redemption of the requisite Pinelands Development Credits; provided, however, that a municipality may grant general development plan, preliminary subdivision or preliminary site plan approval conditioned upon such evidence being presented as a prerequisite to final subdivision or site plan approval. For such a final subdivision or site plan, the developer shall provide evidence of Pinelands Development Credit ownership and redemption to secure the same proportion of lots or residential units as was approved for Pinelands Development Credit use in the preliminary approval or, as appropriate, the general development plan. Notification of a local permitting agency development approval shall be made to the Pinelands Commission pursuant to N.J.A.C. 7:50-4 and to the New Jersey Pinelands Development Credit Bank in accordance with N.J.A.C. 3:42-3. Redemption of the requisite Pinelands Development Credits shall occur in accordance with N.J.A.C. 3:42-3.6 prior to the memorialization of the resolution granting final subdivision or final site plan approval, or if no such approval is required, prior to the issuance of any construction permits.

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

Substituted "developer" for "developed" in (c).  
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)3i, deleted "farm related housing" reference.  
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.2000 d.43, effective February 7, 2000.  
See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

Rewrote (c).

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

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

In (b)1i and (b)3i substituted "impervious" for "impermeable".

Amended by R.2009 d.385, effective December 21, 2009.

See: 41 N.J.R. 2398(a), 41 N.J.R. 4786(a).

In (b)1i and (b)3ii, inserted "wetlands management;"; and in (b)2i, deleted "and" preceding "fish" and inserted "; and wetlands management".

Amended by R.2012 d.012, effective January 3, 2012.

See: 43 N.J.R. 928(a), 44 N.J.R. 72(a).

In (b)1i, (b)2i and (b)3i, inserted "; and accessory uses"; in (b)1i, deleted "and" following "wetlands management;"; in (b)2i, deleted "and" following "management;"; and in (b)3i, deleted "and" preceding the second occurrence of "agricultural".

#### Case Notes

Pinelands Protection Act and implementing regulations do not violate takings clause. *Gardner v. New Jersey Pinelands Com'n*, 125 N.J. 193, 593 A.2d 251 (1991).

Pinelands comprehensive management plan is not an illegal exaction. *Gardner v. New Jersey Pinelands Com'n*, 125 N.J. 193, 593 A.2d 251 (1991).

#### 7:50-5.48 through 7:50-5.50 (Reserved)

### PART V—SPECIAL PINELANDS DEVELOPMENT CREDIT PURCHASE PROGRAM

#### 7:50-5.51 Purpose

This Part establishes a special program for the State's purchase of Pinelands Development Credits, utilizing funds appropriated by the State for this purpose. The program is administered in cooperation with the New Jersey Department of Environmental Protection and the New Jersey Pinelands Development Credit Bank and is intended to increase the amount of important agricultural and forested lands permanently protected in the Preservation Area District, the Agricultural Production Areas and the Special Agricultural Production Areas. All Pinelands Development Credits purchased through this special program shall also be retired so that the development rights purchased by the State are not used for density bonuses in Regional Growth Areas or for other development activities authorized in this Plan.

New Rule, R.2000 d.43, effective February 7, 2000.

See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

Former N.J.A.C. 7:50-5.51, Purpose, recodified to N.J.A.C. 7:50-5.61.

#### 7:50-5.52 Program administration

(a) The Pinelands Commission shall enter into a memorandum of agreement with the New Jersey Department of Environmental Protection and the New Jersey Pinelands Development Credit Bank to provide for the orderly administration of the special program authorized in this Part. The agreement shall, among other financial and administrative matters, provide for the Pinelands Commission's determination, through letters of interpretation issued pursuant to N.J.A.C. 7:50-4, Part VI, of the number of Pinelands Development Credits attributed to a parcel, the Pinelands Development Credit Bank's purchase of the Pinelands Development Credits on behalf of the Pinelands Commission

and the administration of the appropriated funds. The memorandum of agreement may also authorize joint implementation of the program with any County Development Credit Bank.

(b) Nothing in this Part shall be construed to limit the authority of the Pinelands Development Credit Bank to otherwise purchase, extend loan guarantees for, sell, exchange, convey or retire Pinelands Development Credits pursuant to the authorities granted to the Bank in N.J.S.A. 13:18A-30 through 49.

New Rule, R.2000 d.43, effective February 7, 2000.

See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

Former N.J.A.C. 7:50-5.52, Designation of Municipal Reserve Areas, recodified to N.J.A.C. 7:50-5.62.

#### 7:50-5.53 Pinelands Development Credit purchases

(a) The memorandum of agreement shall authorize the Pinelands Development Credit Bank to purchase Pinelands Development Credits through this special program on behalf of the Pinelands Commission only when sufficient funds are available for such purchases and when all of the requirements of (b) and (c) below are met.

(b) All purchases of Pinelands Development Credits under this program shall meet the following criteria:

1. The deed restriction required pursuant to N.J.A.C. 7:50-5.47 was recorded on or after July 1, 1999 for the parcel to which the Pinelands Development Credits are allocated;
2. The Pinelands Development Credits are owned by the person or entity who owns the parcel to which the Pinelands Development Credits are allocated;
3. The Pinelands Development Credits are not owned by a public agency;
4. If a person or entity owns more than one parcel, each of which is one acre or less in size and each of which receives a PDC allocation pursuant to N.J.A.C. 7:50-5.43(b)4 or 5, no more than a total of 0.50 Pinelands Development Credits allocated to such parcels shall be purchased from that person or entity; and
5. No more than 25 Pinelands Development Credits shall be purchased from any person or entity prior to July 1, 2000 unless the full amount of the appropriation by the State for such purposes is not obligated by June 30, 2000.

(c) Upon receipt of a written request from a property owner and the transfer of sufficient funds to the Pinelands Development Credit Bank by the Pinelands Commission, the Bank shall purchase the Pinelands Development Credits if the requirements of (a) and (b) above and the requirements of N.J.A.C. 3:42-3 are met.

(d) The requirements of (a), (b) and (c) above apply to the Pinelands Development Credit Bank's purchase of Pinelands

Development Credits pursuant to this special program and shall not otherwise be construed to limit any person's ability to sell Pinelands Development Credits to the Pinelands Development Credit Bank pursuant to N.J.A.C. 3:42-5 or to any other person.

New Rule, R.2000 d.43, effective February 7, 2000.  
See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

Former N.J.A.C. 7:50-5.53, Development in Municipal Reserve Areas, recodified to N.J.A.C. 7:50-5.63.

#### 7:50-5.54 Purchase price

(a) The purchase price of a Pinelands Development Credit shall be the higher of the following values:

1. The 1985 market value of \$12,500 established in the Pinelands Development Credit Bank Act, P.L. 1985, c.310 (N.J.S.A. 13:18A-30-49), adjusted to current dollar value. The adjustment shall be directly proportional to the percent change in the Consumer Price Index from the 1985 annual average index to the annual average index for the calendar year immediately preceding the purchase. The adjustment shall use the Consumer Price Index for All Urban Consumers, Philadelphia-Wilmington-Atlantic City Area, Owners Equivalent Rent of Primary Residence, as compiled by the United States Department of Labor Bureau of Labor Statistics; or

2. The value derived from the more recent of the following:

i. The purchase price for Pinelands Development Credits established by the Pinelands Development Credit Bank pursuant to the Pinelands Development Credit Bank Act, P.L. 1985, c.310 (N.J.S.A. 13:18A-30-49) which is promulgated at N.J.A.C. 3:42-5.6; or

ii. Eighty percent of the highest per unit bid received in conjunction with the most recent sale of Pinelands Development Credits by the Pinelands Development Credit Bank pursuant to N.J.A.C. 3:42-7.

New Rule, R.2000 d.43, effective February 7, 2000.

See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

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.

#### 7:50-5.55 Retirement of Pinelands Development Credits purchased through this program

All Pinelands Development Credits purchased by the Pinelands Development Credit Bank pursuant to the special program authorized in this Part shall be retired and may never be transferred, sold, conveyed, redeemed or otherwise used in any way. The Pinelands Development Credit Bank shall record the retirement of these Pinelands Development Credits in the registry maintained pursuant to N.J.A.C. 3:42-4.

New Rule, R.2000 d.43, effective February 7, 2000.

See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

#### 7:50-5.56 through 7:50-5.60 (Reserved)

### PART VI—MINIMUM STANDARDS FOR MUNICIPAL RESERVE AREAS

#### 7:50-5.61 Purpose

In order to enable counties and municipalities with jurisdiction over land in Rural Development Areas and Regional Growth Areas to plan for an orderly rate and pattern of growth within both areas, the Pinelands Commission hereby establishes a municipal option that may be incorporated in a municipal master plan or land use ordinance which allows a municipality to designate areas in a Rural Development Area or Regional Growth Area as Municipal Reserve Areas. These areas would be eligible for development under the minimum standards established for development and land use in Regional Growth Areas, including use of Pinelands Development Credits at a future date.

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

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

Recodified from N.J.A.C. 7:50-5.51 by R.2000 d.43, effective February 7, 2000.

See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

#### 7:50-5.62 Designation of Municipal Reserve Areas

(a) A municipality may, in its master plan and land use ordinance, designate lands in Rural Development Areas that are adjacent to or contiguous with a Regional Growth Area or areas of existing growth and development located outside of the Pinelands as Municipal Reserve Areas, provided that the area designated:

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

#### 7:50-6.65 Specific limitations in the Preservation Area

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

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

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

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

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

Section was "Application requirements for resource extraction".

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

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

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

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

Added (c).

#### 7:50-6.66 Specific limitations in the Forest Area

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

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

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

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

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

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

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

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

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

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

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

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

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

Administrative Correction.

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

#### 7:50-6.68 Resource extraction standards

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

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

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

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

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

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

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

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

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

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

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

10. Will involve restoration of disturbed areas at the completion of the resource extraction operation in accordance with the requirements of N.J.A.C. 7:50-6.67, 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.

(2) Subtract from (b)1i(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)1ii(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)1i 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 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. In November 2006, the Commission decided to remove the Ashco RFS III system from the Alternate Design Treatment Systems Pilot Program. The Commission made this decision due to the manufacturer's failure to make systems commercially available in the Pinelands during the initial five-year period of the pilot program or to otherwise demonstrate the ability or intention for future participation in the program. Residential development using any of the authorized 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. In 2010, the Commission decided to release two of the original pilot program technologies (Amphidrome and Bioclere) from the pilot program and authorize them for permanent use, subject to the provisions of N.J.A.C. 7:50-6.84(a)5iv(3). The Commission also decided to provide an opportunity for expansion of the pilot program to include certain other residential nutrient reducing onsite wastewater treatment technologies that have attained verification and/or certification through the United States Environmental Protection Agency Environmental Technology Verification (USEPA ETV) Program or the National Sanitation Foundation/American National Standards Institute (NSF/ANSI) Standard 245 testing program. Information regarding the USEPA ETV Program is available from the United States Environmental Protection Agency website at: <http://www.epa.gov/etv/vt-wqp.html#dwtt> and <http://www.epa.gov/etv/pubs/600s07004.pdf>. Information regarding the NSF/ANSI Standard 245 testing program is available from the National Sanitation Foundation website at: [http://www.nsf.org/business/wastewater\\_certification/standards.asp?program=WastewaterCer#245](http://www.nsf.org/business/wastewater_certification/standards.asp?program=WastewaterCer#245).

(d) The Alternate Design Waste Water Treatment Systems Pilot Program is authorized as a means to test whether specifically authorized 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 were originally encouraged, but not required, to adopt ordinances incorporating the requirements of N.J.A.C. 7:50-10.22 into their own land use ordinances. The use of the pilot program systems was then allowed only in those municipalities which had adopted such ordinances. Although most municipalities did adopt ordinances, several did not. This led to situations where owners of unsewered parcels under 3.2 acres in size were denied the ability to develop those parcels in a manner consistent with all other municipal land use and environmental standards, due simply to a municipality's failure to adopt an ordinance allowing for the installation of the pilot program systems. This resulted in considerable hardship to landowners, an outcome which was never the intent of the pilot program. The program has therefore been revised to authorize use of the pilot program systems in all municipi-

palities for the duration of the program, whether or not the specific terms of the program are reflected in a municipal ordinance. Municipalities will continue to 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).

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

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

In (c), inserted the fifth sentence and recodified the final three sentences as (d); and rewrote (d).

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

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

In (b), deleted the fifth and sixth sentences; in (c), substituted "the authorized" for the second occurrence of "these" and added the last four sentences; and in (d), substituted "specifically authorized" for the first occurrence of "these" and "a" for "an" preceding "manner".

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

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

### 7:50-10.22 General standards

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

1. The proposed lot size and density is consistent with the provisions of N.J.A.C. 7:50-5 and the applicable municipal land use ordinance that 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 or are determined to be consistent with record documents submitted for USEPA ETV and/or NSF/ANSI Standard 245 testing. 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, and total kjeldahl nitrogen. Total nitrogen shall be reported as the sum of nitrate-nitrogen, nitrite-nitrogen, plus total kjeldahl nitrogen from samples collected during a common sampling date. Where laboratory results indicate ammonia-nitrogen concentration to be greater than total kjeldahl nitrogen concentrations, the results will not be accepted by the Commission and re-sampling for all required parameters shall be required;

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 FAST or Cromaglass system shall be located on a parcel containing at least one acre for each dwelling unit that will be served by the system. Each USEPA ETV or NSF/ANSI Standard 245 technology approved by the Commission for participation in the pilot program pursuant to N.J.A.C. 7:50-10.23(b) shall be located on a parcel containing sufficient land area to comply with the two parts per million nitrogen requirement and the water quality standards contained in N.J.A.C. 7:50-6, Part VIII, as calculated using the Pinelands Septic Dilution Model and the expected effluent total nitrogen value for the technology based upon the findings of the USEPA ETV and/or NSF/ANSI Standard 245 test data.

4. The Cromaglass and FAST alternate design pilot program treatment systems identified in (a)3 above are authorized to be installed until August 5, 2013 and the USEPA ETV or NSF/ANSI Standard 245 technologies approved by the Commission for participation in the pilot program pursuant to N.J.A.C. 7:50-10.23(b) are authorized to be installed until August 5, 2016.

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:

i. 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; and

ii. The Executive Director may impose an immediate suspension on all new installations of said technology until such time as the manufacturer or its agent remedies standard performance and any other identified compliance issues. The Executive Director shall publish notice of such action in the New Jersey Register and on the Commission's website within 60 days of imposing such suspension.

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 technolo-

gies 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 local board of health shall not issue a certificate of compliance or similar authorization to permit occupancy of the building served or use of the alternative design wastewater treatment system until such time as the Pinelands Commission provides written authorization to the local board of health that such system may be authorized for use by the board of health;

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

viii. Each system shall be covered by a five-year warranty and a minimum five-year maintenance contract that cannot be cancelled and is renewable and which includes a provision requiring that the manufacturer or its agent inspect the system at least once a year and

undertake any maintenance or repairs determined to be necessary during any such inspection or as a result of observations made at any other time, including when effluent monitoring occurs or that is identified based on the results of any effluent monitoring. Said warranty and maintenance contract shall be consistent with the sample warranty and maintenance contract approved pursuant to (a)2v above. In addition to complying with the reporting requirements of N.J.A.C. 7:9A-3.4(b) concerning system malfunctions, the manufacturer or agent shall report to the Executive Director and local board of health on all necessary maintenance and repairs within 10 days and shall report to the Executive Director and local board of health semi-annually as to the inspections conducted during the preceding six months including a description of any maintenance and repairs that were undertaken and the success of those measures and their costs;

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

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

xi. June 5 and December 5 of each calendar year, until the conclusion of the pilot program, each manufacturer or its agent shall submit to the Executive Director a report which includes the number of systems installed during the previous six months and since the beginning of the pilot program, a discussion of any installation problems and what has been done to address those problems, an analysis and evaluation of the monitoring results to date and a discussion of any operational or maintenance issues, including the number of systems requiring maintenance or repairs and the nature and success of such maintenance and repairs, and the number of times the automatic dialing system was set off and the reasons for each such occurrence;

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

xiii. No more than six alternate design treatment technologies shall be approved for use in the Alternate

Design Waste Water Treatment Systems Pilot Program at any one time.

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

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

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

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

Public Notice: Ashco-A-Corporation, RFS<sup>III</sup> 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<sup>III</sup> Gravity Dosing Treatment System.

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

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

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

Public Notice: Approval of Cromaglass® Treatment System.

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

Petition for Rulemaking.

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

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

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

Rewrote (a)6i.

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

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

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

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

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

In (a)2i, inserted "or are determined to be consistent with record documents submitted for USEPA ETV and/or NSF/ANSI Standard 245 testing"; in (a)2iii, inserted "and" preceding and deleted "and chlorides" following the first occurrence of "total kjeldahl" and added the last two sentences; rewrote (a)3 through (a)5; added new (a)6vi; recodified former (a)6vi through (a)6xi as (a)6vii through (a)6xii; in (a)6xi, substituted "June 5 and December 5 of each calendar year" for "By July 5, 2003 and every six months thereafter" and deleted "and" from the end; in (a)6xii, substituted "; and" for a period at the end; and added (a)6xiii; and (c).

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

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

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

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

### 7:50-10.23 Pinelands Commission approval and evaluation

(a) If otherwise appropriate under N.J.A.C. 7:50-3, the Commission shall approve a municipal ordinance authorizing

use of alternate design pilot program treatment systems if it finds that the standards of N.J.A.C. 7:50-10.22 are met.

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

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

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

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

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

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

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

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

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

4. Within 90 days after the deadline established for the receipt of complete applications or any extension thereto, the Executive Director shall submit a report to the Commission setting forth proposed findings and a recommendation as to whether each technology should be per-

mitted to participate in this pilot program. The Executive Director shall evaluate the eligibility of each technology to participate in the pilot program based upon expected effluent quality, estimated costs and system availability. Any such recommendation shall specify the minimum lot size necessary for compliance with the water quality standards of N.J.A.C. 7:50-6, Part VIII.

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

(c) The Executive Director shall review this pilot program relative to the FAST and Cromaglass treatment technologies no later than August 5, 2012 and shall report to the Commission within three months of that date on its implementation. The Executive Director shall review this pilot program relative to any approved USEPA and NSF/ANSI Standard 245 treatment technologies no later than August 5, 2015 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.

(d) If the Executive Director finds that the number of monitoring events for the FAST and Cromaglass treatment technologies is not adequate to evaluate that technology under this pilot program in accordance with (c) above, the Executive Director shall so inform the Commission and, upon

receiving the Commission's approval, initiate a second review to be completed no later than August 5, 2014.

(e) If the Executive Director finds that the number of monitoring events for any approved USEPA and NSF/ANSI Standard 245 treatment technologies is not adequate to evaluate any of those technologies under this pilot program in accordance with (c) above, the Executive Director shall so inform the Commission and, upon receiving the Commission's approval, initiate a second review to be completed no later than August 5, 2017.

(f) 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 (c) above, the Executive Director shall propose, within three months of the issuance of the report required in (c) 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.

(g) 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.

(h) 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 (c) above, the Executive Director shall propose, within three months of the issuance of the report required in (c) 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 (c) 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.

(i) Nothing in this section shall be construed to authorize the installation of a FAST or Cromaglass alternate design pilot program treatment system after August 5, 2013 or to authorize the installation of any USEPA ETV and NSF/ANSI Standard 245 treatment technology approved by the Commission for participation in the pilot program after August 5, 2016 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 (g) or (h) above.

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

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

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

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

In the introductory paragraph of (b), substituted "seven" for "four"; in (c), substituted "eight" for "six" and a period for the semicolon at the end; and in (g), substituted "2010" for "2007".

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

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

Added new (b); recodified former (b) and (c) as (c) and (d); and rewrote (c) and (d); added new (e); recodified former (d) through (g) as (f) through (i); in (f) and (h), substituted "(c)" for "(b)" throughout; and rewrote (i).

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

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

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).

Repealed by R.2010 d.194, effective September 7, 2010.

See: 42 N.J.R. 663(a), 42 N.J.R. 2125(a).

Section was "Purpose".

#### 7:50-10.29 (Reserved)

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).

Repealed by R.2010 d.194, effective September 7, 2010.

See: 42 N.J.R. 663(a), 42 N.J.R. 2125(a).

Section was "General".

#### 7:50-10.30 (Reserved)

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).

Repealed by R.2010 d.194, effective September 7, 2010.

See: 42 N.J.R. 663(a), 42 N.J.R. 2125(a).

Section was "Pinelands Commission approval and evaluation".

### PART VI—ELECTRIC TRANSMISSION RIGHT-OF-WAY MAINTENANCE

#### 7:50-10.31 Purpose

(a) The purpose of this pilot program is to implement and evaluate the New Jersey Pinelands Electric Transmission Right-of-Way Maintenance Plan (ROW Plan), which is hereby adopted by the Pinelands Commission. The ROW Plan identifies detailed vegetation management prescriptions for approximately 233 miles of existing electric transmission rights-of-way managed by Public Service Enterprise Group, Jersey Central Power and Light and Atlantic City Electric, a subsidiary of Pepco Holdings, Inc.

(b) The ROW Plan has two primary objectives:

1. To create and maintain relatively stable and sustainable early successional habitats that are characteristic of the Pinelands and which provide habitat for native Pinelands plants and animals, including threatened and endangered species; and

2. To ensure the reliability and safety of the electric transmission system in the Pinelands by creating and maintaining low growth vegetation communities.

New Rule, R.2009 d.386, effective December 21, 2009.  
See: 41 N.J.R. 2412(a), 41 N.J.R. 4788(a).

### 7:50-10.32 General standards

(a) Electric transmission right-of-way vegetation management activities shall be authorized in the Pinelands Area in accordance with the provisions of the New Jersey Pinelands Electric Transmission Right-of-Way Plan, dated February 2009, as amended and supplemented and available at the principal office of the Commission or at [www.nj.gov/pinelands](http://www.nj.gov/pinelands) until December 31, 2019, or as extended pursuant to N.J.A.C. 7:50-10.35(c).

(b) The utility companies and their successors or assigns are authorized to proceed with conforming vegetation management prescriptions without prior notice to and review by the Pinelands Commission pursuant to N.J.A.C. 7:50-4, provided that:

1. Each utility company shall submit an annual report to the Executive Director, in such form as he or she shall prescribe, that identifies the specific right-of-way spans in which prescribed vegetation management activities have been performed. This report shall be due on January 31 of each year and shall cover the preceding calendar year; and

2. In lieu of any application fees required by N.J.A.C. 7:50-1.6, each utility company shall remit to the Executive Director the following amounts on January 31 of each year to help finance the Commission's inspection and monitoring obligations specified in (c) and (d) below. The first payment shall be due on January 31, 2010 and the last payment shall be due on January 31, 2018.

- i. Public Service Enterprise Group - \$22,500;
- ii. Jersey Central Power and Light - \$8,900; and
- iii. Atlantic City Electric - \$27,800.

(c) The Executive Director shall establish and implement an annual inspection program to verify that the vegetation management activities undertaken by the utility companies are consistent with the ROW Plan.

(d) The Executive Director shall establish and implement a scientifically based monitoring program to assess the outcomes of the vegetation management activities and whether they are accomplishing the objectives of the ROW Plan.

New Rule, R.2009 d.386, effective December 21, 2009.  
See: 41 N.J.R. 2412(a), 41 N.J.R. 4788(a).

### 7:50-10.33 Progress reports and conformance

(a) The Executive Director shall submit a biennial progress report to the Commission, each of the utility companies and the Board of Public Utilities which describes the type and

extent of vegetation management activities undertaken to date, any significant problems or issues encountered during the period and the need for any amendments to the ROW Plan. The first such report shall be due March 30, 2012.

(b) The Executive Director shall submit such other interim reports to the Commission as may be necessary to inform the Commission of any significant issues with respect to the utility companies' conformance with the terms of the ROW Plan. Copies of such reports shall be provided to each of the utility companies and the Board of Public Utilities.

(c) If the Executive Director identifies a significant and recurring conformance issue in a progress or interim report, the applicable utility company or companies shall thereafter be required to submit individual development applications pursuant to the requirements of N.J.A.C. 7:50-4 until such time as the Executive Director notifies the Commission, the utility company or companies and the Board of Public Utilities that the conformance issues have been satisfactorily resolved. Such development applications shall be subject to the fee requirements of N.J.A.C. 7:50-1.6. Any annual payment required pursuant to N.J.A.C. 7:50-10.32(b)2 shall be adjusted to account for the period during which individual development applications are submitted.

New Rule, R.2009 d.386, effective December 21, 2009.  
See: 41 N.J.R. 2412(a), 41 N.J.R. 4788(a).

### 7:50-10.34 Amendments

(a) Although the ROW Plan provides that minor adjustments to the vegetation management prescriptions may be made with the Executive Director's prior approval, a need may periodically arise for substantive amendments to the ROW Plan. Such an amendment proposal may be made by the Executive Director, one or more of the utility companies or the Board of Public Utilities.

(b) Upon receipt of a complete amendment proposal, the Executive Director shall give notice of and set the date, time and place for a public hearing. The public hearing shall be held by the Executive Director within 60 days following receipt of the amendment proposal.

(c) Within 90 days of the receipt of the amendment proposal, the Executive Director shall submit a report to the Pinelands Commission setting forth proposed findings and a recommended order as to whether the amendment should be approved, approved with conditions or disapproved.

(d) Upon receipt of the Executive Director's report, the Commission shall review the findings, conclusions and recommendations of the Executive Director and shall, within 120 days following receipt of the amendment, approve, approve with conditions or disapprove the amendment.

New Rule, R.2009 d.386, effective December 21, 2009.  
See: 41 N.J.R. 2412(a), 41 N.J.R. 4788(a).

**7:50-10.35 Pilot program evaluation**

(a) The Executive Director shall review this pilot program and report to the Pinelands Commission on its implementation by September 30, 2019. The report shall be provided to the utility companies and the Board of Public Utilities. The Executive Director shall determine whether the pilot program is successful in accordance with the following criteria:

1. The vegetation management prescriptions have been implemented in a reliable and predictable way;
2. The vegetation management prescriptions have resulted in relatively stable and sustainable early successional habitats that are characteristic of the Pinelands and which provide habitat for native Pinelands plants and animals, including threatened and endangered species;
3. The vegetation management prescriptions contributed to the reliability and safety of the electric transmission system in the Pinelands by creating and maintaining low growth vegetation communities; and
4. The notification and inspection system authorized in this pilot program has simplified Pinelands permitting procedures for the utility companies and the Commission's staff.

(b) If the Executive Director finds that this pilot program has been successful, he or she shall propose an amendment to the Comprehensive Management Plan to institute the New Jersey Pinelands Electric Transmission Right-of-Way Maintenance Plan on a permanent basis. In so doing, the Executive Director may propose changes to the ROW Plan or to the procedural requirements of this Part to improve the implementation of the program. The Commission shall thereafter determine whether or not to amend the Comprehensive Management Plan.

(c) If the Executive Director finds that additional time is needed to fully assess the results, he or she shall so inform the Commission and, upon Commission approval, this pilot program may be extended for up to two years. In such an event, all of the conditions of this pilot program, including the responsibilities set forth in N.J.A.C. 7:50-10.32(b), shall be extended and remain in full force and effect.

(d) If the Executive Director finds that this pilot program has not been successful, he or she shall propose such other measures, including other amendments to the Comprehensive Management Plan, to govern future electric transmission right-of-way maintenance and management in the Pinelands.

New Rule, R.2009 d.386, effective December 21, 2009.  
See: 41 N.J.R. 2412(a), 41 N.J.R. 4788(a).