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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 is one of the following systems, as described in the report prepared by Anish R. Jantrania, Ph.D., P.E., M.B.A. entitled “Performance Expectations for Selected On-site Wastewater Treatment Systems,” dated December, 2000, incorporated herein by reference, and available at the principal office of the Commission, that have been authorized for use for residential development by the pilot program established in N.J.A.C. 7:50-10, Part IV:

1. FAST;
2. Cromaglass;
3. Bioclere; or
4. Amphidrome.

“Amendment” is a means for making changes in this Plan as expressly authorized by the provisions of N.J.A.C. 7:50-7

or any change to a certified local master plan or land use ordinance.

“Ancillary” means a structure or use which:

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

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

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

“Approval, final” means any approval to develop issued by a local permitting agency which represents the final action to be taken on the application for development by that agency, including but not limited to final approval of major subdivisions and site plans, approval of minor subdivisions, and the issuance of zoning or construction permits.

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

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

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

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

“Building” means any structure, either temporary or permanent, having a roof and designed, intended or used for

the sheltering or protection of persons, animals, chattel or property of any kind.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“First order stream” means that portion of a stream, as identifiable on the USGS 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. It includes such practices as reforestation, site preparation and other silvicultural practices. For purposes of this Plan, the following activities shall not be defined as forestry:

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

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

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

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

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

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

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

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

“Historic resource” means any site, building, area, district, structure or object important in American history or 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.

“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.

“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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Recommended management practice” means the management program which employs the most efficient use of

available technology, natural, human and economic resources.

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

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

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

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

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

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

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

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

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

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

“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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Wetlands”. See N.J.A.C. 7:50-6.3.

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

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

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

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

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

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

3. The wetland is not:

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

“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".

### 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 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.

40. Knieskern's beaked rush (*Rhynchospora kniesker-nii*).
41. Curly grass fern (*Schizaea pusilla*).
42. Chaffseed (*Schwalbea americana*).
43. Long's bulrush (*Scirpus longii*).
44. Slender nut rush (*Scleria minor*).
45. Reticulated nut rush (*Scleria reticularis*).
46. Sclerolepis (*Sclerolepis uniflora*).
47. Wand-like goldenrod (*Solidago stricta*).
48. Little ladies tresses (*Spiranthes tuberosa*).
49. False asphodel (*Tofieldia racemosa*).
50. Humped bladderwort (*Utricularia gibba*).
51. White-flowered bladderwort (*Utricularia olivacea*).
52. Purple bladderwort (*Utricularia purpurea*).
53. Reclined bladderwort (*Utricularia resupinata*).
54. Yellow-eyed grass (*Xyris caroliniana*, formerly *X. flexuosa*).

Recodified from 7:50-6.24 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.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).  
 Rewrote the section.

#### 7:50-6.28 through 7:50-6.30 (Reserved)

### PART III—FISH AND WILDLIFE

#### 7:50-6.31 Purpose

The Pinelands environment supports a rich diversity of fish and wildlife species. Many threatened and endangered species are found in the Pinelands and they, together with the other fauna of the area, constitute an important part of the essential ecological character of the Pinelands that requires careful management and protection.

#### 7:50-6.32 Fish and wildlife management program

In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal master plan or land use ordinance must include the standard for the protection of Pinelands fish and wildlife contained in this Part.

#### 7:50-6.33 Protection of threatened or endangered wildlife required

No development shall be carried out unless it is designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of those threatened or endangered animal species designated by the Department of Environmental Protection pursuant to N.J.S.A. 23:2A-1 et seq.

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

#### 7:50-6.34 Protection of wildlife habitat

All development of other authorized activity shall be carried out in a manner which avoids disturbance of fish and wildlife habitats that are essential to the continued nesting, resting, breeding and feeding of significant populations of fish and wildlife in the Pinelands.

#### 7:50-6.35 through 7:50-6.40 (Reserved)

### PART IV—FORESTRY

#### 7:50-6.41 Purpose

Forest vegetation represents a unique and financially valuable part of the essential character of the Pinelands. If they are properly managed, Pinelands forests represent significant economic opportunities to their owners while perpetuating the overall ecological value of the Pinelands. This Part encourages commercial forestry that will maximize forest land values and provide for the long-term economic and environmental integrity of the Pinelands.

#### 7:50-6.42 Forestry management program

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

#### 7:50-6.43 Application requirements

(a) The filing of an application pursuant to N.J.A.C. 7:50-4.13 or 4.33 for forestry operations on those parcels of land enrolled in the New Jersey Forest Stewardship Program shall not be required. Such forestry operations shall continue to be subject to the local permitting procedures required by N.J.A.C. 7:50-3.39(a)5 and the review procedures of N.J.A.C. 7:50-4.19 and 4.22 or 4.37 and 4.40.

(b) Unless the submission requirements are modified or waived pursuant to N.J.A.C. 7:50-4.2(b)3, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for a forestry operation on a parcel of land approved for woodland assessment shall include at least the following information:

1. The applicant's name and address and his interest in the subject parcel;
2. The owner's name and address, if different from the applicant's, and the owner's signed consent to the filing of the application;
3. The legal description, including block and lot designation and street address, if any, of the subject parcel;

4. A description of all existing uses of the subject parcel;

5. A brief written statement generally describing the proposed forestry operation;

6. 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;

7. A scaled map or statement indicating how the standards set forth in N.J.A.C. 7:50-6.45(a)2, 3, 4, 6, 9 and 10 will be met;

8. A letter from the Office of Natural Lands Management identifying any threatened or endangered plants or animals reported on or in the immediate vicinity of the parcel and a detailed description of the measures proposed by the applicant to meet the standards set forth in N.J.A.C. 7:50-6.27 and 6.33;

9. A cultural resource survey documenting cultural resources on those portions of the parcel where ground disturbance due to site preparation or road construction will occur and a detailed description of the measures proposed by the applicant to treat those cultural resources in accordance with N.J.A.C. 7:50-6.156;

10. A statement identifying the type, location and frequency of any proposed herbicide treatments and how such treatments will comply with the standards set forth in N.J.A.C. 7:50-6.45(a)8;

11. A statement identifying the specific steps to be taken to ensure that trees or areas to be harvested are properly identified so as to ensure that only those trees intended for harvesting are harvested;

12. Written certification from the New Jersey State Forester that the proposed forestry activities adhere to the silvicultural practices contained in the Society of American Foresters Forestry Handbook, Second Edition, incorporated herein by reference, as contained in pages 413 through 455, dated 1984, as amended (available at the principal office of the Commission);

13. Written comments from the New Jersey State Forester concerning the extent to which the proposed forestry activities are consistent with the guidelines provided in the New Jersey Forestry and Wetlands Best Management Practices Manual developed by the New Jersey Department of Environmental Protection, dated October 1995, as amended. Any such comments which indicate that the proposed activities are not consistent with said Manual must be addressed by the applicant in terms of their potential impact on the standards set forth in N.J.A.C. 7:50-6.45(a)9 and 10; and

14. A copy of the woodland management plan, the scaled map of the parcel and a completed woodland data form, prepared pursuant to the farmland assessment requirements of N.J.A.C. 18:15-2.7 through 2.15.

(c) Unless the submission requirements are modified or waived pursuant to N.J.A.C. 7:50-4.2(b)3, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for a forestry operation on a parcel of land that has not been approved for woodland assessment shall include at least the following information:

1. The information required in (b)1 through 13 above; and

2. A forestry activity plan which includes, as appropriate:

i. A cover page for the plan containing:

(1) The name, mailing address and telephone number of the owner of the subject parcel;

(2) The municipality and county in which the subject parcel is located;

(3) The block and lot designation and street address, if any, of the subject parcel;

(4) The name and address of the forester who prepared the plan, if not prepared by the owner of the subject parcel; and

(5) The date the plan was prepared and the period of time the plan is intended to cover;

ii. A clear and concise statement of the owner's objectives for undertaking the proposed forestry activities, silvicultural prescriptions and management practices;

iii. A description of each forest stand in which a proposed activity, prescription or practice will occur. These stand descriptions shall be keyed to an activity map and shall include, as appropriate, the following information:

(1) The number of acres;

(2) The species composition, including overstory and understory;

(3) The general condition and quality;

(4) The structure, including age classes, diameter breast height (DBH) classes and crown classes;

(5) The overall site quality;

(6) The condition and species composition of advanced regeneration when applicable; and

(7) The stocking levels, growth rates and volume;

iv. A description of the forestry activities, silvicultural prescriptions, management activities and practices proposed during the permit period. These may include, but are not necessarily limited to, a description of:

- (1) Stand improvement practices;
- (2) Site preparation practices;
- (3) Harvesting practices;
- (4) Regeneration and reforestation practices;

(5) Improvements, including road construction, stream crossings, landings, loading areas and skid trails; and

(6) Herbicide treatments;

v. A description, if appropriate, of the forest products to be harvested, including the following:

- (1) Volume: cords, board feet;
- (2) Diameter breast height (DBH) classes and average diameter;

- (3) Age;
- (4) Heights; and
- (5) Number of trees per acre; and

vi. A property map of the entire parcel which includes the following:

- (1) The owner's name, address and the date the map was prepared;
- (2) An arrow designating the north direction;
- (3) A scale which is not smaller than one inch equals 2,000 feet or larger than one inch equals 400 feet;
- (4) The location of all property lines;
- (5) A delineation of the physical features such as roads, streams and structures;
- (6) The identification of soil types (a separate map may be used for this purpose);
- (7) A map inset showing the location of the parcel in relation to the local area;
- (8) Clear location of the area and acreage in which each proposed activity, prescription or practice will occur. If shown on other than the property map, the map or maps shall note the scale, which shall not be smaller than one inch equals 2,000 feet or larger than one inch equals 400 feet, and shall be appropriately keyed to the property map; and
- (9) A legend defining the symbols appearing on the map.

(d) Upon receiving a written request from the applicant, the Pinelands Commission shall assume the responsibilities set forth in (b)<sup>9</sup> above.

New Rule, R.1996 d.225, effective May 20, 1996.

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

Former section, "Time limit on forestry permits", recodified as 7:50-6.44.

#### 7:50-6.44 Time limit on forestry permits and approvals

Permits and approvals authorizing forestry operations shall be valid for a period of 10 years or, where applicable, for the remaining duration of any forestry plan approved for woodland assessment or for enrollment in the New Jersey Forest Stewardship Program. Nothing in this section shall be construed to prohibit any person from securing additional permits or approvals provided that the requirements of this Plan are met.

Recodified from 7:50-6.43 and amended by R.1996 d.225, effective May 20, 1996.

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

Former section, "Forestry standards", recodified as 7:50-6.45.

#### 7:50-6.45 Forestry standards

(a) Forestry operations shall be approved only if the applicant can demonstrate that the standards set forth in this subsection are met. Unless specifically addressed in this subsection, the management programs and minimum standards of this subchapter shall not apply to forestry operations.

1. All silvicultural practices shall be conducted in accordance with the standards set forth in the Society of American Foresters Forestry Handbook, Second Edition, incorporated herein by reference, as contained in pages 413 through 455, dated 1984, as amended (available at the principal office of the Commission).

2. Any newly developed access to lands proposed for harvesting shall avoid wetland areas except as absolutely necessary to harvest wetlands species or to otherwise gain access to a harvesting site.

3. All silvicultural and reforestation practices shall serve to maintain native Pinelands forest types, including those that are locally characteristic, except on those parcels where other forest types exist.

4. The following actions shall be required to encourage the reforestation of Atlantic White Cedar in cedar and hardwood swamps:

- i. Clearcutting cedar and managing slash;
- ii. Controlling competition by other plant species;
- iii. Utilizing fencing and other retardants, where necessary, to protect cedar from overbrowsing;
- iv. Utilizing existing streams as cutting boundaries, where practical;
- v. Harvesting during dry periods or when the ground is frozen; and
- vi. Utilizing the least intrusive harvesting techniques, including the use of winches, corduroy roads and helicopters, where practical.

5. All forestry activities and practices shall be designed and carried out so as to comply with the standards set forth in N.J.A.C. 7:50-6.27 and 6.33.

6. All forestry activities and practices shall be designed and carried out so as to comply with the standards set forth in N.J.A.C. 7:50-6.79.

7. All forestry activities and practices shall be designed and carried out so as to comply with the standards set forth in N.J.A.C. 7:50-6.151 through 6.158.

8. Herbicide treatments shall be permitted, provided that:

- i. The proposed treatment is identified in the forestry application submitted to the Commission pursuant to N.J.A.C. 7:50-6.43(b)10;

ii. Control of competitive plant species is clearly necessary;

iii. Control of competitive plant species by other, non-chemical means is not feasible; and

iv. All chemicals shall be expressly labeled for forestry use and shall be used in a manner that is consistent with relevant State and Federal requirements.

9. A vegetated streamside management zone shall be maintained or established adjacent to streams, ponds, lakes and marshes, except that no streamside management zone shall be required when Atlantic White Cedar is proposed to be harvested or re-established. The streamside management zone shall be at least 25 feet in width. Where soils are severely erodible, slopes exceed 10 percent or streamside vegetation is not vigorous, the streamside management zone shall be increased up to a maximum of 70 feet to buffer the water body from adjacent forestry activities.

10. Stream crossings, access roads, timber harvesting, skid trails, log decks, portable sawmill sites, site preparation, and reforestation shall be designed and carried out so as to:

i. Minimize changes to surface and ground water hydrology;

ii. Minimize changes to temperature and other existing surface water quality and conditions;

iii. Prevent unnecessary soil erosion, siltation and sedimentation; and

iv. Minimize unnecessary disturbances to aquatic and forest habitats.

11. A copy of the approved municipal forestry permit shall be conspicuously posted on the parcel which is the site of the forestry activity.

(b) The New Jersey Forestry and Wetlands Best Management Practices Manual developed by the New Jersey Department of Environmental Protection, dated October 1995, as amended, may be utilized as a guide in determining the extent to which the proposed forestry activity meets the standards of (a)9 and 10 above.

Recodified from 7:50-6.44 and amended by R.1996 d.225, effective May 20, 1996.

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

Rewrote section.

#### 7:50-6.46 Additional standards for State forestry practices

(a) In addition to the standards in N.J.A.C. 7:50-6.45, forestry activities undertaken by or on behalf of any State agency shall meet the following additional standards:

1. Individual forestry practices on State conservation lands shall seek to maintain biological diversity and landscape integrity characteristics of the Pinelands by:

i. Conserving existing Atlantic white cedar stands unless there is demonstrable evidence of destruction by fire, flooding or other natural disaster or where succession to a hardwood or other swamp is irreversible and impending; and

ii. Conserving exemplary forest stands, with emphasis on older and more mature stands, of the following types:

(1) Mixed hardwood swamp;

(2) Chestnut oak;

(3) Black oak;

(4) Scarlet oak;

(5) White oak;

(6) Pitch pine;

(7) Shortleaf pine;

(8) Virginia pine; and

(9) Southern red oak.

(b) Exceptions to the requirements in (a)1 above may be approved by the Commission as a means of carrying out specific research efforts targeted to the regeneration of Atlantic white cedar or the creation of habitat patches for threatened or endangered plant and animal species.

(c) The requirements of (a)1 above may be modified through the Commission's approval of management plans for State conservation lands pursuant to N.J.A.C. 7:50-4.51 through 4.58.

New Rule, R.1996 d.225, effective May 20, 1996.

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

#### 7:50-6.47 Guidelines and requirements for financial sureties

(a) Municipalities may require the posting of financial sureties for harvesting activities, provided that:

1. The surety shall be for the sole purpose of ensuring proper performance during the harvesting operation and shall not be intended to serve as a long-term maintenance guarantee;

2. The surety shall not exceed \$500.00 or 10 percent of the stumpage value of the wood to be harvested during the duration of any approval which is granted, whichever is greater; and

3. The surety shall not be required to be posted for a period exceeding two years. Nothing in this section shall be construed to prohibit a municipality from requiring the posting of sureties for succeeding two year periods, provided the requirements of this section are met.

New Rule, R.1996 d.225, effective May 20, 1996.

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

7:50-6.48 through 7:50-6.50 (Reserved)

## PART V—AGRICULTURE

### 7:50-6.51 Purpose

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

### 7:50-6.52 Agricultural management program

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

### 7:50-6.53 General agricultural standards

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

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

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

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

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

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

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

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

### 7:50-6.55 Application requirements and standards for agricultural resource extraction

(a) Unless the application requirements are modified or waived in accordance with N.J.A.C. 7:50-4.2(b)3, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for agricultural resource extraction shall include at least the following information:

1. All information specified in N.J.A.C. 7:50-4.2(b)4i through vi and viii through x;
2. A Farm Conservation Plan, designed in accordance with the United States Department of Agriculture, Natural Resources Conservation Service New Jersey Field Office Technical Guide, section 4, dated May 2001, incorporated herein by reference, as amended and supplemented, that has been approved by the Soil Conservation District. A copy of the approved Plan must be submitted to the Pinelands Commission by the owner of the parcel. The Farm Conservation Plan shall specifically indicate that the proposed agricultural resource extraction is necessary for the proposed agricultural or horticultural use and that offsite soil removal is consistent with generally accepted agricultural practices;
3. For aquaculture, a written determination from the New Jersey Department of Agriculture, Division of Rural Resources, that the proposed aquaculture activity is consistent with Agricultural Management Practices for Aquaculture Facilities prepared by the New Jersey Department of Agriculture and other generally accepted aquaculture practices;

4. For the offsite removal of overlying soils to access underlying sand for cranberry management practices, a demonstration that the quantity of overlying soil removed offsite does not exceed the quantity of underlying sand to be used for the management practices listed below and that 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:

- i. Sanding of existing bogs at a rate of one inch of sand at three year intervals (135 cubic yards of sand per acre of bog);
- ii. Sanding of new bogs at a rate of one half inch of sand one year after planting (65 cubic yards of sand per acre of bog);
- iii. Sanding of bogs with heavy vine overgrowth at a rate of two to five inches of sand (270 to 675 cubic yards of sand per acre of bog);
- iv. Bog renovation or new bog construction in areas of muck soils at a rate of up to 12 inches of sand (1,600 cubic yards of sand per acre of bog) except where additional fill would be required to establish a planting surface 24 inches above the water table; and

v. Bog renovation or new bog construction at a rate of two to five inches of sand (270 to 675 cubic yards of sand per acre of bog) in areas of appropriate water table with optimum to moderately excessive organic matter applied prior to planting;

5. A schedule which demonstrates that the proposed agricultural use will be developed in phases ensuring that portions of the agricultural use are instituted prior to completion of all agricultural resource extraction activities or a written explanation as to why such a phased institution of the agricultural use is not practical or feasible; and

6. Any additional information which the Executive Director determines is reasonably necessary to facilitate review of the application.

(b) The requirements of N.J.A.C. 7:50-6.61 through 6.70 shall apply to all resource extraction activities which do not meet the standards contained in (a) above.

New Rule, R.2001 d.454, effective December 3, 2001.  
See: 33 N.J.R. 2005(a), 33 N.J.R. 4133(a).

**7:50-6.56 through 7:50-6.60 (Reserved)**

## PART VI—RESOURCE EXTRACTION

### 7:50-6.61 Purpose

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

### 7:50-6.62 Resource extraction management program

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

### 7:50-6.63 General limitations

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

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

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

#### Law Review and Journal Commentaries

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

#### Case Notes

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

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

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

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

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

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

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

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

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

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

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

vi. Failure to resolve a deviation or to adhere to the terms and conditions of any agreement to resolve a

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

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

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

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

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