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SUBCHAPTER 1. GENERAL PROVISIONS

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

7:50-1.1 Title

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

Case Notes

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

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

7:50-1.2 Authority

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

7:50-1.3 General purpose and intent

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

7:50-1.4 Applicability

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

Case Notes

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

7:50-1.5 Effective date

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

7:50-1.6 Fees

(a) All applications required or permitted by any provision of this Plan other than applications filed by a public agency, shall be accompanied by a nonrefundable application fee calculated according to the fee schedule set forth in (b) through (k) below. No application filed pursuant to this Plan shall be reviewed or considered complete unless all fees required by this Part have been paid and any escrow required pursuant to N.J.A.C. 7:50-1.7 has been submitted.

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

1. There shall be no fee for a residential development consisting of only:
 - i. One dwelling unit on an existing lot of record as of April 5, 2004, provided that the applicant has not

submitted another application for residential development involving a single dwelling unit within the previous 12-month period;

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

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

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

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

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

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

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

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

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

3. For the development of a golf course, the fee shall be \$100.00 per acre devoted to the golf course facility, including, but not limited to, the golf course and associated

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

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

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

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

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

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

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

(f) An application fee in accordance with (a) through (d) above shall be submitted for an application where a certificate of filing or a certificate of completeness has not been issued pursuant to N.J.A.C. 7:50-4.34 or 4.15 and either no direct activity in furtherance of the Commission's application process has occurred for a period of two years or there has

been a significant or material change in the proposed development that is the subject of the application.

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

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

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

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

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

Amended by R.2004 d.136, effective April 5, 2004.
See: 35 N.J.R. 4411(a), 36 N.J.R. 1804(a).

Rewrote the section.

Administrative correction.

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

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

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

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

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

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

In (a), substituted "(k)" for "(l)" and inserted "and any escrow required pursuant to N.J.A.C. 7:50-1.7 has been submitted"; deleted the former introductory paragraph of (l); and recodified former (l) through (l)7 as N.J.A.C. 7:50-1.7(a)1 through (a)7.

7:50-1.7 Escrows

(a) Notwithstanding any other provision of N.J.A.C. 7:50-1.6, the Executive Director may request an escrow for those matters pending before the Commission that involve complex issues which, either because of the need for specialized expertise, necessitate the retention of consultants to assist in the Commission's review, or in the case of development applications, will require considerable staff review. Should the Executive Director determine that an escrow is necessary:

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

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

3. Should the funds held in escrow be insufficient to defray the costs identified in (a)2 above, the Executive Director will provide the entity initiating the matter or the applicant with a statement of the account and will request from the entity or the applicant the additional amount estimated to be required for the escrow account;

4. At the time that the Commission renders its decision on the matter or, for a development application, the final municipal approval takes effect pursuant to N.J.A.C. 7:50-4, Part III, the Executive Director shall provide a statement of the account to the entity initiating the matter or the applicant and any funds remaining in the escrow account shall be returned to that entity or applicant;

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

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

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

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

7. The Executive Director shall review the information submitted pursuant to (a)6 above and notify the entity or applicant, within 10 days thereof, of the additional amount to be provided.

(b) The escrow requirements in (a) above shall not apply to applications for minor residential development.

Recodified in part from N.J.A.C. 7:50-1.6 and amended by R.2007 d.372, effective December 3, 2007.

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

Added the introductory paragraph of (a); recodified former N.J.A.C. 7:50-1.6(l)1 through (l)7 as (a)1 through (a)7; rewrote (a)1 through (a)7; and added (b).

Former N.J.A.C. 7:50-1.7, Severability, recodified to N.J.A.C. 7:50-1.8.

7:50-1.8 Severability

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

Recodified from N.J.A.C. 7:50-1.7 by R.2007 d.372, effective December 3, 2007.

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

Section was "Reserved".

7:50-1.9 through 7:50-1.10 (Reserved)

PART II—DUTIES AND POWERS OF THE COMMISSION

7:50-1.11 Duties and powers

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

7:50-1.12 Meetings, hearings and procedures

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

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

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

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

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

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

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

Case Notes

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

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

PART III—DUTIES AND POWERS OF THE EXECUTIVE DIRECTOR

7:50-1.21 Duties and powers

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

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

2. Records: The Executive Director shall maintain:

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

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