

CHAPTER 50

**PINELANDS COMPREHENSIVE
MANAGEMENT PLAN**

Authority

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

Source and Effective Date

R.1981 d.13, effective January 14, 1981.
See: 12 N.J.R. 513(b), 13 N.J.R. 91(e).

Chapter Historical Note

Chapter 50, originally Pinelands Environmental Council, was repealed by R.1980 d.433, effective October 7, 1980.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 Chapter 50, Pinelands Comprehensive Management Plan, adopted as R.1981 d.13, superseded the interim rules at N.J.A.C. 7:1G, adopted by the Pinelands Commission as R.1980 d.370, effective September 23, 1980.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

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

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SUBCHAPTER 1. GENERAL PROVISIONS

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

7:50-1.1 Title

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

Case Notes

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

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

7:50-1.2 Authority

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

7:50-1.3 General purpose and intent

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

7:50-1.4 Applicability

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

Case Notes

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

7:50-1.5 Effective date

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

7:50-1.6 Fees

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

apportion the costs of such services or documents to the users thereof.

7:50-1.7 Severability

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

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

PART II—DUTIES AND POWERS OF THE COMMISSION

7:50-1.11 Duties and powers

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

7:50-1.12 Meetings, hearings and procedures

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

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

(c) The Commission shall adopt its own rules for the conduct of its business, meetings and hearings not inconsistent with the Pinelands Protection Act and this Plan. All rules shall be adopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and shall be filed with the Executive Director. 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.

Case Notes

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

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

PART III—DUTIES AND POWERS OF THE EXECUTIVE DIRECTOR

7:50-1.21 Duties and powers

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

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

2. Records: The Executive Director shall maintain:

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

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

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

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

SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS

PART I—INTERPRETATION

7:50-2.1 Provisions are minimum requirements

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

Case Notes

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

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

7:50-2.2 Construction

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

7:50-2.3 Word usage

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

1. Words used or defined in one tense or form shall include other tenses and derivative forms.

2. Words in the singular shall include plural and words in the plural shall include the singular.

3. The masculine gender shall include the feminine and the feminine gender shall include the masculine.

4. The word "shall" is mandatory.

5. The word "may" is permissive.

6. In case of any difference of meaning or implication between the text of this Plan and any caption, the text shall control.

7:50-2.4 through 7:50-2.10 (Reserved)

PART II—DEFINITIONS

7:50-2.11 Definitions

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

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

1. Is subordinate to and serves a principal building or a principal use, including but not limited to the production, harvesting, and storage as well as washing, grading and packaging of unprocessed produce grown on-site; and

2. Is subordinate in area, extent and purpose to the principal structure or principal building or a principal use served; and

3. Contributes primarily to the comfort, convenience or necessity of the occupants, business or industry of the principal structure or principal use served; and

4. Is located on the same parcel as the principal structure or principal use served, except as otherwise expressly authorized by the provisions of this Plan.

“Agricultural commercial establishment” means a retail sales establishment primarily intended to sell agricultural products produced in the Pinelands. An agricultural commercial establishment may be seasonal or year round and may or may not be associated directly with a farm; however it does not include supermarkets, convenience stores, restaurants and other establishments which coincidentally sell agricultural products, nor does it include agricultural production facilities such as a farm itself, nor facilities which are solely processing facilities.

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

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

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

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

“Ancillary” means a structure or use which:

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

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

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

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

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

“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.

“Commencement of construction” means actual construction on a parcel of land in accordance with a permit issued by the applicable jurisdiction if the cost of the physical improvements completed constitutes at least 25 percent of the projected total cost of the development or the completion of all required foundations, of a form and character

such that the foundations are not usable for any other form of development except that authorized by the issued permit.

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

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

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

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

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

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

“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.

“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.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Forestry” means the growing and harvesting of trees for commercial purposes except that 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. Removal of trees directly associated with the use of the property for a nursery, garden center, Christmas tree plantation, or orchard;
3. Removal of trees directly associated with the development of the property as otherwise authorized by this Plan;
4. Removal of trees necessary for the maintenance of utility or public rights-of-way;
5. Removal of trees for the personal use of the property 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.

“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 prehis-

tory, 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.

“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.

“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, supervised residential institutions, rehabilitation therapy centers and public health facilities; law enforcement facilities; military facilities; churches; public office buildings; cemeteries; and other similar 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 sites, including open dumps, where solid waste, liquid and dry sewage sludge, and liquid and dry chemical waste are disposed of by land application with or without the use of management practices or soil covering. For the purposes of this Plan, solid waste transfer stations shall not be considered landfills.

“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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Public services” means sewer service, gas, electricity, water, telephone, television and other public utilities, roads

and streets and other similar services provided or maintained by any public or private entity.

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

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

“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.

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

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

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

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

“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.

“Solid waste transfer station” means a facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a landfill.

“Specimen tree” means any tree of exceptional size which is listed by the New Jersey Division of Parks and Forestry. A listing of such trees and a map showing their location is maintained at the principal office of the Commission.

“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.

“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.

“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 wetland supporting plant species which are designated as endangered pursuant to N.J.S.A. 13:1B-15.151 et seq. or supporting plant or wildlife species designated as threatened or endangered pursuant to N.J.A.C. 7:50-6.24 and N.J.A.C. 7:50-6.33.

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

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

“Certificate of Compliance” added. “Certificate of Conformity” deleted.
 Amended by R.1985 d.494, effective September 12, 1985.
 See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).
 Amended by R.1987 d.436, effective November 2, 1987.
 See: 18 N.J.R. 2239(a), 19 N.J.R. 2010(a).
 Substantially amended.
 Amended by R.1988 d.405, effective September 19, 1988.
 See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).
 Substantially amended.
 Amended by R.1990 d.170, effective March 19, 1990.
 See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).
 Corrected errors in “Parcel” and “Subdivision”.
 Amended by R.1992 d.91, effective March 2, 1992.
 See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).
 Amended “Contiguous lands”; added “fair market value” and “wetland, impaired”.
 Amended by R.1994 d.590, effective December 5, 1994.
 See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
 Amended by R.1995 d.449, effective August 21, 1995.
 See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).
 Amended “Agricultural employee housing”, “Certified county master plan or ordinance”, and “Uncertified municipality or county”; added “Local communications facility”; and deleted “Local review officer” and “Notice of filing”.

Case Notes

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

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

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

PART I—PURPOSE

7:50-3.1 Purpose

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

(b) The Act also contemplates that the Commission will achieve local participation in the implementation program and oversee implementation of the Plan. The Act provides

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

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

(d) A local authority that incorporates all of the elements of this Plan in its local plan and ordinances will be assured of certification. In contrast, municipal plans and ordinances that deviate from the essential nature of this Plan are unlikely to be certified. However, it is a policy of this Plan to allow municipalities the greatest degree of flexibility and discretion in the preparation of local plans and ordinances so long as the plans and ordinances do not conflict with the ultimate objectives and minimum requirements of this Plan. There are some elements of this Plan which must be strictly followed. For example, the maximum density limitations in the designated forest and rural development areas are critical to the overall objectives of the Plan for the distribution and intensity of land uses, as is the requirement that lands in designated growth areas be eligible for density bonuses in the form of transferred Pinelands Development Credits. Conversely, the distribution of densities and many of the uses authorized in the various areas are left to local discretion. This subchapter permits the Commission to assess local decisions on an individualized basis and will preserve local discretion to the maximum extent practical, provided that local preferences are in fundamental harmony with the overall objectives of this Plan.

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

7:50-3.2 through 7:50-3.10 (Reserved)

PART II—CERTIFICATION OF COUNTY PLANS

7:50-3.11 Conformance of county master plans and regulations required

Within one year after the effective date of this Plan, or any amendment thereof, each county with jurisdiction over land located within the Pinelands Area shall adopt or amend a master plan applicable to such land and shall amend any regulations applicable to the development of land so that the master plan and regulations are in conformance with the minimum standards of this Plan.

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

7:50-3.12 Submission of plan and regulations

Within one year after the effective date of this Plan, or any amendment thereof, each county located in whole or in part in the Pinelands Area shall submit, in accordance with the provisions of this Part, its county master plan and any regulations applicable to the development of land to the Commission for review and determination of whether the county master plan and regulations are in conformance with the minimum requirements of this Plan. Such county master plan and regulations shall be in such form and number and shall contain such information as may be required by the Executive Director in order to make the findings required by N.J.A.C. 7:50-3.19.

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

7:50-3.13 Setting of hearing

After receipt of the county master plan and regulations, the Executive Director shall give notice of and set the date, time and place for a public hearing for consideration of the application, plan and regulations. The public hearing shall be held by the Executive Director within 30 days following the receipt of the plan and regulations in accordance with the provisions of N.J.A.C. 7:50-4.3.

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

7:50-3.14 Recommendation of Executive Director

Upon completion of the public hearing, the Executive Director shall review the application and the record of the hearings and shall, within 45 days following the receipt of the plan and ordinances, submit a report to the Commission setting forth proposed findings and a recommended order as to whether the county master plan and regulations are in conformance with the minimum standards of this Plan.

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

7:50-3.15 Certification of county master plans and regulations

Upon receipt of the report of the Executive Director, the Commission shall review findings, conclusions and recommendations of the Executive Director and shall, within 60 days following the receipt of the plan and regulations, issue an order certifying, certifying with conditions or disapproving the county master plan and regulations. If the county master plan or regulations are conditionally certified or disapproved, the Commission shall specify the changes necessary in order to secure Commission certification.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
Amended by R.1995 d.449, effective August 21, 1995.
See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

7:50-3.16 Responsibility of county upon conditional certification or disapproval

Any county whose master plan or regulations have been disapproved or certified with conditions shall modify such master plan or regulations as is necessary to conform to the minimum standards of this Plan, the conditions attached to a conditional certification or specified changes. Within 120 days after entry of the Commission order disapproving or certifying with conditions, each county shall submit its modified master plan and regulations for review, pursuant to the provisions of N.J.A.C. 7:50-3.13 through 3.15.

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

7:50-3.17 Effect of failure of county to obtain Commission approval of master plan and regulations

No person shall initiate any development which requires county approval or receive any county approval for development of land in the Preservation Area or, subsequent to one year following the adoption of this Plan, of any land in the Pinelands Area located within any county whose master plan or regulations have not been certified by the Commission pursuant to N.J.A.C. 7:50-3.15 without first obtaining approval by the Commission pursuant to N.J.A.C. 7:50-4, Part II. If the Commission conditionally certifies or disapproves an amendment to a county master plan or regulation pursuant to N.J.A.C. 7:50-3.15 and the county does not comply with the requirements of N.J.A.C. 7:50-3.16, the amendment shall be deemed to be disapproved. The county's previously certified master plan and regulations shall remain in effect unless the amendment constituted the required response to an order issued pursuant to Part VI of this subchapter or to an amendment adopted by the Commission pursuant to N.J.A.C. 7:50-7. In that case, the county's master plan and regulations shall be deemed to be uncertified.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
Amended by R.1995 d.449, effective August 21, 1995.
See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

7:50-3.18 Effect on and responsibilities of county upon certification

(a) Commission certification of a county master plan and regulations shall authorize such county:

1. To petition the Commission, pursuant to N.J.A.C. 7:50-3, Part III, for authority to conduct preliminary review of municipal master plans and land use ordinances within the county; and

2. To grant, to the extent that it is so authorized by State law or county regulation, any permits or approvals within its Pinelands Area jurisdiction, subject to N.J.A.C. 7:50-4.31 through 4.42 or N.J.A.C. 7:50-3.81 through 3.85; provided, however, that all such permits or approvals granted, and any other action taken by such county with respect to the development of land within the Pinelands Area, shall be in strict conformance with the certified county master plan and regulations and the minimum standards of this Plan.

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

7:50-3.19 Standards for certification of county master plans and ordinances

(a) County master plans and regulations, or any parts thereof, shall be certified only if:

1. They are based upon a current and comprehensive inventory and analysis of the natural resources of the county prepared by the county or any other source. A county may use the inventory provided by the Commission;

2. All standards established by a county for review of applications for subdivision or site plan approval for development proposed within municipalities located within the county, or for any other permit or approval to be granted by any county department, body or agency as a prerequisite to initiating development in the Pinelands Area, are in conformance with the minimum standards of this Plan;

3. They include a capital improvements program that demonstrates that adequate and necessary facilities will be available to serve permitted development;

4. They include provisions relating to solid and liquid waste management which are in conformance with the waste management and water quality programs and standards contained in this Plan;

5. They provide that no application for development within the Pinelands Area, except as provided in N.J.A.C. 7:50-3.81 through 3.85, shall be determined to be complete by any county department, body or agency unless:

i. It is accompanied by a Certificate of Filing issued by the Commission pursuant to N.J.A.C. 7:50-4.34; and

ii. It contains at least the information required by the Commission pursuant to N.J.A.C. 7:50-4.2(b).

6. They provide that notice of the issuance of any county permit or approval which is a prerequisite to initiating development within the Pinelands Area, except as provided in N.J.A.C. 7:50-3.81 through 3.85, must be given to the Commission as provided in N.J.A.C. 7:50-4.25(d) or (e); and

7. They otherwise are in conformance with and contain all provisions necessary to implement the objectives of this Plan.

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

7:50-3.20 Submission and review of amendments to certified county master plans and ordinances

(a) Submission: No amendment to any certified county master plan or ordinance shall be effective until the county shall have submitted such amendment to the Commission and such amendment has been certified by the Commission, pursuant to N.J.A.C. 7:50-3.15, or the Executive Director has, pursuant to (b) below, notified the county that such amendment does not affect the prior certification of the master plan or ordinance.

(b) Decision not to review within 15 days following receipt of any amendment to a certified master plan or ordinance, the Executive Director shall determine whether or not the amendment raises a substantial issue with respect to the conformance of the county master plan or ordinance with this Plan. If the Executive Director determines no such substantial issue is raised, he shall certify such fact to the clerk of the county and such amendment shall thereupon take effect in accordance with its terms and applicable law.

(c) Decision to review: If the Executive Director determines that the amendment raises a substantial issue with respect to the conformance of the amended county master plan or ordinance to this Plan, the amended county master plan or ordinance shall be reviewed pursuant to N.J.A.C. 7:50-3.18 and 3.19, and the Executive Director shall so inform the county clerk.

PART III—DELEGATION TO COUNTY PLANNING BOARDS OF PRELIMINARY REVIEW OF MUNICIPAL PLANS AND ORDINANCES

7:50-3.21 Application by county for delegation

The governing body of any county whose master plan and regulations have been certified by the Commission pursuant to N.J.A.C. 7:50-3, Part II, may petition the Commission for authority to conduct preliminary review of municipal master plans and land use ordinances located within the county by submitting a request for such authority in such form and number and containing such information as may be required by the Executive Director.

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

7:50-3.22 Delegation by Commission

(a) Recommendation of Executive Director: Within 30 days after receipt of a request filed pursuant to N.J.A.C. 7:50-3.21, the Executive Director shall submit to the Commission his recommendation as to whether the requested delegation is consistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act and this Plan.

(b) Action by the Commission: Upon receipt of the Executive Director's recommendation, the Commission shall review the request for authorization and the recommendation of the Executive Director and may, if it determines that the requested delegation is consistent with the purposes and provisions of the Pinelands Protection Act, Federal Act and this Plan, delegate to the petitioning county the preliminary review of municipal master plans and land use ordinances prescribed in Part IV of this subchapter. The Commission may, in its discretion, limit such delegation to designated municipalities within a county for a fixed term, with or without provision for automatic or other renewal; and may make such delegation subject to any special terms, conditions or limitations deemed necessary or appropriate by the Commission.

7:50-3.23 List of reviewing counties and notice to municipalities

The Executive Director shall maintain a list of those counties to which a delegation pursuant to N.J.A.C. 7:50-3.22(b) has been made and shall, within 10 days following entry of any order by the Commission pursuant to N.J.A.C. 7:50-3.22(b) delegating preliminary review authority to any county, notify the clerks of all municipalities within the county of such delegation and of its specific terms.

7:50-3.24 Revocation of delegation and notice thereof

(a) Recommendation by Executive Director: If at any time after a delegation pursuant to N.J.A.C. 7:50-3.22(b) has been made the Executive Director has reason to believe that a county is exercising the delegated preliminary review authority in a manner inconsistent with that represented to the Commission in the request filed pursuant to N.J.A.C. 7:50-3.21 or in any manner inconsistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act or this Plan, he shall report all facts giving rise to such determination, together with his recommendation that the delegation be revoked, suspended or modified, to the Commission.

(b) Action by the Commission: Upon receipt of any report and recommendation from the Executive Director pursuant to (a) above, the Commission shall determine whether such county has exercised the delegated preliminary review authority in a manner inconsistent with that represented to the Commission in the request filed pursuant to N.J.A.C. 7:50-3.21 or in any manner not consistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act or this Plan and, if it so determines, shall revoke, suspend or modify such delegation.

(c) Notice of revocation: Within 10 days following entry of any order entered by the Commission pursuant to (b) above, revoking, suspending or modifying any delegation pursuant to N.J.A.C. 7:50-3.22(b), the Executive Director shall give notice of such order and of its terms, by certified mail, to the affected county and to all municipalities within such county.

7:50-3.25 through 7:50-3.30 (Reserved)

PART IV—CERTIFICATION OF MUNICIPAL PLANS

7:50-3.31 Conformance of municipal master plan and land use ordinances required

Within one year after the effective date of this Plan, or any amendment hereof, each municipality with jurisdiction over land located within the Pinelands Area shall conform its master plan and land use ordinances applicable to such land to the minimum standards of this Plan.

7:50-3.32 Submission of plan and land use ordinances

Within one year after the effective date of this Plan, or any amendment thereof, each municipality located in whole or in part in the Pinelands Area shall submit, in accordance with the provisions of this Part, its master plan and land use ordinances to the Commission for review and determination of whether such plan and ordinances are in conformance with the minimum standards of this Plan; provided, however, that municipalities in any county which has been delegated preliminary review authority pursuant to Part III of this subchapter shall submit their master plans and land use ordinances to such county in accordance with N.J.A.C. 7:50-3.40 and the provision of any applicable ordinance or regulation of such county. Such municipal master plan and land use ordinances shall be in such form and number and shall contain such information as may be required by the Executive Director in order to make the findings required by N.J.A.C. 7:50-3.39. In no case shall the Executive Director accept a master plan for formal review and certification pursuant to N.J.A.C. 7:50-3.39 without an adopted ordinance which implements said master plan, unless no such ordinance is necessary.

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

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

Added text "In no case . . .".

7:50-3.33 Setting of hearing

After receipt of the master plan and land use ordinances, the Executive Director shall give notice of and set the date, time, and place for a public hearing for consideration of the application. The public hearing shall be held by the Executive Director within 60 days following the receipt of the master plan and ordinances in accordance with the provisions of N.J.A.C. 7:50-4.3. At the hearing any person may present any relevant information, including but not limited to nominations of Special Agricultural Production Areas and Agricultural Production Areas that are not designated in the submitted municipal master plan or land use ordinance.

7:50-3.34 Recommendation of Executive Director

Upon completion of the public hearing, the Executive Director shall review the application and the record of the hearing and shall, within 100 days following the receipt of the master plan and land use ordinances, submit a report to the Commission setting forth proposed findings and a recommended order as to whether the master plan and land use ordinances are in conformance with the minimum standards of this Plan.

7:50-3.35 Certification of municipal master plans and land use ordinances

Upon receipt of the report of the Executive Director, the Commission shall review the findings, conclusions and recommendation of the Executive Director and shall, within 120 days following receipt of the plan and land use ordinances, issue an order certifying, certifying with conditions or disapproving the municipal master plan and land use ordinances. If the municipal master plan and land use ordinances are certified with conditions or disapproved, the Commission shall specify the changes necessary in order to secure Commission certification of the municipal master plan and land use ordinance.

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

7:50-3.36 Responsibility of municipality upon conditional certification or disapproval

Any municipality whose master plan or land use ordinances have been disapproved or certified with conditions shall modify such master plan or land use ordinances as is necessary to conform to the minimum standards of this Plan and the provisions of any conditions attached to a conditional certification. Within 120 days after the Commission order disapproving or certifying with conditions, each such municipality shall submit its modified master plan and land use ordinances for review pursuant to the provisions of N.J.A.C. 7:50-3.33 through 3.35.

7:50-3.37 Effect of municipality's failure to obtain Commission certification of master plan and land use ordinances

In the Preservation Area, and after one year from the effective date of this Plan, in the Pinelands Area, no person shall carry out any development in an uncertified municipality unless such development has been approved by the Commission pursuant to N.J.A.C. 7:50-4, Part II. Such approval shall supersede any local decision if a municipality has not received certification of its master plan and land use ordinances. If the Commission conditionally certifies or disapproves an amendment to a municipal master plan or land use ordinance pursuant to N.J.A.C. 7:50-3.35 and the municipality does not comply with the requirements of N.J.A.C. 7:50-3.36, the amendment shall be deemed to be disapproved. The municipality's previously certified master plan and land use ordinances shall remain in effect unless the amendment constituted the required response to an order issued pursuant to Part VI of this subchapter or to an amendment adopted by the Commission pursuant to N.J.A.C. 7:50-7. In that case, the municipality's master plan and land use ordinances shall be deemed to be uncertified and the provisions of N.J.A.C. 7:50-4, Part II shall apply to all development requiring municipal approval.

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

Case Notes

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).

7:50-3.38 Effect on and responsibilities of municipality upon certification

Commission certification of a municipal master plan and land use ordinances shall authorize such municipality to grant, to the extent that it is so authorized by State law or municipal ordinance, any permits or approvals of development within its Pinelands Area jurisdiction subject to N.J.A.C. 7:50-4.31 through 4.42 or N.J.A.C. 7:50-3.81 through 3.85; provided, however, that all such permits or approvals granted, and any other action taken by such municipality with respect to the development or use of land within the Pinelands Area, shall be in strict conformance with the certified municipal master plan, land use ordinances and this Plan.

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

7:50-3.39 Standards for certification of municipal master plans and land use ordinances

(a) Municipal master plans and land use ordinances, and any parts thereof, shall be certified only if:

1. They are based upon a current and comprehensive inventory and analysis of the natural resources of the municipality prepared by the municipality or any other source. A municipality may use the inventory provided by the Commission;
2. They include provisions which:
 - i. Regulate the character, location and magnitude of development within the Pinelands Area;
 - ii. Prescribe standards relating to lot layout, road design and construction, and public utility installation which conform to all similar standards contained in this Plan;
 - iii. Implement the overall development intensity standards contained in this Plan through minimum lot specifications or other appropriate means;
 - iv. Are adequate to ensure that all development of land in the Pinelands Area is in conformance with the development standards established by N.J.A.C. 7:50-5 and 6; and
 - v. Encourage coordinated development along roadways by concentrating commercial development at transportation nodes, providing shared access points, encouraging comprehensive commercial planning and design and use of other appropriate techniques.
3. They provide that no application for development within the Pinelands Area, except as provided in N.J.A.C. 7:50-3.81 through 3.85, shall be determined to be com-

plete by any municipal department, body or agency unless it is accompanied by a Certificate of Filing issued by the Commission pursuant to N.J.A.C. 7:50-4.34 and contains at least the information required by the Commission pursuant to N.J.A.C. 7:50-4.2(b);

4. They provide that municipal review and approval or denial are required for all development in the Pinelands Area except where pre-empted by State or Federal laws or regulations;

5. They provide that no local permit shall be effective, except as provided in N.J.A.C. 7:50-3.81 through 3.85, until the review procedures in N.J.A.C. 7:50-4.31 through 4.42 have been completed;

6. They include a capital improvements program which demonstrates that adequate and necessary facilities will be available to serve permitted development;

7. They provide for sufficient residentially zoned property to be eligible for an increase in density to accommodate transferred Pinelands Development Credits as provided for in N.J.A.C. 7:50-5, Part IV;

8. If the municipality has established an environmental commission, they provide for referral of applications for development approval to the environmental commission for review and comment;

9. They otherwise are in conformance with and contain all provisions necessary to implement the objectives of this Plan;

10. They demonstrate conformance to the energy conservation requirements of L. 1980, ch. 146;

11. They demonstrate that they are in conformance with the provisions of the Federal Act; and

12. In the event that the distribution and density of land uses at the boundary of a municipality are in conflict with or otherwise inconsistent with the distribution and density of land uses in adjacent municipalities, they include a description of steps which have been taken to resolve such conflicts including consultation with the county or counties in which the municipalities are located.

(b) Municipalities with areas outside the Pinelands Area but within the Pinelands may request review by the Commission of their land use ordinances and master plans for these areas to determine substantial compliance with the provisions of N.J.A.C. 7:50-5 and 6 of this Plan. Equivalent protection of the resources of the Pinelands will be the overall standard used in such compliance review rather than strict adherence to every standard in N.J.A.C. 7:50-5 and 6. Buffer requirements to wetlands will be evaluated based on the provisions of the Freshwater Wetlands Protection Act rather than on the standards set forth in N.J.A.C. 7:50-6.14. To encourage voluntary compliance, if the Commission determines that the municipality is in substantial compliance with the provisions of N.J.A.C. 7:50-5 and 6, the Commission will rely upon the complying master plans and ordinances, rather than a strict interpretation of this Plan, to provide comment to relevant state and federal regulatory agencies in its role as the planning entity for the Pinelands.

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

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

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

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

7:50-3.40 Submission to county planning board for preliminary review

When a county has, pursuant to the provisions of N.J.A.C. 7:50-3, Part III, been delegated preliminary review authority with respect to any municipal plan or land use ordinance, the submission required by N.J.A.C. 7:50-3.32 in connection with such plan or ordinance shall be made to such county. Within five days following the submission of the plan and land use ordinances, the county shall forward a copy of such application to the Commission.

7:50-3.41 Setting of hearing and procedures therefor

Within 15 days following the submission of a plan and land use ordinances, the clerk of the county shall set and give notice of, the date, time and place for a hearing thereon. Such hearing shall be held within 30 days following the submission of a plan and land use ordinances.

7:50-3.42 Recommendation of county board

After the hearing held pursuant to N.J.A.C. 7:50-3.41 is completed, the county planning board shall review the plan and land use ordinances and the record of the hearing and shall, within 60 days following receipt of the plan and land use ordinances, submit a report to the Commission setting forth its findings and recommendation as to whether the municipal master plan and land use ordinances are in conformance with the minimum standards of this Plan.

7:50-3.43 Recommendation of Executive Director

Upon receipt of the report of the county planning board with respect to the certification of any municipal master plan and land use ordinances, the Executive Director shall review the findings, conclusions and recommendation of the county planning board and the record of the hearing and shall, within 100 days following receipt of the plan and land use ordinances by the county planning board, submit a report to the Commission setting forth his recommendation as to whether the municipal master plan and land use ordinances should be certified as being in conformance with the minimum standards of this Plan.

7:50-3.44 Action by Commission

Within 120 days following the receipt of the plan and land use ordinances by the county planning board, and following the receipt of the reports of the Executive Director and the county planning board with respect to the certification of such municipal master plan and land use ordinances, the Commission shall review the reports and enter an order as provided in N.J.A.C. 7:50-3.35.

7:50-3.45 Submission and review of amendments to certified municipal master plans and land use ordinances

(a) Submission: No amendments to any part of a certified municipal master plan or land use ordinance shall be effective until the municipality shall have submitted such amendment to the Commission and either the Commission has certified such amendment pursuant to N.J.A.C. 7:50-3.35, or the Executive Director has, pursuant to (b) below notified the municipality that such amendment does not affect the prior certification of the master plan or land use ordinance.

(b) Decision not to review: Within 30 days following receipt of any amendment to a certified master plan or land use ordinance, the Executive Director shall determine whether or not the amendment raises a substantial issue with respect to the conformance of the municipal master plan or land use ordinances with this Plan. If the Executive Director determines that no such substantial issue is raised, he shall certify such fact to the municipal clerk and such amendment shall thereupon take effect in accordance with its terms and applicable law.

(c) Decision to review: If the Executive Director determines that the amendment raises a substantial issue with respect to the conformance of the amended municipal master plan or land use ordinance to this Plan, the amended municipal master plan or land use ordinance shall be reviewed pursuant to N.J.A.C. 7:50-3.33 through 3.44 and the Executive Director shall so inform the municipal clerk.

7:50-3.46 through 7:50-3.50 (Reserved)

PART V—FEDERAL INSTALLATION PLANS

7:50-3.51 Conformance of Federal installation master plans

Within one year after approval of this Plan by the Secretary of the Interior, each military installation and Federal aviation facility shall provide a copy of its master plan for the installation or facility to the Commission. The preparation and adoption of the installation master plan shall be independent of the application procedures as set forth in N.J.A.C. 7:50-4.

7:50-3.52 Elements of Federal installation master plan

(a) A Federal installation master plan shall include at least, if applicable to that Federal installation, the following items in the standard format applicable to that installation:

1. Environmental information prepared by the installation or other appropriate agency as required by the National Environmental Policy Act of 1969;
2. A delineation of any areas of critical ecological importance;

3. An existing land use map which should include the location, character, and intensity of existing land uses;

4. A future land use map depicting planned or anticipated land uses which should include the location, character, and intensity of uses; and

5. The status of major construction projects which should include a description of ongoing or planned projects and projected dates of commencement and completion.

7:50-3.53 Preparation of the plan for review

Each Federal installation shall prepare, with the assistance of the Commission staff as may be available from time to time, its Federal installation master plan in accordance with provisions of Part V of this subchapter, and upon its review and approval by the Department of Defense, shall submit it to the Commission for review and determination of whether the master plan is in substantial conformance with this Plan.

7:50-3.54 Recommendation of Executive Director

The Executive Director shall review the plan, together with the recommendation of the staff, and shall submit a report to the Commission setting forth proposed findings and recommendations as to whether the Federal installation master plan is in substantial conformance with this Plan.

7:50-3.55 Review of Federal installation master plans

Within 60 days after receipt of the Executive Director's report, the Commission shall review the findings and recommendations. The Commission shall specify the changes necessary in order to ensure substantial conformance with this Plan. The Commission shall inform the Federal installation of its recommendations.

7:50-3.56 Amendments to Federal installation plans

Each Federal installation and the Commission may propose amendments to an approved installation plan from time to time. Such amendments shall be approved in the manner provided in this Part for approval of the original plan and such amendments shall not require the revision or approval of the plan as a whole.

Recodified from 7:50-3.57 by R.1990 d.170, effective March 19, 1990. See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

Repealed duplicative text at existing 7:50-3.56.

7:50-3.57 through 7:50-3.60 (Reserved)

PART VI—MODIFICATION OR REVOCATION OF CERTIFICATION OF COUNTY AND MUNICIPAL PLANS AND ORDINANCES

7:50-3.61 Initiation by Executive Director

(a) Any person may request the Executive Director to assess whether a certified county or municipal master plan,

regulation or ordinance is being implemented in accordance with the provisions of this Plan. Such request shall be in writing and shall specify the county or municipal acts which are alleged to be not in conformance with this Plan by date, time and other identifying characteristics.

(b) If the Executive Director determines, at any time, that any county or municipality is not implementing and enforcing its certified master plan, regulations or ordinances as is necessary to implement this Plan, he shall notify the Commission of such determination and upon its concurrence initiate proceedings pursuant to this Part to revoke, suspend or modify the Commission certification of the municipal or county master plan, regulations or ordinances.

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

7:50-3.62 Notice and hearing

Upon making a determination to initiate proceedings to revoke, suspend or modify Commission certification of a county or municipal master plan, regulation or land use ordinance, the Executive Director shall give notice and conduct a public hearing in accordance with the provisions of N.J.A.C. 7:50-4.

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

7:50-3.63 Recommendation of Executive Director

After the completion of the hearing required by N.J.A.C. 7:50-3.62, the Executive Director shall review the record of the hearing and shall, within 45 days of the conclusion of the hearing, submit a report to the Commission setting forth his findings, conclusions and recommendations as to the action which should be taken by the Commission pursuant to this Part. He may recommend any action which the Commission is authorized to take pursuant to N.J.A.C. 7:50-3.64.

7:50-3.64 Action by Commission

(a) Upon receipt of the report of the Executive Director pursuant to N.J.A.C. 7:50-3.63, the Commission shall review the findings, conclusions and recommendations of the Executive Director and shall issue a final order with respect to the revocation, suspension or modification of the Commission certification of the county or municipal master plan, regulations or ordinances. Upon determining that the county or municipality is not implementing its master plan, regulations, ordinances or this Plan, the Commission shall issue an order:

1. Revoking or suspending Commission certification of the county or municipal master plan, regulations or land use ordinances;
2. Modifying such certification to impose any conditions necessary to ensure adequate county or municipal review of development within its jurisdiction; or

3. Taking any other action it deems necessary to ensure county or municipal cooperation in the implementation of the objectives of this Plan.

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

7:50-3.65 Effect of modification, suspension or revocation of Commission certification

Revocation, suspension or modification of Commission certification of any county or municipal master plan, regulation or land use ordinance shall have the same effect as if the county or municipal master plan, regulation or land use ordinance had been disapproved or certified with conditions in the first instance as provided in N.J.A.C. 7:50-3.17 or 3.37. Any revocation, suspension or modification of Commission certification pursuant to this Part shall remain in effect until otherwise ordered by the Commission.

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

7:50-3.66 through 7:50-3.70 (Reserved)

PART VII—ADOPTION OF RULES AND REGULATIONS FOR UNCERTIFIED AREAS

7:50-3.71 Commission adoption of rules and regulations for uncertified areas

In the event that any county or municipality fails to obtain certification of its land use plan, regulations and ordinances, the Commission shall adopt and enforce such rules and regulations as may be necessary to implement the minimum standards contained in this Plan and as may be applicable to any such county or municipality.

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

7:50-3.72 Preparation and review of rules and regulations

(a) The Commission shall prepare or cause to be prepared such rules and regulations which are consistent with and implement this Plan for any municipality or county which fails to obtain certification under this Plan. Said rules and regulations shall include those provisions necessary to implement the goals and objectives of this Plan including:

1. A procedure for nominating and designating Special Agricultural Production Areas; and
2. A procedure for implementing all the mandatory and optional elements of N.J.A.C. 7:50-6. Said rules and regulations shall not include the optional programs in N.J.A.C. 7:50-5.

7:50-3.73 Public hearing

The Commission shall conduct a public hearing in accordance with the provisions of N.J.A.C. 7:50-4 to consider the proposed rules and regulations for uncertified areas.

7:50-3.74 Adoption of rules and regulations

Upon completion of the public hearing provided in N.J.A.C. 7:50-3.73, the Commission shall revise and adopt said rules and regulations.

PART VIII—ALTERNATIVE LOCAL PERMITTING PROGRAMS

7:50-3.81 Purpose of alternative local permitting programs

In order to provide for more efficient or simplified processing of development applications or to allow municipalities to exercise additional direct decisionmaking authority, the Commission may alter the development review procedures in N.J.A.C. 7:50-4.31 through 4.42 through its certification of county regulations or a municipal ordinance pursuant to this Subchapter.

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

7:50-3.82 Description of alternative permitting programs

Alternative permitting programs may establish application processing procedures or decisionmaking requirements which differ from those set forth in N.J.A.C. 7:50-4.31 through 4.42. The Commission in its discretion may disapprove a requested alternative program due to the type, magnitude, location or complexity of development to be reviewed under the proposed program.

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

7:50-3.83 Certification standards

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

1. The county or municipality has demonstrated capability to implement the program in an efficient and effective manner;
2. The program, including the procedures to be followed, standing alone or in combination with activities continuing to be administered by the Commission, ensures that application requirements and permit decisions are adequate to determine compliance with the relevant criteria and standards of N.J.A.C. 7:50-5 and 6 and the provisions of the relevant certified local regulation or ordinance;

3. The program ensures that adequate, qualified and capable personnel will administer the program and that safeguards exist to ensure that (a)2 above is met in the event of personnel changes;

4. The program ensures that applicants receive any necessary waivers of strict compliance from the Pinelands Commission; and

5. Either the program allows for Commission review of local approvals pursuant to N.J.A.C. 7:50-4.31 et seq. or includes an alternative procedure to ensure that periodic review of permits by the Commission may be conducted to assess consistency of the program with the standards of N.J.A.C. 7:50-5 and 6 and the provisions of the relevant certified local regulation or ordinance. The alternative procedure shall also include a requirement for all local approvals to be subject to review by the Commission pursuant to N.J.A.C. 7:50-4.31 through 4.42 in the event that the Executive Director makes a recommendation to the Commission pursuant to N.J.A.C. 7:50-3.85. In that event, the procedures for the review of local approvals set forth in N.J.A.C. 7:50-4.31 through 4.42 shall remain in effect until such time as the procedures in N.J.A.C. 7:50-3.61 through 3.65 have been followed.

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

7:50-3.84 Assistance and monitoring

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

(b) The Executive Director shall report on each alternative permitting program to the Commission and the appropriate county or municipality in accordance with a specific review program approved by the Commission concurrent with its certification of the alternative permitting program. Such report shall describe the elements of the permitting program and evaluate their operation according to the standards of N.J.A.C. 7:50-3.83.

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

7:50-3.85 Failure to implement

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

pality willfully ignores or refuses to implement such revocation, suspension or modification order.

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

SUBCHAPTER 4. DEVELOPMENT REVIEW

INTRODUCTION

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

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

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

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

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

PART I—UNIFORM PROCEDURES

7:50-4.1 Applicability

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

1. The improvement, expansion, or reconstruction within five years of destruction or demolition, of any single family dwelling unit or appurtenance thereto;
2. The improvement, expansion, construction or reconstruction of any structure accessory to a single family dwelling;
3. The improvement, expansion, construction or reconstruction of any structure used exclusively for agricultural or horticultural purposes;
4. The construction, repair or removal of any sign, except for the construction or replacement of any off-site commercial advertising sign;
5. The repair of existing utility distribution lines;
6. The installation of utility distribution lines, except for sewage lines, to serve areas which are effectively developed or development which has received all necessary approvals and permits;
7. The clearing of less than 1,500 square feet of land;
8. The construction of any addition or accessory structure for any non-residential use or any multi-family residential structure provided said addition or structure will be located on or below an existing impermeable surface and the existing use is served by public sewers and said addition or structure will cover an area of no more than 1,000 square feet;
9. The demolition of any structure less than 50 years old;
10. The repair or replacement of any existing on-site waste water disposal system;
11. The repaving of existing paved roads, provided no increase in the paved width of said roads will occur;
12. The clearing of land solely for agricultural purposes;
13. Fences, provided no more than 1,500 square feet of land is to be cleared; or

14. Above-ground telephone equipment cabinets.

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

1. All necessary municipal planning board or board of adjustment approvals were obtained by January 14, 1991;
2. No additional approval, extension, renewal or any other action whatsoever is required or received from either the municipal planning board or board of adjustment after January 14, 1991; and either
3. All necessary approvals, including all necessary construction permits, were obtained by January 3, 1995 or within 18 months of the expiration of any tolling pursuant to N.J.S.A. 40:55D-21 of the running of the period of the planning board or board of adjustment approval pursuant to N.J.S.A. 40:55D-47 or 40:55D-52, whichever is later; and no construction permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after the latter of said dates; or
4. All necessary approvals, including all necessary construction permits, are obtained by December 31, 1996 and no construction permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after said date, provided that the lot for which the approvals and permits are issued either fronts on a road that prior to January 3, 1995 was improved at least to the extent of the installation of a subbase or had a foundation or septic system lawfully constructed on said lot prior to January 3, 1995.

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

Amended by R.1988 d.405, effective September 19, 1988.
See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

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

Amended by R.1993 d.211, effective May 17, 1993.
See: 25 N.J.R. 225(a), 25 N.J.R. 2119(a).

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

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

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

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

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

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

(a) Pre-application conference.

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

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

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

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

5. Representations of the Executive Director: No representation made by the Executive Director or any member of the staff designated by the Executive Director during the course of any pre-application conference shall be binding on the Commission or the Executive Director with respect to any application subsequently submitted.

(b) Application requirements.

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

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

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

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

- i. The applicant's name and address and his interest in the subject parcel;
- ii. The owner's name and address, if different from the applicant's, and the owner's signed consent to the filing of the application;
- iii. The legal description, including block and lot designation and street address, if any, of the subject parcel;
- iv. A description of all existing uses of the subject parcel;
- v. A brief written statement generally describing the proposed development;
- vi. A USGS Quadrangle map, or copy thereof, and a copy of the municipal tax map sheet on which the boundaries of the subject parcel and the Pinelands management area designation and the municipal zoning designation in a certified municipality are shown;
- vii. A plat or plan showing the location of all boundaries of the subject parcel, the location of all proposed development, and existing or proposed facilities to provide water for the use and consumption of occupants of all buildings and sanitary facilities which will serve the proposed development. The following information shall be included with respect to existing or proposed sanitary facilities:

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

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

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

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

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

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

- i. All information required by (b)4i through iv;
- ii. A brief written statement generally describing the proposed development; the number of total units; and the floor area of all units to be included in the proposed development;
- iii. A written statement addressing each of the standards or guidelines set forth in subchapters 5 and 6 of this Plan; and stating specifically how the proposed development meets each such standard or guideline;
- iv. A plat or plan showing the location of all boundaries of the subject parcel, the location of all proposed development, and existing or proposed facilities to provide water for the use and consumption of occupants of all buildings and sanitary facilities which will serve the proposed development. The following information shall be included with respect to existing or proposed wastewater treatment facilities:

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

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

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

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

v. A project site base map, at a scale of no less than one inch to 200 feet and including the areas extending at least 300 feet beyond each boundary of the subject parcel, showing ownership boundary lines, the boundary of the proposed development, owners of holdings, if any, adjoining and adjacent to the subject parcel, existing facilities, buildings and structures on the site, all proposed development, wetlands, streams (including intermittent streams), rivers, lakes and other waterbodies, and existing roads;

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

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

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

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

x. A map, at the same size and scale as the project site base map, showing storm water drainage patterns

and calculations and the applicant's proposed storm water run-off management plan, which shall contain results of all percolation tests and soil borings performed in each recharge area including the estimated seasonal high water table;

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

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

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

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

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

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

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

ii. A forestry management plan, which details the management practices proposed to be employed, including, but not limited to, harvesting practices, reforestation and the following:

(1) Location and size of tracts with each tract being defined based on the physical characteristics of the parcel, each tract should be as close to 100 acres as practical;

(2) A map of the parcel at a scale of no less than one inch to 1,000 feet showing wetlands, types of vegetation cover, receiving waters, location of stream crossings and alternatives, location of skid trails, location of access and haul roads and landings, cutting boundaries of the tracts to be harvested and size of filter or buffer strips;

(3) A parcel description including land use; acreage of open, crop and woodland; general soil types and erodibility; range of percent of slope; timber quality and age (forest type, species, age, DBH, height, volume and reproduction); and understory;

- (4) Description of timber to be harvested;
- (5) Description of regeneration plans; and
- (6) Description of intermediate management practices to be applied;

iii. A letter of comment or no comment from the New Jersey Bureau of Forest Management on the Forestry Management Plan unless the municipality in which the parcel is located has entered an agreement to have said Bureau review all forestry applications;

iv. A signed acknowledgment from both the owner and the applicant that they are responsible for any forestry practices which are contrary to any provision of this Plan or of the submitted forestry management plan done by any agent, employee, contractor, subcontractor or any other person authorized to be on the parcel by either the owner or the applicant;

v. A financial surety, guaranteeing performance of the requirements of N.J.A.C. 7:50-6.44 in the form of a letter of credit, certified check, surety bond or other recognized form of financial surety acceptable to the Commission. The financial surety shall be equal to the greater of \$500.00 or 10 percent of the value of the wood to be harvested during the two year duration of any approval which is granted. The financial surety, which shall name the Commission and the certified municipality if applicable as the obligee, shall be posted by the property owner or his agent with the municipality if the municipality has had its master plan and ordinances certified pursuant to N.J.A.C. 7:50-3 or with the Pinelands Commission if the municipality has not had its master plan and ordinances so certified;

vi. Demonstration that the cutting boundaries and property boundaries have been adequately marked and that all adjacent property owners have been notified in writing of the proposed forestry operation; and

vii. Demonstration that for any proposed selective cut that all trees to be harvested have been marked unless the State Bureau of Forest Management is the applicant.

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

- i. All information required by (b)i through vi.
- ii. A topographic map at a scale of one inch equals 200 feet, showing the proposed dimensions, location and operations on the subject parcel;
- iii. The location, size and intended use of all buildings;
- iv. The location of all points of ingress and egress;

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

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

vii. A soils map;

viii. A restoration plan which includes:

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

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

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

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

- i. All information required in an application for development approval as set out in (b)4 above;
- ii. The waiver sought, the provisions or standards of this Plan from which a waiver is requested and a statement of the reasons for the waiver;
- iii. At the option of the applicant, all other information required in (b)5 above;

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

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

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

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

(c) Determination of whether application is complete.

1. Determination by Executive Director:

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

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

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

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

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

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

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

In (b)7viii, "restoration" was "reclamation". Added (c)1ii and iii.

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

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

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

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

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

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

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

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

7:50-4.3 Commission hearing procedures

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

(b) Notice of public hearing.

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

- i. The time and place of hearing;
- ii. The authority pursuant to which the hearing is held;
- iii. The name and address of the applicant;
- iv. A brief description of the subject matter to be considered at the hearing;
- v. A statement that the application and supporting materials are available for public inspection and copying at the principal offices of the Commission; and
- vi. A statement that any person may at such public hearing speak or submit a written statement.

2. Persons entitled to notice:

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

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

(2) By sending a copy of the notice, by mail to any person, organization or agency which has previously

filed with the Commission a written request, together with an annual fee in an amount to be determined from time to time by the Commission to cover the actual cost of such notice.

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

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

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

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

(7) If the public hearing involves an inter-governmental agreement pursuant to N.J.A.C. 7:50-4.52, by sending a copy of the notice, by mail, to the mayor of each Pinelands municipality and the freeholder director and county executive of each Pinelands county that may be directly affected by the memorandum of agreement under consideration. In addition, a copy of the notice shall be published in those official newspapers of the Pinelands Commission having general circulation in the area that may be directly affected by the memorandum of agreement.

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

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

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

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

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

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

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

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

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

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

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

(c) Duty of Commission staff:

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

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

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

(d) Conduct of the hearing:

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

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

3. Record of hearing:

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

ii. The record of proceedings shall consist of the transcript of testimony, if ordered; all applications, exhibits and papers submitted in any proceeding with respect to the matter being considered; and the summary and report or reports of the Executive Director.

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

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

1. All decisions and orders of the Executive Director or the Commission, and all recommendations of the Executive Director to the Commission, shall be in writing and shall include findings of fact, shall refer to the

information in the record upon which such decision or order is based, shall specify the reason or reasons for such decision, and shall contain a conclusion or statement separate from the findings of fact which shall set forth any recommendation or final approval, conditional approval, or denial of the application being considered.

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

i. The applicant;

ii. Any person, organization or agency which has previously filed with the Commission a written request, together with an annual fee in an amount to be determined from time to time by the Commission to cover the actual cost of said notice;

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

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

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

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

Added (b)2i(5); corrected reference in (b)3.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

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

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

Case Notes

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

7:50-4.4 Waiver of time limits

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

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

7:50-4.5 Emergency provision

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

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

7:50-4.6 through 7:50-4.10 (Reserved)**PART II—DEVELOPMENT IN AREAS WITHOUT CERTIFIED LOCAL PLANS****7:50-4.11 Purpose**

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

Case Notes

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

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

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

7:50-4.12 Applicability

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

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

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

(a) deleted.

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

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

Case Notes

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

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

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

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

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case Notes

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

7:50-4.15 Action by Executive Director on application

Within 90 days following the receipt of a complete application for development, the Executive Director shall review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review issue a Certificate of Com-

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

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

Case Notes

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

7:50-4.16 Standards for uncertified areas

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

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

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

Case Notes

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

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

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

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

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

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

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

(a) General requirement: Every local permitting agency shall give notice to the Pinelands Commission, as hereinafter specified, of the filing of, and of any changes to, and of any hearings and meetings concerning, and of the disposition of every application for development filed with it. Failure to provide said notices shall void any local decision for which such notices were not provided.

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

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

7. The content of any change made to any such application since it was filed with the Commission; and

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

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

1. The name and address of the applicant;
2. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued;
3. The date, time and location of the meeting, hearing, or other formal proceeding;
4. The name of the local permitting agency or representative thereof which will be conducting the meeting, hearing, or other formal proceeding;
5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission; and
6. The purpose for which the meeting, hearing or other formal proceeding is to be held.

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

1. The name and address of the applicant;
2. The legal description and street address, if any, of the parcel which the applicant proposes to develop;
3. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued;
4. The date on which the preliminary approval was granted;
5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission;

6. A copy of the resolution or other documentation of the preliminary approval which was granted and a copy of the plans which were approved; and

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

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

1. The name and address of the applicant;
2. The legal description and street address, if any, of the parcel which the applicant proposes to develop;
3. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued; and
4. A copy of the resolution or other documentation of the local permitting agency approving or denying the applicant and, if the application was approved, a copy of any final site or subdivision plan or plat or similar plan which was approved by the local permitting agency.

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

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

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

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

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

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

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

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

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

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

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

Case Notes

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

7:50-4.19 Commission review following preliminary approval

(a) Decision to review local approval: Upon receipt of any notice of preliminary local approval given pursuant to N.J.A.C. 7:50-4.18(d), the Executive Director shall review the application for development and all other information in

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

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

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

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

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

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

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

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

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

Deleted "Notice of preliminary approval".

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

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

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

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

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

7:50-4.20 Decision on review

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

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

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

(d) Effect of the determination:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).
Substituted "parcel" for "property".

Case Notes

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

7:50-4.22 Commission review following final local approval

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

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

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

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

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

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

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

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

Added text "and by regular mail to".

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

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

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

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

Substituted "permitting agency" for "approval agency".

Case Notes

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

7:50-4.23 Public hearing

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

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

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

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

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

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

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

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

Substituted "permitting agency" for "approval agency".

Case Notes

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

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

7:50-4.24 Decision on review

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

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

(c) Effect of the Commission's decision.

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

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

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

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

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

Case Notes

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

7:50-4.25 Commission review following local denial

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

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

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

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

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

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

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

Added "and by regular mail to".

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

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

Case Notes

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

7:50-4.26 Decision on review

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

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

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

(d) Effect of the determination:

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

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

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

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

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

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

(c) added; old (c) recodified to (d).

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

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

Case Notes

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

7:50-4.27 Effect of Pinelands Development Approval

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

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

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

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

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

Deleted text "the adoption of ... into the plan." and substituted "July 15, 1985".

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

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

Case Notes

Development applicant possessing an Executive Director's approval issued under former rules must seek preliminary approval of local municipal planning agency. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App. Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

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

PART III—REVIEW OF LOCAL PERMITS IN CERTIFIED MUNICIPALITIES

7:50-4.31 Purpose

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

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

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

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

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

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

Recodified from 4.21.

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

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
Amended by R.1995 d.449, effective August 21, 1995.
See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Case Notes

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

7:50-4.32 Applicability

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

Amended Emergency Rule, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.22.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
Amended by R.1995 d.449, effective August 21, 1995.
See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Case Notes

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

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

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

Amended Emergency Rule, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.23.
Amended by R.1995 d.449, effective August 21, 1995.
See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Case Notes

All municipalities with land use ordinances and master plans certified by the Pinelands Commission can pass directly upon any development proposed to be located within their borders; the Commission is authorized to review any such approval. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

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

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

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.24.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
Amended by R.1995 d.449, effective August 21, 1995.
See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

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

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

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

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

3. A brief description of the proposed development, including uses and intensity of uses proposed;

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

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

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

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

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

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

1. The name and address of the applicant;

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

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

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

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

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

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

1. The name and address of the applicant;

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

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

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

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

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

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

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

1. The name and address of the applicant;

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

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

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

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

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

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

Recodified from 4.25.

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

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

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

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

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

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

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

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

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

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.26.

7:50-4.37 Commission review following preliminary approval

(a) Decision to review local approval: Upon receipt of any notice of local approval given pursuant to N.J.A.C. 7:50-4.35(d), the Executive Director shall review the application for development submitted and any Commission staff recommendation made pursuant to N.J.A.C. 7:50-4.36 and determine whether the grant of preliminary approval raises substantial issues with respect to the conformance of the proposed development with the minimum standards of this

Plan. If substantial issues are raised, the preliminary approval shall be reviewed pursuant to this section. The preliminary approval shall also be reviewed pursuant to this section if the Executive Director determines there is insufficient information to evaluate whether there is such a substantial issue. If substantial issues are not raised, the preliminary approval shall not be reviewed.

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

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

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

(e) Termination of review: For any application which has been called up for review by the Commission pursuant to the provisions of this section, the Executive Director may, at any time, terminate the review of the application if the applicant submits additional information to demonstrate that the local approval does not raise a substantial issue with respect to the conformance of the proposed development with the minimum standards of the Plan and the provisions of the relevant certified local ordinance. The Executive

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

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

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

Recodified from 4.27.

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

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

Case Notes

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

Cited as example of situation in which Executive Director could designate a representative to have final decision making power (citing former N.J.A.C. 7:50-4.27). In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App. Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 244, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

7:50-4.38 Decision on review

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

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

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

(d) Effect of determination.

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

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

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

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

Recodified from 4.28.

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

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

Case Notes

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

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

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

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

5. A brief description of the nature of such changes.

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

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

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

Recodified from 4.29.

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

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

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

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

7:50-4.40 Commission review following final local approval

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

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

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

development shall be carried out unless such review has been completed and the Commission has approved or approved with conditions the proposed development and the provisions of N.J.A.C. 7:50-4.42(c) have been fulfilled.

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

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

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

Recodified from 4.30.

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

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

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

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

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

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

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

Case Notes

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

7:50-4.41 Public hearing

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

as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). However, an applicant may, at his option, waive all time limits for review imposed by the Pinelands Protection Act or this Plan and request that the hearing be held by an Administrative Law Judge pursuant to the procedures established in N.J.A.C. 7:50-4.91.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.31.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Case Notes

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

7:50-4.42 Decision on review

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

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

(c) Effect of the Commission's decision:

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

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

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.32.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

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

PART IV—PUBLIC DEVELOPMENT

7:50-4.51 Purpose

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

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.41.

7:50-4.52 General requirements

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

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

(c) Intergovernmental agreements:

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

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

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

(d) Exceptions for national defense are as follows:

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

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

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

(e) State agency plans:

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

i. Be based upon a current and comprehensive inventory and analysis of the Pinelands natural resources. The Commission's natural resource inventory may be used as a basis for this purpose;

ii. Set forth the character, location and magnitude of development within the Pinelands;

iii. Be adequate to ensure that all development of land in the Pinelands is carried out in conformance with N.J.A.C. 7:50-5 and 6, provided, however, that alternative or additional techniques may be included if consistent with the goals and objectives of this Plan;

iv. Prescribe standards for capital improvement siting, design and construction, including those necessary to ensure that adequate and necessary support facilities will be available to serve permitted development and proposed uses of lands;

v. Identify resource management practices which conform to the objectives of this Plan, the Pinelands Protection Act, and the Federal Act;

vi. Be compatible with surrounded land uses and certified municipal and county master plans; and

vii. Be otherwise consistent with and contain all provisions necessary to implement this Plan.

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

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

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.42.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recodified from 4.43 and (c)-(h) added.

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

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

Substantially amended.

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

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

In (d), added text regarding "chemical control of vegetation in a water body".

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

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

7:50-4.54 Review of submission by Executive Director

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

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

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

Recodified from 4.44 and substantially amended.

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

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

Case Notes

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

7:50-4.55 Rights of appeal

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

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

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

(b) Recodified to 7:50-4.56.

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

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

Case Notes

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

7:50-4.56 Action by Commission

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

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

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

Recodified from 4.45. Old text deleted and new text substituted.

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

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

Recodified from N.J.A.C. 7:50-4.55(b).

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

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

7:50-4.57 Standards for public development

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

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

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

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

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

Recodified from 4.46.

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

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

Recodified from 4.56.

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

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

7:50-4.58 Limits on public agency actions

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

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

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

Recodified from 4.47 and substantially amended.

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

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

Recodified from 4.57.

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

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

7:50-4.61 Purpose

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

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

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

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

Recodified from 4.51.

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

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

Additional rationale for granting of relief explained.

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

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

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

Case Notes

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

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

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

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

7:50-4.62 General standards

(a) Waivers may only be granted when either:

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

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

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

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

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

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

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

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

iii. Except for State projects located on and directly related to the management and use of State conservation lands, the acquisition and redemption of 0.25 Pinelands Development Credits whenever the waiver provides relief from one or more of the standards of N.J.A.C. 7:50-6 and the acquisition and redemption of an additional 0.25 Pinelands Development Credits whenever the waiver provides relief from one or more of the wetlands protection standards contained in N.J.A.C. 7:50-6, Part I; and

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

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

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

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

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

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

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

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

Case Notes

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

7:50-4.63 Standards for establishing extraordinary hardship

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

1. The only relief sought is from one or more of the standards contained in N.J.A.C. 7:50-6 for one of the following:

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

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

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

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

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

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

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

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

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

x. A single family dwelling accessory to an active agricultural operation in a Special Agricultural Produc-

tion Area pursuant to the criteria contained in N.J.A.C. 7:50-5.25(b)1;

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

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

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

3. Except as expressly provided in N.J.A.C. 7:50-5.1(c), the proposed use will be either the sole principal use or an accessory use to the sole principal use as permitted in (a)1ix, (a)1x, (a)1xi or (a)1xii above on the entire contiguous parcel, as established in (a)2 above;

4. All necessary municipal use, lot area and density variances have been obtained if the parcel is located in a municipality whose master plan and land use ordinances have been fully certified by the Pinelands Commission pursuant to N.J.A.C. 7:50-3; and

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

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

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

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

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

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

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

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

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

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

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

(2) Are not the result of any action or inaction by the applicant, the owner or any predecessor in title including any transfer of any contiguous lands which were in common ownership on or after January 14, 1981 or the refusal on or after January 14, 1981 of the applicant, the owner or any predecessor-in-title to either sell the subject parcel for its fair market value at the time the offer was made or to buy a contiguous parcel for its fair market value at the time the offer was made; and

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

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

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

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

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

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

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

Case Notes

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

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

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

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

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

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

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

Sale of adjoining lot precluded existence of extraordinary hardship, even though property owner was elderly individual suffering from heart problems and diabetes and sought to sell or develop property in order to help support herself and two handicapped sons residing with her. Stark v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 34.

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

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

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

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

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

Residents living in former gun club were entitled to waiver of strict compliance from minimum lot size and water quality requirements. Swezeny v. Fulford, 92 N.J.A.R.2d (EPC) 1.

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

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

7:50-4.64 Standards for establishing compelling public need

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

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

i. The public health and safety require the request- ed waiver;

ii. The public benefits from the proposed use are of a character that override the importance of the protection of the Pinelands as established in the Pinelands Protection Act or the Federal Act;

iii. The proposed use is required to serve existing needs of the residents of the Pinelands; and

iv. No feasible alternatives exist outside the Pinelands Area to meet the established public need and that no better alternatives exist within the Pinelands Area; or

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

i. The reuse is the minimum relief necessary to ensure the integrity and continued protection of the designated historic resource; and

ii. The designated historic resource's integrity and continued protection cannot be maintained without the granting of a Waiver of Strict Compliance.

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

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

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

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

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

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

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

7:50-4.65 Substantial impairment and consistency

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

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

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

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

3. Any residential use to be served by an on-site sewage disposal system where the overall density is great-

er than one dwelling unit per 20,000 square feet, excluding road rights of way, or where any dwelling will be located on a lot smaller than 20,000 square feet, excluding road rights of way;

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

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

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

7. Any development which will violate the threatened and endangered species protection requirements contained in N.J.A.C. 7:50-6.24 and 6.33;

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

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

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

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

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

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

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

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

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

Case Notes

Cited as example of situation in which Executive Director could designate a representative to have final decision making power (citing former N.J.A.C. 7:50-4.54). In re Application of John Madin/Lordland

Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App. Div.1985), certification granted 102 N.J. 380, 508 A.2d 243, 244, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

7:50-4.66 Application

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Clarified text in (a)1.

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

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

Recodified from 7:50-6.2; new (h) added.

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

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

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

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

Law Review and Journal Commentaries

Environmental Law—Solid Waste. P.R. Chenoweth, 137 N.J.L.J. No. 16, 51 (1994).

Case Notes

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

Development application denied to petitioners for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to offer information to establish an extraordinary hardship citing N.J.A.C. 1:1-11.2 (recodified as N.J.A.C. 1:11-8.3)—(Final Decision by the Pinelands Commission). *Lavecchia v. Pinelands Commission*, 10 N.J.A.R. 63 (1987).

Application for waiver denied to petitioners based on doctrine of res judicata where, in circumstances substantially similar, their predecessors in title to the property, were denied both the initial right to develop the property and a waiver of strict compliance (Final Decision by Pinelands Commission). *Pagnotti v. Pinelands Commission*, 10 N.J.A.R. 24 (1987).

Application to resubdivide two existing lots denied for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to establish extraordinary hardship (Final Decision by Pinelands Commission). *Colon v. Pinelands Commission*, 10 N.J.A.R. 14 (1987).

Absent evidence of unique or unusual nature of property, or inability of owner-applicant to obtain a reasonable rate of return on property under permitted uses, no extraordinary hardship found to permit waiver of strict compliance (citing former N.J.A.C. 7:50-4.55). *Hanoverland Industries v. Pinelands Commission*, 8 N.J.A.R. 529 (1985).

Denial of waiver of strict compliance with waterless toilet requirement found reasonable in light of adverse effects of continuing approval of conventional systems (citing former N.J.A.C. 7:50-4.55). *Riggins v. Pinelands Commission*, 8 N.J.A.R. 441 (1985).

Location of property between two single family dwellings in a subdivision does not qualify as an extraordinary hardship under N.J.A.C. 7:50-4.66(a)1 criteria (citing former N.J.A.C. 7:50-4.55). *Pfeiffer v. Pinelands Commission*, 8 N.J.A.R. 317 (1985).

7:50-4.67 Action by Executive Director on application

Within 90 days following the receipt of a complete application for waiver, the Executive Director shall review the application and all information submitted by the applicant and any other person relating to the application and upon completion of such review make a determination whether the application should be approved, approved with condi-

tions or disapproved. The application may be recommended for approval or approval with conditions only if the applicant, subject to any conditions which may be imposed, meets the standards for a Waiver of Strict Compliance established in N.J.A.C. 7:50-4.62. The Executive Director shall give written notification of his findings and conclusion to the applicant, the Commission, interested persons, including all persons who have submitted information concerning the application as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

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

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

Recodified from 4.53 and substantially amended.

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

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

Recodified from 7:50-4.63 by R.1992 d.91, effective March 2, 1992.

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

7:50-4.68 Rights of appeal

Any interested person who is aggrieved by any determination made by the Executive Director pursuant to this Part may within 15 days appeal the Executive Director's determination to the Commission as provided by N.J.A.C. 7:50-4.91. Additional information not included in the Executive Director's determination may be presented to the Pinelands Commission only by requesting a hearing pursuant to N.J.A.C. 7:50-4.91. If the appeal is based on an allegation that the parcel does not have a beneficial use even considering the allocation of Pinelands Development Credits pursuant to N.J.A.C. 7:50-4.62(c)2, the applicant must include specific documentation concerning the economic value of each of the permitted uses of the parcel once the Pinelands Development Credits are transferred and documentation of the value necessary to give the parcel a beneficial use as part of the appeal process. If the applicant demonstrates that the allocation of the Pinelands Development Credits based on fair market value along with the other permitted uses of the parcel does not result in the parcel having a beneficial use, the allocation of Pinelands Development Credits shall be increased to the number necessary to provide the parcel with a beneficial use.

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

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

Recodified from 4.57.

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

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

Recodified from 4.67.

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

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

Recodified from 7:50-4.64; added language concerning consideration based on an allegation that a parcel does not have a beneficial use.

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

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

7:50-4.69 Action by Commission

If at the next regular Commission meeting after the time for appeal under N.J.A.C. 7:50-4.91 has expired and no

request for an appeal has been received, the Commission may approve the determination of the Executive Director or refer the determination of the Executive Director to the Office of Administrative Law. If the Commission fails to take any action at said meeting, the determination of the Executive Director shall be referred to the Office of Administrative Law unless an extension of time for the Commission to act is approved pursuant to N.J.A.C. 7:50-4.4. If the Executive Director's determination is referred to the Office of Administrative Law, the referral shall be treated as a petition for appeal in accordance with the provisions of N.J.A.C. 7:50-4.91.

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

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

Recodified from 4.54 and substantially amended.

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

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

Recodified and substantially amended from 4.64.

Recodified from 7:50-4.65 by R.1992 d.91, effective March 2, 1992.

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

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

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

7:50-4.70 Effect of grant of waiver; expiration; recodification; effective date

(a) Any waiver granted under the provisions of this Part shall only be considered a waiver of the particular standard of this Plan which the Commission waived. It shall not constitute an approval of the entire development proposal. Nor shall it constitute a waiver from any requirements contained within any certified local ordinance.

(b) Waivers approved under former N.J.A.C. 7:50-4.66(a)1ii, repealed effective November 2, 1987, and former N.J.A.C. 7:50-4.55(a)1iii, repealed effective September 12, 1985, shall expire as follows:

1. Any waiver previously approved under the final subdivision standard contained in the now repealed N.J.A.C. 7:50-4.55(a)1iii shall continue to be subject to the condition that the waiver shall expire after two years if substantial construction of improvements is not commenced, or if fewer than 10 percent of the total number of lots in the subdivision are sold or built upon within any succeeding 12 month period; and

2. Any waiver previously approved under the prior municipal development approval standard contained in the previously repealed N.J.A.C. 7:50-4.66(a)1ii has expired or will expire, without exception, unless the requirements in (b)2i, ii and either iii or iv below have been and continue to be met:

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

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

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

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

(c) Any waiver approved pursuant to N.J.A.C. 7:50-4.63 which authorizes development of the parcel shall expire five years after the Waiver is approved unless all necessary construction permits have been issued within said five year period, the authorized work was commenced within 12 months after issuance of the permits and no such permit becomes invalid pursuant to N.J.A.C. 5:23-2.16(b) after said five year period.

(d) A copy of any approval of a Waiver of Strict Compliance by the Pinelands Commission shall be recorded in the office of the county recording officer of the county wherein the real estate that is subject to the Waiver is situated pursuant to N.J.S.A. 46:16-2 within 60 days of the approval of the Waiver. Said recording shall be notice to all subsequent judgment creditors, purchasers and mortgagees of the existence and contents of the approved Waiver of Strict Compliance.

(e) The N.J.A.C. 7:50-2.11 definitions of "contiguous lands," "fair market value" and "impaired wetlands," and N.J.A.C. 7:50-4.2(b)8 and 4.61 through this section, as amended or adopted effective March 2, 1992, shall apply to all applications except for those applications on which an Executive Director's determination was issued prior to March 2, 1992. For those applications, the above-referenced provisions in effect prior to March 2, 1992 shall govern, provided that:

1. The Pinelands Commission action on the Waiver of Strict Compliance is based on information that was submitted to the Pinelands Commission prior to March 2, 1992;

2. The applicant has not requested that the application be reviewed pursuant to the N.J.A.C. 7:50-2.11 definitions of "contiguous lands," "fair market value" and "impaired wetlands," and N.J.A.C. 7:50-4.2(b)8 and 4.61 through this section, as amended or adopted effective March 2, 1992; and either

3. The Pinelands Commission acts on the application at its next regularly scheduled meeting after the time to appeal under N.J.A.C. 7:50-4.91 has expired and no request for appeal has been received; or

4. A timely request for an appeal is received under N.J.A.C. 7:50-4.91 or the Executive Director's determination is referred to the Office of Administrative Law by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.69 (formerly N.J.A.C. 7:50-4.65).

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

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

Recodified from 4.56 and text "or the Executive Director" was deleted.

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

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

Recodified from 4.66.

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

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

Recodified from 7:50-4.67; added new (b) and (c).

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

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

Established an expiration date coincident with P.L. 1992 c.82 (Permit Extension Act).

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

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

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

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

Rewrote (b)2.iv.

PART VI—LETTERS OF INTERPRETATION

7:50-4.71 Purpose

This Part is intended to provide an expeditious method by which any person may secure a clarification or interpretation of the meaning of any provision of this Plan, or any rule or regulation adopted pursuant to it.

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

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

Recodified from 4.61.

7:50-4.72 Authority

(a) The Executive Director may, subject to the procedures, standards and limitations set forth in this Part, issue letters of clarification or interpretation of any provision of this Plan, or any rule or regulation issued pursuant to it. No letter of clarification or interpretation shall have the effect of modifying, amending, abrogating or waiving any substantive requirement of this Plan. These interpretations may include:

1. A determination of whether a particular use, which is not expressly authorized in an area, is substantially

similar to the uses authorized in the area and should be authorized; or

2. A determination of the definition or application of any provision of this Plan.

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

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

Recodified from 4.62.

7:50-4.73 Request for interpretation

(a) A request for a letter of clarification or interpretation shall be initiated by requesting a pre-application conference pursuant to N.J.A.C. 7:50-4.2(a). This request shall set forth the clarification or interpretation requested and the facts or the circumstances which are the basis for the request for an interpretation, together with any proposed clarification or interpretation desired by the applicant. The applicant shall include all information determined to be necessary by the Executive Director after the pre-application conference. Within 30 days after receipt of a request for a letter of clarification or interpretation, the Executive Director shall inform the applicant of any additional information which is required in order to make a determination of the requested clarification or interpretation.

(b) An applicant for a letter of clarification or interpretation involving a specific parcel, except where the letter of interpretation involves solely the question of the number of Pinelands Development Credits which are attributed to a specific parcel, shall provide notice of the application as follows:

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

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

(c) An applicant for a letter of clarification or interpretation not involving a specific parcel, including a proposed development located within a right-of-way or easement, shall provide notice of the application as follows:

1. Notice shall be given by publication in any official newspaper of the Pinelands Commission having general circulation in any municipality in which the parcel that is the subject of the proposed interpretation or clarification is located or in all the official newspapers of the Pinelands Commission if the requested clarification or interpreta-

tion does not apply to a specific development proposal; and

2. Notice shall be given by publication in the official newspaper, if any, of the municipality in which the parcel subject to the proposed interpretation or clarification is located or, if there is no official newspaper in any such municipality, then in a newspaper of general circulation in that municipality.

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

1. The nature of the application pending before the Pinelands Commission, including a statement of the requested interpretation or clarification and, if known, a description of the proposed development;

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

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

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

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

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

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

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

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

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

Recodified from 4.63 and substantially amended.
Amended by R.1985 d.494, effective September 12, 1985.
See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Substantially amended.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
Amended by R.1995 d.449, effective August 21, 1995.
See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).
Substituted "parcel" for "property" throughout the section.

Case Notes

Letter of interpretation considered in rendering decision on issue raised by letter request (citing former N.J.A.C. 7:50-4.63). *Fine v. Galloway Twp. Committee*, 190 N.J.Super. 432, 463 A.2d 990 (Law Div.1983).

7:50-4.74 Interpretation by Executive Director

Except as provided in N.J.A.C. 7:50-4.75, the Executive Director shall, within 45 days following the receipt of a completed request for clarification or interpretation review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review issue a letter of clarification or interpretation. Prior to the issuance of the letter, an analysis of all pending requests for letters of interpretation will be submitted to the Commission for its review at its regular monthly meeting. A copy of the letter shall be provided to the appropriate municipal or county planning board, environmental commission, if any, interested persons, including all persons who have submitted information concerning the application as well as all persons who have requested a copy of said determination and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). The letter issued by the Executive Director shall specify the grounds, reasons and analysis upon which the clarification or interpretation is based. In the event the Executive Director fails to render a letter of clarification or interpretation within 45 days of receipt of a completed application or such longer period of time as may be agreed to by the applicant, the applicant is entitled to request a hearing pursuant to N.J.A.C. 7:50-4.91. Nothing in this section shall be construed to prevent any person from resubmitting a request for clarification or interpretation.

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

Recodified and substantially amended from 4.64.

7:50-4.75 Limitations on issuance of use interpretations

(a) No use interpretation shall permit a use listed as an authorized use in any area to be established in any area in which such use is not listed.

(b) No use interpretation shall permit any use in any area unless the Executive Director determines that the use will be in conformity with the minimum standards and requirements of this Plan.

(c) No use interpretations shall authorize any use in a particular area unless the use is substantially similar to other uses authorized in the area.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.65.

7:50-4.76 Effect of and limitation on favorable interpretation

(a) No letter of clarification or interpretation shall authorize the establishment of a use or the carrying out of any development, but shall merely authorize the preparation, filing and processing of applications for any permits and approvals which may be required by the codes and ordinances of any local permitting agency with jurisdiction over the subject parcel or this Plan.

(b) No letter of clarification or interpretation shall be valid for a period longer than two years from the date of issuance, unless a final approval pursuant to this Plan has been granted within that period, and development is thereafter diligently pursued to completion, or the use is legally commenced within that period.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.66.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-4.77 Binding effect of interpretations

Any letter of clarification or interpretation issued by the Executive Director pursuant to this Part shall be binding so long as the applicant complies with all applicable conditions imposed by the provisions of this Part or other provisions of this Plan.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.67.

7:50-4.78 Monthly report

The Executive Director shall keep a record of each clarification or interpretation rendered pursuant to this Part and shall file a monthly report of such clarifications or interpretations with the Commission. The report may include a recommendation of the Executive Director that this Plan be amended to add new uses to the various use lists established by this Plan to reflect any use interpretations given pursuant to this Part.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.68.

7:50-4.79 Appeal

Any interested person who is aggrieved by any clarification or interpretation given by the Executive Director pursuant to this Part may within 15 days appeal the Executive Director's clarification or interpretation to the Commission as provided in N.J.A.C. 7:50-4.91.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.69.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-4.80 (Reserved)

PART VII—COORDINATED PERMITTING WITH STATE AGENCIES

7:50-4.81 General requirements; applicant to submit application to Executive Director

(a) No department, board, bureau, official or other agency of the State of New Jersey shall issue any approval, certificate, license, consent, permit, or financial assistance for the construction of any structure or the disturbance of any land in the Pinelands Area unless such approval or grant is consistent with the minimum standards of this Plan.

(b) Prior to filing any application for development in the Pinelands Area with any department, board, bureau, official or other agency of the State of New Jersey, the applicant shall file with the Commission a duplicate copy of the application. The Executive Director may within 30 days require the applicant to submit any additional information which he determines is necessary in order to evaluate the interest of the Commission in such application. No State department, board, bureau, official or other agency shall deem an application for development complete unless it is accompanied by a Certificate of Filing, a Notice of Filing, a Certificate of Completeness or a resolution of the Pinelands Commission approving, pursuant to the provisions of Part IV of this subchapter, an application for public development. Notwithstanding these requirements, the Pinelands Commission may enter into an intergovernmental memorandum of agreement with any State department, board, bureau, official or other agency for the purpose of eliminating or altering any of the procedural requirements set forth in this subsection concerning the review by a State agency of third party development.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.71.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

**7:50-4.82 Determination of Commission interests;
Commission staff participation in State review
process**

(a) Review of application: Within 30 days following receipt of any application or additional information submitted pursuant to N.J.A.C. 7:50-4.81, the Executive Director shall review the application and additional information and determine what, if any, special interests the Commission has with respect to the application, the extent to which the Commission staff should participate in any proceedings held by the state agency with which the application is to be filed, and whether any Commission review provided for in this Plan should be conducted before, after or simultaneously with any proceedings to be conducted by the state agency.

(b) Issuance of Certificate of Filing: If the Executive Director determines that any proceedings to be conducted by the state agency in question should be conducted prior to or simultaneously with any Commission review provided for in this Plan, the Executive Director shall within 30 days issue to the applicant a Certificate of Filing evidencing the fact that the applicant has complied with the provisions of N.J.A.C. 7:50-4.81 and authorizing the filing of the application with the state agency. Such Certificate of Filing shall indicate that any permit, approval or authorization granted by the state agency shall be conditioned upon the issuance of any Commission approval provided for by this Plan.

(c) Determination of degree of participation: If the Executive Director determines pursuant to (a) above that any state agency proceeding, with respect to an application filed pursuant to N.J.A.C. 7:50-4.81, should be conducted before or simultaneously with any Commission review, he shall determine the appropriate nature and extent of Commission staff participation in such proceeding. Its participation may include, but is not limited to:

1. Submitting a written analysis of any concerns and opinions the Commission staff has with respect to the conformance of the proposed development with the minimum standards of the Plan, including a list of any conditions which it determines should be imposed in the event that the permit is granted;
2. Submitting written evidence with respect to the conformance by the proposed development with the minimum standards of this Plan.

(d) State agency to allow Commission staff participation: Each state agency with jurisdiction over any application for development in the Pinelands Area shall permit the Commission staff to participate at any meeting, hearing or other proceeding at which an application for development in the Pinelands Area is to be considered and to present the opinions of the Commission staff with respect to the application. At the option of the Executive Director, the Commission staff submissions to the state agency may be in written form in addition to actual appearance at such hearing or meeting.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
Recodified from 4.72.

**7:50-4.83 Notice from State agencies with respect to
applications for development**

(a) General: Every department, board, bureau, official and other agency of the state shall give notice to the Commission of the filing of any applications for development and of hearings, meetings and other formal proceedings concerning the filing and disposition of every application for development in the Pinelands Area filed with it.

(b) Notice of application: Notice of submission of any application for development shall be given by mail within seven days following such filing and shall contain the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the parcel which the applicant proposes to develop;
3. A brief description of the proposed development, including uses and intensity of uses proposed;
4. The Pinelands Commission application number;
5. The date on which the application was filed and any application or other identifying number assigned to such application by the State agency;
6. The state agency with which the application was filed; and
7. The nature of the approval or approvals being sought.

(c) Notice of hearings and meetings: Notice of any hearing, public meeting or other formal proceeding at which the filing or disposition of any application for development in the Pinelands Area is to be considered shall be given by mail no less than five days prior to such meeting or hearing and shall contain the following information:

1. The name and address of the applicant;
2. The Pinelands Commission application number;
3. The date, time and location of the meeting or hearing;
4. The name of the state agency which will conduct the meeting or hearing;
5. Any written reports or comments received by the state agency on the application which have not previously been submitted to the Commission; and
6. The purpose for which the meeting or hearing is to be held.

(d) Notice of grant of final determination: Notice of any final determination by any department board, bureau, official or other agency of the State with respect to any application for development in the Pinelands Area shall be given by mail within five days of the grant or denial of such approval and shall contain the following information:

1. The name and address of the applicant;
2. The legal description and street address, if any, of the property which the applicant proposed to develop;
3. The Pinelands Commission application number;
4. A copy of the permit, approval or authorization which was issued; and
5. A copy of any approved plans.

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

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

Recodified from 4.73.

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

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

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

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

7:50-4.84 Referral of matters to state agency

At any stage of any Commission review of development provided for in this Plan, the Executive Director may refer any issue raised in such review to any state department, board, bureau, official or other agency of the state with a request for such information or assistance as may be necessary or convenient to permit the Commission to fulfill its duties and responsibilities. Upon receipt of such referral, the state agency shall provide any requested information, assistance or recommendation relating to any issues within the areas of its expertise. Any such information, assistance or recommendations shall not be binding on such agency with respect to the granting of any permit, approval or other authorization required by the laws and regulations applicable to such agency shall be deemed to be purely advisory to the Commission.

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

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

Recodified from 4.74.

7:50-4.85 Referral of matters to Commission by state agency

At any stage of any proceedings conducted by any state department, board, bureau, official or other agency of the state with respect to development in the Pinelands Area, such agency may refer any issue raised in such proceedings to the Commission. Upon receipt of such referral, the Commission shall provide any requested information or recommendation relating to any issues relating to this Plan, any other Commission rules or regulations, or any other matters of special concern to the Commission. Such recommendations shall not be binding on the Commission with respect to the grant of any approval required by this Plan but shall be deemed purely advisory.

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

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

Recodified from 4.75.

7:50-4.86 through 7:50-4.90 (Reserved)

PART VIII—RECONSIDERATION AND JUDICIAL REVIEW

7:50-4.91 Appeal

(a) Notice: Any person who is granted, by any provision of this Plan, a right to appeal any determination made by the Executive Director to the Commission shall, within 15 days after the decision is rendered, perfect such right by giving notice by mail of his intent to appeal to the Commission. Such notice shall include:

1. The name and address of the person requesting the appeal;
2. The number of the application which is the subject of the appeal;
3. The date on which the determination to be appealed was made;
4. A statement detailing the basis for the appeal; and
5. A certificate of service indicating that service of the notice has been made, by certified mail, on the clerk of the county or municipal planning board and environmental commission, if any, with jurisdiction over the property which was the subject of the decision or order.

(b) Any person who is granted, by any provision of this Plan, a right to request a hearing conducted by the Office of Administrative Law concerning a local approval which the Executive Director has determined should be reviewed by the Pinelands Commission shall, within 15 days after the Executive Director's determination, perfect such right by giving notice by mail of his intent to request a hearing to the Commission. Such notice shall include the information specified in (a)1 through 5 above.

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

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

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

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
 See: 17 N.J.R. 1918(a).
 Recodified from 4.81.
 Amended by R.1994 d.590, effective December 5, 1994.
 See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Case Notes

Discussion of reconsideration rights accorded under former N.J.A.C. 7:50-4.17 and 7:50-4.81. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App. Div.1985), certiorari vacated as moot 103 N.J. 689, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

7:50-4.92 Judicial review

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

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
 See: 17 N.J.R. 1918(a).
 Recodified from 4.82.
 Amended by R.1994 d.590, effective December 5, 1994.
 See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

SUBCHAPTER 5. MINIMUM STANDARDS FOR LAND USES AND INTENSITIES

INTRODUCTION

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

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

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

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

PART I—STANDARDS OF GENERAL APPLICABILITY

7:50-5.1 Development in accordance with this plan

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

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

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

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

1. They are associated with existing single family dwellings; and
2. They are intended only for temporary housing and occupancy for no longer than three years.

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

Case Notes

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

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

7:50-5.2 Expansion and changes of existing uses

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

1. The use was not abandoned or terminated subsequent to January 14, 1981;
2. The expansion or alteration of the use is in accordance with all of the minimum standards of N.J.A.C. 7:50-6; and
3. The area of expansion does not exceed 50 percent of the floor area, the area of the use or the capacity of the use, whichever is applicable, on January 14, 1981 or which was approved pursuant to this Plan.

(b) A municipality may include in its ordinance a provision which, notwithstanding the use restrictions contained in Part III of this subchapter, permits a change in any use existing on January 14, 1981 that is currently non-conforming or any use which was constructed based upon an approval granted pursuant to this Plan that is currently non-conforming, other than those uses which are expressly limited in N.J.A.C. 7:50-6, provided that:

1. The use was not abandoned or terminated subsequent to January 14, 1981;
2. The new use is in accordance with all of the minimum standards of N.J.A.C. 7:50-6 including N.J.A.C. 7:50-6.84(a)4, unless a new septic system permit will not be required as a result of the change in use, in which case the standards of N.J.A.C. 7:50-6.83(b) and (c) must be met; and
3. The area, capacity, and intensity of the new use is comparable to that of the existing use.

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

Amended by R.1990 d.170, effective March 19, 1990.
See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).
In (b), added "and not subsequently abandoned".

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
Amended by R.1995 d.449, effective August 21, 1995.
See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Case Notes

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

7:50-5.3 Map status

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

1. Pinelands Area Jurisdiction Boundaries, Plate 1, as amended as of August 21, 1995;
2. Surficial Geology, Plate 2, as amended as of August 21, 1995;
3. NW-SE Geologic Cross-Section, Plate 3;
4. Hydrogeologic Features, Plate 4, as amended as of August 21, 1995;
5. Surface Water Hydrology, Plate 5, as amended as of August 21, 1995;
6. Agricultural Soils, Plate 6, as amended as of August 21, 1995;
7. Depth to Seasonal High Water Table, Plate 7, as amended as of August 21, 1995;
8. Hydrologic Soil Group, Plate 8, as amended as of August 21, 1995;
9. Soil Factors Limiting Use for Septic Tank Absorption Fields, Plate 9, as amended as of August 21, 1995;
10. Vegetation, Plate 10, as amended as of August 21, 1995;
11. Wildland Fire Hazard Classification, Plate 11, as amended as of August 21, 1995;
12. Watersheds Supporting Characteristics Pinelands Aquatic Communities, Plate 12;
13. Prehistoric Archaeologic Resources, Plate 13, as amended as of August 21, 1995;
14. Historic, Archaeologic and Architectural Resources, Plate 14, as amended as of August 21, 1995;
15. Cultural Subregions, Plate 15, as amended as of August 21, 1995;
16. Land Use, Plate 16, as amended as of August 21, 1995;
17. Sewer Service Areas, Plate 17, as amended as of August 21, 1995;
18. Water Service Areas, Plate 18, as amended as of August 21, 1995;

19. Solid Waste Disposal Sites, Plate 19, as amended as of August 21, 1995;

20. Transportation Systems, Plate 20, as amended as of August 21, 1995;

21. Major Public Land Holdings, Plate 21, as amended as of August 21, 1995;

22. Resource Extraction Areas, Plate 22, as amended as of August 21, 1995;

23. Ecological Critical Area Importance Values, Plate 27, as amended as of August 21, 1995;

24. Land Capability, Plate 28, as amended as of April 1, 1996;

25. Zoning maps, master plans and land use ordinances certified by the Commission under the provisions of N.J.A.C. 7:50-3;

26. Special Areas Map, Figure 7.1.

Petition for Rulemaking: amend Berkeley Township portion of Land Capability Map.

See: 20 N.J.R. 936(a), 1486(a), 2325(d).

Petition for Rulemaking: amend Manchester Township portion of Land Capability Map.

See: 21 N.J.R. 345(a), 1025(a), 1460(b), 1913(a), 2403(b).

Petition for Rulemaking: Revise the Pinelands Land Capability Map referred to in (a)24.

See: 23 N.J.R. 2062(d), 23 N.J.R. 2882(c).

Withdrawal of Petition for Rulemaking: Withdrawal of petition which had been published at 23 N.J.R. 2062(d).

See: 23 N.J.R. 2062(d), 23 N.J.R. 2882(c), 23 N.J.R. 3825(d).

Petition for Rulemaking: Revise the Pinelands Land Capability Map referred to in (a)24.

See: 26 N.J.R. 3752(a), 26 N.J.R. 4834(c).

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d. 449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Amended by R.1996 d.170, effective April 1, 1996.

See: 27 N.J.R. 3532(a), 27 N.J.R. 3895(a), 28 N.J.R. 1848(a).

In (a)24 substituted April 1, 1996 for August 21, 1995.

7:50-5.4 Height limitations

(a) In all Pinelands Management Areas other than Regional Growth Areas and Pinelands Towns, no structure, including radio and television transmission and other communication facilities which are not accessory to an otherwise permitted use, shall exceed a height of 35 feet, except as provided in (b) below.

(b) The height limitation in (a) above shall not apply to any of the following structures, provided that such structures are compatible with uses in the immediate vicinity and conform to the objectives of N.J.A.C. 7:50-6, Part X: antennas which do not exceed a height of 200 feet and which are accessory to an otherwise permitted use, silos, barns and other agricultural structures, church spires, cupolas, domes, monuments, water towers, fire observation towers, electric transmission lines and supporting structures, windmills, smokestacks, derricks, conveyors, flag poles and masts, or aerials, solar energy facilities, chimneys and similar structures required to be placed above the roof level and not intended for human occupancy.

(c) The height limitation in (a) above shall not apply to the antenna and any supporting structure of a local communication facility of greater than 35 feet, provided that:

1. There is a demonstrated need for the facility to serve the local communication needs of the Pinelands, including those related to public health and safety, as well as a demonstrated need to locate the facility in the Pinelands in order to provide adequate service to meet these needs;

2. The supporting structure is designed to accommodate the needs of any other local communications provider which has identified a need to locate a facility within an overlapping service area;

3. The antenna utilizes an existing communications or other suitable structure, to the extent practicable;

4. If an existing communications or other suitable structure cannot be utilized, the antenna and any necessary supporting structure is located such that it:

i. Meets technical operating requirements;

ii. Minimizes visual impacts as viewed from publicly dedicated roads and highways and from other areas frequented by the public by, in order of decreasing priority:

(1) Avoiding, to the maximum extent practicable, any direct line of sight from low intensive recreation facilities and campgrounds; and

(2) Minimizing the length of time that an antenna structure is visible from publicly dedicated roads and highways;

iii. Avoids, to the maximum extent practicable, visual impacts as viewed from the wild and scenic rivers and special scenic corridors listed in N.J.A.C. 7:50-6.105(a), the Pine Plains and area necessary to maintain the ecological integrity of the Pine Plains, as depicted on the Special Areas Map, Figure 7.1;

iv. Maintains a distance of at least five miles from the Forked River Mountains and otherwise minimizes visual impacts as viewed from the Forked River Mountains, as depicted on the Special Areas Map, Figure 7.1;

v. Minimizes visual impacts as viewed from existing residential dwellings located on contiguous parcels through adherence to the buffer and setback requirements established in the certified land use ordinances of the municipality in which the facility is proposed to be located; and

vi. If proposed in the Preservation Area District, Forest Area, Special Agricultural Production Area, or Rural Development Area, is located in one of the following areas:

(1) In a certified municipal commercial or industrial zone, including a mixed use zone which permits a variety of non-residential uses. If the facility is proposed in an industrial zone within the Forest or Preservation Area District where resource extraction is the primary permitted use, the facility shall be located on the parcel of an approved resource extraction operation in accordance with (c)4vi(3) below;

(2) On developed publicly owned lands within 500 feet of an existing structure, provided that the facility will be located on previously disturbed lands that have not subsequently been restored and that no facility will be located on State, county, or municipal conservation lands, State recreation lands or county and municipal lands used for low intensity recreational purposes;

(3) On the parcel of an approved resource extraction operation, provided that the facility will be located on previously disturbed lands that have not subsequently been restored;

(4) On the parcel of an existing first aid or fire station; or

(5) On the parcel of an existing landfill, provided that the facility will be located on previously disturbed lands that have not subsequently been restored;

5. The antenna and any supporting structure does not exceed 200 feet in height but, if of a lesser height, shall be designed so that its height can be increased to 200 feet if necessary to accommodate other local communications facilities in the future;

6. If the facility is proposed to be located in any Pinelands management area other than a Regional Growth Area or a Pinelands Town, a comprehensive plan for the entire Pinelands Area must be submitted to the Pinelands Commission for certification. If the facility is proposed to be located in a Military and Federal Installation Area, submission of such a plan shall only be required if the facility is to be located outside the substantially developed area of the installation. Said plan shall include five and 10 year horizons, a review of alternative technologies that may become available for use in the near future, and the approximate location of all proposed facilities. Said plan shall also demonstrate that the facilities to be located in the Preservation Area District, Forest Area, Special Agricultural Production Area and Pinelands Villages of Bamber Lake, Beckerville, Belcoville, Belleplain, Brookville, Chatsworth, Dorothy, Eldora, Elwood, Estell Manor, Green Bank, Jenkins, Lower Bank, North Dennis, Sweetwater, Warren Grove and Weekstown are the least number necessary to provide adequate service, taking into consideration the location of facilities outside the Pinelands that may influence the number and location of facilities needed within the Pinelands. Said plan shall also demonstrate consistency with (c)1 and 3 above and

either demonstrate, or note the need to demonstrate, consistency with (c)2, 4 and 5 when the actual siting of facilities is proposed. Where more than one entity is providing the same type of service or has a franchise for the area in question, the plan shall be agreed to and submitted jointly by all such providers, where feasible, and shall provide for the joint construction and use of the least number of facilities that will provide adequate service by all providers for the local communication system intended. Shared service between entities, unless precluded by Federal law or regulation, shall be part of the plan when such shared services will reduce the number of facilities to be otherwise developed.

i. Upon receipt of the comprehensive plan, or amendments to a previously approved plan, the Executive Director shall give notice of and set the date, time, and place for a public hearing for consideration of the plan. The public hearing shall be held by the Executive Director within 60 days following receipt of the comprehensive plan in accordance with the provisions of N.J.A.C. 7:50-4.3.

ii. Upon completion of the public hearing, the Executive Director shall review the comprehensive plan and the record of the hearing and shall, within 90 days following receipt of the plan, submit a report to the Commission setting forth proposed findings and a recommended order as to whether the plan is in conformance with the minimum standards of this section.

iii. Upon receipt of the report of the Executive Director, the Commission shall review the findings, conclusions, and recommendation of the Executive Director and shall, within 120 days following receipt of the plan, approve, approve with conditions or disapprove the plan. If the plan is disapproved or conditionally approved, the Commission shall specify the changes necessary in order to secure Commission approval of the plan.

iv. Upon Commission approval of a comprehensive plan, the Commission shall review any proposed development in accordance with the standards of N.J.A.C. 7:50-5.4(c)1 through 3, 4i through v and 5, the approved plan, and the other standards of this Plan.

v. Applicants may propose amendments to an approved plan from time to time. Any such amendments shall be agreed to and submitted jointly by all of the local communications providers who provide the same type of service or have a franchise within the Pinelands Area. Operators with newly awarded franchises that did not participate in the development of the original plan shall be given the opportunity to participate in the proposal of amendments. In the event that any provider declines to participate in the amendment process, the Commission may proceed with its review of the amendment. All amendments shall be reviewed by the Commission according to the requirements set forth in (c)6 above and according to the procedures set forth in (c)6i through iii above;

7. A certification is submitted to the Commission and the appropriate municipality every five years that the facility is still in use and that its current height can not be decreased because of operational needs. Any facility shall be removed and restoration of the parcel shall be completed in accordance with N.J.A.C. 7:50-6.23(a)1 through 6 within 12 months of the original user or users ceasing operations, unless the Commission determines that the facility is necessary for additional users that otherwise would qualify for the construction of a new local communications facility pursuant to this section. Any oversized facility shall be reduced within 12 months of the certification.

(d) Computer simulation models, photographic juxtaposition and other similar techniques may be used by the Commission in determining compliance with the visual impact standards set forth in (c)4ii, iii and iv above.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
Amended by R.1995 d.449, effective August 21, 1995.
See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

7:50-5.5 Setback standards

(a) All buildings within the Preservation Area District, Rural Development Area, and Forest Area shall be set back from public, paved roads in accordance with N.J.A.C. 7:50-6.103 and 104.

(b) All structures within 1,000 feet of rivers designated in N.J.A.C. 7:50-6.105(a) shall be screened in accordance with the requirements set forth therein.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-5.6 through 7:50-5.10 (Reserved)

PART II—PINELANDS MANAGEMENT AREAS

7:50-5.11 Purpose

In order to ensure that the development and use of land in the Pinelands meet the minimum standards of this Plan, the Pinelands Commission hereby finds that it is necessary to establish eight management areas governing the general distribution of land uses and intensities in the Pinelands. Except for Special Agricultural Production Areas and the Pinelands Villages, the boundaries of the Management areas are set forth on the Land Capability Map identified in N.J.A.C. 7:50-5.3. Special Agricultural Production Areas and additional Agricultural Production Areas may be created as an element of a municipal master plan or land use ordinance under the provisions of N.J.A.C. 7:50-5.14 and 5.15. The boundaries of Pinelands Villages shall be delineated in accordance with the criteria in N.J.A.C. 7:50-5.16. The boundaries of the management areas may be refined and/or adjusted in municipal master plans and land use ordinances provided that the Commission determines that the goals and objectives of this Plan will be implemented by the proposed municipal master plan or land use ordinance under the municipal plan certification procedures of subchapter 3.

Case Notes

Management areas established; regulation not shown to reduce land prices for property tax valuation. *Riorano, Inc. v. Weymouth Twp.*, 4 N.J.Tax 550 (Tax Ct.1982), affirmed 6 N.J.Tax 253.

7:50-5.12 Pinelands Management Areas established

(a) The following Pinelands Management Areas are hereby established:

1. Preservation Area District;
2. Forest Areas;
3. Agricultural Production Areas;
4. Special Agricultural Production Areas;
5. Rural Development Areas;
6. Pinelands Villages and Pinelands Towns;
7. Regional Growth Areas;
8. Military and Federal Installation Areas.

Case Notes

Pinelands Protection Act and implementing regulations did not violate takings clause. *Gardner v. New Jersey Pinelands Com'n*, 125 N.J. 193, 593 A.2d 251 (1991).

Pinelands comprehensive management plan was not illegal exaction. *Gardner v. New Jersey Pinelands Com'n*, 125 N.J. 193, 593 A.2d 251 (1991).

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).

7:50-5.13 Goals and objectives of Pinelands Management Areas

(a) The Preservation Area District is the heart of the Pinelands environment and represents the most critical ecological region in the Pinelands. It is an area of significant environmental and economic values that are especially vulnerable to degradation. This large, contiguous, wilderness-like area of forest, transected by a network of pristine wetlands, streams and rivers, supports diverse plant and animal communities and is home to many of the Pinelands' threatened and endangered species. The area must be protected from development and land use that would adversely affect its long-term ecological integrity.

(b) Forest Areas are similar to the Preservation Area in terms of their ecological value and, along with the Preservation Area, serve to provide a suitable ecological reserve for the maintenance of the Pinelands environment. These undisturbed, forested portions of the Protection Area support characteristic Pinelands plant and animal species and provide suitable habitat for many threatened and endangered species. These largely undeveloped areas are an essential element of the Pinelands environment, contain high quality water resources and wetlands, and are very sensitive to random and uncontrolled development. Although the overall type and level of development must be strictly limited, some parts of the Forest Areas are more suitable for development than others provided that such development is subject to strict environmental performance standards.

(c) Agricultural Production Areas are areas of active agricultural use, together with adjacent areas of prime and unique agricultural soils or soils of statewide significance, which are suitable for expansion of agricultural operations. In order to maintain agriculture as an essential element of the Pinelands region, the level and type of development must be controlled to prevent incompatible land uses from infringing upon these important land resources.

(d) Special Agricultural Production Areas are discrete areas within the Preservation Area District which are primarily used for berry agriculture or horticulture of native Pinelands plants. They represent a unique and essential element of the Pinelands economy and, because they are generally compatible with the ecological values of the Preservation area, are a part of the essential character of the Pinelands. In order to maintain these agricultural uses in a manner which recognizes their integral relationship to the Preservation Area, very strict limits on non-agricultural land uses are necessary.

(e) Rural Development Areas are areas which are, on an overall basis, slightly modified and may be suitable for limited future development subject to strict adherence to the environmental performance standards of N.J.A.C. 7:50-6. They represent a balance of environmental and development values that is intermediate between the pristine Forest Areas and existing growth areas; however, some parts are more suitable for development than others due to existing development and an absence of critical ecological resources.

(f) Pinelands Villages and Towns are existing spatially discrete settlements in the Pinelands. These traditional communities are appropriate for infill residential, commercial and industrial development that is compatible with their existing character.

1. Pinelands Area Villages are:

- i. Bamber Lake;
- ii. Beckerville;
- iii. Belcoville;
- iv. Belleplain;
- v. Blue Anchor;
- vi. Brookville;
- vii. Cassville;
- viii. Chatsworth;
- ix. Collings Lake;
- x. Cologne-Germania;
- xi. Cumberland-Hesstown;
- xii. Delmont;
- xiii. Dennisville;

- xiv. Dorchester-Leesburg;
- xv. Dorothy;
- xvi. Eldora;
- xvii. Elm;
- xviii. Elwood;
- xix. Estell Manor;
- xx. Folsom;
- xxi. Green Bank;
- xxii. Indian Mills;
- xxiii. Jenkins;
- xxiv. Lake Pine;
- xxv. Landisville;
- xxvi. Laureldale;
- xxvii. Legler;
- xxviii. Lower Bank;
- xxix. Milmay;
- xxx. Mizpah;
- xxxi. Nesco-Westcoatville;
- xxxii. New Gretna;
- xxxiii. New Lisbon;
- xxxiv. Newtonville;
- xxxv. North Dennis;
- xxxvi. Petersburg;
- xxxvii. Pomona;
- xxxviii. Port Elizabeth-Bricksboro;
- xxxix. Port Republic;
- xl. Richland;
- xli. Sweetwater;
- xl.ii. Tabernacle;
- xl.iii. Tansboro;
- xl. iv. Taunton Lake;
- xl. v. Tuckahoe;
- xl. vi. Vanhiseville;
- xl. vii. Vincentown;
- xl. viii. Warren Grove;
- xl. ix. Waterford Works;
- l. Weekstown; and
- li. Winslow.

2. Villages located within the Pinelands National Reserve but outside of the Pinelands Area are:

- i. Clermont;
- ii. Corbin City;
- iii. Goshen;
- iv. Heislerville;
- v. Oceanville;
- vi. Smithville;
- vii. South Dennis;
- viii. Swainton; and
- ix. West Creek.

3. Pinelands Area Towns are:

- i. Buena;
- ii. Egg Harbor City;
- iii. Hammonton;
- iv. Lakehurst;
- v. Whiting; and
- vi. Woodbine.

4. Towns located within the Pinelands National Reserve but outside of the Pinelands Area are:

- i. Tuckerton.

(g) Regional Growth Areas are areas of existing growth or lands immediately adjacent thereto which are capable of accommodating regional growth influences while protecting the essential character and environment of the Pinelands, provided that the environmental objectives of Subchapter 6 are implemented through municipal master plans and land use ordinances.

(h) Military and Federal Installation Areas are federal enclaves within the Pinelands. They represent a unique element of the Pinelands landscape and are a substantial resource to the region and the state, provided that their activities preserve and protect the unique natural, ecological, agricultural, archaeological, historic, scenic, cultural and recreational resources of the Pinelands.

Amended by R.1990 d.170, effective March 19, 1990.
See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

In (f), added Vincentown.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Case Notes

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).

Regional Growth Area definition cited. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certification vacated as moot 103 N.J. 689, 512 A.2d 490 (1986).

7:50-5.14 Minimum standards for municipal designation of Special Agricultural Production Areas

(a) Special Agricultural Production Areas may be designated at the option of a municipality, or upon nomination to the Commission by an individual prior to certification, in the Preservation Area District in accordance with the following criteria:

1. The area to be designated is primarily agricultural in use, is of a size capable of sustaining active agricultural operation taking into account adjacent and surrounding uses and the availability of agricultural support uses, and includes surrounding actively used agricultural lands in so far as necessary to ensure that a viable, long term agricultural area exists; and

2. The area may include land in an adjacent municipality also designated under this section; and

3. The area is primarily comprised of lands used for active berry agricultural or active native horticultural use and lands which are essential to and held for the protection of active berry agricultural or active native horticultural uses; and

4. Where a nomination is made by an individual prior to certification, the Commission shall conduct a hearing pursuant to N.J.A.C. 7:50-4.3.

7:50-5.15 Minimum standards for municipal designation of Agricultural Production Areas

(a) Agricultural Production Areas may be designated in the Protection Area at the option of a municipality or upon nomination to the Commission by an individual prior to certification, in accordance with the following criteria:

1. The area to be designated is primarily agricultural in use, is of a size capable of sustaining active agricultural operation taking into account adjacent and surrounding uses and the availability of agricultural support uses, and includes surrounding actively used agricultural lands in so far as necessary to ensure that a viable, long term agricultural area exists; and

2. The area may include land in an adjacent municipality also designated under this section; and

3. The area is primarily comprised of lands used for active agricultural use including lands which are held as buffers, water conservation areas or for other protection of active agricultural uses; and

4. Where a nomination is made by an individual prior to certification, the Commission shall conduct a hearing pursuant to N.J.A.C. 7:50-4.3.

7:50-5.16 Guidelines for delineation of boundaries of Pinelands Villages

(a) In the preparation of municipal master plans and land use ordinances, municipalities shall designate the boundaries of Pinelands Villages; provided that the designated village area shall maintain its existing character and does not contain more vacant land than built land, nor provide for an additional increment of development which is greater than the number of non-accessory structures that currently exist in the village. For the purposes of this requirement, built land for residential structures shall be calculated as the existing lot size or 3.2 acres, whichever is less, and built land for non-residential structures shall be calculated as the lot size required by existing zoning at the time of adoption of this Plan. Municipalities should also consider the following guidelines in designating village boundaries to the greatest extent practicable:

1. The village area should include the center of the village, typically located at or near the intersection of two roads, the developed lands contiguous to the village center, and other cleared lands not in active agricultural use.
2. In the Preservation Area District and Forest Areas the village area should not contain more than 50 percent forested land.
3. In Agricultural Production Areas and Forest Areas the village area should not include active agricultural lands except for isolated areas of less than 10 acres.
4. Village boundaries along roads leading to and from the village center should not be extended more than $\frac{1}{2}$ mile from the village center.
5. Village delineations should not intrude into wetlands vegetation associations.
6. Villages should include areas of high septic suitability contiguous to developed lands.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-5.17 Incorporation of Pinelands Management Areas into municipal master plans and land use ordinances

In order to be certified under the provisions of N.J.A.C. 7:50-3, Part IV, a municipal master plan or land use ordinance must incorporate and implement the minimum standards of this subchapter governing the distribution and intensity of land uses.

7:50-5.18 Minimum residential allocation of density in wetlands

Each municipality shall allocate a minimum residential density to all wetlands that is at least one-fifth of the average gross residential density of uplands located in the same management area as the wetlands.

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-5.19 Cluster development

(a) Clustering of residential development on parcels located within the Regional Growth Areas and Rural Development Areas is encouraged, provided that the densities established in the certified municipal ordinance are not exceeded and that the development otherwise conforms to the standards of this Plan.

(b) Clustering of residential development on parcels located within more than one Pinelands management area may be permitted, provided that:

1. The parcel in question is contiguous;
2. The portion of the parcel to be developed is located within the management area with the highest assigned residential density;
3. The amount of the development proposed does not exceed that which would be permitted separately in each management area as determined by application of the standards contained in this subchapter and in N.J.A.C. 7:50-6.84;
4. The minimum lot area requirements of the management area in which the portion of the parcel to be developed is located are met; and
5. If any portion of the parcel is located within the Regional Growth Area, opportunities for the use of Pinelands Development Credits established pursuant to N.J.A.C. 7:50-5.28(a)3 are not reduced as a result of the cluster development.

New Rule, R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-5.20 (Reserved)**PART III—MINIMUM STANDARDS FOR LAND USE DISTRIBUTION AND INTENSITIES****7:50-5.21 Purpose**

In order to ensure the long-term integrity of the Pinelands environment while accommodating regional growth influences, the Pinelands Commission finds that it is appropriate and necessary to establish minimum standard governing the character, location and magnitude of development and the use of land in the Pinelands.

7:50-5.22 Minimum standards governing the distribution and intensity of development and land use in the Preservation Area District

(a) The following uses shall be permitted in the Preservation Area District:

1. Residential dwelling units in accordance with the cultural housing provisions of N.J.A.C. 7:50-5.32.

2. Berry agriculture and horticulture of native plants and other agricultural activities compatible with the existing soil and water conditions that support traditional Pinelands berry agriculture.

3. Forestry.
4. Beekeeping.
5. Fish and wildlife management.
6. Low intensity recreational uses, provided that:

i. The parcel proposed for low intensity recreational use has an area of at least 50 acres;

ii. The recreational use does not involve the use of motorized vehicles except for necessary transportation;

iii. Access to bodies of water is limited to no more than 15 linear feet of frontage per 1,000 feet of water body frontage;

iv. Clearing of vegetation, including ground cover and soil disturbance, does not exceed five percent of the parcel; and

v. No more than one percent of the parcel will be covered with impermeable surfaces.

7. Pinelands Development Credits.

(b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in the Preservation Area District:

1. Agricultural employee housing as an element of, and accessory to, an active agricultural operation.

2. Expansion of intensive recreational uses, provided that:

i. The intensive recreational use was in existence on February 7, 1979 and the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;

ii. The use is necessary to achieve recreational use of a particular element of the existing Pinelands environment; and

iii. The use is environmentally and aesthetically compatible with the character of the Preservation Area District and the characteristics of the particular basin in which the use is to be located, taking into consideration the proportion of cleared and developed land, ambient water quality, ecologically sensitive areas and unique resources, and will not unduly burden available public services.

3. Campgrounds, in accordance with the standards of (a)6 above, provided that the parcel will contain no more than one campsite per two acres and that, if clustered, the campsites not exceed a net density of six per acre.

4. Public service infrastructure which is necessary to serve only the needs of the Preservation Area District uses. Centralized waste water treatment and collection facilities shall be permitted to service the Preservation Area District only in accordance with N.J.A.C. 7:50-6.84(a)2. Communication cables not primarily intended to serve the needs of the Preservation Area District may be permitted provided that they are installed within existing developed rights of way and are installed underground or are attached to road bridges, where available, for the purpose of crossing water bodies or wetlands.

5. Continuation of existing resource extraction operations in accordance with the standards of N.J.A.C. 7:50-6, Part VI.

6. Signs.

7. Infill areas: Residential dwellings and commercial uses on lots existing as of January 14, 1981 of at least one acre in size within an area designated by a municipality in its ordinance in accordance with the following criteria:

i. The area must have direct access to an existing improved public road;

ii. The area must exhibit a compact pattern of existing development, generally exhibited by more than 20 principal structures and the boundary shall generally conform to that of the existing developed area so that extensive amounts of adjoining vacant land are not included;

iii. The area must contain vacant lots of at least one acre in size or smaller lots which could reasonably be assembled into one acre or greater lots; and

iv. Commercial uses shall be limited to those specific portions of the area which are predominantly occupied by existing commercial uses.

8. Accessory uses.

9. Home occupations.

10. Local communications facilities, provided that the standards of N.J.A.C. 7:50-5.4(c) are met.

(c) No residential dwelling shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.32.

(d) Minimum lot areas for non-residential structures shall be determined by application of the standards contained in N.J.A.C. 7:50-6.84(a)4 whether or not the lot is to be served by a centralized waste water treatment or collection facility pursuant to (b)4 above, provided, however, that no such structure shall be located on a parcel of less than one acre.

Amended by R.1988 d.405, effective September 19, 1988.

See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

Added text in (b)4, "Communication cables not . . ."; added (c) and (d).

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d.449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).
Added (b)10.

Case Notes

Application for operation of roadside produce stand denied as the owner of the proposed stand did not intend to engage in agricultural production on grounds near or attached to the proposed stand site. *Hanoverland Industries v. Pinelands Commission*, 8 N.J.A.R. 529 (1985).

7:50-5.23 Minimum standards governing the distribution and intensity of development and land use in Forest Areas

(a) The following uses shall be permitted in a Forest Area:

1. Residential dwelling units in accordance with the cultural housing provisions of N.J.A.C. 7:50-5.32.
2. Residential dwelling units at municipally designated densities provided that the total number of dwelling units authorized by a municipality does not exceed an average of one dwelling unit for every 15.8 acres of privately owned, undeveloped land which is not defined in this Plan as wetlands. The Executive Director shall maintain a current record of residential units zoned in each certified municipality pursuant to this section.
3. Agriculture;
4. Forestry;
5. Low intensity recreational uses, provided that:
 - i. The parcel proposed for low intensity recreational use has an area of at least 50 acres;
 - ii. The recreational use does not involve the use of motorized vehicles except for necessary transportation;
 - iii. Access to bodies of water is limited to no more than 15 linear feet of frontage per 1,000 feet of water body frontage;
 - iv. Clearing of vegetation, including ground cover and soil disturbance, does not exceed five percent of the parcel; and
 - v. No more than one percent of the parcel will be covered with impermeable surfaces.

(b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in a Forest Area:

1. Institutional uses, provided that:
 - i. The use does not require or will not generate subsidiary or satellite development in the Forest Area;
 - ii. The applicant has demonstrated that adequate public service infrastructure will be available to serve the use; and
 - iii. The use is primarily designed to serve the needs of the Forest Area in which the use is to be located.

2. Pinelands resource-related industrial or manufacturing uses, excluding resource extraction and uses that rely on sand or gravel as raw products, provided that:

- i. The parcel proposed for development has an area of at least five acres;
- ii. The principal raw material for the proposed use is found or produced in the Pinelands; and
- iii. The use does not require or will not generate subsidiary or satellite development in a Forest Area.

3. Light industrial uses within an area designated by a municipality in accordance with the following criteria:

- i. The area adjoins an existing airport, and the airport is either publicly owned or serves a Pinelands Town;
- ii. The area is predominantly developable under the provisions of subchapter 6 of this Plan; and
- iii. The area is limited in size to that which received approval to develop pursuant to the Pinelands Protection Act prior to January 14, 1981.

4. Campgrounds, not to exceed one campsite per gross acre, provided that the campsites may be clustered at a net density not to exceed 10 campsites per acre.

5. Agricultural commercial establishments, excluding supermarkets, restaurants and convenience stores provided that:

- i. The principal goods or products available for sale were produced in the Pinelands; and
- ii. The sales area of the establishment does not exceed 5,000 square feet.

6. Roadside retail sales and service establishments, provided that:

- i. The parcel proposed for development has roadway frontage of at least 50 feet;
- ii. No portion of any structure proposed for development will be more than 300 feet, measured along a line parallel to the roadway, from the closest part of a roadside retail sales and service establishment structure that was in existence on February 7, 1979; and
- iii. The proposed use will not unduly burden public services, including but not limited to water, sewer and roads.

7. Continuation of existing resource extraction operations in accordance with the standards of N.J.A.C. 7:50-6, Part VI.

8. Landfills.

9. Fish and wildlife management.

10. Agricultural employee housing as an element of, and accessory to, an active agricultural operation.

11. Expansion of intensive recreational uses, provided that:

i. The intensive recreational use was in existence on February 7, 1979 and the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;

ii. The use is necessary to achieve recreational use of a particular element of the existing Pinelands environment; and

iii. The use is environmentally and aesthetically compatible with the character of the Forest Area and the characteristics of the particular basin in which the use is to be located, taking into consideration the proportion of cleared and developed land, ambient water quality, ecologically sensitive areas and unique resources, and will not unduly burden available public services.

12. Public service infrastructure intended to primarily serve only the needs of the Pinelands. Centralized waste water treatment and collection facilities shall be permitted to service the Forest Area only in accordance with N.J.A.C. 7:50-6.84(a)2. Communication cables not primarily intended to serve the needs of the Forest Area may be permitted provided that they are installed within existing developed rights of way and are installed underground or are attached to road bridges, where available, for the purpose of crossing water bodies or wetlands.

13. Home occupations.

14. Signs.

15. Accessory Uses.

16. Airport facilities provided:

i. The airport is publicly owned or serves a Pinelands Town; and

ii. The airport was in existence on January 14, 1981; and

iii. The area of the airport is limited in size to that which existed on January 14, 1981; and

iv. The use will not generate subsidiary or satellite development not otherwise permitted in the Forest Area, Preservation Area District or Special Agricultural Production Area.

17. Local communications facilities, provided that the standards of N.J.A.C. 7:50-5.4(c) are met.

(c) No residential dwelling unit shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.30, 5.31 and 5.32. When the residential density otherwise permitted on a particular parcel of land is clustered on 3.2 acre lots, the remainder of the parcel not assigned to individual residential lots shall be permanently dedicated through recordation of a restriction on the deed to the parcel as open space with no further development permitted. Recreational amenities may be permitted on the deed restricted lands insofar as they are consistent with the types of recreational amenities which could have been developed as accessory uses on the residential lots, absent clustering.

(d) Minimum lot areas for non-residential structures shall be determined by application of the standards contained in N.J.A.C. 7:50-6.84(a)4 whether or not the lot is to be served by a centralized waste water treatment or collection facility pursuant to (b)12 above, provided, however, that no such structure shall be located on a parcel of less than one acre.

Amended by R.1988 d.405, effective September 19, 1988.

See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

Added text to (b)12, "Communications cables not ..."; and added (d).

Amended by R.1990 d.170, effective March 19, 1990.

See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

Added (b)16.

Amended by R.1992 d.91, effective March 2, 1992.

See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

Exception added at (c).

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d.449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Added (b)17.

Case Notes

Certification and approval of master plan which designated forest area as municipal reserve area was improper where municipal reserve area created was immediately adjacent to forest area. In Re: Certification of Master Plan and Land Use Ordinances of Berkeley Twp., 214 N.J.Super. 390, 519 A.2d 901 (App.Div.1986).

Sale of adjoining lot precluded existence of extraordinary hardship, even though property owner was elderly individual suffering from heart problems and diabetes and sought to sell or develop property in order to help support herself and two handicapped sons residing with her. Stark v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 34.

Residents living in former gun club were entitled to waiver of strict compliance from minimum lot size and water quality requirements. Swezey v. Fulford, 92 N.J.A.R.2d (EPC) 1.

7:50-5.24 Minimum standards governing the distribution and intensity of development and land use in Agricultural Production Areas

(a) The following uses shall be permitted in an Agricultural Production Area:

1. Residential dwelling units in accordance with the cultural housing provisions of N.J.A.C. 7:50-5.32.

2. Residential dwelling units not to exceed a gross density of one unit per 10 acres provided that:

i. The dwelling is accessory to an active agricultural operation;

ii. The dwelling is for an operator or employee of the farm who is actively engaged in and essential to the agricultural operation;

iii. The dwelling is located on a lot which is under or qualified for agricultural assessment;

iv. The dwelling is located on a lot which has an active production history or where a farm management plan has been prepared which demonstrates that the property will be farmed as a unit unto itself or as part of another farm operation in the area;

v. A residential lot has not been subdivided from the property within the previous five years unless the lot has been subdivided pursuant to N.J.A.C. 7:50-5.32; and

vi. No more than one lot may be created for a dwelling accessory to an active agricultural operation pursuant to this provision at any one time.

3. Residential dwelling units at a gross density of one unit per 40 acres, provided that:

i. The unit(s) shall be clustered on one acre lots, unless the municipality determines that residential development is not compatible and interferes with the use of the remaining parcel and adjoining lands for agricultural use;

ii. The remainder of the parcel, including all contiguous lands in common ownership, which is not assigned to individual residential lots shall be permanently dedicated for agricultural uses through recordation of a restriction on the deed to the parcel; and

iii. The restriction on the deed to the parcel, including any rights to be redeemed for future residential development, shall be done in accordance with N.J.A.C. 7:50-5, Part IV, so as to sever any Pinelands Development Credits allocated to the parcel.

4. Agriculture.

5. Forestry.

6. Low intensity recreational uses, provided that:

i. The parcel proposed for low intensity recreational use has an area of at least 50 acres;

ii. The recreational use does not involve the use of motorized vehicles except for necessary transportation;

iii. Access to bodies of water is limited to no more than 15 linear feet of frontage per 1,000 feet of water body frontage;

iv. Clearing of vegetation, including ground cover and soil disturbance, does not exceed five percent of the parcel; and

v. No more than one percent of the parcel will be covered with impermeable surfaces.

7. Agricultural commercial establishments excluding supermarkets, restaurants and convenience stores, provided that:

i. The principal goods or products available for sale were produced in the Pinelands; and

ii. The sales area of the establishment does not exceed 5,000 square feet.

8. Agricultural products processing facilities.

9. Pinelands Development Credits.

(b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in an Agricultural Production Area:

1. Roadside retail sales and service establishments, provided that:

i. The parcel proposed for development has roadway frontage of at least 50 feet;

ii. No portion of any structure proposed for development will be more than 300 feet, measured along a line parallel to the roadway, from the closest part of a roadside retail sales and service establishment structure that was in existence on February 7, 1979; and

iii. The proposed use will not unduly burden public services, including but not limited to water, sewer and roads.

2. Pinelands resource-related industries, excluding resource extraction and uses that rely on sand or gravel as raw products, provided that:

i. The parcel proposed for development has an area of at least five acres;

ii. The principal raw material for the proposed use is found or produced in the Pinelands; and

iii. The use does not require or will not generate subsidiary or satellite development in an Agricultural Production Area.

3. Airports and heliports which are accessory to agricultural uses and are used exclusively for the storage, fueling, loading and operation of aircraft as a part of an ongoing agricultural operation.

4. Light industrial uses within an area designated by a municipality in accordance with the following criteria:

i. The area adjoins a publicly owned airport;

ii. The area is predominantly developable under the provisions of subchapter 6; and

iii. The area is limited in size to that which is no greater in size than the airport.

5. Fish and wildlife management.

6. Agricultural employee housing as an element of, and accessory to, an active agricultural operation.

7. Expansion of intensive recreational uses, provided that:

i. The intensive recreational use was in existence on February 7, 1979 and the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;

ii. The use is necessary to achieve recreational use of a particular element of the existing Pinelands environment; and

iii. The use is environmentally and aesthetically compatible with the character of the Agricultural Production Area and the characteristics of the particular basin in which the use is to be located, taking into consideration the proportion of cleared and developed land, ambient water quality, ecologically sensitive areas and unique resources, and will not unduly burden available public services.

8. Landfills.

9. Public service infrastructure except that centralized waste water treatment and collection facilities shall be permitted to service the Agricultural Production Area only in accordance with N.J.A.C. 7:50-6.84(a)2. Communication cables not primarily intended to serve the needs of Agricultural Production Areas may be permitted provided that they are installed within existing developed rights of way and are installed underground or are attached to road bridges, where available, for the purpose of crossing water bodies or wetlands.

10. Home occupations.

11. Signs.

12. Accessory Uses.

13. Airport facilities provided:

i. The airport is publicly owned or serves a Pinelands Town; and

ii. The airport was in existence on January 14, 1981; and

iii. The area of the airport is limited in size to that which existed on January 14, 1981; and

iv. The use will not generate subsidiary or satellite development not otherwise permitted in the Forest Area, Preservation Area District, Special Agricultural Production Area or Agricultural Production Area.

14. Local communications facilities, provided that the standards of N.J.A.C. 7:50-5.4(c) are met.

(c) No residential dwelling unit shall be located on a lot of less than one acre.

(d) Minimum lot areas for non-residential structures shall be determined by application of the standards contained in N.J.A.C. 7:50-6.84(a)4 whether or not the lot is to be served by a centralized waste water treatment or collection facility pursuant to (b)9 above, provided, however, that no such structure shall be located on a parcel of less than one acre.

Amended by R.1988 d.405, effective September 19, 1988.

See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

Added text to (b)9, "Communications cables not . . ."; and added (d).

Amended by R.1990 d.170, effective March 19, 1990.

See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

In (a)2v, added subdivision reference; added 2vi and (b)13.

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d.449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Added (b)14.

Case Notes

Pinelands Protection Act and implementing regulations do not violate takings clause. *Gardner v. New Jersey Pinelands Com'n*, 125 N.J. 193, 593 A.2d 251 (1991).

Pinelands comprehensive management plan is not an illegal exaction. *Gardner v. New Jersey Pinelands Com'n*, 125 N.J. 193, 593 A.2d 251 (1991).

Nonfarm housing limitations are not a taking or partial taking of property. *Gardner v. New Jersey Pinelands Com'n*, 227 N.J.Super. 396, 547 A.2d 725 (Ch.1988), affirmed 235 N.J.Super. 382, 562 A.2d 812, certification granted 117 N.J. 663, 569 A.2d 1355, affirmed 125 N.J. 193, 593 A.2d 251.

7:50-5.25 Minimum standards governing the distribution and intensity of development and land use in Special Agricultural Production Areas

(a) The following uses shall be permitted in a Special Agricultural Production Area:

1. Residential dwelling units in accordance with the cultural housing provisions of N.J.A.C. 7:50-5.32.

2. Berry agriculture and horticulture of native plants and other agricultural activities compatible with the existing soil and water conditions that support traditional Pinelands berry agriculture;

3. Beekeeping;

4. Forestry;

5. Fish and wildlife management;

6. Pinelands Development Credits.

(b) In addition to the uses permitted under (a) above, a municipality may permit, at its option, the following uses in a Special Agricultural Production Area:

1. Residential dwelling units provided that the dwelling is:

i. Accessory to an active agricultural operation;

ii. For an operator or employee of the farm who is actively engaged in and essential to the agricultural operation;

iii. To be located on a parcel of land of at least 40 acres in size which is under or qualified for agricultural assessment; and

iv. Located on a property which has an active production history or where a farm management plan has been prepared which demonstrates that the property will be farmed as a unit unto itself or as part of another farm operation in the area.

2. Agricultural employee housing as an element of, and accessory to, an active agricultural operation;

3. Public service infrastructure which is necessary to serve only the needs of the Special Agricultural Production Area uses. Centralized waste water treatment and collection facilities shall be permitted to service the Special Agricultural Production Area only in accordance with N.J.A.C. 7:50-6.84(a)2. Communication cables not primarily intended to serve the needs of Special Agricultural Production Areas may be permitted provided that they are installed within existing developed rights of way and are installed underground or are attached to road bridges, where available, for the purpose of crossing water bodies or wetlands.

4. Home occupations;

5. Accessory uses;

6. Signs; and

7. Local communications facilities, provided that the standards of N.J.A.C. 7:50-5.4(c) are met.

(c) No residential dwelling unit shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.32.

(d) Minimum lot areas for non-residential structures shall be determined by application of the standards contained in N.J.A.C. 7:50-6.84(a)4 whether or not the lot is to be served by a centralized waste water treatment or collection facility pursuant to (b)3 above, provided, however, that no such structure shall be located on a parcel of less than one acre.

Amended by R.1988 d.405, effective September 19, 1988.

See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

Added text in (b)3, "Communications cables not . . ."; and added (d).

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d.449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Added (b)7.

7:50-5.26 Minimum standards governing the distribution and intensity of development and land use in Rural Development Areas

(a) Residential dwelling units at municipally designated densities shall be permitted provided that the total number of dwelling units authorized by a municipality does not exceed one dwelling unit for every 3.2 acres of privately owned undeveloped land which is not defined in this Plan as wetland.

(b) In addition to the residential uses permitted under (a) above, a municipality may permit any use which is compatible with the essential character of the Pinelands environment and is similar in character, intensity and impact to the following uses:

1. Agriculture;

2. Agricultural employee housing as an element of, and accessory to, an active agricultural operation;

3. Forestry;

4. Recreational facilities, other than amusement parks;

5. Agricultural products sales establishments;

6. Agricultural processing facilities and other light industrial uses;

7. Roadside retail sales and service establishments;

8. Resource extraction operations;

9. Landfills;

10. Public service infrastructure except that centralized waste water treatment and collection facilities shall be permitted to service the Rural Development Area only in accordance with N.J.A.C. 7:50-6.84(a)2;

11. Institutional uses;

12. Community commercial uses;

13. Signs;

14. Accessory uses; and

15. Local communications facilities, provided that the standards of N.J.A.C. 7:50-5.4(c) are met.

(c) No residential dwelling unit shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.30, 5.31 and 5.32. A municipality may also permit the residential density otherwise permitted on a particular parcel of land to be clustered on one acre lots if the remainder of the parcel not assigned to individual residential lots is permanently dedicated through recordation of a restriction on the deed to the parcel as open space with no further development permitted. Recreational amenities may be permitted on the deed restricted lands insofar as they are consistent with the types of recreational amenities which could have been developed as accessory uses on the residential lots, absent clustering.

(d) Minimum lot areas for non-residential structures shall be determined by application of the standards contained in N.J.A.C. 7:50-6.84(a)4 whether or not the lot is to be served by a centralized waste water treatment or collection facility pursuant to (b)10 above, provided, however, that no such structure shall be located on a parcel of less than one acre.

Amended by R.1988 d.405, effective September 19, 1988.

See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

Added (d).

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d.449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Added (b)15.

Case Notes

Parcel not have beneficial use; extraordinary hardship existed entitling property owner to waiver of Pinelands Comprehensive Manage-

ment Plan requirements; conditions imposed. *Christensen v. New Jersey Pinelands Commission*, 93 N.J.A.R.2d (EPC) 5.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with density requirements, seasonal high water table requirement, and wetlands protection requirements. *Summonte v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 9.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with lot size requirements. *Egenstaffer v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 3.

7:50-5.27 Minimum standards governing the distribution and intensity of development and land use in Pinelands Villages and Towns

(a) Any use not otherwise limited pursuant to N.J.A.C. 7:50-6 may be authorized in a Pinelands Village or Town, provided that:

1. Public service infrastructure necessary to support the use is available, or can be provided without any development in the Preservation Area District, Special Agricultural Production Area, or a Forest Area; and

2. The character and magnitude of the use is compatible with existing structures and uses in the Village or Town.

(b) No residential dwelling units or nonresidential use shall be located on a parcel of less than one acre unless served by a centralized waste water treatment plant.

(c) Any municipal variance approval which grants relief from density or lot area requirements for a residential or principal non-residential use shall require that Pinelands Development Credits be used for all dwelling units or lots in excess of that permitted without the variance. This requirement shall not apply to use variances which authorize development on lots which conform to the area requirements for the principal uses normally permitted in the zone.

Amended by R.1992 d.91, effective March 2, 1992.

See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

New (c) added.

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-5.28 Minimum standards governing the distribution and intensity of development and land use in Regional Growth Areas

(a) Any use not otherwise limited pursuant to N.J.A.C. 7:50-6 may be permitted in a Regional Growth Area, provided that:

1. Except as provided in (a)2, 3, 4, 5, 6 and 7 below and Part IV of this subchapter, the total number of dwelling units authorized by a municipality for a Regional Growth Area shall be equal to and not exceed the following density per acre of developable land:

i. In Barnegat Township: 2.0 dwelling units per acre.

ii. In Beachwood Borough: 3.5 dwelling units per acre.

iii. In Berkeley Township: 2.0 dwelling units per acre.

iv. In Berlin Borough: 2.0 dwelling units per acre.

v. In Berlin Township: 2.0 dwelling units per acre.

vi. In Chesilhurst Borough: 1.125 dwelling units per acre.

vii. In Dennis Township: 1.0 dwelling unit per acre.

viii. In Dover Township: 3.5 dwelling units per acre.

ix. In Eagleswood Township: 2.0 dwelling units per acre.

x. In Egg Harbor Township: 3.5 dwelling units per acre.

xi. In Evesham Township: 2.0 dwelling units per acre.

xii. In Galloway Township: 2.5 dwelling units per acre.

xiii. In Hamilton Township: 3.5 dwelling units per acre.

xiv. In Jackson Township: 3.0 dwelling units per acre.

xv. In Lacey Township: 3.5 dwelling units per acre.

xvi. In Little Egg Harbor Township: 3.5 dwelling units per acre.

xvii. In Manchester Township: 3.5 dwelling units per acre.

xviii. In Medford Township: 1.0 dwelling unit per acre.

xix. In Medford Lakes Borough: 3.0 dwelling units per acre.

xx. In Monroe Township: 2.0 dwelling units per acre.

xxi. In Ocean Township: 3.5 dwelling units per acre.

xxii. In Pemberton Township: 2.0 dwelling units per acre.

xxiii. In Shamong Township: 1.0 dwelling unit per acre.

xxiv. In Southampton Township: 1.0 dwelling unit per acre.

xxv. In South Toms River Borough: 3.5 dwelling units per acre.

xxvi. In Stafford Township: 3.5 dwelling units per acre.

xxvii. In Tabernacle Township: 1.0 dwelling unit per acre.

xxviii. In Upper Township: 1.0 dwelling unit per acre.

xxix. In Waterford Township: 2.25 dwelling units per acre.

xxx. In Winslow Township: 1.125 dwelling units per acre.

2. For purposes of this section, developable lands are those privately held, non-wetland lands with a depth to seasonal high water table of greater than five feet. Where sewer systems are available, lands with a depth to seasonal high water table exceeding 1.5 feet shall also be considered developable. Developable land may exclude lands which are zoned exclusively for commercial or industrial use, predominantly developed as such, and which otherwise form a part of a reasonable balance between industrial or commercial zoned property and residential zoned lands.

3. The land use element of a municipal master plan and land use ordinance shall reasonably permit development to occur within a range of densities, provided that the total amount of residential development permitted in (a)1 above is exceeded by at least 50 percent through the use of Pinelands Development Credits; that a reasonable proportion of the density increase permits the development of single family detached residences; and that the residentially zoned districts in which the ranges are established are reasonably expected to be developed within the assigned density ranges.

i. The following guidelines may be used by municipalities in establishing these ranges:

- (1) Less than .5 dwelling units per acre;
- (2) One-half to one dwelling units per acre;
- (3) One to two dwelling units per acre;
- (4) Two to three dwelling units per acre;
- (5) Three to four dwelling units per acre;
- (6) Four to six dwelling units per acre;
- (7) Six to nine dwelling units per acre;
- (8) Nine to twelve dwelling units per acre; and
- (9) Twelve and greater dwelling units per acre.

ii. Municipal master plans or land use ordinances shall provide that development at a density which is greater than the lowest density in each range can be carried out if the increase in density is achieved through a density bonus for use of Pinelands Development Credits.

4. Any municipal variance approval which grants relief from density or lot area requirements shall require that

Pinelands Development Credits be used for all dwelling units or lots in excess of that permitted without the variance.

5. Any municipal variance for an approval of residential development approved in a zone in which residential development is not otherwise permitted shall require that Pinelands Development Credits be used for all dwelling units in such development.

6. Any municipal variance for an approval of nonresidential development in a zone in which the approved nonresidential development is not otherwise permitted, and in which density may be increased through the use of Pinelands Development Credits pursuant to (a)3ii above, shall require that Pinelands Development Credits be used at the maximum rate permitted for Pinelands Development Credit use in the zone in which the development is located. This requirement shall not apply to the expansion of or changes to existing uses in accordance with N.J.A.C. 7:50-5.2 or to uses that were constructed based upon an approval granted pursuant to the provisions of this Plan.

7. Nothing in (a) above is intended to prevent a municipality, as a part of a certified master plan or land use ordinance, from:

i. Employing additional density bonus or incentive programs, provided that such programs do not interfere with nor otherwise impair in any way the required municipal program for use of Pinelands Development Credits; or

ii. Increasing or decreasing by as much as ten percent the total number of dwelling units assigned pursuant to (a)1 above, provided that the Pinelands Development Credit program requirements set forth in (a)3 above are met relative to the adjusted dwelling unit total and provided further that the adjustment is consistent with land tenure patterns, the character of portions of the regional growth area, the provision of infrastructure and community services, and the natural resource characteristics of the area.

(b) No residential dwelling unit or nonresidential use shall be located on a parcel of less than one acre unless served by a centralized waste water treatment plant.

Amended by R.1990 d.170, effective March 19, 1990.
See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

In (a)1vi, xxix and xxx, units per acre; deleted xxx(1). Revised (a)3ii, 4 and 5; added new (a)6 and renumbered 6 as 7.
Amended by R.1992 d.91, effective March 2, 1992.
See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

Language added regarding nonresidential use; term "local" changed to "municipal".

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d.449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Substituted "municipal variance" for "local variance" in (a)5.

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).

Extraordinary hardship; waiver of lot size requirement, seasonal high water table requirement, and ground water nitrate-nitrogen requirement. *Eni v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 31.

The Commission lacked jurisdiction to hear developer's appeal of his voluntary purchase of one-quarter Pinelands development credit. *Cario v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 7.

Residents living in former gun club were entitled to waiver of strict compliance from minimum lot size and water quality requirements. *Swezeny v. Fulford*, 92 N.J.A.R.2d (EPC) 1.

Approval condition requiring waterless toilets on less-than-one-acre residential lots upheld as neither arbitrary, capricious nor unreasonable. *Country Village Homes, Inc. v. Pinelands Commission*, 8 N.J.A.R. 205 (1985).

7:50-5.29 Minimum standards governing the distribution and intensity of development and land use in Military and Federal Installation Areas

(a) Any use associated with the function of the Federal installation may be permitted in a Military and Federal Installation Area, provided that:

1. Where feasible, development shall be located in that portion of the installation located within the Pinelands Protection Area;
2. The use shall not require any development, including public service infrastructure, in the Preservation Area District or in a Forest Area; and
3. All development undertaken by the Federal government substantially meets the standards of N.J.A.C. 7:50-6 of this Plan or an intergovernmental agreement entered into pursuant to N.J.A.C. 7:50-4, Part IV.

(b) Any other public purpose use undertaken by or on behalf of another level of government may be permitted in a Military and Federal Installation Area, provided that:

1. The use is sanctioned by the installation;
2. The use is located within a substantially developed area which is served by a centralized sewer treatment and collection system; and
3. All development meets the standards of N.J.A.C. 7:50-6 or an intergovernmental agreement entered into pursuant to N.J.A.C. 7:50-4, Part IV.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-5.30 Development transfer programs in Forest Areas and Rural Development Areas

(a) Each municipality with land in either a Forest Area or a Rural Development Area shall establish within said area or areas a program which permits residential development on otherwise undersized lots if other land, equivalent to that needed to meet the assigned density, is protected through a permanent deed restriction.

(b) The density transfer programs shall adhere to the following minimum standards:

1. No lot less than one acre can be developed;
2. All parcels involved in the density transfer shall be located within the same Pinelands management area and within the same municipal zoning district;
3. The total acreage of the parcels involved in the density transfer shall at least equal the density required for that zoning district; and
4. Any parcel whose acreage is being utilized to meet the density requirement but which will not be developed shall be permanently dedicated as open space through recordation of a restriction on the deed to the parcel with no further development permitted except agriculture, forestry and low intensity recreational use.

(c) A municipality may adapt the program to its particular circumstances and vary the standards in (b) above provided that the program is otherwise consistent with the land use and density provisions of this subchapter. This may include, but is not limited to, identifying specific areas to receive the development transfers or excluding certain areas from the program considering:

1. Land ownership and subdivision patterns;
2. Infrastructure availability;
3. Environmental constraints; and
4. Protection of important natural resources.

(d) The Pinelands Commission shall not approve any transfer program which:

1. Has extremely limited applicability because of ownership and subdivision patterns or environmental constraints; or
2. Negatively impacts important natural resources including critical subbasins or publicly managed conservation lands.

Amended by R.1988 d.405, effective September 19, 1988.

See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

In (a), changed reference from 4.65 to 4.66.

Repeal and New Rule, R.1992 d.91, effective March 2, 1992.

See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d.449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

7:50-5.31 Minimum standards for substandard lots

(a) A municipality may, as a part of its master plan and land use ordinance prepared and certified under the provisions of N.J.A.C. 7:50-3, exempt the owners of parcels of land within the Protection Area from the density limitations of this Part, provided that:

1. The municipality has identified each lot that will be exempt under the municipal exemption plan or has established a program of registration for the owners of such lots;
2. The dwelling unit will be the principal residence of the applicant;
3. The parcel has been in the continuous ownership of the applicant, a member of his immediate family, or a partnership or corporation made up of members of a qualifying immediate family who collectively own more than a majority interest in such partnership or corporation since February 7, 1979;
4. No lot that was in common ownership with any contiguous land on or after February 7, 1979 is exempt from the density provisions of this Part;
5. No lot of less than one acre will be exempt from the density provisions of this Part; and
6. The development of the lots exempted from the density limitations of this Part will comply with all other minimum standards of this Plan.

(b) A municipality may modify or eliminate one or more of the standards set forth in subsection (a)1 through 4 above, provided that any resulting increase in projected development is offset by a decrease in the densities otherwise permitted in the applicable management area.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-5.32 Special provisions for cultural housing

(a) Residential dwellings on 3.2 acre lots may be permitted within any management area provided that:

1. The dwelling unit will be the applicant's principal place of residence;
2. The applicant has not developed a dwelling unit under this section within the previous five years; and
3. The applicant can demonstrate a cultural, social or economic link to the essential character of the Pinelands under the following tests:
 - i. The parcel of land on which the dwelling is to be located has been in the continuous ownership of the applicant, a member of his immediate family, or a partnership or corporation made up of members of a qualifying immediate family who collectively own more than a majority interest in such partnership or corporation since February 7, 1979; and either
 - ii. The applicant is a member of a two-generation immediate family that has resided in the Pinelands for at least 20 years; or
 - iii. The primary source of the applicant's household income is employment or participation in a Pinelands resource-related activity.

(b) Residential dwelling units on a lot smaller than 3.2 acres existing as of February 8, 1979 or created as a result of an approval granted by the Pinelands Development Review Board or by the Pinelands Commission pursuant to the Interim Rules and Regulations prior to January 14, 1981 which otherwise meets the standards of (a) above provided that:

1. The lot contains at least one acre;
2. The applicant qualifies for and receives a variance from the 3.2 acre lot size requirement from the municipality in which the lot is located;
3. The applicant acquires and redeems 0.25 Pinelands Development Credits in addition to the reduction in the Pinelands Development Credit allocation that will result from the development of the dwelling unit pursuant to N.J.A.C. 7:50-5.43(b)3; and
4. Any Pinelands Development Credits allocated to the lot are reduced pursuant to N.J.A.C. 7:50-5.43(b)3.

Amended by R.1992 d.91, effective March 2, 1992.
See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

New (b) added.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Case Notes

Waiver to subdivide a parcel of land denied by Pinelands Commission; petitioner failed to establish ownership of the land in compliance with N.J.A.C. 7:50-5.32(a)3i. Gerber v. Pinelands Commission, 11 N.J.A.R. 12 (1988).

7:50-5.33 through 7:50-5.40 (Reserved)

PART IV—PINELANDS DEVELOPMENT CREDIT PROGRAM

7:50-5.41 Purpose

If land use and development of the Pinelands is concentrated in Regional Growth Areas, the Pinelands as a region can tolerate additional development without damaging the Pinelands environment. It is the purpose of this Part to facilitate such patterns of growth and development by providing land-owners in the Preservation Area District, Special Agricultural Production Areas, and Agricultural Production Areas with an opportunity to secure an additional beneficial use of their land without the risk of damaging the essential ecological character of the Pinelands.

7:50-5.42 Pinelands Development Credit Program required

In order to be certified under the provisions of N.J.A.C. 7:50-3, Part IV, the master plan and land use ordinances of a municipality which has land in the Preservation Area District, an Agricultural Production Area, a Special Agricultural Production Area, or a Regional Growth Area shall include provisions implementing the Pinelands Development Credit Program.

7:50-5.43 Pinelands Development Credits established

(a) Except for land which is owned by a public agency on January 14, 1981, land which is thereafter purchased by the State for conservation purposes, land which is subject to an easement limiting the use of land to nonresidential uses or land otherwise excluded from entitlement pursuant to (b) below, every parcel of land in the Preservation Area District, an Agricultural Production Area or a Special Agricultural Production Area shall have a use right known as "Pinelands Development Credits" that can be used to secure a density bonus for lands located in Regional Growth Areas.

(b) Pinelands Development Credits are hereby established at the following ratios:

1. In the Preservation Area District, including those areas designated pursuant to N.J.A.C. 7:50-5.22(b)7:

i. Uplands which are undisturbed but currently or previously approved for resource extraction pursuant to this Plan: two Pinelands Development Credits per 39 acres;

ii. Uplands which are mined as a result of a resource extraction permit approved pursuant to this Plan: zero Pinelands Development Credits per 39 acres;

iii. Other uplands: one Pinelands Development Credit per 39 acres; and

iv. Wetlands: two-tenths Pinelands Development Credits per 39 acres.

2. In the Agricultural Production Area and Special Agricultural Production Area:

i. Uplands which are undisturbed but approved for resource extraction pursuant to this Plan: two Pinelands Development Credits per 39 acres;

ii. Uplands which are mined as a result of a resource extraction permit approved pursuant to this Plan: zero Pinelands Development Credits per 39 acres;

iii. Other uplands and areas of active berry agricultural bogs and fields: two Pinelands Development Credits per 39 acres;

iv. Wetlands in active field agricultural use currently and as of February 7, 1979: two Pinelands Development Credits per 39 acres; and

v. Other wetlands: two-tenths Pinelands Development Credits per 39 acres.

3. The allocations established in (b)1 and 2 above shall be reduced as follows:

i. Any parcel of 10 acres or less which is developed for a commercial, industrial, resource extraction, intensive recreation, institutional, campground or landfill use shall not receive Pinelands Development Credit entitlement. For such an improved parcel of more than 10 acres, the area actively used for such use or 10 acres, whichever is greater, shall not receive Pinelands Development Credit entitlement.

ii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each existing dwelling unit on the parcel;

iii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each reserved right to build a dwelling unit on the parcel retained by the owner of the parcel pursuant to N.J.A.C. 7:50-5.44(b).

4. If the allocations established in (b)1 and 2 above are less than one-quarter of a Pinelands Development Credit, the allocation shall be increased to one-quarter of a Pinelands Development Credit if the owner of record of one-tenth or greater acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979 owns a vacant parcel of land that was not in common ownership with any contiguous land on or after February 7, 1979, and the parcel has not been sold or transferred except to a member of the owner's immediate family.

5. The provisions of (b)4 above shall also apply to owners of record of less than one-tenth acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979, provided that said owners acquire vacant, contiguous lands to which Pinelands Development Credits are allocated pursuant to (a) and (b) above which lands, when combined with the acreage of the parcel owned prior to February 7, 1979, total at least one-tenth of an acre.

(c) The owners of parcels of land which are smaller than 39 acres shall have fractional Pinelands Development Credits at the same ratio established in (b) above for the management area in which the parcel is located.

Amended by R.1988 d.405, effective September 19, 1988.

See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

Added "District" to (b)1.

Amended by R.1990 d.170, effective March 19, 1990.

See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

In (b)3, replaced old i and ii with new i through iii; in (b)4, added "less than one-quarter" of a PDC requirement.

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d.449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Substituted "parcel" for "property" throughout section and amended (b)5.

7:50-5.44 Limitations on use of Pinelands Development Credits

(a) No Pinelands Development Credit may be conveyed, sold, encumbered or transferred unless the owner of the land from which the credit has been obtained has received a Pinelands Development Credit Certificate from the New Jersey Pinelands Development Credit Bank pursuant to N.J.A.C. 3:42-3, and has deed restricted the use of the land in perpetuity to those uses set forth in N.J.A.C. 7:50-5.47(b) by recorded deed restriction which is in favor of a public agency or not for profit incorporated organization and specifically and expressly enforceable by the Commission.

(b) Notwithstanding the provisions of (a) above, an owner of a parcel from which Pinelands Development Credits are sold may retain a right for residential development on that parcel, provided that the recorded deed restriction expressly provides for same and that the total allocation of Pinelands Development Credits for that parcel is reduced by .25 Pinelands Development Credits for each reserved right to build a dwelling unit. Subdivision of the parcel shall not be required until such time as the residential development right is exercised.

(c) The bonus density of a parcel of land on which Pinelands Development Credits are used shall not exceed the upper limits of the density range of the municipal zone or district in which the parcel is located.

Amended by R.1990 d.170, effective March 19, 1990.

See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

In (b), added .25 PDC reduction for reserved rights.

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d.449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Substituted "parcel" for "property" throughout section.

7:50-5.45 Pinelands Development Credit bonus multipliers

Pinelands Development Credits which are used for securing a density bonus for parcels of land located in a Regional Growth Area shall yield a bonus of four dwelling units per credit.

7:50-5.46 Aggregation of Pinelands Development Credits

Pinelands Development Credits may be aggregated from different parcels for use in securing a bonus for a single parcel of land in a Regional Growth Area, provided that the density does not exceed the limits of the density range specified in the municipal district in which the parcel is located.

Amended by R.1995 d.449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Substituted "parcel" for "property" throughout section.

7:50-5.47 Recordation of deed restriction

(a) No conveyance, sale or transfer of Pinelands Development Credits shall occur until the municipality with jurisdiction over the parcel of land from which the Pinelands Development Credits were obtained, the agency or organi-

zation to which the restriction is in favor, and the Commission have been provided with evidence of recordation of a restriction on the deed to the land from which the development credits were obtained.

(b) Such deed restriction shall specify the number of Pinelands Development Credits sold and that the parcel may only be used in perpetuity for the following uses:

1. In the Preservation Area District:

- i. Berry agriculture; horticulture of native Pinelands plants; forestry; beekeeping; fish and wildlife management; and low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not exceed five percent of the parcel, and no more than one percent of the parcel will be covered with impermeable surfaces.

- ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, agricultural employee housing as an accessory use may also be specifically permitted in such deed restriction.

2. In Special Agricultural Production Areas:

- i. Berry agriculture; horticulture of native Pinelands plants; forestry; beekeeping; and fish and wildlife management.

- ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, agricultural employee housing as an accessory use may also be specifically permitted in such deed restriction.

3. In Agricultural Production Areas:

- i. Agriculture; forestry; low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not exceed five percent of the parcel, and no more than one percent of the parcel will be covered with impermeable surfaces; agricultural commercial establishments, excluding supermarkets and restaurants and convenience stores, where the principal goods or products available for sale were produced in the Pinelands and the sales area does not exceed 5,000 square feet; and agricultural products processing facilities.

- ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, the following additional uses may be specifically permitted in such deed restriction: airports and heliports accessory to agricultural uses and which are used exclusively for the storage, fueling, loading, and operation of aircraft as part of an ongoing agricultural operation; fish and wildlife management; and agricultural employee housing as an accessory use.

4. In all other Pinelands management areas where Pinelands Development Credits have been allocated pursuant to N.J.A.C. 7:50-4.62(d)2:

i. Agriculture; forestry; and low intensity recreational uses.

(c) No development involving the use of Pinelands Development Credits shall be approved by a local permitting agency until the developer has provided the Commission and the municipality in which the parcel of land to be developed is located with evidence of his ownership of the requisite Pinelands Development Credits; provided, however, that a municipality may grant preliminary subdivision or site plan approval conditioned upon such evidence being presented as a prerequisite to final subdivision or site plan approval. For such a final subdivision or site plan, the developer shall provide evidence of Pinelands Development Credit ownership to secure the same proportion of lots or residential units as was approved for Pinelands Development Credit use in the preliminary approval. Notification of a local permitting agency development approval shall be made to the Pinelands Commission pursuant to N.J.A.C. 7:50-4, and to the New Jersey Pinelands Development Credit Bank in accordance with N.J.A.C. 3:42-3. Redemption of Pinelands Development Credits shall thereafter be accomplished in accordance with N.J.A.C. 3:42-3.6.

Amended by R.1988 d.405, effective September 19, 1988.
See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

Substituted "developer" for "developed" in (c).
Amended by R.1990 d.170, effective March 19, 1990.
See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

In (b)3i, deleted "farm related housing" reference.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Case Notes

Pinelands Protection Act and implementing regulations do not violate takings clause. *Gardner v. New Jersey Pinelands Com'n*, 125 N.J. 193, 593 A.2d 251 (1991).

Pinelands comprehensive management plan is not an illegal exaction. *Gardner v. New Jersey Pinelands Com'n*, 125 N.J. 193, 593 A.2d 251 (1991).

7:50-5.48 through 7:50-5.50 (Reserved)

PART V—MINIMUM STANDARDS FOR MUNICIPAL RESERVE AREAS

7:50-5.51 Purpose

In order to enable counties and municipalities with jurisdiction over land in Rural Development Areas and Regional Growth Areas to plan for an orderly rate and pattern of growth within both areas, the Pinelands Commission hereby establishes a municipal option that may be incorporated in a municipal master plan or land use ordinance which allows a municipality to designate areas in a Rural Development Area or Regional Growth Area as Municipal Reserve Areas. These areas would be eligible for development under the minimum standards established for development and land use in Regional Growth Areas, including use of Pinelands Development Credits at a future date.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-5.52 Designation of Municipal Reserve Areas

(a) A municipality may, in its master plan and land use ordinance, designate lands in Rural Development Areas that are adjacent to or contiguous with a Regional Growth Area or areas of existing growth and development located outside of the Pinelands as Municipal Reserve Areas, provided that the area designated:

1. Does not contain significant amounts of:
 - i. Wetlands as defined in N.J.A.C. 7:50-6, Part I;
 - ii. Somewhat excessively and excessively drained soils as delineated in Plate 9;
 - iii. Active agricultural lands;
 - iv. Aquifer recharge areas as indicated by a depth of the unsaturated zone of 20-30 and 30-40 feet on Plate 4 and not underlain by a clay aquiclude;
 - v. Extreme fire hazard areas as delineated in Plate 11; and
 - vi. Flood-prone areas designated under the Federal Flood Insurance Program.
2. Has a relatively uniform boundary which conforms to physical or environmental features;
3. Is geographically balanced around existing or planned community centers;
4. Is accessible to employment centers, and areas of commercial activity and recreation opportunities;
5. Is not contiguous with a Preservation Area District, Special Agricultural Production Area, Forest Area or Agricultural Production Area and preserves an adequate buffer of low intensity use between the Municipal Reserve Area and such districts;
6. Has available or is planned for full public services including sewer, water, roads, police and fire protection, and schools and libraries.

(b) A municipality may, in its master plan and land use ordinance, designate lands in a Regional Growth Area as Municipal Reserve Areas, provided that sufficient vacant, developable land remains in the municipality's Regional Growth Area to meet the growth needs of the county and the municipality projected for the next five years as determined or approved by the county in which the municipality is located, as well as by the Pinelands Commission, and the area designated:

1. Does not have available and is not planned for sewer service and other essential public services in the next five years;
2. Has a relatively uniform boundary which conforms to physical or environmental features;

- 3. Is contiguous to areas designated for less intense development or is not in close proximity to currently developing areas; and
- 4. Is designated as, and zoned in accordance with the requirements for, Rural Development Areas.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Case Notes

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).

7:50-5.53 Development in Municipal Reserve Areas

(a) A municipal master plan or land use ordinance that designates areas in a Rural Development Area as a Municipal Reserve Area shall include provisions ensuring that development of the reserve area at Regional Growth Area densities will occur only when all of the following conditions are met:

- 1. Adjacent developable land in the Regional Growth Area has been substantially developed in accordance with the land use and management programs provided in this Plan;
- 2. All essential public services are available and;
- 3. The amount of vacant developable land in all Regional Growth Areas in the municipality is insufficient to meet the growth needs of the county and the municipality projected for the next five years as determined or approved by the county in which the reserve area is located, as well as by the Pinelands Commission.

(b) A municipal master plan and land use ordinance that designate areas in a Regional Growth Area as a Municipal Reserve Area shall include provisions ensuring that development of the reserve area at Regional Growth Area densities will automatically be permitted within a period of five years. A municipality may demonstrate that such development should be further delayed because one of the following conditions is met:

- 1. Adjacent developable land in the Regional Growth Area has not yet been substantially developed in accordance with the land use and management programs provided in this Plan;
- 2. All sewer service and other essential public services are not yet reasonably available; or
- 3. The amount of vacant developable land in all other Regional Growth Areas in the municipality is sufficient to meet the growth needs of the county and the municipality projected for the next five years as determined or approved by the county in which the reserve area is located, as well as by the Pinelands Commission.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Case Notes

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).

SUBCHAPTER 6. MANAGEMENT PROGRAMS AND MINIMUM STANDARDS

INTRODUCTION

This subchapter establishes management programs and minimum standards governing development and land use in the Pinelands. In addition, guidelines for county and municipality preparation of management programs for scenic resources and recreation are provided. All the programs are intended to be implemented by the administration of municipal and county master plans and land use ordinances and by State and Federal agencies through the development review procedures established in N.J.A.C. 7:50-4. Prior to certification of county or municipal master plans and land use ordinances, the standards of this subchapter except for those guidelines or optional programs, will be implemented and enforced by the Pinelands Commission. The standards set forth in this subchapter are minimum requirements and a municipality, county, State, or Federal agency may adopt more restrictive regulations, provided that such regulations are compatible with the goals and objectives of this Plan. In such cases, all development must adhere to the more restrictive regulations. In addition to the models specified herein, the Pinelands Commission may utilize other scientifically based models, on a case by case basis, in determining compliance with the standards contained in 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).

PART I—WETLANDS

7:50-6.1 Purpose

Coastal and inland wetlands constitute a vital element of the ecological character of the Pinelands. They are critical habitats for many threatened and endangered plant and animal species and play many other important roles including the maintenance of surface and ground water quality. This program is deemed to be the minimum standards necessary to protect the long-term integrity of wetlands.

7:50-6.2 Wetlands 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 provide for the protection of the integrity of wetlands. 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 wetlands defined in this Part, as would be achieved under the provisions of this Part.

7:50-6.3 Wetlands

Wetlands are lands which are inundated or saturated by water at a magnitude, duration and frequency sufficient to support the growth of hydrophytes. Wetlands include lands with poorly drained or very poorly drained soils as designated by the National Cooperative Soils Survey of the Soil Conservation Service of the United States Department of Agriculture. Wetlands include coastal wetlands and inland wetlands, including submerged lands. The "New Jersey Pinelands Commission Manual for Identifying and Delineating Pinelands Area Wetlands—a Pinelands Supplement to the Federal Manual for Identifying and Delineating Jurisdictional Wetlands," dated January, 1991, as amended, may be utilized in delineating the extent of wetlands based on the definitions of wetlands and wetlands soils contained in this section, N.J.A.C. 7:50-2.11, 6.4 and 6.5.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Case Notes

Substantial impairment under former N.J.A.C. 7:1G does not arise by mere violation of a regulatory standard; degree of violation and relationship to other violation must be considered; development application denied (Commission's Final Decision). *Orleans Builders & Developers v. Pinelands Commission*, 6 N.J.A.R. 258 (1980), appeal dismissed 186 N.J.Super. 432, 453 A.2d 200 (App.Div.1982).

Legislative standard of substantial impairment of the resources of the Pinelands as applied by the Pinelands Commission was of sufficient definiteness to withstand constitutional attack (citing former N.J.A.C. 7:1G-1.11). *Orleans Builders & Developers v. Byrne*, 186 N.J.Super. 432, 453 A.2d 200 (App.Div.1982).

7:50-6.4 Coastal wetlands

(a) Coastal wetlands are banks, low-lying marshes, swamps, meadows, flats, and other lowlands subject to tidal inundation which support or are capable of supporting one or more of the following plants:

1. Salt meadowgrass (*Spartina patens*);
2. Spike grass (*Distichlis spicata*);
3. Black grass (*Juncus gerardi*);
4. Saltmarsh grass (*Spartina alterniflora*);
5. Saltworts (*Salicornia europaea* and *Salicornia bigelovii*);
6. Sea lavender (*Limonium carolinianum*);
7. Saltmarsh bulrushes (*Scirpus robustus* and *Scirpus paludosus* var. *atlanticus*);
8. Sand spurrey (*Spergularia marina*);
9. Switch grass (*Panicum virgatum*);

10. Tall cordgrass (*Spartina pectinata*);
11. Hightide bush (*Iva frutescens* var. *oraria*);
12. Cattails (*Typha angustifolia* and *Typha latifolia*);
13. Spike rush (*Eleocharis rostellata*);
14. Chairmaker's rush (*Scirpus americanus*);
15. Bent grass (*Argostis palustris*);
16. Sweet grass (*Hierochloa odorata*);
17. Wild rice (*Zizania aquatica*);
18. Olney's threesquare (*Scirpus olneyi*);
19. Marsh mallow (*Hibiscus palustris*);
20. Salt reed grass (*Spartina cynosuroides*);
21. Common reed grass (*Phragmites communis*);
22. Pickerel grass (*Pontederia cordata*);
23. Arrowheads (*Sagittaria* spp.);
24. Spatterdock (*Nuphar variegatum*);
25. Red maple (*Acer rubrum*); and
26. Atlantic white cedar (*Chamaecyparis thyoides*).

(b) Coastal wetlands include those lands which are delineated by the New Jersey Department of Environmental Protection on official maps at a scale of 1:2, 400 listed in N.J.A.C. 7:7A-1.13.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.5 Inland wetlands

(a) Inland wetlands include, but are not limited to:

1. Atlantic white cedar swamps which are areas dominated by Atlantic white cedars (*Chamaecyparis thyoides*) and supporting one or more of the following hydrophytic plants:

- i. Red maple (*Acer rubrum*);
- ii. Sweetbay (*Magnolia virginiana*);
- iii. Blackgum (*Nyssa sylvatica*);
- iv. Dangleberry (*Gaylussacia frondosa*);
- v. Highbush blueberry (*Vaccinium corymbosum*);
- vi. Swamp azalea (*Rhododendron viscosum*);
- vii. Fetterbush (*Leucothoe racemosa*);
- viii. Sweet pepperbush (*Clethra alnifolia*);
- ix. Inkberry (*Ilex glabra*);
- x. Pitcher plant (*Sarracenia purpurea*);
- xi. Sundew (*Drosera* spp.);

- xii. Cinnamon fern (*Osmunda cinnamomea*);
- xiii. Royal fern (*Osmunda regalis*); and
- xiv. Sphagnum moss (*Sphagnum* spp.).

2. Hardwood swamps which are areas dominated by red maple (*Acer rubrum*), blackgum (*Nyssa sylvatica*) and/or sweetbay (*Magnolia virginiana*) and supporting one or more of the following hydrophytic plants:

- i. Gray birch (*Betula populifolia*);
- ii. Pitch pine (*Pinus rigida*);
- iii. Atlantic white cedar (*Chamaecyparis thyoides*);
- iv. Sweetgum (*Liquidambar styraciflua*);
- v. Sweet pepperbush (*Clethra alnifolia*);
- vi. Highbush blueberry (*Vaccinium corymbosum*);
- vii. Swamp azalea (*Rhododendron viscosum*);
- viii. Fetterbush (*Leucothoe racemosa*);
- ix. Leatherleaf (*Chamaedaphne calyculata*);
- x. Dangleberry (*Gaylussacia frondosa*);
- xi. Cinnamon fern (*Osmunda cinnamomea*);
- xii. Chain fern (*Woodwardia* spp.); and
- xiii. Rushes (*Juncus* spp.);

xiv. Or other lowland forests dominated by one or more of the following plants:

- (1) Sweetgum (*Liquidambar styraciflua*);
- (2) Pin oak (*Quercus palustris*); and
- (3) Willow oak (*Quercus phellos*).

3. Pitch pine lowlands which are areas dominated by pitch pine (*Pinus rigida*) and supporting one or more of the following hydrophytic plants:

- i. Red maple (*Acer rubrum*);
- ii. Blackgum (*Nyssa sylvatica*);
- iii. Gray birch (*Betula populifolia*);
- iv. Leatherleaf (*Chamaedaphne calyculata*);
- v. Dangleberry (*Gaylussacia frondosa*);
- vi. Sheep laurel (*Kalmia angustifolia*);
- vii. Highbush blueberry (*Vaccinium corymbosum*);
- viii. Sweet pepperbush (*Clethra alnifolia*); and
- ix. Wintergreen (*Gaultheria procumbens*).

4. Bogs which are areas dominated by hydrophytic, shrubby vegetation including:

- i. Cranberry (*Vaccinium macrocarpon*);
- ii. Leatherleaf (*Chamaedaphne calyculata*);

- iii. Sheep laurel (*Kalmia angustifolia*);
- iv. Highbush blueberry (*Vaccinium corymbosum*);
- v. Swamp azalea (*Rhododendron viscosum*);
- vi. Sweet pepperbush (*Clethra alnifolia*);
- vii. Dangleberry (*Gaylussacia frondosa*);
- viii. Staggerbush (*Lyonia mariana*); or

ix. Sphagnum moss (*Sphagnum* spp.), pitcher plant (*Sarracenia purpurea*), sundew (*Drosera* spp.), and sedges (*Carex* spp.) are among the herbaceous plants which are found in bogs. Active cranberry bogs and shrub thickets dominated by leatherleaf (*Chamaedaphne calyculata*) are included in this category.

5. Inland marshes which are areas dominated by hydrophytic grasses (*Graminaea*) and sedges (*Carex* spp.) and which include one or more of the following plants: pickerelweed (*Pontederia cordata*), arrow arum (*Peltandra virginica*), cattail (*Typhus* spp.), and rushes (*Juncus* spp.).

6. Lakes and ponds which are seasonal or permanent standing bodies of water.

7. Rivers and streams which are bodies of water which periodically or continuously contain moving water or which form a link between two bodies of standing water.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Case Notes

Application to resubdivide two existing lots denied for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to establish extraordinary hardship. (Final Decision by Pinelands Commission). *Colon v. Pinelands Commission*, 10 N.J.A.R. 14 (1987).

7:50-6.6 Development prohibited

Development shall be prohibited in all wetlands and wetlands transition areas established pursuant to N.J.A.C. 7:50-6.14 in the Pinelands except as specifically authorized in this Part. Only activities permitted in wetlands pursuant to this Part shall be permitted in wetlands transition areas pursuant to N.J.A.C. 7:50-6.14.

Amended by R.1992 d.91, effective March 2, 1992.
See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

Added language regarding wetlands transition areas.

Case Notes

Developer seeking to build residences on or near wetlands not entitled to hardship waiver; developer permitted to build one single family dwelling. *Martino v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 15.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with density requirements, seasonal high water table requirement, and wetlands protection requirements. *Summonte v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 9.

7:50-6.7 Significant adverse impact

(a) A significant adverse impact shall be deemed to exist where it is determined that one or more of the following modifications of a wetland will have an irreversible effect on the ecological integrity of the wetland and its biotic components including, but not limited to, threatened or endangered species of plants or animals:

1. An increase in surface water runoff discharging into a wetland;
2. A change in the normal seasonal flow patterns in the wetland;
3. An alteration of the water table in the wetland;
4. An increase in erosion resulting in increased sedimentation in the wetland;
5. A change in the natural chemistry of the ground or surface water in the wetland;
6. A loss of wetland habitat;
7. A reduction in wetland habitat diversity;
8. A change in wetlands species composition; or
9. A significant disturbance of areas used by indigenous and migratory wildlife for breeding, nesting, or feeding.

(b) Determinations under (a) above shall consider the cumulative modifications of the wetland due to the development being proposed and any other existing or potential development which may affect the wetland.

(c) The "Buffer Delineation Model for New Jersey Pine-lands Wetlands" dated May, 1985, as amended, (Division of Pinelands Research, Center for Coastal and Environmental Studies, Rutgers—The State University of New Jersey, New Brunswick, New Jersey 08903) may be utilized as a guide in determining the extent of the wetlands transition area necessary so that no significant adverse impact will be deemed to exist pursuant to (a) above.

Amended by R.1988 d.405, effective September 19, 1988.
See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

In (a), added "including, but not . . .", and in (b), changed "effect" to "affect".

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.8 Agriculture and horticulture

Horticulture of native Pinelands species and berry agriculture shall be permitted in all wetlands subject to the requirements of Part V of this subchapter. Beekeeping shall be permitted in all wetlands.

7:50-6.9 Forestry

Forestry shall be permitted in all wetlands subject to the requirements of Part IV of this subchapter.

7:50-6.10 Fish and wildlife management

Fish and wildlife management activities shall be permitted in all wetlands subject to the minimum standards of all other parts of this subchapter; provided that the management activity does not have a significant adverse impact, as set forth in N.J.A.C. 7:50-6.7, on the wetlands in which the activity is carried out; and provided that the activity conforms to all state and federal regulations. On a case by case basis, fish and wildlife management proposals shall be evaluated relative to the scientific research value of the proposal.

7:50-6.11 Low intensity uses

Hunting, fishing, trapping, hiking, boating, and swimming shall be permitted in all wetlands provided that such uses do not involve any structure other than those authorized in N.J.A.C. 7:50-6.12. Other similar low intensity recreational uses shall be permitted provided that any associated development does not have a significant adverse impact, as set forth in N.J.A.C. 7:50-6.7, on the wetland in which the use is carried out.

7:50-6.12 Water-dependent recreational facilities

(a) Docks, piers, moorings, and boat launches for the use of a landowner shall be permitted in all wetlands, provided that the use will not result in a significant adverse impact, as set forth in N.J.A.C. 7:50-6.7, and conforms to all State and Federal regulations.

(b) Commercial or public docks, piers, moorings, and boat launches shall be permitted provided that:

1. There is a demonstrated need for the facility that cannot be met by existing facilities;
2. The development conforms with all state and federal regulations; and
3. The development will not result in a significant adverse impact, as set forth in N.J.A.C. 7:50-6.7.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.13 Linear improvements

(a) Bridges, roads, trails and utility transmission and distribution facilities and other similar linear facilities shall be permitted in wetlands provided that:

1. There is no feasible alternative route for the facility that does not involve development in a wetland or, if none, that another feasible route which results in less significant adverse impacts on wetlands does not exist;
2. The need for the proposed linear improvement cannot be met by existing facilities or modification thereof;
3. The use represents a need which overrides the importance of protecting the wetland;

4. Development of the facility will include all practical measures to mitigate the adverse impact on the wetland; and

5. The resources of the Pinelands will not be substantially impaired as a result of the facility and its development as determined exclusively based on the existence of special and unusual circumstances.

Amended by R.1992 d.91, effective March 2, 1992.

See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

Term "linear" added throughout.

7:50-6.14 Wetland transition areas

No development, except for those uses which are specifically authorized in this subchapter, shall be carried out within 300 feet of any wetland, unless the applicant has demonstrated that the proposed development will not result in a significant adverse impact on the wetland, as set forth in N.J.A.C. 7:50-6.7.

Case Notes

Parcel not have beneficial use; extraordinary hardship existed entitling property owner to waiver of Pinelands Comprehensive Management Plan requirements; conditions imposed. *Christensen v. New Jersey Pinelands Commission*, 93 N.J.A.R.2d (EPC) 5.

Purchase of lot after commonly owned land was subdivided; no extraordinary hardship allowing waiver of wetlands requirements. *Harris v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 45.

Plotted but unbuilt street did not render non-contiguous commonly owned adjoining parcels of land; no hardship waiver from wetlands requirement. *Bisignano v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 36.

Developer seeking to build residences on or near wetlands not entitled to hardship waiver; developer permitted to build one single family dwelling. *Martino v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 15.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with density requirements, seasonal high water table requirement, and wetlands protection requirements. *Summonte v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 9.

Development application denied, in part, for failure to meet minimum standards for wetlands buffer. *Pfeiffer v. Pinelands Commission*, 8 N.J.A.R. 317 (1985).

7:50-6.15 through 7:50-6.20 (Reserved)

PART II—VEGETATION

7:50-6.21 Purpose

Vegetation represents the most visible element of the essential character of the Pinelands and constitutes the fundamental structure of wildlife habitats, including the habitats of several species which are designated as threatened or endangered. The Pinelands landscape is comprised of a mosaic of plant associations which reflects the interaction of water, soil, topography, fire and human influence. The continued integrity of the Pinelands vegetation is essential to the preservation and maintenance of the essential character of the Pinelands. Therefore, vegetation clearing

should be limited to authorized forestry activities, fire hazard mitigation, preparation of agricultural fields, and the minimum clearing necessary to permit construction of development or land use authorized by this Plan. In addition, landscaping materials employed in the Pinelands must be compatible with native vegetation in order to preserve the visual and ecological character of the Pinelands.

7:50-6.22 Vegetation 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 provide for the protection of the integrity of Pinelands vegetation. It is not necessary that a 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 Pinelands vegetation as would be achieved under the provisions of this Part.

7:50-6.23 Vegetation removal and landscaping standards

(a) The clearing of more than 1,500 square feet of vegetation from any parcel of land, other than clearing for agricultural activities, and the development of previously cleared lands shall be authorized only if the applicant can demonstrate:

1. That the removal is necessary to accommodate the development or maintenance of a permitted structure or to carry out a permitted use of the parcel; or
2. That removal is necessary in order to implement the fire management objectives in this Plan; or
3. That removal is necessary to eliminate a pedestrian or vehicular safety hazard; or
4. That removal is necessary to eliminate a hazard to a building; and
5. That specimen trees will not be cleared or removed; and
6. That the cleared area will be landscaped in accordance with the following requirements:

- i. All landscaping as shown on the site plan shall be completed within six months of completion of construction;
- ii. All landscaping shall ensure the stabilization of soils;
- iii. All landscaping shall be conducted with the objective of maximizing native tree and shrub cover and minimizing the need for supplemental water, applications of soil amendments, such as fertilizers and lime, and the use of herbicides, fungicides, and pesticides.
- iv. Native Pinelands trees and shrubs shall be utilized for landscaping; provided, however, that non-native tree and shrub species may be used for foundation plantings provided that the species are adapted to

sandy, acid and nutrient poor conditions characteristic of uncultivated Pinelands soils or that species not of the Heath family (Ericaceae) comprise no more than 20 percent of such plantings. Native plants include:

- (1) Pitch pine;
- (2) Short-leaf pine;
- (3) Black oak;
- (4) Southern red oak;
- (5) White oak;
- (6) Blackjack oak;
- (7) Scrub oak;
- (8) Post oak;
- (9) Chestnut oak;
- (10) Scarlet oak;
- (11) Black huckleberry;
- (12) Dangleberry;
- (13) Sheep laurel;
- (14) American holly;
- (15) Lowbush blueberry;
- (16) Mountain laurel;
- (17) Virginia pine;
- (18) Atlantic white cedar;
- (19) Red cedar;
- (20) Grey birch;
- (21) Sweetbay magnolia;
- (22) Sassafras;
- (23) Trident red maple;
- (24) Blackgum;
- (25) Red chokeberry;
- (26) Black chokeberry;
- (27) Shadbush;
- (28) Bayberry;
- (29) Sweetfern;
- (30) Inkberry;
- (31) Winterberry;
- (32) Sweet pepperbush;
- (33) Arrowwood;
- (34) Swamp azalea;
- (35) Sand myrtle;

- (36) Swamp leucothoe;
- (37) Staggerbush;
- (38) Teaberry;
- (39) Trailing arbutus;
- (40) Bearberry;
- (41) Dwarf huckleberry;
- (42) Highbush blueberry;
- (43) Black highbush blueberry;
- (44) Cranberry;
- (45) Rhododendron maximum.

v. Native Pinelands grasses and non-native species adapted to sandy, acid and nutrient poor conditions characteristic of uncultivated Pinelands soils shall be utilized. In addition, non-native annual species used for temporary cover may be utilized unless mulch is used to stabilize soil. Appropriate species include, but are not limited to:

- (1) Little bluestem;
- (2) Deertongue;
- (3) Red top;
- (4) Switch grass;
- (5) Tall fescue;
- (6) Sheep fescue;
- (7) Chewings fescue;
- (8) Red fescue;
- (9) Smooth brome grass;
- (10) Annual ryegrass; and
- (11) Oats.

vi. Notwithstanding the requirements of (a)6v above, other grasses may be used:

- (1) In areas not exceeding 2,000 square feet per building; and
- (2) In areas for intensive recreational use, when it is demonstrated that alternative grasses are required due to the type and intensity of recreational use.

vii. Managed turfed areas which require supplemental water, application of soil amendments or the use of herbicides, fungicides and pesticides shall be limited as set forth in (a)6vii(1) through (3) below, whether or not such areas are composed of native or non-native grasses. Managed turfed areas shall include those areas planted with non-native grasses in accordance with (a)6vi(1) above. Nothing herein shall be construed as relieving an applicant of the requirement to demonstrate that the clearing of more than 1,500 square feet of vegetation from any parcel of land complies with (a)1 through 5 above. Managed turfed areas shall not exceed the following:

(1) For single family detached dwellings and two-family dwellings, 10,000 square feet for each lot;

(2) For non-residential uses and multi-family dwellings, 25 percent of the parcel being landscaped; and

(3) For intensive recreational uses and for areas that are not intended to be managed once landscaping has been completed, the limitations set forth in (1) and (2) above shall not apply.

(b) A municipality may, as part of its certified land use ordinance, exempt certain areas from the requirements of (a)6iv above provided that these areas contain a predominance of non-Pinelands plant species and are clearly delineated in the land use ordinance.

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d.449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

7:50-6.24 Development prohibited in the vicinity of threatened or endangered plants

(a) No development shall be carried out by any person unless it is designed to avoid irreversible adverse impacts on the survival of any local populations of the following plants, which are hereby found and declared to be threatened or endangered plants of the Pinelands:

1. Sensitive-joint vetch (*Aeschynomene virginica*).
2. Red milkweed (*Asclepias rubra*).
3. Silvery aster (*Aster concolor*).
4. Pickering's morning glory (*Breweria pickeringii*).
5. Pine Barrens reedgrass (*Calamovilfa brevipilis*).
6. Barratt's sedge (*Carex barrattii*).
7. Sickle-leaved golden aster (*Chrysopsis falcata*).
8. Spreading pogonia (*Cleistes divaricata*).
9. Broom crowberry (*Corema conradii*).
10. Rose-colored tickseed (*Coreopsis rosea*).
11. Rushfoil (*Crotonopsis elliptica*).
12. Stiff tick trefoil (*Desmodium strictum*).
13. Knotted spike rush (*Eleocharis equisetoides*).
14. Resinous boneset (*Eupatorium resinum*).
15. Pine Barrens gentian (*Gentiana autumnalis*).
16. Yellow-fringed orchid (*Habenaria ciliaris*).
17. Crested yellow orchid (*Habenaria cristata*).
18. Southern yellow orchid (*Habenaria integra*).
19. Swamp pink (*Helonias bullata*).
20. New Jersey rush (*Juncus caesariensis*).
21. Lily-leaved twayblade (*Liparis loeselii*).
22. Loesel's twayblade (*Liparis loeselii*).
23. Southern twayblade (*Listera australis*).
24. Boykin's lobelia (*Lobelia boykinii*).
25. Canby's lobelia (*Lobelia canbyi*).
26. Hairy ludwigia (*Ludwigia hirtella*).
27. Linear-leaved ludwigia (*Ludwigia linearis*).
28. Climbing fern (*Lygodium palmatum*).
29. Torrey's muhly (*Muhlenbergia torreyana*).
30. Yellow asphodel (*Narthecium americanum*).
31. Floating heart (*Nymphoides cordata*).
32. Narrow panic grass (*Panicum hemitomon*).
33. Hirst's panic grass (*Panicum hirstii*).
34. American mistletoe (*Phoradendron flavescens*).
35. Maryland milkwort (*Polygala mariana*).
36. Slender rattlesnake root (*Prenanthes autumnalis*).
37. Awned meadow beauty (*Rhexia aristosa*).
38. Capitata beakrush (*Rhynchospora cephalantha*).
39. Slender beaked rush (*Rhynchospora inundata*).
40. Knieskern's beaked rush (*Rhynchospora knieskernii*).
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 flexuosa*).

7:50-6.25 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 Time limit on forestry permits

No permit authorizing a forestry operation shall be issued for a period exceeding two years. Nothing in this section shall be construed to prohibit any person from securing additional permits provided that the requirements of this Plan are met.

7:50-6.44 Forestry standards

(a) Forestry shall be authorized throughout the Pinelands provided:

1. That the owners of all property adjoining the property proposed to be harvested are notified at least five days but no earlier than 90 days prior to the harvest and are advised as to where the forestry management plan for the property may be reviewed;
2. That all persons conducting or supervising the forestry operation or transporting harvested wood from the site have in their possession at all times during the operation the approved forestry permit and evidence that they are authorized by the applicant or his agent to conduct the operation; and
3. That access to land proposed for harvesting:
 - i. Is direct;
 - ii. Follows previously established roads and trails to the maximum extent practical;
 - iii. Avoids wetland areas except as are absolutely necessary to harvest wetland species or to gain access to the harvesting site; and
 - iv. Avoids crossing streams with high and unstable banks and those with approaching slopes exceeding 10 percent where alternative crossings exist.
4. That all activities during and after harvesting are carried out in a manner to avoid damage to stream banks and bottoms, erosion, and degradation of water quality, including the following:
 - i. Stream banks at crossings shall be stabilized during and after harvesting;
 - ii. Culverts and bridges shall be temporary in nature;
 - iii. Trees which serve to stabilize stream banks shall be retained; other trees shall be felled to avoid stream banks where practical and winched off such banks where felling occurs;
 - iv. A 25-foot vegetated buffer along streams, ponds, lakes and marshes shall be maintained;
 - v. The use of active and intermittent stream channels for skidding of logs shall be prohibited;
 - vi. Skidding shall not occur within 25 feet of streams, ponds, lakes and marshes except for necessary crossings;

vii. Accessways for forestry activities shall be located at least 100 feet from streams, ponds, lakes and marshes where practical;

viii. Landings shall be located in well drained areas where practical, at least 200 feet from public roads where practical, and at least 200 feet from ponds, lakes and marshes;

ix. Filter strips shall be located between: harvested areas, landings and skid trails; and streams, ponds, lakes and marshes;

x. Water diversion devices shall be installed as necessary to control erosion.

5. That, except for operations of the State Bureau of Forest Management on state owned property, the boundaries of any area proposed to be clear cut be marked at regular intervals not to exceed 100 feet in length or, in the case where selected trees are to be cut, that either the trees to be cut or left standing are clearly marked at the base of each tree.

6. That only those trees which have been selected for harvesting are cut; that all trees are cut to the base; and all practical steps are taken to minimize damage to undesignated trees.

7. That at the conclusion of any harvesting operation:

i. All areas disturbed for access, processing, moving or loading trees shall be regraded to approximate natural slopes and that water diversion devices are installed as necessary in order to avoid erosion;

ii. All accessways shall be closed and devices installed, such as poles, pilings or berms that will preclude use of the accessway;

iii. Bare ground areas shall be stabilized with vegetation where necessary;

iv. All debris shall be removed from streams;

v. All non-vegetative refuse shall be collected; and

vi. All hanging trees shall be removed.

8. That harvesting and reforestation activities shall ensure the regeneration of Atlantic White Cedar in harvested cedar and mixed hardwood/cedar swamps or any other native forest type in other harvested areas; and

9. That harvesting and reforestation in Atlantic White Cedar and hardwood swamps is conducted in the following manner:

i. Atlantic White Cedar will be clear-cut and slash will be managed to create site conditions favorable to regeneration of Atlantic White Cedar;

ii. Reforestation to ensure Atlantic White Cedar regeneration will involve control of competitive hardwood species;

iii. Existing streams shall be cutting boundaries where practical;

iv. Harvesting methods employed shall be those which minimize environmental damage including the use of winches, corduroy roads and helicopters; and

v. Harvesting will occur to the greatest extent practical during dry periods or when the ground is frozen.

10. That the proposed activity does not involve the draining or filling of wetlands.

7:50-6.45 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 planning, 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.

7:50-6.54 Exemption from nuisance ordinances ("Right-to-Farm")

As an element of its agricultural program each municipality shall exempt agricultural operations in any Agricultural Production or Special Agricultural Production Area from all municipal ordinances and regulations which inhibit efficient crop production, including but not limited to ordinances and regulations imposing time limits on operations, dust limits and odor restrictions, except those ordinances and regulations which are strictly necessary for the maintenance of public health.

7:50-6.55 through 7:50-6.60 (Reserved)

PART VI—RESOURCE EXTRACTION

7:50-6.61 Purpose

Sand, gravel, clay, and ilmenite are important Pinelands resources that have been commercially utilized in the past. Such activity can provide a substantial economic benefit to landowners; however, it is critical that such activities do not conflict with other values of the Pinelands. This Part is intended to ensure that extraction activities do not adversely affect long-term ecological values in the Pinelands, and that abandoned extraction sites will be restored so that they will be a functional part of the Pinelands ecosystem.

7:50-6.62 Resource extraction management program

In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal master plan and land use ordinance must contain a program to manage resource extraction operations. It is not necessary that the municipal program incorporate the literal terms of the program set out in this Part; rather, a municipality may adopt alternative and additional techniques which will achieve equivalent protection of the Pinelands as would be achieved under the provisions of this Part.

7:50-6.63 General limitations

(a) Except as expressly authorized in this Plan, the extraction or mining of mineral resources other than sand, gravel, clay and ilmenite is prohibited.

(b) Nothing in this Part shall be construed to authorize resource extraction activities without receiving permits pursuant to this Plan or from complying with the standards of this subchapter.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Law Review and Journal Commentaries

Pinelands—Municipal Land Use. P.R. Chenoweth, 137 N.J.L.J. No. 18, 53 (1994).

Case Notes

Requiring owner of property to register preexisting nonconforming use for sand and gravel extraction did not violate due process. *Uncle v. New Jersey Pinelands Com'n*, 275 N.J.Super. 82, 645 A.2d 788 (A.D. 1994).

Pinelands Protection Act and regulations superceded Municipal Land Use Law. *Uncle v. New Jersey Pinelands Com'n*, 275 N.J.Super. 82, 645 A.2d 788 (A.D.1994).

7:50-6.64 Time limit and scope of resource extraction permits

(a) No permit authorizing resource extraction shall be issued for any period exceeding two years unless a program extending the duration of such permits has been established and certified by the Commission pursuant to N.J.A.C. 7:50-3.39. Such a program may allow permits authorizing resource extraction to be issued for periods exceeding two years, provided that:

1. No permit authorizing resource extraction shall be issued for any period exceeding five years;

2. Every such permit shall be issued subject to the following conditions to ensure conformance with the approved permit:

- i. Operators shall be required to certify, in writing and on an annual basis, to the satisfaction of the local permitting agency and the Commission that all mining, restoration and other activities have been and continue to be conducted in accordance with the approved permit;

- ii. If the local permitting agency or the Executive Director determines that any activity deviates from an approved permit, the operator shall be immediately notified of the deviation;

- iii. The notice shall state the nature of the deviation, order the action necessary to correct it, and set forth the date, time and location of a meeting to be held within 10 days of the notice at which the operator shall present all relevant information concerning the deviation and the action taken or to be taken to correct it;

iv. The order to take corrective action shall specify any activity which must be immediately ceased to prevent direct or indirect aggravation of the deviation or to avoid a danger to the public health, safety or welfare. Such cessation shall continue until the deviation has been resolved to the satisfaction of the local permitting agency and the Executive Director or until an agreement to resolve the deviation has been reached;

v. Any interested person who is aggrieved by any determination of the Executive Director pursuant to (a)2iii or iv above may, within 15 days, appeal the Executive Director's determination to the Pinelands Commission as provided in N.J.A.C. 7:50-4.91(a). The Executive Director shall thereafter conduct a hearing pursuant to N.J.A.C. 7:50-4.3, unless the applicant requests a hearing before an Administrative Law Judge in which case the matter shall be referred to the Office of Administrative Law pursuant to N.J.A.C. 7:50-4.91(b), and submit a hearing report to the Pinelands Commission for a final determination;

vi. Failure to resolve a deviation or to adhere to the terms and conditions of any agreement to resolve a deviation shall constitute sufficient cause for revocation of the permit. Either the local permitting agency or the Executive Director may institute such proceedings. The local permitting agency shall institute such proceedings in accordance with its procedures relative to resource extraction permit approvals. The Executive Director shall institute revocation proceedings in accordance with the procedures of N.J.A.C. 7:50-4.41 and 4.42.

vii. Notwithstanding (a)2i through vi above, permit provisions may also be enforced either by the Pinelands Commission pursuant to the provisions of N.J.A.C. 7:50-8 or by the local permitting agency instituting appropriate enforcement proceedings.

(b) Nothing in (a) above shall be construed to prohibit any person from securing additional permits provided that the requirements of this Part are otherwise met.

(c) Municipalities may approve otherwise permitted structures and uses that are clearly accessory to a resource extraction operation and necessary for on-going operations without the need for a certificate of filing issued pursuant to N.J.A.C. 7:50-4.34, provided that all such structures or uses will be located in a discrete, disturbed area that is encompassed within or in close proximity to the processing area that supports the resource extraction operation. The area must be delineated as part of a resource extraction application that has been submitted to and approved by the local permitting agency and reviewed pursuant to N.J.A.C. 7:50-4.37 or 4.40. Any such local approval shall be subject to review by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.37 and 4.40.

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.65 Specific limitations in the Preservation Area

(a) No resource extraction operations shall be permitted in the Preservation Area District or Special Agricultural Production Areas other than those operations which were registered with the Pinelands Commission on or before January 21, 1981 and received all necessary development permits for resource extraction on or before December 31, 1985.

(b) In no case shall the area of extraction exceed the value given under the category "acreage to be mined" on the mine registration application submitted to the Department of Labor and Industry as of February 7, 1979, or that area approved by a valid municipal permit as of February 7, 1979 in the case of an operation exempted from registration with the Department of Labor and Industry.

Repealed by R.1990 d.170, effective March 19, 1990.

See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

Section was "Application requirements for resource extraction".

New Rule, R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.66 Specific limitations in the Forest Area

(a) No development permit or other approval for resource extraction in the Forest Area shall be approved or issued after December 5, 1994 except as expressly authorized in (b) and (c) below.

(b) An operation which received a valid development approval pursuant to the provisions of this Plan for resource extraction on or after January 14, 1981 but prior to December 5, 1994 may continue to operate, subject to the terms and conditions of the approval. Upon expiration of the approval, extraction operations may be authorized to continue within the limits of the parcel or parcels which were identified in the resource extraction application which was approved pursuant to this Plan.

(c) Any land for which a valid development approval pursuant to the provisions of this Plan for resource extraction has not been issued between January 14, 1981 and December 31, 1992 may be authorized to undertake extraction operations only if a development permit is approved prior to December 5, 1994. In such cases, extraction operations may operate subject to the terms and conditions of the approval. Upon expiration of the approval, extraction operations may continue only within the areas mined and not restored as of the expiration date of the approval.

New Rule, R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.67 Specific limitations in the Agricultural Production Area

No development permit or other approval for resource extraction in the Agricultural Production Area shall be approved or issued after November 2, 1987.

New Rule, R.1994 d.590, effective December 5, 1994.
 See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
 Administrative Correction.
 See: 28 N.J.R. 1379(a).

7:50-6.68 Resource extraction standards

(a) Resource extraction operations shall be approved only if the applicant can demonstrate that the proposed resource extraction operation:

1. Will not result in a substantial adverse impact upon those significant resources depicted on the Special Areas Map, Figure 7.1;
2. Is designed so that no area of excavation, sedimentation pond, storage area, equipment, or machinery or other structure or facility is closer than 200 feet to any property line; unless it can be demonstrated that a distance between 100 and 200 feet will not result in greater off-site environmental impacts;
3. Is to be located on a parcel of land of at least 20 acres;
4. Provides that all topsoil that is necessary for restoration will be stored on the site but not within 200 feet of any property line unless the area proposed for storage is unforested and will be restored; and that the topsoil will be protected from wind and water erosion;
5. Is fenced or blocked so as to prevent unauthorized entry into the resource extraction operation through access roads;
6. Provides ingress and egress to the resource extraction operation from public roads by way of gravel or porous paved roadways;
7. Is designed so that surface runoff will be maintained on the parcel in a manner that will provide for on-site recharge to ground water;
8. Will not involve excavation exceeding 65 feet below the natural surface of the ground existing prior to excavation unless it can be demonstrated that a depth greater than 65 feet will result in no significant adverse impact relative to the proposed final use or on off-site areas;
9. Will be carried out in accordance with an extraction schedule which depicts the anticipated sequence, as well as anticipated length of time that each of the 20 acre units of the parcel proposed for extraction will be worked. This shall not preclude more than one 20 acre unit from being worked at any one time, provided that there is a demonstrated need for additional units, restoration is proceeding on previously mined units and the area of clearing does not exceed that specified in (a)11 below;
10. Will involve restoration of disturbed areas at the completion of the resource extraction operation in accordance with the requirements of N.J.A.C. 7:50-6.67, and the implementation of the restoration plan is secured by a letter of credit, surety bond or other guarantee of performance; and

11. Will not involve clearing adjacent to ponds in excess of 20 acres or an area necessary to complete scheduled operations; or will not involve unreclaimed clearing exceeding 100 acres or 50 percent of the area to be mined, whichever is less, for surface excavation at any time.

Recodified from 7:50-6.66 and amended by R.1994 d.590, effective December 5, 1994.
 See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.69 Restoration standards

(a) All parcels of land which are used for resource extraction operations shall be restored as follows:

1. Restoration shall be a continuous process, and each portion of the parcel shall be restored such that ground cover be established within two years and tree cover established within three years after resource extraction is completed for each portion of the site mined;
2. Restoration shall proceed in the same sequence and time frame set out in the extraction schedule required in N.J.A.C. 7:50-6.66(a)9;
3. All restored areas shall be graded so as to conform to the natural contours of the parcel to the maximum extent practical. Grading techniques that help to control erosion and foster revegetation shall be utilized. The slope of surface of restored surfaces shall not exceed one foot vertical to three feet horizontal except as provided in (a)6 below;
4. Topsoil shall be restored in approximately the same quality and quantity as existed at the time the resource extraction operation was initiated. All topsoil removed shall be stockpiled and used for the next area to be restored unless it is immediately reused for reclamation that is currently underway;
5. Drainage flows, including direction and volume, shall be restored to the maximum extent practical to those flows existing at the time the resource extraction operation was initiated;
6. Any body of water created by the resource extraction operation shall have a shoreline not less than three feet above and three feet below the projected average water table elevation. The shoreline both above and below the surface water elevation shall have a slope of not less than five feet horizontal to one foot vertical. This requirement shall apply to any water body or portion of a water body created after December 5, 1994. For any water body or portion of a water body created prior to December 5, 1994, this requirement shall apply to the extent that it does not require grading of areas which have not been disturbed by mining activities. Where grading would require such disturbance, a reduction in the distance of the graded shoreline above and below the average water table elevation shall be permitted;

7. Slopes beyond a water body's shoreline shall be permitted at the natural angle of repose to the bottom of the pond;

8. All equipment, machinery and structures, except for structures that are useable for recreational purposes or any other use authorized in the area, shall be removed within six months after the resource extraction operation is terminated and restoration is completed;

9. Reclamation shall to the maximum extent practical result in the re-establishment of the vegetation association which existed prior to the extraction activity and shall include:

i. Stabilization of exposed areas by establishing ground cover vegetation; and

ii. Re-establishment of the composition of the natural forest and shrub types that existed prior to the extraction activity through one of the following:

(1) The planting of a minimum of 1,000 one-year-old pitch pine seedlings or other native Pinelands tree species per acre in a random pattern;

(2) Cluster planting of characteristic Pinelands oak species, such as blackjack oak, bear oak, chestnut oak and black oak, and shrubs such as black huckleberry, sheep laurel and mountain laurel, at a spacing sufficient to ensure establishment of these species;

(3) A combination of the planting techniques set forth in (a)9ii(1) and (2) above; or

(4) The use of other planting techniques or native Pinelands species as may be necessary to restore the vegetation association which existed prior to the extraction activity.

10. The letter of credit, surety bond, or other guarantee of performance which secures restoration for each section shall be released after the requirements of (a)1 through 9 above are determined by a certified municipality or the Commission, as appropriate, as being met and is replaced with a maintenance guarantee for a period of two years thereafter.

Recodified from 7:50-6.67 and amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.70 (Reserved)

PART VII—WASTE MANAGEMENT

7:50-6.71 Purpose

The disposal of solid and liquid waste by application to land in the Pinelands represents a substantial threat to surface and ground water quality. It is the purpose of this Part to provide standards to protect the Pinelands from degradation resulting from waste disposal activities.

7:50-6.72 Waste management program

In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal or county master plan and land use ordinance must contain a program for waste management. It is not necessary that the municipal or county program incorporate the literal terms of the program set out in this Part; rather, a municipality or county may adopt alternative or additional management techniques which will achieve the protection of the Pinelands equivalent to that which would be achieved under the provisions of this Part.

7:50-6.73 Landfills prohibited

Except as otherwise provided in this Part, no person shall operate any Landfill within the Pinelands.

7:50-6.74 Existing landfills

(a) Landfill operations that were in lawful use on August 8, 1980 may be continued provided that:

1. No landfill shall be operated within the Preservation Area;

2. Landfills in Regional Growth Areas, Pinelands Towns and Villages, or Rural Development Areas are terminated on August 8, 1990;

3. Landfills in Agricultural Production Areas or Forest Areas are terminated on August 8, 1990, or when the disposal capacity authorized as of January 14, 1981 is exceeded by 25 percent, whichever occurs first.

4. All waste accepted from outside the Pinelands is from Pinelands municipalities or from counties with at least 50 percent of their land area within the Pinelands;

5. The operation of the landfill will meet the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and all adopted and certified district waste management plans;

6. All areas filled to final design elevations shall be capped with an impervious material within one year. Prior to the establishment and filling of new areas, all existing areas shall be filled to final elevation and capped with an impervious material. The type and nature of capping shall be in accordance with the standards of the New Jersey Solid Waste Administration; and

7. Expansion of any existing landfill operation shall only occur if:

i. There are no practical alternative disposal sites outside of the Pinelands;

ii. No feasible alternative disposal techniques are available;

iii. The expansion does not involve the disposal of waste within 2,500 feet of an existing residential use;

iv. The expansion area is lined and includes a leachate collection and treatment system and a methane collection and removal system; and either

v. The expansion will occur only on lands containing adequate clay aquicludes as determined by the Commission in consultation with the New Jersey Solid Waste Administration; or

vi. When there are no lands containing adequate clay aquicludes, all measures necessary to prevent the degradation of ground water shall be reviewed and analyzed. Those measures determined to be most effective to prevent the degradation of ground water shall be implemented.

Law Review and Journal Commentaries

Environmental Law—Solid Waste. P.R. Chenoweth, 137 N.J.L.J. No. 16, 51 (1994).

7:50-6.75 New landfills

(a) Landfills not existing on August 8, 1980 shall be permitted in the Protection Area only if a solid waste management district demonstrates to the Commission that:

1. A new landfill is significantly preferable from an environmental perspective to continuation of an existing landfill;

2. There are no practical alternative disposal techniques available, as demonstrated in a certified solid waste management plan;

3. There are no feasible alternative land sites available outside of the Pinelands;

4. All waste to be accepted is from Pinelands municipalities or from counties with at least 50 percent of their land area within the Pinelands; and

5. The new landfill shall be operated in accordance with N.J.A.C. 7:50-6.74(a)5-7. Except as provided in (c) below, use of the landfill shall be terminated on August 8, 1990.

(b) Notwithstanding (a) above, landfills designed and operated exclusively to accept vegetative wastes may be permitted in Rural Development Areas, Regional Growth Areas, Agricultural Production Areas, and Pinelands Towns and Villages.

(c) Subject to the procedural and substantive requirements of this Plan, the landfill operated by the Cape May County Municipal Utilities Authority that was authorized to stay in operation after August 8, 1990 as a result of waivers of strict compliance previously approved by the Pinelands Commission pursuant to the provisions of this Plan may continue in operation provided that:

1. All landfilling is located within the Pinelands Town management area;

2. All landfilling occurs at the previously approved cells 1A, 1B and 1C and on up to 42 acres of land which are contiguous with those existing cells until the permitted capacity of those areas is reached;

3. The height of cells 1A, 1B and 1C may be increased beyond the currently permitted elevations subject to the approval of the Department of Environmental Protection. The height of any future cells located in the 42 acre area shall be as approved by the Department of Environmental Protection;

4. Except as otherwise permitted by this Part, landfilling is limited to those wastes previously authorized by the Pinelands Commission and the Department of Environmental Protection;

5. Landfill mining operations may occur within the areas authorized for landfilling pursuant to (c)2 above;

6. Prior to May 1, 1996, the Cape May County Municipal Utilities Authority shall impose a deed restriction on all lands owned by it in the Pinelands Area as of April 1, 1996. Said deed restriction shall prohibit any landfilling on said lands except for the areas authorized for landfilling pursuant to (c)2 above and except as may be otherwise specifically authorized pursuant to the provisions of this Plan. Said deed restriction shall be specifically enforceable by the Pinelands Commission;

7. In mitigation for the impacts upon the resources of the Pinelands caused by the landfill expansion and the continued use of the landfill after May 1, 1996, a payment of \$2.04 per ton of waste disposed in the landfill after May 1, 1996 shall be made to the Pinelands Commission by the operator of the landfill. Said payments shall be made until \$2.25 million has been paid to the Pinelands Commission. Said payments shall be made quarterly within 45 days of the end of any quarter, with the first quarter ending on August 1, 1996. As an alternative to said quarterly payments, the Cape May County Municipal Utilities Authority and the Pinelands Commission may agree to the Authority's making a present value payment to the Pinelands Commission of the equivalent, based upon an agreed upon formula, to the \$2.25 million paid quarterly as set forth above. Any such present value payment shall be made prior to May 1, 1996; and

8. Funds transmitted to the Commission pursuant to (c)7 above shall be used solely for the acquisition of conservation and recreation lands throughout the Pinelands National Reserve. The Commission shall devote at least eight percent of those funds to purchases in Cape May County. The Commission, where practicable, will seek matching funds for the funds used for acquisitions in Cape May County.

Amended by R.1996 d.170, effective April 1, 1996.
See: 27 N.J.R. 3532(a), 27 N.J.R. 3895(a), 28 N.J.R. 1848(a).
Added (c).

7:50-6.76 Solid waste transfer stations

(a) Solid waste transfer stations may be permitted provided that:

1. The facility meets all standards and requirements of the Department of Environmental Protection;
2. All waste accepted from outside the Pinelands is from Pinelands municipalities or from counties with at least 50 percent of their land area within the Pinelands; and
3. The facility is located in a Regional Growth Area, Pinelands Town, or Rural Development Area.

(b) Notwithstanding the requirements of (a)2 and 3 above, a facility may be permitted in a Pinelands Village provided that all waste accepted is from the municipality in which the facility is located; or in any other Pinelands management area if the facility is located on the site of an existing landfill which is no longer active when the transfer station is built, and all waste accepted is from the municipality in which the facility is to be located.

7:50-6.77 Categories of wastes prohibited

(a) No hazardous, toxic, chemical, petroleum (including oil spill pollutants), septic or nuclear waste shall be stored, discharged or disposed of on any land within the Pinelands. Liquid or dewatered sludge may only be applied as part of a land application program for agricultural purposes when also approved by the New Jersey Department of Environmental Protection.

(b) Notwithstanding (a) above:

1. Petroleum wastes collected and temporarily stored for delivery to another facility for processing may be permitted in the Pinelands provided that the storage facility is designed and operated in accord with state and federal regulations.
2. Other wastes and byproducts may be temporarily stored at the facility where generated provided that the storage facility is designed and operated in accord with state and federal regulations.

7:50-6.78 Compliance with county, state and federal requirements

No provision of this Plan shall be construed as authorizing any landfill operation in violation of any local, state or federal regulation or plan governing the disposal of waste material, including the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., and associated implementing rules and regulations.

7:50-6.79 and 7:50-6.80 (Reserved)**PART VIII—WATER QUALITY****7:50-6.81 Purpose**

An essential element of the overall ecological value of the Pinelands environment is its extensive surface and ground

water resources of exceptional quality. The Pinelands Protection Act provides that the Plan protect and maintain the quality of surface and ground water through the control of development and land use, and close cooperation and coordination with local, state and federal agencies of government. This management program is intended to protect and preserve surface and ground waters of the Pinelands and to ensure that random and uncontrolled growth and development will not degrade the Pinelands environment. Nothing in this Part applies to agricultural activities except as otherwise provided by state or Federal regulation.

7:50-6.82 Water quality management program required

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 surface and ground water quality in the Pinelands. 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 the equivalent protection of surface and ground water quality as would be achieved under the provisions of this Part.

7:50-6.83 Minimum standards necessary to protect and preserve water quality

(a) All development permitted under this Plan, or under a certified county or municipal master plan or land use ordinance, shall be designed and carried out so that the quality of surface and ground water will be protected and maintained. For the purpose of this Part, agricultural use shall not be considered development.

(b) Except as specifically authorized in this Part, no development which degrades surface or ground water quality or which establishes new point sources of pollution shall be permitted.

(c) No development shall be permitted which does not meet the minimum water quality and potable water standards of the State of New Jersey or the United States.

7:50-6.84 Minimum standards for point and non-point source discharges

(a) The following point and non-point sources may be permitted in the Pinelands:

1. Development of new or the expansion of existing commercial, industrial, and waste water treatment facilities, or the development of new or the expansion of existing non-point sources otherwise permitted in N.J.A.C. 7:50-5, except those specifically regulated in (a)2 through 6 below, provided that:
 - i. There will be no direct discharge into any surface water body;
 - ii. All discharges from the facility or use are of a quality and quantity such that ground water exiting from the parcel of land or entering a surface body of

water will not exceed two parts per million nitrate/nitrogen;

iii. All public waste water treatment facilities are designed to accept and treat septage; and

iv. All storage facilities, including ponds or lagoons, are lined to prevent leakage into ground water.

2. Development of new waste water treatment or collection facilities which are designed to improve the level of nitrate/nitrogen attenuation of more than one existing on-site waste water treatment system where a public health problem has been identified may be exempted from the standards of (a)1ii above provided that:

i. There will be no direct discharge into any surface water body;

ii. The facility is designed only to accommodate waste water from existing residential, commercial, and industrial development;

iii. Adherence to (a)1ii above cannot be achieved due to limiting site conditions or that the costs to comply with the standard will result in excessive user fees; and

iv. The design level of nitrate/nitrogen attenuation is the maximum possible within the cost limitations imposed by such user fee guidelines but in no case shall ground water exiting from the parcel or entering a surface body of water exceed five parts per million nitrate/nitrogen.

3. Improvements to existing commercial, industrial, and waste water treatment facilities which discharge directly into surface waters provided that:

i. There is no practical alternative available that would adhere to the standards of N.J.A.C. 7:50-6.84(a)1i.

ii. There is no increase in the existing approved capacity of the facility; and

iii. All discharges from the facility into surface waters are such that the nitrate/nitrogen levels of the surface waters at the discharge point do not exceed two parts per million. In the event that nitrate/nitrogen levels in the surface waters immediately upstream of the discharge point exceed two parts per million, the discharge shall not exceed two parts per million nitrate/nitrogen.

4. Individual on-site septic waste water treatment systems which are not intended to reduce the level of nitrate/nitrogen in the waste water, provided that the following standards are met:

i. The proposed development to be served by the system is otherwise permitted pursuant to N.J.A.C. 7:50-4 and 5;

ii. The design of the system and its discharge point, and the size of the entire contiguous parcel on which the system or systems is located will ensure that ground water exiting from the entire contiguous parcel or entering a surface body of water will not exceed two parts per million nitrate/nitrogen calculated pursuant to the Pinelands dilution model dated December, 1993, as amended, incorporated herein by reference as subchapter Appendix A, subject to the provisions of (a)4iii below. For purposes of this section, the entire contiguous parcel may include any contiguous lands to be dedicated as open space as part of the proposed development but may not include previously dedicated road rights-of-way or any contiguous lands that have been deed restricted pursuant to N.J.A.C. 7:50-5.30 or 5.47;

iii. Only contiguous land located within the same municipal zoning district and Pinelands management area as the proposed septic waste water treatment system or systems may be utilized for septic dilution purposes, except for the development of an individual single family dwelling on a lot existing as of January 14, 1981, non-residential development on a lot of five acres or less existing as of January 14, 1981, or cluster development as permitted by N.J.A.C. 7:50-5.19;

iv. The depth to seasonal high water table is at least five feet;

v. Any potable water well will be drilled and cased to a depth of at least 100 feet, unless the well penetrates an impermeable clay aquiclude, in which case the well shall be cased to at least 50 feet;

vi. The system will be maintained and inspected in accordance with the requirements of N.J.A.C. 7:50-6.85;

vii. The technology has been approved for use by the New Jersey Department of Environmental Protection; and

viii. Flow values for non-residential development shall be determined based on the values contained in N.J.A.C. 7:9A-7.4, as amended, except that number of employees may not be utilized in calculating flow values for office uses.

5. Individual on-site septic waste water treatment systems which are intended to reduce the level of nitrate/nitrogen in the waste water, provided that the following standards are met:

i. The technology has been approved for use by the New Jersey Department of Environmental Protection;

ii. The proposed development to be served by the system is otherwise permitted pursuant to N.J.A.C. 7:50-4 and 5;

iii. The proposed development is either residential or, if non-residential, is located in a Regional Growth Area, a Pinelands Village, a Pinelands Town or in an area within the Preservation Area District designated pursuant to N.J.A.C. 7:50-5.22(b)7;

iv. The design of the system and its discharge point, and the size of the entire contiguous parcel on which the system or systems is located, will ensure that ground water exiting from the entire contiguous parcel or entering a surface body of water will not exceed two parts per million nitrate/nitrogen calculated pursuant to the Pinelands dilution model dated December, 1993, as amended, (Appendix A) subject to the provisions of (a)5v below and based on the following assumptions and requirements. For purposes of this section, the entire contiguous parcel may include any contiguous lands to be dedicated as open space as part of the proposed development but may not include previously dedicated road rights-of-way or any contiguous lands that have been deed restricted pursuant to N.J.A.C. 7:50-5.30 or 5.47:

(1) For RUCK septic systems:

(A) For residential development, the system will reduce total nitrogen concentration in the waste water entering the disposal field to 20 parts per million; or

(B) For non-residential development, no reduction in total nitrogen concentration will be assumed, except that a reduction in total nitrogen concentration in the waste water entering the disposal field to 20 parts per million will be assumed if either:

(I) The use is comparable to a single family residential use and it can be demonstrated that the waste water quality is similar to residential waste water; or

(II) The applicant demonstrates that the nitrate/nitrogen concentration of the waste water flow is similar to that of a residential use and the ratio of greywater to blackwater is similar to that of a residential use.

(2) For pressure dosed septic systems:

(A) For residential development, either the system will be located on a lot of at least one acre for each individual single family residential dwelling unit or the system or systems for multi-family developments will be located on a parcel with an overall density equal to or greater than one residential dwelling unit per acre of land; or

(B) For non-residential development, no reduction in total nitrogen concentration will be assumed, except that a reduction in total nitrogen concentration in the waste water entering the system by 40 percent will be assumed if either:

(I) The use is comparable to a single family residential use and it can be demonstrated that the waste water quality is similar to residential waste water; or

(II) The applicant demonstrates that the nitrogen concentration of the waste water flow is similar to that of a residential use.

(3) Other on-site septic waste water treatment systems shall only be credited with reducing total nitrogen concentration to the extent authorized by an experimental monitoring program approved by the Pinelands Commission. Such an experimental monitoring program shall only be approved if:

(A) The specific theoretical basis for the nitrogen removal process to be utilized is sound and has been satisfactorily documented in the scientific literature;

(B) The nitrogen removal efficiency of operating systems using the design concept to service one or more types of development has been satisfactorily demonstrated and adequately documented in the scientific literature;

(C) The proposed application of the treatment process could be expected to meet the two parts per million nitrate/nitrogen ground water quality standard in the Pinelands Area and the ability to meet this requirement can be continuously achieved on a long-term basis;

(D) Systems utilizing the design concept can be expected not to require any maintenance beyond that required of conventional septic systems or, if additional maintenance is required, sufficient measures can feasibly be taken to insure that the system will be properly maintained and operated;

(E) A comprehensive monitoring program is feasible to fully evaluate the nitrogen removal efficiency of the application of the proposed design concept;

(F) The system contains components which will allow it to function as a standard system if the alternate experimental technology were to fail; and

(G) The design concept can be expected to meet those requirements of the New Jersey Department of Environmental Protection necessary to receive a Treatment Works Approval.

v. Only contiguous land located within the same municipal zoning district and Pinelands management area as the proposed septic waste water treatment system or systems may be utilized for septic dilution purposes, except for the development of an individual single family dwelling on a lot existing as of January 14, 1981, non-residential development on a lot of five acres

or less existing as of January 14, 1981, or cluster development as permitted by N.J.A.C. 7:50-5.19;

vi. The depth to seasonal high water table is at least five feet;

vii. Any potable water well will be drilled and cased to a depth of at least 100 feet, unless the well penetrates an impermeable clay aquiclude, in which case the well shall be cased to at least 50 feet;

viii. The system will be maintained and inspected in accordance with the requirements of N.J.A.C. 7:50-6.85;

ix. Flow values for non-residential development shall be determined based on the values contained in N.J.A.C. 7:9A-7.4, as amended, except that number of employees may not be utilized in calculating flow values for office uses.

6. Surface water runoff, provided that:

i. The total runoff generated from any net increase in impervious surfaces by a 10 year storm of a 24 hour duration shall be retained and infiltrated on-site. Runoff volumes shall be calculated in accordance with the United States Soil Conservation Service Technical Release No. 55, including the definitions, methodologies and guidance contained therein, or the S.C.S. National Engineering Handbook, section 4;

ii. The rates of runoff generated from the parcel by a two year, 10 year and 100 year storm, each of a 24 hour duration, shall not increase as a result of the proposed development. Runoff rates shall be calculated in accordance with the United States Soil Conservation Service Technical Release No. 55, including the definitions, methodologies and guidance contained therein, or the S.C.S. National Engineering Handbook, section 4;

iii. The standards set forth in (a)6i and ii above shall not apply to minor residential development, provided such development does not involve the construction of any new roads, or to minor non-residential development, provided such development does not involve the grading, clearing or disturbance of an area in excess of 5,000 square feet within any five year period;

iv. Surface water runoff shall not be directed in such a way as to increase the volume and rate of discharge into any surface water body from that which existed prior to development of the parcel;

v. Excessively and somewhat excessively drained soils, as defined by the Soil Conservation Service, should be avoided for recharge of runoff wherever practical;

vi. A minimum separation of at least two feet between the elevation of the lowest point of the bottom of the infiltration or detention facility and the seasonal high water table is met, or a lesser separation when it is demonstrated that the separation, either due to soil conditions or when considered in combination with other stormwater management techniques, is adequate to protect ground water quality; and

vii. For private development applications, a four year maintenance guarantee is provided for the entire stormwater management system by the applicant. In addition, for both private and public development applications, the applicant or other interested party shall fund or otherwise guarantee an inspection and maintenance program for a period of no less than 10 years. This may be accomplished by various mechanisms, including but not limited to, the assumption of the inspection and maintenance program obligation by a municipality, county, public utility or homeowners association or other viable mechanisms to achieve the purposes of this section. The program proposed shall identify the entity charged with responsibility for annual inspections and the completion of any necessary maintenance, and the method to finance said program.

Amended by R.1988 d.405, effective September 19, 1988.

See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

In (a)2, added "or collection" and "where a public health problem has been identified", and in (a)4ii, deleted "District" and added "Rural Development Area".

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Administrative Correction

See: 27 N.J.R. 1410(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).

Deleted (a)5.iv.(2)(A)(I) and (a)5.iv.(2)(A)(II).

Case Notes

No extraordinary hardship existed entitling property owner to waiver of strict compliance with seasonal high water table requirement. Pappas v. Pinelands Commission, 93 N.J.A.R.2d (EPC) 13.

Parcel not have beneficial use; extraordinary hardship existed entitling property owner to waiver of Pinelands Comprehensive Management Plan requirements; conditions imposed. Christensen v. New Jersey Pinelands Commission, 93 N.J.A.R.2d (EPC) 5.

Assumption that 3.5 people would inhabit each of proposed dwellings permissible; calculation as to whether proposed development violated nitrate-nitrogen ground water requirements. Schretzenmair v. Pinelands Commission, 93 N.J.A.R.2d (EPC) 1.

Sale of adjoining lot precluded existence of extraordinary hardship, even though property owner was elderly individual suffering from heart problems and diabetes and sought to sell or develop property in order to help support herself and two handicapped sons residing with her. Stark v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 34.

Extraordinary hardship; waiver of lot size requirement, seasonal high water table requirement, and ground water nitrate-nitrogen requirement. Eni v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 31.

Compelling health need; hardship waiver of nitrate-nitrogen discharge limitations; town permitted to build wastewater treatment facility. Adamucci, et al v. Pinelands Commission and Town of Hammon-ton, 92 N.J.A.R.2d (EPC) 21.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with density requirements, seasonal high water table requirement, and wetlands protection requirements. *Summonte v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 9.

Residents living in former gun club were entitled to waiver of strict compliance from minimum lot size and water quality requirements. *Swezeny v. Fulford*, 92 N.J.A.R.2d (EPC) 1.

Waiver to subdivide a parcel of land denied by Pinelands Commission; petitioner failed to establish ownership of the land in compliance with N.J.A.C. 7:50-5.32(a)3i. *Gerber v. Pinelands Commission*, 11 N.J.A.R. 12 (1988).

Petitioner denied waiver of strict compliance with provisions of Comprehensive Management Plan for the Pinelands which establish minimum standards for septic wastewater treatment systems for failure to prove extraordinary hardship. *Kruckner v. New Jersey Pinelands Commission*, 10 N.J.A.R. 237 (1988).

Development application denied to petitioners for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to offer information to establish an extraordinary hardship citing N.J.A.C. 1:1-11.2 (recodified as N.J.A.C. 1:11-8.3)—(Final Decision by the Pinelands Commission). *Lavecchia v. Pinelands Commission*, 10 N.J.A.R. 63 (1987).

Application to resubdivide two existing lots denied for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to establish extraordinary hardship. (Final Decision by Pinelands Commission). *Colon v. Pinelands Commission*, 10 N.J.A.R. 14 (1987).

Effluent standard for waterless toilet (2 ppm) cited in determination that denial of waiver of strict compliance with toilet requirement reasonable. *Riggins v. Pinelands Commission*, 8 N.J.A.R. 441 (1985).

Property for which development approval sought, even if minimum lot size requirement met, does not meet minimum standards for wetlands buffer (N.J.A.C. 7:50-6.14) or seasonal high water table (N.J.A.C. 7:50-6.84); permit application denied. *Pfeiffer v. Pinelands Commission*, 8 N.J.A.R. 317 (1985).

Development application denied, in part, for failure to meet minimum standards for seasonal high water table. *Pfeiffer v. Pinelands Commission*, 8 N.J.A.R. 317 (1985).

7:50-6.85 Individual wastewater treatment facility and petroleum tank maintenance

(a) The owner of every on-site septic wastewater treatment facility in the Pinelands shall, as soon as suitable septage disposal facility capacity is available, in accordance with the provisions of Chapter 326 of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and Section 201 of the Clean Water Act:

1. Have the facility inspected by a technician at least once every three years;
2. Have the facility cleaned at least once every three years; and
3. Once every three years submit to the board of health serving the municipality in which the facility is located a sworn statement that the facility has been inspected, cleaned and is functional, setting forth the name of the person who performed the inspection and cleaning and the date of such inspection.

(b) The owners of commercial petroleum storage tanks shall comply with the requirements of P.L. 1986, c.102 (N.J.S.A. 58:10A-29).

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.86 Water management

(a) Interbasin transfer of water between watersheds in the Pinelands should be avoided to the maximum extent practical. In areas served by central sewers, water-saving devices such as water-saving toilets, showers and sink faucets shall be installed in all new development.

(b) Water shall not be exported from the Pinelands except as otherwise provided in N.J.S.A. 58:1A-7.1.

(c) All wells and all increases in diversion from existing wells which require water allocation permits from the New Jersey Department of Environmental Protection shall be designed and located so as to minimize impacts on wetlands and surface waters. Hydrologic analyses shall be conducted in accordance with the New Jersey Department of Environmental Protection Guidelines for Water Allocation Permits, with an Appendix on Aquifer-Test Analysis Procedures, New Jersey Geological Survey Report GSR 29, 1992, incorporated herein by reference, as contained in pages 53 through 91 of the Technical Manual for Water Supply Element, Bureau of Water Allocation, Water Allocation Permits dated May 19, 1993, as amended.

(d) All applications for the development of water supply wells or the expansion of existing water distribution systems shall address measures in place or to be taken to increase water conservation in all areas to be served by the proposed well or system. This shall include efforts by water purveyors and local governments to reduce water demands by users and to reduce losses in the supply and distribution system.

(e) Except for agricultural uses, all new potable and non-potable water supply diversions of more than 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer as a source of water supply and new increases in existing potable and non-potable water supply diversions of over 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer may be permitted only if it is demonstrated that:

1. No viable alternative water supply sources are available; or
2. The proposed use of the Kirkwood-Cohansey aquifer will not result in any adverse ecological impact on the Pinelands Area.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.87 Prohibited chemicals and materials

(a) Use of the following substances is prohibited in the Pinelands to the extent that such use will result in direct or

indirect introduction of such substances to any surface or ground water or any land:

1. Septic tank cleaners; and
2. Waste oil.

(b) All storage facilities for deicing chemicals shall be lined to prevent leaking into the soil, and shall be covered with an impermeable surface which shields the facility from precipitation.

(c) No person shall apply any herbicide to any road or public utility right-of-way within the Pinelands unless necessary to protect an adjacent agricultural activity.

7:50-6.88 through 7:50-6.90 (Reserved)

PART IX—AIR QUALITY

7:50-6.91 Purpose

Air quality in the Pinelands is important to the character and ecology of the Pinelands. It is the purpose of this Part to ensure that the quality of the air in the Pinelands region is protected and enhanced.

7:50-6.92 Air quality program

In order to obtain certification under the provisions of N.J.A.C. 7:50-3, the municipal master plan and land use ordinances must contain a program for air quality. It is not necessary that the program incorporate the literal terms of the program set out in this Part; rather, it may adopt alternative or additional management techniques which will achieve the protection of the Pinelands equivalent to that which would be achieved under the provisions of this Part.

7:50-6.93 General standard

All development shall adhere to the relevant air quality standards of N.J.A.C. 7:27. Adherence to the standards of this Part shall be determined by means of an air quality simulation model approved by the New Jersey Department of Environmental Protection pursuant to N.J.A.C. 7:27-18.3.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.94 Standards for specified development

(a) Applications for the following developments shall ensure that all state ambient air quality standards in N.J.A.C. 7:27 et seq. for carbon monoxide shall not be exceeded at places of maximum concentration and at sensitive receptors:

1. Residential development of 50 or more units and any other development involving more than 100 parking spaces located in a Regional Growth Area or Pinelands Town; and

2. Residential development of 100 or more units and any other development involving more than 300 parking spaces located in any other Pinelands management area.

7:50-6.95 through 7:50-6.100 (Reserved)

PART X—SCENIC

7:50-6.101 Purpose

The Pinelands is a complex of environmental values that presents a definable visual character to residents and visitors. This character contributes substantially to the attractiveness of the area and therefore is an important element to the area's economy. This Part is intended to ensure that development will take advantage of and enhance the visual character of the Pinelands.

7:50-6.102 Scenic 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 provide a program for the protection of the scenic values of the Pinelands. 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 scenic values which would be achieved under the provisions of this Part.

7:50-6.103 Scenic corridors

(a) Except for those roads which provide for internal circulation within residentially developed areas, all public, paved roads in the Preservation Area District, the Rural Development and Forest Areas shall be considered scenic corridors.

(b) Those rivers designated in N.J.A.C. 7:50-6.105 shall be considered as special scenic corridors in any part of the Pinelands.

7:50-6.104 Requirements for scenic corridors

(a) Except as provided in this section, no permit shall be issued for development other than for agricultural commercial establishments unless the applicant demonstrates that all buildings are set back at least 200 feet from the center line of the scenic corridor.

(b) If compliance with the 200-foot setback is constrained by environmental or other physical considerations, such as wetland, or active agricultural operation, the building shall be set back as close to 200 feet as practical and the site shall be landscaped in accordance with the provisions of Part II of this subchapter so as to provide screening from the corridor.

(c) If an applicant for development approval demonstrates that existing development patterns of the corridor are such that buildings are set back less than 200 feet within 1,000 feet of the site proposed for development, then a setback shall be set for the proposed development which is consistent with the established development pattern, provided that the site is landscaped in accordance with the provisions of Part II of this subchapter so as to provide screening between the building and the corridor.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.105 Requirements for special scenic corridors

(a) The following rivers are hereby designated to be wild and scenic rivers and scenic corridors of special significance to the Pinelands. All structures within 1,000 feet of the center line of these rivers shall be designed to avoid visual impacts as viewed from the river:

1. Great Egg Harbor River—Great Egg Bay (Garden State Parkway) to Route 536.
2. Tuckahoe River—Great Egg Bay to the Route 552 crossing in Milmay.
3. Middle River—Great Egg Bay to Schoolhouse Lane crossing north of Corbin City.
4. Mullica River—Garden State Parkway to Medford Road crossing at the Medford, Waterford, and Shamong Township boundaries.
5. Wading River—Confluence with the Mullica River to Route 563 crossing at Speedwell.
6. Oswego River—Confluence with the Wading River to Sim Place reservoir dam.
7. Batsto River—Confluence with Mullica River to Carranza Memorial Road crossing at Shamong and Tabernacle Township boundaries.
8. Bass River—Confluence with the Mullica River to Stage Road crossing in Bass River State Forest.
9. Nescochague Creek—Confluence with the Mullica River to confluence with Great Swamp Branch and Albertson Branch.
10. Great Swamp Branch—Confluence with Nescochague Creek to Route 206 bridge in Hammonton.
11. Rancocas Creek—Route 530 crossing in Browns Mills to the Pinelands boundary.
12. Cedar Creek—Route 9 crossing to the dam at Bamber Lake.
13. West Creek—Confluence with Delaware Bay to Pickle Factory Pond above Route 550.
14. Dennis Creek—Confluence with Delaware Bay to the headwaters of the mainstem in the Great Cedar Swamp west of Route 9.

15. North Branch of the Forked River—Garden State Parkway to the confluence with Cave Cabin Branch east of Howardsville.

16. Toms River—From the Central Railroad of New Jersey bridge to the Route 528 crossing east of Cassville.

17. Maurice River—Delaware Bay to Manumuskin River.

18. Manumuskin River—Confluence with the Maurice River to the Route 49 crossing near Cumberland Road.

19. Mount Misery Branch—Route 70 crossing to the Greenwood Branch continuing to the North Branch of the Rancocas Creek.

7:50-6.106 Signs

Each municipality shall adopt provisions governing signs in its municipal master plan and ordinances. N.J.A.C. 7:50-6.107 contains provisions which must be included in all municipalities; N.J.A.C. 7:50-6.108 contains mandatory provisions for municipalities in the Preservation Area District and Special Agricultural Production Areas; and N.J.A.C. 7:50-6.109 contains suggested guidelines for additional sign provisions for other areas of the Pinelands.

7:50-6.107 Mandatory sign provisions

(a) No sign, other than warning or safety signs, which is designed or intended to attract attention by sudden, intermittent or rhythmic movement, or physical or lighting change, shall be permitted in any area.

(b) No sign, other than warning or safety signs, which changes physical position by any movement or rotation or which gives the visual impression of such movement or rotation shall be permitted in any area.

(c) No outdoor off-site commercial advertising sign, other than those off-site signs specifically authorized in N.J.A.C. 7:50-6.108 and 6.109, shall be permitted in the Pinelands except as follows:

1. Off-site outdoor signs advertising agricultural commercial establishments shall be permitted in Agricultural Production Areas and Special Agricultural Production Areas and may be permitted in any other management area. All such off-site signs shall be subject to the following conditions:

i. A maximum of two signs may be placed in any one direction along each road directly approaching the stand; and

ii. Each sign along four lane State or U.S. highways shall be limited to a maximum of 50 square feet in area; each sign along all other roads shall be limited to a maximum of 32 square feet in area.

2. Off-site outdoor directional signs may be permitted in any management area, provided that such signs do not contain advertising and are restricted to the name of the

public or private use and any necessary directions, the number of signs per use is the minimum necessary to give adequate directions and the size of such signs does not exceed that necessary to convey directions.

3. Existing lawful off-site commercial advertising signs, in existence as of January 14, 1981, shall be permitted in:

- i. Regional Growth Areas;
- ii. Pinelands Towns; and
- iii. Certified municipal non-residential zones in Rural Development Areas and Villages in existence as of December 5, 1994 if the sign is located within 1,000 feet of a Regional Growth Area or Pinelands Town and is located on a United States Highway.

(d) Any existing sign that violates (a) or (b) shall be removed immediately. Any existing off-site commercial advertising sign which does not conform to (c) shall be removed no later than December 5, 1996.

(e) To the maximum extent practical, the character and composition of construction materials for all signs shall be harmonious with the scenic values of the Pinelands.

Amended by R.1988 d.405, effective September 19, 1988.
See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

In (c), changed "roadside stands" to "commercial establishments" and added "offsite outdoor signs . . ." and 1 and 2.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.108 Mandatory sign provisions in the Preservation Area District and Special Agricultural Production Areas

(a) No sign shall be constructed, repaired or maintained except in accordance with the provisions of N.J.A.C. 7:50-6.107 and this section.

(b) The following signs are permitted in the Preservation Area District and the Special Agricultural Production Areas:

1. Official public safety and information signs displaying road names, numbers and safety directions;
2. On-site signs advertising the sale or rental of the premises, provided that:
 - i. The area on one side of any such sign shall not exceed 12 square feet;
 - ii. No more than one sign is located on any parcel of land held in common ownership.
3. On-site identification signs for schools, churches, hospitals, or similar public service institutions, provided that:
 - i. The size of any such sign shall not exceed 12 square feet;

ii. No more than one sign is placed on any single property.

4. Trespassing signs or signs indicating the private nature of a road, driveway or premises, and signs prohibiting or otherwise controlling fishing or hunting, provided that the size of such signs does not exceed 12 square feet;

5. On-site professional, home occupation, or name signs indicating the profession and/or activity and/or name of the occupant of the dwelling, provided that:

i. The size of any such sign shall not exceed 12 square feet;

ii. No more than one sign is permitted for any individual parcel of land.

6. On-site business or advertising signs, provided that:

i. No more than two signs are located on any one premise or on the premises leased or utilized by any one business establishment;

ii. The total area of such signs shall not exceed 20 square feet per side, with the maximum height to the top of the sign not to exceed 15 feet from ground level.

7. Temporary signs advertising political parties or candidates for election, provided that the size of any such sign does not exceed four square feet.

8. Temporary on and off-site signs advertising civil, social or political gatherings and activities, provided that the size of such signs does not exceed four square feet.

7:50-6.109 Guidelines for sign provisions outside the Preservation Area District and Special Agricultural Production Areas

(a) The following guidelines may be used in formulating municipal sign ordinances:

1. Official public safety and information signs displaying road names, numbers and safety directions may be permitted;
2. On-site signs advertising the sale or rental of the premises may be permitted, provided that:
 - i. The area on one side of any such sign does not exceed 12 square feet;
 - ii. No more than one sign is located on any parcel of land held in common ownership.
3. On-site identification signs for schools, churches, hospitals, or similar public service institutions may be permitted; provided that:
 - i. The size of any such sign does not exceed 12 square feet;
 - ii. No more than one sign is placed on any single property.

4. Temporary signs advertising political parties or candidates for election may be permitted, provided that the size of any such sign does not exceed 12 square feet;

5. Temporary on and off-site signs advertising civic, social or political gatherings and activities may be permitted, provided that the size of such signs does not exceed 12 square feet;

6. Trespassing signs or signs indicating the private nature of a road, driveway, or premise, and sign prohibiting or otherwise controlling fishing or hunting may be permitted, provided that the size of such signs does not exceed 12 square feet;

7. On-site professional, home occupation, or name signs indicating the profession and/or activity and/or name of the occupant of the dwelling may be permitted, provided that:

- i. The size of such sign does not exceed four square feet;
- ii. No more than one sign is permitted for any individual parcel of land.

8. On-site business or advertising signs may be permitted provided that:

- i. No more than two signs are located on any one premise or on the premises leased or utilized by any one business establishment;
- ii. The total area of such signs does not exceed 20 square feet per side with the maximum height to the top of the sign not to exceed 15 feet from ground level.

9. New off-site commercial advertising signs may be permitted by certified municipalities in Regional Growth Areas and Pinelands Towns provided that the applicant can demonstrate that for each new sign an existing lawful off-site commercial advertising sign has been removed by the applicant pursuant to N.J.A.C. 7:50-6.107(d).

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.110 Motor vehicle screening and storage

In order to obtain certification, municipalities shall adopt local ordinances which provide that no more than 10 automobiles, trucks or other motor vehicles, whether or not they are in operating condition, shall be stored on any lot unless such motor vehicles are adequately screened from adjacent residential uses and scenic corridors. All vehicles not in operating condition shall be stored only if the gasoline tanks of such vehicles are drained. This section shall not apply to vehicles which are in operating condition and which are maintained for agricultural purposes.

7:50-6.111 Location of utilities

(a) New utility distribution lines to locations not presently served by utilities shall be placed underground, except for

those lines which are located on or adjacent to active agricultural operations.

(b) All electric transmission lines shall be located on existing towers or underground to the maximum extent practical.

(c) Above-ground generating facilities, switching complexes, pumping stations, and substations shall be screened with vegetation from adjacent uses in accordance with N.J.A.C. 7:50-6, Part II.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

PART XI—RESERVED

7:50-6.112 through 7:50-6.120 (Reserved)

PART XII—FIRE MANAGEMENT

7:50-6.121 Purpose

Forest vegetation represents a significant wildfire threat to structures developed within the Pinelands. Therefore all development in the Pinelands shall conform to the requirements of this Part in order to protect life and property from catastrophic forest fires and to ensure the maintenance of the Pinelands forest ecosystems.

7:50-6.122 Fire 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 provide a fire management program. 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 the equivalent management objectives as would be achieved under the provisions of this Part.

7:50-6.123 Fire hazard classification

The following vegetation classifications shall be used in determining the fire hazard of a parcel of land:

Fire Hazard Classification

| Hazard | Vegetation Type |
|----------|--|
| Low | Atlantic white cedar. Hardwood swamps. |
| Moderate | Non-Pine Barrens forest and prescribed burned areas. |
| High | Pine Barrens forest including mature forms of pine, pine-oak, and oak-pine. |
| Extreme | Immature or dwarf forms of pine-oak or oak-pine, all classes of pine-scrub oak and pine-lowland. |

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.

7:50-6.124 Fire hazard mitigation standards

(a) No application for development approval shall be granted in moderate, high and extreme fire hazard areas unless the applicant demonstrates that:

1. All proposed developments, or units or sections thereof, of 25 dwelling units or more will have two accessways of a width and surface composition sufficient to accommodate and support fire fighting equipment;

2. All dead-end roads will terminate in a manner which provides safe and effective entry and exit for fire fighting equipment;

3. The rights-of-way of all roads will be maintained so that they provide an effective fire break;

4. Except as provided in (a)5 below, a fire hazard fuel break is provided around structures proposed for human use by the selective removal or thinning of trees, bushes, shrubs and ground cover as follows:

i. In moderate fire hazard areas a fuel break of 30 feet measured outward from the structure in which:

(1) Shrubs, understory trees and bushes and ground cover are to be selectively removed, mowed or pruned on an annual basis; and

(2) All dead plant material is removed.

ii. In high fire hazard areas a fuel break of 75 feet measured outward from the structure in which:

(1) Shrubs, understory trees and bushes and ground cover are to be selectively removed, mowed or pruned and maintained on an annual basis;

(2) All dead plant material is removed.

iii. In extreme high hazard areas a fuel break of 100 feet measured outward from the structure in which:

(1) Shrubs, understory trees and bushes and ground cover are to be selectively removed, mowed or pruned and maintained on an annual basis;

(2) No pine tree (*Pinus* spp.) is closer than 25 feet to another pine tree; and

(3) All dead plant material is removed.

5. All residential development of 100 dwelling units or more in high or extreme high hazard areas will have a 200-foot perimeter fuel break between all structures and the forest in which:

i. Shrubs, understory trees and bushes and ground cover are selectively removed, mowed or pruned and maintained on an annual basis;

ii. All dead plant material is removed;

iii. Roads, rights-of-way, wetlands and waste disposal sites shall be used as fire breaks to the maximum extent practical; and

iv. There is a specific program for maintenance.

7:50-6.125 Guidelines for construction

(a) Municipalities may use the following construction guidelines in formulating municipal ordinance standards:

1. Roofs and exteriors will be constructed of fire resistant materials such as asphalt rag felt roofing, tile, slate, asbestos cement shingles, sheet iron, aluminum or brick. Fire retardant-treated wood shingles or shake type roofs are prohibited in high or extreme fire hazard areas.

2. All projections such as balconies, decks and roof gables shall be constructed of fire resistant material or materials treated with fire retardant chemicals.

3. Any openings in the roof, attic and the floor shall be screened.

4. Chimneys and stovepipes which are designed to burn solid or liquid fuels shall be equipped with screens over the outlets.

5. Flat roofs are prohibited in areas where vegetation is higher than the roof.

7:50-6.126 through 7:50-6.130 (Reserved)**PART XIII—HOUSING****7:50-6.131 (Reserved)**

Amended by R.1988 d.405, effective September 19, 1988.
See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).
Repealed "Purpose".

7:50-6.132 (Reserved)

Amended by R.1988 d.405, effective September 19, 1988.
See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).
Repealed "Minimum standards".

7:50-6.133 (Reserved)

Amended by R.1988 d.405, effective September 19, 1988.
See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).
Repealed "Minimum housing standards in uncertified municipalities".

7:50-6.134 through 7:50-6.140 (Reserved)**PART XIV—RECREATION****7:50-6.141 Purpose**

The Pinelands are an important recreational resource. It is the purpose of this Part to protect those natural resources necessary for compatible recreational uses, promote diverse recreational opportunities in a manner that minimizes land use conflicts, promote the location of low intensity recreational uses in undeveloped areas, and promote intensive recreational uses in developed areas.

7:50-6.142 Recreational management plan

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 and enhance recreational resources. It is not necessary that the municipal program be precisely the program set out in this Part; rather, a municipality may adopt alternative and additional techniques to protect recreational resources. In reviewing the municipal plan, the Commission shall consider the extent to which the plan and ordinances implement the standards and objectives of this Part.

7:50-6.143 General requirements

(a) All recreational facilities in the Pinelands shall comply with the following requirements:

1. No power vessel in excess of 10 horsepower shall operate on waters of the State within the Pinelands Area except on:

- i. That portion of the Mullica River downstream from Burlington County Route 542; and
- ii. That portion of the Wading River downstream from its confluence with the Oswego River; and
- iii. That portion of the Great Egg Harbor River downstream from its confluence with Mare Run.

2. No motor vehicle other than fire, police or emergency vehicles or those vehicles used for the administration or maintenance of any public land shall be operated upon publicly owned land within the Pinelands. Other motor vehicles may operate on public lands for recreational purposes on public highways and areas on land designated prior to August 8, 1980 for such use by state and local governmental entities until designated as inappropriate for such use under (a)3 below.

3. The Commission shall from time to time designate areas which are inappropriate for use of motor vehicles. Such designation shall be based upon the following considerations and upon consultation with the New Jersey Department of Environmental Protection and other interested persons:

- i. A need to protect a scientific study area;
- ii. A need to protect the location of threatened or endangered plant or animal species;
- iii. A need to provide a wilderness recreational area;
- iv. A need to prevent conflicts with adjoining intensively used recreational areas;
- v. A need to protect historic or archaeological sites;
- vi. A need to protect critical wildlife habitats;
- vii. A need to address a situation of public health and safety;

viii. A need to protect extensively disturbed areas from further impact; and

ix. The extent to which such road closure would substantially impair recreation access to and uses of surrounding resources.

4. Route maps for organized off-road vehicle events shall be filed with and approved by the Executive Director.

5. All recreation areas and facilities shall be designed in accordance with the New Jersey Department of Environmental Protection publication "Administration Guidelines: Barrier-Free Design Standards for Parks and Recreational Facilities."

6. Improved bicycling facilities are provided only in conjunction with paved roads within the Preservation Area District and Forest Area.

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.144 Guidelines for recreational land and facilities

(a) In preparing the recreational program element of its master plan and ordinances, each municipality may consider the following requirements. In municipalities that have not received certification of their master plans and land use ordinances, all development shall meet the standards of (a)3i below as long as the densities established pursuant to N.J.A.C. 7:50-5 can be met.

1. Lawn areas shall be permitted in association with commercial and industrial development provided that such lawns are designed and used for public recreational purposes, meet an identified public recreational need, and are dedicated to public recreation use.

2. Lawn areas developed in association with recreational development shall be limited to those which support recreation activities and shall, to the extent practical, be of a variety of grass which requires minimal fertilization.

3. Each municipality shall have ordinances which provide for open space and recreational facilities in association with residential developments. The following guidelines may be utilized to develop these ordinances:

i. All residential development of 25 units or more shall provide:

(1) Eight acres of land to be used for recreational purposes for every 1,000 projected residents of the development, or a prorated acreage if less than 1,000 projected residents; provided, however, that such acreage shall not be required to exceed 10 percent of the total acreage of the proposed development;

(2) Land provided in accordance with (a)3i(1) above shall be provided in a single area or in individual parcels at least one acre in size;

(3) All residential units for which the recreational land is provided in accordance with (a)3i(1) above shall be located within $\frac{1}{4}$ mile of such recreational land; and

(4) At least 50 percent of the recreational land provided in accordance with (a)3i(1) above shall be turfed or landscaped with otherwise suitable materials to permit informal recreational activities.

ii. All residential development of 50 units or more should provide recreational land in accordance with (a)3i above. Recreational facilities in accordance with the following schedule shall also be provided to the extent recreational needs are generated by the proposed development. An analysis of the recreational needs of a proposed development within a specified service area around the development shall be conducted by comparing the following schedule of facility standards with existing recreational facilities within the service area and the projected population of the service area:

Recreational Facility Guidelines

| | Population | Minimum Facility Space Standards | Recreational Service Area Radius |
|--|---------------------|--|--|
| Basketball courts | 1 per 1,000 | Court dimensions range 60 feet \times 80 feet \times 70 feet \times 104 feet | $\frac{1}{2}$ mile |
| Tennis courts | 1 per 2,000 | Court dimensions range from 60 feet \times 120 feet—single court 45 feet \times 120 feet additional adjoining courts | 1 mile |
| Multi-purpose | 1 per 2,000 | .50 acre (including basketball and tennis courts) | $\frac{1}{2}$ mile |
| Passive area (sitting) | 1 per 2,000 | .50 acre | $\frac{1}{2}$ mile |
| Senior citizen (bocce, shuffleboard, horse-shoe) | 1 per 1,000 over 55 | .50 acre | whichever is greater $\frac{1}{4}$ mile |
| Pre-school playground | 1 per 2,000 | .25 acre | $\frac{1}{4}$ mile |
| Advanced playground | 1 per 2,000 | .25 acre | $\frac{1}{2}$ mile |
| Multi-purpose turf area | 1 per 2,000 | .50 acre | 1 mile |
| Football/soccer fields | 1 per 10,000 | Field dimensions 140 feet \times 280 feet—youth 190 feet \times 420 feet—adult | 1 mile |
| Baseball—regulation 90-foot diamond | 1 per 6,000 | 2.8 acres 325-foot outfield | 1 mile |
| Baseball-youth Softball 60-foot diamond | 1 per 6,000 | 1.0 acre 200-foot outfield | 1 mile |
| Picnic area | 1 per 6,000 | 8-foot tables | 1 mile |

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.145 through 7:50-6.150 (Reserved)

PART XV—HISTORIC, ARCHAEOLOGICAL, AND CULTURAL PRESERVATION

7:50-6.151 Purpose

(a) Historically distinctive resources, including buildings, structures, sites and districts of historic, archaeological, architectural, or cultural importance help to define the Pinelands environment and must be properly managed in furtherance of the following public purposes:

1. To effect and accomplish the protection, enhancement, perpetuation and use of improvements and areas of special historic and archaeological interest or value which represent or reflect significant elements of the Pinelands' cultural, social, economic, political and architectural history and prehistory;
2. To safeguard the Pinelands' prehistoric, historic and cultural heritage as embodied and reflected in such improvements and areas;
3. To stabilize and improve property values in such areas;
4. To prevent neglect and vandalism of historic, archaeological and cultural sites;
5. To foster pride in the beauty and noble accomplishments of the past; and
6. To preserve opportunities for traditional life styles related to and compatible with the ecological values of the Pinelands.

7:50-6.152 Historic resource 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 provide a program for the protection of historic resources. 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 the equivalent protection provided under the provisions of this Part.

7:50-6.153 Authorities of municipal officials and agencies

(a) The Planning Board of each municipality shall have the following powers and duties:

1. To initiate, hear, review and make recommendations to the Pinelands Commission regarding designation of historic resources and districts of local Pinelands, national or state significance in accordance with the provisions of N.J.A.C. 7:50-6.154;
2. To initiate, hear, review and identify historic resources and districts of local Pinelands, national or state significance and recommend same to the governing body for designation in the zoning ordinance, in accordance with the provisions of N.J.A.C. 7:50-6.154 and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.;
3. To review and issue certificates of appropriateness in accordance with the provisions of N.J.A.C. 7:50-6.155 and 6.156 for any application for development which it is otherwise empowered to review;
4. To review and report on any matter related to this Part referred to it by the Pinelands Commission;

5. To make its general knowledge and expertise available upon reasonable written request to the Pinelands Commission or any agency of the municipality, county, state or federal government;

6. To consult with any county, state or national agency with special expertise in the area of historic resources;

7. To prepare and adopt plans implementing measures to preserve the cultural heritage of traditional Pinelands Villages;

8. To develop and maintain a manual of recommended rehabilitation techniques and the relationship of new construction to natural areas for the guidance of the public; and

9. To adopt rules of procedure which are not in conflict with the provisions of this Part and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

(b) The Board of Adjustment shall review and issue certificates of appropriateness, in accordance with the provisions of N.J.A.C. 7:50-6.155 and 6.156 for any application for development which it is otherwise empowered to review.

(c) The governing body may by ordinance provide for an Historic Preservation Commission in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. The Historic Preservation Commission shall have those duties and responsibilities set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and shall:

1. Advise the Planning Board and Board of Adjustment on the issuance of certificates of appropriateness for all applications for development which otherwise require approval of the Boards; and

2. Unless the governing body expressly authorizes the Planning Board to do so, issue certificates of appropriateness, pursuant to N.J.A.C. 7:50-6.155 and 6.156, for all zoning, construction or other permits which are not issued pursuant to a valid site plan, conditional use, or variance approval granted by the Planning Board or Board of Adjustment.

(d) Where the governing body has not provided for an Historic Preservation Commission, the local permitting agency responsible for ruling on the application for development shall exercise the duties set forth in (c)2 above.

7:50-6.154 Designation of historic resources and districts

(a) Those historic resources within the Pinelands which are from time to time listed in the State or National Registers of Historic Places, pursuant to N.J.S.A. 13:1B-15.128 et seq. and P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470, respectively, are hereby designated by the Pinelands Commission as historic resources of significance to the Pinelands.

(b) Standards for designation of additional resources are as follows:

1. The Pinelands Commission may designate additional historic resources and districts if it determines that the resource or district possesses integrity of location, design, setting, materials, workmanship, feeling, and association which reflects its significance in American history, architecture, archaeology or culture under one or more of the following criteria:

i. The presence of structures, sites or areas associated with events of significance to the cultural, political, economic or social history of the nation, state, local community or the Pinelands; or

ii. The presence of structures, sites or areas associated with the lives of persons or institutions of significance to the cultural, political, economic or social history of the nation, state, local community or the Pinelands; or

iii. The presence of structures that represent the work of a master, or that possess high artistic values, or that embody the distinctive characteristics of a type, period or method of construction, or that represent a distinguishable entity of significance to the architectural, cultural, political, economic or social history of the nation, state, local community or the Pinelands; or

iv. The presence of a site or area which has yielded or is likely to yield significant information regarding the history or archaeological history of the Pinelands; and

2. The Planning Board shall utilize these standards in identifying areas, sites, structures or districts as resources of significance in accordance with the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and recommending that the governing body designate same in the zoning ordinance.

(c) Initiation of Designation: The designation of historic resources or districts of Pinelands significance may be initiated by the Pinelands Commission, the Executive Director, a Historic Preservation Commission, a Planning Board, or any other person.

(d) Designation Application:

1. If designation by the Pinelands Commission is proposed by an Historic Preservation Commission, a Planning Board or other person, the application shall be submitted on a National Register of Historic Places Inventory-Nomination Form with the accompanying information listed in the State and National Register Manual as published by the New Jersey Department of Environmental Protection. The application shall contain the following information:

i. A statement setting forth the basis for designation with specific reference to the standards set forth in (b) above;

ii. Comments from the local Planning Board if the designation is proposed by a person who is not a member of the Planning Board;

iii. Such additional information as may be required from time to time by the Pinelands Commission to facilitate adequate review of the application.

2. If local designation is proposed, the application shall include the information required in (d)1 above and any other information as may be required by the Planning Board.

(e) Pinelands Commission Review: All proposed designations by the Pinelands Commission shall be reviewed and a public hearing held in the manner provided in N.J.A.C. 7:50-4.

(f) Effect of Designation: All resources and districts designated pursuant to this section will be governed by the standards of N.J.A.C. 7:50-6.156.

(g) Removing Designation: Any resource designated by the Pinelands Commission or by a municipality may be removed from designation if the designating agency determines that the resource no longer meets the standards of (b) above. In the event the Pinelands Commission considers removal of any designation, a public hearing shall be held in the manner provided in N.J.A.C. 7:50-4. All resources and districts designated pursuant to this section will be governed by the standards of N.J.A.C. 7:50-6.156.

Amended by R.1990 d.170, effective March 19, 1990.

See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

In (a), "State or National Registers" was "State and ...".

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.155 Evaluation of development proposals

(a) Identification of Resources:

1. A cultural resource survey shall accompany all applications for development in a Pinelands Village or Town and applications for major development in other Pinelands Management Areas in order to determine whether any significant historic resources exist on the parcel. Guidelines for this survey are contained in Appendix B of the "Cultural Resource Management Plan," dated April 1991, as amended. In general, the survey shall include: a statement as to the presence of any properties listed on the National and State Registers of Historic Places on the site or within the area of the project's potential environmental impacts; a thorough search of state, local and any other pertinent inventories to identify sites of potential significance; a review of the literature and consultation with professional and avocational archaeologists knowledgeable about the area; thorough pedestrian and natural resources surveys; archaeological testing as necessary to provide reasonable evidence of the presence or absence of historic resources of significance; adequate recording of the information gained and methodologies and sources used; and a list of personnel involved and qualifications of the person(s) performing the survey.

(b) Survey Exemptions:

1. Notwithstanding (a) above, the need for a cultural resource survey may be:

i. Eliminated by a municipality, as part of its certified land use ordinance, in portions of a Pinelands Village or Town if there is insufficient evidence of significant cultural activity within the area or, in the case of archaeological resources, within the vicinity; and

ii. Waived by the Pinelands Commission or by an approval agency for individual applications for development if it is determined that:

(1) There is insufficient evidence of cultural activity on the project site or, in the case of archaeological resources, within the vicinity;

(2) The evidence of cultural activity on the site lacks the potential for importance because further recording of the available data will not contribute to a more comprehensive understanding of Pinelands culture; or

(3) The evidence of cultural activity lacks any potential for significance pursuant to the standards of N.J.A.C. 7:50-6.154(b).

(c) Evaluation of Resources:

1. The "Cultural Resource Management Plan," dated April 1991, as amended, may be utilized as a guide in the evaluation and treatment of cultural resources.

2. Except for those resources designated pursuant to N.J.A.C. 7:50-6.154, each historic resource identified through the survey shall be evaluated to determine its significance according to the individual criteria set forth in N.J.A.C. 7:50-6.154(b). The evaluation questions contained within the "Cultural Resource Management Plan," dated April 1991, as amended, may be utilized as a guide to assist in this determination of significance.

3. Should a resource be determined not to be significant, the evaluation must determine whether the resource constitutes a site with sufficient remains pursuant to N.J.A.C. 7:50-6.157(a).

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-6.156 Treatment of resources

(a) A Certificate of Appropriateness is required and issued as follows:

1. No construction, or encroachment upon nor alteration, remodeling, removal, disturbance, or demolition of any resource, structure or area designated pursuant to N.J.A.C. 7:50-6.154 nor any action which shall render such a site inaccessible, shall be permitted without first obtaining a certificate of appropriateness. A certificate of appropriateness shall not be required for routine repair or maintenance, nor interior renovations unless the interior has been expressly found to possess significance according to the designation criteria of N.J.A.C. 7:50-6.154.

2. No application for development which involves a resource, structure or area found significant pursuant to N.J.A.C. 7:50-6.155 shall be approved without first obtaining a certificate of appropriateness unless the cultural resource survey accomplishes the recording in accordance with (c) below, in which case no certificate of appropriateness shall be required. A certificate of appropriateness shall not be required for routine repair or maintenance, nor interior renovations unless the interior has been expressly found to possess significance according to the designation criteria of N.J.A.C. 7:50-6.154.

3. The issuance of certificates of appropriateness by a certified municipality shall be subject to the Pinelands Commission notice and review procedures of N.J.A.C. 7:50-4 unless the proposed developments are exempted pursuant to N.J.A.C. 7:50-4.1(a). The exemptions of N.J.A.C. 7:50-4.1(a) shall not apply to activities set forth in (a)1 above which affect a resource listed in the State or National Registers of Historic Places or which is specifically designated by the Pinelands Commission pursuant to N.J.A.C. 7:50-6.154. In uncertified municipalities, certificates of appropriateness shall be issued by the Pinelands Commission except as provided above. The Commission's review of a certificate of appropriateness for locally designated sites or areas shall accept the determination for treatment of the local permitting agency, unless the Commission finds the resource meets the standards of N.J.A.C. 7:50-6.154(b), in which case the certificate of appropriateness must meet the standards of N.J.A.C. 7:50-6.156(c).

4. Notwithstanding (a)1, 2 and 3 above, development proposed by a county, State or Federal agency shall require that a certificate of appropriateness be issued by the Pinelands Commission only if the site is listed in the State or National Registers of Historic Places, has been specifically designated by the Commission, or determined by the Commission to be significant pursuant to N.J.A.C. 7:50-6.155.

(b) The application requirements for a Certificate of Appropriateness are as follows:

1. An application for a certificate of appropriateness shall contain the following information:

i. Detailed plans depicting the exact work to be performed, including detailed renderings of the exterior of any proposed new structure or any exterior alterations to existing structures. A delineation of the relationship of the renderings of the proposal in relation to adjacent structures or surrounding lands may be requested.

ii. A statement of the relationship of the proposed work to the standards for designation in N.J.A.C. 7:50-6.154(b) and the standards for approval of certificates of appropriateness set forth in (c) below.

iii. Such other information as may be required from time to time by the Executive Director or the appropriate municipal reviewing agency or official.

(c) The standards for Certificates of Appropriateness are as follows:

1. Certificates of appropriateness shall be issued which require one of the following treatments:

- i. Preservation of the resource in place if possible;
- ii. Preservation of the resource at another location if in place preservation is not possible; or
- iii. Recordation of the resource if neither preservation of the resource in place or at another location is possible.

2. In determining the type of treatment required pursuant to (c)1 above, the "Cultural Resource Management Plan," dated April 1991, as amended, may be utilized as a guide. In general, the criteria shall include, but not be limited to, consideration of the following:

i. Preservation in place;

(1) Whether the resource represents the last or best remaining example of its kind in the Pinelands that possesses research potential or public educational values;

(2) Whether the resource can be preserved by protecting its location from disturbance;

(3) Whether affirmative measures, such as stabilization, rehabilitation, or reuse can result in preservation;

(4) Whether redesign of the development proposal to avoid impacts can result in preservation;

(5) Whether the steps necessary to preserve the resource are both technically and economically feasible and practical; and

(6) Whether protective measures will result in long term preservation of the resource.

ii. Preservation at another location;

(1) Whether the resource can be moved and still retain its historic significance;

(2) Whether the resource is sufficiently well preserved to permit relocation;

(3) Whether alternative locations which are compatible with the resource are available;

(4) Whether it is both technically and economically feasible and practical to relocate the resource; and

(5) Whether the relocation will result in long term preservation of the resource.

iii. Recordation;

(1) Whether the resource possesses significance other than its association with an important person;

(2) Whether recording the qualities that make the resource significant can increase information beyond that already known; and

(3) Whether the recorded information will help to address important research questions concerning this type of resource.

3. The following requirements shall apply to the treatments specified in (c)1 above:

i. Preservation in Place:

(1) Buildings, architectural features, and engineering features:

(A) Deed covenants, easements, or other appropriate mechanisms must be developed to provide that: any rehabilitation, including additions, of the building or feature must be performed in accordance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (Federal Register/Vol. 48, No. 190/Thursday, September 29, 1983, as amended), incorporated herein by reference; and the structure or feature must be protected sufficiently to preserve those qualities that make it significant.

(B) Before beginning rehabilitation, the original condition of the building or other architectural or engineering feature must be documented photographically in accordance with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation.

(2) Archaeological sites:

(A) A deed covenant, easement, or other appropriate mechanism must be developed to provide for protection, through restricted access if necessary, to preserve those qualities that make the resource important. Any on-site activities must have no detrimental effect on the preservation of the resource. The covenant or other appropriate mechanism must further direct that any stabilization of the resource will be carried out in conformance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.

(B) The archaeological resource shall be incorporated into open space whenever project designs or land use activities permit.

(C) Land allocated for resource preservation may need to be set aside for that single use if the preservation of the resource is not compatible with other activities.

ii. Preservation at Another Location:

(1) Deed covenants, easements, or other appropriate mechanisms must be developed to provide that: any new construction or rehabilitation, including additions, of a building or feature must be performed in accordance with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (Federal Register/Vol. 48, No. 190/Thursday, September 29, 1983, as amended); and the structure or feature must be protected and maintained sufficiently to preserve those qualities that make it significant.

(2) The relocation of the resource must be designed to minimize the damage to the resource and to preserve those qualities that make it significant. The relocation shall be undertaken in accordance with the Secretary of the Interior's publication "Moving Historic Buildings".

(3) The resource shall be recorded to the requirements of the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation prior to removal from its original location. Minimally this will include the preparation of a site plan, appropriate photographs and/or drawings, and a narrative description of any historical functions or processes carried out at the site.

iii. Recordation: The Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (Federal Register/Vol. 48, No. 190/Thursday, September 29, 1983, as amended) shall be utilized when recording resources. In addition, the "Pinelands Cultural Resource Management Plan," dated April 1991, as amended, may be utilized as a further guide for recording resources.

(d) Effect of Issuance of Certificate of Appropriateness:

1. The issuance of a certificate of appropriateness authorizes the applicant to apply for any additional approvals which may be required by the municipality or any other jurisdiction prior to the commencement of work. All subsequent development approvals shall be issued or denied in a manner consistent with the certificate of appropriateness except as provided in (d)2 below.

2. Notwithstanding (d)1 above, a certificate of appropriateness issued for a resource determined to be significant pursuant to N.J.A.C. 7:50-6.155 but not presently designated pursuant to N.J.A.C. 7:50-6.154 shall be valid for two years. If the resource is not designated by the Pinelands Commission or by the municipal governing body in the zoning ordinance within two years, the standards of this Part shall not apply to the cultural resource in question until such time as the Pinelands Commission designates the resource pursuant to N.J.A.C. 7:50-6.154.

Amended by R.1990 d.170, effective March 19, 1990.
See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

In (d)2, "cultural resource in question" was "property ...".
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 (d)2.

APPENDIX A

PINELANDS SEPTIC DILUTION MODEL

December 1993

7:50-6.157 Documentation required for sites with sufficient remains

(a) Sites with sufficient remains are those sites which present graphic evidence of a cultural activity (that is, human alteration of the natural landscape for purposes of occupation or extended use) but which are not found to be significant.

(b) If additional documentation of sites determined to have sufficient remains will provide information beyond that provided in the application for development or the cultural resource survey, these sites shall be documented to include:

1. A narrative description of the resource and its cultural environment;
2. Photographic documentation to record the exterior appearance of buildings, structures, and engineering resources;
3. A site plan depicting in correct scale the location of all buildings, structures, and engineering resources; and
4. A New Jersey State inventory form as published by the New Jersey Department of Environmental Protection for buildings and a narrative description of any process or technology if necessary to elaborate upon the photographic record.

7:50-6.158 Emergency provisions

(a) Notwithstanding any other provisions of this Part, in any case where the Executive Director determines that alteration, remodeling or demolition of a designated structure is necessary to remedy a condition that is dangerous to life, health or safety, a certificate of appropriateness which is required under the provisions of this Part may be issued under the signature of the Executive Director. The Executive Director shall inform the Commission of any action taken pursuant to this provision at its next regularly scheduled meeting.

(b) If at any time after construction has been commenced, archaeological data is discovered on a site, the developer shall immediately cease construction, notify the Commission and the local permitting agency; and take all reasonable steps to protect the archaeological data in accordance with the Guidelines for Recovery of Scientific, Prehistoric, Historic, and Archaeological Data: Procedures for Notification, Reporting, and Data Recovery (36 C.F.R. Part 66).

The water quality standards of the Pinelands Comprehensive Management Plan allow the use of individual on-site septic systems provided that the design of the system and the size of the parcel on which the system is located will ensure that the concentration of nitrate-nitrogen in the groundwater exiting the parcel or entering a surface water body will not exceed 2 ppm (N.J.A.C. 7:50-6.84(a)4iii). The model used to calculate the minimum land area necessary to dilute nitrogen from septic systems to concentrations that will comply with the water quality standards was developed by K.W. Brown (An Assessment of the Impact of Septic Leach Fields, Home Lawn Fertilization and Agricultural Activities on Groundwater Quality, 1980). The following formula is used:

$$A_t = A_f + \frac{(F \frac{L_f}{C} - D_f) A_f}{D_o}$$

- Where:
- A_t = total parcel area
 - A_f = area of disposal field
 - F = unit conversion factor of 10
 - L_f = flux of nitrate-nitrogen below disposal field (kg/ha/yr)
 - C = concentration of nitrate-nitrogen (ppm)
 - D_f = equivalent depth of percolate below disposal field (cm/yr)
 - D_o = equivalent depth of percolate below open acres (cm/yr)

In using this model, it is necessary to assume values for factors such as wastewater flow into the system, the concentration of nitrogen in the wastewater and the amount of rainfall diluting the nitrogen. The standard assumptions required for use in the Pinelands Dilution Model are contained in Table 1.

The assumed wastewater flow for non-residential uses must be consistent with the values contained in N.J.A.C. 7:9A-7.4, as amended, except that the number of employees may not be utilized in calculating wastewater flow for office uses. Absent actual monitoring of nitrogen concentration in the wastewater, the residential nitrogen concentration of 39.45 ppm will be utilized. If the applicant establishes wastewater flow based on monitoring of flows pursuant to N.J.A.C. 7:9A-7.4, then water quality monitoring must also be done to establish actual nitrogen concentration in the wastewater. All structures are assumed to contribute to the generation of wastewater unless it is demonstrated that the nature of the building construction precludes human occupancy.

TABLE 1

| Parameter | Assumption |
|-------------------------------|------------|
| 1. Number of persons/dwelling | 3.5 |

| Parameter | Assumption |
|--|----------------------------------|
| 2. Number of persons/age restricted dwelling | 2.0 |
| 3. Residential wastewater flow (gallons/capita/day) | 75 |
| 4. Plant uptake of nitrogen | 4.5% (A soils) 9.0% (B soils) |
| 5. Infiltrating rainfall | 20 inches/year (50.8 cm/year) |
| 6. Nitrogen production (grams/capita/day) | 11.2 gms |
| 7. Distribution of nitrogen in wastewater | 83% blackwater 17% greywater |
| 8. Nitrogen concentration in wastewater for residential uses | 39.45 ppm |

Amended by R.1994 d.590, effective December 5, 1994,
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
Administrative Correction.
See: 27 N.J.R. 2212(c).

SUBCHAPTER 7. AMENDMENTS TO THE COMPREHENSIVE MANAGEMENT PLAN

7:50-7.1 Purpose

This subchapter establishes a means for making changes in the text of this Plan and in the Land Capability Map. It is not intended to relieve particular hardships nor to confer special privileges or rights but is intended as a tool to adjust the provisions of this Plan and the Land Capability Map in light of changing, newly discovered or newly important conditions, situations or knowledge. The procedures established by this subchapter are designed to maximize public participation in the amendment process.

7:50-7.2 Authority for amendments

The Commission may amend the text, maps, charts and illustrations of this Plan and the Land Capability Map after a public hearing and pursuant to the procedures set out in this Part and in the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Amendments may be proposed by any member of the Commission, the Executive Director, any public agency, and, except in municipalities or counties with certified plans, any resident of the Pinelands Area or the owner of, or any person having a contractual interest in, any property in the Pinelands Area.

7:50-7.3 Petitions for amendment

(a) Any member of the Commission or the Executive Director may, at any time, submit to the Commission on his own initiative any proposed amendment for consideration. Any such submission shall include all information which the member of the Commission or Executive Director determines is necessary or appropriate for full and proper consideration of the proposed amendment.

(b) Any other person desiring to petition the Commission for an amendment to this Plan shall file a petition with the Executive Director in such form and number as the Executive Director shall from time to time establish and containing at least the following information:

1. The petitioner's name and address;
2. The precise wording of any proposed amendment of the text of this Plan and a map or plat delineating any proposed change to the Pinelands Land Capability Map;
3. A statement of the need and justification for the proposed amendment;
4. A statement as to the conformity of any proposed amendment to this Plan or the reason for any deviation from the Plan;
5. In the event that the proposed amendment would change the classification of any parcel as shown on the Land Capability Map:

- i. The street address and legal description of the parcel proposed to be reclassified;
- ii. The petitioner's interest in the subject parcel;
- iii. The owner's name and address, if different from the petitioner's, and the owner's signed consent to the filing of the petition;
- iv. The names and addresses of all owners of property required to be notified pursuant to (c)1 below;
- v. The present classification and existing uses of the parcel proposed to be reclassified; and
- vi. The area of the parcel proposed to be reclassified stated in square feet or acres, or fraction thereof.

6. In the event that the proposed amendment would affect zoning districts, permitted uses or intensity of permitted uses within one or more municipalities whose master plans and land use ordinances have been certified by the Pinelands Commission, duly adopted resolutions of the planning board and governing body of each municipality expressing their support for changes to the master plan and land use ordinances to effectuate the proposed amendment if approved by the Pinelands Commission.

(c) For petitions filed pursuant to (b) above, the petitioner shall be required to provide notice of the filing of the petition within 20 days after receiving notification from the Executive Director that a complete petition has been filed with the Commission as follows:

1. If the petition proposes to change the classification of any parcel as shown on the Land Capability Map or is intended to affect a specific parcel or an area less than 100 acres in size:

i. Notice shall be given to the secretary of the county and municipal planning board and environmental commission, if any, with jurisdiction over any parcel or area that would be directly affected by the proposed amendment;

ii. Notice shall be given to owners of all real property within 200 feet of any parcel or area that would be directly affected by the proposed amendment as provided for in N.J.S.A. 40:55D-12(b). The administrative officer of the municipality in which the subject parcel or area is located shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c). The petitioner shall be entitled to rely upon the information contained in said certified list as provided in N.J.S.A. 40:55D-12(c);

iii. Notice shall be given by publication in the official newspaper of the municipality in which the subject parcel or area is located, if there is one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12; and

iv. Notice shall be given by conspicuous posting on any parcel or parcels that would be directly affected by the proposed amendment.

2. For all other petitions, notice shall be given by publication in all the official newspapers of the Pinelands Commission.

3. The petitioner shall file with the Executive Director, no less than 25 days after receiving notification from the Executive Director that a complete petition has been filed with the Commission, an affidavit that the requirements of (c)1 or 2 above, whichever may be applicable, have been satisfied.

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d. 449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

7:50-7.4 Action by Executive Director

(a) Review: Within 30 days of receipt of any petition for amendment filed pursuant to N.J.A.C. 7:50-7.3, the Executive Director shall review the petition and determine whether it raises substantial issues with respect to whether the proposed amendment should be adopted. If the Executive Director determines that such substantial issues are raised, he shall notify the Commission of his determination and that the petition is under consideration by the staff.

(b) Notice: The Executive Director shall notify, by mail, the petitioner of all decisions made pursuant to (a) above.

7:50-7.5 Action by Commission

(a) Decision to review: Upon submission of any proposed amendment to the Commission by any member of the Commission or the Executive Director, the Commission shall determine whether a hearing should be held for the

purpose of considering the proposed amendment. If the Commission determines that a hearing should be held, it shall conduct a hearing pursuant to the provisions of N.J.A.C. 7:50-4 and the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., at which the proposed amendment shall be considered. If it determines that no hearing need be held, it shall so order.

(b) Final Decision by Commission: Within 30 days of the conclusion of any hearing held pursuant to (a) above, the Commission shall enter a final order either granting or denying the proposed amendment.

7:50-7.6 Submission to Pinelands Municipal Council

All proposed amendments shall, at least 60 days prior to any meeting at which the Commission will consider such amendment, be submitted by the Executive Director to the Pinelands Municipal Council, by mailing such amendments to each municipality in the Pinelands, for its review and recommendation.

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

7:50-7.7 Submission to Governor and Legislature

All amendments adopted by the Commission pursuant to N.J.A.C. 7:50-7.5(b) shall be submitted to the Governor and the Legislature within seven days of adoption.

7:50-7.8 Filing with Secretary of State

Any amendment adopted by the Commission shall be filed with the Secretary of State as required by N.J.S.A. 52:14B-5.

7:50-7.9 Submission to Secretary of the United States Department of the Interior

Any amendment to this Plan shall, within five days following adoption by the Commission, be submitted to the Secretary of the United States Department of the Interior.

7:50-7.10 Effective date of amendments

Amendments to this Plan shall be effective as provided in the Pinelands Protection Act, the Federal Act, and the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:50-7.11 Comprehensive review of plan by Commission

At least every five years after the adoption of this Plan, the Executive Director shall comprehensively review this Plan and all actions taken by the Commission or the Executive Director pursuant to N.J.A.C. 7:50-4 and shall submit a report to the Commission detailing any recommended amendments to the Plan. Such report shall be submitted by January 15 of every fifth year after adoption of this Plan and shall include an explanation of the reasons for any recommended amendment.

SUBCHAPTER 8. ENFORCEMENT

7:50-8.1 Civil enforcement

(a) Civil enforcement: In the event that any building or structure is erected, constructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this Plan, or in the event that construction is commenced on any building or structure in violation of this Plan, the Commission may, in addition to other remedies, institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent completion of construction of said building or structure, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

(b) Emergency enforcement: If the Executive Director determines that any action provided for in (a) above hereof need be initiated immediately in order to protect the Pinelands Area or the jurisdiction or authority of the Commission, he may initiate such action on behalf of the Commission and he shall notify the Commission of any action taken pursuant to this subsection.

SUBCHAPTER 9. ACQUISITION OF PROPERTIES WITH LIMITED PRACTICAL USE

Authority

N.J.S.A. 13:18A-6j.

Source and Effective Date

R.1995 d.379, effective July 17, 1995.

See: 27 N.J.R. 1572(a), 27 N.J.R. 1927(b), 27 N.J.R. 2741(a).

7:50-9.1 Purpose

Federal legislation has been enacted to authorize the acquisition of lands considered as having a limited practical use as set forth in section 502(k)(2)(C) of the National Parks and Recreation Act of 1978, Pub.L. 95-265 (16 U.S.C. Section 471i(k)(2)(C)). The Federal legislation required that the Federal funds appropriated for this purpose be matched by an equal state appropriation. The State of New Jersey has made matching funds available for this program. The purpose of this subchapter is to implement the program of purchasing parcels that have limited practical use, to the extent that Federal funds and matching state funds allow.

7:50-9.2 General standards

(a) The Department of Environmental Protection may acquire parcels of land which are located in the Pinelands Area and are found to be of limited practical use in accordance with the following:

1. The Commission has either denied a Waiver of Strict Compliance for the parcel in question pursuant to N.J.A.C. 7:50-4, Part V or has approved a Waiver of Strict Compliance for the parcel in question and granted a transferable residential development right to other lands in the Protection Area, in accordance with former N.J.A.C. 7:50-4.66(b)3 and 5.30(a), repealed effective March 2, 1992;

2. The parcel in question is less than 50 acres in size; and

3. The standards set forth in N.J.A.C. 7:50-9.3 relative to the ownership and the present and potential uses of the parcel in question have been met.

7:50-9.3 Standards for present and potential uses and ownership

(a) In order to be eligible for acquisition under the provisions of this subchapter, the owner of the parcel shall demonstrate and the Commission shall verify that all of the following conditions exist:

1. Present and potential uses, as follows:

i. The parcel, including all contiguous lands in common ownership on or after January 14, 1981, contains no residential dwelling unit;

ii. The parcel, including all contiguous lands in common ownership on or after January 14, 1981, contains no substantial principal non-residential structure that has an economically viable use, except for structures that are used exclusively for agricultural purposes;

iii. The parcel, including all contiguous lands in common ownership on or after January 14, 1981, has not been approved for resource extraction pursuant to the provisions of this Plan;

iv. If the parcel, including all contiguous lands in common ownership on or after January 14, 1981, is entitled to at least 0.25 Pinelands Development Credits pursuant to N.J.A.C. 7:50-5.43, those Credits have been severed from the parcel pursuant to N.J.A.C. 7:50-5.47;

v. No approval for development of a residential dwelling or substantial principal non-residential structure on the parcel, including all contiguous lands in common ownership on or after January 14, 1981, has been granted pursuant to this Plan provided that approval is still valid; and

vi. The parcel, including all contiguous lands in common ownership on or after January 14, 1981, cannot be determined to meet all standards for the development of either a residential dwelling or a substantial principal non-residential structure in accordance with the provisions of this Plan absent a Waiver of Strict Compliance, taking into consideration the following factors:

(1) The availability of centralized waste water treatment and collection service;

(2) The certification of any municipal land use ordinance pursuant to N.J.A.C. 7:50-3.35 or 3.45; and

(3) The information used by the Commission in its review and action on the Waiver of Strict Compliance relative to the parcel in question.

2. Ownership, as follows:

i. The parcel has been in the same ownership since the date of the Commission's action on the Waiver of Strict Compliance, except that transfer in ownership solely through gift or inheritance shall not render the parcel ineligible for acquisition;

ii. The owner can transfer good title to the parcel which is currently owned in fee simple absolute; and

v. The owner owns less than 50 acres of land in the Pinelands, including the parcel in question, as of July 17, 1995. For purposes of determining whether this requirement is met, all lands in the Pinelands in which the owner has an ownership interest either directly or through a legal entity in which the owner has an ownership interest shall be included in the total acreage based upon the pro-rata share of the total acreage of such land owned by the owner of the parcel in question. Said land shall only be included if the owner owns at least a 10 percent share of said land or said land is owned by a corporation, partnership or other legal entity in which the owner has at least a 10 percent ownership interest.

7:50-9.4 Submission of questionnaires

(a) In order to have a parcel of land considered for acquisition, the owner of the parcel must complete and submit to the Commission the responses to the questionnaire developed by the Executive Director pursuant to N.J.A.C. 7:50-1.21. The questionnaire shall be designed to determine the eligibility of the parcel for acquisition based on the criteria set forth in N.J.A.C. 7:50-9.2 and 9.3. Copies of the questionnaire shall be available from the Commission and shall include any information necessary to enable landowners to contact the Commission for assistance in completing the questionnaire.

(b) If the owner of the parcel fails to submit the questionnaire required pursuant to (a) above or otherwise declines to participate or withdraws from the acquisition process at any time, the parcel shall not be considered for acquisition during the then current round of acquisitions. In order for the parcel to be considered eligible for a later acquisition round, the parcel owner must submit a new completed questionnaire pursuant to (a) above.

7:50-9.5 Notice of intent to acquire lands

The Commission shall publish notice of the intent to purchase parcels of land of limited practical use in all the official newspapers of the Commission. The notice shall include the date by which questionnaires must be submitted for consideration by the Commission during the then current round of acquisitions.

7:50-9.6 Determination and record of eligible parcels

(a) The Executive Director shall periodically establish a date by which completed questionnaires must be received by the Commission in order to be eligible for the then current round of acquisitions. The Executive Director may extend the deadline pursuant to N.J.A.C. 7:50-4.4(a).

(b) The Executive Director shall review each completed questionnaire and inform the owner if any other information is necessary in order to determine the parcel's eligibility for acquisition. If so, the owner shall have 30 days within which to provide the necessary information.

(c) Within 60 days after the deadline established for the receipt of questionnaires for each round of acquisitions or any extension thereto, the Executive Director shall review each completed questionnaire, all other information submitted on behalf of the parcel owner and all other information available to the Pinelands Commission concerning each parcel for which a questionnaire was completed and determine those parcels which qualify for acquisition. No parcel may be recommended for acquisition unless it meets the standards contained in N.J.A.C. 7:50-9.2 and 9.3. The Executive Director shall give written notification of his or her findings and conclusion to the owner of the parcel, the Commission, all persons who have requested a copy of said determination and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

(d) The Executive Director shall retain a record of all questionnaires received, the determination as to their eligibility for acquisition and the acquisition round in which the determination was made.

7:50-9.7 Rights of appeal

Any interested person who is aggrieved by any determination made by the Executive Director pursuant to this subchapter may, within 15 days, appeal the Executive Director's determination to the Commission as provided by N.J.A.C. 7:50-4.91. Additional information not included in the Executive Director's determination may be presented to the Pinelands Commission only by requesting a hearing pursuant to N.J.A.C. 7:50-4.91.

7:50-9.8 Priorities for acquisition

(a) At the conclusion of the appeal period set forth in N.J.A.C. 7:50-9.7, the Executive Director shall recommend to the Pinelands Commission which parcels qualify for acquisition. The parcels shall be prioritized for acquisition

chronologically according to the date of the Commission's action on the Waiver of Strict Compliance, as set forth in N.J.A.C. 7:50-9.2(a)1. The earlier the date of the Commission's action, the higher the priority that will be assigned to the subject parcel. The priority list shall be comprised of:

1. Parcels determined to be eligible during the current round of acquisition;
2. Parcels found to be eligible during a previous round of acquisition that were not acquired due to lack of funding; and
3. Parcels found to be eligible during a previous round of acquisition that the Department of Environmental Protection declined to acquire for any reason other than those specified in N.J.A.C. 7:50-9.11(b)1 and 2.

(b) At the next Commission meeting after receiving the Executive Director's recommendations, the Commission shall consider the Executive Director's recommendation for each parcel and may either approve the recommendation or refer that recommendation to the Office of Administrative Law for a hearing.

(c) The Executive Director shall transmit the chronological list of parcels approved for acquisition to the Department of Environmental Protection within 10 days of the Commission approving those parcels.

(d) The Executive Director shall also inform the Department of Environmental Protection of any parcels which have been referred to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 7:50-9.7 or 9.8(b) and where each such parcel would be on the chronological list if the parcel is subsequently approved for acquisition. Within 10 days of the Commission's action on any parcel referred to the Office of Administrative Law for a hearing, the Executive Director shall inform the Department of Environmental Protection of such action. No owner of a parcel determined to be eligible for acquisition by the Commission following referral to the Office of Administrative Law shall in any way be prejudiced by the fact that the matter was referred to the Office of Administrative Law.

7:50-9.9 Access

By submission of the questionnaire to determine eligibility, the owner agrees to allow access to the parcel during reasonable hours to Commission and Department of Environmental Protection personnel in order to determine the eligibility of the parcel for acquisition and to aid in assessing its value.

7:50-9.10 Acquisition funding

The acquisition of eligible parcels may be funded by moneys expressly appropriated for this purpose by the State of New Jersey and the United States. No acquisition for this purpose may occur if funding is unavailable for any reason.

7:50-9.11 Purchase and conditions

(a) To the extent that funding permits, the Department of Environmental Protection shall pursue the acquisition of eligible parcels in the order established in N.J.A.C. 7:50-9.8.

(b) The Department of Environmental Protection may decline to acquire any parcel at any time prior to the transfer of title for the following reasons:

1. The parcel does not meet the standards set forth in N.J.A.C. 7:50-9.2 and 9.3;
2. Failure of the owner of the parcel to respond to a purchase offer within a reasonable time period or to accept the offer made by the Department of Environmental Protection; or
3. Conditions exist either on the parcel or on contiguous lands which either would require remediation in order to alleviate a hazard to the public or would otherwise incur additional costs to resolve.

7:50-9.12 Landowner right of refusal

The public acquisition of lands considered to possess limited practical use is a voluntary program on the part of the owner of the parcel. Nothing contained in this subchapter shall be construed to require the owner to relinquish title to a parcel of land.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION