

(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.

Public Notice: Notice of Receipt of and Action on a Petition for Rulemaking.

See: 29 N.J.R. 383(a), 29 N.J.R. 1403(a).

#### 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. 7:50-6.24 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).  
Amended by R.1996 d.225, effective May 20, 1996.  
See: 27 N.J.R. 3878(a), 28 N.J.R. 2596(a).  
In (c)7 substituted 7:50-6.24 for 7:50-6.23(a)1 through 6.

#### 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

(a) 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 through the Commission's certification of municipal master plans and land use ordinances pursuant to N.J.A.C. 7:50-3, provided that the Commission determines that the goals and objectives this Plan will be implemented by the proposed municipal master plan or land use ordinance under the municipal plan certification procedures of N.J.A.C. 7:50-3.

(b) The following shall be used by the Commission as guidelines in determining whether a proposed management area change is more appropriate to consider through the Plan amendment procedures of N.J.A.C. 7:50-7 rather than through the certification procedures of N.J.A.C. 7:50-3 and shall be given proper consideration by the Commission when evaluating the need for an amendment to this Plan:

1. A free standing management area is to be created, unless it is an Agricultural Production Area designated by a municipality pursuant to N.J.A.C. 7:50-5.15 or a Special Agricultural Production Area designated by a municipality pursuant to N.J.A.C. 7:50-5.14;

2. A Pinelands Village is to be created that is not otherwise listed in N.J.A.C. 7:50-5.13(f)1;

3. A single management area change would:

i. Increase development potential for an area which predominantly includes land that:

(1) Is not appropriate for increased development levels because of known environmental limitations or because of the known presence of important natural or cultural resources;

(2) Is permanently protected as open space or included in a defined Pinelands acquisition area; or

(3) Is included in an Agricultural Development Area identified by a county agriculture development board pursuant to N.J.A.C. 2:76; or

ii. Decrease development potential for an area which predominantly includes land that is not appropriate for decreased development levels because of land tenure and use patterns, the community and environmental character of the area, known accessibility to existing or planned infrastructure and community services, or the role of the land in the Pinelands Development Credit program;

4. The management area change(s) would substantially alter the character of a municipality's overall zoning plan for the Pinelands Area as it relates to the standards and objectives of this Plan, considering the size and character of the area(s) proposed for redesignation and the extent to which increases in development potential are balanced by decreases in development potential through offsetting management area changes;

5. The rationale for the management area change(s) represents such a material and significant departure from past Commission practice or policy that it requires an amendment to this Plan pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.);

6. The rationale for the management area change(s) is not consistent with the goals and objectives for each management area as set forth in N.J.A.C. 7:50-5.13; or

7. A management area change does not meet the certification standards set forth in N.J.A.C. 7:50-3.39(a).

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

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

Designated former text of section as (a) and therein inserted a reference to the Commission's certification and additional references to N.J.A.C. 7:50-3; and added (b).

#### 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;
- xlii. Tabernacle;
- xliii. Tansboro;
- xliv. Taunton Lake;
- xlv. Tuckahoe;
- xlvi. Vanhiseville;
- xlvii. Vincentown;
- xlviii. Warren Grove;
- xlix. 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. Swanton; 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;

(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 pursuant to N.J.A.C. 7:50-7.5(b) 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 by mailing a copy of the petition 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).

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

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

Rewrote the section.

#### 7:50-7.4 Action on proposed amendments

(a) Upon the proposal of an amendment pursuant to N.J.A.C. 7:50-7.3(a), the Commission shall determine whether it is desirous of amending this Plan so as to implement the proposed amendment. If so, the Executive

Director shall submit the proposed amendment and any required supporting documentation to the Office of Administrative Law for publication in the New Jersey Register as a notice of proposal in accordance with N.J.A.C. 1:30-3.1.

(b) A minimum period of 30 days from the date of publication of the proposed amendment in the New Jersey Register shall be provided for receipt of public comment. During the 30 day period, a public hearing shall be held for purposes of considering the proposed amendment. The Commission shall conduct the 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.

(c) Upon the conclusion of the public comment period, the Commission may enter a final order on the proposed amendment. The Executive Director shall prepare and file notice of any action taken by the Commission with the Office of Administrative Law for publication in the New Jersey Register in accordance with N.J.A.C. 1:30-4.1.

Repeal and New Rule, R.2001 d.103, effective April 2, 2001.  
See: 32 N.J.R. 4037(a), 33 N.J.R. 1095(a).

#### 7:50-7.5 Action on petitions for amendment

(a) Within 30 days following receipt of a petition for amendment filed pursuant to N.J.A.C. 7:50-7.3(b), the Executive Director shall determine whether said petition is complete. Should the Executive Director determine that the petition is not complete, he or she shall mail a written statement to the petitioner specifying the information necessary to complete the submission. No further action on the petition shall be taken until the necessary information is received.

(b) Upon determining that a petition for amendment is complete, the Executive Director shall so notify the petitioner and shall, within 15 days, prepare and file a notice of petition for rulemaking with the Office of Administrative Law in accordance with N.J.A.C. 1:30-3.6(a).

(c) Within 30 days of determining that a petition for amendment is complete, the Executive Director shall review the petition and determine whether it raises substantial issues with respect to whether the amendment proposed by the petitioner should be adopted. If the Executive Director determines that such substantial issues are raised, he or she shall notify the Commission and the petitioner of his or her determination and that the petition is under consideration by the staff. If the Executive Director determines that no substantial issues are raised and that further review of the petition is not warranted, he or she shall so notify the Commission and the petitioner and thereafter recommend that the Commission deny the petition. The Executive Director shall file a notice of his or her determination, and that the petition has been referred to the Commission for a final decision in accordance with (d) below, with the Office of Administrative Law for publication in the New Jersey Register.

(d) Within 90 days of receipt of a complete petition for amendment, the Commission shall enter a final order on the petition. In accordance with N.J.A.C. 1:30-3.6(b), the Commission's action on a petition may include:

1. Denial of the petition;
2. Approval of the petition and the filing of a notice of proposed rule in accordance with N.J.A.C. 7:50-7.4(a) with the Office of Administrative Law; or
3. Referral of the matter to the Executive Director for further review, the nature of which shall be specified and which shall conclude within 60 days of the referral on a specified date.

(e) The Executive Director shall notify the petitioner of the Commission's action and shall prepare and file a notice with the Office of Administrative Law for publication in the New Jersey Register in accordance with N.J.A.C. 1:30-3.6(b).

Repeal and New Rule, R.2001 d.103, effective April 2, 2001.  
See: 32 N.J.R. 4037(a), 33 N.J.R. 1095(a).

#### **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. 7:50-7.4(c) shall be submitted to the Governor and the Legislature within seven days of adoption.

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

#### **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**

(a) 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.

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

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

#### **7:50-7.10 Effective date of amendments**

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

#### **7:50-7.11 Comprehensive review of plan by Commission**

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

### **SUBCHAPTER 8. ENFORCEMENT**

#### **7:50-8.1 Civil enforcement**

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

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

## SUBCHAPTER 9. ACQUISITION OF PROPERTIES WITH LIMITED PRACTICAL USE

### Authority

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

### Source and Effective Date

R.1995 d.379, effective July 17, 1995.

See: 27 N.J.R. 1572(a), 27 N.J.R. 1927(b), 27 N.J.R. 2741(a).

### 7:50-9.1 Purpose

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

### 7:50-9.2 General standards

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

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

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

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

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

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

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

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

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

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

- (1) The availability of centralized waste water treatment and collection service;
- (2) The certification of any municipal land use ordinance pursuant to N.J.A.C. 7:50-3.35 or 3.45; and
- (3) The information used by the Commission in its review and action on the Waiver of Strict Compliance relative to the parcel in question.

### 2. Ownership, as follows:

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

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

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

least a 10 percent share of said land or said land is owned by a corporation, partnership or other legal entity in which the owner has at least a 10 percent ownership interest.

**7:50-9.4 Submission of questionnaires**

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

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

**7:50-9.5 Notice of intent to acquire lands**

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