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SUBCHAPTER 1. GENERAL PROVISIONS

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

7:50-1.1 Title

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

Case Notes

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

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

7:50-1.2 Authority

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

7:50-1.3 General purpose and intent

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

7:50-1.4 Applicability

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

Case Notes

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

7:50-1.5 Effective date

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

7:50-1.6 Fees

(a) Except as provided in (a)1 and 2 below, all applications required or permitted by any provision of this Plan shall be accompanied by a nonrefundable application fee of \$200.00 or a fee calculated according to the fee schedule set forth in (b) through (k) below, whichever is greater. No application filed pursuant to this Plan shall be reviewed or considered complete unless all fees required by this Part have been paid and any escrow required pursuant to N.J.A.C. 7:50-1.7 has been submitted.

1. No application fee shall be required for an application processed in accordance with an alternative local permitting program certified by the Commission pursuant to N.J.A.C. 7:50-3.83; and

2. No application fee shall be required for development that is processed in accordance with an intergovernmental

agreement approved by the Commission pursuant to N.J.A.C. 7:50-4.52(c)1.

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

1. There shall be a \$200.00 fee for a residential development consisting of one unit or one lot; and

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

i. \$200.00 per dwelling unit or lot for the first four units or lots;

ii. \$225.00 per dwelling unit or lot for units/lots five through 50;

iii. \$125.00 per dwelling unit or lot for units/lots 51 through 150; and

iv. \$100.00 per dwelling unit or lots for units/lots in excess of 150.

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

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

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

3. For the development of a golf course, the fee shall be \$150.00 per acre devoted to the golf course facility, in-

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

4. For a proposed linear development, the application fee shall be \$150.00 per acre of all land included in the right of way of the proposed linear development project plus \$150.00 per acre located outside of the right of way that will be disturbed as part of a linear development project. "Linear development" means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission or distribution lines, which have the basic function of connecting two points, the rights-of-way therefore, and any accessory structures or uses directly associated therewith. Linear development shall not include residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads;

5. For a resource extraction permit application or permit renewal application, the application fee shall be \$1,500 plus \$30.00 per acre to be mined within each permit period;

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

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

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

(e) The application fee required at the time of submission of a development application in accordance with (a) through (d) above shall:

1. Be increased by \$2,500 if an individual on-site septic system is proposed pursuant to N.J.A.C. 7:50-6.84(a)5;

2. Equal 50 percent of the calculated fee if a public agency is the applicant; and

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

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

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

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

1. Prescribe needed land treatment and related conservation and natural resources management measures, including forest management practices, for the conservation, protection and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity, and the control and prevention of non-point source pollution; and

2. Establish criteria for resource sustainability of soil, water, air, plants and animals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Wetlands”. See N.J.A.C. 7:50-6.3.

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

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

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

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

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

3. The wetland is not:

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

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

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

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

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

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

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

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

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

Substantially amended.

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

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

Substantially amended.

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

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

Corrected errors in “Parcel” and “Subdivision”.

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

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

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

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

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

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

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

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

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

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

Added "Collection facility", "Domestic treatment works", "Domestic wastewater", "Hazardous or toxic substances", "Hazardous waste", "Household hazardous waste", "Incinerator", "Lawful use", "Record tree", "Recyclable material", "Recycling center", "Regulated medical waste", "Remediation", "Sewage sludge", "Suitable sewage sludge", "Transfer station or facility", "Vegetative waste", "Waste", "Waste derived material", and "Waste management facility"; deleted "Solid waste transfer station" and "Specimen tree"; and amended "Forestry", "Landfill" and "Wetlands, impaired".

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

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

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

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

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

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

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

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

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

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

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

Added "Alternate design pilot program treatment system".

Amended by R.2005 d.171, effective June 6, 2005.

See: 36 N.J.R. 4401(a), 37 N.J.R. 172(a), 37 N.J.R. 2013(b).

Added "Consumer electronics".

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

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

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

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

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

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

Case Notes

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

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

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

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

PART I—PURPOSE

7:50-3.1 Purpose

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

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

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

(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 Continuation, expansion and changes of existing uses

(a) Notwithstanding the use restrictions contained in Part III of this subchapter, a municipality may permit the continuation of any nonconforming use, provided that such use is not abandoned, and further provided that no such use shall be expanded, altered, or changed to another nonconforming use, except as provided in (b) and (c) below.

(b) Notwithstanding the use restrictions contained in Part III of this subchapter, a municipality may permit the expansion or alteration of any nonconforming use existing on January 14, 1981 or any nonconforming use which was constructed based upon an approval granted pursuant to this Plan, 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.

(c) 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 nonconforming use existing on January 14, 1981 or any nonconforming use which was constructed based upon an approval granted pursuant to this Plan, 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.

(d) A municipality may limit the application of (a), (b) and (c) 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).
Amended by R.2007 d.372, effective December 3, 2007.
See: 39 N.J.R. 1970(a), 39 N.J.R. 5077(b).

Section was "Expansion and changes of existing uses". Added new (a), recodified former (a) through (c) as (b) through (d); in the introductory paragraph of (b), inserted "nonconforming" preceding "use" twice and deleted "that is currently non-conforming" following "1981" and "which is currently non-conforming" following "Plan"; in the introductory paragraph of (c), inserted "nonconforming" preceding "use" twice and deleted "that is currently non-conforming" following "1981" and following "Plan"; and in (d), substituted "(b) and (c)" for "and (b)".

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. Development within the residential cluster shall be designed as follows:

i. Residential lots should be one acre in size but may be larger if dictated by unusual site conditions. In no case shall the average size of residential lots within a cluster exceed 1.1 acres;

ii. Individual on-site septic waste water treatment systems in accordance with N.J.A.C. 7:50-6.84(a)4 may serve the lots within the cluster development area. However, in the event that existing agricultural uses will continue on the parcel in accordance with (d)5 below, individual on-site septic waste water treatment systems shall comply with the standards of N.J.A.C. 7:50-6.84(a)5 or 10.21 through 10.23. Community on-site waste water treatment systems serving two or more residential dwelling units which meet the standards of N.J.A.C. 7:50-6.84(a)5 or 10.21 through 10.23 shall also be permitted;

iii. The residential cluster development area shall include such land and facilities as are necessary to support the development, including wastewater facilities, streets, stormwater management facilities and recreation amenities; and

iv. Permitted recreation amenities shall be specified in the municipal ordinance but in no case may they occupy more than one-half acre of land or the equivalent of one acre of land for every 25 residential lots, whichever is greater.

4. Except as otherwise provided in (d)5 below, the balance of the parcel located outside of the residential cluster development shall be owned and managed by a duly constituted homeowners' association, a non profit conservation organization, the municipality or incorporated as part of one of the lots within the cluster development area.

i. All such land shall be permanently protected through recordation of a deed of conservation restriction. Such restriction shall be in favor of the residents of the cluster development and, if provided by municipal ordinance, the municipality or another public agency or non profit conservation organization. In all cases, such restriction shall be expressly enforceable by the Pinelands Commission; and

ii. Such deed of conservation restriction shall permit the land to be managed for low intensity recreation, ecological management and forestry, provided that no more than five percent of the land may be cleared, no more than one percent of the land may be covered with impervious surfaces and any such uses or activities are approved and conducted in accordance with the

requirements of this Plan, including any municipal ordinance certified pursuant thereto.

5. Where agricultural use exists on a parcel proposed for cluster development, the following standards shall apply:

i. For those agricultural uses in existence as of April 6, 2009, the deed of restriction may provide for the continuation of agricultural uses, and the expansion of the area of agricultural use by up to 50 percent;

ii. For those agricultural uses established after April 6, 2009, the deed of restriction may provide for the continuation of agricultural uses, provided the agricultural use has been in existence for a period of at least five years prior to submission of an application for cluster development pursuant to N.J.A.C. 7:50-4;

iii. For those agricultural uses established after April 6, 2009 which do not meet the standards of (d)5ii above, the deed of restriction shall permit the land to be managed only in accordance with (d)4 above and shall not provide for continuation of any agricultural use on the parcel;

iv. In lieu of the provisions of (d)4 above, the deed of restriction to be recorded pursuant to (d)5i or ii above may be in favor of a county or the State Agriculture Development Committee. In all cases, such restriction shall be expressly enforceable by the Pinelands Commission;

v. The deed of restriction to be recorded pursuant to (d)5i or ii above shall authorize agricultural uses and provide that impervious surface may not exceed that which currently exists or three percent, whichever is greater, unless a Resource Management System Plan has been prepared. Before these impervious surface limits may be exceeded, the Resource Management System Plan must be approved by the Pinelands Commission and, if the deed of restriction is in favor of the county or the State Agriculture Development Committee, by such agency; and

vi. For parcels which meet the standards of (d)5i or ii above, a provision is recorded in the deed for each residential lot within the cluster development area which acknowledges agricultural use of the protected land outside the cluster development area and recognizes the legal protections afforded to that use through the deed of restriction and any applicable statutes.

New Rule, R.1994 d.590, effective December 5, 1994.

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

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

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

In (a), deleted "and Rural Development Areas" preceding "Regional Growth Areas"; and added (c) and (d).

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 impervious 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 was not subsequently abandoned;
- ii. The capacity of the use will not exceed two times the capacity of the use on February 7, 1979;
- iii. The use is necessary to achieve recreational use of a particular element of the existing Pinelands environment; and
- iv. 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.

11. The following waste management facilities in accordance with N.J.A.C. 7:50-6, Part VII:

i. Transfer stations, collection facilities and recycling centers located at closed landfills in accordance with N.J.A.C. 7:50-6.76(a);

ii. Petroleum waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(b);

iii. Household hazardous waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(c);

iv. Recycling centers accessory to an existing lawful resource extraction operation or asphalt or concrete manufacturing facility in accordance with N.J.A.C. 7:50-6.76(d), provided the existing resource extraction operation or manufacturing facility is located within one mile of a Regional Growth Area or Pinelands Town;

v. Composting facilities located at closed landfills in accordance with N.J.A.C. 7:50-6.77(b); and

vi. Regulated medical waste facilities accessory to a generator of such waste in accordance with N.J.A.C. 7:50-6.78(b).

(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.

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

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

In (b) added waste management facilities.

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

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

In (b)2i, inserted "was not subsequently abandoned;" and recodified "the capacity of the use will not exceed two times the capacity of the use

on February 7, 1979;" as new (b)2ii; in (b)2ii, substituted "The" for "the"; recodified former (b)2ii and (b)2iii as (b)2iii and (b)2iv; and in (b)11iv, inserted "provided the existing resource extraction operation or manufacturing facility is located within one mile of a Regional Growth Area or Pinelands Town".

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

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

In (a)6v, substituted "impervious" for "impermeable".

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 cluster development in accordance with the provisions of N.J.A.C. 7:50-5.19(c) and (d). Non-clustered residential development shall also be permitted, provided that:

i. No more than one unit is proposed; or

ii. The standards of N.J.A.C. 7:50-5.19(c) cannot be met;

3. Residential dwelling units in accordance with the development transfer provisions of N.J.A.C. 7:50-5.30;

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 impervious surfaces.

(b) In addition to 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. The following waste management facilities in accordance with N.J.A.C. 7:50-6, Part VII:
 - i. Transfer stations, collection facilities and recycling centers located at closed landfills in accordance with N.J.A.C. 7:50-6.76(a);
 - ii. Petroleum waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(b);
 - iii. Household hazardous waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(c);
 - iv. Recycling centers accessory to an existing lawful resource extraction operation or asphalt or concrete manufacturing facility in accordance with N.J.A.C. 7:50-6.76(d), provided the existing resource extraction operation or manufacturing facility is located within one mile of a Regional Growth Area or Pinelands Town;
 - v. Composting facilities located at closed landfills in accordance with N.J.A.C. 7:50-6.77(b); and
 - vi. Regulated medical waste facilities accessory to a generator of such waste in accordance with N.J.A.C. 7:50-6.78(b).
 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 was not subsequently abandoned;
 - ii. The capacity of the use will not exceed two times the capacity of the use on February 7, 1979;
 - iii. The use is necessary to achieve recreational use of a particular element of the existing Pinelands environment; and
 - iv. 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) Minimum lot area and density requirements for residential development: No residential dwelling unit shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.19, 5.30, 5.31 and 5.32. The total number of dwelling units authorized by a municipality shall not exceed a density of one dwelling unit for every 15.8 acres of privately owned, undeveloped land which is not defined in this Plan as wetlands, except as provided in N.J.A.C. 7:50-5.19(d)1. The Executive Director shall maintain a current record of residential units zoned in each certified municipality pursuant to this section.

(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.

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

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

In (b) substituted waste management facilities for landfills.

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

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

In (b)8iv, inserted "provided the existing resource extraction operation or manufacturing facility is located within one mile of a Regional Growth Area or Pinelands Town"; in (b)11i, inserted "was not subsequently abandoned" and recodified "the capacity of the use will not exceed two times the capacity of the use on February 7, 1979;" as new (b)11ii; in (b)11ii, substituted "The" for "the"; and recodified former (b)11ii and (b)11iii as (b)11iii and (b)11iv.

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

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

In (a)1, substituted a semicolon for a period at the end; rewrote (a)2; added new (a)3; recodified former (a)3 through (a)5 as (a)4 through (a)6; in (a)6v, substituted "impervious" for "impermeable"; and rewrote (c).

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. Swezeny 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 impervious 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. The following waste management facilities in accordance with N.J.A.C. 7:50-6, Part VII:

i. Transfer stations, collection facilities and recycling centers located at closed landfills in accordance with N.J.A.C. 7:50-6.76(a);

ii. Petroleum waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(b);

iii. Household hazardous waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(c);

iv. Recycling centers accessory to an existing lawful asphalt or concrete manufacturing facility in accordance with N.J.A.C. 7:50-6.76(d);

v. Vegetative waste landfills in accordance with N.J.A.C. 7:50-6.75(a);

vi. Vegetative waste composting facilities in accordance with N.J.A.C. 7:50-6.77(a);

vii. Composting facilities located at closed landfills in accordance with N.J.A.C. 7:50-6.77(b); and

viii. Regulated medical waste facilities accessory to a generator of such waste in accordance with N.J.A.C. 7:50-6.78(b).

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.

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

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

In (b) substituted waste management facilities for landfills.

Administrative correction.

See: 28 N.J.R. 4479(a).

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

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

In (a)6v, substituted "impervious" for "impermeable".

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;
7. Local communications facilities; and
8. The following waste management facilities in accordance with N.J.A.C. 7:50-6, Part VII:

- i. Transfer stations, collection facilities and recycling centers located at closed landfills in accordance with N.J.A.C. 7:50-6.76(a);
- ii. Petroleum waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(b);

iii. Household hazardous waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(c);

iv. Composting facilities located at closed landfills in accordance with N.J.A.C. 7:50-6.77(b); and

v. Regulated medical waste facilities accessory to a generator of such waste in accordance with N.J.A.C. 7:50-6.78(b).

(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.

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

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

In (b) added waste management facilities.

7:50-5.26 Minimum standards governing the distribution and intensity of development and land use in Rural Development Areas

(a) The following uses shall be permitted in a Rural Development Area:

1. Residential cluster development in accordance with the provisions of N.J.A.C. 7:50-5.19. Nonclustered residential development shall also be permitted, provided that:

- i. No more than one unit is proposed; or
- ii. The standards of N.J.A.C. 7:50-5.19(c) cannot be met; and

2. Residential dwelling units in accordance with the development transfer provisions of N.J.A.C. 7:50-5.30.

(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;

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.

6. The total allocations made pursuant to (b)4 and 5 above to any owner of record shall not exceed one-half of a Pinelands Development Credit. At such time as the ap-

plication of (b)4 and 5 above would exceed a total allocation of one-half of a Pinelands Development Credit to an owner, all remaining lands of that owner in excess of that needed to yield the one-half Pinelands Development Credit allocation shall be entitled to an allocation of Pinelands Development Credits according to the allocation formulas specified in (b)1, 2 and 3 above.

(c) The owners of parcels of land which are smaller than 39 acres shall have fractional Pinelands Development Credits at the same ratio established in (b) above for the management area in which the parcel is located.

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

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

Added "District" to (b)1.

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

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

In (b)3, replaced old i and ii with new i through iii; in (b)4, added "less than one-quarter" of a PDC requirement.

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

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

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

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

Substituted "parcel" for "property" throughout section and amended (b)5.

Amended by R.2000 d.43, effective February 7, 2000.

See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

Inserted (b)6.

Case Notes

Reduction of development credits in Pinelands Preservation Area District was justified due to existence of two dwellings on parcel. *Fas-Mac Associates v. Pinelands Commission*, 96 N.J.A.R.2d (EPC) 21.

7:50-5.44 Limitations on use of Pinelands Development Credits

(a) No Pinelands Development Credit may be conveyed, sold, encumbered or transferred unless the owner of the land from which the credit has been obtained has received a Pinelands Development Credit Certificate from the New Jersey Pinelands Development Credit Bank pursuant to N.J.A.C. 3:42-3, and has deed restricted the use of the land in perpetuity to those uses set forth in N.J.A.C. 7:50-5.47(b) by recorded deed restriction which is in favor of a public agency or not for profit incorporated organization and specifically and expressly enforceable by the Commission.

(b) Notwithstanding the provisions of (a) above, an owner of a parcel from which Pinelands Development Credits are sold may retain a right for residential development on that parcel, provided that the recorded deed restriction expressly provides for same and that the total allocation of Pinelands Development Credits for that parcel is reduced by .25 Pinelands Development Credits for each reserved right to build a dwelling unit. Subdivision of the parcel shall not be required until such time as the residential development right is exercised.

(c) The bonus density of a parcel of land on which Pinelands Development Credits are used shall not exceed the

upper limits of the density range of the municipal zone or district in which the parcel is located.

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

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

In (b), added .25 PDC reduction for reserved rights.

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

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

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

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

Substituted "parcel" for "property" throughout section.

7:50-5.45 Pinelands Development Credit bonus multipliers

Pinelands Development Credits which are used for securing a density bonus for parcels of land located in a Regional Growth Area shall yield a bonus of four dwelling units per credit.

7:50-5.46 Aggregation of Pinelands Development Credits

Pinelands Development Credits may be aggregated from different parcels for use in securing a bonus for a single parcel of land in a Regional Growth Area, provided that the density does not exceed the limits of the density range specified in the municipal district in which the parcel is located.

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

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

Substituted "parcel" for "property" throughout section.

7:50-5.47 Recordation of deed restriction

(a) No conveyance, sale or transfer of Pinelands Development Credits shall occur until the municipality with jurisdiction over the parcel of land from which the Pinelands Development Credits were obtained, the agency or organization to which the restriction is in favor, and the Commission have been provided with evidence of recordation of a restriction on the deed to the land from which the development credits were obtained.

(b) Such deed restriction shall specify the number of Pinelands Development Credits sold and that the parcel may only be used in perpetuity for the following uses:

1. In the Preservation Area District:

i. Berry agriculture; horticulture of native Pinelands plants; forestry; beekeeping; fish and wildlife management; 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 impervious 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 impervious surfaces; agricultural commercial establishments, excluding supermarkets and restaurants and convenience stores, where the principal goods or products available for sale were produced in the Pinelands and the sales area does not exceed 5,000 square feet; 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 and redemption of the requisite Pinelands Development Credits; provided, however, that a municipality may grant general development plan, preliminary subdivision or preliminary site plan approval conditioned upon such evidence being presented as a prerequisite to final subdivision or site plan approval. For such a final subdivision or site plan, the developer shall

provide evidence of Pinelands Development Credit ownership and redemption to secure the same proportion of lots or residential units as was approved for Pinelands Development Credit use in the preliminary approval or, as appropriate, the general development plan. Notification of a local permitting agency development approval shall be made to the Pinelands Commission pursuant to N.J.A.C. 7:50-4 and to the New Jersey Pinelands Development Credit Bank in accordance with N.J.A.C. 3:42-3. Redemption of the requisite Pinelands Development Credits shall occur in accordance with N.J.A.C. 3:42-3.6 prior to the memorialization of the resolution granting final subdivision or final site plan approval, or if no such approval is required, prior to the issuance of any construction permits.

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

Substituted "developer" for "developed" in (c).
Amended by R.1990 d.170, effective March 19, 1990.
See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

In (b)3i, deleted "farm related housing" reference.
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.2000 d.43, effective February 7, 2000.
See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

Rewrote (c).
Amended by R.2009 d.108, effective April 6, 2009.
See: 40 N.J.R. 4874(a), 41 N.J.R. 1405(a).

In (b)1i and (b)3i substituted "impervious" for "impermeable".

Case Notes

Pinelands Protection Act and implementing regulations do not violate takings clause. *Gardner v. New Jersey Pinelands Com'n*, 125 N.J. 193, 593 A.2d 251 (1991).

Pinelands comprehensive management plan is not an illegal exaction. *Gardner v. New Jersey Pinelands Com'n*, 125 N.J. 193, 593 A.2d 251 (1991).

7:50-5.48 through 7:50-5.50 (Reserved)

PART V—SPECIAL PINELANDS DEVELOPMENT CREDIT PURCHASE PROGRAM

7:50-5.51 Purpose

This Part establishes a special program for the State's purchase of Pinelands Development Credits, utilizing funds appropriated by the State for this purpose. The program is administered in cooperation with the New Jersey Department of Environmental Protection and the New Jersey Pinelands Development Credit Bank and is intended to increase the amount of important agricultural and forested lands permanently protected in the Preservation Area District, the Agricultural Production Areas and the Special Agricultural Production Areas. All Pinelands Development Credits purchased through this special program shall also be retired so that the development rights purchased by the State are not used for density bonuses in Regional Growth Areas or for other development activities authorized in this Plan.

New Rule, R.2000 d.43, effective February 7, 2000.
See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

Former N.J.A.C. 7:50-5.51, Purpose, recodified to N.J.A.C. 7:50-5.61.

7:50-5.52 Program administration

(a) The Pinelands Commission shall enter into a memorandum of agreement with the New Jersey Department of Environmental Protection and the New Jersey Pinelands Development Credit Bank to provide for the orderly administration of the special program authorized in this Part. The agreement shall, among other financial and administrative matters, provide for the Pinelands Commission's determination, through letters of interpretation issued pursuant to N.J.A.C. 7:50-4, Part VI, of the number of Pinelands Development Credits attributed to a parcel, the Pinelands Development Credit Bank's purchase of the Pinelands Development Credits on behalf of the Pinelands Commission and the administration of the appropriated funds. The memorandum of agreement may also authorize joint implementation of the program with any County Development Credit Bank.

(b) Nothing in this Part shall be construed to limit the authority of the Pinelands Development Credit Bank to otherwise purchase, extend loan guarantees for, sell, exchange, convey or retire Pinelands Development Credits pursuant to the authorities granted to the Bank in N.J.S.A. 13:18A-30 through 49.

New Rule, R.2000 d.43, effective February 7, 2000.
See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

Former N.J.A.C. 7:50-5.52, Designation of Municipal Reserve Areas, recodified to N.J.A.C. 7:50-5.62.

7:50-5.53 Pinelands Development Credit purchases

(a) The memorandum of agreement shall authorize the Pinelands Development Credit Bank to purchase Pinelands Development Credits through this special program on behalf of the Pinelands Commission only when sufficient funds are available for such purchases and when all of the requirements of (b) and (c) below are met.

(b) All purchases of Pinelands Development Credits under this program shall meet the following criteria:

1. The deed restriction required pursuant to N.J.A.C. 7:50-5.47 was recorded on or after July 1, 1999 for the parcel to which the Pinelands Development Credits are allocated;
2. The Pinelands Development Credits are owned by the person or entity who owns the parcel to which the Pinelands Development Credits are allocated;
3. The Pinelands Development Credits are not owned by a public agency;
4. If a person or entity owns more than one parcel, each of which is one acre or less in size and each of which receives a PDC allocation pursuant to N.J.A.C. 7:50-5.43(b)4 or 5, no more than a total of 0.50 Pinelands Development Credits allocated to such parcels shall be purchased from that person or entity; and

5. No more than 25 Pinelands Development Credits shall be purchased from any person or entity prior to July 1, 2000 unless the full amount of the appropriation by the State for such purposes is not obligated by June 30, 2000.

(c) Upon receipt of a written request from a property owner and the transfer of sufficient funds to the Pinelands Development Credit Bank by the Pinelands Commission, the Bank shall purchase the Pinelands Development Credits if the requirements of (a) and (b) above and the requirements of N.J.A.C. 3:42-3 are met.

(d) The requirements of (a), (b) and (c) above apply to the Pinelands Development Credit Bank's purchase of Pinelands Development Credits pursuant to this special program and shall not otherwise be construed to limit any person's ability to sell Pinelands Development Credits to the Pinelands Development Credit Bank pursuant to N.J.A.C. 3:42-5 or to any other person.

New Rule, R.2000 d.43, effective February 7, 2000.

See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

Former N.J.A.C. 7:50-5.53, Development in Municipal Reserve Areas, recodified to N.J.A.C. 7:50-5.63.

7:50-5.54 Purchase price

(a) The purchase price of a Pinelands Development Credit shall be the higher of the following values:

1. The 1985 market value of \$12,500 established in the Pinelands Development Credit Bank Act, P.L. 1985, c.310 (N.J.S.A. 13:18A-30-49), adjusted to current dollar value. The adjustment shall be directly proportional to the percent change in the Consumer Price Index from the 1985 annual average index to the annual average index for the calendar year immediately preceding the purchase. The adjustment shall use the Consumer Price Index for All Urban Consumers, Philadelphia-Wilmington-Atlantic City Area, Owners Equivalent Rent of Primary Residence, as compiled by the United States Department of Labor Bureau of Labor Statistics; or
2. The value derived from the more recent of the following:
 - i. The purchase price for Pinelands Development Credits established by the Pinelands Development Credit Bank pursuant to the Pinelands Development Credit Bank Act, P.L. 1985, c.310 (N.J.S.A. 13:18A-30-49) which is promulgated at N.J.A.C. 3:42-5.6; or
 - ii. Eighty percent of the highest per unit bid received in conjunction with the most recent sale of Pinelands Development Credits by the Pinelands Development Credit Bank pursuant to N.J.A.C. 3:42-7.

New Rule, R.2000 d.43, effective February 7, 2000.

See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

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

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

Rewrote the section.

7:50-5.55 Retirement of Pinelands Development Credits purchased through this program

All Pinelands Development Credits purchased by the Pinelands Development Credit Bank pursuant to the special program authorized in this Part shall be retired and may never be transferred, sold, conveyed, redeemed or otherwise used in any way. The Pinelands Development Credit Bank shall record the retirement of these Pinelands Development Credits in the registry maintained pursuant to N.J.A.C. 3:42-4.

New Rule, R.2000 d.43, effective February 7, 2000.
See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

7:50-5.56 through 7:50-5.60 (Reserved)**PART VI—MINIMUM STANDARDS FOR
MUNICIPAL RESERVE AREAS****7:50-5.61 Purpose**

In order to enable counties and municipalities with jurisdiction over land in Rural Development Areas and Regional Growth Areas to plan for an orderly rate and pattern of

growth within both areas, the Pinelands Commission hereby establishes a municipal option that may be incorporated in a municipal master plan or land use ordinance which allows a municipality to designate areas in a Rural Development Area or Regional Growth Area as Municipal Reserve Areas. These areas would be eligible for development under the minimum standards established for development and land use in Regional Growth Areas, including use of Pinelands Development Credits at a future date.

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

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

Recodified from N.J.A.C. 7:50-5.51 by R.2000 d.43, effective February 7, 2000.

See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

7:50-5.62 Designation of Municipal Reserve Areas

(a) A municipality may, in its master plan and land use ordinance, designate lands in Rural Development Areas that are adjacent to or contiguous with a Regional Growth Area or areas of existing growth and development located outside of the Pinelands as Municipal Reserve Areas, provided that the area designated:

(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 Pinelands 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 unbuild 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 Clearing and soil disturbance

(a) All clearing and soil disturbance activities, whether or not an application for development is required pursuant to N.J.A.C. 7:50-4, shall be limited to that which is necessary to accommodate an activity, use or structure which is permitted by this Plan.

(b) Where practical, all clearing and soil disturbance activities associated with an activity, use or structure other than agriculture, forestry and resource extraction, shall:

1. Avoid wooded areas, including New Jersey's Record Trees as published by the New Jersey Department of Environmental Protection in 1991 and periodically updated; and

2. Revegetate or landscape areas temporarily cleared or disturbed during development activities.

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).

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

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

Section was "Vegetation removal and landscaping standards".

7:50-6.24 Revegetation and landscaping plans

(a) Except for forestry and resource extraction, each application for public development which requires Pinelands Commission approval pursuant to N.J.A.C. 7:50-4.51 through 4.58 shall reflect revegetation and landscaping measures to meet the standards of (c) below.

(b) Except for forestry and resource extraction, each application for major development and any other application where a municipality otherwise requires a landscaping plan shall contain a landscaping or revegetation plan in accordance with the standards of (c) below.

(c) In order to conserve water, conserve natural features and reduce pollution from the use of fertilizers, pesticides and other soil supplements, the following elements shall be incorporated into all revegetation or landscaping plans prepared pursuant to (a) and (b) above:

1. The limits of clearing shall be identified;

2. Existing vegetation, including New Jersey's Record Trees as published by the New Jersey Department of Environmental Protection in 1991 and periodically updated, shall be incorporated into the landscape design where practical;

3. Permanent lawn or turf areas shall be limited to those specifically intended for active human use such as play fields, golf courses and lawns associated with a residence or other principal non-residential use. Existing wooded areas shall not be cleared and converted to lawns except when directly associated with and adjacent to a proposed structure; and

4. Shrubs and trees authorized by N.J.A.C. 7:50-6.25 shall be used for revegetation or landscaping purposes. Other shrubs and trees may be used in the following circumstances:

i. When the parcel to be developed or its environs contain a predominance of shrubs and tree species not authorized by N.J.A.C. 7:50-6.25;

ii. For limited ornamental purposes around buildings and other structures; or

3. Transportation of cathode ray tubes and consumer electronics to and from the recycling center and disposition of the processed product shall be accomplished in accordance with N.J.A.C. 7:26A-7.6, except that a transporter may not store the materials in the Pinelands;

4. The waste importation limitations prescribed in N.J.A.C. 7:50-6.73(c) shall not apply;

5. The total amount of consumer electronics materials accepted for recycling shall not exceed 200 tons per day;

6. No materials intended for recycling or repair shall be stored at the center for more than three months and the total amount of recyclable materials on site at any time shall not exceed 1,000 tons;

7. The recycling center shall not be expanded or modified in any way, except as necessary to facilitate the recycling function prescribed herein and only after written notice has been provided to the Commission and an application for development, if required pursuant to N.J.A.C. 7:50-4, has been approved by the Commission;

8. Recyclable materials shall be stored in secure, enclosed, weather-tight buildings or containers and the design and operation of the recycling center shall be in accordance with the appropriate standards of N.J.A.C. 7:26A-4.1 through 4.6; and

9. The New Jersey Department of Environmental Protection and the Commission shall conduct annual joint inspections of the operations of the recycling center, as permitted by N.J.A.C. 7:26A-4.3, during the period the Fort Dix Consumer Electronics Recycling Center Pilot Program is in effect.

10. The recycling center shall not be expanded or modified in any way, except as necessary to facilitate the recycling function prescribed herein and only after written notice has been provided to the Commission and an application for development, if required pursuant to N.J.A.C. 7:50-4, has been approved by the Commission;

(b) The operators of the Fort Dix consumer electronics recycling center shall, on an annual basis, provide to the Commission the following information:

1. The tonnage of consumer electronics received at the facility for recycling; and
2. The tonnage of consumer electronics sent from the facility for disposal in a landfill.

New Rule, R.2005 d.171, effective June 6, 2005.
See: 36 N.J.R. 4401(a), 37 N.J.R. 172(a), 37 N.J.R. 2013(b).

7:50-10.30 Pinelands Commission approval and evaluation

(a) If otherwise appropriate under N.J.A.C. 7:50-4, the Pinelands Commission shall approve the development application for the Fort Dix consumer electronics recycling center if it finds that the standards of N.J.A.C. 7:50-10.29 are met.

(b) The Executive Director shall review this pilot program three years following the Commission's approval pursuant to (a) above and shall report to the Commission on its implementation. The Executive Director shall determine whether the pilot program is successful in accordance with the following criteria:

1. The facility has operated in a manner entirely and uniformly consistent with the standards of N.J.A.C. 7:50-10.29;

2. There have been no incidents at the Fort Dix computer electronics recycling facility or any other Class D consumer electronics recycling facility in New Jersey which would cause any of the provisions of the contingency plan required by N.J.A.C. 7:26A-4.6(c) to go into effect;

3. The amount of solid waste returned to the waste stream for disposal in a landfill has been significantly reduced; and

4. The net effect of the pilot program, when viewed in its entirety, is that the resources of the Pinelands have been afforded the same or greater level of protection than would be provided by the standards and requirements set forth in N.J.A.C. 7:50-5 and 6.

(c) If the Executive Director finds that this pilot program has not been implemented or has not been successful based on the criteria set forth in (b) above, the Executive Director shall propose an amendment to this subchapter, in accordance with N.J.A.C. 7:50-7, to repeal the pilot program.

(d) If the Executive Director finds that this pilot program has been successful based on the criteria set forth in (b) above, the Executive Director may propose an amendment to this Plan in accordance with N.J.A.C. 7:50-7 which would allow for the continued operation of the Fort Dix computer electronics recycling facility and broaden the applicability of this pilot program in the Pinelands.

New Rule, R.2005 d.171, effective June 6, 2005.
See: 36 N.J.R. 4401(a), 37 N.J.R. 172(a), 37 N.J.R. 2013(b).