

## Case Notes

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

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

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

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

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

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

1. They are based upon a current and comprehensive inventory and analysis of the natural resources of the municipality prepared by the municipality or any other source. A municipality may use the inventory provided by the Commission;
2. They include provisions which:
  - i. Regulate the character, location and magnitude of development within the Pinelands Area;
  - ii. Prescribe standards relating to lot layout, road design and construction, and public utility installation which conform to all similar standards contained in this Plan;
  - iii. Implement the overall development intensity standards contained in this Plan through minimum lot specifications or other appropriate means;
  - iv. Are adequate to ensure that all development of land in the Pinelands Area is in conformance with the development standards established by N.J.A.C. 7:50-5 and 6;
  - v. Encourage coordinated development along roadways by concentrating commercial development at transportation nodes, providing shared access points, encouraging comprehensive commercial planning and design and use of other appropriate techniques;
  - vi. Implement Pinelands management area and zoning district boundaries in a manner which provides consistent treatment of lands that are similar in situation and character and considers the suitability of lands for their assigned management area, and zoning district designations, as they relate to the standards and objectives of this Plan; and

vii. Enable permitted densities in each Regional Growth Area zoning district in which residential development is permitted to be reasonably achieved in most cases.

3. They provide that no application for development within the Pinelands Area, except as provided in N.J.A.C. 7:50-3.81 through 3.85, shall be determined to be complete by any municipal department, body or agency unless it is accompanied by a Certificate of Filing issued by the Commission pursuant to N.J.A.C. 7:50-4.34 and contains at least the information required by the Commission pursuant to N.J.A.C. 7:50-4.2(b);

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

5. They include provisions relative to the review and action on applications for forestry operations which:

- i. Are designed to implement a clear and straightforward process for the review of forestry applications that does not involve municipal site plan approval;
- ii. Require that forestry permits be approved or denied within 45 days after submission of a complete application to a municipality, or within such further time as may be consented to by the applicant;
- iii. Provide that failure of a municipality to act within the period prescribed in (a)5ii above shall constitute municipal approval of the permit; and

iv. At the option of the municipality, provide for the establishment of reasonable application fees for forestry permits in accordance with N.J.S.A. 40:55D-8(b) and the posting of financial sureties in accordance with N.J.A.C. 7:50-6.47;

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

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

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

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

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

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

12. They demonstrate that they are in compliance with the provisions of the Federal Act; and

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

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

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

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

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

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

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

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

In (a) added requirement of provisions relative to review and action on applications for forestry operations.

Amended by R.1999 d.306, effective September 7, 1999.

See: 31 N.J.R. 1251(a), 31 N.J.R. 2609(a).

Inserted (a)14.

Amended by R.2000 d.232, effective June 5, 2000.

See: 32 N.J.R. 151(a), 32 N.J.R. 2082(a).

Deleted a former (a)14.

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

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

In (a), added 2vi.

Amended by R.2002 d.67, effective March 4, 2002.

See: 33 N.J.R. 3399(a), 34 N.J.R. 1024(a).

In (a), added 2vii.

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

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

#### **7:50-3.41 Setting of hearing and procedures therefor**

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

#### **7:50-3.42 Recommendation of county board**

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

#### **7:50-3.43 Recommendation of Executive Director**

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

#### **7:50-3.44 Action by Commission**

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

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

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

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

(c) Decision to review: If the Executive Director determines that the amendment raises a substantial issue with respect to the conformance of the amended municipal master plan or land use ordinance to this Plan, the amended

municipal master plan or land use ordinance shall be reviewed pursuant to N.J.A.C. 7:50-3.33 through 3.44 and the Executive Director shall so inform the municipal clerk.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. A topographic map at a scale of one inch equals 200 feet, showing the proposed dimensions, location and operations on the subject parcel;

iii. The location, size and intended use of all buildings;

iv. The location of all points of ingress and egress;

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

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

vii. A soils map;

viii. A restoration plan which includes:

(1) Method of stockpiling topsoil and overburden;

(2) Proposed grading and final elevations;

(3) Topsoil material application and preparation;

(4) Type, quantity and age of vegetation to be used;

(5) Fertilizer application including method and rates;

(6) Planting method and schedules; and

(7) Maintenance requirements schedule;

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

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

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

i. All information required in an application for development approval as set out in (b)4 above;

ii. The waiver sought, the provisions or standards of this Plan from which a waiver is requested and a statement of the reasons for the waiver;

iii. At the option of the applicant, all other information required in (b)5 above;

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

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

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

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

(c) Determination of whether application is complete.

1. Determination by Executive Director:

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

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

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

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

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

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

In (b)7viii, "restoration" was "reclamation". Added (c)1ii and iii.  
 Amended by R.1992 d.91, effective March 2, 1992.  
 See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

Corrections made upon adoption or (b), (b)8i, iii, iv and v.  
 Amended by R.1994 d.590, effective December 5, 1994.  
 See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

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

Changed "property" to "parcel" throughout the section.  
 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) deleted provisions for application for forestry.

**7:50-4.3 Commission hearing procedures**

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

(b) **Notice of public hearing.**

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

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

2. **Persons entitled to notice:**

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

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

(2) By sending a copy of the notice, by mail to any person, organization or agency which has previously filed with the Commission a written request, together with an annual fee in an amount to be determined from time to time by the Commission to cover the actual cost of such notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Duty of Commission staff:

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

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

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

(d) Conduct of the hearing:

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

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

3. Record of hearing:

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

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

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

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

1. All decisions and orders of the Executive Director or the Commission, and all recommendations of the Executive Director to the Commission, shall be in writing and shall include findings of fact, shall refer to the information in the record upon which such decision or order is based, shall specify the reason or reasons for such decision, and shall contain a conclusion or statement separate from the findings of fact which shall set forth any recommendation or final approval, conditional approval, or denial of the application being considered.

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

i. The applicant;

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

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

iv. 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 land use in Rural Development Areas**

(a) Residential dwelling units at municipally designated densities shall be permitted provided that the total number of dwelling units authorized by a municipality does not exceed one dwelling unit for every 3.2 acres of privately owned undeveloped land which is not defined in this Plan as wetland.

(b) In addition to the residential uses permitted under (a) above, a municipality may permit any use which is compatible with the essential character of the Pinelands environment and is similar in character, intensity and impact to the following uses:

1. Agriculture;

2. Agricultural employee housing as an element of, and accessory to, an active agricultural operation;

3. Forestry;

4. Recreational facilities, other than amusement parks;

5. Agricultural products sales establishments;

6. Agricultural processing facilities and other light industrial uses;

7. Roadside retail sales and service establishments;

8. Resource extraction operations;

9. 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);

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).

10. Public service infrastructure except that centralized waste water treatment and collection facilities shall be permitted to service the Rural Development Area only in accordance with N.J.A.C. 7:50-6.84(a)2;

11. Institutional uses;

12. Community commercial uses;

13. Signs;

14. Accessory uses; and

15. Local communications facilities, provided that the standards of N.J.A.C. 7:50-5.4(c) are met.

(c) No residential dwelling unit shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.30, 5.31 and 5.32. A municipality may also permit the residential density otherwise permitted on a particular parcel of land to be clustered on one acre lots if the remainder of the parcel not assigned to individual residential lots is permanently dedicated through recordation of a restriction on the deed to the parcel as open space with no further development permitted. Recreational amenities may be permitted on the deed restricted lands insofar as they are consistent with the types of recreational amenities which could have been developed as accessory uses on the residential lots, absent clustering.

(d) Minimum lot areas for non-residential structures shall be determined by application of the standards contained in N.J.A.C. 7:50-6.84(a)4 whether or not the lot is to be served by a centralized waste water treatment or collection facility pursuant to (b)10 above, provided, however, that no such structure shall be located on a parcel of less than one acre.

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

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

Added (d).

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

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

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

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

Added (b)15.

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.

#### 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.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with density requirements, seasonal high water table requirement, and wetlands protection requirements. Summonte v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 9.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with lot size requirements. Egenstaffer v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 3.

#### 7:50-5.27 Minimum standards governing the distribution and intensity of development and land use in Pinelands Villages and Towns

(a) Any use not otherwise limited pursuant to N.J.A.C. 7:50-6 may be authorized in a Pinelands Village or Town, provided that:

1. Public service infrastructure necessary to support the use is available, or can be provided without any development in the Preservation Area District, Special Agricultural Production Area, or a Forest Area;

2. The character and magnitude of the use is compatible with existing structures and uses in the Village or Town;

3. Only the following waste management facilities shall be permitted in a Pinelands Village in accordance with N.J.A.C. 7:50-6, Part VII:

i. Transfer stations, collection facilities and recycling centers 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);

v. Composting facilities 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).

4. No hazardous waste facility, landfill or incinerator shall be permitted in a Pinelands Town, except as expressly authorized in N.J.A.C. 7:50-6.75 or 6.78.

(b) No residential dwelling unit or nonresidential use shall be located on a parcel of less than one acre unless served by either:

1. A centralized waste water treatment plant; or

2. A community on-site waste water treatment system serving two or more residential dwelling units which meets the standards of N.J.A.C. 7:50-6.84(a)5 or 10.21 through 10.23, provided that the overall residential density on the parcel does not exceed one dwelling unit per acre.

(c) Any municipal variance approval which grants relief from density or lot area requirements for a residential or principal non-residential use shall require that Pinelands Development Credits be used for all dwelling units or lots in excess of that permitted without the variance. This requirement shall not apply to use variances which authorize development on lots which conform to the area requirements for the principal uses normally permitted in the zone.

Amended by R.1992 d.91, effective March 2, 1992.  
See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

New (c) added.

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

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

In (a) added provisions for waste management facilities and prohibited hazardous waste facilities, landfills and incinerators.

Administrative correction.

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

Amended by R.2002 d.247, effective August 5, 2002.  
See: 34 N.J.R. 722(a), 34 N.J.R. 2804(b).

Rewrote (b).

**7:50-5.28 Minimum standards governing the distribution and intensity of development and land use in Regional Growth Areas**

(a) Any use not otherwise limited pursuant to N.J.A.C. 7:50-6 may be permitted in a Regional Growth Area, provided that:

1. Except as provided in (a)2, 3, 4, 5, 6 and 7 below and Part IV of this subchapter, the total number of dwelling units authorized by a municipality for a Regional Growth Area shall be equal to and not exceed the following density per acre of developable land:

- i. In Barnegat Township: 2.0 dwelling units per acre.
- ii. In Beachwood Borough: 3.5 dwelling units per acre.
- iii. In Berkeley Township: 2.0 dwelling units per acre.
- iv. In Berlin Borough: 2.0 dwelling units per acre.
- v. In Berlin Township: 2.0 dwelling units per acre.
- vi. In Chesilhurst Borough: 1.125 dwelling units per acre.
- vii. In Dennis Township: 1.0 dwelling unit per acre.
- viii. In Dover Township: 3.5 dwelling units per acre.
- ix. In Eagleswood Township: 2.0 dwelling units per acre.
- x. In Egg Harbor Township: 3.5 dwelling units per acre.
- xi. In Evesham Township: 2.0 dwelling units per acre.

- xii. In Galloway Township: 2.5 dwelling units per acre.
- xiii. In Hamilton Township: 3.5 dwelling units per acre.
- xiv. In Jackson Township: 3.0 dwelling units per acre.
- xv. In Lacey Township: 3.5 dwelling units per acre.
- xvi. In Little Egg Harbor Township: 3.5 dwelling units per acre.
- xvii. In Manchester Township: 3.5 dwelling units per acre.
- xviii. In Medford Township: 1.0 dwelling unit per acre.
- xix. In Medford Lakes Borough: 3.0 dwelling units per acre.
- xx. In Monroe Township: 2.0 dwelling units per acre.
- xxi. In Ocean Township: 3.5 dwelling units per acre.
- xxii. In Pemberton Township: 2.0 dwelling units per acre.
- xxiii. In Shamong Township: 1.0 dwelling unit per acre.
- xxiv. In Southampton Township: 1.0 dwelling unit per acre.
- xxv. In South Toms River Borough: 3.5 dwelling units per acre.
- xxvi. In Stafford Township: 3.5 dwelling units per acre.
- xxvii. In Tabernacle Township: 1.0 dwelling unit per acre.
- xxviii. In Upper Township: 1.0 dwelling unit per acre.
- xxix. In Waterford Township: 2.25 dwelling units per acre.
- xxx. In Winslow Township: 1.125 dwelling units per acre.

2. For purposes of this section, developable lands are those privately held, non-wetland lands with a depth to seasonal high water table of greater than five feet. Where sewer systems are available, lands with a depth to seasonal high water table exceeding 1.5 feet shall also be considered developable. Developable land may exclude lands which are zoned exclusively for commercial or industrial use, predominantly developed as such, and which otherwise form a part of a reasonable balance between industrial or commercial zoned property and residential zoned lands.

3. The land use element of a municipal master plan and land use ordinance shall reasonably permit development to occur within a range of densities, provided that the total amount of residential development permitted in (a)1 above is exceeded by at least 50 percent through the use of Pinelands Development Credits; that a reasonable proportion of the density increase permits the development of single family detached residences; and that the residentially zoned districts in which the ranges are established are reasonably expected to be developed within the assigned density ranges.

i. The following guidelines may be used by municipalities in establishing these ranges:

- (1) Less than .5 dwelling units per acre;
- (2) One-half to one dwelling units per acre;
- (3) One to two dwelling units per acre;
- (4) Two to three dwelling units per acre;
- (5) Three to four dwelling units per acre;
- (6) Four to six dwelling units per acre;
- (7) Six to nine dwelling units per acre;
- (8) Nine to twelve dwelling units per acre; and
- (9) Twelve and greater dwelling units per acre.

ii. Municipal master plans or land use ordinances shall provide that development at a density which is greater than the lowest density in each range can be carried out if the increase in density is achieved through a density bonus for use of Pinelands Development Credits.

4. Any municipal variance approval which grants relief from density or lot area requirements shall require that Pinelands Development Credits be used for all dwelling units or lots in excess of that permitted without the variance.

5. Municipal use variances and other municipal approvals which authorize uses in zones where such uses are not permitted shall be subject to the following:

i. Municipal variances or other municipal approvals which authorize residential development in a zone in which residential development is not otherwise permitted or which authorize nonresidential development in a zone in which the approved nonresidential development is not otherwise permitted, and in which permitted residential density may be increased through the use of Pinelands Development Credits pursuant to (a)3ii above, shall be allowed to take effect pursuant to N.J.A.C. 7:50-4.31 through 4.50, provided the applicant is able to demonstrate that such a variance or approval will not be substantially detrimental to the purpose or character of the zone in which the development would be located or to the land use and development objectives of this Plan by:

(1) Involving, on a parcel of at least 50 acres, the development of more than 50 units or more than two percent of the base units allocated pursuant to (a)1 above by a certified municipal land use ordinance to the Regional Growth Area of the municipality in which the development would be located, whichever is greater;

(2) Eliminating, on a parcel of at least 50 acres, more than 50 base units or more than two percent of the base units allocated pursuant to (a)1 above by a certified municipal land use ordinance to the Regional Growth Area of the municipality in which the development would be located, whichever is greater. In cases where different types of residential development are permitted at different base densities within the same zone, an average of the permitted base densities shall be used to determine whether the applicable base unit threshold would be exceeded;

(3) Exceeding the thresholds established in (a)5i(2) above by impacting surrounding parcels within the Regional Growth Area in such a way as to reduce their potential for residential development; or

(4) Exceeding the thresholds established in (a)5i(2) above when considered together with other use variances or similar approvals issued by the municipality during the preceding two years within the same zone.

ii. If the criteria in (a)5i above are satisfied, the municipal variance or other approval shall be allowed to take effect pursuant to N.J.A.C. 7:50-4.31 through 4.50, provided the applicant acquires and redeems Pinelands Development Credits as follows:

(1) For those municipal variances or approvals which authorize residential development in a zone in which residential development is not otherwise permitted, Pinelands Development Credits must be acquired and redeemed for 50 percent of the authorized units for parcels under 10 acres in size; for 75 percent of the authorized units for parcels between 10 and 20 acres in size and for 100 percent of the authorized units for parcels over 20 acres in size; and

(2) For those municipal variances or approvals which authorize nonresidential development in a zone in which the approved nonresidential development is not otherwise permitted, and in which density may be increased through the use of Pinelands Development Credits pursuant to (a)3ii above, Pinelands Development Credits must be acquired and redeemed at 50 percent of the maximum rate permitted for Pinelands Development Credit use in the zone which the nonresidential use will be located for parcels under 10 acres in size; at 75 percent of the maximum rate for parcels between 10 and 20 acres in size; and at 100 percent of the maximum rate for parcels over 20 acres in size.

iii. The requirements in (a)5ii above shall not apply to municipal variances or other approvals which authorize the expansion of or changes to existing nonresidential uses in accordance with N.J.A.C. 7:50-5.2.

6. If the number of Pinelands Development Credits required pursuant to (a)3 through 5 above is not evenly divisible by 0.25, it shall be increased to the next highest increment of 0.25.

7. Nothing in (a) above is intended to prevent a municipality, as part of a certified master plan or land use ordinance, from:

i. Employing additional density bonus or incentive programs, provided that such programs do not interfere with nor otherwise impair in any way the required municipal program for use of Pinelands Development Credits;

ii. Increasing or decreasing by as much as 10 percent the total number of dwelling units assigned pursuant to (a)1 above, provided that the Pinelands Development Credit program requirements set forth in (a)3 above are met relative to the adjusted dwelling unit total and provided further that the adjustment is consistent with land tenure patterns, the character of portions of the regional growth area, the provision of infrastructure and community services, and the natural resource characteristics of the area; or

iii. Decreasing the total number of dwelling units assigned pursuant to (a)1 above to a density of no less than 2.5 units per acre of developable land, provided that:

(1) The municipality's originally assigned density pursuant to (a)1 above is 3.0 units per developable acre or higher;

(2) The Pinelands Development Credit program requirements of (a)3 above are met; and

(3) The municipal governing body describes those ongoing and future efforts, projects and other measures that it will implement, individually or collectively, or recommend to responsible agencies to address the needs identified in (a)7iii(3)(A) through (D) below, provides reasonable schedules for the implementation of the identified efforts, projects and measures, and describes how they will help to support the land development policies reflected in its municipal land use ordinance and foster the provision of real opportunities to achieve the permitted residential densities provided therein:

(A) The municipality's present and future circulation and utility service needs;

(B) The municipality's present and future recreation, conservation and open space needs;

(C) The municipality's present and long-term economic development needs, taking into account existing non-residential land use patterns within the municipality, non-residential zoning policies of its ordinance and the requirements of (a)2 above; and

(D) The municipality's present and future housing and community development needs, taking into account existing land use patterns and housing stock and the value of having a variety of housing types and neighborhoods where retail and service facilities are readily accessible to residences.

8. No hazardous waste facility, landfill or incinerator shall be permitted, except as expressly authorized in N.J.A.C. 7:50-6.75 or 6.78.

(b) No residential dwelling unit or nonresidential use shall be located on a parcel of less than one acre unless served by either:

1. A centralized waste water treatment plant; or

2. A community on-site waste water treatment system serving two or more residential dwelling units which meets the standards of N.J.A.C. 7:50-6.84(a)5 or 10.21 through 10.23, provided that the overall residential density on the parcel does not exceed one dwelling unit per acre.

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

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

In (a)1vi, xxix and xxx, units per acre; deleted xxx(1). Revised (a)3ii, 4 and 5; added new (a)6 and renumbered 6 as 7.

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

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

Language added regarding nonresidential use; term "local" changed to "municipal".

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

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

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

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

Substituted "municipal variance" for "local variance" in (a)5.

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

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

In (a) prohibited hazardous waste facilities, landfills and incinerators.

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

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

In (a), rewrote 5 and 6.

Amended by R.2002 d.67, effective March 4, 2002.

See: 33 N.J.R. 3399(a), 34 N.J.R. 1024(a).

In (a), added 7iii.

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

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

Rewrote (b).

#### Case Notes

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

Extraordinary hardship; waiver of lot size requirement, seasonal high water table requirement, and ground water nitrate-nitrogen requirement. *Eni v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 31.

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

Residents living in former gun club were entitled to waiver of strict compliance from minimum lot size and water quality requirements. *Swezeny v. Fulford*, 92 N.J.A.R.2d (EPC) 1.

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

#### 7:50-5.29 Minimum standards governing the distribution and intensity of development and land use in Military and Federal Installation Areas

(a) Any use associated with the function of the Federal Installation may be permitted in a Military and Federal Installation Area, provided that:

1. Where feasible, development shall be located in that portion of the installation located within the Pinelands Protection Area;
2. The use shall not require any development, including public service infrastructure, in the Preservation Area District or in a Forest Area;
3. No hazardous waste facility, landfill or incinerator shall be permitted, except as expressly authorized in N.J.A.C. 7:50-6.75 or 6.78; and
4. All development undertaken by the Federal government substantially meets the standards of N.J.A.C. 7:50-6 of this Plan or an intergovernmental agreement entered into pursuant to N.J.A.C. 7:50-4, Part IV.

(b) Any other public purpose use undertaken by or on behalf of another level of government may be permitted in a Military and Federal Installation Area, provided that:

1. The use is sanctioned by the installation;
2. The use is located within a substantially developed area which is served by a centralized sewer treatment and collection system;
3. No hazardous waste facility, landfill or incinerator shall be permitted, except as expressly authorized in N.J.A.C. 7:50-6.75 or 6.78; and
4. All development meets the standards of N.J.A.C. 7:50-6 or an intergovernmental agreement entered into pursuant to N.J.A.C. 7:50-4, Part IV.

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

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

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

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

In (a) and (b) prohibited hazardous waste facilities, landfills and incinerators.

#### 7:50-5.30 Development transfer programs in Forest Areas and Rural Development Areas

(a) Each municipality with land in either a Forest Area or a Rural Development Area shall establish within said area or areas a program which permits residential development on otherwise undersized lots if other land, equivalent to that needed to meet the assigned density, is protected through a permanent deed restriction.

(b) The density transfer programs shall adhere to the following minimum standards:

1. No lot less than one acre can be developed;
2. All parcels involved in the density transfer shall be located within the same Pinelands management area and within the same municipal zoning district;
3. The total acreage of the parcels involved in the density transfer shall at least equal the density required for that zoning district; and
4. Any parcel whose acreage is being utilized to meet the density requirement but which will not be developed shall be permanently dedicated as open space through recordation of a restriction on the deed to the parcel with no further development permitted except agriculture, forestry and low intensity recreational use.

(c) A municipality may adapt the program to its particular circumstances and vary the standards in (b) above provided that the program is otherwise consistent with the land use and density provisions of this subchapter. This may include, but is not limited to, identifying specific areas to receive the development transfers or excluding certain areas from the program considering:

1. Land ownership and subdivision patterns;
2. Infrastructure availability;
3. Environmental constraints; and
4. Protection of important natural resources.

(d) The Pinelands Commission shall not approve any transfer program which:

1. Has extremely limited applicability because of ownership and subdivision patterns or environmental constraints; or
2. Negatively impacts important natural resources including critical subbasins or publicly managed conservation lands.

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

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

In (a), changed reference from 4.65 to 4.66.

Repeal and New Rule: R.1992 d.91, effective March 2, 1992.

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

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

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

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

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

**7:50-5.31 Minimum standards for substandard lots**

(a) A municipality may, as a part of its master plan and land use ordinance prepared and certified under the provisions of N.J.A.C. 7:50-3, exempt the owners of parcels of land within the Protection Area from the density limitations of this Part, provided that:

1. The dwelling unit will be the principal residence of the property owner or a member of the immediate family of the property owner;
2. The parcel has been in the continuous ownership since February 7, 1979 of the person whose principal residence the dwelling unit will be, a member of that person's immediate family, or a partnership or corporation in which members of that person's immediate family collectively own more than a majority interest in such partnership or corporation;
3. No lot that was in common ownership with any contiguous land on or after February 8, 1979 that contains substantial improvements is exempt from the density provisions of this Part;
4. No lot that does not include all vacant contiguous lands in common ownership on or after February 8, 1979 is exempt from the density provisions of this Part; and
5. No lot of less than one acre will be exempt from the density provisions of this Part.

(b) A municipality may, as a part of its master plan and land use ordinances prepared and certified under the provi-

sions of N.J.A.C. 7:50-3, modify or eliminate one or more of the standards set forth in (a)1 through 3 above, provided that any resulting increase in projected development is offset by a decrease in the densities otherwise permitted in the applicable management area.

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

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

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

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

**7:50-5.32 Special provisions for cultural housing**

(a) Residential dwellings on 3.2 acre lots may be permitted within any management area provided that:

1. The dwelling unit will be the principal residence of the property owner or a member of the immediate family of the property owner;
2. The individual whose principal residence the dwelling unit will be has not developed a dwelling unit under this section within the previous five years;
3. The parcel of land on which the dwelling is to be located has been in the continuous ownership since February 7, 1979 of the person whose principal residence the dwelling unit will be, a member of that person's immediate family or a partnership or corporation in which members of that person's immediate family collectively own more than a majority interest in such partnership or corporation; and

4. The person whose principal residence the dwelling unit will be has resided in the Pinelands for at least five years and that person or one or more members of that person's immediate family has resided in the Pinelands for a total of at least 20 different years.

(b) Residential dwelling units on a lot smaller than 3.2 acre existing as of February 8, 1979 or created as a result of an approval granted by the Pinelands Development Review Board or by the Pinelands Commission pursuant to the Interim Rules and Regulations prior to January 14, 1981 which otherwise meets the standards of (a) above may be permitted by a municipality within any management area provided that:

1. The lot contains at least one acre;
2. The applicant qualifies for and receives a variance from the 3.2 acre lot size requirement from the municipality in which the lot is located;
3. The applicant acquires and redeems 0.25 Pinelands Development Credits in addition to the reduction in the Pinelands Development Credit allocation that will result from the development of the dwelling unit pursuant to N.J.A.C. 7:50-5.43(b)3; and
4. Any Pinelands Development Credits allocated to the lot are reduced pursuant to N.J.A.C. 7:50-5.43(b)3.

Amended by R.1992 d.91, effective March 2, 1992.  
See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

New (b) added.

Amended by R.1994 d.590, effective December 5, 1994.  
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).  
Amended by R.1996 d.225, effective May 20, 1996.  
See: 27 N.J.R. 3878(a), 28 N.J.R. 2596(a).

**Case Notes**

Waiver to subdivide a parcel of land denied by Pinelands Commission; petitioner failed to establish ownership of the land in compliance with N.J.A.C. 7:50-5.32(a)3i. *Gerber v. Pinelands Commission*, 11 N.J.A.R. 12 (1988).

**7:50-5.33 (Reserved)**

Repealed by, R.2000 d.232, effective June 5, 2000.  
See: 32 N.J.R. 151(a), 32 N.J.R. 2082(a).  
Section was "Special provisions for public educational facilities"

**7:50-5.34 Assisted living facilities and continuing care retirement communities**

(a) A municipality may include in its master plan and land use ordinance provisions which permit assisted living facilities and continuing care retirement communities, provided that:

1. Such uses shall be permitted only in Regional Growth Areas, Pinelands Villages and Pinelands Towns;
2. Within Regional Growth Areas, assisted living facilities and continuing care retirement communities may be permitted at densities consistent with the standards of N.J.A.C. 7:50-5.28(a); provided, however, that the maxi-

imum permitted density for an assisted living facility, including the assisted living component of a continuing care retirement community, shall be permitted to exceed eight units per acre only through the use of Pinelands Development Credits;

3. Within Pinelands Villages and Pinelands Towns, assisted living facilities and continuing care retirement communities may be permitted consistent with the standards of N.J.A.C. 7:50-5.27;

4. Calculations of residential density shall include all dwelling units in a continuing care retirement community and all dwelling units within an assisted living facility. Long term care beds within nursing facilities that have been licensed as such by the Department of Health and Senior Services shall not be included in calculations of density, whether or not said facility is part of a continuing care retirement community; and

5. Residential density for continuing care retirement communities and for any assisted living facilities which are part of a mixed use development shall be calculated by determining the amount of land associated with each use to be located on the parcel proposed for development. When the residential and nonresidential uses are located in the same building or share other facilities, the determination of land area occupied by the residential use may take into consideration the size, intensity and capacity of the proposed residential and nonresidential uses on said parcel.

New Rule, R.2000 d.272, effective July 3, 2000.  
See: 32 N.J.R. 145(a), 32 N.J.R. 2435(a).

**7:50-5.35 through 7:50-5.40 (Reserved)**

**PART IV—PINELANDS DEVELOPMENT CREDIT PROGRAM**

**7:50-5.41 Purpose**

If land use and development of the Pinelands is concentrated in Regional Growth Areas, the Pinelands as a region can tolerate additional development without damaging the Pinelands environment. It is the purpose of this Part to facilitate such patterns of growth and development by providing land-owners in the Preservation Area District, Special Agricultural Production Areas, and Agricultural Production Areas with an opportunity to secure an additional beneficial use of their land without the risk of damaging the essential ecological character of the Pinelands.

**7:50-5.42 Pinelands Development Credit Program required**

In order to be certified under the provisions of N.J.A.C. 7:50-3, Part IV, the master plan and land use ordinances of a municipality which has land in the Preservation Area District, an Agricultural Production Area, a Special Agricultural Production Area, or a Regional Growth Area shall

include provisions implementing the Pinelands Development Credit Program.

#### 7:50-5.43 Pinelands Development Credits established

(a) Except for land which is owned by a public agency on January 14, 1981, land which is thereafter purchased by the State for conservation purposes, land which is subject to an easement limiting the use of land to nonresidential uses or land otherwise excluded from entitlement pursuant to (b) below, every parcel of land in the Preservation Area District, an Agricultural Production Area or a Special Agricultural Production Area shall have a use right known as "Pinelands Development Credits" that can be used to secure a density bonus for lands located in Regional Growth Areas.

(b) Pinelands Development Credits are hereby established at the following ratios:

1. In the Preservation Area District, including those areas designated pursuant to N.J.A.C. 7:50-5.22(b)7:

i. Uplands which are undisturbed but currently or previously approved for resource extraction pursuant to this Plan: two Pinelands Development Credits per 39 acres;

ii. Uplands which are mined as a result of a resource extraction permit approved pursuant to this Plan: zero Pinelands Development Credits per 39 acres;

iii. Other uplands: one Pinelands Development Credit per 39 acres; and

iv. Wetlands: two-tenths Pinelands Development Credits per 39 acres.

2. In the Agricultural Production Area and Special Agricultural Production Area:

i. Uplands which are undisturbed but approved for resource extraction pursuant to this Plan: two Pinelands Development Credits per 39 acres;

ii. Uplands which are mined as a result of a resource extraction permit approved pursuant to this Plan: zero Pinelands Development Credits per 39 acres;

iii. Other uplands and areas of active berry agricultural bogs and fields: two Pinelands Development Credits per 39 acres;

iv. Wetlands in active field agricultural use currently and as of February 7, 1979: two Pinelands Development Credits per 39 acres; and

v. Other wetlands: two-tenths Pinelands Development Credits per 39 acres.

3. The allocations established in (b)1 and 2 above shall be reduced as follows:

i. Any parcel of 10 acres or less which is developed for a commercial, industrial, resource extraction, intensive recreation, institutional, campground or landfill use shall not receive Pinelands Development Credit entitlement. For such an improved parcel of more than 10 acres, the area actively used for such use or 10 acres, whichever is greater, shall not receive Pinelands Development Credit entitlement.

ii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each existing dwelling unit on the parcel;

iii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each reserved right to build a dwelling unit on the parcel retained by the owner of the parcel pursuant to N.J.A.C. 7:50-5.44(b).

4. If the allocations established in (b)1 and 2 above are less than one-quarter of a Pinelands Development Credit, the allocation shall be increased to one-quarter of a Pinelands Development Credit if the owner of record of one-tenth or greater acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979 owns a vacant parcel of land that was not in common ownership with any contiguous land on or after February 7, 1979, and the parcel has not been sold or transferred except to a member of the owner's immediate family.

5. The provisions of (b)4 above shall also apply to owners of record of less than one-tenth acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979, provided that said owners acquire vacant, contiguous lands to which Pinelands Development Credits are allocated pursuant to (a) and (b) above which lands, when combined with the acreage of the parcel owned prior to February 7, 1979, total at least one-tenth of an acre.

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 application 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 impermeable surfaces.

ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, agricultural employee housing as an accessory use may also be specifically permitted in such deed restriction.

##### 2. In Special Agricultural Production Areas:

i. Berry agriculture; horticulture of native Pinelands plants; forestry; beekeeping; and fish and wildlife management.

ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, agricultural employee housing as an accessory use may also be specifically permitted in such deed restriction.

##### 3. In Agricultural Production Areas:

i. Agriculture; forestry; low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to

water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not exceed five percent of the parcel, and no more than one percent of the parcel will be covered with impermeable surfaces; agricultural commercial establishments, excluding supermarkets and restaurants and convenience stores, where the principal goods or products available for sale were produced in the Pinelands and the sales area does not exceed 5,000 square feet; and agricultural products processing facilities.

ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, the following additional uses may be specifically permitted in such deed restriction: airports and heliports accessory to agricultural uses and which are used exclusively for the storage, fueling, loading, and operation of aircraft as part of an ongoing agricultural operation; fish and wildlife management; and agricultural employee housing as an accessory use.

4. In all other Pinelands management areas where Pinelands Development Credits have been allocated pursuant to N.J.A.C. 7:50-4.62(d)2:

i. Agriculture; forestry; and low intensity recreational uses.

(c) No development involving the use of Pinelands Development Credits shall be approved by a local permitting agency until the developer has provided the Commission and the municipality in which the parcel of land to be developed is located with evidence of his ownership 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).

#### 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:

1. Does not contain significant amounts of:
  - i. Wetlands as defined in N.J.A.C. 7:50-6, Part I;
  - ii. Somewhat excessively and excessively drained soils as delineated in Plate 9;
  - iii. Active agricultural lands;
  - iv. Aquifer recharge areas as indicated by a depth of the unsaturated zone of 20-30 and 30-40 feet on Plate 4 and not underlain by a clay aquiclude;
  - v. Extreme fire hazard areas as delineated in Plate 11; and
  - vi. Flood-prone areas designated under the Federal Flood Insurance Program.
2. Has a relatively uniform boundary which conforms to physical or environmental features;
3. Is geographically balanced around existing or planned community centers;
4. Is accessible to employment centers, and areas of commercial activity and recreation opportunities;
5. Is not contiguous with a Preservation Area District, Special Agricultural Production Area, Forest Area or Agricultural Production Area and preserves an adequate buffer of low intensity use between the Municipal Reserve Area and such districts;
6. Has available or is planned for full public services including sewer, water, roads, police and fire protection, and schools and libraries.

(b) A municipality may, in its master plan and land use ordinance, designate lands in a Regional Growth Area as Municipal Reserve Areas, provided that sufficient vacant, developable land remains in the municipality's Regional Growth Area to meet the growth needs of the county and the municipality projected for the next five years as determined or approved by the county in which the municipality is located, as well as by the Pinelands Commission, and the area designated:

1. Does not have available and is not planned for sewer service and other essential public services in the next five years;
2. Has a relatively uniform boundary which conforms to physical or environmental features;
3. Is contiguous to areas designated for less intense development or is not in close proximity to currently developing areas; and
4. Is designated as, and zoned in accordance with the requirements for, Rural Development Areas.

Amended by R.1994 d.590, effective December 5, 1994.  
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).  
Recodified from N.J.A.C. 7:50-5.52 by R.2000 d.43, effective February 7, 2000.  
See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

### Case Notes

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

### 7:50-5.63 Development in Municipal Reserve Areas

(a) A municipal master plan or land use ordinance that designates areas in a Rural Development Area as a Municipal Reserve Area shall include provisions ensuring that development of the reserve area at Regional Growth Area densities will occur only when all of the following conditions are met:

1. Adjacent developable land in the Regional Growth Area has been substantially developed in accordance with the land use and management programs provided in this Plan;
2. All essential public services are available and;
3. The amount of vacant developable land in all Regional Growth Areas in the municipality is insufficient to meet the growth needs of the county and the municipality projected for the next five years as determined or approved by the county in which the reserve area is located, as well as by the Pinelands Commission.

(b) A municipal master plan and land use ordinance that designate areas in a Regional Growth Area as a Municipal Reserve Area shall include provisions ensuring that development of the reserve area at Regional Growth Area densities will automatically be permitted within a period of five years. A municipality may demonstrate that such development should be further delayed because one of the following conditions is met:

1. Adjacent developable land in the Regional Growth Area has not yet been substantially developed in accordance with the land use and management programs provided in this Plan;
2. All sewer service and other essential public services are not yet reasonably available; or
3. The amount of vacant developable land in all other Regional Growth Areas in the municipality is sufficient to meet the growth needs of the county and the municipality projected for the next five years as determined or approved by the county in which the reserve area is located, as well as by the Pinelands Commission.

Amended by R.1994 d.590, effective December 5, 1994.  
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).  
Recodified from N.J.A.C. 7:50-5.53 by R.2000 d.43, effective February 7, 2000.  
See: 31 N.J.R. 3020(a), 32 N.J.R. 601(a).

#### Case Notes

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## SUBCHAPTER 6. MANAGEMENT PROGRAMS AND MINIMUM STANDARDS

### INTRODUCTION

This subchapter establishes management programs and minimum standards governing development and land use in the Pinelands. In addition, guidelines for county and municipality preparation of management programs for scenic resources and recreation are provided. All the programs are intended to be implemented by the administration of municipal and county master plans and land use ordinances and by State and Federal agencies through the development review procedures established in N.J.A.C. 7:50-4. Prior to certification of county or municipal master plans and land use ordinances, the standards of this subchapter except for those guidelines or optional programs, will be implemented and enforced by the Pinelands Commission. The standards set forth in this subchapter are minimum requirements and a municipality, county, State, or Federal agency may adopt more restrictive regulations, provided that such regulations are compatible with the goals and objectives of this Plan.

In such cases, all development must adhere to the more restrictive regulations. In addition to the models specified herein, the Pinelands Commission may utilize other scientifically based models, on a case by case basis, in determining compliance with the standards contained in this subchapter.

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

## PART I—WETLANDS

### 7:50-6.1 Purpose

Coastal and inland wetlands constitute a vital element of the ecological character of the Pinelands. They are critical habitats for many threatened and endangered plant and animal species and play many other important roles including the maintenance of surface and ground water quality. This program is deemed to be the minimum standards necessary to protect the long-term integrity of wetlands.

### 7:50-6.2 Wetlands management program

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

### 7:50-6.3 Wetlands

Wetlands are lands which are inundated or saturated by water at a magnitude, duration and frequency sufficient to support the growth of hydrophytes. Wetlands include lands with poorly drained or very poorly drained soils as designated by the National Cooperative Soils Survey of the Soil Conservation Service of the United States Department of Agriculture. Wetlands include coastal wetlands and inland wetlands, including submerged lands. The "New Jersey Pinelands Commission Manual for Identifying and Delineating Pinelands Area Wetlands—a Pinelands Supplement to the Federal Manual for Identifying and Delineating Jurisdictional Wetlands," dated January, 1991, as amended, may be utilized in delineating the extent of wetlands based on the definitions of wetlands and wetlands soils contained in this section, N.J.A.C. 7:50-2.11, 6.4 and 6.5.

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

#### Case Notes

Substantial impairment under former N.J.A.C. 7:1G does not arise by mere violation of a regulatory standard; degree of violation and relationship to other violation must be considered; development application denied (Commission's Final Decision). Orleans Builders & Developers v. Pinelands Commission, 6 N.J.A.R. 258 (1980), appeal dismissed 186 N.J.Super. 432, 453 A.2d 200 (App.Div.1982).

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

#### 7:50-6.72 Waste management program

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

#### 7:50-6.73 General prohibitions

(a) Except as expressly authorized in this Part, no waste management facility shall be developed within the Pinelands.

(b) Except as expressly authorized in this Part, no hazardous or toxic substances, including hazardous wastes shall be stored, transferred, processed, discharged, disposed or otherwise used within the Pinelands. Provided it is permitted by State or Federal law, this prohibition does not apply to a hazardous or toxic substance, other than a waste, associated with a commercial, industrial, agricultural, domestic, community or other lawful use of a property.

(c) No waste shall be accepted for disposal, stored, collected, processed, transferred, separated, recycled, reclaimed, recovered or reused in the Pinelands unless it originates from one or more Pinelands municipalities or from one or more non-Pinelands municipalities located within Atlantic, Burlington, Cape May or Ocean counties. The following shall be exempt from this importation limitation:

1. Recyclable materials;
2. Suitable sewage sludge and sludge products derived from suitable sewage sludge; and
3. Regulated medical waste, in accordance with the limitations prescribed in N.J.A.C. 7:50-6.78.

(d) Except for the waste importation limitations prescribed in (c) above, nothing in this Part or in N.J.A.C. 7:50-5 shall be construed to prohibit or otherwise constrain either the development and operation of a waste management facility essential for the remediation of a site contaminated with wastes or hazardous or toxic substances and located within the Pinelands or the management of by-products of an otherwise lawful use of a property in a manner essential for complying with State or Federal requirements.

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 "Landfills prohibited".

#### 7:50-6.74 Recyclables and other special materials

(a) In addition to the standards set forth in N.J.A.C. 7:50-6.76 through 6.78, waste management facilities and industrial facilities which accept suitable sewage sludge, sludge products derived from suitable sewage sludge or any recyclable material other than source-separated non-putrescible metal, glass, paper, plastic containers, corrugated and other cardboard or vegetative waste shall meet the following standards:

1. The facility shall be designed and managed so as to eliminate the impacts of leachate on the quality of surface and ground water;
2. The facility shall be designed and managed so as to protect surface water flows and ground water regimes from excessively depletive water uses;
3. Any waste or recyclable material that is accepted at the facility shall be stored for no more than 12 months; and
4. The storage of any waste generated from the facility shall comply with the standards of this Part.

(b) Nothing in this Part shall be construed to prohibit the use of any recyclable material as a raw material in a manufacturing process.

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 "Existing landfills".

#### Law Review and Journal Commentaries

Environmental Law—Solid Waste. P.R. Chenoweth, 137 N.J.L.J. No. 16, 51 (1994).

#### 7:50-6.75 Landfills

(a) Landfills which accept only vegetative waste shall be ancillary to an agricultural use of the parcel on which they are located.

(b) Nothing in this Part shall be construed to prohibit the disposal of vegetative waste on the parcel on which it was generated, provided that the vegetative clearing or harvesting is otherwise authorized by this Plan. For agricultural operations, the disposal of vegetative waste on non-contiguous parcels in common ownership which have an active production history as a unit or where a farm management plan has been prepared which demonstrates that the parcels will be farmed as a unit, shall also be permitted.

(c) All landfills which ceased operation on or after September 23, 1980 if located in the Preservation Area on or after January 14, 1981 if located in the Protection Area shall be capped with an impermeable material unless it can be clearly demonstrated that:

1. The landfill accepted only vegetative waste or construction debris for disposal;

2. An alternative means of addressing the public health and ecological risks associated with the landfill is available that will afford an equivalent level of protection of the resources of the Pinelands than would be provided if the landfill were capped with an impermeable material or

3. No leachate plume associated with the landfill exists and the landfill is not generating leachate.

(d) Plans to cap landfills or carry out the alternative treatment methods set forth in (c)2 above shall be submitted to the Commission by May 20, 1997. Capping or alternative treatment of all landfills shall begin immediately following approval of such plans by the Commission pursuant to N.J.A.C. 7:50-4.51 through 4.58, except when an extension pursuant to (e) below has been granted.

(e) An extension of the requirement set forth in (d) above concerning the commencement of capping or alternative treatment methods immediately upon obtaining approval by the Commission shall be granted, provided that it can be clearly demonstrated that there are presently insufficient funds reasonably available to meet that requirement and one of the following standards is met and continues to be met:

1. The levels of chemical constituents in the leachate plume associated with the landfill do not exceed background levels of those pollutants as measured at the parcel line and the plume is not moving offsite; or

2. The levels of chemical constituents in the leachate plume associated with the landfill exceed background levels of those pollutants or the plume is moving offsite but:

i. The plume does not pose a significant public health risk, as determined by the Department of Environmental Protection; and

ii. The plume does not pose a significant ecological risk, as determined by examining whether the plume is located within an undisturbed subwatershed or is likely to impact publicly owned conservation lands or systems which support known populations of threatened or endangered species.

(f) In the event that an extension is granted pursuant to (e) above, capping or alternative treatment of the landfill in question must proceed immediately upon sufficient funds being obtained. Timely application for State or Federal funding assistance shall be made when such assistance becomes available.

(g) Closure techniques to reduce the volume or surface area of a landfill to be capped, including landfill mining, shall be permitted.

(h) Closure techniques involving the use of non-sludge derived composted materials, vegetative waste or the following recycled materials: source-separated non-putrescible glass, paper, plastic or cardboard; waste concrete, asphalt, brick or block; wood that has been processed through a chipper; or other similar materials, excluding those materials classified as dry industrial wastes (Type 27) pursuant to N.J.A.C. 7:26-2.13(g)1vi, for landfill caps or covers shall be permitted, provided that the standards of this section and N.J.A.C. 7:50-6.81 through 6.87 are met and that the use of such techniques is part of a total financial commitment that ensures that final capping is completed. For purposes of this section, the use of such techniques shall not be considered land application of waste. Nothing herein shall be construed as permitting the height or extent of a landfill to be raised beyond what is necessary to complete final contouring to enable impermeable capping or provide for a limited final cover over the impermeable cap.

(i) Subject to the procedural and substantive requirements of this Plan, the landfill operated by the Cape May County Municipal Utilities Authority that was authorized to stay in operation after August 8, 1990 as a result of waivers of strict compliance previously approved by the Pinelands Commission pursuant to the provisions of this Plan may continue in operation provided that:

1. All landfilling is located within the Pinelands Town management area;

2. All landfilling occurs at the previously approved cells 1A, 1B and 1C and on up to 42 acres of land which are contiguous with those existing cells until the permitted capacity of those areas is reached;

3. The height of cells 1A, 1B and 1C may be increased beyond the currently permitted elevations subject to the approval of the Department of Environmental Protection. The height of any future cells located in the 42 acre area shall be as approved by the Department of Environmental Protection;

4. Except as otherwise permitted by this Part, landfilling is limited to those wastes previously authorized by the Pinelands Commission and the Department of Environmental Protection;

5. Landfill mining operations may occur within the areas authorized for landfilling pursuant to (i)2 above;

6. Prior to May 1, 1996, the Cape May County Municipal Utilities Authority shall impose a deed restriction on all lands owned by it in the Pinelands Area as of April 1, 1996. Said deed restriction shall prohibit any landfilling on said lands except for the areas authorized for landfilling pursuant to (i)2 above and except as may be otherwise specifically authorized pursuant to the provisions of this Plan. Said deed restriction shall be specifically enforceable by the Pinelands Commission.

7. In mitigation for the impacts upon the resources of the Pinelands caused by the landfill expansion and the continued use of the landfill after May 1, 1996, a payment of \$2.04 per ton of waste disposed in the landfill after May 1, 1996 shall be made to the Pinelands Commission by the operator of the landfill. Said payments shall be made until \$2.25 million has been paid to the Pinelands Commission. Said payments shall be made quarterly within 45 days of the end of any quarter, with the first quarter ending on August 1, 1996. As an alternative to said quarterly payments, the Cape May County Municipal Utilities Authority and the Pinelands Commission may agree to the Authority's making a present value payment to the Pinelands Commission of the equivalent, based upon an agreed upon formula, to the \$2.25 million paid quarterly as set forth above. Any such present value payment shall be made prior to May 1, 1996; and

8. Funds transmitted to the Commission pursuant to (i)7 above shall be used solely for the acquisition of conservation and recreation lands throughout the Pinelands National Reserve. The Commission shall devote at least eight percent of those funds to purchases in Cape May County. The Commission, where practicable, will seek matching funds for the funds used for acquisitions in Cape May County.

Amended by R.1996 d.170, effective April 1, 1996.  
See: 27 N.J.R. 3532(a), 27 N.J.R. 3895(a), 28 N.J.R. 1848(a).  
Added (c).  
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 "New landfills".  
Administrative correction.  
See: 28 N.J.R. 4101(a).

#### **7:50-6.76 Transfer stations, collection facilities and recycling centers**

(a) Transfer stations, collection facilities and recycling centers which are located in Pinelands Villages and at closed landfills outside Regional Growth Areas and Pinelands Towns shall accept only waste or recyclable material that is generated within the municipality in which the facility is located. Waste or recyclable materials from other municipalities qualifying under N.J.A.C. 7:50-6.73(c) may be accepted at the facility provided that the total amount of waste and recyclable materials handled at the facility does not exceed 25 tons per day.

(b) Petroleum waste collection and transfer facilities shall be permitted in any Pinelands management area, provided that the wastes are not stored for more than six months and that the facilities are ancillary to an otherwise lawful use of the parcel on which they are located.

(c) Household hazardous waste collection and transfer facilities shall be permitted in any Pinelands management area, provided that the wastes are not stored for more than six months and that the facilities are ancillary to an otherwise lawful use of the parcel on which they are located.

(d) Recycling centers that process concrete, asphalt, brick or block resulting from construction or demolition activities shall be permitted in any Pinelands management area, provided that they are accessory to an existing lawful resource extraction operation or asphalt or concrete manufacturing facility.

**7:50-6.82 Water quality management program required**

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

**7:50-6.83 Minimum standards necessary to protect and preserve water quality**

(a) All development permitted under this Plan, or under a certified county or municipal master plan or land use ordinance, shall be designed and carried out so that the quality of surface and ground water will be protected and maintained. For the purpose of this Part, agricultural use shall not be considered development.

(b) Except as specifically authorized in this Part, no development which degrades surface or ground water quality or which establishes new point sources of pollution shall be permitted.

(c) No development shall be permitted which does not meet the minimum water quality and potable water standards of the State of New Jersey or the United States.

**7:50-6.84 Minimum standards for point and non-point source discharges**

(a) The following point and non-point sources may be permitted in the Pinelands:

1. Development of new or the expansion of existing commercial, industrial, and waste water treatment facilities, or the development of new or the expansion of existing non-point sources otherwise permitted in N.J.A.C. 7:50-5, except those specifically regulated in (a)2 through 6 below, provided that:

- i. There will be no direct discharge into any surface water body;
- ii. All discharges from the facility or use are of a quality and quantity such that ground water exiting from the parcel of land or entering a surface body of water will not exceed two parts per million nitrate/nitrogen;
- iii. All public waste water treatment facilities are designed to accept and treat septage; and
- iv. All storage facilities, including ponds or lagoons, are lined to prevent leakage into ground water.

2. Development of new waste water treatment or collection facilities which are designed to improve the level of nitrate/nitrogen attenuation of more than one existing on-site waste water treatment system where a public

health problem has been identified may be exempted from the standards of (a)1ii above provided that:

- i. There will be no direct discharge into any surface water body;
- ii. The facility is designed only to accommodate waste water from existing residential, commercial, and industrial development;
- iii. Adherence to (a)1ii above cannot be achieved due to limiting site conditions or that the costs to comply with the standard will result in excessive user fees; and
- iv. The design level of nitrate/nitrogen attenuation is the maximum possible within the cost limitations imposed by such user fee guidelines but in no case shall ground water exiting from the parcel or entering a surface body of water exceed five parts per million nitrate/nitrogen.

3. Improvements to existing commercial, industrial, and waste water treatment facilities which discharge directly into surface waters provided that:

- i. There is no practical alternative available that would adhere to the standards of N.J.A.C. 7:50-6.84(a)1i.
- ii. There is no increase in the existing approved capacity of the facility; and
- iii. All discharges from the facility into surface waters are such that the nitrate/nitrogen levels of the surface waters at the discharge point do not exceed two parts per million. In the event that nitrate/nitrogen levels in the surface waters immediately upstream of the discharge point exceed two parts per million, the discharge shall not exceed two parts per million nitrate/nitrogen.

4. Individual on-site septic waste water treatment systems which are not intended to reduce the level of nitrate/nitrogen in the waste water, provided that the following standards are met:

- i. The proposed development to be served by the system is otherwise permitted pursuant to N.J.A.C. 7:50-4 and 5;
- ii. The design of the system and its discharge point, and the size of the entire contiguous parcel on which the system or systems is located will ensure that ground water exiting from the entire contiguous parcel or entering a surface body of water will not exceed two parts per million nitrate/nitrogen calculated pursuant to the Pinelands dilution model dated December, 1993, as amended, incorporated herein by reference as subchapter Appendix A, subject to the provisions of (a)4iii below. For purposes of this section, the entire contiguous parcel may include any contiguous lands to be dedicated as open space as part of the proposed devel-

opment but may not include previously dedicated road rights-of-way or any contiguous lands that have been deed restricted pursuant to N.J.A.C. 7:50-5.30 or 5.47;

iii. Only contiguous land located within the same municipal zoning district and Pinelands management area as the proposed septic waste water treatment system or systems may be utilized for septic dilution purposes, except for the development of an individual single family dwelling on a lot existing as of January 14, 1981, non-residential development on a lot of five acres or less existing as of January 14, 1981, or cluster development as permitted by N.J.A.C. 7:50-5.19;

iv. The depth to seasonal high water table is at least five feet;

v. Any potable water well will be drilled and cased to a depth of at least 100 feet, unless the well penetrates an impermeable clay aquiclude, in which case the well shall be cased to at least 50 feet;

vi. The system will be maintained and inspected in accordance with the requirements of N.J.A.C. 7:50-6.85;

vii. The technology has been approved for use by the New Jersey Department of Environmental Protection; and

viii. Flow values for non-residential development shall be determined based on the values contained in N.J.A.C. 7:9A-7.4, as amended, except that number of employees may not be utilized in calculating flow values for office uses. In the event that N.J.A.C. 7:9A-7.4 does not provide flow values for a specific use, but a flow value is assigned for that use in 7:14A-23.3(a), the flow value specified in N.J.A.C. 7:14A-23.3(a) shall be used in calculating flow.

5. Individual on-site septic waste water treatment systems which are intended to reduce the level of nitrate/nitrogen in the waste water, provided that the following standards are met:

i. The technology has been approved for use by the New Jersey Department of Environmental Protection;

ii. The proposed development to be served by the system is otherwise permitted pursuant to N.J.A.C. 7:50-4 and 5;

iii. The proposed development is either residential or, if non-residential, is located in a Regional Growth Area, a Pinelands Village, a Pinelands Town or in an area within the Preservation Area District designated pursuant to N.J.A.C. 7:50-5.22(b)7;

iv. The design of the system and its discharge point, and the size of the entire contiguous parcel on which the system or systems is located, will ensure that ground water exiting from the entire contiguous parcel or entering a surface body of water will not exceed two parts per million nitrate/nitrogen calculated pursuant to the Pinelands dilution model dated December, 1993, as amended, (Appendix A) subject to the provisions of (a)5v below and based on the following assumptions and requirements. For purposes of this section, the entire contiguous parcel may include any contiguous lands to be dedicated as open space as part of the proposed development but may not include previously dedicated road rights-of-way or any contiguous lands that have been deed restricted pursuant to N.J.A.C. 7:50-5.30 or 5.47:

(1) For RUCK septic systems:

(A) For residential development, the system will reduce total nitrogen concentration in the waste water entering the disposal field to 20 parts per million;

(B) For non-residential development, no reduction in total nitrogen concentration will be assumed, except that a reduction in total nitrogen concentration in the waste water entering the disposal field to 20 parts per million will be assumed if either:

(I) The use is comparable to a single family residential use and it can be demonstrated that the waste water quality is similar to residential waste water; or

(II) The applicant demonstrates that the nitrate/nitrogen concentration of the waste water flow is similar to that of a residential use and the ratio of greywater to blackwater is similar to that of a residential use;

(C) The patent holder or his agent shall certify to the Commission and the local board of health that installation of each system has been properly completed;

(D) The patent holder or his agent shall provide to each owner a complete operation and maintenance manual that has been approved by the Executive Director;

(E) Each system shall be covered by a five-year warranty that has been approved by the Executive Director and a minimum five-year maintenance contract that has been approved by the Executive Director, that cannot be cancelled and is renewable and which includes a provision requiring that the patent holder or his agent inspect the system at least once a year and undertake any maintenance or repairs determined to be necessary during any such inspection; and

(F) The property owner shall record with the deed to the property a notice that identifies that a RUCK system is being utilized for wastewater disposal on the parcel, acknowledges the owner's responsibility to operate and maintain it in accordance with the manual required in (a)5iv(1)(D) above, and grants access, with reasonable notice, to the local board of health, the Commission and its agents for inspection and monitoring purposes. The recorded deed shall run with the property and shall ensure that the maintenance requirements are binding on any owner of the property during the life of the system; and

(2) For pressure dosed septic systems:

(A) A complete application for the proposed residential development was received by the Commission pursuant to N.J.A.C. 7:50-4.2 or by a municipality pursuant to an alternate permitting program certified by the Commission in accordance with N.J.A.C. 7:50-3.81 through 3.85 prior to August 5, 2002, the proposed lot size and density are consistent with the provisions of this Plan and the municipal land use ordinances that have been certified by the Commission pursuant to the provisions of N.J.A.C. 7:50-3, the proposed pressure dosed septic system receives approval from a local board of health by August 5, 2003 and the system is installed within one year of the issuance of its approval by the local board of health; and

(B) For residential development, either the system will be located on a lot of at least one acre for each individual single family residential dwelling unit or the system or systems for multi-family developments will be located on a parcel with an overall density equal to or greater than one residential dwelling unit per acre of land.

(3) Other on-site septic waste water treatment systems shall only be credited with reducing total nitrogen concentration to the extent authorized by an experimental monitoring program approved by the Pinelands Commission. Such an experimental monitoring program shall only be approved if:

(A) The specific theoretical basis for the nitrogen removal process to be utilized is sound and has been satisfactorily documented in the scientific literature;

(B) The nitrogen removal efficiency of operating systems using the design concept to service one or more types of development has been satisfactorily demonstrated and adequately documented in the scientific literature;

(C) The proposed application of the treatment process could be expected to meet the two parts per million nitrate/nitrogen ground water quality standard in the Pinelands Area and the ability to

meet this requirement can be continuously achieved on a long-term basis;

(D) Systems utilizing the design concept can be expected not to require any maintenance beyond that required of conventional septic systems or, if additional maintenance is required, sufficient measures can feasibly be taken to insure that the system will be properly maintained and operated;

(E) A comprehensive monitoring program is feasible to fully evaluate the nitrogen removal efficiency of the application of the proposed design concept;

(F) The system meets all the requirements in N.J.A.C. 7:50-10.22(a)6i through x; and

(G) The design concept can be expected to meet those requirements of the New Jersey Department of Environmental Protection necessary to receive a Treatment Works Approval.

v. Only contiguous land located within the same municipal zoning district and Pinelands management area as the proposed septic waste water treatment system or systems may be utilized for septic dilution purposes, except for the development of an individual single family dwelling on a lot existing as of January 14, 1981, non-residential development on a lot of five acres or less existing as of January 14, 1981, or cluster development as permitted by N.J.A.C. 7:50-5.19;

vi. The depth to seasonal high water table is at least five feet;

vii. Any potable water well will be drilled and cased to a depth of at least 100 feet, unless the well penetrates an impermeable clay aquiclude, in which case the well shall be cased to at least 50 feet;

viii. The system will be maintained and inspected in accordance with the requirements of N.J.A.C. 7:50-6.85;

ix. Flow values for non-residential development shall be determined based on the values contained in N.J.A.C. 7:9A-7.4, as amended, except that number of employees may not be utilized in calculating flow values for office uses. In the event that N.J.A.C. 7:9A-7.4 does not provide flow values for a specific use, but a flow value is assigned for that use in 7:14A-23.3(a), the flow value specified in N.J.A.C. 7:14A-23.3(a) shall be used in calculating flow.

6. Surface water runoff, provided that:

i. The total runoff generated from any net increase in impervious surfaces by a 10 year storm of a 24 hour duration shall be retained and infiltrated on-site. Runoff volumes shall be calculated in accordance with the United States Soil Conservation Service Technical Release No. 55, including the definitions, methodologies

and guidance contained therein, or the S.C.S. National Engineering Handbook, section 4;

ii. The rates of runoff generated from the parcel by a two year, 10 year and 100 year storm, each of a 24 hour duration, shall not increase as a result of the proposed development. Runoff rates shall be calculated in accordance with the United States Soil Conservation Service Technical Release No. 55, including the definitions, methodologies and guidance contained therein, or the S.C.S. National Engineering Handbook, section 4;

iii. The standards set forth in (a)6i and ii above shall not apply to minor residential development, provided such development does not involve the construction of any new roads, or to minor non-residential development, provided such development does not involve the grading, clearing or disturbance of an area in excess of 5,000 square feet within any five year period;

iv. Surface water runoff shall not be directed in such a way as to increase the volume and rate of discharge into any surface water body from that which existed prior to development of the parcel;

v. Excessively and somewhat excessively drained soils, as defined by the Soil Conservation Service, should be avoided for recharge of runoff wherever practical;

vi. A minimum separation of at least two feet between the elevation of the lowest point of the bottom of the infiltration or detention facility and the seasonal high water table is met, or a lesser separation when it is demonstrated that the separation, either due to soil conditions or when considered in combination with other stormwater management techniques, is adequate to protect ground water quality; and

vii. For private development applications, a four year maintenance guarantee is provided for the entire stormwater management system by the applicant. In addition, for both private and public development applications, the applicant or other interested party shall fund or otherwise guarantee an inspection and maintenance program for a period of no less than 10 years. This may be accomplished by various mechanisms, including but not limited to, the assumption of the inspection and maintenance program obligation by a municipality, county, public utility or homeowners association or other viable mechanisms to achieve the purposes of this section. The program proposed shall identify the entity charged with responsibility for annual inspections and the completion of any necessary maintenance, and the method to finance said program.

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

In (a)2, added "or collection" and "where a public health problem has been identified", and in (a)4ii, deleted "District" and added "Rural Development Area".

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

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

Administrative Correction

See: 27 N.J.R. 1410(a).

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

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

Deleted (a)5.iv.(2)(A)(I) and (a)5.iv.(2)(A)(II).

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

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

In (a)4viii and (a)5ix inserted the reference to 7:14A-23.3(a).

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

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

Rewrote (a)5iv.

#### Case Notes

Municipal sewage treatment facility may have waiver from strict compliance with water purity requirements where compliance with environmental and procedural laws is shown. *Adamucci v. Pinelands Commission*, 96 N.J.A.R.2d (EPC) 1.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with seasonal high water table requirement. *Pappas v. Pinelands Commission*, 93 N.J.A.R.2d (EPC) 13.

Parcel not have beneficial use; extraordinary hardship existed entitling property owner to waiver of Pinelands Comprehensive Management Plan requirements; conditions imposed. *Christensen v. New Jersey Pinelands Commission*, 93 N.J.A.R.2d (EPC) 5.

Assumption that 3.5 people would inhabit each of proposed dwellings permissible; calculation as to whether proposed development violated nitrate-nitrogen ground water requirements. *Schretzenmair v. Pinelands Commission*, 93 N.J.A.R.2d (EPC) 1.

Sale of adjoining lot precluded existence of extraordinary hardship, even though property owner was elderly individual suffering from heart problems and diabetes and sought to sell or develop property in order to help support herself and two handicapped sons residing with her. *Stark v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 34.

Extraordinary hardship; waiver of lot size requirement, seasonal high water table requirement, and ground water nitrate-nitrogen requirement. *Eni v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 31.

Compelling health need; hardship waiver of nitrate-nitrogen discharge limitations; town permitted to build wastewater treatment facility. *Adamucci, et al v. Pinelands Commission and Town of Hammon-ton*, 92 N.J.A.R.2d (EPC) 21.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with density requirements, seasonal high water table requirement, and wetlands protection requirements. *Summonte v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 9.

Residents living in former gun club were entitled to waiver of strict compliance from minimum lot size and water quality requirements. *Swezeny v. Fulford*, 92 N.J.A.R.2d (EPC) 1.

Waiver to subdivide a parcel of land denied by Pinelands Commission; petitioner failed to establish ownership of the land in compliance with N.J.A.C. 7:50-5.32(a)3i. *Gerber v. Pinelands Commission*, 11 N.J.A.R. 12 (1988).

Petitioner denied waiver of strict compliance with provisions of Comprehensive Management Plan for the Pinelands which establish minimum standards for septic wastewater treatment systems for failure to prove extraordinary hardship. *Kruckner v. New Jersey Pinelands Commission*, 10 N.J.A.R. 237 (1988).

Development application denied to petitioners for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to offer information to establish an extraordinary hardship citing N.J.A.C. 1:1-11.2 (recodified as N.J.A.C. 1:11-8.3)—(Final Decision by the Pinelands Commission). *Lavecchia v. Pinelands Commission*, 10 N.J.A.R. 63 (1987).

Application to resubdivide two existing lots denied for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to establish extraordinary hardship. (Final Decision by Pinelands Commission). *Colon v. Pinelands Commission*, 10 N.J.A.R. 14 (1987).

Effluent standard for waterless toilet (2 ppm) cited in determination that denial of waiver of strict compliance with toilet requirement reasonable. *Riggins v. Pinelands Commission*, 8 N.J.A.R. 441 (1985).

Property for which development approval sought, even if minimum lot size requirement met, does not meet minimum standards for wetlands buffer (N.J.A.C. 7:50-6.14) or seasonal high water table (N.J.A.C. 7:50-6.84); permit application denied. *Pfeiffer v. Pinelands Commission*, 8 N.J.A.R. 317 (1985).

Development application denied, in part, for failure to meet minimum standards for seasonal high water table. *Pfeiffer v. Pinelands Commission*, 8 N.J.A.R. 317 (1985).

#### **7:50-6.85 Individual wastewater treatment facility and petroleum tank maintenance**

(a) The owner of every on-site septic wastewater treatment facility in the Pinelands shall, as soon as suitable septage disposal facility capacity is available, in accordance with the provisions of Chapter 326 of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and Section 201 of the Clean Water Act:

1. Have the facility inspected by a technician at least once every three years;

2. Have the facility cleaned at least once every three years; and

3. Once every three years submit to the board of health serving the municipality in which the facility is located a sworn statement that the facility has been inspected, cleaned and is functional, setting forth the name of the person who performed the inspection and cleaning and the date of such inspection.

(b) The owners of commercial petroleum storage tanks shall comply with the requirements of P.L. 1986, c.102 (N.J.S.A. 58:10A-29).

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

#### **7:50-6.86 Water management**

(a) Interbasin transfer of water between watersheds in the Pinelands should be avoided to the maximum extent practical. In areas served by central sewers, water-saving devices such as water-saving toilets, showers and sink faucets shall be installed in all new development.

(b) Water shall not be exported from the Pinelands except as otherwise provided in N.J.S.A. 58:1A-7.1.

1. Systems shall be authorized only in those municipalities which have adopted an ordinance that is in conformance with the requirements of this Part and has been certified by the Commission pursuant to N.J.A.C. 7:50-3.

2. The manufacturer of the alternate design pilot program treatment system has submitted to the Executive Director and the Executive Director has approved:

i. Detailed specifications and an engineering design for the system. Separate specifications and designs may be submitted for systems serving an individual dwelling and for community on-site systems. These specifications and designs may only be approved by the Executive Director if they are determined to be consistent with the description of the relevant technology contained in the report prepared by Anish R. Jantrania, Ph.D., P.E., M.B.A. entitled "Performance Expectations for Selected On-site Wastewater Treatment Systems," dated December, 2000, incorporated herein by reference, and available at the principal office of the Commission. Subsequent to that approval, manufacturers may submit modified specifications or engineering designs for the system which may then be utilized if the Executive Director determines the modifications are consistent with the originally approved specifications and engineering design and the modified system will be at least as effective as the originally approved system;

ii. A description of the automatic dialing system required in (a)6ii below, and a description of how and when that system will function;

iii. A monitoring protocol that ensures that sufficient data will be obtained to enable a determination of whether the technology complies with the two ppm nitrogen requirement and the water quality standards contained in N.J.A.C. 7:50-6, Part VIII. For each system being monitored, the protocol will provide at a minimum that the effluent will be sampled at least quarterly for a period of at least three years and that at least the following parameters will be analyzed: total nitrogen, nitrate-nitrogen, nitrite-nitrogen, ammonia-nitrogen, total kjeldahl nitrogen and chlorides;

iv. An operation and maintenance manual;

v. A sample warranty and maintenance contract; and

vi. A sample deed notice that is consistent with (a)6viii below.

3. Subject to being increased during the pilot program based on the results of a hearing conducted pursuant to (a)5 below, each Ashco RFS III system shall be located on a parcel containing at least 1.5 acres for each dwelling unit that will be served by the system and each FAST, Cromaglass, Bioclere or Amphidrome system shall be located on a parcel containing at least one acre for each dwelling unit that will be served by the system.

4. The alternate design pilot program treatment systems identified in (a)3 above are authorized to be installed for a period of five years from August 5, 2002.

5. The Executive Director shall submit an annual report to the Commission describing installation, maintenance and performance data for each technology. The Executive Director also shall submit an interim report to the Commission if it is determined there is a significant installation, maintenance or performance issue with one or more technologies that needs to be addressed before the issuance of the next annual report. Copies of each annual and interim report shall be provided to each manufacturer and agent of a technology that is discussed in that report. If it is determined in a report either that a manufacturer or its agent is not adhering to any of the requirements of this pilot program or that any one of the technologies, based on maintenance or installation issues or on an evaluation of all the monitoring results for that technology under this pilot program, is not meeting the minimum water quality standards in N.J.A.C. 7:50-6.83 or the two parts per million total nitrogen requirement in (a)6x below on all lots smaller than 3.2 acres or on lots smaller than a particular size because the effluent exiting the system is higher than was anticipated in establishing the lot sizes in (a)3 above, then any subsequent local approvals for a development that is proposing use of said technology shall be determined to raise a substantial issue and shall be reviewed by the Commission pursuant to the provisions set forth in N.J.A.C. 7:50-4.31 through 4.42. Notice of any hearing scheduled pursuant to this paragraph and any subsequent determination on the application made by the Executive Director or the Commission pursuant to N.J.A.C. 7:50-4.31 through 4.42 shall be provided to the manufacturers of said system and any agent designated by said manufacturer. The annual or interim report issued by the Executive Director shall be part of the hearing record in any hearing conducted pursuant to this paragraph.

6. Conditions for use of alternate design pilot program treatment systems are as follows:

i. No more than 10 alternate design pilot program septic systems utilizing the same technology shall be installed in the development of any parcel if those systems are each serving one single family dwelling;

ii. Each system shall be equipped with automatic dialing capability to the manufacturer, or its agent, in the event of a mechanical malfunction. The manufacturer or its agent shall report to the Executive Director each such malfunction within five days of its occurrence, describing the nature of the mechanical malfunction, the measures taken to correct the malfunction and the success of those measures. Periodic dialing or some other fail safe mechanism shall be provided to ensure against unauthorized disconnections;

iii. Each system shall be designed and constructed so that samples of effluent leaving the alternate design pilot program septic system can be readily taken to confirm the performance of the technology;

iv. The manufacturer or its agent shall be responsible for providing resources for the collection and analysis of effluent samples in accordance with the protocol approved pursuant to (a)2iii above. The samples shall be taken from each system that is installed unless the manufacturer or agent of a particular technology demonstrates, and the Executive Director concurs, that samples from a specified representative number of systems of that technology will provide sufficient information to enable an evaluation of that technology. Each sample shall be analyzed by a New Jersey certified laboratory and the results of each analysis shall be reported to the Executive Director by the manufacturer or its agent within five days of receipt from the certified laboratory. The manufacturer or its agent shall also submit to the Executive Director a quarterly evaluation of all monitoring conducted prior to that evaluation;

v. The manufacturer or its agent shall certify to the Commission and the local board of health that installation of each system has been properly completed and shall include in the certification the cost of the installation and a description of any problem encountered during the installation;

vi. The manufacturer or its agent shall provide to each owner an operation and maintenance manual approved pursuant to (a)2iv above;

vii. Each system shall be covered by a five-year warranty and a minimum five-year maintenance contract that cannot be cancelled and is renewable and which includes a provision requiring that the manufacturer or its agent inspect the system at least once a year and undertake any maintenance or repairs determined to be necessary during any such inspection or as a result of observations made at any other time, including when effluent monitoring occurs or that is identified based on the results of any effluent monitoring. Said warranty and maintenance contract shall be consistent with the sample warranty and maintenance contract approved pursuant to (a)2v above. In addition to complying with the reporting requirements of N.J.A.C. 7:9A-3.4(b) concerning system malfunctions, the manufacturer or agent shall report to the Executive Director and local board of health on all necessary maintenance and repairs within 10 days and shall report to the Executive Director and local board of health semi-annually as to the inspections conducted during the preceding six months including a description of any maintenance and repairs that were undertaken and the success of those measures and their costs;

viii. The property owner shall record with the deed to the property a notice consistent with the sample deed

notice approved pursuant to (a)2vi above that identifies the technology, acknowledges the owner's responsibility to operate and maintain it in accordance with the manual required in (a)6vi above, and grants access, with reasonable notice, to the local board of health, the Commission and its agents for inspection and monitoring purposes. The recorded deed shall run with the property and shall ensure that the maintenance requirements are binding on any owner of the property during the life of the system and that the monitoring requirements are binding on any owner of the property during the time period the monitoring requirements apply pursuant to this pilot program or any subsequent regulations adopted by the Commission that apply to said system;

ix. The manufacturer or its agent shall make available for inspection by the Commission or its agents, upon reasonable notice, all records relating to each system installed in the Pinelands pursuant to this pilot program;

x. By July 5, 2003 and every six months thereafter until the conclusion of the pilot program, each manufacturer or its agent shall submit to the Executive Director a report which includes the number of systems installed during the previous six months and since the beginning of the pilot program, a discussion of any installation problems and what has been done to address those problems, an analysis and evaluation of the monitoring results to date and a discussion of any operational or maintenance issues, including the number of systems requiring maintenance or repairs and the nature and success of such maintenance and repairs, and the number of times the automatic dialing system was set off and the reasons for each such occurrence; and

xi. The system complies with the requirements of N.J.A.C. 7:50-6.84(a) 4i through v.

(b) The property owner shall not be held liable for poor system performance if the system has been properly operated and maintained.

New Rule, R.2002 d.247, effective August 5, 2002.

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

Public Notice: Ashco-A-Corporation, RFS<sup>III</sup> Wastewater Treatment System.

See: 35 N.J.R. 2750(b).

Public Notice: Amphidrome® Treatment System.

See: 35 N.J.R. 4135(b).

Ascho-A-Corporation, RFS<sup>III</sup> Gravity Dosing Treatment System.

See: 35 N.J.R. 4136(a).

Public Notice: Approval of Aquapoint, Inc, Bioclere<sup>TM</sup> Treatment System.

See: 36 N.J.R. 221(c).

Public Notice: Approval of Cromaglass® Treatment System.

See: 36 N.J.R. 1238(a).

Petition for Rulemaking.

See: 37 N.J.R. 1237(a), 2707(a), 3074(c).