

Disclaimer

These CMP amendments were adopted by the Commission on June 12, 2014. However, no action authorized by the Commission involving the adoption of amendments to the CMP shall have force or effect until thirty (30) days, Saturdays, Sundays and public holidays excepted, after a copy of the Commission meeting minutes has been delivered to the Governor for review, unless prior to expiration of the review period the Governor approves same, in which case the action shall become effective upon such approval. The June 12, 2014 meeting minutes were sent to the Governor on June 24, 2014.

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Definitions; Application Requirements and Procedures; Pinelands

Development Credits; Pilot Program for Alternate Design Wastewater

Treatment Systems

Adopted Amendments: N.J.A.C. 7:50-2.11, 4.1, 4.2, 4.18, 4.19, 4.25, 4.35, 4.37, 4.52, 4.74, 4.76, 5.43, 6.68, 6.69, 10.21, 10.22, and 10.23

Proposed: February 18, 2014 at 46 N.J.R. 319(a)

Adopted: June 12, 2014 by the New Jersey Pinelands Commission, Nancy

Wittenberg, Executive Director

Filed: August 8, 2014 **without change**

Authorized by: New Jersey Pinelands Commission

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

Effective Date: September 2, 2014

Expiration Date: Exempt.

The New Jersey Pinelands Commission (Commission) is adopting amendments to Subchapters 2, Interpretations and Definitions; 4, Development Review; 5, Minimum Standards for Land Uses and Intensities; 6, Management Programs and Minimum Standards; and 10, Pilot Programs, of the Pinelands

Comprehensive Management Plan (CMP). The amendments were proposed on February 18, 2014 at 46 N.J.R. 319(a). The adopted amendments relate to application requirements and procedures, the duration of Letters of Interpretation, the allocation of Pinelands Development Credits and the Pilot Program for Alternate Design Wastewater Treatment Systems. They are intended to codify current Commission practice, clarify existing standards and requirements, increase the efficiency of the Commission and its staff, eliminate unnecessary application requirements, correct typographical errors in the regulations, provide an extended time period within which the installation of certain alternate design wastewater treatment systems will be permitted, and remove from the Alternate Design Wastewater Treatment Systems Pilot Program a particular technology that has been unable to demonstrate compliance with CMP standards.

In association with publication of the proposed amendments in the February 18, 2014 issue of the New Jersey Register, the Pinelands Commission transmitted the proposal to each Pinelands municipality and county, as well as to other interested parties, for review and comment. Additionally, the Pinelands Commission:

- Sent notice of the public hearing to all persons and organizations that subscribe to the Commission's public hearing registry;
- Sent notice of the public hearing and provided a copy of the rule proposal to all Pinelands counties and municipalities, the Pinelands Agricultural Advisory Committee, the health departments of all seven Pinelands counties, the alternate

design wastewater treatment system vendors for technologies approved in the Pinelands Area and other interested parties;

- Placed advertisements of the public hearing in the four official newspapers of the Commission, as well as on the Commission's own web page;
- Submitted the proposed amendments to the Pinelands Municipal Council pursuant to N.J.S.A. 13:18A-7f;
- Distributed the proposed amendments to the news media maintaining a press office in the State House Complex; and
- Published a copy of the proposed amendments on its web page at www.nj.gov/pinelands.

Summary of Hearing Officer Recommendations and Agency Response:

A formal public hearing was held before the Commission staff on March 26, 2014. Two people attended the hearing; however, no oral testimony on the rule proposal was provided.

The public hearing was recorded on magnetic tape which is on file at the Commission's office at 15 Springfield Road, New Lisbon, New Jersey. The record of this rulemaking is available for inspection in accordance with applicable law by contacting:

Betsy Piner
Pinelands Commission
P.O. Box 359
New Lisbon, NJ 08064

The Commission received five written comments on the proposed amendments.

The hearing officer's recommendations are in accordance with the public comment and agency responses below.

Summary of Public Comments and Agency Responses:

The Commission accepted oral comments on the February 18, 2014 proposal at the above-discussed March 26, 2014 public hearing and written comments by regular mail, facsimile or e-mail through April 19, 2014.

The following individuals and organizations submitted comments:

1. Mark Demitroff
2. Bruce S. Shapiro, New Jersey Association of Realtors
3. Elizabeth George-Cheniara, Vice-President of Regulatory Affairs, New Jersey Builders Association
4. Christopher Schulz, Administrator, Medford Township
5. Peter Ferwerda

The Commission's detailed response to the comments is set forth below.

The numbers in parentheses after each comment correspond to the list of commenters above.

1. COMMENT: Two commenters expressed general support for the proposed amendments and encouraged the Commission to move forward with adoption. (2, 3)

RESPONSE: The Commission appreciates the support of these commenters.

2. COMMENT: Two commenters supported the proposed application exemptions at N.J.A.C. 7:50-4.1(a) because they eliminate unnecessary application requirements and allow the Commission staff to appropriately focus its resources on reviewing more significant development proposals. (2, 3)

RESPONSE: The Commission agrees and appreciates the support of these commenters.

3. COMMENT: One commenter suggested several minor technical changes to proposed N.J.A.C. 7:50-4.1(a)8i and ii, the application exemption related to additions to non-residential uses and multi-family residential structures. (4)

RESPONSE: While appreciative of the detailed review undertaken by the commenter, the Commission does not believe any changes are necessary.

4. COMMENT: One commenter asked that the Notice of Proposal be revised to further emphasize that the exemption of certain home occupations from the Commission's application requirements (see N.J.A.C. 7:50-4.1(a)22) does not affect municipal application, review and approval procedures regarding home occupations. (4)

RESPONSE: The Notice of Proposal clearly states that the ability of a Pinelands municipality to regulate home occupations is in no way affected by exempting such development from the need to file an application with the

Commission. The Commission believes this statement is sufficient and no additional wording is necessary.

5. COMMENT: One commenter indicated support for the exemption of home occupations from the Commission's application requirements at N.J.A.C. 7:50-4.1(a)22 but noted that because the exemption would apply only if no additional development were proposed, a new parking lot or building would trigger the need for application. (4)

RESPONSE: The commenter is correct. If a new parking lot or building were proposed in association with the establishment of a home occupation, the submission of an application for development to the Commission could be required.

6. COMMENT: One commenter supported the proposed application exemption at N.J.A.C. 7:50-4.1(a)23 for changes of one nonresidential use to another but noted that the Commission may need to address changes of use involving a residential component. (3)

RESPONSE: The submission of applications for development to the Commission will continue to be required for changes of use involving an existing nonresidential use and a proposed residential use. The Commission believes this is appropriate, given the multitude of CMP standards that govern residential density and the potential need for use of Pinelands Development Credits.

7. COMMENT: One commenter suggested slight changes in wording to the amended submission requirements set forth at N.J.A.C. 7:50-4.18(e)4 and

4.35(e)4. Specifically, the commenter suggested that the term “municipal determination” should be used instead of “approval” or “denial”. (4)

RESPONSE: Use of the terms “approval” and “denial” in these sections of the CMP was deliberate. In municipalities that have not had their master plans and land use ordinances certified by the Commission as being in conformance with the CMP, notice of municipal development approvals and denials must be provided to the Commission in accordance with N.J.A.C. 7:50-4.18(e). In municipalities where such certification has occurred, it is only municipal development approvals that must be provided to the Commission, pursuant to N.J.A.C. 7:50-4.35(e). This important distinction would be lost if the term “determination” were to be used. Therefore, the Commission will not be making any further changes to these sections.

8. COMMENT: Two commenters supported the proposed amendments to N.J.A.C. 7:50-4.70, extending the duration of Letters of Interpretation from two to five years. These commenters felt the longer time period would be beneficial to both property owners and the Commission. (2, 3)

RESPONSE: The Commission agrees and appreciates the support of these commenters.

9. COMMENT: One commenter questioned whether there would be negative impacts to extending the duration of Letters of Interpretation and “locking up” Pinelands Development Credits for a longer period of time. (4)

RESPONSE: The Commission does not expect there to be any negative impacts. The majority of Letters of Interpretation issued by the Commission

merely inform a property owner of the number of Pinelands Development Credits to which a particular property is entitled. Extending the duration of a Letter of Interpretation provides that property owner with a longer period of time within which to decide what, if anything, he or she wishes to do with the allocation information provided by the Commission. Issuance of a Letter of Interpretation does not create Pinelands Development Credits, add to the supply of Pinelands Development Credits or impose any obligation on the property owner. Changes in PDC allocations upon the renewal of a Letter of Interpretation are relatively infrequent and always insignificant. The Commission does not anticipate this to change merely because Letters of Interpretation will now be valid for five years as opposed to two.

10. COMMENT: One commenter recommended that the resource extraction standards set forth at N.J.A.C. 7:50-6.68 be further amended to include a prohibition on the use of power vessels on waters of the State in the Pinelands Preservation Area. The commenter submits that such a prohibition was included in the Pinelands Protection Act but is not being appropriately enforced by the Commission. (5)

RESPONSE: The CMP already contains the prohibition referenced by the commenter (see N.J.A.C. 7:50-6.143(a)1). There is no need for it to be repeated in other sections of the CMP.

11. COMMENT: One commenter indicated support for the proposed extension of the Pilot Program for Alternate Design Wastewater Treatment Systems septic pilot program and the removal of the Cromaglass technology from

the Pilot Program. The commenter also suggested that the Commission actively allow additional technologies into the Pilot Program as a means of increasing competition, thereby leading to cost-savings for users. (3)

RESPONSE: The Commission appreciates the commenter's expression of support. Five technologies are currently authorized for participation in the Pilot Program. Four of the five were approved for participation fairly recently and have yet to be installed in the Pinelands Area. After gaining some experience with the installation and performance of these four new technologies, the Commission will consider whether to seek participation by additional technologies, keeping in mind that N.J.A.C. 7:50-10.22(a)6xiii allows no more than six technologies to be approved for use in the Pilot Program at any one time.

12. COMMENT: One commenter stated that the Commission may need to consider potential environmental impacts if there is no requirement that existing Cromaglass systems be replaced with technologies that meet Pinelands water quality standards. (4)

RESPONSE: Only 60 Cromaglass systems were approved under the Pilot Program. From a regional standpoint, the Commission does not expect there to be any significant environmental impacts from such a small number of systems.

Notably, when the Commission established the Pilot Program for Alternate Design Wastewater Treatment Systems in 2002, one of the fundamental principles was that property owners would not be held liable for poor performance of their pilot program systems if the systems were being properly operated and maintained. N.J.A.C. 7:50-10.22(b) was incorporated in the pilot program rules to

make this explicit. The intent of this section was to provide purchasers of pilot program systems with the assurance that they would not be required to pay for the replacement of a technology that failed to comply with nitrogen removal expectations. The inability of a particular technology to meet CMP water quality standards was a possibility the Commission acknowledged when the program was first established. That, in large part, was why testing or piloting of the new technologies was required prior to their authorization in the Pinelands Area on a permanent basis.

The 60 homeowners in the Pinelands Area currently using the Cromaglass technology have the option of continuing to use their systems in a manner consistent with the operation and maintenance provisions of the CMP, converting the systems to function as septic tanks, replacing the systems with conventional septic tanks meeting the requirements of N.J.A.C. 7:9A (the New Jersey Department of Environmental Protection's Standards for Individual Subsurface Sewage Disposal Systems) or replacing the systems with other nitrogen-reducing technologies authorized by the CMP. This is consistent with New Jersey's long-established practice of not requiring the replacement or retrofitting of existing septic systems that were legally installed in compliance with the regulations in effect at the time of plan approval and system construction. Typically, the Department of Environmental Protection requires that such systems be upgraded only upon the occurrence of a system failure as defined at N.J.S.A. 7:9A, generally resulting in sewage on the ground, backing up into a building or contaminating a well with fecal coliform bacteria. Such conditions do not exist

with the existing Cromaglass systems. Nevertheless, the Commission intends to identify potential funding sources that might be used to provide grants to homeowners interested in replacing their Cromaglass systems.

13. COMMENT: One commenter objected to the inclusion of the Smart Growth Development Impact analysis in the notice of proposal, as well as the general use of the term “smart growth” in a regulatory context. This commenter also stated that the Commission should not amend the CMP to comport with the State Development and Redevelopment Plan (State Plan). Rather, the State Plan should be amended to be consistent with the Pinelands CMP. In addition, this commenter stated that the Commission cannot force all Pinelands Villages to become “Centers (with redevelopment)” until the 1999 Memorandum of Agreement between the Commission the State Planning Commission is revised.

(1)

RESPONSE: The commenter’s objections have nothing to do with the CMP amendments now being adopted. Rather, they relate to the Smart Growth Development Impact analysis included in the Notice of Proposal. Such an analysis is required pursuant to N.J.S.A. 52:14B-4, as amended in 2008. The Commission does not have the authority to omit this analysis from the proposal or rename it so that it does not include the term “smart growth”.

The analysis must include a description of the types and an estimate of the number of housing units to which the proposed amendments will apply, a description of the estimated increase or decrease in the availability of affordable housing that will be affected by the proposed amendments, and a description as to

whether the proposed amendments will affect in any manner new construction within Planning Areas 1 or 2, or within designated centers, under the State Plan. The Commission's analysis simply notes that such Planning Areas and State Plan designated centers do not exist in the Pinelands Area. Therefore, the Commission evaluated the impact of the proposed amendments on Pinelands management areas that are equivalent to Planning Areas 1 and 2 and designated centers (that is, Regional Growth Area, Pinelands Villages and Pinelands Towns). The Commission's 1999 Memorandum of Agreement with the State Planning Commission makes these correlations explicit, with all Pinelands Villages assigned a corresponding State Plan center designation of "Village" or "Hamlet".

As is evident from the text of the amendments themselves, the Commission is not amending the CMP to comport with the State Plan.