

December 1, 2008

PINELANDS COMMISSION

**Pinelands Comprehensive Management Plan
Cluster Development; Development Transfer Programs; Surface Water Runoff**

**Adopted Amendments: N.J.A.C. 7:50-2.11, 3.39, 5.16, 5.19, 5.22, 5.23, 5.24, 5.26,
5.30, 5.47, 6.80, 6.84 and 6.104**

Proposed: September 2, 2008 at 40 N.J.R. 4874(a)

Adopted: January 16, 2009 by the New Jersey Pinelands Commission,
John C. Stokes, Executive Director

Filed: March 13, 2009 **without change.**

Authorized by: New Jersey Pinelands Commission

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

Effective Date: April 6, 2009

Expiration Date: Exempt.

Summary of Public Comments and Agency Responses:

The New Jersey Pinelands Commission (Commission) is adopting amendments to subchapters 2, Interpretations and Definitions, 3, Certification of County, Municipal and Federal Installation Plans, 5, Minimum Standards for Land Uses and Intensities, and 6, Management Programs and Minimum Standards, of the Pinelands Comprehensive Management Plan (CMP). The amendments were proposed on September 2, 2008 at 40 N.J.R. 4874(a). The adopted amendments relate to residential cluster development and development transfer programs in the Pinelands Forest and Rural Development Areas, as well as stormwater management for public development.

In association with publication of the proposed amendments in the September 2, 2008 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 which subscribe to the Commission's public hearing registry;
- 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;
- Published a copy of the proposed amendments on its web page at www.nj.gov/pinelands;
- Hosted two meetings for representatives of Pinelands municipalities at which the proposed clustering amendments were presented and discussed; and
- Distributed press releases concerning the proposed amendments to the news media

A formal public hearing was held before the Commission staff on October 7, 2008. Approximately 10 people attended the hearing; oral testimony on the rule proposal was provided by 7 individuals. The hearing officer's recommendations are in accordance with the public comment and agency responses below.

Oral comments were 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 7
New Lisbon, NJ 08064.

Summary of Public Comments and Agency Responses:

The Commission accepted oral comments on the September 2, 2008 proposal at the above-discussed October 7, 2008 public hearing and written comments by regular mail, facsimile or e-mail through November 1, 2008.

The following individuals and organizations submitted comments:

1. Daniel Jassby
2. Bonnie S. Yearsley, Township Clerk, Weymouth Township
3. Lee Snyder, New Jersey Sierra Club
4. Jaclyn Rhoads, Director for Conservation Policy, Pinelands Preservation Alliance,
and Alison Mitchell, Policy Director, New Jersey Conservation Foundation
5. Jeff Tittel, Director, New Jersey Sierra Club
6. Emile DeVito, Manager of Science & Stewardship, New Jersey Conservation
Foundation
7. Kent Schellinger, Township Engineer, Maurice River Township
8. Michael St. Amour, Mullica Township Committeeman

9. Bernard Graebener, Mullica Township Committeeman
10. James Pridgeon, Chairman, Weymouth Township Environmental Commission
11. Jeffrey J. Waldman, Esq., Weymouth Township Planning Board Solicitor
12. Ben Stowman, Chairman, Maurice River Township Land Use Board
13. Jay Mounier, Noble McNaughton and Bill Cutts, members of the Pinelands Commission's Agricultural Advisory Committee
14. Ronald P. Trebing, Administrator/CMFO, Buena Vista Township
15. Kimberly Johnson, Municipal Clerk, Mullica Township
16. Joseph Springer, Chairman, Southampton Township Environmental Commission
17. Jon Malkin, Chairman, Mullica Township Environmental Commission
18. Michael M. Kay
19. Mayor T. Richard Bethea, Bass River Township
20. Kimberly Johnson
21. Kimberley Hodsdon, City Clerk, City of Estell Manor
22. Douglas M. Tomson, Director of Legislative Affairs, New Jersey Association of Realtors
23. Susan E. Craft, Executive Director, State Agriculture Development Committee
24. Monique Purcell, Director, Division of Agricultural & Natural Resources, New Jersey Department of Agriculture
25. Fred Akers, Administrator, Great Egg Harbor Watershed Association
26. Angelo J. Genova, Esq., Genova, Burns & Vernoia

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

General comments

1. **COMMENT:** Three commenters expressed support for the proposed clustering amendments because clustering of residential development in the Forest and Rural Development Areas will avoid fragmentation, permanently protect large contiguous areas of environmentally sensitive land and prevent large-lot sprawl. (23, 24, 26)

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

2. **COMMENT:** Four commenters oppose the clustering amendments because they believe clustering will promote growth, accelerate buildout and encourage larger developments in the Forest and Rural Development Areas. (5, 7, 9, 12)

RESPONSE: The clustering amendments are not intended to promote growth or accelerate buildout. Rather, the amendments are designed to promote a more appropriate residential development pattern in the Forest Area, one of the most environmentally sensitive areas of the Pinelands, and the Rural Development Area, an important transition area. To the extent that the amendments will result in the assemblage of lots, larger developments may result. This in turn will result in larger amounts of protected open space and an end to the proliferation of homes on large lots scattered throughout the Forest and Rural Development Areas.

3. **COMMENT:** Two commenters oppose the clustering amendments because they believe rural municipalities will see an increase in their affordable housing obligations as a result. (5, 12)

RESPONSE: The Commission is currently working with the Council on Affordable Housing (COAH) to develop a revised Memorandum of Agreement between the two agencies which will clarify the applicability of COAH's new third round

regulations in the Pinelands Area. Given the extremely low permitted densities within the Pinelands Forest Area, the Commission does not believe that this management area should be included in the calculation of a municipality's growth share. A recommendation to exclude these areas has been submitted to COAH several times and is expected to be implemented in the revised Memorandum of Agreement. As a result, the mandatory clustering of residential development in the Forest Area and the provision of bonus units pursuant to N.J.A.C. 7:50-5.19(d)1 will have no impact whatsoever on a municipality's affordable housing obligation.

With respect to the Rural Development Area, it must first be emphasized that this is and will remain an unsewered area of relatively low density (an average of one unit per five acres). The mandatory clustering of units one acre lots, in and of itself, does not change the zoning capacity of the Rural Development Area nor result in an increased affordable housing obligation. The provision of bonus units for certain cluster developments may have a very minor impact. Making some simple assumptions about the likelihood of parcel assemblage (e.g., bigger existing parcels are more likely to be assembled than smaller existing parcels), it can be estimated that only about one-third of the zoning capacity in the Rural Development Area might be eligible for the bonus units. This would increase total zoning capacity by approximately 5 to 7 percent or 1,300 units across nearly 113,000 acres. Given this very minor increase in residential development potential on a regional basis, impacts on any individual municipality in terms of an increased affordable housing obligation will be even more limited.

4. **COMMENT:** Four commenters oppose the clustering amendments because they will dramatically change the character of development in rural communities, thus

affecting the quality of life of residents. These comments further state that existing municipal ordinances provide sufficient tools for stable development and ensure growth is comprehensively planned and managed in an orderly fashion. (12, 15, 20, 25)

RESPONSE: While the Commission understands the concerns of these commenters, the Commission cannot agree that municipal ordinances currently provide the tools necessary to ensure that residential growth in the Pinelands Forest and Rural Development Areas is comprehensively planned and managed in an orderly fashion. Most municipal ordinances simply allow for residential development at low densities on relatively large lots, with little attempt to focus the location of such development in the most appropriate areas and little attention paid to the protection of environmentally sensitive areas. Clustering, where permitted, is frequently made subject to so many limitations on such things as tract size and the number of units that it almost never is proposed or approved at the local level. The result is scattered and piecemeal development, leading to forest fragmentation, something which the Commission feels it must take steps to prevent.

5. **COMMENT:** One commenter states that the proposed clustering amendments are too comprehensive in size for a municipality to adequately analyze; thus, the public comment period should be extended for an additional six months. (12)

RESPONSE: Not only was a 60 day formal public comment period provided for the proposed amendments upon their publication in the New Jersey Register in early September, 2008, but the Commission also sent copies of the proposed amendments to each Pinelands municipality well over a month in advance. Commission staff also briefed the Pinelands Municipal Council, an organization made up of the mayors of all Pinelands

municipalities, on the amendments on more than one occasion. A public hearing was held and the Commission also held two special meetings, specifically for representatives of Pinelands municipalities, at which the clustering amendments were discussed in detail. An extension of the public comment period is therefore not warranted.

In addition, pursuant to N.J.A.C. 7:50-3.23 of the CMP, Pinelands municipalities are provided with a one year period within which to adopt and submit amendments to their master plans and land use ordinances for purposes of conformance with any amendment to the CMP. Upon the Commission's adoption of these amendments, Pinelands municipalities will therefore have ample time to analyze the amendments and determine how best to incorporate the mandatory clustering program into their master plans and land use ordinances. The Commission will work closely with municipalities during this process and provide as much assistance as possible.

6. **COMMENT:** Three commenters oppose the clustering amendments because they will harm the Pinelands environment and ecosystems in the Forest and Rural Development Areas. One of the commenters further asserts that the clustering amendments represent a violation of the basic foundation of the Pinelands Protection Act. (12, 18, 25)

RESPONSE: Residential development is a permitted use in both the Forest and Rural Development Areas pursuant to the CMP. These amendments merely require that such residential development be configured in a different manner than has been the traditional practice in these two management areas since the CMP took effect. The Commission feels strongly that the new development pattern which will result from these amendments provides greater protection to the Pinelands environment and ecosystems.

The amendments are designed to further the goals of the Pinelands Protection Act and in no way constitute a violation thereof. By mandating cluster development and the preservation of larger, contiguous areas of forest which provide important habitat for characteristic and rare Pinelands plants and animals, the amendments serve to further three specific goals of the Pinelands Protection Act: to preserve and maintain the essential character of the Pinelands environment; encourage appropriate patterns of development; and discourage piecemeal and scattered development.

7. **COMMENT:** One commenter suggests that before determining clustering is needed, the Commission should know how many five acre lots in the Pinelands have been developed and how many more are planned. A list of such five acre lots, by block and lot number, is requested. (18)

RESPONSE: The Commission does not have available the specific information requested by this commenter and it is unclear why the commenter has a particular interest in five acre lots. However, it is worth noting that of the 45,000 existing parcels in the Rural Development Area, only 2,600 (less than six percent) are between 3.2 and 5.0 acres in size. In the Forest Area, approximately 3,150 of the 61,000 parcels (five percent) are between 3.2 and 5.0 acres. The vast majority of existing lots in both management areas (86 percent) are under 3.2 acres in size, as was noted in the rule proposal. These figures include both vacant and developed lots.

8. **COMMENT:** One commenter states that because the proposed clustering amendments do not define “forest fragmentation,” there will be no way to measure the impacts of the amendments in the future. (25)

RESPONSE: While the Commission does not believe a formal definition of “forest fragmentation” is necessary, Commission staff will be asked to report to the Commission on a regular basis on all applications for residential cluster development in the Forest and Rural Development Areas submitted following adoption of these amendments. The location of all such developments, together with the number of units and size and configuration of the protected open space, will be reported. This will allow for comparisons to be made between the clustering which occurs pursuant to these amendments and the development pattern which would likely have resulted on the same parcels absent the amendments.

9. **COMMENT:** One commenter opposes the clustering amendments because they will result in the random scattering of small clusters of development throughout the Forest and Rural Development Areas, rather than reducing scattered and piecemeal development. This commenter further asserts that the purpose of the clustering amendments appears to be the creation of “stylish pockets of Regional Growth Area clusters in the Forest and Rural Development Areas to counter the false notion that these existing zones promote large lot urban sprawl”. The commenter also states that the Commission has not demonstrated that the current Forest and Rural Development Area zoning has resulted in scattered and piecemeal development. (25)

RESPONSE: The Commission has no expectation that cluster developments in the Forest and Rural Development Areas resulting from the adoption of these amendments will resemble those in the Regional Growth Areas. That is certainly not the objective of these amendments. Cluster developments in the Forest and Rural Development Areas are generally expected to involve small numbers of units on one acre

lots utilizing septic systems. Cluster developments in the Regional Growth Area have traditionally involved many more units on relatively small lots served by sewer.

In terms of demonstrating that scattered and piecemeal development has resulted from current Forest and Rural Development Area zoning, the Commission would again point to the statistics provided in the rule proposal. In both of these Pinelands management areas, the majority of applications received by the Commission involve single homes on existing large lots. Based on the 28-acre average lot size requirement in the Forest Area, the 474 applications for single dwelling units in that management area submitted to the Commission between 1981 and 2004 could have consumed over 13,000 acres. If those 474 units had been clustered and developed on one acre lots, far less land would have been disturbed and far less fragmentation of the forest would have resulted. Without mandating cluster development and encouraging parcel assemblage, the Commission believes the traditional development pattern would continue to have a harmful effect on the Pinelands environment.

N.J.A.C. 7:50-2.11: Definition of Impervious Surface

10. **COMMENT:** One commenter states that compacted dirt roads, graveled driveways and permeable pavement should not be considered impervious surfaces under the definition being added at N.J.A.C. 7:50-2.11. (12)

RESPONSE: As the commenter provided no substantive basis for his suggestion, the Commission cannot comment and will continue to rely on TR-55 which defines compacted dirt roads, graveled driveways and permeable pavement as impervious surfaces.

N.J.A.C. 7:50-3.39: Municipal Certification Standards

11. **COMMENT:** Two commenters state that under the municipal flexibility provisions being added at N.J.A.C. 7:50-3.39(a)2ix, municipalities should be permitted to pick and choose those provisions of the clustering amendments which they feel are most appropriate to their jurisdictions. The Commission should empower municipalities to choose which tools they wish to employ and greater municipal flexibility should be provided. (7, 12)

RESPONSE: The Commission believes that sufficient municipal flexibility has been afforded pursuant to N.J.A.C. 7:50-3.39(a)2ix. This section of the CMP provides the Commission with the ability to certify municipal ordinances that contain clustering standards different than those set forth at N.J.A.C. 7:50-5.19(c) and (d), provided such standards are supported by sound land use planning, are warranted based on local conditions or circumstances, and do not undermine the goals and objectives of the Forest and Rural Development Area clustering program.

N.J.A.C. 7:50-5.19(c): Mandatory Clustering

12. **COMMENT:** Seven commenters state that clustering of residential development in the Forest and Rural Development Areas may only be appropriate in limited areas; therefore, it should be optional, rather than mandatory. One of the commenters suggests that municipalities should have the ability to consider the potential for cluster development during their required master plan reexaminations and determine whether the

principles being adopted by the Commission would be beneficial. (12, 14, 15, 17, 19, 20, 21)

RESPONSE: Based on over 27 years of experience, the Commission strongly believes that clustering must be made mandatory in the Forest and Rural Development Areas or it simply will not occur on any widespread or meaningful basis. N.J.A.C. 7:50-5.19(c) itself recognizes that there will be circumstances under which clustering should not be required and, while these situations are expected to be limited in number, the Commission will work with municipalities and applicants to identify and appropriately recognize them. Moreover, municipalities will, as the commenters suggest, have the ability to review the CMP's clustering program requirements when updating their master plans and land use ordinances in response to these amendments. Should a municipality identify the need for clustering standards different than or in addition to those set forth in the CMP, the Commission may certify such standards, provided they comply with N.J.A.C. 7:50-3.39(a)2ix.

13. **COMMENT:** One commenter suggests that clustering should be optional for the developer when fewer than four units are proposed. (1)

RESPONSE: As was indicated in the rule proposal, the overwhelming majority of applications for residential development in the Forest and Rural Development Areas submitted to by the Commission since 1981 have involved less than five units. Cluster development in these two management areas, while permitted by the CMP as an optional use during that same time period, has rarely been proposed or approved. Continuing to make clustering optional for smaller residential projects would likely result in little to no

change in the current land use pattern, an unacceptable outcome from the Commission's perspective.

14. **COMMENT:** One commenter states that the statistics cited in the rule proposal with respect to previous applications for development in the Forest Area make a compelling case for the use of mandatory clustering. Another commenter also indicates support for mandatory clustering, provided the Commission is able to ensure that forested open space lands are retained and not eaten away. (6, 23)

RESPONSE: The Commission appreciates the support of these commenters.

15. **COMMENT:** One commenter suggests that the extent to which the forest is already fragmented on a particular lot should be determined before clustering is mandated. If this is not done, the commenter asserts the Commission would be arbitrarily applying a planning concept that merely pretends to protect the forest, with no way to prove clustering is needed at all. (25)

RESPONSE: The Commission does not agree that fragmentation can or should be assessed or prevented on a lot by lot basis. However, if a municipality is able to identify in its master plan and land use ordinance specific areas where forest fragmentation has already occurred and it is not necessary to mandate clustering, the Commission may be able to certify that master plan and ordinance pursuant to N.J.A.C. 7:50-3.39(a)2ix.

16. **COMMENT:** One commenter states that mandatory clustering in the Rural Development Area will be a boon to developers but will not achieve the intended goal of increased land protection and sound regional planning. Further, the commenter projects that mandatory clustering in the Rural Development Area will be burdensome on

municipalities as they will have to deal with a “litany of waivers and variances” from the bulk requirements in existing master plans. (25)

RESPONSE: Pinelands municipalities which contain Pinelands Forest and/or Rural Development Areas will be required to amend their master plans and land use ordinances to incorporate the Commission’s clustering program. As part of this effort, municipalities will need to establish revised bulk requirements which will apply to clustered development on one acre lots. This will eliminate the need for waivers and variances, in all but the most limited of circumstances.

With respect to the commenter’s opinion that clustering in the Rural Development Area will not result in increased land protection or sound regional planning, the Commission respectfully disagrees. The Commission believes that sound regional planning dictates the discontinuation of scattered large lot residential development across the Pinelands and that mandatory cluster development is the best available method of doing so.

17. **COMMENT:** One commenter suggests that commercial clustering should also be permitted. This commenter also expresses a concern with the applicability of the clustering amendments to sand mining properties. (12)

RESPONSE: There is nothing in the CMP which would prohibit the clustering of commercial uses in the Pinelands. Municipalities may adopt design standards and clustering requirements for commercial uses should they choose to do so. It is worth noting, however, that opportunities for a significant amount of major commercial development, clustered or not, in the Forest and Rural Development Areas are limited due to the lack of sewer service.

With respect to sand mining properties, the clustering amendments apply to the extent such properties have been included in residential districts under a municipality's zoning plan and the property owner is interested in developing homes on the property.

18. **COMMENT:** One commenter states that long-time Pinelands residents should continue to be allowed to develop homes under the CMP's cultural housing regulations; they should not be subject to the clustering amendments. (14)

RESPONSE: As was indicated in the rule proposal, long-time Pinelands residents and property owners will still be able to develop homes under the CMP's cultural housing provisions (N.J.A.C. 7:50-5.32). Cultural housing, including the creation of new 3.2-acre lots, remains a permitted use in the Forest and Rural Development Areas and is not affected by the mandatory clustering requirements now being adopted by the Commission. In addition, an applicant wishing to develop one home on an existing lot in the Forest or Rural Development Area which complies with the minimum lot size and density requirements for the zone in which it is located retain the ability to do so. The development of a single home would not be affected by the clustering amendments.

19. **COMMENT:** One commenter states that the relationship between mandatory clustering and a municipal density transfer program, both of which are applicable in the Forest and Rural Development Areas, is not clear. (12)

RESPONSE: Pursuant to N.J.A.C. 7:50-5.19(c), cluster development will be mandatory whenever two or more units are proposed in the Forest or Rural Development Areas, unless that development proposal is inconsistent with CMP environmental standards, results in greater forest fragmentation than non-clustered development or conflicts with a municipal density transfer program. Cluster development involves the use

of contiguous lands. Density transfer programs allow for the use of noncontiguous lands. In most municipalities, density transfer programs are designed only to facilitate the development of a single home on an existing lot which does not meet the minimum lot area requirement for the zoning district in which it is located. In those municipalities, there is unlikely to be any conflict between the mandatory clustering program and the density transfer program. In other municipalities, density transfer programs have been designed to accomplish additional objectives such as the protection of environmentally sensitive portions of a Forest Area and/or the focusing of new development along roads or adjacent to Pinelands Villages. It is in these municipalities where cluster development ordinances will need to be carefully structured so as not to interfere with a density transfer program.

Assume, for example, a municipality with a very large Forest Area has a density transfer program in place which includes the designation of receiving areas and sending areas. The minimum lot size for residential development in the municipality's Forest Area is 20 acres. Within the receiving areas, applicants are permitted to create new one acre lots, provided 19 acres of noncontiguous land in the sending areas are purchased and deed restricted for each such newly created lot. The development of undersized lots in the sending areas is not permitted. Under these circumstances, it might not make sense to mandate the clustering of development in the designated receiving areas because the objective is to protect open space in the sending areas, not on the parcels being developed in the receiving areas. Likewise, mandating cluster development and allowing for the provision of bonus units in the sending areas might not be the best approach because these areas have been identified as containing environmentally sensitive lands in need of

protection. It may be that the better solution is for the municipality to continue relying on its receiving areas to accommodate the majority of new development which will occur in the Forest Area while restricting development in the sending areas, including clustering. With the help of Commission staff, each municipality will need to examine its Forest and Rural Development Areas in order to determine how best to accommodate both cluster development and the density transfer program.

20. **COMMENT:** One commenter states that the proposed amendments do not specify that clustering may occur only on contiguous lands. The commenter notes that the term “parcel” is not defined in the proposed amendments. (5)

RESPONSE: A definition for the term “parcel” is already included at N.J.A.C. 7:50-2.11 of the CMP. Based on this definition, a “parcel” consists only of contiguous lots (except for farms which may include certain noncontiguous lands in common ownership). Cluster development in the Forest and Rural Development Areas may occur only on contiguous lands; it is only under the development transfer programs established pursuant to N.J.A.C. 7:50-5.30 that noncontiguous lands may be utilized.

N.J.A.C. 7:50-5.19(d)1: Bonus units

21. **COMMENT:** Support for bonus units is expressed by three commenters who believe that bonus units will provide an incentive to cluster residential development and assemble larger tracts of land, leading to the permanent protection of larger contiguous areas that support characteristic Pinelands plant and animal species and provide habitat for rare species. (23, 24, 26)

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

22. **COMMENT:** One commenter requests that the Commission clarify how it intends to calculate the density bonus for parcels located in more than one zoning district. The commenter suggested that total parcel size be used to derive the bonus. (26).

RESPONSE: The density bonus for parcels located in more than one zoning district will be calculated based on the total size of the parcel. As an example, assume an application for cluster development is submitted on a parcel of 180 acres in size, where 40 acres are in the R-5 Zone (with a five acre lot size requirement) and 140 acres are in the R-10 Zone (ten acre lot size requirement). As indicated in N.J.A.C. 7:50-5.19(d)1, separate residential unit calculations for each zoning district are made and then summed to determine the total number of residential lots to be clustered. For the 40 acres in the R-5 Zone, the applicant would be entitled to eight units. Because the overall parcel consists of 180 acres, a 25% bonus would be applied based on N.J.A.C. 7:50-5.19(d)1, yielding an additional two units. For the 140 acres in the R-10 Zone, the applicant would be entitled to 14 units. A 30% bonus would be applied, yielding an additional four units. In total, 28 units would be permitted on the parcel.

23. **COMMENT:** One commenter requests that the Commission clarify whether the bonus density is to be applied to the “permitted density” of a project or to the authorized number of units in a particular project. (26)

RESPONSE: The bonus density is to be applied to the authorized number of units in a particular project, as was indicated in the rule proposal.

24. **COMMENT:** Nine commenters oppose the provision of bonus units, believing they will increase development pressure, encourage growth, overburden municipal services and school districts and undermine the CMP and the purpose of the clustering amendments (to protect more land and habitat). Five of the commenters suggest that there is no need to use bonus densities as an incentive because parcel assemblage will allow for intensive development to occur and the developer receives a sufficient “bonus” through the savings on infrastructure costs which result from clustering. Four of these commenters suggest that municipalities should be able to retain the ability to require “yield plans” whereby the maximum number of permitted units in a cluster development cannot exceed that which would be allowed for a conventional development, taking applicable environmental constraints into consideration. (2, 5, 8, 10, 11, 14, 19, 17, 21)

RESPONSE: The Commission continues to believe that the provision of bonus units is a necessary component of the CMP’s new mandatory clustering program. Given that the overwhelming majority of existing lots in the Forest and Rural Development Areas are too small to permit meaningful cluster development, if any, an incentive for the assemblage of property must be provided. Coupled with reduced infrastructure costs and increased value due to the proximity of protected open space, the bonus units will further help to offset any decreases in property value that may result from the mandatory clustering requirements.

The “yield plan” approach suggested by some of these commenters is one which a number of Pinelands municipalities have utilized over the years. In the Commission’s experience, the requirement for a yield plan provides no incentive whatsoever for cluster development and, in fact, has been used by municipalities in the past as a means of

discouraging development rather than encouraging better site design and the protection of important open space lands. Allowing municipalities to require yield plans in the Forest and Rural Development Areas would ultimately undermine the goals the Commission is seeking to achieve through its new clustering program.

25. **COMMENT:** One commenter states that bonus densities are unjustified and inconsistent with the wisdom of the original CMP. This commenter asserts that the Commission is proposing bonus units merely to make up for the loss of residential units from state and non profit acquisition of lands in the Forest and Rural Development Areas and has not demonstrated that the protection of large contiguous areas of open space through clustering will offset the environmental impacts of the bonus units. (25)

RESPONSE: The Commission cannot disagree strongly enough with the unfounded assertion made by this commenter. No attempt whatsoever is being made to make up for the loss of residential development potential caused by acquisition of land in the Forest and Rural Development Areas. Reference was made to such acquisitions in the rule proposal merely to assure those concerned with the amount of residential development being authorized through the provision of bonus units that the level of development originally envisioned by the CMP in the two management areas would not be exceeded.

With respect to the contention that the Commission has not demonstrated the protection of large contiguous areas of open space will offset the environmental impacts of the bonus units, the Commission can only say that the environmental benefits of clustering have been amply documented in the rule proposal, the Commission's January 2006 White Paper on Preserving Ambient Water Quality and journal articles too

numerous to mention. The fact that a relatively small number of bonus units will be developed under the clustering program does not negate these benefits. Making the simple assumptions about the likelihood of parcel assemblage described previously, it can be estimated that only about one-third of the zoning capacity in the Rural Development Area and slightly more, perhaps one-half, of the zoning capacity in the Forest Area might be eligible for the bonus units. This would increase total zoning capacity by approximately 1,300 units in the Rural Development Area and 1,000 units in the Forest Area. Given the overall size of these two management areas (113,000 acres in the Rural Development Area and 245,000 acres in the Forest Area), it is difficult to see how one could reach the conclusion that the possible addition of 2,300 units over 358,000 acres will cancel out all of the benefits of cluster development.

26. **COMMENT:** One commenter suggests that bonus units should be optional, rather than mandatory. (12)

RESPONSE: The Commission believes that if clustering itself is to be made mandatory, it is important that the bonus units also be mandatory (in terms of their incorporation in municipal clustering ordinances). As noted in other responses, municipalities will have the opportunity to identify areas or circumstances under which bonus units might be applied differently than required in N.J.A.C. 7:50-5.19(d)1. The Commission will review such variations and be able to approve them, if warranted under N.J.A.c. 7:50-3.39(a)2ix.

27. **COMMENT:** Two commenters suggest that municipalities should be allowed and encouraged to apply the bonus provisions only to tracts of land assembled after the effective date of the amendments. These commenters state that municipalities should not

be required to request and provide justification for the limitation of the bonus densities in this fashion. Assemblage of parcels should be rewarded with bonus density only if it occurs after the effective date of the amendments. (3, 4)

RESPONSE: Application of the bonus provisions only to tracts of land assembled after the effective date of these amendments is one of the many possible variations from the CMP's clustering program which municipalities may consider when putting together their clustering ordinances. Given the administrative complexity of such a limitation, the Commission does not believe it would be advisable to encourage Pinelands municipalities to implement this particular variation. The opportunity to do so is provided under N.J.A.C. 7:50-3.39(a)2ix, subject to certain conditions which municipalities will have to address. The Commission believes these conditions to be wholly appropriate, not overly burdensome and necessary to ensuring the success of the new clustering program.

28. **COMMENT:** One commenter suggests that instead of providing bonus units, the Commission should focus on TDR programs. More specifically, this commenter suggests the establishment of a comprehensive TDR program whereby development is transferred into villages, rather than the creation of high density nodes of development in the middle of nowhere. (5)

RESPONSE: The Commission agrees that TDR is a valuable tool, one which can be used to focus development in appropriate locations while protecting environmentally sensitive lands elsewhere. To that end, the Commission adopted amendments to the CMP in 1992 which required municipalities to establish development transfer programs within their Forest and Rural Development Areas. Primarily intended

to address the development of existing undersized lots, these transfer programs have, in a number of municipalities, been expanded to include the designation of sending and receiving areas as a means of furthering both development and preservation goals. The amendments now being adopted provide municipalities with additional flexibility in designing their development transfer programs, including, for the first time, the ability to allow transfers of density from the Rural Development Area to the Forest Area and from the Rural Development and Forest Areas to Pinelands Villages. The lack of community wastewater treatment facilities in most Pinelands Villages may unfortunately deter meaningful transfers of density for the time being; however, the Commission believes it is important to enable municipalities to consider such options, both now and in the future.

The provision of bonus units to cluster developments in the Forest and Rural Development Areas will not lead to the creation of “high density nodes of development in the middle of nowhere”. Average permitted densities in the Forest and Rural Development Areas are one unit per 28 acres and one unit per 5 acres, respectively. Given these low densities, and the small parcel sizes within the two affected management areas, the vast majority of cluster developments are expected to be relatively small in size, even with the addition of a modest number of bonus units. The cluster development areas themselves will consist of homes on one acre lots served by septic systems, a development pattern which hardly qualifies as a high density node. Furthermore, the performance standards included at N.J.A.C. 7:50-5.19(d)2 will ensure that each cluster development is appropriately located proximate to existing development and roads.

N.J.A.C. 7:50-5.19(d)2: Location of the residential cluster

29. **COMMENT:** One commenter expresses support for the proposed performance standards guiding the location of the residential cluster development area. (23)

RESPONSE: The Pinelands Commission appreciates the support of this commenter.

30. **COMMENT:** One commenter suggests that an environmental resource inventory should be completed to determine the least ecologically damaging site on which the residential cluster should be located. (10)

RESPONSE: Applicants for cluster development will be required to design their projects in such a way as to comply with the minimum environmental standards of the CMP, including the maintenance of required wetlands buffers, protection of habitat for rare species and location of septic systems in appropriate soils. Municipalities that wish to include a requirement for the completion of environmental impact assessments or inventories as part of their own application procedure may do so, provided the standards for such assessments or inventories are clear, straightforward and not overly burdensome for the applicant (see N.J.A.C. 7:50-3.39(a)2ix). In addition, municipalities may take a more comprehensive approach by evaluating environmental resources throughout their Forest and Rural Development Areas in order to predetermine the most appropriate sites for cluster development and/or development transfer and guide the development of an implementing ordinance. The Commission will be happy to work with and provide information to any municipality that wishes to take such a proactive approach.

31. **COMMENT:** Two commenters object to the exemption of cluster developments from the scenic corridor requirements of the CMP. One of the commenters suggests that these scenic corridor requirements should continue to apply to cluster developments

located along main roads; the exemption should apply only to the interior roads within a cluster development. (17, 20)

RESPONSE: The Commission agrees that there may be situations where it is important that the CMP's scenic corridor requirements continue to apply. Pursuant to N.J.A.C. 7:50-3.39(a)2ix, municipalities may adopt and the Commission may certify land use ordinances which contain clustering standards different from those set forth at N.J.A.C. 7:50-5.19(c) and (d). Presuming it is warranted by local conditions or circumstances and would not undermine the overall goals of the clustering program, this could include the retention of the CMP's scenic corridor standards for certain areas or roads within a municipality.

N.J.A.C. 7:50-5.19(d)3i: One acre lot size requirement

32. **COMMENT:** One commenter supports the one acre lot size requirement as a significant step forward to reducing large lot sizes in the Forest and Rural Development Areas. This commenter indicates that lots smaller than one acre would also be supported. (24)

RESPONSE: The Pinelands Commission appreciates the support of this commenter.

33. **COMMENT:** One commenter believes the required one acre lot size may be viewed as too restrictive by homeowners who want to have space for accessory buildings and facilities (e.g., pools, tennis courts, etc.). This commenter suggests that the average lot size requirement be increased to two acres. In the Forest Area, the commenter also suggests that the average lot size for clustering be allowed to exceed 1.1 acres by an

amount that would absorb the acreage for the bonus units (which would not be awarded), leaving the size of the preserved open space the same. (1)

RESPONSE: The Commission believes a one acre lot size will be sufficient to accommodate the location of most accessory uses which homeowners wish to construct on their properties. In addition, N.J.A.C. 7:50-5.19(d)3iii and iv allow for the development of recreational amenities within the cluster development area that will be available to all homeowners. An increase in the lot size to two acres is not necessary, nor would it be consistent with the goals of the clustering program as it would lead to larger development areas, more clearing and less protected open space. An increase in the average lot size for clustering in the Forest Area is likewise not necessary and the Commission does not believe the elimination of bonus units is advisable as there would then be little incentive for parcel consolidation.

34. **COMMENT:** Two commenters caution that the reduction to one acre lots and the cost of new roads could lead to a proliferation of small driveways along existing highways due to reduced lot frontage requirements. The Commission should not encourage the development of neighborhoods with frontages on arterial highways. Rather than allowing such an undesirable “strip subdivision” development pattern, the Commission should require cul-de-sacs off major roads. (7, 12)

RESPONSE: Although environmental constraints do at times result in the location of individual homes closer to highways than desirable, the Commission believes the clustering program being adopted will provide increased flexibility in the design and location of residential projects in the Forest and Rural Development Areas. Municipalities, in adopting implementing land use ordinances, will have the ability to

incorporate site specific bulk and design standards, including setback, frontage and street requirements, to further guide the location of new homes and neighborhoods.

35. **COMMENT:** Two commenters object to the one acre lot size requirement on the basis that lots of this size are not in accordance with current municipal zoning. With their smaller front yard and side yard setbacks, one acre lots will not blend well with existing patterns of development. (14, 21)

RESPONSE: While the Commission understands the concerns of these commenters, it must be noted that it is the existing pattern of development in the Forest and Rural Development Area (scattered residential development on large lots) which the clustering amendments are expressly designed to prevent. The Commission is confident that municipalities are capable of designing and administering their clustering ordinances in a manner which is sensitive to existing development.

36. **COMMENT:** One commenter states that prohibiting residential lots sizes from exceeding 1.1 acres in a cluster development is very restrictive of private property rights. This commenter cautions that if there is no demand for lots of that size, a decrease in property values may result (22)

RESPONSE: Any decrease in property value which results from the requirement to cluster residential development on one acre lots should be more than offset by reduction in infrastructure costs associated with a cluster development, the additional value provided by proximity to substantial amounts of permanently protected open space and the bonus units authorized by N.J.A.C. 7:50-5.19(d)1. In addition, an opportunity for the development and/or purchase of a home on a large lot in the Forest or Rural Development Area will remain for those applicants seeking to construct only one unit.

N.J.A.C. 7:50-5.19(d)3ii: Wastewater service

37. **COMMENT:** One commenter suggests that in cases where a cluster development adjoins a Pinelands Town or Regional Growth Area with existing sewer service, the extension of sewer to serve that cluster development should be permitted. (1)

RESPONSE: Under very limited circumstances, the Commission agrees that this might be appropriate. Should a municipality wish to incorporate such a variation from CMP standards in its clustering ordinance, the Commission could consider approving it, if appropriately limited and justified, pursuant to N.J.A.C. 7:50-3.39(a)2ix.

38. **COMMENT:** One commenter states that the Commission should require the use of alternate design wastewater treatment systems in all cluster developments, rather than permitting the use of standard septic systems. (17)

RESPONSE: Upon the conclusion of the Commission's Pilot Program for Alternate Design Wastewater Treatment Systems and/or as part of the upcoming comprehensive review of the Pinelands protection program, the Commission may decide to consider this suggestion.

39. **COMMENT:** One commenter suggests that rather than requiring all units to have wastewater technologies which reduce pollutant loading if agriculture is to continue on the open space lands associated with a cluster development, it would be fairer to proportion them based upon the ratio of farmland to the total amount of protected land.

(13)

RESPONSE: The commenter makes a valid although perhaps complicated suggestion, one which a municipality may propose to implement in its clustering ordinance.

40. **COMMENT:** One commenter indicates support for the use of community on-site wastewater treatment systems to serve two or more dwelling units. (24)

RESPONSE: The Pinelands Commission appreciates the support of this commenter.

41. **COMMENT:** One commenter warns that the Department of Environmental Protection (DEP) may not allow one acre lots with individual septic systems and advises the Commission to seek DEP's opinion before proceeding with adoption of the amendments. (18)

RESPONSE: DEP's new wastewater management rules serve as a planning tool for HUC 11 watersheds. They are not site specific standards applied to each individual parcel. For example, if the DEP model calls for five acre lots within a certain area, that five acre lot is considered as an average over the entire watershed in question. Thus, a HUC 11 watershed with an average zoning density of five acres per lot meets the test, even with bonus units achieved through clustering on one acre lots, if there is protected land or lower density zones elsewhere in the subwatershed. Likewise, Forest Area zones, which have an average permitted density of one unit per 28 acres, easily satisfy the DEP model. DEP has tested the Pinelands watersheds based on certified zoning densities and advised the Commission that all "pass". In other words, the average densities in those portions of the Pinelands Area where septic systems serve residential development are more rigorous than the DEP model.

42. **COMMENT:** Three commenters indicate concerns with groundwater pollution in the immediate area of the cluster development, stating that the Commission has not demonstrated the use of standard septic systems on one acre lots within a cluster development will meet water quality standards. One of these commenters asserts that doubling the density within a cluster development results in a “squaring” of the impacts. Another suggests the Commission should use DEP’s model for nitrate/nitrogen because it addresses individual conditions (e.g., soil, rainfall, impervious surface). The third commenter states that lowering the original Comprehensive Management Plan standards for lot size and nitrate dilution will degrade local hydrology and create pollution plume impacts both on- and off-site. (5, 16, 25)

RESPONSE: First, CMP standards are not being “lowered” as the commenter suggests. Cluster development on one acre lots utilizing standard septic systems has been permitted by the CMP in the Rural Development Area, Regional Growth Area and Pinelands Towns and Villages since 1981. The clustering amendments now being adopted by the Commission merely extend this practice to the Forest Area. If anything, the clustering amendments provide an opportunity for increased water quality protection through the requirement for use of alternate design wastewater treatment systems in those cases where agriculture will continue on the open space lands associated with a cluster development. Moreover, the amendments provide, for the first time, an opportunity for decentralized, community wastewater treatment in the Forest and Rural Development Areas. To the extent that clustering leads to less need for driveways and roads, stormwater impacts will also be generally lessened.

It is true that impacts from septic systems may result in higher localized nitrate levels within a cluster development area; however, regionally, there still will be no increased impact. The local levels will not exceed those in the many existing communities in the Pinelands that were built on small lots and meet the State's potable water standards, and, will be much less at the 100 foot depth at which new wells are commonly screened. To the extent that on-site wastewater treatment occurs (either voluntarily or because agriculture will continue on the open space lands associated with a cluster development), regional impacts will be much less than that from scattered developments, and even localized impacts would be dramatically reduced, although not to the level of individual scattered units.

N.J.A.C. 7:50-5.19(d)3iii: Supporting facilities

43. **COMMENT:** One commenter believes the requirement to include all necessary supporting facilities within the cluster development area will effectively reduce the size or number of lots and discourage assemblage, thereby canceling out the bonus units. (1)

RESPONSE: The Commission does not agree that this will be the outcome and believes sufficient flexibility has been provided for the location of supporting facilities within the cluster development area.

44. **COMMENT:** One commenter states that mandatory clustering with shared stormwater basins will lead to more planning failures, more pollution and more water quality degradation in the Pinelands. The commenter notes that non-point source pollution from failing stormwater basins is already a reality in the Pinelands. (25)

RESPONSE: Stormwater management in the Pinelands has been of significant concern to the Commission for many years. The Commission adopted a set of comprehensive stormwater standards in 2006 to address these concerns, with emphasis on soils testing, construction safeguards and maintenance of stormwater facilities. Application of these amended stormwater standards to residential cluster developments in the Forest and Rural Development Areas should address the concerns raised by the commenter with the development of new shared stormwater basins, although it should be noted that such basins will not be proposed or necessary in every cluster development.

N.J.A.C. 7:50-5.19(d)4: Ownership of protected land

45. **COMMENT:** One commenter states that it will be difficult for a homeowners association to manage the protected open space if there are only a few units in the cluster development. Another commenter fears that homeowners associations may become unable to manage the open space due to financial or staffing reasons, forcing a municipality to acquire the open space. (1, 12)

RESPONSE: The concerns raised by these commenters relative to homeowners associations are valid, both under existing Municipal Land Use Law provisions and the new clustering program being adopted by the Commission. This is the reason N.J.A.C. 7:50-5.19(d)4 provides for a range of possible ownership arrangements relative to the open space within a cluster development. Municipal ownership of the open space may be the preferred arrangement in many communities, recognizing the municipality's greater ability to manage the lands. In other instances, ownership and management by a non profit conservation organization may provide the best outcome. Municipalities that have a

concern with ownership of the open space by homeowners associations will have the opportunity to structure their clustering ordinances so as to limit the circumstances under which this arrangement is permitted. The number of units in a cluster development could certainly be one of the determining factors.

46. **COMMENT:** Two commenters object to the ownership options provided by the clustering amendments, stating that Municipal Land Use Law provisions which allow for ownership only by a homeowners association or municipality should be retained. One of these commenters suggests that management of the open space could be the responsibility of a non profit organization or farmer, but ownership should rest with a homeowners association or municipality. (5, 6)

RESPONSE: The Commission does not believe the CMP should limit ownership of the protected open space in the fashion suggested by these commenters. The other ownership arrangements authorized by N.J.A.C. 7:50-5.19(d)4 may in some cases be a better alternative. For example, if the protected open space resulting from a cluster development is adjacent to lands owned by a non profit conservation organization, there is no reason why the open space lands should not also be owned (and managed) by that organization. Likewise, in those rare cases where the open space lands are in agricultural use and will continue to be farmed after clustering occurs, the Commission believes it makes sense to provide for the possibility of ownership of those lands by the farmer (provided the lands are incorporated in one of the residential lots within the cluster development area, also owned by the farmer). Municipalities, in developing their clustering ordinances, may determine that these are appropriate ownership options only in certain portions of a Forest or Rural Development Area or only if certain conditions exist.

Municipalities may also determine that, as one of the commenters suggests, the role of non profit conservation organizations or farmers should be limited to management of the open space lands, rather than ownership. Assuming such determinations are consistent with N.J.A.C. 7:50-3.39(a)2ix, the Commission would be able to certify such an ordinance.

47. **COMMENT:** One commenter appreciates the ownership options provided by the proposed amendments and suggests their creative use by municipalities. (7)

RESPONSE: The Pinelands Commission agrees and appreciates the support of this commenter.

48. **COMMENT:** Two commenters believe that allowing one of the homeowners in the cluster development to own the protected open space raises concerns with management and enforcement. These commenters suggest that individual owners will not engage in proper ecological forest management, nor will they control detrimental or illegal activities on the open space such as ATV use. (9, 10)

RESPONSE: The Commission understands the concerns of these commenters. However, an argument can also be made that the homeowner will be a better steward of the open space exactly because he or she resides in the cluster development and is therefore directly affected by its management and use. Because the open space land will be subject to a conservation restriction in favor of all the residents of the cluster development; the homeowner will have a responsibility to his or her neighbors to ensure that the lands are properly managed and protected.

49. **COMMENT:** One commenter believes that ownership of the protected open space should revert to the municipality for proper control and management. (10)

RESPONSE: Municipal ownership of the protected open space within a cluster development is authorized pursuant to N.J.A.C. 7:50-5.19(d)4. It is, however, not the only ownership option provided. Homeowners associations and non profit conservation organizations may also own the open space. In addition, the open space may be incorporated as one of the residential lots in the cluster development area. Municipalities will need to assess all of these ownership arrangements when drafting their clustering ordinances to determine those that are most appropriate in particular areas or under certain circumstances. It may well be that municipal ownership of the open space is the preferred arrangement in many Pinelands municipalities; however, the Commission believes it is advisable to provide a series of other options as well.

50. **COMMENT:** Two commenters state that the amendments appropriately provide flexibility to municipalities in allowing farmers to own and/or manage the open space lands which will continue to be farmed. These commenters suggest that farmers should not have to live on one of the residential lots in the cluster development in order to own the open space which will continue to be farmed. One of the commenters notes that if a farmer cannot own the open space, problems may develop in terms of trespass, liability and access to capital. This may lead a farmer to choose public funding through the State Agriculture Development Committee's (SADC) Farmland Preservation Program over private development (clustering) because SADC permits the farmer to retain ownership while deed restricting the farmland. (13, 24)

RESPONSE: If the protected open space lands are to be owned by an individual, rather than a homeowners association, municipality or non profit conservation organization, the Commission believes it is important that that person reside in and be

part of the cluster development, whether or not farming is to continue on the open space lands. For that reason, N.J.A.C. 7:50-5.19(d)4 provides that the open space lands may be incorporated as part of one of the lots within the cluster development area. Should the farmer not reside within the cluster development, the open space lands may be leased to him or her by a homeowners association, municipality or non profit conservation organization. Should circumstances warrant, a municipality may propose to allow ownership of the open space lands by a farmer who does not reside in the cluster development. The Commission could consider certifying such an ordinance provision if it complies with the standards of N.J.A.C. 7:50-3.39(a)2ix.

With respect to the suggestion that farmers may choose to preserve their lands through the SADC's Farmland Preservation Program rather than through cluster development if retaining ownership of the open space lands is not an option, the Commission fully supports such an outcome. The CMP does not require, nor even encourage, the residential development of farms in the Forest or Rural Development Areas. Should a farmer wish to pursue residential development in these portions of the Pinelands Area, the amendments now being adopted by the Commission simply require that development to be clustered, with the resulting open space subject to certain ownership and management restrictions. The permanent protection of farms and forested open space, be it through clustering or the SADC's purchase of easements, is of significant benefit to the Pinelands.

N.J.A.C. 7:50-5.19(d)4i: Protection of open space

51. **COMMENT:** One commenter suggests that Pinelands Development Credits (PDC) be allocated to the protected open space associated with a cluster development. These PDCs could then be severed and used for additional units in the cluster development, rather than awarding bonus units. (1)

RESPONSE: The allocation of PDCs to selected portions of the Pinelands Forest Area is under consideration by the Commission as part of a separate set of amendments to the CMP. Should the Commission adopt those amendments, lands in the Forest Area could be provided with permanent protection through the severance of PDCs, while the credits themselves would be used to facilitate higher density development in the designated growth areas of the Pinelands. It should be noted that adding to the overall supply of PDCs must be carefully done so as to ensure the balance between PDC supply and demand is not disrupted.

N.J.A.C. 7:50-5.19(d)5ii: Continuation of agricultural uses

52. **COMMENT:** Five commenters state that only those agricultural uses in existence as of the effective date of the amendments should be permitted to continue after cluster development occurs on a parcel. As proposed, the provisions allowing for “new” agricultural uses to continue after clustering will encourage the conversion of forested lands to agricultural uses. These commenters also state that clearcutting to create new farms should not be permitted. (3, 4, 5, 6, 9)

RESPONSE: The Commission understands the concerns of these commenters; however, there is simply no data to suggest that the conversion of forested land to agriculture in the Forest and/or Rural Development Areas is going to accelerate in the

coming years, whether as a result of these amendments or not. Agriculture remains a permitted use in the Forest and Rural Development Areas; thus, the establishment of new farms is permitted. The amendments provide an opportunity for the continuation of that permitted agricultural use should the farmer decide to pursue clustered residential development, but not its expansion. The Commission believes these provisions are appropriate.

The experts with whom the Commission has consulted agree that the conversion of forested land to agriculture in the Forest and Rural Development Areas has not been the trend in the past and is not anticipated to become such in the future. However, in the event that market conditions change dramatically, it is of course possible that such conversions will begin to occur. The Commission will be monitoring the situation through air photo interpretation, when the information necessary to complete such interpretation is available.

With respect to the comment about clearcutting, the methods by which new agricultural uses are established are outside the scope of these amendments. The Commission is scheduled to consider a comprehensive set of amendments related to forestry in the coming year and these amendments will address certain clearcutting activities. Beyond that, the Commission may elect to consider this issue, among many other important matters, during the upcoming comprehensive review of the Pinelands protection program.

53. **COMMENT:** Three commenters object to those provisions which would allow farming to continue on a parcel after clustering occurs as this will lead to further degradation of water quality, excessive clearing, increased stress on the land and

increased traffic. These commenters assert that by allowing agriculture to continue, the clustering amendments fail to adequately protect the open space lands from development.

(5, 7, 15)

RESPONSE: As was discussed in the rule proposal, agriculture in the Forest and Rural Development Areas is very limited. As of September, 2005, agriculture accounted for only two percent of the Forest Area (4,900 acres) and only eight percent of the Rural Development Area (9,000 acres). The Commission continues to believe that it is appropriate to provide an opportunity for the continuation of these existing farms, should their owners decide to subdivide and develop their properties for non-farm uses, such as residential cluster development. Such farms would be subject to a deed restriction, ensuring their permanent protection.

54. **COMMENT:** One commenter suggests the Commission should limit the types of agricultural uses which will be allowed on the protected lands after clustering occurs as not all such uses would be compatible (e.g., bed and breakfasts, craft stores, wind farms, etc.). (5)

RESPONSE: The uses described by the commenter are not included in the CMP's definition of agriculture and would therefore not be permitted on the protected open space lands. The Commission does not believe it is necessary to limit the types of agriculture which will be permitted; rather, it will rely on the development and implementation of Resource Management System Plans for those agricultural operations where impervious surface is an issue.

55. **COMMENT:** One commenter states that large lot clearing for the establishment of horse farms is starting to occur more frequently in some portions of the Pinelands

Area. The commenter notes that these are not really farms; rather landowners are merely seeking reductions in their taxes which in turn represent a loss of revenue for municipalities. (7)

RESPONSE: The Commission would welcome the submission of data to support this observation so that the situation can be monitored over time to determine whether it needs to be addressed in the CMP or through other programs.

56. **COMMENT:** One commenter suggests that a farmer should be able to subdivide off (and deed restrict) the farmed portion of a parcel while retaining ownership and then proceed to cluster residential units on the non-farmed portion of the original parcel. (13)

RESPONSE: Subdivisions such as those suggested by the commenter are permitted under the CMP. However, given the Commission's goal of encouraging assemblage of properties and the protection of larger areas of open space through clustering, such subdivisions are not encouraged. It is important to note that in order for the new farmed lot created by such a subdivision to qualify as the protected open space in a cluster development, it must meet the standards of N.J.A.C. 7:50-5.19(d)4. This means that the farmed lot must be deed restricted and owned by the homeowners association, municipality or non profit conservation organization, or it must be incorporated within one of the residential lots within the cluster development area. If these standards are not met, the cluster development would have to be located on the non-farmed lot in its entirety, including the required open space.

57. **COMMENT:** One commenter states that if a farmer already has a home on the parcel but it is not located in the area where the cluster development will be sited, it should be permitted to continue. (13)

RESPONSE: Existing homes on parcels proposed for cluster development will be permitted to continue, regardless of their ownership. Such homes will, of course, be included in the calculations of permitted density on a parcel.

58. **COMMENT:** One commenter states that allowing farming on the deed restricted lands within a mandatory cluster development will guarantee forest fragmentation, something which the proposed amendments are supposedly designed to prevent. The commenter suggests that if the Commission truly wants to prevent forest fragmentation, the CMP should be amended to prohibit any new farming in the Pinelands Forest Area. (25)

RESPONSE: Whether or not agriculture should remain a permitted use in the Forest Area is beyond the scope of these amendments. The Commission is scheduled to begin its next comprehensive review of the Pinelands protection program within the year. This suggestion, as well as a host of other important matters, may be considered at that time.

N.J.A.C. 7:50-5.19(d)5iv: Deed of restriction

59. **COMMENT:** One commenter suggests that deed restrictions on lands currently in agricultural production should be substantially similar to those used for lands preserved through the SADC Farmland Preservation Program. This commenter further states that SADC would be willing to hold such an easement for farmlands preserved through the Commission's clustering program. (23)

RESPONSE: The Commission appreciates the suggestions of the commenter, as well as the SADC's willingness to facilitate the Commission's clustering program by

holding appropriate easements. As indicated in the rule proposal, the Commission will be preparing sample conservation and agricultural easements for use by municipalities and applicants when approving or proposing cluster developments. These sample easements will specify permitted open space or agricultural use provisions and detail relevant stewardship, monitoring and enforcement requirements. As part of this effort, the Commission will review the easements used by the SADC and anticipates that the agricultural easements used in association with cluster developments in the Pinelands will be similar.

N.J.A.C. 7:50-5.19(d)5v: Impervious surface limitations for agricultural uses

60. **COMMENT:** Three commenters state that impervious surface should be “capped” at less than five percent for those lands which will continue to be farmed after clustering occurs. One of the commenters indicates that many preserved farms in the Pinelands have impervious surface limitations and this has not been a hindrance to the agricultural uses. (3, 4, 6)

RESPONSE: The Commission does not agree that a “cap” on impervious surface is necessary. Rather, the Commission believes the requirement for preparation, submission and implementation of Resource Management System Plans when three percent impervious surface is exceeded on a farm is a better approach. Merely imposing a “cap” would not facilitate the Commission’s substantive review of the activities proposed on the farm in question. It must be remembered, as well, that the cluster development in which agriculture will continue on the protected lands is going to be the exception, rather than the rule, in the Pinelands Forest and Rural Development Areas. Agriculture

accounted for only two percent of the Forest Area (4,900 acres) and only eight percent of the Rural Development Area (9,000 acres) in late 2005. The Commission is aware of no data to indicate that a significant increase in the amount of agriculture in these two management areas is likely to occur in the future.

The Commission is not aware of any preserved farms in the Pinelands on which specific impervious surface limitations have been imposed. Although this information was requested from the commenter, it was not provided.

61. **COMMENT:** One commenter supports the requirement for preparation and submission of Resource Management System Plans when impervious surfaces exceed three percent. (24)

RESPONSE: The Pinelands Commission appreciates the support of this commenter.

N.J.A.C. 7:50-5.19(d)5vi: Right to Farm provisions

62. **COMMENT:** One commenter expresses strong support for recordation of right to farm provisions in the deed to residential lots within those cluster developments where agriculture will continue on the open space lands. (23)

RESPONSE: The Pinelands Commission appreciates the support of this commenter.

N.J.A.C. 7:50-5.19(d)5v: Resource Management System Plans

63. **COMMENT:** One commenter cautions that Resource Management System Plans may not adequately address concerns with water quality; also, these plans do not appear

to be designed to reduce impervious surface or pesticide use. The commenter further states it is unclear how the Commission will apply CMP standards to its review and approval of Resource Management System Plans, nor is it clear who will implement and monitor such plans. (4)

RESPONSE: In those limited instances where agriculture is to continue after cluster development occurs and the requirement for a Resource Management System Plan is triggered, the farmer will be responsible for implementing that Plan and the Commission staff will be responsible for monitoring. The Commission will also be responsible for reviewing the Resource Management System Plans and determining whether such Plans are consistent with the minimum environmental standards of the CMP (N.J.A.C. 7:50-6). These standards include the protection of wetlands, maintenance of necessary wetlands buffer areas, protection of habitat for rare plants and animals and management of stormwater. Activities proposed as part of a Resource Management System Plan will be required to comply with all of these standards, just as all development in the Pinelands Area is.

N.J.A.C. 7:50-5.30: Development transfer programs

64. **COMMENT:** One commenter states that municipalities have had inadequate time to analyze the impacts of allowing for transfers of development between parcels located in different municipal zoning districts, as well as the designation of sending and receiving areas. (12)

RESPONSE: Pursuant to N.J.A.C. 7:50-3.23 of the CMP, Pinelands municipalities are provided with a one year period within which to adopt and submit

amendments to their master plans and land use ordinances for purposes of conformance with any amendment to the CMP. Upon the Commission's adoption of these amendments, Pinelands municipalities will therefore have ample time to analyze the amendments and determine whether changes to their existing density transfer programs would be appropriate. It is also important to note that the specific provisions referenced by the commenter (transfers of density between zoning districts and the designation of sending and receiving areas) are not mandatory elements of every municipal density transfer program. Rather, they represent options which municipalities may consider or the Commission may suggest where circumstances warrant.

65. **COMMENT:** One commenter supports the establishment of sending areas, within which development would not be permitted, as a means of providing municipalities with the flexibility to preserve appropriate areas and focus development elsewhere. The commenter believes this will allow municipalities to be more proactive in their planning efforts. (7)

RESPONSE: The Pinelands Commission agrees and appreciates the support of this commenter.

66. **COMMENT:** One commenter notes that allowing transfers from the Forest Area to the Rural Development Area may provide additional protection to the Forest Area, but it may have an adverse effect on the Rural Development Area where an "unfair amount" of homes on one acre lots would be permitted. The commenter notes that the existing CMP requirement to purchase and protect noncontiguous lands within the same zoning district as the lot proposed for development serves as a check on the amount of

development which may occur in the Rural Development Area because there is a finite amount of land there. (17)

RESPONSE: The commenter makes an interesting argument, one which the Commission will keep in mind when reviewing municipal master plan and ordinance amendments adopted in response to these amendments. The Commission will work closely with each Pinelands municipality to ensure that any density transfer program which is amended to allow for transfers between management areas and/or zoning districts is appropriately designed to avoid adverse impacts on any particular zone or area. In addition, the Commission staff will be asked to report to the Commission on a regular basis as to the use of density transfer programs throughout the Pinelands, including the location of both the permitted development and the protected noncontiguous lands.

N.J.A.C. 7:50-6.84(a)6vi(4): Stormwater – Public Development

67. **COMMENT:** One commenter supports the proposed amendments as they will facilitate certain road projects, such as road widenings and intersection improvements. (7)

RESPONSE: The Pinelands Commission agrees and appreciates the support of this commenter.

68. **COMMENT:** One commenter believes that municipalities should have the opportunity to review public development projects (e.g., State, Federal, County, school districts, etc.) and determine whether exceptions from CMP stormwater standards should be granted. This commenter objects to the proposed amendments which allow the Commission to approve such projects directly, without local approvals. (12)

RESPONSE: The Commission appreciates the desire of the commenter, and perhaps other municipalities as well, to have a role in the review and approval of projects proposed by other (higher) levels of government. To that end, the amendments now being adopted require that when a public development applicant requests the Commission to consider granting an exception from CMP stormwater standards, any proposed alternative measures or off-site mitigation must be consistent with a certified municipal stormwater management plan unless that plan does not provide for appropriate mitigation opportunities. While this does not provide municipalities with a direct role in the approval process for public development projects, it does allow municipalities an opportunity to have input through the identification of preferred mitigation measures and projects in their stormwater management plans. The Commission's intent in adopting the amendments is merely to correct a procedural flaw in the existing CMP and allow important public development projects to proceed.

Federal Standards Statement

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. §471i) called upon the State of New Jersey to develop a comprehensive management plan for the Pinelands National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals which the plan must meet, including the protection, preservation and enhancement of the land and water resources of the Pinelands. The proposed amendments are designed to meet those goals by establishing requirements for the clustering of residential development in the Forest

and Rural Development Areas as a means of reducing scattered and piecemeal development and the resulting fragmentation of the landscape. The proposed amendments also clarify the process whereby applicants for public development may seek exceptions to the stormwater management standards of the CMP, as long as appropriate alternate measures are provided.

There are no other Federal requirements which apply to the subject matter of these amendments.