

May 2, 2007

**PINELANDS COMMISSION**

**Pinelands Comprehensive Management Plan**

**Escrows; Nonconforming Uses; Recycling Centers; Pilot Program for Alternate Design Wastewater Treatment Systems**

**Proposed Amendments: N.J.A.C. 7:50-1.6, 1.7, 2.11, 4.2, 5.2, 5.22, 5.23, 6.65, 6.66, 10.21-10.23**

Authorized By:

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New Jersey Pinelands Commission,  
John C. Stokes, Executive Director

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal Number:

A **public hearing** concerning this proposal will be held on:

June 26, 2007 at 7:00 P.M.  
Richard J. Sullivan Center  
15C Springfield Road  
New Lisbon, New Jersey

Submit written comments by regular mail, facsimile or e-mail by July 6, 2007 to:

Susan R. Grogan, P.P., AICP  
Chief Planner  
Pinelands Commission  
P.O. Box 7  
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The name and mailing address of the commenter must be submitted with all public comments.

The agency proposal follows:

### **Summary**

The New Jersey Pinelands Commission proposes to amend subchapters 1, General Provisions, 2, Interpretations and Definitions, 4, Development Review, 5, Minimum Standards for Land Uses and Intensities, and 6, Management Programs and Minimum Standards, of the Pinelands Comprehensive Management Plan (CMP). The Pinelands CMP has been guiding land use and development activities in the Pinelands since it took effect on January 14, 1981. Since that time, the CMP has been amended a number of times, most recently in August of 2006 through a set of amendments relating to local communications facilities (see 38 N.J.R. 3299(b)).

The amendments now being proposed by the Commission relate to escrows, the withdrawal of applications for development, nonconforming uses, recycling centers and the Pilot Program for Alternate Design Wastewater Treatment Systems.

#### *Escrows*

The proposed amendments relative to escrows involve the relocation and expansion of N.J.A.C. 7:50-1.6(l) which currently affords the Executive Director the ability to require applicants to provide escrows to assist in the Commission's review of development applications involving complex issues. These escrow requirements are being relocated to a new section (N.J.A.C. 7:50-1.7) and expanded to allow the Executive

Director to require escrows not only for development applications but also for other matters pending before the Commission. Should these matters involve complex issues which necessitate specialized expertise, the Executive Director will now be able to require an escrow in order to retain a consultant to assist in the Commission's review. As an example, it is anticipated that such escrow requirements may be invoked when a comprehensive plan for local communications facilities is submitted to the Commission for review in accordance with N.J.A.C. 7:50-5.4(c). Depending on their subject matter, certain intergovernmental memoranda of agreement, proposed pursuant to N.J.A.C. 7:50-4.52(c), may also necessitate the submission of funds into an escrow account. All such escrow funds will be used by the Commission to reimburse any costs it incurs as a result of retaining the necessary consultant expertise. Any funds remaining in the escrow account after the Commission has rendered its decision on the matter pending before it will be returned to the entity who initiated the matter. N.J.A.C. 7:50-1.6(a) is also being amended to clarify that applications for developed filed with the Commission in accordance with the Comprehensive Management Plan will not be reviewed by the Commission until any escrows required pursuant to N.J.A.C. 7:50-1.7 have been submitted.

#### *Withdrawal of Applications for Development*

Amendments are proposed to the application procedures established in N.J.A.C. 7:50-4.2(b) and (c) to better address situations where development applications submitted to the Commission for review remain incomplete for lengthy periods of time. Both of these sections currently state that an application is deemed to be withdrawn if material

needed for its completion is not submitted within 30 days of the Commission's request. Given the volume of applications which the Commission receives and reviews on a daily basis, this is an unwieldy policy which has proven very difficult to administer. It is also often unrealistic to expect that an applicant will be able to submit all of the necessary materials within 30 days. The Commission is therefore revising the requirement to indicate that direct activity in furtherance of an application must occur within two years of the Commission's request for information or that application will be deemed to be withdrawn. This two year period is consistent with the Comprehensive Management Plan's fee provisions (N.J.A.C. 7:50-1.6(f)) which state that an incomplete application on which no activity in furtherance of the application process occurs for two years is to be considered a new application with a required application fee. It should be noted that the proposed amendments would affect only incomplete applications. Those applications for development which have been completed with the Commission, a status which is normally confirmed through the Commission's issuance of a Certificate of Filing or Certificate of Completeness, would not be affected.

#### *Nonconforming Uses*

The Comprehensive Management Plan contains provisions relating to the expansion of and changes to existing uses which do not conform to the Comprehensive Management Plan (see N.J.A.C. 7:50-5.2). However, the Comprehensive Management Plan has never contained a definition of the term "nonconforming use" nor explicit regulations addressing either the continuation or cessation of these uses in the Pinelands. Amendments are therefore being proposed in order to clarify and codify the

Commission's policies with respect to nonconforming uses. In general, the Commission's goal has been and will continue to be the ultimate cessation of nonconforming uses throughout the Pinelands

Specifically, the proposed amendments relative to nonconforming uses include the addition of two definitions at N.J.A.C. 7:50-2.11. The first is a definition of "nonconforming use". This definition was taken directly from the Municipal Land Use Law (N.J.S.A. 40:55D-5), although it has been modified it slightly so that it refers to Pinelands management areas as well as municipal zoning districts. The second is a definition of "abandonment" as it relates to nonconforming uses. As proposed, a nonconforming use would be considered abandoned if it were to be voluntarily ceased or discontinued for a period of two years. Temporary or short-term interruptions to a use during periods of remodeling, maintenance or improvement would not constitute abandonment, nor would closure due to normal periods of vacation or the seasonal nature of the use. The proposed definition makes clear that it is the applicant's responsibility to demonstrate that a nonconforming use has not been abandoned by providing objective proof of intent to continue the use. A list of factors or documents which the Commission will rely on in evaluating such intent has been provided in the definition. Given the wide variety of nonconforming uses which exist in the Pinelands, all of which have their own special circumstances, it would be impossible to come up with a list or definition that directly relates to all such uses. Those included in the definition have been written in broad terms and, as the definition makes clear, the Commission will not be limited to considering only those on the list in making its determinations. Each nonconforming use will be carefully evaluated by the Commission on a case by case basis. Additionally, it

should be noted that a nonconforming use will be evaluated in its entirety when determining whether not it has been abandoned. In other words, the fact that a portion of a nonconforming use (e.g, activity on one parcel in a multi-parcel holding) may have been discontinued for two or more years will not render the entire use abandoned. This will be particularly true when dealing with land extensive uses such as agriculture and resource extraction which are not static but, rather, move or rotate from one area to another (or from one lot to another) on a parcel over time, depending on the amount or quality of the resources in question and their demand.

As noted above, N.J.A.C. 7:50-5.2 of the Comprehensive Management Plan contains provisions for the expansion of and changes to existing uses. This section is being amended through the incorporation of a new section 7:50-5.2(a) which addresses the continuation of existing, nonconforming uses. This new section clarifies that nonconforming uses in the Pinelands are allowed to continue, provided they have not been abandoned. What will now be N.J.A.C. 7:50-5.2(b) and (c) are being amended merely to reflect usage of the term “nonconforming use” now that it is being defined in the Comprehensive Management Plan. In addition, the standards for expansion of existing intensive recreational uses, which are nonconforming uses in the Preservation Area District and Forest Area (N.J.A.C. 7:50-5.22(b)2 and 5.23(b)11), are being amended to incorporate a requirement relative to abandonment. Finally, new sections are being added at N.J.A.C. 7:50-6.65(c) and 6.66(d) to clarify that resource extraction operations in the Preservation Area District and Forest Area are considered nonconforming uses, subject to the new abandonment provisions. These resource extraction operations are expressly authorized by the Comprehensive Management Plan to continue, provided they

meet the standards of N.J.A.C. 7:50-6.65(a) and (b) or N.J.A.C. 7:50-6.66(a) and (b), and these protections will remain in place as long as the operations are not abandoned. There are no existing resource extraction operations in the Agricultural Production Area and thus there is no need to amend N.J.A.C. 7:50-6.67 to address the issue of nonconforming uses. It should be noted that resource extraction will continue to be a permitted use in the Rural Development Area and Regional Growth Area, as well as in Pinelands Towns and Villages.

Certain uses and activities which do not require application to the Commission pursuant to N.J.A.C. 7:50-4.1(a) might also be considered nonconforming uses. For example, the reconstruction of a house within five years of its destruction or demolition is an “exempt” activity, as are agriculture and the construction of any structure used exclusively for agricultural purposes. These uses may be exempt from application requirements, but they are still required to comply with the minimum land use and environmental standards of N.J.A.C. 7:50-5 and 6. Therefore, under some circumstances and in some Pinelands management areas, these uses or activities might technically be defined as nonconforming uses. The proposed amendments relative to nonconforming uses are not intended to affect those activities considered exempt from Pinelands application requirements. These are activities of which the Commission is generally unaware and there is no intention on the Commission’s part to become involved in their review with respect to the discontinuation or abandonment issue. The same applies to houses which are reconstructed pursuant to N.J.A.C. 7:50-4.1(c) which the Commission is required to approve as long as the reconstruction occurs on an intact foundation within 25 years of demolition.

It should be emphasized that all of the proposed amendments relating to nonconforming uses address uses which are nonconforming; they do not attempt to regulate nonconforming structures which might not comply with a bulk or height requirement nor do they address nonconforming lots which do not comply with minimum lot area requirements.

### *Recycling Centers*

In 1996, the Pinelands Commission adopted new waste management regulations (see 28 N.J.R. 2596(a)) designed to address evolving policies and technological advances in that field. These waste management regulations, codified at N.J.A.C. 7:50-6, Part VII, were designed to implement the Commission's general policy of requiring that more intensive waste management facilities be sited in close proximity to the areas from which wastes are generated while allowing less intensive facilities in Pinelands Villages, at closed landfills and at a limited number of other disturbed sites. In accordance with this policy, N.J.A.C. 7:50-6.76(d) was adopted to allow recycling centers that process concrete, brick or block resulting from construction or demolition activities in any Pinelands management area, provided they are accessory to an existing resource extraction operation or asphalt or concrete manufacturing facility.

Resource extraction operations, as well as asphalt and concrete manufacturing facilities, are considered to be nonconforming uses in certain Pinelands management areas; namely, the Preservation Area District and the Forest Area. Because the Commission was already in the process of considering amendments to the Comprehensive Management Plan dealing with nonconforming uses in general, it



decided that it would be appropriate to also consider whether accessory recycling centers should continue to be permitted in these most environmentally sensitive management areas.

The Commission's records show that there are 36 resource extraction operations in the Preservation Area District and Forest Area which are considered to be "grandfathered", that is, allowed to continue operation pursuant to N.J.A.C. 7:50-6.65 and 6.66. In total, these mining sites encompass over 13,000 acres, although only a small portion of that acreage (perhaps 25 percent) has actually been subject to mining activity. Resource extraction operations are also located in other Pinelands management areas; approximately 35 mines comprising over 5,000 acres exist in the Rural Development Area, Regional Growth Area and Pinelands Villages where they are permitted uses pursuant to the Comprehensive Management Plan.

Despite the large number of potentially eligible sites for accessory recycling centers, N.J.A.C. 7:50-6.76(d) has been infrequently used since its incorporation in the Comprehensive Management Plan in 1996. To date, one recycling facility has been constructed in accordance with N.J.A.C. 7:50-6.76(d); this facility is accessory to an existing asphalt manufacturing facility within the Preservation Area District in Ocean County. A second recycling facility, also in Ocean County's Preservation Area District, has been approved but not yet constructed. That facility would be accessory to an existing resource extraction operation. A third facility in Ocean County is under consideration; however, it is located in the Regional Growth Area and has become controversial at the local level. In addition, there are one or perhaps two existing recycling facilities of this type located outside the Pinelands Area in Ocean and Cape May Counties.

As stated previously, the Commission's goal is the ultimate cessation of nonconforming uses in the Pinelands, including resource extraction and concrete or asphalt manufacturing facilities in the highly sensitive Preservation Area District and Forest Area. Allowing accessory recycling centers to be developed at the sites of these nonconforming uses provides an opportunity for increased intensity of use which is contrary to that objective. The Commission has therefore determined that accessory recycling centers should be permitted in the Preservation Area District and Forest Area only at those existing resource extraction sites and manufacturing facilities which are in close proximity to designated development areas and population centers. Close proximity is, in this case, being defined as within one mile of a Regional Growth Area or Pinelands Town. N.J.A.C. 7:50-5.22(b)11 and 7:50-5.23(b)8 are being amended to incorporate this new limitation. This proposed restriction is in keeping with the Commission's long-standing policy of locating waste management facilities in or near those areas from which the wastes, or in this case, recyclable materials, are generated.

There are eight existing resource extraction operations in the Preservation Area District and Forest Area which are within one mile of a Regional Growth Area or Pinelands Town. The development of new accessory recycling centers would continue to be permitted at these sites; however, new recycling centers would no longer be permitted elsewhere in the Preservation Area District or Forest Area. Ample opportunities for new accessory recycling facilities will remain at the numerous existing mines in the Rural Development and Regional Growth Areas. In addition, a much broader range of recycling facilities will continue to be permitted in the development-oriented management areas of the Pinelands (Regional Growth Area, Pinelands Villages and Pinelands Towns). Any

existing accessory recycling centers in the Preservation Area District and Forest Area will also be allowed to continue, provided the nonconforming resource extraction operation or manufacturing facility to which they are accessory also continues.

*Alternate Design Treatment Systems Pilot Program*

In 2000, the Pinelands Commission formed a special Ad Hoc Septic System Committee to research alternate septic system technologies that might better meet the water quality standards of the Comprehensive Management Plan (N.J.A.C. 7:50-6, Part VIII) for residential development on lots smaller than 3.2 acres, where such lots were already authorized pursuant to N.J.A.C. 7:50-5. In its research efforts, the Committee consulted wastewater engineering professionals, state and regional on-site technology demonstration projects, alternate treatment system technology manufacturers, Pinelands Area county health departments and other state and local agencies. Based on this research, the Committee identified five technologies that it determined could be expected to meet Pinelands water quality standards for residential development on lots smaller than 3.2 acres in size. The identified technologies were the Amphidrome, Ashco RFS<sup>III</sup>, Cromaglass, Bioclere and FAST treatment systems. Based upon nitrogen removal expectations and the Pinelands Septic Dilution Model, the Committee concluded the Amphidrome, Cromaglass, Bioclere and FAST systems could be permitted on lots of at least one acre and that the Ashco RFS<sup>III</sup> system could be allowed on residential lots of at least 1.5 acres. All of the identified systems utilize proven biological nutrient removal processes to reduce nitrogen levels in treated wastewater. The water quality requirements of N.J.A.C. 7:50-6, Part VIII, include provisions which are aimed at controlling the

amount of nitrogen that enters the environment because nitrogen itself is a significant pollutant and because it often serves as an indicator of changes in overall water quality.

The Ad Hoc Septic System Committee unanimously recommended that an interim program be developed for the approval, installation and monitoring of the five identified wastewater treatment technologies and that the interim program include conditions and safeguards to govern their use. To implement these recommendations, the Pinelands Commission adopted a set of amendments to the Comprehensive Management Plan which authorized the use of the technologies through the establishment of the Alternate Design Treatment Systems Pilot Program (see 34 N.J.R. 2804(b)). These Comprehensive Management Plan amendments, which took effect on August 5, 2002, are codified at N.J.A.C. 7:50-10, Part IV. The Pilot Program provides a means to test whether the five identified technologies can be maintained and operated so as to meet the water quality standards of the Comprehensive Management Plan in a manner that a homeowner can be reasonably expected to follow.

Implementation of the Pilot Program commenced on August 5, 2002. Applications for unsewered residential development on lots smaller than 3.2 acres, received by the Commission after that date, were required to use a pilot program treatment system. Pursuant to N.J.A.C. 7:50-10.22(a)1, use of the pilot program systems was permitted only in those Pinelands municipalities which had adopted ordinances to reflect the standards and requirements of the Pilot Program. Completed applications received by the Commission prior to August 5, 2002 were permitted to use a pressure dosing septic system, provided the installation of that pressure dosing system was completed by August 5, 2004.

Prior to each technology's being certified for use in the Pinelands by the Commission's Executive Director, the manufacturers were required to provide the Commission with detailed engineering plans and specifications for the technologies, a description of an alarm and telephone dialer to alert offsite maintenance personnel of a system malfunction, a monitoring protocol for the sampling and analysis of effluent samples and sample system warranties, maintenance contracts, deed notices and operation and maintenance manuals. Each pilot program treatment system is required to be covered under a five year comprehensive parts and labor warranty and a five year operation and maintenance contract. The Pilot Program also requires quarterly sampling and analysis of treated effluent during the initial three years of operation for each system. Based upon a review of the submitted documents, the Executive Director certified the Ashco RFS<sup>III</sup> gravity system on May 15, 2003, the Ashco RFS<sup>III</sup> gravity dosing system on July 24, 2003, the Amphidrome system on July 24, 2003, the Bioclere system on November 18, 2003, the Cromaglass system on December 29, 2004 and the FAST system on June 9, 2005. The first pilot program treatment system was installed and brought on line in April of 2004.

N.J.A.C. 7:50-10.23 of the Comprehensive Management Plan requires that the Executive Director review the Alternate Design Treatment Systems Pilot Program four years after its effective date (August 5, 2002) and report to the Commission as to the program's implementation no later than November 5, 2006. The criteria by which the Pilot Program is to be evaluated are set forth at N.J.A.C. 7:50-10.23(b)1 through 6. The required evaluation was completed and a report submitted to the Commission on November 3, 2006. That report noted that from April 2004 through August 2006, a total

of 85 pilot program systems were installed and activated in a total of 13 different Pinelands municipalities. All of the installed systems were either Amphidrome, Bioclere or Cromaglass systems; no Ashco RFS<sup>III</sup> or Fast treatment technologies were installed in the Pinelands Area as of August of 2006. While the number of installed systems, and effluent sampling reported from these systems, is not insignificant, the relatively limited use of the Pilot Program to date provided the Executive Director with insufficient data from which to draw many definitive conclusions. The Executive Director therefore recommended and the Commission agreed to propose a series of amendments to the Comprehensive Management Plan to extend and revise the Pilot Program.

First, N.J.A.C. 7:50-2.11, 7:50-10.21(c) and 7:50-10.22(a)3 are being amended to reflect the removal of the Ascho RFS<sup>III</sup> technology from the Pilot Program in accordance with N.J.A.C. 7:50-10.23(d). This section of the Comprehensive Management Plan provides that the Commission may repeal the Pilot Program as it relates to one or more technologies if it is determined that the Pilot Program has not been implemented or has not been successful for said technologies. As noted previously, no Ashco RFS technologies were installed during the evaluation period (August 2002 to August 2006) of the Pilot Program. The manufacturer has not demonstrated any intention or ability for future participation. It was also noted previously that no FAST treatment systems were installed during the evaluation period. However, the manufacturer of that system has advised the Commission that it has now designated a local firm to market and support the FAST system in the Pinelands. The Commission believes the FAST system should therefore be retained in the Pilot Program.

N.J.A.C. 7:50-10.21(d), 7:50-10.22(a) and 7:50-10.22(a)1 are being amended to address the problems which have arisen due to the failure of a number of Pinelands municipalities to adopt ordinances allowing for the installation of the pilot program systems. Pursuant to N.J.A.C. 7:50-10.22(a), pilot program systems may not be used in such municipalities. The original pilot program encouraged Pinelands municipalities to adopt such ordinances but did not require them to do so. When the pilot program was adopted in 2002, the Commission recognized that municipal participation would be a critical component. Without the full support and cooperation of Pinelands municipalities, the program would not be successful. Mandating the adoption of ordinances or the approval of the pilot program systems was not viewed as the best way to ensure municipal cooperation and support. Instead, the Commission met with municipal representatives to explain the provisions and benefits of the pilot program, drafted model ordinances for use by the municipalities and provided any additional assistance that was requested in order to facilitate implementation of the program. These efforts were largely successful and there remain only a handful of Pinelands municipalities which have chosen not to participate in the pilot program. In adopting the pilot program, the Commission recognized that this situation might arise and indicated that it might need to revisit the issue and take a different approach if problems were widespread.

Property owners in municipalities which have not adopted ordinances to allow use of the pilot program systems have been unable to proceed with the residential development of their lots, even though such development fully conforms with the lot area and density requirements contained in the applicable municipal land use ordinance. This is the case simply because the municipality has elected not to adopt the necessary

authorizing ordinance. The Commission does not believe that it is appropriate to continue to place property owners and applicants in this difficult situation.

Rather than making the adoption of ordinances mandatory, the proposed amendment at N.J.A.C. 7:50-10.22(a) simply authorizes the use of alternate design systems in all Pinelands municipalities for the duration of the pilot program, whether or not all of the standards of the program have been reflected in a municipal ordinance. The municipal adoption of ordinances may well become necessary when and if the alternate design systems are allowed on a permanent basis, particularly for purposes of implementing long-term maintenance programs. However, during the pilot program period, the Commission does not believe such municipal ordinances are necessary. Comprehensive Management Plan water quality standards are already incorporated in all Pinelands municipal ordinances and this will suffice for the interim.

The amendment being made at N.J.A.C. 7:50-10.22(a)1 is intended to clarify and emphasize that while pilot program treatment systems are to be authorized for use in all Pinelands municipalities, development must still be consistent with the lot size and density requirements contained in the municipal land use ordinances which have been certified by the Commission pursuant to N.J.A.C. 7:50-3. In other words, use of a pilot program system does not allow for increased residential density beyond that permitted in a certified municipal land use ordinance.

N.J.A.C. 7:50-10.22(a)4 and 7:50-10.23(g) are being amended to permit continued installation of the pilot program systems through August 5, 2010. Currently, installation of the systems is permitted only until August 5, 2007. The three year extension will provide an opportunity for new installations of the pilot program systems



and the review of subsequent effluent monitoring prior to the Commission's making a final determination of the ability of the different treatment technologies to meet Pinelands water quality standards. The monitoring provisions of the Pilot Program are also being extended for three years, until August 5, 2009, to provide for additional monitoring of the Amphidrome, Bioclere, Cromaglass and FAST technologies. This is particularly important for the FAST technology as this particular system has yet to be installed in the Pinelands Area. A second comprehensive review of the Pilot Program will be completed at that time pursuant to the amendments being made at N.J.A.C. 7:50-10.23(b). N.J.A.C. 7:50-10.23(c) is also being amended to provide the Executive Director with the ability to continue evaluation of the pilot program in the event there are insufficient monitoring events for any of the authorized technologies. It should be noted that even with this extension, it is possible that an adequate number of systems and sampling events may not exist to conclusively determine performance levels for the Bioclere and FAST technologies as few to none of those technologies have been installed to date. The Executive Director may well need to recommend a further extension of the Pilot Program with respect to those two technologies when conducting his assessment in 2009. N.J.A.C. 7:50-10.23(c) is being amended to provide the Executive Director with the ability to do so.

### **Social Impact**

No adverse social impact is anticipated as a consequence of the adoption of the proposed amendments. Society as a whole benefits from the protection of the Pinelands

and the proposed amendments are designed to do just that. Any social impacts which do result are expected to be positive.

The proposed escrow amendments are expected to have a positive social impact for New Jersey's taxpayers as they will reduce the need for the Commission to spend taxpayer money to hire consultants to review the complex matters which are from time to time brought before the Commission by private or other public entities.

The proposed amendments relative to nonconforming uses serve to clarify the status of these uses in the Pinelands and ensure that, if abandoned, they cannot be reinstated. These are uses which are inconsistent with the Comprehensive Management Plan and Pinelands municipal ordinances. While the proposed amendments do nothing to encourage or speed their discontinuation, they do make clear that cessation of nonconforming uses is the Commission's general goal, one which is of benefit to society as a whole and certainly to the many Pinelands residents who live in close proximity to such uses.

Extension of the Alternate Design Treatment Systems Pilot Program for three years will provide a continued opportunity for residential development in unsewered portions of the Pinelands which have already been planned and zoned for such development. The amendments do not in any way affect permitted residential densities or minimum lot size requirements in the Pinelands Area. Thus, no significant changes in land use patterns will result from the proposed amendments.

The proposed amendments restricting the location of accessory recycling centers in the Preservation Area District and Forest Area to those existing resource extraction operations or manufacturing facilities within one mile of a Regional Growth Area or

Pinelands Town will preclude the development of these facilities in the most remote portions of the Pinelands. Opportunities for new recycling centers will, however, remain throughout the Pinelands in other more appropriate management areas. In addition, property owners in the Preservation Area District and Forest Area will retain the ability to recycle materials resulting from on-site construction activities. Such temporary recycling facilities (Limited Class B) are permitted at any existing use in any Pinelands management area pursuant to N.J.A.C. 7:50-6.73(d) which allows for recycling facilities essential for remediation or the management of by-products of an otherwise lawful use of a property. Provided such facilities are temporary and involve only the recycling of on-site materials (materials may not be brought in from other sites), this type of facility will continue to be permitted and is not affected by the proposed amendments at N.J.A.C. 7:50-6.76(d). In addition, any existing accessory recycling centers will be allowed to continue, provided the use to which they are accessory is not abandoned. Limited recycling will therefore still be allowed to occur in the Preservation Area District and Forest Area.

### **Economic Impact**

The proposed amendments at N.J.A.C. 7:50-1.7 which allow the Executive Director to request escrows will increase costs for some private or public entities that seek the Commission's approval of various plans or agreements. These escrows will, however, better enable the Commission to handle these matters by facilitating the hiring of consultants with valuable and necessary expertise. The result may be improved and

more efficient review by the Commission, perhaps partially offsetting the increased financial obligation.

With respect to the proposed amendments concerning the withdrawal of applications for development, there may be an economic impact for those applicants who do not complete their applications or respond to the Commission's request for information within a two year period. Should such applicants be interested in pursuing these applications in the future, they will need to begin the process anew, including the submission of a fee in accordance with N.J.A.C. 7:50-1.6. It should be noted that the current regulations provide that an incomplete application is considered withdrawn if the information requested by the Executive Director is not received within 30 days. The proposed two year period provides a more reasonable time frame for an applicant's response.

The proposed amendments relating to nonconforming uses are designed to reflect the Commission's long-standing policy of preventing those nonconforming uses which have truly been abandoned from being reinstated in the Pinelands. To the extent that the Commission determines that a nonconforming use has been abandoned for two or more years, and the owner of the use is unable to document objective proof of intent to continue the use, negative economic impacts may result as that use will not be allowed to be reinstated. The property in question could still be developed or redeveloped, but only for a use which conforms with the Comprehensive Management Plan and the relevant municipal land use ordinance. Because the burden is on the applicant to prove that abandonment has not occurred, owners of nonconforming uses may incur minor

costs associated with the submission of documents to the Commission to demonstrate that a nonconforming use has not been abandoned.

The proposed amendments restricting the location of accessory recycling centers to certain portions of the Preservation Area District and Forest Area may have a negative economic impact for those existing resource extraction operations elsewhere in these management areas which might have been planning to construct a recycling facility at some point in the future. Given the environmental sensitivity of these two management areas, however, as well as the fact that the opportunity to construct an accessory recycling center has been available for over 10 years and rarely exercised, the Commission believes the amendments are warranted. It should be noted that the proposed amendments would not require the few existing recycling centers which do exist in the Preservation Area District and Forest Area to be discontinued. Provided the resource extraction operations or concrete and asphalt manufacturing facilities to which these existing recycling centers are accessory continue to operate and are not abandoned, the recycling centers may continue as well.

The economic impact of the proposed amendments to the Pilot Program for Alternate Design Wastewater Treatment systems will clearly be positive for those landowners seeking to develop their one-3.2 acre properties in unsewered areas of the Pinelands Area. By extending for three years the period of time during which installation of the alternate design treatment systems will be permitted, the proposed amendments provide a continued opportunity for these landowners to develop their properties in accordance with the lot size and density requirements set forth in certified municipal land use ordinances. Without the ability to utilize the pilot program systems, these landowners

would need to have at least 3.2 acres in order to develop a home (the lot size required for use of a conventional septic system).

The amendments are also of significant benefit to landowners in those few Pinelands municipalities which did not adopt ordinance amendments to reflect the standards and requirements of the Pilot Program. Previously, the pilot program systems were not authorized for use in such municipalities. The proposed amendments would authorize use of the systems in all Pinelands municipalities, whether or not ordinance amendments have been adopted. The amendments would allow, for example, the owner of an unsewered one acre lot in Egg Harbor Township to develop a home on that property in full conformance with the zoning requirements of the Township's land use ordinances. Prior to the amendments, that same landowner would have had to await the availability of sewer service or use a conventional septic system, requiring a minimum of 3.2 acres, in order to develop, due to the municipality's failure to adopt an ordinance to authorize use of the pilot program systems.

Finally, all Pinelands municipalities will incur costs because of the need to revise their land use ordinances in order to conform with the proposed amendments, once adopted. The costs of these revisions will be borne by the local governments, although the Commission will continue with its practice of providing model or sample ordinances which municipalities may consider, thereby somewhat offsetting costs. While the adoption of ordinance amendments represents a cost to municipalities, it is expected to be nominal.

### **Environmental Impact**

The Comprehensive Management Plan was adopted to protect the natural and cultural resources of the Pinelands. The proposed amendments are intended to maintain and in some cases strengthen the environmental protection afforded under the Comprehensive Management Plan by making the Commission's policies on nonconforming uses explicit and limiting the development of intensive waste management facilities (accessory recycling centers) in the Preservation Area District and Forest Area to the most appropriate portions of these environmentally sensitive Pinelands management areas. Extension of the Alternate Design Wastewater Treatment Systems Pilot Program through 2010 should also be of environmental benefit as it will allow additional treatment systems to be authorized and installed. The installation of additional systems will result in more monitoring and testing of effluent and this will ultimately provide the Commission with more data to be evaluated as part of the pilot program. Provided they are maintained properly, these systems provide the potential for improved water quality when compared with conventional septic systems.

#### **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 and new rule are designed to meet

those goals by facilitating the hiring of consultants to provide the Commission with necessary expertise in its various review processes, clarifying regulations relative to nonconforming uses and their continuation in the Pinelands, restricting the potential for new recycling centers in the most environmentally sensitive portions of the Pinelands and allowing for the continued installation and monitoring of alternate design wastewater treatment systems for residential development.

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

### **Jobs Impact**

It is not anticipated that jobs will be directly generated or lost due to the proposed amendments.

### **Agriculture Industry Impact**

The proposed amendments are expected to have very limited impacts on the agriculture industry in the Pinelands. Only those related to the continuation and abandonment of nonconforming uses may have any effect on agriculture at all. Because field (non-berry) agriculture is not a permitted use in certain Pinelands management areas (the Preservation Area District and Special Agricultural Production Area), such agricultural operations which existed prior to adoption of the Comprehensive Management Plan in 1980 are considered to be nonconforming uses. Under the proposed amendments at N.J.A.C. 7:50-2.11 and 5.2(a), these agricultural operations are permitted to continue, provided they are not discontinued for two or more years and therefore deemed to be abandoned. As was noted previously, the fact that an agricultural use may



have been discontinued on one lot does not mean that that the entire agricultural operation, which could involve a significantly larger parcel including noncontiguous lots, would be considered to have been abandoned. In any case, objective proof of intent to continue the agricultural use would need to be provided to the Commission in order to allow for its continuation. This should be a relatively easy task for any agricultural operation in the Pinelands that is under or has qualified for farmland assessment. The New Jersey Farmland Assessment Act of 1964 requires that property owners annually apply for farmland assessment to the municipal tax assessor. In order to qualify, the lands in question must have been devoted to agricultural or horticultural uses for at least the prior two years. Submission of this information to the Commission would serve as evidence of proof to continue the agricultural use.

It should be noted that agricultural uses are considered to be exempt from the Commission's application requirements. It is therefore highly unlikely that the Commission will become involved in matters concerning the abandonment of a non-berry agricultural use in the Preservation Area District or Special Agricultural Production Area.

None of the other proposed amendments are expected to affect agriculture in the Pinelands.

### **Regulatory Flexibility Analysis**

The proposed amendments regulating existing nonconforming uses in the Pinelands Area impose minimum reporting and recordkeeping requirements on the owners and/or operators of such uses. Because the size and nature of nonconforming uses varies so widely, it is unknown how many of the current owners or operators of such uses constitute small businesses as defined under the Regulatory Flexibility Act, N.J.S.A.

52:14B-16 et seq. Under the proposed amendments, the owner or operator of an existing nonconforming use will be required to provide the Commission with objective proof of intent to continue the use in order to demonstrate that it has not been abandoned. A list of factors, documents and records which the Commission will rely on in evaluating such intent has been provided in the definition of “Abandonment” proposed at N.J.A.C. 7:50-2.11. These documents are, in all likelihood, already maintained by the owners and/or operators of nonconforming uses in some fashion; therefore, their submittal to the Commission should not represent an additional burden.

The proposed amendments allowing the Commission to require the provision of escrows will facilitate the retention of consultants to assist in the review process for matters pending before the Commission which involve complex issues and therefore necessitate specialized expertise. While it would be impossible to identify all of the matters brought before the Commission that might result in an escrow requirement, this proposal identifies two of the more likely: comprehensive plans for local communications facilities and intergovernmental memoranda of agreement. In neither of those cases would small businesses as defined under the Regulatory Flexibility Act be affected.

The proposed amendments continue the imposition of reporting, recordkeeping and compliance requirements on the manufacturers or their agents of those alternate design wastewater treatment systems authorized for use in the Pinelands Area pursuant to the Commission’s Pilot Program. It is believed that at least some of these manufacturers may be small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In meeting the standards for use of the four technologies which would continue to be authorized under the pilot program, these businesses may continue to incur

costs relative to ensuring compliance with the maintenance and monitoring requirements of N.J.A.C. 7:50-10.22(a)6. It is unlikely, however, that engaging professional services will be necessary in order to do so. The design of systems for approval by County health departments and other agencies requires the services of a professional engineer under existing State law; that requirement is not changed by the proposed amendments.

Furthermore, the requirements at N.J.A.C. 7:50-10.22(a)6 merely involve the provision of certain manuals, maintenance guarantees and other documents which the manufacturers already have on hand, as well as the provision of resources for the collection and analysis of effluent sampling. This is not to say that the requirements represent insignificant costs for the manufacturers, particularly for the five-year non-cancellable maintenance contract required by N.J.A.C. 7:50-10.22(a)6vii. However, these requirements are a critical part of the proposed pilot program and the Commission would not be considering extending the program without them. In any case, it is likely that the associated costs will be passed on to the homeowner by the manufacturers.

No differing requirements have been established for small businesses under the pilot program. Instead, the same maintenance and monitoring requirements will continue to be imposed relative to the four authorized technologies, regardless of business size. This is necessary to balance protection of Pinelands resources with the Commission's desire to provide a continued opportunity for residential development on lots of less than 3.2 acres in size in unsewered areas of the Pinelands. In fact, the Commission has identified proper system maintenance as the primary factor in ensuring that the alternate technologies will function in a manner which is consistent with CMP water quality

standards. It is therefore critical that the requirements continue to be imposed on all of the manufacturers or their agents.

The proposed amendments impose no other reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

### **Smart Growth Impact**

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-4(a)) to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Commission has evaluated the proposed amendments which are the subject of this rulemaking effort and determined that they will have very little impact on smart growth and implementation of the State Plan. The proposed amendments do make the Commission's policies on nonconforming uses explicit and set forth clear standards which an applicant must meet in order to demonstrate that there was not intent to abandon such a use. The amendments also eliminate the potential for certain recycling facilities to be developed in the most environmentally sensitive and remote portions of the Pinelands. Finally, the proposed amendments relative to the Alternate Design Treatment Systems Pilot Program will allow for the continued installation and monitoring of innovative alternate design wastewater treatment systems in unsewered areas of the Pinelands that are zoned for residential development on lots of less than 3.2 acres in size. With few exceptions, these areas are located in Regional Growth Areas, Pinelands

Villages and Pinelands Towns, management areas designated for development by the Comprehensive Management Plan. Successful testing could have positive results for other non-sewered areas in the State, outside the Pinelands Area.

No other smart growth impacts are anticipated from the proposed amendments.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

**Full text** of the proposal follows (additions indicated with underlines thus; deletions indicated in brackets [thus]):

**7:50-1.6 Fees**

(a) All applications required or permitted by any provision of this Plan other than applications filed by a public agency, shall be accompanied by a nonrefundable application fee calculated according to the fee schedule set forth in (b) through [(l)] (k) below. No application filed pursuant to this Plan shall be reviewed or considered complete unless all fees required by this Part have been paid and any escrow required pursuant to N.J.A.C. 7:50-1.7 has been submitted.

(b)-(k) (No change.)

[(l) Notwithstanding any other provision of this section, if the Executive Director determines that a development application, excluding an application for a minor residential development, involves complex issues which, either, because of the

need for specialized expertise, necessitates the retention of consultants to assist in the review of such application, or will require considerable staff review:

1. The Executive Director shall notify the applicant of such determination and the escrow amount to be submitted;
2. Monies submitted pursuant to (1)1 above shall be held in an escrow account and shall be used by the Commission to reimburse any costs it incurs either as a result of retaining any consultants for that application or for the considerable amount of staff time required to review such application;
3. Should the funds held in escrow be insufficient to defray the such costs, the Executive Director will provide the applicant with a statement of the account and will request from the applicant the additional amount estimated to be required for the escrow account;
4. At the time that final municipal approval takes effect pursuant to N.J.A.C. 7:50-4, Part III, the Executive Director shall provide a statement of the account to the applicant and any funds remaining in the escrow account shall be returned to the applicant;
5. No additional review of the application will occur until the escrow amount requested pursuant to (1)1 or 3 above has been submitted; and
6. An applicant who objects to the escrow amount requested pursuant to (1)1 or (3) above, shall notify the Executive Director, in writing, within 15 days of receipt of the Executive Director's determination, of such

objection. Depending upon the basis for the escrow amount, the applicant shall submit with this notification either:

- i. An estimate from a qualified professional, having the requisite knowledge and expertise required to address the issues raised by the application, to support the applicant's estimation of the appropriate additional amount to be assessed; or
  - ii. An estimate of the number of hours the applicant believes are required to complete a review of the submitted application and the rates and qualifications of professionals with the knowledge and expertise required to review such application; and
7. The Executive Director shall review the applicant's submission and notify the applicant within 10 days thereof, of the additional amount to be provided.]

**7:50-1.7      Escrows**

- (a) Notwithstanding any other provision of N.J.A.C. 7:50-1.6, the Executive Director may request an escrow for those matters pending before the Commission that involve complex issues which, either because of the need for specialized expertise, necessitate the retention of consultants to assist in the Commission's review, or in the case of development applications, will require considerable staff review. Should the Executive Director determine that an escrow is necessary:
1. The Executive Director shall notify the entity initiating the matter or the applicant of such determination and the escrow amount to be submitted;

2. Monies submitted pursuant to (a)1 above shall be held in an escrow account and shall be used by the Commission to reimburse any costs it incurs either as a result of retaining any consultants or for the considerable amount of staff time required for the review;
3. Should the funds held in escrow be insufficient to defray the costs identified in (a)2 above, the Executive Director will provide the entity initiating the matter or the applicant with a statement of the account and will request from the entity or the applicant the additional amount estimated to be required for the escrow account;
4. At the time that the Commission renders its decision on the matter or, for a development application, the final municipal approval takes effect pursuant to N.J.A.C. 7:50-4, Part III, the Executive Director shall provide a statement of the account to the entity initiating the matter or the applicant and any funds remaining in the escrow account shall be returned to that entity or applicant;
5. No additional review of the matter or application will occur until the escrow amount requested pursuant to (a)1 or 3 above has been submitted;  
and
6. An entity or applicant who objects to the escrow amount requested pursuant to (a)1 or (3) above shall notify the Executive Director, in writing, within 15 days of receipt of the Executive Director's determination of such objection. Depending upon the basis for the escrow amount, the entity or applicant shall submit with this notification either:



- i. An estimate from a qualified professional, having the requisite knowledge and expertise required to address the issues raised by the matter pending before the Commission or the development application, to support the entity or applicant's estimation of the appropriate additional amount to be assessed; or
- ii. An estimate of the number of hours the entity or applicant believes are required to complete a review of the matter or development application and the rates and qualifications of professionals with the knowledge and expertise required to conduct such a review;  
and

7. The Executive Director shall review the information submitted pursuant to (a)6 above and notify the entity or applicant, within 10 days thereof, of the additional amount to be provided.

(b) The escrow requirements in (a) above shall not apply to applications for minor residential development.

**7:50-[1.7]1.8 Severability**

**7:50-2.11 Definitions**

...

“Abandonment” means the voluntary cessation or discontinuation of a use, not including temporary or short-term interruptions to a use during periods of remodeling, maintaining or otherwise improving or rearranging a facility, or during normal periods of

vacation or seasonal closure. Cessation or discontinuation of a use for two or more years shall constitute prima facie evidence of abandonment. An applicant may rebut this presumption of abandonment by demonstrating, by a preponderance of the evidence, objective proof of intent to continue a use such that a reasonable person would believe there was no intent to abandon said use. Factors to be considered by the Commission in evaluating such intent may include, but are not limited to:

1. The length of time of cessation or discontinuation of the use;
2. Whether the owner of the use has allowed it to fall into disrepair;
3. Bills of lading, delivery records, phone records or utility bills affirmatively documenting continuation of the use; and
4. Any other record, bill or correspondence affirmatively documenting continuation of the use.

...

“Alternate design pilot program treatment system” means an individual or community on site waste water treatment system that has the capability of providing a high level of treatment including a significant reduction in the level of total nitrogen in the wastewater and is one of the following systems, as described in the report prepared by Anish R. Jantrania, Ph. D., P.E., M.B.A. entitled “Performance Expectations for Selected On-site Wastewater Treatment Systems,” dated December, 2000, incorporated herein by reference, and available at the principal office of the Commission, that have been authorized for use for residential development by the pilot program established in N.J.A.C. 7:50-10, Part IV:

- [1. Ashco RFS III;]

- 1[2]. FAST;
- 2[3]. Cromaglass;
- 3[4]. Bioclere; or
- 4[5]. Amphidrome

...

“Nonconforming use” means a use or activity which was lawful prior to the adoption or amendment of this Plan, but which fails to conform to the requirements of the municipal zoning district and/or Pinelands management area in which it is located by reasons of adoption or amendment of this Plan.

...

**7:50-4.2 Pre-application conference; application requirements**

- (a) (No change.)
- (b) Application requirements.
  - 1.-8. (No change.)
  - 9. Imposition of additional application requirements: At any time during the review of any application filed pursuant to this Plan, the Executive Director may require an applicant to submit any additional information which he determines is reasonably necessary to facilitate adequate review of the application. If the applicant does not submit the additional material [within 30 days, or request an extension of time to do so] or undertake any direct activity in furtherance of the application process within two years, the application shall be deemed to be withdrawn.
- (c) Determination of whether application is complete.

1. (No change.)
2. Remedy of deficiencies: [Within 30 days following] Upon receipt of a statement of deficiencies from the Executive Director[, or such extension as the Executive Director may grant], the applicant shall submit all additional information requested in such statement. The failure of the applicant to submit such additional information or undertake any direct activity in furtherance of the application process within two years shall be deemed a withdrawal of the application.
3. (No change.)

**7:50-5.2 Continuation, [E]expansion and changes of existing uses**

- (a) Notwithstanding the use restrictions contained in Part III of this subchapter, a municipality may permit the continuation of any nonconforming use, provided that such use is not abandoned, and further provided that no such use shall be expanded, altered, or changed to another nonconforming use, except as provided in (b) and (c) below.
- ([a]b) Notwithstanding the use restrictions contained in Part III of this subchapter, a municipality may permit the expansion or alteration of any nonconforming use existing on January 14, 1981 [that is currently non-conforming] or any nonconforming use which was constructed based upon an approval granted pursuant to this Plan [which is currently non-conforming], other than intensive recreation facilities and those uses which are expressly limited in N.J.A.C. 7:50-6, provided that:

1. The use was not abandoned or terminated subsequent to January 14, 1981;
2. The expansion or alteration of the use is in accordance with all of the minimum standards of N.J.A.C. 7:50-6;
3. The area of expansion does not exceed 50 percent of the floor area, the area of the use or the capacity of the use, whichever is applicable, on January 14, 1981 or which was approved pursuant to this Plan.

([b]c) A municipality may include in its ordinance a provision which, notwithstanding the use restrictions contained in Part III of this subchapter, permits a change in any nonconforming use existing on January 14, 1981 [that is currently non-conforming] or any nonconforming use which was constructed based upon an approval granted pursuant to this Plan [that is currently non-conforming], other than those uses which are expressly limited in N.J.A.C. 7:50-6, provided that:

1. The use was not abandoned or terminated subsequent to January 14, 1981;
2. The new use is in accordance with all of the minimum standards of N.J.A.C. 7:50-6 including N.J.A.C. 7:50-6.84(a)4, unless a new septic system permit will not be required as a result of the change in use, in which case the standards of N.J.A.C. 7:50-6.83(b) and (c) must be met; and
3. The area, capacity, and intensity of the new use is comparable to that of the existing use.

([c]d) A municipality may limit the application of (a) [and], (b) and (c) above to those uses which conformed to its zoning ordinance as of January 14, 1981.

**7:50-5.22 Minimum standards governing the distribution and intensity of development and land use in the Preservation Area District**

- (a) (No change.)
- (b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in the Preservation Area District:
  - 1. (No change.)
  - 2. Expansion of intensive recreational uses, provided that:
    - i. The intensive recreational use was in existence on February 7, 1979 and was not subsequently abandoned;
    - ii. [t]The capacity of the use will not exceed two times the capacity of the use on February 7, 1979;
    - iii. The use is necessary to achieve recreational use of a particular element of the existing Pinelands environment; and
    - i[[ii]v. The use is environmentally and aesthetically compatible with the character of the Preservation Area District and the characteristics of the particular basin in which the use is to be located, taking into consideration the proportion of cleared and developed land, ambient water quality, ecologically sensitive areas and unique resources, and will not unduly burden available public services.
  - 3-10. (No change.)
  - 11. The following waste management facilities in accordance with N.J.A.C. 7:50-6, Part VII:
    - i.-iii. (No change.)

- iv. Recycling centers accessory to an existing lawful resource extraction operation or asphalt or concrete manufacturing facility in accordance with N.J.A.C. 7:50-6.76(d), provided the existing resource extraction operation or manufacturing facility is located within one mile of a Regional Growth Area or Pinelands Town;
- v.-vi (No change.)

(c)-(d) (No change.)

**7:50-5.23 Minimum standards governing the distribution and intensity of development and land use in Forest Areas**

- (a) (No change.)
- (b) In addition to uses permitted under (a) above, a municipality may, at its option, permit the following uses in a Forest Area:
  - 1.- 7. (No change.)
  - 8. The following waste management facilities in accordance with N.J.A.C. 7:50-6, Part VII:
    - i.-iii. (No change.)
    - iv. Recycling centers accessory to an existing lawful resource extraction operation or asphalt or concrete manufacturing facility in accordance with N.J.A.C. 7:50-6.76(d), provided the existing resource extraction operation or manufacturing facility is located within one mile of a Regional Growth Area or Pinelands Town;
    - v.-vi. (No change.)

9.-10. (No change.)

11. Expansion of intensive recreational uses, provided that:

- i. The intensive recreational use was in existence on February 7, 1979 and was not subsequently abandoned;
- ii. [t]The capacity of the use will not exceed two times the capacity of the use on February 7, 1979;
- iii. The use is necessary to achieve recreational use of a particular element of the existing Pinelands environment; and
- i[ii]v. The use is environmentally and aesthetically compatible with the character of the Forest Area and the characteristics of the particular basin in which the use is to be located, taking into consideration the proportion of cleared and developed land, ambient water quality, ecologically sensitive areas and unique resources, and will not unduly burden available public services.

12.-17. (No change.)

(c)-(d) (No change.)

**7:50-6.65 Specific limitations in the Preservation Area**

(a)-(b) (No change.)

- (c) Resource extraction operations shall be considered nonconforming uses in the Preservation Area District and Special Agricultural Production Area and, as such, shall be subject to the requirements of N.J.A.C. 7:50-5.2(a).



**7:50-6.66 Specific limitations in the Forest Area**

(a)-(b) (No change.)

(c) Any land for which a valid development approval pursuant to the provisions of this Plan for resource extraction was [has] not [been] issued between January 14, 1981 and December 31, 1992 may be authorized to undertake extraction operations only if a development permit was [is] approved prior to December 5, 1994. In such cases, extraction operations may operate subject to the terms and conditions of the approval. Upon expiration of the approval, extraction operations may continue only within the areas mined and not restored as of the expiration date of the approval.

(d) Resource extraction operations shall be considered nonconforming uses in the Forest Area and, as such, shall be subject to the requirements of N.J.A.C. 7:50-5.2(a).

**7:50-10.21 Purpose**

(a)-(b) (No change.)

(c) In 2000, the Commission formed a special committee to investigate alternate septic system technologies that would better meet the water quality requirements of N.J.A.C. 7:50-6, Part VIII, for residential development on lots smaller than 3.2 acres where such lots are currently authorized by N.J.A.C. 7:50-5. After conducting extensive research, the Committee identified five technologies that can be expected to meet these water quality requirements for residential development. The Committee recommended that an interim program be

developed for the approval, installation and monitoring of the five technologies for use under certain conditions and safeguards. Based on the available information, the Committee recommended that the Ashco RFS III system be allowed on residential lots of at least 1.5 acres and the other four systems be allowed on residential lots of at least one acre. In November 2006, the Commission decided to remove the Ashco RFS III system from the Alternate Design Treatment Systems Pilot Program. The Commission made this decision due to the manufacturer's failure to make systems commercially available in the Pinelands during the initial five year period of the pilot program or to otherwise demonstrate the ability or intention for future participation in the program. Residential development using any of these systems would still have to conform to the lot size and density requirements contained in the municipal land use ordinances that have been certified by the Commission pursuant to N.J.A.C. 7:50-3.

- (d) The Alternate Design Waste Water Treatment Systems Pilot Program is authorized as a means to test whether these systems can be maintained and operated so as to meet the water quality standards contained in N.J.A.C. 7:50-6, Part VIII with maintenance requirements that a homeowner can be reasonably expected to follow. Since these systems do require maintenance beyond that which would be required for a standard septic system in order to optimize treatment efficiencies, municipalities were originally encouraged, but not required, to adopt ordinances incorporating the requirements of N.J.A.C. 7:50-10.22 into their own land use ordinances. The use of the pilot program systems

was then allowed only in those municipalities which had adopted such ordinances. Although most municipalities did adopt ordinances, several did not. This led to situations where owners of unsewered parcels under 3.2 acres in size were denied the ability to develop those parcels in a manner consistent with all other municipal land use and environmental standards, due simply to a municipality's failure to adopt an ordinance allowing for the installation of the pilot program systems. This resulted in considerable hardship to landowners, an outcome which was never the intent of the pilot program. The program has therefore been revised to authorize use of the pilot program systems in all municipalities for the duration of the program, whether or not the specific terms of the program are reflected in a municipal ordinance. Municipalities will continue to be encouraged to allow community systems to be installed in larger residential developments where densities between one and 3.2 acres are currently authorized. Since insufficient data is available to determine a particular efficiency of these alternate design pilot program treatment systems for non-residential development, the use of these systems for non-residential development will be evaluated on a case by case basis pursuant to N.J.A.C. 7:50-6.84(a)1 if any such system is proposed to reduce total nitrogen in the effluent for non-residential development.

#### **7:50-10.22 General standards**

- (a) Alternate design pilot program treatment systems shall be authorized for residential use in all municipalities [where the proposed lot size and density is

consistent with the provisions of N.J.A.C. 7:50-5 and the municipal land use ordinance that has been certified by the Commission pursuant to N.J.A.C. 7:50-3 and] provided that the following standards are met:

1. [Systems shall be authorized only in those municipalities which have adopted an ordinance that is in conformance with the requirements of this Part and has been certified by the Commission pursuant to N.J.A.C. 7:50-3.] The proposed lot size and density is consistent with the provisions of N.J.A.C. 7:50-5 and the applicable municipal land use ordinance that has been certified by the Commission pursuant to N.J.A.C. 7:50-3.
  2. (No change.)
  3. Subject to being increased during the pilot program based on the results of a hearing conducted pursuant to (a)5 below, [each Ashco RFS III system shall be located on a parcel containing at least 1.5 acres for each dwelling unit that will be served by the system and] each FAST, Cromaglass, Bioclere or Amphidrome system shall be located on a parcel containing at least one acre for each dwelling unit that will be served by the system;
  4. The alternate design pilot program treatment systems identified in (a)3 above are authorized to be installed for a period of [five] eight years from August 5, 2002;
  - 5.-6. (No change.)
- (b) (No change.)

**7:50-10.23 Pinelands Commission approval and evaluation**

- (a) (No change).
- (b) The Executive Director shall review this pilot program [four] seven years after August 5, 2002 and shall report to the Commission within three months of that date on its implementation. The Executive Director shall determine whether the pilot program is successful in accordance with the following criteria:
  - 1.-6. (No change.)
- (c) If the Executive Director finds that the number of monitoring events for any alternate design pilot program treatment system technology is not adequate to evaluate that technology under this pilot program in accordance with (b) above, the Executive Director shall so inform the Commission and, upon receiving the Commission's approval, initiate a second review to be completed within [six] eight years of August 5, 2002[;].
- (d)-(f) (No change.)
- (g) Nothing in this section shall be construed to authorize the installation of an alternate design pilot program treatment system after [five] eight years from August 5, 2002 as set forth in N.J.A.C. 7:50-10.22(a)4, unless a rule has been adopted by the Commission which expressly authorizes such installation pursuant to (e) or (f) above.