

July 5, 2017

ENVIRONMENTAL PROTECTION

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Fees; Escrows; Definitions; Standards for Certification; Application Requirements and Procedures; Landfills; Water Quality; Signs; Petitions for Amendment; Pilot Program for Alternate Design Wastewater Treatment Systems

Proposed Amendments: N.J.A.C. 7:50-1.6, 1.7, 2.11, 3.24, 3.39, 4.1, 4.3, 4.15, 4.19, 4.20, 4.22, 4.23, 4.25, 4.26, 4.35, 4.37, 4.38, 4.40, 4.41, 4.53-4.56, 4.66-4.68, 4.74, 4.79, 4.91, 6.64, 6.75, 6.84, 6.85, 6.106-6.109, 7.3, 7.5, 9.7 and 10.21-10.23

Authorized By: New Jersey Pinelands Commission, Nancy Wittenberg, 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:

Wednesday, October 4, 2017, 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 November 4, 2017, to:

Susan R. Grogan, P.P., AICP

Chief Planner

Pinelands Commission

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New Lisbon, NJ 08064

Facsimile: (609)894-7330

E-mail: planning@njpines.state.nj.us or through the Commission's website at

<http://www.nj.gov/pinelands/home/contact/planning.shtml>

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; 3, Certification of County, Municipal and Federal Installation Plans; 4, Development Review; 5, Minimum Standards for Land Uses and Intensities; 6, Management Programs and Minimum Standards; 9, Acquisition of Properties with Limited Practical Use; and 10, Pilot Programs, 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 September 2014 through a set of amendments related to application requirements and procedures, the duration of Letters of Interpretation, the allocation of Pinelands Development Credits and the Pilot Program for Alternate Design Wastewater Treatment Systems (see 46 N.J.R. 1877(b)).

The amendments now being proposed by the Commission relate to fees, escrows, application requirements and procedures, public notice and mailing requirements, water quality standards, landfill closure, signs and the Pilot Program for Alternate Design Wastewater Treatment Systems. They are intended to codify current Commission practice, clarify existing standards and requirements, increase the efficiency of the Commission and its staff, eliminate unnecessary application requirements, simplify procedures for the Commission, Pinelands municipalities and applicants, clarify the circumstances under which installation of an impermeable cap is not necessary for existing Pinelands landfills, allow for the use of advanced treatment technologies as a means of facilitating expansion of certain existing nonresidential uses, update and revise CMP sign standards and recognize the successful participation of one alternate design wastewater treatment technology in a long-standing pilot program.

The proposed amendments are, in large part, an outgrowth of the Commission's fourth comprehensive review of the CMP. The Commission embarked on the plan review process in June of 2012. A Plan Review Committee, composed of five Commission members, was formed at that time and met 14 times, completing its work in Spring 2014. While all of the Plan Review Committee meetings were open to the public, the Committee also sought public comment at a series of additional public meetings throughout the summer of 2012. The submission of written comments on the Comprehensive Management Plan and its implementation was also encouraged. Notice of the opportunity to attend the public meetings and/or provide written comments was provided via press releases, posting on the Commission's website and use of the Pinelands News Alert system which involves emails to nearly 600 people. In addition, emails were sent to a wide variety of potentially interested individuals and groups, including all Pinelands Area municipalities, the Pinelands Preservation Alliance and other environmental

groups, the New Jersey State League of Municipalities, the New Jersey Farm Bureau, the Chambers of Commerce of all Pinelands counties, the Builders League of South Jersey, the New Jersey Builders Association and the members of the Commission's own Forest Advisory and Agricultural Advisory Committees. In response to these outreach efforts, both oral and written comments were received on a wide range of topics. All written comments received by the Commission were posted and remain available on the Commission's website at www.nj.gov/pinelands. Ultimately, the Commission's goal was to analyze its past actions, consider the public's input and identify ways to strengthen the Comprehensive Management Plan through future amendments and administrative actions.

The first set of CMP amendments adopted as part of the ongoing plan review process was designed to implement various efficiency measures, codify current Commission practices and provide for the continued installation of alternate design wastewater treatment systems in accordance with Alternate Design Wastewater Treatment Systems Program. The amendments now being proposed represent the second phase in the CMP review process. Analysis of other substantive issues raised during the plan review public comment process will continue over the next year and may lead to the proposal of additional CMP amendments. In the meantime, the Commission has determined it would be appropriate and beneficial to move ahead with the current proposal.

The proposed amendments were discussed and reviewed at multiple public meetings of the Commission's CMP Policy & Implementation Committee between 2014 and 2016. On July 28, 2016, Pinelands Commission staff also provided a presentation on the proposed amendments at a public meeting of the Pinelands Municipal Council (PMC). The PMC, created by the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.), is made up of the mayors of the 53

municipalities in the Pinelands Area or their designees. The Council is empowered to review and comment upon changes proposed by the Pinelands Commission in the New Jersey Pinelands Comprehensive Management Plan and advises the Commission on matters of interest regarding the Pinelands.

A more detailed description of the proposed amendments follows.

Fees

Since April 2004, the Pinelands Commission has charged application fees as a means to cover a portion of the costs associated with the review of development applications and related services that support the development application process. The Commission periodically reviews its fee schedule and adopted amendments to it in June 2006 (see 38 N.J.R. 2708(a)) and December 2008 (see 40 N.J.R. 6805(a)).

A series of amendments to the Commission's application fee requirements are now being proposed to increase the percentage of application review costs that is covered by application fee revenue, better recognize specific types of development applications, reduce fees for solar energy facilities, codify current practices, clarify existing fee requirements and eliminate inefficiencies in the application review process.

In Fiscal Year 2010, the first full year after the 2008 fee-related CMP amendments took effect, the Commission expended approximately \$1,384,000 on its application review functions and recouped 34% or \$472,000 in application fee revenue. Over the next seven fiscal years, the Commission's permit-related expenses decreased to an annual average of \$1,194,775.

Application fee revenue varied widely during the same time period, from a high of \$648,750 in fiscal year 2016 to a low of \$253,000 in fiscal year 2014. Some of this variation was due to a

decrease in the number of applications submitted each year. In fiscal year 2010, 577 new development applications were received. For fiscal years 2011 through 2017, the average number of applications received per year was only 457. The Commission's permitting expenses likewise decreased over time as project review staff retired, were laid off or left for other reasons and were not replaced.

The Commission has charged application fees for development applications since 2004 and last increased the amount of those fees in 2008. Over the past seven fiscal years, fee revenue has covered an average of 37 percent of the cost incurred by the Commission to review and act on development applications. (Average annual fee revenue for the past seven fiscal years is just under \$450,000 and the Commission's annual average application review cost during the same time period is \$1,194,775). The balance of the cost is funded almost exclusively by annual General Fund appropriations. The Commission proposes to increase most application fees by 25 percent, which could yield an additional \$70,000 in revenue annually. Such an increase would allow fee revenue to cover approximately 43 percent of the cost incurred to review development applications. The proposed increase in application fees would ensure that fee revenue funds a more appropriate share of the cost incurred to review and act on development applications. For comparison, application fees assessed by the New Jersey Department of Environmental Protection program cover about 50 percent of the cost to review and act on those applications.

The proposed fee increases are reflected in the proposed amendments to N.J.A.C. 7:50-1.6(a), (b), (c), (e), (h), (i) and (j). It should be emphasized that the maximum application fees specified in N.J.A.C. 7:50-1.6(e)2 and 4 (\$50,000 for private development; \$25,000 for public development) will continue to apply. Likewise, the maximum application fee for a qualified tax-

exempt religious association or non-profit organization will remain at \$500, as specified at N.J.A.C. 7:50-1.6(g).

In addition to the fee increases described above, N.J.A.C. 7:50-1.6(b), (c), (f) and (j) are being amended to include specific references to N.J.A.C. 7:50-4.52 and 4.56, the procedures for submission and review of public development applications. Although fees related to public development applications were instituted by the Commission in 2008, these sections were mistakenly not amended to include the appropriate cross-references at that time. Likewise, N.J.A.C. 7:50-1.6(b) is being further amended to include a reference to the application requirements set forth at N.J.A.C. 7:50-4.66(c), in order to clarify that fee requirements apply to applications for Waivers of Strict Compliance necessary to address compelling public needs. Finally, N.J.A.C. 7:50-1.6(j) is being further amended to include Certificates of Completeness, the document issued by the Commission to signify completion of an application for development in a municipality whose master plan and land use ordinances have not been certified by the Commission. As currently written, N.J.A.C. 7:50-1.6(j) refers only to the document issued by the Commission in certified municipalities, a Certificate of Filing. All of the proposed amendments described in this paragraph merely correct inadvertent omissions and codify existing Commission practice; they do not represent any change in policy.

N.J.A.C. 7:50-1.6(c) is being further amended to replace the lengthy description of fee requirements for commercial, institutional, industrial and other types of nonresidential development applications with a simple table. Also, N.J.A.C. 7:50-1.6(c) is being amended to delete the requirement for submission of a sworn statement of a licensed architect, licensed engineer or other qualified individual as to the expected construction costs. Instead, the Commission will now require only that supporting documentation of expected construction costs

be submitted as part of the application for development. If an applicant's calculations indicate that the maximum fee is required for a particular application (\$50,000 for private development; \$25,000 for public development; \$500 for applications by non-profit organizations), the submission of supporting documentation related to the fee will not be required. In such cases, the applicant would only need to indicate on the application form that he or she is paying the maximum fee.

The Commission expects the above-described amendments to simplify and streamline the initial stages of the development application process. Over time, it has become clear that the requirement for submission of sworn statements or sealed construction cost estimates as to the construction costs associated with a proposed development leads to unnecessary delays in the processing of applications. Under the current fee regulations, the Commission staff cannot review an application for commercial, institutional or industrial development or consider such an application for development to be complete until the required fee and the accompanying sworn statement of a licensed architect or engineer has been received. Often, the fee is submitted, along with an estimate of construction costs, but the construction cost estimate is not signed or sealed. This leaves the application for development incomplete and requires the Commission to send a letter to the applicant noting the deficiency. In the meantime, no review of the application can occur. As an extreme example, when an applicant submits the maximum fee (for example, \$50,000 for a private development or \$500 for a qualified tax exempt religious or non-profit organization), the Commission must still request a sworn statement as to construction costs before the application can be deemed complete. The proposed amendments will allow an applicant to simply include supporting documentation of his or her construction cost estimates as an attachment to the development application form. This form (available on the Commission's

website at

[http://www.nj.gov/pinelands/appli/PinelandsDevelopmentApplicationInstructions&Form\(Final\).](http://www.nj.gov/pinelands/appli/PinelandsDevelopmentApplicationInstructions&Form(Final).pdf)

[pdf](#) must be signed by the applicant, attesting to the validity of all submitted information, which would include construction cost estimates. While there may still be occasions where the Commission will need to request additional information to support a particular fee calculation, the process should be much less cumbersome. This will allow the staff to begin review of applications for development more quickly.

N.J.A.C. 7:50-1.6(c)1-5 include fees for various types of development based on the number of acres affected by the development. All of these sections are being amended to clarify that the relevant fee applies per acre “or portion thereof”. This represents a codification of current practice, and should eliminate the questions that have been raised over the years as to whether the fee is assessed on the total acreage proposed for development or only on full acres.

N.J.A.C. 7:50-1.6(c)4 is being amended to clarify that bridges are not considered “linear development” for purposes of calculating required application fees.

N.J.A.C. 7:50-1.6(c)8 is being added to clarify that the application fee for the demolition of a structure, whether residential or nonresidential, is \$250. The current fee rules do not specifically address this type of application for development. The Commission’s practice over the years has been to assess the minimum fee for demolition of a single family dwelling and to require a construction cost estimate and fee in accordance with N.J.A.C. 7:50-1.6(c) for demolition of a nonresidential structure. The proposed amendment will eliminate any confusion and establish a flat fee that is easy to administer and understand. It should be noted that it is only the demolition of structures 50 years or older that requires application to the Commission.

A new N.J.A.C. 7:50-1.6(c)9 is being added to specifically address application fees for solar energy facilities. Currently, solar energy facilities are treated in the same fashion as commercial, institutional and industrial uses, with application fees based on construction cost estimates. This has led to very large fee requirements, including at least one at the \$50,000 maximum for private development projects. Under the proposed amendment, the required fee would be calculated on a per acre basis, similar to the fee requirements for resource extraction operations, golf courses and other land extensive uses. N.J.A.C. 7:50-1.6(c)9 would require an initial fee of \$1,500, plus \$500 per acre, or portion thereof, of land to be developed for solar energy facility use, including any off-site development. Calculating the fee in this manner will lead to a reduction in required application fees. This reduction will be significant, for both large and small solar facilities. For example, an application for a three acre solar energy facility that required a fee of approximately \$10,000 under the current regulations (based on construction costs) could be required to pay only \$3,000 under the proposed amendment. Applications involving the development of approximately half an acre of solar panels could be required to pay as little as \$1,850 under the proposed amendment, whereas under the current rules, such applications required fees ranging from \$5,750 to \$12,500. The Commission believes that calculating application fees on a per acre basis is the more appropriate method for solar energy facilities.

N.J.A.C. 7:50-1.6(e)1 is being amended by correcting and clarifying cross-references to other sections of the fee regulations and CMP water quality standards.

N.J.A.C. 7:50-1.6(h)1 is being amended to clarify the circumstances under which a fee is assessed for an amended Letter of Interpretation (LOI) involving Pinelands Development Credits (PDCs). PDCs are transferable development rights that are allocated to certain properties within

the Pinelands Area. An official allocation, determined by the Commission through an LOI, is valid for five years and is a prerequisite for property owners to sell their PDCs. No fee is assessed when a property owner initially requests an LOI for an allocation of PDCs or seeks to have an expired allocation re-issued. However, a fee is required when a property owner who has a valid LOI for PDCs decides to request an amended allocation because, for example, s/he decides to add or remove lands from the allocation or reserve the right to build additional homes on the property. In those cases, a fee is assessed pursuant to N.J.A.C. 7:50-1.6(h)1 to recognize the additional work that is required of the Commission. Amendments to this section are proposed to clarify that the fee for an Amended LOI applies only when that application is submitted during the period of time when the original LOI is still valid. LOIs are now valid for five years, pursuant to the September 2014 CMP amendments mentioned previously. Therefore, the proposed amendment to N.J.A.C. 7:50-1.6(h)1 specifies that there will be a fee for an Amended LOI requested within five years of issuance of the original LOI. Requests for renewed or amended LOIs after an LOI has expired do not incur a fee.

A new N.J.A.C. 7:50-1.6(l) is being added to specifically address fees associated with general development plan applications. The Municipal Land Use Law (N.J.S.A. 40:55D- 45.1) provides developers with the option of seeking general development plan approval for what are commonly viewed as “large” projects, those involving 100 or more acres, or, if less than 100 acres, 150,000 square feet of nonresidential floor area or 100 or more residential units. The general development plan process is based upon submission of conceptual plans to a municipal planning board prior to any application for site plan or subdivision approval. Once the planning board grants general development plan approval, the developer has the right to develop the property in accordance with that approval, regardless of any subsequent changes in municipal

zoning. This period of protection can extend for as long as 20 years. Ultimately, municipal site plan or subdivision approval is still required; however, the general development plan process provides both the developer and the municipal planning board with the ability to discuss and review large projects at the concept stage, prior to the submission of detailed plans.

The CMP's current application fee regulations do not distinguish between general development plans and more traditional development applications that require municipal site plan or subdivision approval. As a result, the application fee for a project that will be seeking general development approval from a municipality is currently based on the number of proposed residential units and the construction costs associated with any nonresidential component. These fees presume full Commission review of the submitted application, including detailed stormwater calculations and threatened and endangered species surveys. Because general development plan applications normally do not include this level of detailed information, this has led to a requirement for submission of a significant application fee, at an inappropriate stage in the application process. The proposed amendment would require 50% of the application fee be paid upon initial submission of an application involving a general development plan to the Commission. The remainder of the fee would be due when the applicant returns to the Commission seeking a new Certificate of Filing or Certificate of Completeness for a particular phase of the development, prior to obtaining preliminary or final subdivision or site plan approval from the municipality or county. At that time, more detailed information would be provided to the Commission as part of the application. If the number of units or nonresidential square footage in any phase of the development varies from what was contained in the general development plan approval, the required fee would be recalculated with those revised numbers in mind. This fee structure and process will allow the Commission to conduct an initial review of

the application in its concept stage, with a more in-depth review conducted at a later date when detailed development plans are submitted for individual phases of the project.

The Commission has seen few general development plan applications over the years. However, in each case, questions have been raised about the need for an application to the Commission at all, the amount of any required fee, and the information that must be submitted as part of the application. The Commission believes it is worthwhile to eliminate any confusion about whether an application is required and, further, to structure the required application fee so that it appropriately recognizes the level of staff review required at each stage of the project. Just as a general development plan and its municipal approval will be “phased” over time, the Commission’s fee structure and review for this type of project will also be phased.

The table below illustrates how the above-described fee amendments would affect selected types of development applications. For the listed nonresidential projects, estimated construction costs were used to generate the examples.

Development Application	Current Fee	Proposed Fee
1 single family dwelling	\$200	\$250
50 lot residential subdivision	\$11,150	\$13,937.50
15,000 square foot retail building	\$18,750	\$23,437.50
20 acre resource extraction application	\$2,100	\$2,625
3 acre solar energy facility	\$10,000	\$3,000
Municipal recreational improvements	\$1,600	\$2,000

Escrows

Pursuant to N.J.A.C. 7:50-1.7, the Executive Director of the Commission is currently authorized to require applicants to provide escrows to assist in the Commission's review of development applications or other matters pending before the Commission that involve complex issues (for example, comprehensive plans for local communications – cellular - facilities). Escrow funds may be used to reimburse the Commission for the costs it incurs as a result of retaining consultants, expending a considerable amount of staff time or developing, implementing and monitoring an intergovernmental memorandum of agreement. The amendment being proposed at N.J.A.C. 7:50-1.7 would provide the Executive Director with the ability to use escrow funds for unusual expenditures, including the purchase of software and other equipment necessary for review of a development application or memorandum of agreement. In addition, escrow funds could be used to procure services (for example, preparation of public meeting transcripts by court reporters) or rent off-site facilities necessary to accommodate larger than normal public attendance at meetings on particular development applications or other matters pending before the Commission.

Since their incorporation in the CMP in 2004, the escrow provisions have been utilized only a handful of times. The proposed amendment does not expand the types of applications or matters for which an escrow can be required, nor will the amendment make it more likely the Commission will choose to require an escrow. The amendment merely adds software, equipment facilities and services to the list of items that can be acquired with escrow funds. It provides the Commission with the flexibility to purchase software and complete the review of a complex development application itself, perhaps negating the need to identify and hire a consultant to do the same work. For example, the Commission might need to purchase GIS-based computer

software capable of performing viewshed analyses to determine whether particular towers proposed as part of a comprehensive plan for local communications facilities comply with the visual impact and scenic standards of the CMP. As is the case under the current regulations, 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.

Definitions

A definition of “electronic message display” is being added at N.J.A.C. 7:50-2.11 to clarify the term as it relates to the amended sign standards proposed herein at N.J.A.C. 7:50-6.109.

The definition of “immediate family” in N.J.A.C. 7:50-2.11 is being modified so that it refers to “spouses” rather than “husbands and wives” and includes “domestic partners”.

The definition of “interested person” in N.J.A.C. 7:50-2.11 is being changed to “interested party”. It is also being reworded to clarify that it refers only to a person or entity who has either submitted an application for development to the Pinelands Commission or who has a particularized property interest sufficient to require a hearing on constitutional or statutory grounds. This amendment is being made to better align the CMP with the 1993 amendments to the Administrative Procedure Act, which limited the right to third party hearings and withdrew authority from state agencies to confer a right to an Office of Administrative Law hearing by rule or regulation. The CMP currently uses the term “interested person” in the broadest possible sense, encompassing anyone who testifies at a public hearing, submits written comments or simply is curious about the Commission’s actions. The above-described amendment is being made to clarify who has the right to formally participate in the decision-making process, request

hearings or appeal the Commission's decisions. In order to reflect the revised definition and ensure that ample opportunities remain for other individuals and organizations to remain informed of the Commission's proceedings and decisions, amendments are being made throughout N.J.A.C. 7:50-4 (4.15, 4.19, 4.20, 4.22, 4.23, 4.25, 4.26, 4.35, 4.37, 4.38, 4.40, 4.41, 4.53, 4.54, 4.55, 4.56, 4.66, 4.67, 4.68, 4.73, 4.74, 4.79 and 4.91), as well as to N.J.A.C. 7:50-6.64 and 9.7. As these amendments make clear, the Commission will continue to provide copies of documents and otherwise notify those individuals who have submitted information on a particular application or matter, requested copies of the Commission's decision on a particular application or matter or registered in accordance with N.J.A.C. 7:50-4.3(b)2i(2) to receive copies of all Commission hearing notices. There will be no change in the information provided by the Commission to these individuals. They will merely no longer be referred to as "interested parties" in the legal sense.

A definition of "mail" is being added at N.J.A.C. 7:50-2.11, to make clear that when the CMP requires the Commission to provide information to municipalities, applicants or the public by mail, either regular mail or email will be acceptable means for doing so. In recent years, the Commission has increasingly used email as its preferred method of communication but has been prevented from doing so in certain circumstances by the language in the CMP, which requires the use of regular or certified mail. This has led to inefficiencies in various procedures, primarily involving the review of development applications, as well as the unnecessary expense associated with use of certified mail. Originally drafted in the early 1980's, the CMP simply did not recognize email as a possibility. Given that it is the manner in which the Commission and the regulated community increasingly communicate, an amendment to the CMP is warranted.

The definition of “off-site commercial advertising sign” in N.J.A.C. 7:50-2.11 is being modified to “off-site signs” and includes an expanded list of advertising topics that would constitute such a sign. The modification in terminology was made to remove the distinction between non-commercial and commercial off-site signs as CMP sign regulations, proposed for amendment at N.J.A.C. 7:50-6.106 through 6.109, do not make such a differentiation in their application.

The definition of “sign” in N.J.A.C. 7:50-2.11 is being modified so as to remove any implicit exemptions from the signs standards in the CMP.

Application Exemptions

N.J.A.C. 7:50-4.1(a) includes a list of activities that do not require application to the Commission. Two of these “exemptions” are being clarified.

First, N.J.A.C. 7:50-4.1(a)4 is being revised to include a reference to the types of off-site signs for which applications to the Commission are required. Standards for these off-site signs are being relocated to proposed N.J.A.C. 7:50-6.108(a)3, 4 and 5. The term “off-site commercial advertising sign” is being changed to simply “off-site sign” for the reasons provided above in the discussion of proposed definitions. All on-site signs are and will continue to be exempt from application requirements.

Second, the exemption for prescribed burning and clearing and maintaining of fire breaks at N.J.A.C. 7:50-4.1(a)17 is being clarified. Both activities will remain exempt from application to the Commission, provided they are conducted to control and reduce the threat of wildfire. The term “fire break” is being replaced with a more quantitative standard that will be easier to administer. Under the revised exemption, linear clearing of vegetation, up to six feet in width,

will be exempt from application to the Commission, as will the maintenance of such cleared areas and vegetation.

Notice and Mailing Requirements

Various sections of the CMP require the Commission's transmission of notices and other documents via certified mail. Other sections require that municipalities provide certain information to the Commission via certified mail. The Commission would prefer to communicate with applicants, municipalities and the general public via email as much as possible, as it is a more efficient, less expensive method of transmitting information. Therefore, N.J.A.C. 7:50-3.24(c), 4.3(b)2i(1), 4.18(d) and (e), 4.19(b), 4.22(b), 4.25(b), 4.35(d) and (e), 4.37(b) and 4.40(b) are being amended to delete the requirement for use of certified mail. These sections will now specify only that information (notices, copies of various documents) be mailed by or to the Commission, opening up the possibility for use of email as well as regular mail. In most cases, the Commission will elect to transmit information via email and it will certainly encourage municipalities to do so as well. Certified mailings will not be eliminated entirely as there may still be instances where the Commission determines the use of certified mail to be necessary. The proposed amendments will provide the Commission (and municipalities) with the ability to choose the most appropriate method of communication.

The Commission is also proposing to revise its notice requirements for various types of public hearings. These notice requirements, set forth in N.J.A.C. 7:50-4.3(b)2i, apply to hearings held by the Commission on municipal and county master plans and land use ordinances, amendments to the CMP, intergovernmental memoranda of agreement and comprehensive plans for local communications facilities. In each case, the Commission is proposing to add a

requirement for posting of the notice on the Commission's website. This reflects the Commission's current practice.

The Commission is also proposing to amend the requirements and procedures for public hearings on waivers of strict compliance that are being considered to address compelling public needs. Although such waiver applications are rare, the Commission believes that when they do occur, it should be the Commission's obligation, rather than the applicant's, to schedule and provide notice for the public hearing required pursuant to N.J.A.C. 7:50-4.66(i). Therefore, N.J.A.C. 7:50-4.3(b)2ii(2) is being revised and new language is being added at N.J.A.C. 7:50-4.3(b)2i(5) to specify that notice will be provided by the Commission for this type of public hearing. Amendments are also proposed at N.J.A.C. 7:50-4.66(d) to require that when an applicant provides notice of the filing of a compelling public need waiver with the Commission, that notice state that a public hearing will be held at a future date and will be publicized on the Commission's website. Finally, N.J.A.C. 7:50-4.66(i) is being amended to eliminate the sentence that required the applicant to give notice of hearings.

Other notice requirements for applicants are also being amended. Specifically, N.J.A.C. 7:50-4.3(b)2ii(3) and (4) are being eliminated so that applicants will no longer be required to post copies of public notices on the property where development is proposed or a resource is proposed for designation pursuant to N.J.A.C. 7:50-6.154. Although the requirement for posting of notice on affected properties is a common one, originally taken from the Municipal Land Use Law and incorporated in the CMP decades ago, the Commission has come to realize that such notices are of little value in a large rural area such as the Pinelands Area. In general, people are driving by properties proposed for development or designation, not walking, and therefore have

little to no opportunity to read the public notices. Applicants will continue to be required to post notices in the newspaper and provide notice to counties, municipalities and adjacent landowners.

The Commission is also proposing to amend the notice requirements for amendment petitions set forth at N.J.A.C. 7:50-7.3(c) and 7.5(b) to be consistent with the above-described revisions. Specifically, N.J.A.C. 7:50-7.3(c)iv is being amended to delete the requirement for posting of notices relative to amendment petitions on an affected property. N.J.A.C. 7:50-7.5(b) is being amended to require the Commission to post notices of petition on its website.

The Commission is also proposing to amend the notice and hearing procedures set forth in N.J.A.C. 7:50-4.3(e)3. This section of the CMP currently states that all decisions and orders of the Executive Director or the Commission shall be considered rendered three days after notice has been deposited in the United States Mail. In keeping with the above-described amendments related to the definition of “mail,” the term “United States Mail” is being replaced with “mail” to allow for transmission of notices via email. This section is being further clarified through the addition of a sentence indicating that for purposes of computing the three day period after which decisions are considered rendered, the date the notice is mailed shall not be included in the calculation. The appeal procedures in N.J.A.C. 7:50-4.91 are also being amended to clarify that interested parties have 15 days from the date the Executive Director’s decision is considered rendered pursuant to N.J.A.C. 7:50-4.3(e) to provide notice to the Commission of their intent to appeal.

Requirements of Local Approval Agencies

N.J.A.C. 7:50-4.18 and 4.35 set forth the requirements that local approval agencies (for example, municipal Planning Boards) must meet with respect to providing information to the

Commission related to various applications for development. Pursuant to N.J.A.C. 7:50-4.18(d) and 4.35(d), local approval agencies are required to provide notice to the Commission of all preliminary site plan, subdivision or other preliminary approvals. The required notice must include such information as the name and address of the applicant, the legal description of the parcel proposed for development, the date of the preliminary approval and a copy of the approval itself, including the approved preliminary plans and any written reports received by the local approval agency on the application. As noted previously, the requirement that these notices be transmitted to the Commission via certified mail is being eliminated so that local approval agencies will be able to use regular mail or email. In addition, N.J.A.C. 7:50-4.18(d)7 and 4.35(d)7 are being eliminated so that local approval agencies will no longer be required to submit the names and mailing addresses of all persons who participated in the local proceedings (for example, commented on a subdivision application at a municipal Planning Board meeting) to the Commission. Likewise, the requirement for Commission notification of the participating individuals as to the Executive Director's or Commission's decisions on applications is being deleted from N.J.A.C. 7:50-4.19(b) and (c), 4.20(a), 4.22(b), 4.23, 4.25(c), 4.26(a), 4.37(b) and (c), 4.40(b) and 4.41. Originally thought to be a good way of keeping the Commission and public informed of each other's interest in a particular application, implementation of this requirement has proven, over time, to be cumbersome and ineffective. Individuals who testify at local Planning Board meetings often do not provide their addresses, thereby making it difficult, if not impossible for the municipality to comply with the notice requirements. This results in incomplete submissions, which in turn causes delays in the Commission's review process. The required submission of names and addresses also creates the false impression that the Commission will review and address the concerns raised by individuals at municipal

proceedings. Because only the contact information for these individuals is provided by the municipality, the Commission is generally unaware of the nature of their concerns, comments or interest in the relevant application. When the Commission is made aware of the concerns that were raised, they frequently relate to matters outside the Commission's jurisdiction (for example, a side yard setback requirement or height of a proposed fence). There is little the Commission can do beyond providing copies of letters evidencing the results of its review of an application.

Persons who wish to be informed of the Commission's review or decision on a particular application will still have ample opportunity to obtain this information. They need only call or email the Commission to request a copy of the Commission's written decision, or, if they have a general interest in all matters pending before the Commission, register pursuant to N.J.A.C. 7:50-4.3(b)2i(2) to receive written copies of all hearing notices. In addition, persons who have submitted information to the Commission concerning a particular application will continue to be provided with copies of the Commission's decision on that application. It is only the automatic requirement for notification of any person who participated in a municipal or other local proceeding that is being eliminated.

Landfills

The CMP (N.J.A.C. 7:50-6.75(c)) requires that landfills in the Preservation Area that ceased operation on or after September 23, 1980 be permanently covered with an impermeable cap. Landfills in the Protection Area that ceased operation on or after January 14, 1981 are subject to the same requirement. An impermeable landfill cap prevents stormwater from percolating into the buried refuse, thereby significantly reducing the discharge of landfill leachate into ground water and nearby surface water bodies. Prior to the adoption of the CMP,

more than 60 sanitary landfills operated in the million-acre Pinelands Area. With only one exception, all of these facilities ceased operations on or after January 1981 at the direction of the New Jersey Department of Environmental Protection (NJDEP) and as a result of the implementation of the CMP. The Cape May County Municipal Utilities Authority's Landfill is the only exception. It currently operates pursuant to N.J.A.C. 7:50-6.75(i) and is equipped with leachate collection, gas venting and impermeable capping systems.

N.J.A.C. 7:50-6.75(c) provides certain exemptions from the impermeable cap requirement. Specifically, landfills that accepted only vegetative or construction waste are not required to have impermeable caps (N.J.A.C. 7:50-6.75(c)1), nor are landfills that are not generating a leachate plume (N.J.A.C. 7:50-6.75(c)3). In addition, applicants may seek to demonstrate that an alternative means of addressing public health and ecological risks is available and will afford an equivalent level of protection to Pinelands resources (N.J.A.C. 7:50-6.75(c)2). The Commission has always interpreted this section to mean that the "alternative means of addressing the public health and ecological risks associated with a landfill" may include no landfill cap at all. Over time, however, questions have been raised so the Commission believes a clarification would be useful. To that end, the Commission is proposing a new N.J.A.C. 7:50-6.75(c)4 that will clearly exempt from the impermeable capping requirement landfills for which a leachate plume exists but poses no significant ecological risk to wetlands. This is not a change in policy; rather, it is a clarification of the circumstances under which an impermeable cap will not be required.

The Commission will be aided in its determinations by the results of the Commission's recently completed Rapid Landfill Assessment, which uses existing NJDEP landfill monitoring data and GIS land feature data as part of a screening tool developed by the USGS New Jersey

Water Science Center to quantify the level of concern posed by contaminants from Pinelands landfills that lack leachate reduction and containment controls. Completed in 2014, the screening tool uses a model to estimate concentrations of contaminants reaching receptors such as wetlands and existing homes. Details on the landfill assessment and screening tool are available on the Commission's website at <http://www.nj.gov/pinelands/landuse/current/rapid/>

Water Quality

Amendments are being proposed at N.J.A.C. 7:50-6.84(a)5 to accomplish two objectives: (1) recognize the successful participation of the FAST wastewater technology in the Commission's Alternate Design Wastewater Treatment Systems Pilot Program; and (2) provide an opportunity for the use of advanced treatment systems, such as FAST, for certain nonresidential uses in the Pinelands Forest, Agricultural Production and Rural Development Areas.

The FAST technology was one of five advanced treatment systems authorized for residential use in the Pinelands Area pursuant to the Commission's Alternate Design Wastewater Treatments Systems Pilot Program. Established in 2002 through an amendment to the CMP (see 34 N.J.R. 2804(b)), the pilot program was implemented to provide a means to test whether the five identified technologies could be maintained and operated so as to meet the water quality standards of the CMP in a manner that a homeowner could be reasonably expected to follow. Implementation of the Pilot Program commenced on August 5, 2002, with the first pilot program treatment system installed and brought on line in April 2004.

Since that time, one of the five technologies (Ashco) was removed from the pilot program due to its commercial unavailability in the Pinelands. Another (Cromaglass) was

removed from the pilot program in 2014 because it failed to demonstrate compliance with CMP water quality standards. Two others, Amphidrome and Bioclere, were able to demonstrate compliance and, in 2010, were released from the pilot program and granted permanent approval status for residential use on lots of at least one acre in size. Finally, in the 2014, 2015 and 2016 annual reports on the pilot program, the Executive Director recommended that the last of the original pilot program technologies, the FAST system, also be granted permanent approval status, subject to special administrative controls. The Executive Director found that the pilot program has demonstrated that the FAST technology, with proper operation and maintenance, is capable of meeting the water quality objectives of the Pinelands CMP and the Pinelands Protection Act. In the 2016 annual report, the Executive Director clarified that each FAST system, when used to serve residential development, would need to be located on a parcel of at least 1.4 acres in size in order to meet CMP water quality standards. A copy of the 2016 annual report is available on the Commission's website at

<http://www.nj.gov/pinelands/landuse/current/altseptic/2016%20FINAL%20SEPTIC%20PILOT%20PRORAM%20ANNUAL%20REPORT.pdf>

Based on this recommendation, the Commission is proposing to amend the CMP to authorize the use of the FAST technology on a permanent basis, subject to long-term management of the systems via service contracts with qualified service technicians. To that end, a new N.J.A.C. 7:50-6.84(a)5iv2(B) is being added to allow for the use of the FAST technology for residential development on lots of at least 1.4 acres in size (or at a density not to exceed one unit per 1.4 acres of land). Existing N.J.A.C. 7:50-6.84(a)5iv2(A) is being revised to clarify that it applies only to the Amphidrome and Bioclere technologies, which continue to be authorized on lots of one acre in size. Use of the FAST system will be subject to a series of requirements,

including mandatory recording of deed notices, conveyance of an approved operation and maintenance manual to the homeowner, compliance with construction standards, as-built certifications, alarm requirements, system warranty requirements and renewable operation and maintenance service agreements. These requirements, set forth at what will now be N.J.A.C. 7:50-6.84(a)5iv(2)C through (J), are identical to those that apply to the Amphidrome and Bioclere technologies. They are similar to those imposed under the pilot program, except that no water quality testing is required. The Commission believes retention of these safeguards for the three permanently authorized advanced treatment systems (Amphidrome, Bioclere and now FAST) is necessary to ensure their continued performance in a manner that meets CMP water quality standards.

N.J.A.C. 7:50-10.21(c), 10.22(a)3 and 4, 10.23(c), 10.23(d) and 10.23(i) are also being amended to reflect the Commission's decision to authorize the FAST treatment technology to be used on a permanent basis, subject to the provisions of proposed N.J.A.C. 7:50-6.84(a)5iv(2)(B)-(J).

The above-described amendments relative to the FAST technology apply to residential development throughout the Pinelands Area. The Commission is also proposing to further amend N.J.A.C. 7:50-6.84(a)5 in order to expand opportunities for the use of advanced treatment technologies, such as FAST, for nonresidential development. Since 1987, advanced treatment systems have been permitted to serve nonresidential development only in the growth-oriented areas of the Pinelands, namely, the Regional Growth Area, Pinelands Villages and Pinelands Towns, and in small infill areas within the Preservation Area District. Given its successful experience over the years with evaluating advanced treatment systems proposed for various types of commercial uses in the Pinelands Area, the Commission believes it is now appropriate to

allow the nonresidential use of advanced treatment systems in additional Pinelands management areas, subject to a number of important conditions.

Therefore, proposed N.J.A.C. 7:50-6.84(a)5iii(2) is being added to authorize the use of advanced treatment systems for certain nonresidential development in the Rural Development Area, Forest Area and Agricultural Production Area. Pursuant to proposed N.J.A.C. 7:50-6.84(a)5iii(2)(A), the proposed nonresidential development must constitute expansion of a nonresidential use that was in existence on January 14, 1981, the effective date of the CMP. The change of such an existing use to another permitted nonresidential use will also qualify. In either case, the existing nonresidential use must currently be using an on-site wastewater disposal system that does not reduce the level of nitrate/nitrogen in the waste water (N.J.A.C. 7:50-6.84(a)5iii(2)(B)) and the existing nonresidential use must be of such a size and scale that it does not currently comply with CMP water quality standards (N.J.A.C. 7:50-6.84(a)5iii(2)(C)). Finally, the proposed nonresidential development must not exceed 50 percent of the floor area, area of the use or the capacity of the existing nonresidential use on January 14, 1981 (N.J.A.C. 7:50-6.84(a)5iii(2)(D)).

The CMP does not permit sewer service in the Rural Development, Forest or Agricultural Production Areas, unless necessary to address a documented public health problem. Therefore, all development in these management areas must rely on some type of septic system and have sufficient land area to comply with CMP septic dilution requirements. The use of a standard septic system can require approximately one acre of land for every 800-1,000 square feet of nonresidential floor area. Nonresidential uses constructed prior to the CMP are frequently located on lots that are too small to provide sufficient area for dilution. Under current CMP standards, expansion of such uses is only feasible when additional vacant, contiguous lands can

be acquired and used for dilution purposes. Allowing these uses to install advanced treatment systems will serve two purposes. First, current and future waste water from the uses will be treated such that nitrate/nitrogen levels are reduced to comply with CMP water quality standards. Second, the existing uses will be able to expand or change to other nonresidential uses that might have increased waste water flows. The result will be improved water quality and a greater likelihood that pre-existing uses, often of great economic importance to the more rural communities of the Pinelands Area, will remain viable.

Two other amendments should be noted. First, N.J.A.C. 7:50-6.84(a)5iii(1) is being created to make clear that the use of advanced treatment systems for nonresidential development in Regional Growth Areas, Pinelands Villages and Pinelands Towns continues to be permitted without the above-described new conditions. This new subsection will now also reference Military and Federal Installation Areas. Second, nonresidential development in infill areas within the Preservation Area District will be subject to the new conditions specified at proposed N.J.A.C. 7:50-6.84(a)5iii(2). Although advanced treatment systems were previously permitted to serve nonresidential development in infill areas, the Commission believes it is appropriate that such development in this most sensitive of Pinelands management areas be limited, just as it will be in the Rural Development, Forest and Agricultural Production Areas. The impacts of this particular amendment are expected to be very limited, given that there are only five infill zones in the Pinelands, they total less than 2,100 acres in size and are primarily intended for residential development.

It is impossible for the Commission to accurately estimate the number of existing businesses in the Rural Development, Forest, Agricultural Production and Infill Areas that might qualify for expansion through use of an advanced treatment system. There are only a handful of

commercial and industrial zones in the Forest, Agricultural Production and Infill Areas and they are small in terms of land area. However, other scattered pre-existing uses do exist and could qualify. Most eligible nonresidential uses are likely to be in the Rural Development Area, which contains larger nonresidential zoning districts and serves as a transition area between the growth- and conservation-oriented areas of the Pinelands. The Commission does not expect that a large number of existing businesses in these areas will seek to use advanced treatment systems as a means of facilitating expansion, simply because the advanced treatment systems are not inexpensive. However, the Commission's hope is that several of the larger existing businesses will take advantage of the opportunity.

Septic Management

Amendments are proposed at N.J.A.C. 7:50-3.39(a)2x and 6.85(c) to remove from the CMP requirements for the municipal establishment of long-term maintenance programs for alternate design wastewater treatment systems. These requirements, added to the CMP in 2010, were originally intended to ensure that maintenance of alternate design systems would continue beyond the five year duration of the maintenance contracts required under the Commission's Alternate Design Wastewater Treatment System Pilot Program. Since that time, NJDEP has adopted regulations (see N.J.A.C. 7:9A-8.3 and 12.3) to require long-term maintenance and monitoring programs for such wastewater treatment systems throughout the state. Therefore, the CMP requirements are duplicative and, therefore, no longer necessary. The Commission will continue to assist Pinelands counties and municipalities and the NJDEP with the establishment of maintenance and monitoring programs, including providing data on existing alternate design

wastewater treatment systems in the Pinelands Area.

Signs

The fourth comprehensive review of the CMP recommended further inquiry into the signage standards of the CMP as they relate to new sign technologies. After a comprehensive review of the current CMP signage provisions, Commission practices, and best current practices in signage regulation, the Commission proposes to amend N.J.A.C. 7:50-6.106 through 6.109 in order to: clarify the signage standards of the CMP; delegate regulatory control of on-site signage to local municipalities; and to regulate the use of electronic message displays on off-site signs.

The Commission proposes to amend the section headings for N.J.A.C. 7:50-6.107, 6.108, and 6.109 to off-site signs, on-site signs, and provisions for permitted signs, respectively. These new section headings reflect a reorganization of CMP signage regulations into a more easily interpretable structure that more closely aligns with current practices for local municipal sign regulation.

The Commission proposes to delegate regulatory authority of on-site signs to the municipalities of the Pinelands Area (N.J.A.C. 7:50-6.107). Since the adoption of the CMP, Pinelands Area municipalities have been the primary regulators of on-site signs due to the exemption of on-site signs from CMP application requirements. This policy change is further supported due to the local scale of signage impacts and the ability of municipalities to better adapt and respond in a timely fashion to evolving community values and new sign technologies. This amendment would also afford Pinelands Area municipalities the opportunity to regulate on-site business signs on an equal basis, regardless of the Pinelands management area wherein the business is located.

The Commission proposes to make clarifying amendments to provisions regulating off-site signs (N.J.A.C. 7:50-6.108). The proposed rules clarify which signs are non-conforming, and therefore, eligible to count towards a new off-site sign if removed, and which signs are unlawful, and therefore, ineligible to count towards a new off-site sign and must be removed immediately. Such non-conforming signs would only include those off-site signs that: (1) predate the CMP and (2) are located outside of the Regional Growth Area, Pinelands Towns, and prescribed areas of the Rural Development Area and Pinelands Villages. These changes reflect the current practices of the Pinelands Commission.

The Commission proposes to permit, at the option of the municipality, off-site signs with electronic message displays (N.J.A.C. 7:50-6.109). The proposed rules would prohibit use of electronic message display by non-conforming, off-site signs. For example, the CMP would not permit the conversion of an existing off-site sign in the Forest Area or Preservation Area District to an electronic message display. The allowance of such electronic message displays would not extend to those signs advertising agricultural commercial establishments because of their typical locations in Special Agricultural Areas and Agricultural Production Areas.

If a municipality opts to permit electronic message displays on off-site signs, the proposed amendment would require the municipality to adopt provisions controlling the message transition and duration between transitions. These rules are closely aligned with New Jersey Department of Transportation standards (N.J.A.C. 16:41C-11.1). Additionally, such municipalities would be required to adopt some degree of brightness standards that would be reviewed by the Commission as part of the ordinance certification process. Lastly, these rules would require such signs to have a built-in automatic dimming technology that adjusts the sign's brightness to ambient light conditions.

The proposed rules for electronic message displays would only apply to off-site signs. Therefore, it would be at the discretion of the municipality to determine how to regulate on-site signs with regard to such technologies.

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.

Social Impact

No significant 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 that do result are expected to be positive.

The proposed fee amendments are expected to have a positive social impact for New Jersey's taxpayers because the fees will, on a relative basis, reduce the need for general state funding to support the legislatively mandated permitting responsibilities of the Commission. In addition, society as a whole will continue to benefit from the protection of the unique resources of the Pinelands, the nation's first national reserve. The Pinelands Area is comprised of pine-oak forests, cedar swamps, extensive surface and groundwater resources of high quality, threatened and endangered species and other unique natural, ecological, agricultural, scenic, cultural and recreational resources. The proposed amendments to the Commission's application fee schedule will help to ensure that the Commission has the resources necessary to undertake its statutorily mandated review of development applications to ensure that such projects adhere to the land use and environmental requirements of the Pinelands CMP. Applicants are also likely to avoid

significant application processing delays that could occur if less revenue results in a significant reduction in resources dedicated to application reviews. On the other hand, applicants may also view these proposed rates in a negative light because the proposed amendments will increase their review costs.

The proposed decrease in development application fees for solar energy facilities could have a positive social impact if it encourages more landowners in the Pinelands Area to develop such facilities.

The proposed escrow amendments are expected to have a positive social impact for New Jersey's taxpayers as they will allow the Commission to purchase software or other equipment necessary to review the complex matters that are from time to time brought before the Commission by private or other public entities, without the need to expend public funds. Likewise, escrow funds will be available for use if a particularly complex or contentious application necessitates rental of a larger public meeting space than the Commission can provide at its own offices.

The proposed amendments to the Commission's hearing procedures, set forth at N.J.A.C. 7:50-4.3(b)2i, continue to provide ample opportunities for public notice and involvement. Notices for all public hearings held by the Commission will be posted on the Commission's website and provided to relevant municipalities and counties at least 10 days in advance of any hearing. Notices will also continue to be provided to any member of the public who has asked to be included on the Commission's hearing registry, established pursuant to N.J.A.C. 7:50-4.3(b)2i(2). Such notices are provided free of charge via email to all persons on the registry, and at a small fee to cover the costs of copying and postage if the notices must be sent via regular mail. Elimination of the requirement that certain hearing and other notices be posted on

properties proposed for development is not expected to reduce public awareness of or participation at hearings held by the Commission.

The proposed clarifications to CMP landfill capping requirements may encourage more municipalities and other applicants to approach the Commission to discuss their landfill closure plans because they will have a better understanding of the circumstances under which an impermeable cap is not required. For those that qualify, proper closure of these old landfills may then proceed more quickly, which will have a positive social impact on the communities in which they are located.

The proposed amendments provide permanent approval status to the FAST advanced treatment technology because it has demonstrated, through participation in the pilot program, that it is capable of meeting Pinelands water quality standards when used to service residential development on lots as small as 1.4 acres. Adoption of the amendments will have a positive social impact by permitting the use of this proven technology on parcels between 1.4 and 3.2 acres in size, without the expense of water quality testing. 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.

Economic Impact

The proposed amendments clarify and make a number of changes to the Commission's application fee requirements. Fees for solar energy facility applications will decrease, in some cases quite significantly. Fees for all other types of development applications submitted to the Commission will increase, particularly those submitted to resolve identified violations of the CMP. It is difficult to predict the exact impacts of these amendments, as the actual amount of

revenue generated by the application fees in the future will be a function of the number and type of development applications submitted to the Commission each year.

The following examples help to illustrate the impact of the proposed fee changes on several types of projects:

- A 50-lot residential subdivision will be subject to a \$2,787.50 fee increase, amounting to an additional cost of \$55.75 per lot;
- The fee for a 20-acre resource extraction (mining) proposal will increase by \$525 or \$26.25 per acre of land to be mined;
- A 15,000 square foot municipal building with an estimated construction cost of \$1,875,000 will be subject to a fee increase of \$2,344, or an additional cost of \$0.16 per square foot.

Although the Commission views these as modest increases, it also recognizes that applicants may view them in a negative light. However, it should be noted that the Commission's fee schedule is not designed to recapture all of the Commission's permit-related expenses. Rather, the Commission expects that, if current application trends continue, perhaps 43 percent of the Commission's permit-related expenses could be recouped through application fee revenue.

The proposed amendments at N.J.A.C. 7:50-1.7 that allow the Executive Director to request escrows to cover the cost of software, equipment, facilities or services necessary to review a particular development application 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 and complete its review procedures in a timely and informed manner. This should result in an improved and more

efficient review by the Commission, partially offsetting the increased financial obligation of the applicant.

The Commission also expects there to be decreased costs to the Commission as a result of the efficiency measures implemented in the proposed amendments. In particular, eliminating the need to send certain documents via certified mail will save both time and money. In the past five years alone, the Commission spent approximately \$6,500 to send over 1,050 letters to applicants via certified mail pursuant to N.J.A.C. 7:50-4.37(b) and 4.40(b). Had those same 1,050 documents been sent via email, as would be permitted under the proposed amendments, there would have been no cost to the Commission. Had they been sent via regular mail, which would also be permitted under the proposed amendments, the expenditure of less than \$500 would have been required. Based on current development activity levels, it is estimated that the Commission could save as much as \$1,300 per year by eliminating certified mailing requirements. The proposed amendments also eliminate certified mailing requirements for municipalities; thus, there will be a cost savings for those entities as well.

The proposed amendments allowing for use of advanced treatment systems for certain nonresidential uses in the Rural Development, Forest and Agricultural Production Areas should have a positive economic impact. Under current CMP standards, these businesses are precluded from expansion because they do not currently meet CMP water quality standards. The amendments provide a new opportunity for up to 50 percent expansion of existing businesses that meet certain conditions and install an advanced waste water treatment system.

The flexibility granted to municipalities in the regulation of on-site signs may provide businesses opportunities to install more signage and/or utilize modern sign technologies in their advertising. The flexibility granted to municipalities in the regulation of off-site signs may

provide additional revenues and business opportunities to the owners of off-site signs if permitted to convert to a sign with an electronic message display.

The proposed amendments release the FAST technology from the pilot program and grant permanent approval status to this technology. Granting of permanent approval status is expected to result in a positive economic impact to the residents of the Pinelands. Permanent approval means that the FAST technology will no longer be subject to laboratory analysis of treated wastewater discharged from this technology. The elimination of laboratory testing requirements is expected to result in cost savings to owners of a FAST system.

Environmental Impact

The Commission does not anticipate that the proposed amendments will have any negative environmental impact.

Decreased fees for solar energy facilities may serve to encourage applicants to move forward with the development of such facilities, consistent with the goals of the New Jersey Energy Master Plan.

The Commission does not anticipate that the proposed amendments to the Commission's application fee schedule will have any negative environmental impact. The proposed amendments do not modify the land use and environmental requirements of the CMP in any way. Applications for development will still need to demonstrate that they satisfy the land use and environmental standards of the Plan, as is the case now.

The proposed amendments at N.J.A.C. 7:50-6.84(a)5iii(2) allow certain existing nonresidential uses in the Pinelands Rural Development, Forest and Agricultural Production Areas to use advanced wastewater treatment systems as a way of improving water quality and

facilitating expansion of businesses that were constructed prior to the effective date of the CMP (January 14, 1981). Use of such systems, which treat waste water rather than simply diluting it, will enable the existing businesses to come into conformance with CMP water quality standards, providing an obvious environmental benefit to the Pinelands.

The proposed amendments to allow electronic message displays for on-site signs and certain off-site signs may be viewed by some as detracting from the scenic qualities of the Pinelands and posing a threat to ecosystem functioning due to ecological light pollution. However, these types of off-site signs will only be permitted where they are consistent with other permitted, similar nonresidential uses, that is, in Regional Growth Areas, Pinelands Towns, and in non-residential zones in the Rural Development Areas and Pinelands Villages close to the Regional Growth Areas and Pinelands Towns. Furthermore, provisions have been included to mandate the shielding of external lights on off-site signs that are directed to the sky. Also, it is worth noting that the type of lighting used in electronic message displays tends to be less intense than the more traditional lighting used in older signs. As such, light impacts may actually be reduced through the use of electronic message displays. With regard to the impacts of ecological light pollution, the literature on the impacts of artificial light at night (ALAN) was investigated, but the field of study has yet to reach a consensus on science-based brightness standards for signs that would mitigate such ecological impacts.

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 that 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 providing an opportunity for water quality improvements through the use of advanced waste water treatment systems. The other proposed amendments may be categorized as mere clarifications or largely procedural in nature.

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

Jobs Impact

The proposed amendments are not expected to have any significant jobs impacts. Although the amendments do increase development application fees on the private and public sectors, the added costs, as explained in the Economic Impact section above, are not significant and are not expected to result in a loss of jobs.

The remainder of the proposed amendments are not expected to have any impact on the creation or loss of jobs.

Agriculture Industry Impact

The proposed amendments make changes to the Commission's fee schedule. To the extent that members of the agriculture industry located within the Pinelands intend to engage in activities that will necessitate submission of a development application, they may be impacted. Fees for most commercial activities (agricultural commercial establishments, agricultural

processing facilities, etc.) are being increased. Application fees for solar energy facilities are being decreased and this may be of benefit to farm owners. For the most part, principal agricultural activities do not require the submission of development applications and therefore will continue to pay no fees to the Commission. The Commission does not believe that the proposed amendments will have any significant impact on the agriculture industry.

The proposed amendments to N.J.A.C. 7:50-6.84(a)5iii(2) provide an opportunity for existing businesses in the Agricultural Production Area to expand by using advanced waste water treatment systems. To the extent such businesses are owned, operated or used by members of the agriculture industry, they will benefit from these new provisions.

Regulatory Flexibility Analysis

The proposed amendments revising the Commission's application fee schedule will not impose any additional reporting or recordkeeping requirements on small businesses, nor will the amendments require small businesses to employ professional services. As discussed in the Economic Impact Section above, the proposed amendments may have an impact on developers, contractors and property owners involved or interested in certain development projects within the Pinelands Area. Because most businesses in the Pinelands Area may be characterized as small in size and number of employees, at least in comparison to the remainder of New Jersey, the proposed fee amendments may have an impact on "small business" as defined by the Regulatory Flexibility Act., N.J.S.A. 52:14B-16 et seq. However, because the Commission's fee schedule is based on the type of development application submitted, the proposed amendments are expected to have the same impact on small businesses as on any other entity. Given that the resources of the Pinelands are important to all State citizens, and the proposed amendments are necessary to

provide revenue for appropriate review and protection of these resources, no lesser requirements for small businesses are provided.

The proposed amendments also allow the Commission to require escrow funds for the acquisition of software, equipment, facilities or services deemed necessary for the review of matters pending before the Commission that involve complex issues, necessitate specialized expertise or require considerable staff review. While it would be impossible to identify all of the matters brought before the Commission that might result in an escrow requirement, the two most likely are 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 by the amended escrow requirements.

No adverse economic impact on small businesses is to be expected from the revised sign standards. New revenue opportunities may occur for outdoor advertising companies permitted to install an electronic message display on their off-site signs. Such technologies would allow multiple advertising messages to be displayed in a given period of time thus providing more sources of revenue for the sign owner and/or land owner. Similarly, small businesses may be afforded more flexibility in the size, quantity, and design of their on-site signs, which may provide more effective advertising.

The proposed amendments to N.J.A.C. 7:50-6.84(a)5iii(2) provide a new opportunity for expansion of existing businesses in the more rural portions of the Pinelands Area. Although an exact percentage is unknown, many of the affected businesses are likely to qualify as small businesses under the Act and will benefit from the amendments.

The proposed amendments will not impose any 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.

Housing Affordability Impact Analysis

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008 by P.L. 2008, c. 46, the Commission has evaluated the proposed amendments to determine the impact, if any, on the affordability of housing.

Clearly, increased development application fees will have an impact on those applicants seeking to build new residential developments in the Pinelands Area. The increased fees will constitute a very small portion of the total project cost for such developments. Therefore, the Commission believes it is extremely unlikely the economic impacts of the proposed fee amendments would evoke a change in the average costs associated with housing.

The proposed amendments have the potential to reduce the cost of alternate design wastewater treatment systems for those landowners seeking to develop homes on lots between 1.4 and 3.2 acres in size in the unsewered portions of the Pinelands Area. This is because the FAST system will now be authorized for use on a permanent basis in association with such development. The costs associated with monitoring this technology will be eliminated, resulting in decreased costs of the systems for homeowners. In addition, adding a third system to the list of those authorized for permanent use may increase competition amongst the three (Amphidrome, Bioclere and FAST) and result in reduced prices.

It is unlikely that any of the other proposed amendments would evoke a change in the average costs associated with housing.

Smart Growth Development Impact

N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c.46, requires that proposed amendments be evaluated to determine their impacts, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan (State Plan). Planning Areas 1 and 2 do not exist in the Pinelands Area. Likewise, the State Plan does not designate centers within the Pinelands Area. Instead, N.J.S.A. 52:18A-206.a provides that the State Plan shall rely on the Pinelands CMP with respect to the Pinelands. Therefore, the Commission has evaluated the impact of the proposed amendments on Pinelands management areas that are equivalent to Planning Areas 1 and 2 and designated centers (that is, Regional Growth Area, Pinelands Villages and Pinelands Towns), as designated by the CMP.

The proposed amendments are not anticipated to have any significant impact on housing production. The amendments relative to the FAST treatment technology will allow for the installation and use of this technology on a permanent basis 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 and equivalent to designated centers under the State Plan.

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

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

7:50-1.6 Fees

(a) Except as provided in (a)1 and 2 below, all applications required or permitted by any provision of this Plan shall be accompanied by a nonrefundable application fee of \$[200.00]**250.00** or a fee calculated according to the fee schedule set forth in (b) through [(k)] **(l)** below, whichever is greater. No application filed pursuant to this Plan shall be reviewed or considered complete unless all fees required by this Part have been paid and any escrow required pursuant to N.J.A.C. 7:50-1.7 has been submitted.

1.-2. (No change.)

(b) The application fee for a residential development application submitted pursuant to N.J.A.C. 7:50-4.14, [or] 4.33, **4.52 or 4.66** shall be calculated as follows:

1. There shall be a \$[200]**250** fee for a residential development consisting of one unit or one lot;
2. The fee for all other residential developments shall be calculated based on the number of proposed dwelling units or lots, including those to be utilized for stormwater facilities, open space, recreational facilities or other accessory elements of a residential development, according to the following:
 - i. \$[200.00]**250.00** per dwelling unit or lot for the first four units or lots;
 - ii. \$[225.00]**281.25** per dwelling unit or lot for units/lots five through 50;
 - iii. \$[125.00]**156.25** per dwelling unit or lot for units/lots 51 through 150;
and
 - iv. \$[100.00]**125.00** per dwelling unit or lot for units/lots in excess of 150.

(c) The application fee for a commercial, institutional, industrial or other non-residential development application submitted pursuant to N.J.A.C. 7:50-4.14, [or] 4.33, **4.52 or**

4.66 shall be calculated in accordance with the following, based on typical construction costs, except as provided in (c)1 through [7]9 below:

Construction Cost	Required Application Fee
\$0 - \$500,000	1.25% of construction costs
\$500,001 - \$1,000,000	\$6,250 + 1% of construction costs above \$500,000
Greater than \$1,000,000	\$11,250 + 0.75% of construction costs above \$1,000,000

[one percent of construction costs for the first \$500,000 of the total construction cost; three-fourths percent of construction costs for the portion of the construction costs between \$500,000 and \$1 million; and one-half percent of construction costs for the portion of the construction costs in excess of \$1 million.] Typical construction costs shall include all costs associated with the development for which the application is being submitted, including, but not limited to, site improvement and building improvement costs, but shall not include interior furnishings, atypical features, decorative materials or other similar features. [For fees calculated based on the percentage construction costs, such costs shall be supported by the sworn statement of a licensed architect, licensed engineer, or other qualified individual, if an architect or engineer has not been retained for the project, as to the expected construction costs.] **Supporting documentation of the expected construction costs shall be submitted as part of the application for development, unless the maximum fee pursuant to (e)4 below is required, in which case no such documentation shall be necessary.**

1. For an off-road vehicle event conducted in accordance with N.J.A.C. 7:50-6.143(a)4, the fee shall be \$[5.00]**6.25** per mile, **or portion thereof**, of the route proposed;

2. For a forestry application or renewal application, submitted pursuant to N.J.A.C. 7:50-6.43(b) or (c), for forestry activities involving 10 or more acres, the fee shall be \$[5.00]**6.25** per acre, **or portion thereof**, that is subject to the forestry activities; and
3. For the development of a golf course, the fee shall be \$[150.00]**187.50** per acre, **or portion thereof**, devoted to the golf course facility, including, but not limited to, the golf course and associated forested areas, club house, putting greens, driving range, parking areas, locker rooms and accessory buildings, such as rest rooms, maintenance buildings, and other recreational areas depicted on the site plan submitted as part of the application. All areas associated with the planning, construction, operation or maintenance of a golf course facility, including those areas not directly associated with golfing or a recreational activity, must be included in the acreage used to calculate the applicable application fee for the development of a golf course;
4. For a proposed linear development, the application fee shall be \$[150.00]**187.50** per acre, **or portion thereof**, of all land included in the right of way of the proposed linear development project [plus \$150.00 per acre] **and all land** located outside the right of way that will be disturbed as part of the linear development project. "Linear development" means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission or distribution lines, which have the basic function of connecting two points, the rights-of-way therefor, and any accessory structures or uses directly associated therewith. **For purposes of this section, [L]linear**

development shall not include residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, **bridges** or internal circulation roads;

5. For a resource extraction permit application or permit renewal application, the application fee shall be \$[1,500]**1,875** plus \$[30.00]**37.50** per acre to be mined, **or portion thereof**, within each permit period;
6. For a change of use with no additional development or **a** home occupation[s], the application fee shall be \$[200.00]**250.00**; [and]
7. For an application for a subdivision or resubdivision only, with no other development, the application fee shall be calculated according to the formula in (b)2 above, based on the total number of lots which will exist following the subdivision or resubdivision regardless of the number of lots that existed prior to the subdivision[.];
8. **For the demolition of a structure 50 years or older, the fee shall be \$250.00; and**
9. **For the development of a solar energy facility, the fee shall be \$1,500.00 plus \$500 per acre of land to be developed, or portion thereof, including any off-site development.**

(d) (No change.)

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

1. Be increased by \$[2,500]**3,125** if an individual on-site septic system is proposed pursuant to N.J.A.C. 7:50-6.84(a)5iv(2)(I) or **6.84(a)5iv(3)**;

- 2.-3. (No change.)
- (f) An application fee in accordance with (a) through (d) above shall be submitted for an application where a certificate of filing [or], certificate of completeness **or public development approval** has not been issued pursuant to N.J.A.C. 7:50-4.34 [or], 4.15 **or 4.56** and either no direct activity in furtherance of the Commission's application process has occurred for a period of two years or there has been a significant or material change in the proposed development that is the subject of the application.
- (g) (No change).
- (h) The fee for a Letter of Interpretation or Amended Letter of Interpretation **submitted** pursuant to N.J.A.C. 7:50-4, Part VI, shall be determined according to the following:
1. There shall be no fee for a Letter of Interpretation involving the allocation of Pinelands Development Credits except for an Amended Letter of Interpretation **requested within five years of issuance of the original Letter of Interpretation**, in which case the fee shall be \$[200.00]**250.00** plus \$[5.00]**6.25** per acre of land for which the amended allocation is requested; and
 2. The application fee for any other Letter of Interpretation or Amended Letter of Interpretation shall be \$[200.00]**250.00**.
- (i) The application fee for the review and processing of a request for a letter stating information that is available in a municipal land use ordinance or stating other information readily available to the public from a source other than the Pinelands Commission shall be \$[200.00]**250.00**.
- (j) The application fee for an Amended Certificate of Filing, **Amended Certificate of Completeness or amended public development approval** shall be \$[200.00]**250.00** or

10 percent of the original permit fee, whichever is greater, with a maximum fee of \$[3,000]**3,750**. If a request for an Amended Certificate of Filing, **Amended Certificate of Completeness or amended public development approval** is submitted more than five years following issuance of the original Certificate of Filing, **Certificate of Completeness or public development approval**, the fee shall be calculated as if a new application had been submitted.

(k) (No change.)

(l) The application fee for a Certificate of Filing or Certificate of Completeness associated with an application for general development plan approval in accordance with N.J.S.A. 40:55D-45.3 shall be one-half of the estimated application fee calculated in accordance with (b) through (d) above. The remainder of the application fee, adjusted as necessary to reflect any changes from the general development approval, shall be due upon submission of any subsequent applications for individual phases of the development, each of which shall require a new Certificate of Filing or Certificate of Completeness.

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 development applications or other 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 will require considerable staff review **or unusual expenditures, including costs associated with specialized software, equipment,**

facilities or services. Should the Executive Director determine that an escrow is necessary:

1. (No change.)
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 occurs **pursuant to (a) above** [either as a result of retaining any consultants or for the considerable amount of staff time required for the review and,]. [i]In the case of an escrow for an intergovernmental memorandum of agreement authorized pursuant to N.J.A.C. 7:50-4.52(c)2, **monies submitted** shall also be used for developing, implementing and monitoring such agreement;
- 3.-7. (No change.)

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings ascribed to them.

...

“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 that has** [includes the systems listed below, 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. In addition, alternate

design pilot program treatment system shall also include any technology or technologies that have] been approved by the Commission for participation in the alternate design wastewater treatment systems pilot program pursuant to N.J.A.C. 7:50-10.23(b). Detailed plans and specifications for each authorized technology are available at the principal office of the Commission.

- [1. FAST; or
2. Other nitrogen reducing technologies approved by the Commission pursuant to N.J.A.C. 7:50-10.23(b).]

“Electronic message display” means an element of a sign that is capable of displaying words, symbols, figures or images that electronically or mechanically change by remote or automatic means.

“Interested [person]party” means any [persons whose right to use, acquire or enjoy property is or may be affected by any action taken under this Plan, or whose right to use, acquire or enjoy property under this Plan or under any other law of this State or of the United States has been denied, violated or infringed upon by an action or a failure to act under this Plan] person or entity who has either submitted an application for development to the Pinelands Commission or who has a particularized property interest sufficient to require a hearing on constitutional or statutory grounds.

“Mail” shall mean regular mail or e-mail.

“Off-site [commercial advertising] sign” means a sign [which] that directs attention to a business, commodity, product, service, [or] entertainment, or other attraction conducted, sold or offered at a location other than the premises on which the sign is located.

“Sign” [means any object, device, display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images. Signs do not include the flag or emblem of any nation, organization of nations, state or city, or any fraternal, religious or civic organizations; merchandise, pictures or models of products or services incorporated in a window display; works of art which in no way identify a product; or scoreboards located on athletic fields.] **means any structure including, but not limited to, an advertising structure and sign face used outdoors and affixed to or upon property to display messages and/or images within public view that is designed to attract, or does attract, the attention of pedestrians or operators or passengers of motor vehicles using the roads, highways, and other public thoroughfares and places, and shall include any writing, printing, painting, display, emblem, drawing or other device whether placed on the ground, rocks, trees, tree stumps or other natural structures, or on a building, structure, signboard, billboard, wallboard, roofboard, frame, support, fence, or elsewhere, and any lighting or other accessories used in conjunction therewith.**

...

7:50-3.24 Revocation of delegation and notice thereof

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

(c) Notice of revocation: Within 10 days following entry of any order entered by the Commission pursuant to (b) above, revoking, suspending or modifying any delegation pursuant to N.J.A.C. 7:50-3.22(b), the Executive Director shall give notice of such order

and of its terms, by [certified] mail, to the affected county and to all municipalities within such county.

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

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

1. (No change.)

2. They include provisions which:

i.-vii. (No change.)

viii. Establish and implement a mitigation plan as part of any municipal stormwater management plan and ordinance adopted in accordance with N.J.A.C. 7:8-4.2(c)11 which:

(1)-(4) (No change.)

(5) Requires that the municipality expend any contributions collected pursuant to (a)2ix(4) above within five years of their receipt; **and**

ix. Are designed to implement a clear and straightforward process for the review of applications for residential cluster development in the Forest and Rural Development Areas, in accordance with the requirements for cluster development set forth in N.J.A.C. 7:50-5.19(c) and (d). The Commission may certify municipal clustering ordinances that contain different clustering standards than those set forth in N.J.A.C. 7:50-5.19(c) and (d) provided that those standards are supported through the application of sound land use planning principles, are based upon local conditions or

circumstances that warrant such changes and do not undermine the overall goals and objectives of the Forest and Rural Development Area clustering program set forth at N.J.A.C. 7:50-5.19(c) and (d).[; and

- x. Establish a program for the long-term maintenance of Pinelands alternate design wastewater treatment systems which, at minimum, complies with and implements the provisions of N.J.A.C. 7:50-6.85(b) and (c), and N.J.A.C. 7:15-5.25(e)3. Said program may include the municipal collection of reasonable fees for the issuance of any required permits or other authorizations. The Commission may certify municipal ordinances that contain additional and/or different standards or procedures than those set forth in N.J.A.C. 7:50-6.85(b) and (c), provided those standards and procedures are based upon local conditions or circumstances that warrant such changes and will ensure the protection of surface and ground water quality consistent with N.J.A.C. 7:50-6, Part VIII.]

3.-13. (No change.)

(b) No change.

7:50-4.1 Applicability

- (a) For the purposes of this subchapter only, the following shall not be considered development except for the development of any historic resource designated by the Pinelands Commission pursuant to N.J.A.C. 7:50-6.154:

1.-3. (No change.)

4. The construction, repair or removal of any sign, except for the construction or replacement of any off-site [commercial advertising] sign **in accordance with N.J.A.C. 7:50-6.108(a)3, 4 or 5.**

5.-16. (No change.)

17. **To control and reduce the threat of wildfire:**

i. Prescribed burning; and

ii. **Linear** clearing [and maintaining of fire breaks] **of vegetation, including subsequent maintenance of that cleared area and vegetation, provided the linear clearing does not exceed six feet in width;**

18.-23. (No change.)

(b)-(d) (No change.)

7:50-4.3 Commission hearing procedures

(a) (No change.)

(b) Notice of public hearing

1. (No change.)

2. Persons entitled to notice:

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

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

(2) (No change.)

(3) If the public hearing involves certification of a municipal master plan or land use ordinances, **by posting the notice on the Commission's website, publication of the notice in an official**

newspaper of the Commission having general circulation in the area and sending a copy of the notice, by mail, to the municipal clerk and the planning board secretary of **the municipality seeking certification, the municipal clerk and planning board secretary of** each Pinelands municipality bordering the municipality seeking certification[;] and [to] the county clerk and the county planning board secretary of the county in which the municipality **seeking certification** is located and of the adjacent county if the municipality borders another county.

- (4) If the public hearing involves certification of a county master plan or regulations, by **posting the notice on the Commission’s website, publication of the notice in an official newspaper of the Commission having general circulation in the area and** sending a copy of the notice, by mail, to the [municipal] clerk and the planning board secretary **of the county seeking certification,** each Pinelands municipality in the county seeking certification and [to the county clerk and county planning board secretary of] each Pinelands county bordering the county seeking certification.
- (5) **If the public hearing involves an application for a Waiver of Strict Compliance submitted pursuant to N.J.A.C. 7:50-4.64(a)1, by sending a copy of the notice, by mail, to the applicant and the secretary of the county and municipal planning board and environmental commission, if any, with**

jurisdiction over the parcel on which development is proposed.

In addition, a copy of the notice shall be posted on the Commission's website and published in an official newspaper of the Commission having general circulation in the area. [If the public hearing involves certification of a county or municipal master plan or municipal land use ordinance or county development ordinance, by publication of a copy of the notice, at least once, in an official newspaper of the Pinelands Commission having general circulation in the area;]

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

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

Commission having general circulation in the area that may be directly affected by the memorandum of agreement **and posted on the Commission's website.**

- (8) (No change.)
- (9) If the public hearing involves a comprehensive plan submitted to the Commission pursuant to N.J.A.C. 7:50-5.4(c)6, by sending a copy of the notice and the comprehensive plan, by mail, to the mayor of each Pinelands municipality and the freeholder director and county executive of each Pinelands county. In addition, a copy of the notice shall be published in all the official newspapers of the Pinelands Commission and **posted on the Commission's website.**

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

- (1) If the public hearing relates to an application for development approval or an application for designation pursuant to N.J.A.C. 7:50-6.154, by sending a copy of the notice by certified mail to each owner of record, if different than the applicant, of any land on which development or designation is proposed; **and**
- (2) If the public hearing relates to an application for development approval [or an application for a Waiver of Strict Compliance submitted pursuant to N.J.A.C. 7:50- 4.64(a)1], by sending a copy of the notice, by mail, to:
 - (A) The secretary of the county and municipal planning board and environmental commission, if any, with jurisdiction

over the parcel on which development has been proposed;

and

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

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

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

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

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

1.-2. (No change.)

3. All decisions and orders of the Executive Director or the Commission shall be considered rendered three days after notice of such decisions and orders has been deposited in the [United States M]mail addressed to those persons identified in (e)2 above. **For purposes of computing the three day period, the date of deposition of the notice in the mail shall not be included.**

7:50-4.15 Action by Executive Director on application

Within 90 days following the receipt of a complete application for development, the Executive Director shall review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review issue a Certificate of Completeness stating whether the application should be approved, approved with

conditions or disapproved. The application may be approved or approved with conditions only if the development as proposed, or subject to any conditions which may be imposed, conforms to each of the minimum standards for development approval established by N.J.A.C. 7:50-4.16. The Executive Director may propose in said Certificate of Completeness any reasonable condition which he finds is necessary to achieve the objectives of this Plan. The Executive Director shall provide a copy of the Certificate of Completeness to the applicant, the Commission, [interested persons, including] all persons who have **individually** submitted information concerning the application, [as well as] all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

7:50-4.18 Report requirements of local permitting agency with respect to applications for development

(a)-(c) (No change.)

(d) Notice of preliminary approval: Notice of any grant of preliminary site plan or subdivision approval or any other preliminary approval of any application for development provided for by the Municipal Land Use Law or any county or municipal regulation or ordinance shall be given to the Commission by the local agency, by [certified] mail, within five days following such grant or approval. Such notice shall be in such form as the Executive Director shall from time to time specify, but shall contain at least the following information:

1.-6. (No change.)

[7. The names and addresses of all persons who actively participated in the local proceedings.]

(e) Notice of final determination. Notice of any final determination approving or denying any application for development shall be given to the Commission by the local agency, by [certified] mail, within five days following such determination and shall be in such form as the Executive Director shall from time to time specify; but such notice shall contain at least the following information:

1.-6. (No change.)

(f) (No change.)

7:50-4.19 Commission review following preliminary approval

(a) (No change.)

(b) Notice of decision and hearing: Within 30 days following receipt of a notice of preliminary approval containing all the information specified in N.J.A.C. 7:50-4.18(d), the Executive Director shall give notice of his determination by mail to the applicant, the local permitting agency which granted such preliminary approval, [interested persons, including] all persons who have individually submitted information concerning the application [or who participated in the local approval process, as well as], all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). If the Executive Director determines that the preliminary approval should be reviewed by the Commission, [the notice shall be sent by certified mail to the applicant and the local agency which granted the approval. T]the notice shall indicate that the applicant, the local permitting agency or any interested [person] **party** may, within 21 days of mailing such notice, request that a hearing be held

before an Administrative Law Judge pursuant to the procedures established by N.J.A.C. 7:50-4.91 for the purpose for reviewing such preliminary approval.

- (c) [Notices to interested persons:] If the Executive Director determines that a preliminary approval shall be reviewed by the Commission and a hearing has been requested before an Administrative Law Judge pursuant to (b) above, he shall notify all persons who [actively participated in the proceedings before the local permitting agency and all persons who] **individually** submitted information on the application to the Commission, **all persons who have requested a copy of the Commission's decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2)** [that they may participate in any proceedings held pursuant to this Part].

(d)-(e) (No change.)

7:50-4.20 Decision on review

- (a) If no hearing is requested pursuant to N.J.A.C. 7:50-4.19(b), the Executive Director shall, within 60 days after the time to request an appeal has expired, review the application, all other information in the file, the Certificate of Completeness and the local approval and determine whether the preliminary approval is in conformance with the minimum standards of this Plan. The Executive Director may recommend the Commission approve the preliminary approval, approve the preliminary approval with conditions or disapprove the preliminary approval. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local approving agency, [interested persons, including] all persons who have individually submitted information concerning the application, [or who participated in the local approval process, as well as]

all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

(b)-(d)(No change.)

7:50-4.22 Commission review following final local approval

(a) (No change.)

(b) Notice of decision and hearing: Within 15 days following receipt of a notice of final determination containing all the information specified in N.J.A.C. 7:50-4.18(e), the Executive Director shall give notice of his determination by mail to the applicant, the local permitting agency which granted such approval, [interested persons, including] all persons who have individually submitted information concerning the application, [or who participated in the local review process, as well as] all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). If applicable, such notice shall set a date, time and place for public hearing as required by N.J.A.C. 7:50-4.23. [Any notice scheduling a public hearing shall be sent by certified mail to the applicant and the local agency which granted the approval.]

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

7:50-4.23 Public hearing

If the Executive Director determines that the approval should be reviewed by the Commission, he shall, within 45 days following receipt of a completed notice of final determination given pursuant to N.J.A.C. 7:50-4.18(e), conduct a public hearing to be held

pursuant to the procedures set out in N.J.A.C. 7:50-4.3 of this Plan. The applicant shall have the burden of going forward and the burden of proof at the public hearing. Following conclusion of the public hearing, the Executive Director shall review the record of the public hearing and issue a report on the public hearing to the Commission. The Executive Director may recommend that the Commission approve the application, approve the application with conditions or disapprove the application. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local permitting agency, [interested persons, including] all persons who have individually submitted information concerning the application, [or who participated in the local review process, as well as] all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). However, an applicant may, at his option, waive all time limits for review imposed by the Pinelands Protection Act or this Plan and request that the hearing be held by an Administrative Law Judge pursuant to the procedures established in N.J.A.C. 7:50-4.91.

7:50-4.25 Commission review following local denial

- (a) (No change.)
- (b) Notice of decision and hearing: Within 30 days following receipt of a notice of a denial containing all the information specified in N.J.A.C. 7:50-4.18(e) the Executive Director shall give notice of his determination by mail to the applicant, the local permitting agency which denied the applicant, [interested persons, including] all persons who have individually submitted information concerning the application, [as well as] all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). If the Executive Director

determines that the denial should be reviewed by the Commission, the notice shall be sent by [certified] mail to the applicant and the local agency which granted the approval. The notice shall indicate that the applicant, the local permitting agency or any interested [person] **party** may, within 21 days of mailing of such notice, request that a hearing be held before an Administrative Law Judge pursuant to the procedures established by N.J.A.C. 7:50-4.91 for the purpose of reviewing the denial.

- (c) [Notices to interested persons:] If the Executive Director determines that a denial shall be reviewed by the Commission and a hearing before an Administrative Law Judge has been requested pursuant to (b) above, he shall notify all persons who [actively participated in the proceedings before the local permitting agency and all persons who] **individually** submitted information on the application to the Commission, **all persons who have requested a copy of the Commission's decision and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2)** [that they may participate in any proceedings held pursuant to this Part].

7:50-4.26 Decision on review

- (a) If no hearing is requested pursuant to N.J.A.C. 7:50-4.25(b), the Executive Director shall, within 60 days after the time to request an appeal has expired, review the application and all other information in the file, the Certificate of Completeness and the local denial and determine whether the denial is in conformance with the minimum standards of this Plan. The Executive Director may recommend the Commission approve the application, approve the application with conditions, disapprove the application or allow the local denial to stand. The Executive Director shall give written notification of his findings and

conclusions to the applicant, the Commission, the local approving agency, [interested persons, including] all persons who have individually submitted information concerning the application, [or who participated in the local approval process, as well as] all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

(b)-(d) (No change.)

7:50-4.35 Report requirements of local permitting agency with respect to applications for development

(a)-(c) (No change.)

(d) Notice of preliminary approval: Notice of any grant of preliminary site plan or subdivision approval or any other preliminary approval of any application for development provided for by the Municipal Land Use Law or any county or municipal regulation or ordinance shall be given to the Commission, by [certified] mail, within five days following such grant or approval. Such notice shall be in such form as the Executive Director shall from time to time specify, but shall contain at least the following information:

1.-4. (No change.)

5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission; **and**

6. A copy of the resolution or other documentation of the preliminary approval and a copy of the submitted preliminary plans that were approved by the local permitting agency[; and].
 - [7. The names and addresses of all persons who actively participated in the local proceedings.]
- (e) Notice of final determination: Notice of any final determination with respect to any application for development shall be given to the Commission, by [~~certified~~] mail, within five days following such determination and shall be in such form as the Executive Director shall from time to time specify; but such notice shall contain at least the following information:
- 1.-6. (No change.)
- (f) (No change.)

7:50-4.37 Commission review following preliminary approval

- (a) (No change.)
- (b) Notice of decision and hearing: Within 30 days following receipt of a notice of preliminary approval containing all the information specified in N.J.A.C. 7:50-4.35(d), the Executive Director shall give notice of his determination by mail to the applicant, the local permitting agency which granted such preliminary approval, [and interested persons, including] all persons who have individually submitted information concerning the application, [or who participated in the local review process, as well as] all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). If the Executive Director

determines that the preliminary approval should be reviewed by the Commission, [the notice shall be sent by certified mail to the applicant and the local agency which granted the approval. T]the notice shall indicate that either the applicant, the local permitting agency or any interested [person] **party** may, within 21 days of mailing of such notice, request that a hearing be held before an Administrative Law Judge pursuant to the procedures established by N.J.A.C. 7:50-4.91 for the purpose of reviewing such preliminary approval.

- (c) [Notices to persons participating in local permitting process; opportunity to comment:] If the Executive Director decides to review a preliminary approval and a hearing before an Administrative Law Judge has been requested pursuant to (b) above, he shall notify all persons who [actively participated in the proceedings before the local permitting agency] **have individually submitted information concerning the application, all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2)** [of such determination and inform them that they may participate in any proceedings held pursuant to this Part].

(d)-(e) (No change.)

7:50-4.38 Decision on review

- (a) Determination by Executive Director: If no hearing is requested by the applicant, the local permitting agency or any interested [person] **party** pursuant to N.J.A.C. 7:50-4.37(b), the Executive Director shall, within 60 days after the time to request a hearing has expired, review the application, all other information in the file including any staff reports and the local approval and determine whether the preliminary approval is in

conformance with the minimum standards of this Plan and the provisions of the relevant certified local ordinance. The Executive Director may recommend the Commission approve the preliminary approval, approve the preliminary approval with conditions or disapprove the preliminary approval. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local approving agency, [interested persons, including] all persons who have individually submitted information concerning the application, [as well as] all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

(b)-(d) (No change.)

7:50-4.40 Commission review following final local approval

(a) (No change.)

(b) Notice of decision and hearing: Within 15 days following receipt of a notice of final determination containing all the information specified in N.J.A.C. 7:50-4.35(e), the Executive Director shall give notice of his determination by [certified] mail to the applicant, [and] the clerk of the local permitting authority which granted such approval, [and interested persons, including] all persons who have individually submitted information concerning the application, [or who participated in the local review process, as well as] all persons who have requested a copy of said decision, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). [Any notice scheduling a public hearing shall be sent by certified mail to the applicant and the local agency which granted the approval.]

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

7:50-4.41 Public hearing

If the Executive Director determines that the approval should be reviewed by the Commission, he shall, within 45 days following receipt of a completed notice of final determination given pursuant to N.J.A.C. 7:50-4.35(c), conduct a public hearing to be held pursuant to the procedures set out in N.J.A.C. 7:50-4.3. The applicant shall have the burden of going forward and the burden of proof at the public hearing. Applications from applicants who do not provide notice for any hearing and do not make a timely request for adjournment shall be recommended for denial. For applicants who do not appear at more than one scheduled public hearing, the Executive Director may determine that no further adjournment of the public hearing will be provided. Following conclusion of the public hearing, the Executive Director shall review the record of the public hearing and issue a report on the public hearing to the Commission. The Executive Director may recommend that the Commission approve the application, approve the application with conditions or disapprove the application. The Executive Director shall give written notification of his findings and conclusions to the applicant, the Commission, the local approval agency, [interested persons, including] all persons who have individually submitted information concerning the application, [or who participated in the local review process, as well as] all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). However, an applicant may, at his option, waive all time limits for review imposed by the Pinelands Protection Act or this Plan and request that the hearing be held by an Administrative Law Judge pursuant to the procedures established in N.J.A.C. 7:50-4.91.

7:50-4.53 Pre-application conference and submission requirements

(a)-(d) (No change.)

(e) The notice in (c) and (d) above shall state:

1.-5. (No change.)

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided with a copy of said findings and conclusion and that any interested [person] **party** who is aggrieved by said determination is entitled to a hearing by appealing the determination.

7:50-4.54 Review of submission by Executive Director

Within 30 days following receipt of a completed application for public development, the Executive Director shall review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review make a determination whether the application should be approved, approved with conditions or disapproved. The application may be recommended for approval or approval with conditions only if the development as proposed, or subject to any conditions which may be imposed, conforms to each of the minimum standards for development approval established by N.J.A.C.

7:50-4.57. The Executive Director may attach to any determination to recommend approval of an application any reasonable condition which he finds is necessary to achieve the objectives of this Plan. The Executive Director shall give written notification of his findings and conclusion to the applicant, the Commission, [interested persons, including] all persons who have **individually** submitted information concerning the application, [as well as] all persons who have requested a

copy of said decision, and any person, organization or agency which has registered under 7:50-4.3(b)2i(2).

7:50-4.55 Rights of appeal

Any interested [person] **party** who is aggrieved by any determination made by the Executive Director pursuant to this Part may within 15 days appeal the Executive Director's determination to the Commission as provided by N.J.A.C. 7:50-4.91. Additional information not included in the Executive Director's determination may only be presented to the Pinelands Commission by requesting a hearing pursuant to N.J.A.C. 7:50-4.91.

7:50-4.56 Action by Commission

At the next regular Commission meeting after the time for appeal under N.J.A.C. 7:50-4.91 has expired and no interested [person] **party** has requested a hearing, the Commission may approve the determination of the Executive Director or refer the determination of the Executive Director to the Office of Administrative Law. If the Pinelands Commission fails to take any action at said meeting, the determination of the Executive Director shall be referred to the Office of Administrative Law unless an extension of time for the Commission to act is approved pursuant to N.J.A.C. 7:50-4.4. If the Executive Director's determination is referred to the Office of Administrative Law, the referral shall be treated as a petition for appeal in accordance with the provisions of N.J.A.C. 7:50-4.91.

7:50-4.66 Application

(a)-(c) (No change.)

(d) The notice in (b) and (c) shall state:

1. (No change.)

2. **That the Pinelands Commission will schedule and hold a public hearing on the application, the date and time of which will be posted on the Commission's website;**

3[2]. That action may be taken on the application after 10 days from the date the notice is published and mailed;

4[3]. That written comments on the application may be submitted to the Pinelands Commission **at the public hearing or in writing** and that all such comments received within 10 days of the mailing or publication of this notice **or within the notice period established for the public hearing** will be considered in the review of the application;

5[4]. That the application is available for inspection at the office of the Pinelands Commission;

6[5]. The **mailing** address, [and] phone number **and website address** of the Pinelands Commission; and

7[6]. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested [person] **party** who is aggrieved by said determination is entitled to a hearing by appealing the determination.

(e)-(h) (No change.)

(i) For an application submitted pursuant to N.J.A.C. 7:50-4.64(a)1, the Executive Director shall set the date, time and place for a public hearing for consideration for the application.

The public hearing shall be noticed and held by the Executive Director in accordance with the provisions of N.J.A.C. 7:50-4.3. [The applicant shall give notice of the hearing in accordance with N.J.A.C. 7:50-4.3(b)2ii and the notice required pursuant to (b) or (c) above must be incorporated therein.]

7:50-4.67 Action by Executive Director on application

Within 90 days following the receipt of a complete application for waiver, the Executive Director shall review the application and all information submitted by the applicant and any other person relating to the application and upon completion of such review make a determination whether the application should be approved, approved with conditions or disapproved. The application may be recommended for approval or approval with conditions only if the applicant, subject to any conditions which may be imposed, meets the standards for a Waiver of Strict Compliance established in N.J.A.C. 7:50-4.62. The Executive Director shall give written notification of his findings and conclusion to the applicant, the Commission, [interested persons, including] all persons who have **individually** submitted information concerning the application, [as well as] all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

7:50-4.68 Rights of appeal

Any interested [person] **party** who is aggrieved by any determination made by the Executive Director pursuant to this Part may within 15 days appeal the Executive Director's determination to the Commission as provided by N.J.A.C. 7:50-4.91. Additional information not included in the Executive Director's determination may be presented to the Pinelands Commission only by

requesting a hearing pursuant to N.J.A.C. 7:50-4.91. If the appeal is based on an allegation that the parcel does not have a beneficial use even considering the allocation of Pinelands Development Credits pursuant to N.J.A.C. 7:50-4.62(c)2, the applicant must include specific documentation concerning the economic value of each of the permitted uses of the parcel once the Pinelands Development Credits are transferred and documentation of the value necessary to give the parcel a beneficial use as part of the appeal process. If the applicant demonstrates that the allocation of the Pinelands Development Credits based on fair market value along with the other permitted uses of the parcel does not result in the parcel having a beneficial use, the allocation of Pinelands Development Credits shall be increased to the number necessary to provide the parcel with a beneficial use.

7:50-4.73 Request for interpretation

(a)-(c) (No change.)

(d) The notice in (b) and (c) above shall state:

1.-5. (No change.)

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested [person] **party** who is aggrieved by said determination is entitled to a hearing by appealing the determination.

(e)-(g) (No change.)

7:50-4.74 Interpretation by Executive Director

Except as provided in N.J.A.C. 7:50-4.75, the Executive Director shall, within 45 days following the receipt of a completed request for clarification or interpretation, review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review issue a letter of clarification or interpretation. A copy of the letter shall be provided to the appropriate municipal or county planning board, environmental commission, if any, [interested persons, including] all persons who have **individually** submitted information concerning the application, [as well as] all persons who have requested a copy of said determination and any person, organization or agency, which has registered under N.J.A.C. 7:50-4.3(b)2i(2). The letter issued by the Executive Director shall specify the grounds, reasons and analysis upon which the clarification or interpretation is based. In the event the Executive Director fails to render a letter of clarification or interpretation within 45 days of receipt of a completed application or such longer period of time as may be agreed to by the applicant, the applicant is entitled to request a hearing pursuant to N.J.A.C. 7:50-4.91. Nothing in this section shall be construed to prevent any person from resubmitting a request for clarification or interpretation.

7:50-4.79 Appeal

Any interested [person] **party** who is aggrieved by any clarification or interpretation given by the Executive Director pursuant to this Part may within 15 days appeal the Executive Director's clarification or interpretation to the Commission as provided in N.J.A.C. 7:50-4.91.

7:50-4.91 Appeal

(a) Notice: Any [person] **interested party** who [is granted, by any provision of this Plan,] **has** a right to appeal any determination made by the Executive Director to the Commission shall, within 15 days [after] **of the date** the decision is **deemed** rendered **in accordance with N.J.A.C. 7:50-4.3(e)3**, perfect such right by giving notice by mail of his intent to appeal to the Commission. Such notice shall include:

1.-5. (No change.)

(b) Any [person] **interested party** who [is granted, by any provision of this Plan,] **has** a right to request a hearing conducted by the Office of Administrative Law concerning a local approval which the Executive Director has determined should be reviewed by the Pinelands Commission shall, within 15 days [after] **of the date** the Executive Director's determination **is deemed rendered in accordance with N.J.A.C. 7:50-4.3(e)3**, perfect such right by giving notice by mail of his intent to request a hearing to the Commission. Such notice shall include the information specified in (a)1 through 5 above.

(c)-(e) (No change.)

7:50-6.64 Time limit and scope of resource extraction permits

(a) No permit authorizing resource extraction shall be issued for any period exceeding two years unless a program extending the duration of such permits has been established and certified by the Commission pursuant to N.J.A.C. 7:50-3.39. Such a program may allow permits authorizing resource extraction to be issued for periods exceeding two years, provided that:

1. (No change.)

2. Every such permit shall be issued subject to the following conditions to ensure conformance with the approved permit:

i.-iv. (No change.)

v. Any interested [person] **party** who is aggrieved by any determination of the Executive Director pursuant to (a)2iii or iv above may, within 15 days, appeal the Executive Director's determination to the Pinelands Commission as provided in N.J.A.C. 7:50-4.91(a). The Executive Director shall thereafter conduct a hearing pursuant to N.J.A.C. 7:50-4.3, unless the applicant requests a hearing before an Administrative Law Judge in which case the matter shall be referred to the Office of Administrative Law pursuant to N.J.A.C. 7:50-4.91(b), and submit a hearing report to the Pinelands Commission for a final determination;

vi.-vii. (No change.)

(b)-(c) (No change.)

7:50-6.75 Landfills

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

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

1. The landfill accepted only vegetative waste or construction for disposal;
2. An alternative means of addressing the public health and ecological risks associated with the landfill is available that will afford an equivalent level of

protection of the resources of the Pinelands than would be provided if the landfill were capped with an impermeable material; [or]

3. No leachate plume associated with the landfill exists and the landfill is not generating leachate; **or**
4. **A leachate plume associated with the landfill exists, but poses no significant ecological risk to wetlands.**

(d)-(i) (No change.)

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

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

- 1.-4. (No change.)
5. Individual on-site septic waste water treatment systems which are intended to reduce the level of nitrate/nitrogen in the waste water, provided that:
 - i.-ii. (No change.)
 - iii. The proposed development is either residential, or, if non-residential, is located in:
 - (1) [a]A Regional Growth Area, a Pinelands Village, a Pinelands Town **or a Military and Federal Installation Area**; or
 - (2) **A Rural Development Area, a Forest Area, an Agricultural Production Area, or** in an area within the Preservation Area District designated pursuant to N.J.A.C. 7:50-5.22(b)7, **subject to the following conditions:[;]**

- (A) The proposed nonresidential development constitutes expansion of a nonresidential use existing on January 14, 1981 or the change of a nonresidential use existing on January 14, 1981 to another nonresidential use that is a permitted use pursuant to the certified municipal land use ordinance;**
- (B) The existing nonresidential use relies on an existing on-site waste water disposal system that is not designed to reduce the level of nitrate/nitrogen in the waste water;**
- (C) The existing nonresidential use is of such a size and scale that it does not comply with N.J.A.C. 7:50-6.84(a)4ii; and**
- (D) The proposed nonresidential development will 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.**

iv. The design of the system and its discharge point, and the size of the entire contiguous parcel on which the system or systems is located, will ensure that ground water existing from the entire contiguous parcel or entering a surface body of water will not exceed two parts per million nitrate/nitrogen calculated pursuant to the Pinelands dilution model dated December, 1993, as amended (Appendix A) subject to the provisions of

(a)5 below and based on the following assumptions and requirements. For purposes of this section, the entire contiguous parcel may include any contiguous lands to be dedicated as open space as part of the proposed development but may not include previously dedicated road rights-of-way or any contiguous lands that have been deed restricted pursuant to N.J.A.C. 7:50-5.30 or 5.47:

(1) (No change.)

(2) For Amphidrome, [and] Bioclere **and FAST** systems:

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

(B) **For residential development using the FAST system, the system will be located on a parcel of at least 1.4 acres for each individual single family residential dwelling unit or the system or systems for multi-family developments will be located on a parcel with an overall density equal to or greater than one residential unit per 1.4 acres of land;**

Recodify (B)-(I) as (C)-(J) with no change in text.

(3) (No change.)

v.-ix. (No change.)

6. (No change.)

7:50-6.85 Individual and non-individual onsite subsurface sewage disposal systems and petroleum tank maintenance

(a) (No change.)

(b) All Pinelands alternate design wastewater treatment systems in active use shall be equipped with functioning alarm dialing capability and shall be covered under a renewable operation and maintenance agreement for as long as the system is in active use. The operation and maintenance agreement shall, at minimum, provide for at least once annual service calls by a qualified service technician. The operation and maintenance agreement shall also provide for periodic onsite inspection and maintenance service visits which meet the minimum operation and maintenance requirements of the Pinelands alternate design wastewater treatment system manufacturer or vendor.

(c) Every owner or operator of a Pinelands alternate design wastewater treatment system shall **comply with the maintenance and monitoring requirements of N.J.A.C. 7:9A-8.3 and 12.3.[:**

1. Obtain from the municipality in which the system is located or from another responsible management entity designated by said municipality an initial permit or other authorization to operate said system. Said initial permit or authorization shall be valid for no more than three years; and

2. Prior to the expiration of the initial permit or authorization required in (c)1 above, apply to the municipality in which said system is located or to another responsible management entity designated by said municipality to renew said permit or authorization. The following information shall accompany any such application for permit renewal:

- i. Certification by a qualified service technician that the system is covered under a renewable operation and maintenance agreement which meets the requirements of the Pinelands Alternate Design Wastewater Treatment System manufacturer or vendor;
- ii. Certification by a qualified service technician that all of the components of the Pinelands Alternate Design Wastewater Treatment System are in good repair; and
- iii. Certification by a qualified service technician that that the Pinelands Alternate Design Wastewater Treatment System is operating in conformance with the manufacturer's specifications and is functioning properly, meaning that the system is denitrifying, does not show evidence of ponding or breakout of sewage or effluent onto the surface of the ground, sewage or effluent is not seeping into below ground portions of the building served, there is no back-up of sewage into the building and there is no evidence of a direct discharge of sewage or effluent to a surface water body.]

(d) (No change.)

7:50-6.106 Signs

Each municipality shall adopt provisions governing signs in its municipal master plan and ordinances. [N.J.A.C. 7:50-6.107 contains provisions which must be included in all municipalities; N.J.A.C. 7:50-6.108 contains mandatory provisions for municipalities in the Preservation Area District and Special Agricultural Production Areas; and N.J.A.C. 7:50-6.109 contains suggested guidelines for additional sign provisions for other areas of the Pinelands.] **On-site signs are generally permitted in the Pinelands pursuant to N.J.A.C. 7:50-6.107. Off-site signs are permitted only in accordance with N.J.A.C. 7:50-6.108. Mandatory provisions for off-site signs are provided in N.J.A.C. 7:50-6.109. Each municipality may adopt additional provisions governing signs including, but not limited to, the establishment of sign types and associated regulations governing the appropriate location and manner of such signs provided that such provisions do not conflict with N.J.A.C. 7:50-6.107 through 6.109.**

7:50-6.107 [Mandatory sign provisions] **On-site signs**

- (a) [No sign, other than warning or safety signs, which is designed or intended to attract attention by sudden, intermittent or rhythmic movement, or physical or lighting change, shall be permitted in any area.] **On-site signs may be permitted in any management area.**
- (b) [No sign, other than warning or safety signs, which changes physical position by any movement or rotation or which gives the visual impression of such movement or rotation shall be permitted in any area.] **Municipalities are encouraged to adopt the standards for electronic message displays and lighting in N.J.A.C. 7:50-6.109(a)3 and 4 in formulating municipal ordinance standards for on-site signs.**

[(c) No outdoor off-site commercial advertising sign, other than those off-site signs specifically authorized in N.J.A.C. 7:50-6.108 and 6.109, shall be permitted in the Pinelands except as follows:

1. Off-site outdoor signs advertising agricultural commercial establishments shall be permitted in Agricultural Production Areas and Special Agricultural Production Areas and may be permitted in any other management area. All such off-site signs shall be subject to the following conditions:
 - i. A maximum of two signs may be placed in any one direction along each road directly approaching the stand, and
 - ii. Each sign along four lane State or U.S. highways shall be limited to a maximum of 50 square feet in area; each sign along all other roads shall be limited to a maximum of 32 square feet in area.
2. Off-site outdoor directional signs may be permitted in any management area, provided that such signs do not contain advertising and are restricted to the name of the public or private use and any necessary directions, the number of signs per use is the minimum necessary to give adequate directions and the size of such signs does not exceed that necessary to convey directions.
3. Existing lawful off-site commercial advertising signs, in existence as of January 14, 1981, shall be permitted in:
 - i. Regional Growth Areas;
 - ii. Pinelands Towns; and
 - iii. Certified municipal non-residential zones in Rural Development Areas and Villages in existence as of December 5, 1994 if the sign is located within

1,000 feet of a Regional Growth Area or Pinelands Town and is located on a United States Highway.

- (d) Any existing sign that violates (a) or (b) above shall be removed immediately. Any existing off-site commercial advertising sign which does not conform to (c) above shall be removed no later than December 5, 1996.
- (e) To the maximum extent practical, the character and composition of construction materials for all signs shall be harmonious with the scenic values of the Pinelands.]

7:50-6.108 [~~Mandatory sign provisions in the Preservation Area District and Special Agricultural Production Areas~~] **Off-site signs**

- (a) [No sign shall be constructed, repaired or maintained except in accordance with the provisions of N.J.A.C. 7:50-6.107 and this section] **Off-site signs are permitted only as follows:**
 - 1. **Off-site directional signs may be permitted in any management area.**
 - 2. **Off-site temporary signs may be permitted in any management area.**
 - 3. **Off-site signs advertising an agricultural commercial establishment shall be permitted in Agricultural Production Areas and Special Agricultural Production Areas and may be permitted in any other management area.**
 - 4. **Off-site signs lawfully in existence as of January 14, 1981 shall be permitted in:**
 - i. **Regional Growth Areas;**
 - ii. **Pinelands Towns; and**

iii. Certified municipal non-residential zones in Rural Development Areas and Pinelands Villages in existence as of December 5, 1994 if the sign is located within 1,000 feet of a Regional Growth Area or Pinelands Town and is located on a United States Highway.

5. New off-site signs may be permitted by certified municipalities in Regional Growth Areas and Pinelands Towns, provided that the applicant can demonstrate that, for each new sign, a non-conforming off-site sign pursuant to N.J.A.C. 7:50-6.108(b) has been removed.

[(b) The following signs are permitted in the Preservation Area District and the Special Agricultural Production Areas:

1. Official public safety and information signs displaying road names, numbers and safety directions;
2. On-site signs advertising the sale or rental of the premises, provided that:
 - i. The area on one side of any such sign shall not exceed 12 square feet;
 - ii. No more than one sign is located on any parcel of land held in common ownership.
3. On-site identification signs for schools, churches, hospitals, or similar public service institutions, provided that:
 - i. The size of any such sign shall not exceed 12 square feet;
 - ii. No more than one sign is placed on any single property.
4. Trespassing signs or signs indicating the private nature of a road, driveway or premises, and signs prohibiting or otherwise controlling fishing or hunting, provided that the size of such signs does not exceed 12 square feet;

5. On-site professional, home occupation, or name signs indicating the profession and/or activity and/or name of the occupant of the dwelling, provided that:
 - i. The size of any such sign shall not exceed 12 square feet;
 - ii. No more than one sign is permitted for any individual parcel of land.
6. On-site business or advertising signs, provided that:
 - i. No more than two signs are located on any one premise or on the premises leased or utilized by any one business establishment;
 - ii. The total area of such signs shall not exceed 20 square feet per side, with the maximum height to the top of the sign not to exceed 15 feet from ground level.
7. Temporary signs advertising political parties or candidates for election, provided that the size of any such sign does not exceed four square feet.
8. Temporary on- and off-site signs advertising civil, social or political gatherings and activities, provided that the size of such signs does not exceed four square feet.]

(b) Any off-site sign in existence prior to January 14, 1981 that does not conform to (a)1, (a)3, or (a)4 above shall be deemed a non-conforming sign and shall be removed no later than December 5, 1996. Any off-site sign erected on or after January 14, 1981 that does not conform to (a) above shall be deemed unlawful and shall be removed immediately.

7:50-6.109 [Guidelines for sign provisions outside the Preservation Area District and Special Agricultural Production Areas] **Provisions for permitted signs**

- (a) [The following guidelines may be used in formulating municipal sign ordinances:
1. Official public safety and information signs displaying road names, numbers and safety directions may be permitted;
 2. On-site signs advertising the sale or rental of the premises maybe permitted, provided that:
 - i. The area on one side of any such sign does not exceed 12 square feet;
 - ii. No more than one sign is located on any parcel of land held in common ownership.
 3. On-site identification signs for schools, churches, hospitals, or similar public service institutions may be permitted; provided that:
 - i. The size of any such sign does not exceed 12 square feet;
 - ii. No more than one sign is placed on any single property.
 4. Temporary signs advertising political parties or candidates for election may be permitted, provided that the size of any such sign does not exceed 12 square feet;
 5. Temporary on- and off-site signs advertising civil, social or political gatherings and activities may be permitted, provided that the size of such signs does not exceed 12 square feet;
 6. Trespassing signs or signs indicating the private nature of a road, driveway, or premise, and signs prohibiting or otherwise controlling fishing or hunting may be permitted, provided that the size of such signs does not exceed 12 square feet;
 7. On-site professional, home occupation, or name signs indicating the profession and/or activity and/or name of the occupant of the dwelling may be permitted, provided that:

- i. The size of such sign does not exceed four square feet;
 - ii. No more than one sign is permitted for any individual parcel of land.
- 8. On-site business or advertising signs may be permitted provided that:
 - i. No more than two signs are located on any one premise or on the premises leased or utilized by any one business establishment;
 - ii. The total area of such signs does not exceed 20 square feet per side with the maximum height to the top of the sign not to exceed 15 feet from ground level.
- 9. New off-site commercial advertising signs may be permitted by certified municipalities in Regional Growth Areas and Pinelands Towns provided that the applicant can demonstrate that for each new sign an existing lawful off-site commercial advertising sign has been removed by the applicant pursuant to N.J.A.C. 7:50-6.107(d).]

(a) Permitted signs shall comply with the following provisions:

- 1. Off-site directional signs shall comply with the following standards:**
 - i. They shall contain no advertising and shall be limited to the name of the public or private use and any necessary directions;**
 - ii. The quantity of signs per use shall be limited to the minimum necessary to give adequate directions; and**
 - iii. The size of such signs shall be limited to that necessary to convey directions.**
- 2. Off-site signs advertising agricultural commercial establishments shall comply with the following standards:**

- (c) **Noncommercial copy shall be permitted to replace the message on any permitted sign.**

7:50-7.3 Proposed amendments; petitions for amendment

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

- (c) For petitions filed pursuant to (b) above, the petitioner shall be required to provide notice of the filing of the petition within 20 days after receiving notification from the Executive Director pursuant to N.J.A.C. 7:50-7.5(b) that a complete petition has been filed with the Commission as follows:

1. If the petition proposes to change the classification of any parcel as shown on the Land Capability Map or is intended to affect a specific parcel or an area less than 100 acres in size:
 - i. (No change.)
 - ii. Notice shall be given to owners of all real property within 200 feet of any parcel or area that would be directly affected by the proposed amendment as provided for in N.J.S.A. 40:55D-12(b). The administrative officer of the municipality in which the subject parcel or area is located shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c). The petitioner shall be entitled to rely upon the information contained in said certified list as provided in N.J.S.A. 40:55D-12(c); **and**
 - iii. Notice shall be given by publication in the official newspaper of the municipality in which the subject parcel or area is located, if there is one,

or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12.[]; and

- iv. Notice shall be given by conspicuous posting on any parcel or parcels that would be directly affected by the proposed amendment.]

2.-3. (No change.)

7:50-7.5 Action on petitions for amendment

(a) (No change.)

- (b) Upon determining that a petition for amendment is complete, the Executive Director shall so notify the petitioner and shall, within 15 days, prepare and file a notice of petition for rulemaking with the Office of Administrative Law in accordance with N.J.A.C. 1:30-3.6(a). **The Executive Director shall thereafter publish the notice of petition on the Commission's website.**

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

7:50-9.7 Rights of appeal

Any interested [person] **party** who is aggrieved by any determination made by the Executive Director pursuant to this subchapter may, within 15 days, appeal the Executive Director's determination to the Commission as provided by N.J.A.C. 7:50-4.91. Additional information not included in the Executive Director's determination may be presented to the Pinelands Commission only by requesting a hearing pursuant to N.J.A.C. 7:50-4.91.

SUBCHAPTER 10. PILOT PROGRAMS

PART IV – ALTERNATE DESIGN TREATMENT SYSTEMS PILOT PROGRAM

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 pilot program. Residential development using any of the authorized 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. In 2010, the Commission decided to release two of the original pilot program technologies (Amphidrome and Bioclere) from the pilot program and authorize them for

permanent use, subject to the provisions of N.J.A.C 7:50-6.84(a)5iv(3). The Commission also decided to provide an opportunity for expansion of the pilot program to include certain other residential nutrient reducing onsite wastewater treatment technologies that have attained verification and/or certification through the United States Environmental Protection Agency Environmental Technology Verification (USEPA ETV) Program or the National Sanitation Foundation/ American National Standards Institute (NSF/ANSI) Standard 245 testing program. Information regarding the USEPA ETV Program is available from the United States Environmental Protection Agency website at:

<http://www.epa.gov/etv/vt-wqp.html#dwtt> and

<http://www.epa.gov/etv/pubs/600s07004.pdf>. Information regarding the NSF/ANSI

Standard 245 testing program is available from the National Sanitation Foundation

website at:

http://www.nsf.org/business/wastewater_certification/standards.asp?program=WastewaterCer#245. In 2013, the Commission decided to remove the Cromaglass technology from

the Alternate Design Treatment Systems Pilot Program. The Commission made this

decision based on the Cromaglass technology's inability to meet the water quality

standards contained in N.J.A.C. 7:50-6, Part VIII. **In 2016, the Commission decided to**

release the only remaining original pilot program technology (FAST) from the pilot

program and authorize it for permanent use on parcels of at least 1.4 acres in size,

subject to the provisions of N.J.A.C 7:50-6.84(a)5iv(3).

(d) (No change.)

7:50-10.22 General standards

(a) Alternate design pilot program treatment systems shall be authorized for residential use in all municipalities provided that the following standards are met:

1.-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 FAST system shall be located on a parcel containing at least one acre for each dwelling unit that will be served by the system. E]each USEPA ETV or NSF/ANSI Standard 245 technology approved by the Commission for participation in the pilot program pursuant to N.J.A.C. 7:50-10.23(b) shall be located on a parcel containing sufficient land area to comply with the two parts per million nitrogen requirement and the water quality standards contained in N.J.A.C. 7:50-6, Part VIII, as calculated using the Pinelands Septic Dilution Model and the expected effluent total nitrogen value for the technology based upon the findings of the USEPA ETV and /or NSF/ANSI Standard 245 test data.

4. The [FAST alternate design pilot program treatment system identified in (a)3 above and the] USEPA ETV or NSF/ANSI Standard 245 technologies approved by the Commission for participation in the pilot program pursuant to N.J.A.C. 7:50-10.23(b) are authorized to be installed until August 5, 2018.

5-6. (No change.)

(b)-(c) (No change.)

7:50-10.23 Pinelands Commission approval and evaluation

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

(c) The Executive Director shall review this pilot program relative to [the FAST treatment technology and] any approved USEPA and NSF/ANSI Standard 245 treatment technologies no later than August 5, 2017, 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.)

[(d) If the Executive Director finds that the number of monitoring events for the FAST treatment technology is not adequate to evaluate that technology under this pilot program in accordance with (c) above, the Executive Director shall so inform the Commission and, upon receiving the Commission's approval, initiate a second review to be completed no later than August 5, 2019.]

(d)[(e)] If the Executive Director finds that the number of monitoring events for any approved USEPA and NSF/ANSI Standard 245 treatment technologies is not adequate to evaluate any of those technologies under this pilot program in accordance with (c) above, the Executive Director shall so inform the Commission and, upon receiving the Commission's approval, initiate a second review to be completed no later than August 5, 2019.

Recodify (f)-(h) as (e)-(g) with no change in text.

(h)[(i)] Nothing in this section shall be construed to authorize the installation of [a FAST alternate design pilot program treatment system or] any USEPA ETV and NSF/ANSI Standard 245 treatment technology approved by the Commission for participation in the pilot program after August 5, 2018, 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 **(f) or (g)** [~~or (h)~~] above.