

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Forestry

Adopted Amendments: N.J.A.C. 7:50-6.46

Proposed: May 17, 2010 at 42 N.J.R. 875(a)

Adopted: November 12, 2010 by the New Jersey Pinelands Commission,
John C. Stokes, Executive Director

Filed: January 13, 2011 **without change**.

Authorized by: New Jersey Pinelands Commission

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

Effective Date: February 7, 2011

Expiration Date: Exempt.

The New Jersey Pinelands Commission (Commission) is adopting amendments to Subchapter 6, Management Programs and Minimum Standards, of the Pinelands Comprehensive Management Plan (CMP). The amendments were proposed on May 17, 2010 at 42 N.J.R. 875(a) and relate to forestry management practices in the Pinelands. Specifically, the amendments address disking practices in Pine Shrub-Oak forests as a means to temporarily suppress shrub-oak understory to facilitate pine regeneration. Although disking (a silvicultural

practice that involves drawing one or more heavy, round, concave, sharpened, freely rotating disks across a site to cut through soil and roots or to create furrows) is authorized in Pine Shrub-Oak forests, standards were proposed to limit the practice to single pass disking which penetrates the soil no deeper than six inches and to limit repeat disking to once in the second year in areas where pine seedlings have not been established.

In association with publication of the proposed amendments in the May 17, 2010 issue of the New Jersey Register, the Pinelands Commission transmitted the proposal to each Pinelands municipality and county, as well as to other interested parties, for review and comment. Additionally, the Pinelands Commission:

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

Summary of Hearing Officer Recommendations and Agency Response:

A formal public hearing was held before the Commission staff on June 30, 2010. Approximately six people attended the hearing; oral testimony on the rule proposal was provided by three individuals. The hearing officer's recommendations are in accordance with the public comment and agency responses below.

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

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

Summary of Public Comments and Agency Responses:

The Commission accepted oral comments on the May 17, 2010 proposal at the above-discussed June 30, 2010 public hearing and written comments by regular mail, facsimile or e-mail through July 16, 2010.

The following individuals and organizations submitted comments:

1. Pinelands Agricultural Advisory Committee;
2. Barbara Sachau;
3. Tabernacle Township Committee through its adoption of Resolution 2010-56;

4. Emile DeVito on behalf of the Pinelands Preservation Alliance and the New Jersey Conservation Foundation
5. Raymond McCarty;
6. Eileen Carlos;
7. Michael Kerbowski;
8. Carleton Montgomery on behalf of the Pinelands Preservation Alliance and the New Jersey Conservation Foundation; and
9. Richard Nieuwenhuis on behalf of the New Jersey Farm Bureau.

The Commission's response to the comments is set forth below. The numbers in parentheses after each comment correspond to the list of commenters above.

1. COMMENT: One commenter unconditionally supported the proposed amendments. (7)

RESPONSE: The Commission appreciates the support.

2. COMMENT: Three commenters supported the amendments because they felt they would prevent the conversion of one forest type to another or is needed to perpetuate the globally rare Pine Shrub-Oak forest type. (4, 6 and 8)

RESPONSE: The Commission agrees with the commenters. Light disking (the use of a farm disk that penetrates no deeper than six inches in the soil) mimics beneficial ground fires in Pine Shrub-Oak forests, enhances pine seed germination and early pine survival, incorporates acorns into the upper soil

horizon and will not impact the deep and abundant oak root systems. Thus, it facilitates the re-establishment of pine trees without destroying the shrub oak understory.

3. COMMENT: Another commenter also expressed support for single pass disking at a depth at least six inches below ground in Pine Shrub-Oak forests. (9)

RESPONSE: The Commission agrees that disking in Pine Shrub-Oak forests is an important silvicultural practice and should be limited to a single pass to reduce the degree of ground disturbance. Although the proposed rule allows the use of a 12-inch farm disk which would penetrate six inches below ground, deeper penetration is neither necessary from a silvicultural standpoint nor wise from an ecological standpoint.

4. COMMENT: One commenter questioned the technical basis of the proposed disking conditions for Pine Shrub-Oak forests. (3)

RESPONSE: On August 10, 2009, the Society of American Foresters, New Jersey Division (an organization of professional foresters) submitted written testimony on forestry practices in the Pinelands in response to the Commission's proposal of a comprehensive set of forestry rules. These comments endorsed the specific type of "light" disking authorized through this rule "as a valuable practice." Knowledgeable ecologists also testified during the public comment period on the comprehensive forestry rules (see 42 N.J.R. 629(a)) as to the negative impacts deep disking can have on Pine Shrub-Oak forests, a globally rare forest type. Based upon these comments, its informal consultation

with other foresters and ecologists and its own analysis, the Commission is satisfied that the disking standards now being adopted have silvicultural and ecological benefits.

5. COMMENT: Three commenters opposed the amendments because they felt they would infringe upon property rights, dampen interest in forestry and/or result in negative economic impacts. (1,3 and 5)

RESPONSE: Since the professional forestry community and other foresters have endorsed this type of light disking in Pine Shrub-Oak forests as a valuable silvicultural practice, the Commission has no basis to believe that these disking practices will negatively affect sustainable forestry in Pine Shrub-Oak forests.

6. COMMENT: One commenter indicated that he did not believe the six inch disking depth has anything to do with the inability of equipment to go deeper. (5)

RESPONSE: The Commission has been advised that deeper disking in Pine Shrub-Oak forests is not practical because of equipment damage that the abundance of deeper shrub oak roots would likely cause. In spite of these potential operational constraints, these disking controls were proposed because they represent useful silvicultural practices that facilitate pine regeneration and protect the understory of Pine Shrub-Oak forests.

7. COMMENT: One commenter expressed opposition to a possible forestry agreement with the Department of Environmental Protection because of a number of concerns related to public review, secret agreements and questionable

science. (2)

RESPONSE: The Pinelands Commission is considering an intergovernmental agreement with the Department of Environmental Protection regarding the issuance of forestry permits in the Pinelands. However, these amendments do not affect that administrative arrangement.

8. COMMENT: Two commenters expressed concern that the proposed amendments did not address current Comprehensive Management Plan forestry rules which permit the use of herbicides in Pine Shrub-Oak forests. These commenters felt that the current rules might permit the repeated, broadcast application of herbicides that will convert Pine Shrub-Oak forests to pine plantations. (4 and 8)

RESPONSE: This issue does not relate to the current rule proposal which deals only with disking practices. However, it was raised when comprehensive amendments to the forest management rules were proposed by the Commission in 2009. In the adoption notice for those rules (see 42 N.J.R. 629(a)), the Commission concluded that the rules, as adopted, would not permit broadcast application of herbicides and would not permit the conversion of any native forest type to a pine plantation.

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 placing appropriate limitations on disking as a silvicultural practice in order to sustain and improve the health of Pinelands forests.

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