



State of New Jersey  
THE PINELANDS COMMISSION  
PO Box 359  
NEW LISBON, NJ 08064  
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PHILIP D. MURPHY  
Governor  
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Lt. Governor

General Information: [Info@pinelands.nj.gov](mailto:Info@pinelands.nj.gov)  
Application Specific Information: [AppInfo@pinelands.nj.gov](mailto:AppInfo@pinelands.nj.gov)

RICHARD PRICKETT  
Chairman  
SUSAN R. GROGAN  
Acting Executive Director

October 1, 2021

John Sacco, State Forester (via email)  
New Jersey Department of Environmental Protection, Division of Parks and Forestry  
501 East State St.  
PO Box 420  
Trenton, NJ 08625

Re: Application # 1990-0868.033  
Block 48, Lots 1 & 2  
Block 49, Lot 12  
Bass River Township

Dear Mr. Sacco:

The Commission staff has completed its review of this re-amended application for spot treatment of herbicide to control invasive plant species within 16.4 acres that were previously cleared to restore visibility from the Bass River State Forest fire observation tower (App. No. 1990-0868.031). Enclosed is a copy of a Re-Amended Public Development Application Report. On behalf of the Commission's Acting Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its October 8, 2021 meeting.

Any interested party may appeal this recommendation in accordance with the appeal procedure attached to this document. If no appeal is received, the Pinelands Commission may either approve the recommendation of the Acting Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

Prior to any development, the applicant shall obtain any other necessary permits and approvals.

Sincerely,

Charles M. Horner, P.P.  
Director of Regulatory Programs

Enc: Appeal Procedure

c: Secretary, Bass River Township Planning Board (via email)  
Bass River Township Construction Code Official (via email)  
Secretary, Burlington County Planning Board (via email)

Todd Wyckoff (via email)

Samantha Hensen, Assistant Regional Forester (via email)

Courtney Compton, Assistant Regional Forester (via email)

William Zipse, Supervising Forester (via email)



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### RE-AMENDED PUBLIC DEVELOPMENT APPLICATION REPORT

October 1, 2021

John Sacco, State Forester (via email)  
New Jersey Department of Environmental Protection, Division of Parks and Forestry  
501 East State St.  
PO Box 420  
Trenton, NJ 08625

Application No.: 1990-0868.033  
Block 48, Lots 1 & 2  
Block 49, Lot 12  
Bass River Township

This application proposes spot treatment of herbicide to control invasive plant species within 16.4 acres that were previously cleared to restore visibility from the Bass River State Forest fire observation tower on the above referenced 435.3 acre parcel in Bass River Township. The purpose of the proposed herbiciding is to facilitate natural re-vegetation of historic tree plantations, including native and previous plantation trees.

On April 12, 2019, the Commission approved the clearing of 16.4 acres of trees to restore visibility in all directions from the existing Bass River State Forest fire observation tower (App. No. 1990-0868.031).

The applicant has identified two invasive plant species, Japanese stiltgrass and Japanese barberry, within portions of the 16.4 acre cleared area. This application proposes spot treatment of herbicide to facilitate re-vegetation of the historic tree plantations by suppressing these invasive plant species. **Spot treatment involves the direct application of herbicide to targeted plants in infested areas of the parcel by a handheld spray gun or nozzle as opposed to aerial spraying of herbicide or broadcast application of herbicide. As proposed by the applicant, the spot treatment of herbicide would occur through the use of a utility terrain vehicle transported tank with spray nozzle, backpack tank sprayer, or hand-held spray tank.**

This application proposes to apply a pre-emergent herbicide, a post-emergent herbicide and a foliar or stem/bark herbicide. The herbicide treatments are proposed until the invasive plant species have been eliminated and tree seedlings become established. Each of the three separate herbicide treatments will occur a maximum of three times.

## STANDARDS

The Commission staff has reviewed the proposed application of herbicide for consistency with all standards of the Pinelands Comprehensive Management Plan (CMP). The following reviews the CMP standards that are relevant to this application:

### Land Use (N.J.A.C. 7:50-5.22(b))

The 435.3 acre parcel is located partially in the Pinelands Preservation Area District (405.2 acres), partially in a Pinelands Rural Development Area (18.8 acres) and partially in a Pinelands Village (11.3 acres).

The 16.4 acres proposed for spot treatment of herbicide are located in the Pinelands Preservation Area District portion of the parcel. The existing Bass River State Forest fire observation tower is also located in the Pinelands Preservation Area District. The proposed spot application of herbicide is permitted in the Pinelands Preservation Area District as a silvicultural practice for site preparation.

### Forestry (N.J.A.C. 7:50-6.41)

The CMP permits herbicide treatment as a silvicultural practice for site preparation provided the following five conditions are met:

1. Condition One: The proposed treatment is identified in an application submitted to the Pinelands Commission. The submitted Pinelands application identifies the proposed herbicide treatment.
2. Condition Two: Control of competitive plant species is clearly necessary. The applicant represents that Japanese stiltgrass is a fast growing invasive annual grass species and Japanese barberry is an invasive shrub species and that both species inhibit natural plant community structure and germination.
3. Condition Three: Control of competitive plant species by other non-chemical means is not practical. The applicant represents that non-chemical means are not practical considering the amount of Japanese stiltgrass on the 16.4 acres. The applicant further submits that mowing is not a viable means of controlling Japanese barberry because it will severely damage the natural regeneration of tree seedlings and can lead to re-sprouting and significant spread of the concerned competitive plant species.

**The applicant represents that other non-chemical control methods were considered, such as hand pulling invasive plants, the use of herbivores to control competing vegetation and the use of clearing saws and weed cutters. The applicant indicated that all of these methods would necessitate multiple re-entries into the parcel, as often as twice a year for several years, that would be impractical, requiring additional costs, person power and safety risks. The applicant further indicated that non-chemical control methods will be less effective and cause significant impacts to regenerating trees, either through direct seedling mortality or impacts to the parcel such as compaction, versus using chemical control. The applicant also indicated that the likelihood of regenerative success of non-chemical control methods is poor relative to chemical competition control.**

4. Condition Four: All chemicals shall be expressly labeled for forestry use and shall be used and mixed in a manner that is consistent with relevant State and Federal requirements. The applicant represents that all herbicides will adhere to the label, as pesticide labels constitute legal documents that include rates of application, time of year for deployment, in certain instances, and proper weather and site conditions for application.
5. Condition Five: In Pine-Shrub Oak Native Forest Types, herbicide treatments shall only be permitted as a method to temporarily suppress shrub-oak understory in order to facilitate pine regeneration. All such herbicide treatments shall be applied in a targeted manner so that there will be no significant reduction in tree or shrub-oak re-sprouting outside those areas subject to the herbicide treatment. The proposed herbicide treatments will not occur in a Pine-Shrub Oak Native Forest Type.

The applicant has demonstrated that the five CMP conditions to permit the use of herbicide for silvicultural site preparation will be met.

#### Threatened and Endangered Species Standards (N.J.A.C. 7:50-6.27 & 6.33)

Available information identifies known sightings of threatened and endangered (T&E) animal and plant species in the vicinity of the proposed herbiciding. The Commission staff reviewed the proposed herbiciding to determine whether it was designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of T&E animal species and irreversible adverse impacts on the survival of any local populations of T&E plant species.

The T&E animal species of concern are Barred owl, Northern pine snake and Timber rattlesnake. Based upon the existing cleared habitat and available contiguous State owned lands, the proposed spot treatment of herbicide is designed to avoid an irreversible adverse impact on habitat that is critical to the survival of any local populations of T&E animal species.

As part of Commission approval of the application (App. No. 1990-0868.031) for the clearing of 16.4 acres of trees to restore visibility in all directions from the existing Bass River State Forest fire observation tower, the applicant was required to conduct a visual survey in the area proposed for tree clearing to avoid potential irreversible adverse impact to any local population of Broom crowberry, a CMP designated T&E plant species. The applicant conducted the visual survey and concluded that Broom crowberry was not present in the area proposed for tree clearing. Prior to the proposed spot treatment of herbicide, the applicant proposes to conduct another visual survey for Broom crowberry. If Broom crowberry is identified, the applicant proposes to buffer any such area from the spot application of herbicide and to temporarily place a tarp over the plant(s) during spraying. The proposed spot treatment of herbicide is designed to avoid irreversible adverse impacts on the survival of any local populations of T&E plant species.

#### **PUBLIC COMMENT**

The applicant has provided the requisite public notices. Notice to required landowners within 200 feet of the above referenced parcel was completed on April 10, 2021. Newspaper public notice was completed on April 9, 2021. The application was designated as complete on the Commission's website on June 1, 2021. The Commission's public comment period closed on June 11, 2021. No public comment was submitted to the Commission regarding this application.

## CONDITIONS

1. The proposed activities shall adhere to the “Proposal For Silvicultural Activity On State Forest And Park Lands, New Jersey Forestry Services, dated February 2, 2021 **as amended to September 29, 2021.**
2. **This Commission approval shall be valid for a period of 5 years from January 1, 2022 until January 1, 2027, provided the January 1, 2027 approval expiration date can be extended in writing by the Executive Director until October 1, 2027 should weather conditions inhibit deployment of herbicides in 2026.**
3. **Between January 1, 2022 and January 1, 2027, each of the three separate herbicide treatments (pre-emergent herbicide, post-emergent herbicide and foliar or stem/bark herbicide) shall not occur more than three times.**
4. **At the end of any calendar year in which herbicide is applied, the NJDEP will provide a detailed written summary, including photographs, to the Commission staff of the herbicide treatment and its results. The summary will address the extent to which herbiciding is facilitating the natural regeneration of seedlings.**
5. **All herbicides to be applied shall be expressly labeled for forestry use and shall be used and mixed in a manner that is consistent with relevant State and Federal requirements pursuant to N.J.A.C. 7:50-6.44(a)9ii(4).**
6. To avoid irreversible adverse impacts on any local population of Broom Crowberry that may be present, NJDEP shall conduct a visual survey of the 16.4 acres for Broom crowberry prior to any spot treatment of herbicide. If the visual survey identifies Broom Crowberry, the applicant shall install a temporary protective barrier around any identified plant(s) and a temporary plastic covering during spot application of herbicide to avoid irreversible adverse impacts on the survival of any local population of Broom Crowberry.
7. Prior to any herbiciding, the applicant shall obtain any other necessary permits and approvals.

## CONCLUSION

As the proposed herbiciding conforms to the standards set forth in N.J.A.C. 7:50-4.57, it is recommended that the Pinelands Commission **APPROVE** the proposed herbiciding subject to the above conditions.

## PINELANDS COMMISSION APPEAL PROCEDURE

The Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal any determination made the by Executive Director to the Commission in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of

Administrative Law for a hearing. Any such appeal must be made in writing to the Commission and received by the Commission's office no later than 5:00 PM on July 6, 2021 and include the following information:

1. the name and address of the person requesting the appeal;
2. the application number;
3. the date on which the determination to be appealed was made;
4. a brief statement of the basis for the appeal; and
5. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

Within 15 days following receipt of a notice of valid appeal, the Executive Director shall initiate the procedures for assignment of an Administrative Law Judge to preside at the hearing pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the procedures established by the Office of Administrative Law. The time, date and location of such hearing shall be designated by the Office of Administrative Law.