



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-25- 09

TITLE: Approving With Conditions an Application for a Waiver of Strict Compliance (Application Number 1992-0669.001)

Commissioner Lohbauer moves and Commissioner Pikolycky seconds the motion that:

WHEREAS, the Pinelands Commission has reviewed each of the Findings of Fact, Conclusion and the recommendation of the Executive Director that the following application for Waiver of Strict Compliance be approved with conditions:

1992-0669.001
Applicant: Joshua Lehman
Municipality: Monroe Township
Management Area: Pinelands Rural Development Area
Date of Report: March 22, 2025
Proposed Development: Single family dwelling.

WHEREAS, no request for a hearing before the New Jersey Office of Administrative Law regarding the Executive Director's recommendation has been received for this application for Waiver of Strict Compliance; and

WHEREAS, the Pinelands Commission hereby adopts the Findings of Fact and Conclusion of the Executive Director for the requested Waiver of Strict Compliance; and

WHEREAS, the Pinelands Commission hereby determines that this application for a Waiver of Strict Compliance conforms to the standards for approving such an application based on an extraordinary hardship as set forth in N.J.A.C 7:50-4.62, N.J.A.C. 7:50-4.63 and N.J.A.C. 7:50-4.65 provided the conditions recommended by the Executive Director are imposed; and

WHEREAS, pursuant to N.J.S.A. 13A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

NOW, THEREFORE BE IT RESOLVED that Application Number 1992-0669.001 for a Waiver of Strict Compliance is hereby approved subject to the conditions recommended by the Executive Director.

Record of Commission Votes

Table with 4 groups of columns (AYE, NAY, NP, A/R*) and 16 rows of member names and their votes.

*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: April 11, 2025

Susan R. Grogan
Executive Director

Laura E. Matos
Chair



State of New Jersey
THE PINELANDS COMMISSION
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PHILIP D. MURPHY
Governor
TAHESHA L. WAY
Lt. Governor

General Information: Info@pinelands.nj.gov
Application Specific Information: AppInfo@pinelands.nj.gov

LAURA E. MATOS
Chair
SUSAN R. GROGAN
Executive Director

REPORT ON AN APPLICATION FOR A WAIVER OF STRICT COMPLIANCE

March 22, 2025

Joshua Lehman (via email)
11 Fletcher Blvd
Sicklerville NJ 08081

Re: Application # 1992-0669.001
Block 2601, Lot 38
Monroe Township

Dear Mr. Lehman:

The Commission staff has completed its review of the above referenced application for a Waiver of Strict Compliance ("Waiver") based upon an extraordinary hardship. The Waiver application proposes the development of one single family dwelling on the above referenced 5.49 acre parcel. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its April 11, 2025 meeting.

FINDINGS OF FACT

This application is for the development of one single family dwelling, serviced by an on-site septic system, on the above referenced 5.49 acre parcel. The parcel is located in a Pinelands Rural Development Area and in Monroe Township's RD-A zoning district. In this zoning district, Monroe Township's land use ordinance, certified by the Commission, establishes a minimum lot size of 8.0 acres to develop a single family dwelling.

The Monroe Township land use ordinance (Section 175-157(H)) and the Pinelands Comprehensive Management Plan (CMP, N.J.A.C. 7:50-5.32) also establishes a minimum lot size of at least 3.2 acres to develop a single family dwelling in the RD-A zoning district provided that the dwelling qualifies for the cultural housing provision. To qualify for the cultural housing provision, a proposed single family dwelling must be the principal residence of the property owner as of 1979 or a member of the property owner's immediate family. The parcel must also have remained in continuous ownership since 1979 of the property owner or a member of the property owner's immediate family. Lastly, the property owner's immediate family must have resided in the Pinelands for a total of 20 different years.

An application for a Commission Waiver based upon an extraordinary hardship for the development of one single family dwelling on Block 2601, Lot 38 was approved by the Commission on December 3, 1993 (App. No. 1992-0669.001). A development application for the proposed dwelling was

subsequently completed with the Commission and a Certificate of Filing, denoting completion of that development application, was issued on August 15, 1997.

The CMP (N.J.A.C. 7:50-4.70(c)) provides that any Waiver based upon an extraordinary hardship (N.J.A.C. 7:50-4.63) shall expire five years after the Waiver is approved by the Commission unless all necessary construction permits have been issued and other CMP specified requirements are met. Based on the submitted information, all necessary construction permits were not received for the proposed development and the Waiver approval expired on December 3, 1998.

The applicant is proposing to develop a single family dwelling on the parcel in accordance with the cultural housing provision contained in the Monroe Township land use ordinance and the CMP. Information has been submitted demonstrating that the applicant qualifies to develop a single family dwelling on the parcel pursuant to the cultural housing provision.

The parcel has been site inspected by two members of the Commission's staff. In addition, the appropriate resource capability maps and data available to the staff have been reviewed.

The CMP (N.J.A.C. 7:50-6.84(a)4iv) requires that a septic system be located in an area where the depth to the seasonal high water table is at least five feet below the natural ground surface. The Gloucester County Soils Survey indicates that there are Atsion and Hammonton soils on this parcel. These soils may have a seasonal high water table of less than five feet below the natural ground surface. Six soil borings were performed by the applicant's consultant. The soil borings confirmed a seasonal high water table of less than five feet below the natural ground surface at the location of the borings. The applicant has submitted no information to demonstrate that the septic system could be located in an area on the parcel where the seasonal high water table is at least five feet below the natural ground surface. Since available information indicates the seasonal high water table on the parcel is less than five feet below the natural ground surface, the applicant is requesting a Waiver from the seasonal high water table requirement contained in N.J.A.C. 7:50-6.84(a)4iv.

The CMP (N.J.A.C. 7:50-6.14) requires that development maintain a 300 foot buffer to wetlands unless it is demonstrated that a lesser buffer to wetlands will not result in a significant adverse impact on wetlands. A portion of the parcel is wetlands as defined in the CMP (N.J.A.C. 7:50-6.5(a)2). The wetlands continue onto adjacent lands. Any development of the parcel would be located within 300 feet of these wetlands. The applicant has submitted no information to demonstrate that the proposed development will not cause a significant adverse impact on the wetlands. Based on the quality and location of the wetlands, the proposed development will cause a significant adverse impact on the wetlands. As there will be a significant adverse impact on wetlands located within 300 feet of the proposed development, the applicant is requesting a Waiver from the buffer to wetlands standard contained in N.J.A.C. 7:50-6.14.

The CMP (N.J.A.C. 7:50-4.65(b)6) requires that to qualify for a Waiver to develop a single family dwelling in a Pinelands Rural Development Area, it must be demonstrated that any required wastewater disposal field will be located in an area where the seasonal high water table is at least two feet (24 inches) below the natural ground surface. The wastewater disposal field proposed to service the proposed single family dwelling subject of this application will be located in an area where the seasonal high water table is at least 50 inches below the natural ground surface.

The CMP (N.J.A.C. 7:50-4.65(b)5 and 6) requires that to qualify for a Waiver to develop a single family dwelling in a Pinelands Rural Development Area, it must be demonstrated that no development, including clearing and land disturbance, except for development otherwise permitted in wetlands and the required buffer to wetlands, will be located within 50 feet of wetlands. The applicant has demonstrated that no development, except for the proposed surfacing of an existing dirt driveway, will be located within 120 feet of wetlands.

The application proposes to surface an existing dirt driveway located on the parcel with stone. The stone driveway will be 10 feet wide. Approximately 185 linear feet of the existing dirt driveway are located in wetlands. Approximately 185 linear feet of the existing dirt driveway are located within 50 feet of wetlands. The CMP (N.J.A.C. 7:50-6.13 and N.J.A.C. 7:50-6.14) permits driveways (linear improvements) in wetlands and the required buffer to wetlands provided five conditions are met. Those conditions include that there is no feasible alternative route for the proposed driveway and that the resources of the Pinelands will not be substantially impaired as a result of the proposed driveway. The proposed surfacing with stone of the existing dirt driveway meets the five conditions of N.J.A.C. 7:50-6.13 and is permitted in the wetlands and the required buffer to wetlands.

The parcel includes all contiguous land in common ownership on or after January 14, 1981. The proposed single family dwelling will be the sole principal use of the entire contiguous parcel. The development of a single family dwelling on the parcel will not require any lot area or residential density variances pursuant to Monroe Township's certified land use ordinance. The development of a single family dwelling on the parcel will be consistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act and the CMP. The proposed single family dwelling will not result in a substantial impairment of the resources of the Pinelands Area as required by the CMP (N.J.A.C. 7:50-4.65(b)).

Only if the parcel is developed in accordance with the conditions recommended below will the adverse impacts on groundwater quality and wetlands be minimized.

PUBLIC COMMENT

The applicant has provided the requisite public notices. Newspaper public notice was completed on April 3, 2024. Public notice to all property owners within 200 feet of the parcel was completed on June 29, 2024. The application was designated as complete on the Commission's website on February 25, 2025. The Commission's public comment period closed on March 14, 2025.

The Commission received one public comment regarding this application.

Public Commenter: The applicant, Joshua Lehman, offered comments at the Commission's February 14, 2025 meeting. The commenter noted that a Waiver was previously approved by the Commission for the development of a dwelling on the parcel and that the Waiver had expired. The commenter noted that the application for a new Waiver has been ongoing since November of 2023. The commenter spoke in support of the application and requested that the Commission approve the Waiver.

Staff Response: On November 27, 2023, over 30 years after Commission approval of the now expired Waiver, the applicant submitted an inquiry as to what information would be required to apply for a new Waiver. On January 8, 2024, an application for a new Waiver was submitted to the Commission. On January 2, 2025, the applicant

submitted the required information to complete the Waiver application. Upon a Commission staff determination that the submitted information was consistent with the applicable CMP regulations, the application was designated as complete and placed on the March 14, 2025 Commission monthly meeting agenda for public comment. This Report on an Application for a Waiver of Strict Compliance recommends approval of the application at the Commission's April 11, 2025 monthly meeting.

CONCLUSION

The CMP (N.J.A.C. 7:50-4.62) sets forth the standards which must be met before a Waiver can be approved. The CMP (N.J.A.C. 7:50-4.62(a)) requires that for a Waiver application to be approved based on extraordinary hardship, the applicant must demonstrate that the conditions of either N.J.A.C. 7:50-4.63(a) or (b) have been met.

N.J.A.C. 7:50-4.63(a) sets forth five conditions which must be met to qualify for a Waiver based on an extraordinary hardship.

The first condition is that the only relief sought is from one or more of the standards contained in N.J.A.C. 7:50-6 for certain specified development. One of the specified types of development is a single family dwelling that qualifies for the cultural housing provision on a parcel of at least 1.0 acre. This application is for a Waiver from the minimum depth to seasonal high water table standard when utilizing an onsite septic system and the required buffer to wetlands standard, both standards contained in N.J.A.C. 7:50-6. The proposed single family dwelling on the 5.49 acre parcel meets the cultural housing provision as set forth in the Monroe Township land use ordinance (Section 175-157(H)) and the CMP (N.J.A.C. 7:50-5.32). As a result, the application meets the criteria set forth in N.J.A.C. 7:50-4.63(a)1vii.

The second condition is that the parcel includes all contiguous land in common ownership on or after January 14, 1981, including lands which are contiguous as a result of ownership of other contiguous lands. Since the parcel includes all such contiguous land, the applicant meets the criteria set forth in N.J.A.C. 7:50-4.63(a)2.

The third condition is that the proposed use will be the sole principal use on the entire contiguous parcel, except as expressly provided in N.J.A.C. 7:50-5.1(c). As the proposed single family dwelling will be the sole principal use on the parcel, the applicant meets the criteria set forth in N.J.A.C. 7:50-4.63(a)3.

The fourth condition is that all necessary municipal lot area and density variances have been obtained if the parcel is located in a municipality whose master plan and land use ordinance have been certified by the Pinelands Commission. Monroe Township's master plan and land use ordinance have been certified by the Pinelands Commission. In the RD-A zoning district, Monroe Township's certified land use ordinance establishes a minimum lot size of 3.2 acres to develop a single family dwelling in accordance with the cultural housing provision (Section 175-157(H)). This application proposes to develop a single family dwelling in accordance with the cultural housing provision on a 5.49 acre parcel. No municipal lot area or density variances are required to develop the proposed single family dwelling. As a result, the application meets the criteria set forth in N.J.A.C. 7:50-4.63(a)4.

The fifth condition is that the development of the parcel will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b). N.J.A.C. 7:50-4.65(a) precludes the granting of a Waiver which permits a parcel to be developed unless such development will be consistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act and the CMP and will not result in a substantial impairment of the resources of the Pinelands Area. N.J.A.C. 7:50-4.65(b) sets forth the circumstances which do not comply with N.J.A.C. 7:50-4.65(a). With the conditions recommended below, the proposed development will not violate any of the circumstances contained in N.J.A.C. 7:50-4.65(b). As a result, the applicant meets the criteria set forth in N.J.A.C. 7:50-4.63(a)5.

Since the applicant meets all five conditions set forth in N.J.A.C. 7:50-4.63(a), the applicant has demonstrated that an extraordinary hardship exists pursuant to N.J.A.C. 7:50-4.62(a).

As required by N.J.A.C. 7:50-4.62(b), the proposed dwelling will not result in substantial impairment of the resources of the Pinelands or be inconsistent with the provisions of the Pinelands Protection Act, the Federal Act or the CMP in accordance with the criteria set forth in N.J.A.C. 7:50-4.65.

As required by N.J.A.C. 7:50-4.62(c), and with the conditions recommended below, the proposed dwelling will not involve trespass or create a public or private nuisance by being materially detrimental or injurious to other property or improvements in the area in which the parcel is located, increase the danger of fire or endanger public safety.

The CMP (N.J.A.C. 7:50-4.62(d)) requires that the Waiver only grant the minimum relief necessary to relieve the extraordinary hardship. The proposed single family dwelling is the minimum relief necessary to relieve the extraordinary hardship which has been shown to exist.

The CMP (N.J.A.C. 7:50-4.62(d)1iii) requires the acquisition and redemption of 0.25 Pinelands Development Credits (PDCs) whenever a Waiver provides relief from one or more of the standards of N.J.A.C. 7:50-6. Since the application requires a Waiver from the minimum depth to seasonal high water table standard (N.J.A.C. 7:50-6.84(a)4iv) and the required buffer to wetlands standard (N.J.A.C. 7:50-6.14), a condition is included below requiring the acquisition and redemption of 0.25 PDCs.

To meet the requirements of N.J.A.C. 7:50-4.62, N.J.A.C. 7:50-4.63(a) and N.J.A.C. 7:50-4.65, the Pinelands Commission staff has determined that the parcel must be developed in accordance with the following conditions:

1. Except as modified by the below conditions, the proposed development shall adhere to the plot plan prepared by Churchill Consulting Engineers, LLC dated February 27, 2024 and last revised December 31, 2024.
2. All development associated with the single family dwelling, including clearing and land disturbance, except for the proposed driveway, shall maintain the wetlands buffer depicted on the plot plan prepared by Churchill Consulting Engineers, LLC dated February 27, 2024 and last revised December 31, 2024.
3. Drywells, pervious pavement, small scale infiltration basin(s) or comparable alternative measures designed in accordance with the New Jersey Department of Environmental Protection, Best Management Practice shall be installed to retain and infiltrate stormwater runoff generated from the total roof area of the single family dwelling by a 10-year, 24-hour storm.

4. Appropriate measures shall be taken during construction to preclude sedimentation from entering wetlands and shall be maintained in place until all development has been completed and the area has been stabilized.
5. The driveway shall be constructed of crushed stone or other permeable material.
6. Prior to the construction of any portion of the proposed development, including utility installation, which will result in the disturbance of any wetland area, a Freshwater Wetland Permit shall be obtained pursuant to the New Jersey Freshwater Wetlands Protection Act.
7. The septic system shall be located in an area where the seasonal high water table is at least two feet below the natural ground surface.
8. In accordance with the cultural housing provision of the Monroe Township land use ordinance and the CMP, the proposed single family dwelling shall be the principal residence of Joshua Lehman.
9. Prior to Commission issuance of a letter advising that any municipal or county permit or approval may take effect, the Commission must receive a letter from the Pinelands Development Credit Bank indicating that the requisite 0.25 PDCs have been acquired and submitted to the PDC Bank for redemption.
10. Except as provided in N.J.A.C. 7:50-5.1(c), the single family dwelling approved herein shall be the sole principal use of the parcel.
11. This Waiver shall expire April 11, 2030 unless all necessary construction permits have been issued by that date. The Waiver shall also expire if any construction permit is allowed to expire or lapse after April 11, 2030 or if any renewal or extension of any permit or approval or issuance of a new construction permit is necessary after that date.
12. Prior to Commission issuance of a letter advising that any municipal or county permit or approval may take effect, a copy of a recorded deed containing all of the above conditions shall be submitted to the Pinelands Commission. The deed shall specify that the conditions are being imposed pursuant to a March 22, 2025 Pinelands Commission Report on an Application for a Waiver of Strict Compliance for Application # 1992-0669.001. The deed shall also indicate that the conditions are enforceable by the Pinelands Commission, the Gloucester County Health Department, Monroe Township and any other party of interest.

With the above conditions, the applicant qualifies for a Waiver from the requirements of N.J.A.C. 7:50-6.84(a)4iv and N.J.A.C. 7:50-6.14.

Since the applicant meets the provisions of N.J.A.C. 7:50-4.62, N.J.A.C. 7:50-4.63(a) and N.J.A.C. 7:50-4.65 for the development of a single family dwelling on the parcel, it is recommended that the Pinelands Commission **APPROVE** the requested Waiver of Strict Compliance subject to the above conditions.

APPEAL

The CMP (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal this recommendation 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 April 9, 2025 and include the following information:

1. the name and address of the person requesting the appeal;
2. the application number;
3. a brief statement of the basis for the appeal; and
4. 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.

If no appeal is received, the Pinelands Commission may either approve the determination of the Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

Recommended for Approval by: _____



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

- c: Secretary, Monroe Township Planning Board (via email)
 Monroe Township Construction Code Official (via email)
 Secretary, Gloucester County Planning Board (via email)
 Gloucester County Health Department (via email)



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-25- 10

TITLE: To Authorize the Executive Director to Enter Into a Contract with a Historic Preservation Architect to Provide Services for the Historic Fenwick Manor Rehabilitation Project

Commissioner Lohbauer moves and Commissioner Rittler Sanchez seconds the motion that:

WHEREAS, in 1990, the Pinelands Commission adopted resolution PC4-90-05, which designated Fenwick Manor as a Cultural Resource of Significance to the History of the Pinelands; and

WHEREAS, on October 25, 1990, Fenwick Manor was entered into the National Register of Historic Places; and

WHEREAS, on March 11, 2022, the Pinelands Commission adopted Resolution PC4-22-13, authorizing the Acting Executive Director to submit an application to the New Jersey Historic Trust for a 2022 Preserve New Jersey Historic Preservation Fund Historic Sites Management Grant to fund the preparation of a Preservation Plan for historic Fenwick Manor; and

WHEREAS, on September 9, 2022, the Pinelands Commission adopted resolution PC4-22-37, which established the Fenwick Manor Preservation Budget to recognize the \$500,000 special appropriation to the Pinelands Commission included in the State’s Fiscal Year 2023 Budget for the refurbishment, maintenance and preservation of Fenwick Manor; and

WHEREAS, on September 28, 2022, the New Jersey Historic Trust announced that grant funding in the amount of \$31,387 had been awarded to the Pinelands Commission for preparation of a Preservation Plan for Fenwick Manor; and

WHEREAS, on October 14, 2022, the Pinelands Commission adopted Resolution PC4-22-41, which accepted the \$31,387 grant from the New Jersey Historic Trust and authorized the Acting Executive Director to enter into a contract with the firm of Connolly & Hickey Historical Architects to complete the Preservation Plan; and

WHEREAS, on April 14, 2023, the Pinelands Commission adopted Resolution PC4-23-15, authorizing the Executive Director to submit an application to the New Jersey Historic Trust for a 2023 Preserve New Jersey Historic Preservation Fund Capital Level II Grant to fund the rehabilitation efforts outlined in the Preservation Plan for historic Fenwick Manor; and

WHEREAS, on September 8, 2023, the Pinelands Commission adopted Resolution PC4-23-38, which defined the Fenwick Manor Preservation Budget as including the \$500,000 special appropriation to the Pinelands Commission in Fiscal Year 2023 and \$75,000 from the Commission’s Fenwick Manor Painting Reserve, with all funds to be used for the refurbishment, maintenance and preservation of Fenwick Manor; and

WHEREAS, the Fenwick Manor Preservation Budget, totaling \$575,000, was used to satisfy the required match for the requested Preserve New Jersey Historic Preservation Fund Capital Level II Grant; and

WHEREAS, on September 28, 2023, the New Jersey Historic Trust announced that Capital II grant funding in the amount of \$575,000 had been awarded to the Pinelands Commission for rehabilitation of historic Fenwick Manor; and

WHEREAS, on February 9, 2024, the Pinelands Commission adopted Resolution PC4-24-03, which accepted the \$575,000 grant and authorized the Executive Director to execute a grant agreement with the New Jersey Historic Trust; and

WHEREAS, the Preservation Plan was completed in February 2024 and details the rehabilitation work that is necessary to ensure the long-term preservation of Fenwick Manor and the safety of the Commission’s employees; and

WHEREAS, a Request for Proposals (RFP) to procure the services of a Historic Preservation Architect to complete the rehabilitation of historic Fenwick Manor was posted on the Commission’s website on February 5, 2025; and

WHEREAS, the RFP was emailed to prospective bidders who were listed as pre-qualified to conduct Historical Preservation/Restoration work according to the New Jersey Division of Property Management and Construction website; and

WHEREAS, on February 12 and 20, 2025, the Commission hosted open-house site visits for prospective consultants to tour historic Fenwick Manor; and

WHEREAS, the Commission received three proposals prior to the receipt deadline of 4:00 p.m. on March 5, 2025; and

WHEREAS, a three-member Evaluation Committee composed of diverse members of the Pinelands Commission’s staff was established; and

WHEREAS, the Evaluation Committee individually scored each proposal based on the criteria established in the RFP; and

WHEREAS, based on the Evaluation Committee’s individual scores of each proposal, the committee recommended that the contract be awarded to Connolly & Hickey Historical Architects, LLC of Cranford, New Jersey, in the amount of \$102,100; and

WHEREAS, the Executive Director concurred with the Evaluation Committee’s recommendation; and

WHEREAS, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

NOW, THEREFORE BE IT RESOLVED that the Executive Director is authorized to enter into a contract with Connolly & Hickey Historical Architects, LLC of 1 S. Union Avenue, Cranford, New Jersey 07016 in the amount of \$102,100 to complete all the necessary work to rehabilitate historic Fenwick Manor.

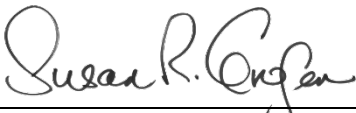
Record of Commission Votes

| AYE NAY NP A/R* | | | | | AYE NAY NP A/R* | | | | | AYE NAY NP A/R* | | | | |
|--------------------------|---|--|---|--|--------------------------|---|--|---|--|--------------------------|---|--|--|--|
| Asselta | X | | | | Lettman | | | X | | Rittler Sanchez | X | | | |
| Avery | X | | | | Lohbauer | X | | | | Signor | X | | | |
| Buzby-Cope | X | | | | Mauriello | X | | | | Wallner | X | | | |
| Holroyd | | | X | | Meade | X | | | | Matos | X | | | |
| Irick | X | | | | Pikolycky | X | | | | | | | | |

*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: April 11, 2025



Susan R. Grogan
Executive Director



Laura E. Matos
Chair



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-25- 11

TITLE: To Authorize the Executive Director to Propose Amendments to the Comprehensive Management Plan in Accordance with the Administrative Procedure Act (Fees; Certificates of Filing; Waivers of Strict Compliance; Land Capability Map; Regional Growth Areas; Pinelands Development Credits)

Commissioner Mauriello moves and Commissioner Lohbauer seconds the motion that:

WHEREAS, N.J.A.C. 7:50-5 of the Comprehensive Management Plan sets forth criteria for the designation of Pinelands management areas and depicts the boundaries of these areas on a Land Capability Map, adopted as part of the Comprehensive Management Plan at N.J.A.C. 7:50-5.3(a)24; and

WHEREAS, updated information generated by and made available to the Commission concerning natural resources in the Black Run Watershed indicates that a change in the designation of an area in Evesham Township, Burlington County, from a Rural Development Area to a Forest Area is warranted; and

WHEREAS, the Commission is therefore proposing to amend the Land Capability Map adopted at N.J.A.C. 7:50-5.3(a)24 in order to implement the above-described management area change; and

WHEREAS, the Commission has also identified the need to amend the Comprehensive Management Plan to adjust fees required for certain development applications so as to better reflect staff resources expended on the review of such applications; and

WHEREAS, the Commission also wishes to establish expiration provisions for certain Waivers of Strict Compliance, Certificates of Filing and other completeness documents issued by the Commission in order to ensure that proposed development is consistent with current Comprehensive Management Plan standards and reduce the confusion and administrative burden that results when applicants seek to rely on decades-old documents; and

WHEREAS, the Commission further wishes to update provisions related to development and land use in Pinelands Regional Growth Areas, as well as standards related to the allocation, use and severance of Pinelands Development Credits; and

WHEREAS, the Executive Director has submitted to the Commission draft amendments to the Pinelands Comprehensive Management Plan to accomplish the above-described objectives in a manner that furthers the goals of the Comprehensive Management Plan; and

WHEREAS, the proposed Comprehensive Management Plan amendments were discussed and reviewed at multiple public meetings of the Commission’s CMP Policy & Implementation Committee, beginning in 2015; and

WHEREAS, the proposed amendments to the Comprehensive Management Plan have been reviewed by the Pinelands Commission; and

WHEREAS, the Pinelands Commission wishes to formally consider the proposed amendments to the Comprehensive Management Plan set forth in the attachment hereto, dated April 9, 2025; and

WHEREAS, the Administrative Procedure Act of 1968, as amended, and the Office of Administrative Law implementing regulations set forth a detailed procedure governing proposed rulemaking; and

WHEREAS, the Pinelands Commission also wishes to obtain the comments of the public, governmental agencies and the Pinelands Municipal Council on the proposed amendments, in

accordance with the Pinelands Protection Act and Subchapter 7 of the Comprehensive Management Plan; and

WHEREAS, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

NOW, THEREFORE, BE IT RESOLVED that:

- 1. The Commission hereby authorizes the Executive Director to submit the proposed amendments to the Comprehensive Management Plan, attached hereto and dated April 9, 2025, and the required supporting documentation to the Office of Administrative Law for publication as proposed regulations;
- 2. The Executive Director shall post and distribute the proposed amendments in accordance with N.J.A.C. 7:50-7.4 and shall transmit the proposed amendments to the Pinelands Municipal Council for review and recommendation pursuant to N.J.A.C. 7:50-7.6;
- 3. The public comment period on the proposed amendments shall extend 60 days from the date of publication of the proposal in the New Jersey Register. During the public comment period, the Executive Director shall schedule and hold a public hearing to receive comments on the proposed amendments; and
- 4. Subsequent to the end of the comment period, and after consideration of all public comments received, the Executive Director shall expeditiously prepare proposed final amendments, with any pertinent changes, for review by the Commission’s CMP Policy & Implementation Committee, and shall submit such amendments to the Commission for final action.

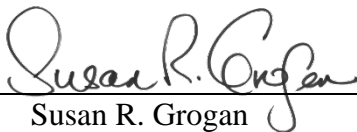
Record of Commission Votes

| AYE NAY NP A/R* | | | | | AYE NAY NP A/R* | | | | | AYE NAY NP A/R* | | | | |
|-----------------|---|--|---|--|-----------------|---|--|---|---|-----------------|---|--|--|--|
| Asselta | X | | | | Lettman | | | X | | Rittler Sanchez | X | | | |
| Avery | X | | | | Lohbauer | X | | | | Signor | X | | | |
| Buzby-Cope | X | | | | Mauriello | X | | | | Wallner | X | | | |
| Holroyd | | | X | | Meade | | | | A | Matos | X | | | |
| Irick | X | | | | Pikolycky | X | | | | | | | | |


*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: April 11, 2025



Susan R. Grogan
Executive Director



Laura E. Matos
Chair

April 9, 2025

ENVIRONMENTAL PROTECTION

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Fees; Hearing Procedures; Action on Applications; Certificates of Filing; Public Hearings;

Waivers of Strict Compliance; Map status; Standards for Development and Land Use in

Regional Growth Areas; Pinelands Development Credits; Pilot Program for Alternate

Design Wastewater Treatment Systems

Proposed Amendments: N.J.A.C. 7:50-1.6, 4.3, 4.15, 4.34, 4.41, 4.70, 5.3, 5.28, 5.43, 5.46,

5.47 and 10.22

Authorized By: New Jersey Pinelands Commission, Susan R. Grogan, Executive Director.

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

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

Proposal Number:

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

_____, 2025, at 9:30 A.M.

Submit written comments by regular mail, facsimile, or email by ____, 2025, to:

Susan R. Grogan, P.P., AICP

Executive Director

Pinelands Commission

PO Box 359

New Lisbon, NJ 08064

Facsimile: (609) 894-7330

Email: planning@pinelands.nj.gov or through the Commission's website at

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

The name and email address of the commenter must be submitted with all public comments. Commenters who do not wish their names and affiliations to be published in any notice of adoption subsequently prepared by the Commission should so indicate when they submit their comments.

The agency proposal follows:

Summary

The New Jersey Pinelands Commission (Commission) proposes to amend subchapters 1, General Provisions; 4, Development Review; 5, Minimum Standards for Land Uses and Intensities; 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 many times, most recently in December 2023, through a set of amendments related to water management, which strengthened the ecological protections of the Kirkwood-Cohansey aquifer (See 55 N.J.R. 247(a)).

The amendments now being proposed relate to: (1) application fees; (2) the expiration of completeness documents and Waivers of Strict Compliance; (3) Regional Growth Areas and the Pinelands Development Credit program; (4) the redesignation of the Black Run watershed in

Evesham Township, Burlington County from a Pinelands Rural Development Area to a Pinelands Forest Area; and (5) minor clarifications and updates.

The proposed amendments were discussed and reviewed at multiple public meetings of the Commission's CMP Policy & Implementation Committee between 2022 and 2024. With respect to the proposed amendment to the Pinelands Land Capability Map, a more significant outreach effort was undertaken over an extended period of time. The proposal was the subject of discussion at numerous public Policy & Implementation Committee meetings in 2015 and 2016, during which time a series of meetings were also held with Evesham Township officials and representatives of the major property owner in the affected area. A full rule proposal was drafted at that time but ultimately did not proceed. In more recent years, Commission staff drafted a simpler proposal and met with Evesham Township representatives, neighboring residents, legislators and the non-profit organization charged with overseeing the existing Black Run Preserve. All indicated a strong interest in providing increased protection to the area.

If requested, Commission staff will provide a presentation on the proposed amendments at a public meeting of the Pinelands Municipal Council (PMC). The PMC, created by the Pinelands Protection Act, is made up of the mayors of the 53 municipalities in the Pinelands Area, or their designees. The PMC is empowered to review and comment upon changes to the CMP proposed by the Commission and advises the Commission on matters of interest regarding the Pinelands. The PMC has unfortunately been inactive since late 2022 but could play an important role in the review of these and any future proposed CMP amendments.

Application Fees

Since April 2004, the Commission has assessed 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 application process (see 36 N.J.R. 1804(a)). The Commission previously amended its fee schedule in June 2006 (see 38 N.J.R. 2708(a)), December 2008 (see 40 N.J.R. 6805(a)), March 2018 (see 50 N.J.R. 969(a)) and December 2023 (see 55 N.J.R. 247(a).)

A series of amendments to the Commission's application fee requirements are now being proposed to better align fees with the staff resources expended on development applications involving: the resolution of an existing, identified violation of the CMP; a Waiver of Strict Compliance to alleviate an extraordinary hardship; or a Letter of Interpretation. The proposed fee increases are reflected in the proposed amendments to N.J.A.C. 7:50-1.6(e), (g) and (h).

Applications Involving CMP Violations

New rules at N.J.A.C. 7:50-1.6(e)3 and 4 are proposed to address staff resources expended on the review of development applications that are submitted, in whole or in part, to resolve an identified violation of the CMP. The proposed rule at (e)3 will assess an additional fee of \$1,000 when a major development application is submitted, in whole or in part, to resolve an identified violation. The proposed rule at (e)4 will assess an additional fee of \$500 when a minor development application is submitted, in whole or in part, to resolve an identified violation. The terms "development, major" and "development, minor" are defined at N.J.A.C. 7:50-2.11. Major development means any subdivision of land into five or more lots, construction of five or more dwelling units, nonresidential development on a site of more than three acres in size or grading, clearing or disturbance of an area in excess of 5,000 square feet. In both cases, this new fee is to

be assessed in addition to the application fee already required by N.J.A.C. 7:50-1.6(a) through (d) or (f).

Violations of the CMP most often involve development that has occurred on a parcel in the Pinelands Area without prior application to the Commission or local approval by the relevant county or municipality. Such development typically consists of clearing, expansion of nonresidential buildings or structures (e.g., parking lots) or construction of accessory structures. A violation may also occur when development on a parcel is not in accordance with a previously approved site plan, leading to inconsistencies with the approved stormwater management plan or maintenance of required buffers to wetlands. When such a violation is identified, the landowner is usually required to submit a development application to the Commission for the development that has occurred without approval. Existing violations of the CMP are often identified during the review of a separate and subsequent development proposal for which an application is submitted after the unpermitted development activity has occurred. In such cases, the applicant is required to amend their development application to resolve the violation.

The fee increase is proposed to recognize the additional staff resources required to identify, evaluate, and resolve violations. Multiple site visits are often necessary, as are meetings with applicants, their representatives and relevant county and municipal officials. Staff must often interpret aerial photography, spanning decades, to identify the extent of violations and the timeframe within which they occurred. In some cases, staff are asked to appear in court in support of municipal enforcement actions. Applicants are often required to design and submit restoration plans that the Commission must review and sometimes monitor. The increased fee is in no way intended to be punitive. It is merely a way of ensuring that fees for various types of

development applications appropriately correspond to the staff resources required to review and process them.

Under current rules, an applicant, regardless of whether the application involves a violation, is assessed an application fee based on the application fee provisions at N.J.A.C. 7:50-1.6(a) through (d) or (f) as well as the characteristics of the proposed development. This may include any existing development included in the application to resolve an identified violation. For example, if an applicant constructed an accessory structure or cleared an acre of land without prior application to the Commission or approval by the relevant municipality, the applicant would be assessed the same fee as an applicant that applied and received approvals prior to the construction or clearing. Under the proposed rule, the application to resolve the violation would be assessed an additional fee of \$500 or \$1,000, depending on the size and intensity of the development.

In the ten-year period between 2013-2023, there were approximately 1,000 CMP violations reported, of which approximately 650 were pursued by the Commission. The majority occurred on privately owned parcels. Less than ten percent were associated with public development, which includes state, county and municipal lands and projects. Of the 650 violations pursued, 75 percent met the definition of minor development.

The fees assessed for minor development applications involving a violation were generally less than \$500 per application. The proposed amendments would require an additional \$500 when a minor development application is submitted, in whole or in part, to resolve an identified violation.

Less common are substantial violations involving extensive clearing, soil disturbance or the construction of new or expanded nonresidential structures at a scale that meets the definition of major development. Examples in recent years include installation of storage buildings, establishment of a composting facility and expansion of active recreational facilities. In these cases, an application to resolve the violation would be assessed an additional fee of \$1,000.

Given the staff time and effort necessary to review and resolve violations, even those characterized as minor development, the Commission believes these increased fees are justified and appropriate.

The current rule at N.J.A.C. 7:50-1.6(e)2 is recodified at N.J.A.C. 7:50-1.6(e)5. The current rule at N.J.A.C. 7:50-1.6(e)3 is recodified and amended at N.J.A.C. 7:50-1.6(e)6. The proposed amendment at (e)6 maintains the existing application fee cap of \$25,000 for applications submitted by a public agency and \$50,000 for all other applications. However, the rule is amended to allow those caps to be exceeded if the application involves an existing violation. Under the proposed amendment, if an assessed application fee reaches the established fee cap and the application for development involves the resolution of an existing violation, then the proposed rule would allow the cap to be exceeded by as much as \$500 for a minor development application and by as much as \$1,000 for a major development application.

The current rule at N.J.A.C. 7:50-1.6(g) provides an application fee cap of \$500 for applications submitted by a qualified tax-exempt religious association or corporation or a qualified tax-exempt non-profit organization. In similar fashion to the amendment proposed at (e)6 above, an amendment is proposed at (g) to allow the established cap to be exceeded if the application involves resolution of an existing violation. Under the proposed amendment, if an assessed application fee reaches this \$500 fee cap and the application for development involves

the resolution of an existing violation, then the proposed rule would allow the cap to be exceeded by as much as \$500 for a minor development application and by as much as \$1,000 for a major development application.

Applications Requiring a Waiver of Strict Compliance

The CMP provides procedures and standards by which the Commission is authorized to waive strict compliance with the standards in the CMP (see N.J.A.C. 7:50-4 Part V). If a development proposal is not consistent with all applicable requirements of the CMP, it cannot be carried out without a valid Waiver of Strict Compliance. Waivers granted under these provisions are intended to provide relief where strict compliance with the CMP will create an extraordinary hardship or where the waiver is necessary to serve a compelling public need.

A new rule at N.J.A.C. 7:50-1.6(e)2 is proposed to address staff resources expended on the review of development applications requiring a Waiver of Strict Compliance to alleviate an extraordinary hardship. The proposed rule will assess an additional fee of \$250 for any application submitted that requires such a waiver. This lump sum fee is assessed in addition to any applicable fee for development assessed in accordance with N.J.A.C. 7:50-1.6(a) through (d) or (f).

The proposed fee is necessary to recognize the additional staff resources required to review and process waiver applications seeking to alleviate an extraordinary hardship in accordance with N.J.A.C. 7:50-4.63. All such applications involve additional staff resources beyond that which is required of a typical development application, as staff must: ensure that the applicant has properly met all notice requirements provided by the CMP; schedule an opportunity for public comment; review and consider any submitted public comment; draft a

report and resolution along with a recommendation for the Commission's consideration; and schedule the waiver application for final consideration at a Commission meeting. These procedural obligations are in addition to the substantive review that must also occur, requiring historical research related to ownership of the parcel and contiguous lands and determining the minimum buffers that must be maintained to one or more wetlands areas on a parcel.

The new \$250 fee is not expected to impact many applicants. Over the past 10 years, the Commission has approved an average of just three extraordinary hardship waiver applications per year. The increased fee is therefore likely to impact only a small number of applicants and is not expected to generate a significant increase in application fee revenue. The proposed fee is also quite modest, in recognition of the fact that waivers to alleviate an extraordinary hardship are almost always associated with an application to develop only one single-family dwelling unit.

It should be noted that, for any waiver granted to alleviate an extraordinary hardship that has expired in accordance with N.J.A.C. 7:50-4.70, the applicant must resubmit an application for a new waiver if they wish to pursue the development. Such an application will be assessed a fee in accordance with N.J.A.C. 7:50-1.6, including the additional \$250 fee if the application still requires a waiver.

If an applicant is seeking a waiver to alleviate an extraordinary hardship for the sole purpose of demonstrating that the parcel is of "limited practical use" pursuant to N.J.A.C. 7:50-9.2(a), the proposed rule will not require the applicant to pay the additional \$250 fee. The Limited Practical Use Land Acquisition Program (LPU Program) offers owners of small properties with limited development potential an opportunity to sell their properties to the State of New Jersey. The regulations associated with the LPU Program were adopted by the Commission in 1995 and are set forth in the CMP at N.J.A.C. 7:50-9. To be eligible for

acquisition under the LPU Program, the property must be less than 50 acres in size and the property owner may not own 50 or more acres total anywhere in the Pinelands National Reserve. In addition, the Pinelands Commission must have denied an application requesting a waiver for the development of a residential unit on the property. While the staff does devote time and attention to the review and processing of such waiver applications, it is typically somewhat less extensive. More importantly, the Commission does not want to discourage property owners interested in pursuing State acquisition under the LPU Program.

While the Commission may also approve waivers based upon a compelling public need in accordance with N.J.A.C. 7:50-4.64, no additional fee is proposed for that type of waiver. This latter category of waiver generally involves large, nonresidential development that, under current rules, are assessed an application fee that appropriately aligns with the staff resources spent on the review and processing of such applications.

Applications Requesting a Letter of Interpretation

Letters of Interpretation (LOI) are issued by the Commission pursuant to N.J.A.C. 7:50-4, Part VI, at the request of an applicant. LOIs may be requested for any standard set forth in the CMP and, upon issuance by the Commission, are valid for five years. The majority of LOI applications involve requests for an allocation of PDCs to a particular parcel. Most other LOI applications relate to the extent of wetlands or wetlands buffer areas on specific parcels.

New rules at N.J.A.C. 7:50-1.6(h)2 and 3 are proposed to establish distinct fees for wetlands-related Letters of Interpretation (LOIs) in order to better reflect the amount of staff time and effort typically required for these types of applications. The current rules at N.J.A.C. 7:50-

1.6(h) assess a fee of \$250 for all LOIs, except there is no fee for an initial LOI involving the allocation of Pinelands Development Credits (PDC) or an amended PDC LOI after a period of five years. The proposed rule at (h)2 increases the application fee to \$1,000 for an LOI that determines the presence or absence of wetlands or wetlands transition areas on a parcel. The proposed rule at (h)3 increases the application fee to \$1,000 plus \$100 per acre of a parcel, or portion thereof, for an LOI that verifies wetlands boundaries or determines the extent of any required wetlands transition area. As an example, an application for an LOI as to the extent or wetlands or required buffers on a parcel of 25.3 acres would be assessed a fee of \$1,000 plus \$2,600 for a total of \$3,600. While such an increase is not insignificant for the applicant, it appropriately reflects the need for site visit(s), fieldwork and sometimes complex analysis to determine multiple wetlands buffer requirements, given the size of the parcel.

It should be noted that the proposed rule includes a cap on the fee for an LOI involving the extent of wetlands or required wetlands buffer areas. In keeping with existing fee caps at N.J.A.C. 7:50-1.6(e)3 (now being recodified as (e)6), the maximum fee will be \$25,000 if the LOI applicant is a public entity and \$50,000 if the applicant is a private landowner or development. While unlikely that there will be many wetlands-related LOI applications on parcels large enough to reach these caps, the Commission nevertheless feels that it is appropriate to consider and address that possibility in the rule.

As noted above, these fee increases are proposed to better reflect staff resources expended on the review and processing of applications requesting LOIs where extensive fieldwork and analysis by staff is required. The increased fees are consistent with those currently assessed by the New Jersey Department of Environmental Protection (NJDEP) at N.J.A.C. 7:7A-18.1(f) for similar types of LOIs. The Commission believes the DEP's LOI fee structure

adequately and appropriately reflects the staff resources expended on these types of applications. A 1993 Memorandum of Agreement (MOA) between the Commission and the DEP provides additional justification for the Commission's decision to align its LOI fees with the DEP's fees for similar LOIs. Under the MOA, the NJDEP delegated to the Commission its responsibility to fulfill the requirements of the Section 404 program of the federal Clean Water Act and to establish a framework for the protection of wetlands within the Pinelands Area. Through this agreement, the Commission assumed responsibility for issuing LOIs to verify the presence or absence of wetlands and to verify wetlands boundaries in the Pinelands Area.

The current rule at N.J.A.C. 7:50-1.6(h)2 is recodified and amended at N.J.A.C. 7:50-1.6(h)4. The proposed amendment at (h)4 raises the application fee for all LOIs that do not involve wetlands or the allocation of PDCs from \$250 to \$500. Such LOIs could involve the clarification or interpretation of any provision of the CMP, such as whether an existing use qualifies for the provisions at N.J.A.C. 7:50-5.2 that permit expansion or changes to nonconforming uses. While relatively few such LOI applications are submitted to the Commission, they can require significant staff resources to research and analyze. The increased fee remains quite modest while better reflecting the necessary level of staff time and effort.

There will continue to be no fee for an initial PDC LOI application or an amended PDC LOI application submitted five years after the prior LOI was issued. Likewise, the application fee for an amended PDC LOI requested within five years of issuance of the original LOI will remain \$250 plus \$6.25 per acre of land for which the amended LOI is requested.

The fee increase is not expected to generate a significant increase in revenue, because the Commission receives and processes relatively few non-PDC LOI applications each year. Since January 2014, the Commission has received approximately 35 non-PDC LOI applications, which

equates to an average of four per year. All but two of these applications requested LOIs related to wetlands, either for the presence or absence of wetlands or for confirmation of the extent of wetlands and required wetlands buffer areas. Each paid a fee of just \$200 or \$250 based on the CMP regulations in effect at the time of application. Under the proposed rules, the required fee would be a minimum of \$500, with additional fees assessed for those LOIs seeking confirmation of wetlands delineations or determination of wetlands buffer requirements. While clearly not a major component of the Commission staff's application review workload, the Commission believes it is important that application fees better reflect staff resources expended on applications requesting these types of LOIs.

Expiration of Completeness Documents and Waivers of Strict Compliance

A series of amendments are proposed to establish expiration provisions for completeness documents and certain Waivers of Strict Compliance. The purpose of these amendments is to reduce the administrative burden imposed on Commission staff, local permitting agencies, and applicants, while also ensuring that any proposed development is consistent with current CMP standards and taking into consideration current environmental conditions of lands proposed for development. The proposed changes are reflected at N.J.A.C. 7:50-4.15, 4.34, and 4.70.

Expiration of Completeness Documents

The CMP provides procedures and standards for the issuance of completeness documents referred to as Certificates of Completeness and Certificates of Filing. No county or municipal permitting agency is permitted to deem any application for development in the Pinelands Area complete unless it is accompanied by either a Certificate of Completeness or a Certificate of Filing issued by the Executive Director of the Commission.

A Certificate of Completeness, issued in accordance with N.J.A.C. 7:50-4.15, verifies that a complete application for development has been filed with the Commission for development in a county or municipality whose master plan and land development ordinances *have not been* certified by the Commission. Prior to December 1994, a Certificate of Completeness was referred to in the CMP as a Certificate of Compliance (see 26 N.J.R. 4795(a)). Certificates of Compliance are incorporated in the statistics provided below and are treated as Certificates of Completeness under current and proposed rules.

A Certificate of Filing, issued in accordance with N.J.A.C. 7:50-4.34, verifies that a complete application for development has been filed with the Commission for development in a county or municipality whose master plan and land development ordinances have been certified by the Commission. As of 2013, the master plans and land use ordinances of all counties and municipalities in the Pinelands Area have been certified in accordance with N.J.A.C. 7:50-3 Part II and IV.

Once an applicant has received a completeness document issued by the Commission, they may proceed to the local permitting agency to apply for any necessary county or municipal approvals. Under current rules at N.J.A.C. 7:50-4.19, 4.22, 4.37, and 4.40, Commission staff must review any preliminary or final local development approval to ensure that the approved development conforms to the minimum standards of the CMP and the relevant certified local land development ordinance. This review process ensures that any previously identified inconsistencies communicated in the completeness document have been resolved and that any other modifications to the proposal since the completeness document was issued are consistent with current CMP standards. As part of that review, staff must also consider whether the proposed development is consistent with any CMP standards that have been amended since the

issuance of the completeness document. This aspect of the review can be substantial depending on the time elapsed since the completeness document was issued, the scope of the project, and whether any significant changes to the environmental conditions of the land proposed for development have occurred.

In the past 15 years alone, significant amendments have been made to CMP standards regulating onsite wastewater treatment systems, residential clustering, stormwater management and water management. Amendments to CMP standards often render the application review that preceded the issuance of the completeness document obsolete. The more time that has elapsed between the issuance of a completeness document and the local approval, the greater the chance that the proposed development no longer meets current CMP standards. In many cases, decades may have passed, properties may have been sold multiple times and applicants and local permitting agencies are unaware that a proposed development project is no longer meeting the current standards of the CMP or the municipal land use ordinance.

If Commission staff review a local development approval and find that the approved development does not conform with the minimum standards of the CMP and the provisions of the certified local land use ordinance, then the local approval is called up for review pursuant to 7:50-4.38 or 4.42. This triggers the need to schedule and hold a public hearing, for Commission staff to compile a report to be submitted to the Pinelands Commission, and for the Commission to make a determination on whether to approve, approve with conditions, or disapprove the local approval. In almost all cases, the applicant opts to revise their development proposal to resolve any inconsistencies prior to the Commission's rendering a formal decision. Any revised proposal must also be resubmitted to the local permitting agency for review and approval, in some cases triggering additional hearings on the application before the local Planning or Zoning Board.

Amendments are proposed at N.J.A.C. 7:50-4.15 to establish expiration provisions for Certificates of Completeness, and amendments are proposed at N.J.A.C. 7:50-4.34 to establish expiration provisions for Certificates of Filing. These proposed expiration provisions (N.J.A.C. 7:50-4.15(b) and (c); N.J.A.C. 7:50-4.34(c) and (d)) are the same for both types of completeness documents. Under the proposed rules, any Certificate issued prior to January 1, 2004, shall be deemed expired and may not be used to obtain local approval or approval by the Commission. Any Certificate issued on or after January 1, 2004, will expire five years after it has been issued unless the applicant has obtained local approval and the Executive Director has determined that the locally approved development is consistent with the minimum standards of the CMP.

Under the proposed rules, an applicant seeking local development approval, whose Certificate of Completeness or Certificate of Filing has expired, will need to reapply to the Pinelands Commission to receive a valid completeness document prior to any subsequent county or municipal approval. Through the process of reapplying, the applicant will be made aware of any inconsistencies that the development proposal has with respect to current CMP standards, taking into consideration current environmental conditions of the lands proposed for development. This will allow the applicant to address those inconsistencies prior to receiving local approval and therefore reduce the incidence of applicants having to return to the local permitting agency with revised development proposals.

Although the master plans and land use ordinances of all counties and municipalities in the Pinelands Area are certified, the rules for development review in jurisdictions without certification are maintained in the event that county or municipal certification is revoked or suspended in the future, in accordance with N.J.A.C. 7:50-3.64. Therefore, the proposed

amendments will apply to any future Certificates of Completeness issued in the event that a county or municipality is no longer certified.

Upon adoption of the proposed rules, Certificates of Completeness and Certificates of Filing issued between 1980 and 2003 will be deemed expired. The Commission issued approximately 12,600 Certificates during that period. Of those issued, approximately 2,500 Certificates were for development that did not obtain a local approval that was reviewed and approved by the Executive Director. Under the current rules, these 2,500 applications, filed between 20 and 43 years ago, could pursue local development approval at any time, using their now very old Certificates as evidence of completion of an application with the Commission. As described above, it is unlikely that the development proposed in these decades-old applications meets current CMP or municipal standards given the time elapsed. The proposed rules recognize the problems that can and have arisen when property owners attempt to pursue local approvals using such outdated documents, only to subsequently discover that their projects do not comply with current CMP standards and may need to be significantly redesigned. Assigning an expiration date to these old Certificates sends an appropriate signal to property owners, applicants and municipalities that new applications and reviews are necessary.

Certificates of Completeness and Certificates of Filing issued after 2004 will expire five years after their date of issuance under the proposed rules, unless the applicant received local approval for the development, and the local approval was reviewed and approved by the Executive Director. Between 2004 and 2023, the Commission issued approximately 4,600 Certificates. Of those issued, approximately 1,700 Certificates were for development that never obtained a local approval that was reviewed and approved by the Executive Director. Of those 1,700 Certificates, approximately 1,250 Certificates were issued prior to 2018 and would be

deemed expired under the proposed rules. The remaining 450 Certificates will expire once five years have elapsed from the date of issuance, unless a local approval is granted and the approval is reviewed and approved by the Executive Director.

It is also noted that, under the proposed rules, it is not sufficient for an applicant to have received a local approval in order to avoid the expiration of their completeness document. The local approval must also have been reviewed, determined to be consistent with the CMP and allowed to take effect by the Executive Director. The CMP requires at N.J.A.C. 7:50-4.18 and 4.35 that notice of any preliminary or final site plan, subdivision or other development approval be provided to the Commission within five days of issuance. However, there are instances where the Commission is not notified or does not receive all of the required information associated with a local approval to enable its review for consistency with the CMP. This may include site plans or professional reports. In those instances, the completeness document will not be protected from expiration.

If a completeness document expires pursuant to the proposed rules, the applicant must reapply to the Commission and receive a valid Certificate of Filing prior to proceeding to the local permitting agency for county or municipal approval. In such cases, applicants will have to submit an application fee in accordance with N.J.A.C. 7:50-1.6. Most Certificates that will immediately expire under the proposed rules are for single-family residential units on existing lots. In fact, ninety-four percent of the Certificates issued by the Commission prior to 2004 for residential development were for minor development (e.g., applications for four or fewer residential units). Under the proposed rule, those applicants whose Certificates expired will be required to reapply for a new Certificate of Filing, which will be assessed an application fee of \$250 per dwelling unit or lot, whichever is greater, in accordance with N.J.A.C. 7:50-1.6(b).

Some expired Certificates were associated with much larger proposed developments involving significant acreage, which will appropriately be assessed larger application fees as they necessitate more comprehensive reviews. For example, an applicant may need to complete updated surveys to determine the presence of critical habitat for a threatened or endangered animal species or reconfigure a project's design in order to accommodate new or additional stormwater management measures.

Expiration of Waivers of Strict Compliance

As described above, the CMP provides procedures and standards for the Commission to waive strict compliance with the minimum standards of the CMP (see N.J.A.C. 7:50-4 Part V). These exemptions, required by the 1979 Pinelands Protection Act, are called "Waivers of Strict Compliance" (Waivers.) Waivers are somewhat similar in concept, although not identical, to zoning variances issued by municipalities. Unlike variances, however, Waivers of Strict Compliance are exemptions from CMP standards and can only be granted by the Pinelands Commission to alleviate extraordinary hardships or to satisfy compelling public needs. The Commission must also determine that granting the waiver will not result in a substantial impairment of Pinelands resources and will not be inconsistent with the purposes, objectives or general spirit of the Pinelands Protection Act, the Federal Act or the Comprehensive Management Plan.

In March 1992, the Commission adopted a series of amendments to the CMP waiver regulations that provide greater environmental protections to Pinelands resources by setting stricter waiver standards (see 24 N.J.R. 832(b)). Among those amendments was an expiration provision for waivers granted to alleviate an extraordinary hardship. Under current rules at N.J.A.C. 7:50-4.70(c), such waivers, granted on or after March 2, 1992, expire after five years

unless all necessary construction permits have been issued and the authorized work was commenced within 12 months of issuance of the permits and no such permit becomes invalid. Notably, the expiration provision did not apply to waivers granted prior to March 2, 1992, which continued to be valid in perpetuity.

A new rule at N.J.A.C. 7:50-4.70(e) is proposed to establish an expiration provision for Waivers of Strict Compliance granted prior to March 2, 1992 to alleviate an extraordinary hardship. Under the proposed rule, these types of waivers will be deemed expired one year from the effective date of the adoption of the amendment. The Commission believes it is necessary to periodically reevaluate the conditions under which waivers are granted to ensure that potential environmental changes and amendments to the CMP are given adequate consideration. This responsibility clearly extends to waivers that were granted between 25 and 35 years ago that are currently valid in perpetuity. While the March 1992 amendment did not include such expiration provisions, the Commission feels that it is appropriate to do so now that at least 25 years have elapsed, allowing affected property owners ample time to proceed with development.

The current rule at N.J.A.C. 7:50-4.70(e), which provided a limited number of applicants with the option of requesting that their active waiver application be reviewed under the pre-1992 CMP waiver regulations, is being repealed as there are no longer any applications for which these provisions could apply.

The Commission estimates that there are approximately 200 waivers approved between 1981 and March 1992 that could be affected by the proposed rule. These waivers were almost exclusively for the development of one residential unit on an existing lot. According to Commission records, these applicants did not subsequently complete a development application or obtain a municipal building permit to develop the proposed residential unit. The Commission

will make every effort to contact these affected applicants and property owners and advise them of the pending waiver expiration and their options. Some may be able to complete a development application and receive a municipal building permit within the 1-year period. However, it is likely that many will not. If an applicant's waiver expires under the proposed rule, they must reapply to the Commission if they want to pursue the development for which the expired waiver was approved. This will require the submission of any application fee assessed in accordance with N.J.A.C. 7:50-1.6.

There may be instances where the proposed development no longer requires a waiver. Many of the affected waivers were granted in the early 1980s, prior to the Commission's certification of many municipal master plans and land use ordinances. Numerous changes in zoning and Pinelands management area designations were made during that initial certification process. For example, lands originally designated as a Forest Area by the CMP could have been redesignated to a Rural Development Area through the Commission's certification of a municipal zoning map. Permitted density in the Rural Development Area is significantly higher than that permitted in the Forest Area. If a waiver was originally required because a property did not meet the lot area or density requirements for a Forest Area, it may no longer be necessary now that the property is in a management area and zone where more intensive development is permitted.

Applications that still require a Waiver of Strict Compliance will be processed by the Commission in accordance with current CMP waiver standards and procedures. Such applications will also be assessed the \$250 fee proposed herein, unless the Waiver request is solely to demonstrate that the parcel is of "limited practical use" pursuant to N.J.A.C. 7:50-9.2(a). If an application does not meet the current waiver standards, the Commission must deny the requested waiver.

An applicant requesting a new waiver for the same development proposal that previously received a waiver cannot be guaranteed to receive another waiver. The standards at N.J.A.C. 7:50-4.63, which provide the conditions that must be demonstrated by the applicant for the Commission to deem an extraordinary hardship to exist, have been amended several times since 1981 and most substantially in March 1992. Those amendments more clearly defined when hardship conditions exist, and narrowed the circumstances that qualify for an extraordinary hardship. Under the proposed rule, there are likely to be waivers that expire for which the applicant will not qualify for an extraordinary hardship if they reapply under current CMP standards. If so, the Commission must deny the waiver request. In cases where a waiver is denied, the land may become eligible for State acquisition under the LPU Program described above.

There may be circumstances where an applicant reapplies for a waiver and demonstrates that an extraordinary hardship exists under current CMP standards, but where the Commission finds that the waiver would result in substantial impairment to Pinelands resources. As noted above, the Commission cannot waive strict compliance if it will result in a substantial impairment of the resources of the Pinelands. Prior to March 1992, the CMP did not expressly define substantial impairment. The March 1992 amendments set standards at N.J.A.C. 7:50-4.65 that determine whether the requested waiver would result in substantial impairment. The purpose of these amendments was not only to provide clear standards, but also to make them more stringent than the Commission's past practice. Under the proposed rule, there are likely to be waivers that expire for which the applicant will be able to meet the current CMP standards for demonstrating an extraordinary hardship but will not be able to meet the current standards for substantial impairment. In such cases, the Commission must grant the waiver, but instead of

allowing any on-site development to occur, the waiver will grant the applicant a PDC based on the fair market value of the parcel and the market value of the PDCs at the time the waiver application is completed in accordance with N.J.A.C. 7:50-4.62(d)2. Such applicants will be entitled to a minimum one-quarter PDC.

In cases where a waiver is approved and it will not result in a substantial impairment to Pinelands resources, the applicant may proceed with the development application. If the waiver granted waives strict compliance with one or more of the standards at N.J.A.C. 7:50-6, then the applicant will be required to purchase and redeem one-quarter PDC in accordance with N.J.A.C. 7:50-4.62(d)1iii. This PDC requirement was adopted as part of the March 1992 amendments, and therefore was not a requirement imposed on waivers granted prior to March 1992. The Commission continues to maintain that this provision helps to reduce the overall impact of each waiver on the resources of the Pinelands as it results in the permanent protection of important forested or agricultural land in the Preservation Area District, Special Agricultural Production Areas, and Agricultural Production Areas.

It is important to note that only those waivers granted to relieve an extraordinary hardship will be impacted by these amendments. Waivers granted to satisfy a compelling public need pursuant to N.J.A.C. 7:50-4.64 will continue to be valid in perpetuity. The Commission believes this distinction is appropriate, given that the development associated with such waivers typically consists of larger, municipal or county facilities necessary for public safety or other public purposes (e.g., site remediation or infrastructure).

Regional Growth Areas and the Pinelands Development Credit Program

Minimum standards for land use distribution and intensities; Pinelands Development

Credits; N.J.A.C. 7:50-5.28, 5.43, 5.46, 5.47

A driving force for the establishment of the Pinelands Protection Act in 1979 was the realization that a vast tract of relatively unspoiled land would eventually be lost through the effects of scattered and piecemeal development. While each new development by itself may not have caused irreparable harm to the unique Pinelands ecosystem, the continuation of the development patterns occurring in the 1960's and 1970's would in time be the death knell for the Pinelands. The state and federal Pinelands legislation, and the plan developed in response to that legislation (the CMP), have as a primary purpose the preservation and protection of the essential character of the Pinelands, which is that of an area with large unbroken landscapes. The CMP seeks to maintain this character by channeling growth to areas already experiencing development and by protecting outlying areas through a variety of management techniques.

Pinelands Regional Growth Areas, generally located on the outer fringes of the Pinelands Area, were designed to accommodate most of the region's anticipated growth. On the other hand, lands within the Preservation Area District, Special Agricultural Production Area and Agricultural Production Area were afforded protection through rigorous land use policies intended to minimize disturbance and conserve important ecological and agricultural resources. It is estimated that approximately 80% of the residential development approved in the Pinelands Area over the several decades is located within Regional Growth Areas, which comprise only 8% of the land in the Pinelands Area. Less than one percent of the approved residential units during that same time period is located within the Preservation Area District, Special Agricultural Production Area and Agricultural Production Area, areas which together represent almost 42% of the Pinelands Area's land mass.

One of the key growth management and preservation techniques established in the CMP is the PDC program, a transferable development rights program designed to (1) shift development away from the Preservation Area District, Special Agricultural Production Area and Agricultural Production Area and (2) provide a way for landowners in these three management areas to benefit from increased land values in Regional Growth Areas. The PDC program works by allocating development rights to properties in “sending areas” – the Preservation Area District, Special Agricultural Production Area and Agricultural Production Area. These rights can be sold and used to increase the density of residential development in Regional Growth Areas, allow for development on otherwise nonconforming lots in Regional Growth Areas, Pinelands Villages and Pinelands Towns, and offset the environmental impacts associated with waivers of strict compliance. In order for the rights to be available for sale, they must be severed from a sending area property. The severance process requires recordation of an agricultural or conservation easement on the property to permanently protect it against future residential and non-agricultural development. As of June 30, 2024, nearly 58,000 acres of land in Pinelands sending areas have been preserved in this manner and 4,471 rights have been used for development, predominantly in Regional Growth Areas.

The amendments now being proposed are intended to update provisions related to development and land use in Regional Growth Areas and standards related to the allocation, use and severance of PDCs. The primary purpose of these amendments is to codify long-standing Commission practice of affording municipalities flexibility in designing their master plans and land use ordinances to accommodate a variety of housing types, higher residential densities, redevelopment designations and nonresidential and mixed use development opportunities in their Regional Growth Areas. Not only does this sort of flexibility allow municipalities to respond to

changing market demands and other state mandates, it also ensures that opportunities for the use of PDCs remain real, which in turn provides continued value to sending area property owners with PDCs to sell.

The proposed amendment revises N.J.A.C. 7:50-5.28(a)1, which requires that municipalities zone their Regional Growth Areas so as to accommodate a specific number of dwelling units, based on a prescribed density per acre of developable land. As currently worded, this section indicates that the prescribed number of units must be equal to and not exceed the prescribed density. Municipalities will still be required to zone their Regional Growth Area in a manner that accommodates a minimum residential density; however, N.J.A.C. 7:50-5.28(a)1 will no longer prohibit municipal zoning plans from exceeding the number of required units. This amendment recognizes that the CMP has, for many years, contained other provisions that specifically allow for density increases in Regional Growth Area residential zoning capacity. The amendment is also an acknowledgement that it is simply impractical to require that a municipality consistently zone for a very specific number of units in a large geographic area where development and redevelopment occurs or is proposed on a daily basis. The intent of the amendment is to recognize the ability of municipalities to plan for well-balanced communities based on local needs and conditions, which can shift significantly over time.

Additional amendments are proposed to clarify N.J.A.C. 7:50-5.28(a)3, which sets forth requirements for the accommodation of opportunities to use PDCs. While this section will continue to require that municipal zoning plans provide for a certain number of PDC opportunities, it is being restructured. New N.J.A.C. 7:50-5.28(a)3i will simply specify the number of PDC opportunities that must be provided. The requirement that a reasonable proportion of such opportunities be associated with development of single family detached

homes is being deleted. This amendment is being made to recognize that desired housing types change over time and vary from site to site and municipality to municipality. It is a component of a zoning plan that is more appropriately left to municipal discretion. Furthermore, a requirement to zone for single-family detached development is not conducive to the efficient use of land as it tends to involve larger lot zoning and “sprawl”.

As amended, 7:50-5.28(a)3ii will now contain only the simple requirement that municipal zoning plans ensure all residentially zoned districts are reasonably expected to be developed within their assigned density ranges. The guidelines for such density ranges, previously included at N.J.A.C. 7:50-5.28(a)i, are eliminated. These were included in the CMP as guidance for municipalities only and, over time, have proven to be unnecessary.

N.J.A.C. 7:50-5.28(a)3iii is clarified to recognize that it is both municipal master plans and land use ordinances that must provide for the use of PDCs to achieve bonus residential densities.

New N.J.A.C. 7:50-5.28(a)3iv provides Pinelands municipalities with the express authority to meet their assigned PDC zoning obligations by requiring the use of PDCs for nonresidential development. This amendment does not require any increase or change in the number of PDC opportunities to be accommodated in a municipal Regional Growth Area. Rather, it simply makes explicit that a municipality has the option of shifting requirements for the use of PDCs from one type of development (residential) to another (nonresidential). Whereas for residential development, PDCs are generally required based on density, the use of PDCs for nonresidential development could be based on floor area, impervious surface or developed acreage, depending on the type of use that a municipal ordinance or redevelopment plan seeks to accommodate. The amendment recognizes that Pinelands municipalities need the ability to adapt

their certified zoning plans to changing conditions or development opportunities. Provided these adaptations are made in a way that does not harm the PDC program, the Commission supports them. In fact, the Commission has certified a number of municipal ordinances in recent years that require the use of PDCs for certain nonresidential uses or in certain zoning districts. This has proven to be an effective way of preserving PDC demand and, in some cases, enhancing it. N.J.A.C. 7:50-5.28(a)3iv is essentially a codification of this particular example of municipal flexibility.

New N.J.A.C. 7:50-5.28(a)3v acknowledges that Pinelands municipalities may adopt zoning plans that identify housing types for which no PDC use will necessary, including housing units made affordable to low and moderate income households pursuant to N.J.S.A. 52:27D-311. If a municipality makes this choice, its zoning plan must contain provisions that guarantee the use of PDCs for other housing types or in other of the municipality's Regional Growth Area zoning districts. This can most easily be accomplished through the imposition of a requirement that a certain percentage of the units to be developed on a parcel in a given zoning district require the use of PDCs, regardless of project density. The minimum number of PDC opportunities required in the municipality's Regional Growth Area must still be provided, thereby ensuring that there is no overall reduction in PDC opportunities. Many Pinelands municipalities have adopted such provisions over the past 10-20 years based on the municipal flexibility provisions of the CMP. N.J.A.C. 7:50-5.28(a)3v merely codifies this successful practice by expressly stating that municipalities have this option if certain requirements are met.

It is important to note that N.J.A.C. 7:50-5.28(a)3v should not be construed as an automatic exemption of all low and moderate income housing units from the requirement to purchase and redeem PDCs. Such an exemption must be expressly incorporated into a municipal

land use ordinance and coupled with a requirement for the use of PDCs for other housing types (e.g., market rate units) in order for low and moderate income units to be “exempt”. Allowing certain housing types to be exempted addresses concerns expressed by stakeholders and members of the public that dwelling units proposed to meet affordable housing obligations will be made infeasible by the added cost of PDCs.

N.J.A.C. 7:50-5.28(a)4 is amended to clarify that the existing PDC requirements associated with municipal density or lot area variances apply to residential uses only. This has always been the intent of this particular section, but occasional confusion has arisen with variances involving nonresidential development. The addition of the word “residential” will serve to prevent future issues from developing.

New N.J.A.C. 7:50-5.28(a)7ii is added to specify the requirements that must be met when a municipality elects to provide for increased residential zoning capacity in its Regional Growth Area in accordance with N.J.A.C. 7:50-5.28(a)1 and 3. This is yet another instance where the CMP is being updated to reflect the Commission’s long-standing practice of providing municipalities with the flexibility to make these sorts of decisions when designing or amending their Regional Growth Area zoning plans, provided certain conditions related to infrastructure, environmental limitations and the accommodation of PDCs are satisfied. If a municipality wishes to zone for increased residential density in a particular portion of its Regional Growth Area, whether in an existing zone or in a newly created zone or redevelopment area, infrastructure (i.e., roads, water, sewer) must be available or able to be provided to serve the area(s) in question. Such area(s) must be free of significant environmental limitations, such as wetlands or critical habitat for rare animals. Finally, PDCs must be a required component of

zones or redevelopment areas where higher densities than those required by the CMP are to be permitted.

Over the past 10-20 years, Pinelands municipalities have proposed and the Commission has approved many redevelopment plans and land use ordinance amendments that permit densities well in excess of what the CMP requires. These plans and ordinances have satisfied the conditions described above, enabling the Commission to approve the changes in zoning based on the flexibility afforded to municipalities by the CMP. In terms of PDC requirements, municipalities have typically incorporated a requirement that PDCs be redeemed for 20-30% of the market rate units to be developed in a project. Such a requirement has not resulted in significant changes to the theoretical number of PDC opportunities provided via municipal zoning plans. However, by reframing PDC use as a mandatory element of residential development in a Regional Growth Area zone, rather than as an optional bonus density mechanism, the use of PDCs becomes much more certain, no matter what the ultimate density of any particular project might be. This greater certainty benefits both the developer and the holders of PDCs while allowing Pinelands municipalities the flexibility they need to make zoning changes and capture new market demand. Codification of this successful practice in the CMP is now appropriate.

N.J.A.C. 7:50-5.28(a)7iii (previously ii) is amended to clarify the ability of municipalities to vary from the residential density assignments set forth in N.J.A.C. 7:50-5.28(a)1. This section will now only provide municipalities with the ability to implement ten percent decreases in the number of dwelling units assigned to their Regional Growth Areas. The ability to implement a ten percent increase is being deleted. Given the amendments discussed above, which explicitly

acknowledge the ability of Pinelands municipalities to zone their Regional Growth Areas for higher densities, limitation to and standards for a ten percent increase are no longer necessary.

Finally, N.J.A.C. 7:50-5.28(a)7iv (previously iii) is amended to limit opportunities for municipalities to decrease their Regional Growth Area assigned residential densities to 2.5 units per acre of developable land. The amendment specifies that this density reduction is available only to those municipalities who have already implemented such decreases, as evidenced through the Commission's prior certification of amended master plans and land use ordinances.

N.J.A.C. 7:50-5.28(a)7iv (previously iii) was adopted by the Commission in 2002 in order to provide municipalities with the highest assigned Regional Growth Area densities (3.0 units per developable acre or higher) the ability to reduce their residential zoning capacities (see 34 N.J.R. 1024(a)). The Commission believed this decreased density prescription could result in more appropriate patterns of development in certain Regional Growth Areas while providing municipalities with increased flexibility in the design of their zoning plans so as to better achieve local objectives, recognize areas with natural or cultural resource constraints and accommodate the use of PDCs. The amendment was largely a response to ongoing concerns raised by some municipalities with the impacts of the CMP's assigned densities on their ability to plan for community development.

At the time of adoption of the amendment, the Commission predicted that perhaps four of the 12 municipalities with assigned Regional Growth Area densities of 3.0 units per acre or more might seek to implement the density decrease. In the years that followed, only three of the municipalities did so and their revised zoning plans were certified by the Commission between 2002-2008. In subsequent years, numerous development projects were effectively "grandfathered" by various iterations of the State's Permit Extension Act and two of the three

municipalities routinely granted extensions of prior approvals, thereby delaying or, in some cases, negating the decreased densities permitted by the revised zoning plans. This meant that development largely proceeded under the prior zoning plans and densities, with little to none of the benefits the Commission hoped would accrue to the PDC program. It is also noteworthy that, subsequent to the Commission's approval of the density decreases, the three municipalities adopted zoning changes and/or redevelopment plans that permit significantly higher densities, in some cases to accommodate affordable housing obligations and in others to respond to market demand for housing types other than single-family detached dwellings.

Shortly after adopting the density reduction rule described above, the Commission convened a task force for purposes of updating housing demand estimates and determining how much demand should be accommodated with Pinelands development areas. The task force's final report, issued in January 2007, made a number of conclusions. Among them were findings that areas within the Pinelands Area that are targeted for residential development (Regional Growth Area, Pinelands Towns and certain Pinelands Villages) could readily accommodate housing demands well beyond 2020. The task force also recommended that zoning policies in these areas should promote greater land development efficiency to reduce sprawl and meet the diverse housing needs of the population. Specifically, the task force concluded that average densities of at least 4.5 units per acre of developable land were necessary to encourage the efficient use of land and reasonably accommodate future housing needs, largely within Regional Growth Areas. The Pinelands Housing Task Force report is available on the Commission's website at www.nj.gov/pinelands/landuse/recent/housing/Housing%20Final%Rpt.pdf. This density recommendation exceeds the Regional Growth Area assignments set forth at N.J.A.C. 7:50-5.28(a)1 and illustrates the importance of providing Pinelands municipalities with the flexibility

to zone for increased densities in appropriate portions of their Regional Growth Areas. It also highlights the need to limit the ability of municipalities to significantly decrease their permitted Regional Growth Area densities. Given the findings of the Housing Task Force and the demonstrated lack of municipal interest in implementing and maintaining the decreased density offered by the CMP, there is no justification for continuing to allow municipalities to reduce their densities to 2.5 units per developable acre.

The proposed amendments also revise N.J.A.C. 7:50-5.43(a) by clarifying where and why PDCs may be used in the Pinelands Area. The use of PDCs was traditionally limited to achieving residential density bonuses in Regional Growth Areas; therefore, N.J.A.C. 7:50-5.43(a) has for years referenced only that opportunity for PDC use. However, a series of prior amendments to the CMP expanded opportunities and requirements for the use of PDCs to other Pinelands management areas and types of development. Likewise, the amendments now proposed at N.J.A.C. 7:50-5.28(a)3 make clear that municipalities have the ability to incorporate the use of PDCs into their zoning and redevelopment plans in a wide variety of ways. Therefore, N.J.A.C. 7:50-5.43(a) is being amended to more broadly refer to the use of PDCs for development in Regional Growth Areas, as well as for waivers of strict compliance granted by the Commission (N.J.A.C. 7:50-4.62(a)), variances granted by municipalities in Pinelands Villages and Pinelands Towns (N.J.A.C. 7:50-5.27(c)), variances granted by municipalities for undersized lots that qualify for development of homes under the CMP's cultural housing provisions (N.J.A.C. 7:50-5.32(b)) and development within designated Municipal Reserve Areas (N.J.A.C. 7:50-5.63(b)).

N.J.A.C. 7:50-5.43(b)5 is amended to clarify that all PDC allocations are rounded to the nearest one-quarter of a credit, not only those exceeding one-quarter (0.25) of a Credit. For

example, if a parcel is eligible for an allocation of 0.13 PDCs based on the formula contained at N.J.A.C. 7:50-5.43(b)1 and 2, that allocation will be rounded up to 0.25 PDCs. The one exception to this “rounding rule” will be allocations of less than 0.125 PDCs. Such allocations will not be rounded to the nearest quarter PDC, as that would result in an allocation of 0 PDCs. In these situations, allocation of “fractional” (less than one-quarter) PDCs will continue, unless the property owner qualifies for an increase to 0.25 PDCs under the special allocation provisions set forth at N.J.A.C. 7:50-5.43(b)6 or 7. While this amendment is unlikely to affect a large number of PDC allocations, it is consistent with current practice in the calculation of most other allocations and recognizes that obtaining an allocation of at least 0.25 PDCs is important because it is the minimum denomination that can be severed, sold or redeemed.

Also, amendments are proposed to update the language at N.J.A.C. 7:50-5.46 that currently allows PDCs allocated to different parcels of land in sending areas to be aggregated and used to achieve bonus density in a Regional Growth Area. N.J.A.C. 7:50-5.43 establishes how PDCs are allocated and other sections, described previously here, provide for the use of PDCs for a variety of purposes beyond density bonuses in a Regional Growth Area. As amended, N.J.A.C. 7:50-5.46 will now simply state that PDCs may be aggregated for use in accordance with any of the provisions specified at N.J.A.C. 7:50-5.43(a).

Finally, N.J.A.C. 7:50-5.47(b) is amended to clarify the required content of deed restrictions that are recorded for purposes of severing PDCs from a parcel of land in a sending area. The existing CMP at 7:50-5.47(b) mistakenly uses the word “sold”, leading to the perception that severance of PDCs and recordation of the required deed restriction occurs when PDCs are sold. In practice, PDCs must be allocated by the Commission and severed from the land by the property owner via a recorded deed restriction before any sale, transfer or redemption

can occur. Therefore, one word in this section is being changed to indicate that PDC deed restrictions must refer to the number of PDCs allocated to the parcel subject of the deed restriction.

Redesignation of Black Run watershed, Evesham Township, Burlington County

The Commission is proposing to redesignate an area in Evesham Township, Burlington County, from a Pinelands Rural Development Area to a Pinelands Forest Area. The proposed amendment is an outgrowth of two important Commission initiatives: the 2006 Southern Medford/Evesham Sub-Regional Resource Protection Plan and the 2008 Ecological Integrity Assessment. These initiatives, described in further detail below, confirmed the ecological sensitivity and importance of protecting a largely undisturbed watershed in Evesham Township known as the Black Run. Subsequently, protection of the Black Run and surrounding areas was once again emphasized as a priority during the Commission's 2014 comprehensive plan review process.

Southern Medford/Evesham Plan

In June 2004, the Commission began an innovative natural resource conservation planning project for the southern portions of Evesham and Medford Townships. The Commission organized a Steering Committee comprised of representatives from the New Jersey Department of Environmental Protection (NJDEP) and the two municipalities to oversee development of a conservation plan for a 22-square-mile project area. This Steering Committee appointed an 18-person Project Advisory Committee and a 17-person Technical Support Group to help guide the Steering Committee's decisions. With the support of Commission staff, the three committees met

regularly throughout 2004 to gather and evaluate data and discuss and formulate a series of strategies that would offer increased protection to the Black Run watershed and surrounding areas. Numerous public meetings were held to gather suggestions and review proposed zoning changes. All potentially affected landowners were notified of the planning project and made aware of their opportunities to participate in public meetings. The recommended strategies were detailed in the Southern Medford/Evesham Sub-Regional Natural Resources Protection Plan authored by Commission staff and issued in 2006. A copy of the plan, and additional information about the Southern Medford/Evesham planning process, is available on the Commission's website <http://www.nj.gov/pinelands/landuse/recent/medeves/>.

The Southern Medford/Evesham plan includes innovative zoning, land preservation, resource management, and community design recommendations, all premised on the fact that the Black Run watershed was identified as having high ecological values based on water quality data, rare plant and animal documentation, and landscape, wetland and watershed integrity assessments. The plan notes that less than 10 percent of the land in the Black Run drainage area is disturbed. Because disturbance in excess of 10 percent of land area is considered a tipping point for ecological impacts, the report urged that this area be protected through a series of regulatory and land preservation strategies. In terms of land preservation, the plan recommended acquisition and deed restriction of properties in the study area by various governmental agencies and non-profit conservation organizations. Land stewardship efforts were to be promoted through public education for homeowners, builders, planning and zoning boards. In addition, surveys were recommended to identify the area's rare plants with the intent of helping public landowners, homeowner's associations and the municipalities to protect, manage and recover native plant populations.

In terms of regulatory strategies, the Southern Medford/Evesham plan recommended a number of zoning changes to reduce future zone capacity and land disturbance in high-quality natural resource areas. Additional zoning strategies called for creating incentives to transfer development potential out of high-value natural resource areas to areas more capable of accommodating it. Clustering of residential development was also recommended, with the hope that it would result in the conservation of significant acreage. The plan also recommended the creation of a green belt consisting of public lands, preservation areas and low-density zoning districts through the middle of the study area in Evesham and Medford Townships as a means of further protecting the area's water quality and maintaining biodiversity.

The Pinelands Commission endorsed the Southern Medford/Evesham Plan in 2006 and spent the next several years working to implement many of the plan's recommendations. Notably, the CMP was amended in 2009 to require clustering of residential development in all Pinelands Forest and Rural Development Areas, including those in Medford and Evesham Townships. Both municipalities adopted ordinances to implement the mandatory clustering provisions. Evesham Township designed its clustering provisions in such a way as to offer greater protection to the Black Run Watershed, one of the primary goals of the Southern Medford/Evesham Plan. However, neither municipality pursued any of the other recommended zoning changes and so the Commission focused its efforts on education, surveys and land preservation.

Ecological Integrity Assessment

In April 2008, the Commission completed a report entitled An Ecological-Integrity Assessment of the New Jersey Pinelands: A Comprehensive Assessment of the Landscape and Aquatic and Wetland Systems of the Region (hereinafter, the "EIA Report"), which

comprehensively and objectively evaluated the ecological status of the entire ecosystem within the Pinelands Area. The EIA Report evaluated three levels of the Pinelands ecological hierarchy: the entire regional upland-forest and wetland landscape; aquatic systems and associated watersheds; and freshwater wetlands and adjacent upland areas. The EIA Report's evaluation of Pinelands ecology was guided by three basic principles concerning landscape, aquatic, and wetland-drainage integrity. The principles were based on the results of various ecological studies conducted both within the Pinelands and elsewhere.

Landscape integrity focuses upon species that move across wetlands and uplands and processes that operate at a regional-landscape level. The guiding principle behind the idea of landscape integrity is that the conservation of characteristic Pinelands plant and animal species and communities, including wide-ranging species, requires the protection of relatively large tracts of Pinelands habitat, including upland forests, wetlands, and water bodies. Thus, landscape integrity is a measure of the extent of Pinelands habitat in an area.

Aquatic integrity primarily focuses upon processes that operate at the watershed level and the species and communities that are influenced by the quantity and quality of surface waters. The guiding principle behind the idea of aquatic integrity is that the conservation of characteristic Pinelands water quality and lake, pond, and stream communities and the indigenous plant and animal species that make up these communities requires the protection of associated watersheds. Thus, aquatic integrity is a measure of the percentage of land within a watershed that is neither developed land nor upland agriculture.

A wetland-drainage unit is a discrete area of wetlands and the adjacent uplands that contribute surface water and groundwater to those wetlands. Wetland-drainage integrity focuses upon land uses that affect the quantity and quality of groundwater flowing to palustrine wetlands.

The guiding principle behind the idea of wetland-drainage integrity is that the conservation of characteristic Pinelands palustrine wetlands and the indigenous plant and animal species that inhabit these wetlands requires the protection of adjacent uplands that influence the hydrologic integrity of the wetlands. Thus, wetland-drainage integrity is a measure of the percentage of land within a wetland-drainage unit that is neither developed land nor upland agriculture.

The EIA Report characterized landscape integrity using a moving-window analysis to measure the amount of Pinelands habitat within a circle referred to as a “window.” A moving-window analysis moves a “window” across a layer of rasterized or cell-based spatial data, performs a specified calculation on the data within the window, and assigns the result of that calculation to the center cell within the window. The window then moves to the next cell, performs the same calculation again and applies the results to the center cell of that window. This process continues until all the cells in the input-raster layer have been analyzed and an output-raster layer with the new values is created. To assess landscape integrity, the EIA Report analyzed 10×10-meter Pinelands-habitat cells using a 1,000-meter-radius window. Pinelands-habitat cells were classified using the 2002 NJDEP land-use/land-cover data. The result of the analysis was a data layer composed of about 31 million Pinelands-habitat cells, with each cell assigned a landscape-integrity score represented by the percentage of habitat in the surrounding window. High landscape integrity was equated with a high percentage of surrounding Pinelands habitat.

The EIA Report characterized aquatic integrity and wetland-drainage integrity using the same measure of ecological integrity. Aquatic and wetland-drainage integrity scores were assigned by determining the percentage of each watershed or wetland-drainage unit respectively that was neither developed land nor upland agriculture. The percentage of each watershed or

wetland-drainage unit that was neither developed land nor upland agriculture was then assigned to that watershed or wetland-drainage unit and to every 10×10-meter cell therein. High aquatic and wetland-drainage integrity scores were equated with a low percentage of developed land and upland agriculture.

The overall ecological integrity of the 900,000-plus-acre Pinelands Area was determined by using a composite of all three integrity measures – landscape, aquatic and wetlands-drainage integrity. The ecological integrity score represents an average of the landscape-, aquatic- and wetlands-drainage-integrity scores for each 10x10-meter Pinelands-habitat cell. High ecological integrity was equated with a high average score. All three measures of integrity as well as the composite measure of integrity were determined for the entire Pinelands Area and for each of the Pinelands management areas.

In 2009, the Commission completed an analysis of Pinelands management area boundaries using the EIA Report's integrity scores as the basis for recommended changes. In particular, areas worthy of protection due to their high ecological-integrity scores were identified as candidates for redesignation from growth-oriented management areas to more conservation-oriented management areas, such as the Pinelands Forest Area. Ultimately, 11 areas large enough to be of regional significance were delineated. Not surprisingly, given the results of the already completed Southern Medford/Evesham Plan, one of the identified areas was the Black Run watershed and surrounding lands in Medford and Evesham townships. This area, comprising approximately 3,700 acres, was recommended for redesignation from Rural Development to Forest Area. Ultimately, the Commission elected not to proceed with proposal or adoption of any of the recommended management area adjustments and instead worked with individual municipalities on rezoning efforts, where appropriate and when opportunities arose.

Plan Review Process

Since the completion of the Southern Medford/Evesham Plan and the Ecological Integrity Assessment, various efforts to provide increased protection to the Black Run watershed and surrounding areas have been undertaken. Municipal ordinances were adopted to mandate the clustering of residential development. Land acquisition efforts were successful in preserving hundreds of acres in the area. While these efforts were not insignificant, large portions of the watershed remain unprotected, a problem that was emphasized during the Commission's fourth comprehensive review of the CMP. Completed in 2014, this plan review process involved the establishment of a Plan Review Committee, comprised of five Commission members, and a vigorous effort to solicit public comment on the CMP and its implementation. The Plan Review Committee held 14 meetings throughout 2012-2014, all of which were open to the public, and additional public meetings were held during the summer of 2012 for purposes of receiving public comment. Written comments were also encouraged and received on a wide variety of topics. All written comments received by the Commission were posted and remain available on the Commission's website at <http://www.nj.gov/pinelands/cmp/planreview/Public%20comments.pdf>

Ultimately, after review and evaluation of public comment, the Plan Review Committee developed a list of specific recommendations that became the focus of the Commission's staff's efforts from 2014 to date. Eight such recommendations were of such high priority to the Commission and interest to the public that they were discussed in detail in the Commission's Fourth Report on Plan Implementation, issued in 2014 (see <http://www.nj.gov/pinelands/cmp/planreview/PR%20reports/PlanReviewReportFinalDraft.pdf>). One of the eight high priority recommendations involved protection of the Black Run watershed.

Strategies to protect the Black Run watershed and surrounding areas were then discussed at several public meetings of the Commission's CMP Policy & Implementation Committee in 2015 and 2016 and again beginning in 2022. These discussions identified the need to better recognize the environmental sensitivity of the area through a change in Pinelands management area designations. Details on the proposed management area change, which can only be implemented through an amendment to the CMP, are provided below.

Subchapter 5, Minimum Standards for Land Uses and Intensities, of the CMP establishes requirements that govern the type, location and intensity of land uses permitted throughout the Pinelands. Part II of subchapter 5 establishes nine land use management areas and sets forth the goals, objectives and permitted uses for each. The boundaries of these management areas are provided on the Land Capability Map adopted as part of the CMP at N.J.A.C. 7:50-5.3(a)24.

Although refined over the years through the Commission's approval of municipal land use ordinances, the boundaries of the management areas were originally established by the Commission in 1980 when the CMP was adopted. The management area delineation procedure began with the Commission's definition of what constituted the "essential character" of the Pinelands Protection Area (defined as that area located outside the legislatively-defined Pinelands Preservation Area). Seven criteria were developed: the presence of ecologically-critical areas; undisturbed watersheds; wetlands; cranberry cultivation areas; areas of deep aquifer recharge; unique resources requiring high levels of protection; and public lands managed for resource protection or recreation. Undisturbed watersheds were drainages that had very little development in them (less than five percent), particularly development that degrades surface and groundwater quality and fragments the Pinelands ecosystem. Wetlands included cedar swamps, hardwood swamps, pitch pine lowland forests, bogs, inland marshes and coastal marshes. Unique

resources requiring high levels of protection included the Pine Plains and a surrounding buffer zone and subwatersheds supporting characteristic Pinelands aquatic species. The presence of threatened and endangered species was one of the most important factors in determining the designation of a subwatershed as an ecologically critical area.

These seven components, and their mapped expressions, served as the determinants of the essential character of the Pinelands environment within the Protection Area. The delineation of areas of essential character provided the basis for the designation of Pinelands Forest Areas, largely undisturbed forest and coastal wetlands adjoining the Preservation Area and extending into the southern portion of the Pinelands. Designation of other management areas followed, including Rural Development Areas, which were generally defined as transitional areas separating the less developed, forested areas of the Pinelands from growth areas, serving as both buffers and reserves for future development. The identification of conflict areas was the last step. Conflict areas were areas where lands considered suitable for appropriate patterns of development overlapped with areas displaying essential character. When a conflict area that was classified as a Rural Development Area exhibited essential character as an undisturbed watershed or had greater than 75 percent wetlands or critical areas, it was reclassified as a Forest Area. Additionally, areas of less than 1,000 acres that did not exhibit essential character but were entirely surrounded by areas of essential character became Forest Areas.

Upon adoption of the CMP in 1980, the majority of the Black Run watershed within the Pinelands Area in Evesham Township was designated as a Rural Development Area. The area was identified as a conflict area by the Commission in its original delineation procedure but ultimately designated a Rural Development Area primarily because of the presence of an existing landfill and its anticipated impacts on water quality.

The new information made available to the Commission as a result of the Southern Medford/Evesham planning process and the Ecological Integrity Assessment strongly suggests the presence of the existing landfill was given a disproportionate amount of weight in 1980, resulting in the designation of this area as a Rural Development Area. It is clear that the Black Run watershed area demonstrates the characteristics associated with a Forest Area designation and is worthy of the enhanced protection that would be provided by such a management area designation. Also, since the Southern Medford/Evesham Plan and Ecological Integrity Assessment were completed, additional lands in the Black Run and surrounding areas in Evesham and Medford have been permanently protected by various non-profit and governmental agencies. More recently, surveys in the area have confirmed the presence of threatened and endangered species. All of these factors emphasize the importance of protecting the area and provide the basis for a change in management area designations to do so.

Rule Change and Impact

To accomplish a management area redesignation of this magnitude, it is necessary for the Commission to amend the CMP. Specifically, it is proposing to amend the Land Capability Map at N.J.A.C. 7:50-5.3(a)24 to reflect a revision in Pinelands management area boundaries. The Black Run watershed and nearby preserved, publicly owned or severely environmentally constrained lands, previously located in a Rural Development Area, will now be located in a Pinelands Forest Area. A map depicting the boundaries of the redesignated area is available on the Commission's website at (link to be inserted when map and proposal are posted on the website).

The redesignated area encompasses approximately 2,440 acres in Evesham Township and is located in close proximity to Evesham's existing Pinelands Forest Area. Close to 60 percent of

the redesignated area (1,450 acres) is already preserved or in public ownership. Only 990 acres of privately owned land remain available for development within the area proposed for redesignation. The majority of the undeveloped land in what would become Evesham's new Forest Area is comprised of wetlands and required wetlands buffer areas, making any new development on such lands unlikely, regardless of zoning or management area designation.

Upon the Commission's adoption of the proposed amendment to the Land Capability Map, Evesham Township will be required to revise its master plan and land use ordinances to reflect the new management area designation. Maximum permitted density in the affected area will decrease from one unit per 3.2 acres of privately owned vacant upland to one unit per 15.8 acres of privately owned vacant upland in order to comply with CMP standards for Pinelands Forest Areas. The likely result in terms of municipal zoning is a new Forest Area zone with a residential density of one unit per 25 acres. Mandatory clustering on one acre lots will be required and all development will need to be served by septic systems, as is the case under the current Rural Development Area designation and zoning. The pattern of permitted residential development therefore will not change, nor will the environmental standards that apply to all development. Rather, it is the theoretical zoning capacity of the area that will decrease significantly. The current municipal zoning plan would allow for the development of 249 units, based on currently permitted residential densities. After the redesignation to Pinelands Forest Area, residential zoning capacity would decrease to 38 units. While a significant decrease in theoretical zoning capacity, much of the redesignated area is so heavily constrained by wetlands and other environmental limitations that development is a virtual impossibility on the majority of vacant lots, regardless of zoning. For the few developable upland properties in the redesignated

area, however, development potential will certainly be reduced, which the Commission believes is appropriate given the environmental sensitivity of the area.

Clearly, the Commission has considered a number of different strategies to increase protection of the Black Run watershed over the years, including the creation of innovative density transfer and off-site clustering programs. While both had merit, they are complex, require significant cooperation among landowners, and rely on the identification of an available area for development outside the watershed that has access to infrastructure and limited environmental constraints. The Commission's primary goal is to decrease disturbance in and increase protection of the Black Run watershed, something which can most readily be accomplished through the management area redesignation discussed above. Evesham Township retains the ability to modify its zoning plan in ways that further encourage cluster development in the area.

Minor Amendments

The Commission is proposing to update internal citations and terms and correct a minor omission.

Commission hearing procedures (N.J.A.C. 7:50-4.3)

Minor changes are being proposed at N.J.A.C. 7:50-4.3 to replace the term "freeholder director" with "director of the board of county commissioners" in response to recent legislation that changed the title of "freeholder" and "chosen freeholder" to "county commissioner" and the term "board of chosen freeholders" to "board of county commissioners." (See P.L. 2020, c.67)

Public hearings on local approvals (N.J.A.C. 7:50-4.41)

An internal citation is being corrected in the first sentence from N.J.A.C. 7:50-4.35(c) to N.J.A.C. 7:50-4.35(e).

Alternative Design Treatment Systems Pilot Program (N.J.A.C. 7:50-10.22)

A minor, non-substantive change is being made at N.J.A.C. 7:50-10.22(a)5ix to correct the reference to the operation and maintenance manual required as part of this Pilot Program.

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

The proposed fee amendments are expected to have a positive social impact for New Jersey's taxpayers because the increased fees will, on a relative basis, reduce the need for general State funding to support the legislatively mandated permitting responsibilities of the Commission. The proposed amendments to the application fee schedule will help to ensure 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.

The establishment of expiration dates for various Commission documents should also have a positive social impact by eliminating any uncertainty that currently exists concerning the continued validity of approvals and documents issued decades ago. The amendments will also provide Pinelands municipalities with a greater ability to address questions from residents and

property owners about their ability to rely on old approvals and documents. It is better for municipalities if applicants have up to date documents and it is better for applicants to understand how their old development proposals might be affected by current standards. The expiration of old completeness documents and required completion of new applications with the Commission will provide that opportunity and prevent issues from arising only after a municipal construction permit or other approval has been issued.

The amendments being made to the relative to zoning plans and the PDC program recognize the importance of municipal flexibility in designing their own Regional Growth Area zoning plans, based on community needs and desires, market conditions, etc. The 24 municipalities throughout the Pinelands Area that contain Regional Growth Areas may find it easier to adjust density requirements and zoning plans to fit local circumstances, provide opportunities for affordable housing and foster desired development patterns. While municipalities have long had the ability to do so, the provisions being added and amended throughout N.J.A.C. 7:50-5.28(a) will make this explicit. The reaction from both municipalities and property owners in Regional Growth Areas is expected to be positive.

The proposed amendment to the Land Capability Map is expected to have a positive social impact because it recognizes an environmentally sensitive area and appropriately reduces its development potential. The existing Black Run Preserve is of great importance not only to Evesham Township residents but also to the larger Burlington and Camden County communities, as evidenced by the formation and involvement of a non-profit conservation organization dedicated to management and continued protection of the Preserve. Redesignation of the Preserve and surrounding lands from the Rural Development Area to the Forest Area will reduce the potential for future land use conflicts with and negative environmental impacts on the

existing Preserve. Although clustered residential development in the redesignated area will still be permitted, the number of units and amount of associated disturbance will be reduced and the amount of protected open space required as part of a cluster development will be increased.

Economic Impact

The proposed amendments make a number of changes to the Commission's application fee requirements. New fees are established for certain applications requiring waivers of strict compliance and for applications involving resolution of identified violations of the CMP. Increased fees are proposed for applications seeking LOIs, with the exception of those related to the allocation of PDCs. It is difficult to predict the exact impacts of these fee increases, as the actual amount of revenue generated by the application fees in the future will be a function of the number and type of applications submitted to the Commission each year.

For the most part, the fee changes will result in relatively modest increases of between \$250 to \$1,000 for any particular application. In what is likely to be a very limited number of instances involving requests for wetlands-related LOIs on very large parcels, the increase will be more significant. Given the amount of staff resources that must be dedicated to such requests, the Commission believes the increase is warranted. It should be noted that the Commission does not require applicants to secure wetlands-related LOIs. Rather, Commission staff regularly makes determinations as to the extent of wetlands and the size of required wetlands buffers as part of its review of development applications. For those applicants who prefer to obtain wetlands-related LOIs prior to submitting development applications or are required to do so by other agencies, the increased fee will be assessed.

Although in most cases, the proposed amendments will result in modest increases, the Commission recognizes that applicants may view them in a negative light. However, it must be recognized that even with the proposed increases, the Commission's fee schedule does not recapture all of the Commission's permit-related expenses. Rather, the Commission expects that, if current application trends continue, perhaps only 50-60 percent of the Commission's total permit-related expenses could be recouped through application fee revenue.

Upon the expiration of Certificates of Filing and certain waivers of strict compliance in accordance with the proposed amendments, new applications will need to be submitted to the Commission. Such applications will require payment of application fees and completion of new or updated site plans and surveys. While this might mean increased or unanticipated costs, applicants will benefit from the identification of potential inconsistencies with the CMP at the outset of the Commission's review of a new application, rather than later in the review process when an applicant may have relied on a very old waiver or completeness document to obtain municipal approval. The requirement to obtain a new Certificate of Filing will facilitate identification and earlier notice of potential problems and the impact of new or revised standards, perhaps ultimately reducing costs associated with lengthy reviews and multiple redesigns of projects.

The proposed amendments related to Regional Growth Area zoning plans and the PDC program are not expected to have significant economic impacts on municipalities, developers or property owners. The amendments do not impose new or increased PDC obligations, nor do they require Pinelands municipalities to revise their zoning plans. Rather, the amendments set out the requirements that must be met if a municipality elects to create new zoning districts, increase permitted densities in existing zoning districts or seek to accommodate new types of uses via

redevelopment plans. When such changes are made, increased opportunities for PDC use may result, as well as more certainty in terms of demand for PDCs, which should have a positive economic impact in terms of the ability of PDC holders to sell their PDCs for appropriate prices.

The proposed amendment at N.J.A.C. 7:50-5.43(b)5 will result in the rounding of PDC allocations of at least 0.125 PDCs to 0.25 PDCs. This will have a positive economic impact on the owners of properties in PDC sending areas to which the Commission has made such allocations. PDCs are severed, bought, sold and redeemed in one-quarter credit increments, with 0.25 PDCs being the minimum increment necessary for any such transaction. The value of 0.25 PDCs varies over time. In 2024, the average sales price for 0.25 PDCs was \$21,827.

The economic impact of the proposed amendment to the Land Capability Map will be perceived as negative by many of the owners of vacant land in the new Pinelands Forest Area due to the decrease in permitted residential density. Most of these lots are so constrained by wetlands and required wetlands buffers, however, that on-site development is currently infeasible or, at best, highly unlikely without the Commission's approval of a waiver of strict compliance. These landowners, as well as those who own the few vacant developable properties in the redesignated area, will retain an opportunity for residential cluster development, albeit at lower density than that currently permitted. Owners of vacant undersized lots will also have the opportunity to "transfer" density to developable noncontiguous lots elsewhere in Evesham Township's Forest or Rural Development Areas pursuant to N.J.A.C. 7:50-5.30.

Owners of developable upland properties in the new Forest Area will experience a significant decrease in development potential, which clearly has a negative economic impact. Given the highly sensitive nature of the area, however, the Commission believes this decreased development potential is fully warranted and necessary.

Evesham Township will incur costs associated with the master plan and ordinance amendment process required to implement the new Forest Area designation. The municipality will be required to amend its master plan and land use ordinance to create a new Forest Area zoning district or assign one of its existing Forest Area zoning district designations and create a revised zoning map. Additional master plan and ordinance amendments will be required if Evesham Township elects to implement a new density transfer program or revise its existing cluster development standards for the new Forest Area zone. These costs might include notification to all property owners of the proposed master plan and zoning changes.

Environmental Impact

Because the purpose of many of the proposed amendments is to strengthen the level of environmental protection afforded under the CMP, overall environmental benefits should result. No negative impacts from these proposed amendments are expected.

The proposed amendments to the Commission's application fees schedule are not expected to have any negative environmental impact as they do not modify the land use and environmental standards of the CMP in any way. If anything, the proposed increased fee assessed to applications involving resolution of violations of the CMP may serve as a disincentive to future violations of CMP standards, which would have a positive environmental impact.

The proposed expiration dates for various Commission completeness documents should have a positive environmental impact by alerting landowners and applicants to the current environmental standards of the CMP that must be met. Additional benefits will be realized

through establishment of an expiration date for waivers of strict compliance which, by definition, involve development that does not meet all CMP environmental standards.

The proposed amendments related to Regional Growth Area and the use of PDCs are largely codification of current Commission practice; however, they may nevertheless have a positive environmental impact. Maintaining and enhancing demand for PDCs via changes to municipal zoning plans ensures the existence of an active market for PDCs, which facilitates sales and encourages owners of sending areas lands participate in the PDC program by deed restricting their properties.

It is unknown how many of the 24 Regional Growth Area municipalities will avail themselves of the flexibility provisions related to residential density and assignment of PDC opportunities to nonresidential uses. Many have already done so, and the amendments merely codify practices that the towns and Commission have employed for many years based on the existing flexibility provisions throughout the CMP. It is likely that municipalities will continue to make zoning changes and adopt redevelopment plans that provide for higher densities and a variety of housing types within already designated Regional Growth Areas. No negative environmental impacts are anticipated. In fact, making the rules clearer for municipalities who wish to accommodate more housing or development within the existing boundaries of their Regional Growth Areas may ultimately forestall future requests for expansion of these growth areas into portions of the Pinelands Area that the Commission is charged with protecting.

The proposed amendment at N.J.A.C. 7:50-5.43(b)5 to round up certain fractional PDC allocations could have a positive environmental impact. It will provide landowners whose properties have PDC allocations between 0.125 and 0.25 with the ability to complete the PDC severance process and subsequently sell or redeem their development rights. Previously,

landowners with these fractional allocations were unable to do so, because PDCs are severed and transacted in quarter-credit increments. With an increase to 0.25 PDCs, affected landowners will be able to record the required deed restriction and sever their credits. The severance process results in permanent preservation of forested and agricultural lands in the Pinelands Preservation Area District, Agricultural Production Area or Special Agricultural Production Area.

The proposed amendment to the Land Capability Map is expected to have a positive environmental impact as it provides the potential for reduced impacts on and increased protection of some of the most environmentally sensitive lands in the Pinelands Area, namely, the Black Run watershed and lands in the surrounding Pinelands Forest Area. Redesignation of the 2,440-acre area from the Rural Development Area to the Forest Area carries with it a reduction in theoretical residential zoning capacity from 249 to 38 potential units. The clustering of residential units on one acre lots will be required, just as it is under the current Rural Development Area zoning plan, but fewer permitted units will mean smaller clusters of development, less land disturbance and larger areas of preserved open space in this highly sensitive area.

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. This legislation set forth rigorous goals that the plan must meet but did not specify standards governing individual uses or topics such as those covered by the proposed amendments. The plan was subject to the approval of the United States Secretary of the Interior, as are all amendments to the CMP.

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

Jobs Impact

The proposed amendments are not expected to have significant jobs impacts.

The amendments do increase certain development application fees on the private and public sectors; however, the added costs are relatively minor and not expected to result in a loss of jobs.

The proposed establishment of an expiration date for various completeness documents and waivers issued by the Commission may trigger the need for submission of new development applications to the Commission. If new or revised site plans, updated surveys or new stormwater management plans are necessary for such applications, increased job opportunities for engineers and other environmental consultants may result. The proposed amendments to the Land Capability Map and the standards related to Regional Growth Area zoning plans and the use of PDCs may affect the number of new homes permitted in portions of the Pinelands Area, potentially impacting the number of jobs associated with new home construction. However, it is impossible for the Commission to estimate the number of jobs that might result.

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 are not expected to significantly impact the agriculture industry.

To the extent that members of the agriculture industry located within the Pinelands Area intend to engage in activities that will necessitate submission of a development application, they may be impacted by the proposed fee increases. It is important to note that for the most part, principal agricultural activities do not require the submission of development applications and will therefore continue to pay no fees to the Commission. The proposed fee increases, including \$250 for a waiver of strict compliance application and \$500 or \$1,000 for an application involving resolution of a violation, are relatively small and unlikely to affect many farm owners. The same is true for the increased fee for various types of LOIs. Importantly, there will continue to be no fee for the most commonly requested type of LOI, namely, the allocation of PDCs to any particular parcel in a PDC sending area.

The proposed amendments establishing expiration dates for certain waivers of strict compliance and completeness documents issued by the Commission could impact farm owners and operators. They may need to submit new development applications to the Commission and demonstrate consistency with current CMP standards and municipal land use ordinance provisions. Development applications in the Agricultural Production Area and Special Agricultural Production Area, where the vast majority of Pinelands farms are located, most often involve development of one single-family home. Application fees for such proposals remain modest (\$250), as are the costs typically associated approval for minor development.

The proposed amendments related to Regional Growth Area zoning plans and the PDC program are expected to have a positive impact on the agriculture industry. By providing municipalities with explicit authority to zone for higher densities in their Regional Growth Area if PDC use is mandatory, or to shift PDC obligations from residential to nonresidential uses when warranted, continued and more certain demand for PDCs results. The amendments also

eliminate the ability of municipalities to implement significant decreases in their Regional Growth Area residential zoning capacities, thereby preserving existing opportunities for the use of PDCs. All of these amendments keep the market for PDCs active, which generates increased prices being paid to the holders of PDCs, a large number of whom are farmers or long-time landowners in the agricultural sending areas of the Pinelands. By helping to ensure that consistent, guaranteed opportunities for PDC use in Regional Growth Area will exist in the future, an economic incentive will remain for sending area landowners to sever and sell PDCs.

The proposed amendment to round certain fractional allocations of PDCs up to equal 0.25 PDCs may also benefit farm owners in the PDC sending areas. Such landowners will now have the minimum PDC increment required for severance and sale. As noted previously, 0.25 PDCs hold significant value, with an average sales price of nearly \$22,000 in 2024.

The proposed amendment to the Land Capability Map is expected to have no impact on the agriculture industry. There is limited active agriculture in the area being redesignated from the Rural Development Area to the Forest Area, where farming will continue to be a permitted use.

Regulatory Flexibility Statement

Most businesses in the Pinelands may be characterized as small in size and employment compared to the remainder of New Jersey. However, the proposed amendments do not differentiate by size of business and thus impact on all businesses equally. No new reporting, recordkeeping or compliance requirements are imposed on small businesses by the proposed amendments.

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.

The proposed amendments to the Commission's application fee requirements are unlikely to have any noticeable effect on housing affordability. Increased fees (\$500 for minor development; \$1,000 for major development) are proposed to be assessed to resolve a violation of the CMP, which could occur as part of residential development application. Also, the proposed \$250 fee for an application requiring a waiver of strict compliance based on extraordinary hardship will, in nearly all cases, involve proposed development of a single family detached home. The fee increases will have an impact on such applications. However, the amount of the increased fees will constitute a very small portion of the total project cost for all such developments, even those proposing only one unit. 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.

Similarly, the proposed amendments to establish expiration dates for certain completeness documents and old waivers of strict compliance are unlikely to have any significant impact on housing affordability. When a waiver or completeness document expires, submission of a new and possibly revised development application to the Commission will be required. Some of these applications will be for residential projects of varying sizes, housing types and locations. In order for a new waiver or Certificate of Filing to be issued, the payment of application fees will be necessary, as will preparation and submission of new or revised site plans and supporting studies or reports. While there are costs associated with fulfilling these

requirements, they are not unreasonable given the importance of ensuring that development in the Pinelands Area meets all current CMP standards. The need to obtain new waivers or Certificates of Filing is unlikely to have a marked impact on housing affordability.

The proposed amendments at N.J.A.C. 7:50-5.28(a)1 and 7ii acknowledge that Pinelands municipalities have the flexibility to increase permitted densities within their Regional Growth Area in order to permit a wider variety of housing types, which is often necessary to accommodate the provision of affordable housing. The proposed amendment at N.J.A.C. 7:50-5.28(a)3v expressly provides these municipalities with the ability to relieve affordable housing units from the requirement to redeem PDCs if certain conditions are met. These amendments should have a positive impact on the affordability of housing.

The proposed amendment to the Land Capability Map affects lands in Evesham Township that are currently zoned for single-family residential development. All such development must be clustered on one acre lots and served by on-site septic systems, under both the current Rural Development Area designation and the proposed Forest Area designation. The CMP does not permit sewer service in these two management areas, making them unlikely and largely inappropriate targets for the development of affordable housing. Therefore, the proposed amendments are unlikely to evoke a change in the average costs associated with housing in the affected area.

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 the proposed amendments be evaluated to determine their impacts, if any, on housing production in Planning Areas 1 and 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. Rather, 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 related to application fees and expiration of old waivers and completeness documents are not expected to have any impact on housing production. The proposed redesignation of lands from the Rural Development Area to the Forest Area in Evesham Township will have no impact on housing production in Regional Growth Areas, Pinelands Villages or Pinelands Towns.

The proposed amendments at N.J.A.C. 7:50-5.28 may have a positive impact on housing production in the Regional Growth Area. These amendments effectively codify the flexibility municipalities have to make changes to their zoning plans for purposes of accommodating housing of all types and intensities in their Regional Growth Areas. The provision of explicit standards will be of benefit to municipalities, landowners and developers seeking to increase permitted residential densities in order to facilitate housing projects in the Regional Growth Area.

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

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commission has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:50-1.6 Fees

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

(c) The application fee for a commercial, institutional, industrial or other nonresidential development application submitted pursuant to N.J.A.C. 7:50-4.14, 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 10 below:

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

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. Supporting documentation of the expected construction costs

shall be submitted as part of the application for development, unless the maximum fee pursuant to (e)[3]6 below is required, in which case no such documentation shall be necessary.

1. to 10. (No change.)

(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 \$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)](J) or 6.84(a)5iv(3);
2. **Be increased by \$250.00 if a Waiver of Strict Compliance is required pursuant to N.J.A.C. 7:50-4.63, unless the application is submitted solely for purposes of demonstrating that a parcel is of limited practical use pursuant to N.J.A.C. 7:50-9.2(a);**
3. **Be increased by \$1,000 for any application for major development that is submitted, in part or in whole, for purposes of resolving an outstanding violation of this Plan;**
4. **Be increased by \$500 for any application for minor development that is submitted, in part or in whole, for purposes of resolving an outstanding violation of this Plan;**

[2]5. Equal 50 percent of the calculated fee if a public agency is the applicant; and

[3]6. **Except where an increased fee is required pursuant to (e)3 or 4 above, [N]not** exceed \$50,000 unless a public agency is the applicant, in which case the fee shall not exceed \$25,000.

(f) (No change.).

(g) The application fee for a development application submitted by a qualified tax-exempt religious association or corporation or a qualified tax-exempt non-profit organization shall be \$500.00 or the amount calculated in accordance with (a) through (d) above, whichever is less. **If the development application is submitted, in part or in whole, for purposes of resolving an outstanding violation of this Plan, the application fee shall be increased in accordance with (e)3 or (e) 4 above.** For purposes of this provision, the term “qualified tax-exempt religious association or corporation” means a religious association or corporation which is exempt from Federal income taxation under Sections 501(c)(3) or (d) of the Internal Revenue Service Code, Title 26, Subtitle A, Chapter 1, Subchapter F, Part I, Sections 501(c)(3) and (d). For purposes of this provision, the term qualified tax-exempt non-profit organization means a non-profit organization which is exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Service Code, Title 26, Subtitle A, Chapter 1, Subchapter F, Part I, Section 501(c)(3).

(h) The fee for a Letter of Interpretation or Amended Letter of Interpretation 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 the issuance of the original Letter of Interpretation,

in which case the fee shall be \$250.00 plus \$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 \$250.00.] **a Letter of Interpretation or Amended Letter of Interpretation to determine the presence or absence of wetlands or wetlands transition areas shall be \$1,000.00;**
3. **The application fee for a Letter of Interpretation or Amended Letter of Interpretation to verify a wetlands line or to determine the extent of any required wetlands transition areas shall be \$1,000.00 plus \$100.00 per acre of the parcel, or portion thereof, subject to the provisions of (e)6 above; and**
- [2]4. **The application fee for any other LOI or Amended LOI shall be \$500.00**
[\$250.00].

(i)-(l) (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 hearings shall be given by the Commission:

(1)-(5) (No change.)

- (6) If the public hearing involves an amendment proposed by the Commission pursuant to N.J.A.C. 7:507, by sending a copy of the notice, by mail, to the mayor of each Pinelands municipality and to the [freeholder] director **of the board of county commissioners** 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. 7:504.52, by sending a copy of the notice, by mail, to the mayor of each Pinelands municipality and to the [freeholder] director **of the board of county commissioners** 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. 7:505.4(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 **of the board of county commissioners** and county executive, if any, 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. (No change.)

3.- 4. (No change.)

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

7:50-4.15 Action by Executive Director on application

(a) 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 that he or she 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, all persons who have individually submitted information concerning the application, all persons who have requested a copy of said decision, and any person, organization, or agency that has registered under N.J.A.C. 7:50-4.3(b)2i(2).

(b) Any Certificate of Completeness issued by the Executive Director on or after January 1, 2004 shall expire five years from the date of issuance, unless:

- 1. The applicant has obtained local approval and the Executive Director has determined that approval raises no substantial issues with respect to the conformance of the proposed development with the minimum standards of this Plan pursuant to N.J.A.C. 7:50-4.19 or 4.22; or**
- 2. The applicant has obtained approval by the Commission pursuant to N.J.A.C. 7:50-4.5.**

(c) Any Certificate of Completeness issued by the Executive Director prior to January 1, 2004 shall be deemed expired and may not be used to obtain local approval or approval by the Commission.

7:50-4.34 Certificate of Filing; required for determination of completeness

- (a)** Upon determining that an application is complete, the Executive Director shall issue a Certificate of Filing.
- (b)** No local permitting agency shall determine that any application for development is complete unless it is accompanied by a Certificate of Filing issued pursuant to this section. Such certificate may identify any inconsistencies of the proposed development with the standards of this Plan or the local certified land use ordinances and may indicate that if such inconsistencies are not resolved by a local approval, that local approval will be subject to review by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.37 and

4.40. Any such information contained in the Certificate of Filing is for the guidance of the applicant and local permitting agency only. Such information in no way shall be considered a final determination by either the Executive Director or the Pinelands Commission.

(c) Any Certificate of Filing issued by the Executive Director on or after January 1, 2004 shall expire five years from the date of issuance, unless:

- 1. The applicant has obtained local approval and the Executive Director has determined that approval raises no substantial issues with respect to the conformance of the proposed development with the minimum standards of this Plan pursuant to N.J.A.C. 7:50-4.37 or 4.40; or**
- 2. The applicant has obtained approval by the Commission pursuant to N.J.A.C. 7:50-4.5.**

(d) Any Certificate of Filing issued by the Executive Director prior to January 1, 2004 shall be deemed expired and may not be used to obtain local approval or approval by the Commission.

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)](e), 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 permitting agency, all persons who have individually submitted information concerning the application, all persons who have requested a copy of said determination, and any person, organization or agency that has registered under N.J.A.C. 7:504.3(b)2i(2). However, an applicant may, at his or her 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.

7:50-4.70 Effect of grant of waiver; expiration; recordation; effective date

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

(e) **Waivers approved under former N.J.A.C. 7:50-4.66(a)1, repealed effective March 2, 1992, shall expire one year from the effective date of these rules.** [The N.J.A.C. 7:50-2.11 definitions of “contiguous lands,” “fair market value” and “impaired

wetlands,” and N.J.A.C. 7:50-4.2(b)7 and 4.61 through this section, as amended or adopted effective March 2, 1992, shall apply to all applications except for those applications on which an Executive Director’s determination was issued prior to March 2, 1992. For those applications, the above-referenced provisions in effect prior to March 2, 1992 shall govern, provided that:

1. The Pinelands Commission action on the Waiver of Strict Compliance is based on information that was submitted to the Pinelands Commission prior to March 2, 1992;
2. The applicant has not requested that the application be reviewed pursuant to the N.J.A.C. 7:50-2.11 definitions of “contiguous lands,” “fair market value” and “impaired wetlands,” and N.J.A.C. 7:50-4.2(b)7 and 4.61 through this section, as amended or adopted effective March 2, 1992; and either
3. The Pinelands Commission acts on the application at its next regularly scheduled meeting after the time to appeal under N.J.A.C. 7:50-4.91 has expired and no request for appeal has been received; or
4. A timely request for an appeal is received under N.J.A.C. 7:50-4.91 or the Executive Director’s determination is referred to the Office of Administrative Law by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.69 (formerly N.J.A.C. 7:50-4.65).]

SUBCHAPTER 5. MINIMUM STANDARDS FOR LAND USES AND INTENSITIES

7:50-5.3 Map status

- (a) The following maps, the originals of which are maintained at the offices of the Commission, are hereby designated and established as a part of this Plan and shall be as much a part of this Plan as if they were set out in full in this Plan:
- 1.-23. (No change.)
 24. Land Capability, as amended as of [June 19, 2006] **the effective date of this rule;**
 25. (No change.)

7:50-5.28 Minimum standards governing the distribution and intensity of development and land use in Regional Growth Areas

- (a) Any use not otherwise limited pursuant to N.J.A.C. 7:50-6 may be permitted in a Regional Growth Area, provided that:
1. Except as provided in (a)2, 3, 4, 5, 6 and 7 below and Part IV of this subchapter, the total number of dwelling units authorized by a municipality for a Regional Growth Area shall be equal to [and not exceed] the following density per acre of developable land:
 - i.-xxx. (No change.)
 2. (No change.)
 3. The land use element of a municipal master plan and land use ordinance shall reasonably permit development to occur within a range of densities, provided that:

i. T[t]he total amount of residential development permitted in (a)1 above is exceeded by at least 50 percent through the use of Pinelands Development Credits; that a reasonable proportion of the density increase permits the development of single family detached residences; and that]

ii. **All** [the] residentially zoned districts [in which the ranges are established] are reasonably expected to be developed within **their** [the] assigned density ranges;[.]

[ii]iii. **Municipal master plans and** [or] land use ordinances shall provide that development at a density **that** [which] is greater than the lowest density in each range can be carried out **only** if the increase in density is achieved through a density bonus for use of Pinelands Development Credits;[.]

iv. **Municipal master plans and land use ordinances may accommodate all or a portion of the Pinelands Development Credit obligation assigned in (a)3i above by requiring the use of Pinelands Development Credits for nonresidential development; and**

v. **Municipalities may identify housing types for which no PDC use will be necessary, including housing units made affordable to low and moderate income households pursuant to N.J.S.A. 52:27D-311, provided the municipal land use ordinance contains provisions to guarantee the use of Pinelands Development Credits for other housing types or in other zoning districts within the municipality's Regional**

Growth Area such that the minimum requirements of (a)3i above are met.

[i. The following guidelines may be used by municipalities in establishing these ranges:

(1) Less than .5 to .5 dwelling units per acre;

(2) One-half to one dwelling units per acre;

(3) One to two dwelling units per acre;

(4) Two to three dwelling units per acre;

(5) Three to four dwelling units per acre;

(6) Four to six dwelling units per acre;

(7) Six to nine dwelling units per acre;

(8) Nine to 12 dwelling units per acre; and

(9) Twelve and greater dwelling units per acre.]

4. Any local approval, including variances, [which] **that** grants relief from **residential** density or lot area requirements shall require that Pinelands Development Credits be used for all dwelling units or lots in excess of that otherwise permitted, unless a Waiver of Strict Compliance for the dwelling unit or lot has been approved by the Pinelands Commission pursuant to N.J.A.C. 7:50-4, Part V.

5.-6. (No change.)

7. Nothing in (a) above is intended to prevent a municipality, as part of a certified master plan or land use ordinance, from:
- i. (No change.)
 - ii. **Increasing the total number of dwelling units assigned pursuant to (a)1 and (3) above in order to achieve identified municipal objectives, provided that infrastructure is available or can be provided to serve the areas to be zoned for increased residential density, such areas do not contain significant environmental limitations and the use of Pinelands Development Credits is required for a percentage of the permitted dwelling units. Said percentage shall be established in consideration of the type of dwelling unit permitted, maximum permitted density and the rate at which Pinelands Development Credits have been used in the municipality's Regional Growth Area as a whole;**
 - iii. [Increasing or d]Decreasing by as much as 10 percent the total number of dwelling units assigned pursuant to (a)1 above, provided that the Pinelands Development Credit program requirements set forth in (a)3 above are met relative to the adjusted dwelling unit total and provided further that the adjustment is consistent with land tenure patterns, the character of portions of the regional growth area, the provision of infrastructure and community services, and the natural resource characteristics of the area; or

iv[ii]. Decreasing the total number of dwelling units assigned pursuant to (a)1 above to a density of no less than 2.5 units per acre of developable land, **provided that any such decrease is certified by the Commission pursuant to N.J.A.C. 7:50-3 as of (the effective date of these rules) and:**

(1)-(3) (No change.)

8. (No change.)

(b) (No change.)

7:50-5.43 Pinelands Development Credits established

(a) Except for land which is owned by a public agency on January 14, 1981, land which is thereafter purchased by the State for conservation purposes, land which is subject to an easement limiting the use of land to non-residential uses or land otherwise excluded from entitlement pursuant to (b) below, every parcel of land in the Preservation Area District, an Agricultural Production Area or a Special Agricultural Production Area shall have a use right known as “Pinelands Development Credits” that can be used **for development** [to secure a density bonus for lands located] in Regional Growth Areas **and in accordance with N.J.A.C. 7:50-4.62(d), 5.27(c) and 5.32(b).**

(b) Pinelands Development Credits are hereby established at the following ratios:

1.-4. (No change.)

5. Pinelands Development Credit allocations [exceeding one-quarter of a Pinelands Development Credit] shall be rounded to the nearest one-quarter of a Credit, **with the exception of any such allocation that totals less than 0.125 Pinelands Development Credits unless the standards of (b)6 or 7 below are met.**

6.-8. (No change.)

(c) (No change.)

7:50-5.46 Aggregation of Development Credits

Pinelands Development Credits may be aggregated from different parcels for use in **accordance with (a) above** [securing a bonus for a single parcel of land in a Regional Growth Area, provided that the density does not exceed the limits of the density range specified in the municipal district in which the parcel is located].

7:50-5.47 Recordation of deed restriction

(a) (No change.)

(b) Such deed restriction shall specify the number of Pinelands Development Credits [sold] **allocated** and that the parcel may only be used in perpetuity for the following uses:

1.-4. (No change.)

(c) (No change.)

SUBCHAPTER 10. PILOT PROGRAMS

7:50-10.22 General standards

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

1.-4. (No change.)

5. Conditions for the use of alternate design pilot program treatment systems are as follows:

i.-viii. (No change.)

- ix. The property owner shall record, with the deed to the property, a notice consistent with the sample deed notice approved pursuant to (a)2vi above that identifies the technology, acknowledges the owner's responsibility to operate and maintain it in accordance with the manual required at [(a)2vi] **(a)2iv** above, and grants access, with reasonable notice, to the local board of health, the Commission, and its agents for inspection and monitoring purposes. The recorded deed shall run with the property and shall ensure that the maintenance requirements are binding on any owner of the property during the life of the system and that the monitoring requirements are binding on any owner of the property during the time period the monitoring requirements apply pursuant to this pilot program or any subsequent rules adopted by the Commission that apply to said system;

x.-xiii. (No change.)

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