

July 27, 2007

**PINELANDS COMMISSION**

**Pinelands Comprehensive Management Plan**

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

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

Proposed: May 21, 2007 at 39 N.J.R. 1970(a)

Adopted: September 14, 2007 by the New Jersey Pinelands Commission,  
John C. Stokes, Executive Director

Filed: November 7, 2007 **without change.**

Authorized by: New Jersey Pinelands Commission

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

Effective Date: December 3, 2007

Expiration Date: Exempt.

**Summary of Public Comments and Agency Responses:**

The New Jersey Pinelands Commission (Commission) is adopting amendments to subchapters 1, General Provisions, 2, Interpretations and Definitions, 4, Development Review, 5, Minimum Standards for Land Uses and Intensities, 6, Management Programs and Minimum Standards, and 10, Pilot Programs, of the Pinelands Comprehensive Management Plan (CMP). The amendments were proposed on May 21, 2007 at 39 N.J.R. 1970(a). The adopted amendments relate to escrows, the withdrawal of applications for

development, nonconforming uses, recycling centers and the Commission's pilot program for alternate design wastewater treatment systems.

In association with publication of the proposed amendments in the May 21, 2007 issue of the New Jersey Register, the Pinelands Commission transmitted the proposal to each Pinelands municipality and county, as well as to other interested parties, for review and comment. Additionally, the Pinelands Commission:

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

A formal public hearing was held before the Commission staff on June 26, 2007. Two people attended the hearing; oral testimony on the rule proposal was provided by one individual. The hearing officer's recommendations are in accordance with the public comment and agency responses below.

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

Betsy Piner  
Pinelands Commission  
P.O. Box 7  
New Lisbon, NJ 08064.

**Summary** of Public Comments and Agency Responses:

The Commission accepted oral comments on the May 21, 2007 proposal at the above-discussed June 26, 2007 public hearing and written comments by regular mail, facsimile or e-mail through July 20, 2007.

The following persons submitted comments (an asterisk indicates those persons who submitted only oral comments):

1. Anderson, Wallace
2. Chiarello, Charles; Mayor of Buena Vista Township\*
3. Harkins, Joanne M.; Director of Land Use and Planning, New Jersey Builders Association
4. McGlinchey, Edward J.; Zoning Officer, Winslow Township

The Commission's response to the comments is set forth below.

1. **COMMENT:** One individual raised concerns with the escrow provisions being added at N.J.A.C. 7:50-1.7(a). Specifically, the commenter expressed a concern that the

proposed escrow provisions do not sufficiently guide the Executive Director in determining whether complex issues warranting an escrow account exist. The commenter also indicated a concern that the Executive Director's request for escrow deposits will "creep" into standard residential development applications. This latter concern was based on the experience of the commenter's members with other governmental review entities. The commenter suggested that the Commission amend the regulations to include specific guidance on the type of complex issues that would require the use of escrow deposits. (3)

**RESPONSE:** The proposed amendments authorize the Executive Director to assess an escrow for those matters pending before the Commission that involve complex issues which, because of the need for specialized expertise, necessitate the retention of consultants to assist in the Commission's review. Examples of those instances where such an escrow might be required were provided in the rule proposal and include comprehensive plans for local communications facilities and certain intergovernmental memoranda of agreement. The language of the rule does not support an interpretation that its use will become standard practice or that it will be applied to standard residential development applications. The ability to require escrow accounts for development applications, be they residential or nonresidential, was already provided by virtue of amendments to the CMP adopted in 2004 (see 36 N.J.R. 1804(a)) and remains unaffected by the proposed amendments.

It is worth noting that in the three years since the CMP was amended to allow the Executive Director to require escrows for certain development applications, the Executive Director has invoked the escrow provision only once. That escrow requirement involved an application for resource extraction, not residential development. The

Commission fully expects application of the new escrow provisions for other matters to be similarly limited. The experiences of the commenter's members with other regulating entities do not support an inference that a similar situation will arise regarding the Commission's treatment of such escrow payments. Moreover, the Commission's escrow provisions contain procedures regarding the posting of an escrow account and providing an accounting for such expenses. For example, the regulations require that escrow monies submitted in accordance with N.J.A.C. 7:50-1.7(a)2 be held in an escrow account and that, at the time the Commission renders its decision on the matter before it, a statement of the escrow account be provided and any remaining funds be returned to the entity which initiated the matter. The Commission believes that its escrow provisions are sufficiently clear and appropriate.

2. **COMMENT:** One individual stated that it is sometimes difficult to enforce or determine when and how to apply abandonment standards for nonconforming uses. He indicated that Buena Vista Township uses a tighter window for purposes of abandonment than the two years being proposed by the Commission at N.J.A.C. 7:50-2.11. (2)

**RESPONSE:** The Commission agrees that determining whether a nonconforming use has been abandoned is not always a simple and straightforward matter. The definition being adopted at N.J.A.C. 7:50-2.11 is intended to make the process somewhat easier by clarifying who bears the responsibility of demonstrating the intent to continue a nonconforming use, establishing a specific two-year time period and providing a list of examples of documents the Commission will rely on in evaluating the intent to continue a nonconforming use. Each such use will be carefully evaluated by the Commission on a case by case basis.

Pursuant to N.J.A.C. 7:50-3, Part IV, Pinelands municipalities will be required to amend their land use ordinances in response to these adopted CMP amendments, including those relating to nonconforming uses. As is the case with many other issues, however, these municipalities will have the option of adopting more restrictive standards than those set forth in the CMP. If a municipality feels a shorter time frame is more appropriate for purposes of determining whether a nonconforming use has been abandoned than the two years provided in the definition being adopted as part of these amendments, such a municipal ordinance may be certified by the Commission provided it does not conflict with other standards or objectives of the CMP.

3. **COMMENT:** Another individual also commented on the proposed definition of “Abandonment” being added at N.J.A.C. 7:50-2.11. This commenter suggested that the Commission should not involve itself in making determinations as to the abandonment of nonconforming uses as these decisions are best left to municipal Zoning Boards. The commenter stated that the abandonment issue has been dealt with in the past by the courts and it is those court decisions which should guide municipal Zoning Boards in their determinations with respect to nonconforming uses. (4)

**RESPONSE:** The Commission agrees that municipalities play an important role in determinations concerning nonconforming uses, one which the Commission has no intention of eliminating. However, the Commission also has a significant interest in ensuring that uses in the Pinelands which do not conform to the CMP are discontinued if they have been abandoned. Adoption of the proposed amendments will provide the Commission with clear standards by which to judge whether a nonconforming use has been abandoned or has a legitimate right to be continued or even expanded.

As is the case for all private development in the Pinelands Area which is not otherwise exempted from application requirements pursuant to N.J.A.C. 7:50-4.1 or subject to an alternative local permitting program in accordance with N.J.A.C. 7:50-3, Part VIII, a development application involving a nonconforming use must first be submitted to the Pinelands Commission. Upon the completion of that application, the Commission will issue a Certificate of Filing which enables the applicant to proceed to secure any necessary municipal approvals. The Certificate of Filing will note that the application is complete and provide an indication of any issues in terms of the consistency of the application with the standards of the CMP, including those related to the abandonment, continuation and expansion of nonconforming uses set forth at N.J.A.C. 7:50-2.11 and 5.2. The municipal Zoning Board will then have the opportunity to review any variance or other associated development applications and render its decision. Adoption of the proposed amendments in no way changes this process. The amendments merely set forth the minimum standards which the Commission feels are necessary with respect to the continuation and expansion of nonconforming uses in the Pinelands. As noted previously, Pinelands municipalities retain the option of adopting more restrictive or additional standards, provided they are consistent with the objectives of the CMP in this matter.

4. **COMMENT:** One individual expressed support for the amendments at N.J.A.C. 7:50-10.22 and 10.23 which would extend the Pilot Program for Alternate Design Wastewater Treatment Systems and authorize the use of such systems in all Pinelands municipalities. (3)

**RESPONSE:** The Commission appreciates the expression of support.

5. **COMMENT:** One individual stated his objections to any amendments which would further prevent, restrict or otherwise increase the costs of development for his property, the location of which was not provided. (1)

**RESPONSE:** Without knowing the location or condition of the property in question, it is impossible for the Commission to determine whether the adopted amendments would have any impacts on that particular property. Unless the property contains an existing nonconforming use or was eligible for the development of an accessory recycling center pursuant to N.J.A.C. 7:50-6.76(d), it is unlikely there would be any impacts at all.

6. **COMMENT:** One individual expressed concern with the lack of wireless communication services in certain areas and the impact this might have in emergency situations. This individual also posed questions concerning the construction of a water treatment plant and connection to sewer and water pipe lines. Finally, this individual suggested that the Commission look closely at the Chatsworth portion of Woodland Township as this municipality has the potential for more development. (1)

**RESPONSE:** While important issues in the Pinelands, wireless communication services, the construction of water treatment plants and the development potential of the Pinelands Village of Chatsworth are not the subject of the adopted amendments.

### **Federal Standards Statement**

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. §471i) called upon the State of New Jersey to develop a comprehensive management plan for the



Pinelands National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals which the plan must meet, including the protection, preservation and enhancement of the land and water resources of the Pinelands. The adopted amendments were designed to meet those goals by facilitating the hiring of consultants to provide the Commission with necessary expertise in its various review processes, clarifying rules relative to nonconforming uses and their continuation in the Pinelands, restricting the potential for new recycling centers in the most environmentally sensitive portions of the Pinelands and allowing for the continued installation and monitoring of alternate design wastewater treatment systems for residential development.

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