



State of New Jersey

THE PINELANDS COMMISSION

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JON S. CORZINE  
Governor

JOHN C. STOKES  
Executive Director

**MEMORANDUM**

To: Members, Policy and Implementation Committee

From: John C. Stokes, Executive Director

Date: November 20, 2009

Subject: Pinelands Development Credit and Density Rules

Please find attached for your review and approval a resolution and accompanying rule proposal, dated November 19, 2009, regarding the Pinelands Development Credit and Density rules.

You may recall that, two years ago, the Policy and Implementation Committee established a series of principles to guide the development of these rules. Those principles were based upon the recommendations of the Commission's Housing Task Force, your review of the Pinelands Development Credit program and our consultation with a number of interested parties. However, the rule drafting process was delayed until the State Ethics Commission provided advice regarding Commission members' participation in the rulemaking process.

After receiving that advice earlier this year, our staff and the Committee began to work on the rules. You reviewed draft rules at your March 27 and April 29 meetings and reviewed a full rule proposal at your May 29 meeting. During the next several months, our staff continued to consult with several interested parties. As a result of that consultation, the Committee re-examined several topics at its September 25 meeting.

Although the attached rule proposal remains largely unchanged from that which you reviewed in detail last Spring, we have successfully incorporated several refinements as a result of our continuing consultation since then. A summary of those changes follows:

- The standard that affords each municipality an opportunity to zone as much as 25% of its Growth or Town management area for non-residential development without the need to accommodate more residential development elsewhere has been revised to recognize that, in a few cases, non-residentially zoned lands may exceed 25% because of zones that contain incompatible land uses that render them unsuitable for residential development. This revision is reflected on Pages 57 and 58.
- The table that presents the sliding scale percentages for PDC use in residential developments has been revised so that the percentage of PDC use continues to decline as project densities increase above 6.5 dwelling units per acre. A note has also been added to provide that the rate (percentage) of PDC use for properties that are significantly constrained by environmental features will be applied to the developable area and not the property as a whole. Pages 66 and 67 include these provisions.



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E-mail: [info@njpines.state.nj.us](mailto:info@njpines.state.nj.us)

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- The threshold above which non-residential developments can increase impervious coverage through PDC use has been increased. This PDC use provision was intended to apply to non-residential projects that are proposed at higher-than-normal development intensities. Our consultation with municipalities and continuing analysis suggests that the threshold should be 60%, not 50%. The standard has also been clarified to make it clear that, if existing impervious coverage exceeds 60%, PDCs will only apply to the proposed increase in coverage. This provision is presented on Pages 68 and 69.
- In order to encourage mixed use (residential and non-residential) development, we recommend that residential uses in a mixed use project not be subject to PDC requirements. This provision is described on Pages 69 and 70.
- Although municipalities can grant “use” variances to permit a use in a zone where it’s not normally permitted, the CMP has, for a long time, included a provision dealing with significant deviations from zoning provisions. A minor change to this variance standard is proposed so that the language tracks that of the Municipal Land Use Law. Page 71 includes this provision.
- The Commission has always had the authority to review and modify/overturn a local development approval if it runs counter to Pinelands standards. Historically, these “call-up” provisions were unclear as to whether they could be exercised if a municipality effectively required a developer to reduce the density of an otherwise conforming project. The proposed rule change to make this authority explicit has been revised to more clearly state the circumstances under which the Commission could “call-up” a municipal approval. These provisions are included on Pages 46, 47 and 48.
- The proposed rules authorize the Commission to allocate PDCs to certain portions of the Forest Area. One of the criteria is that the area has high ecological value. That standard has been revised to refer to the attributes that contribute to high conservation value rather than to specifically reference the Ecological Integrity Assessment (EIA). Although the methodology used in the EIA can help inform the Commission as it makes these decisions, the decisions are not tied exclusively to the EIA. This provision is described on Pages 77 and 78.

It is reassuring that, during such an extended “informal” review period, the rules have been refined without compromising the basic principles you outlined more than two years ago. As you can imagine, further delays in these rules will continue to promote sprawl, hinder the development of compact and sustainable communities, hamper mixed use development which combines commerce with higher density housing opportunities, restrict affordable housing development, thwart the preservation of important conservation and agricultural land and undermine one of the most successful transfer-of-development rights programs in the country. I believe it’s now time to officially seek public comment on these rules and hope the Commission will do so by authorizing the attached rule proposal.

Attachments

CP200



DRAFT

## **RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION**

**NO. PC4-09-**\_\_\_\_\_

**TITLE:** [To Authorize the Executive Director to Propose Amendments to the Comprehensive Management Plan in Accordance with the Administrative Procedure Act (Regional Growth Areas, Pinelands Towns and Pinelands Development Credits)]

**Commissioner** \_\_\_\_\_ **moves and Commissioner** \_\_\_\_\_  
**seconds the motion that:**

**WHEREAS**, the Pinelands Commission undertook its third comprehensive review of the Pinelands Comprehensive Management Plan, beginning in 2001; and

**WHEREAS**, at the outset of the review process, the Commission identified Permanent Land Protection and Regional Growth and Development as the two priority topics to be addressed; and

**WHEREAS**, this review resulted in the identification of eight initiatives relating to Permanent Land Protection and 12 initiatives relating to Regional Growth and Development intended to guide the Commission's actions over the next five years, as memorialized in Resolution PC4-03-78 which was adopted by the Commission on July 11, 2003; and

**WHEREAS**, the Commission's Housing Demand Task Force and its CMP Policy and Implementation Committee then addressed three of these initiatives in great detail; namely, the reexamination of regional housing demand estimates, the redesign of the Pinelands Development Credit (PDC) program to expand the number and type of opportunities to use PDCs in development areas and an expansion of the PDC program in order to protect important lands outside of current PDC "sending" areas; and

**WHEREAS**, the Executive Director has reviewed with the Commission and the Policy and Implementation Committee draft amendments to the Comprehensive Management Plan which are designed to implement the recommendations of the Housing Demand Task Force and the CMP Policy and Implementation Committee; and

**WHEREAS**, these amendments have been reviewed and endorsed by the Commission's CMP Policy and Implementation Committee; and

**WHEREAS**, the Pinelands Commission is desirous of considering the amendments set forth in the attachment hereto, dated November 19, 2009; 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 is also desirous of obtaining 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 November 19, 2009, and the required supporting documentation to the Office of Administrative Law for publication as proposed regulations;
2. The Executive Director shall transmit the proposed amendments to all Pinelands municipalities and counties and the Pinelands Municipal Council for review;
3. The public comment period on the proposed amendments shall extent 60 days from the date of publication of the proposal in the *New Jersey Register* and the Executive Director shall affix the date of a public hearing to receive comments on the proposed amendment; and
4. Subsequent to the comment period, the Executive Director shall expeditiously prepare proposed final amendments, with any pertinent changes, for review by the Commission's CMP Policy and Implementation Committee, and shall submit same to the Commission for final action.

**Record of Commission Votes**

	AYE	NAY	NP	ABS		AYE	NAY	NP	ABS		AYE	NAY	NP	ABS
Ashmun					Haas					Lloyd				
Brown					Jackson					McIntosh				
Campbell					Kennedy					Witt				
Ficcaglia					Lee					Tomasello				
Galletta					Link									

Adopted at a meeting of the Pinelands Commission

Date: \_\_\_\_\_

\_\_\_\_\_  
John C. Stokes  
Executive Director

\_\_\_\_\_  
Norman Tomasello  
Vice Chairman

November 19, 2009

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan  
Regional Growth Areas; Pinelands Towns; and Pinelands Development Credits  
Proposed Rules:

Authorized By:

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
New Jersey Pinelands Commission,  
John C. Stokes, Executive Director

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

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

Proposal Number:

A public hearing concerning this proposal will be held on:

\_\_\_\_\_, \_\_\_\_\_, 2010 at 7:00 P.M.  
Richard J. Sullivan Center  
15C Springfield Road  
New Lisbon, New Jersey

Submit written comments by regular mail, facsimile or e-mail by \_\_\_\_\_, \_\_\_\_\_, 2009 to:

Susan R. Grogan, P.P., AICP  
Chief Planner  
Pinelands Commission  
P.O. Box 7  
New Lisbon, NJ 08064  
Facsimile: (609)894-7330  
E-mail: [planning@njpines.state.nj.us](mailto:planning@njpines.state.nj.us)

The name and mailing address of the commenter must be submitted with all public comments.

The agency proposal follows:

Summary

The New Jersey Pinelands Commission (Commission) proposes to amend various parts of the Pinelands Comprehensive Management Plan (CMP) in order to modify regional development policies that apply to Pinelands “Regional Growth” and “Town” land management areas and to revise the Pinelands Development Credit Program, which is the Pinelands-wide transfer of development program. 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 through a set of amendments related to forest management practices in the Pinelands.

A driving force for the establishment of the Pinelands Protection Act 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, Pinelands Towns and, to a lesser extent, Pinelands Villages were designed to accommodate most of the anticipated growth in the Pinelands Area. On the other hand, lands within the Preservation Area District, Special Agricultural Production Area, Agricultural Production Area and Forest Area were afforded protection through rigorous land use policies that were intended to minimize disturbance and conserve important ecological and agricultural resources. It is estimated that more than 76% of the residential development approved in the Pinelands Area over the past 28 years is to be located within Regional Growth Areas, Pinelands Villages and Pinelands Towns, which comprise only 13% of the Pinelands' land area. Five percent of the approved development is located within the Preservation Area District, Special Agricultural Production Area, Agricultural Production Area and Forest Area, areas which represent almost 70% of the Pinelands' land mass.

The CMP also established the Pinelands Development Credit (PDC) Program, a regional transfer of development rights program, 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 areas to benefit from increased land values in Regional Growth Areas. The Pinelands Development Credit 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 to increase the density of residential development in Regional Growth Areas. Once the rights are sold, an agricultural or conservation easement is recorded on the sending property to permanently protect

it against future residential and non-agricultural development. Since the inception of the program, almost 60,000 acres of important conservation and agricultural lands have been preserved in this manner and more than 3,000 rights have been used for residential development in Regional Growth Areas.

## COMMISSION REVIEW OF THE PINELANDS COMPREHENSIVE MANAGEMENT PLAN

The amendments now being proposed are intended to improve the manner in which future growth demands are accommodated within the Pinelands and to strengthen the Pinelands Development Credit program's ability to protect important conservation and agricultural lands. These goals were established during the Commission's last comprehensive review of the Pinelands program which was completed in 2003.

The Commission began that review in 2001 by holding a special meeting at which two priority topics were identified: Permanent Land Protection and Regional Growth and Development. In an effort to obtain public input on these topics, as well as other issues, the Commission held four public forums through the middle part of 2002. Each forum featured a moderated discussion of expert panelists followed by opportunities for public comment.

In January of 2002, the Commission's Executive Director issued the Third Progress Report on Plan Implementation to summarize the activities undertaken by the Commission



during the previous 10 years. The Progress Report was organized by major Commission functions (e.g., land use planning, project review, regulatory programs) and concluded with a series of recommendations in the areas of community development, permanent land protection, resource protection and land management, research and planning, operations and permit streamlining, and education and interpretation. The Third Progress Report on Plan Implementation is available on the Commission's web site at [www.nj.gov/pinelands](http://www.nj.gov/pinelands).

Vision statements were then prepared to guide the development of recommendations for the two priority topics. The comments received during the public forums and the findings from the Progress Report were used to help craft goals that support the vision statements. A series of alternative strategies and initiatives to implement each of the goals were also drafted. After careful review and discussion, Pinelands Commission members selected those strategies and initiatives that they believed would be most effective in achieving each of the goals. These decisions, which were memorialized in a resolution adopted by the Commission in July 2003, included eight initiatives relating to Permanent Land Protection and 12 initiatives relating to Regional Growth and Development. Three of those initiatives specifically relate to these proposed rules – one dealing with housing demand and two dealing with the Pinelands Development Credit program.

## PINELANDS HOUSING DEMAND ASSESSMENT

To assure that realistic opportunities exist to accommodate the Pinelands' share of anticipated housing demand in southern New Jersey, one of the Commission's initiatives called for a task force to be created to update housing demand estimates and determine how much demand should be accommodated within Pinelands development areas. In November 2003, the Commission officially established a task force comprised of two Pinelands Commissioners and representatives of seven Pinelands counties, five Pinelands municipalities, three New Jersey cabinet departments and four non-governmental organizations. The task force's final report, issued in January 2007, presented 13 major conclusions and recommendations. Among them were findings that areas within the Pinelands which are targeted for residential development (Pinelands Regional Growth Areas, Pinelands Towns and certain Pinelands Villages) can 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 recommended that average densities of 4.5 dwelling units per acre of land<sup>1</sup> be achieved in areas with sewer service and that an average gross density of 1.5 dwelling units per acre would be appropriate in those portions of Regional Growth Areas, Pinelands Towns or Pinelands Villages where sewer service is unlikely. The Pinelands Housing Task Force Report is available on the Commission's web site at [www.nj.gov/pinelands](http://www.nj.gov/pinelands).

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<sup>1</sup> The task force excluded wetlands and an estimated wetlands buffer of 200 feet from its region-wide estimates of land available for development and recommended an average density of 4.5 dwelling units per acre for the remaining land.

## PINELANDS DEVELOPMENT CREDIT PROGRAM ASSESSMENT

The two Commission initiatives dealing with the Pinelands Development Credit program called for (1) a redesign of the PDC program to expand the number and type of opportunities to use PDCs in development areas and (2) an expansion of the PDC program in order to protect important lands outside of the current “sending” areas.

As the task force was assessing housing demand in the Pinelands, the Commission’s staff was examining the Pinelands Development Credit Program. Although the PDC Program is one of the most successful transferable development right programs in the country, the staff’s investigation focused on a concern that historical use of Pinelands Development Credits within Regional Growth Areas had not been occurring at a high enough rate to accommodate all of the rights that might be potentially transferred from sending areas in future years. The staff’s findings confirmed that the 6600<sup>2</sup> rights likely to be allocated to sending properties in future years would exceed the likely number of rights (5,100) to be used in Regional Growth Areas if current trends continued. The staff recommended that the number of opportunities to use PDCs be increased and that, to facilitate the construction of affordable housing, no PDC use be required for affordable housing units. To protect additional lands through the PDC program, the

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<sup>2</sup> The staff’s original July 2006 estimate of 8100 rights was revised to 6600 rights in 2007 based upon updated information on the state’s Farmland Preservation Program, which extinguishes Pinelands Development Credits when farmland preservation easements are purchased.

staff further recommended that particularly critical portions of the Pinelands Forest Area be designated as PDC “sending” areas.

## GROWTH AND PDC PROGRAM POLICY RECOMMENDATIONS

A series of specific policy recommendations that merged the growth management recommendations of the housing task force with the closely related Pinelands Development Credit recommendations were then developed in consultation with the Commission’s Policy and Implementation Committee and interested organizations. These were completed in September 2007. However, before the Commission took any action with respect to the policies, it sought advice from the State Ethics Commission to ensure that no Pinelands Commission members would inadvertently participate in rulemaking deliberations when state ethics policies require that they recuse themselves. The State Ethics Commission’s advice was forthcoming in February 2009 and work then began on the preparation of rules.

## LAND USE REGULATIONS FOR PINELANDS TOWN AND GROWTH AREAS

### Current Land Use Regulations

Current CMP land use regulations treat Pinelands Towns and Growth Areas differently from each other. Other than waste management facilities and public service infrastructure which

are expressly limited, N.J.A.C. 7:50- 5.27 (a)2 establishes standards for Pinelands Towns (as well as Pinelands Villages) that permit any use that is otherwise consistent with the character and magnitude of existing uses and structures in the Town. N.J.A.C. 7:50- 5.28 does not similarly limit the character and magnitude of uses permitted in Regional Growth areas but does require that municipalities zone for a certain amount of residential development in their growth areas. Thus, while the CMP places some strictures on the type and intensity of uses permitted in Pinelands Towns that do not exist within Regional Growth Areas, specific residential zoning obligations exist in Regional Growth Areas.

These differences in land use policies have been in place since 1981 and were established to reflect a perceived difference between established settlements with an existing development character (i.e., Pinelands Towns) and Regional Growth Areas, which represented areas undergoing more significant development and with a capacity to accommodate future region-wide growth influences. The CMP did attempt to distinguish between the intensity of residential development occurring in these Regional Growth Areas by assigning different average residential zoning densities to the areas.

#### Proposed Land Use Regulations

Over the years, the development distinction between Pinelands Towns and Regional Growth areas has become less clear and, as the housing task force concluded, both have the

potential to accommodate future growth demands. Since the growth policies for Pinelands Towns and Regional Growth Areas are now recommended to be the same, a number of proposed CMP amendments merely reorganize the rules to accomplish this merger. For example, what is now known as a “Regional Growth Area” is being renamed to “Growth Area.” It, along with “Pinelands Towns,” will now be collectively referred to as “Regional Growth Areas.” This change in terminology is being proposed at N.J.A.C. 7:50- 2.11 and is reflected throughout many sections of the Comprehensive Management Plan. It also dictates the proposed changes to N.J.A.C. 7:50-5.13 and N.J.A.C. 7:50-5.27(a).

The substantive growth policies that will apply to both Growth Areas and Pinelands Towns are now proposed in N.J.A.C. 7:50-5.28. The changes proposed in N.J.A.C. 7:50-5.28(a)1. eliminate individual density requirements that currently apply to municipalities with Regional Growth Areas in favor of average residential densities that will apply uniformly to all Growth Areas and Pinelands Towns. It is important to note that these particular rule changes do not alter the size or location of Growth Areas or Pinelands Towns.

N.J.A.C. 7:50- 5.28(a)1.i proposes an average residential density of 3.7 dwelling units per acre of land for areas that are currently served or likely to be served by a centralized waste water treatment system, referred to in these rules as a domestic treatment works. A definition for sewer service area – centralized is proposed to be added to N.J.A.C. 7:50-2.11.

It should be noted that the housing task force’s recommended density of 4.5 units per

acre of land, which excluded a theoretical wetlands buffer of 200 feet from its region-wide estimate of available land, has been adjusted. Since each municipal zoning ordinance must provide realistic opportunities for zone densities to be achieved (see the proposed revision at N.J.A.C. 7:50- 3.39(a)2vii), each ordinance will be required to afford design flexibility to overcome typical design constraints caused by property configuration, wetland buffers (which are variable) and similar conditions. Consequently, when vacant land which may fall within a theoretical, uniform wetland buffer is not excluded, the task force's recommended density equates to 3.7 dwelling units per acre.

As is the case now, only lands that are readily available for development will be subject to the average density requirement. This excludes already developed land (except for partially developed land where additional development potential exists), publicly owned land and wetlands, including areas where the seasonal high water table is within 1.5 feet of the ground surface. As currently provided in N.J.A.C. 7:50- 5.28(a)2., each municipality will create different residential zoning districts with different density and lot area requirements. However, the total amount of residential development authorized by the municipality in its Growth Area or Pinelands Town must equal that required by the CMP's average residential density. This affords flexibility to municipalities in crafting their master plans and zoning ordinances but ensures that the overall development policies of the CMP are not compromised.

N.J.A.C. 7:50- 5.28(a)1.ii proposes an average density of 1.5 dwelling units per acre of

land in areas that will likely be served by decentralized or smaller scale wastewater treatment facilities. A definition for sewer service area – decentralized is proposed to be added to N.J.A.C. 7:50-2.11. This average density requirement will be applied in the same manner as the N.J.A.C. 7:50- 5.28(a)1i requirements except that, in order for lands to be considered available for development, the seasonal high water table will need to be at least five feet below ground surface. This recognizes that N.J.A.C. 7:50- 6.84(a)4 requires that disposal fields for individual on-site subsurface sewage disposal systems must be located in areas where the groundwater table is at least five feet below the ground's surface. It should be noted that recently adopted septic system management rule proposal include several changes to the CMP's septic system definitions, one of which is the addition of a definition for an individual on-site subsurface sewage disposal system.

The proposed changes to N.J.A.C. 7:50- 5.28(a)2 expand upon the CMP's existing opportunity for municipalities to plan for well balanced communities. So that municipalities are not required to zone for more residential development elsewhere to compensate for the fact that land in a non-residential zoning district will not be available for residential development, the residential zoning obligations set forth in N.J.A.C. 7:50- 5.28(a)1 will not apply to lands that are zoned for non-residential uses (such as commercial, industrial, institutional or public uses) provided that those zones account for no more than 25% of the developable land within the Growth Area or Pinelands Town. In addition, the 25% threshold will not apply if the lands zoned for non-residential uses are unsuitable for residential development because of existing,



incompatible land uses within the zone(s).

N.J.A.C. 7:50- 5.28(a)3 is being revised to recognize that mixed use zoning districts (those which permit residential and other types of development, such as commercial uses) can be established and that densities established for residential zones which do not permit mixed uses must be realistic. For example, the creation of an extremely high density residential zone in an area with significant development constraints is not appropriate and would not meet this standard. N.J.A.C. 7:50- 5.28(a)3's previous reference to Pinelands Development Credit requirements, and the density ranges associated with those requirements, are being deleted. As explained later, revised requirements regarding the use of Pinelands Development Credits are proposed in N.J.A.C. 7:50- 5.28(b).

The existing provisions of N.J.A.C. 7:50- 5.28(a)4 and 5 are being eliminated. These existing standards, which deal with variances (relief from normal zoning requirements) that municipalities are authorized to grant pursuant to the Municipal Land Use Law, require that Pinelands Development Credits be used under certain conditions. Because of the structural changes that are being proposed in the Pinelands Development Credit program, these existing requirements will become largely irrelevant. Instead, a new subsection, N.J.A.C. 7:50- 5.28(c), is being proposed as a safeguard to ensure that, when exercising its variance authorities, a municipality must do so in a manner that will not substantially impair the intent and purpose of the zoning district or to the land use and development objectives of the CMP, including the

Pinelands Development Credit program. If an action is taken that may be contrary to this standard, which is largely fashioned after a similar standard in the Municipal Land Use Law (N.J.S.A. 40:55D-1.1, et seq.) the municipal approval will be subject to Commission review pursuant to N.J.A.C. 7:50-4, which authorizes the Commission to condition or overturn a local approval that is not consistent with the CMP. Although municipalities are almost always judicious in granting variances, the Commission must reserve the right to intervene if a variance might undermine a Pinelands approved master plan and land use ordinance. Such a situation could occur, for example, if a use variance for a large industrial use in a residential zoning district had the effect of extinguishing significant residential development opportunities and the Pinelands Development Credit use that would accompany them.

Since it relates to Pinelands Development Credit use in Growth Areas and Pinelands Towns, the existing standard at N.J.A.C. 7:50- 5.28(a)6 is effectively being moved to a new subsection 6 in proposed N.J.A.C. 7:50- 5.28(b).

Existing N.J.A.C. 7:50- 5.28(a)7 (recodified here as N.J.A.C. 7:50- 5.28(a)4) is being revised in two respects. First, the word “additional” is being deleted from N.J.A.C. 7:50- 5.28(a)4i because municipalities will be afforded the opportunity to employ any type of density bonus or incentive programs that do not otherwise impair the Pinelands Development Credit program. Second, N.J.A.C. 7:50- 5.28(a)4ii and 4iii are being revised to eliminate a municipality’s opportunity to decrease CMP-assigned densities because the Commission agrees

with the findings of its housing task force that the average densities recommended herein are necessary to encourage the efficient use of land within Pinelands development areas and to reasonably accommodate future housing needs.

PINELANDS DEVELOPMENT CREDIT REGULATIONS FOR  
PINELANDS TOWN AND GROWTH AREAS

Current Pinelands Development Credit Regulations

Pinelands Development Credits are currently redeemed (used) in Regional Growth Areas to achieve higher than normal residential development densities. In fact, municipalities are required to specify bonus densities in virtually every residential zoning district to allow for Pinelands Development Credit use. However, the actual number of PDCs to be used in any given residential project is determined by the size of the property to be developed and the number of homes to be built. For example, a zoning ordinance may specify that a residential zone that normally permits 2 dwelling units per acre could allow residential density to increase to 3 dwelling units per acre when PDCs are used. In such a zone, up to 40 homes could be built on a 20 acre property without the use of PDCs. Up to 60 homes could be built on that same property by using PDCs -  $\frac{1}{4}$  of a PDC (or one "right") would be needed for each home in excess of 40. Thus, a 45 unit project in this zone would be permissible if 5 rights (1.25 PDCs) are used while a 55 unit project would require 15 rights or 3.75 PDCs.

The PDC bonus densities that municipalities incorporate into their zoning ordinances must provide for normal zone capacities to increase by at least 50%. This doesn't mean that each and every zone must permit a 50% bonus. Some zones could provide for smaller bonuses while others offer higher bonuses. However, the bonuses offered in all of the residential zones must permit the total residential zoning capacity of the growth area to increase by 50%.

Although the use of PDCs in Regional Growth Areas is generally limited to residential development, there are instances where PDCs can be used for non-residential development. The standards in N.J.A.C. 7:50- 5.28(a)4 and 5 require PDC use when municipalities grant variances for non-residential development in a residential zoning district because these variances extinguish PDC use opportunities. Of course, this provision has very limited application but a few municipalities have allowed broader use of PDCs for non-residential development in non-residential zoning districts by taking advantage of CMP provisions at N.J.A.C. 7:50- 5.28(a)7i that authorize them to employ additional bonus density programs.

Pinelands Development Credits can also be used in Pinelands Villages and Towns but only in very limited circumstances. Specifically, N.J.A.C. 7:50- 5.27(c) requires that PDCs be used when a municipality grants relief from the normal density or lot area requirements of its ordinance.

Proposed Pinelands Development Credit Program Regulations

Three fundamental changes to the Pinelands Development Credit Program are being proposed. First, since the growth policies for Pinelands Towns are now proposed to be comparable to those for Growth Areas, the Pinelands Development Credit Program will be applied equally to both areas as well. Second, instead of operating as a bonus program to allow higher-than-normal residential development densities, PDC use will now be an integral part of virtually all residential development within Pinelands Growth Areas and Pinelands Towns. Third, municipalities will now be required to afford non-residential development proposals an opportunity to increase the intensity of the proposed use through the PDC program. The net effect of these proposed changes is that the estimated number of opportunities to redeem (use) Pinelands Development Credits may increase from 5100 rights to 9800 rights. Since these opportunities are much more certain than is the case now, the changes not only ensure that the 6600 or so rights that may be allocated to currently-eligible properties in the future can be redeemed but that additional rights can be allocated to help protect properties that aren't currently eligible. These and other elements of the proposed changes to the Pinelands Development Credit program are more particularly described below.

The requirements governing Pinelands Development Credit use in Growth Areas and Pinelands Towns are contained in N.J.A.C. 7:50- 5.28(b). N.J.A.C. 7:50- 5.28(b)1 proposes a sliding scale for PDC use in residential development projects. In very low density projects (less

than one dwelling unit per acre), 60% of the units or lots will require the use of PDCs. Thus, a project that proposes to subdivide a 20 acre property into 10 two acre lots would be required to use (redeem) 1.5 Pinelands Development Credits, or 6 rights. As the density of the development increases, the rate of PDC use decreases. For example, a 20 acre property that is subdivided at a density of 3 dwelling units per acre would yield a total of 60 lots, necessitating a 35% rate of PDC use, resulting in the use of 5.25 PDCs, or 21 rights. At a density of 6.0 dwelling units per acre, the percentage of PDC use drops to 5%. Although the rate of PDC use decreases as density increases, the actual number of PDCs to be redeemed increases until a density of 3.5 dwelling units per acre is reached. At that point, the number of PDCs begins to decline as density continues to increase. When densities reach or exceed 6.5 dwelling units per acre, the rate of PDC use becomes fixed at 5% and is calculated at a project density of 6.5 dwelling units per acre, even if the actual project density is higher. Thus, higher project densities will continue to benefit from lower rates of PDC use. This methodology has the effect of reducing the per unit/lot cost of PDCs as the density of development increases.

The sliding scale approach also accounts for properties whose development yields are significantly lower than otherwise permitted in the zone because of severe environmental constraints, such as extensive wetlands or critical habitat for threatened or endangered species. Although municipalities are required by N.J.A.C. 7:50-3.39(a)8 to afford sufficient project design flexibility in their ordinances to allow zone densities to be achieved in most cases, a small number of properties within any given zoning district may be severely constrained. In such

cases, the rate of PDC use will be based upon the density of the actual development area, not the property as a whole. Thus, in these abnormal cases, the rate of PDC use will be reduced, reflecting the lower development yields that result from severe constraints.

This sliding scale approach to PDC use in residential projects accomplishes two goals. It provides more certainty with respect to PDC use so that there is a greater assurance that PDCs allocated to properties in PDC “sending” areas will have utility and value in the coming years. Secondly, unlike the current program where PDC bonus density ranges often serve as a disincentive to higher density projects, the sliding scale results in a lower per lot or unit cost in higher density projects.

Two exceptions to these new PDC requirements are proposed, as follows:

- N.J.A.C. 7:50- 5.28(b)2 provides that affordable housing units, as defined in the regulations that implement New Jersey’s Fair Housing Act, shall not generate a PDC obligation. This adjustment works by subtracting the number of affordable units from the total number of proposed housing units before applying the applicable PDC use percentage. For example, in a 6.0 dwelling unit per acre planned residential development with 100 units, 20 of which are to be affordable housing units, a total of 1.0 Pinelands Development Credit, or 4 rights, will be required. That result is obtained by subtracting the 20 affordable units from the 100 total units and multiplying the difference of 80 by 5%. N.J.A.C. 7:50- 5.28(b)2 also provides that

the calculation will be different if an affordable housing component is not interspersed throughout a larger residential development. If, for example, a large residential project proposes separate areas for a higher density housing type (such as apartments) and a lower density housing type (such as detached housing) and the higher density housing type is dedicated for affordable housing, the applicable PDC use percentage will be determined by the density of the lower density housing type since the affordable housing is not interspersed throughout the overall residential project. These provisions, in tandem with the sliding scale PDC obligation, will enable affordable housing and PDC goals to be more readily achieved.

- N.J.A.C. 7:50- 5.28(b)3 proposes to exempt from a PDC obligation the development of a dwelling on a lot existing as of the effective date of these rules and that otherwise meets the density and minimum lot size requirements of the municipality's Pinelands certified zoning ordinance. This exemption will not apply if the lot still has subdivision potential. For example, development of a home on a 25,000 square foot lot in a zone which permits a minimum lot size of 15,000 square feet would not have a PDC obligation because there is no subdivision potential. If, on the other hand, a home is to be built on a 30,000 square foot lot in that same zone, the fact that subdivision potential exists will require that 0.25 PDCs (or 1 right) be used. This requirement is intended to discourage the under-utilization of land which, in turn leads to inefficient development patterns. Although more PDC use might be required if larger properties are incrementally subdivided over time, such an outcome can be avoided merely by preparing a comprehensive subdivision plan initially.



N.J.A.C. 7:50- 5.28(b)4 proposes to afford non-residential development an opportunity to benefit from the PDC program. Specifically, N.J.A.C. 7:50- 5.28(b)4i(1) provides that non-residential development may exceed an impervious coverage threshold of 60% if 0.25 PDCs (or one right) is redeemed for each 6,000 square feet of new site coverage that exceeds the threshold. The 60% threshold approximates the maximum impervious coverage typically allowed by Pinelands municipalities and is meant to serve as the benchmark for distinguishing typical from atypical (high intensity) projects. N.J.A.C. 7:50- 5.28(b)4i(2) makes it clear that this 60% threshold will not apply to parcels where the existing impervious coverage already exceeds 60%. Rather, PDCs need only be used for the proposed increase in coverage.

To determine the rate of PDC use in non-residential development, an effort was made to equate non-residential development to residential development. Although many different units of measurement can serve as a basis for comparison, water use was used in this case. In this regard, approximately 3,000 square feet of commercial floor area is equivalent to a dwelling unit. Since other impervious coverage (parking, circulation, etc) that accompanies a commercial use often equals the floor area, the 3,000 square feet of floor area was doubled to achieve a non-residential measure roughly equivalent to residential use.

In applying this new provision throughout Pinelands Growth and Town areas, municipalities will, as they currently do, establish maximum impervious coverage limits in their

non-residential zoning districts. To the extent these coverage limits are less than or equal to 60%, PDC use will apply only if a variance is granted which authorizes coverage to exceed 60%. Of course, municipalities may occasionally create zones where impervious coverage is permitted to exceed 60%, in which case the zone district standards will allow for coverage in excess of 60% when PDCs are used.

To account for unusual non-residential uses, N.J.A.C. 7:50- 5.28(b)4ii provides for PDC use when golf courses and similar uses are permitted within Growth Areas or Pinelands Town zoning districts. Since these rather land extensive types of uses generally have low impervious coverage, a different means of calculating PDC use is required. The formula, 1 right (or 0.25 PDCs) for every 4 acres of non-impervious, managed grass or turf area, was derived from the Commission's Pilot Program (N.J.A.C. 7:50-10, Part II) for the Township of Galloway and City of Egg Harbor City. That formula, which was based on groundwater impacts from intensively managed grass areas, requires that approximately two acres of land be protected for every acre of land devoted to this type of use. Thus, four acres of managed grass or turf area would require the protection of about 8 acres of land, roughly the same amount of land protected in a Pinelands PDC "sending" area when 1 right (0.25 PDCs) is severed.

It should be noted that proposed N.J.A.C. 7:50- 5.28(b)4iii exempts public development from PDC use. This exemption applies to the full range of public uses, including educational, institutional and recreational facilities.

N.J.A.C. 7:50- 5.28(b)5 proposes that the number of PDCs to be used in a mixed use project, one that includes residential and non-residential uses, be based solely on the non-residential component of the project if the amount of land that is devoted to the non-residential component is significant, representing more than 50% of the combined residential and non-residential floor area. This provision, which reduces PDC obligations, may serve as an inducement to design compact, mixed use developments with higher density residential elements. If the non-residential component is less extensive, separate calculations to determine PDC use will be necessary since the formulas are different for residential and non-residential uses.

N.J.A.C. 7:50- 5.28(b)6 effectively recodifies N.J.A.C. 7:50-5.28(a)6 and provides that fractional PDC requirements will be rounded to the next highest increment. For example, a residential development of 65 units on a 21.6 acre property would, according to the N.J.A.C. 7:50- 5.28(a)1 table, require the redemption of 5.69 PDCs. Since PDCs are generally bought and sold in one-quarter increments, this requirement would be rounded to 5.75 PDCs (or 23 rights). The need for rounding can also apply to non-residential development.

N.J.A.C. 7:50- 5.28(b)7 recognizes that typical PDC requirements may not be advisable or practical in certain Pinelands municipalities. Based upon a Commission staff analysis of many factors that might signal fiscal stress on a municipal level, principal components analysis (PCA),

a multivariate data technique that objectively correlates variables, reveals that nine variables (tax burden per capita, total equalized property value per capita, per capita income, gross debt per capita, tax burden as a percentage of income, effective tax rate, unemployment rate, poverty rate and gross debt as a percentage of property value) have a high correlation with fiscal stress. Data on 562 New Jersey municipalities has been subjected to PCA analysis and grouped using the Jenks Natural Breaks method, also known as the Optimal Breaks method. The highest stressed group of New Jersey municipalities total 56 and include the seven municipalities (Buena Borough, Chesilhurst Borough, Egg Harbor City, Pemberton Township, South Toms River Borough, Woodbine Borough and Wrightstown Borough) identified in the proposed rule. Although the draft report, which is available on the Commission's web site at [www.nj.gov/pinelands](http://www.nj.gov/pinelands), is undergoing review, the Commission is confident that these seven municipalities are faced with conditions that may not be conducive to the typical application of the Pinelands Development Credit Program.

For this reason, the proposed rules authorize these seven municipalities to modify PDC requirements if those modifications are necessary to accommodate the redevelopment of areas that have, in accordance with New Jersey law, been appropriately designated as areas in need of redevelopment and are implemented through ordinances which have been approved by the Commission. A second authorized modification relates to local conditions that may not support the extent of PDC use envisioned under these rules because local land and housing values are significantly lower than the region-wide values that drive PDC prices on the open market.

It is important to note that these provisions do not automatically exempt these municipalities from the PDC program. Rather, they provide a vehicle for them to adjust the PDC program so that it works in concert with redevelopment efforts and/or local land and housing values. When considering such a modification request, the Commission must find that the requested modification is justifiable and will need to formally approve it through the municipal planning and conformance process set forth in N.J.A.C. 7:50, Subchapter 3. In most cases, the Commission expects that each municipality will compare local market conditions to regional market conditions to determine the PDC program adjustments, if any, that would be economically viable within the context of the local market. Such an adjustment could, for example, reduce the percentage of PDC use set forth in N.J.A.C. 7:50- 5.28(a)1 to achieve a proportionate cost of PDCs per lot/unit equal to that generally occurring in the broader market.

## PINELANDS DEVELOPMENT CREDIT ALLOCATIONS TO FOREST AREAS

### Current Pinelands Development Credit Allocation Regulations

As stated earlier, most properties in the Preservation Area District, the Special Agricultural Production Area and the Agricultural Production Area qualify for an allocation of PDCs that their owners can sever (remove) from the properties and sell for use within Growth Areas. When PDCs are severed, an agricultural or conservation easement is recorded on the

sending property to permanently protect it against future residential and non-agricultural development. However, this opportunity does not currently exist in the Forest Area, one of the most ecologically sensitive regions in the Pinelands.

#### Proposed Pinelands Development Credit Allocation Regulations

The proposed rules seek to allocate PDCs to parts of the Forest Area, as the revisions to N.J.A.C. 7:50- 5.41 and 5.42 indicate. The standards to guide these allocations are contained in a new section, N.J.A.C. 7:50- 5.43(d). Although PDCs are allocated throughout the entirety of other, eligible Pinelands management areas, that is not the approach proposed for the Forest Area. Since the Commission wants to ensure that the number of PDCs allocated to “sending” properties does not exceed the capability to use (redeem) them within Pinelands Growth and Town areas, only the most highly valued ecological areas within the Forest Area will be eligible. N.J.A.C. 7:50- 5.43(d)1 provides that these areas must represent large, contiguous areas of forest, undisturbed drainage units, undisturbed wetlands or prime habitat for characteristic and rare Pinelands plant and animal populations. The methodology set forth in the Commission’s Ecological Integrity Assessment of the New Jersey Pinelands, dated 2008, as amended and supplemented, may be used as an aid in identifying these areas. This report is available on the Commission’s web site at [www.nj.gov/pinelands](http://www.nj.gov/pinelands).

N.J.A.C. 7:50- 5.43(d)2 further provides that the Commission must also find that existing

CMP conservation-related land use programs that operate within Forest Areas are not likely to achieve the conservation objectives for these designated areas. These existing programs include the Forest Area development transfer program (see N.J.A.C. 7:50- 5.30) and the on-site clustering requirements of N.J.A.C. 7:50- 5.19. In other words, the PDC program may only be applied in specific areas where the conditions are such that neither of these other two programs are likely to offer the degree of resource protection needed. Such a condition might exist, for example, in a highly valued forested area which was subdivided decades ago. If the lots are small and in multiple ownership, neither the Forest Area development transfer program nor the on-site clustering program is likely to prevent fragmentation of that forest. Such an area would then be a candidate for the PDC program.

If an area is so designated, properties located therein will be entitled to an allocation of PDCs. N.J.A.C. 7:50- 5.43(d)3 proposes to base the allocation on the formula that applies to properties in the Agricultural Production Area since the on-site development potential of Forest Area properties is more akin to those properties than properties in the Preservation Area District.

Lastly, as an added safeguard, N.J.A.C. 7:50- 5.43(d)4 proposes to cap the number of rights that may be allocated. The proposed limit of 500 Pinelands Development Credits (or 2000 rights) ensures that the number of rights likely to be allocated to sending area properties (6600 within the Preservation Area District, Agricultural Production Area and Special Agricultural Production Area plus 2000 in the Forest Area) will be less than the number

of rights (9800) likely to be used within Growth Areas and Pinelands Towns. As these estimates are reviewed and updated in the coming years, the Commission may, of course, decide to consider other changes to the PDC program.

The changes proposed at N.J.A.C. 7:50- 5.44(b) accomplish two things. First, by specifying that, as is the case now, one or more on-site residential development rights may be retained for properties in the Preservation Area District, Agricultural Production Area and Special Agricultural Production Area, no such rights may be retained for Forest Area properties. Since the provisions of N.J.A.C. 7:50- 5.43(d)2 essentially require that, among other things, the Commission must find that on-site residential development is not in keeping with the conservation objectives for these designated areas, it follows that the retention of on-site residential development opportunities would be contrary to the reasons these areas were designated.

N.J.A.C. 7:50- 5.47(b)1 is proposed to be amended to specify that the deed restrictions (easement) recorded for Forest Area properties from which PDCs are severed must be the same as those restrictions imposed in the Preservation Area District, which has comparable ecological attributes to these highly valued parts of the Forest Area.

#### OTHER PROPOSED REGULATORY CHANGES



In addition to editing changes brought about by the regulatory changes discussed above, there are several other proposed regulatory amendments. They are as follows:

- N.J.A.C. 7:50-3.39(a)2.vii is proposed to be revised for greater clarity. This is one of many standards that is used to determine whether municipal zoning ordinances should be approved by the Commission. The proposed revisions reflect the standard's application to Pinelands Town management areas and describe the types of measures that can be employed to ensure that zone densities can be achieved.
- N.J.A.C. 7:50- 3.61(b) is being amended to call attention to the fact that the failure of a municipality to implement ordinance provisions that seek to achieve permitted residential densities in Growth Areas and Pinelands Towns is cause for the Commission's Executive Director to initiate proceedings to revoke, suspend or modify Commission certification (approval) of a municipal or county master plan, regulation or land use ordinance.
- N.J.A.C. 7:50- 4.37(a) and N.J.A.C. 7:50- 4.40(a) authorize the Commission's Executive Director to review a preliminary or final local approval for an individual development application if that approval raises a substantial issue with respect to CMP standards. Both of these sections are proposed to be amended to make it clear that local approvals that undermine the achievement of permitted densities in Growth Areas and Pinelands Towns may be subject to Commission review. For example, a municipal preliminary approval of a

residential development at a significantly lower density than was proposed when the Pinelands Commission issued its Certificate of Filing (a document that signifies that development plans are on file with the Commission and that local agencies can begin their reviews) might indicate that a substantial issue exists with respect to CMP density standards. The same test holds true for a final municipal approval unless that final approval is being issued pursuant to a prior preliminary approval that was affirmed by the Commission. In that case, the final municipal approval will be reviewed on the basis of the density set forth in the preliminary approval.

- N.J.A.C. 7:50- 5.27(b) is being amended to better distinguish between different types of wastewater treatment systems, referred to in the CMP as domestic treatment works. N.J.A.C. 7:50- 5.27(b)1 is being revised to denote larger scale treatment systems that serve diverse users within a centralized service area while N.J.A.C. 7:50- 5.27(b)2 is intended to refer to smaller scale systems in decentralized sewer service areas. Individual onsite subsurface sewage disposal systems are excluded from this provision because the CMP prohibits their use on a lot smaller than one acre in size. Identical changes are also proposed at N.J.A.C. 7:50- 5.28(b), now being recodified as N.J.A.C. 7:50- 5.28(d).
- A change is being proposed in N.J.A.C. 7:50- 5.43(b)3ii. to clarify that agricultural employee housing, which is non-permanent housing accessory to an agricultural use does not affect the allocation of PDCs.

- Pinelands Development Credits are typically bought and sold in  $\frac{1}{4}$  increments because that increment equals one right. Therefore, the Commission established an administrative practice years ago to round allocations (except those that represent a fraction of  $\frac{1}{4}$  PDC) to the nearest one-quarter of a Credit. A new N.J.A.C. 7:50- 5.43(b)5 is being proposed to specify this practice in the CMP's rules.
- It has also been the Commission's longstanding practice to calculate a PDC allocation for all contiguous properties that are currently or were previously held in common ownership. This practice began many years ago in an effort to issue very precise PDC allocations and round fractional allocations (up or down as appropriate) for an entire ownership and not for individual properties. With the passage of time, researching prior ownership has become very time consuming, to the point where the costs of doing so are excessive. Therefore, a new N.J.A.C. 7:50- 5.43(b)4 is being proposed to end this administrative practice and calculate PDC allocations for an entire parcel as it exists at the time of the application or, at the request of the applicant, for individual lots.
- N.J.A.C. 7:50- 5.47(b) sets forth the land uses that are authorized on properties after PDCs have been severed. The uses are specific to the management areas in which the properties are located. Although it has been the Commission's position that accessory uses (those that are subordinate to and serve the principal use) are inherently permitted, the changes proposed to

N.J.A.C. 7:50- 5.47(b)1i, N.J.A.C. 7:50- 5.47(b)2i and N.J.A.C. 7:50- 5.47(b)3i will make that clear.

### Social Impact

These rules are expected to have a generally positive social impact. To the extent the land use rule changes encourage compact and flexible development designs and mixed use centers, they can help to create neighborhoods as opposed to large lot suburban sprawl, thereby generating a greater sense of community. The rules, while preserving many municipal planning prerogatives, will also promote residential development densities that accommodate a variety of housing types. One notable local planning prerogative, that related to creating a balanced community with an appropriate mix of residential and non-residential development, will be encouraged through the new land use rule that allows a municipality to “reserve” up to 25% of its land area for non-residential development without having to compensate for higher residential densities elsewhere. This will enable municipalities to better plan for these types of uses than is the case now.

The rules also provide greater certainty with respect to residential densities. The use of bonus residential densities previously associated with the use of Pinelands Development Credits often created discord at a local level because of a perception that municipal planning boards should have discretion to grant or deny the bonuses. Since the use of PDCs will no longer trigger

bonus densities, this type of discord should be lessened. Moreover, there will be greater predictability relative to the use of Pinelands Development Credits in residential projects for all parties involved in the land development process.

Sound community development objectives in the fiscally stressed municipalities of Buena Borough, Chesilhurst Borough, Egg Harbor City, Pemberton Township, South Toms River Borough, Woodbine Borough and Wrightstown Borough should be able to be advanced without worry that the regional transferable development rights program will thwart revitalization efforts.

Some local officials and developers may view the new PDC requirements that apply to non-residential development in a negative light because they feel that the cost of PDC purchases for high intensity commercial and other development will stymie such development.

### Economic Impact

Positive economic impacts should accrue to municipalities to the extent that more compact, mixed use development reduces public costs associated with the provision of water, sewer and other infrastructure services. Compact, interconnected development can also result in a reduced need for roads, and lessen the effects of congestion related to the over-reliance on automobiles. This form of development can also result in lower costs for public services such as

trash collection, police and fire protection and school transportation.

The impacts of the PDC-related rule changes should positively affect property owners in existing PDC sending areas who may be interested in selling their PDCs. By ensuring that greater opportunities for PDC use in Growth Areas and Pinelands Towns exist, reduced PDC values due to lower demand in future years should be avoided. A relatively small number of property owners in the Forest Area will also benefit from the opportunity to sell PDCs.

The sliding scale formula for PDC use in residential development also has economic implications. Since the relative PDC obligation is proposed to be higher in low density projects, the costs per unit or lot will be more than in a higher density project. This effect may be viewed in a negative light by developers who will be purchasing PDCs for low density development in Growth Areas and Pinelands Towns and in a positive light by developers who wish to develop higher density projects. The following comparison of PDC obligations under the current and proposed rules helps to quantify these effects:

- A 20 lot subdivision of one acre lots will be required under the proposed rules to purchase PDCs for 55% of the lots. Assuming that each of the 11 rights that is needed cost \$20,000, the total cost will be \$220,000, an average of \$11,000 for each of the 20 lots. Under current rules, it is unlikely that any PDCs would be purchased for a residential development at this density.

- An 80 lot subdivision of ¼ acre lots will be required under the proposed rules to purchase PDCs for 25% of the lots. Assuming that each of the 20 rights that is needed cost \$20,000, the total cost will be \$400,000, an average of \$5,000 for each of the 80 lots. Under current rules, it is likely that a municipality's "base" (non-PDC) density would range from 2.5 to 3.0 dwelling units per acre, requiring the purchase of 20 to 30 rights for this project. The per lot cost would range from \$5,000 (equal to the cost under the proposed rules) to a higher cost of \$7,500 per lot.
- A 120 unit town home project at 6 dwelling units per acre will be required to purchase PDCs for 5% of the units. Assuming that each of the 6 rights that is needed cost \$20,000, the total cost will be \$120,000, an average of \$1,000 for each of the 120 units. Under current rules, a density of 6 dwelling units per acre would typically exceed the "base" (non-PDC) density by 50%, requiring the purchase of 40 rights. At a cost of \$6,667 per lot, this cost is more than six times higher than under the proposed rules.
- A 180 unit town home project at 9 dwelling units per acre will be required to purchase the same number of PDCs as a 6.5 dwelling unit per acre project. Assuming that each of the 7 rights that is needed cost \$20,000, the total cost will be \$140,000, an average of \$778 for each of the 180 units. Under current rules, a density of 9 dwelling units per acre could exceed the "base" (non-PDC) density by as much as 50%, requiring the purchase of 60

rights. At a cost of \$6,667 per lot, this is almost nine times higher than under the proposed rules.

Thus, lower density development that generally yields the highest per lot economic return to a developer will also have the highest per lot PDC cost. Conversely, higher density development, which generally has a lower per unit return, will have a lower per lot or unit PDC cost. This formula results in a more equitable distribution of PDC costs than the current rules, which, as the above examples illustrate, often result in higher density projects having the same or greater PDC obligation (and per lot/unit cost) than lower density projects.

Since PDC program requirements will not apply to affordable housing units, the provision of affordable housing in Pinelands Growth Areas and Pinelands Towns should be more economically viable than is the case now. However, some might argue that the elimination of all PDC requirements for every project that proposes the development of affordable housing units (no matter what the percentage of affordable housing is in relation to market rate units) is a more appropriate policy.

Rather than viewing the new PDC rules that apply to non-residential development as an opportunity to increase impervious coverage above 60%, some may view the rules as an added cost which could have been avoided if the matter was left to the sole discretion of a municipality. Many non-residential projects will be unaffected by these PDC rules but those projects that take



advantage of the development intensity bonus will pay between \$7.00 to \$10.00 for the ability to construct each “bonus” square foot of floor area. This cost range is based upon a cost of \$20,000 per right and presumes that total impervious coverage (which is used to calculate the number of PDCs) is generally two to three times that of the floor area. An economic incentive will also exist to develop mixed use projects because, in many cases, no PDC obligation will apply to the residential component of these types of projects.

The rules which authorize seven fiscally stressed municipalities in the Pinelands to adjust PDC program requirements should have positive economic impacts on those communities and their citizens. The rules provide greater assurance that redevelopment plans can move forward and that normal residential and non-residential development within those communities will not be thwarted because the economics of the regional PDC program do not sync with local land and housing values.

Finally, those Pinelands municipalities which contain Growth and Town (and to a much lesser extent Forest) management areas will incur costs because of the need to revise their master plans and land use ordinances in order to conform to the proposed amendments, once adopted. The costs of these revisions will be borne by the local governments, although the Commission will continue with its practice of providing model or sample ordinances which municipalities may consider, thereby somewhat offsetting costs.

## Environmental Impact

Compact and flexible development designs, along with mixed use centers, can result in the preservation of open space and better protection of local natural resource values. It can also result in less reliance on automobiles, thereby resulting in less air pollution and energy use, and less impervious coverage, which can reduce stormwater runoff and non-point pollution. Of course, one might argue that reducing development below the levels envisioned in these rules can also benefit the environment. However, those unmet development demands would then need to be met elsewhere in the region, resulting in even greater impacts.

Changes to the Pinelands Development Credit Program will help to ensure that greater opportunities for PDC use in Growth Areas and Pinelands Towns will exist in the future. Since PDC use in Growth Areas and Pinelands Towns give value to PDCs, the incentive will remain for landowners in Pinelands “sending” areas to sever and sell PDCs, thus protecting important ecological and agricultural lands in the most sensitive parts of the Pinelands.

The use of PDCs in non-residential development may also create an economic incentive for developers to design high-intensity commercial and other uses in a more creative way so as to keep impervious coverage below 60%, thereby avoiding the need to purchase PDCs. Reduced impervious coverage has significant stormwater and non-point pollution benefits.

## 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 goals which the comprehensive management plan must meet, including orderly development within the region and the protection, preservation and enhancement of the land and water resources of the Pinelands. The proposed amendments are designed to meet those goals by facilitating appropriate levels of development in suitable areas and, by so doing, protecting important natural and agricultural resources in other parts of the Pinelands.

### Jobs Impact

The proposed amendments are not expected to have a material effect on the generation or loss of jobs.

### Agriculture Industry Impact

Existing CMP regulations anticipate that much of the undeveloped and agricultural land within Growth Areas and Pinelands Towns will be converted to more urbanized uses in the long term. The amendments proposed herein should not alter those effects.

Two of the PDC program's existing "sending" areas represent the largest and most concentrated centers of farming in the Pinelands. Since farm landowners are eligible to sell PDCs, the proposed amendments to the Pinelands Development Credit Program are likely to have a positive impact on the industry. By helping to ensure that greater opportunities for PDC use in Growth Areas and Pinelands Towns will exist in the future, an economic incentive will remain for "sending" area landowners to sever and sell PDCs.

However, some may argue that even greater positive impacts might accrue to landowners in existing PDC "sending" areas, including farmland owners, if PDCs are not allocated to Pinelands Forest Areas. By authorizing the designation of selected parts of the Pinelands Forest Area as PDC "sending" areas, these proposed rules enable up to 2,000 additional rights to be allocated, increasing the total potential allocation throughout the Pinelands to 8,600 rights. Although Growth Areas and Pinelands Towns are estimated to have the capacity to absorb up to 9,800 rights (more than 1,200 more than would be available for allocation), not allocating rights to Forest Areas may create a shortage of supply and lead to higher PDC values.

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Commission has evaluated the reporting, recordkeeping, and other compliance requirements that the proposed amendments would impose upon small businesses. The Act defines the term “small business” as “any business which is a resident of this State, independently owned and operated and not dominant in its field and which employs fewer than 100 full-time employees.” N.J.S.A. 52:14B-17. Although the proposed amendments do not establish any additional reporting or recordkeeping requirements on small businesses, municipalities will need to retain professional planning and legal services to prepare master plan and land use ordinance amendments, some of whom may be small businesses. All new regulatory requirements are uniform throughout and impact all businesses equally.

### Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-4(a)) to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Commission has evaluated the proposed amendments to determine the nature and extent of their impact on smart growth and implementation of the State Plan.

Although N.J.S.A. 52:18A-206.a. provides that the State Plan shall rely on the Pinelands CMP with respect to the Pinelands, these proposed rules further a number of smart growth objectives contained in the State Plan and the Pinelands CMP. These include, but are certainly not limited to, those which encourage the creation of centers and the protection of natural systems through the use of development transfer programs.

#### Housing Affordability Impact

These rules establish the opportunity for up to 60,500 new residential housing units to be constructed in Growth Areas and Pinelands Towns. This is slightly lower than the maximum zone capacities of currently certified municipal ordinances; however, some of those existing zone densities are not realistic. To the extent that these rules allow for site design flexibility and facilitate the development of compact, mixed use centers, they may facilitate the development of a wider variety of housing types than currently permitted.

The proposed PDC rules tie the use of PDCs to the density of residential projects, with lower density projects assuming a relatively greater PDC obligation than higher density projects. This approach may increase the costs of lower density residential development but will lower the costs of higher density development. It is expected that housing for very low, low and moderate and middle income households will be constructed at higher densities.

### Smart Growth Development Impact

As stated in the Housing Affordability Impact section, these rules establish the opportunity for up to 60,500 new residential housing units to be constructed in Growth Areas and Pinelands Towns. To the extent that these rules allow for site design flexibility and facilitate the development of compact, mixed use centers, they may facilitate the development of a wider variety of housing types than currently permitted.

These rules do not directly affect the availability of very low, low and moderate and middle income housing. Indirect effects may occur as a result of a lessened PDC obligation in higher density residential projects and the exclusion of affordable housing, as defined in N.J.A.C. 5:97-1.4, from PDC requirements.

Since N.J.S.A. 52:18A-206.a provides that the State Plan shall rely on the Pinelands CMP with respect to the Pinelands, State Plan Planning Areas do not exist within the Pinelands. However, it should be noted that Pinelands Growth and Pinelands Town management areas are similar to State Planning Area 2 and centers.

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.

Full text of the proposal follows (additions indicated with underlines thus; deletions indicated in brackets [~~thus~~):

7:50-2.11 Definitions

“Sewer Service Area – Centralized” means an area which is currently or likely to be served by a centralized domestic treatment works typically connected to the area by intercepting sewers and/or trunk lines.

“Sewer Service Area – Decentralized” means an area which could be served by a centralized domestic treatment works but is likely to be served by decentralized domestic treatment works, including individual onsite subsurface sewage disposal systems.

“Regional Growth areas” means all Growth Areas and Pinelands Towns<sup>3</sup>

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

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

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<sup>3</sup> Since the term “Regional Growth Area” will now refer to two management areas, this rule proposal will be expanded to account for this change in terminology in other CMP sections.



1. (No change.)
  
2. They include provisions which:
  - i.-vi. (No change.)
  
  - vii. Enable permitted densities in each [~~Regional~~] Growth Area and Pinelands Town zoning district in which residential development is permitted to be reasonably achieved in most cases by permitting, as necessary, a range of housing types and reduced lot size requirements through various design techniques, including but not limited to mixed use, transit oriented, neotraditional and cluster development;
  
  - viii.-ix.(No change.)
  
3. – 7. (No Change)
  
8. They provide for [~~sufficient residentially zoned property to be eligible for an increase in density to accommodate transferred~~] reasonable use of Pinelands Development Credits as provided for in N.J.A.C. 7:50-5.28 and N.J.A.C. 7:50-5,

Part IV;

PART VI – MODIFICATION OR REVOCATION OF CERTIFICATION OF COUNTY AND  
MUNICIPAL PLANS AND ORDINANCES

7:50-3.61 Initiation by Executive Director

- (a) (No change)
- (b) If the Executive Director determines, at any time, that any county or municipality is not implementing and enforcing its certified master plan, regulations or ordinances as is necessary to implement this Plan, including, but not limited to, allowing the achievement of permitted residential densities in Growth Areas and Pinelands Towns set forth at N.J.A.C. 7:50-3.39(a) and N.J.A.C. 7:50-5.28(a), he shall notify the Commission of such determination and upon its concurrence initiate proceedings pursuant to this Plan to revoke, suspend or modify the Commission certification of the municipal or county plan, regulations or ordinances.

7:50-4.37 Commission review following preliminary approval

- (a) Decision to review local approval: Upon receipt of any notice of local approval given

pursuant to N.J.A.C. 7:50-4.35(d), the Executive Director shall review the application for development submitted and any Commission staff recommendation made pursuant to N.J.A.C. 7:50-4.36 and determine whether the grant of preliminary approval raises substantial issues with respect to the conformance of the proposed development with the minimum standards of this Plan, the provisions of the relevant certified local ordinance and, if the application for development is located within a Growth Area or Pinelands Town, the density of residential development set forth in a Certificate of Filing issued pursuant to N.J.A.C. 7:50-4.34. If substantial issues are raised, the preliminary approval shall be reviewed pursuant to this section. The preliminary approval shall also be reviewed pursuant to this section if the Executive Director determines there is insufficient information to evaluate whether there is such a substantial issue. If sufficient information is available and substantial issues are not raised, the preliminary approval shall not be reviewed.

(b)-(e) (No change.)

7:50-4.40 Commission review following final local approval

- (a) Decision to review local approval: Upon receipt of any notice given pursuant to N.J.A.C. 7:50-4.35(e), the Executive Director shall review the application for development submitted, any Commission staff recommendation made pursuant to N.J.A.C. 7:50-4.36

6. Pinelands Villages [~~and Pinelands Towns~~];

7. [Regional] Growth Areas and Pinelands Towns, which together constitute Pinelands Regional Growth Areas; and

8. (No change)

(b) (No change)

7:50-5.13 Goals and objectives of Pinelands Management Areas and Parkway Overlay District

(a)-(e) (No change.)

(f) Pinelands Villages [~~and Towns~~] are existing spatially discrete settlements in the Pinelands. These traditional communities are appropriate for infill residential, commercial and [~~industrial~~] other development that is compatible with their existing character.

1.-2. (No change.)

6. Pinelands Villages [~~and Pinelands Towns~~];

7. [Regional] Growth Areas and Pinelands Towns, which together constitute Pinelands Regional Growth Areas; and

8. (No change)

(b) (No change)

7:50-5.13 Goals and objectives of Pinelands Management Areas and Parkway Overlay District

(a)-(e) (No change.)

(f) Pinelands Villages [~~and Towns~~] are existing spatially discrete settlements in the Pinelands. These traditional communities are appropriate for infill residential, commercial and [~~industrial~~] other development that is compatible with their existing character.

1.-2. (No change.)

[3.—Pinelands Area Towns are:

i.—Buena;

ii.—Egg Harbor City;

iii.—Hammonton;

iv.—Lakehurst;

v.—Whiting;

vi.—Woodbine; and

vii.—Wrightstown.

4.—Towns located within the Pinelands National Reserve but outside of the Pinelands Area are:

i.—Tuckerton.]

(g) Pinelands Towns are existing spatially discrete settlements in the Pinelands which are appropriate for residential, commercial, institutional and industrial development.

Pinelands Towns are also capable of accommodating regional growth influences while protecting the essential character of the Pinelands, provided that the environmental objectives of Subchapter 6 are implemented through municipal master plans and land use ordinances.

1. Pinelands Area Towns are:

i. Buena;

ii. Egg Harbor City;

iii. Hammonton;

iv. Lakehurst;

v. Whiting;

vi. Woodbine; and

vii. Wrightstown.

2. Pinelands Towns located within the Pinelands National Reserve but outside of the Pinelands Area:

i. Tuckerton.

(h) ~~[(g)]~~ [Regional] Growth Areas are areas of existing growth or lands immediately adjacent thereto which are capable of accommodating regional growth influences while protecting the essential character of the Pinelands, provided that the environmental objectives of Subchapter 6 are implemented through municipal master plans and land use ordinances.

Recodify (h) and (i) as (i) and (j) with no change in text.

7:50-5.27 Minimum standards governing the distribution and intensity of development and land use in Pinelands Villages ~~[and Towns]~~

(a) Any use not otherwise limited pursuant to N.J.A.C. 7:50-6 may be authorized in a Pinelands Village ~~[or Town]~~, provided that:



1. (No change)
2. The character and magnitude of the use is compatible with existing structures and uses in the Village [~~or Town~~]; and
3. Only the following waste management facilities shall be permitted in a Pinelands Village in accordance with N.J.A.C. 7:50-6, Part VII:
  - i. Transfer stations, collection facilities and recycling centers in accordance with N.J.A.C. 7:50-6.76(a);
  - ii. Petroleum waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(b);
  - iii. Household hazardous waste collection and transfer facilities in accordance with N.J.A.C. 7:50-6.76(c);
  - iv. Recycling centers accessory to an existing lawful resource extraction operation or asphalt or concrete manufacturing facility in accordance with N.J.A.C. 7:50-6.76(d);

- vii. Composting facilities in accordance with N.J.A.C. 7:50-6.77(b); and
- viii. Regulated medical waste facilities accessory to a generator of such waste in accordance with N.J.A.C. 7:50-6.78(b) [~~and~~].

~~[4. No hazardous waste facility, landfill or incinerator shall be permitted in a Pinelands Town, except as expressly authorized in N.J.A.C. 7:50-6.75 or 6.78.]~~

(b) No residential dwelling unit or nonresidential use shall be located on a parcel of less than one acre unless served by either:

1. A centralized domestic treatment works [~~waste water treatment plant~~]; or
2. A decentralized domestic treatment works [~~community~~] other than an individual on-site subsurface sewage disposal system [~~waste water treatment system serving two or more residential dwelling units which meets the standards of N.J.A.C. 7:50-6.84(a)5 or 10.21 through 10.23, provided that the overall residential density on the parcel does not exceed one dwelling unit per acre~~].

(c) (No change.)

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

(a) Any use not otherwise limited pursuant to N.J.A.C. 7:50-6 may be permitted in a ~~[Regional]~~ Growth Area or Pinelands Town, provided that:

1. ~~{Except as provided in (a)2, 3, 4, 5, 6 and 7 below and Part IV of this subchapter,~~  
t] The total number of dwelling units authorized by a municipality for a [Regional] Growth Area or Pinelands Town shall be at least equal to [and not exceed the following density per acre of developable land]:
  - i. an average residential density of 3.7 dwelling units per acre of vacant, privately held, non-wetland lands with a depth to seasonal high water table greater than 1.5 feet that are located within a centralized sewer service area; and
  - ii. an average residential density of 1.5 dwelling units per acre of vacant, privately held, non-wetland lands with a depth to seasonal high water table greater than five feet that are located within a decentralized sewer service area.

- ~~[ i. — In Barnegat Township: 2.0 dwelling units per acre.~~
- ~~ii. — In Beachwood Borough: 3.5 dwelling units per acre.~~
- ~~iii. — In Berkeley Township: 2.0 dwelling units per acre.~~
- ~~iv. — In Berlin Borough: 2.0 dwelling units per acre.~~
- ~~v. — In Berlin Township: 2.0 dwelling units per acre.~~
- ~~vi. — In Chesilhurst Borough: 1.125 dwelling units per acre.~~
- ~~vii. — In Dennis Township: 1.0 dwelling unit per acre.~~
- ~~viii. — In Dover Township: 3.5 dwelling units per acre.~~
- ~~ix. — In Eagleswood Township: 2.0 dwelling units per acre.~~
- ~~x. — In Egg Harbor Township: 3.5 dwelling units per acre.~~
- ~~xi. — In Evesham Township: 2.0 dwelling units per acre.~~
- ~~xii. — In Galloway Township: 2.5 dwelling units per acre.~~
- ~~xiii. — In Hamilton Township: 3.5 dwelling units per acre.~~
- ~~xiv. — In Jackson Township: 3.0 dwelling units per acre.~~
- ~~xv. — In Lacey Township: 3.5 dwelling units per acre.~~
- ~~xvi. — In Little Egg Harbor Township: 3.5 dwelling units per acre.~~
- ~~xvii. — In Manchester Township: 3.5 dwelling units per acre.~~
- ~~xviii. — In Medford Township: 1.0 dwelling unit per acre.~~
- ~~xix. — In Medford Lakes Borough: 3.0 dwelling units per acre.~~
- ~~xx. — In Monroe Township: 2.0 dwelling units per acre.~~

- ~~xxi. — In Ocean Township: 3.5 dwelling units per acre.~~
- ~~xxii. — In Pemberton Township: 2.0 dwelling units per acre.~~
- ~~xxiii. — In Shamong Township: 1.0 dwelling unit per acre.~~
- ~~xxiv. — In Southampton Township: 1.0 dwelling unit per acre.~~
- ~~xxv. — In South Toms River Borough: 3.5 dwelling units per acre.~~
- ~~xxvi. — In Stafford Township: 3.5 dwelling units per acre.~~
- ~~xxvii. — In Tabernacle Township: 1.0 dwelling unit per acre.~~
- ~~xxviii. — In Upper Township: 1.0 dwelling unit per acre.~~
- ~~xxix. — In Waterford Township: 2.25 dwelling units per acre.~~
- ~~xxx. — In Winslow Township: 1.125 dwelling units per acre].~~

2. The residential zoning calculations set forth in 1. above shall not apply to lands which are zoned for non-residential use and which otherwise form a part of a reasonable balance between non-residentially zoned property and residentially zoned lands, provided that:
  - i. Such non-residentially zoned lands account for no more than 25 percent of the total developable land within the Growth Area and/or Pinelands Town;  
or [For purposes of this section, developable lands are those privately held, non-wetland lands with a depth to seasonal high water table of greater than five feet. Where sewer systems are available, lands with a depth to seasonal high water table] exceeding 1.5 feet shall also be

~~considered developable. Developable land may exclude lands which are zoned exclusively for commercial or industrial use, predominantly developed as such, and which otherwise form a part of a reasonable balance between industrial or commercial zoned property and residential zoned lands.]~~

ii. Such non-residentially zoned lands account for more than 25 percent of the total developable land within the Growth Area and/or Pinelands Town because the non-residentially zoned land is not suitable for residential development due to a preponderance of incompatible land uses within the zone(s).

3. The land use element of a municipal master plan and land use ordinance shall reasonably permit residential development to occur within a range of densities provided that: ~~[the 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 the residentially zoned districts in which the ranges are established are reasonably expected to be developed within the assigned density ranges.]~~

i. Mixed use districts may be established within which higher residential densities, a variety of housing types, nonresidential uses and community facilities are permitted in a compact form served by an interconnected

system of streets and sidewalks; and

ii. Other residentially zoned districts are reasonably expected to be developed within the permitted densities.

~~[ 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.~~

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

4. ~~Any local approval, including variances, which grants relief from 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. ~~Municipal use variances and other municipal approvals which authorize uses in zones where such uses are not permitted shall be subject to the following:~~
  - i. ~~Municipal variances or other municipal approvals which authorize residential development in a zone in which residential development is not otherwise permitted or which authorize nonresidential development in a zone in which the approved nonresidential development is not otherwise permitted, and in which permitted residential density may be increased through the use of Pinelands Development Credits pursuant to (a)3ii above, shall be allowed to take effect pursuant to N.J.A.C. 7:50-4.31 et seq., provided the applicant is able to demonstrate that such a variance or approval will not be substantially detrimental to the purpose or character of the zone in which the development would be located or to the land use and development objectives of this Plan by:~~



- ~~(1) Involving, on a parcel of at least 50 acres, the development of more than 50 units or more than two percent of the base units allocated pursuant to (a)1 above by a certified municipal land use ordinance to the Regional Growth Area of the municipality in which the development would be located, whichever is greater;~~
- ~~(2) Eliminating, on a parcel of at least 50 acres, more than 50 base units or more than two percent of the base units allocated pursuant to (a)1 above by a certified municipal land use ordinance to the Regional Growth Area of the municipality in which the development would be located, whichever is greater. In cases where different types of residential development are permitted at different base densities within the same zone, an average of the permitted base densities shall be used to determine whether the applicable base unit threshold would be exceeded;~~
- ~~(3) Exceeding the thresholds established in (2) above by impacting surrounding parcels within the Regional Growth Area in such a way as to reduce their potential for residential development; or~~

~~(4) Exceeding the thresholds established in (2) above when considered together with other use variances or similar approvals issued by the municipality during the preceding two years within the same zone.~~

~~ii. If the criteria in (a)5i above are satisfied, the municipal variance or other approval shall be allowed to take effect pursuant to N.J.A.C. 7:50-4.31 et seq., provided the applicant acquires and redeems Pinelands Development Credits as follows:~~

~~(1) For those municipal variances or approvals which authorize residential development in a zone in which residential development is not otherwise permitted, Pinelands Development Credits must be acquired and redeemed for 50 percent of the authorized units for parcels under 10 acres in size; for 75 percent of the authorized units for parcels between 10 and 20 acres in size and for 100 percent of the authorized units for parcels over 20 acres in size; and~~

~~(2) For those municipal variances or approvals which authorize nonresidential development in a zone in which the approved nonresidential development is not otherwise permitted, and in~~

which density may be increased through the use of Pinelands Development Credits pursuant to (a)3ii above, Pinelands Development Credits must be acquired and redeemed at 50 percent of the maximum rate permitted for Pinelands Development Credit use in the zone which the nonresidential use will be located for parcels under 10 acres in size; at 75 percent of the maximum rate for parcels between 10 and 20 acres in size; and at 100 percent of the maximum rate for parcels over 20 acres in size.

iii. — The requirements in (a)5ii above shall not apply to municipal variances or other approvals which authorize the expansion of or changes to existing nonresidential uses in accordance with N.J.A.C. 7:50-5.2.

6. — If the number of Pinelands Development Credits required pursuant to (a)3 through (5) above is not evenly divisible by 0.25, it shall be increased to the next highest increment of 0.25.]

4. [7.] Nothing in {(a)} 1. through 3 above is intended to prevent a municipality, as a part of a certified master plan or land use ordinance, from:

i. Employing [additional] density bonus or incentive programs, provided that

such programs do not interfere with nor otherwise impair in any way the required municipal program for use of Pinelands Development Credits;

and

- ii. Increasing ~~[ or 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]~~ (b) below continue to be 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 or town area, the provision of infrastructure and community services, and the natural resource characteristics of the area. ~~[; or]~~

- iii. ~~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:~~

~~(1) The municipality's originally assigned density pursuant to (a)1 above is 3.0 units per developable acre or higher;~~

~~(2) The Pinelands Development Credit program requirements of (a)3~~

above are met; and

~~(3) — The municipal governing body describes those ongoing and future efforts, projects and other measures that it will implement, individually or collectively, or recommend to responsible agencies to address the needs identified in (a)7iii(3)(A) through (D) below, provides reasonable schedules for the implementation of the identified efforts, projects and measures, and describes how they will help to support the land development policies reflected in its municipal land use ordinance and foster the provision of real opportunities to achieve the permitted residential densities provided therein:~~

~~(A) — The municipality's present and future circulation and utility service needs;~~

~~(B) — The municipality's present and future recreation, conservation and open space needs;~~

~~(C) — The municipality's present and long-term economic development needs, taking into account existing non-residential land use patterns within the municipality, non-residential zoning policies of its ordinance and the~~

requirements of (a)2 above; and

~~(D) The municipality's present and future housing and community development needs, taking into account existing land use patterns and housing stock and the value of having a variety of housing types and neighborhoods where retail and service facilities are readily accessible to residences.~~

5 [8]. No hazardous waste facility, landfill or incinerator shall be permitted, except as expressly authorized in N.J.A.C. 7:50-6.75 or 6.78.

(b). Pinelands Development Credits shall be acquired and redeemed for development in a Growth Area or Pinelands Town as specified below:

1. The acquisition and redemption of 0.25 Pinelands Development Credits shall be required for each residential unit in accordance with the following table:

<u>PDC Requirements for Residential Development</u>	
<u>Gross Project Density</u>  (dwelling units per acre)	<u>% of Units</u>  <u>Requiring PDCs</u>

<u>0-0.99</u>	<u>60</u>
<u>1.00-1.49</u>	<u>55</u>
<u>1.50-1.99</u>	<u>50</u>
<u>2.00-2.49</u>	<u>45</u>
<u>2.50-2.99</u>	<u>40</u>
<u>3.00-3.49</u>	<u>35</u>
<u>3.50-3.99</u>	<u>30</u>
<u>4.00-4.49</u>	<u>25</u>
<u>4.50-4.99</u>	<u>20</u>
<u>5.00-5.49</u>	<u>15</u>
<u>5.50-5.99</u>	<u>10</u>
<u>6.00-6.49</u>	<u>5</u>
<u>6.50 and above</u>	<u>5 % of units at 6.50 du/a</u> <u>density</u>
<u>Where environmental constraints reduce the developable area of a parcel by 50% or more, the project density shall be based upon the developable area of the parcel.</u>	

2. No Pinelands Development Credits shall be required for the development of affordable housing units as defined pursuant to N.J.A.C. 5:97-1.4. The

percentage in (b)1 above shall be determined according to the overall density of the project and shall be applied to the number of residential units not defined as affordable units unless the affordable units are located within one or more separate development areas, in which case that area and the units shall be excluded from the density and PDC calculations.

3. No Pinelands Development Credits shall be required for the development of one dwelling unit on a lot existing as of (the effective date of these rules) which conforms to the density and minimum lot size requirements of a municipal land use ordinance which has been certified by the Commission pursuant to N.J.A.C. 7:50-3, provided said lot cannot be subdivided to provide for additional residential units in accordance with said certified land use ordinance. Should such subdivision potential exist, development of one residential unit on the lot shall require acquisition and redemption of 0.25 Pinelands Development Credits;
  
4. Pinelands Development Credits shall be acquired and redeemed for non-residential development in a Growth Area or Pinelands Town as specified below:
  - i. When impervious surfaces will exceed 60 percent of the parcel to be developed, the acquisition and redemption of 0.25 Pinelands Development Credits shall be required for:



(1) Each 6,000 square feet of impervious surface exceeding 60% if the existing amount of impervious surface is less than or equal to 60%; or

(2) Each 6,000 square feet of impervious surface above the existing amount of impervious surface if the existing amount exceeds 60%.

ii. The acquisition and redemption of 0.25 Pinelands Development Credits shall also be required for every four acres of new, non-impervious, managed grass or turf area within a golf course, park or other similar recreation facility.

iii. No Pinelands Development Credits shall be required for public development.

5. When a mixed residential and non-residential development application is proposed in a Growth Area or Pinelands Town, the amount of land devoted to residential and non-residential use shall be determined. The Pinelands Development Credit requirements shall then be determined according to (b)1 through 4 above; provided, however, that no Pinelands Development Credit

requirement shall apply to the residential component of such a project if that non-residential component represents more than 50 percent of the total residential and non-residential floor area.

6. If the number of required Pinelands Development Credits is not evenly divisible by 0.25, the required number of Pinelands Development Credits shall be increased to the next highest increment of 0.25.
  
7. Buena Borough, Chesilhurst Borough, Egg Harbor City, Pemberton Township, South Toms River Borough, Woodbine Borough and Wrightstown Borough are authorized to modify the Pinelands Development Credit requirements of (b)1 through 6 above in a master plan and/or ordinance certified by the Commission pursuant to Subchapter 3 of this Plan provided that such modifications are determined to be necessary to:
  - i. Accommodate redevelopment plans certified by the Commission pursuant to Subchapter 3 of this Plan that would, for all practical purposes, be infeasible to implement if the Pinelands Development Credit requirements were strictly applied; or
  
  - ii. Reflect local land and housing values that are not conducive to the use of

Pinelands Development Credits in strict accordance with the requirements of (b)1 through 6 above.

(c) Municipal variances or other municipal approvals which authorize uses in zones where such uses are not permitted shall be allowed to take effect pursuant to N.J.A.C. 7:50-4.31 et seq., provided it is demonstrated that such a variance or approval will not substantially impair the intent and purpose of the zone in which the development would be located or to the land use and development objectives of this Plan, including the Pinelands Development Credit program.

(d) ~~(b)~~ No residential dwelling unit or nonresidential use shall be located on a parcel of less than one acre unless served by either:

1. A centralized domestic treatment works [~~waste-water treatment plant~~]; or
2. A decentralized domestic treatment works [community] other than an individual on-site subsurface sewage disposal system [waste-water treatment system serving two or more residential dwelling units which meets the standards of N.J.A.C. 7:50-6.84(a)5 or 10.21 through 10.23, provided that the overall residential density on the parcel does not exceed one dwelling unit per acre].

## PART IV – PINELANDS DEVELOPMENT CREDIT PROGRAM

## 7:50-5.41 Purpose

If land use and development of the Pinelands is concentrated in [~~Regional~~] Growth Areas and Pinelands Towns, the Pinelands as a region can tolerate additional development without damaging the Pinelands environment. It is the purpose of this Part to facilitate such patterns of growth and development by providing landowners in the Preservation Area District, Special Agricultural Production Areas, and Agricultural Production Areas with an opportunity to secure an additional beneficial use of their land without the risk of damaging the essential ecological character of the Pinelands. It is also the purpose of this Part to provide similar opportunities to landowners in designated parts of Pinelands Forest Areas.

## 7:50-5.42 Pinelands Development Credit Program required

In order to be certified under the provisions of N.J.A.C. 7:50-3, Part IV, the master plan and land use ordinances of a municipality which has land in the Preservation Area District, an Agricultural Production Area, a Special Agricultural Production Area, a Forest Area designated pursuant to N.J.A.C. 7:50-5.43 (d), [~~or~~] a [~~Regional~~] Growth Area or Pinelands Town shall include provisions implementing the Pinelands Development Credit Program.

## 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 in ~~[to secure a density bonus for lands located in Regional]~~ Growth Areas and Pinelands Towns.
- (b) Pinelands Development Credits are hereby established at the following ratios:
1. In the Preservation Area District, including those areas designated pursuant to N.J.A.C. 7:50-5.22(b)7:
    - i. Uplands which are undisturbed but currently or previously approved for resource extraction pursuant to this Plan: two Pinelands Development Credits per 39 acres;

Uplands which are mined as a result of a resource extraction permit approved pursuant to this Plan: zero Pinelands Development Credits per 39 acres;

iii. Other uplands: one Pinelands Development Credit per 39 acres; and

iv. Wetlands: two-tenths Pinelands Development Credits per 39 acres.

2. In the Agricultural Production Area and Special Agricultural Production Area:

i. Uplands which are undisturbed but approved for resource extraction pursuant to this Plan: two Pinelands Development Credits per 39 acres;

ii. Uplands which are mined as a result of a resource extraction permit approved pursuant to this Plan: zero Pinelands Development Credits per 39 acres;

iii. Other uplands and areas of active berry agricultural bogs and fields: two Pinelands Development Credits per 39 acres;

iv. Wetlands in active field agricultural use currently and as of February 7, 1979: two Pinelands Development Credits per 39 acres; and

- v. Other wetlands: two-tenths Pinelands Development Credits per 39 acres.
3. The allocations established in (b)1 and 2 above shall be reduced as follows:
- i. Any parcel of 10 acres or less which is developed for a commercial, industrial, resource extraction, intensive recreation, institutional, campground or landfill use shall not receive Pinelands Development Credit entitlement. For such an improved parcel of more than 10 acres, the area actively used for such use or 10 acres, whichever is greater, shall not receive Pinelands Development Credit entitlement.
  - ii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each existing dwelling unit on the parcel, provided that no such adjustment shall be required for agricultural employee housing;
  - iii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each reserved right to build a dwelling unit on the parcel retained by the owner of the parcel pursuant to N.J.A.C. 7:50-5.44(b).

4. Pinelands Development Credit allocations shall be calculated for an entire parcel or, at the request of the applicant, for individual lots specified in the application.
  
5. Pinelands Development Credit allocations exceeding one-quarter of a Pinelands Development Credit shall be rounded to the nearest one-quarter of a Credit.
  
- 6 [4]. If the allocations established in (b)1 [~~and 2~~] through 4 above are less than one-quarter of a Pinelands Development Credit, the allocation shall be increased to one-quarter of a Pinelands Development Credit if the owner of record of one-tenth or greater acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979 owns a vacant parcel of land that was not in common ownership with any contiguous land on or after February 7, 1979, and the parcel has not been sold or transferred except to a member of the owner's immediate family.
  
- 7 [5]. The provisions of ~~{(b)4}~~ (b)6 above shall also apply to owners of record of less than one-tenth acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979, provided that said owners acquire vacant, contiguous lands to which Pinelands Development Credits are allocated pursuant to (a) and (b) above which



lands, when combined with the acreage of the parcel owned prior to February 7, 1979, total at least one-tenth of an acre.

- § [6]. The total allocations made pursuant to ~~[(b)4 and 5]~~ (b)6 and 7 above to any owner of record shall not exceed one-half of a Pinelands Development Credit. At such time as the application of ~~[(b)4 and 5]~~ (b)6 and 7 above would exceed a total allocation of one-half of a Pinelands Development Credit to an owner, all remaining lands of that owner in excess of that needed to yield the one-half Pinelands Development Credit allocation shall be entitled to an allocation of Pinelands Development Credits according to the allocation formulas specified in (b)1, 2 and 3 above.
- (c) The owners of parcels of land which are smaller than 39 acres shall have fractional Pinelands Development Credits at the same ratio established in (b) above for the management area in which the parcel is located.
- (d) The Pinelands Commission may allocate Pinelands Development Credits to designated portions of the Pinelands Forest Area in accordance with the following:
1. The areas so designated are amongst those with the highest ecological values in the Forest Area, as exhibited by large, contiguous areas of forest, undisturbed

drainage units, undisturbed wetlands or prime habitat for characteristic and rare Pinelands plant and animal populations;

2. The development transfer provisions of N.J.A.C. 7:50-5.30 and the cluster development provisions of N.J.A.C. 7:50-5.19 are not likely to achieve the Commission's conservation objectives for these areas;
3. Pinelands Development Credits shall be allocated to these areas according to N.J.A.C. 7:50-5.43(b)2 through 6 and N.J.A.C. 7:50-5.43(c); and
4. Such allocations, in total, are not estimated to yield more than 500 Pinelands Development Credits and will not substantially impair the private sale of Pinelands Development Credits.

#### 7:50-5.44 Limitations on use of Pinelands Development Credits

- (a) No Pinelands Development Credit may be conveyed, sold, encumbered or transferred unless the owner of the land from which the credit has been obtained has received a Pinelands Development Credit Certificate from the New Jersey Pinelands Development Credit Bank pursuant to N.J.A.C. 3:42-3, and has deed restricted the use of the land in perpetuity to those uses set forth in N.J.A.C. 7:50-5.47(b) by recorded deed restriction

which is in favor of a public agency or not for profit incorporated conservation organization and specifically and expressly enforceable by the Commission.

- (b) Notwithstanding the provisions of (a) above, an owner of a parcel in the Preservation Area District, the Special Agricultural Production Area or the Agricultural Production Area from which Pinelands Development Credits are sold may retain a right for residential development on that parcel provided that the recorded deed restriction expressly provides for same and that the total allocation of Pinelands Development Credits for that parcel is reduced by .25 Pinelands Development Credit for each reserved right to build a dwelling unit. Subdivision of the parcel shall not be required until such time as the residential development right is exercised. No Pinelands Development Credit adjustment shall be required for the development of agricultural employee housing.
- (c) The bonus density of a parcel of land on which Pinelands Development Credits are used shall not exceed the upper limits of the density range of the municipal zone or district in which the parcel is located.

#### 7:50-5.45 Pinelands Development Credit bonus multipliers

Pinelands Development Credits which are used for residential development [~~securing a density bonus for parcels of land located~~] in a [Regional] Growth Area shall yield a bonus of

four dwelling units per credit. Pinelands Development Credits which are used for non-residential development in a Growth Area or Pinelands Town shall yield a bonus in accordance with N.J.A.C. 7:50-5.28(b)4.

#### 7:50-5.46 Aggregation of Development Credits

Pinelands Development Credits may be aggregated from different parcels for use in ~~[securing a bonus for]~~ a single parcel of land in a ~~[Regional]~~ Growth Area or Pinelands Town ~~[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 conveyance, sale or transfer of Pinelands Development Credits shall occur until the municipality with jurisdiction over the parcel of land from which the Pinelands Development Credits were obtained, the agency or organization to which the restriction is in favor, and the Commission have been provided with evidence of recordation of a restriction on the deed to the land from which the development credits were obtained.
- (b) Such deed restriction shall specify the number of Pinelands Development Credits sold and that the property may only be used in perpetuity for the following uses:

1. In the Preservation Area District and the Forest Area:

Berry agriculture; horticulture of native Pinelands plants; forestry; beekeeping; fish and wildlife management; [~~and~~] low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not exceed five percent of the parcel, and no more than one percent of the parcel will be covered with impervious surfaces; and accessory uses.

- ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, agricultural employee housing as an accessory use may also be specifically permitted in such deed restriction.

2. In Special Agricultural Production Areas:

- i. Berry agriculture; horticulture of native Pinelands plants; forestry; beekeeping; [~~and~~] fish and wildlife management; and accessory uses.

- ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, agricultural employee housing as an accessory use may also be specifically permitted in such deed restriction.
3. In Agricultural Production Areas:
- i. Agriculture; forestry; low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not exceed five percent of the parcel, and no more than one percent of the parcel will be covered with impervious surfaces; agricultural commercial establishments, excluding supermarkets and restaurants and convenience stores, where the principal goods or products available for sale were produced in the Pinelands and the sales area does not exceed 5,000 square feet; ~~and~~ agricultural products processing facilities; and accessory uses.
  - ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, the following additional

uses may be specifically permitted in such deed restriction: airports and heliports accessory to agricultural uses and which are used exclusively for the storage, fueling, loading, and operation of aircraft as part of an ongoing agricultural operation; fish and wildlife management; and agricultural employee housing as an accessory use.

4. In all other Pinelands management areas where Pinelands Development Credits have been allocated pursuant to N.J.A.C. 7:50-4.62(d)2:
  - i. Agriculture; forestry; and low intensity recreational use