



## PINELANDS PRESERVATION ALLIANCE

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September 14, 2012

Candace McKee Ashmun  
Chair, Plan Review Committee  
NJ Pinelands Commission  
PO Box 359  
New Lisbon, NJ 08064

### **Re: Plan Review 2012 Recommendations**

Dear Commissioner Ashmun,

Pinelands Preservation Alliance (PPA) is submitting comments for the Pinelands Commission 2012 Plan Review for consideration by the Commission. PPA asks the Commission to pursue ten important reforms. All have been researched and discussed by the Commission over the past several years, but have not advanced to a resolution. All aim to address environmental and planning problems which the CMP does not address, or has not addressed effectively in light of current experience.

The CMP is the foundation of Pinelands protection, and it is vital that the Commission uses this process to further improve the Plan. It is our hope that the Commission will move forward on the following recommendations, since the Commission has devoted a significant amount of time and resources on these issues and has expressed the need to improve the language and policies of in the CMP on these issues.

The following are all important changes and are not listed in an order of priority:

1. Protection of the Headwaters of the Black Run Watershed in Evesham
2. Pinelands Development Credit changes
3. Kirkwood-Cohansey Aquifer protection
4. Stormwater rules reform, including low impact development (LID) requirements
5. Public comment procedures reform
6. Amendment of the Intergovernmental MOA Provisions of the CMP
7. Vegetation standards and roadside protections
8. CMP threatened and endangered plant list reform
9. Sustainable growth fixes
10. Applications for enduros and similar events

Attached to this cover letter is a more detailed discussion of each recommendation. Some of the material includes specific CMP rule changes with supporting material as needed. Again, PPA urges the Commission to carefully consider and move forward to implement these

recommended changes. The Commission regularly notes that it has few staff and limited resources, so this should provide an even greater incentive to complete the investment of work from years past.

For any questions or clarifications on the attached recommendations, contact either Carleton Montgomery or Jaclyn Rhoads at 609-859-8860.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carleton Montgomery". The signature is fluid and cursive, with a large loop at the end.

Carleton Montgomery  
Executive Director

## **1. Protection of the Headwaters of the Black Run Watershed in Evesham**

More than ten years ago, the Pinelands Commission identified the Black Run watershed in Evesham Township as an extraordinary resource worthy of greater protection. The watershed exhibits pristine water quality and intact habitats despite lying at the very edge of the Pinelands, and the middle section of the watershed is already conserved as part of the township-owned Black Run Preserve. The Commission recognized, however, that the headwaters of this watershed are highly developable, but if developed as current zoning permits would lose the pristine water quality and natural resource values of the downstream Preserve.

Since then, the Commission has devoted considerable effort to advancing revisions to the CMP to protect the headwaters of the watershed. The Commission and township have created excellent plans to accomplish this goal, but for a variety of reasons these plans have not been implemented. The past three years have seen increased public attention to the Black Run Preserve, the creation of a Friends of the Black Run Preserve group, and renewed interest on the part of the township council and planning board in preserving this resource. The Plan Review provides an excellent opportunity to bring past conservation plans to fruition.

The headwaters area is designated as Rural Development Area by the CMP, and current zoning permits one housing unit per 3.2 acres. The Sub-Regional Resource Protection Plan for Southern Medford/Evesham Townships, completed by the Commission, Medford and Evesham Townships and DEP in 2006, demonstrated that the scale of headwaters development permitted by existing zoning would result in the loss of today's exceptional water quality, along with the loss of native habitats and plant and animal communities which water quality loss entails in the Pine Barrens.

Evesham Township recently adopted zoning amendments to institute the cluster development requirements of the CMP for its Rural Development Area. In an initial effort to discourage development of the headwaters area, the amended zoning ordinance provides an incentive for a developer to build a cluster development outside the watershed boundary by reducing the "bonus density" a developer can get in proportion to the amount of building placed inside the watershed. This incentive could prove a useful tool, but its use is optional, and there is no assurance a future developer will find the incentive sufficient to design the development around protecting the watershed.

In order to ensure the watershed is protected from excessive headwaters development, it is necessary to do so through the CMP and accompanying revisions to the municipal zoning ordinances. There is more than one way to do this. We recommend an amendment that:

- a. Places the Black Run headwaters area in the Forest Area.
- b. Where a developer owns contiguous land both inside and outside the headwaters area, the number of units it may build in the Rural Development Area outside the watershed shall be calculated treating all the contiguous land (or, better, uplands) as if zoned at the same density as the land outside the boundary. That is, the headwaters

land in common ownership would contribute to the developer's yield in the development taking place outside the watershed boundary as if it was still Rural Development Area.

- c. The township may petition to convert a pre-planned and approved section of land outside the watershed boundary as Regional Growth Area if it wishes to do, sewer infrastructure is available to serve the area, the area is sized to accommodate and absorb no more than the amount of development as provided by existing Rural Development zoning for the area, and development of the new Regional Growth Area is conditioned on concomitant conservation of the remaining headwaters land in common ownership (unless that land has previously been transferred to the township or a conservation agency).

## **2. Pinelands Development Credit Changes**

As currently structured, the Pinelands CMP's transfer of development rights program requires developers to purchase PDCs as a condition of building at *higher* densities. This structure provides a financial incentive to build at lower density and provides no incentive to adopt any other beneficial design feature in a development plan. Thus, the current structure encourages exactly the kind of sprawl development that makes inefficient use of growth areas and causes more than necessary harm to environmental, scenic and cultural values. The current system has also been slow to generate demand for PDCs in some growth areas, as builders have stuck with lower density subdivision designs.

PPA supports amending the PDC rules to reverse these incentives and to make the PDC system a positive incentive to build in a more efficient, sustainable and environmentally beneficial fashion. The Commission has already developed an extensive amendment to the PDC program that was fully reviewed by the Commissioners and the public. PPA supports moving forward with these previously identified changes.

In general terms, we support the program that a developer:

- a. must buy more PDCs to build at *low* density or with a reduced wetlands buffer as defined by the buffer delineation model;
- b. need not buy PDCs, or must buy a lower number of PDCs, if a developer builds using design features such as the following:
  - retain a 300-foot buffer to wetlands,
  - manage stormwater using only non-structural stormwater strategies, and/or
  - have multi-use structures.

We also hope that the original amendment for applying the PDC program to include non-residential (essentially commercial) structures to create incentives for reducing impervious

coverage will still be included for consideration in plan review. This change would only apply in a small number of cases.

For details of our original comments see the PPA Memo in Appendix A: Proposal for Revision of PDC Program To Encourage Better Community Design, November 18, 2004.

### **3. Kirkwood-Cohansey Aquifer Planning**

The Pinelands Commission has placed a high value on the Kirkwood-Cohansey aquifer system since the Commission's inception. The Pinelands Comprehensive Management Plan (CMP) permits diversions from the Kirkwood-Cohansey system only for agriculture, or where there is no alternative source and it is demonstrated that no adverse ecological impact will occur as a result of the diversion. The CMP also requires that such allocations be accompanied by conservation measures, but this provision has not been enforced. When water is obtained from the Kirkwood-Cohansey, the Commission has also acted to control transfers of water between watersheds from water supply distribution and/or centralized wastewater systems. In addition, State legislation (N.J.S.A. 58:1A-7.1) prohibits the exportation of surface and groundwater beyond ten miles from the boundary of the Pinelands National Reserve.

The Commission's concern with the Kirkwood-Cohansey system is amply justified. Since this shallow aquifer provides from 80 to 95 percent of baseflow to streams and associated wetlands within the Pinelands, removal and distribution of water from this aquifer can measurably reduce streamflow and negatively impact wetlands and aquatic species.

Several findings and episodes illustrate the vulnerability of the Kirkwood-Cohansey and associated habitats to excessive water withdrawals or poorly-located wells.

- In February 1987, the Camden County Municipal Utilities Authority prepared a 208 water quality management plan for Chesilhurst Borough, Waterford Township, and Winslow Township. The proposal called for the transfer of sewage from the Region Growth Areas of these Pinelands townships, to the Delaware Basin. It was determined that if the Kirkwood-Cohansey aquifer was used for water supply, the interbasin transfer of all of the wastewater to the Delaware River Basin would impact the flow of streams entering Wharton State Forest (Pinelands Commission Report, May 1988).
- The Pinelands Commission found that the use of the Kirkwood-Cohansey aquifer to supply water for projected buildout of the Regional Growth Areas in Hamilton Township and portions of Galloway Township would significantly deplete stream flows, if wastewater was exported out of the area via sewers (Pinelands Commission Report, August 1990).
- In Berlin Township, Camden County, approval for a municipal water supply well was rescinded when it was determined that withdrawals from the Kirkwood-Cohansey was impacting Swamp Pink, a plant that is federally listed as threatened pursuant to

the Endangered Species Act (Water Allocation Permit Modification, Berlin Borough, January 2004).

- During 2003, a private water company's request for a 20 percent increase in allocation from the Kirkwood-Cohansey aquifer was thwarted when it was determined that there would be a loss of stream flow, and associated impacts to Knieskern's beaked-rush, a Federal and New Jersey listed threatened wetlands plant. Seeing no alternative, the water company installed a new well to a depth of 1225 feet in a deeper aquifer (Water Allocation Permit Modification, Crestwood Village Water Company, April 2006).

In 2001, the State provided \$5.5 million in funding through the "Gibson Bill," N.J.P.L. 2001 c. 165, to study the aquifer, and the federal government subsequently provided additional funds to the project. The study came about in response to two growing concerns: the increasing demand for water to serve growth in South Jersey, and the recognition that while the Kirkwood-Cohansey is a readily available source to help meet this demand, it is also critical to the surface ecology of the region.

Based on the numerous reports completed to date as part of the study and the findings from the Pinelands Science-Policy Forum on the Kirkwood-Cohansey aquifer, PPA recommends that the findings of the Kirkwood-Cohansey Study be a major part of plan review, with specific scientific based amendments to the CMP to protect the Pinelands environment as an outcome. PPA recommends that the following be part of the Plan Review discussion.

***a. Rules for Controlling Impacts of New or Increased Allocations:***

- For potential impacts to streams and rivers: Institute ecologically-based thresholds for new or increased allocations from the Kirkwood-Cohansey Aquifer by using low flow margin, percent of 7Q10, or percent of drought of record, but with the ecological passing flow as a floor or limit in all cases.
- For potential impacts on wetlands: Require species-specific and Pinelands pond-specific criteria for judging acceptable versus unacceptable impacts of withdrawals on wetlands.
- Require quantifiable water conservation measures in the same sub-watershed to offset expected impacts of new and increased withdrawals.
- Incentivize all water conservation measures as part of permitting for new or increased allocations.
- Set a regulatory trigger that suspends new or increased allocations, or reduces existing allocation limits, in a watershed when a trend of increasingly severe impacts of current withdrawals shows the modeling on which permits are based is inaccurate.

- Require recipients of allocations to monitor and report streamflow and water table changes in the future.
- Permit no reductions of existing wetlands for applications for a new or increased allocation from the Kirkwood-Cohansey aquifer.
- Require all applicants to show that other sources are not available before using the Kirkwood-Cohansey aquifer.

***b. Water Supply Planning:***

- Set targets for total withdrawals from the aquifer in each basin/sub-basin and provide suggested water supply alternatives.
- Using available information from the New Jersey Geological Survey regarding water withdrawals, uses, transfers, and discharges, set limits on total withdrawals from the aquifer in each basin and identify required water supply alternatives.
- Design plans to maintain current ecological functions and restore natural flow and water levels where existing withdrawals have already reduced flows or water levels.
- Set explicit criteria for determining when each potential alternative source will be considered available, desirable and required for consideration by purveyors.
- Incorporate water supply alternatives into targets, limits and options for those basins where the aquifer is already stressed.
- Incorporate impacts to and withdrawals from connected aquifers, such as the Atlantic City 800-foot Sands in all planning.

**4. Stormwater rules reform, including low impact development (LID) requirements**

Improper management and treatment of stormwater pollutants continue to impair the water quality of Pinelands waterways as a result of major flaws in the stormwater rules and the lack of NJDEP and municipal enforcement of the rules. NJDEP has convened stakeholder groups to discuss changes to the stormwater management rules, but appears to be headed down the path of weakening the rules, not strengthening them.

The Pinelands Commission has within its authority to protect the Pinelands waterways and the Kirkwood-Cohansey aquifer. Specific stormwater provisions are provided in the CMP that are more protective than DEP regulations. Nevertheless, these CMP standards have proven insufficient, as shown by the Commission's ecological monitoring program and other scientific findings because simple detention basins do not treat stormwater as needed to attenuate the addition of excess nitrogen and other contaminants to the aquifer and associated surface waters. In addition, the Commission has shown that a large percentage of detention basins do not even

function as intended due to poor construction or maintenance; reducing the quantity of stormwater through non-structural means helps alleviate these practical problems.

To protect Pinelands waters, the Commission must respond to the evidence that current standards, while innovative at the time they were adopted, have proven insufficient to protect the special chemistry of Pine Barrens aquatic habitats. A necessary step is to make changes to the stormwater section of the CMP to address A) nonstructural stormwater management strategies and B) stormwater runoff quality standards, specifically:

#### **A. Nonstructural stormwater management strategies**

- Stormwater standards in N.J.A.C. 7:8-5.4 and 5.5 shall be met by incorporating all of the nine nonstructural stormwater management strategies at N.J.A.C. 7:8 – 5.3 into the design of the project.
- Minimize impervious surfaces and break up or disconnect the flow of runoff over impervious surfaces – show a minimum of 25% disconnection.
- Restore compacted soils in a manner that is consistent with native flora and soil types.

#### **B. Stormwater runoff quality standards**

- Stormwater management measures shall also be designed to reduce the post-construction nutrient (including both nitrogen and phosphorous) load of the anticipated load from the developed site in stormwater runoff generated from the water quality design storm. In achieving reduction of nutrients, the design of the site shall include nonstructural strategies and structural measures that optimize nutrient removal while still achieving the performance standards in N.J.A.C. 7:8-5.4 and 5.5. Loadings reductions will be required to remove post-construction nutrient load in freshwater areas by 90% and remove groundwater post-construction nitrogen load by 90%.

### **5. Public Comment Procedures Reform**

PPA appreciates the Commission's restoration of public comments for public development applications at Commission hearings, but still has some suggestions for improvement of the public comment process.

The CMP outlines procedures for meetings, hearing and written public comment. Although these procedures have allowed the public to provide input at various opportunities, the Commission has also transformed its meeting schedules, which provides the public limited opportunities for participating. In light of these operations, the public would be better served by restoring some evening Commission meetings and allowing all public comments, hearing and meeting notifications to be provided within a 30 day window.



In particular, the sections of the CMP that should be updated to have a uniform 30 day comment or notification period include: N.J.A.C. 7:50 – 1.12, 4.52, and 4.53. These sections detail provisions for meetings, hearings, and procedures, public development general requirements and submission requirements, respectively.

Public comment is vital to public development applications and the operation of agencies. It is critical that the public is kept informed and provided ample opportunity to comment and participate in these matters.

## **6. Amendment of the Intergovernmental MOA Provisions of the CMP**

The Commission should replace the existing CMP procedure for using intergovernmental Memoranda of Agreement (MOAs) to waive or reduce CMP environmental standards for individual development projects with a revised procedure for public facility plans. Using long-term planning for public facilities would enable the Commission to address the special issues raised by public development while avoiding the enormous risks and organizational burdens which individual intergovernmental MOAs have brought over the past several years. (MOAs could still be used to coordinate agency actions, as in areas of overlapping jurisdiction with DEP, and for other administrative and procedural purposes.)

The current approach of using intergovernmental MOAs to modify CMP standards on a case-by-case development basis invites inappropriate proposals, brings the Commission into making *ad hoc* and inconsistent deals one project at a time, and leads the Commission into the very dangerous waters of negotiating private, for profit development deals outside the normal regulatory application process. The use of intergovernmental MOAs to waive CMP protections has created the impression that you can avoid environmental standards if you are powerful or wealthy enough to pressure the Commission into such special deal making.

Our proposal would shift the approach to a facility-based process based on long-term planning for each public facility that, by virtue of its size or complexity, requires plans tailored to the facility in order for it to meet public needs. We believe this kind of process will bring better results from a planning and an environmental perspective. We also believe this approach would enable the Commission to avoid getting pulled into controversies over what is or is not a “public purpose” in a private development, to avoid becoming a party to the negotiation of profit-making development contracts, and thereby to maintain its integrity as a regulatory agency that treats private developers and landholders in a consistent and even-handed fashion – while also answering the legitimate needs of genuine public facilities that happen to be located in the Pinelands.

This approach would enable the Commission to solve the legitimate challenges that genuine public development can raise in the Pinelands, while avoiding the pitfalls of the current procedure.

Specifically, we propose the following amendment:

## PART IV-PUBLIC DEVELOPMENT

### 7:50-4.51 Purpose

This Part establishes procedures and standards designed to assure that public development in the Pinelands Area is in conformance with the goals and provisions of this Plan.

### 7:50-4.52 General requirements

(a) Conformance with minimum standards: All development within the Pinelands Area by any state or local public agency shall be in conformance with the minimum standards set out in N.J.A.C. 7:50-4.16 and all other standards and guidelines contained in this Plan, except as otherwise provided by ~~a public facility plan memoranda of agreement between the Commission and such agency a state agency plan~~ approved by the Commission pursuant to (e) below. All development within a Military and Federal Installation Area shall be in substantial conformance with the minimum standards and guidelines contained in this Plan, except where incompatible with national defense mission or other national security requirements as provided in (d) below.

(b) Commission approval required: Except as provided in ~~an public facility plan or~~ intergovernmental agreement, no development shall be initiated by any state or local public agency prior to conferring with and obtaining the approval of the Commission pursuant to the procedures established by this Part. Except as provided in ~~an public facility plan or~~ intergovernmental memorandum of agreement, the Commission shall review development within a federal military installation or development by another federal agency only where a state or local permit is required by Federal law or regulations. Such reviews shall be in accordance with the provisions of Part VII of this subchapter.

(c) Intergovernmental agreements:

1. The Commission may enter into intergovernmental memoranda of agreement with any agency of the Federal, State or local government which authorize such agency to carry out specified development activities without securing individual development approval from the Commission under this Part, provided the specified development activities are consistent with the provisions of N.J.A.C. 7:50-5 and 6.

~~2. The Commission may enter into intergovernmental memoranda of agreement with any agency of the Federal, State or local government which authorize such agency to carry out specified development activities that may not be fully consistent with the provisions of N.J.A.C. 7:50-5 and 6, provided such agency demonstrates and the Commission finds that variation from the standards of this Plan is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands than would be provided through a strict application of the standards of this Plan. Any intergovernmental memorandum of agreement relating to waste management shall be consistent with the standards and provisions of N.J.A.C. 7:50-6.80.~~

~~23.~~ Prior to the execution of any intergovernmental memorandum of agreement by the Commission, the Executive Director shall set the date, time and place of a public hearing for consideration of the agreement. The public hearing shall be noticed and held by the Executive Director in accordance with the provisions of N.J.A.C. 7:50-4.3.

(d) Exceptions for national defense are as follows:

1. Notwithstanding any provision of this Plan, if the commander of a military installation determines that compliance with the provisions of this Plan, the installation master plan or a memorandum of agreement with a military installation would be incompatible with the installation's mission, safety or other national defense requirements, the installation commander shall notify the Commission in writing.

2. Upon receipt by the Commission of such notification compliance with any provision of this Plan shall be deemed to be waived.

3. In time of war or when war is imminent or a national emergency is declared by Congress or the President, nothing in this Plan shall modify or limit any other provisions of law granting emergency powers to the President, the Secretary of Defense, or persons possessing such authority by delegation from the President or Secretary of Defense, to include but not be limited to acts of using property, mobilizing and training personnel, or acquiring property.

(e) Public facility~~State agency~~ plans:

1. Any agency of the State of New Jersey or federal government, or any county or local government agency, may apply to the Commission for designation of any facility or land it owns as a public facility within the terms of this section. Public facilities may include publicly owned lands or facilities used by or for the benefit of the public, such as existing public college and school campuses, state developmental centers, public buildings, military installations, and publicly owned and managed airports. The Commission may approve such application if, in its discretion, it determines that the facility in question justifies regulation through a public facility plan due to its size, complexity, and significance to the public. This provision may not be used to facilitate the creation of new public facilities that would violate the Minimum Standards for Land Uses and Intensities set forth in Subchapter 5 of this Plan.

2. Any agency of the State of New Jersey or federal government, or any county or local government agency, may submit to the Commission for review and approval a comprehensive plan of its existing and planned land use, resource management and development activities within the Pinelands on any designated public facility it owns. Such plans shall:

i. Be based upon a current and comprehensive inventory and analysis of the Pinelands natural resources. ~~The Commission's natural resource inventory may be used as a basis for this purpose;~~

ii. Set forth the character, location and magnitude of development within the Pinelands;

iii. Be adequate to ensure that all development of land in the Pinelands is carried out in conformance with N.J.A.C. 7:50-5 and 6;<sup>5</sup> provided, however, that alternative or additional techniques may be included if they are consistent with the goals and objectives of this Plan, eliminate or minimize variations from the standards of this Plan to the maximum extent feasible consistent with meeting the public purposes of the facility, and include measures which, when taken as a whole, bring about an enhancement of the natural resources of the Pinelands;

iv. Prescribe standards for capital improvement siting, design and construction, including those necessary to ensure that adequate and necessary support facilities will be available to serve permitted development and proposed uses of lands;

v. Identify resource management practices which conform to the objectives of this Plan, the Pinelands Protection Act, and the Federal Act;

vi. Be compatible with surrounded land uses and certified municipal and county master plans; and

vii. Be otherwise consistent with and contain all provisions necessary to implement this Plan.

3. Prior to the Commission acting to approve or disapprove such plan, the Executive Director shall set the date, time and place of a public hearing for consideration of the plan. The public hearing shall be noticed and held by the Executive Director in accordance with the provisions of N.J.A.C. 7:50-4.3.

42. Upon Commission approval of such plan, the Commission shall review any proposed development in accordance with the standards of this Plan as modified by specified provisions of the approved agency plan.

53. Each agency and the Commission may propose amendments to an approved plan from time to time. Such amendments shall be approved in the manner provided in this part, including the holding of a public hearing, and such amendments shall not require the revision or approval of the plan as a whole.

## 7. Vegetation Standards and Roadside Protections

The Commission should adopt revisions that protect existing habitats along roadsides and prevent the unnecessary creation of turfed areas in place of native vegetation in development projects. There are a number of references to vegetation standards and roadside protections in the Commission's list of Plan review suggestions. These are summarized as follows:

- Revision of the CMP at Section 6.24-6.26 to change native vegetation "guidelines" to native vegetation "requirements" to use trees, shrubs, and herbaceous species native to the Pinelands National Reserve where commercial availability of these species allows.
- The addition of a Section 6.24(d) to address post-construction road work and to require using native plant and seed material, using native, clean fill from a comparable soil formation, reusing excavated native soils, etc.
- The addition of a Section 6.23(c) to require the use of clean fill from a soil formation matching pre-development conditions and/or the reuse of native soils excavated from the site for landscaping and backfill outside of permanent lawn and turf areas.

Section 7:50-6.21 of the Comprehensive Management Plan (the "Purpose" of the Vegetation section) explicitly states that "The continued integrity of the Pinelands vegetation is essential to the preservation and maintenance of the essential character of the Pinelands... landscaping materials employed in the Pinelands must be compatible with native vegetation in order to preserve the visual and ecological character of the Pinelands."

PPA fully supports the suggestion to change native vegetation guidelines into requirements. There already exist commercial sources for many Pinelands plants, and adding this requirement to the CMP will likely motivate local plant nurseries to further increase their availability of natives. Requiring the use of native vegetation is one of the best ways to preserve

the ecological character of the Pinelands. The Commission should expand the list of appropriate native shrubs and trees at 7:50-6.25 and add a separate list of native herbaceous species.

PPA also supports the addition of any language that will appropriately address the treatment of roadsides before, during, and after disturbance due to road work, development, or infrastructure installation. A major ongoing problem in the Pinelands is the mismanagement of roadside soils and vegetation. We have seen several cases in which a disturbed roadside is treated with non-native fill containing non-native plant seeds and with higher pH and nutrient levels than the native Pinelands soil it has replaced. Such practice predictably results in the transition of the roadside from a native Pinelands plant community to one colonized by non-native weeds. These altered roadsides serve as routes of entry for non-native species into the Preservation areas within the Pinelands. The Commission should consider requiring that post-disturbance roadside work uses native fill originating at and stockpiled from the disturbance site or locally-obtained soil with comparable physical and chemical properties of the disturbed site. Additionally, where re-seeding is desired, only native Pinelands roadside grasses and herbaceous species should be permitted. The CMP lists suggested grass species for revegetation in 7:50-6.26, but this list is in great need of revision as it currently includes several non-native or otherwise inappropriate species. Additional explanation and suggestions for appropriate species for landscaping and roadside revegetation are included here in Appendix B. In many situations, vegetative stabilization may not even be necessary on disturbed roadsides, and natural regeneration of the native biota should be encouraged.

Additionally, the Commission needs to create a more discrete policy for roadside management. It is now common knowledge that Pinelands roadsides, when not covered with non-native soil and seeded with non-native plants, are valuable habitat for early-successional native plant species. Roadsides also serve as one of the most visible aspects of the Pinelands for those passing through the Reserve. Although the Commission has entered into an MOA with Burlington and Atlantic Counties which requires these county roads be maintained using the Roadside Best Management Practices in exchange for streamlined approval of road projects, we are finding time and time again that roadside managers are not actually following the BMPs laid out in the MOAs. Since the Commission has been remiss to enforce the requirements of the MOA (or otherwise retract the streamlining benefits afforded to the entities that do not hold up their end of the agreement), PPA suggests adding a section to the CMP requiring that Pinelands roadsides are managed under the guidelines of the Roadside BMPs. Such requirements would result in much improved native plant habitat and will benefit both common and rare roadside plants by limiting the extent and timing of mowing.

## **8. CMP threatened and endangered plant list reform**

The overriding purpose of the Pinelands Protection Act and the CMP is to conserve the Pinelands' natural resources. Both the Act and the CMP recognize that conservation of characteristic Pinelands resources includes protection of endangered and threatened flora and fauna. The CMP recognizes this policy specifically through its prohibitions on development at 7:50-6.27, "Development prohibited in the vicinity of threatened or endangered plants." This

section reads, “No development shall be carried out by any person unless it is designed to avoid irreversible adverse impacts on the survival of any local populations of those plants designated by the Department of Environmental Protection as endangered plant species pursuant to N.J.A.C 7:5C-5.1 as well as the following plants, which are hereby found and declared to be threatened or endangered plants of the Pinelands” and is followed by a list of 54 plant species. The background story of how these protections came to be is too complex to briefly summarize here, but the main point we would like to make is that without protecting all of the plant species occurring in the Pinelands which are tracked by the New Jersey Department of Environmental Protection’s Natural Heritage Program and therefore classified by the Natural Heritage Program as “endangered” plant species and plant “species of concern,” the CMP is not providing the environmental protections it was enacted to provide.

Currently, the CMP does not protect all threatened and endangered species of plants, because the list of species in the CMP omits a number of Pinelands species that the State of New Jersey recognizes as threatened. Though the Natural Heritage Program uses the phrase “species of concern” rather than the word “threatened,” these species of concern are indeed understood to be threatened. The Federal Endangered Species Act defines “threatened species” as “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” As defined in New Jersey’s Endangered Plant Species Program rules, “Plant Species of Concern” serves as the official “working list for transition of species to and from the Endangered Plant Species List,” and thus fits the federal model of “threatened” on which the CMP’s use of the term is based. All Plant Species of Concern at issue in the Pinelands are ranked S1 (critically imperiled), S2 (imperiled), or S3 (rare and may soon become imperiled if current trends continue), with a small number designated SX (determined or presumed to be extirpated) or SH (historically present but no extant occurrences known). These rankings clearly fall under the definition of “threatened” and these species should therefore be protected under 7:50-6.27 which prohibits development “in the vicinity of threatened or endangered plants.”

We propose that section 7:50-6.27 be amended to read, “No development shall be carried out by any person unless it is designed to avoid irreversible adverse impacts on the survival of any local populations of those plants listed by the New Jersey Natural Heritage Program as ‘Endangered Plant Species and Plant Species of Concern’.” Doing so would bring the Pinelands protections into alignment with the Highlands protection standards, which call for protection of *all* listed plant species of concern. This is the only sensible approach from a conservation perspective. Additional information regarding the history of the Pinelands plant protection process is provided in Appendix C.

## **9. Smart Growth Fixes**

The CMP currently prescribes the pace, quantity and location of growth. However, to continue to successfully fulfill its mission into the future, the Plan should give equal weight to the quality of development to ensure that natural resources are still well protected and

communities designated to accommodate growth are also inviting, well-designed places where people readily prefer to live.

Improved community design is included in recommendations from the Pinelands Commission Housing Task Force report and Water Quality White Paper which promote efficient use of land through greater residential densities and less impervious surface thereby reducing development impact on water quality.

Below are two sections within the CMP that should be revised to complement the changes to the PDC rules as well as any improvement to the stormwater rules.

(1) Minimum Standards for Land Uses and Intensities – Part I – Standards of General Applicability

7:50 – 5.1 (c) “Unless expressly permitted in a certified municipal land use ordinance, no more than one principal use shall be located on one lot, except for forestry, agriculture, horticulture, fish and wildlife management, and on agricultural lands, recreation development.

*Prohibits mixed use and should be changed to promote more than one principle use on one lot assuming that the mixed use would be in accordance with the character of the management area and community.*

(2) 7:50 – 5.28 Minimum standards governing the distribution and intensity of development and land use in Regional Growth Areas

(a) 3. The land use element of a municipal master plan and land use ordinance shall reasonably permit development to occur within a range of densities provided that the total amount of residential development permitted in (a)1 above is exceeded by at least 50 percent through the use of PDCs; 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.

*Promotes single family detached dwelling in RGAs. This language should be removed and should encourage mixed-use zones and multiple types of dwellings such as town homes, apartments, twins, rows, etc.*

Although the Commission staff is open to and encourages smart growth, mixed-use development, the language in the CMP needs to reflect these principles.

## **10. Applications for enduros and similar events**

Off-road vehicles (ORVs) have caused significant damage throughout the state-owned lands in New Jersey. NJ DEP estimated in 2001 that over 300,000 acres are damaged in New Jersey every year, and funds are not available for restoration. Evidence of such damage exists in the Pinelands, for example Wharton State Forest.

ORVs include a variety of vehicle types, such as motorcycles, trucks, quads and dirt bikes. Enduro events are sanctioned events that are allowed to occur on state land with a permit. The Pinelands Commission spends an enormous amount of time reviewing dozens of enduro/motorcycle race permits for natural resource impacts. Typically, these permits have been granted for NEW trails, and do not require review by anyone on the commission staff or by state forest staff following the race to ensure that the maps were followed and damages were not incurred.

There is plenty of evidence to show that enduro event trails are continuously used throughout the year after events have ended. There is also evidence that trails are sometimes expanded beyond the race permit allowances.

The CMP provides little to no guidance on enduro events in N.J.A.C. 7:50-6.143 and needs to be strengthened to prevent these activities from occurring outside of the permitted events and to protect the habitats that are being destroyed or damaged.

The CMP should be revised to:

1. Require all permits to secure a bond with the county or municipality where the event is occurring.
2. Increase fees to cover staff time in reviewing applications and conducting a site inspection following the recreation event.
3. Limit the creation of new trails and allow events to occur only on existing trails or fire roads or paths needed for fire department/safety.
4. Require municipalities to adopt ordinances which strengthen enforcement of existing laws on ORV use on public and private land. We attach a model ordinance as Appendix D.

These revisions would hopefully deter the illegal creation and/or expansion of trails and would cover the costs associated with any damages.





## PINELANDS PRESERVATION ALLIANCE

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### **Appendix A: Proposal for Revision of PDC Program To Encourage Better Community Design**

November 18, 2004

The goal is to change the PDC purchase requirements for developers in order to provide financial incentives to do on-site clustering, provide 300 foot wetlands buffers and implement other desirable community design features. Doing so would reverse the existing financial incentive to build large lot, more sprawling designs, which is built into the current PDC regime. We do not know how to scale such revised PDC requirements to maintain the current market price, so this proposal uses somewhat hypothetical numbers.

1. Municipal zoning densities stay the same as current certified densities for residential zones.
  - This heads off municipal concern that new incentives would cause urbanization of suburban areas, foster higher school and other municipal costs, etc.
2. Developers of subdivisions would be required to buy PDCs based on the following clustering and wetland buffer standards:
  - a. Clustering – PDC obligation is based on lot size. For example, in a current 1-acre residential zone in Egg Harbor Township, the standard might be:
    - 1 acre or larger: 2 rights per unit
    - 0.33 to <1 acre: 1 right per unit
    - <0.33 acre: 0 rights per unit
  - b. Wetlands buffer – PDC obligation is based on adherence to 300-foot buffer. For example:
    - 300-foot buffer: 0 rights per unit
    - <300-foot buffer: 1 right per unit within 300-foot boundary
3. Reductions from the PDC obligation could be provided for adopting additional good design features. (If this is done, it might make sense to impose a minimum starting PDC obligation for all qualifying subdivisions of, say, 0.2 PDCs per unit regardless of clustering and wetlands buffers.) Such design features to reward might include:
  - Innovative stormwater design, or contribution to larger-scale stormwater management project for the neighborhood.
  - Multi-use development in appropriate transportation nodes.
  - Providing units that meet the municipality's COAH obligations.

## Appendix B. Suggested changes to the list of plant species for landscaping and revegetation at 7:50-6.26

Current species list:

1. “Fescue species” is utterly vague. There are many fescue species that are available, and probably all the ones being planted are non-native. The only appropriate species for planting in the Pinelands would be *Festuca octoflora*. (Current authorities have transferred it to the genus *Vulpia*.) Otherwise, this listed category includes non-native species.
2. “Smooth brome grass” is ambiguous, though it’s a common name used for the species *Bromus inermis*. There are both native (to the US) and non-native subspecies and varieties, but we are unable to find any evidence that any of them are native to New Jersey.
3. “Reed canary grass” (*Phalaris arundinacea*) appears mysteriously on this list. While the CMP indicates these grasses are appropriate for “droughty, nutrient poor conditions,” Reed Canary Grass is typically a wetland plant of richer areas. It’s considered a wetland obligate species. It’s basically a weed in south Jersey and was historically absent from the Pine Barrens. Therefore, this is an inappropriate species for the Pinelands.
4. “Little Bluestem” (so long as we are referring to *Schizachyrium scoparium* var. *scoparium*) is a good species for this list, although very little of what is being planted is the local ecotype.
5. “Deertongue” is a name commonly used for *Panicum clandestinum*. As with Reed Canary Grass, this is a plant of richer areas, and, while not a wetland obligate, it is typically found in damp to wet habitats. It is certainly not a good choice for “droughty, nutrient poor conditions.” The Commission’s Science staff lists this plant as a “disturbance indicator,” in wetlands, one that shows up in degraded areas of the Pinelands that have been affected by development and agriculture. Therefore, this is an inappropriate species for this list.
6. “Red top” is a vague common name that is applied mostly to *Agrostis gigantea*, a species not native to the US. This is therefore not a Pinelands native and should be removed.
7. “Switch grass” is the common name used for *Panicum virgatum*, which is an acceptable though not ideal species for this list. This species (represented by dozens of non-local ecotypes and cultivars) has become a very popular plant, but it is being over-used in the Pinelands. Stone’s book, *The Plants of Southern New Jersey*, 1911, which is the best baseline we have, does not indicate that it was a common component of the flora of the Pinelands except along the coast and in the vicinity of the larger rivers.

Suggested species additions to the list of graminoids:

1. Broom Sedge (*Andropogon virginicus*)
2. Gray's Sedge (*Cyperus grayi*)
3. Hemlock Rosette Grass (*Dichanthelium sabulorum*)
4. Matting Rosette Grass (*Dichanthelium meridionale*)
5. Pennsylvania Sedge (*Carex pensylvanica*)
6. Pine Barren Sedge (*Cyperus retrorsus*)
7. Roundseed Panic-grass (*Dichanthelium sphaerocarpon*)
8. Silky Wild Oat Grass (*Danthonia sericea*)
9. Slender Fescue Grass (*Vulpia octoflora* var. *octoflora*)
10. Slender Three-awn (*Aristida longespica*)
11. Starved Panic-grass (*Dichanthelium depauperatum*)
12. Ticklegrass (*Agrostis hyemalis*)
13. Umbel-like Sedge (*Carex tonsa* var. *tonsa*)
14. Wild Oat Grass (*Danthonia spicata*)

Additional herbaceous/groundcover species suggestions:

1. Bearberry (*Arctostaphylos uva-ursi*)
2. Blue Curls (*Trichostema dichotomum*)
3. Blue Toad-flax (*Nuttallanthus canadensis*)
4. Blunt-leaved Milkweed (*Asclepias amplexicaulis*)
5. Bushy Aster (*Symphotrichum dumosus*)
6. Butterfly-weed (*Asclepias tuberosa*)
7. Coastal Blue-eyed-grass (*Sisyrinchium atlanticum*)
8. Cow-wheat (*Melampyrum lineare* var. *pectinatum*)
9. Downy Goldenrod (*Solidago puberula*)
10. Dwarf Dandelion (*Krigia virginica*)
11. Fern-leaved False Foxglove (*Aureolaria pedicularia*)
12. Field Goldenrod (*Solidago nemoralis*)
13. Fragrant Goldenrod (*Solidago odora*)
14. Frostweed (*Helianthemum canadense*)
15. Goat's Rue (*Tephrosia virginiana*)
16. Grass-leaf Blazing-star (*Liatris pilosa*)
17. Hairy Boneset (*Eupatorium rotundifolium* var. *ovatum*)
18. Hairy Hawkweed (*Hieracium gronovii*)
19. Hudsonia (*Hudsonia ericoides*)
20. Hyssop-leaved Boneset (*Eupatorium hyssopifolium*)
21. Late Purple Aster (*Symphotrichum patens*)
22. Maryland Golden-aster (*Chrysopsis mariana*)
23. Narrow-leaved White-top Aster (*Sericocarpus linifolius*)
24. Oblong-fruited Pinweed (*Lechea racemulosa*)
25. Orange-grass (*Hypericum gentianoides*)

26. Pearly Everlasting (*Anaphalis margaritacea*)
27. Pine Barren Sandwort (*Minuartia caroliniana*)
28. Purplish Cudweed (*Gnaphalium purpureum* var. *purpureum*)
29. Pyxie (*Pyxidantha barbulata*)
30. Rattlesnake Root (*Prenanthes serpentaria*)
31. Showy Aster (*Eurybia spectabilis*)
32. Slender Aster (*Eurybia compacta*)
33. Slender Goldenrod (*Solidago erecta*)
34. Stiff-leaved Aster (*Ionactis linariifolius*)
35. Sweet Everlasting (*Gnaphalium obtusifolium* var. *obtusifolium*)
36. Tall Lettuce (*Lactuca canadensis*)
37. Teaberry (*Gaultheria procumbens*)
38. Thread Agalinis (*Agalinis setacea*)
39. Trailing Tick-trefoil (*Desmodium rotundifolium*)
40. Vein-leaf Hawkweed (*Hieracium venosum*)
41. Venus' Looking-glass (*Triodanus perfoliata*)
42. White Boneset (*Eupatorium album*)
43. White Goldenrod (*Solidago bicolor*)
44. White-top Aster (*Sericocarpus asteroides*)
45. Wild Indigo (*Baptisia tinctoria*)
46. Wrinkle-leaved Goldenrod (*Solidago rugosa* var. *rugosa*)
47. Yellow Stargrass (*Hypoxis hirsuta*)

Please note that the above species lists are appropriate for landscaping and revegetation along roadsides and droughty, nutrient-poor sites. We encourage the Commission to add Pinelands native species lists appropriate for landscaping and revegetation in mesic and wet sites as well.

## **Appendix C. Background information regarding Pinelands plant protections.**

**Some of the strongest protections in New Jersey for rare, threatened, and endangered species are embodied in the New Jersey Pinelands Comprehensive Management Plan (CMP). Even so, many of this region's imperiled plant species are NOT officially protected by the regulations. In order to understand how this happened and what we can do about it, we need to review the history.**

The CMP currently protects all state-listed endangered plant species and a number of species identified by name which the regulation says "are hereby found and declared to be threatened or endangered plants of the Pinelands." What follows is the original list of fifty-four species that was included in the CMP at its adoption in 1981, based on a report furnished in 1980. Actually, the authors of that report, Nicholas Caiazza and David E. Fairbrothers, indicated a need to protect *seventy-one* species. There being no official state status for plants at that time, the authors, on the basis of their research and professional judgment, considered twenty species to be "endangered," thirty-four "threatened," and seventeen "undetermined."

The Caiazza and Fairbrothers report (as well as the version of that report that had been previously published in R. Forman (ed.), *Pine Barrens: Ecosystem and Landscape*, 1979) indicated that, in addition to the plant species that were designated as "endangered" and "threatened," plant species designated "undetermined" were also considered imperiled. It was only the degree of imperilment that was undetermined. On the basis of this uncertainty about whether they were threatened, endangered, or possibly even extirpated, the Pinelands Commission inappropriately excluded all seventeen of them from the list it formally adopted.

In 1981, The Conservation and Environmental Studies Center, supported by the U.S. Fish and Wildlife Service, published a document written by David B. Snyder and V. Eugene Vivian, titled *Rare and Endangered Vascular Plant Species in New Jersey*. The authors conducted a thorough literature search and reviewed pertinent specimens at the Chrysler Herbarium at Rutgers University and at the herbarium of the Philadelphia Academy of Natural Sciences. In collaboration with twelve other experts, they conducted extensive field research to collect data and develop a final report.

The Snyder and Vivian report documents over 180 plants of conservation concern within the broader Pinelands region (including peripheral areas, the coastal zone, and Cape May County). About fifty-seven of those species were historically documented within the general area now designated as the Pinelands Protection Area. Eleven of them were characteristic Pine Barrens plants that had been designated "undetermined" by Caiazza and Fairbrothers in the afore-mentioned report, and were, as yet, unprotected under the CMP.

In 1984, the New Jersey Natural Heritage Program was established. The mission of the Heritage Program is primarily to identify conservation priorities for the state and develop programs to monitor and conserve valuable natural resources. It uses an internationally recognized and widely accepted methodology developed, initially, by The Nature Conservancy.

Beginning in 1984, the Heritage Program staff made recommendations to the Pinelands Commission staff that the CMP plant list should be expanded. This recommendation was based largely upon the data that Snyder, Vivian, and their collaborators had gathered over the previous five years.

The Heritage Program staff continued to investigate the state's flora as to the abundance, distribution, and condition of the populations of each known taxon, and it confirmed that many more imperiled species were known from the Pinelands region than were under the protection of the CMP. The Heritage Program staff continued to recommend to the Pinelands Commission that the CMP list of protected plants should be expanded in accordance with the most up-to-date information, but the Commission did not make any changes.

In 1989, the state enacted the Endangered Plant Species List Act, which authorized the DEP to create and maintain a list of endangered plant species. Nearly half the species that had been designated as "undetermined" by Caiazza and Fairbrothers in the 1980 report now became officially listed as endangered in the state. The Heritage Program staff continued to recommend to the Commission staff that the CMP should be revised to include all plants in need of protection, but the Commission did not make any revisions.

In 2003, PPA began a sustained effort to encourage the Pinelands Commission to revise its protected plant list. PPA's advocacy was stimulated and guided by the testimony of a large and broad informal coalition of local conservationists, biologists, and ecologists, including personnel with the DEP's Office of Natural Lands Management and the local office of the U.S. Fish and Wildlife Service.

In 2005, the Commission amended the CMP to include protection for the state list of endangered plants. This was a positive move, in that it broadened the scope of plant protection. However, it fell short of accomplishing what the state's experts had recommended, i.e., that, in addition to the state-listed endangered plants, all the plants deserving "threatened" status should be protected.

Although New Jersey does not have an official "threatened" status for plants, it effectively recognizes plant species at this level of conservation concern through the list of Plant Species of Concern maintained by the Heritage Program. As defined in the Endangered Plant Species Program rules, Plant Species of Concern serves as the official "working list for transition of species to and from the Endangered Plant Species List." Thus this designation coincides with the federal model of "threatened" on which the CMP's use of the term is based.

Most of the Plant Species of Concern in the Pinelands are ranked S1 (critically imperiled—most of these also have the official state status of endangered), S2 (imperiled), or S3 (rare and may soon become imperiled if current trends continue). A smaller number are designated SX (determined or presumed to be extirpated) or SH (historically present but no extant occurrences known). Both conceptually and in practical application of conservation measures, "Plant Species of Concern" is synonymous with "threatened plant species."

PPA, local plant experts, and other conservation organizations have continued to recommend to the Pinelands Commission what the Heritage Program has been recommending to the Commission staff since 1985: that the CMP should expressly protect all of the Endangered Plant Species and Plant Species of Concern known to occur in the region. By disregarding this recommendation, the Pinelands Commission has stood alone in contrast to the consensus opinion of the entire community of botanists and ecologists involved in Pinelands research and conservation.

## **Appendix D: Model ORV Ordinance**

### **Section 1: PURPOSE**

The purpose of this Ordinance is to control and regulate off-road vehicles, as defined in Section 2, entitled "Definitions," in order to preserve the public peace and order, protect the health, safety and welfare of the general public, and protect the natural resources in our environment in the Township of X.

### **Section 2: DEFINITIONS**

As used in this chapter, the following terms shall have the meanings indicated:

Public Highway - The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Public Lands - Any and all real property which is owned or controlled by a governmental entity.

Off-Road Vehicle - means a motor vehicle, designed to travel over any terrain, of a type possessing between two and six tires and includes but is not limited to dirt bikes, trail bikes, mini-bikes, motor scooters, go-carts, all-terrain vehicles, swamp buggies, mopeds, and snowmobiles, and any other motor-driven vehicles which are not authorized to be licensed by the State of New Jersey, Department of Motor Vehicles, for use upon the public highways.

### **Section 3: OPERATION and USE RESTRICTIONS**

A. Public Lands. It shall be unlawful for any person to operate or permit to or suffer to be operated an off-road vehicle, as defined herein, on any public grounds or property, including playgrounds and recreational areas.

Limited Access Highways. No person shall operate an off-road vehicle upon limited-access highways or within the right-of-way limits thereof.

Public Streets or Highways. No person shall operate an off-road vehicle upon the main traveled portion of any public street or highway or within the right-of-way limits thereof except as follows:

- 1) Properly registered off-road vehicles may cross, as directly as possible, public streets or highways, except limited access highways, provided that such crossing can be made in safety and that it does not interfere with the free movement of vehicular traffic approaching from either direction of such public street or highway. Prior to making any such crossing, the operator shall bring the off-road vehicle to a complete stop. It shall be the responsibility of the operator of the off-road vehicle to yield the right-of-way to all vehicular traffic upon any public street or highway before crossing the same.



2) Wherever it is impracticable to gain immediate access to an area adjacent to a public highway where an off-road vehicle is to be operated, it may be operated adjacent and parallel to such public highway for the purpose of gaining access to the area of operation. This subsection shall apply to the operation of an off-road vehicle from the point where it is unloaded from a motorized conveyance to the area where it is to be operated or from the area where operated to a motorized conveyance when such loading or unloading cannot be effected in the immediate vicinity to the area of operation without causing a hazard to vehicular traffic approaching from either direction on said public highway. Such loading or unloading must be accomplished with due regard to safety, at the nearest possible point to the area or operation.

B. Agricultural Purposes: All-terrain vehicles strictly used for agricultural purposes on farmland, roadways, and public and private land, with permission, are exempt from this ordinance. When these vehicles are found operating in a manner not for agricultural purposes, the rider and owner of the vehicle shall be subject to the same restrictions, fines and penalties as set forth in this ordinance.

C. Private Property: All-terrain vehicles/off-road vehicles used on private property with permission from the owner are exempt from this ordinance, except for the written consent requirements below.

D. WRITTEN CONSENT.

1) No person shall operate a motorcycle or off-road vehicle on the property of another without receiving the consent of the owner of the property or the person who has a contractual right to the use of such property.

2) No person shall continue to operate an off-road vehicle on the property of another after consent has been withdrawn.

3) The consent as required by Subsection D (1) and (2) above shall be by the written consent of the owner of the property or the person who has contractual right to the use of such property.

E. HARSH, OBJECTIONABLE or UNREASONABLE NOISE. It shall be unlawful for any person to operate or permit or suffer to be operated an off-road vehicle in such manner as to cause a harsh, objectionable or unreasonable noise so as to disturb or interfere with the peace and quiet of other persons.

F. CARELESS, RECKLESS, or NEGLIGENT OPERATION. It shall be unlawful for any person to operate or permit or suffer to be operated an off-road vehicle in a careless, reckless or negligent manner so as to endanger the safety or property of any person.

G. PROTECTIVE HELMETS. It shall be unlawful for any person to operate to permit or suffer to be operated, or to ride as a passenger on, any off-road vehicle without wearing a protective helmet approved by the Director of the Division of Motor Vehicles in the Department of Law

and Public Safety of the State of New Jersey. Any such helmet shall be of a type acceptable for use in conjunction with motorcycles as provided in NJSA 39:3-76.7 through NJSA 39:3-76.10.

H. HEADLIGHTS, TAILLIGHTS, BRAKES and MUFFLERS. It shall be unlawful for any person to operate or permit or suffer to be operated an off-road vehicle that is not equipped with working headlights, taillights, brakes and proper mufflers as supplied by the motor manufacturer for the particular model without modifications.

I. PURSUIT of WILDLIFE. It shall be unlawful for any person to operate or permit or suffer to be operated an off-road vehicle at any time and in any manner intended or reasonably to be expected to harass, drive, injure, or pursue any wildlife.

J. LIGHTED HEADLIGHTS AND TAILLIGHTS. It shall be unlawful for any person to operate or permit to be operated any off-road vehicle without lighted headlights and lighted taillights.

K. RAILROADS. It shall be unlawful for any person to operate or permit or suffer to be operated an off-road vehicle upon railroad or right-of-way of an operating railroad, except railroad personnel in the performance of their duties.

L. RULES and REGULATIONS. It shall be unlawful for any person to violate any provision of this chapter or any rule or regulation adopted pursuant to this chapter.

#### **Section 4. AGE REQUIREMENT.**

No person under the age of fourteen (14) years shall operate or be permitted to operate any off-road vehicle on public lands or upon a public highway.

#### **Section 5. VIOLATIONS AND PENALTIES.**

A. Any police officer may at his discretion:

Impound any off-road vehicle alleged to be operated or permitted or suffered to be operated, in violation of this chapter.

Impound any off-road vehicle operating on the public roadways in violation of any then-applicable State Statute or any Regulation validly promulgated by any State agency having jurisdiction.

The period of any impoundment shall be from the date of the alleged violation until the disposition of the alleged offense by such court of competent jurisdiction as shall hear the same, and the owner thereof shall pay the reasonable cost of said removal and storage constituting impoundment, which cost is as set forth in Chapter X. The expense of impoundment shall be in addition to any other fine or penalty levied or collected under the terms of this chapter.

B. Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor, punishable by imprisonment for not more than ninety (90) days, or at a minimum a fine of One Thousand (\$1000.00) Dollars, or both.

C. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

D. Any person under the age of eighteen (18) years who shall violate any of the provisions of this chapter shall be deemed to be a juvenile delinquent and shall be proceeded against as such.

E. In addition to the penalties described in Section 5.B., if the violation for which an Operator of an

Off-road vehicle has been convicted has caused damage to real or personal property, the Operator so convicted, as well as the registered owner(s) of the vehicle involved, if such vehicle was in the possession of the Operator with the permission of any owner(s), may also be ordered by the Court to pay restitution for the full amount of such damage.

## **Section 6. VALIDITY**

Validity. If any section, subsection, paragraph, clause, phrase or provision of this chapter shall be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Chapter as a whole or any part thereof.

## **Section 7. REPEALER**

Repealer. Any and all ordinances or parts thereof in conflict or inconsistent with any of the terms and provisions of this Chapter are hereby repealed to the extent of their inconsistency provided, however, that the adoption of this Chapter shall not prevent or bar the continuance or institution of proceedings for offenses heretofore committed in violation of any existing Ordinances of the Township of X or violation of NJSA 39:1-1 et. Seq.

## **Section 8. EFFECTIVE DATE**

Effective Date. This chapter shall take effect immediately upon its final passage, publication and filing with the County Planning Board in the manner prescribed by applicable New Jersey Statutes.