

STATE of THE
PINELANDS

An Annual Report by the Pinelands Preservation Alliance



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Mullica River

Photo: PPA

A Letter from the Executive Director

June 25, 2009

Pinelands Commission Faces Tests of Its Commitment to Preservation

Recent debates and actions of the Pinelands Commission have placed its commitment to preserving the Pinelands in serious question. Some Commissioners do not seem personally committed to the fundamental environmental mission - working instead to protect particular financial and development interests by trying to block important environmental protection initiatives. We may not see a lot of new construction going on right now, but be assured that developers and their sponsors are continuing to get the approvals they need to swing into action when the economy turns around. Laboring under worsening budget constraints and pressure from local governments and development and farming interests, the Commission staff is promoting ways to "streamline" rigorous reviews of whole classes of development activity. Rather than focus its resources on enforcing the CMP, the Commission continues to expend enormous staff time helping applicants get around the CMP through special procedures like memoranda of agreement. And the Commission ignores blatant and harmful violations by county and municipal governments (though sometimes it will send an admonishing letter to the offender if PPA and the public complain loudly enough.)

In the coming year, the Commission faces critical tests that will show us where its soul really lies:

- **Changes to the Comprehensive Management Plan for greater protection of intact forests and wetlands, based on the Ecological Integrity Assessment:** Some Commissioners seem determined to stop any reform of the Plan that would protect high-ecological integrity areas from intensive development. Will they prevail, or will the Commission recall its statutory purpose and carry through with these science-based reforms?
- **Reform of the Pinelands Development Credit program to promote smart growth:** For the past several years, the Commission has known the PDC program - the Pinelands' regional transfer of development right system - has basic problems that keep down the price of credits, promote sprawl development, and discourage more efficient, low-impact development. After years of analysis and debate, the Commission staff has put together an excellent proposal for reform. Now the Commissioners must act.
- **Forestry regulations:** In an eleventh-hour coup and without discussion, farming interests got the Commission to insert very harmful language into the new regulations it is proposing to govern forestry in the Pinelands. The inserted language would authorize the use of broadcast herbiciding and soil disking in the region's globally rare Pitch Pine/Shrub Oak forests, which make up much of the heart of the Pine Barrens. Experts confirm the only reason to use these techniques is to prevent the natural shrub oak understory from re-growing after a harvest - that is, to create a monoculture pine plantation in place of a complex natural forest. The Commission can remove these provisions and return the rules to the original recommendations of its own Forestry Advisory Committee when it adopts the final rule. Will it?
- **Native Plant Protection:** After much prodding and some embarrassing violations of its rules, the Pinelands Commission staff have agreed to work with PPA and others to promote the conservation of native flora along roadsides and, we hope, in other contexts as well. Public education is an important part of the effort, but education alone will not change what is happening to native plants. The Commission also needs to clarify, strengthen and enforce its regulations. A key test will be whether the Commission takes the actions needed to change the way many county and municipal road departments treat roadsides when they do maintenance, paving or widening projects. That is, will the Commission take decisive action to make sure road departments stop plowing up rare and native species and adding non-native soils, fertilizers and lime, non-native grass seeds, and even trash to road shoulders?

Carleton Montgomery
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Summary

It's hard to believe that in the most densely populated state in the nation that we have something as unique as the Pinelands with all of its natural wonders. The primary reason for this is that the Pinelands enjoy the protections of our nation's strongest development controls. These controls are found in the Pinelands Protection Act and the Pinelands Comprehensive Management Plan or "CMP." The Pinelands' great open spaces and unique diversity of plants and animals has survived due in large measure to the strict interpretation of the Pinelands Protection Act and CMP by the Pinelands Commission. Yet even with these unique regulatory controls, the Pinelands and its Pine Barrens ecosystem are facing very serious challenges as we celebrate the 30th anniversary of the Pinelands Protection Act, the state law that made it all a reality. These threats arise from economic forces that push our society to ever-greater exploitation of limited land and resources. And these threats will prevail if the agencies entrusted with protecting this region are weak or inconsistent in enforcing the rules and regulations of the Pinelands Comprehensive Management Plan.

During the past 30 years, the residents of New Jersey have been able to witness first-hand this great experiment in land-use planning and growth management called the Pinelands. It is a daunting task to manage land use in 56 municipalities within seven counties. In this context and taken as a whole, the Pinelands process has been remarkably successful at preserving large areas of ecologically sensitive lands within the heart of the Pine Barrens during the past three decades. Like any innovative and far-reaching endeavor, its strengths and weaknesses only become apparent with time.

One of the weaknesses we see is in the way that the Pinelands Commission - the lead government agency responsible for protecting this unique area - seems now to view its own regulations. Over the past 5 years, we've seen a slow shift in philosophy from the CMP as rules with regulatory teeth, to the CMP as guidelines only, to be ignored, negotiated or enforced on a case-by-case basis for the convenience of local governments, developers and even the Commission itself.

A recent example - small in area covered, but large in implications - is the Commission's approval of a road project through threatened and endangered species habitat in the Preservation Area. While conceding the applicant had not proven the paving would avoid harming local rare wildlife populations, and conceding the paving would probably harm these populations, the Commission staff still pressed for approval on the grounds there was insufficient scientific research on how much harm the paving would cause. The burden of proof was placed on the public to prove a violation of the CMP, instead of requiring the applicant to demonstrate compliance with the CMP thus reversing the regulatory standard and overthrowing nearly 30 years of its own practice to approve an unnecessary, financially wasteful and environmentally harmful project. (*See Woodland Township Road Expansion in this report*).

This disrespect for its own rules can also be seen in the Commission's increased use of Memoranda of Agreements (MOAs) and regulatory streamlining proposals to allow applicants to navigate around the CMP without demonstrating compliance.

These trends raise great concern for the future integrity of the Pinelands because they represent a fundamental shift in the Commission's mind-set of how to protect the Pinelands. If the Pinelands is to survive for another 30 years, it is imperative that the Commission get back to viewing the CMP as a body of *regulations*, not guidelines to be renegotiated with each development or government agency that wants special dispensations. It is critical that the Commissioners reaffirm the agency's commitment to applying its rules consistently, year after year, and development after development.



About this Report

June 28, 2009 marks the 30th anniversary of the signing of the Pinelands Protection Act establishing the Pinelands Commission and the Comprehensive Management Plan (CMP) to preserve natural resources and control development in the 1.1 million acres of the Pinelands National Reserve. Many wonder how the Pinelands will fare in the long-term considering that New Jersey is the most densely populated state in the nation and still growing at an alarming rate.

Since the fate of the Pinelands ultimately rests with decisions by government agencies, PPA became convinced that a mechanism was needed to hold these agencies accountable in a focused and systematic way, rather than on a crisis by crisis basis. The State of the Pinelands report allows us to rate, on a yearly basis, how specific actions of government agencies, elected officials and the courts have either helped or harmed the Pinelands during the previous year. In addition, it allows us to acknowledge those individuals and organizations that took the extra steps through education or action, to help keep the Pine Barrens special. This report highlights some of the most significant actions taken by government, organizations and individuals that affected the Pinelands in the year through June 2009. The agencies rated in this report include, but are not limited to, the Pinelands Commission, New Jersey Department of Environmental Protection (DEP), New Jersey State Legislature, Governor, mayors, county government, local governing bodies, federal representatives and the courts. We also include how Pinelands Commissioners voted on the topics that required formal action, sponsors of state and federal legislation, and action or inaction of elected officials. The underlying goal is to make the regulatory process more transparent and therefore, help members of the public become more engaged in protecting the Pinelands.

Six (6) criteria were used to guide the preparation of the report. They included how agencies:

1. promoted the integrity of the Comprehensive Management Plan (CMP);
2. protected native habitats for plants and wildlife;
3. safeguarded the quality of Pinelands water in aquifers and surface waters;

4. insured the integrity of water supply for both people and ecosystem;
5. promoted the cultural and historic resources of the area; and
6. promoted education about the Pinelands.

We believe this report is a representative sampling of the scope and nature of environmental policy issues that the Pinelands Preservation Alliance's staff tackles on a regular basis. It is our hope that a yearly State of the Pinelands report will serve as another tool to insure that the next three decades of protecting the Pinelands will be as promising as the last.

Governor



Pinelands Commission Appointments

After years of inaction, the Governor this month made nominations to fill open and expired terms on the Pinelands Commission. We appreciate the governor making these nominations, while wishing they had come sooner (and not so close to the legislature's summer recess.) As of this writing, the governor also had not named a Chair of the Commission. It is critical that the governor act expeditiously to ensure his nominations are approved by the Senate to restore the Commission to full strength and that he appoint a Chairperson.

Pinelands Commission

By statute, the Pinelands Commission has fifteen (15) commissioners who make up the governing body of the agency: seven (7) appointed by the Governor; one appointed by each of the seven (7) Pinelands counties; and one (1) person appointed by the U.S. Secretary of the Interior. The gubernatorial appointees are subject to the review and consent of the New Jersey Senate. Members of the Commission serve staggered three-year terms. These commissioners have final say with regards to all activities regulated by the Pinelands Comprehensive Management Plan (CMP). In addition, the Commissions staff of approximately 40 people is directed by the commissioners.

The Commission today consists of the following thirteen members. **U.S. Secretary of the Interior's Appointee:** Robert McIntosh, Jr. **Gubernatorial Appointees:**



Candace Ashmun, Robert Jackson, Edward Lloyd, Rev. Dr. Guy Campbell, Stephen V. Lee III, with two vacancies. **County Appointees:** Paul Galletta (Atlantic), Daniel Kennedy (Burlington), Norman Tomasello (Acting Chairman—Camden), William Brown (Cape May), Leslie Ficaglia (Cumberland), Francis Witt (Gloucester), and John Haas (Ocean)



Management Area Changes

As we reported in last year's report, the Commission's science staff completed an Ecological Integrity Assessment of the Pinelands. The Commission's planning staff is now using this detailed analysis to identify changes to CMP management area boundaries in the interest of greater protection of ten large, high-integrity areas currently designated for growth. PPA has been very involved in submitting information and proposals as part of this process, and we support the changes the Commission staff is currently proposing. Unfortunately, many ratable-chasing municipalities are opposing the changes, and some Commissioners have attacked the scientific validity of the Ecological Integrity Assessment as a way to stall this effort. It is not clear whether the Commission is going to have the will to carry out this very important initiative.



Pinelands Water Quality Suffering

This is the findings of an independent study by the William J. Hughes Center for Public Policy at Richard Stockton College. The draft report titled, *Challenges for the Pinelands Regional Growth Area: Development and Redevelopment and Their Impacts on Water Quality*, points out that Pinelands Commission policies to protect water quality in the Regional Growth Areas are not working:

"Water quality is suffering because of development policies in the Regional Growth Areas. This is documented by the Pinelands Commission's own scientific studies (Zampella et. al. 2001, 2003, 2005). The Pinelands Commission's growth policies are in conflict with the New Jersey Department of Environmental Protection's water quality regulations, which forbid degradation of Pinelands waters."

Perhaps the most disturbing statement of the 44-page

report is that Commission staff has apparently accepted water quality degradation in the Regional Growth Areas as a price necessary for preserving the Forest Area and Preservation Area. The report notes that the Commission's own *White Paper on Preserving Ambient Water Quality — Policy Implications of Pinelands Commission Research Projects* shows that significant portions of the watersheds' that include growth areas will at build-out be greater than 30 percent developed land. Yet, "there are no immediate plans to prevent the inevitable degradation of water quality and loss of native biodiversity that will result." PPA took the Commission to task in our 2007 and 2008 State of the Pinelands Reports for the very same reason.

The Hughes report makes a number of recommendations including, but not limited to: maintaining 300-foot buffer zones to protect wetlands in Regional Growth Areas; allowing Pinelands Development Credits (PDCs) to be used outside the Pinelands, specifically to encourage redevelopment of underutilized sites; requiring clustering of all new development; allowing impact fees and timed growth ordinances; and requiring Best Management Practices in all new development, including minimal site clearance, low maintenance landscaping with native vegetation and non-structural stormwater management. We hope the Commission will take this report seriously, and take action to implement some of the recommendations. The complete report can be viewed at <http://intraweb.stockton.edu/eyos/page.cfm?SiteID=135&pageID=23>.



Clustering Residential Development

This year the Pinelands Commission adopted new rules to require clustering of homes in all Forest Areas and Rural Development Areas. Unfortunately, the new rules have serious defects. PPA has long advocated for mandatory clustering. Clustering means the concentration of development on smaller lots in one part of each parcel and the permanent protection of the remainder of the lot, as opposed to spreading houses, lawns, roads and driveways evenly across a parcel. Clustering can be an excellent tool for reducing forest fragmentation and saving open space. The new Pinelands rules, however, mandate bonus densities which will force more development in a given area than previously allowed. In addition, agricultural interests on the Commission hijacked the process to include both new



and preexisting agriculture on set-aside lands, allowing developers to "double-dip" by getting more units through clustering and clearing the remaining forest for commercial farming. This rule will permit forests to be replaced by clustered housing developments alongside industrial agriculture operations, which can include greenhouses, sod farms, aquaculture farms, and other uses that would destroy the forest under the guise of agriculture and degrade water quality.

The Commission approved the rules: 11 to 0

Voting for: Ashmun, Lloyd, Brown, Jackson, McIntosh, Campbell, Kennedy, Witt, Galletta, Lee, Tomasello

Pinelands Short Course

On March 7, 2009, the Commission held its 20th Annual Pinelands Short Course at Burlington County College. There were approximately 693 people who attended to learn more about the Pinelands. Since its inception the short course has provided a wonderful opportunity for people to learn more about the unique natural, historic, and cultural aspects of the Pine Barrens. This year included 24 new programs, field trips, and live musical performances throughout the day. The annual short course is something that the Commission takes great pride in, and deservedly so.

Forestry Rules

After years of delay, the Pinelands Commission agreed to publish proposed new rules to govern forestry in the Pinelands. The supposed purpose of the rules is to permit forestry that is consistent with maintaining and sustaining the Pineland's native forests, with all their natural biota and ecosystem functions. At literally the last minute, however, commercial timber cutting interests got the Commission to insert language that fundamentally negates the validity of the rules - and the Commission acceded to this change with no discussion of its real purposes or impacts. Given that these rules were supposed to be based on the long, detailed deliberations of the Commission's Forestry Advisory Committee (FAC), the eleventh-hour changes are especially galling, since the FAC expressly rejected the forestry techniques that would be approved if the rules are ultimately adopted as proposed. The changes would authorize greater use of herbicides and soil disking in pitch-pine shrub oak forests—techniques whose only purpose would

be to eliminate the shrub oak understory of this globally rare forest type in order to create a "pine plantation" of pure pine trees. Such plantation forestry has done vast damage in places like the south-eastern United States, eliminating characteristic forest flora and the wildlife that depend on the complex structure of a real forest. The Commission is now accepting public comment on the draft rules, but it should never have inserted such last-minute changes before publishing the rule proposal.

The Commission voted to publish the proposed rules: 8 to 0

Voting for: Brown, Campbell, Ficaglia, Hass, Jackson, Kennedy, Lloyd, McIntosh

Roadside Native Plants Being Obliterated

Native roadside plant communities are regularly being destroyed throughout the Pinelands, even though the Pinelands CMP contains rules designed to protect them. In some cases, native plant communities are being scraped away and replaced with alien species. In other situations, road crews have been using rich topsoil thus smothering the native plants and setting the stage for all kinds of weeds. Throughout the Pinelands, most of our road shoulders are regularly mowed during the growing season, making it impossible for wildflowers to blossom and set seed. This kind of destruction appears to have accelerated and spread in recent years but the Pinelands Commission, responding to public outcry, has recently taken an interest in addressing the problem. If the Commission follows through and enforces applicable rules, we may see reforms.

Funding for Land Acquisition

The Pinelands Commission has agreed to dedicate nearly \$2.1 million to preserve 602 acres in Camden and Ocean Counties in the Pinelands. The expenditures will come from the Pinelands Conservation Fund and will preserve land in partnership with local governments and nonprofit organizations. The funding is contingent upon the execution of a purchase contract. The funds will be used to preserve lands in Winslow Township, Camden County and properties in Ocean, Jackson, Manchester, Toms River and Lacey townships in Ocean County. These acquisitions are important since they connect adjacent properties that are already preserved.



In addition, a 10-acre property located in an environmentally-sensitive area of Medford Township has been preserved by the Rancocas Conservancy with \$100,000 from the Pinelands Conservation Fund. The New Jersey Department of Environmental Protection's Green Acres Program was also a funding partner. The parcel is located in the Medford-Evesham Sub-Regional Planning Area, and is a critical greenway corridor linking the Woodford Cedar Run Wildlife Refuge and the Rancocas Conservancy's Wurst Preserve.



Pinelands Commission Streamlining Proposal

The Commission is now actively promoting its "Public Development Streamlining Memorandum of Agreement (MOA)" authorizing the Pinelands Commission staff to approve certain development by public agencies without genuine oversight by the public and Pinelands Commission. The Commission says that these applications will receive the same review as others. But if that were true, then why do they need the streamlining process? Municipalities and counties will be allowed to quickly process public development applications without full assessment of the impacts on rare and native plant populations. PPA opposes the MOA for a number of reasons: 1) there is not adequate opportunity under this proposed process for the public to properly review and comment on these kinds of applications, 2) MOA's should only be used sparingly to accommodate an essential public purpose - not simply for the convenience of public agencies, 3) public agencies have not adequately demonstrated that they take the environmental standards of the CMP seriously, 4) experience shows that the kinds of development covered by this MOA are already causing environmental harms, and it will only get worse with even less oversight.

This streamlining impulse is misguided and is liable to get worse in time. Currently, the New Jersey Department of Transportation and the Joint Base (McGuire AFB, Fort Dix & Lakehurst Naval Air Station) have requested MOA's with the Commission to streamline activities associated with state roads, and the military base, respectively. The Commission should put the brakes on the proliferation of MOA's that allow applicants to navigate around the Pinelands rules.



Pinelands Development Credit Reforms

In early 2007 Pinelands Commission staff proposed fundamental and necessary reforms to the Pinelands Development Credit Program (PDC). However, the PDC initiative stalled during the fall of 2007 because of unresolved conflict of interest concerns for Commissioners who own PDC's, or could benefit financially from changes in the PDC program. Now that these concerns have been addressed, we hope that much needed reforms will once again move forward (see *PDC Conflict of Interest Issue Resolved* in this report). The reforms, for which PPA has long advocated, include a basic shift in the incentives the program gives builders. Currently, builders are required to buy credits when they build at a higher density, giving them an incentive to build inefficient, sprawling subdivisions. The proposed rules would make it less expensive to build at higher densities (though still within the municipality's zoning limits). The new rules would also require the purchase of credits in a wider variety of situations and in more of the Pinelands, thus increasing the preservation of land that goes with the sale and purchase of credits.



Garden State Parkway Widening

During November 2008, the Commission approved a Memorandum of Agreement (MOA) with the New Jersey Turnpike Authority that would allow the 50-mile widening project of the Garden State Parkway from Somers Point, Atlantic County to South Toms River, Ocean County. All but approximately one mile of widening will take place in the Pinelands. In addition, the project will require the construction of new parallel spans and rehabilitation of existing bridges over the Mullica and Bass Rivers, as well as widening the existing bridge over Patcong Creek.

Because this massive project will impact habitat for threatened and endangered plant and animal species, the Commission is requiring a paltry 142.76 acres of land to offset the known impacts. In addition, the Delaware Valley Regional Planning Commission (DVRPC) concluded that the project could generate secondary, growth-related impacts inconsistent with Pinelands regulations in the vicinity of Little Egg Harbor Township and Ocean Township (interchanges 58 and 69 respectively), Ocean County. DVRPC also noted that these secondary impacts would be inconsistent with the Pinelands program.



A public hearing on the MOA was held on October 15, 2008 with PPA and others giving testimony. This was all for naught since Commission staff summarily rejected all public comment as irrelevant. The Commission approved the MOA the following month.

The Commission approved the MOA: 11 to 0

Voting For: Ashmun, Campbell, Galletta, Haas, Jackson, Kennedy, Lee, Lloyd, McIntosh, Witt, Tomasello



Monroe Township - Commission Ignores CMP

In contradiction to its own rules, the Commission certified a Reexamination Report for Monroe Township that encourages bringing sewer to a Rural Development Area, something strictly prohibited by Pinelands CMP regulations. The Reexamination Report is an update to the Township's Master Plan and recommends that the Diamond Lakes community, located in a Rural Development Area of the Pinelands, be serviced with a public sewer system. PPA and residents pointed out that this is inconsistent with the CMP, and that this section should be removed from the Reexamination Report before the Commission certifies the report. The Township made a weak analogy between well water contamination in other parts of the township, and what *could* happen at Diamond Lakes if the area is not serviced with sewer. The report presents no factual information to show any public health problem actually exists. The argument is also illogical since even if there were well water contamination the solution would be to bring in city water, not sewer. The residents suspect, and we agree, that the reason sewer is being proposed is to use Diamond Lakes as an excuse to sewer a much larger area along White Horse Pike (Route 322). This is just another example of the Commission being unwilling or unable to say no to Township officials even when the action is inconsistent with the CMP.

The Commission voted to certify the reexamination report: 12 to 0

Voting For: Ashmun, Brown, Campbell, Ficcaglia, Galletta, Haas, Jackson, Kennedy, Lee, Lloyd, Tomasello, Wilson.



Sustainable Community Design

Several sections of the CMP limit or prohibit municipalities from designing communities in a sustainable manner.

The CMP currently does not promote pedestrian and environmentally friendly, mixed-use, neighborhood developments. Instead, it promotes primarily single family subdivision developments. Fortunately, the Pinelands Commission has proposed the modification of such language to help facilitate the sustainable design of communities in growth areas. The Commission has yet to vote on the proposal, but it is our hope that all the Commissioners will realize the importance of changing rules that require sprawling development, to rules that will permit and incentivize more compact and sustainable community design for the remaining land that is left in the growth areas of the Pinelands.

In addition, the Commission has suggested the development of a program to better inform decision makers about the benefits of compact, interconnected mixed-use centers. Any program should include a series of presentations as well as CMP modifications on fostering sustainable community design. The CMP already has language regarding "minimum standards governing the character, location, and magnitude of development and the use of the lands in the Pinelands" in N.J.A.C. 7:50-5.21. At a time when development has slowed down, the Commission should use this opportunity to structure a better development pattern for the Pinelands.



Woodland Township Road Expansion

We don't know what the impact will be, so we'll go ahead and approve the application. That was the logic when the Commission approved a three mile road-paving project on the outskirts of Chatsworth. Over the objections of PPA, the Pinelands Commission narrowly approved the \$2 million paving of a sand road in the Preservation Area that serves 10 houses. PPA emphatically protested that the impacts of this paving had not been properly evaluated, especially with respect to possible adverse impacts to threatened and endangered species, including Barred Owl, Timber Rattlesnake, Northern Pine Snake, and protected plant species. Roads are well documented hazards to wildlife, and paved roads are undoubtedly more hazardous than unpaved roads. For one thing, paved roads are more attractive to snakes that are drawn to bask on the warmer surface. Additionally, paving a road triggers increased traffic and encourages motorists to drive faster.

While admitting that the paving can be expected to kill more



snakes than the unpaved road, the Commission staff argued that repaving complies with the CMP's threatened and endangered species protection because no one had produced a scientific study to show how much greater an impact on snakes could be expected from a paved as opposed to an unpaved road. The burden of proof, therefore, was placed on the public to prove a violation of the CMP, as opposed to the applicant to demonstrate compliance with the CMP. This approach to finding compliance violates the terms of the CMP and the Commission's long-established practice. We worry what it portends for the future.

The Commission voted for the road expansion: 8 to 3

Voting For: Campbell, Jackson, Witt, Kennedy, Galletta, Lee, Tomasello, Haas

Voting Against: Ashmun, Ficaglia, Lloyd

Threatened & Endangered Plants - Regulatory Limbo

The CMP's current list of protected plant species is out of date and incomplete since it doesn't include all state-listed rare plant species as determined by the New Jersey Natural Heritage Program. Since the inception of the New Jersey Natural Heritage Program, the Pinelands Commission has declined to recognize the ranks of rarity the Heritage Program assigns to plant species. This ranking system represents an official process of the State of New Jersey, instituted in order to set conservation priorities, yet the Commission has stubbornly refused to protect all the species that ought to be protected. The Natural Heritage Program has accumulated the best available information on the status of rare plants in New Jersey. Though the state does not have an official "threatened" status for plants, the Heritage Program ranks of S2 and S3 are applied to species that deserve conservation measures so that they do not slip toward the status of "endangered," which actually means near extinction in the state. A few years ago, the Commission incorporated the state's "endangered" category of plants into its regulations, but, contrary to PPA's proposals, it has not protected many species that are "threatened" based on their rarity as documented by the Heritage Program.

Pinelands Commission & New Jersey Department of Environmental Protection

Native Lake Vegetation Being Ignored

An estimated 400 lakes are scattered throughout the Pinelands. Many of these lakes are home to a variety of native and rare aquatic vegetation that are often targeted for control with herbicides, lake drainings and mechanical removal. The DEP Pesticide Control Program reviews and monitors pesticide applications throughout the state. However, when it comes to lake vegetation, the DEP is not as rigorous with regards to targeted species information as with terrestrial species. As a result, threatened and endangered aquatic species are being wiped out.

In many cases the Commission does not enforce its regulations by requesting information for the species targeted for control. PPA has requested that both DEP and Pinelands Commission enforce the application requirements that require species-specific information for targeted species. To add insult to injury, the Commission has proposed approving some repeat pesticide applications for 10-years to cut back on staff time required to rubber-stamp the applications...*approved*. At this rate, native lake vegetation will eventually be wiped out in many Pinelands lakes.

New Jersey Department of Environmental Protection

Jackson Valley Sewer Extension

In contradiction of its regulations and policies, the Department of Environmental Protection has granted a Treatment Works Approval (TWA) to the Jackson Township Municipal Utilities Authority authorizing the extension of sewers for the proposed Jackson Valley development in Ocean County. PPA and the American Littoral Society have filed an appeal challenging the TWA on the grounds that it violates the state's Water Quality Management Planning regulations and Surface Water Quality Standards, as well as the National Parks and Recreation Act of 1978 and Pinelands Comprehensive Management Plan. The area of the proposed project is in the headwaters of the Toms River and adjacent to the Colliers Mills Wildlife Management Area. Just last year the streams associated with the Toms River, including those on the site of the proposed 962 unit development



received Category One protections, the highest level of protection by the Department of Environmental Protection. The area is also demonstrated habitat for threatened and endangered species. This area is inside the Pinelands National Reserve and within the Pinelands CMP, but inexplicably was left outside the boundary of the Pinelands Commission's regulatory jurisdiction - for reasons no one seems able to remember or reconstruct. So we rely on DEP and the municipality to implement the CMP here, and so far both have failed to do so.



Statewide Water Supply Master Plan Update

Any day now! That has been the mantra of the New Jersey Department of Environmental Protection over the past few years whenever asked about release of the next statewide water supply master plan. Since the shallow groundwater aquifer provides approximately 90 percent of flow to streams and rivers in the Pinelands, how we use this aquifer has a direct bearing on the aquatic environment and associated wetlands.

New Jersey's waters belong to its residents, held in trust and managed for them by the State. The New Jersey Statewide Water Supply Plan is a policy and strategy document that sets forth major initiatives required to ensure that sufficient quantities of water supplies are available to all parts of the state. The last time that the Plan was updated was during 1996. The first "stakeholders" meeting or Public Advisory Committee for the new water supply master plan meeting was held during November 2002. Some sub-committee meetings were held in 2003, but none of the committees have been convened since that time. The only tangible output has been a draft progress report released in April 2005.

The water levels in almost all of the aquifers beneath the Pinelands are declining at an alarming rate. Considering all of the new housing developments and water allocation requests since 1996, a new and rigorous water supply plan is long overdue. As we deplete the finite number of deeper aquifers, the pressure to use the shallow aquifer will only increase. As a result, how we manage, or mismanage all of our aquifers is a Pinelands issue. The Department of Environmental Protection needs to move this effort forward, and not wait until the next drought when they will be forced to go into crisis mode.

State Ethics Commission



PDC Conflict of Interest Issue Resolved

The State Ethics Commission has ruled that Pinelands Commission members who own property that qualifies for Pinelands Development Credits (PDC's) cannot vote on making changes to the PDC program since they could gain financially through their vote. This was PPA's contention all along. The ethics question surfaced in 2007 during discussions to revise the PDC program, which allows for property owners in areas with the strictest Pinelands regulations to be financially compensated for selling development rights. Property owners in these areas are assigned credits that they can sell to the Pinelands Development Credit Bank or to builders through a process that gives these property owners money and permanently deed restricts their land against development even if the Pinelands laws are changed in the future. The Farm Bureau argued that farmers serving on the Commission should not be subject to ordinary conflict of interest rules that apply to other government officials. PPA submitted detailed comments to the Ethics Commission arguing that the public trust in the Pinelands Commission required Commissioners be held to the same, universal conflict of interest standards that ensure Commission actions are not questioned because of the personal financial interests of individual Commissioners. The Ethics Commission agreed, and in an 18-page letter to the Pinelands Commission ruled that commissioners with PDC's should not vote on PDC related issues. This issue is not entirely resolved however. Senator Jeff Van Drew has sponsored legislation that would exempt Commissioners from any conflict of interest requirement when voting on any amendment to the CMP, no matter how much the proposed change might benefit or harm their personal interests (See *Who Needs Ethics in the Pinelands* in this report).

State Legislature



Who Needs Ethics in the Pinelands!

This seems to be the attitude of State Senator Van Drew who has sponsored legislation (S2822) to negate all ethical constraints on a Pinelands Commissioner when the Commission considers changes to the Comprehensive Management Plan. This ill-conceived bill is designed to



undo the recent State Ethics Commission ruling on PDC's described above by amending the Pinelands Protection Act. If the bill became law, Pinelands Commissioners with a direct or indirect financial interest in a pending change, such as proposed reforms of the PDC program, would be allowed to vote on how much money they might stand to gain or lose by the change. The Pinelands Protection Act today clearly spells out that "No member, officer, employee, or agent of the commission shall take any official action on any matter in which he has a direct or indirect financial interest..." This measure of simple justice must not be thrown out to benefit individuals who want to serve on the Pinelands Commission and vote on matters affecting their personal finances.



Open Space Funding

Since the Governor failed to take a leadership role in obtaining a stable source of funding for open space preservation, the State Legislature decided it needed to do something. Legislation has been sponsored (A3901/S1858) that would place a three year, \$600 million bond issue (recently modified to \$400 million) on this November's ballot. During 2007 the voters of the state approved the "Green Acres, Farmland, Blue Acres and Historic Preservation Bond Act, as a stop-gap measure for funding because the Garden State Preservation Trust Fund was almost exhausted. The proposed legislation would help to protect open space, water supply, farmland and historic sites. Since 1961 New Jersey voters have approved all 12 statewide ballot measures for open space.



Off-Road Vehicle Legislation

Proposed off-road vehicle (ORV) legislation-A823/S2005 would protect existing open space, help protect the safety of law enforcement officers and riders, and support lawful recreation. This legislation has been a key focus for PPA during the past few years. Illegal off-road vehicle use in New Jersey has damaged more than 350,000 acres and costs the State and its residents over three million dollars yearly in natural resource damages, farm crop damages, enforcement, and emergency transport for accidents and injuries. A823/S2055 requires mandatory registration and tagging of new and existing off-road vehicles. By tagging vehicles, the legislation would enable police and conservation officers to identify offenders without having to physically apprehend them - a process that has proven danger-

ous, even deadly, for riders and officers in past incidents. Ten dollars of the registration fee is to be deposited into an ORV Recreation Fund which will be administered by DEP for the creation and maintenance of parks. The bill also increases the fines for illegal riders and creates stricter penalties for repeat offenders.

With the state budget continuing to dwindle, A823/S2055 makes those responsible for causing the damages pay, and should deter people from riding illegally on private and public land without permission.

The bill received full approval by the Assembly Transportation Committee and the Senate Environment Committee. Sponsors of the bills include Assemblymen Gusciora, Moriarty, Wisniewski, Ramos, Rodriquez and Senator Gordon and Stack.

County Government



Ocean County Roadside Littering

As one travels along West Veterans Highway in Jackson Township, Ocean County, it's hard not to notice the uncharacteristic dark patches of fill-type soil that extends intermittently for over two miles on both sides of the county road. And on a sunny day, the soil even flickers and reflects light. Upon closer inspection, the answer is apparent. The dark soil contains, plastic, wire, glass, white Styrofoam, and even a shoe was noted. This is the work of the Ocean County Road Department. For some unknown reason the county decided to place this fill containing various types of litter along a public road within the Pinelands National Reserve, and in this example, adjacent to the Colliers Mills Wildlife Management Area. If the intent was to "enhance" the road shoulder for safety reasons, it actually made matters worse since the fill is soft and pliable, and now contains ruts. In addition, non-characteristic (invasive) plants and grasses have started to thrive in this richer type of soil (See *Roadside Native Plants Being Obliterated* in this report). In one place, this trash-filled soil was placed in front of county owned property, and a sign that reads, *This Land Preserved by the Citizens of Ocean County*—the irony! It's hard to justify and understand why a county government would knowingly litter the very Pinelands road that it is responsible to keep clean.



Ocean County Destroys Globally Rare Roadside Plants

In disregard of the distinctive Pine Barrens vegetation, the Ocean County Roads Department destroyed most of a Pine Barrens Gentian population on the shoulder of Dover Road near Dover Forge. Late in 2008, workers buried the plants under rich soil that contained municipal compost and trash. When citizens objected, they raked up and collected most of that material, and then came back and re-buried the plants under a different kind of soil mixture, which they claimed was "Pinelands Approved." (There is no such thing.) The new soil mixture contains less trash, but has crushed asphalt and concrete. No soil tests were done to determine the pH or nutrients in this new mix. This time, due to prodding by PPA and others, the Pinelands Commission issued a letter of violation to the county, but made the unwarranted declaration that if the county would rake the new soil back somewhat from the Gentian location, the matter would be resolved. However, from the fall of 2008 right up to the present time, the county has done nothing to address the possibility of this loose soil eroding back toward the Gentians. Now, large quantities of the new soil mixture, full of all kinds of non-native weeds, which are bound to out-compete the Gentians, have washed down and is permanently intermingled with them. In other cases, the county has directed contractors to put lime, fertilizer and non-native turf grasses on top of flat stretches of sugar sand as a soil conservation measure. This cavalier approach to managing roads through Pine Barrens habitats cannot be justified either on the basis of safety or cost-savings. Indeed, it represents a wholly unnecessary waste of public funds.

Local Government



Southern Medford/Evesham Subregional Conservation Plan

It is almost four years since the Pinelands Commission, Department of Environmental Protection and, Medford and Evesham Townships completed an innovative conservation plan for the exceptional natural resources of this area. Medford has incorporated the changes into its zoning rules and master plan, but Evesham has done nothing to implement the plan through the necessary local zoning ordinances.



Egg Harbor Township - Criticism Disingenuous

In what can only be described as a Machiavellian move, some officials of Egg Harbor Township are now publically opposing Pinelands Commission management areas changes that will reduce their growth potential, something that they have been requesting the Commission to do for almost thirty years. ***This just defies logic!*** A February 25th Press of Atlantic City editorial on the proposed management area changes for Atlantic County summed it up perfectly, "A few of these officials have rarely encountered a local land-use problem that they couldn't turn into a tirade against the pinelands plan and the commission." We agree!


The Commission is proposing to change 1,179 acres from Regional Growth Area (RGA) to Forest Area (FA). Currently, 3.5 dwelling units per acre are allowed in the RGA of the township. The change to Forest Area would limit future development to a greatly reduced average density of no more than 1 dwelling unit per 15.8 acres. In addition, there are no areas proposed for higher densities. ***What are they thinking!*** The criticism of the Commission by some township officials for allowing too much growth has now been proven to be both unfounded and outright disingenuous.



Medford Township - Destruction of Green Acres Parklands

Medford Township has violated its agreement with the state's Green Acres program by accepting taxpayer monies for open space and then allowing a private contracting business to establish a construction yard on the site.

In 2007, the Medford Township governing body leased out a portion of the Bob Meyer Memorial Park, land encumbered by Green Acres, to Mount Construction of Berlin, apparently in exchange for that business performing various construction and improvement projects for the municipality. There are a few problems here. The first is that Medford never asked for or received Pinelands permits, and even constructed a stormwater basin in violation of Pinelands rules. The second problem is that this use of parkland as a commercial construction staging area is a violation of State Green Acres rules, and is considered a "diversion" of public open space. In other words, you cannot accept State Green Acres funding that is supposed to be



used for open space purposes, and then convert the area into a very un-natural commercial site, destroying its open space values and helping a private company make money using preserved public lands. So far, the township has not agreed to fix the problem.

Federal Government

Solid Waste Rail Facilities Grinds to a Halt

Legislation authored by U.S. Senator Frank R. Lautenberg and signed into law during October 2008 now gives states more power to regulate solid waste processing facilities along rail lines. The bill, the *Clean Railroads Act of 2008*, closes a federal loophole that prohibited states from enforcing environmental, health and safety regulations at rail sites. Under the Act, the creation of a rail solid waste transfer site in environmentally-sensitive areas such as the Pinelands National Reserve is now prohibited. This law puts an end to the possibility of rail transfer facilities in Winslow and Mullica Townships. The legislation was cosponsored by Senator Robert Menendez, and championed in the House of Representatives by Representative Frank Pallone.

U.S. Department of Defense

The New Jersey Air National Guard in partnership with the New Jersey Conservation Foundation (NJCF), have secured \$500,000 in grant funding to preserve additional land around the Warren Grove range. The funding came from the U.S. Department of Defense's Readiness and Environmental Preparedness Initiative (REPI) grant program. One of the goals of the REPI program is to increase buffers of preserved land around military installations nationwide.

Schools

Weymouth Township Elementary School

The Weymouth Township Elementary School received a \$35,000 technology grant that it used to study and document the flora and fauna of the New Jersey Conservation Foundation's 300- acre Dorothy Preserve. Wildlife photographer Michael Hogan and other professionals helped with the field investigations.

Non-Governmental Organizations

Save Barnegat Bay - Fertilizer Ordinance

The non-profit organization Save Barnegat Bay has prepared and is promoting an ordinance to control the use of lawn fertilizers in Ocean County. Scientists have identified excessive nitrogen entering the bay from streams and rivers as fueling algal blooms and altering the bay's basic ecosystem. Much of this nitrogen is derived from lawn fertilizers entering the shallow groundwater system and streams. The goal of the proposed ordinance is to have an Ocean County-wide standard to prevent the excessive use of nitrogen-rich fertilizers.

Pine Barrens Hall of Fame

Individuals Who Have Made a Difference

The Pine Barrens Hall of Fame was established by PPA in 2004 to honor individuals who through their dedication and hard work have made a lasting contribution to the Pinelands. On November 8, 2008 over one hundred people gathered at Braddock's Tavern in Medford Township to honor three scientists at the 5th annual awards ceremony and banquet. They were **Dr. David Fairbrothers**, **Dr. Richard Forman** and **Dr. Robert Zampella**. All contributed to the development of the original Comprehensive Management Plan (CMP) through their scientific work and knowledge of Pine Barrens ecology.

Also recognized in 2008 were two outstanding educators, **Julie Akers** and **Phil Levy**, both of whom are committed to environmental education and the Pinelands. Without their dedication, we could not count on having a new generation of knowledgeable, committed conservationists to carry on the cause of protecting Pinelands and our global environment.

"In the final analysis, it is the citizens who will decide the ultimate fate of the pine barrens. It is our responsibility to pass this wilderness heritage on, in its natural state, to our heirs."

Howard Boyd,
A Field Guide to the Pine Barrens of New Jersey

The New Jersey Pinelands

The New Jersey Pinelands is home to the most extensive surviving forest on the Eastern Seaboard between Maine and Florida. The Pinelands is a region of 1.1 million acres defined by federal and state legislation enacted to protect the unique ecological values of the Pine Barrens ecosystem by controlling development on a regional basis. The Pinelands landscape consists of generally flat, sandy and acidic soils deposited over millions of years of rising and falling sea levels. Early European settlers gave this region the derogatory name of "Pine Barrens" not because the region is barren of life, but simply because its acidic, sandy soils are an unfriendly medium for crops like wheat and vegetables. Indeed, the New Jersey Pine Barrens is a lush ecosystem that provides a haven for a growing number of rare species adapted to its unusual conditions. At least half of the Pinelands are privately owned - that is, not protected as state and local nature preserves.

The realization that the Pine Barrens is underlain by one of the continent's largest fresh water aquifers and that the Pines also serve as home for many rare and endangered plants and animals, led to passage of federal and state legislation to protect the area's natural resources. Section 502 of the National Parks and Recreation Act of 1978 created the Pinelands National Reserve. New Jersey adopted the Pinelands Protection Act the following year. This Act implemented the federal statute, created the Pinelands Commission, and directed the Commission to adopt a Comprehensive Management Plan (CMP) to manage development throughout the region.

The Comprehensive Management Plan covers the 1.1 million acres of the Pinelands National Reserve. In addition to writing and amending the CMP, the Pinelands Commission applies the CMP by reviewing all development applications in 936,000 acres of the National Reserve. The New Jersey Department of Environmental Protection (DEP) implements the CMP in most of the balance of the Pinelands National Reserve through New Jersey's coastal zone management rules.

Even in the Pinelands, many residents do not know that all new development here is controlled - and in most areas severely limited - by the nation's most innovative regional land use plan. The CMP is designed to preserve the pristine conditions found within the core of the Pinelands while accommodating increased human use and a regulated amount of growth around the region's periphery. The Pinelands Commission's staff of approximately 40 professionals is directed by 15 Commissioners, individuals appointed as follows: seven by the Governor with approval of the state Senate, seven by the counties in the Pinelands, and one by the U.S. Secretary of the Interior.

The DEP also plays key roles in protecting the Pinelands environment. In addition to its job of implementing the CMP in the coastal zone, the DEP regulates the distribution of fresh water from the aquifers that lie beneath the Pinelands, and it is the state agency that also controls the filling or dredging of wetlands here as elsewhere in the state.

The Pineland Commission and DEP's accomplishments in the Pinelands are many and truly remarkable. They are, however, government agencies susceptible to changing political currents. There is no guarantee that the Pinelands Commissioners' enforcement of the CMP always furthers its statutory mandate "to preserve, protect, and enhance" the Pinelands. There is no guarantee that DEP will consistently protect the water resources it controls. Therefore, it is up to the citizens of the state to monitor, engage, criticize and support these agencies as they do their work. Ultimately, only the demands of the public will guarantee the survival of the Pine Barrens.

Pinelands Land Capability Map

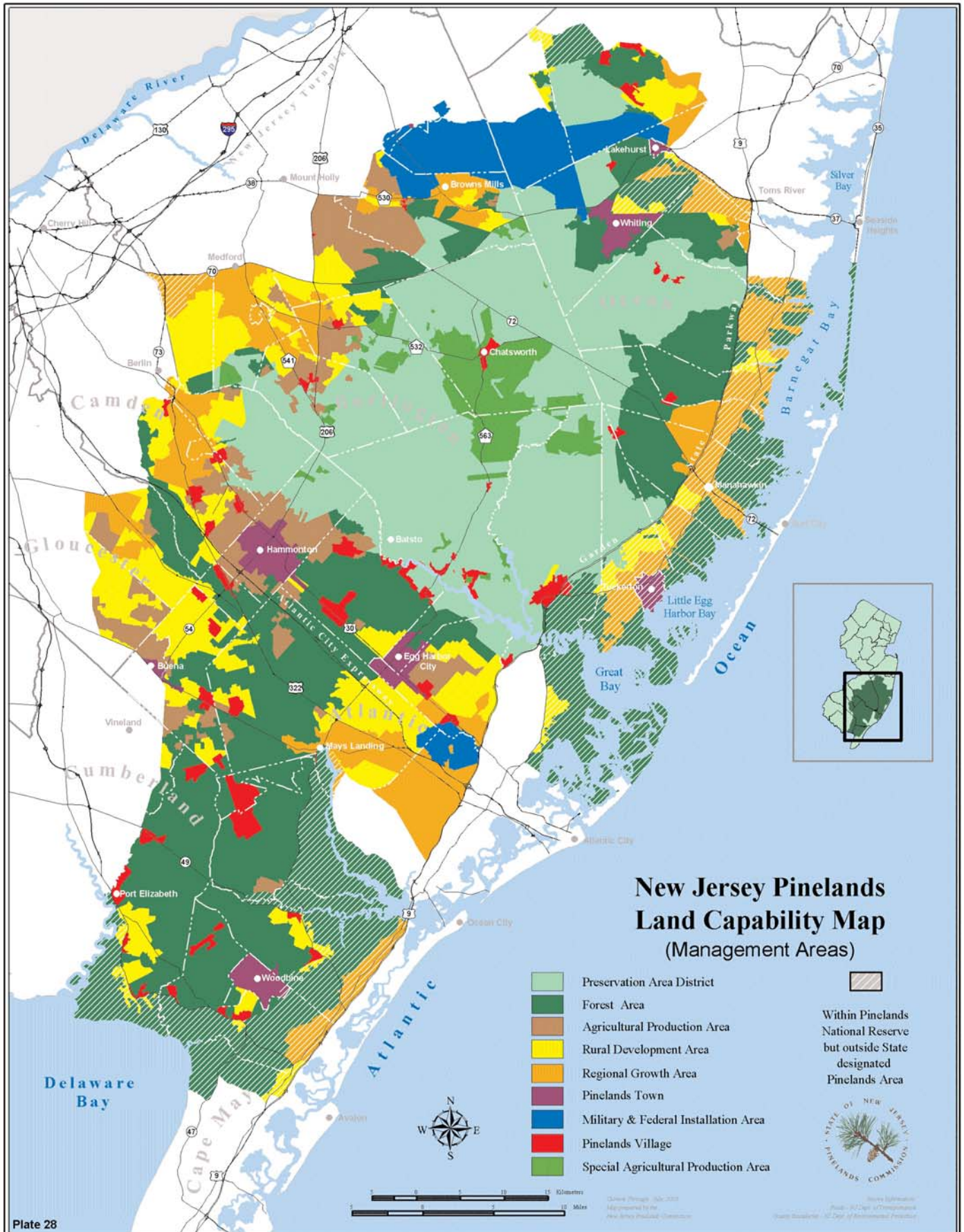


Plate 28

The Pinelands Preservation Alliance

Founded in 1989, the Pinelands Preservation Alliance (PPA) is a nonprofit environmental organization dedicated to preservation of the New Jersey Pinelands. This year we are celebrating our 20th anniversary. Our members include concerned citizens, businesses, and environmentalists who believe the actions and decisions of the Pinelands Commission and other government agencies should be rigorously monitored, missteps critiqued, and good steps supported.

PPA's primary objectives are three-fold: First, we monitor issues coming before the Pinelands Commission, New Jersey Department of Environmental Protection, local government, courts, and monitor the state's lawmaking bodies when legislation affecting the Pinelands is introduced. PPA supports the Comprehensive Management Plan (CMP) and acts to insure that the CMP is observed, enforced and improved. Second, we build grass-roots support for conservation and work with citizens to help them add their voices to the debates over conservation and preservation. Third, PPA educates. Our staff and volunteers travel throughout New Jersey and neighboring states providing education on the Pinelands through presentations, workshops and panel discussions. PPA provides numerous field trips for the public and school groups, and we hold intensive teacher-training programs to help educators incorporate the Pinelands into their teaching.

PPA welcomes inquiries regarding membership and is happy to provide information and suggestions to those wishing to visit the Pinelands. We also invite people to visit our 250 year-old headquarters at the Bishop Farmstead in Southampton, where you will find an excellent visitors' center that can serve as your gateway to exploring the Pinelands. Basic membership to PPA includes a yearly subscription to our newsletter, a discount on PPA field trips and merchandise; and the knowledge that your contributions are used to help us preserve, protect and enhance our state's greatest natural resource.

For more information, contact PPA at Bishop Farmstead, 17 Pemberton Road, Southampton, NJ 08088, phone 609-859-8860, fax 609-859-8804 or e-mail at ppa@pinelandsalliance.org. Visit our web site at www.pinelandsalliance.org.

