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## Pinelands Preservation Alliance

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PPA  
1989 - 2009

Celebrating 20 years of  
Pinelands Preservation

### Pinelands Commission Meeting April 9, 2010

*Provided by Russell Juelg*

We appreciate the opportunity to continue our dialogue with the Commission about the native vegetation issues. And, again, we do enthusiastically congratulate the Commission for its recent work directed toward reforming roadside vegetation management within the context of *maintenance practices*. However, we want to recommend that the Commission make similar progress toward protection of native vegetation in the context of *project review*. We certainly understand the Commission's reluctance to hastily change its established habits, but it is our carefully considered view that some of these habits are at odds with the regulations, and thus need to be changed.

Also, we will continue to remind the Commission that it *needs to revise the CMP* to correct a few fundamental flaws and introduce some improvements in the Vegetation Section. (We don't think that the impediments created by the governor really should prevent the Commission from drafting new language. These impediments are, after all, quite recent and, by all evidence, of only temporary duration.)

Consequently, we are providing, for the public record, and for the sake of easy reference of the Commission, the entire Vegetation Section of the CMP, with PPA comments inserted within the text. Within our comments, we pose a few specific questions (numbered), and we hope to receive your reply at your earliest convenience.

#### **CMP**

#### **PART II-VEGETATION**

#### **7:50-6.21 Purpose**

**Vegetation represents the most visible element of the essential character of the Pinelands and constitutes the fundamental structure of wildlife habitats, including the habitats of several species which are designated as threatened or endangered.** The Pinelands landscape is comprised of a mosaic of plant associations which reflects the interaction of water, soil, topography, fire and human influence. **The continued integrity of the Pinelands vegetation is essential to the preservation and maintenance of the essential character of the Pinelands. Therefore, vegetation clearing**

**should be limited** to authorized forestry activities, fire hazard mitigation, preparation of agricultural fields, and the minimum clearing necessary to permit construction of development or land use authorized by this Plan. **In addition, 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 Comment: This "Purpose" paragraph clearly is intended to set the tone for what is to follow. The framers of the CMP evidently thought that protecting the native vegetation was a high priority. We have been told that it would be legally hazardous for the Commission to directly apply these statements, in the "Purpose" paragraph, to development application review, because they are merely expressed in the "Purpose" paragraph, rather than in the specific provisions that follow. It may very well be that the Commission is justified in taking a fastidious approach on this technical point, considering the powers possessed by legal experts employed by politically well-connected developers who evidently find it troublesome to conform to these constraints, but, even so, two points are to be made. First, even if the "Purpose" paragraph, here, cannot safely be applied directly, it certainly ought to color the way the Commission *interprets* the specific provisions. (1) Does the Commission agree? Secondly, there are some specific provisions within the Vegetation Section that do indeed reiterate what is stated in the "Purpose" paragraph.

#### 7:50-6.22 Vegetation Management Program

In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal master plan or land use ordinance must provide for the protection of the integrity of Pinelands vegetation. It is not necessary that a municipal program incorporate the literal terms of the program set out in this Part; rather, a municipality may adopt alternative and additional techniques which will achieve equivalent protection of Pinelands vegetation as would be achieved under the provisions of this Part.

#### 7:50-6.23 Clearing and soil disturbance

**(a) All clearing and soil disturbance activities, whether or not an application for development is required pursuant to N.J.A.C. 7:50-4, shall be limited to that which is necessary to accommodate an activity, use or structure which is permitted by this Plan.**

\*PPA Comment: This echoes quite clearly what was stated in the "Purpose" paragraph with respect to clearing. So, (2) how does the Commission apply this regulation? It appears to be routinely ignored in recent development. Also, notice that this applies "**whether or not an application for development is required....**" That being the case, when Ocean County, for example, destroyed miles and miles of native roadside vegetation under the guise of road maintenance, on Rt. 539, (3) we would have to interpret that as a violation, wouldn't we? Re-paving a road does not require that you scrape all the native vegetation from the road shoulder and replace it with non-native vegetation. So (4) does the Commission plan to cite Ocean County for this violation, and require restoration of the natural resource?

(b) Where practical, all clearing and soil disturbance activities associated with an activity, use or structure other than agriculture, forestry and resource extraction, shall:

1. Avoid wooded areas, including New Jersey's Record Trees as published by the New Jersey Department of Environmental Protection in 1991 and periodically updated; and
2. Revegetate or landscape areas temporarily cleared or disturbed during development activities.

## **7:50-6.24 Revegetation and landscaping plans**

(a) Except for forestry and resource extraction, each application for public development which requires Pinelands Commission approval pursuant to N.J.A.C. 7:50-4.51 through 4.58 shall reflect revegetation and landscaping measures to meet the standards of (c) below.

(b) Except for forestry and resource extraction, each application for major development and any other application where a municipality otherwise requires a landscaping plan shall contain a landscaping or revegetation plan in accordance with the standards of (c) below.

(c) In order to conserve water, conserve natural features and reduce pollution from the use of fertilizers, pesticides and other soil supplements, the following elements shall be incorporated into all revegetation or landscaping plans prepared pursuant to (a) and (b) above:

1. The limits of clearing shall be identified;

**2. Existing vegetation**, including New Jersey's Record Trees as published by the New Jersey Department of Environmental Protection in 1991 and periodically updated, **shall be incorporated into the landscape design where practical**;

\*PPA Comment: This reiterates what was stated in the "Purpose" section with respect to clearing. So, (5) how does the Commission apply this regulation?

**3. Permanent lawn or turf areas shall be limited to those specifically intended for active human use such as play fields, golf courses and lawns associated with a residence or other principal non-residential use.**

\*PPA Comment: This reiterates what was stated in the "Purpose" paragraph, where it says, "**landscaping materials employed in the Pinelands must be compatible with native vegetation** in order to preserve the visual and ecological character of the Pinelands." Lawns and turf are obviously incompatible with native vegetation, because they are composed of non-native species that require soil amendments. Turf obliterates native Pinelands vegetation. Lime and fertilizer invites non-native plant species and adversely impacts the water resources and aquatic plant and animal communities—a phenomenon thoroughly documented by the Commission's own Science staff. So, (6) how does the Commission apply this regulation? We have been told that the Commission may be in the habit of interpreting the expression "**areas...intended for active human use**" to include roadsides. We think the Commission needs to reconsider this for several reasons. First, it violates common sense. Road shoulders are clearly not *actively used* by people. Second, it runs counter to the "Purpose" of the Vegetation Section, which, as we indicated, certainly ought to at least color the way the Commission interprets provisions within the section. Third, it runs counter to the direction the Commission is committed to with respect to the roadside vegetation maintenance reforms. (7) Will the Commission adopt a common-sense interpretation of this provision?

Existing wooded areas shall not be cleared and converted to lawns except when directly associated with and adjacent to a proposed structure; and

**4. Shrubs and trees authorized by N.J.A.C. 7:50-6.25 shall be used for revegetation or landscaping purposes.**

\*PPA Comment: This echoes, with remarkable specificity, what was stated in the "Purpose" paragraph. In fact, since the diversity of commercially available native Pinelands grasses and other herbaceous plants is somewhat restricted, it actually makes very good sense to require that only these trees and shrubs be used. So, (8) how does the Commission apply this regulation? We have been told that the Commission does not believe that the writers of the CMP intended to say what this sentence obviously says. (9) Isn't that a dangerously arbitrary way to approach interpretation of your regulations? (10) How would you justify making such assumptions? (11) Are there ANY other provisions of the CMP that the Commission disregards on the assumption that the regulation in question was erroneously drafted?

Other shrubs and trees may be used in the following circumstances:

- i. When the parcel to be developed or its environs contain a predominance of shrubs and tree species not authorized by N.J.A.C. 7:50-6.25;
- ii. For limited ornamental purposes around buildings and other structures; or
- iii. When limited use of other shrubs or tree species is required for proper screening or buffering.

#### 7:50-6.25 Native shrubs and trees

(a) Native shrubs and trees include but are not necessarily limited to:

1. Pitch pine;
2. Short-leaf pine;
3. Black oak;
4. Southern red oak;
5. White oak;
6. Blackjack oak;
7. Scrub oak;
8. Post oak;
9. Chestnut oak;
10. Scarlet oak;
11. Black huckleberry;
12. Dangleberry;
13. Sheep laurel;
14. American holly;
15. Lowbush blueberry;
16. Mountain laurel;
17. Virginia pine;
18. Atlantic white cedar;
19. Red cedar;
20. Grey birch;
21. Sweetbay magnolia;
22. Sassafras;
23. Trident red maple;
24. Blackgum;
25. Red chokeberry;
26. Black chokeberry;
27. Shadbush;
28. Bayberry;
29. Sweetfern;
30. Inkberry;
31. Winterberry;
32. Sweet pepperbush;
33. Arrowwood;
34. Swamp azalea;
35. Sand myrtle;
36. Swamp leucothoe;
37. Staggerbush;
38. Teaberry;
39. Trailing arbutus;
40. Bearberry;
41. Dwarf huckleberry;
42. Highbush blueberry;
43. Black highbush blueberry;
44. Cranberry; and
45. Rhododendron maximum.

## **7:50-6.26 Landscaping and revegetation guidelines**

### **(a) Municipalities *may wish to consider* the following measures when formulating landscaping or revegetation requirements:**

1. Requiring vegetation removal permits as a means to further ensure that unnecessary disturbance of existing vegetation is avoided and that proper revegetation is undertaken, when necessary. These permits can be required only when a construction permit or other municipal approval is required or can be independently required as a prerequisite to the removal of a specified amount of vegetation.
2. Requiring landscaping permits as a prerequisite to any substantial landscaping activities. These can be required only when a construction permit or other municipal approval is required or can be independently required even if no other municipal permit or approval is required.
3. Listing the types of other shrubs and trees which may be used when the conditions of N.J.A.C. 7:50-6.24(c)3 are met. These other shrubs and trees may be listed on the basis of their adaptation to droughty, nutrient poor conditions.

#### **4. Identifying preferred types of grasses that are tolerant of droughty, nutrient poor conditions.**

##### ***Appropriate types include:***

- i. Fescue species;**
- ii. Smooth bromegrass;**
- iii. Reed canary grass;**
- iv. Little bluestem;**
- v. Deertongue;**
- vi. Red top; and**
- vii. Switch grass.**

\*PPA Comment: It has been at least five years since PPA first pointed out to the Commission that only two of these grasses are native to the Pinelands. Of the five non-natives, at least two of them are considered by local experts to be invasive. (12) If the majority of the grasses listed here are non-native, and some are invasive, why would you continue to recommend them as "preferred types" or "appropriate types"? To this day, we have not received an answer to what we think are very fair questions: (13) How did these grasses come to be recommended in the CMP? (14) Will the Commission stop recommending them? This is a provision that needs to be revised.

#### **5. Establishing precise standards for lawn areas, such as:**

- i. Limiting their size to a certain percentage of the total area to be landscaped or a specified square footage; and**
- ii. Prohibiting small, isolated grass areas and lawn strips.**

\*PPA Comment: Although this provision is within the non-compulsory section, it again highlights the fact that the framers of the CMP took a dim view of lawns. And this dim view was no doubt stimulated by the realization that lawns obliterate native vegetation and have long-term negative effects on the water resources and downstream aquatic communities. Lawns are undoubtedly a major source of nutrient enrichment—a fatal kind of pollution of Pinelands streams and rivers, as documented by the Pinelands Commission's own Science staff. Unfortunately, over the years, average lawn sizes have increased, rather than decreased. (15) Does the Commission consider this a problem that it ought to be addressing?

6. Requiring that planting beds be covered with at least two inches of mulch.
7. Requiring additional shade trees to reduce evaporation rates.
8. Encouraging water conserving irrigation methods in one or more of the following ways:
  - i. Use of non-potable (for example, retained stormwater) water for irrigation purposes;
  - ii. Use of moisture sensing devices to regulate automatic irrigation systems;
  - iii. Use of manually operated irrigation systems;
  - iv. Use of drip irrigation systems; or
  - v. Discourage the use of permanently installed irrigation systems except when necessary to maintain heavily used recreation areas.

## **7:50-6.27 Development prohibited in the vicinity of threatened or endangered plants**

### **(a) 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:**

1. Sensitive-joint vetch (*Aeschynomene virginica*).
2. Red milkweed (*Asclepias rubra*).
3. Silvery aster (*Symphotrichum concolor*, formerly *Aster concolor*).
4. Pickering's morning glory (*Stylisma pickeringii* var. *pickeringii*, formerly *Breweria pickeringii*).
5. Pine Barrens reedgrass (*Calamovilfa brevipilis*).
6. Barratt's sedge (*Carex barrattii*).
7. Sickle-leaved golden aster (*Pityopsis falcata*, formerly *Chrysopsis falcata*).
8. Spreading pogonia (*Cleistes divaricata*).
9. Broom crowberry (*Corema conradii*).
10. Rose-colored tickseed (*Coreopsis rosea*).
11. Rushfoil (*Croton willdenowii*, formerly *Crotonopsis elliptica*).
12. Stiff tick trefoil (*Desmodium strictum*).
13. Knotted spike rush (*Eleocharis equisetoides*).
14. Resinous boneset (*Eupatorium resinsum*).
15. Pine Barrens gentian (*Gentiana autumnalis*).
16. Yellow-fringed orchid (*Platanthera ciliaris*, formerly *Habenaria ciliaris*).
17. Crested yellow orchid (*Platanthera cristata*, formerly *Habenaria cristata*).
18. Southern yellow orchid (*Platanthera integra*, formerly *Habenaria integra*).
19. Swamp pink (*Helonias bullata*).
20. New Jersey rush (*Juncus caesariensis*).
21. Lily-leaved twayblade (*Liparis loeselii*).
22. Loesel's twayblade (*Liparis loeselii*).
23. Southern twayblade (*Listera australis*).
24. Boykin's lobelia (*Lobelia boykinii*).
25. Canby's lobelia (*Lobelia canbyi*).
26. Hairy ludwigia (*Ludwigia hirtella*).
27. Linear-leaved ludwigia (*Ludwigia linearis*).
28. Climbing fern (*Lygodium palmatum*).
29. Torrey's muhly (*Muhlenbergia torreyana*).
30. Yellow asphodel (*Narthecium americanum*).
31. Floating heart (*Nymphoides cordata*).
32. Narrow panic grass (*Panicum hemitomon*).
33. Hirst's panic grass (*Dichantherium hirstii*, formerly *Panicum hirstii*).
34. American mistletoe (*Phoradendron leucarpum*, formerly *P. flavescens*).
35. Maryland milkwort (*Polygala mariana*).
36. Slender rattlesnake root (*Prenanthes autumnalis*).
37. Awned meadow beauty (*Rhexia aristosa*).
38. Capitata beakrush (*Rhynchospora cephalantha*).
39. Slender beaked rush (*Rhynchospora inundata*).
40. Knieskern's beaked rush (*Rhynchospora knieskernii*).
41. Curly grass fern (*Schizaea pusilla*).
42. Chaffseed (*Schwalbea americana*).
43. Long's bulrush (*Scirpus longii*).
44. Slender nut rush (*Scleria minor*).
45. Reticulated nut rush (*Scleria reticularis*).
46. Sclerolepis (*Sclerolepis uniflora*).
47. Wand-like goldenrod (*Solidago stricta*).
48. Little ladies tresses (*Spiranthes tuberosa*).
49. False asphodel (*Tofieldia racemosa*).
50. Humped bladderwort (*Utricularia gibba*).
51. White-flowered bladderwort (*Utricularia olivacea*).
52. Purple bladderwort (*Utricularia purpurea*).
53. Reclined bladderwort (*Utricularia resupinata*).
54. Yellow-eyed grass (*Xyris caroliniana*, formerly *X. flexuosa*).

\*PPA Comment: This list of 54 plants represents the original list of plants declared to be the "threatened and endangered plants of the Pinelands" in the original version of the CMP. It is a *partial representation* of the best

research and professional judgment that could be summoned at that time. It is flawed in several ways, most notably, because *it does not include all the plants* that those professionals recommended for protection. Eighteen species were arbitrarily and unjustifiably excluded—an oversight, no doubt, that most of you were unaware of.

Considerably more information has come to light in the last 30 years due to research by professionals employed by the state of New Jersey. The product of the best research and professional judgment that is available today is reflected in the list titled “**List of Endangered Plant Species and Plant Species of Concern**” published by the state of New Jersey: <http://www.state.nj.us/dep/parksandforests/natural/heritage/jan2010plantlist.pdf>.

The state of New Jersey declares its conservation priorities by publishing this list. Unfortunately, this list includes scores of plant species that are known to occur in the area under your jurisdiction, but that you officially decline to protect. We understand that the Commission is not satisfied with the methodology of the state of New Jersey, and the Commission is not satisfied with the availability of data associated with the conservation priorities published by the state of New Jersey. The question is, (16) does this New Jersey Pinelands Commission really want to go on record as refusing to acknowledge the rare plant conservation priorities of the state of New Jersey, priorities that may indeed be imperfect, but which reflect the very best available research and professional judgment currently available?