

June 27, 2008
Revised for OAL 7/30/08 and 8/12/08

PINELANDS COMMISSION

**Pinelands Comprehensive Management Plan
Cluster Development; Development Transfer Programs; Surface Water
Runoff**

**Proposed Amendments: N.J.A.C. 7:50-2.11, 3.39, 5.16, 5.19, 5.22, 5.23, 5.24,
5.26, 5.30, 5.47, 6.80, 6.84 and 6.104**

Authorized By:

_____/____/____
New Jersey Pinelands Commission,
John C. Stokes, Executive Director

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

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

Proposal Number:

A **public hearing** concerning this proposal will be held on:

Tuesday, October 7, 2008 at 7:00 P.M.
Richard J. Sullivan Center
15C Springfield Road
New Lisbon, New Jersey

Submit written comments by regular mail, facsimile or e-mail by November
1, 2008 to:

Susan R. Grogan, P.P., AICP
Chief Planner
Pinelands Commission
P.O. Box 7
New Lisbon, NJ 08064
Facsimile: (609)894-7330
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The name and mailing address of the commenter must be submitted with all
public comments.

The agency proposal follows:

Summary

The New Jersey Pinelands Commission proposes to amend subchapters 2, Interpretations and Definitions, 3, Certification of County, Municipal and Federal Installation Plans, 5, Minimum Standards for Land Uses and Intensities, and 6, Management Programs and Minimum Standards, of the Pinelands Comprehensive Management Plan (CMP). The Pinelands CMP has been guiding land use and development activities in the Pinelands since it took effect on January 14, 1981. Since that time, the CMP has been amended a number of times, most recently in December of 2007 through a set of amendments related to nonconforming uses, accessory recycling facilities and the pilot program for alternate design wastewater treatment systems.

With the exception of those related to surface water runoff (stormwater management), the amendments now being proposed are an outgrowth of the Commission's plan review process. The Pinelands Protection Act (N.J.S.A.13:18A-8) requires that the CMP be periodically revised and updated. The CMP further specifies that a comprehensive review must be undertaken within five years of completing the last such review. Prior reviews of the CMP were completed in 1986 and 1996.

The Commission began the third review of the CMP by holding a special meeting to develop a framework for the review. At that meeting, the Commission identified two priority topics to be addressed during the review: Permanent Land

Protection and Regional Growth and Development. In an effort to obtain public input on these topics, as well as other issues, the Commission then held four public forums: Practitioner Issues (December 2001); Permanent Land Protection (March 2002); Regional Growth and Development (April 2002); and Critical Issues and Opportunities (May 2002). Each forum featured a moderated discussion of expert panelists followed by opportunities for public comment.

In January of 2002, the Commission's Executive Director issued the *Third Progress Report on Plan Implementation* to summarize the activities undertaken by the Commission during the previous 10 years. The Progress Report was organized by major Commission functions (e.g., land use planning, project review, regulatory programs) and concluded with a series of recommendations in the areas of community development, permanent land protection, resource protection and land management, research and planning, operations and permit streamlining, and education and interpretation. The Third Progress Report on Plan Implementation is available on the Commission's web site at www.nj.gov/pinelands.

Drawing on the foundation provided by the Pinelands Protection Act and the CMP, Commission staff next drafted vision statements to guide the development of recommendations for the two priority topics to be addressed by the third plan review: Permanent Land Protection and Regional Growth and Development. The comments received during the public forums and the findings from the Progress Report then served as a significant source of input in the crafting of a series of

goals that flow from the vision statements. A series of alternative strategies and initiatives to implement each of the goals were also drafted. The vision statements, goals, strategies and initiatives were presented to the Commission for review, followed shortly by a summary of the general costs and benefits associated with each initiative. In June of 2003, the Commission held a special meeting to select the strategies and initiatives that would best further progress towards achieving each of the goals. These decisions were memorialized in a resolution adopted by the Commission on July 11, 2003 and are intended to guide the Commission's actions over the next five years or until the next plan review commences.

The Commission identified eight initiatives relating to Permanent Land Protection and 12 initiatives relating to Regional Growth and Development. Many of these initiatives involve the provision of assistance to Pinelands municipalities in the development of plans, programs and ordinances related to open space, community design and infrastructure. Others involve the creation of task forces to address such issues as housing demand in the Pinelands and enhanced resource protection in the Toms River Corridor area in Jackson and Manchester Townships, Ocean County. Of relevance to the current rulemaking effort is an initiative calling for the reexamination and improvement of current CMP clustering opportunities as a means of fostering land protection in the Pinelands and reducing the potential for forest fragmentation.

A driving force for the establishment of the Pinelands Protection Act was the realization that a vast tract of relatively unspoiled land would eventually be lost through the effects of scattered and piecemeal development. While each new development by itself may not have caused irreparable harm to the unique Pinelands ecosystem, the continuation of the development patterns occurring in the 1960's and 1970's would in time be the death knell for the Pinelands. The state and federal Pinelands legislation, and the plan developed in response to that legislation (the CMP) have as a primary purpose the preservation and protection of the essential character of the Pinelands, which is that of an area with unbroken landscapes. The CMP seeks to maintain this character by channeling growth to areas already experiencing development and by protecting outlying areas through a variety of management techniques.

Pinelands Regional Growth Areas and, to a lesser extent, Pinelands Towns and Villages, were designed to accommodate most of the anticipated growth in the Pinelands Area. The other lands in the Protection Area, i.e., the Forest, Rural Development and Agricultural Production Areas, currently have varying degrees of large lot zoning. An initial assumption in designating the management areas and their overall densities was that relatively low residential densities, coupled with the minimum environmental standards set forth in the CMP, would protect the essential character of the Pinelands.

Indeed, the CMP has been very effective in protecting many features of the Pinelands environment. Between 1991 and 2001, for example, over 71 percent of

the residential units approved in the Pinelands Area were located in Regional Growth Areas, which comprise only eight percent of the Pinelands in terms of land area. Over 96 percent of all approved residential units during that time period were located in those management areas which the CMP designates for development (Regional Growth Areas, Pinelands Villages, Pinelands Towns and Rural Development Areas). Only two percent were located in the Forest Area. Nevertheless, the Commission has become increasingly mindful of the potential impacts large lot residential development may have on the landscape, particularly in the largely undisturbed Forest Area which comprises approximately 250,000 acres or 27 percent of the Pinelands Area. Similar to the Preservation Area District in terms of ecological value, the Forest Area represents a largely undeveloped forested area which is an essential element of the Pinelands environment. It contains high quality water resources and wetlands and provides suitable habitat for many threatened and endangered species. The Commission's increasing concern with the negative environmental impacts of forest fragmentation prompted a reexamination of the cluster development provisions currently contained in the CMP and ultimately led to the amendments currently being proposed.

In its simplest form, clustering is a type of development that allows reduced minimum lot sizes in exchange for the preservation of open space or some other desirable feature of the property (e.g., a historic site, a scenic vista, etc). The overall density remains the same, but the individual building lots are

smaller than that which would occur under a conventional lot layout. The benefits of clustering include reduced fragmentation of the landscape, protection of sensitive areas, provision of usable open space for the residents of a cluster development, maintenance of rural character through establishment of wooded buffer areas, reduced site improvement costs due to reduced internal roadways and utility extensions, and more of a neighborhood feel. In general, cluster development offers greater flexibility in site design as it relates to minimum lot sizes, setbacks, and other development criteria.

The CMP allows for and even promotes clustering, both on an on-site and an off-site basis, through several different techniques. N.J.A.C. 7:50-5.19 provides a number of standards for traditional on-site cluster development and indicates that this form of residential development is encouraged in the Rural Development Area and Regional Growth Area. N.J.A.C. 7:50-5.30 requires the establishment of development transfer programs in the Forest and Rural Development Areas. Under these programs, existing lots which would otherwise be considered undersized may be developed if sufficient noncontiguous lands elsewhere in the same Pinelands management area are permanently protected so that the overall parcel size which results is equal to the minimum lot size of the zone in which development is proposed. A number of municipalities have expanded on these transfer programs by designating sending and/or receiving areas between which densities from parcels within a zone or management area may be transferred. Parcels within a designated receiving area may be subdivided into lots smaller

than those normally required in the zone and open space is provided on noncontiguous parcels, thereby resulting in off-site clustering. The general intent of these special transfer programs is to provide increased protection to an identified resource or environmentally sensitive area, as well as to better direct development to the most appropriate portions of particular zoning districts or management areas.

As part of its analysis of the clustering opportunities offered by the CMP, the Commission undertook a survey of the land use ordinances of those Pinelands municipalities which contain Forest and/or Rural Development Areas. Thirty-eight of the 53 Pinelands Area municipalities fall into this category. The CMP allows all of these municipalities to incorporate cluster development provisions in to their land use ordinances. However, of the 35 municipalities which contain lands designated as Forest Area, only 20 permit on-site cluster development. Only 21 of the 28 municipalities which contain lands designated as Rural Development Area do so.

The Commission also examined previous applications for development in the Pinelands Area which involved clustering and discovered that the majority of these applications were for properties located in the Regional Growth Area. Less than 20 applications in the Rural Development or Forest Areas received by the Commission between 1981 and February of 2004 proposed cluster development.

One factor which may account for fewer cluster developments being in the Forest or Rural Development Areas is the smaller size of the projects relative to those

in Regional Growth Areas. Applications in the lower density Forest and Rural Development Areas tend to involve fewer units than in the Regional Growth Areas. As an example, of the more than 5,300 applications for residential development in the Forest and Rural Development Areas submitted to the Commission between 1981 and February of 2004, less than 100 contained five or more units. Only 60 involved 10 or more units and only 30 involved 25 or more units. Applications approved by the Commission between 2004 and 2007 show that this trend has continued. During those three years, only five of the 151 applications approved by the Commission for residential development in the Rural Development Area involved five or more units. The vast majority (107 out of 151) were for a single unit. In the Forest Area, only one application for residential development approved by the Commission between 2004 and 2007 involved five or more units. The majority (60 out of a total of 68 applications) involved only a single unit.

Another factor may be that a number of municipal land use ordinances which permit clustering in their Forest or Rural Development Areas also specify minimum tract sizes for cluster development or a minimum number of lots. The result is that clustering is frequently not an option for smaller property owners. As an example, Buena Vista Township requires a minimum of 25 lots for clustering, but the projects proposed to date in that municipality have all included less than fifteen units. Pemberton Township mandates a 50 acre tract minimum, and all the residential applications in Pemberton's Forest or Rural Development Areas have been for individual single family units.

Another factor which may work against clustering is the minimum lot size requirement established by the CMP for the Forest Area. N.J.A.C. 7:50-5.23(c) currently specifies that no residential dwelling unit may be located on a lot of less than 3.2 acres in size unless it qualifies under the cultural housing or substandard lot provisions of the Plan. Cluster developments in the Forest Area, then, must adhere to this relatively large lot size requirement. Moreover, some municipalities have elected to require even larger lot sizes. The City of Estell Manor requires a lot size of five acres for cluster development in some zones and a full 10 acres in others. Evesham Township requires four and six acre lots in its two Forest Area zones.

A final limiting factor may be the relatively small size of properties in this management area. Of the approximately 61,000 existing parcels in the Forest Area, less than one percent are over 80 acres in size. The vast majority (over 86 percent) are 3.2 acres or less in size. The same percentages hold true for the 45,000 existing parcels in the Rural Development Area. Cluster development on a meaningful scale therefore is difficult or impossible to achieve without significant efforts toward the consolidation of multiple contiguous lots.

Recognizing that amendments to the CMP would be necessary in order to promote on-site cluster development in the Forest and Rural Development Areas, the Commission developed a series of guiding principles. These principles are listed in italics below, followed by citations to the proposed amendments derived from the principles, where applicable.

Pinelands Forest and Rural Development Clustering Program Principles

Purpose

1. By helping to preserve larger, contiguous areas of forest which provide important habitat for characteristic and rare Pinelands fauna and flora, clustering of residential development in areas of the Pinelands that are valued for their ecological attributes can help to advance several goals of the Pinelands Protection Act, specifically to preserve and maintain the essential character of the Pinelands environment (N.J.S.A. 13:18A-9b(1)), encourage appropriate patterns of development (N.J.S.A. 13:18A-9b(5)) and discourage piecemeal and scattered development (N.J.S.A. 13:18A-9b(4)).

Target Areas

2. Pinelands Forest and Rural Development management areas should be the target for this clustering program. (N.J.A.C. 7:50-5.19(c) and (d))

Municipal Participation

3. If clustering is to be successful, it must be utilized on a widespread basis. Thus, municipalities should be obligated to incorporate the clustering program into their zoning ordinances. (N.J.A.C. 7:50-3.39(a)2ix)

4. As provided in Section 27 of the Pinelands Protection Act (N.J.S.A. 13:18A-27), the Commission expects that the normal provisions of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et. seq.) will govern municipal clustering programs

unless they conflict with specific elements of the Pinelands clustering program. In those cases, the provisions of the Pinelands clustering program will control.

5. Through the application of sound land use planning principles, municipalities may identify local conditions or circumstances that warrant clustering provisions different than those provided in the Pinelands program as long as the overall goals and objectives of the clustering program are met. Therefore, municipalities should be afforded the ability to tailor the Pinelands clustering program to account for unusual local conditions or circumstances, when these local adaptations have been supported through sound land use planning practices.

(N.J.A.C. 7:50-3.39(a)2ix)

Landowner/Developer Participation

6. To further ensure its widespread use, all residential development in the Forest and Rural Development Areas should be clustered, unless doing so would be disadvantageous from an ecological perspective. (7:50-5.19(c)).

7. Clustering shall not be permitted if it can not adhere to the environmental standards in subchapter 6 of the CMP, would conflict with the CMP's density transfer program (N.J.A.C. 7:50-5.30) or would disrupt the contiguity of the forest ecosystem more than non-clustered development. (7:50-5.19(c)1 through 3)

Forest Contiguity

8. *Since property ownership is very fragmented in Forest and Rural Development management areas, an incentive to assemble large tracts of land must be afforded. This incentive should be in the form of a density bonus that, although not specifically tied to assemblage, increases with the size of the tract. (N.J.A.C. 7:50-5.19(d)1)*

9. *The density bonus should be structured to provide further incentives for land assemblage in the more ecologically valuable areas, which generally correspond to lower density zoning districts. (N.J.A.C. 7:50-5.19(d)1)*

10. *Density bonuses should range from 0 to 40%, with larger parcels in the lower density zones receiving the higher bonuses. An assembled 75 acre property in a 15 acre zoning district may, for example, receive a 20% density bonus, which equates to one additional lot. (N.J.A.C. 7:50-5.19(d)1)*

Locating and Designing the Cluster

11. *Performance standards should guide land planners in locating the “cluster” on the property. These standards should provide that residential clusters: be located proximate to existing roads; be located proximate to existing development; and be buffered from land uses, such agricultural uses, where land use conflicts could materialize. (7:50-5.19(d)2)*

12. To protect the greatest amount of land while reducing the likelihood of water quality impacts within the residential cluster, residential lots shall be one acre in size. On-site community wastewater systems will also be permitted to serve the cluster. (N.J.A.C. 7:50-5.19(d)3i and ii)

13. The residential cluster shall include all land and facilities necessary to directly support the development. These may include stormwater facilities in accordance with CMP requirements (N.J.A.C. 7:50-6.84(a)6); other support infrastructure, such as streets and accessory recreation facilities; and community wastewater facilities, if they are to be provided. Municipal ordinances should specify the types of recreation facilities permitted within the residential cluster, provided that recreation facilities may occupy no more than ½ acre of land or a ratio of one acre for every 25 residential lots, whichever is greater. (N.J.A.C. 7:50-5.19(d)3iii and iv)

Protected Land

14. Protected land (land outside the cluster) may be owned by a homeowners association, a non profit organization, the municipality itself or included as part of one of the residential lots within the cluster. The protected land will be subject to a protective easement. (N.J.A.C. 7:50-5.19(d)4)

15. Regardless of ownership, the protected land should be subject to an easement in favor of the residents of the cluster, another public entity, such as the

municipality, county and/or state, or a non-profit organization. In the case of agricultural land, the easement can be in favor of a County Agriculture Development Board or the State Agriculture Development Committee. (N.J.A.C. 7:50-5.19(d)4i and 5.19(d)5iv)

16. In those rare cases where active agricultural lands exist within that portion of the property to be protected, an agricultural easement may provide for continued agricultural use and expansion of that use up to 50%, provided that:

- *Wastewater technologies (either individual or community systems) that reduce pollutant loading will serve the residential cluster. These systems shall conform to CMP requirements; (N.J.A.C. 7:50-5.19(d)3ii)*
- *The easement limits impervious coverage to three percent or existing conditions, whichever is greater, unless a Resource Management System Plan has been prepared in accordance with Natural Resources Conservation Service guidelines and approved by the Commission and the County Agriculture Development Board or the State Agriculture Development Committee, if either holds the easement; and (N.J.A.C. 7:50-5.19(d)5v)*
- *A provision is recorded in each deed to the residential lots within the cluster that reflects right to farm provisions. (N.J.A.C. 7:50-5.19(d)5vi)*

17. All other protected lands shall be subject to a conservation easement that limits the land's use to passive recreation, ecological management and forest management.

- *Passive recreation shall permit, subject to municipal and Pinelands permitting requirements, the construction of trails and similar facilities provided that clearing does not exceed five percent and impervious coverage does not exceed one percent; (N.J.A.C. 7:50-5.19(d)4ii)*
- *Ecological management activities shall be subject to municipal and Pinelands permitting requirements; and (N.J.A.C. 7:50-5.19(d)4ii)*
- *Forest management shall be conducted in accordance with an approved forest stewardship plan. (N.J.A.C. 7:50-5.19(d)4ii)*

18. A sample conservation easement and a sample agricultural easement should be prepared to supplement the use restrictions presented in the CMP. Each sample easement should describe the permitted open space or agricultural use provisions with specificity and describe relevant stewardship requirements and relevant monitoring and enforcement.

In accordance with the identified clustering principles, N.J.A.C. 7:50-5.19 is being amended to provide specific standards for cluster development in the Forest and Rural Development Areas. Proposed N.J.A.C. 7:50-5.19(c) *requires* that clustering of residential development occur in both the Forest and Rural

Development Areas whenever two or more lots are proposed, except in cases where doing so would conflict with a municipal development transfer program (so called “off-site clustering”), be inconsistent with the minimum environmental standards set forth in subchapter 6 of the CMP or disrupt the contiguity of the forest ecosystem to a greater degree than non-clustered development.

Proposed N.J.A.C. 7:50-5.19(d) sets forth the standards for residential cluster development which will apply in the Forest and Rural Development Areas. Proposed N.J.A.C. 7:50-5.19(d)1 specifies the method for calculation of the permitted number of units in a cluster development, utilizing parcel size and permitted density (as specified in a municipal ordinance). For parcels of 50 acres or more in size, a bonus of between 10 and 40 percent is then applied in accordance with the table included at the end of this new section. As an example, a 100-acre parcel of land in a zoning district where the permitted density is 17 acres per unit would qualify for the development of 5.88 units. The 25 percent bonus provided under N.J.A.C. 7:50-5.19(d)1 would yield an additional 1.47 units. When these two numbers are added together, a total of 7.35 units results. Because fractional units obviously cannot be built, the number of permitted units would be rounded down to seven. The bonus provisions would, in this example, result in two additional units being permitted. While modest, it is the Commission’s hope that the bonus provisions will encourage the consolidation of parcels in the Forest and Rural Development Areas so that meaningful amounts of undisturbed land will have the opportunity for protection through clustering.

Incorporation of the bonus densities into municipal land use ordinances will be mandatory.

Proposed N.J.A.C. 7:50-5.19(d)1 also recognizes that cluster developments may involve lands located in more than one municipal zoning district and specifies that separate residential lot calculations for each zoning districts shall be summed to determine the total number of permitted lots.

Proposed N.J.A.C. 7:50-5.19(d)2 requires that residential clusters in the Forest and Rural Development Areas be located on a parcel such that the development area is located proximate to existing roads and existing development on adjacent or nearby parcels. Proposed N.J.A.C. 7:50-5.19(d)2iii further requires that the development area be buffered from adjoining or nearby nonresidential land uses. Finally, proposed N.J.A.C. 7:50-5.19(d)2iv specifies that the location of the cluster development area must conform with the minimum environmental standards of N.J.A.C. 7:50-6, with the exception of N.J.A.C. 7:50-6.104. The standards provided in N.J.A.C. 7:50-6.104 relate to development along scenic corridors in the Forest and Rural Development Areas. In these two management areas, all public, paved roads (except those providing internal circulation within residential subdivisions) are considered to be scenic corridors. N.J.A.C. 7:50-6.104 requires that all buildings be set back at least 200 feet from the center line of a scenic corridor, unless environmental or physical constraints dictate otherwise or existing development along the corridor is already located within the 200 foot set back. Requiring that cluster development areas maintain a 200 foot set back

from all paved, public roads would run counter to the Commission's goal of locating development in already disturbed areas on a parcel that take advantage of existing infrastructure. Therefore, cluster developments in accordance with N.J.A.C. 7:50-5.19(c) and (d) are being exempted from the scenic corridor standards of N.J.A.C. 7:50-6.104. A notation to that effect is being added as new N.J.A.C. 7:50-6.104(d).

The proposed standards in N.J.A.C. 7:50-5.19(d)2 are intended to ensure that cluster development occurs in a manner which promotes efficient use of existing infrastructure, coordinates with existing development on adjacent parcels, minimizes the potential for land use conflicts with existing uses on adjacent parcels and protects the environmental attributes of a parcel, including wetlands, critical habitat for threatened and endangered plants and animals and sites of historic, cultural or archaeological significance. Put more simply, clustered residential development must be located on that portion of a parcel which is most appropriate for development, taking into consideration environmental limitations, adjacent land uses and existing disturbance.

Proposed N.J.A.C. 7:50-5.19(d)3 provides standards for the design of development within a residential cluster. Proposed N.J.A.C. 7:50-5.19(d)3i requires that cluster development occur on one acre lots, unless unusual site conditions dictate a larger lot size. The average size of residential lots within a cluster development may not exceed 1.1 acres. These standards are intended to

limit the size of the development area and necessary disturbance on the parcel while maximizing the amount of open space which results.

Proposed N.J.A.C. 7:50-5.19(d)3ii indicates that individual on-site septic wastewater treatment systems not intended to reduce the level of nitrate/nitrogen in wastewater (i.e., standard septic systems) may serve the lots within the cluster development area, unless existing agricultural uses on the parcel will continue. In those cases, septic systems which are intended to reduce nitrate/nitrogen levels in wastewater must be used in accordance with N.J.A.C. 7:50-6.84(a)5 or the Commission's Pilot Program for Alternate Design Wastewater Treatment Systems (N.J.A.C. 7:50-10, Part IV). In either case, community on-site wastewater treatment systems will also be permitted. Previously, community systems were allowed only in Pinelands Villages, Pinelands Towns and Regional Growth Areas.

It is important to note that regardless of the type of wastewater treatment system being used, CMP water quality standards must be met. In particular, the design of the system and its discharge point, and the size of the entire contiguous parcel on which the system is located must ensure that ground water exiting from said parcel does not exceed two parts per million nitrate/nitrogen. As defined in N.J.A.C. 7:50-6.84(a)4ii and (a)5iv, the entire contiguous parcel includes any contiguous lands to be dedicated as open space as part of a proposed cluster development. Although proposed N.J.A.C. 7:50-5.19(d)3ii allows for the use of standard septic systems to serve the residential lots within a cluster development area, this must be done in accordance with N.J.A.C. 7:50-6.84(a)4 which includes

the two parts per million requirement. Cluster developments with overall densities of one unit per 3.2 acres or less will be able to meet the two parts per million standard utilizing standard septic systems. However, cluster developments with overall densities in excess of one unit per 3.2 acres will need to utilize alternate design wastewater treatment systems in order to meet the water quality standard. There are a number of zoning districts, particularly in the Rural Development Area, where this will become an issue due to the bonus provisions being proposed at N.J.A.C. 7:50-5.19(d)1. A cluster development proposed in a zone where the permitted density is one unit per 3.2 acres may be entitled to a bonus of between 10 and 20 percent, depending on the size of the parcel. Those bonus units will push the density of the overall project to something greater than one unit per 3.2 acres, thus necessitating the use of alternate design wastewater treatment systems for at least some of the proposed units.

Proposed N.J.A.C. 7:50-5.19(d)3iii specifies that all lands and facilities necessary to support the cluster development must be located within the residential cluster development area. This includes wastewater facilities, streets, stormwater management facilities and recreation amenities. These facilities must be located in the development area, not within the protected open space of the cluster development. With respect to recreation amenities, proposed N.J.A.C. 7:50-5.19(d)3iv further provides that such uses not occupy more than $\frac{1}{2}$ an acre of land or one acre of land for every 25 residential lots, whichever is greater. Whether or not to allow recreational facilities within the cluster development area

is up to each Pinelands municipality. Those municipalities which choose to do so must specify in their land use ordinances the types of recreational uses and facilities to be permitted.

Proposed N.J.A.C. 7:50-5.19(d)4 sets forth standards which will govern the balance of a parcel located outside the residential cluster development. These lands must be owned and managed by a homeowners association, a non profit conservation organization or the municipality or incorporated as part of one of the residential lots in the cluster development area. No matter what their ownership, these lands must be permanently protected through recordation of a deed of conservation restriction. According to proposed N.J.A.C. 7:50-5.19(d)4i, the conservation restriction must be in favor of the residents of the cluster development. If permitted by a municipality in its land use ordinance, the restriction may also be in favor of the municipality or another public agency or a non profit conservation organization. In all cases, the restriction must be expressly enforceable by the Commission.

Proposed N.J.A.C. 7:50-5.19(d)4ii sets forth limitations on the use of the lands outside the cluster development area. These lands may be used only for low intensity recreation, ecological management and forestry, provided that no more than five percent of the land may be cleared, no more than one percent of the land may be covered with impervious surfaces and any such uses or activities are approved and conducted in accordance with the CMP and any applicable

municipal ordinances. These limitations and provisions must be reflected in the deed of conservation restriction.

Proposed N.J.A.C. 7:50-5.19(d)5 addresses those situations where agriculture exists on a parcel in the Forest or Rural Development Areas that is proposed for cluster development. In cases where agriculture exists as of the effective date of these proposed rules, proposed N.J.A.C. 7:50-5.19(d)5i provides that the deed of restriction may allow for the continuation of agricultural uses and an expansion of the area in agricultural use of up to 50 percent. This will provide a limited opportunity for the expansion of existing farms in the Forest and Rural Development Areas whose owners elect to subdivide and develop their properties for residential use. In cases where an agricultural use is established after the effective date of these proposed rules, proposed N.J.A.C. 7:50-5.19(d)5ii would allow for the continuation of the agricultural use, provided it has been in existence for at least five years prior to submission of an application for cluster development on the parcel to the Commission. Expansion of that agricultural use would not be permitted. Finally, proposed N.J.A.C. 7:50-5.19(d)5iii provides that if an agricultural use established after the effective date of these proposed rules has not been in existence for at least five years prior to submission of a cluster development application, the deed of restriction may not allow for either the continuation or expansion of that agricultural use.

In those instances where an agricultural use will be allowed to continue, proposed N.J.A.C. 7:50-5.19(d)5iv specifies that the deed of restriction may be in

favor of the County (either the county agriculture development board or board of chosen freeholders) or the State Agriculture Development Committee and must be expressly enforceable by the Commission. Limitations on future agricultural use are set forth in proposed N.J.A.C. 7:50-5.19(d)5v and must be specified in the deed of restriction, including a requirement that impervious surface not exceed that which currently exists or three percent, whichever is greater, unless a Resource Management System Plan has been prepared by the applicant in accordance with Natural Resources Conservation Service standards. A Resource Management System Plan is a comprehensive farm conservation plan that meets the Natural Resources Conservation Service's highest standards for resource sustainability by requiring that all resource management concerns on a farm be addressed, including soil, water, air, plants and animals. These plans must be designed in accordance with the United States Department of Agriculture, Natural Resources Conservation Services New Jersey Field Office Technical Guide, dated June 2005, as amended and supplemented. The definition of "Resource Conservation Plan" in N.J.A.C. 7:50-2.11 is being updated and revised to refer to "Resource Management System Plan" and the applicable Natural Resources Conservation Services standards. The Resource Management System Plan must be submitted to the Pinelands Commission. The Commission will then review the Plan and approve it, provided it is consistent with the standards of the Comprehensive Management Plan, particularly those set forth in N.J.A.C. 7:50-6. If the deed of restriction is in favor of the County or the State Agriculture

Development Committee, that agency must also approve the Resource Management System Plan.

Finally, proposed N.J.A.C. 7:50-5.19(d)5vi requires that a provision be recorded in the deed for each residential lot within the cluster development area acknowledging the existing and future agricultural use of the protected land outside the development area and recognizing the legal protections afforded to that use through the deed of restriction and any applicable statutes.

In light of the limitations on impervious surface being proposed at N.J.A.C. 7:50-5.19(d)5v, a definition for the term is being added at N.J.A.C. 7:50-2.11. Although this term is already used in the CMP's stormwater management regulations (N.J.A.C. 7:50-6.84(a)6), a definition was not previously included in the regulations. The proposed definition makes clear that impervious surfaces include any surface that has been compacted or covered so that it prevents, impedes or slows infiltration in a manner sufficient to be classified as impervious in Urban Areas in the Natural Resources Conservation Service Title 210 - Engineering, 210-3-1 Small Watershed Hydrology, more commonly referred to as TR-55. Such surfaces may have varying degrees of permeability, with Runoff Curve Numbers (CN values) as described in TR-55, ranging from 72 to 98 and up to and including impermeability. For example, compacted dirt roads, graveled driveways and permeable pavement would have higher permeability than concrete and asphalt areas, geotechnical membranes and roofing materials, yet all would be considered impervious surfaces. Not included in the calculation of impervious

surface would be dirt lanes and paths used exclusively by farm personnel to access their sites and to which the public would have no access. Changes in crop type or additional clearing of wooded areas alone would also not be included as these types of changes do not increase the amount of impervious surface on a parcel. Only those surfaces classified as impervious in Urban Areas by TR-55 will be included.

A link to the windows-based TR-55 model available on the NRCS website is being provided in the new definition of “impervious surface”. This same website address is also being added to the CMP’s existing stormwater management standards in place of the new outdated website address currently included at N.J.A.C. 7:50-6.84(a)6i. The same information on impervious surfaces in Urban Areas is also available in the NRCS National Engineering Handbook (NEH), in Chapter 9, Table 9-5. The NRCS address is indicated in the definition of impervious surface and in N.J.A.C. 7:50-6.84(a)6i should any user prefer to obtain and use a printed copy of the materials.

In addition to the cluster development standards being added at N.J.A.C. 7:50-5.19(c) and (d), a new certification standard for municipal master plans and land use ordinances is also being proposed at N.J.A.C. 7:50-3.39(a)2ix to reflect the CMP’s new approach to cluster development in the Forest and Rural Development Areas. This standard will require that those municipalities which contain lands designated as Forest and Rural Development Areas permit cluster development on those lands in accordance with N.J.A.C. 7:50-5.19(c) and (d) and

implement a straightforward process for the review of cluster development applications. The proposed certification standard also makes clear that municipalities may propose and the Commission may approve clustering ordinances that contain different standards than those set forth at N.J.A.C. 7:50-5.19(c) and (d), provided those standards are supported through the application of sound land use planning principles, are based upon local conditions or circumstances and do not undermine the overall objectives of the Forest and Rural Development clustering program, as detailed in this Plan and outlined in the principles listed previously. Pinelands municipalities have always had the general ability to refine the various standards and provisions of the CMP and tailor them to local conditions, provided CMP goals and objectives continue to be achieved. The language included in the new certification standard merely relates this important concept specifically to cluster development and emphasizes the need for variations from CMP standards to be based on sound land use planning principles.

As an example, a municipality might propose to apply the density bonus provisions of N.J.A.C. 7:50-5.19(d)1 only to tracts assembled after the effective date of these proposed amendments. As proposed, the density bonus would apply based on the overall size of the tract which is the subject of an application for development submitted to the Commission for review. The number of lots included in such a tract, or their acquisition date by the applicant, would not affect the density bonus. However, because the bonus is intended to encourage and reward lot consolidation in the Forest and Rural Development Areas, a

municipality might propose to limit its applicability to only those tracts where consolidation has actually occurred as a result of these proposed amendments. Provided such a provision would not serve to discourage meaningful cluster development in the municipality, and further provided that the municipality in question has the ability to administer such a provision, the Commission could consider approving this variation from CMP standards based on proposed N.J.A.C. 7:50-3.39(a)2ix.

Another example of a variation which a municipality might propose involves ownership options for the protected open space in a cluster development. Proposed N.J.A.C. 7:50-5.19(d)4 indicates that said open space must be owned and managed by a homeowners association, a non profit conservation organization, the municipality or the owner of one of the residential lots within the cluster development area. A municipality might propose to limit these ownership options by, for example, restricting ownership to itself or a homeowners association only. Another municipality might propose to allow the owner of an adjacent farm to own and/or manage the protected open space. Assuming such provisions can be justified from a land use perspective, based on the particular circumstances of a municipality's Forest and/or Rural Development Area, the Commission would be able to approve either variation from CMP standards.

The Commission is also proposing a number of amendments to N.J.A.C. 7:50-5.30 which sets forth standards for development transfer programs, so called off-site clustering, in the Forest and Rural Development Areas. Specifically,

N.J.A.C. 7:50-5.30(b)2 is being amended to allow for the transfer of density between parcels located in different municipal zoning districts. This section previously limited transfers to parcels within the same Pinelands management area and zoning district. N.J.A.C. 7:50-5.30(b)4 is being amended with respect to those parcels whose acreage is utilized to meet density requirements but which will not be developed. These parcels must be permanently protected through recordation of a deed of restriction in favor of the parcel to be developed and, if allowed by a municipal ordinance, the municipality or another public agency or a non profit conservation organization. The restriction must be expressly enforceable by the Commission. The deed of restriction must also limit use of the land to low intensity recreation, ecological management and forestry, provided no more than five percent of the parcel may be cleared, no more than one percent of the parcel may be covered with impervious surfaces and any such uses or activities are approved and conducted in accordance with the CMP. If agricultural uses exist on the parcel as of the effective date of these proposed rules, the deed of restriction may provide for their continuation and expansion by up to 50 percent. Agricultural uses established after the effective date of these proposed rules may also be allowed to continue, provided they have been in existence for at least five years prior to submission of an application for development to the Commission pursuant to the development transfer program. Expansion of such agricultural uses would not be permitted. In those cases where agricultural uses will be allowed to continue, impervious surface may not exceed that which currently exists or three

percent, whichever is greater, unless a Resource Management System Plan has been prepared by the applicant in accordance with Natural Resources Conservation Service standards. That Resource Management System Plan must be approved by the Commission. If the deed of restriction is in favor of the County or the State Agriculture Development Committee, that agency must also approve the Resource Management System Plan. As a result of these amendments, the uses permitted on open space lands resulting from on-site cluster development and density transfer in the Forest and Rural Development Areas will now be identical.

Proposed N.J.A.C. 7:50-5.30(b)5 is being added to indicate that municipalities may set forth reasonable conditions or requirements governing ownership of the parcel or parcels to be protected under the density transfer program.

N.J.A.C. 7:50-5.30(c) is being amended to specify a number of the ways in which a Pinelands municipality may adapt the basic provisions of a development transfer program to its own circumstances. N.J.A.C. 7:50-5.30(c)1 specifically authorizes the transfer of density from a Forest Area to a Rural Development Area. N.J.A.C. 7:50-5.30(c)2 allows for transfers of density from a Forest or Rural Development Area to a Pinelands Village. In order to facilitate such a transfer program, N.J.A.C. 7:50-5.16(a), which sets forth guidelines for the delineation of Pinelands Village boundaries, is also being amended. Pursuant to N.J.A.C. 7:50-5.16, village boundaries are to be established by Pinelands municipalities so as not to provide for an additional increment of development

which is greater than that which currently exists in the village. The proposed amendments would exclude residential units being transferred from a Forest or Rural Development Area from the calculation of the additional increment of development, more commonly referred to as the village doubling rule. The Commission believes this amendment is necessary in order to provide a realistic opportunity for transfers of density into Pinelands Villages.

N.J.A.C. 7:50-5.30(c)3 is expanded to outline criteria for the designation of receiving areas (those areas to which density is transferred) and to require the use of either individual or community on-site septic waste water treatment systems intended to reduce the level of nitrate/nitrogen in waste water within such areas. Similarly, N.J.A.C. 7:50-5.30(c)4 provides for the designation of sending areas, those environmentally sensitive or constrained areas within which development will be limited or not permitted but from which density may be transferred to other parcels more appropriate for development. A small number of Pinelands municipalities have already established sending and receiving areas as part of their density transfer programs and more will be encouraged to do so under the proposed amendments. The establishment of receiving areas is expected to be the more common adaptation of the density transfer program and even that will not be feasible in all municipalities. The designation of so-called mandatory sending areas, within which no development would be permitted, is not expected to be a widely used tool by Pinelands municipalities nor is it one which the Commission intends to generally advocate. The proposed amendment at N.J.A.C.

7:50-5.30(c)4 is merely intended to provide municipalities with the ability to designate such areas, should the need for that level of protection be identified.

Many of the criteria established in N.J.A.C. 7:50-5.30(b) and (c) for development transfer programs mirror those being proposed at N.J.A.C. 7:50-5.19(c) and (d) for on-site cluster development. This is a logical result as the two programs have similar objectives, namely, encouraging development to occur in the most appropriate locations and protecting large and contiguous areas of forested and other important lands.

Amendments are also being proposed at N.J.A.C. 7:50-5.23(a) and (c) and 5.26(a) and (c) in recognition of the revisions being made relative to cluster development and development transfer programs. These two sections of the CMP set forth permitted uses in the Forest and Rural Development Areas, respectively. N.J.A.C. 7:50-5.23(a) and 5.26(a) will now make clear that municipalities must permit both cluster development and residential development in accordance with a development transfer program in their Forest and Rural Development Areas. Municipalities must also allow for the bonus densities associated with cluster development as prescribed in proposed N.J.A.C. 7:50-5.19(d)1. Language is being added at N.J.A.C. 7:50-5.23(c) and 5.26(c) to recognize that new standard.

N.J.A.C. 7:50-2.11 is being amended through the addition of a new definition for “Permeability” and revision of the existing definition for “Impermeable surface”. These amendments are being made in order to appropriately distinguish between what constitutes an impermeable surface as

opposed to an impervious surface. As discussed previously, limitations on impervious surface are being proposed with respect to the use of the protected open space resulting from cluster development (N.J.A.C. 7:50-5.19(d)4ii and (d)5v) and density transfer (N.J.A.C. 7:50-5.30(b)4ii and vi). In developing these limitations, the Commission examined the current CMP definition for “impermeable surface” and determined that it was not being used in a consistent or appropriate fashion throughout the regulations. The term “impervious surface” was also used within the CMP’s stormwater management regulations (N.J.A.C. 7:50-6.84(a)6) but not defined in N.J.A.C. 7:50-2.11. Thus, a definition for “impervious surface” is being added and the existing definition of “impermeable surface” is being clarified to indicate that impermeable surfaces are those which typically have a maximum permeability for water of 10^{-7} cm/second at the maximum anticipated hydrostatic pressure. Finally, “impermeable surface” is appropriately being changed to “impervious surface” in various sections of the CMP, including those related to development applications involving additions or accessory structures to nonresidential or multifamily residential uses (N.J.A.C. 7:50-4.1(a)8), low intensity recreational uses in the Preservation Area District (N.J.A.C. 7:50-5.22(a)6v), the Forest Area (N.J.A.C. 7:50-5.23(a)6v) and Agricultural Production Area (N.J.A.C. 7:50-5.24(a)6v), the remaining uses permitted on lands deed restricted through the severance of Pinelands Development Credits in the Preservation Area District (N.J.A.C. 7:50-5.47(b)1i) and Agricultural Production Area (N.J.A.C. 7:50-5.47(b)3i), and memoranda of

agreement allowing the use of existing waste management facilities in the Rural Development Area (N.J.A.C. 7:50-6.80(b)4). The term “impermeable surface” will continue to be used in N.J.A.C. 7:50-6.75(c) with respect to landfill capping, 7:50-6.84(a)4v and (a)5vii with respect to the sealing of well casings and 7:50-6.87(b) with respect to the covering of storage facilities for deicing chemicals.

The Commission is also proposing a minor revision to the stormwater management standards of the CMP, set forth at N.J.A.C. 7:50-6.84 et seq. and substantially amended by the Commission in May of 2006. These amended CMP standards require that all stormwater be managed on-site. However, 7:50-6.84(a)6vi (3) does recognize that there are certain situations when not all CMP stormwater management standards can be met. For example, development on parcels containing C-type soils, where permeabilities are too low for recharge, may not be able to meet all CMP stormwater standards. In those and other situations, the CMP provides that *municipalities* may, at their discretion, waive the affected standard and permit “alternative measures”. Such alternative measures must, pursuant to N.J.A.C. 7:50-3.39(a)2viii(3), occur on parcels located within the Pinelands Area and within the same drainage area as the parcel proposed for development. The alternative measures must also be identified in the municipal stormwater plan which in turn must be submitted to the Commission for certification. The Commission has certified 35 such municipal stormwater plans to date, perhaps half of which identify potential off-site mitigation projects. The other stormwater plans indicate that mitigation will not be permitted in the

Pinelands Area until such time as an amendment has been adopted to identify appropriate projects and the Commission has certified that amendment.

Implementation of the amended CMP stormwater standards has led to the identification of a procedural problem. The process described above for the granting of exceptions from CMP stormwater standards is not workable for all public development. Public development projects, which may be proposed by counties, the State, Federal government, school districts, etc., are approved directly by the Pinelands Commission pursuant to N.J.A.C. 7:50-4.51 et seq. and do not require municipal approval. Thus, there is no procedure by which an exception can be granted for public development. The absence of such a procedure has become a particular problem for linear development applications, especially those involving the expansion of existing roads or improvement of existing intersections. Roads in the Pinelands Area often traverse areas with higher water tables, making the maintenance of a two foot separation from the seasonal high water table to swales along side of the road difficult or impossible to achieve.

In order to address this inadvertent absence of a procedure for public development, the Commission is proposing to add new N.J.A.C. 7:50-6.84(a)6vi(4) to provide public development with the same ability to seek and be granted exceptions from CMP stormwater standards as is currently afforded to private development. The standards by which such an exception may be granted would be the same, and any off-site mitigation would be required to occur within

the Pinelands Area and within the same drainage area as the proposed development, just as it is for private development. The only difference is that it would be the Commission itself who decides whether or not to grant an exception, not the municipality in which the public development project is located. The proposed alternate measures or off-site mitigation must nevertheless be consistent with the municipality's stormwater management plan, unless said stormwater plan does not provide for appropriate mitigation for the particular exception being granted or does not identify appropriate parcels or projects where off-site mitigation may occur. In those cases, the applicant for public development may propose other measures or off-site mitigation projects and the Commission will determine whether the proposal is appropriate and consistent with N.J.A.C. 7:50-6.84(a)6vi(4).

Finally, N.J.A.C. 7:50-6.84(a)6iv(3) is being revised through the addition of a cross-reference to N.J.A.C. 7:50-4.31 et seq. in order to clarify that this section provides procedures for the granting of exceptions for private development applications.

Social Impact

No adverse social impact is anticipated as a consequence of the proposed amendments. In fact, social impacts are expected to be positive. By requiring cluster development in the Forest and Rural Development Areas, the proposed amendments will promote more and better comprehensive site planning and

design, leading to more attractive developments as well as the opportunity for creation of large contiguous areas of permanently protected common or public open space. The development of homes on smaller lots in closer proximity to one another is expected to result in the creation of neighborhoods as opposed to large lot suburban sprawl, thereby generating a greater sense of community.

It should be noted that long-time Pinelands property owners and residents will still be able to develop homes under the cultural housing provisions of the CMP (N.J.A.C. 7:50-5.32). Cultural housing, including the creation of new 3.2 acres lots, will remain a permitted use in the Forest and Rural Development Areas. The cluster development requirements now being proposed would not be triggered by an application to develop under the cultural housing standards of the Comprehensive Management Plan.

Finally, by providing a workable procedure by which the Commission may review and grant exceptions to CMP stormwater standards for certain public development projects, the expansion and improvement of existing public development (e.g., roads and intersections) is facilitated, leading to increased safety and convenience for the public.

Economic Impact

Adoption of the proposed amendments related to clustering will, on a regional basis, have a minimal but generally positive economic impact. The proposed amendments require the clustering of residential development on one

acre lots in the Forest and Rural Development Areas and should result in an economic benefit to both the municipalities in which such developments are located and to those seeking to develop their properties in these management areas. The clustering of development near existing roads and other development should reduce expenditures for infrastructure because, for example, shorter new roads should be necessary. Municipal services (e.g., trash collection, snow removal, school bus routes) will be able to be provided in a more efficient manner than if homes were scattered throughout the areas on large lots. These same economic benefits will result from the amendments to N.J.A.C. 7:50-5.30(c) which encourage the establishment of receiving areas as part of development transfer programs in the Forest and Rural Development Areas. Additionally, the bonus densities proposed at N.J.A.C. 7:50-5.19(d)1 for cluster development in the Forest and Rural Development Areas will provide property owners with the opportunity to develop an increased number of residential units if their parcels are at least 50 acres in size.

Mandatory clustering on smaller lots may also result in lower building lot values, although the presence of substantial permanently protected land adjacent to the development area will reduce this impact. For example, an examination of recent data suggests a diminution in value of between 25 and 50 percent. The bonus density provisions being proposed and the added value which should accrue to the lots due to the proximity of and access to protected open space will reduce or eliminate this potential negative economic impact for property owners.

As noted in the previous description of the amendments being proposed relative to the Forest and Rural Development Area density transfer programs, N.J.A.C. 7:50-5.30(c)4 would allow a municipality to designate a mandatory sending area, from which density could be transferred but within which development would not be permitted, either on existing undersized lots or on larger parcels of land. Municipal interest in the designation of such mandatory sending areas is expected to be very limited and it is not something which the Commission intends to actively promote. The only areas where this aspect of the density transfer program might be considered would be those which are severely constrained from a development standpoint due to environmental limitations (e.g., wetlands). If a municipality were interested in designating such an area as a mandatory sending area, the Commission would ensure that the overall municipal density transfer program were designed to provide sufficient receiving opportunities so that property owners in the designated sending area would have realistic opportunities to transfer the densities associated with their parcels and receive some economic return. That being the case, any negative impacts on property values as a result of the proposed density transfer program amendments are expected to be minimal.

Farmers seeking to increase impervious surface beyond three percent on those lands outside a cluster development area which remain in agricultural use will be required to prepare Resource Management System Plans for the Commission's approval. There will be a cost associated with preparing these

plans, although it is anticipated that the costs will be low as there has historically been free technical assistance available from the United States Department of Agricultural Natural Resources Conservation Service and the New Jersey Department of Agriculture.

Finally, those Pinelands municipalities which contain Forest and/or Rural Development Areas will incur costs because of the need to revise their master plans and land use ordinances in order to conform with the proposed amendments, once adopted. The costs of these revisions, while expected to be nominal, will be borne by the local governments, although the Commission will continue with its practice of providing model or sample ordinances which municipalities may consider, thereby somewhat offsetting costs. The Commission will also be preparing sample conservation and agricultural easements for use by municipalities and applicants when approving or proposing cluster developments. These sample easements will specify permitted open space or agricultural use provisions and detail relevant stewardship, monitoring and enforcement requirements.

Environmental Impact

The environmental impact of the proposed amendments is expected to be demonstrably positive. The amendments will require the clustering of residential development on one acre lots in the Forest and Rural Development Areas whenever an application for two or more units is proposed. Such clustered

development will be required to be located on a parcel in a manner which promotes efficient use of existing infrastructure, coordinates with existing development, minimizes land use conflicts and protects environmental and natural resources. The result will be more a more compact pattern of development, a reduction in non-point source pollution due to less impervious surface, the permanent protection of large areas of open space, a reduction in scattered and piecemeal development and, perhaps most importantly, less potential for fragmentation of the landscape. It is true that the clustering of units on smaller lots will concentrate wastewater recharge in a small portion of a larger parcel as all development will be required to utilize septic systems. However, there is no impact from a larger, sub-basin perspective and the proposed one acre lot size easily satisfies any potable water concerns.

The bonus densities provided for cluster development in the Forest and Rural Development Areas on parcels at least 50 acres in size will slightly increase the overall amount of residential development permitted in these management areas and this could be viewed as having a negative environmental impact. However, these bonus densities have been proposed as a means of encouraging the consolidation of lots in the Forest and Rural Development Areas and facilitating the protection of large, contiguous areas of open space through clustering. A review of past development applications in these two management areas led the Commission to believe such an amendment was necessary. Subdivisions in the Forest Area have been rare historically; the Commission's

records show an average of only three residential subdivision applications per year in the Forest Area. In both management areas, there has been a substantial amount of single family development on existing large lots that may be construed as fragmentation of the forest. In terms of residential development, it should be remembered that in the Forest Area, the average required lot size is 28 acres. Thus, the 474 applications for single dwelling units in the Forest Area submitted to the Commission between 1981 and February of 2004 could have consumed over 13,000 acres. Had those 474 dwelling units been developed on one acre lots, far less land would have been disturbed, even if one were to assume that in each case one of the bonus densities now being proposed had been applicable. In addition, past and ongoing State and non profit acquisition of lands in the two affected management areas, particularly the Forest Area, have reduced residential zoning capacity far more than any increase likely to occur due to the proposed bonus densities.

A review of the frequency of various lot sizes in the Forest and Rural Development Areas further emphasizes the need to encourage lot consolidation if the benefits of cluster development are to be fully realized. There are approximately 58,000 privately owned lots in the Forest Area of 10 acres or less in size and only 2,900 over 10 acres. In the Rural Development Area, there are approximately 43,000 privately owned lots of 10 acres or less in size and only 1,200 over 10 acres. These figures include both vacant and developed lots. The predominance of relatively small lots clearly indicates the need to provide an

incentive for lot consolidation in the Forest and Rural Development Areas, particularly considering the relatively low average density in the Rural Development Area of one unit per 5 acres and very low average density in the Forest Area of one unit per 28 acres. The Commission believes the most effective way to do so is through the bonus densities being offered for larger parcels. These bonus densities have therefore been structured to be higher in lower density zones, based on the fact that these are generally the areas with highest ecological value within the two affected Pinelands management areas.

The proposed amendments related to stormwater management will provide the Commission with a mechanism by which exceptions from CMP standards may be granted for what is expected to be a limited number of public development projects. Municipalities were previously authorized to grant these exceptions; however, the procedure for doing so, set forth at N.J.A.C. 7:50-6.84(a)6vi(3) did not take into account the fact that municipalities do not review and approve applications for public development which may be submitted to the Commission by counties, the State, school districts, etc. Proposed N.J.A.C. 7:50-6.84(a)6vi(4) allows the Commission itself to grant exceptions in those instances where an applicant for public development can demonstrate that CMP stormwater standards cannot be met on the parcel proposed for development or that stormwater management would more effectively be achieved through alternative measures. These alternative measures must occur within the same drainage area as the parcel proposed for development and be sufficient to offset the granting of the exception.

Thus, from a regional perspective, the granting of exceptions for public development projects pursuant to the proposed amendment will have little environmental impact. Site specific impacts may result; however, in most cases it is expected that the projects in question will involve expansion of or improvements to existing public development (e.g., roads) which itself does not meet CMP stormwater standards. Allowing for the expansion of existing public infrastructure in this fashion may reduce the need for entirely new roads or other development in other locations in the Pinelands Area. In any case, the proposed amendment merely corrects a procedural problem in the current CMP in order to provide a workable process for the granting of appropriate exceptions for public development applications.

Federal Standards Statement

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. 471i) called upon the State of New Jersey to develop a comprehensive management plan for the Pinelands National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals which the plan must meet, including the protection, preservation and enhancement of the land and water resources of the Pinelands. The proposed amendments are designed to meet those goals by establishing requirements for the clustering of residential

development in the Forest and Rural Development Areas as a means of reducing scattered and piecemeal development and the resulting fragmentation of the landscape. The proposed amendments also clarify the process whereby applicants for public development may seek exceptions to the stormwater management standards of the CMP, as long as appropriate alternate measures are provided.

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

Jobs Impact

The proposed amendments are not expected to cause the generation or loss of any jobs if adopted.

Agriculture Industry Impact

The proposed amendments related to stormwater management are expected to have no impact on the agriculture industry. Those amendments related to cluster development are expected to have only minimal impacts on the agriculture industry.

The proposed amendments would allow for the continuation and expansion of agricultural activities on those open space lands derived from residential cluster development in the Forest and Rural Development Areas which are already being farmed as of the effective date of these proposed rules. If established after the effective date of these proposed rules, agriculture would be permitted to continue if it has been in existence for at least five years prior to

submission of an application for cluster development to the Commission. This is a change from the current CMP regulations which specify at N.J.A.C. 7:50-5.23(c) and 5.26(c) that no further development of any kind may be permitted on such lands once they have been used for cluster development. Conversely, agriculture was permitted on lands protected through a development transfer program in the Forest or Rural Development Area. That standard of the CMP, N.J.A.C. 7:50-5.30(b)4, is proposed for amendment to allow for the continuation and expansion of agricultural uses only on those protected lands which are already being farmed as of the effective date of these proposed rules. The continuation of agriculture on lands where farming has been established after the effective date of the rules will also be permitted, provide it has been in existence for at least the five years prior to submission of an application to the Commission under the development transfer program provisions. The same uses (low intensity recreation, ecological management, forestry and agriculture on already farmed lands) will therefore be permitted on the open space lands resulting from either on-site or off-site cluster development.

While this is an improvement in terms of consistency of regulation, impacts on the future of the agricultural industry may be perceived as being negative. In that light, the Commission's primary objective of preventing fragmentation of the landscape by ensuring the protection of large, contiguous, undisturbed areas must be recognized. The Pinelands Protection Act itself (N.J.S.A. 13:18A-9b(1)) sets forth as a goal for the Protection Area the

preservation and maintenance of the essential character of the existing Pinelands environment, including the plant and animal species indigenous thereto and the habitat therefor. Forest Areas and, to a lesser extent, Rural Development Areas, were designated in response to that mandate.

Allowing the common open space appurtenant to clustered residential development in the Forest and Rural Development Areas to be cleared and disturbed for new agricultural operations would run counter to this ecological goal, particularly in the Forest Area. Therefore, if a landowner chooses to develop under the residential cluster or development transfer provisions of the CMP, the Commission believes it is appropriate that future agricultural activities on the properties in question be limited. N.J.A.C. 7:50-5.19(d)5i and 5.30(b)4iii are therefore proposed to allow only the continuation and expansion, by up to 50 percent, of agricultural activities existing as of the effective date of these proposed rules. As of September, 2005, agriculture accounted for only two percent of the Forest Area, approximately 4,900 acres, and only eight percent of the Rural Development Area, just over 9,000 acres. The proposed amendments provide an opportunity, albeit a limited one, for the expansion of these existing farms should their owners decide to subdivide and develop their properties for non-farm uses, such as residential development.

In addition, the establishment of new farms in the Forest and Rural Development Areas will continue to be permitted on those lands which have not already been residentially developed under the proposed clustering or

development transfer provisions of N.J.A.C. 7:50-5.19 and 5.30. Agriculture remains a permitted use in the Forest and Rural Development Areas pursuant to N.J.A.C. 7:50-5.23(a)3 and 5.26(b)1. The proposed amendments will not prevent property owners from establishing new farms in these two management areas; they will simply limit the ability to do so on the protected open space resulting from residential cluster development or development transfer. If an agricultural use is established after the effective date of these rules and the property owner elects to pursue residential development under the clustering or development transfer provisions, the agricultural use will be allowed to continue but only if it has been existence for at least five years prior to submission of the application for development. If the agricultural use cannot meet this requirement, it will not be permitted to continue on the protected open space and will have to be extinguished.

On those parcels where agricultural uses are allowed to continue and/or expand subsequent to cluster development or development transfer, farmers who wish to increase the amount of impervious surface on the protected open space beyond three percent will be required to prepare a Resource Management System Plan. The agricultural community is already familiar with this type of plan and the process for creating one. N.J.A.C. 7:50-5.19(d)5v and 5.30(b)4vi would merely make the preparation of such a plan and its approval by the Commission mandatory in what is likely to be a very limited number of circumstances. The amount of impervious surface on a farm will be calculated in accordance with

Natural Resources Conservation Service TR-55, as is indicated in the definition of “impervious surface” being added at N.J.A.C. 7:50-2.11. Temporary and seasonal agricultural uses, whether or not they are recurring from year to year, will not be included, nor will dirt lanes and paths used exclusively by farm personnel to access their sites and to which the public has no access. Changes in crop type or additional clearing of wooded areas alone would also not be included as these types of changes do not increase the amount of impervious surface on a parcel. Only those surfaces classified as impervious in Urban Areas by TR-55 will be included.

The Pinelands Protection Act also states that the CMP should promote the continuation and expansion of agricultural and horticultural uses within the Protection Area (N.J.S.A. 13:18A-9b(3)). The CMP accomplishes this goal largely through the establishment of Agricultural Production Areas which consist of areas of agricultural use, together with adjacent areas which are suitable for expansion of agricultural operations. The Agricultural Production Area currently totals just over 68,000 acres in size, of which approximately 42 percent was in agriculture as of September, 2005. If there are portions of the Forest or Rural Development Area in which the establishment of new agricultural operations in conjunction with clustered residential development is desired, these areas may be considered for redesignation as Agricultural Production Areas. To promote agricultural uses, this Pinelands management area provides an opportunity for both clustered residential development pursuant to N.J.A.C. 7:50-5.24(a)3 and the

continuation and/or establishment of new agricultural uses on the same parcel. In addition, land in the Agricultural Production Area is eligible for an allocation of PDCs, an increasingly valuable use. It should be noted that the redesignation of lands from the Forest and Rural Development Areas to the Agricultural Production Area is not uncommon. Since 2002, the redesignation of approximately 1,050 acres has been approved by the Commission in four different Pinelands municipalities.

Within the Forest and Rural Development Areas, the proposed rules would make cluster development mandatory whenever two or more units are proposed as part of a residential development. Other opportunities for the development of housing in these two management areas will remain unchanged. Specifically, cultural housing on 3.2 acre lots will remain a permitted use in the Forest and Rural Development Areas pursuant to N.J.A.C. 7:50-5.32. The cluster development requirements now being considered would not be triggered by an application to develop under the cultural housing standards of the Comprehensive Management Plan. Likewise, agricultural employee housing which is an element of an agricultural operation will remain a permitted accessory use in the Forest and Rural Development Areas. The cluster development requirements would not be triggered by an application to develop agricultural employee housing which meets the standards of the Comprehensive Management Plan.

Farm-related housing is not currently a permitted use in the Forest or Rural Development Areas. Instead, the Comprehensive Management Plan permits

housing in the Forest Area at a density not to exceed one unit per 15.8 acres of privately owned vacant upland. In the Rural Development Area, the requirement is one unit per 3.2 acres of privately owned vacant upland. These requirements are translated by municipalities into zoning districts of varying densities. The development of a home for the owner or operator of a farm in the Forest or Rural Development Area is permitted, provided it is consistent with the residential density standard established by the municipality for the zoning district in question. The development of such a home would continue to be permitted without the need for cluster development and the associated deed restrictions.

Regulatory Flexibility Statement

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Commission has evaluated the reporting, recordkeeping, and other compliance requirements that the proposed amendments would impose upon small businesses. The Act defines the term “small business” as “any business which is a resident of this State, independently owned and operated and not dominant in its field and which employs fewer than 100 full-time employees. N.J.S.A. 52:14B-17. Most businesses in the Pinelands may be characterized as small in size and number of employees, at least in comparison to the remainder of New Jersey. The requirements of the proposed amendments, however, do not establish any additional reporting or recordkeeping requirements, nor will the amendments require, in most cases, the retention of professional

services. Consequently, there is no need for the amendments to provide lesser requirements for small businesses and, thus, the proposed amendments do not differentiate by size of business, and impact all businesses equally.

The proposed amendments set forth the standards applicable to on-site and off-site clustering of residential development in the Forest and Rural Development Areas. Additionally, the proposed amendments will provide Pinelands municipalities with the option of designating mandatory sending areas; will add a definition of “impervious surface” to the CMP and revise the definition of the term “impermeable surface”; and establish a process by which the Commission may grant exceptions to the stormwater management standards of the Plan for a certain public development projects. As discussed in the Economic Impact Statement above, the proposed amendments would establish new obligations on Pinelands municipalities which contain Forest and/or Rural Development Areas. Specifically, such municipalities will need to revise their master plans and land use ordinances in order to conform to the proposed amendments once adopted. Rather than establishing new compliance requirements on small businesses, the amendments may provide opportunities for those small planning and engineering firms that may be retained by such municipalities to assist them in this undertaking.

The amendment concerning the submission to and approval by the Commission of a Resource Management System Plan in order to increase the impervious coverage beyond 3 % or existing conditions, which ever is greater, on

a farm that is continued and/or expanded on conserved lands subsequent to cluster development or development transfer, may require the retention of professional services to assist in the preparation of such plan. However, as discussed in the Economic Impact Statement above, free technical assistance has been historically available from the United States Department of Agricultural Natural Resources Conservation Service and the New Jersey Department of Agriculture. Moreover, as discussed in the Agriculture Industry Impact Statement, the agricultural community is already familiar with this type of plan and the process for creating one. The proposed amendments would merely make preparation of such a plan and its approval by the Commission mandatory in what is likely to be a very limited number of circumstances. Given this and the important objective of the amendments to limit forest fragmentation within the Pinelands Area, no lesser requirements for small businesses are provided.

Smart Growth Impact

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

nature and extent of their impact on smart growth and implementation of the State Plan.

The proposed amendments which require cluster development on one acre lots in the Forest and Rural Development Areas whenever two or more units are proposed will minimize fragmentation of the existing forest and prevent scattered and piecemeal development in these important portions of the Pinelands Area. Thus, the amendments will serve to encourage and in some cases mandate smart growth as envisioned under the State Plan.

No other smart growth impacts are anticipated from the proposed amendments.

Housing Affordability Impact

The proposed clustering amendments apply to all types of housing units proposed to be developed in the Pinelands Forest and Rural Development Areas, regardless of their size, cost or ownership. Under the proposed amendments, any application for development of two or more homes in the Forest or Rural Development Area would be required to cluster that development on one acre lots.

There are approximately 90,000 vacant acres of residentially zoned land in the Pinelands Forest Area. Given an average permitted density of one unit per 28 acres in the Forest Area, the potential for approximately 3,200 new housing units results. In the Rural Development Area, the average permitted density of one unit per 5 acres yields the potential for approximately 7,500 new housing units on the

approximately 37,500 acres of vacant residentially zoned land contained therein. The bonus densities for clustered development proposed at N.J.A.C. 7:50-5.19(d)1 will slightly increase these housing projections; however, as these bonus densities are dependent on municipal zoning and the size of the parcel being proposed for development, it is impossible to estimate their exact impact.

As noted in the economic impact section of this proposal, the proposed requirements for clustering of residential development on one acre lots, rather than continuing to allow such units to be developed on large “estate” lots, may reduce the value of each lot. Although there are a number of other factors which may impact housing cost (e.g., proximity to protected open space), the result may well be an increase in housing affordability in the Forest and Rural Development Areas. It must be recognized, however, that these two management areas have average permitted densities of one unit per 28 acres (the Forest Area) and one unit per 5 acres (the Rural Development Area). Neither management area has sewers or is permitted by the CMP to have sewer service in the future. These are not the portions of the Pinelands Area where affordable housing is targeted or anticipated.

It should also be noted that the Pinelands Protection Act (N.J.S.A. 13:18A-12b) currently precludes the Commission from considering the number of low or moderate income housing units provided by municipal master plans and ordinances as a criterion for their approval. Likewise, the Pinelands Protection Act (N.J.S.A. 13:18A-15) precludes the Commission from considering the

affordability of housing in its review and action on applications for development in the Pinelands Area.

Smart Growth Development Impact

The proposed clustering amendments apply to all types of housing units proposed to be developed in the Pinelands Forest and Rural Development Areas, regardless of their size, cost or ownership. Under the proposed amendments, any application for development of two or more homes in the Forest or Rural Development Area would be required to cluster that development on one acre lots.

There are approximately 90,000 vacant acres of residentially zoned land in the Pinelands Forest Area. Given an average permitted density of one unit per 28 acres in the Forest Area, the potential for approximately 3,200 new housing units results. In the Rural Development Area, the average permitted density of one unit per 5 acres yields the potential for approximately 7,500 new housing units on the approximately 37,500 acres of vacant residentially zoned land contained therein.

The bonus densities for clustered development proposed at N.J.A.C. 7:50-5.19(d)1 will slightly increase these housing projections; however, as these bonus densities are dependent on municipal zoning and the size of the parcel being proposed for development, it is impossible to estimate their exact impact.

The proposed amendments may result in a decrease in the price of housing in the Forest and Rural Development Areas as it is only reasonable to assume that one would pay less for a home on a one acre lot than for a home on a 25 acre

“estate” lot. Whether or not this decrease in price will lead to an increase in the availability of affordable housing is unknown. As noted previously, the very low densities permitted in the Forest and Rural Development Areas, coupled with the lack of sewer service, generally make these portions of the Pinelands Area poor candidates for the provision of new affordable housing.

The proposed amendments will not affect new construction in Planning Areas 1 and 2 as designated by the State Development and Redevelopment Plan. These State Planning Areas do not exist in the Pinelands Area. In terms of designated centers, all Pinelands Villages in the Pinelands Area are accorded such status by virtue of the 1999 Memorandum of Agreement between the Pinelands Commission and the State Planning Commission. The proposed amendments expand the CMP’s development transfer program to allow for the transfer of residential density from a Forest or Rural Development Area to a Pinelands Village. While this mechanism is unlikely to be frequently used, it does provide an opportunity for the clustering of higher intensity development in Pinelands Villages while at the same time offering permanent protection to environmentally sensitive lands outside these designated centers.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

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

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings ascribed to them.

...

“Impermeable surface” means any surface which does not permit fluids to pass through or penetrate its pores or spaces, typically having a maximum permeability for water of 10^{-7} cm/second at the maximum anticipated hydrostatic pressure. The term “impermeable” is equivalent in meaning.

“Impervious surface” means any surface that has been compacted or covered with a layer of material so that it prevents, impedes or slows infiltration or absorption of fluid, including stormwater directly into the ground, and results in either reduced groundwater recharge or increased stormwater runoff sufficient to be classified as impervious in Urban Areas by the United States Department of Agriculture, Natural Resources Conservation Service Title 210 - Engineering, 210-3-1 - Small Watershed Hydrology (WINTR-55) Version 1.0, as amended and supplemented, available with user guide and tutorials at http://www.wsi.nrcs.usda.gov/products/W2Q/H&H/Tools_Models/WinTr55.html or at Natural Resources Conservation Service, 220 Davidson Avenue, Somerset, NJ 08873. Such surfaces may have varying degrees of permeability.

“Permeability” means the rate at which water moves through a unit area of

soil, rock, or other material at hydraulic gradient of one.

“Resource management system plan” means a plan, prepared in accordance with the United States Department of Agriculture, Natural Resources Conservation Service New Jersey Field Office Technical Guide, dated June 2005, incorporated herein by reference, as amended and supplemented and available at <http://www.nrcs.usda.gov/technical/efotg> . Such plans shall:

1. Prescribe needed land treatment and related conservation and natural resources management measures, including forest management practices, for the conservation, protection and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity, and the control and prevention of non-point source pollution; and
2. Establish criteria for resource sustainability of soil, water, air, plants and animals.

...

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

- (a) Municipal master plans and land use ordinances, and any parts thereof, shall be certified only if:
1. (No change.)
 2. They include provisions which:

- i.-vi. (No change.)
- vii. Enable permitted densities in each Regional Growth Area zoning district in which residential development is permitted to be reasonably achieved in most cases; [and]
- viii. Establish and implement a mitigation plan as part of any municipal stormwater management plan and ordinance adopted in accordance with N.J.A.C. 7:8-4.2(c)11 which:
 - (1)-(4) (No change.)
 - (5) Requires that the municipality expend any contributions collected pursuant to (a)2ix(4) above within five years of their receipt[.]; and
- ix. Are designed to implement a clear and straightforward process for the review of applications for residential cluster development in the Forest and Rural Development Areas, in accordance with the requirements for cluster development set forth in N.J.A.C. 7:50-5.19(c) and (d). The Commission may certify municipal clustering ordinances that contain different clustering standards than those set forth in N.J.A.C. 7:50-5.19(c) and (d) provided that those standards are supported through the application of sound land use planning principles, are based upon local conditions or circumstances that warrant such changes and

do not undermine the overall goals and objectives of the Forest and Rural Development Area clustering program set forth at N.J.A.C. 7:50-5.19(c) and (d).

7:50-4.1 Applicability

- (a) For the purposes of this subchapter only, the following shall not be considered development except for development of any historic resource designated by the Pinelands Commission pursuant to N.J.A.C. 7:50-6.154:

1.-7. (No change.)

8. The construction of any addition or accessory structure for any non-residential use or any multi-family residential structure provided said addition or structure will be located on or below an existing [impermeable] impervious surface and the existing use is served by public sewers and said addition of structure will cover an area of no more than 1,000 square feet;

9.-19. (No change.)

(b)-(d) (No change.)

7:50-5.16 Guidelines for delineation of boundaries of Pinelands Villages

- (a) In the preparation of municipal master plans and land use ordinances, municipalities shall designate the boundaries of Pinelands Villages; provided that the designated village shall maintain its existing character

and does not contain more vacant land than built land, nor provide for an additional increment of development which is greater than the number of non-accessory structures that currently exist in the village. For the purposes of this requirement, built land for residential structures shall be calculated as the existing lot size or 3.2 acres, whichever is less, [and] built land for non-residential structures shall be calculated as the lot size required by existing zoning at the time of adoption of this Plan and residential development being transferred to a village from a Forest or Rural Development Area pursuant to N.J.A.C. 7:50-5.30(c)2 shall not be included in calculating the additional increment of development.

Municipalities shall also consider the following guidelines in designating village boundaries to the greatest extent practicable:

1.-6. (No change.)

7:50-5.19 Cluster development

- (a) Clustering of residential development on [properties] parcels located within the Regional Growth Areas [and Rural Development Areas] is encouraged, provided that the densities established in the certified municipal ordinance are not exceeded and that the development otherwise conforms to the standards of this Plan.
- (b) (No change.)

(c) Clustering of residential development on parcels located within the Forest Areas and Rural Development Areas shall be required whenever two or more units are proposed as part of a residential development, except in cases where such development:

1. Conflicts with the provisions of a development transfer program established pursuant to N.J.A.C. 7:50-5.30;
2. Is inconsistent with the standards of Subchapter 6 of this Plan; or
3. Disrupts the contiguity of the forest ecosystem to a greater degree than non-clustered development.

(d) The following standards shall apply to the clustering of residential development within the Forest Areas and Rural Development Areas:

1. The number of residential lots permitted within the cluster shall be calculated on the basis of the size of the parcel of land and the permitted density of the zoning district(s) in which the parcel is located, with a bonus applied in accordance with the following chart. If the parcel is located in more than one municipal zoning district, separate residential lot calculations for each zoning district shall be summed to determine the total number of residential lots to be clustered.

FOREST AND RURAL DEVELOPMENT AREA CLUSTERING BONUS				
Parcel Size	Permitted Residential Density			
		3.2-4.99	5.0-9.99	10-24.99

	acres per unit	acres per unit	acres per unit	per unit
<50 acres	0	0	0	0
50-99.99 acres	+10%	+15%	+20%	+25%
100-149.99 acres	+15%	+20%	+25%	+30%
≥150 acres	+20%	+25%	+30%	+40%

2. The residential cluster shall be located on the parcel such that the development area:
 - i. Is located proximate to existing roads;
 - ii. Is located proximate to existing developed sites on adjacent or nearby parcels;
 - iii. Is or will be appropriately buffered from adjoining or nearby non-residential land uses; and
 - iv. Conforms with the minimum standards of Subchapter 6 of this Plan, with the exception of N.J.A.C. 7:50-6.104.

3. Development within the residential cluster shall be designed as follows:
 - i. Residential lots should be one acre in size but may be larger if dictated by unusual site conditions. In no case shall the average size of residential lots within a cluster exceed 1.1 acres;
 - ii. Individual on-site septic waste water treatment systems in accordance with N.J.A.C. 7:50-6.84(a)4 may serve the lots

within the cluster development area. However, in the event that existing agricultural uses will continue on the parcel in accordance with 5 below, individual on-site septic waste water treatment systems shall comply with the standards of N.J.A.C. 7:50-6.84(a)5 or 10.21 through 10.23. Community on-site waste water treatment systems serving two or more residential dwelling units which meet the standards of N.J.A.C. 7:50-6.84(a)5 or 10.21 through 10.23 shall also be permitted;

- iii. The residential cluster development area shall include such land and facilities as are necessary to support the development, including wastewater facilities, streets, stormwater management facilities and recreation amenities; and
- iv. Permitted recreation amenities shall be specified in the municipal ordinance but in no case may they occupy more than one-half acre of land or the equivalent of one acre of land for every 25 residential lots, whichever is greater.

- 4. Except as otherwise provided in (d)5 below, the balance of the parcel located outside of the residential cluster development shall be owned and managed by a duly constituted homeowners' association, a non profit conservation organization, the

municipality or incorporated as part of one of the lots within the cluster development area.

- i. All such land shall be permanently protected through recordation of a deed of conservation restriction. Such restriction shall be in favor of the residents of the cluster development and, if provided by municipal ordinance, the municipality or another public agency or non profit conservation organization. In all cases, such restriction shall be expressly enforceable by the Pinelands Commission; and
 - ii. Such deed of conservation restriction shall permit the land to be managed for low intensity recreation, ecological management and forestry, provided that no more than five percent of the land may be cleared, no more than one percent of the land may be covered with impervious surfaces and any such uses or activities are approved and conducted in accordance with the requirements of this Plan, including any municipal ordinance certified pursuant thereto.
5. Where agricultural use exists on a parcel proposed for cluster development, the following standards shall apply:

- i. For those agricultural uses in existence as of (the effective date of these rules), the deed of restriction may provide for the continuation of agricultural uses, and the expansion of the area of agricultural use by up to 50%;
- ii. For those agricultural uses established after (the effective date of these rules), the deed of restriction may provide for the continuation of agricultural uses, provided the agricultural use has been in existence for a period of at least five years prior to submission of an application for cluster development pursuant to N.J.A.C. 7:50-4.1 et seq.;
- iii. For those agricultural uses established after (the effective date of these rules) which do not meet the standards of (d)5ii above, the deed of restriction shall permit the land to be managed only in accordance with (d)4 above and shall not provide for continuation of any agricultural use on the parcel;
- iv. In lieu of the provisions of (d)4 above, the deed of restriction to be recorded pursuant to (d)5i or ii above may be in favor of a County or the State Agriculture Development Committee. In all cases, such restriction shall be expressly enforceable by the Pinelands Commission;

- v. The deed of restriction to be recorded pursuant to (d)5i or ii above shall authorize agricultural uses and provide that impervious surface may not exceed that which currently exists or three percent, whichever is greater, unless a Resource Management System Plan has been prepared. Before these impervious surface limits may be exceeded, the Resource Management System Plan must be approved by the Pinelands Commission and, if the deed of restriction is in favor of the County or the State Agriculture Development Committee, by such agency; and
- vi. For parcels which meet the standards of (d)5i or ii above, a provision is recorded in the deed for each residential lot within the cluster development area which acknowledges agricultural use of the protected land outside the cluster development area and recognizes the legal protections afforded to that use through the deed of restriction and any applicable statutes.

7:50-5.22 Minimum standards governing the distribution and intensity of development and land use in the Preservation Area District

- (a) The following uses shall be permitted in the Preservation Area District:
 - 1.-5. (No change.)
 - 6. Low intensity recreational uses, provided that:

i.-iv. (No change.)

v. No more than one percent of the parcel will be covered with [impermeable] impervious surfaces.

7. (No change.)

(b)-(d) (No change.)

7:50-5.23 Minimum standards governing the distribution and intensity of development and land use in Forest Areas

(a) The following uses shall be permitted in a Forest Area:

1. Residential dwelling units in accordance with the cultural housing provisions of N.J.A.C. 7:50-5.32[.];
2. [Residential dwelling units at municipally designated densities provided that the total number of dwelling units authorized by a municipality does not exceed an average of one dwelling unit for every 15.8 acres of privately owned, undeveloped land which is not defined in this Plan as wetlands. The Executive Director shall maintain a current record of residential units zoned in each certified municipality pursuant to this section.] Residential cluster development in accordance with the provisions of N.J.A.C. 7:50-5.19(c) and (d). Nonclustered residential development shall also be permitted, provided that:

i. No more than one unit is proposed; or

ii. The standards of N.J.A.C. 7:50-5.19(c) cannot be met;

3. Residential dwelling units in accordance with the development transfer provisions of N.J.A.C. 7:50-5.30;

[3.] 4. Agriculture;

[4.] 5. Forestry;

[5.] 6. Low intensity recreational uses, provided that:

i.-iv. (No change.)

v. No more than one percent of the parcel will be covered with [impermeable] impervious surfaces.

(b) (No change.)

(c) Minimum lot area and density requirements for residential development:

No residential dwelling unit shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.19, 5.30, 5.31 and 5.32. The total number of dwelling units authorized by a municipality shall not exceed a density of one dwelling unit for every 15.8 acres of privately owned, undeveloped land which is not defined in this Plan as wetlands, except as provided in N.J.A.C. 7:50-5.19(d)1. The Executive Director shall maintain a current record of residential units zoned in each certified municipality pursuant to this section. [When the residential density otherwise permitted on a particular parcel of land is clustered on 3.2 acre lots, the remainder of the parcel not assigned to individual residential lots shall be permanently dedicated through recordation of a restriction on the

deed to the parcel as open space with no further development permitted. Recreational amenities may be permitted on the deed restricted lands insofar as they are consistent with the types of recreational amenities which could have been developed as accessory uses on the residential lots, absent clustering.]

- (d) (No change.)

7:50-5.24 Minimum standards governing the distribution and intensity of development and land use in the Agricultural Production Areas

- (a) The following uses shall be permitted in an Agricultural Production Area:

- 1.-5. (No change.)
- 6. Low intensity recreational uses, provided that:
 - i.-iv. (No change.)
 - v. No more than one percent of the parcel will be covered with [impermeable] impervious surfaces.
- 7.-9. (No change.)

- (b)-(d) (No change.)

7:50-5.26 Minimum standards governing the distribution and intensity of development and land use in Rural Development Areas

- (a) The following uses shall be permitted in a Rural Development Area:

1. Residential cluster development in accordance with the provisions of N.J.A.C. 7:50-5.19. Nonclustered residential development shall also be permitted, provided that:

- i. No more than one unit is proposed; or
- ii. The standards of N.J.A.C. 7:50-5.19(c) cannot be met; and

2. Residential dwelling units in accordance with the development transfer provisions of N.J.A.C. 7:50-5.30;

[(a) Residential dwelling units at municipally designated densities shall be permitted provided that the total number of dwelling units authorized by a municipality does not exceed one dwelling unit for every 3.2 acres of privately owned undeveloped land which is not defined in this Plan as wetland.]

(b) (No change.)

(c) Minimum lot area and density requirements for residential development:

No residential dwelling unit shall be located on a lot of less than 3.2 acres, except as provided in N.J.A.C. 7:50-5.19, 5.30, 5.31 and 5.32. The total number of dwelling units authorized by a municipality shall not exceed a density of one dwelling unit for every 3.2 acres of privately owned, undeveloped land which is not defined in this Plan as wetlands, except as provided in N.J.A.C. 7:50-5.19(d)1. [A municipality may permit the residential density otherwise permitted on a particular parcel of land to be clustered on one acre lots if the remainder of the parcel not assigned to

individual residential lots is permanently dedicated through recordation of a restriction on the deed to the parcel as open space with no further development permitted. Recreational amenities may be permitted on the deed restricted lands insofar as they are consistent with the types of recreational amenities which could have been developed as accessory uses on the residential lots, absent clustering.]

- (d) (No change.)

**7:50-5.30 Development transfer programs in Forest Areas and Rural
Development Areas**

- (a) (No change.)
- (b) The density transfer programs shall adhere to the following minimum standards:
1. (No change.)
 2. All parcels involved in the density transfer shall be located within the same Pinelands management area [and within the same municipal zoning district];
 3. (No change.)
 4. Any parcel whose acreage is being utilized to meet the density requirement but which will not be developed shall be permanently protected [dedicated as open space] through recordation of a deed of restriction [on the deed to the parcel with no further

development permitted except agriculture, forestry and low intensity recreational use].

- i. Such restriction shall be in favor of the parcel to be developed and, if provided by municipal ordinance, the municipality or another public agency or a non profit conservation organization. In all cases, such restriction shall be expressly enforceable by the Pinelands Commission;
- ii. Such deed of restriction shall permit the parcel to be managed for low intensity recreation, ecological management and forestry, provided that no more than five percent of the parcel may be cleared, no more than one percent of the parcel may be covered with impervious surfaces and any such uses or activities are approved and conducted in accordance with the requirements of this Plan, including any municipal ordinance certified pursuant thereto;
- iii. Where agricultural use exists on a parcel to be protected (as of the effective date of these rules), the deed of restriction may provide for the continuation of agricultural uses, and the expansion of the area of agricultural use by up to 50%;

- iv. Where agricultural use was established on the parcel to be protected after (the effective date of these rules), the deed of restriction may provide for the continuation of agricultural uses, provided the agricultural use has been in existence for a period of at least five years prior to submission of an application for development pursuant to the development transfer program and N.J.A.C. 7:50-4.1 et seq.:
- v. Where agricultural use was established on the parcel to be protected after (the effective date of these rules) that does not meet the standards of (b)4iv above, the deed of restriction shall permit the land to be managed only in accordance with (b)4ii above and shall not provide for continuation of any agricultural use on the parcel; and
- vi. The deed of restriction to be recorded pursuant to (b)4iii or iv above shall provided that impervious surface may not exceed that which currently exists or three percent, whichever is greater, unless a Resource Management System Plan has been prepared. Before these impervious surface may be exceeded, the Resource Management System Plan must be approved by the Pinelands Commission and, if the deed of restriction is in favor of the

County or the State Agriculture Development Committee,

by such agency; and

5. The municipal ordinance may set forth reasonable conditions or requirements governing ownership of the parcel to be protected.

(c) A municipality [may] shall adapt the program to its particular circumstances and may vary the standards in (b) above provided that [the program is otherwise consistent with the land use and density provisions of this subchapter] those standards are supported through the application of sound land use planning principles and do not undermine the overall goals and objectives of N.J.A.C. 7:50-5.30. This may include, but is not limited to[,] :

1. Permitting the permanent protection of lands in a Forest Area pursuant to (b)4 above to meet the density requirement for the development of otherwise undersized lots in the Rural Development Area;
2. Permitting the permanent protection of lands in a Forest Area or Rural Development Area pursuant to (b)4 above as a means of transferring development to a Pinelands Village; and
3. [identifying] Identifying specific areas to receive the development transfers [or excluding certain areas from the program considering]. Within such receiving areas, residential development shall be permitted on one acre lots and shall be served by

individual or community on-site septic waste water treatment systems which meet the standards of N.J.A.C. 7:50-6.84(a)5 or 10.21 through 10.23. Receiving areas shall be delineated in a manner which:

- i. Promotes efficient use of existing public service infrastructure;
 - ii. Coordinates with and is located in close proximity to areas of existing development, including residential dwellings and other principal structures;
 - iii. Minimizes the potential for land use conflicts with existing uses on adjacent parcels, including, but not limited to, agricultural uses;
 - iv. Recognizes the presence and location of areas containing numerous existing undersized lots; and
 - v. Excludes expansive areas that are unlikely to meet the development standards of Subchapter 6 of this Plan.
4. Identifying specific areas within which development will not be permitted pursuant to a development transfer program but from which density may be transferred to facilitate the development of otherwise undersized lots elsewhere in the municipality. Such sending areas may be delineated for purposes of:

- i. Promoting the establishment and continuation of greenways and maximizing the contiguity of forested lands and protected open space; and
- ii. Protecting the environmental and unique natural attributes of areas within a Forest or Rural Development Area, including but not limited to extensive areas that:
 - (1) Contain wetlands and wetlands transition areas;
 - (2) Support those threatened and endangered plant and animal species defined as such in N.J.A.C. 7:50-6.27 and 6.33; and
 - (3) Are unlikely to meet the development standards of Subchapter 6 of this Plan.

- [1. Land ownership and subdivision patterns;
- 2. Infrastructure availability;
- 3. Environmental constraints; and
- 4. Protection of important natural resources.]

(d) (No change.)

7:50-5.47 Recordation of deed restriction

(a) (No change.)

(b) Such deed restriction shall specify the number of Pinelands Development Credits sold and that the parcel may only be used in perpetuity for the following uses:

1. In the Preservation Area District:
 - i. Berry agriculture; horticulture of native Pinelands plants; forestry; beekeeping; fish and wildlife management; and low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not exceed five percent of the parcel, and no more than one percent of the parcel will be covered with [impermeable] impervious surfaces.
 - ii. (No change.)
2. (No change.)
3. In Agricultural Production Areas:
 - i. Agriculture; forestry; low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not

exceed five percent of the parcel, and no more than one percent of the parcel will be covered with [impermeable] impervious surfaces; agricultural commercial establishments, excluding supermarkets and restaurants and convenience stores, where the principal goods or products available for sale were produced in the Pinelands and the sales area does not exceed 5,000 square feet; and agricultural products processing facilities.

ii. (No change.)

4. (No change.)

(c) (No change.)

7:50-6.80 Memoranda of agreement may permit deviations

(a) (No change.)

(b) The Pinelands Commission may enter into intergovernmental memoranda of agreement with other governmental agencies which authorize only the use of existing waste management facilities located in the Rural Development Area that were originally developed in accordance with the provisions of this Plan, provided that the Commission determines:

1.-3. (No change.)

4. There will be no material increase in traffic, [impermeable] impervious surface or clearing of vegetation as a result of the proposed use;

5.-6. (No change.)

(c)-(e) (No change.)

7:50-6.84 Minimum standards for point and non-point source discharges

(a) The following point and non-point sources may be permitted in the Pinelands:

1.-5. (No change.)

6. Surface water runoff in accordance with N.J.A.C. 7:8-5 and 6, as amended, except as modified and supplement pursuant to the following:

i. Runoff rates and volume, runoff quality and groundwater recharge methodologies:

(1) Runoff rates and volumes shall be calculated in accordance with the USDA Natural Resources Conservation Service (NRCS) Runoff Equation, Runoff Curve Numbers, and Dimensionless Unit Hydrograph, as described in the NRCS National Engineering Handbook Part 630 – Hydrology and [Technical Release 55 – Urban Hydrology for Small

Watersheds] Title 210 - Engineering, 210-3-1 Small Watershed Hydrology (WINTR-55) Version 1.0, incorporated herein by reference, as amended and supplemented. Information regarding these methodologies is available from the Natural Resources Conservation Service website at [<http://www.wcc.nrcs.usda.gov/water/quality/common/neh630/4content.html>]http://www.wsi.nrcs.usda.gov/products/W2Q/H&H/Tools_Models/WinTr55.html or at Natural Resources Conservation Service, 220 [Davison] Davidson Avenue, Somerset, New Jersey 08873; (732)537-6040. Alternative methods of calculation may be utilized, provided such alternative methods are at least as protective as the NRCS methodology when considered on a regional stormwater management area basis;

(2)-(4) (No change.)

ii.-v. (No change.)

vi. Exceptions:

(1)-(2) (No change.)

(3) Provided an applicant for major development pursuant to N.J.A.C. 7:50-4.31 et seq. is able to

demonstrate that the standards set forth in (a)6i through v above cannot be met on the parcel proposed for development or that stormwater management would more effectively be achieved through alternative measures, strict compliance with said standards may be waived at the discretion of the municipality in which the proposed development is located, provided the municipal stormwater management plan certified by the Commission pursuant to N.J.A.C. 7:50-3 specifies the circumstances under which such alternative measures would be appropriate and identifies those parcels or projects elsewhere in the Pinelands Area where any off-site mitigation would be permitted to occur; [and]

- (4) Provided an applicant for major public development pursuant to N.J.A.C. 7:50-4.51 et seq. is able to demonstrate that the standards set forth in (a)6i through v above cannot be met on the parcel proposed for development or that stormwater management would more effectively be achieved through alternative measures, an exception may be

granted at the discretion of the Commission,
provided any such measures occur within the
Pinelands Area and within the same drainage area as
the parcel proposed for development and are
sufficient to offset the granting of the exception.
The proposed alternative measures must be
consistent with the stormwater management plan
certified by the Commission pursuant to N.J.A.C.
7:50-3 for the municipality in which the proposed
development is located, unless said stormwater plan
does not provide for appropriate mitigation for the
particular exception being granted or identify
appropriate parcels or projects where off-site
mitigation may occur; and

[(4)](5) Unless specifically included in (a)6vii(1) through
 [(3)] (4) above, the exemptions, exceptions,
 applicability standards and waivers of strict
 compliance for stormwater management described
 in N.J.A.C. 7:8 shall not apply.

vii.-viii. (No change.)

7:50-6.104 Requirements for scenic corridors

(a)-(c) (No change.)

(d) The requirements of this section shall not apply to cluster developments within the Forest and Rural Development Areas which comply with the standards of N.J.A.C. 7:50-5.19(c) and (d).