

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Wetlands management

Proposed Amendments: N.J.A.C. 7:50-2.11, 7:50-5.1, 7:50-5.22, 7:50-5.23, 7:50-5.24, 7:50-5.25, 7:50-5.47, and 7:50-6.10

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:

Wednesday, July 22, 2009 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 August 14, 2009 to:

Susan R. Grogan, P.P., AICP
Chief Planner
Pinelands Commission
P.O. Box 7
New Lisbon, NJ 08064
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E-mail: planning@njpines.state.nj.us

The commenter's name and mailing address 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 5, Minimum Standards for Land Uses and Intensities, and 6, Management Programs and Minimum Standards of the Pinelands Comprehensive Management Plan (CMP). The 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 revised a number of times, most recently in 2009 through a set of amendments related to on-site clustering of residential development in Forest and Rural Development Areas, development transfer programs (so called off-site clustering) in the Forest and Rural Development Areas and stormwater management for public development.

The amendments now being proposed by the Commission relate to activities that are permitted within wetlands. The CMP recognizes that wetlands are vital to the ecological character of the Pinelands - that they provide critical habitats for many rare plant and animal species and they play an equally important role in maintaining ground and surface water quality. Furthermore wetlands provide critical stormwater storage capacity that helps to control flooding. The CMP's wetlands protection program is set forth at N.J.A.C. 7:50-6, Part I. Pursuant to N.J.A.C. 7:50-6.6, development is generally prohibited in all wetlands. Furthermore, in accordance with the provisions of N.J.A.C. 7:50-6.7, any modification of a wetland that would have an irreversible effect on a wetland's ecological integrity, including any alteration of hydrology or change in species composition, among other factors, is strictly prohibited. These limitations and activity prohibitions pose a dilemma in those instances when the Commission receives proposals

to “restore” natural wetland vegetation communities that have been impacted or altered due to human intervention such as agriculture or urban development. Because such restoration activities would, in all likelihood, entail hydrologic or species composition changes, these types of activities may be viewed as being inconsistent with the current CMP provisions despite the beneficial wetlands effects they might provide.

The CMP does expressly authorize certain uses and activities to occur within wetlands. Specifically, berry agriculture and horticulture, forestry, low intensity recreational uses such as hunting, fishing and swimming, water-dependent recreational facilities such as docks, piers and boat launches and linear improvements such as bridges, roads, trails and utility transmission facilities are permitted in wetlands, subject to certain conditions. Likewise, fish and wildlife management activities are permitted in wetlands pursuant to N.J.A.C. 7:50-6.10, provided that they do not result in a significant adverse impact on the wetlands in which they are carried out and they conform to all state and federal regulations. As defined at N.J.A.C. 7:50-2.11, fish and wildlife management means the changing of the characteristics and interactions of fish and wildlife populations and their habitats in order to promote, protect and enhance the ecological integrity of those populations. However, vegetation management activities are not expressly included in that definition or otherwise addressed in N.J.A.C. 7:50-6.10. Consequently, it is not clear how development proposals designed to reduce or reverse the ecological effects of human actions by returning agricultural lands that had previously been wetlands to a characteristic wetlands state by, for example, restoring native Pinelands plant communities, relate to these standards.

To address this dilemma, the Commission convened a group of scientists with expertise in Pinelands ecology and asked them to develop objectives for vegetation management in Pinelands wetlands. This working group was asked to recommend criteria that the Commission could apply in evaluating whether proposed wetland restoration activities could be undertaken in a manner that would be consistent with the objectives of the Pinelands CMP and therefore should be authorized. This group met on a regular basis between February and June 2008, at which point a draft set of principles was provided to and evaluated by the Commission's staff. Recognizing that, in the absence of appropriate controls, wetlands manipulation could result in unforeseen and potentially negative impacts, the Commission determined that vegetation management activities in wetlands should only be authorized in select circumstances and with appropriate safeguards to ensure that inadvertent collateral damage to existing Pinelands wetlands plants and animals did not occur. In view of the need for these precautions, the Commission concluded that vegetation management activities should be authorized in wetlands under the following limited circumstances:

1. Where wetlands have been impacted by exotic (non-indigenous to North America) species or *Phragmites*;
2. Where the effort will return farm fields that had previously been wetlands and are no-longer in active agricultural use to a characteristic Pinelands wetland type; and
3. To achieve ecological goals such as: preventing the loss of a rare wetland community through succession; expanding a rare type of wetland community; or creating more favorable conditions for the viability of rare plant or animal populations.

N.J.A.C. 7:50-6.10 is being amended to incorporate the above-described provisions for wetlands management in the CMP. Proposed N.J.A.C. 7:50-6.10(a) authorizes the establishment of characteristic wetlands on inactive farmland, as well as the removal of exotic species or *Phragmites* from a wetland. Specific conditions which must be met in order for such activities to be permitted are incorporated at proposed N.J.A.C. 7:50-6.10(a)1 through 7. It is important to emphasize that these provisions are not being proposed to hasten the conversion of farm fields to wetlands but to provide the opportunity to do so if an applicant elects to pursue restoration and to establish appropriate controls and monitoring requirements to assure that anticipated objectives are achieved and unforeseen adverse affects are avoided. It should be noted that inactive farm fields that have effectively reverted to wetlands would obviously not qualify under these proposed amendments. It should also be noted that these rules do not take precedence over any existing easements or restrictive covenants that may have been place upon a parcel, for example, in inactive farm lands that are subject to agricultural restrictions.

Proposed N.J.A.C. 7:50-6.10(a)1 states that the proposed management activities must be necessary in order to establish the wetland or remove the exotic species or *Phragmites* in question. The intent of this standard is to make it clear that if there is a choice among equally effective management activities, the applicant should use the least intrusive measure to achieve the management objectives. Proposed N.J.A.C. 7:50-6.10(a)2 acknowledges that although some short-term disturbance may occur, the activities undertaken to establish a characteristic wetland or remove exotic plants or *Phragmites* from a wetland shall not impair the long-term integrity of the affected wetland. Proposed N.J.A.C. 7:50-6.10(a)3 and 4 require that the management activity

will not have an irreversible adverse impact on the long-term survival of those local populations of plant and animal species designated as threatened and endangered under the existing standards of the CMP. Proposed N.J.A.C. 7:50-6.10(a)5 requires that all plant stock used in the project be obtained from areas proximate to the site or, if that is not practical, from locally native naturally occurring sources. (Sources for locally native naturally occurring plant stock include NJDEP's Forest Education Resource Center, located in Jackson Township, and the Natural Resources Conservation Service's Cape May Plant Materials Center as well as local nurseries that specialize in Pinelands native plants (one source for information about such nurseries is the Native Plant Society of New Jersey - www.npsnj.org/ and a list of native plants is available on line at www.state.nj.us/pinelands/infor/fact/native%20plants_links.pdf.) The objective of this standard is to assure that all plants, seeds, seedlings or cuttings used in restoration projects are locally native, and that they are planted within their natural range and habitat and to protect against the inadvertent introduction of non-native plant varieties in Pinelands wetlands. Proposed N.J.A.C. 7:50-6.10(a)6 requires an applicant to analyze and then certify to the Commission that appropriate measures will be taken to assure that the proposed wetlands management activities will not result in adverse off-site impacts, including material changes in stream flows. For example, an applicant who intends to use aerial application of herbicides to remove Phragmites must certify that measures will be taken to avoid unintended application and drift into non-targeted areas. Finally, proposed N.J.A.C. 7:50-6.10(a)7 requires that the applicant prepare and submit monitoring protocols to the Commission in advance of undertaking wetlands management activities. These protocols, which the applicant shall implement, include the submission of a report

that appropriately documents the outcomes of the management activities. Although not expressly stated in the rule, the intent of this requirement is to assure anticipated outcomes are, in fact, achieved. For example, an applicant who intends to return a wetland that has been dominated by exotic plant species or Phragmites to a characteristic Pinelands wetland must describe techniques that will be used to remove the unwanted plants as well as those that will assure reintroduction of native Pinelands plants (e.g. prescribed burning or planting), how often the applicant will provide the Commission with project progress updates, and the manner in which the results will be evaluated.

Proposed N.J.A.C. 7:50-6.10(b) authorizes the establishment of a characteristic wetland in those instances where another type of characteristic wetland may be adversely affected. The applicable conditions are set forth at proposed N.J.A.C. 7:50-6.10(b)1 through 10. Proposed N.J.A.C. 7:50-6.10(b)1 requires that the proposed wetlands management activities be designed to create or expand a rare type of wetland community, which is defined as non-forested wetlands types as listed in N.J.A.C. 7:50-6.5 (bogs, inland marshes, lakes and ponds, rivers and streams), establish a local population of a plant species designated as threatened or endangered in the Pinelands, or create habitat conditions conducive to the survival of an animal species designated as threatened or endangered in the Pinelands. Proposed N.J.A.C. 7:50-6.10(b)2 specifies that only those wetlands that commonly occur throughout the Pinelands and are identified as forested wetlands communities in N.J.A.C. 7:50-6.5 may be adversely affected by the proposed management activities. Proposed N.J.A.C. 7:50-6.10(b)3 makes it clear that the restoration techniques proposed by the applicant, including any grading and herbicide use, must be required to accomplish the project. Proposed N.J.A.C. 7:50-6.10(b)4 and 5

require that the management activity will not have an irreversible adverse impact on the long-term survival of those local populations of plant and animal species designated as threatened and endangered under the existing standards of the CMP. Proposed N.J.A.C. 7:50-6.10(b)6 requires that all plant stock used in the project be obtained from areas proximate to the site or, if that is not practical, from locally native naturally occurring sources. Proposed N.J.A.C. 7:50-6.10(b)7 requires an applicant to analyze and then certify to the Commission that appropriate measures will be taken to assure that the proposed wetlands management activities will not result in adverse off-site impacts, including material changes in stream flows. Proposed N.J.A.C. 7:50-6.10(b)8 requires that the proposed wetlands management activities either be based on documented results achieved under similar conditions or be undertaken as part of a research project to confirm a sound hypothesis. In those cases where the proposed activities are part of a research project, proposed N.J.A.C. 7:50-6.10(b)9 requires that the applicant prepare and submit to the Commission an appropriate research design justifying the project size, location and protocols of the proposed experiment. While not explicitly set forth in the rule, the Pinelands Commission believes that an appropriate research design should include site information (e.g., size, location, conditions, etc.), management objectives (e.g., goals, expected results, etc.), an explanation of why the project size is necessary to accomplish the objectives, proposed management activities (e.g., tools, techniques, etc.); monitoring protocols (e.g., sampling design, replication, key variables, etc.), data analysis methods (e.g., graphical, statistical, etc.), and reporting intervals. Finally, proposed N.J.A.C. 7:50-6.10(b)10 requires an applicant to prepare and submit monitoring protocols to the Commission in advance of undertaking wetlands management activities and that

the protocols, which the applicant shall implement, include a description of how the activities will be documented and reported to assure that anticipated outcomes are achieved.

Proposed N.J.A.C. 7:50-6.10(a) and (b) address the establishment of characteristic wetlands. However, proposed N.J.A.C. 7:50-6.10(c) is being added in order to address wetlands management activities other than those expressly authorized in N.J.A.C. 7:50-6.10(a) and (b). Fish and wildlife management activities are also authorized in wetlands under proposed N.J.A.C. 7:50-6.10 as they were under the original provisions of N.J.A.C. 7:50-6.10. The standards for such activities are provided at N.J.A.C. 7:50-6.10(c)1 through 3. In accordance with these provisions, the minimum environmental standards of all other parts of N.J.A.C. 7:50-6 must be met (7:50-6.10(c)1) and the proposed activities may not have a significant adverse impact on the wetlands (7:50-6.10(c)2). These are the same standards that were previously contained in N.J.A.C. 7:50-6.10 for fish and wildlife management in wetlands. Added at proposed N.J.A.C. 7:50-6.10(c)3 is a requirement that any proposed fish and wildlife management activities proposed under N.J.A.C. 7:50-6.10(c), and any wetland management activities other than those authorized in N.J.A.C. 7:50-6.10(a) and (b), be based upon either documented results achieved under similar conditions or be part of a research project intended to confirm a sound hypothesis. An appropriate research design must be prepared and submitted to the Commission for those activities that are part of a research project. Regardless of whether the proposed management activity undertaken in accordance with this section is based on documented results or is part of a research project, the applicant is required to prepare, submit and

implement a monitoring protocol to ensure that actual outcomes are appropriately documented and reported to the Commission.

In conjunction with the proposed amendments to N.J.A.C. 7:50-6.10, N.J.A.C. 7:50-2.11 is being amended to include reference to “Wetlands Management”, which shall mean the establishment of a characteristic wetland or the removal of exotic species or *Phragmites* from a wetland in accordance with the standards of N.J.A.C. 7:50-6.10. For the purpose of this definition, exotic species are those that are not indigenous to North America.

N.J.A.C. 7:50-5.1(c) is being amended to include wetlands management as one of the exceptions to the requirements that no more than one principal use shall be located on one lot. N.J.A.C. 7:50-5.22(a)5., N.J.A.C. 7:50-5.23(b)9, N.J.A.C. 7:50-5.24(b)5 and N.J.A.C. 7:50-5.25(a)5, are being amended to indicate that, in addition to fish and wildlife management, wetlands management is included as a permitted use in the respective management areas to which these sections apply – Preservation Areas, Forest Areas, Agricultural Production Areas and Special Agricultural Production Areas.

N.J.A.C. 7:50-5.47(b)1i, N.J.A.C. 7:50-5.47(b)2i and N.J.A.C. 7:50-5.47(b)3ii require that a deed to land in the Preservation Area District, Special Agricultural Production Areas or Agricultural Production Areas from which Pinelands Development Credits have been conveyed, sold or transferred must specify that the subject parcel may only be used for a limited number of purposes in perpetuity. These uses include berry agriculture; horticulture of native Pinelands plants; forestry; beekeeping; fish and wildlife management; and low intensity recreational uses. These provisions are being amended to include wetlands management in this list of permitted uses. It should be noted that

wetlands management is not comparable to these principal uses and as such would be permitted on a PDC restricted parcel, therefore it is proposed to be listed to avoid confusion.

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.

Social Impact

The proposed amendments are expected to result in no adverse social impacts. Society as a whole benefits from the protection of the Pinelands and the proposed amendments are designed to do just that. Any social impacts which do result are expected to be positive.

Economic Impact

The proposed amendments are likely to have minimal to no impacts on the Pinelands economy. Management activities that result in the re-establishment or restoration of wetlands will not affect lands that could otherwise be developed. Farmers seeking return inactive farm fields to a Pinelands characteristic wetlands state will be required to monitor the management techniques employed to accomplish the farm field return. Costs will be associated with developing monitoring protocols and preparing the monitoring report required in Section 7:50-6.10 in the rule. However, it is anticipated that associated costs will be low because the United States Department of Agricultural Natural Resources Conservation Service provides technical and financial assistance under

its Wetlands Reserve Program specifically to manage wetlands and to retire marginal lands from agriculture.

Environmental Impact

The proposed amendments will have a positive impact on the Pinelands environment. The CMP recognizes that wetlands constitute a vital element of the ecological character of the Pinelands. The plan also acknowledges that wetlands are critical habitats for many of the rare plant and animal species of the Pinelands and they play an important role in maintaining the ground and surface water quality of the area. The proposed CMP amendments would complement these objectives by enabling, on a limited basis, vegetation management activities within wetlands that would, in turn, prevent the loss of rare wetland communities through succession; expand rare wetland community types; or create more favorable conditions for the viability of rare plant or animal populations. Furthermore, these amendments are intended to enable the removal of exotic vegetation or *Phragmites* in wetlands and return inactive farmlands to a characteristic wetlands state thereby expanding Pinelands wetlands areas. Finally, monitoring of wetlands management activities, as envisioned in the proposed amendments, will result in the development of a body of documented experiments that will verify the validity of various wetlands restoration techniques in the Pinelands for the long-term protection and preservation of the Pinelands ecology.

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 promoting, in limited circumstances, the restoration, protection and expansion of critical wetlands resources that are characteristic of the Pinelands environment.

Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. The CWA also establishes how wetlands are defined and identified. The CWA permits wetlands restoration and EPA promotes and encourages restoration and reestablishment of pre-disturbance aquatic functions and related physical, chemical and biological characteristics of wetlands. To the extent that the proposed amendments would enable vegetation management activities to restore characteristic Pinelands wetlands, they are consistent with the CWA.

Jobs Impact

The proposed amendments are not expected to result in either the creation or loss of any jobs if adopted.

Agriculture Industry Impact

The proposed amendments are expected to have very limited impacts on the agriculture industry in the Pinelands. The proposed amendments do permit the return of

farmland areas to a wetlands state, however, this would only occur on lands that are not in active agricultural production.

Regulatory Flexibility Analysis

Most businesses in the Pinelands may be characterized as small in size and employment compared to the remainder of New Jersey. However, the proposed amendments and new rule do not differentiate by size of business and thus impact on all businesses equally. It is important to emphasize that a property owner's determination to undertake wetlands management is voluntary. However, the proposed amendments do require that once landowners elect to undertake such activities, they must monitor the management techniques they employ. The above assessment of economic impacts acknowledges that the development of such protocols and preparation of the monitoring report required at proposed 7:50-6.10(a)7 or 6.10(b)10 is likely to have associated costs. If a landowner is a small business or hires a small business to undertake the proposed wetlands management activities, such businesses will incur the costs for the required monitoring. However, it is anticipated that these costs will be low because the United States Department of Agricultural Natural Resources Conservation Service provides technical and financial assistance under its Wetlands Reserve Program specifically to manage wetlands and to retire marginal lands from agriculture.

Smart Growth Impacts

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. To the extent that Smart Growth promotes the integration of the built environment, habitat protection and preservation of natural resources, this amendment is consistent with and advances the State Plan smart growth policies and objectives.

Housing Affordability Impacts

In accordance with Subsection (a) of Section 4 of P.L.1968, c.410 (C.52:14B-4), all proposed rules amendments must consider such amendments' potential impacts on housing affordability. The proposed amendments to enable wetlands management within the Pinelands will have no impact on costs associated with housing. This conclusion is based upon the fact that management activities that result in the re-establishment or restoration of wetlands will not affect lands that could otherwise be developed for housing.

Smart Growth Development Impacts

In accordance with Subsection (a) of Section 4 of P.L.1968, c.410 (C.52:14B-4), all proposed rules amendments must describe: (1) the type and number of housing units to which the proposed rule will apply, (2) the estimated increase or decrease in the availability of affordable housing that will be affected by the proposed rule; and (3) whether the proposed rule will affect, in any manner, new construction within Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan.

It is extremely unlikely that the proposed amendments to enable wetlands management within the Pinelands will have any impact on the production of new housing units within the Pinelands. This conclusion is based upon the fact that management activities that result in the re-establishment or restoration of wetlands will not affect lands that could otherwise be developed for housing. The proposed amendments will not affect new construction in Planning Areas 1 and 2 as designated by the State Development and Redevelopment Plan because 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. However, as noted above, it is extremely unlikely that the proposed amendments will have any affect on these areas because re-establishment or restoration of wetlands will not affect lands that could otherwise be developed.

Full text of the proposal follows. Additions to existing rules are indicated by underlining. Existing rule provisions to be deleted are shown in [brackets].

7:50-2.11 Definitions

...

“Wetlands Management” means the establishment of a characteristic wetland or the removal of exotic species or Phragmites from a wetland in accordance with the standards of N.J.A.C. 7:50-6.10. For purposes of this definition, exotic species are those that are not indigenous to North America.

7:50-5.1 Development in accordance with this plan

- (a) - (b) (No change.)
- (c) Unless expressly permitted in a certified municipal land use ordinance, no more than one principal use shall be located on one lot, except for forestry, agriculture, horticulture, fish and wildlife management, wetlands management, and, on agricultural lands, recreation development.
- (d) (No change.)

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.-4. (No change.)
 - 5. Fish and wildlife management and wetlands management.
 - 6.-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) (No change.)
- (b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in a Forest Area:
 - 1.-8. (No change.)
 - 9. Fish and wildlife management and wetlands management.

10.-17. (No change.)

(c) - (d) (No change.)

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

(a) (No change.)

(b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in an Agricultural Production Area:

1.-4. (No change.)

5. Fish and wildlife management and wetlands management.

6.-14. (No change.)

(c) - (d) (No change.)

**7:50-5.25 Minimum standards governing the distribution and intensity of
development and land use in Special Agricultural Production Areas**

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

1.-4. (No change.)

5. Fish and wildlife management and wetlands management.

6. (No change.)

(b) - (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; wetlands 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 surfaces.
 - ii. (No change.)
 2. In Special Agricultural Production Areas:
 - i. Berry agriculture; horticulture of native Pinelands plants; forestry; beekeeping; and fish and wildlife management; and wetlands management.
 - ii. (No change.)
 3. In Agricultural Production Areas:
 - i. (No change.)
 - ii. Where permitted by a certified municipal land use ordinance or when the property is located in an uncertified municipality, the following additional uses may be specifically permitted in such deed restriction: airports and heliports accessory to agricultural uses and which are

used exclusively for the storage, fueling, loading, and operation of aircraft as part of an ongoing agricultural operation; fish and wildlife management; wetlands management; and agricultural employee housing as an accessory use.

4. (No change.)

7:50-6.10 Wetlands [Fish and Wildlife] Management

[Fish and wildlife management activities shall be permitted in all wetlands subject to the minimum standards of all other parts of this subchapter; provided that the management activity does not have a significant adverse impact, as set forth in N.J.A.C. 7:50-6.7, on the wetlands in which the activity is carried out; and provided that the activity conforms to all state and federal regulations. On a case by case basis, fish and wildlife management proposals shall be evaluated relative to the scientific research value of the proposal.]

- (a) Notwithstanding the other standards of this subchapter, the establishment of a characteristic wetland, as defined in N.J.A.C. 7:50-6.4 and 6.5, on inactive farmland or the removal of exotic plant species or Phragmites from a wetland shall be permitted provided that:

1. The proposed activities, including any grading and herbicide use, are required to establish the wetland or to remove the exotic plant species or Phragmites;
2. Activities undertaken to establish a characteristic wetland or remove exotic plants or Phragmites from a wetland will not impair the long term integrity of the wetland;

3. The proposed activities will not result in an irreversible adverse impact on the long term survival of any local populations of those plant species designated pursuant to N.J.A.C. 7:50-6.27 (a) and N.J.A.C. 7:5C-5.1;
 4. The proposed activities will not result in an irreversible adverse impact on the long term survival of any local populations of those animal species designated pursuant to N.J.S.A. 23:2A-1 et seq.;
 5. All plant stock used in the project will be obtained from areas proximate to the site or, if that is not practical, from locally native naturally occurring sources;
 6. The applicant analyzes and certifies that appropriate measures will be taken to assure that no adverse off-site impacts, including material changes in stream flows, shall occur; and
 7. A monitoring protocol is prepared, submitted and implemented by the applicant to ensure that actual outcomes are appropriately documented and reported.
- (b) Notwithstanding the other standards of this subchapter, the establishment of a characteristic wetland, as defined in N.J.A.C. 7:50-6.4 and 6.5, that adversely affects another type of characteristic wetland may be permitted only if:
1. The proposed activities are intended to create or expand a non forested wetland community as listed in N.J.A.C. 7.50-6.5, to establish a local population of a plant species designated pursuant to N.J.A.C. 7:50-6.27 (a) or

N.J.A.C. 7:5C-5.1, or to create habitat conditions conducive for an animal species designated pursuant to N.J.S.A. 23:2A-1 et seq.;

2. The wetland that will be adversely affected commonly occurs throughout the Pinelands and is identified as a forested wetlands community in N.J.A.C. 7:50-6.5;
3. The proposed activities, including any grading and herbicide use, are required to accomplish the project;
4. The proposed activities will not result in an irreversible adverse impact on the long term survival of any local populations of those plant species designated pursuant to N.J.A.C. 7:50-6.27 (a) and N.J.A.C. 7:5C-5.1;
5. The proposed activities will not result in an irreversible adverse impact on the long term survival of any local populations of those animal species designated pursuant to N.J.S.A. 23:2A-1 et seq.;
6. All plant stock used in the project will be obtained from areas proximate to the site or, if that is not practical, from locally native naturally occurring sources;
7. The applicant analyzes and certifies that appropriate measures will be taken to assure that no adverse off-site impacts, including material changes in stream flows, shall occur;
8. The proposal is based upon documented results achieved under similar conditions or is proposed as part of a research project to confirm a sound hypothesis;

9. If the proposal is part of a research project to confirm a sound hypothesis, an appropriate research design has been prepared and submitted which justifies the size, location, and protocols of the study; and
 10. A monitoring protocol is prepared, submitted and implemented by the applicant to ensure that actual outcomes are appropriately documented and reported.
- (c) Fish and wildlife management activities and wetlands management activities other than those expressly authorized in (a) and (b) above shall be permitted in wetlands only if:
1. The minimum standards of all other parts of this subchapter are met;
 2. The proposed activities will not have a significant adverse impact, as set forth in N.J.A.C. 7:50-6.7, on the wetlands in which the activities are carried out;
and
 3. The standards set forth in (b)10 and either (b)8 or (b)9 above are met.