

September 4, 2008

PINELANDS COMMISSION

**Pinelands Comprehensive Management Plan
Application Fees**

Adopted Amendments: N.J.A.C. 7:50-1.6 and 1.7

Proposed: June 2, 2008 at 40 N.J.R. 2632(a)

Adopted: September 12, 2008 by the New Jersey Pinelands Commission,
John C. Stokes, Executive Director

Filed: November 5, 2008 **without change.**

Authorized by: New Jersey Pinelands Commission

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

Effective Date: December 1, 2008

Expiration Date: Exempt.

Summary of Public Comments and Agency Responses:

The New Jersey Pinelands Commission (Commission) is adopting amendments to subchapter 1, General Provisions, of the Pinelands Comprehensive Management Plan (CMP). The amendments were proposed on June 2, 2008 at 40 N.J.R. 2632(a). The adopted amendments relate to fee and escrow requirements.

In association with publication of the proposed amendments in the June 2, 2008 issue of the New Jersey Register, the Pinelands Commission transmitted the proposal to each Pinelands municipality and county, as well as to other interested parties, for review and comment. Additionally, the Pinelands Commission:

- Sent notice of the public hearing to all persons and organizations which subscribe to the Commission's public hearing registry;
- Placed advertisements of the public hearing in the five official newspapers of the Commission, as well as on the Commission's own web page;
- Submitted the proposed amendments to the Pinelands Municipal Council pursuant to N.J.S.A. 13:18A-7f;
- Distributed the proposed amendments to the news media maintaining a press office in the State House Complex;
- Published a copy of the proposed amendments on its web page at www.nj.gov/pinelands; and
- Distributed press releases concerning the proposed amendments to the news media

A formal public hearing was held before the Commission staff on July 15, 2008. Three people attended the hearing; oral testimony on the rule proposal was provided by two individuals. The hearing officer's recommendations are in accordance with the public comment and agency responses below.

Oral comments were recorded on magnetic tape which is on file at the Commission's office at 15 Springfield Road, New Lisbon, New Jersey. The record of this rulemaking is available for inspection in accordance with applicable law by contacting:

Betsy Piner

Pinelands Commission

P.O. Box 7

New Lisbon, NJ 08064.

Summary of Public Comments and Agency Responses:

The Commission accepted oral comments on the June 2, 2008 proposal at the above-discussed July 15, 2008 public hearing and written comments by regular mail, facsimile or e-mail through August 2, 2008.

The following individuals and organizations submitted comments:

1. City of Estell Manor, Atlantic County
2. Galloway Township, Atlantic County
3. Egg Harbor Township, Atlantic County
4. Borough of Folsom, Atlantic County
5. Hamilton Township, Atlantic County
6. Nan Hunter Walnut
7. Jay Mounier
8. Joseph M. Maher, Department Head, Department of Regional Planning and Development, Atlantic County
9. Joy Ramer
10. Joanne Harkins, PP, AICP, Vice President, Regulatory Affairs, New Jersey Builders Association
11. Pinelands Municipal Council
12. Atlantic County Board of Chosen Freeholders
13. Atlantic County Mayors Association

The Commission's response to the comments is set forth below.

1. **COMMENT:** Four commenters oppose the fee changes because the Pinelands Commission should first streamline its permitting process and clear the backlog of permits that await approval before asking taxpayers for more money. (1, 2, 4 and 5)

RESPONSE: The Pinelands Commission agrees that streamlining its permitting process is important. Indeed, the Commission has taken several steps over the years to do so, including the negotiation of intergovernmental agreements with counties and municipalities to streamline permit procedures for public projects and the establishment of so-called “Local Review Officer” programs that allow municipalities to exercise direct permitting authority for certain types of private development applications. These efforts have met with varying degrees of success and are now being re-evaluated. For example, the Commission has embarked on an initiative to expand the scope of intergovernmental streamlining agreements and will be completing a review of the Local Review Officer Program later this fiscal year.

Relative to taxpayers, state appropriations that support permitting operations are a cost born by all New Jersey taxpayers. On the other hand, application fees distribute the costs of permitting services amongst those property owners, developers, businesses and other entities (whether they be public or private) who require the service. In the case of the Pinelands Commission, its permitting expenses are financed by both application fee revenue and state appropriations.

2. **COMMENT:** Three commenters oppose the fee changes because the Commission has not comprehensively reviewed efficiency or cost effectiveness or eliminated duplicative regulatory requirements. These commenters further state that a reluctance to consolidate and coordinate overlapping and conflicting programs within

state government results in increased costs to the public and private sectors. (8, 12 and 13)

RESPONSE: The Commission agrees that eliminating duplication, increasing efficiencies and coordinating overlapping state programs is important but disagrees that it is reluctant to address these issues. In addition to the steps described above, the Commission has negotiated agreements with a variety of Department of Environmental Protection programs (such as freshwater wetlands, stream encroachment, site remediation and pesticide regulation) to eliminate duplication and coordinate similar but not identical environmental requirements. Agreements with the Council on Affordable Housing and the State Planning Commission also help to eliminate potential conflicts amongst different state programs. In addition, the Commission's Regulatory Programs office has recently proposed a number of administrative changes to achieve further economies in the Pinelands permitting process. These will be discussed with the Commission and put into practice over the coming months.

3. **COMMENT:** Three commenters recommend that a Pinelands Commission committee or a task force, similar to the one recently established by the Department of Environmental Protection, be formed to review permit efficiencies. (8, 12 and 13)

RESPONSE: The Commission is scheduled to begin its next comprehensive review of the Pinelands protection program within the year. It will consider this suggestion, as well as a host of other important matters, at that time.

4. **COMMENT:** Two commenters oppose the fee changes because the Pinelands Commission is shifting costs to municipalities rather than cutting the size of the bureaucracy. (2 and 4)

RESPONSE: It is true that a higher percentage (slightly more than 40%) of the Commission's permitting costs will be born by those who require the services. However, it is also true that the Commission has been reducing expenses and the size of its staff. Its Fiscal Year 2009 operating budget is 7% less than three years ago. Furthermore, the Commission's staff complement is now 14% lower than authorized levels.

5. **COMMENT:** One commenter opposes fees for municipal development projects because municipalities are already being adversely affected by a reduction or loss of state aid. (11)

RESPONSE: The Commission acknowledges that many government agencies are coping with fewer financial resources, as is the Commission. In addition to cutting its expenses and staffing, the Commission believes that the costs of reviewing development applications should be more equitably allocated among applicants. In recognition of the inherent public benefits of projects sponsored by municipalities and other public agencies, the Commission's fee schedule assesses public development fees at half the rate of most other applicants. Although not an outright exemption, this should help to buffer the financial impact.

6. **COMMENT:** One commenter opposes the fee for public development, especially for municipalities, because it constitutes a tax on living in the Pinelands. The commenter suggests that, if the Commission needs additional revenue, fees for county and state development should be increased incrementally and municipal development remain exempt. (7)

RESPONSE: The Commission disagrees that fees are akin to taxes. Fees represent a payment for services while taxes are a general levy by government on its

citizens. Furthermore, exempting municipal development from fees and assessing a higher fee to other public projects merely shifts the expenses to another level of government.

7. **COMMENT:** One commenter opposes the fees for governmental development projects because many of those public development projects are the result of a municipality's location in a Pinelands Regional Growth Area. The commenter argues that Pinelands Regional Growth Areas were arbitrarily chosen and the designation as such has resulted in many public development projects (including schools, municipal building additions, parks, community centers and open space preservation) which would not have been necessary otherwise. (3)

RESPONSE: The Commission acknowledges that, as residential and business development increase, the need for public services increases. Therefore, it is likely that public investments will be greater in areas where more development occurs, such as Pinelands Regional Growth Areas. However, Pinelands Regional Growth Areas were not arbitrarily designated. The designations respond to regional growth influences, such as casino-related development in Atlantic City, and were delineated according to specific criteria that, among other things, considered location relative to growth influences, infrastructure and past development trends.

8. **COMMENT:** One commenter supports the fee changes because the Commission should not be deprived of the very modest amount of money it will receive for its review services, services for which municipalities charge, oftentimes at a much higher rate. (6)

RESPONSE: The Commission appreciates the support. Although it is true that municipalities assess fees, the Commission's fee structure is based upon its costs and not the rates assessed by municipalities.

9. **COMMENT:** One commenter supports the fees because the Commission's budget is already tight and the costs of permit reviews should be born by those who utilize the service. The commenter further noted that the Commission's staff should not be cut nor should the review process be streamlined since that would hurt the Pinelands protection effort. (9)

RESPONSE: The Commission agrees with the commenter that costs should be born by those who utilize the service. However, the Commission also notes that its staff resources have already been reduced and that streamlining initiatives, if carefully structured, do not inherently undermine the Pinelands protection program.

10. **COMMENT:** One commenter opposes the fee for applications involving one single family home because the fee represents a tax on living in the Pinelands. Moreover, the commenter argues that the reason these applicants are not experienced in the regulatory process (and thus require more expansive review services) is because they are not developers; rather they are building a home for their families or themselves and should not be penalized for their lack of experience. The commenter suggests that fees for large residential developers be increased if the Commission needs additional revenue. (7)

RESPONSE: As stated earlier, application fees are not akin to taxes. Although it is not accurate that all applicants who propose the development of a single home are doing so for themselves or for a family member (many applicants propose single lot

development for purposes of sale), such a distinction ignores the fact that these single lot applications require a significant amount of staff review time. It would not be equitable to shift these costs by raising fees for other residential applications. Further, the Pinelands “Local Review Officer” program offers municipalities an opportunity to eliminate this fee by accepting a principal role in the review of single lot applications.

11. **COMMENT:** One commenter supports the fees insofar as they will now apply to all applicants, including applicants for single lots and public agencies. (10)

RESPONSE: The Commission agrees that permitting costs will be more equitably distributed amongst development applications that require review services.

12. **COMMENT:** One commenter opposes the increase in fees for residential development applications, indicating that it will impose a financial hardship during difficult economic times. Instead, the commenter recommends that the Commission reduce permit review costs by eliminating triple and quadruple backup review systems, such as those that apply to building permits in residential developments that have received a municipal planning board approval. (10)

RESPONSE: The Commission acknowledges that the housing market has recently declined and considered that fact when structuring the revised fee schedule. For example, the fee for each lot in a 50 lot residential project will increase by a relatively modest amount, \$98.00. However, the Commission felt that such an adjustment had to be made because residential applications were being assessed a lower fee than comparable non-residential development. The fee adjustments being adopted will bring residential fees more into line with those other fees.

Regarding multiple reviews, it is true that large projects involve Commission review of different permits, running the gamut from preliminary and final planning board approvals to zoning permits, building permits and septic permits. These latter permit reviews can be redundant if the overarching approval, such as a municipal planning board approval, was issued in the recent past and conditions of approval do not have to be confirmed. Some of the administrative practices being evaluated by the Commission's Regulatory Programs office seek to address these types of situations. The Commission may also elect to explore other simplifications when it conducts its next comprehensive review of the Pinelands protection program.

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 adopted amendments revise the Commission's application fee schedule but do not amend any of the provisions of the CMP that implement the Federal goals of the CMP. As a result, the Commission has concluded that these amendments do not exceed any Federal standards or requirements.

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