

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Forestry

Proposed Amendments: N.J.A.C. 7:50-6.46

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:

June 30, 2010 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 July 16, 2010 to:

Susan R. Grogan, P.P., AICP
Chief Planner
Pinelands Commission
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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 is submitting this proposal to amend the forestry standards set forth at N.J.A.C. 7:50-6.46 of the Pinelands Comprehensive Management Plan (CMP). These forestry standards, effective March 1, 2010 (see 42 N.J.R. 629(a)), were part of a larger effort on the Commission's part to review, clarify and refine the forestry provisions previously contained in the CMP. Among other things, the adopted amendments clarified forestry application procedures and requirements, expanded the definition of "forestry", identify Pinelands Native Forest Types, defined acceptable silvicultural techniques and set limits for a wide variety of site preparation, harvesting and reforestation practices.

As noted above, the forestry provisions included in N.J.A.C. 7:50-6.46 incorporate descriptions of site preparation techniques that may be applied to manage Pinelands forests. Included among the various practices addressed by the amendments is disking, which is now defined at N.J.A.C. 7:50-2.11 as a silvicultural practice involving the drawing of one or more heavy, round, concave, sharpened, freely rotating steel disks across a site for the purposes of cutting through soil and roots or cutting and turning a furrow over an area. Standards for disking as a site preparation technique, before or after harvesting, are now included at N.J.A.C. 7:50-6.46(a)9iv. A specific standard for disking in Pine-Shrub Oak Native Forest Types is incorporated at N.J.A.C. 7:50-6.46(a)9iv(2). It is this standard which was the subject of much of the public comment received on the now adopted forestry amendments. These comments, more fully described in

the Notice of Adoption at 42 N.J.R. 629(a), focused on the potential for disking to result in deep soil penetration and disturbance, leading to destruction of the soil and root structure of the Pine-Shrub Oak forest and its subsequent conversion to another forest type.

The Commission continues to believe that disking can be a useful site preparation tool to promote forest regeneration and that, from a practical standpoint, silvicultural techniques would not involve deep soil penetration in Pine-Shrub Oak Native Forest Types. Moreover, N.J.A.C. 7:50-6.46(a)1 expressly prohibits conversion of forest types. However, specific limitations on disking frequency and depth in Pine-Shrub Oak Native Forest Types are warranted to avoid any misunderstandings that such activity will destroy the soil and root structure or result in the conversion or elimination of this rare forest type. The Commission is therefore proposing amendments to N.J.A.C. 7:50-6.46(a)9iv(2) in order to clarify its intent and incorporate specific limitations on disking in Pine-Shrub Oak Native Forest Types. Specifically, N.J.A.C. 7:50-6.46(a)9iv(2) is being amended to make clear that disking shall only be permitted in Pine-Shrub-Oak Native Forest Types as a site preparation method to temporarily suppress shrub-oak understory in order to facilitate pine regeneration. In addition, when disking is performed in Pine-Shrub Oak Native Forest Types, it will only be permitted to occur one time during the first year of the establishment of a stand to assure the successful growth of pine seedlings (7:50-6.46(a)9iv(2)(A)). This new subsection permits disking to be repeated one time during the second year of the growth of the stand, but only in areas where pine seedlings have not successfully become

established. Furthermore, only single-pass disking, which penetrates the soil no deeper than 6 inches, will be permitted (7:50-6.46(a)9iv(2)(B)).

These limitations will provide a landowner the flexibility to perform disking to accomplish reforestation in Pine-Shrub Oak Native Forest Types but avoid disturbance that might otherwise result in deep soil penetration that would destroy shrub-oak understory. It is the Commission's understanding from discussions with various foresters and other experts that the proposed limitations on disking frequency and depth reflect the manner in which disking would have to be conducted in the Pine-Shrub Oak forest in any case. The proposed amendments merely make these limitations explicit within the CMP.

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 establish limits on disking in Pine-Shrub Oak Native Forest Types as a site preparation technique associated with forestry. As such, the amendments are not expected to have any social impacts.

Economic Impact

The limitations being proposed relative to disking frequency and depth at N.J.A.C. 7:50-6.46(a)9iv(2)(A) and (B) effectively codify the manner in which site preparation disking practices are likely to be carried out in Pine-Shrub Oak Native Forest Types. In practice, disking would only be performed during the

initial season of growth. Once such growth has successfully been achieved it would be unnecessary and entirely counter-productive to repeat the procedure. Furthermore, the dense root structure that characterizes the Pine-Shrub Oak Forest Type would prevent deep disk penetration, rendering such efforts useless. Therefore, the amendments are unlikely to result in constraints of any significance to the actual silvicultural practices contemplated by landowners or forestry consultants. Therefore, the proposed limitations are not expected to have an adverse economic impact.

Environmental Impact

The CMP recognizes that proper forest management can accomplish important ecological as well as economic objectives. Ecologically-based reforestation can help to maintain and perpetuate the patterns of plant and animal species distribution in the Pinelands by imitating the disturbances that helped to create these patterns. The proposed amendments expressly incorporate environmental protection safeguards by establishing limits on disking as a site preparation technique, with the specific intent of protecting a rare Pinelands forest type (Pine-Shrub Oak). These limitations were likely to be adhered to out of necessity given the characteristics of the Pine-Shrub Oak forest, even without the proposed amendments. In addition, N.J.A.C. 7:50-6.46(a)1 ensures that native forest types, including Pine-Shrub Oak forests, will be maintained. Any environmental effects which do result from the proposed amendments are therefore expected to be extremely limited.

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 that 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 placing appropriate limitations on disking as a silvicultural practice in order to sustain and improve the health of Pinelands forests.

Jobs Impact

The proposed amendments establish limitations on disking as a site preparation technique associated with forestry activities in one type of Pinelands forest. They are not expected to generate or cause the loss of any jobs.

Agriculture Industry Impact

The proposed amendments establish limitations on disking as a site preparation technique associated with forestry activities in Pine-Shrub Oak forests. Disking will continue to be permitted, although it will now be subject to explicit limitations related to frequency and depth. These limitations reflect the practices which would likely be followed by those proposing disk in this

particular forest type, given its dense root structure. As such, they are expected to have limited, if any, impacts on the agriculture industry in the Pinelands

Regulatory Flexibility Statement

Most businesses in the Pinelands may be characterized as small in size and employment compared to the remainder of New Jersey. It is expected that many landowners and/or forestry consultants seeking approval of forestry activities in the Pinelands Area will constitute small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the proposed amendments do not differentiate by size of business and thus impact on all businesses equally.

The proposed amendments do establish limitations on disking within Pine-Shrub Oak Native Forest Types. The imposition of these limitations could conceivably constrain the forestry activities of a small business. However, the Commission believes this is unlikely to be the case. The limitations being proposed relative to disk frequency and depth at N.J.A.C. 7:50-6.46(a)9iv(2)(A) and (B) effectively codify the manner in which site preparation disk practices are likely to be carried out in Pine-Shrub Oak Native Forest Types. In practice, disk would only be performed during the initial season of growth. Once such growth has successfully been achieved it would be unnecessary and entirely counter-productive to repeat the procedure. Furthermore, the dense root structure that characterizes the Pine-Shrub Oak Forest Type would prevent deep disk penetration. Therefore, the amendments are unlikely to result in

constraints of any significance to the actual silvicultural practices contemplated by landowners or forestry consultants, whether they are small businesses or not.

Smart Growth Impacts

The proposed amendments establishing limitations on disketing as a site preparation technique associated with forestry will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impacts

The proposed amendments establishing limitations on disketing as a site preparation technique associated with forestry will not evoke a change in the average costs associated with housing.

Smart Growth Development Impacts

The proposed amendments establishing limitations on disketing as a site preparation technique associated with forestry will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

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

7:50-6.46 Forestry standards

(a) Notwithstanding the other standards of this subchapter, forestry operations shall be approved only if the applicant can demonstrate that the standards set forth in this part are met

1.-8. (No change.)

9. The following standards shall apply to silvicultural practices for site preparation, either before or after harvesting:

i.-iii. (No change.)

iv. Disking shall be permitted, provided that:

(1) (No change.)

(2) **Disking shall only be permitted in [In] Pine-Shrub Oak Native Forest Types[**, diskling shall be permitted only in areas where pine regeneration is the management objective identified in the forestry application submitted pursuant to N.J.A.C. 7:50-6.44] **as a method to temporarily suppress shrub-oak understory in order to facilitate pine regeneration, and shall be limited as follows:**

(A) **Disking may occur one time during the first year of the establishment of a stand to assure the**

successful growth of pine seedlings and may be repeated one time during the second year of the growth of the stand only in areas where pine seedling establishment has not successfully occurred; and

(B) Only single-pass disking, which penetrates the soil no deeper than 6 inches, shall be permitted;

(3)-(4) (No change.)

v.-vii. (No change.)

10.-14. (No change.)

(b) (No change.)