

Grogan, Susan (PINELANDS)

From: Edward Lloyd <elloyd@law.columbia.edu>
Sent: Friday, April 23, 2021 12:57 PM
To: Wittenberg, Nancy (PINELANDS); Grogan, Susan (PINELANDS)
Cc: Rick Prickett; Rick Prickett
Subject: [EXTERNAL] Rule proposal language to repeal 7:50-4.1(a) (5) and (6)
Attachments: repeal of utility exemptions 7 50 4 1 a 5 and 6.pdf

Hi Nancy and Sue,

Would you please send this draft out to the P & I Committee for discussion next week. It puts one of Rick's proposals in a rule proposal format.

Thanks,

Ed

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May 14, 2021

Pinelands Commission

Pinelands Comprehensive Management Plan

Subchapter 4. Development Review

Introduction Part I

Uniform Procedures 7:50-4.1 Applicability

Proposed Repeal: N.J.A.C. 7:50-4.1 (5), -4.1 (6)

Authorized By:

_____/_____/_____
New Jersey Pinelands Commission
Nancy Wittenberg, 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 online:

Thursday, July 15, 2021 at 7:00 P.M.
Richard J. Sullivan Center
15C Springfield Road
New Lisbon, New Jersey

You may view the meeting on the Pinelands Commission YouTube link:

<https://www.youtube.com/channel/UCBgpC8sbR3Acrjo7ppxs3Uw>

To Provide Public Comment at the hearing: Please Dial: 1-929-205-6099 Meeting ID: 833 5477
1666

Submit written comments by regular mail, facsimile or email by July 15, 2021 to:

Susan R. Grogan, P.P., AICP
Chief Planner
Pinelands Commission
P.O. Box 359
New Lisbon, NJ 08064
Facsimile: (609) 894-7330
E-Mail: planning@njpines.state.nj.us

Email: planning@pinelands.nj.gov or through the Commission's website at
<http://nj.gov/pinelands/home/contact/planning.shtml>.

The name and mailing address of the commenter must be submitted with all public comments. Commenters who do not wish their names and affiliations to be published in any notice of adoption subsequently prepared by the Commission should so indicate when they submit their comments. The agency proposal follows:

Summary

The New Jersey Pinelands Commission proposes to repeal the following two exemptions to what is considered development under the Comprehensive Management Plan (“CMP”).

N.J.A.C. 7:50-4.1(a) (5) and N.J.A.C. 7:50-4.1 (a)(6).

N.J.A.C. 7:50-4.1(a) reads in pertinent part:

“Applicability (a)

For the purposes of this subchapter only, the following shall not be considered development . . .

5. The repair of existing utility distribution lines;
6. The installation of utility distribution lines, except for sewage lines, to serve areas which are effectively developed or development which has received all necessary approvals and permits.”

The practice under these two provisions has been that any entity or utility claiming an exemption need inform either the Commission or the Commission staff of its exemption claim. Thus, the Commission does not know the number or extent of such claims. Second, when an entity or utility claiming such an exemption does notify the Commission staff of such a claim, the staff acts on that claim without informing the Commission of such an action. The

Commission proposes to repeal these two exemptions so that any entity or utility who might have claimed such an exemption under the current CMP language quoted above must in the future file an application for development and receive Commission approval of such activity before it may undertake the activity.

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 repeal will require entities or utilities formerly claiming exemptions to the development requirements under two sections of the CMP to apply directly to the Commission for approval of such activities in the future. As described above, the Commission does not know how many exemptions are claimed under these provisions because a claimant of such an exemption is not required to file anything with the Commission regarding the exemption claim; nonetheless, the Commission believes that there are no more than a dozen claimed each year, and that Commission review of these claims will not absorb an inordinate amount of Commission time or Commission staff time. The impact of the repeal of these exemptions will have minimal impact on the Commission and the regulated community. The repeal merely requires applicants to seek approval of the Commission of any such proposed development. The repeal will improve the Commission's ability to assure that development in the Pinelands is consistent with the CMP. As such, the repeal is amendments are expected to have a positive social impact.

Economic Impact

As noted above, the repeal will affect a very small number of utilities or entities who now claim exemptions under the sections proposed to be repealed and will enable the Commission to better protect the resources of the Pinelands. Consequently, the amendments may have a positive, albeit minor, economic impact.

Environmental Impact

As noted above, the repeal of these two provisions will enable the Commission to better protect the resources of the Pinelands. Thus, the repeal will have positive environmental impact on the Pinelands and no adverse environmental impacts are anticipated as a consequence of this regulatory revision.

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 propose repeal is designed to meet these standards by enabling the Commission to better protect, preserve, and enhance the land and water resources of the Pinelands

Jobs Impact

The proposed repeal merely requires a small number of utilities or entities to seek Commission approval of their actions. No negative impacts on the retention or creation of jobs are anticipated as a result of the proposed repeal.

Agricultural Industry Impact

Because the proposed repeal addresses the procedure through which non-agricultural development may occur in the Pinelands, it will have no impact on the agriculture industry in the Pinelands.

Regulatory Flexibility Analysis

It is anticipated that utilities impacted by the proposed repeal do not constitute a small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments are not expected to have any additional impacts upon small businesses.

Smart Growth Impacts

The proposed repeal merely changes the procedure through which the Commission will regulate certain limited activities of a small number of utilities, it has no impact on the larger planning initiatives of municipalities, counties or the State, other than to contribute positively, to the protection of the resources of the Pinelands. The proposed repeal will have little to no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impacts

The proposed amendments deal exclusively with the procedure for Commission review of a small number of utility projects and will not occasion a change in the average costs associated with housing.

Smart Growth Development Impacts

The proposed repeal addresses the procedure for Commission review of a small number of utility projects and will not cause a change in housing production in Planning Areas 1 or 2, or within the 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]):

7:50-4.1(a)

Applicability (a)

For the purposes of this subchapter only, the following shall not be considered development . . .

[5. The repair of existing utility distribution lines;

6. The installation of utility distribution lines, except for sewage lines, to serve areas which are effectively developed or development which has received all necessary approvals and permits.]