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ENVIRONMENTAL PROTECTION

NATURAL AND HISTORIC RESOURCES

Forestry Rules

Proposed Readoption without amendment: N.J.A.C. 7:3

Authorized by: Mark N. Mauriello, Acting Commissioner
Department of Environmental Protection

Authority: N.J.S.A. 13:1B-15.100 through 102, 13:1B-15.106, 13:1D-9, 13:1L-1 et seq., 45:1 through 9, 45:15C-1 et seq., and 54:4-23.1 et seq.

Calendar Reference: See summary below for an explanation of the exception to calendar requirement.

DEP Docket No.: 24-09-12/687

Proposal Number: PRN 2009-_____

Submit written comments by (60 days after publication) to:

Leslie W. Ledogar, Esquire

Office of Legal Affairs

Attn: DEP Docket No. 24-09-12/687

Department of Environmental Protection

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The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a requirement. Submittals on disk or CD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of the electronically submitted comments. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

This rule proposal document can be viewed or downloaded from the Department's web page at <http://www.nj.gov/dep/rules>.

The agency proposal follows:

Summary

As the Department 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..

The Forestry rules, N.J.A.C. 7:3, are scheduled to sunset on December 6, 2009, pursuant to the provisions of Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1 et seq. This expiration date was extended by 180 days to May 16, 2010, pursuant to N.J.S.A. 52:14B-5.1 as a result of the timely filing of this proposal to readopt the rules. The Department has evaluated the rules at N.J.A.C. 7:3 and has determined that they are

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necessary, reasonable and proper for the purpose for which they were originally promulgated, and has determined to readopt them without amendment.

The following is a summary of the Forestry rules proposed for readoption:

Subchapter 1, General Provisions, sets forth provisions that are applicable to the entire Forestry rules chapter, including at N.J.A.C. 7:3-1.3, the definitions of terms used within the chapter.

Subchapter 2, Forestation Program, sets forth the Department's rules governing the operation of the New Jersey State Forest Nursery and its forestation program. The State nursery was established early in the Twentieth century to produce tree seedlings for use in reforesting State lands in New Jersey's Pinelands. In recent decades the State nursery's role has evolved and it has become an affordable supplier of reforestation stock to public, private and non-profit landowners throughout the State, including counties and municipalities. These rules establish the procedures and terms under which New Jersey landowners may obtain this reforestation stock. Additionally, the rules provide that, upon request and depending upon available supply, the State Forest Nursery will distribute a tree seed or seedling, free of charge, to every New Jersey student attending the third grade.

Subchapter 3, Approved Forester List, was promulgated to support implementation of the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23 et seq. The Farmland Assessment Act at N.J.S.A. 54:4-23.15a specifies that, in order to have their property valued and assessed for taxation purposes under Farmland Assessment, landowners must file applications each year with the local tax assessor. N.J.S.A. 54:4-

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23.3b requires that such applications be accompanied by attestation, signed by both the landowner and “a forester from a list of foresters approved by the Department of Environmental Protection,” that the property owner has complied with the woodland management plan for the property. Subchapter 3 also sets forth the criteria and procedures for adding a forester to or removing a forester from to the Department’s Approved Forester List, and sets forth the standards and requirements to be followed by a forester in order for a forester to remain in good standing on the list.

Subchapter 4, Certified Tree Experts, establishes the minimum requirements and procedures required of a tree care professional to qualify to be certified, pursuant to N.J.S.A. 45:15C-1 et seq., as a Certified Tree Expert (CTE) by the Department’s Board of Tree Experts. It regulates how CTEs and employers of CTEs present the CTE designation in advertising, sets forth the canons of professional ethics and other practices to be followed by CTEs, and contains the provisions regarding suspending or revoking the certification of a CTE who has failed to comply with these standards.

Social Impact

The rules proposed for readoption will continue to have a beneficial social impact. The Forestry rules provide the regulatory framework within which the Department administers programs in support of the preservation and restoration of forestlands throughout the State and the planting and in support of the proper care of trees.

Forests and treed environments afford numerous social benefits. Forests provide restorative settings for human recreation and enhance the beauty of scenic landscapes.

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Access to a view of trees can not only relieve stress but has been shown to help patients recover more quickly. Trees planted in more densely populated areas, both in residential and in commercial areas, offer many benefits as well. Trees enhance the aesthetic appeal of parks, roadways, and lawns. They make public spaces more inviting locations for social gatherings, outdoor recreation, and healthful exercise. They help keep neighborhoods cool and therefore more pleasant in which to be on warm summer days. By serving as windbreaks and by deterring erosion, trees help lands retain their fertile top soil and thereby help preserve agriculture and the local production of food.

The readoption of Subchapter 2 will promote forestation throughout the State by authorizing the State Forest Tree Nursery to continue to serve the State's landowners as a source of reforestation stock. Stock from the Nursery can be planted throughout the State, in rural areas and in urban and suburban open space. Readoption of the subchapter will also, through the Third Grade Program, continue to help ensure that the next generation understands and appreciates the value of trees by supporting instruction in the classroom through the Nursery's distribution of tree seedlings to third graders.

Readoption of Subchapter 3 will ensure the continued availability of the Approved Foresters List. The existence of the list aids landowners in finding a qualified forestry consultant to hire to assist them in their forestland management and stewardship. The standards and requirements promulgated in the subchapter help ensure that the foresters that are on the list are well-trained and knowledgeable in forestry. Ensuring that the foresters who review and annually attest to a landowner's compliance with his or her woodland management plan are qualified means that the landowner's implementation of forest management practices is being verified, and that a qualified forester has the annual

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opportunity to provide guidance to the landowner as to what future practices would be beneficial. This provides the public with greater assurance that the forestland owners who receive the taxation benefits of the Farmland Assessment Program are following sound management practices that will help the State realize the benefits of having healthy forestlands within the State, such as the benefit of helping to sustain the supply and quality of water.

Readoption of Subchapter 4 will continue to authorize the Board of Tree Experts to certify qualified tree care professionals, so that property owners throughout the State can have guidance as to which tree care providers are qualified to offer experienced and knowledgeable service. Provision of tree care services by highly qualified professionals raises the level of tree care in neighborhoods and communities and increases overall tree health in the State. A CTE can ensure that the correct maintenance and care is given to individual trees, thereby strengthening the tree's ability to overcome insect, disease and environmental stresses and assuring that the maximum benefits will be derived from the tree over its lifetime. Offering State certification of tree care professionals encourages private property holders to employ persons who have relevant expertise. The advertising requirements that CTEs must follow help protect members of the public from deceptive advertising by individuals who are not certified by the Board. Additionally, requiring CTEs to abide by national safety standards helps to avoid the accidents and injuries that may be incurred in the practice of tree care. Provisions in the subchapter that codify standards and procedures for suspension and revocation of certification serve to provide the public recourse, should they suffer from negligent practices by a CTE. The Board of Tree Experts is authorized to suspend the certificate of any CTE whose practices do not

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conform to the accepted canons of ethics; and to suspend or revoke the certificate of any CTE who does not engage in accepted industry tree care practices.

Economic Impact

The rules proposed for readoption will continue to have a beneficial economic impact. The economic benefits that are derived from trees include the direct economic benefits that accrue to owners of trees, who as the trees mature, can sell them as merchantable forest products or for use as a renewable energy resource. Economic benefits also accrue to the population as a whole. For example, the infiltration rate for precipitation is higher in treed areas, helping prevent flooding and preventing flood damage and the costs associated with these potentially catastrophic events. Increased infiltration also reduces the need for public investment in infrastructure for wastewater treatment and helps protect the availability of public water supplies. Treed areas also cool their environs and help reduce the costs for air conditioning in adjacent built structures, thus aiding in energy conservation. Additionally, it is well documented that the presence of trees in urban and suburban areas enhances property values and promotes commercial activity.

Readoption of Subchapter 2 will enable the Department to continue to supply seeds and seedlings to landowners at a reasonable cost. This will continue to provide encouragement to private landowners to be stewards of their portion of New Jersey's forest resources and help sustain and enhance forestlands and urban and suburban tree cover throughout the State.

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Readoption of Subchapter 3 will keep the Department's Approved Forester Program in place and assure the continued maintenance of the Approved Forester List by the Department. Qualification for entrance or reinstatement to the Approved Forester List is economically beneficial for a forester, as this makes him or her eligible to be hired by a landowner to provide the services required under the Farmland Assessment Act. The Department's maintenance of the Approved Forester List is also economically beneficial to the State's forest landowners who will continue to be able to apply to the local tax assessor and have their lands assessed under Farmland Assessment. Qualification of forestlands for Farmland Assessment helps preserve the forests of the States, and the economic benefits that derive therefrom, since the Farmland Assessment Program enables forest landowners to qualify for tax relief and they are thereby better able to afford to retain their lands as undeveloped forest land.

Readoption of Subchapter 4 will enable the Board of Tree Experts to continue to be authorized to certify tree care professionals as CTEs. Such certification is economically beneficial for tree care providers, as the certification is evidence that can be presented to a potential customer that documents that the provider is well qualified to provide good service. It is also economically beneficial to property owners who want to hire a tree care provider, as it provides them with guidance as to which tree care providers have the experience and knowledge that would enable them to provide good service for money paid.

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Environmental Impact

Readoption of the Forestry Rules will continue to have a positive environmental impact in New Jersey because these rules promote the planting and proper care of trees, support informed stewardship of forestland, and help sustain healthy tree cover in the urban and suburban areas of the State.

The forests of New Jersey's rural areas and the treed parklands of the State's cities and suburbs, as well as the trees within of New Jersey's communities, bestow many and diverse environmental benefits. Among these is protection of watersheds. Forests and trees contribute to the infiltration of precipitation into underground aquifers, helping to preserve water supply and water quality. Also, the presence of trees protects soils by reducing erosion. Forestlands help preserve natural populations and ecosystems by providing habitat for many species of plants and animals. Forests help protect public health through the removal of air pollutants from the atmosphere, including ozone and fine particulates, thus serving as natural air purifiers. Forests and trees cool their environs, thereby making residential and commercial areas more pleasant on hot summer days and reducing energy consumption for air conditioning. Forests may help deter climate change through the sequestration of carbon.

Readoption of Subchapter 2 will enable the State Forest Nursery to continue to serve property owners throughout the State as a source tree seedlings and other forestation stock. Through its distribution of tree seeds and seedlings to third graders, the forestation program will continue to help create environmental awareness among young students. These students represent the next generation and hopefully, as the citizens and

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leaders of the future, this experience will help encourage them to understand and value stewardship of the environment.

Readoption of Subchapter 3 will ensure the Department's continued maintenance of the Approved Forester List. Through their role as consultants to forestland owners and their monitoring of compliance with woodland management plans, Approved Foresters have the opportunity to encourage landowners participating in the State's Farmland Assessment program to implement sound stewardship and forest management practices on their forestlands. By establishing the standards and procedures that will continue to ensure that only well-qualified foresters are accepted and retained on the list, this subchapter will continue promote the health and sustainability of the forests on the privately-held forestlands of New Jersey. Furthermore, by ensuring the continued maintenance of the Approved Forester List and thereby helping forest landowners to qualify for the tax relief benefits of Farmland Assessment, these rules help the State provide economic incentives for the preservation of forestlands and the diverse benefits they bestow on all who live or work in New Jersey.

Readoption of Subchapter 4 will ensure that the Department's Board of Tree Experts will continue its certification of qualified individuals as CTEs. The certification program helps members of the public who require tree care services to determine who is sufficiently qualified to provide arboreal advice that meets high professional standards. Selection of quality stock of appropriate species for planting, identification of appropriate planting locations, and knowing the proper methods for tree planting and tree care are all essential to achieving the best arboricultural results. This subchapter helps property owners know to whom to turn for experienced and informed guidance and thereby

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promotes the maintenance of healthy trees and good tree cover in municipalities throughout the State.

Jobs Impact

The rules proposed for re-adoption will continue to have a small, but positive, impact on jobs in New Jersey for foresters and tree care providers.

Re-adoption of Subchapter 2 will, by continuing to authorize the State Forest Nursery to continue supply forestation stock to landowners, create the need for workers to plant the seeds and seedlings supplied and, to a limited extent, to care for them once planted. Re-adoption of Subchapter 3 will ensure that the Department continues to maintain the Approved Forester List; being on this list is a necessary qualification for a forester to be employed by a landowner to attest to the landowner's compliance with the woodland management plan, which in turn is necessary for the forestlands to be assessed as in agricultural use pursuant to the Farmland Assessment Act. Re-adoption of Subchapter 4 will enable the Department's Board of Tree Experts to continue to certify qualified tree care providers as CTEs; having this credential should continue to be advantageous for these tree care providers as they compete for arboricultural work.

Agriculture Industry Impact

The Department has evaluated this rulemaking to determine the nature and extent of the impact of the rules proposed for re-adoption without amendments on the agriculture industry. Generally, the Forestry rules do not pertain to agriculture and therefore their re-adoption is not anticipated to impact the agricultural community in New Jersey.

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A narrow exception to this is the proposed re adoption of N.J.A.C. 7:3-3 (Approved Forester List). Pursuant to the Farmland Assessment Act at N.J.S.A. 54:4-23.3, in order for forestland other than appurtenant woodland to be deemed for taxation purposes to be in agricultural use, the landowner is required to have a woodland management plan for the forestland and to submit with his or her annual application to the local tax assessor attestation by an Approved Forester of the landowner's compliance with the plan. Persons gain and maintain inclusion on the Approved Forester List pursuant to N.J.A.C. 7:3-3. Re adoption of N.J.A.C. 7:3-3.3 would continue this support by the Department of the implementation of the Farmland Assessment program.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and that employ fewer than 100 full time employees. Many of the approximately 65 foresters currently on the Department's Approved Foresters List are small businessmen or women or work for a small business. Likewise, many of the approximately 350 tree care providers currently certified by the Department's Board of Tree Experts as CTEs are small businessmen or women or work for a small business. The rules proposed for re adoption without amendment will continue to apply to these Approved Foresters and CTEs, and to additional individuals seeking to qualify for one of these designations.

In developing this proposal to redopt the Forestry rules, the Department has reviewed the rules proposed for re adoption to determine if these rules could be designed

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to minimize the burden on small businesses. Inasmuch many Approved Foresters and CTEs are either small businessmen or women or work for small businesses, it is not possible for the Department to exempt or otherwise reduce requirements on small businesses and still achieve its goal of ensuring that only qualified individuals are included on the list of Approved Foresters and are certified as CTEs. Moreover, compliance with the Forestry Rules does not involve capital costs and does not necessitate reliance on the services of any professional. N.J.A.C. 7:3-3, Approved Forester List, does require Approved Foresters to submit semi-annual reports to the Department. N.J.A.C. 7:3-4, Certified Tree Experts, does require CTEs to pay an annual renewal fee of \$25. The proposed readoption without amendment of the Forestry rules would continue these requirements, but would not impose any new recordkeeping, reporting, or other compliance requirements on Approved Foresters or on CTEs.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule 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), N.J.S.A. 52:18A-196 et seq. The Department has evaluated this rulemaking to determine the nature and extent of its impact on smart growth and on the implementation of the State Plan. The Department has determined that the rulemaking supports the principles of smart growth.

A basic objective of the State Plan is the protection of the natural resources and qualities of the State. The readoption of the Forestry Rules at N.J.A.C. 7:3 without

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amendment would continue their contribution to the preservation of forestlands throughout the State and of the stewardship of the trees growing within our municipalities. Given the importance of forestlands and of the trees along municipal roadways, in parklands and commercial settings, and on private property to sustaining the natural qualities of the State, this proposed readoption is consistent with and integral to the achievement of the objectives of the State Plan. The Department therefore anticipates that readoption of the Forestry rules without amendment would be congruent with implementation of the State Plan, and would continue to contribute to the achievement of smart growth in New Jersey and to the maintenance of the quality of life for the citizens of New Jersey.

Housing Affordability Impact

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the rules proposed herein for readoption without amendment to determine their impact, if any, on the affordability of housing. The Department has determined that the readoption of the Forestry rules without amendment will impose an insignificant impact because there is an extreme unlikelihood that the rules will evoke a change in the average costs associated with housing. Accordingly, the Forestry rules do not affect the average costs of housing.

Smart Growth Development Impact

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the Forestry Rules at N.J.A.C. 7:3 proposed for readoption without amendment to determine their impact, if any, on smart growth

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development. Because these rules concern forestry, and do not apply to any type of housing units, they do not evoke a change in housing production and do not impact the type or number of housing units, increase or decrease the availability of affordable housing in any manner, or affect new construction within Planning areas 1, 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:3.