

Appendix A.

Environmental Conservation Law Article 46

New York State Environmental Conservation Law

ARTICLE 46

ALBANY PINE BUSH PRESERVE COMMISSION

Section 46-0101. Legislative declaration and intent.

46-0103. Definitions.

46-0105. Albany Pine Bush preserve commission.

46-0107. Albany Pine Bush preserve.

46-0109. Powers and duties of the commission.

46-0111. Management plan.

46-0113. Appropriations by municipalities.

46-0115. Cooperation of state agencies.

S 46-0101. Legislative declaration and intent.

The pitch pine-scrub oak barrens or pine barrens in the city of Albany and towns of Guilderland and Colonie and known as the "Albany Pine Bush" or "Pine Bush" is a landscape of rare and endangered natural communities and species identified by the New York natural heritage program. Its location at the center of a major urban area makes it especially valuable as an open space resource and, if properly managed, as a passive recreation area and educational laboratory.

Both state, municipal and private actions have been taken to protect the remaining Albany Pine Bush. Because of the fragile qualities of the Pine Bush and its dependence on periodic fires, effective, coordinated management of the remaining Albany Pine Bush is essential.

The legislature hereby declares it to be in the public interest to protect and manage the Albany Pine Bush by establishing an Albany Pine Bush preserve consisting of dedicated public and dedicated private land and a commission made up of representatives of state and local governments and private citizens to manage the preserve for purposes of its protection and controlled and appropriate recreation and education purposes.

S 46-0103. Definitions.

As used in this article:

1. "Albany Pine Bush preserve" or "preserve" shall mean lands in the city of Albany and towns of Guilderland and Colonie in the county of Albany characterized by the growth of pitch pine and scrub oak, pine barrens, vernal ponds and/or the presence of sand dunes which are dedicated for protection and beneficial public use pursuant to section 46-0107 of this article. Land which lacks such physical or vegetative characteristics may be dedicated pursuant to section 46-0107 of this article as a protective or buffer zone for other dedicated lands, or otherwise supports the management of the preserve.

2. "Albany Pine Bush preserve commission" or "commission" shall mean the Albany Pine Bush preserve commission created pursuant to section

46-0105 of this article.

S 46-0105. Albany Pine Bush preserve commission.

1. The Albany Pine Bush preserve commission is hereby established in the department to be a body corporate and public and to consist of eleven voting members who shall be as follows: the commissioner, the commissioner of the state office of parks, recreation and historic preservation, the mayor of the city of Albany, the town supervisors of the towns of Colonie and Guilderland, the chief executive officer of the county of Albany, the state director of the New York field office of the nature conservancy and four members to be appointed by the governor with the advice and consent of the Senate. The four appointed private citizen members of the commission shall be by training, education, experience or attainment qualified to analyze or interpret or support matters relevant to the protection, maintenance and/or management of the Albany Pine Bush. Each of the seven ex-officio members may designate a representative to attend, in his or her place, meetings of the commission and to act in his or her behalf. The Governor shall designate the chairman. The term of office of the four private citizen members shall be four years. In the event of a vacancy occurring other than by the expiration of a member's term, such vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. A majority of the members of the commission shall constitute a quorum.

2. The members of the commission shall receive no compensation for their services, but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties hereunder. Members and staff of the commission shall be considered state employees for the purposes of sections seventeen and nineteen of the public officers law.

S 46-0107. Albany Pine Bush preserve.

The commissioner shall maintain a record of the boundaries of the lands which have been dedicated to the Albany Pine Bush preserve in text and depicted on a map.

1. Land owned by the state may be dedicated to be part of the preserve only by action by the commissioner, the commissioner of the state office of parks, recreation and historic preservation or the commissioner of the state office of general services, provided that state land dedicated hereunder may also be dedicated to be part of the state nature and historical preserve pursuant to article forty-five of this chapter.

2. Land owned by a local government may be dedicated to be part of the preserve only by action of its local legislative body.

3. Land owned by private persons or organizations may be dedicated to be part of the preserve only through the voluntary execution of a conservation easement pursuant to article forty-nine of this chapter,

and the acceptance of such instrument by the commission; provided, however, that the commission shall not have the power or authority, without the consent of the landowner, to require as a condition of or a prerequisite for obtaining any permit, license or other authorization to conduct any activity within or adjacent to the preserve, that any lands be dedicated to the preserve.

4. Every proposed dedication shall be reviewed and approved by the commission.

5. The commission shall have no authority to control or manage any private land unless such land has been dedicated pursuant to this section or the owner thereof has executed a voluntary written agreement with the commission authorizing the specific management actions which may be taken by the commission.

S 46-0109. Powers and duties of the commission.

The commission shall have the power:

1. To sue and be sued.
2. To make by-laws for the management and regulation of its affairs.
3. To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this article.
4. To appoint an executive officer, officers, agents and employees, and prescribe their duties and qualifications and fix their compensation.
5. To utilize, to the extent feasible, the staff and facilities of existing state and local agencies, pursuant to an allocation to be made by the state division of the budget or the chief executive officer of the local government as applicable.
6. To contract for professional and technical assistance and advice.
7. To contract for and to accept assistance, including but not limited to gifts, grants, easements or loans of funds or real property or personal property from the federal government or any agency or instrumentality thereof, or from any agency or instrumentality of the state, or from any other public or private source and to comply, subject to the provisions of this article, with the terms and conditions thereof, subject to the approval of the division of the budget. Notwithstanding the provision of section eleven of the state finance law, the commission may accept gifts, grants, devises and bequests, whether conditional or unconditional, with the approval of the director of the budget.
8. To conduct scientific and environmental studies.
9. Notwithstanding the provisions of section 9-1105 of this chapter or any other provision of law, to take, or cause to be taken, necessary and appropriate fire management actions to protect the flora and fauna of the preserve provided that:
 - (i) such actions have been approved in writing by the commissioner

and are pursuant to a written plan for the conduct of the requested burn, which plan shall include provisions for limiting the area to be burned and restricting the burn to that area, as well as emergency suppression procedures; and

(ii) no burning shall be conducted until the chief or other official in charge of the fire department or company within whose territorial jurisdiction the proposed burn is located has been given the opportunity to review and comment on the written plan and the fire department or company dispatcher has been notified of the actual date and time and estimated duration of such action; and

(iii) no burning shall be prescribed within seventy-five feet of privately owned land within or adjacent to the preserve which has not been dedicated to the preserve, except upon the approval of such adjacent landowner.

10. To construct, or cause to have constructed, necessary facilities including paths and trails, an environmental education center and related parking areas on no more than five percent of the preserve.

11. To conduct environmental education programs.

12. To facilitate and provide passive recreational activities including hiking, nature study and photography.

13. To control access and use of the preserve as is necessary and appropriate to maintain the ecological community of the preserve including establishment of an admission control system by permit on either a group or individual.

14. To review and approve proposed dedications to the preserve and recommend additions to the preserve.

15. To advise and assist state agencies, municipalities and private property owners whose land adjoins the preserve on land use and management techniques that are compatible with the land management needs of the preserve.

16. To encourage individuals, corporations, associations and public entities to protect and preserve the unique resources of the preserve.

17. To prepare an annual report on the conduct of its activities which shall include a recommended budget for the next year.

18. To exercise and perform such other powers and duties as shall have been or may be from time to time conferred by law.

S 46-0111. Management plan.

1. The commission shall prepare or cause to be prepared within thirty months of the effective date of this section a management plan for the preserve; provided that elements of the management plan may be prepared and submitted for approval before the entire plan is completed. Such plan shall cover management of all dedicated lands. At least one public hearing on the draft management plan, or element thereof separately submitted for approval or amendment thereto shall be held. The local legislative bodies of the city of Albany and the

towns of Guilderland and Colonie, the county of Albany, the commissioner, the commissioner of the state office of parks, recreation and historic preservation and the state director of the nature conservancy may review the management plan, elements thereof separately submitted for approval and amendments thereto.

2. The management plan shall be the fundamental document defining the protection and beneficial public use goals for the preserve and the means and techniques for their attainment. The management plan shall include, but need not be limited to:

a. A survey or inventory of the following, together with the establishment of management priorities therefor:

- (i) natural plant and wildlife resources;
- (ii) historic resources;
- (iii) erosion control needs and stream protection;
- (iv) trails, trail development and use; and
- (v) other recreational uses.

b. A fire management plan.

c. A plan for the enforcement of laws pertaining to public use activities, which shall be implemented by rules and regulations for the administration and use of lands dedicated to the preserve which are promulgated by the commissioner.

d. An education program including publications and guided activities.

e. A financial plan for implementation of the management plan recommendations.

3. Not less than once every five years the commission shall review the management plan, and shall include as part of such review a public hearing. The commission shall propose amendments to the management plan as they are deemed to be necessary and appropriate.

S 46-0113. Appropriations by municipalities.

To effectuate the purposes of this article, the local legislative bodies of the county of Albany, city of Albany and towns of Colonie and Guilderland may appropriate and pay over to the commission moneys to be expended by the commission to carry out its functions thereunder.

S 46-0115. Cooperation of state agencies.

To effectuate the purposes of this article, the commission may request from any department, board, bureau, commission or other agency of the state, and the same are authorized to provide, such cooperation and assistance, services and data as will enable the commission properly to carry out its functions thereunder.