State of New Jersey
THE PINELANDS COMMISSION
PO BOX 359
NEW LISBON, NJ 08064
(609) 894-7300
www.nj.gov/pinelands

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

***MEMORANDUM***

To: Members of the Commission

From: Nancy Wittenberg
Executive Director

Date: May 3, 2017

Subject: Summary of the May 12, 2017 Meeting Packet

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**Minutes**

The April 7, 2017 Commission Meeting minutes (open and closed session) are included in your packet.

**Public Development Applications**

The following public development application is being recommended for approval with conditions:

1. **CITY OF ESTELL MANOR**, City of Estell Manor, Forest Area, Development of an 800 linear foot access road and the installation of nine groundwater monitoring wells.

**Waiver of Strict Compliance**

There are no Waiver of Strict Compliance applications on this month's agenda.

**Letter of Interpretation**

Four Pinelands Development Credit Letters of Interpretation (attached) were issued since the last Commission meeting, allocating 1.5 PDCs to 142.19 acres.

**Off-Road Vehicle Event Route Map Approval**

Seven Off-Road Vehicle Event Route Map Approvals (attached) were issued since the last Commission meeting.

**Resolutions Relating to Municipal Master Plans and Ordinances**

We have included a report on Barnegat Township Ordinance 2017-05. This ordinance adopts a redevelopment plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area, which is located in a Pinelands Regional Growth Area. We are recommending certification of Barnegat Township's ordinance.

**Master Plans and Ordinances Not Requiring Commission Action**

We have included a memorandum on two master plan and ordinance amendments that we reviewed and found to raise no substantial issues with respect to CMP standards. These amendments were submitted by Berlin Borough and Egg Harbor City.

**Other Items**

Also included in this month's packet is:

1. A list of pending Public Development Applications for which public comment will be accepted at the May 12, 2017 Commission meeting.

**Closed Session**

The Commission may need to convene into closed session.

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Please note that future meetings and office closure dates, as well as any Pinelands-related activities of interest, are listed at the bottom of the agenda.

/ PC1

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# NEW JERSEY PINELANDS COMMISSION MEETING AGENDA

Friday, May 12, 2017
Richard J. Sullivan Center for Environmental Policy and Education
Terrence D. Moore Conference Room
15C Springfield Road
New Lisbon, New Jersey
**9:30 a.m.**

1. Call to Order

    - Open Public Meetings Act Statement
    - Roll Call
    - Pledge Allegiance to the Flag

2. Adoption of Minutes

    - April 7, 2017 (open and closed session)

3. Committee Chairs' and Executive Director's Reports

4. Matters for Commission Consideration Where the Record is Closed

    A. Permitting Matters

    - Office of Administrative Law
        - None
    - Review of Local Approval
        - None
    - Public Development Projects and Waivers of Strict Compliance
        - Approving With Conditions an Application for Public Development (Application Number 1992-0280.004)

B. Planning Matters

- Municipal Master Plans and Ordinances
  - Issuing an Order to Certify Barnegat Township Ordinance 2017-05, Adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area
- Other Resolutions
  - None
- CMP Amendments
  - None

5. Public Comment on Agenda Items and Pending Public Development Applications (see attached list) *(to ensure adequate time for all members of the public to comment, we will respectfully limit comments to three (3) minutes. Questions raised during this period may not be responded to at this time but where feasible, will be followed up by the Commission and its staff.)*

6. Master Plans and Ordinances Not Requiring Commission Action

   - Berlin Borough Planning Board Resolution 2017-5
   - Egg Harbor City Ordinance 3-2017

7. General Public Comment *(to ensure adequate time for all members of the public to comment, we will respectfully limit comments to three (3) minutes. Questions raised during this period may not be responded to at this time but where feasible, will be followed up by the Commission and its staff.)*

8. Resolution to Retire into Closed Session (if needed) – Personnel, Litigation and Acquisition Matters *(The Commission reserves the right to reconvene into public session to take action on closed session items.)*

9. Adjournment

**Upcoming Meetings**

Unless otherwise noted, all meetings/events are conducted at the offices of the Pinelands Commission in New Lisbon

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|---|---|
| Tues., May 23, 2017 | Policy and Implementation Committee Meeting (9:30 a.m.) |
| Fri., June 9, 2017 | Pinelands Commission Regular Meeting (9:30 a.m.) |

**Upcoming Office Closures**

Monday, May 29, 2017 Memorial Day

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*Pinelands Commission and Committee meeting agendas are posted on the Commission's Web site and can be viewed at www.nj.gov/pinelands/. The agendas are also posted and can be viewed at the Pinelands Commission Offices, 15 Springfield Road, New Lisbon, New Jersey or for more information on agenda details, e-mail the Public Programs Office at Info@njpines.state.nj.us or call (609) 894-7300*

PINELANDS COMMISSION MEETING
Richard J. Sullivan Center
Terrence D. Moore Conference Room
15 Springfield Road
New Lisbon, New Jersey

MINUTES

**April 7, 2017**

Commissioners Present
Candace Ashmun, Alan W. Avery Jr., Bob Barr, Giuseppe Chila, Paul E. Galletta, Jane Jannarone, Mark Lohbauer, Ed McGlinchey, Richard Prickett, and Chairman Sean Earlen. Also present were Executive Director Nancy Wittenberg, Governor's Authorities Unit representative Lisa LeBoeuf and Deputy Attorney Generals (DAG) Sean Moriarty and Timothy Malone.

Commissioners Participating by Phone
Bill Brown, Ed Lloyd and D'Arcy Rohan Green.

Commissioners Absent
Gary Quinn

Chairman Earlen called the meeting to order at 9:34 a.m.

DAG Moriarty read the Open Public Meetings Act Statement.

Executive Director Nancy Wittenberg called the roll and announced the presence of a quorum. (There were 13 Commissioners who participated in the meeting.)

The Commission and public in attendance pledged allegiance to the Flag.

Chairman Earlen said that the Commission's federal appointee Commissioner Frank Hays passed away on March 3, 2017. He asked Commissioners, staff and the public to join him in a moment of silence.

Minutes

Chairman Earlen presented the minutes from the February 24, 2017 Commission Meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Prickett seconded the motion.

The minutes of the February 24, 2017 Commission Meeting were adopted by a vote of 13 to 0.

Committee Chairs' Reports

Commissioner Avery said the March 28, 2017 Personnel and Budget Committee was canceled. He said the Audit Committee held a brief telephone conference to discuss the purchase of new accounting software.

Commissioner McGlinchey said the Agriculture Committee meeting was canceled due to the ongoing litigation with the Pinelands Preservation Alliance regarding Tuckahoe Turf farms. The Agriculture Committee was planning to discuss possible rules regarding field sports in the Agricultural Production Area, and the Committee was advised to hold off until the litigation is resolved.

Chairman Earlen provided an update on the March 24, 2017 Policy and Implementation Committee Meeting:

The Committee adopted the minutes of the October 25, 2016 meeting.

The Committee recommended the certification of ordinances from two municipalities:

Egg Harbor City **-** Ordinance 2-2017 (digital signs)

Waterford Township - 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7. These ordinances adopt a revised redevelopment plan for the Haines Boulevard Redevelopment Area and amend zoning boundaries and PDC requirements in the Regional Growth Area.

The Committee received a presentation from NJDEP regarding the construction of barriers to protect vernal ponds at Wharton State Forest from vehicular destruction. The Committee discussed forming a subcommittee to determine what protective measures can be taken by the Commission, including use of a map to designate areas in Wharton that are inappropriate for motor vehicle use.

Chairman Lohbauer expressed an interest in serving on the subcommittee.

The Committee authorized $500,000 for a new round of land acquisition through the Pinelands Conservation Fund.

The Committee had a brief discussion about funding sources to buy Pinelands Development Credits.

Executive Director's Reports

ED Wittenberg updated the Commission on the following:

- The National Park Service has named Bob Krunemaker as the temporary replacement to fill Commissioner Hays' seat on the Commission. A call has been set up for next week to provide Mr. Krunemaker with an overview of the Commission.

Director Larry Liggett provided information on two items that will be discussed at upcoming Policy and Implementation (P&I) Committee meetings:

- Wireless providers are interested in installing small network nodes or "microcells" onto telephone poles to provide sufficient coverage for data usage to stream movies and other content. Staff met with Verizon, and it looks like a plan amendment will not be necessary as they will not be using poles above a height of 35 feet. Staff also met with Mobilitie, who is representing Sprint. Mobilitie has a different approach and, although most of the towers they are proposing are outside of the Pinelands, the plan will need to be amended to incorporate the towers in the Pinelands Area because they exceed 35 feet in height. Ocean County is having difficulty citing a tower, which will require the New Jersey State Office of Information Technology's (OIT) Comprehensive Public Safety Tower Plan to be amended.
- Winslow Township has requested that the Commission take into account the Township's water conservation efforts in its interpretation of the existing Memorandum of Understanding between the Commission, Winslow Township and the Camden County Municipal Utilities Authority.

Commissioner Ashmun suggested reviewing the current cell tower plan standards at an upcoming P&I meeting.

Director Chuck Horner updated the Commission on the following:

- Staff met with Monroe Township officials to discuss a development application involving parcels that were rezoned after a municipal approval was granted.
- Ocean County has filed an application with the Commission for a park-and-ride facility at Route 539 and the Garden State Parkway in Little Egg Harbor Township. The application will go before the Commission in the coming months.
- Staff is working on two different applications that involve development associated with active agriculture operations.

Paul Leakan said the Commission held its 28th Annual Pinelands Short Course at Stockton University. There were 574 attendees, which is 138 more than last year. The Commission

is currently planning a Summer Pinelands Short Course at Kramer Hall in Hammonton on July 27, 2017.

Chairman Earlen asked about the status of the interpretive center.

Mr. Leakan said the Commission had to hire an architect as part of the state permitting process. Once the permit application is submitted to the state, a 21-day review period begins. Split Rock has completed 75% of the AutoCAD drawings, which will be used to generate the construction of the exhibit. Staff is working to acquire artifacts for the exhibits and recently met with the Joint Base to discuss borrowing specific items, including a bog iron cannon ball.

Stacey Roth reminded Commissioners that Financial Disclosure Statements must be filed by May 15th.

Commissioner Avery asked if there was a different review process or standards for private towers and public service towers.

Director Liggett said the only difference between the two is the siting process for emergency service towers. He said the siting measures will be discussed as part of the plan amendment for the OIT plan. The CMP standards are the same for all types of towers.

Commissioner Chila said Gloucester County recently upgraded its public safety communications system to a 700MHz band. He suggested looking at different approaches to public safety telecommunications.

Resolution to Retire into Closed Session

DAG Moriarty read a resolution to enter into closed session to discuss the Pinelands Preservation Alliance (PPA) request for a Stay on Resolution PC4-17-03 related to the South Jersey Gas matter. Commissioner Lohbauer made a motion to enter into closed session. Commissioner McGlinchey seconded the motion. The Commission agreed to retire into closed session by a vote of 13 to 0, beginning at 10:15 a.m.

Return to Open Session

The Commission entered back into open session at 10:36 a.m.

Chairman Earlen presented resolution regarding the Stay Motion.

Commissioner Barr moved the adoption of a resolution Issuing a Final Decision Denying the Motion to Stay Pinelands Resolution No. PC4-17-03 Filed with the Pinelands Commission on Behalf of the Pinelands Preservation Alliance (See Resolution # PC4-17-04). Commissioner Galletta seconded the motion.

DAG Malone said the resolution before the Commission is to deny PPA's stay motion based on reasons in the attached Order. He said a yes vote would be in favor of denying the stay motion.

Commissioner Lohbauer said he plans to vote no on this resolution because he feels the pipeline will cause irreparable harm to the aquifer, the process did not allow the public adequate time to comment and the project does not serve only the needs of the Pinelands because it does not serve a business in the Pinelands.

Commissioner Avery said nine members of this Commission voted in favor of the South Jersey Gas pipeline application during the February 24, 2017 Commission meeting. He said he believes that was the right decision and especially now after the PJM made a determination requesting the BL England plant to remain open to meet the needs of the grid. He said the public has had ample time to voice their opinions over a number of years and specifically on the application that was remanded back to the Commission. He said many of the comments were outside the scope of the CMP. He said he supports the resolution to deny the stay motion.

Commissioner Ashmun said she will be voting no on the resolution. She said none of the documents she has read have described the impact the construction of the pipeline will cause.

Commissioner Galletta said he agrees with Commissioner Avery. He commended the Attorney General's office for its work on the Order. He said nothing has changed since the vote in February; therefore he supports the resolution denying the Stay.

Commissioner Jannarone said she also agrees with Commissioner Avery. She said the public has had plenty of opportunities to comment on this application.

Commissioner Chila thanked the Attorney General's office for defending the claim that his membership in the International Brotherhood Electrical Workers (IBEW) union created a conflict of interest. (It was determined that Commissioner Chila does not have a conflict of interest in the matter.)

Commissioner Lloyd and Commissioner Rohan Green both stated they intend to vote no.

ED Wittenberg called the vote.

The Commission adopted the resolution by a vote of 8 to 5.

<u>Public Development Projects and Other Permit Matters</u>
Chairman Earlen presented a resolution recommending the approval of a public development application for the development of a 190 foot high communications facility.

Commissioner Avery moved the adoption of a resolution Approving With Conditions an Application for Public Development (Application Number 2003-0319.003)

See Resolution # PC4-17-05). Commissioner Galletta seconded the motion.

Commissioner Prickett asked if this was the same parcel on which the Commission recently approved a municipal parking lot.

Mr. Horner said yes.

Commissioner Lohbauer said staff did a good job addressing the public comment for this application.

The Commission adopted the resolution by a vote of 13 to 0.

Municipal Master Plan and Ordinances

Chairman Earlen presented a resolution recommending the certification of Egg Harbor City Ordinance 2-2017.

Commissioner Prickett moved the adoption of a resolution Issuing an Order to Certify Ordinance 2-2017, Amending Chapter 170 (Land Use and Development) of the Code of Egg Harbor City (See Resolution # PC4-17-06). Commissioner Avery seconded the motion.

The Commission adopted the resolution by a vote of 13 to 0.

Chairman Earlen presented a resolution recommending the approval of Waterford Township's 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7.

Commissioner Galletta moved the adoption of a resolution Issuing an Order to Certify Waterford Township's 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7, Adopting a Redevelopment Plan for the Haines Boulevard Redevelopment Area and Amending Chapter 176 (Land Use, Development and Zoning) of the Township's Code (See Resolution # PC4-17-07). Commissioner Barr seconded the motion.

The Commission adopted the resolution by a vote of 13 to 0.

Commissioner Brown said he had to leave and ended the call.

Public Comment on Agenda Items and Pending Public Development Applications

Georgina Shanley of Ocean City, NJ, said the public was shut out of the January Commission meeting and had no opportunity to comment on the South Jersey Gas pipeline matter. She plans to take action to stop the construction of the pipeline.

Bill Wolfe of Bordentown, NJ, said he raised concerns about staffing levels at the last Personnel and Budget Committee. He also questioned the amount of money the

Commission could recoup from the applicant when so much staff time and resources are spent on an application. He said the CMP requires that the natural resources of the Pinelands be protected, which means the effects of climate change need to be evaluated.

Commissioner Jannarone asked why some members of the public were unable to get into the January meeting.

Ms. Wittenberg said that the state fire marshal was responsible for the room capacity and he said the room was full.

Jeff Tittel of New Jersey Sierra Club expressed his dissatisfaction with the South Jersey Gas pipeline application process.

William Richardson, Mayor of Waterford Township, commended Commission staff for the professionalism displayed during the application process for the town's two applications. He thanked the Commissioners for voting in favor of Waterford's cell tower application and redevelopment plan.

Bob Filipczak of Linwood, NJ said that changing the BL England plant from coal to natural gas will not improve air quality.

Arnold Fishman of Medford Lakes, NJ, said that during the January Commission meeting, he noted to the Chairman that there were available seats.

Katie Smith of the Pinelands Preservation Alliance said she recently reviewed the Taunton Lakes road widening application. She commended staff for a thorough review of the stormwater management facilities. She said the South Jersey Gas pipeline application followed a flawed process and the decision was wrong.

Emile DeVito, New Jersey Conservation Foundation, said he supports a map at Wharton depicting roads where vehicles would be permitted. He said wetlands and ponds continue to be destroyed and the Commission should not wait for pond surveys to be completed before adopting a map. He said climate change is causing snakes to come out of their dens earlier. He said Enduro events need to be held earlier and scaled back so snakes do not get injured.

Greg Langan said he was a past Chief Ranger at Wharton State Forest and would like to help with a road closure map.

Commissioner Prickett said the map is not a road closure map it is a road access map.

Marianna Samaro of Shamong, NJ, raised concerns about the impacts the construction of the pipeline will have. She asked if any research has been done on the harmful effects of cell towers, specifically radiation.

<u>Ordinances Not Requiring Commission Action</u>

Chairman Earlen asked if any Commissioners had questions regarding the ordinances not requiring Commission action:

- Bass River Township Ordinance 2017-02
- Buena Vista Township Ordinance 40-2017
- Hamilton Township Ordinance 1842-2017
- Jackson Township Ordinances 3-17 and 4-17
- Manchester Township Ordinance 17-002
- Monroe Township Ordinance O:08-2017
- Plumsted Township Planning Board Resolution 2016-09
- Waterford Township Ordinance 2017-2

Commissioner Avery asked if Jackson Township was a certified Pinelands municipality.

Ms. Susan R. Grogan said Jackson is certified, noting that all Pinelands municipalities are certified.

Public Comment on Any Matter Relevant to the Commission's Statutory Responsibilities

Debbie Ewan of Waterford Township, NJ spoke about her application to convert an existing structure on her property into a single family dwelling. See handout.

Mr. Horner said this is an ongoing violation of the Township's land use ordinance and he did not want to get into the particulars of the application because the application may come before the Commission.

Georgina Shanley of Ocean City, NJ spoke about the reasons given by several Commissioners for voting for or against the pipeline application.

Bill Wolfe spoke about the importance of the Pinelands Act. Mr. Wolfe began to discuss the lawsuit filed by Commissioner Jannarone, referring to it as a "SLAPP" suit intended to intimidate the public. Chairman Earlen asked Mr. Wolfe to refrain from speaking about pending litigation.

Temma Fishman of Medford Lakes, NJ, said burning fossil fuels drives climate change. She read a statement into the record about her dismay over the South Jersey Gas pipeline decision.

Arnold Fishman said the Commission and public lost $8 million of protection when the Memorandum of Agreement was not approved.

Chairman Earlen said he had to leave the meeting. Before he left he apologized to Commissioner Jannarone, Commissioner Barr and Nancy Wittenberg for the threats and harassment that they were subjected to during the South Jersey Gas application review process.

Chairman Earlen and Commissioner Jannarone left the meeting at around 11:45.

Connie Higgins of Long Beach Island, NJ, asked the Commissioners who voted in favor of the pipeline to provide the rationale for their vote.

Bob Filipczak of Linwood, NJ, spoke about various projects including Exit 44 on the Garden State Parkway that required stormwater management facilities. He expressed his dissatisfaction with the NJDEP stormwater rules. (Handout attached)

Jeff Tittel of the New Jersey Sierra Club read something from his cell phone about the needs of the grid, PJM and the BL England plant. He referred to a letter from the PJM, which he offered to provide to the Commission. He said BL England has not applied to the Basic Generation Service (BGS) auction.

Emile DeVito of the New Jersey Conservation Foundation, said he recently conducted a prescribed burn at the Franklin Parker Preserve. He commended the New Jersey Forest Fire crew. He said all appropriate permits were obtained and he looks forward to the positive results the prescribed burn will have on threatened and endangered species.

Jason Howell of the Pinelands Preservation Alliance said the map initiative at Wharton will improve public access to the Pine Barrens. He suggested that the Commissioners should be taken on regular field visits in the Pinelands. He read 7:50-6.143(2) from the CMP.

Bill Wolfe of Bordentown, NJ, said the basis for Commissioner Lloyd's recusal on the MOA for the pipeline was based on appearance. He said two members of the Commission who voted in favor of the pipeline had relationships with organizations that would benefit from the construction of the pipeline. He said he disagrees with NJDEP's air quality analysis for the BL England plant.

ED Wittenberg advised the Commission that the CMP allows for the creation of escrow accounts to be established when an application requires considerable staff review time. She said an escrow has been created for the South Jersey Gas application and $25,000 was submitted to the Commission.

Commissioner Avery clarified his earlier statement about what the Commission can and cannot consider in making a decision. He said when he makes a decision, it's based on the adopted standards of the CMP, rules that have gone through a public process. He said the CMP does not speak to fracking, climate change, global warming or disfavored uses. He said based on the record for the South Jersey Gas application, the application was consistent with the adopted standards contained in the CMP.

He added that the CMP specifically states that the Commission defer to the NJDEP for air quality review.

Commissioner Chila said in response to a public commenter, he will see no economic benefit from the construction of the pipeline to serve BL England. He said he does not work for the IBEW, they represent him. He works for an electrical contractor and the BL England plant is not in his local union's territory.

In response to Mr. Fishman's comment about the $8 million associated with the MOA process, Commissioner Lohbauer said you cannot put a price on the Pinelands.

In response to Mr. Filipczak's comments about detention basins associated with Exit 44 on the Garden State Parkway, Commissioner Lohbauer said he regrets deferring to the NJDEP about stormwater management regulations.

Commissioner Galletta responded to Ms. Higgins' question about the rationale for Commissioners who voted in favor of the pipeline. He said he chose not to speak in favor of the application as the crowd would have prevented him from being heard. He said it was nearly impossible to hear because of the noise of the crowd.

Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner McGlinchey seconded the motion. The Commission agreed to adjourn at 12:15 p.m.

Certified as true and correct:

_____ Date: April 18, 2017

Jessica Noble, Executive Assistant

# *RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION*

NO. PC4-17-04

TITLE: Issuing a Final Decision Denying the Motion to Stay Pinelands Resolution No. PC4-17-03 Filed with the Pinelands Commission on Behalf of the Pinelands Preservation Alliance

**Commissioner** Barr **moves and Commissioner** Galletta **seconds the motion that:**

**WHEREAS,** in response to the Appellate Division's remand In re S. Jersey Gas Co., 447 N.J. Super. 459 (App. Div. 2016), at its meeting on December 9, 2016, the Pinelands Commission passed Pinelands Resolution No. PC4-16-42 setting forth the process it would utilize to review the South Jersey Gas Company's Pinelands Development Application (Application No. 2012-0056.001) for a natural gas transmission line; and

**WHEREAS,** on January 17, 2017, the Pinelands Preservation Alliance (PPA) filed an appeal in the Superior Court of New Jersey, Appellate Division, of Pinelands Resolution PC4-16-42, Docket No. A-002015-16, and a Notice of Motion to Stay Resolution PC4-16-42 Pending Appeal with the Pinelands Commission; and

**WHEREAS,** on January 23, 2017, the Pinelands Commission passed Resolution No. PC4-16-01 denying PPA's request to stay Resolution PC4-16-42, and the Appellate Division denied PPA's request for emergent relief that same day; and

**WHEREAS,** in accordance with Pinelands Resolution PC4-16-42, the Pinelands Commission accepted verbal comment from the public at its January 24, 2017 meeting and accepted written comments from the public until February 8, 2017; and

**WHEREAS,** prior to its February 24, 2017 meeting, the Pinelands Commission had the opportunity to review the public comments submitted, the transcript of the January 24, 2017 Pinelands Commission meeting, the record and the Executive Director's Recommendation Report recommending approval of the proposed development project with conditions; and

**WHEREAS,** at its February 24, 2017 meeting, the Pinelands Commission passed Pinelands Resolution No. PC4-17-03 through which it adopted the recommendation of the Executive Director, including the conditions contained within the Executive Director's Recommendation Report dated February 17, 2017 and determined that the proposed development project was consistent with the minimum standards of the Pinelands Comprehensive Management Plan; and

**WHEREAS,** on March 27, 2017, PPA filed a Notice of Motion to Stay Resolution PC4-17-03 Pending Appeal with the Pinelands Commission in accordance with R. 2:9-7; and

**WHEREAS,** on March 27, 2017, PPA also filed a Notice of Appeal of Pinelands Resolution PC4-17-03 and a Motion to Consolidate this new appeal with pending appeal A-002015-16 with the Appellate Division; and

**WHEREAS,** R. 2:9-7 requires an appellant, on or after filing a notice of appeal with the Appellate Division of a state administrative agency decision, action or rule, to make a motion for ad interim relief or for a stay of the action under review, in the first instance to the agency whose order is being appealed; and

**WHEREAS,** in support of its Motion, the PPA submitted a supporting brief, a declaration of its Executive Director, Carleton Montgomery and 23 supporting exhibits (the "Motion Papers"); and

**WHEREAS,** on April 3, 2017, the South Jersey Gas Company and RC Cape May Holdings, LLC, submitted opposition to the PPA's Motion; and

**WHEREAS,** the Commission has reviewed the resolution and the motion and opposition papers and based on such review issues the attached ORDER denying the Motion to Stay Pinelands Commission Resolution No. PC4-17-03; and

**WHEREAS,** pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

**NOW, THEREFORE BE IT RESOLVED** that the attached ORDER denying the Motion for a Stay of Pinelands Commission Resolution No. PC4-17-03 is **ADOPTED.**

**Record of Commission Votes**

| | AYE | NAY | NP | A/R* | | AYE | NAY | NP | A/R* | | AYE | NAY | NP | A/R* |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Ashmun | | X | | | Galletta | X | | | | Prickett | | X | | |
| Avery | X | | | | Jannarone | X | | | | Quinn | | | X | |
| Barr | X | | | | Lloyd | | X | | | Rohan Green | | X | | |
| Brown | X | | | | Lohbauer | | X | | | Earlen | X | | | |
| Chila | X | | | | McGlinchey | X | | | | | | | | |

* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: April 7, 2017

Nancy Wittenberg
Executive Director

Sean W. Earlen
Chairman

| | | |
|---|---|---|
| IN THE MATTER OF SOUTH JERSEY GAS COMPANY FOR AUTHORIZATION TO CONSTRUCT A 24" PIPELINE THROUGH MAURICE TOWNSHIP IN CUMBERLAND COUNTY, CITY OF ESTELL MANOR IN ATLANTIC COUNTY AND UPPER TOWNSHIP IN CAPE MAY COUNTY NEW JERSEY | ) | ADMINISTRATIVE ACTION<br>ORDER DENYING STAY REQUEST<br><br>Resolution of the Pinelands Commission No. PC4-17-03<br><br>Pinelands Application No. 2012-0056.001 |

On March 27, 2017, the Pinelands Preservation Alliance ("PPA") filed a request for a stay ("Stay Request") pending its appeal of the New Jersey Pinelands Commission's ("Commission") February 24, 2017 Resolution No. PC4-17-03 regarding the Commission's determination that a natural gas pipeline proposed to be constructed by the South Jersey Gas Company ("SJG") is consistent with the Pinelands Protection Act ("Pinelands Act"), N.J.S.A. 13:18A-1, et seq., and the Pinelands Comprehensive Management Plan ("CMP"), N.J.A.C. 7:50-.1.1, et seq. PPA asks that the Commission stay this Resolution and thus prohibit construction of the pipeline pending the outcome of its appeal. PPA is a non-profit organization with a stated mission of protecting the Pinelands, and has been involved in litigation with the Commission and Board of Public Utilities ("BPU") regarding natural gas pipelines in the Pinelands Area.

The Commission's vote on Resolution No. PC4-17-03 took place after the application was remanded to it by the Superior Court of New Jersey, Appellate Division, in a November 7, 2016 decision. In re the Petition of South Jersey Gas Company, 447 N.J. Super. 459 (App. Div. 2016) ("South Jersey Gas"). The vote was the culmination of State agency review of the Pipeline dating back to 2012, and was taken only after the Commission gave public notice and accepted

public comment, in accordance with the Appellate Division's instructions. After consideration of these comments and review of the record, including an Executive Director's Recommendation Report, the Commission passed Resolution No. PC4-17-03, which adopted the Executive Director's Recommendation Report and determined that SJG's proposal is consistent with the minimum standards of the CMP.

PPA filed a Notice of Appeal from Resolution No. PC4-17-03 on March 27, 2017, and filed the Stay Request with the Commission that same day. For the reasons set forth herein, the Stay Request is DENIED.

**Factual Background and Procedural History**

The Commission is a regional planning entity which oversees development in the Pinelands Area. Congress established the Pinelands National Reserve in 1978 in recognition of the unique and fragile ecology of the New Jersey Pinelands. See Gardner v. N.J. Pinelands Comm'n, 125 N.J. 193, 198-200 (1991) (detailing history and significance of "the New Jersey Pine Barrens, or Pinelands"). Our Legislature then enacted the Pinelands Act, N.J.S.A. 13:18A-1, et seq., creating the State Pinelands Area, which covers most, but not all, of the Pinelands National Reserve. N.J.S.A. 13:18A-11. The Pinelands Act is intended to protect the "significant and unique natural, ecological, agricultural, scenic, cultural and recreational resources" of the Pinelands from "random and uncoordinated development and construction." N.J.S.A. 13:18A-2. In enacting the Pinelands Act, the Legislature recognized that the "continued viability" of the Pinelands and its resources "is threatened by pressures for residential, commercial[,] and industrial development." To oversee this effort, the Legislature created the Commission to serve as the primary planning entity in the Pinelands and vested it with "all the powers and duties as

may be necessary in order to effectuate the purposes and provisions" of the Pinelands Act. N.J.S.A. 13:18A-4.

In this role, the Commission adopted the CMP, which contains regulations governing the standards for development within the Pinelands. See N.J.A.C. 7:50-1.1, et seq. Specifically, the CMP sets forth the "minimum standards for preservation of the Pinelands" and reflects "the legislative determination that management and protection of the essential character and ecological values of the Pinelands require a regional perspective in the formulation and implementation of land use policies and regulations." N.J.A.C. 7:50-2.1; N.J.A.C. 7:50-3.1(a). The CMP created eight management areas, and contains standards that proposed development in those areas must meet. N.J.A.C. 7:50-5.12; -5.21, et seq.

As SJG's pipeline will cross the Pinelands Area, it is subject to the jurisdiction of the Commission and the CMP. The SJG pipeline consists of approximately 21.6 miles of 24 inch pipeline, which will run from Maurice River Township in Cumberland County, through the City of Estell Manor in Atlantic County to Upper Township in Cape May County, and will cross a Pinelands Village Area, Rural Development Area, and Forest Area. The route consists of approximately 2.2 miles of easements on private property, with the remaining 19.4 miles to be located beneath roadways and maintained road shoulders within the public rights-of-way. The primary purpose of the pipeline is to serve the B.L. England power plant in Upper Township. Pursuant to an Administrative Consent Order entered into with the Department of Environmental Protection, B.L. England was required to replace its oil and coal-fired generators with natural gas generators by May 1, 2017, or it must shut down unless ordered by the BPU, PJM or the federal government to continue operating its coal or oil-fired units to avoid adverse consequences from a shutdown. The Commission was recently made aware that PJM recently ordered B.L. England to

continue operating these oil and coal units past May 1, 2017 in order to avoid adversely affecting transmission of electricity in the region.

The SJG pipeline first came before the Commission in 2012, when SJG filed a development application with the Commission for the project. SJG separately filed a petition with the BPU pursuant to N.J.S.A. 40:55D-19 of the Municipal Land Use Law to preempt the application of municipal ordinances to the pipeline. Based upon the information provided by SJG, Commission staff initially identified an inconsistency with the CMP – specifically, because the pipeline would also serve as a reliability line to Atlantic and Cape May Counties, it would not "primarily serve only the needs of the Pinelands," as required by the Forest Area standards for public service infrastructure. See N.J.A.C. 7:50-5.23(b)(12). Staff proposed that the Commission enter into a Memorandum of Agreement ("MOA") with the BPU, which would have allowed for construction of the pipeline notwithstanding the alleged inconsistency with the CMP. The Commission did not authorize entry into the MOA. SJG appealed from the Commission's non-entry into the MOA, but dismissed that appeal with prejudice on May 5, 2016.

On May 21, 2015, SJG submitted a revised application to the Commission, which contained new information and asserted that the pipeline complied with N.J.A.C. 7:50-5.23(b)(12), the sole inconsistency previously identified by the Executive Director. This information included a previously confidential Standard Gas Service Agreement, dated September 2010, and Standard Gas Service Agreement Addendum, dated April 2013, which documented that SJG was contractually obligated to provide capacity for 125,000 MCF per day of natural gas to B.L. England at least 350 days out of the year. This represented the entire

capacity of the pipeline. The revised application also proposed to relocate an interconnect station to outside the Forest Area.

On August 14, 2015, the Executive Director issued a Certificate of Filing ("COF") for the revised application. See N.J.A.C. 7:50-4.31(b); -4.82(b). The COF contained a preliminary finding that, based upon the newly submitted information, the proposed pipeline was consistent with the CMP's requirement that it primarily serve only the needs of the Pinelands, because it would serve an existing Pinelands facility over 95% of the time. This COF allowed the BPU to continue with its review of the SJG's N.J.S.A. 40:55D-19 Petition. See N.J.A.C. 7:50-4.81(b).

At that time, the Commission did not interpret the Pinelands Act or the CMP as authorizing it to directly review any private development applications that were the subject of a petition to the BPU for preemption of municipal review and approval under N.J.S.A. 40:55D-19 for conformance with the standards of the CMP, or to make a final determination on such applications. Rather, the Commission believed that the statute charged the BPU with ensuring that any development it approved to be constructed within the Pinelands conformed to the CMP. See N.J.S.A. 13:18A-10(c). The Commission's interpretation was further informed by the lack of authority within the Pinelands Protection Act for it to review state agency approvals (See N.J.S.A. 13:18A-15, limiting Commission review to municipal or county approvals) and the provisions within the CMP that set forth a process for Commission staff to participate in the proceedings of other state agencies, such as the BPU, to represent the Commission's interests and provide guidance to the agency making the ultimate determination on a development application. N.J.A.C. 7:50-4.81, et seq.

Based on this interpretation, Commission staff participated in BPU's review of SJG's N.J.S.A. 40:55D-19 petition. The BPU conducted additional public hearings during which it

accepted comments regarding the CMP, and held an evidentiary hearing in which PPA was a participant. The BPU then submitted its record to the Commission staff, including all public comments and documents submitted to the BPU. After reviewing these materials, the Commission's Executive Director submitted a letter to the BPU on December 14, 2015, detailing her review and stating the finding in the COF remained valid. On December 16, 2015, the BPU issued a Decision and Order granting SJG's N.J.S.A. 40:55D-19 Petition, finding the pipeline "reasonably necessary for the service, convenience, or welfare of the public."

The Sierra Club and Environment New Jersey appealed the Executive Director's December 14, 2015 letter. Those parties and the PPA also appealed the BPU's approval of SJG's N.J.S.A. 40:55D-19 Petition. The appeals were consolidated.

In its November 7, 2016 published decision, the Appellate Division in large part affirmed the BPU's order, but disagreed with the Commission's interpretation of the Pinelands Act. South Jersey Gas, supra, 447 N.J. Super. 459. The court acknowledged that the CMP's coordinated permitting provisions, N.J.A.C. 7:50-4.81, et seq., did not provide for the Commission to review a staff determination regarding the SJG application. Id. at 477. However, the court held "the Commission retains final decision-making authority as to whether SJG's proposed pipeline is consistent with the minimum standards of the CMP," and that the "Commission therefore retains 'ultimate responsibility' under the CMP to review the proposed project and render a final decision on CMP compliance." Id. at 478

The Appellate Division thus remanded the matter to the Commission, and directed the Commission to determine how to review the Executive Director's recommendation regarding the pipeline. The court's decision afforded the Commission wide discretion in what procedures it chose. In relevant part, the court instructed:

> The Commission shall determine whether to review the Executive Director's decision based on the factual record developed before the [BPU], or whether the parties should be permitted to present additional evidence on the question of whether the pipeline is consistent with the minimum standards of the CMP.
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> The Commission also shall determine whether to refer the matter for a hearing before an Administrative Law Judge (ALJ). In that regard, we note that, under the CMP's provisions for review of municipalities with certified land use regulations, the Commission may review a preliminary approval if it raises substantial issues of CMP compliance. N.J.A.C. 7:50-4.37(a) – (b).
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> If so, the Executive Director must give notice of the staff's determination to the applicant, local permitting agency, and any interested persons. N.J.A.C. 7:50-4.37(b). The applicant, local permitting agency, and any interested persons may request a hearing before an ALJ. Ibid. Thereafter, the Commission may issue a final decision on the matter. N.J.A.C. 7:50-4.91(e).
>
> The Commission shall consider whether the same or similar procedures should be followed in reviewing Wittenberg's decision. See In re Application of John Madin, 201 N.J. Super. 105, 128-34 (App. Div.) (holding that municipalities whose development ordinances have not been certified by the Commission are entitled to an evidentiary hearing on the grant of development approval), certif. granted, 102 N.J. 380 (1985), certif. vacated, 103 N.J. 689 (1986). Moreover, the public should be afforded notice and the opportunity to be heard before the Commission renders a final decision on the application. Id. at 135-136.
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> [Id.,at 479.]

At its December 9, 2016 meeting, the Commission unanimously passed Resolution No. PC4-16-42, detailing how it would implement the court's remand instructions and review the proposed pipeline. The review process chosen by the Commission was modeled on the CMP's existing process to review public development applications. See N.J.A.C. 7:50-4.51, et seq. The circumstances surrounding the Commission's consideration of public development applications are similar to the situation before the Commission here, because, as with public development applications, there is no municipal approval for the Commission to review. Rather, when

reviewing public development applications, the Executive Director first reviews the application and all other information submitted, and makes a determination of whether the application should be approved, approved with conditions, or disapproved. N.J.A.C. 7:50-4.54. The Commission then reviews that determination at its next monthly meeting. N.J.A.C. 7:50-4.56. The process chosen by the Commission through Resolution No. PC4-16-42 also provided the public the opportunity to comment on the SJG application at a Commission meeting, and for the submission of written comments, prior to the Commission making a final determination on the proposed pipeline.

Following the meeting, Commission staff provided notice on December 9, 2016 that the Commission would take public comment regarding the SJG application at its January 24, 2017 meeting, and accept written comments until that date. The Commission subsequently changed the location of the meeting from its offices, which accommodate approximately 60 people, to the St. Ann's Parish Center in Browns Mills, which had a capacity of 260, to accommodate the significant attendance anticipated. Based on parameters of holding the meeting during the day, providing adequate space and parking, cost, and the Commission's preference to hold its meeting in the Pinelands, this was the largest venue the Commission was able to secure for that date. Based on past attendance at proceedings regarding the MOA, the Commission believed the venue would be able to accommodate the expected attendance.

On January 4, 2017, PPA submitted a letter objecting to the adoption of Resolution No. PC4-16-42, including specifically the review process set forth in the Resolution. The Executive Director responded to that letter on January 11, 2017, explaining why PPA's concerns were unfounded. PPA also submitted an email, which misstated that the venue's capacity was only 120 people, and expressed concern that PPA expected more than 120 people to attend.

PPA then filed an appeal of Resolution No. PC4-16-42 with the Appellate Division on January 17, 2017, and simultaneously filed a stay request with the Commission. The Commission denied the request in a special meeting on January 23, 2017, and the Appellate Division denied PPA's request for an emergent stay later that day.

At the January 24, 2017 meeting, the Commission heard public comment from approximately 130 individuals, both in favor and against the pipeline. Attendance initially exceeded capacity, and Commission staff collected a list of those waiting to enter, allowing those people to enter as others left. All those wishing to attend the meeting were able to enter by approximately 12:30 P.M., and the meeting continued until past 5:00 P.M. to allow all those who wished to speak an opportunity to do so. In order to provide those who were unable to wait for their opportunity to comment or chose to leave, the Commission extended written comment an additional two weeks, until February 8, 2017. The Commission also delayed its February meeting until February 24, 2017, to allow adequate time to review any additional comments.

The Executive Director organized and transmitted all public comments to the Commissioners, along with an Executive Director's Recommendation Report. The Report discussed the standards of the CMP, and recommended that SJG's proposal was consistent with all relevant standards. In pertinent part, the Report discussed that the entire capacity of the pipeline would be dedicated to serving B.L. England, an existing Pinelands facility, at least 350 days each year. Thus, because it would serve an existing Pinelands business over 95% of the time, consistent with past Commission precedent, the pipeline met the requirement of N.J.A.C. 7:50-5.23(b)(12) that it primarily serve only the needs of the Pinelands. The Report also discussed other pertinent CMP standards, including requirements pertaining to wetlands, threatened and endangered species, and revegetation. The Report also responded to public

comments relevant to the question before the Commission of whether the SJG application was consistent with the minimum standards of the CMP. In response to an inquiry from one Commissioner, the Executive Director also solicited additional information from DEP and SJG and transmitted this information prior to the February 24, 2017 meeting.

The Commission considered the Executive Director's recommendation at its February 24, 2017 meeting. The meeting was again well-attended. After a resolution to postpone consideration of the matter for a future meeting failed, the Commission voted 9 to 5, with one abstention, to adopt the Executive Director's Recommendation Report, and to find that the SJG pipeline was consistent with the minimum standards of the CMP.

PPA filed a Notice of Appeal from that decision on March 27, 2017, and filed the Stay Request with the Commission that same date. SJG and R.C. Cape May Holdings, LLC (B.L. England's owner) filed opposition to the Stay Request on April 3, 2017.

## DISCUSSION

### Standard for Granting of Stay

Rule 2:9-7 requires that motions for stays of administrative agency decisions be "made in the first instances to the agency whose order is appealed from and, if denied, to the Appellate Division." R. 2:9-7. PPA contends it has met the standards for a stay, and requests that the Commission stay Resolution No. PC4-17-03 and thus any construction of the proposed SJG pipeline pending the outcome of its appeal.

The Commission is not required to grant a stay request simply because its decision is under review by the Appellate Division. Rather, to be entitled to a stay, a movant must demonstrate each of the following: (1) the threat of irreparable harm; (2) a reasonable probability of success on the merits based on settled legal rights; and (3) that on balance public interest and

relative hardships to the parties favor a stay. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982). The party seeking the stay bears the burden of demonstrating it meets each of these standards by clear and convincing evidence. Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013).

The Commission finds that PPA's Stay Request falls short of satisfying each of these criteria, and hereby DENIES the request.

**Irreparable Harm**

A stay "should not issue except when necessary to prevent irreparable harm." Crowe, supra, 90 N.J. at 132-33. PPA claims irreparable harm will result here because the Commission's determination regarding the pipeline's conformance with the CMP was the last approval needed by SJG prior to commencing construction. PPA asserts environmental harm will be caused by pipeline construction, as well as claiming there is risk of leakage of natural gas into the Pinelands' aquifer and streams. PPA also argues approval of the pipeline will create additional development pressure along the pipeline route.

The Commission finds that PPA's claims of irreparable harm are without merit. Notably, the BPU's July 23, 2015 Order precludes any additional connections to the SJG pipeline in the Forest Area. Therefore, the pipeline will not result in additional development pressure along its route.

The Commission also finds that irreparable environmental harm will not result from pipeline construction. Although PPA alleges flora and fauna may be irreparably harmed by development, it does not identify any specific species that will be harmed by construction of the SJG pipeline. As discussed in the Executive Director's Recommendation Report, the vast majority of the pipeline will be constructed either under pre-existing roadways or under existing road shoulders, and no development will occur in wetlands. There will also be no tree clearing or

impact to the forest canopy. The disturbed areas resulting from the natural gas interconnect station will be revegetated with a seed mixture which meets the CMP's Landscaping and Revegetation Guidelines. No threatened or endangered animal species were identified within the vicinity of the pipeline route. Pine Barrens boneset, an endangered plant species, was located approximately 100 feet from the edge of existing road pavement along one portion of the route, but, as the pipeline will be located under existing disturbed and maintained shoulder in this location, no irreversible adverse impact will occur from pipeline construction. Further, SJG has agreed to a number of conditions to ensure no environmental impacts will result from construction, including having an independent biologist present when construction and clearing activities are ongoing near habitat suitable for threatened and endangered species. SJG also agreed to conditions to monitor and prevent any negative effects while Horizontal Directional Drilling is ongoing.[1]

Nor is there a "substantial risk of leakage into Pinelands aquifers and streams." The Commission thoroughly considered this issue in its review of the project. The BPU reviewed and approved the pipeline construction methods. It will be constructed in accordance with federal pipeline safety standards, and will include state of the art piping, continuous pressure gauges, and inspections and shut off valves. Even if a leak did occur, in contrast to pipelines carrying liquids which might drain towards an aquifer, natural gas will instead rise through the soil and dissipate in the air. Thus, there is no likelihood that the Pinelands water resources would be irreparably harmed by the pipeline.

[1] Horizontal Directional Drilling is a trenchless construction method, and is the preferred method by DEP to install pipeline beneath wetlands or streams without impacting those resources.

PPA also claims that, if a stay is not granted, "the authority of the Pinelands Laws will be subverted [and] an illegal development will go forward." As explained below, the Commission's approval of the SJG pipeline is fully consistent with the Pinelands Act and CMP.

PPA has not identified any other harms that would result from pipeline construction. For the above reasons, PPA has not demonstrated irreparable harm sufficient to warrant the entry of a stay.

**Likelihood of Success on the Merits**

The second element that PPA must demonstrate is reasonable probability of success on the merits. Crowe, supra, 90 N.J. at 133. "Temporary relief should be withheld when the legal right underlying [the party's] claim is unsettled. Ibid. To succeed on the merits of an appeal from an agency's decision, PPA must make "a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." In re Hermann, 192 N.J. 19, 28 (2007).

PPA claims the Commission's review violated the Administrative Procedure Act ("APA"), N.J.S.A. 52:14B-1, et seq., and PPA's due process rights. It also contends several Commissioners had conflicts of interest which should have precluded their participation in the consideration of the application. Finally, PPA contends the Commission erred in concluding the pipeline application is consistent with the CMP's standards.

For the following reasons, the Commission disagrees and finds PPA is unlikely to succeed on the merits of these claims on appeal.

PPA's Claim that Resolution No. PC4-16-42 Violates the APA

PPA asserts that Resolution No. PC4-16-42 is an administrative rule, and that compliance with the APA's rulemaking procedures was required. The Commission disagrees. The

Commission previously addressed this argument when it denied PPA's request for a stay in its appeal from Resolution No. PC4-16-42, but for completeness, addresses it again here.

Resolution No. PC4-16-42 was an implementation of the Appellate Division's remand instructions in South Jersey Gas, as it set forth how the Commission would review the remanded SJG application. Nothing in the court's opinion directed the Commission to initiate rulemaking or amend the CMP prior to reviewing SJG's application.[2] Rather, the court remanded the matter to the Commission and directed it to consider how it would review the Executive Director's recommendation regarding SJG's development application, and then make a final decision on the application. The Commission followed the Appellate Division's directions in passing Resolution No. PC4-16-42.

Moreover, the Commission acted consistent with well-established precedent regarding administrative agency action. As the Supreme Court has recognized, "[a]dministrative agencies enjoy great leeway when selecting among rulemaking procedures, contested hearings, or hybrid informal methods in order to fulfill their statutory mandates." In re Provision of Basic Gen. Serv., 205 N.J. 339, 347 (2011).

The Supreme Court has set forth factors for consideration in determining whether adherence to the APA's formal rulemaking procedures is required. Metromedia, Inc. v. Dir., Div. of Tax, 97 N.J. 313, 331-332 (1984). Courts apply a multi-factor test in determining whether rulemaking requirements are implicated, looking at whether the agency's decision:

> 1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an

[2] After the South Jersey Gas decision, the Commission also sought remand of appeals related to the proposed Southern Reliability Link pipeline to allow the Commission to review the application consistent with the South Jersey Gas decision. A-3753-16; A-3762-16. Despite requests from PPA and the Sierra Club in cross-motions for remand, the Appellate Division's remand instructions did not require the Commission to undertake rulemaking prior to reviewing the application.

> individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy.
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> [Ibid.]

PPA asserts those factors are present here, citing a summary disposition brief filed in its appeal from Resolution No. PC4-16-42.[3] The Commission disagrees.

First, the Resolution is not intended to have wide coverage. Although the Resolution notes the Commission's awareness of other applications filed under N.J.S.A. 40:55D-19 that could come before it, at this time the Commission is only aware of two other such applications. The Commission expressed in the Resolution its intent to expeditiously undertake amendments to the CMP to formalize the process for future applications. In addition, as stated in the Executive Director's January 11, 2017 letter to PPA, pending amendments to the CMP, the Commission will address the procedures to be used to review any subsequent applications at the appropriate time, taking into account the specific circumstances of the application as well as the principles and direction contained in the South Jersey Gas opinion, and determine whether alternate procedures should be used. Hence, Resolution No. PC4-16-42 is limited in scope.

Similarly, although the Resolution provides that the Commission may use this process for other applications for which the municipal review process is preempted pending amendments to the CMP, the Commission will address and may modify these procedures as appropriate taking

[3] On February 28, 2017, the Appellate Division denied cross-motions for summary disposition filed in that appeal.

into account the specifics of each application. Thus, the Resolution is not "intended to be a rule of unvarying application to all similar cases." See Metromedia, supra, 97 N.J at 335.

Nor was the Resolution purely designed to operate in only future cases. Indeed, the purpose of its adoption by the Commission was to deal with past cases – one remanded to the Commission by the Appellate Division, and another the Commission at that time anticipated would be remanded shortly with similar instructions.[4] The Commission has expressed its intent to expeditiously undertake amendments to the CMP to formalize the process by which it will address future applications.

Further, the process chosen by the Commission is inferable from the Pinelands Act and other provisions of the CMP. The Pinelands Act only requires an adjudicatory hearing when the Commission elects to review a municipal or county approval; no such local approval was present here. See N.J.S.A. 13:18A-15. Rather, consistent with the Appellate Division's interpretation of the Pinelands Act, the court's remand instructions, and the Commission's existing procedures for other applications which come before it without a prior municipal approval to review, the Commission chose a process which ensured a full record was presented to it, and that the public was provided with notice and an opportunity to comment before the Commission.

The Commission also disagrees that the fifth Metromedia factor is met. Although the CMP currently lacks a process for direct Commission review of applications for which the BPU preempted the municipal review process, the process chosen by the Commission to review the SJG application on remand hewed closely to existing procedures in the CMP for applications that come before the Commission in a similar posture. As noted, the Commission used its review

[4] As noted, the New Jersey Natural Gas Southern Reliability Link pipeline application was recently remanded to the Commission by the Appellate Division. The Commission will consider in the future whether, based on the specifics of that application, the same review procedures should be used prior to undertaking that review.

procedures for public development applications as a guide, because those applications, like the SJG application, come to the Commission without a prior municipal approval to review. There, like here, the Commission reviews a recommendation of the Executive Director, receives public comment at a regular meeting, and then votes on the application's conformance with the CMP. Thus, the process was previously expressed and does not constitute a material departure from existing procedures.

Finally, the sixth Metromedia factor is not met here. The Resolution did not "reflect[] a decision on administrative regulatory policy in the nature of the interpretation of law or general policy." Id. at 332. Rather, it simply details how the Commission would implement the court's remand and review whether SJG's application complies with the Commission's regulations after providing an opportunity for the public to comment during that review. The substantive regulations of the CMP remain unchanged, and the Commission only approved the proposed pipeline after it determined the pipeline conforms with all of the CMP's standards. Thus, the Resolution does not reflect a change in agency policy.

For these reasons, Resolution No. PC4-16-42 is not an administrative rule, and the Commission was not required to follow the APA's formal rulemaking procedures. Therefore, the Commission finds PPA has not shown it has a reasonable likelihood of success on the merits of this claim in its appeal.

PPA's Claim that the Commission's Procedures Violated the Pinelands Act and its Due Process Rights

PPA also asserts the Commission violated its due process rights and the Pinelands Act, because it did not hold an adjudicatory hearing providing an opportunity for sworn testimony and cross-examination; that it knowingly held its public meeting on the application in too small of a venue; and it rushed its review process. The Commission disagrees with PPA's contentions. An

adjudicatory hearing was not required in these circumstances, and PPA and the public were afforded ample due process. The Commission's vote was the culmination of a years-long coordinated review of the pipeline across several State agencies, and the Commission had sufficient time to consider the record before it.

Notably, in its remand instructions, the Appellate Division did not require that the Commission conduct a hearing, but rather left it to the Commission to determine whether an adjudicatory hearing was warranted. South Jersey Gas, supra, 447 N.J. Super. at 479. The court expressly gave the Commission the option of making its determination based on the record developed before the BPU, and only required the Commission to provide public notice and to take additional public comment. Ibid.

PPA asserts an adjudicatory hearing is required by the Pinelands Act and by the Appellate Division's ruling in Madin, supra, 201 N.J. Super. at 134. However, the Pinelands Act only mandates an adjudicatory hearing where the Commission is reviewing a final municipal or county development approval. N.J.S.A. 13:18A-15. And reliance on Madin is inapposite. Madin concerned whether uncertified municipalities, i.e. those municipalities whose land use ordinances had not been certified by the Commission, were entitled to a hearing prior to the Commission's approval of applications for development within their boundaries, especially where, as in Madin, the uncertified municipality opposed the development. Madin, supra, 201 N.J. Super. at 119. Those circumstances are not present here. Instead, the circumstances are more akin to those present during the Commission's review of public development applications, N.J.A.C. 7:50-4.51, et seq., and the Commission modeled its review of the SJG application off those procedures.

Moreover, after Madin was decided, the Administrative Procedure Act was amended to preclude agencies from granting adjudicatory hearings to third parties regarding permitting decisions. N.J.S.A. 52:14B-3.1 and -3.3. Agencies may only grant adjudicatory hearings to persons with particularized property interests or a right to a hearing under a statute. N.J.S.A. 52:14B-3.1; In re Freshwater Wetlands Gen. Permits, 185 N.J. 452, 463-64 (2006). Here, SJG was not aggrieved by an action of the Executive Director as contemplated by N.J.A.C. 7:50-4.37 & -4.41, and did not request an adjudicatory hearing. The Commission is unaware of any parties with a particularized property interest which would have given them standing for an adjudicatory hearing, and PPA did not seek to establish such an interest.

Further, the Supreme Court has been clear that an adjudicatory hearing is not required to satisfy the public's due process rights. See In re Freshwater Wetlands Statewide General Permits, supra, 185 N.J. at 470. As the Court held, "[a] third-party objector's due process rights may be satisfied by an agency's review process, even absent trial-type procedures." Ibid. In determining whether due process has been satisfied, "the administrative process . . . cannot be viewed in isolation," and consideration must be given to proceedings conducted before other government entities. Id. at 472.

Based on the above, the Commission concluded that an adjudicatory hearing was not needed to develop the factual record in this matter. An extensive record was previously developed before the BPU and the Commission, which included: public comments before the BPU on whether the proposed pipeline conforms to the CMP's standards; a BPU evidentiary hearing in which PPA was a participant, and made submissions concerning the CMP; a public hearing and submission of written comments by the public during the MOA proceedings; and recommendations and analysis by the Executive Director made during the MOA proceeding, in

the COF, and after review of the BPU's record. In addition, as instructed by the Appellate Division, the Commission provided public notice and the opportunity to comment, both in writing and in person before the Commission at its January 24, 2017 meeting. South Jersey Gas, supra, 447 N.J. Super. at 479. Representatives of PPA did indeed comment both in-person at that meeting, and in writing, and the Commission extended written comment to February 8, 2017, to accommodate those that may have been unable to comment at the January meeting. PPA submitted additional written comments during this extension period. Thus, PPA and the public were afforded substantial due process during the consideration of the proposed pipeline by the BPU and the Commission.

Moreover, the Commission did not "knowingly" hold its public meeting in too small of a venue. Rather, as the Executive Director explained, the Commission relocated its meeting to the St. Ann's Parish Center in Browns Mills in an effort to accommodate the anticipated attendance and to secure a venue larger than the Commission's offices. The venue had a capacity of 260, which the Commission believed would be sufficient based on attendance during the MOA proceedings. The venue was the largest the Commission was able to secure in the Pinelands given various funding, timing, parking, and other constraints. In addition, the only complaint the Commission received prior to the meeting regarding the venue size mistakenly believed it could only accommodate 120 people. Thus, the Commission had no reason to expect a meeting room with a capacity more than twice that number would be insufficient.

The Commission also made reasonable efforts to accommodate the greater than expected public attendance. Commission staff took a list of names, and allowed people to enter the meeting room as others exited. All those wishing to enter were able to do so by 12:30 P.M., and the Commission continued the meeting until past 5:00 P.M. so that all who wished to speak

could do so. The Commission also extended written comment an additional two weeks, until February 8, 2017, so those that were unable to wait would be able to submit their comments in writing.

Hence, the Commission provided sufficient opportunity for the public to comment and satisfied PPA and the public's due process rights. Indeed, PPA and over 6000 members of the public did comment. The public comments were organized and transmitted to the Commissioners, as was the Executive Director's summary and response of relevant comments. While a motion to postpone the matter to a future meeting was raised at the February meeting, a majority of the Commission determined it had sufficient time to review the record. And, as discussed below, the Commission's ultimate decision regarding the pipeline is amply supported by that record.

Accordingly, the Commission's review of the pipeline satisfied PPA's due process rights and the Pinelands Act. The Commission thus finds PPA is unlikely to succeed on the merits of this claim.

PPA's Claim that Commissioners had Impermissible Conflicts of Interest

PPA also alleges that two Commissioners, Commissioners Giuseppe Chila and Bob Barr, had conflicts of interest which should have precluded their participation in reviewing and voting on the SJG application. PPA claims the Commissioners' relationships with the International Brotherhood of Electrical Workers ("IBEW"), a union which had taken a position in favor of the SJG application, constituted an impermissible conflict of interest. The Commission disagrees.

PPA asserts conflicts exist because Commissioner Chila is a member of the IBEW, and because the Cape May County Democratic Organization received donations from the IBEW while Commissioner Barr served as treasurer or the organization.

PPA and others raised these purported conflicts of interest to the Commission prior to the February 24, 2017 meeting. The Executive Director addressed them on the record during the meeting, prior to the Commission's vote. As she stated:

> Over the past several weeks[,] Commission staff has received information from members of the public alleging that certain members may have conflicts of interest requiring recusal from the vote on the South Jersey Gas application. After review of the application provided and consultation with the State Ethics Commission and the Attorney General's Office[,] it has been determined that none of the Commissioners in question have a conflict of interest requiring recusal in this matter.

Thus, the Commission satisfied its obligation to consider and address the alleged conflicts.

Moreover, the State Ethics rules make clear that membership in an organization does not create a conflict of interest requiring recusal. Rather, recusal is only required when the State officer has held "a leadership role in a professional or trade organization[.]" N.J.A.C. 19:61-7.4(e). Commissioner Chila does not hold and has not held a leadership role in the IBEW. In addition, prior to the February 24, 2017 meeting, Commissioner Chila confirmed that his membership in the IBEW would not preclude his objective and unbiased review of the SJG application.

Likewise, Commissioner Barr is no longer the treasurer of the Cape May Democratic Organization, and resigned prior to being sworn in as Commissioner. Thus, even if that position could create a conflict of interest, no such conflict now exists. PPA fails to explain how Commissioner Barr's elected position as Ocean City's 4th Ward Representative on the City Council presents a conflict of interest. Similarly, Commissioner Barr's public statement regarding his intended vote, after the record was closed and after full consideration of that record, does not constitute a conflict of interest.

Thus, the Commission finds PPA is unlikely to succeed on its claim regarding purported conflicts of interest.

PPA's Claim that Resolution PC4-17-03 is Arbitrary and Capricious

Finally, PPA claims the Commission's adoption of Resolution No. PC4-17-03 and its determination in that Resolution that SJG's application met the minimum standards of the CMP was arbitrary and capricious. Again, the Commission disagrees. The Commission's determination was reasonable, consistent with past precedent, and supported by the record.

PPA claims the Commission erred in finding the SJG pipeline met the requirement of N.J.A.C. 7:50-5.23(b)(12) that it be "intended to primarily serve only the needs of the Pinelands," as well as other unspecified environmental requirements. But the Executive Director's Recommendation Report, adopted by the Commission, fully addressed this standard. As the Report discussed, the pipeline will serve B.L. England, a Pinelands business, more than 95% of the time. Despite PPA's contentions, SJG is indeed contractually obligated to provide the entire capacity of the Pipeline to B.L. England at least 350 days per year. This was documented to the Commission by SJG's 2015 submission of a previously confidential Standard Gas Service Agreement and Standard Gas Service Agreement Addendum. The 24 inch pipeline will operate at a maximum pressure of 437 psig due to constraints in SJG's transmission system, and the BPU confirmed in its December 16, 2015 Order that 125,000 MCF, which is contractually obligated to B.L. England, represents the maximum flow capacity of the pipeline.

Thus, the Pipeline is primarily serving only the needs of B.L. England, an existing Pinelands business, as it undergoes a required repowering from oil and coal to cleaner burning natural gas. That B.L. England will need to undergo redesigns does not change this analysis. Nor

does the cost allocation of the pipeline change the documented fact that the entirety of the gas in the pipeline will flow to B.L. England 95% of the time.

This analysis is also consistent with past Commission precedent, including the issuance of a Certificate of Filing for a pipeline serving the New Lisbon Developmental Center, that serving a Pinelands facility is sufficient to satisfy the requirements of N.J.A.C. 7:50-5.23(b). The analysis is no different from that conducted for any other facility, like a farm, manufacturing facility, cranberry bog, or hospital, which requires public service infrastructure such as gas, electricity, or water to operate. The CMP does not require the Commission to analyze where the people a facility may serve reside, nor where in the stream of commerce goods created by a facility, including where electricity, the product created by B.L. England, may flow.

PPA relies upon a submission by a former Commission Executive Director, Terrence D. Moore, which it purports demonstrates the Commission's decision was not consistent with past precedent. However, none of the Commission decisions cited by Mr. Moore say that serving a Pinelands business does not satisfy N.J.A.C. 7:50-5.23(b). Rather, they provided separate bases for meeting this standard, including serving the Pinelands through electric generation, and directly serving Pinelands residences and businesses. The Commission is unaware of any past decisions in which it stated serving the infrastructure needs of a Pinelands facility did not primarily serve only the needs of the Pinelands.

With regard to where the electricity generated by B.L. England flows, as reflected in the Executive Director's Recommendation Report, that issue was not the primary basis for the Commission's decision and was not necessary for finding the pipeline satisfies N.J.A.C. 7:50-5.23. Nonetheless, as reflected in the BPU's July 23, 2015 Order, affirmed by the Appellate

Division,[5] energy produced by B.L. England would ordinarily flow to Atlantic City Electric ("ACE"). ACE in turn serves 69% of the residents of the Pinelands. Previous Commission decisions, including those cited by Mr. Moore, did not engage in the analysis PPA now demands, regarding proof of what number of customers inside and outside the Pinelands were served by electrical generating sources. But again, definite resolution of this issue was not necessary to find compliance with N.J.A.C. 7:50-5.23 as serving an existing Pinelands business, B.L. England, is sufficient to meet this standard.

Similarly, the Commission rejects PPA's contention that repowering B.L. England is not necessary. The BPU, the State agency charged with making that determination, found in its December 16, 2015 Order that construction of the SJG pipeline to repower B.L. England was "reasonably necessary for the service, convenience, or welfare of the public," and found "there is a need for capacity in the area of B.L. England." Further, PJM recently determined that the pending May 1, 2017 shutdown of B.L. England would adversely affect the transmission of electricity in the region, and ordered B.L. England to keep operating as a coal and oil-fired plant for reliability purposes until it is able to repower to burn the cleaner burning natural gas that will be provided by the pipeline. Thus, there is clearly a continuing need for the plant.

Finally, PPA makes generalized claims of environmental harm, without citing to any specific CMP standards that would be violated. The Executive Director's Recommendation Report, adopted by the Commission, discussed in detail all relevant standards, including Wetlands Protection, N.J.A.C. 7:5-6.7 & -6.13; Vegetation Management, N.J.A.C. 7:50-6.23 & -6.26; Threatened and Endangered Species Protection, N.J.A.C. 7:50-6.27 & -6.33, and Cultural Resource Standards, N.J.A.C. 7:50-6.151. The Report also addressed all comments relevant to

[5] In the Matter of the Petition of South Jersey Gas Company, Docket No. A-0151-15T1 (App. Div. Nov. 7, 2016).

consistency with the CMP. Given PPA fails to identify any standards that were violated, the Commission finds PPA is unlikely to succeed on the merits of this claim.

For these reasons, PPA is unlikely to succeed on the merits of its appeal.

**Balance of Hardships**

The final prong of the test for a stay is consideration of the relative hardships to the parties in granting or denying relief. Crowe, supra, 90 N.J. at 134. PPA asserts the equities favor the grant of the stay because there is a strong public interest in protecting the environment and upholding the law. PPA claims SJG will not be harmed if a stay is granted.

However, as discussed above, no irreparable harm will result from the pipeline. Contrary to PPA's contention, SJG is required to comply with all revegetation management standards, and there will be no irreparable harm to the sole endangered plant species identified anywhere near the pipeline route. In addition, the Commission complied with the law and its regulations, provided substantial due process to PPA and the public, and did not promulgate any new rules.

In contrast, the delay caused if a stay of the Commission's review of the proposed pipeline is granted could cause harm to the public. The BPU found that pipeline construction was reasonably necessary for the service, convenience or welfare of the public, and that would improve air quality and have other positive environmental effects. The Commission is aware PJM has ordered B.L. England to continue operating its coal and oil-fired units past May 1, 2017, to ensure regional electrical needs are met. Delay in construction of the SJG pipeline could result in additional air pollution if the dirtier burning coal and oil units must continue operating until the pipeline is installed. Thus, a stay is contrary to the public interest.

Thus, the Commission finds that the balance of hardships does not weigh in favor of granting a stay.

## CONCLUSION

For the reasons set forth herein, PPA has not demonstrated: (1) irreparable harm; (2) a likelihood of success on the merits based on settled legal rights; or (3) that the balance of hardships favors a stay. Accordingly, PPA's request for a stay is DENIED.

**SO ORDERED.**

# *RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION*

NO. PC4-17-05

**TITLE:** **Approving** With Conditions an Application for **Public Development** (Application Number 2003-0319.003)

**Commissioner** Avery **moves and Commissioner** Galletta **seconds the motion that:**

**WHEREAS,** the Pinelands Commission has reviewed the Public Development Application Report and the recommendation of the Executive Director that the following application for Public Development be approved with conditions:

| | |
|---|---|
| **2003-0319.003** | |
| **Applicant:** | **T-Mobile, Valore, LLC & Waterford Township** |
| Municipality: | Waterford Township |
| Management Area: | Pinelands Rural Development Area |
| Date of Report: | March 17, 2017 |
| Proposed Development: | Construction of 190 foot high local communications tower and a 5,000 square foot equipment compound. |

**WHEREAS,** no request for a hearing before the Office of Administrative Law concerning the Executive Director's recommendation has been received for this application; and

**WHEREAS,** the Pinelands Commission hereby adopts the Conclusion of the Executive Director for the proposed development; and

**WHEREAS,** the Pinelands Commission hereby determines that the proposed public development conforms to the standards for approving an application for public development set forth in N.J.A.C. 7:50-4.57 if the conditions recommended by the Executive Director are imposed; and

**WHEREAS,** pursuant to N.J.S.A. 13A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period and Governor shall approve same, in which case the action shall become effective upon such approval.

**NOW, THEREFORE BE IT RESOLVED** that Application Number 2003-0319.003 for public development is hereby **approved** subject to the conditions recommended by the Executive Director.

**Record of Commission Votes**

| | AYE | NAY | NP | A/R* | | AYE | NAY | NP | A/R* | | AYE | NAY | NP | A/R* |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Ashmun | X | | | | Galletta | X | | | | Prickett | X | | | |
| Avery | X | | | | Jannarone | X | | | | Quinn | | | X | |
| Barr | X | | | | Lloyd | X | | | | Rohan Green | X | | | |
| Brown | X | | | | Lohbauer | X | | | | Earlen | X | | | |
| Chila | X | | | | McGlinchey | X | | | | | | | | |

* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: April 7, 2017

Nancy Wittenberg
Executive Director

Sean W. Earlen
Chairman

State of New Jersey
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General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

March 17, 2017

Leroy Peart
T-Mobile
510 Virginia Drive
Fort Washington, PA 19034

Frank DeGenova
Valore, LLC
7 Gilbert Stuart Way
Marlton, NJ 08053

William A Richardson, Mayor
Waterford Township
2131 Auburn Avenue
Atco, NJ 08004

Re: Application # 2003-0319.003
Block 5301, Lot 5
Waterford Township

Dear Applicants:

The Commission staff has completed its review of this application for the construction of 190 foot high local communication facility (tower). Enclosed is a copy of a Public Development Application Report. On behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its April 7, 2017 meeting.

Any interested party may appeal this recommendation in accordance with the appeal procedure attached to this document. If no appeal is received, the Pinelands Commission may either approve the recommendation of the Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

Prior to any development, the applicant shall obtain any other necessary permits and approvals.

Sincerely,

Charles M. Horner, P.P.
Director of Regulatory Programs

Enc: Appeal Procedure
2/2/2017 Public Comment

c: Secretary, Waterford Township Planning Board (via email)
Waterford Township Construction Code Official (via email)
Waterford Township Environmental Commission (via email)
Secretary, Camden County Planning Board (via email)
Frank, Charlotte and Frankie Connuli (via email)
Brad Lanute (via email)

State of New Jersey
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General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

# PUBLIC DEVELOPMENT APPLICATION REPORT

March 17, 2017

Leroy Peart
T-Mobile
510 Virginia Drive
Fort Washington, PA 19034

Frank DeGenova
Valore, LLC
7 Gilbert Stuart Way
Marlton, NJ 08053

William A. Richardson, Mayor
Waterford Township
2131 Auburn Avenue
Atco, NJ 08004

Application No.: 2003-0319.003
Block 5301, Lot 5
Waterford Township

This application proposes the construction of a 190 foot high local communication facility (tower) located on the above referenced 6.78 acre parcel in Waterford Township. This application also proposes a 5,000 square foot equipment compound accessory to the tower. There is an existing municipal parking lot located on the parcel.

## STANDARDS

The Commission staff has reviewed the proposed development for consistency with all standards of the Pinelands Comprehensive Management Plan (CMP). The following reviews the CMP standards that are relevant to this application:

Land Use (N.J.A.C. 7:50-5.26(b)15)

The proposed development is located in a Pinelands Rural Development Area. The proposed 190 foot high tower is a permitted land use in the Rural Development Area provided it meets the CMP height limitations standards (N.J.A.C. 7:50-5.4(c)) for local communication facilities. The CMP height limitations standards require that a local communication facility shall not exceed a height of 35 feet unless a comprehensive plan for siting such facilities in the Pinelands Area has been certified (approved)

by the Pinelands Commission.

The 190 foot high tower is proposed in the search area associated with Site #111 as identified in the August 1, 2011 "Amendment to the Comprehensive Plan for PCS Communications Facilities in the Pinelands on Behalf of T-Mobile Northeast LLC doing business as T-Mobile." In accordance with the height limitation standards of the CMP, the applicant has demonstrated that the proposed tower will be located on publicly owned land within 500 feet of an existing structure (municipal parking lot). As further required by the height limitation standards of the CMP, the applicant has demonstrated that the proposed tower minimizes visual impacts.

Wetlands Standards (N.J.A.C. 7:50-6.6)

There are wetlands located on the parcel. The CMP prohibits most development in wetlands and requires up to a 300 foot buffer to wetlands unless it is demonstrated that a lesser buffer will not result in a significant adverse impact on wetlands. The proposed tower and all development associated with the tower will be located greater than 300 feet from wetlands.

Vegetation Management Standards (N.J.A.C. 7:50-6.23 & 6.26)

The proposed development will be located primarily within an oak-pine forested area. The proposed development will disturb approximately 5,000 square feet of forested lands. The proposed clearing and soil disturbance is limited to that which is necessary to accommodate the proposed development.

The 5,000 square feet of the parcel proposed for disturbance will be surfaced with stone/gravel. No revegetation or landscaping is proposed.

Stormwater Management Standards (N.J.A.C.7:50-6.84(a)6)

The applicant has demonstrated that the proposed development is consistent with the CMP stormwater management standards. To meet the stormwater management standards, the applicant will utilize an existing stormwater infiltration basin.

## PUBLIC COMMENT

The applicant has provided the requisite public notices. Notice to required land owners within 200 feet of the above referenced parcel was completed on January 23, 2017. Newspaper public notice was completed on January 24, 2017. The application was designated as complete on the Commission's website on January 31, 2017. The Commission's public comment period closed on February 24, 2017. The Commission received one written public comment regarding this application.

Public Comment: The one written public comment received by the Commission was signed by three members of the same family. The commenters are opposed to the proposed development. The commenters expressed concern regarding the potential impacts of the proposed development to plants, animals and cultural resources. The commenters also expressed concern regarding the reduction of the wetlands buffer to 200 feet.

Staff Response: The Commission appreciates the interest of the commenters in the Pinelands.

On July 18, 2016, the Waterford Township Planning Board granted minor site plan approval for the proposed development. Two of the three individuals submitting the public comment to the Commission also provided public comment at the Township Planning Board meeting. The Board's Resolution indicates that their comments were noted and addressed by the Board and/or the applicant as appropriate.

The Commission staff conducted a site inspection of the parcel subject of this application. The CMP requires that development be carried out in a manner which avoids wildlife habitat that is essential to the continued nesting, resting, breeding and feeding of significant populations of wildlife in the Pinelands. The proposed development will not impact essential wildlife habitat. Threatened or endangered animal or plant species have not been identified on the parcel.

With respect to the required buffer to wetlands, on September 9, 2016 the Commission approved the development of a municipal parking lot on the parcel. In accordance with the provisions of the CMP (N.J.A.C. 7:50-6.14), the applicant demonstrated that a 200 foot buffer to an isolated wetland located on the parcel would not result in a significant adverse impact on the wetland. Based upon its proposed location on the parcel, the tower and all development associated with the tower will be located greater than 300 feet from the same isolated wetland.

With respect to cultural resources, the Commission staff reviewed the factors, conditions and information that would indicate the possible presence of significant cultural resources on the parcel. Based upon this review and the limits of the proposed development, a cultural resource survey was not required for the application.

## CONDITIONS

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of 4 sheets, prepared by Valore, LLC and all sheets dated 6/10/16 and last revised 12/22/16.

2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.

3. Prior to any development, the applicant shall obtain any other necessary permits and approvals.

4. All development, including clearing and land disturbance, shall be located at least 200 feet from wetlands.

## CONCLUSION

As the proposed development conforms to the standards set forth in N.J.A.C. 7:50-4.57, it is recommended that the Pinelands Commission **APPROVE** the proposed development subject to the above conditions.

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General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Chris Christie
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*Lt. Governor*

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

# PINELANDS COMMISSION
# APPEAL PROCEDURE

The Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal any determination made the by Executive Director to the Commission in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission and received at the Commission office no later than 5:00 p.m. on April 4, 2017. The appeal must include the following information:

1. the name and address of the person requesting the appeal;

2. the application number;

3. the date on which the determination to be appealed was made;

4. a brief statement of the basis for the appeal; and

5. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

Within 15 days following receipt of a notice of valid appeal, the Executive Director shall initiate the procedures for assignment of an Administrative Law Judge to preside at the hearing pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the procedures established by the Office of Administrative Law. The time, date and location of such hearing shall be designated by the Office of Administrative Law.

**AppInfo - Valore NJ0010 Waterford**

**From:** mavstang <mavstang@comcast.net>
**To:** AppInfo <AppInfo@njpines.state.nj.us>
**Date:** 2/2/2017 1:11 PM
**Subject:** Valore NJ0010 Waterford

Please Deny the proposed Valore /T-Moble cell tower application Valore NJ0010 located on Block 5301, lot 5 and any other lot that is being proposed. This lot was cleared to make a parking lot for Waterford Twp.. This was done with out an environmental inspection,this dose not meet the requirements of the comprehensive management plan, Because you did not require the township to do an environmental study. The fact that there are eagles in the area, Southern NJ Tree Frogs, Copes Grey Tree Frogs, Pine Barrens Tree Frog,Redheaded Woodpeckers, Barred Owls, Tiger Spiked Dragonflies,and Vernal Pools ect..these facts where ignored, therefore allowing the township to clear 1.5 acres of Vineland. My appeal was denied because the Pineland commission said I was not an interested party. (I am a Waterford Township resident who shares a property line with said lot and pays taxes on my land.) This action displaced many animals, plants and trees that are indigenous to the Pinelands Forrest. Which is a very sensitive environment. It doesn't take much to upset the balance of this environment. Some of the animals and plants are protected as endangered. The evidence that endangered species and vernal pools existed on this property was completely ignored. I gave ample evidence that an environmental study should have been conducted. You did not require the Twp. of Waterford to conduct a study.You also allowed the Twp. to reduce the buffer for the wetlands located on this lot from 300Ft. to 200 ft. which I believe is a bad decision based on the fact that the wetlands change due to weather conditions sometimes the land can have more or less water. That is why the buffer was originally established to allow for increasing water table.
This lot is situated one block from Wharton State Forrest and has the same animals and plants inhabiting it as the State Forrest. The Forrest is protected, however this lot has not been protected to spite the same animals and plants are in its habitat.

This area is already suffering from animal displacement and plant destruction due to the 50 acres of forrest that was cleared with out permission across the street 1000 Jackson Rd. Atco NJ 08004.

The area was populated by Indians long before European colonization took place. The physical remains of the historic and prehistoric past need to be protected. Was the lot inspected to see if their was evidence of Indians living on this land? Did you require Waterford Twp. to do a study to see if Indians used this land in the past. I am sure The Brothertons Indian Reservation located in Shamong NJ used this land to hunt, farm and live.
The Pinelands Commission did not require an inspection which is not in

accordance with the Comprehensive Management plan.

The Pinelands Commission is charged to defend the Pinelands

The natural resources of the Pine Barrens will always be worth more than Cell Phone use, and we should not sacrifice our natural resources to make way for Cell Phone use as there are many other lots available that are already clear to erect towers on.

I do request a copy of the Executive Directors Findings and Conclusions.

Frank Connuli, Charlotte Connuli and Frankie Jr.

# *RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION*

**NO. PC4-17-** 060

**TITLE:** Issuing an Order to Certify Ordinance 2-2017, Amending Chapter 170 (Land Use and Development) of the Code of Egg Harbor City

**Commissioner** Prickett **moves and Commissioner** Avery **seconds the motion that:**

**WHEREAS,** on February 6, 1987, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Egg Harbor City; and

**WHEREAS,** Resolution #PC4-87-13 of the Pinelands Commission specified that any amendment to the City's certified Master Plan and codified Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

**WHEREAS,** Resolution #PC4-87-13 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

**WHEREAS,** on December 15, 2016, Egg Harbor City adopted Ordinance 2-2017, amending Chapter 170 (Land Use and Development) of the City's Code; and

**WHEREAS,** Ordinance 2-2017 establishes changeable-copy signs and electronic message center signs as permitted uses in three zoning districts within the Pinelands Town area, including standards controlling for illumination levels, message duration, and message transition; and

**WHEREAS,** the Pinelands Commission received a certified copy of Ordinance 2-2017 on February 16, 2017; and

**WHEREAS,** by letter dated February 17, 2017, the Executive Director notified the City that Ordinance 2-2017 would require formal review and approval by the Pinelands Commission; and

**WHEREAS,** a public hearing to receive testimony on Ordinance 2-2017 was duly advertised, noticed and held on March 8, 2017 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

**WHEREAS,** the Executive Director has found that Ordinance 2-2017 is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan; and

**WHEREAS,** the Executive Director has submitted a report to the Commission recommending issuance of an order to certify that Ordinance 2-2017, amending Chapter 170 (Land Use and Development) of the Code of Egg Harbor City, is in conformance with the Pinelands Comprehensive Management Plan; and

**WHEREAS,** the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that Ordinance 2-2017 be certified; and

**WHEREAS,** the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning Ordinance 2-2017 and has reviewed the Executive Director's report; and

**WHEREAS,** the Pinelands Commission accepts the recommendation of the Executive Director; and

WHEREAS, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

NOW, THEREFORE BE IT RESOLVED that

1. An Order is hereby issued to certify that the Ordinance 2-2017, amending Chapter 170 (Land Use and Development) of the Code of Egg Harbor City, is in conformance with the Pinelands Comprehensive Management Plan.

2. Any additional amendments to Egg Harbor City's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

**Record of Commission Votes**

| | AYE | NAY | NP | A/R* | | AYE | NAY | NP | A/R* | | AYE | NAY | NP | A/R* |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Ashmun | X | | | | Galletta | X | | | | Prickett | X | | | |
| Avery | X | | | | Jannarone | X | | | | Quinn | | | X | |
| Barr | X | | | | Lloyd | X | | | | Rohan Green | X | | | |
| Brown | X | | | | Lohbauer | X | | | | Earlen | X | | | |
| Chila | X | | | | McGlinchey | X | | | | | | | | |

* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission Date: April 7, 2017

Nancy Wittenberg
Executive Director

Sean W. Earlen
Chairman

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Nancy Wittenberg
*Executive Director*

# REPORT ON ORDINANCE 2-2017, AMENDING CHAPTER 170 (LAND USE AND DEVELOPMENT) OF THE CODE OF EGG HARBOR CITY

March 24, 2017

Egg Harbor City
500 London Avenue
Egg Harbor City, NJ 08215

## FINDINGS OF FACT

### I. Background

The City of Egg Harbor is located within central Atlantic County, in the eastern portion of the Pinelands Area. Pinelands municipalities adjacent to Egg Harbor City include the Townships of Mullica and Galloway in Atlantic County, and Washington Township in Burlington County.

On February 6, 1987, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Egg Harbor City.

On February 9, 2017, Egg Harbor City adopted Ordinance 2-2017, amending Chapter 170 (Land Use and Development) of the Code of Egg Harbor City. Ordinance 2-2017 adopts regulations controlling changeable copy signs and electronic message center (EMC) signs. In particular, it establishes such signs as permitted uses in the Retail Commercial, Highway Commercial, and Industrial Zoning Districts, all of which are located in a Pinelands Town management area, and provides additional standards controlling for illumination levels, message duration, and message transition. The Pinelands Commission received a certified copy of Ordinance 2-2017 on February 16, 2017.

By letter dated February 17, 2017, the Executive Director notified the City that Ordinance 2-2017 would require formal review and approval by the Pinelands Commission.

### II. Master Plans and Land Use Ordinances

The following ordinance has been submitted to the Pinelands Commission for certification:

* Ordinance 2-2017, amending Chapter 170 (Land Use and Development) of the Code of Egg Harbor City, introduced on January 19, 2017 and adopted on February 9, 2017.

This ordinance has been reviewed to determine whether it conforms to the standards for certification of municipal master plans and land use ordinances as set out in N.J.A.C. 7:50-3.39 of the Pinelands Comprehensive Management Plan. The findings from this review are presented below. The numbers used to designate the respective items correspond to the numbers used to identify the standards in N.J.A.C. 7:50-3.39.

**1. Natural Resource Inventory**

Not applicable.

**2. Required Provisions of Land Use Ordinance Relating to Development Standards**

Ordinance 2-2017 amends Chapter 170 (Land Use and Development) Section 170-71 (Note 19: Signs) of the Code of Egg Harbor City. In particular, it establishes regulations permitting and controlling for changeable copy signs and electronic message center (EMC) signs. The ordinance defines a changeable copy sign as "a sign with the capability of content change by means of manual or remote input" and defines an EMC sign as "an electronically activated changeable-copy sign whose variable message and/or graphic presentation capability can be electronically programmed by a computer from a remote location." The EMC sign definition further notes that such signs "typically use light emitting diodes (LED) as a lighting source."

The ordinance permits such signs in the Retail Commercial, Highway Commercial, and Industrial Zoning Districts, all of which are located in the Pinelands Town management area. The ordinance establishes additional standards requiring that all such signs: shall be in accordance with established signage standards of the district in which they are located; may account for a portion of or all of the total permitted sign area for a given location; shall be prohibited from providing off-site advertising except public service information approved by the City; and shall not obstruct traffic, distract drivers, or create a traffic hazard. The ordinance provides additional standards for EMC signs, including provisions that such signs: incorporate automatic dimming controls; retain a minimum message display time of 8 seconds; shall not exceed a maximum luminance level of 750 cd/$m^2$ between sunset and sunrise; shall not use continuous scrolling and/or traveling, flashing, blinking, twinkling, spinning, rotating, and similar moving effects; and shall turn off or display a blank screen when malfunctioning.

The amendments made by Ordinance 2-2017 must be evaluated in terms of their consistency with the CMP's scenic management program (N.J.A.C. 7:50-6, Part X), which contains standards for signs. The scenic management standards of the CMP include a general prohibition on signs that are designed to attract attention by physical or lighting change (N.J.A.C. 7:50-6.107(a)). Additionally, N.J.A.C. 7:50-6.107(e) requires that to the maximum extent practical, the character and composition of construction materials for all signs shall be harmonious with the scenic values of the Pinelands.

This ordinance presents a potential conflict with the 7:50-6.107(a) because, by design, EMC signs allow for the contents of a sign to change at relatively frequent intervals through the use of LED technology. It is noteworthy that the CMP does not provide any standards for sign lighting (e.g., internal or external lighting). Thus, it is not the use of the LED technology (internal illumination) by EMC signs that raises an issue with the CMP, but the fact that EMC signs

involve the changing of one static image to another, or even the use of video, to attract attention. However, it is important to note that this particular standard of the CMP was written in 1980 at a time when such LED technology was not common, but is now in pervasive use.

Ordinance 2-2017 incorporates numerous standards to control the location, size and appearance of changeable message signs and EMC signs as outlined above. Given that these types of signs are permitted only in the Pinelands Town Management Area of Egg Harbor City, where the CMP permits and encourages all types of residential and commercial development, these standards sufficiently address concerns with scenic management.

The amendments adopted by Ordinance 2-2017 are consistent with the land use and development standards of the CMP. Therefore, this standard for certification is met.

**3. Requirement for Certificate of Filing and Content of Development Applications**

Not applicable.

**4. Requirement for Municipal Review and Action on All Development**

Not applicable.

**5. Review and Action on Forestry Applications**

Not applicable.

**6. Review of Local Permits**

Not applicable.

**7. Requirement for Capital Improvement Program**

Not applicable.

**8. Accommodation of Pinelands Development Credits**

Not applicable.

**9. Referral of Development Applications to Environmental Commission**

Not applicable**.**

**10. General Conformance Requirements**

Ordinance 2-2017, amending Chapter 170 (Land Use and Development) of the Code of Egg Harbor City, is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan.

This standard for certification is met.

**11. Conformance with Energy Conservation**

Not applicable.

**12. Conformance with the Federal Act**

Ordinance 2-2017, amending Chapter 170 (Land Use and Development) of the Code of Egg Harbor City, is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan. No special issues exist relative to the Federal Act.

This standard for certification is met.

**13. Procedure to Resolve Intermunicipal Conflicts**

Not applicable.

## PUBLIC HEARING

A public hearing to receive testimony concerning Egg Harbor City's application for certification of Ordinance 2-2017 was duly advertised, noticed and held on March 8, 2017 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which no testimony was received.

Written comments were accepted through March 13, 2017; however, no comments were received.

## CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that Ordinance 2-2017 complies with the Comprehensive Management Plan's standards for the certification of municipal master plans and land use ordinances. Accordingly, the Executive Director recommends that the Commission issue an order to certify Ordinance 2-2017 of Egg Harbor City.

SRG/DBL/CEG

# *RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION*

NO. PC4-17-07

TITLE: Issuing an Order to Certify Waterford Township's 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7, Adopting a Redevelopment Plan for the Haines Boulevard Redevelopment Area and Amending Chapter 176 (Land Use, Development and Zoning) of the Township's Code

**Commissioner** Galletta **moves and Commissioner** Barr **seconds the motion that:**

WHEREAS, on July 8, 1983, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Waterford Township; and

WHEREAS, Resolution #PC4-83-56 of the Pinelands Commission specified that any amendment to Waterford Township's certified Master Plan and Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, Resolution #PC4-83-56 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

WHEREAS, on November 9, 2015, Waterford Township adopted Ordinance 2015-17, amending Chapter 176 (Land Use, Development and Zoning) of the Township's Code by rezoning two lots (Block 601, Lots 44 and 45) from the PHB (Planned Highway Business) Zone to the R-4 (Residential, High Density) Zone, within the Regional Growth Area; and

WHEREAS, on December 7, 2015, the Waterford Township Land Use Board adopted Resolution 2015-16, approving a Housing Element and Fair Share Plan, dated November 2015, which outlines the Township's affordable housing obligation, provides information on past efforts to provide affordable housing and recommends the rezoning of property to provide additional affordable housing opportunities; and

WHEREAS, the Pinelands Commission received adopted copies of the 2015 Housing Element and Fair Share Plan and Ordinance 2015-17 on December 21, 2015; and

WHEREAS, by email dated January 12, 2016, Waterford Township requested an extension of the Pinelands Commission's review period for the 2015 Housing Element and Fair Share Plan and Ordinance 2015-17 in order to provide an opportunity for the Township to consider additional ordinance amendments; and

WHEREAS, by letter dated January 12, 2016, the Executive Director notified the Township that an extension until March 14, 2016 was granted; and

WHEREAS, by email dated March 22, 2016, Waterford Township requested a further extension of the Commission's review period in order to provide an opportunity for the Township to complete the adoption process for additional ordinance amendments; and

WHEREAS, by letter dated March 24, 2016, the Executive Director notified the Township that an extension through May 6, 2016 was granted; and

WHEREAS, by letter dated October 12, 2016, Waterford Township requested that the Commission's review period for the 2015 Housing Element and Fair Share Plan and Ordinance 2015-17 again be extended so that it would coincide with Commission review of a revised redevelopment plan being adopted by the Township; and

WHEREAS, by letter dated October 18, 2016, the Executive Director notified the Township that an extension until December 31, 2016 was granted; and

WHEREAS, on December 14, 2016, Waterford Township adopted Ordinance 2016-25, approving a revised redevelopment plan for the Haines Boulevard Redevelopment Area to allow for mixed use and high density residential development; and

WHEREAS, the Pinelands Commission received a certified, adopted copy of Ordinance 2016-25 on December 20, 2016; and

WHEREAS, on February 8, 2017, Waterford Township adopted Ordinances 2017-6 and 2017-7, amending Chapter 176 by revising the submission requirements for development applications in the Haines Boulevard Redevelopment Area and requiring the use of Pinelands Development Credits for residential development in the R1, R2, R3 and R4 Zones; and

WHEREAS, the Pinelands Commission received certified, adopted copies of Ordinances 2017-6 and 2017-7 on February 13, 2017; and

WHEREAS, by letter dated February 15, 2017, the Executive Director notified the Township that the 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7 would require formal review and approval by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony concerning the Township's application for certification of its 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7 was duly advertised, noticed and held on March 8, 2017 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

WHEREAS, the Executive Director has found that the 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7 are consistent with the standards and provisions of the Pinelands Comprehensive Management Plan; and

WHEREAS, the Executive Director has submitted a report to the Commission recommending the issuance of an order to certify that Waterford Township's 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7, adopting a redevelopment plan for the Haines Boulevard Redevelopment Area and amending Chapter 176 (Land Use, Development and Zoning) of the Township's Code, are in conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and recommended that the 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7 be certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning the 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7 and has reviewed the Executive Director's report; and

WHEREAS, the Pinelands Commission accepts the recommendation of the Executive Director; and

WHEREAS, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

**NOW, THEREFORE BE IT RESOLVED** that

1. An Order is hereby issued to certify that Waterford Township's 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7, adopting a redevelopment plan for the Haines Boulevard Redevelopment Area and amending Chapter 176 (Land Use, Development and Zoning) of the Township's Code, are in conformance with the Pinelands Comprehensive Management Plan.

2. Any additional amendments to the Township's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

**Record of Commission Votes**

| | AYE | NAY | NP | A/R* | | AYE | NAY | NP | A/R* | | AYE | NAY | NP | A/R* |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Ashmun | X | | | | Galletta | X | | | | Prickett | X | | | |
| Avery | X | | | | Jannarone | X | | | | Quinn | | | X | |
| Barr | X | | | | Lloyd | X | | | | Rohan Green | X | | | |
| Brown | X | | | | Lohbauer | X | | | | Earlen | X | | | |
| Chila | X | | | | McGlinchey | X | | | | | | | | |

* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: April 7, 2017

Nancy Wittenberg
Executive Director

Sean W. Earlen
Chairman

State of New Jersey
THE PINELANDS COMMISSION
PO BOX 359
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General Information: Info@njpines.state.nj.us
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Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

# REPORT ON WATEFORD TOWNSHIP'S 2015 HOUSING ELEMENT AND FAIR SHARE PLAN AND ORDINANCES 2015-17, 2016-25, 2017-6 AND 2017-7, ADOPTING A REDEVELOPMENT PLAN FOR THE HAINES BOULEVARD REDEVELOPMENT AREA AND AMENDING CHAPTER 176 (LAND USE, DEVELOPMENT AND ZONING) OF THE TOWNSHIP'S CODE

March 24, 2017

Waterford Township
2131 Auburn Avenue
Atco, NJ 08004

## FINDINGS OF FACT

I. Background

The Township of Waterford is located in the western portion of the Pinelands Area, in eastern Camden County. Pinelands municipalities that abut Waterford Township include the Boroughs of Berlin and Chesilhurst and the Townships of Berlin and Winslow in Camden County, the Townships of Evesham, Medford and Shamong in Burlington County and the Town of Hammonton in Atlantic County.

On July 8, 1983, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Waterford Township.

On November 9, 2015, Waterford Township adopted Ordinance 2015-17, amending Chapter 176 (Land Use, Development and Zoning) of the Township's Code by rezoning two lots (Block 601, Lots 44 and 45) from the PHB (Planned Highway Business) Zone to the R-4 (Residential, High Density) Zone, within the Regional Growth Area.

On December 7, 2015, the Waterford Township Land Use Board adopted Resolution 2015-16, approving a Housing Element and Fair Share Plan, dated November 2015, which outlines the Township's affordable housing obligation, provides information on past efforts to provide affordable housing and recommends the rezoning of property to provide additional affordable housing opportunities. The Pinelands Commission received adopted copies of the 2015 Housing Element and Fair Share Plan and Ordinance 2015-17 on December 21, 2015.

By email dated January 12, 2016, Waterford Township requested an extension of the Pinelands Commission's review period for the 2015 Housing Element and Fair Share Plan and Ordinance 2015-17 in order to provide an opportunity for the Township to consider additional ordinance amendments. By

letter dated January 12, 2016, the Executive Director notified the Township that an extension until March 14, 2016 was granted.

By email dated March 22, 2016, Waterford Township requested a further extension of the Commission's review period in order to provide an opportunity for the Township to complete the adoption process for additional ordinance amendments. By letter dated March 24, 2016, the Executive Director notified the Township that an extension through May 6, 2016 was granted.

By letter dated October 12, 2016, Waterford Township requested that the Commission's review period for the 2015 Housing Element and Fair Share Plan and Ordinance 2015-17 again be extended so that it would coincide with Commission review of a revised redevelopment plan being adopted by the Township. By letter dated October 18, 2016, the Executive Director notified the Township that an extension until December 31, 2016 was granted.

On December 14, 2016, Waterford Township adopted Ordinance 2016-25, approving a revised redevelopment plan for the Haines Boulevard Redevelopment Area to allow for mixed-use and high density residential development. The Pinelands Commission received a certified, adopted copy of Ordinance 2016-25 on December 20, 2016.

On February 8, 2017, Waterford Township adopted Ordinances 2017-6 and 2017-7, amending Chapter 176 by revising the submission requirements for development applications in the Haines Boulevard Redevelopment Area and requiring the use of Pinelands Development Credits for residential development in the R1, R2, R3 and R4 Zones. The Pinelands Commission received certified, adopted copies of Ordinances 2017-6 and 2017-7 on February 13, 2017.

By letter dated February 15, 2017, the Executive Director notified the Township that the 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7 would require formal review and approval by the Pinelands Commission.

## II. Master Plans and Land Use Ordinances

The following documents have been submitted to the Pinelands Commission for certification:

* Resolution 2015-16, amending the Master Plan of Waterford Township by adopting a Housing Element and Fair Share Plan, dated November 2015, adopted by the Waterford Township Land Use Board on December 7, 2015;

* Ordinance 2015-17, amending Chapter 176 (Land Use, Development and Zoning) of the Code of Waterford Township, introduced on October 14, 2015 and adopted on November 9, 2015;

* Ordinance 2016-25, adopting a Redevelopment Plan for the Haines Boulevard Redevelopment Area, introduced on November 9, 2016 and adopted on December 14, 2016;

* Ordinance 2017-6, amending Chapter 176 (Land Use, Development and Zoning) of the Code of Waterford Township, introduced on January 19, 2017 and adopted on February 8, 2017; and

* Ordinance 2017-7, amending Chapter 176 (Land Use, Development and Zoning) of the Code of Waterford Township, introduced on January 19, 2017 and adopted on February 8, 2017.

The above-referenced master plan and ordinance amendments have been reviewed to determine whether they conform with the standards for certification of municipal master plans and land use ordinances as set out in N.J.A.C. 7:50-3.39 of the Pinelands Comprehensive Management Plan. The findings from this review are presented below. The numbers used to designate the respective items correspond to the numbers used to identify the standards in N.J.A.C. 7:50-3.39.

## 1. Natural Resource Inventory

Not applicable.

## 2. Required Provisions of Land Use Ordinance Relating to Development Standards

*Affordable Housing*

Land Use Board Resolution 2015-16 adopts the Township's November 2015 Housing Element and Fair Share Plan. The Housing Element provides an inventory of the municipality's existing housing stock, a brief discussion of the projected housing stock and detailed demographic and employment data related to Waterford. The Fair Share Plan outlines the Township's affordable housing obligation, provides information on past efforts to provide affordable housing and recommends the rezoning of property in the Regional Growth Area to provide additional affordable housing opportunities.

Subsequent to adoption of the above-described Housing Element and Fair Share Plan, the Township entered into a settlement agreement with Fair Share Housing Center. Said settlement agreement establishes the Township's Third Round prospective need of 205 affordable housing units, applies a 16-unit credit carried over from the prior round and details the manner in which the remaining obligation will be met. Based on the terms of the settlement agreement, the Township's entire Third Round prospective need will be met in the Haines Boulevard Redevelopment Area, where up to 240 affordable housing units will be developed. All new residential development of five or more units in the Redevelopment Area will be required to set aside a minimum of 20 percent of all units as affordable for low- and moderate-income households. Projects where 100 percent of the units are made affordable for such households will also be permitted. The settlement agreement between the Township and Fair Share Housing Center does not require the rezoning of other properties in the Regional Growth Area to accommodate affordable housing.

*Haines Boulevard Redevelopment Plan*

In 2001, Waterford Township adopted a Redevelopment Plan for the Haines Boulevard Redevelopment Area, an area encompassing approximately 140 acres of land at the intersection of State Highway 73 and U.S. Highway 30 in the Regional Growth Area. At the time, the Redevelopment Area was already substantially developed with a mixture of residential and commercial uses. Based on the Redevelopment Plan adopted for the area by Ordinance 2001-30,

a variety of nonresidential uses were permitted in the Redevelopment Area, including commercial retail centers, conference centers, hotels, theaters, warehousing, research and design laboratories and light manufacturing facilities. Ordinance 2001-30 was reviewed by the Commission and found to raise no substantial issues with respect to conformance with the Pinelands Comprehensive Management Plan.

After many years with no redevelopment activity, the Township began reevaluating market conditions and the future development potential of the Redevelopment Area. The need for new residential development to support future commercial development was identified, as was the need to accommodate affordable housing in accordance with the above-described settlement agreement. Accordingly, the Township adopted Ordinance 2016-25, approving a revised Redevelopment Plan for the Haines Boulevard Redevelopment Area.

The boundaries of the Redevelopment Area (see Exhibit #1) remain the same. However, whereas the prior redevelopment plan limited future development to nonresidential uses, the revised plan adopted by Ordinance 2016-25 permits a wide variety of both residential and nonresidential uses, including mixed-use projects, single-family dwellings, townhouses, assisted living facilities, retail and service establishments, offices and institutional uses. The revised Redevelopment Plan establishes six land use districts within the Redevelopment Area, each with permitted uses, density and other design standards. There are two residential districts, the RD-1 and RD-2 Districts, within which residential development is permitted at five and six units per acre, respectively. Higher density (12 units per acre) is permitted in the TOD/Mixed-Use District, where townhouses, apartments and mixed-use buildings with commercial uses on the ground floor are envisioned. Mixed-use development is likewise permitted in the Community Commercial District at a density of five units per acre. The Institutional Use District allows for a variety of nonresidential uses including schools, libraries, community centers, retail and service establishments and hotels but also permits duplexes, townhouses and assisted living facilities at a density of six units per acre. For any residential project of five or more units in the above-described land use districts, twenty percent of the units must be made affordable for low- and moderate-income households. In addition, should all of the units in a project located in one of these five land use districts be affordable, a density of eight units per acre is permitted. Finally, the Redevelopment Plan includes a Utility District where roads, stormwater facilities and other infrastructure is and will be located. Exhibit #2 depicts the Land Use Plan for the Redevelopment Area with the boundaries of the six land use districts.

The revised Redevelopment Plan also includes a concept plan (see Exhibit #3) to illustrate how the Redevelopment Area might be developed in the future. This concept plan depicts area of highest residential density clustered near the Atco Train Station, with lower density areas adjacent to off-site residentially developed areas. Traditional commercial development is located along U.S. Highway 30 (the White Horse Pike). While not binding, the concept plan may prove to be a useful tool in the Township's future work with redevelopers, a task complicated by the fact that there are 24 lots in the Redevelopment Area and nearly as many individual owners.

In total, the Redevelopment Plan adopted by Ordinance 2016-25 permits a maximum of 792 new residential units, which equates to a gross density of 5.65 units per acre in the Redevelopment Area as a whole. Such a density is significantly higher than that prescribed by the Comprehensive Management Plan for Waterford's Regional Growth Area. N.J.A.C. 7:50-5.28(a)1 and 3 require the Township to zone for a density of only 3.675 units per upland acre in its Regional Growth Area, for a total of 492 units. However, the Comprehensive Management

Plan does provide municipalities with the ability to zone portions of their Regional Growth Areas for higher densities, provided the lands in question are appropriate for more intensive development, sufficient opportunities for the use of Pinelands Development Credits are provided and infrastructure exists or can be provided to support the increased density.

The Haines Boulevard Redevelopment Area was the subject of detailed review by Commission staff in 2011. The area is partially developed, effectively surrounded by existing development and contains no wetlands or required wetlands buffer areas. Site inspections and review of prior records and applications led the staff to conclude the area has a low likelihood of supporting local populations of threatened and endangered species. All of these factors led to the Commission's decision to approve an alternate permitting program for the Redevelopment Area in 2012. More fully described in sections 3 and 6 below, this permitting program allows property owners to submit their development applications directly to the Township, without the need for prior Commission review or issuance of Certificates of Filing. Based on the existing development pattern, lack of environmental constraints and proximity to the existing Atco train station, the Haines Boulevard Redevelopment Area is clearly appropriate for higher intensity development, be it residential, nonresidential or mixed-use. In addition, the use of Pinelands Development Credits has been accommodated and, in fact, guaranteed, in the Redevelopment Area by Ordinance 2016-25 (see Section 8 below).

In terms of infrastructure, concerns with the availability and source of water to serve new development are explicitly addressed in the revised Redevelopment Plan. The Plan specifies that when the Township has allocated 70 percent of its available water capacity, no further applications for major development in the Haines Boulevard Redevelopment Area may be approved until the municipality has contractual arrangements in place to receive water from a source other than the Kirkwood-Cohansey aquifer. This requirement is of particular importance in Waterford Township, where the allocation of water and wastewater flow has been strictly controlled by the Commission, the Department of Environmental Protection and the Camden County Municipal Utilities Authority since 1988. Waterford's current water supply allocation of 652,000 gpd (gallons per day) from the Kirkwood-Cohansey was established at that time. Of that allocation, approximately 348,000 gpd or 53 percent is currently being used by existing development. This means that 47 percent, or 304,000 gpd, remains available for future development throughout the municipality. While not insignificant, this is insufficient to support full build-out in the Township's Regional Growth Area, nor will it support the increased intensity of development permitted in the revised Haines Boulevard Redevelopment Plan. The Township acknowledges the need to secure other sources of water to support future development and has already begun to explore available alternatives. When 70 percent of the available water capacity has been allocated, the Township will need to have contracts in place to implement one of these alternatives. Approximately 108,400 gpd of water can be allocated before the 70 percent "cap" is reached. At best, that amount of water might support one-third of the development potential of the Redevelopment Area. Securing an alternative source of water will therefore be critical to the Township's redevelopment efforts which, as noted previously, include both residential and nonresidential development and the municipality's entire prospective need for affordable housing.

*Rezoning*

Ordinance 2015-17 amends Chapter 176 (Land Use, Development and Zoning) of the Township's Code by rezoning two lots (Block 601, Lots 44 and 45) from the PHB (Planned

Highway Business) Zone to the R-4 (Residential, High Density) Zone, within the Regional Growth Area (see Exhibit #4). The lots are vacant, unconstrained by wetlands or required wetlands buffer areas, and total approximately 22 acres in size.

Permitted uses in the PHB Zone include a wide variety of retail commercial uses, warehousing, research laboratories, offices, hospitals and commercial-scale solar power arrays. New residential development is not permitted. By contrast, permitted uses in the R4 Zone are limited to residential development (single-family detached units, duplexes, townhouses and senior citizen housing), at a maximum permitted density of 5.25 units per acre. By rezoning Block 601, Lots 44 and 45 to the R4 Zone, Ordinance 2015-17 increases the residential zoning capacity of Waterford's Regional Growth Area by 117 units.

Ordinance 2015-17 was originally adopted to implement one of the recommendations of the Township's 2015 Fair Share Plan. The two rezoned lots were thought to be an appropriate location for higher density (8 units per acre) affordable housing. Ultimately, however, the Township elected to accommodate its entire affordable housing obligation in the Haines Boulevard Redevelopment Area. Therefore, although the new residential zoning designation for Block 601, Lots 44 and 45 remains, these two lots are no longer designated for affordable housing and are subject to the permitted density and other requirements of the R4 Zone. The use of Pinelands Development Credits for a certain percentage of the units developed on this rezoned property and others in the R4 Zone is discussed in section 8 below.

*Summary*

The above-described redevelopment plan and zoning change affect developable lands in Waterford's existing Regional Growth Area. Together, they increase the residential zoning capacity of the Regional Growth Area by approximately 900 units, while providing increased opportunities for mixed-use development, affordable housing and a variety of residential housing types. The 2015 Housing Element and Fair Share Plan and Ordinances 2015-17 and 2016-25 are consistent with CMP goals and objectives for the Regional Growth Areas. Therefore, this standard for certification is met.

**3. Requirement for Certificate of Filing and Content of Development Applications**

Ordinance 2017-6 amends Chapter 176 (Land Use, Development and Zoning) of the Code of Waterford Township by revising the simplified permitting system previously established for the Haines Boulevard Redevelopment Area. Under this process, which was certified by the Commission in February 2012, the Township's Local Review Officer first determines whether a proposed development is located in the Redevelopment Area, is consistent with the Redevelopment Plan, is or will be served by public sanitary sewer, and otherwise addresses all applicable standards in Article VIII (General Provisions and Design Standards) of Chapter 176, including stormwater management. Applications for development which are found to meet these criteria are not required to include wetlands delineation mapping, threatened and endangered species surveys, cultural resource surveys (with the exception of Block 301, Lot 13) or Certificates of Filing from the Commission. They may simply proceed to the Planning Board to obtain subdivision and/or site plan approvals. If an application does not meet the specified criteria, it must follow the "normal" application process and obtain a Certificate of Filing from the Commission before seeking any municipal approvals.

Ordinance 2017-6 adds one additional step to the permitting process. Upon determining that an application for development in the Redevelopment Area is complete, the Local Review Officer will now be required to provide certain important information about that application to the Commission. This includes the block and lot designation of the property proposed for development, the number of proposed units, the number of affordable housing units, the proposed square footage of any nonresidential development, the anticipated water needs of the proposed development and the proposed source for the necessary water supply. Receipt of this information will allow the Commission to track proposed development activity in the Haines Boulevard Redevelopment Area and alert the Township and applicants to any possible issues with anticipated water use, affordable housing or use of Pinelands Development Credits. As noted in section 2 above, when the Township has allocated 70 percent of its available water capacity, additional major development projects in the Redevelopment Area cannot be approved until contractual arrangements are in place for a non-Kirkwood-Cohansey source of water. Also, when and if 240 affordable housing units are approved in the Redevelopment Area, any additional affordable units will be subject to the Pinelands Development Credit requirements described in section 8 below. It is therefore critical that the information required in Ordinance 2017-6 be provided to the Commission so that any issues can be identified early on in the application process.

The Commission adopted a set of amendments to the CMP effective August 1995 in an attempt to afford Pinelands municipalities greater flexibility in establishing and implementing alternative local permitting programs. N.J.A.C. 7:50-3.81 through 3.85 of the Comprehensive Management Plan specify that an alternative permitting program may be certified by the Commission if certain standards are met as follows: the municipality in question must demonstrate the capability to implement the program efficiently and effectively; the program must ensure that its application requirements and resulting permit decisions are adequate to determine compliance with subchapters 5 and 6 of the Comprehensive Management Plan and the municipality's land use ordinances; the program must ensure that adequate, qualified and capable personnel will administer it and that safeguards exist if personnel changes occur; and the program must ensure that all applicants receive any necessary Waivers of Strict Compliance from the Commission. The permitting system adopted by Ordinance 2011-19 for the Haines Boulevard Redevelopment Area, as amended by Ordinance 2017-6, continues to comply with these standards.

The August 1995 Comprehensive Management Plan amendments also require that the Executive Director periodically review and report to the Commission on any approved alternative permitting program. The purpose of such review is to enable the Commission to evaluate whether or not development approved under an alternative permitting system is meeting all applicable Pinelands standards. Because no such development has been approved since the Commission’s certification of the permitting program in 2012, there has been nothing to evaluate to this point in time. A full review will be completed within three years of the Commission’s certification of Ordinance 2017-6.

## 4. Requirement for Municipal Review and Action on All Development

Not applicable.

## 5. Review and Action on Forestry Applications

Not applicable.

## 6. Review of Local Permits

As noted in Section 3 above, Ordinance 2017-6 makes minor revisions to the alternate permitting process previously adopted by Ordinance 2011-19 and certified by the Commission. This process currently requires the Township's Local Review Officer to determine whether an application for development: (1) is located in the Haines Boulevard Redevelopment Area; (2) is consistent with the Redevelopment Plan; (3) is served or proposed to be served by public sanitary sewer; and (4) otherwise addresses all applicable standards in Article VIII (General Provisions and Design Standards) of Chapter 176, including stormwater management. Upon making such a determination, the application is deemed eligible for participation in the alternate permitting program and allowed to proceed directly to the Township Planning Board for any necessary subdivision and/or site plan approvals. As is specified in Section 176-14.3B by Ordinance 2011-19, any approvals or permits for development within the Haines Boulevard Redevelopment Area will continue to be subject to the normal notice and review requirements of the Comprehensive Management Plan and Sections 176-14.6 and 176-14.7 of Waterford Township's Land Development Ordinance. This requirement meets the standards of N.J.A.C. 7:50-3.83(a)5, which specifies that any alternative permitting program must either allow for Commission review of local approvals or provide for periodic review of local permits by the Commission.

The permitting system previously established by Ordinance 2011-19 and amended by Ordinance 2017-6 continues to provide sufficient opportunity for Commission review of applications for development within the Haines Boulevard Redevelopment Area. Therefore, this standard for certification is met.

## 7. Requirement for Capital Improvement Program

Not applicable.

## 8. Accommodation of Pinelands Development Credits

N.J.A.C. 7:50-3.39(a)8 specifies that in order to be certified by the Commission, municipal land use ordinances must provide for sufficiently residentially zoned property in the Regional Growth Area to be eligible for an increase in density to accommodate Pinelands Development Credits as provided for in N.J.A.C. 7:50-5.28(a)3. As described in Section 2 above, Ordinances 2015-17 and 2016-25 zone new areas within Waterford's Regional Growth Area for residential development, increasing residential zoning capacity by approximately 900 units.

In order to comply with N.J.A.C. 7:50-3.39(a)8, Ordinance 2016-25 requires that Pinelands Development Credits be acquired and redeemed for 30 percent of all market-rate residential units in projects of five units or more in the Haines Boulevard Redevelopment Area. Affordable housing units are excluded from the Pinelands Development Credit requirement until such time

as the number of affordable units proposed in the Redevelopment Area exceeds 240, at which point Pinelands Development Credits will be required for all future units at the 30 percent rate, whether they are affordable or market-rate. Based on the revised Redevelopment Plan adopted by Ordinance 2016-25, this Pinelands Development Credit requirement will result in an opportunity for use of 165 rights (41.25 full Pinelands Development Credits) in the Haines Boulevard Redevelopment Area.

Ordinance 2017-7 requires that Pinelands Development Credits be acquired and redeemed for 30 percent of all units in the four residential zones in the Township's Regional Growth Area (R1, R2, R3 and R4), regardless of project size or density. Affordable housing units in these four zones will not be "exempt" from the Pinelands Development Credit requirement. Only one exception is provided by Ordinance 2017-17: the development of one home on an existing conforming lot will not be subject to the 30 percent Pinelands Development Credit requirement. When applied to the property rezoned from the PHB (Planned Highway Business) Zone to the R4 Zone by Ordinance 2015-17, the 30 percent requirement results in a new opportunity for use of 36 rights (9 full Pinelands Development Credits). In addition, vacant lands already in these four residential will be subject to the new requirement; they will no longer have a traditional "base" density and an optional "bonus" density achievable through the use of credits. Instead, the previously certified maximum zone densities (2.25 units per acre in R1; 3.0 in R2; 4.5 in R3; 5.25 in R4) will be permitted as a matter of right, with Pinelands Development Credit use a required component of every project.

While the 30 percent Pinelands Development Credit requirement adopted for the Redevelopment Area and R1, R2, R3 and R4 Zones is not as high a number as would be provided through the more traditional zoning approach where Pinelands Development Credits would account for 33 percent of the total number of permitted units, it is important to remember that the traditional base density/bonus density approach utilized throughout the Pinelands Area only provides an *opportunity* for the use of Pinelands Development Credits. There is no requirement under the traditional approach that any credits be used in any particular development project. With minor exceptions, Ordinance 2017-7 *guarantees* that Pinelands Development Credits will be purchased and redeemed as part of the approval of any residential development within the R1, R2, R3 and R4 Zones, regardless of the density or number of units that are ultimately built. Likewise, the use of credits will be guaranteed in any market rate development in the Haines Boulevard Redevelopment Area of five or more units. Given the greater certainty provided by this approach, the Executive Director believes that the Pinelands Development Credit requirements adopted by Ordinances 2016-25 and 2017-7 should be viewed as being consistent with Comprehensive Management Plan standards.

This standard for certification is met.

**9. Referral of Development Applications to Environmental Commission**

Not applicable**.**

**10. General Conformance Requirements**

Waterford Township's 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7, adopting a Redevelopment Plan for the Haines Boulevard Redevelopment Area and amending Chapter 176 (Land Use, Development and Zoning) of the Code of Waterford Township, are consistent with the standards and provisions of the Pinelands Comprehensive Management Plan.

This standard for certification is met.

**11. Conformance with Energy Conservation**

Not applicable.

**12. Conformance with the Federal Act**

Waterford Township's 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7, adopting a Redevelopment Plan for the Haines Boulevard Redevelopment Area and amending Chapter 176 (Land Use, Development and Zoning) of the Code of Waterford Township, are consistent with the standards and provisions of the Pinelands Comprehensive Management Plan. No special issues exist relative to the Federal Act.

This standard for certification is met.

**13. Procedure to Resolve Intermunicipal Conflicts**

With one exception, the zoning changes adopted by Waterford Township do not affect lands on the municipality's boundary. The western edge of the Haines Boulevard Redevelopment Area does, however, abut Berlin Borough's Regional Growth Area. In Berlin Borough, the adjacent lands straddle State Highway 73 and are included in the PC-2 (Neighborhood Commercial) Zone, where a wide variety of retail and service uses are permitted, as well as offices, restaurants, health clubs, child care centers and animal hospitals. Preexisting residential uses are also permitted. This range of permitted uses is not dissimilar to what is permitted by Ordinance 2016-25 in the revised Redevelopment Plan for the Haines Boulevard Redevelopment Area. Therefore, intermunicipal conflicts are not anticipated and this standard for certification is met.

## PUBLIC HEARING

A public hearing to receive testimony concerning Waterford Township's application for certification of its 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7 was duly advertised, noticed and held on March 8, 2017 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which the following testimony was received:

Katie Smith, with the Pinelands Preservation Alliance (PPA), stated that PPA remains concerned with the alternate permitting system previously certified by the Commission for development in the Haines Boulevard Redevelopment Area. She noted the potential habitat in the area for timber rattlesnake, great blue heron and Eastern box turtle. She stated that the presence of rare plants in the area is unknown because no survey has been done. Ms. Smith concluded by stating that PPA would be submitting written comments.

There being no further testimony, the hearing was concluded at 9:40 a.m.

Written comments on Waterford Township's 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7 were accepted through March 13, 2017 and were received from the following individual:

Katherine Smith, Policy Advocate, Pinelands Preservation Alliance (see Exhibit #5)

## EXECUTIVE DIRECTOR'S RESPONSE

The concerns expressed by Ms. Smith for the Pinelands environment are appreciated and were taken into account during the certification process for Waterford Township Ordinance 2011-9, which established the alternate permitting process currently in place in the Haines Boulevard Redevelopment Area. At that time, the Commission staff conducted a detailed review of the Redevelopment Area for consistency with the threatened and endangered species protection standards of the CMP. Commission staff site inspections, consideration of the vegetation communities present in the Redevelopment Area, review of numerous prior applications in the Redevelopment Area, known threatened and endangered species sighting information and the existing land use pattern of the surrounding area all indicated that the Redevelopment Area had a low likelihood of supporting local populations of threatened and endangered species. The staff determined that the submission of threatened and endangered species surveys for purposes of determining consistency with the CMP was unnecessary. Further detail about this determination, made in 2012, follows:

When viewing an aerial photograph of the region (see Exhibit #1), the Redevelopment Area appears to be effectively surrounded by existing development. Specifically, the Redevelopment Area is surrounded by the following:

- State Highway 73 borders the Redevelopment Area to the west and a "clover-leaf" interchange at the intersection of US Highway 30 and State Highway 73 borders the southwestern portion of the Redevelopment Area. Sporadic commercial development is located immediately across State Highway 73 from the Area; however, high intensity residential and commercial development is located less than a mile west of State Highway 73;
- A New Jersey Transit rail line and existing commercial/industrial uses borders the Redevelopment Area to the north;
- High density residential development borders the Redevelopment Area to the east; and
- U.S. Highway 30 and existing commercial and residential uses borders the Redevelopment Area to the south.
- Approximately half the Redevelopment Area is forested. The other half consists of existing developed commercial and residential uses and cleared acreage.

Since 1981, the Commission staff has reviewed 25 applications for development in the Redevelopment Area. The Commission staff also reviewed an application for the development of Haines Boulevard, which bisects the Redevelopment Area. Review of these applications included staff site inspections and review of the proposed developments for consistency with all environmental standards of the CMP, including the threatened and endangered species protection standards.

During 2011, Commission staff performed two additional site inspections of the Redevelopment Area, specifically associated with the Commission's discussions with Waterford Township regarding the possibility of an alternate permitting program within the Redevelopment Area.

Based upon review of past applications, available threatened and endangered species sighting information, the existing land use pattern of the surrounding environs and consideration of the vegetation communities present on the parcel, it was determined that the Redevelopment Area had a low likelihood of supporting local populations of threatened and endangered species for the following reasons:

- Eastern box turtle and Great Blue heron, both mentioned by Ms. Smith in her oral comments, are not listed as threatened or endangered by the New Jersey Department of Environmental Protection and are not afforded threatened and endangered species protection pursuant to the CMP.

- The Commission has one record of Timber rattlesnake, from 1980, in a forest patch within the Redevelopment Area. However, the Redevelopment Area does not contain suitable hibernacula habitat for Timber rattlesnake.

- The existing development pattern surrounding and within the Redevelopment Area acts as a fragmenting barrier that makes the Redevelopment Area unlikely for use by Northern pine snake and/or Timber rattlesnake.

- The Redevelopment Area does not appear to contain suitable nesting habitat for Northern pine snake.

- The Commission staff has no records for other threatened or endangered animal species in the vicinity of the Redevelopment Area.

- The Commission has a record of one threatened/endangered plant species, Pine Barrens boneset, in the vicinity of, but not in, the Redevelopment Area. This species is a wetland species and there is little likelihood that this wetlands species would be present within the Redevelopment Area because there are no wetlands located within the Redevelopment Area.

- If individual development applications for parcels within the Redevelopment Area were submitted to the Commission, based upon existing habitat and the lack of known sightings of threatened and endangered plant species in this area, threatened and endangered plant surveys would not be required. Since threatened or endangered plant surveys would not be required for an individual application in the Redevelopment Area, it did not seem necessary or appropriate to require the completion of a threatened or endangered plant survey prior to approving an alternate permitting process for the area as a whole.

- Regarding Ms. Smith's concern with the presence of unknown threatened and endangered plant populations, although the staff does acknowledge that there are sites throughout the Pinelands that

contain threatened and endangered plant species populations yet to be discovered, it is unlikely that the Redevelopment Area contains any threatened or endangered plant populations. This determination is based upon the extent of development that has already occurred within the Redevelopment Area, the continued review of the Redevelopment Area by Commission staff during the course of 25 development applications, staff site inspections and the lack of other threatened or endangered plant species in the vicinity of the Redevelopment Area.

It should be noted that the amendments made by Ordinance 2017-6 consist of minor changes to the alternate permitting system so that it will reflect the revisions made to the Haines Boulevard Redevelopment Plan relative to permitted uses, affordable housing and water use. These changes require the Local Review Officer to report certain information to the Commission upon determining that an application for development in the Redevelopment Area is complete. The addition of this notice requirement will provide the Commission with greater ability to keep track of the amount of development being proposed in the Redevelopment Area and its associated water use. The remainder of the permitting process remains unchanged and continues to be appropriate for the Redevelopment Area.

## CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that Waterford Township's 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7 comply with Comprehensive Management Plan standards for the certification of municipal master plans and land use ordinances. Accordingly, the Executive Director recommends that the Commission issue an order to certify the 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7of Waterford Township.

SRG/CWT
Attachments

# *RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION*

**NO. PC4-17-_____**

**TITLE:** **Approving** With Conditions an Application for **Public Development** (Application Number 1992-0280.004)

**Commissioner _____ moves and Commissioner_____ seconds the motion that:**

**WHEREAS,** the Pinelands Commission has reviewed the Public Development Application Report and the recommendation of the Executive Director that the following application for Public Development be approved with conditions:

| | |
|---|---|
| **1992-0280.004** | |
| **Applicant:** | **Estell Manor City** |
| Municipality: | City of Estell Manor |
| Management Area: | Pinelands Forest Area |
| Date of Report: | April 21, 2017 |
| Proposed Development: | 800 linear foot access road and the installation of nine groundwater monitoring wells. |

**WHEREAS,** no request for a hearing before the Office of Administrative Law concerning the Executive Director's recommendation has been received for this application; and

**WHEREAS,** the Pinelands Commission hereby adopts the Conclusion of the Executive Director for the proposed development; and

**WHEREAS,** the Pinelands Commission hereby determines that the proposed public development conforms to the standards for approving an application for public development set forth in N.J.A.C. 7:50-4.57 if the conditions recommended by the Executive Director are imposed; and

**WHEREAS,** pursuant to N.J.S.A. 13A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period and Governor shall approve same, in which case the action shall become effective upon such approval.

**NOW, THEREFORE BE IT RESOLVED** that Application Number 1992-0280.004 for public development is hereby **approved** subject to the conditions recommended by the Executive Director.

**Record of Commission Votes**

| | AYE | NAY | NP | A/R* | | AYE | NAY | NP | A/R* | | AYE | NAY | NP | A/R* |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Ashmun | | | | | Galletta | | | | | Prickett | | | | |
| Avery | | | | | Jannarone | | | | | Quinn | | | | |
| Barr | | | | | Lloyd | | | | | Rohan Green | | | | |
| Brown | | | | | Lohbauer | | | | | Earlen | | | | |
| Chila | | | | | McGlinchey | | | | | | | | | |

* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission Date: _____

_____
Nancy Wittenberg
Executive Director

_____
Sean W. Earlen
Chairman

State of New Jersey
THE PINELANDS COMMISSION
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NEW LISBON, NJ 08064
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Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

April 21, 2017

Stephen Teasenfitz, Mayor
City of Estell Manor
P.O. Box 102
Estell Manor, NJ 08319

Re: Application # 1992-0280.004
Block 58, Lot 3
Block 59, Lot 3
City of Estell Manor

Dear Mayor Teasenfitz:

The Commission staff has completed its review of this application for an 800 linear foot access road and the installation of nine groundwater monitoring wells. Enclosed is a copy of a Public Development Application Report. On behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its May 12, 2017 meeting.

Any interested party may appeal this recommendation in accordance with the appeal procedure attached to this document. If no appeal is received, the Pinelands Commission may either approve the recommendation of the Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

Prior to any development, the applicant shall obtain any other necessary permits and approvals.

Sincerely,

Charles M. Horner, P.P.
Director of Regulatory Programs

Enc: Appeal Procedure

c: Secretary, City of Estell Manor Planning Board (via email)
City of Estell Manor Construction Code Official (via email)
Atlantic County Department of Regional Planning and Development (via email)
Andrew Grier, P.E.



*19920280.004*

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*Executive Director*

# PUBLIC DEVELOPMENT APPLICATION REPORT

April 21, 2017

Stephen Teasenfitz, Mayor
City of Estell Manor
P.O. Box 102
Estell Manor, NJ 08319

Application No.: 1992-0280.004
Block 58, Lot 3
Block 59, Lot 3
City of Estell Manor

This application proposes an 800 linear foot access road and the installation of nine groundwater monitoring wells on the above referenced 48.6 acre parcel in the City of Estell Manor. The closed, but not capped, City of Estell Manor landfill is located on the parcel.

The proposed access road will be ten feet wide with no further improvements. The nine proposed monitoring wells will all be located within 50 feet of the proposed access road. The monitoring wells will be utilized to monitor groundwater in the vicinity of the landfill.

## STANDARDS

The Commission staff has reviewed the proposed development for consistency with all standards of the Pinelands Comprehensive Management Plan (CMP). The following reviews the CMP standards that are relevant to this application:

Land Use (N.J.A.C. 6.75(c))

The proposed access road and monitoring wells are located in a Pinelands Forest Management Area. The CMP requires that all landfills which ceased operation after January 14, 1981 be capped. The City of Estell Manor landfill ceased operation in 1991. The proposed wells will be used to monitor for potential leachate in groundwater from the landfill.

Wetlands Standards (N.J.A.C. 7:50-6.13)

There are wetlands located on the parcel. The CMP prohibits most development in wetlands and requires a buffer of up to 300 feet to wetlands.

Installation of each monitoring well will disturb approximately 400 square feet immediately adjacent to the proposed access road. The 800 linear foot access road and six of the nine monitoring wells will be located within wetlands or the required buffer to wetlands. The CMP permits linear improvements, such as access roads, in wetlands and the required buffer to wetlands provided an applicant demonstrates that certain conditions are met. The applicant has demonstrated that there is no feasible alternative for the proposed development that does not involve development in wetlands and the required buffer to wetlands or that will result in a less significant adverse impact to wetlands. In addition, the proposed development will not result in a substantial impairment of the resources of the Pinelands. With the conditions recommended below, all practical measures will be taken to mitigate the impact on wetlands and the required buffer to wetlands. The applicant has indicated that the proposed access road is necessary to permit the installation of the landfill monitoring wells. The applicant has demonstrated that the need for the proposed access road and wells overrides the importance of protecting the concerned wetlands.

Vegetation Management Standards (N.J.A.C. 7:50-6.23 & 6.26)

The proposed development will be located within an existing oak/pine forested area. The proposed development will disturb approximately 4,500 square feet (0.1 acres) of forested lands. The proposed clearing and soil disturbance is limited to that which is necessary to accommodate the proposed monitoring wells and associated access road.

The Landscaping and Revegetation guidelines of the CMP recommend the use of grasses that are tolerant of droughty, nutrient poor conditions. The applicant does not propose any revegetation.

## PUBLIC COMMENT

The CMP defines the proposed development as “minor” development. The CMP does not require public notice for minor public development applications. The application was designated as complete on the Commission’s website on March 24, 2017. The Commission’s public comment period closed on April 7, 2017. No public comment was submitted to the Commission regarding this application.

## CONDITIONS

1. Except as modified by the below conditions, the proposed development shall adhere to the plan prepared by Land Resources Solutions, LLC, dated February 4, 2015 and revised to February 4, 2015.

2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.

3. Any proposed revegetation shall adhere to the "Vegetation" standards of the CMP. Where appropriate, the applicant is encouraged to utilize the following Pinelands native grasses for revegetation: Switch grass, Little bluestem and Broom-sedge.

4. Prior to any development, the applicant shall obtain any other necessary permits and approvals.

5. Prior to the construction of any portion of the proposed development which will result in the disturbance of any wetland area, a Freshwater Wetland Permit shall be obtained pursuant to the New Jersey Freshwater Wetlands Protection Act.

6. Appropriate measures shall be taken during construction to preclude sedimentation from entering wetlands and shall be maintained in place until all development has been completed and the area has been stabilized.

7. For those six monitoring wells proposed in either wetlands or the required buffer to wetlands, the applicant shall not disturb more than 400 square feet of vegetation for each monitoring well.

## CONCLUSION

As the proposed development conforms to the standards set forth in N.J.A.C. 7:50-4.57, it is recommended that the Pinelands Commission **APPROVE** the proposed development subject to the above conditions.

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# PINELANDS COMMISSION
# APPEAL PROCEDURE

The Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal any determination made the by Executive Director to the Commission in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission and received at the Commission office no later than 5:00 PM on May 11, 2017. The appeal must include the following information:

1. the name and address of the person requesting the appeal;

2. the application number;

3. the date on which the determination to be appealed was made;

4. a brief statement of the basis for the appeal; and

5. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

Within 15 days following receipt of a notice of valid appeal, the Executive Director shall initiate the procedures for assignment of an Administrative Law Judge to preside at the hearing pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the procedures established by the Office of Administrative Law. The time, date and location of such hearing shall be designated by the Office of Administrative Law.

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*Chairman*

Nancy Wittenberg
*Executive Director*

# AMENDED LETTER OF INTERPRETATION #1801

March 17, 2017

Michael & Elizabeth Piarulli
Paul & Frieda Schneider
9 Crisfield Rd
Sicklerville, NJ 08081

Re: Application # 1999-0346.002
Block 37, Lot 1.01
Carranza Road
Shamong Township

## FINDINGS OF FACT

The applicants own the above referenced 47.44 acre lot in Shamong Township. This acreage is based on the recorded property deed. The lot is located in the Pinelands Preservation Area District. Pursuant to N.J.A.C. 7:50-4.72(a)1, the applicants are requesting a Letter of Interpretation (LOI) as to the number of Pinelands Development Credits (PDCs) which are allocated to this lot.

On July 8, 2005, the Commission issued LOI #1801 allocating 0.25 PDCs to the lot. That LOI reserved the right to construct a future dwelling on the lot. That LOI expired on July 8, 2007. The applicants are requesting a new LOI reflecting the current ownership of the lot and eliminating the reserved right for a dwelling. This Amended LOI utilizes currently available mapping technology to determine the acreage of uplands and wetlands. This Amended LOI #1801 replaces the July 8, 2005 LOI #1801.

The lot consists of 4.79 acres of uplands and 42.65 acres of wetlands as defined by the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-6.5(a)). The applicants reserve the right to undertake field mapping to further refine the acreage of uplands and wetlands on the lot. The lot is vacant. There are no easements limiting the use of this parcel to non-residential uses. No resource extraction operation or other development has been approved for this parcel pursuant to the provisions of the Comprehensive Management Plan (CMP).

## CONCLUSION

The CMP grants, with certain exceptions, to every parcel of land in the Pinelands Preservation Area District, Pinelands Special Agricultural Production Areas and Pinelands Agricultural Production Areas, a use right known as "Pinelands Development Credits," that can be used to secure a residential density

bonus for lands located in Pinelands Regional Growth Areas (N.J.A.C. 7:50 5.43). None of these exceptions apply to this parcel.

The CMP establishes the ratio by which Pinelands Development Credits are allocated in the Preservation Area District (N.J.A.C. 7:50 5.43(b)1). One Pinelands Development Credit is allocated for every 39 acres of uplands, except for certain uplands which have been approved for resource extraction operations. There are 0.2 Pinelands Development Credits allocated for every 39 acres of wetlands.

For the 4.79 acres of uplands, the applicants would be entitled to 0.12 PDCs. For the 42.65 acres of wetlands, the applicants would be entitled to 0.22 PDCs. There would be 0.34 PDCs allocated to this lot.

PDCs are transacted (allocated, severed and redeemed), with limited exceptions, in 0.25 PDC increments (0.25 PDC = 1 dwelling unit).

Therefore, there are 0.25 PDCs allocated to Block 37, Lot 1.01.

This LOI for an allocation of PDCs is valid for five years from the date of issuance (N.J.A.C. 7:50-4.76(b)).

## APPEAL

The CMP (N.J.A.C. 7:50-4.55) provides an interested party the right to appeal this LOI in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for hearing. Any such appeal must be made in writing to the Commission within eighteen days of the date of this LOI and must include the following information:

1. the name and address of the person making the appeal;

2. the application number;

3. a brief statement of the basis for the appeal; and

4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

If no appeal is received within eighteen days of the date of this LOI, the LOI shall become binding.

If you are interested in "severing" the allocated PDCs from the parcel and/or information regarding the sale of PDCs, please visit the Pinelands Development Credit Bank's website at http://www.nj.gov/pinelands/pdcbank/ or contact the PDC Bank at 609-894-7300.

Sincerely,

Charles M. Horner, P.P.
Director of Regulatory Programs

c: Secretary, Shamong Township Planning Board (via email)
Shamong Township Construction Code Official (via email)
Secretary, Burlington County Planning Board (via email)
Susan R. Grogan, Executive Director, PDC Bank (via email)
Paul & Frieda Schneider (via email)

State of New Jersey
THE PINELANDS COMMISSION
PO BOX 359
NEW LISBON, NJ 08064
(609) 894-7300
www.nj.gov/pinelands

Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

# LETTER OF INTERPRETATION #2155

April 11, 2017

Harold & Cynthia Sager
P.O. Box 442
New Lisbon, NJ 08064

Re: Application # 2017-0040.001
Block 851, Lot 2
Mt Misery Road & Greenwoodbridge Road
Pemberton Township

## FINDINGS OF FACT

The applicants own the above referenced 40.63 acre parcel in Pemberton Township. This acreage is based on the Township tax map. The parcel is located in a Pinelands Agricultural Production Area. Pursuant to N.J.A.C. 7:50-4.72(a)1, the applicants are requesting a Letter of Interpretation (LOI) as to the number of Pinelands Development Credits (PDCs) which are allocated to this parcel.

The parcel consists of 4.26 acres of uplands and 12.39 acres of wetland soils in active field agriculture. The remaining 23.98 acres are wetlands as defined by N.J.A.C. 7:50-6.5(a). The active field agriculture in wetland soils was established prior to February 7, 1979. The applicants reserve the right to undertake field mapping to further refine the acreage of uplands and wetlands on the parcel. The parcel contains two single family dwellings and three structures accessory to the single family dwellings and an agricultural use. No resource extraction operation or development has been approved for this parcel pursuant to the provisions of the Pinelands Comprehensive Management Plan (CMP).

## CONCLUSION

The CMP grants, with certain exceptions, to every parcel of land in a Pinelands Agricultural Production Area, a use right known as "Pinelands Development Credits," that can be used to secure a density bonus for lands located in Regional Growth Areas (N.J.A.C. 7:50 5.43). None of these exceptions apply to this parcel.

The CMP establishes the ratio by which PDCs are allocated in a Pinelands Agricultural Production Area (N.J.A.C. 7:50 5.43(b)2). Two PDCs are allocated for every 39 acres of uplands, except for uplands which are mined as a result of a resource extraction permit approved pursuant to the provisions of the Plan; for areas of active berry agricultural bogs and fields and for wetlands in active field agricultural use as of February 7, 1979. There are 0.2 PDCs allocated for every 39 acres of other wetlands.

For the 4.26 acres of uplands, the applicants would be entitled to 0.22 PDCs. For the 12.39 acres of wetland soils in active field agriculture, the applicants would be entitled to 0.64 PDCs. For the 23.98 acres of other wetlands, the applicants would be entitled to 0.12 PDCs. Not considering the two existing single family dwellings, there would be 0.98 PDCs allocated to this parcel.

However, N.J.A.C. 7:50 5.43(b)3ii requires that the PDC allocation be reduced by 0.25 PDCs for each existing dwelling unit on the parcel. Based upon the two existing dwellings, there would be 0.48 PDCs allocated to the parcel.

PDCs are transacted (allocated, severed and redeemed), with limited exceptions, in 0.25 PDC increments (0.25 PDC = 1 dwelling unit).

Therefore, there is 0.5 PDC allocated to Block 851, Lot 2.

This LOI for an allocation of PDCs is valid for five years from the date of issuance (N.J.A.C. 7:50-4.76(b)).

## APPEAL

The CMP (N.J.A.C. 7:50-4.55) provides an interested party the right to appeal this LOI in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for hearing. Any such appeal must be made in writing to the Commission within eighteen days of the date of this LOI and must include the following information:

1. the name and address of the person making the appeal;

2. the application number;

3. a brief statement of the basis for the appeal; and

4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

If no appeal is received within eighteen days of the date of this LOI, the LOI shall become binding.

If you are interested in "severing" the allocated PDCs from the parcel and/or information regarding the sale of PDCs, please visit the Pinelands Development Credit Bank's website at http://www.nj.gov/pinelands/pdcbank/ or contact the PDC Bank at 609-894-7300.

Sincerely,

Charles M. Horner, P.P.
Director of Regulatory Programs

c: Secretary, Pemberton Township Planning Board (via email)
Pemberton Township Construction Code Official (via email)
Pemberton Township Environmental Commission (via email)
Secretary, Burlington County Planning Board (via email)
Susan R. Grogan, Executive Director, PDC Bank (via email)

State of New Jersey
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(609) 894-7300
www.nj.gov/pinelands

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

# LETTER OF INTERPRETATION #2156

April 11, 2017

Harold & Cynthia Sager
P.O. Box 442
New Lisbon, NJ 08064

Re: Application # 2017-0041.001
Block 848, Lots 1 & 2.01
Pemberton Township

## FINDINGS OF FACT

The applicants own the above referenced 48.18 acre parcel in Pemberton Township. This acreage is based on the recorded property deed. The parcel is located in a Pinelands Agricultural Production Area. Pursuant to N.J.A.C. 7:50-4.72(a)1, the applicants are requesting a Letter of Interpretation (LOI) as to the number of Pinelands Development Credits (PDCs) which are allocated to this parcel.

The parcel consists of 4.05 acres of wetland soils in active field agriculture. The remaining 44.13 acres are wetlands as defined by N.J.A.C. 7:50-6.5(a). The active field agriculture in wetland soils was established prior to February 7, 1979. The applicants reserve the right to undertake field mapping to further refine the acreage of uplands and wetlands on the parcel. The parcel is vacant. No resource extraction operation or development has been approved for this parcel pursuant to the provisions of the Pinelands Comprehensive Management Plan (CMP).

## CONCLUSION

The CMP grants, with certain exceptions, to every parcel of land in a Pinelands Agricultural Production Area, a use right known as "Pinelands Development Credits," that can be used to secure a density bonus for lands located in Regional Growth Areas (N.J.A.C. 7:50 5.43). None of these exceptions apply to this parcel.

The CMP establishes the ratio by which PDCs are allocated in a Pinelands Agricultural Production Area (N.J.A.C. 7:50 5.43(b)2). Two PDCs are allocated for every 39 acres of uplands, except for uplands which are mined as a result of a resource extraction permit approved pursuant to the provisions of the Plan; for areas of active berry agricultural bogs and fields and for wetlands in active field agricultural use as of February 7, 1979. There are 0.2 PDCs allocated for every 39 acres of other wetlands.

For the 4.05 acres of wetland soils in active field agriculture, the applicants would be entitled to 0.21 PDCs. For the 44.13 acres of other wetlands, the applicants would be entitled to 0.23 PDCs. There would be 0.44 PDCs allocated to this parcel.

PDCs are transacted (allocated, severed and redeemed), with limited exceptions, in 0.25 PDC increments (0.25 PDC = 1 dwelling unit).

Therefore, there is 0.5 PDCs allocated to Block 848, Lots 1 and 2.01.

This LOI for an allocation of PDCs is valid for five years from the date of issuance (N.J.A.C. 7:50-4.76(b)).

## APPEAL

The CMP (N.J.A.C. 7:50-4.55) provides an interested party the right to appeal this LOI in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for hearing. Any such appeal must be made in writing to the Commission within eighteen days of the date of this LOI and must include the following information:

1. the name and address of the person making the appeal;

2. the application number;

3. a brief statement of the basis for the appeal; and

4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

If no appeal is received within eighteen days of the date of this LOI, the LOI shall become binding.

If you are interested in "severing" the allocated PDCs from the parcel and/or information regarding the sale of PDCs, please visit the Pinelands Development Credit Bank's website at http://www.nj.gov/pinelands/pdcbank/ or contact the PDC Bank at 609-894-7300.

Sincerely,

Charles M. Horner, P.P.
Director of Regulatory Programs

c: Secretary, Pemberton Township Planning Board (via email)
Pemberton Township Construction Code Official (via email)
Pemberton Township Environmental Commission (via email)
Secretary, Burlington County Planning Board (via email)
Susan R. Grogan, Executive Director, PDC Bank (via email)

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General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Chris Christie
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Kim Guadagno
*Lt. Governor*

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

# LETTER OF INTERPRETATION #2157

April 7, 2017

Harold & Cynthia Sager
P.O. Box 442
New Lisbon, NJ 08064

Re: Application # 2017-0039.001
Block 850, Lot 4.02
Mt Misery Road
Pemberton Township

## FINDINGS OF FACT

The applicants own the above referenced 5.94 acre parcel in Pemberton Township. This acreage is based on the recorded property deed. The parcel is located in a Pinelands Agricultural Production Area. Pursuant to N.J.A.C. 7:50-4.72(a)1, the applicants are requesting a Letter of Interpretation (LOI) as to the number of Pinelands Development Credits (PDCs) which are allocated to this parcel.

The parcel consists of 0.63 acres of uplands and 2.0 acres of wetland soils in active field agriculture. The remaining 3.31 acres are wetlands as defined by N.J.A.C. 7:50-6.5(a). The active field agriculture in wetland soils was established prior to February 7, 1979. The applicants reserve the right to undertake field mapping to further refine the acreage of uplands and wetlands on the parcel. The parcel is vacant. No resource extraction operation or development has been approved for this parcel pursuant to the provisions of the Pinelands Comprehensive Management Plan (CMP).

## CONCLUSION

The CMP grants, with certain exceptions, to every parcel of land in a Pinelands Agricultural Production Area, a use right known as "Pinelands Development Credits," that can be used to secure a density bonus for lands located in Regional Growth Areas (N.J.A.C. 7:50 5.43). None of these exceptions apply to this parcel.

The CMP establishes the ratio by which PDCs are allocated in a Pinelands Agricultural Production Area (N.J.A.C. 7:50 5.43(b)2). Two PDCs are allocated for every 39 acres of uplands, except for uplands which are mined as a result of a resource extraction permit approved pursuant to the provisions of the Plan; for areas of active berry agricultural bogs and fields and for wetlands in active field agricultural use as of February 7, 1979. There are 0.2 PDCs allocated for every 39 acres of other wetlands.

For the 0.63 acres of uplands, the applicants would be entitled to 0.03 PDCs. For the 2.0 acres of wetland soils in active field agriculture, the applicants would be entitled to 0.10 PDCs. For the 3.31 acres of other wetlands, the applicants would be entitled to 0.02 PDCs. There would be 0.15 PDCs allocated to this lot.

PDCs are transacted (allocated, severed and redeemed), with limited exceptions, in 0.25 PDC increments (0.25 PDC = 1 dwelling unit).

Therefore, there is 0.25 PDC allocated to Block 850, Lot 4.02.

This LOI for an allocation of PDCs is valid for five years from the date of issuance (N.J.A.C. 7:50-4.76(b)).

## APPEAL

The CMP (N.J.A.C. 7:50-4.55) provides an interested party the right to appeal this LOI in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for hearing. Any such appeal must be made in writing to the Commission within eighteen days of the date of this LOI and must include the following information:

1. the name and address of the person making the appeal;

2. the application number;

3. a brief statement of the basis for the appeal; and

4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

If no appeal is received within eighteen days of the date of this LOI, the LOI shall become binding.

If you are interested in "severing" the allocated PDCs from the parcel and/or information regarding the sale of PDCs, please visit the Pinelands Development Credit Bank's website at http://www.nj.gov/pinelands/pdcbank/ or contact the PDC Bank at 609-894-7300.

Sincerely,

Charles M. Horner, P.P.
Director of Regulatory Programs

c: Secretary, Pemberton Township Planning Board (via email)
Pemberton Township Construction Code Official (via email)
Pemberton Township Environmental Commission (via email)
Secretary, Burlington County Planning Board (via email)
Susan R. Grogan, Executive Director, PDC Bank (via email)

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Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

April 3, 2017

Vicki Lange
Pine Barons Enduro Riders
16 Mills Brook Lane
Shamong, NJ 08088

Re: Application # 1982-3054.067
Clock Run
April 9, 2017
Pemberton, Tabernacle, Washington
& Woodland Townships

Dear Ms. Lange:

Pursuant to N.J.A.C. 7:50-6.143(a) of the Pinelands Comprehensive Management Plan, the completion of your application has resulted in the issuance of the enclosed *Off-Road Vehicle Event Route Map Approval*.

If you have any questions, please contact Brian Szura of our staff.

Sincerely,

*for* Charles M. Horner, P.P
Director of Regulatory Programs

Enc: Off-Road Vehicle Event Route Map Approval

c: Pemberton Township Clerk (via email)
Tabernacle Township Clerk (via email)
Washington Township Clerk (via email)
Woodland Township Clerk (via email)
David Robbins, Superintendent, Wharton State Forest (via email)
Vicki Lange (via email)
Tom Keck, Regional Superintendent, NJ State Park Service - Southern Region (via email)

New Jersey Pinelands Commission
PO Box 359
New Lisbon, NJ 08064
(609) 894-7300



# OFF-ROAD VEHICLE EVENT ROUTE MAP APPROVAL **#1298**

**Application #: 1982-3054.067**
Applicant: Pine Barons Enduro Riders
Event Name: Clock Run
Event Date: April 9, 2017
Municipalities: Pemberton, Tabernacle, Washington & Woodland Townships
Management Area: Pinelands Village, Preservation Area District, Special Agricultural Production Area

**Lands Utilized**
Brendan T. Byrne & Wharton State Forests

**Approved Route Map**
Received in electronic format on March 27, 2017

**April 3, 2017**

*for* **Charles M. Horner, P.P.**
Director of Regulatory Programs

**Date**

***Please see reverse side for additional information and conditions.***

## BACKGROUND

- One route beginning and ending at the intersection of Savoy and Chatsworth Roads in Woodland Township
- 80 miles

## CONDITIONS

- No deviation from the Approved Route Map shall occur without prior written approval from the Commission.
- No private lands shall be utilized without owner permission.
- No ORV event shall run until all necessary permits, approvals and authorizations have been obtained.
- In the event of cancellation or postponement, the Pinelands Commission shall be notified of the new date. A copy of the new insurance policy as well as documentation that the municipalities, the State Police, the State Forests, and any private land owners have been notified must also be submitted.

State of New Jersey
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(609) 894-7300
www.nj.gov/pinelands

Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

April 10, 2017

Jack O'Connor
Pine Barrens Adventure Camp, LLC
321 Osborn Avenue
Point Pleasant, NJ 08742

Re: Application # 1982-3054.068
Pine Barrens Adventure Camp
April 22 & 23, 2017
Bass River, Little Egg Harbor,
Mullica, Stafford
& Washington Townships

Dear Mr. O'Connor:

Pursuant to N.J.A.C. 7:50-6.143(a) of the Pinelands Comprehensive Management Plan, the completion of your application has resulted in the issuance of the enclosed *Off-Road Vehicle Event Route Map Approval*.

If you have any questions, please contact Brian Szura of our staff.

Sincerely,

*for* Charles M. Horner, P.P
Director of Regulatory Programs

Enc: Off-Road Vehicle Event Route Map Approval

c: Mullica Township Clerk (via email)
Bass River Township Clerk (via email)
Washington Township Clerk (via email)
Little Egg Harbor Township Clerk (via email)
Stafford Township Clerk (via email)
David Robbins (via email)
Thomas Keck (via email)

New Jersey Pinelands Commission
PO Box 359
New Lisbon, NJ 08064
(609) 894-7300



# OFF-ROAD VEHICLE EVENT ROUTE MAP APPROVAL #1299

**Application #: 1982-3054.068**
Applicant: Pine Barrens Adventure Camp, LLC
Event Name: Pine Barrens Adventure Camp
Event Date: April 22 & 23, 2017
Municipalities: Bass River, Little Egg Harbor, Mullica, Stafford & Washington Townships
Management Area: Agricultural Production Area, Forest Area, Pinelands Village, Preservation Area District, Special Agricultural Production Area

**Lands Utilized**
Bass River, Penn and Wharton State Forests

**Approved Route Map**
Received in electronic format on February 8, 2017

April 10, 2017

*for* **Charles M. Horner, P.P.**
Director of Regulatory Programs

**Date**

***Please see reverse side for additional information and conditions.***

## BACKGROUND

- One route beginning and ending at 3616 Nesco Road
- 60 miles

## CONDITIONS

- No deviation from the Approved Route Map shall occur without prior written approval from the Commission.
- No private lands shall be utilized without owner permission.
- No ORV event shall run until all necessary permits, approvals and authorizations have been obtained.
- In the event of cancellation or postponement, the Pinelands Commission shall be notified of the new date. A copy of the new insurance policy as well as documentation that the municipalities, the State Police, the State Forests, and any private land owners have been notified must also be submitted.

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Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

March 23, 2017

David Crane
Meteor Motorcycle Club
143 Wahwantysee Trail
Medford Lakes, NJ 08055

Re: Application # 1987-1127.042
80th Sandy Lane Enduro
March 26, 2017
Bass River, Washington
& Woodland Townships

Dear Mr. Crane:

Pursuant to N.J.A.C. 7:50-6.143(a) of the Pinelands Comprehensive Management Plan, the completion of your application has resulted in the issuance of the enclosed *Off-Road Vehicle Event Route Map Approval*.

If you have any questions, please contact Brian Szura of our staff.

Sincerely,

*for* Charles M. Horner, P.P
Director of Regulatory Programs

Enc: Off-Road Vehicle Event Route Map Approval

c: Bass River Township Clerk (via email)
Washington Township Clerk (via email)
Woodland Township Clerk (via email)
David Crane (via email)
Cynthia Coritz, Superintendent, Bass River State Forest (via email)

New Jersey Pinelands Commission
PO Box 359
New Lisbon, NJ 08064
(609) 894-7300



# OFF-ROAD VEHICLE EVENT ROUTE MAP APPROVAL **#1295**

**Application #: 1987-1127.042**
Applicant: Meteor Motorcycle Club
Event Name: 80th Sandy Lane Enduro
Event Date: March 26, 2017
Municipalities: Bass River, Washington & Woodland Townships
Management Area: Pinelands Village, Preservation Area District, Special Agricultural Production Area

**Lands Utilized**
Pine Island Cranberry Company property

**Approved Route Map**
Received in electronic format on February 21, 2017

March 23, 2017

*for* **Charles M. Horner, P.P.**
Director of Regulatory Programs

**Date**

***Please see reverse side for additional information and conditions.***

## BACKGROUND

- One route beginning and ending at the Interboro Gun Club
- Length of route: 63 miles
- This recreational vehicle event was initially proposed on both privately owned and publically owned lands. The New Jersey Department of Environmental Protection (NJDEP) determined that Meteor Motorcycle Club deviated from an approved route on State Park Service lands during an October 22 and 23, 2016 event. Based upon that deviation, the NJDEP has prohibited Meteor Motorcycle Club from conducting any recreational vehicle events on NJDEP, State Park Service lands for an 18 month period beginning December 15, 2016. Based upon this NJDEP determination, the applicant subsequently revised the route for the current event to be located the route exclusively of privately owned lands.

## CONDITIONS

- No deviation from the Approved Route Map shall occur without prior written approval from the Commission.
- No private lands shall be utilized without owner permission.
- No ORV event shall run until all necessary permits, approvals and authorizations have been obtained.
- In the event of cancellation or postponement, the Pinelands Commission shall be notified of the new date. A copy of the new insurance policy as well as documentation that the municipalities, the State Police, and any private land owners have been notified must also be submitted.
- By March 27, 2017, provide the written permission of the property owner to allow the Commission staff to inspect the event route on one day between March 27 and March 31, 2017 to ensure that event's participants adhered to the Commission approved route map.

State of New Jersey
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PO BOX 359
NEW LISBON, NJ 08064
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www.nj.gov/pinelands

Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

March 17, 2017

Dave Brogden
South Jersey Enduro Riders, Inc.
PO Box 2718
Vincentown, NJ 08088

Re: Application # 1988-0071.034
Curly Fern Enduro
March 19, 2017
Shamong, Tabernacle
& Washington Townships

Dear Mr. Brogden:

Pursuant to N.J.A.C. 7:50-6.143(a) of the Pinelands Comprehensive Management Plan, the completion of your application has resulted in the issuance of the enclosed *Off-Road Vehicle Event Route Map Approval*.

If you have any questions, please contact Brian Szura of our staff.

Sincerely,

*for* Charles M. Horner, P.P
Director of Regulatory Programs

Enc: Off-Road Vehicle Event Route Map Approval

c: Shamong Township Clerk (via email)
Tabernacle Township Clerk (via email)
Washington Township Clerk (via email)
Dave Brogden (via email)
Tom Keck, Regional Superintendent, NJ State Park Service - Southern Region (via email)
David Robbins (via email)
William Davis (via email)

New Jersey Pinelands Commission
PO Box 359
New Lisbon, NJ 08064
(609) 894-7300



# OFF-ROAD VEHICLE EVENT ROUTE MAP APPROVAL **#1294**

**Application #: 1988-0071.034**
Applicant: South Jersey Enduro Riders, Inc.
Event Name: Curly Fern Enduro
Event Date: March 19, 2017
Municipalities: Shamong, Tabernacle & Washington Townships
Management Area: Agricultural Production Area, Preservation Area District

**Lands Utilized**
Wharton State Forest

**Approved Route Map**
Received in electronic format on March 7, 2017

March 17, 2017

*for* **Charles M. Horner, P.P.**
Director of Regulatory Programs

**Date**

***Please see reverse side for additional information and conditions.***

## BACKGROUND

- One route beginning and ending at the Indian Mills Deer Club on Atsion Road in Shamong Township
- 60 miles

## CONDITIONS

- No deviation from the Approved Route Map shall occur without prior written approval from the Commission.
- No private lands shall be utilized without owner permission.
- No ORV event shall run until all necessary permits, approvals and authorizations have been obtained.
- In the event of cancellation or postponement, the Pinelands Commission shall be notified of the new date. A copy of the new insurance policy as well as documentation that the municipalities, the State Police, the State Forests, and any private land owners have been notified must also be submitted.

State of New Jersey
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General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

March 27, 2017

Mike Bradway
Tri-County Sportsmen Motorcycle Club, Inc.
1040 N. Brewster Road
Vineland, NJ 08360

Re: Application # 1988-0757.057
2017 Greenbrier Hare Scramble
April 1 & 2, 2017
Maurice River Township

Dear Mr. Bradway:

Pursuant to N.J.A.C. 7:50-6.143(a) of the Pinelands Comprehensive Management Plan, the completion of your application has resulted in the issuance of the enclosed *Off-Road Vehicle Event Route Map Approval*.

If you have any questions, please contact Brian Szura of our staff.

Sincerely,

*for* Charles M. Horner, P.P
Director of Regulatory Programs

Enc: Off-Road Vehicle Event Route Map Approval

c: Maurice River Township Clerk (via email)
Mike Bradway (via email)



*19880757.057*

New Jersey Pinelands Commission
PO Box 359
New Lisbon, NJ 08064
(609) 894-7300



# OFF-ROAD VEHICLE EVENT ROUTE MAP APPROVAL **#1297**

**Application #: 1988-0757.057**
Applicant: Tri-County Sportsmen Motorcycle Club, Inc.
Event Name: 2017 Greenbrier Hare Scramble
Event Date: April 1 & 2, 2017
Municipality: Maurice River Township
Block 247, Lots 28, 31 & 33; Block 248, Lots 1, 2 & 4; Block 249, Lot 21; Block 263, Lot 1; Block 265, Lots 4 & 5
Management Area: Forest Area, Rural Development Area

**Lands Utilized**
Whibco property

**Approved Route Map**
Received in electronic format on March 1, 2017

*for* **Charles M. Horner, P.P.**
Director of Regulatory Programs

**March 27, 2017**
**Date**

***Please see reverse side for additional information and conditions.***

## BACKGROUND

- One route beginning and ending at the "100 Foot Hill Pit" located on Hunters Mill Road
- 15 miles

## CONDITIONS

- No deviation from the Approved Route Map shall occur without prior written approval from the Commission.
- No private lands shall be utilized without owner permission.
- No ORV event shall run until all necessary permits, approvals and authorizations have been obtained.
- In the event of cancellation or postponement, the Pinelands Commission shall be notified of the new date. A copy of the new insurance policy as well as documentation that the municipalities, the State Police, the State Forests, and any private land owners have been notified must also be submitted.

State of New Jersey
THE PINELANDS COMMISSION
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NEW LISBON, NJ 08064
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www.nj.gov/pinelands

Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

March 22, 2017

Shawn Gulling
Jeep Jamboree USA
2776 Sourdough Flat
Georgetown, CA 95634

Re: Application # 1999-0119.019
23rd Pine Barrens Jeep Jamboree
March 23 - 25, 2017
Shamong, Tabernacle, Washington
& Waterford Townships

Dear Mr. Gulling:

Pursuant to N.J.A.C. 7:50-6.143(a) of the Pinelands Comprehensive Management Plan, the completion of your application has resulted in the issuance of the enclosed *Off-Road Vehicle Event Route Map Approval*.

If you have any questions, please contact Brian Szura of our staff.

Sincerely,

*for* Charles M. Horner, P.P
Director of Regulatory Programs

Enc: Off-Road Vehicle Event Route Map Approval

c: Shamong Township Clerk (via email)
Tabernacle Township Clerk (via email)
Washington Township Clerk (via email)
Waterford Township Clerk (via email)
Jim Justnes (via email)
Shawn Gulling (via email)
Tom Keck, Regional Superintendent, NJ State Park Service - Southern Region (via email)
David Robbins, Wharton State Forest Superintendent (via email)

New Jersey Pinelands Commission
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# OFF-ROAD VEHICLE EVENT ROUTE MAP APPROVAL **#1296**

**Application #: 1999-0119.019**
Applicant: Jeep Jamboree USA
Event Name: 23rd Pine Barrens Jeep Jamboree
Event Date: March 23 - 25, 2017
Municipalities: Shamong, Tabernacle, Washington & Waterford Townships
Management Area: Agricultural Production Area, Forest Area, Pinelands Village, Preservation Area District, Rural Development Area, Special Agricultural Production Area

**Lands Utilized**
Wharton State Forest

**Approved Route Map**
Received in electronic format on March 21, 2017

March 22, 2017

*for* **Charles M. Horner, P.P.**
Director of Regulatory Programs

**Date**

***Please see reverse side for additional information and conditions.***

## BACKGROUND

- Five routes each beginning and ending at Batsto Village in Washington Township
- 50 miles

## CONDITIONS

- No deviation from the Approved Route Map shall occur without prior written approval from the Commission.
- No private lands shall be utilized without owner permission.
- No ORV event shall run until all necessary permits, approvals and authorizations have been obtained.
- In the event of cancellation or postponement, the Pinelands Commission shall be notified of the new date. A copy of the new insurance policy as well as documentation that the municipalities, the State Police, the State Forests, and any private land owners have been notified must also be submitted.

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*Lt. Governor*

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

April 21, 2017

Eugene Jost
Competition Dirt Riders, Inc.
5386 Route 49
Millville, NJ 08332

Re: Application # 2005-0459.025
Ormond Farms Hare Scramble
April 22 and 23, 2017
Maurice River Township

Dear Mr. Jost:

Pursuant to N.J.A.C. 7:50-6.143(a) of the Pinelands Comprehensive Management Plan, the completion of your application has resulted in the issuance of the enclosed *Off-Road Vehicle Event Route Map Approval*.

If you have any questions, please contact Brian Szura of our staff.

Sincerely,

*for* Charles M. Horner, P.P
Director of Regulatory Programs

Enc: Off-Road Vehicle Event Route Map Approval

c: Maurice River Township Clerk (via email)
Dave Bostrom (via email)
Eugene Jost (via email)

New Jersey Pinelands Commission
PO Box 359
New Lisbon, NJ 08064
(609) 894-7300



# OFF-ROAD VEHICLE EVENT ROUTE MAP APPROVAL **#1301**

**Application #: 2005-0459.025**
Applicant: Competition Dirt Riders, Inc.
Event Name: Ormond Farms Hare Scramble
Event Date: April 22 and 23, 2017
Municipality: Maurice River Township
Block 117, Lots 13, 17.01 & 38

Management Area: Forest Area, Pinelands Village

**Lands Utilized**
Ormond Farms located on Hesstown Road

**Approved Route Map**
Received in electronic format on April 17, 2017

**April 21, 2017**

*for* **Charles M. Horner, P.P.**
Director of Regulatory Programs

**Date**

***Please see reverse side for additional information and conditions.***

## BACKGROUND

- Two Routes totaling 8 miles

## CONDITIONS

- No deviation from the Approved Route Map shall occur without prior written approval from the Commission.
- No private lands shall be utilized without owner permission.
- No ORV event shall run until all necessary permits, approvals and authorizations have been obtained.
- In the event of cancellation or postponement, the Pinelands Commission shall be notified of the new date. A copy of the new insurance policy as well as documentation that the municipalities, the State Police, the State Forests, and any private land owners have been notified must also be submitted.

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General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

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*Chairman*

Nancy Wittenberg
*Executive Director*

List of Pending Public Development and Waiver of Strict Compliance Applications
Accepting Public Comment at the May 12, 2017 Commission Meeting

**Public Development Application**

***Application No. 1984-0606.006 – Pemberton Township***
Received on: March 13, 2017
Completed on: April 21, 2017
Project: Demolition of a building, 50 years old or older
Municipality: Pemberton Township
Block 553, Lot 34 (application may include additional lots)

***Application No. 1985-0023.004 – Borough of Folsom Board of Education***
Received on: March 3, 2017
Completed on: May 1, 2017
Project: Construction of a 1,808 square foot storage building
Municipality: Borough of Folsom
Block 801, Lot 9 (application may include additional lots)

***Application No. 1985-0641.012 – Pemberton Township Board of Education***
Received on: March 24, 2017
Completed on: April 10, 2017
Project: Placement of two temporary classroom trailers
Municipality: Pemberton Township
Block 839.02, Lot 44.06 (application may include additional lots)

***Application No. 1987-1326.002 – Manchester Township Board of Education***
Received on: August 21, 2015
Completed on: May 2, 2017
Project: Construction of a 47 space parking lot
Municipality: Manchester Township
Block 109, Lot 3 (application may include additional lots)

***Application No. 2001-0297.005 – Egg Harbor Township***
Received on: February 10, 2017
Completed on: April 26, 2017
Project: Five lot resubdivision and no further development
Municipality: Egg Harbor Township
Block 5953, Lot 5 (application may include additional lots)

***Application No. 2016-0142.001 – Winslow Township***
Received on: October 28, 2016
Completed on: April 13, 2017
Project: Demolition of a building, 50 years old or older
Municipality: Winslow Township
Block 7404, Lot 1 (application may include additional lots)

***Application No. 2016-0153.001 – Winslow Township***
Received on: November 28, 2016
Completed on: April 13, 2017
Project: Demolition of a building, 50 years old or older
Municipality: Winslow Township
Block 2501, Lot 9 (application may include additional lots)

***Application No. 2016-0154.001 – Winslow Township***
Received on: November 28, 2016
Completed on: April 13, 2017
Project: Demolition of a building, 50 years old or older
Municipality: Winslow Township
Block 4101, Lot 28 (application may include additional lots)

***Application No. 2016-0155.001 – Winslow Township***
Received on: November 28, 2016
Completed on: April 13, 2017
Project: Demolition of a building, 50 years old or older
Municipality: Winslow Township
Block 6417, Lot 4 (application may include additional lots)

***Application No. 2016-0156.001 – Winslow Township***
Received on: November 28, 2016
Completed on: April 13, 2017
Project: Demolition of a building, 50 years old or older
Municipality: Winslow Township
Block 6601, Lot 14 (application may include additional lots)

***Application No. 2016-0157.001 – Winslow Township***
Received on: November 28, 2016
Completed on: April 13, 2017
Project: Demolition of a building, 50 years old or older
Municipality: Winslow Township
Block 6601, Lot 37.04 (application may include additional lots)

***Application No. 2017-0060.001 – Pemberton Township***
Received on: March 13, 2017
Completed on: April 7, 2017
Project: Demolition of a building, 50 years old or older
Municipality: Pemberton Township
Block 410, Lot 8 (application may include additional lots)

**Waiver of Strict Compliance Applications**

***None***

# *RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION*

**NO. PC4-17-_____**

**TITLE:** Issuing an Order to Certify Barnegat Township Ordinance 2017-05, Adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area

**Commissioner _____ moves and Commissioner _____ seconds the motion that:**

**WHEREAS,** on April 8, 1983, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Barnegat Township; and

**WHEREAS,** Resolution #PC4-83-29 of the Pinelands Commission specified that any amendment to the Township's certified Master Plan and codified Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

**WHEREAS,** Resolution #PC4-83-29 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

**WHEREAS,** on May 21, 2012, the Barnegat Township Committee adopted a resolution designating the Shoreline Sand and Gravel Area to be an Area in Need of Redevelopment as defined in the Local Redevelopment and Housing Law; and

**WHEREAS,** on March 7, 2017, Barnegat Township adopted Ordinance 2017-05, adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area; and

**WHEREAS,** the Pinelands Commission received a certified copy of Ordinance 2017-05 on March 23, 2017; and

**WHEREAS,** by letter dated March 29, 2017, the Executive Director notified the City that Ordinance 2017-05 would require formal review and approval by the Pinelands Commission; and

**WHEREAS,** a public hearing to receive testimony on Ordinance 2017-05 was duly advertised, noticed and held on April 12, 2017 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

**WHEREAS,** the Executive Director has found that Ordinance 2017-05 is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan; and

**WHEREAS,** the Executive Director has submitted a report to the Commission recommending issuance of an order to certify that Ordinance 2017-05, adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area, is in conformance with the Pinelands Comprehensive Management Plan; and

**WHEREAS**, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that Ordinance 2017-05 be certified; and

**WHEREAS,** the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning Ordinance 2017-05 and has reviewed the Executive Director's report; and

**WHEREAS,** the Pinelands Commission accepts the recommendation of the Executive Director; and

**WHEREAS,** pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the

minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

**NOW, THEREFORE BE IT RESOLVED** that

1. An Order is hereby issued to certify that Barnegat Township's Ordinance 2017-05, adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area, is in conformance with the Pinelands Comprehensive Management Plan.

2. Any additional amendments to Barnegat Township's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

**Record of Commission Votes**

| | AYE | NAY | NP | A/R* | | AYE | NAY | NP | A/R* | | AYE | NAY | NP | A/R* |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Ashmun | | | | | Galletta | | | | | Prickett | | | | |
| Avery | | | | | Jannarone | | | | | Quinn | | | | |
| Barr | | | | | Lloyd | | | | | Rohan Green | | | | |
| Brown | | | | | Lohbauer | | | | | Earlen | | | | |
| Chila | | | | | McGlinchey | | | | | | | | | |

* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission Date: _____

Nancy Wittenberg
Executive Director

Sean W. Earlen
Chairman

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General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

# REPORT ON ORDINANCE 2017-05, ADOPTING A REDEVELOPMENT PLAN FOR THE SHORELINE SAND AND GRAVEL AND COMPASS POINT REDEVELOPMENT AREA

April 28, 2017

Barnegat Township
900 West Bay Avenue
Barnegat, NJ 08005

## FINDINGS OF FACT

### I. Background

The Township of Barnegat is located in southern Ocean County, in the eastern portion of the Pinelands Area. Pinelands municipalities that abut Barnegat Township include the Townships of Lacey, Ocean, Stafford and Little Egg Harbor in Ocean County, and the Townships of Bass River and Woodland in Burlington County.

On April 8, 1983, the Pinelands Commission fully certified the Master Plan and codified Land Use Ordinances of Barnegat Township.

On May 21, 2012, the Barnegat Township Committee adopted a resolution designating the Shoreline Sand and Gravel Area (consisting of 94 lots) to be an Area in Need of Redevelopment as defined in the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.).

On March 7, 2017, Barnegat Township adopted Ordinance 2017-05, adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area. This Redevelopment Area encompasses approximately 140 acres of land within the Pinelands Regional Growth Area, with approximately 123 acres in Barnegat's existing RL/AC (Residential Low/Adult Community) zoning district and 17 acres in the existing CN (Neighborhood Commercial) zoning district.

The Pinelands Commission received a certified copy of Ordinance 2017-05 on March 23, 2017. By letter dated March 29, 2017, the Executive Director notified the Township that Ordinance 2017-05 would require formal review and approval by the Pinelands Commission.

II. Master Plans and Land Use Ordinances

The following ordinance has been submitted to the Pinelands Commission for certification:

* Ordinance 2017-05, adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area, introduced on February 7, 2017 and adopted on March, 7, 2017.

This ordinance has been reviewed to determine whether it conforms with the standards for certification of municipal master plans and land use ordinances as set out in N.J.A.C. 7:50-3.39 of the Pinelands Comprehensive Management Plan. The findings from this review are presented below. The numbers used to designate the respective items correspond to the numbers used to identify the standards in N.J.A.C. 7:50-3.39.

**1. Natural Resource Inventory**

Not applicable.

**2. Required Provisions of Land Use Ordinance Relating to Development Standards**

Ordinance 2017-05 adopts a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area within Barnegat Township. The Redevelopment Area is situated on the southern side of W. Bay Avenue (County-Route 554) and bounded by Cloverdale Road to the west, Caribbean Avenue to the south, and Nautilus Drive to the east (see Exhibit 1).

The Redevelopment Area includes 94 existing lots that combine for an area of approximately 140 acres of land. The Plan separates the Redevelopment Area into two tracts: the Shoreline Sand and Gravel Tract, which is comprised of properties that contain the Shoreline Sand & Gravel, LLC mining facility; and the Compass Point Tract, which is comprised of 85 existing undeveloped residential lots (see Exhibit 2). The only existing structures within the Redevelopment Area are buildings associated with the mining facility, including one office building, one detached garage, and two sheds.

The Redevelopment Area is located entirely within the Pinelands Regional Growth Area and spans two existing zoning districts: the RL/AC (Residential Low/Adult Community) district and the CN (Neighborhood Commercial) district. The RL/AC district permits the development of planned adult communities, detached single-family units, adult community housing, cluster development, and a variety of institutional and recreational uses. The CN district permits a variety of non-residential uses.

In order to meet its goals, described further below, the Redevelopment Plan supersedes the existing zoning district regulations and establishes two new zoning districts: the Shoreline Sand and Gravel Mixed Use Zoning District and the Compass Point Redevelopment Zoning District. The boundary of each new district corresponds to the two tracts described above. The lots included in each district are further described in Table 1, below.

*Table 1. Summary of Zoning Districts Established by Ordinance 2017-05*

| **Shoreline Sand and Gravel Mixed Use Zoning District** | **Compass Point Redevelopment Zoning District** |
|---|---|
| **Area:** 113 acres | **Area:** 27 acres |
| **Existing Lots:** 9 | **Existing Lots:** 85 |
| **Current Zoning Districts:**<br>RL/AC (108 acres)<br>CN (5 acres) | **Current Zoning Districts:**<br>RL/AC (15 acres);<br>CN (12 acres) |
| **Lots included:**<br>Block 92: Lots 15, 16, 18, 18.01, 20, 21, 23, 23.03, 23.04 | **Lots included:**<br>Block 92.103: Lots 1-4<br>Block 92.104: Lots 1-16<br>Block 92.105: Lots 1-23<br>Block 92.106: Lots 1-24<br>Block 92.107: Lots 7,8<br>Block 92.108: Lots 15-24<br>Block 92.109: Lots 14, 15<br>Block 92.113: Lots 42-45 |

Shoreline Sand and Gravel Mixed Use Zoning District

The goal of the Shoreline Sand and Gravel Mixed Use Zoning District is to promote and facilitate the redevelopment of its 113 acres as either a Lifestyle Planned Community or as a Planned Adult Community. Under both options, a mix of age-restricted (55+) residential uses and non-residential uses are permitted. Bulk standards are provided for each of the permitted residential uses and for non-residential uses.

Under both options, a minimum of 25,000 square feet of the district shall be set aside for non-residential uses, with the option to have up to a maximum of 10 acres of non-residential land. Both options permit the same types of non-residential uses, which include: nursing homes, community retail, professional offices, medical uses, restaurants, pharmacies, financial institutions, conveniences stores and self-storage facilities.

If a Lifestyle Planned Community is proposed, the following residential uses are permitted: detached single-family dwellings, attached single-family units, clustered cottages, townhouses (including townhouses over flats), villas, apartments, assisted living facilities, and congregate care facilities. If a Planned Adult Community is proposed, the residential use options are limited to single-family detached dwellings, single-family semi-detached dwellings as well as townhouses. The Redevelopment Plan also restricts the proportion of certain residential uses within the district. The Redevelopment Plan requires that 10% of the residential units be made affordable to low- and moderate-income households.

The district allows for a maximum net residential density of 7.15 units per acre. The net density excludes lands associated with nonresidential uses as well as lands associated with assisted-living, congregate care, or nursing home facilities. For these facilities, the district allows for a

maximum of 250 beds. The maximum gross density permitted for such a facility is 20 beds per acre, not including long-term care beds within nursing facilities.

Compass Point Redevelopment Zoning District

The goal of the Compass Point Redevelopment Zoning District is to develop residential age-restricted (55+) single-family, detached, fee-simple homes only. The Redevelopment Plan restricts density in this district to 4.3 units per acre, or a maximum of 113 units. Bulk standards are provided for the permitted use. The Redevelopment Plan requires that 5% of the existing 85 residential lots and 10% of any additional lots created beyond the original 85 lots to be made affordable to low- and moderate-income households.

As a result of the two zoning districts established by Ordinance 2017-05, the residential zoning capacity of the lands within the Redevelopment Area has increased from 492 units to 1,078 units (see Table 2, below). This is an increase of 586 units.

*Table 2. Summary of Residential Capacity Enabled by Ordinance 2017-05*

| **Existing Residential Capacity** | **Redevelopment Plan Residential Capacity** |
|---|---|
| **RL/AC Zone (123 acres):** | **Shoreline Mixed Use Zone (113 acres):** |
| 492 units[1] | 715 units (not including assisted living)[2] |
| **CN Zone (17 acres):** | 250 units (assisted living only) |
| 0 units | **Compass Point Redevelopment Zone (27 acres):** |
| | 113 units |
| **Total Units: 492** | **Total Units: 1,078** |

*1. Assuming that a Planned Adult Community is developed at the maximum density through the use of PDC bonus densities to achieve a maximum density of 4 units per acre for the entire 123 acres.*

*2. Assuming that a minimum of 0.5 acres is set aside for non-residential uses and that a facility containing the maximum number of assisted living units (250 units) uses 12.5 acres, the remaining 100 acres may be built out to a density of 7.15 units per acre.*

Pursuant to N.J.A.C. 7:50-5.28(a)1 and 3, the CMP would require the opportunity for 420 residential units within the Redevelopment Area. Therefore, the Redevelopment Plan results in the potential for approximately 658 units beyond what the Comprehensive Management Plan requires. A strict application of the Comprehensive Management Plan standards would not require an increase in residential capacity of this magnitude within the Redevelopment Area. However, in order to achieve the goals and objectives of the Redevelopment Plan, the Township has elected to provide a higher permitted density in the Redevelopment Area than the Comprehensive Management Plan would require.

The fact that the residential capacity of the Township's Regional Growth Area will now exceed the minimum required by the Comprehensive Management Plan does not make Ordinance 2017-05 inconsistent with the Comprehensive Management Plan. In fact, N.J.A.C. 7:50-5.28(a)7i

expressly authorizes municipalities to establish programs that provide for additional density within their Regional Growth Areas, provided that the Pinelands Development Credit program is not impaired as a result. In this case, Barnegat Township has satisfied its Regional Growth Area residential zoning obligation under the Comprehensive Management Plan and has elected to provide additional density to a designated Redevelopment Area while at the same time requiring a certain percentage of Pinelands Development Credit use (see Section 8, below).

In further support of the site's suitability for increased density, it is noted that a Threatened and Endangered Species Survey was conducted in 2015 with a target species of northern pine snake. The Commission staff has accepted the survey's finding that no critical habitat for northern pine snake was found within the Redevelopment Area. This finding was contingent upon a 300 foot proposed buffer to the Four Mile Branch wetland complex located in the extreme southwestern corner of the site, and that if a smaller buffer was proposed, a survey for Pine Barrens treefrog should be completed.

The development intensities, permitted uses and zoning changes adopted by Ordinance 2017-05 are otherwise consistent with the standards for Pinelands Regional Growth Areas set forth in the Comprehensive Management Plan. Therefore, this standard for certification is met.

**3. Requirement for Certificate of Filing and Content of Development Applications**

Not applicable.

**4. Requirement for Municipal Review and Action on All Development**

Not applicable.

**5. Review and Action on Forestry Applications**

Not applicable.

**6. Review of Local Permits**

Not applicable.

**7. Requirement for Capital Improvement Program**

Not applicable.

**8. Accommodation of Pinelands Development Credits**

N.J.A.C. 7:50-3.39(a)8 specifies that in order to be certified by the Commission, municipal land use ordinances must provide for sufficient residentially zoned property, in the Regional Growth

Area, to be eligible for an increase in density to accommodate Pinelands Development Credits (PDCs) as provided for in N.J.A.C. 7:50-5.28(a)3.

Ordinance 2017-05 increases the amount of residentially-zoned land in Barnegat's Regional Growth Area by approximately 17 acres, which accounts for those lands within the Redevelopment Area that were zoned in the existing CN district. Furthermore, the residential zone capacity was increased for the other 123 acres that were previously zoned within the RL/AC district.

In order to comply with N.J.A.C. 7:50-5.28(a)3, Ordinance 2017-05 requires that PDCs be acquired and redeemed for 30% of all residential units within the Redevelopment Area, with two exceptions.

First, units made affordable to low- and moderate-income households for purposes of satisfying the 10% set-aside requirement within the Shoreline Mixed Use District and the 5% set-aside in the Compass Point Redevelopment District are exempt from this requirement. It is important to note that such affordable units beyond the required 10% and 5% set-aside described above will require that PDCs be acquired and redeemed at the 30% rate.

Second, Assisted Living/Congregate Care facilities will have a different PDC obligation structure. Such facilities will have a permitted base-density of 8 units per acre with a bonus-density, achievable through the use of PDCs, of up to 12 units per acre. This is fully consistent with N.J.A.C. 7:50-5.34(2) of the CMP, which provides that the maximum permitted density for assisted living facilities in Regional Growth Areas may exceed 8 units per acre only through the use of Pinelands Development Credits. Ordinance 2017-05 also provides that once a density of 12 units per acre is achieved through the use of PDCs, assisted living facilities are eligible for an additional bonus density of up to 20 units per acre without the use of PDCs. It is important to note that units in this case represent beds within the facility.

Based on the densities assigned to Barnegat Township's Regional Growth Area by the Comprehensive Management Plan (N.J.A.C. 7:50-5.28), the Township is required to provide an opportunity for the development of residential units at a base-density of 2 units per acre, with a bonus-density of up to 3 units per acre achievable through the use of PDCs. Given the characteristics of the Redevelopment Area, the municipality is required to permit up to 280 residential units and the opportunity for an additional 140 units through the use of PDCs. In other words, the municipality would have to allow for the opportunity to use 140 rights (35 Pinelands Development Credits). This traditional approach requires that municipalities provide the *opportunity* for use of PDCs for 33% of the total number of residential units permitted in their Regional Growth Areas.

The PDC requirements adopted by Ordinance 2017-05 will result in an opportunity for the use of 275 rights (68.75 Pinelands Development Credits). As described in Section 2 above, the municipality has elected to zone at higher densities than required by the Comprehensive Management Plan. This has resulted in a greater PDC opportunity than what is required. Furthermore, if full zone capacity is reached, an assisted living facility is developed and the affordable housing set-aside requirements are met, approximately 25% of the units in the Redevelopment Area would require PDC use. While the overall PDC opportunity of 25% is not as high a number as would be provided through the more traditional approach described above requiring 33%, it is important to remember that the traditional base-density/bonus-density

approach utilized throughout the Pinelands Area only provides an *opportunity* for the use of PDCs. There is no requirement under the traditional approach that any PDCs be used in any particular development project. Ordinance 2015-07 *guarantees* a PDC redemption rate of 30% for much of the potential development within the Redevelopment Area. Given the greater certainty provided by this approach, the Executive Director finds that the PDC requirements adopted by Ordinance 2017-05 are consistent with Comprehensive Management Plan standards.

This standard for certification is met.

**9. Referral of Development Applications to Environmental Commission**

Not applicable**.**

**10. General Conformance Requirements**

Ordinance 2017-05 is consistent with standards and provisions of the Pinelands Comprehensive Management Plan.

This standard for certification is met.

**11. Conformance with Energy Conservation**

Not applicable.

**12. Conformance with the Federal Act**

Ordinance 2017-05 is consistent with standards and provisions of the Pinelands Comprehensive Management Plan. No special issues exist relative to the Federal Act.

This standard for certification is met.

**13. Procedure to Resolve Intermunicipal Conflicts**

The lands subject to Ordinance 2017-05 are not contiguous with or adjacent to any other municipalities. Therefore, this standard is not applicable.

## PUBLIC HEARING

A public hearing to receive testimony concerning Barnegat Township's application for certification of Ordinance 2017-05 was duly advertised, noticed and held on April 12, 2017 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which no testimony was received.

Written comments on Ordinance 2017-05 were accepted through April 17, 2017 and were submitted by the following parties:

Katherine Smith, Policy Advocate, Pinelands Preservation Alliance (see Exhibit 3)

## EXECUTIVE DIRECTOR'S RESPONSE

Ms. Smith of the Pinelands Preservation Alliance has expressed concerns regarding how PDCs are distributed temporally throughout the development. In particular, she states that "it is essential that the purchase of PDCs be evenly distributed temporally throughout development, so that 30% of the units within each stage require PDCs".

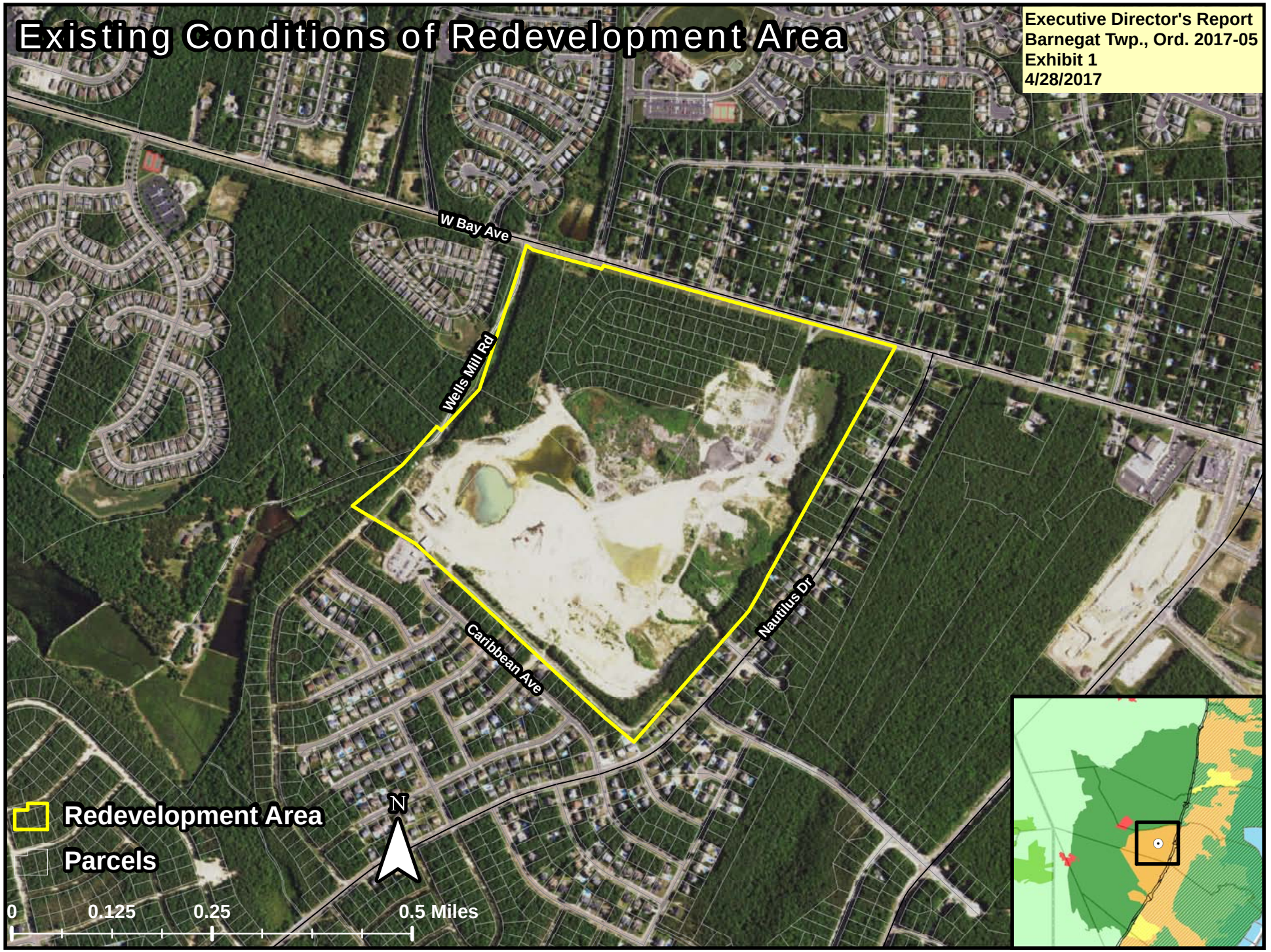
Ms. Smith's concerns are very much appreciated as a well-functioning PDC Program is of critical importance to the Pinelands Commission. As such, the PDC requirements within this Redevelopment Plan have been carefully considered during the conformance review process. It should be noted that the initial Redevelopment Plan adopted by Barnegat Township was found by staff to include ambiguous PDC requirements. As a result, staff worked with Township representatives to establish appropriate and unambiguous PDC requirements. The revised Redevelopment Plan, integrating staff's recommended PDC requirements, was adopted by the Township Committee, and contained in the Plan now under consideration. (A full discussion on the revised PDC requirements included in the Redevelopment Plan under consideration can be found in Section 8 above).

In response to Ms. Smith's particular concern regarding the temporal distribution of PDCs, the Comprehensive Management Plan, as well as Chapter 55 of the code of Barnegat Township, includes provisions that require a developer to redeem any necessary PDCs prior to final subdivision or site plan approval. Pursuant to N.J.A.C. 7:50-5.47(c), municipalities may grant general development plan, preliminary subdivision or preliminary site plan approval without the redemption of any requisite PDCs. If a development gets final approval for discrete sections of a project, then redemption of the requisite PDCs is required on a pro-rated basis, based on the proportion of units within the phase relative to the total units included in the preliminary approval. In this case, if final approval of any project in the Shoreline Sand and Gravel and Compass Point Redevelopment Area is granted in phases or sections, the redemption of PDCs for 30% of the units in each and every section of the project will be required, given the special exceptions described in Section 8 above.

## CONCLUSION

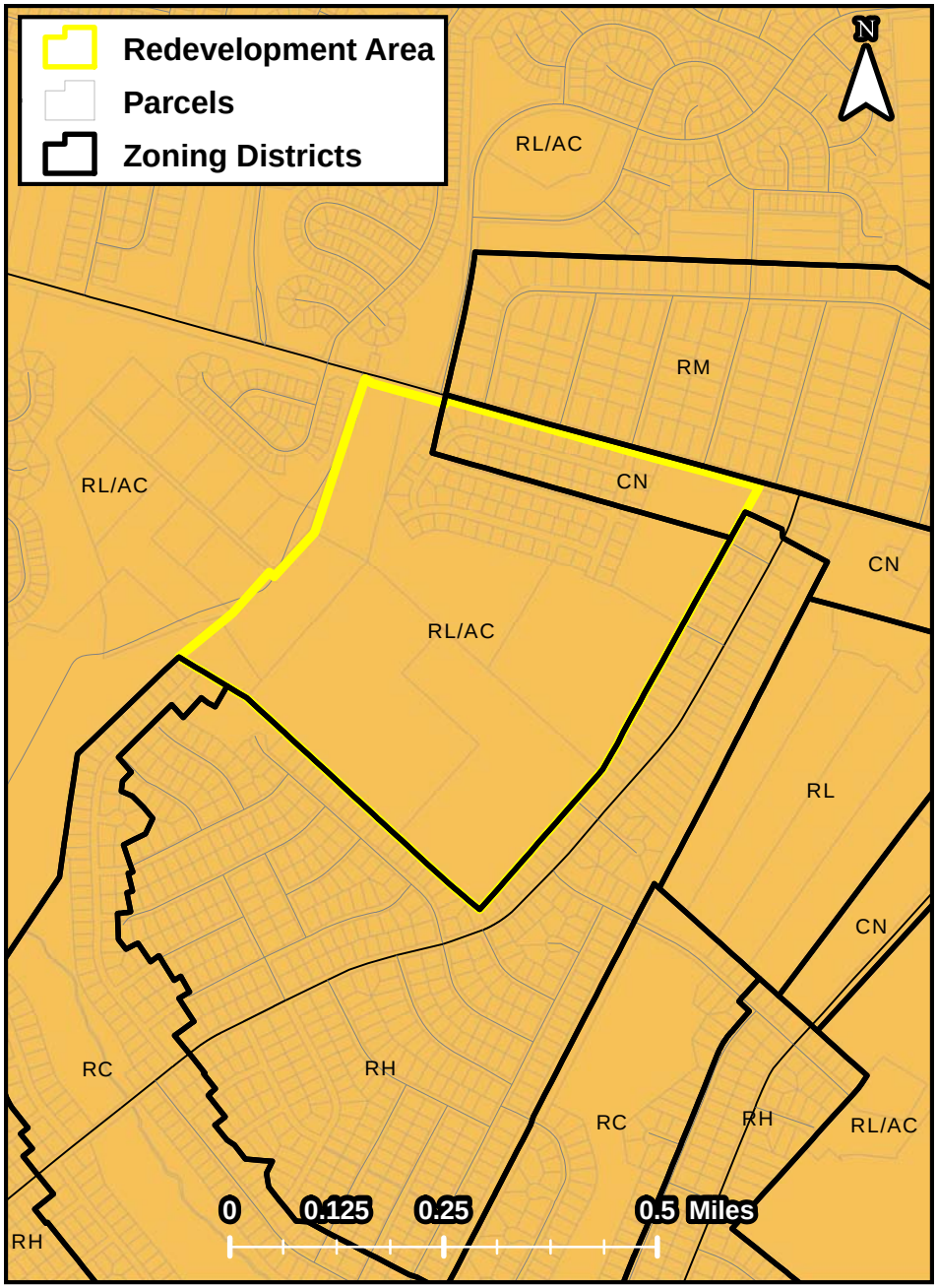
Based on the Findings of Fact cited above, the Executive Director has concluded that Ordinance 2017-05, adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area, is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan. Accordingly, the Executive Director recommends that the Commission issue an order to certify Ordinance 2017-05 of Barnegat Township.

SRG/DBL/CBA
Attachments

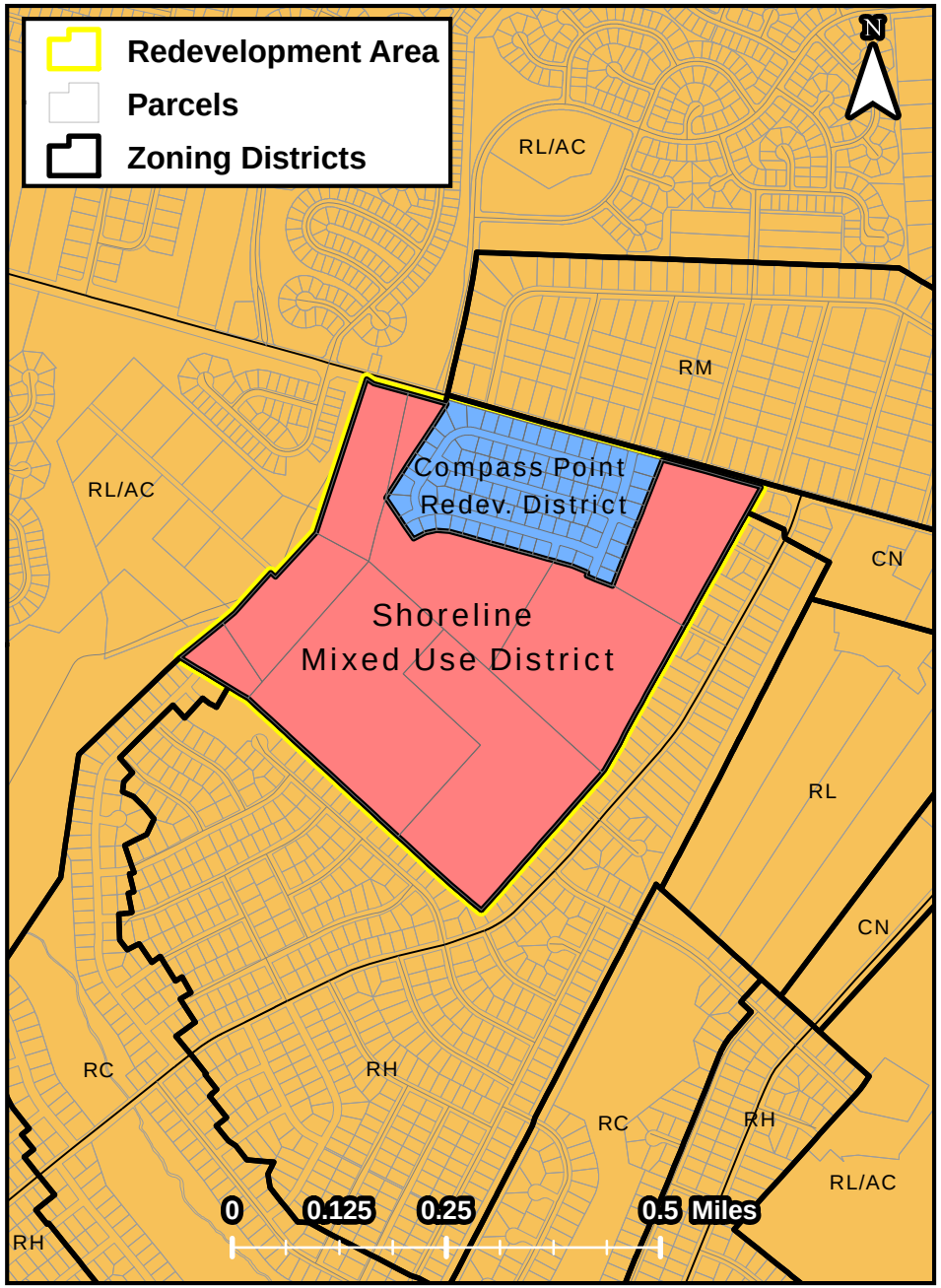

Existing Conditions of Redevelopment Area
Executive Director's Report
Barnegat Twp., Ord. 2017-05
Exhibit 1
4/28/2017
W Bay Ave
Wells Mill Rd
Caribbean Ave
Nautilus Dr
Redevelopment Area
Parcels
N
0
0.125
0.25
0.5 Miles

# Proposed Zoning of Redevelopment Area

**Executive Director's Report**
**Barnegat Twp., Ord. 2017-05**
**Exhibit 2**
**4/28/2017**




Current Zoning




Proposed Zoning

**Executive Director's Report**
**Barnegat Twp., Ord. 2017-05**
**Exhibit 3**
**4/28/2017**


# Pinelands Preservation Alliance

Bishop Farmstead • 17 Pemberton Road • Southampton NJ • 08088
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Protecting the Pinelands since 1989



April 17, 2017

Pinelands Commission
PO Box 359
15 Springfield Road
New Lisbon, NJ 08064

**Barnegat Township Ordinance 2017-05**

Dear Ms. Grogan and Pinelands Commission staff,

I am writing concerning the Barnegat Township Ordinance 2017-05, which adopts the Shoreline Sand and Gravel and Compass Point Redevelopment Plan ("Plan"). I am happy to read in the ordinance that the Township Committee has been in consultation with the Pinelands Commission staff regarding the Plan to suggest modifications that bring it closer to conformance with the Comprehensive Management Plan. As the Plan states, Pinelands Development Credits (PDCs) shall be purchased and redeemed for 30% of all units (with some exceptions). It is essential that the purchase of PDCs be evenly distributed temporally throughout development, so that 30% of the units within each stage require PDCs. While this is the interpretation I reached from the Plan, it could be clarified within the Plan itself or in the Commission's report to remove any ambiguity. This is particularly important given the alternate PDC requirements for the assisted living and congregate care facilities, which rely on base and maximum densities.

Sincerely,

Katherine Smith
Policy Advocate
Pinelands Preservation Alliance

State of New Jersey
THE PINELANDS COMMISSION
PO BOX 359
NEW LISBON, NJ 08064
(609) 894-7300
www.nj.gov/pinelands

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Chris Christie
*Governor*

Kim Guadagno
*Lt. Governor*

Sean W. Earlen
*Chairman*

Nancy Wittenberg
*Executive Director*

# *MEMORANDUM*

To: Members of the Pinelands Commission

From: Susan R. Grogan
Chief Planner

Date: April 28, 2017

Subject: No Substantial Issue Findings

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During the past month, we reviewed two master plan and ordinance amendments that we found to raise no substantial issues with respect to the standards of the Pinelands Comprehensive Management Plan. These amendments were:

**Berlin Borough Planning Board Resolution 2017-5 –** adopts an amended Housing Element and Fair Share Plan. The Housing Element contains updated data and analysis pertaining to the Borough's current and projected demographic, housing stock, and employment characteristics. The Borough's Fair Share Compliance Plan, covering the cumulative period 1987-2025, indicates: a rehabilitation obligation of 32 units, which will be met through partnership with various housing rehabilitation programs offered by the Camden County Improvement Authority and Camden County; a prior round obligation of 154 units, which will be met through several inclusionary developments in various stages of development; and a third round prospective need of 131 units, which will be met by a mix of inclusionary developments and a Market to Affordable Program implemented by the municipality. A portion of one tract planned for inclusionary development, The Gardens (Nexus Properties, LLC), has land within the Pinelands Area. The Plan states that the 0.75 acre portion of the tract within the Pinelands Area will not be developed. The Township's amended Housing Element and Fair Share Plan do not contain any recommended changes to the municipal zoning plan for the Pinelands Area.

**Egg Harbor City Ordinance 3-2017** - adopts a Redevelopment Plan for the Tower Site Rehabilitation Area. The Redevelopment Area is approximately 94 acres, containing numerous City-owned parcels located in the area bounded by Duerer Street, Hamburg Avenue, Moss Mill Road, and Washington Avenue. The Redevelopment Area is located within the Pinelands Town area, and is within the City's R-22 and R-3.2C zoning districts. The purpose of the Redevelopment Plan is to facilitate a public-private partnership that will provide for the development of a vacant and wooded tract of land. The Redevelopment Plan permits a variety of uses including: single family detached dwellings; recreational-

themed housing development; assisted living; various institutional uses; commercial recreation; retail commercial; and parks and playgrounds.