



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-16- 09

TITLE: Issuing a Final Decision Adopting the Initial Decision of the Office of Administrative Law issued in the matter captioned Peg Leg Webb, LLC v. New Jersey Pinelands Commission, OAL Dkt. No. EPC 15772-13; Pinelands Commission Application No. 1984-0454.003

Commissioner McGlinchey
seconds the motion that:

moves and Commissioner Lohbauer

WHEREAS, Petitioner, Peg Leg Webb, LLC (Petitioner), challenges the determination of the Executive Director of the New Jersey Pinelands Commission (Commission) that Jackson Township's (Jackson) October 1, 2012 Preliminary Major Site Plan Approval of Petitioner's establishment of a new resource extraction operation and the construction of a 1,008 square foot building (Preliminary Approval) raises substantial issues with respect to conformance with the minimum standards of the Pinelands Comprehensive Management Plan (CMP), N.J.A.C. 7:50-1.1, et seq.; and

WHEREAS, on or about October 10, 2012, the Commission received notice of the Preliminary Approval granted to Petitioner by the Jackson Township Planning Board; and

WHEREAS, on October 25, 2012, pursuant to N.J.A.C. 7:50-4.37, the Executive Director "called-up" the Preliminary Approval through the issuance of a letter alerting Petitioner that the proposed development raised substantial issues with respect to conformance with the minimum standards of the CMP and advising Petitioner of its right to request a hearing on the issue before the Office of Administrative Law (OAL); and

WHEREAS, on July 28, 2013, at Petitioner's request, the Commission granted an extension of the time for the applicant to request an administrative hearing before OAL; and

WHEREAS, on September 23, 2013, Petitioner requested an administrative hearing before OAL; and

WHEREAS, on October 30, 2013, the Commission transmitted the matter to OAL where it was assigned to Administrative Law Judge Susan M. Scarola (the ALJ); and

WHEREAS, on June 22, 2015, Petitioner filed a Motion for Summary Decision; and

WHEREAS, on July 24, 2015, the Commission filed a Cross Motion for Summary Decision; and

WHEREAS, the ALJ heard oral argument on these motions on October 26, 2015; and

WHEREAS, the ALJ issued an Initial Decision on November 20, 2015 denying Petitioner's Motion for Summary Decision and granting the Commission's Motion for Summary Decision, concluding that the Executive Director's determination to call up the Preliminary Approval was correct under the CMP; and

WHEREAS, on or about December 2, 2015, the Commission received the hearing record from OAL; and

WHEREAS, pursuant to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-18.6, the Commission must issue a Final Decision within 45-days after the receipt of the Initial Decision, unless the period is extended as provided by N.J.A.C. 1:1-18.8; and

WHEREAS, N.J.A.C. 1:1-18.8 allows the Commission to request a single extension of the time limit for filing a final decision for good cause and for additional extensions only with consent of the parties; and

WHEREAS, on January 4, 2016, the Commission received an initial 45-day extension of the deadline to issue its Final Decision until February 18, 2016, upon good cause shown; and

WHEREAS, by letter dated January 4, 2016, the Commission's Executive Director was made aware that, due to a technical issue, Petitioner had not received the Initial Decision from OAL until that date; and

WHEREAS, N.J.A.C. 1:1-18.4(a) affords a party 13 days from the date of mailing of the Initial Decision to file written exceptions with the agency head; and

WHEREAS, it appears an error occurred in the mailing of the Initial Decision to Petitioner causing Petitioner's failure to receive the Initial Decision until January 4, 2016; and

WHEREAS, the deadline for filing its exceptions was extended to January 19, 2016; and

WHEREAS, Petitioner filed exceptions in this matter on January 12, 2016; and

WHEREAS, the Commission filed a response to Petitioner's exceptions on January 28, 2016; and

WHEREAS, with Petitioner's consent, the Commission received a second extension order allowing it until March 19, 2016 to render a Final Decision upon good cause shown; and

WHEREAS, the Commission has reviewed the record, the Initial Decision and Petitioner's exceptions and the Commission's response to exceptions filed in the above-captioned case and issues the attached Final Decision adopting the Initial Decision as set forth herein; 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; and

NOW, THEREFORE, BE IT RESOLVED that the attached Final Decision in the above-captioned case is ADOPTED.

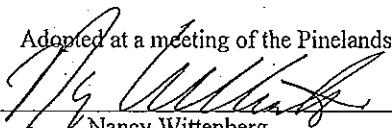
Record of Commission Votes

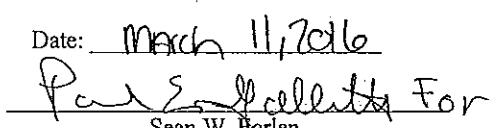
	AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*
Ashmun	X				DiBello	X				McGlinchey	X			
Avery	X				Galletta	X				Prickett	X			
Barr	X				Jannarone	X				Quinn	X			
Brown	X				Lloyd	X				Rohan Green	X			
Chila	X				Lohbauer	X				Earlen			X	

* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: March 11, 2016


 Nancy Wittenberg
 Executive Director


 Sean W. Earlen
 Chairman

PEG LEG WEBB, LLC,)	
)	<u>ADMINISTRATIVE ACTION</u>
Petitioner,)	<u>FINAL DECISION</u>
v.)	
)	
NEW JERSEY PINELANDS)	OAL DKT. NO. EPC 15772-13
COMMISSION,)	AGENCY REF. NO. 1984-0454.003
)	
Respondent.)	

This matter arises from a challenge by Petitioner, Peg Leg Webb, LLC (Petitioner), to the determination of the Executive Director of the New Jersey Pinelands Commission (Commission) that Jackson Township's (Jackson) October 1, 2012 Preliminary Major Site Plan Approval of Petitioner's establishment of a new resource extraction operation and the construction of a 1,008 square foot building (Preliminary Approval) raises substantial issues with respect to conformance with the minimum standards of the Pinelands Comprehensive Management Plan (CMP), N.J.A.C. 7:50-1.1, et seq. This Final Decision **ADOPTS** the Initial Decision finding that the Executive Director's determination to call up the Preliminary Approval was correct under the CMP as further discussed herein.

LEGAL BACKGROUND

The Pinelands Protection Act and Comprehensive Management Plan

The Pinelands Protection Act (PPA), N.J.S.A. 13:18A-1 to -29, 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 PPA, the Legislature recognized that the "continued viability" of the Pinelands and its resources "is threatened by pressures for residential, commercial[,] and industrial development," and that the protection of the Pinelands requires the "coordinated efforts" of municipal and State agencies. Ibid. To oversee this effort, the Legislature created the Commission to serve as the primary

planning entity in the Pinelands and vested with “all the powers and duties as may be necessary in order to effectuate the purposes and provisions” of the PPA. N.J.S.A. 13:18A-4.

In this role, the Commission adopted the CMP, a sweeping set of 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).

To most efficiently enforce these minimum standards, the Commission designated local governments as “the principal management entities” for implementation of the CMP. N.J.A.C. 7:50-3.1(a). But the Commission retains “ultimate responsibility for implementing and enforcing” the provisions of the PPA and the CMP and possesses all powers “necessary to implement the objectives” therein. N.J.A.C. 7:50-1.11; N.J.S.A. 13:18A-4. Additionally, the CMP contains the controlling standards within the Pinelands as any development within the Pinelands that does not conform with the minimum standards of the CMP is “unlawful.” N.J.A.C. 7:50-1.4; see also N.J.S.A. 13:18A-10 (“[s]ubsequent to the adoption of [the CMP], the provisions of any other law, ordinance, rule or regulation to the contrary notwithstanding, no application for development within the pinelands area shall be approved by any municipality, county or agency thereof ... unless such approval or grant conforms to the provisions of [the CMP]”); see also Fine v. Galloway Twp. Committee, 190 N.J. Super. 432 (Law Div.1983) (holding that a municipality may adopt more restrictive standards provided they do no conflict with the CMP which sets forth the minimum standards for protection of the Pinelands).

The CMP is to be liberally construed and any conflicting law “shall be of no force and effect.” N.J.S.A. 13:18A-27; N.J.A.C. 7:50-2.1, -2.2. The Commission is therefore bound in all circumstances to enforce the CMP, including where its conflicts with a local ordinance.

Certification of Local Ordinances

All municipal ordinances are required to conform with the minimum requirements of the CMP. N.J.A.C. 7:50-3.31; N.J.S.A. 13:18A-12. To ensure compliance, ordinances adopted by local governments must be “certified” by the Commission as consistent with the standards of the CMP including, among other things, designations of management areas and zoning district boundaries. N.J.A.C. 7:50-3.1(b), -3.32, -3.39(a)(2)(vi). The certification process includes the holding of a public hearing by the Executive Director for consideration of the ordinance and its compliance with the CMP. N.J.A.C. 7:50-3.33. The Executive Director then reviews the record and issues a report and recommendation to the Commission for vote on certification. N.J.A.C. 7:50-3.34, -3.35.

Upon certification, a local government may grant development approvals within the Pinelands, provided the approval is in “strict conformance” with the CMP and the certified ordinance. N.J.A.C. 7:50-3.38. Still, “[n]o local decision shall impose any requirements which in any way contravene any standard contained in” the CMP or “the applicable certified land use ordinance.” N.J.A.C. 7:50-4.32. Stated simply, regardless of whether the development may conform with the standards of a local ordinance, any development within the Pinelands that does not conform with the minimum standards of the CMP is “unlawful.” N.J.A.C. 7:50-1.4; N.J.S.A. 13:18A-10. If a local government determines to amend a land use ordinance, the amended ordinance cannot go into effect until the Commission either certifies the ordinance or indicates that the amendment does not affect the prior certification. N.J.A.C. 7:50-3.45(a).

Commission Review of Local Government Approvals

The Commission “bears ultimate responsibility for implementing and enforcing” the provisions of the CMP. N.J.A.C. 7:50-1.11. The Commission therefore reviews “all permits issued by local permitting agencies ... to ensure that all development approved by local permitting agencies is located, planned, designed, laid out, constructed and serviced in accordance with” the minimum standards and objectives of the CMP. N.J.A.C. 7:50-4.31(a)-(b); see also N.J.S.A. 13:18A-15. The Commission is therefore given notice of all development applications within the Pinelands for review by its Executive Director. N.J.A.C. 7:50-4.33.

The Executive Director reviews the applications for completeness and, if satisfied, issues a Certificate of Filing (COF) that may identify any observed inconsistencies of the proposed development with the CMP and advise that if such inconsistencies are not resolved by a local approval, that local approval will be subject to review, or call up, by the Commission. N.J.A.C. 7:50-4.34. Upon receipt of the COF, the applicant and the local government are able to proceed with the local approval process. Ibid.

The local government must then notify the Commission upon issuance of any preliminary or final approval of a development application. N.J.A.C. 7:50-4.35(d)-(e). The Executive Director reviews the approval to determine whether it “raises substantial issues with respect to the conformance” with the minimum standards of the CMP and, if so, the Executive Director may call up the approval for review by the Commission. N.J.A.C. 7:50-4.37 and 4.40; N.J.S.A. 13:18A-15, see also N.J.S.A. 13:18A-15.¹

¹ The CMP contains a similar review process for review of a local approval in a municipality with an uncertified ordinance designed to ensure that all development not regulated by a certified ordinance is conducted “in conformance with the minimum standards of the CMP” where local approval must also comply with the CMP and the Commission decision supersedes the local decision. N.J.A.C. 7:50-4.11 through -4.27.

In the case of a preliminary approval like the one at issue here, the CMP provides the Executive Director with 30 days to give notice of her determination and to advise the applicant of its right to request a "hearing before an Administrative Law Judge pursuant to the procedures established by N.J.A.C. 7:50-4.91." N.J.A.C. 7:50-4.37(b).² At such a hearing, "[t]he person requesting the appeal or hearing shall have the burden of going forward and the burden of proof on all issues." N.J.A.C. 7:50-4.91(d).

The Commission's determination upon call up is binding on both the applicant and the local government. If, on call up, the Commission disapproves any preliminary approval of an application for development, the local government must revoke such preliminary approval deny the application. N.J.A.C. 7:50-4.38. Alternatively, if the Commission conditionally approves a preliminary approval, the local government must modify its preliminary approval accordingly and may only grant final approval if the application for final approval demonstrates that such conditions have been or will be met by the applicant. N.J.A.C. 7:50-4.38.

The Commission's development-review decisions therefore "supersede any local decision" and no activities may be conducted until the Commission has "approved or approved with conditions the proposed development." N.J.A.C. 7:50-4.32, -4.37, -4.38, -4.40, -4.42.

Pinelands Management Areas

"[T]o ensure that the development and use of land in the Pinelands meet the minimum standards" of the CMP, the Commission established "eight management areas governing the general distribution of land uses and intensities in the Pinelands." N.J.A.C. 7:50-5.11. These eight Pinelands Management Areas are: (1) The Preservation Area District; (2) Forest Areas; (3) Agricultural Production Areas; (4) Special Agricultural Production Areas; (5) Rural Development Areas; (6)

² The Commission follows similar procedures for review of final approvals with applicants afforded the opportunity to choose between a hearing in front of the Commission or an Administrative Law Judge. N.J.A.C. 7:50-4.40 through 4.42.

Pinelands Villages and Pinelands Towns; (7) Regional Growth Areas; and (8) Military and Federal Installation Areas. N.J.A.C. 7:50-5.12(a)(1)-(8).

“Forest Areas” are described as undisturbed, forested portions that support characteristic Pinelands plant and animal species and provide suitable habitat for many threatened and endangered species. N.J.A.C. 7:50-5.13(c). These largely undeveloped areas are an essential element of the Pinelands environment, contain high quality water resources and wetlands, and are very sensitive to random and uncontrolled development. Ibid. More specifically, resource extraction, as proposed here, is not a permitted use in the Forest Area. N.J.A.C. 7:50-5.23(b)(2). Permitted uses in the Forest Area include the construction of certain residential dwelling units, agriculture, forestry and certain low intensity recreational uses. N.J.A.C. 7:50-5.23(a).

In contrast, “Rural Development Areas” are “slightly modified and may be suitable for limited future development in strict adherence to the environmental performance standards of N.J.A.C. 7:50-6” and “represent a balance of environmental and development values that is intermediate between the pristine Forest Areas and existing growth areas.” N.J.A.C. 7:50-5.13(e). The resource extraction operation proposed by Petitioner is a conditionally permitted use in the Rural Development Area. N.J.A.C. 7:50-5.26.

Land Capability Map

The boundaries of these management areas are set forth in a Land Capability Map that is expressly made part of the CMP. N.J.A.C. 7:50-5.3; N.J.A.C. 7:50-5.11(a). The Commission is empowered to change the “boundaries of the management areas” within the Land Capability Map after certification of a local government ordinance that modifies the management areas. N.J.A.C. 7:50-5.11(a).

THE INITIAL DECISION

In granting summary decision in favor of the Commission, the ALJ made the following findings of fact, all of which are supported by competent evidence in the record and adopted by the Commission in full.

Findings of Fact

Petitioner is the owner certain real property within the Pinelands known as Block 19201, Lot 1 (formerly Block 32.01, Lot 13) in Jackson (Property). The Commission certified Jackson's master plan and land use ordinances on July 8, 1983.

In 2003, the Commission formed the Toms River Corridor Task Force (TRC Task Force) to identify permanent land-protection opportunities in the corridor. In 2004, the TRC Task Force issued a Regional Natural Resource Protection Plan (Resource Protection Plan), which recommended, in relevant part, the re-designation of large portions of Jackson's Rural Development Area, RD-9, to Forest Area, FA-2. The Property was located in the area recommended for re-designation to the Forest Area.

The Commission endorsed the Resource Protection Plan through the passage of PC4-04-22 and directed its Executive Director to work with Jackson to implement the recommendations. In a coordinated effort to implement the recommendations of the TRC Task Force, on November 8, 2004, Jackson passed Ordinance 40-04 adopting a revised zoning map and submitted the ordinance to the Commission for review and certification. After a public hearing, the Commission identified certain errors and omissions in the revised zoning map adopted by Ordinance 40-04 that deviated from the TRC Task Force recommendations. Among these errors was the inadvertent failure to include the Property in the area to be rezoned from Rural Development Area to Forest Area. The Commission requested changes to the ordinance.

To remedy these errors, on February 14, 2005, Jackson adopted Ordinance 06-05 which stated that “Block 32.01, Lot 13 [the Property] was recommended in the Toms River Corridor study for inclusion in the FA-2 forest area zoning district” and was “left in the RD-9 rural development district [in Ordinance 40-04], but will be changed consistent with the Toms River Corridor study recommendations.” On April 15, 2005, after a duly noticed public hearing, the Commission certified Ordinance 06-05 via Resolution PC4-05-22. While not set forth in the Initial Decision, the record reveals that an attorney for Petitioner’s interest in the Property, David C. Sickel was present at the hearing and gave testimony on his behalf.

After certification of Ordinance 06-05, the Commission adjusted the boundaries of the Land Capability Map to, in relevant part, include the Property in the Forest Area. The Commission adds that based on these findings of fact, as of April 2005, the Property was zoned as Forest Area in both the CMP and Jackson’s municipal ordinance.

In 2005, Sickel filed an action against Jackson in Superior Court challenging the validity and effectiveness of Ordinance 06-05 to rezone the Property from Rural Development Area to Forest Area. The Commission was not a party to the action. In a May 23, 2007 letter opinion in Sickel v. Township of Jackson, Docket No. OCN-L-1029-05, the Honorable Vincent J. Grasso, P.J. Ch., concluded:

[P]laintiff’s 97 acre parcel, which was recommended for inclusion in the FA-2 zone, was never specifically discussed or considered at the Township level [and] Plaintiff never received notice or was afforded an opportunity to be heard on the re-zoning of its property. . . .

The court does not reach nor need to address the issue of the merits of the Township’s decision to re-zone Plaintiff’s 97 acre parcel from the RD-9 zone to the FA-2 zone. . . . The court’s finding in this case is limited to procedural considerations. The omission of Plaintiff’s property, through an inadvertent mapping error or otherwise, prior to the adoption of Ordinance #06-05 did not afford the Township or its Planning Board the opportunity to evaluate the merits of re-zoning

Plaintiff's property.

By June 1, 2007 order, Judge Grasso ruled that "Ordinance 06-05 is procedurally defective as it applies to [the Property] and is thus ineffective in its attempt to rezone [the Property] from the RD-9 District to the FA-2 District." The court then remanded the matter to Jackson "to determine whether to rezone Block 32.01, Lot 13 pursuant to Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq." and for further action including notifying any interested party "in the event [Jackson] undertakes to rezone Block 32.01, Lot 13." The Commission adds that the court's opinion did not address implications of its decision on the designation of the Property under the CMP.

The Commission further adds that, despite the court's direction, Jackson took no immediate action to readopt Ordinance 06-05 nor did it revise its local zoning map to rezone the Property from the Forest Area to Rural Development Area. The Commission also notes that it was not until June 28, 2013 that Jackson passed Ordinance 14-13 to readopt Ordinance 06-05. As ALJ correctly found, however, in the interim, Jackson passed, and the Commission certified, subsequent rezoning ordinances (Ordinance 07-06, 02-11) that included maps depicting the Property within the Forest Area and but did not propose to modify its zoning.

In 2009, before Jackson took action to readopt Ordinance 06-05, Petitioner filed with the Commission a copy of its application to Jackson for the establishment of a new resource extraction operation on the Property. On June 8, 2009, the Commission issued a Certificate of Filing pursuant to N.J.A.C. 7:50-4.34, advising Petitioner that it had recently certified Jackson's Ordinance 07-06 showing that the Property was located within the Forest Area and that the proposed operation was not a permitted use under N.J.A.C. 7:50-5.23(b)(2).

On May 9, 2011, Petitioner submitted an application for preliminary major site plan approval for a resource extraction operation on the Property to Jackson's Planning Board. On June 22, 2011,

the Planning Board's engineer determined that the application was incomplete because the Property was located in the Forest Area. On January 10, 2012, Jackson's zoning officer, Jeffrey Purpuro, sent Petitioner "the 'final' determination, as it pertains to how Jackson Township recognizes the subject property." According to Purpuro,

[a]s Zoning Officer of Jackson Township, my only tool to determine if a particular lot is compliant to the zone [in] which it is located, is the currently adopted zoning map. And as the current zoning map shows the subject property as FA-6, that shall be how this lot is viewed. . . .

If you wish to appeal this decision, you may apply for Use Variance approval from the Board of Adjustment, seek an Interpretation from the Board of Adjustment, or, as the interpretation of a zoning ordinance is a legal matter, apply directly to the Superior Court.

In response, Petitioner sought an interpretation from Jackson's Zoning Board of Adjustment.

On July 18, 2012, the Zoning Board of Adjustment adopted a resolution finding that the Property was located in the RD-9 zone. According to the resolution:

As of May 23, 2007, the property was zoned RD-9, and the next ordinance that changed any zone was Ordinance 02-11, only affecting non-Pinelands areas; there was no ordinance between May 23, 2007 and the date of the interpretation affecting this property. The Board recognized [that] while Pinelands mapping may show that this lot [is] in the FA-2 zone, there is no ordinance enabling the map. Absent an ordinance that adopts the map that is then approved by the Pinelands [Commission], the last official act related to the property was Judge Grasso's decision.

Based on the finding of the Zoning Board of Adjustment, on October 1, 2012, Jackson issued the Preliminary Approval. According to the Board's resolution, "the Board notes that although the zoning on the property previously has been recommended for rezoning, the Township's Zoning Board of Adjustment . . . determined that proposed changes do not apply to the subject property and therefore it is located within the RD-9 zoning district." The approval was conditioned, however, on the receipt of "a no call up letter from the Pinelands Commission."

On October 8, 2012, the Commission was notified of the Preliminary Approval. On October 25, 2012, the Executive Director called-up the Preliminary Approval, notifying Petitioner that it raised substantial issues with respect to conformance with the minimum standards of the CMP, including, in relevant part, “[w]hether the proposed resource extraction operation is a permitted use in a Forest Area pursuant to Jackson Township’s certified land use ordinances and N.J.A.C. 7:50-5.23.”

On September 23, 2013, Petitioner requested an administrative hearing before OAL. The issue to be determined was if the Executive Director correctly determined that the Preliminary Approval raises a substantial issue with respect to “[w]hether the proposed resource extraction operation is a permitted use in a Forest Area pursuant to Jackson Township’s certified land use ordinances and N.J.A.C. 7:50-5.23.”

On June 22, 2015, Petitioner filed a motion for summary decision. Petitioner argued that Jackson’s preliminary approval of the company’s site plan should be approved because Judge Grasso’s order invalidated and rendered null and void Ordinance 06-05 with respect to the Property, and, as a result, the Property was never effectively rezoned from the Rural Development Area to the Forest Area.

On July 24, 2015, the Commission filed a cross-motion for summary decision arguing that “the Commission acted fully in accordance with its regulations, set forth in the CMP, in amending the boundaries of its management areas on its Land Capability Map through its certification of Jackson Ordinance 06-05, in considering [Petitioner’s] property to be part of the Forest Area, and in issuing a Call Up Letter to review Jackson Township’s preliminary site plan approval of Petitioner’s mining application.”

Oral argument was heard on October 26, 2015. On November 20, 2105, the ALJ granted summary decision in favor of the Commission and denied Petitioner's motion for summary decision.

Conclusions of Law

The ALJ determined that summary decision may be granted only "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). ALJ further held that there are no genuine issues of material fact that the Commission is entitled to summary decision and that Petitioner's motion for summary decision should be denied.

In her decision, the ALJ found that Petitioner's "proposed resource extraction operation does not conform to the minimum standards of the [CMP] and the provisions of Ordinance 06-05, which is the relevant certified local ordinance." The ALJ further found that "as a result of the Commission's certification of Ordinance 06-05 and revision of the Land Capability Map to include the Property in a Forest Area, the Property is located in a Forest Area, and resource extraction is not a permitted use in Forest Areas ... [u]ntil (1) pursuant to N.J.A.C. 7:50-3 and N.J.A.C. 7:50-5.11(a) Jackson submits for certification by the Commission an ordinance that rezones the Property from FA-2 and the Commission grants certification and revises the Land Capability Map to include the Property in a management area in which resource extraction is permitted, or (2) pursuant to N.J.A.C. 7:50-7 the Commission amends the Land Capability Map to change the management area in which the Property is located, the Property is located in a Forest Area in which resource extraction is not allowed under the [CMP]."

The ALJ reasoned that the Ordinance 06-05 was properly deemed the "relevant certified local ordinance" in a review of the preliminary approval because, under N.J.A.C. 7:50-3.45, Jackson

submitted Ordinance 06-05 for the Commission's review, and Ordinance 06-05, which rezoned the Property to the Forest Area, became effective upon certification by the Commission in 2005 and, in accordance with N.J.A.C. 7:50-5.11(a), the Commission revised the Land Capability Map to include the Property in a Forest Area. The ALJ then concluded that because the Property is located in a Forest Area, the Preliminary Approval does not conform to the minimum standards of the CMP or the provisions of Ordinance 06-05 because, under N.J.A.C. 7:50-5.23(b)(2), resource extraction is not a permitted use in the Forest Area.

The ALJ rejected Petitioner's arguments, finding that Judge Grasso's 2007 order does not alter the conclusion that, the Property is located in a Forest Area because the Legislature has given the Commission primary responsibility for planning in the Pinelands and, in requiring Jackson to amend Ordinance 40-04, the Commission clearly determined that the Property properly belonged in a Forest Area. Further, the ALJ noted that the Commission certified Ordinance 06-05, modified the Land Capability Map and has not subsequently certified another local ordinance or further amended the Land Capability Map to remove the Property from the Forest Area. The ALJ therefore found that, despite Judge Grasso's order, Ordinance 06-05 remains the relevant certified ordinance for purposes of the PPA and the CMP. The ALJ noted that the Commission was not a party to the action on which Judge Grasso's order was based, and stated that a finding that Judge Grasso's order guides a review of Jackson's preliminary approval would run contrary to the Legislature's intent to place ultimate authority for planning in the Pinelands with the Commission.

Finally, the ALJ correctly commented that the Commission possesses only two avenues under the CMP by which Ordinance 06-05 would no longer be the relevant certified local ordinance and the Property could be moved to a management area in which resource extraction is allowed: (1)

the certification process under N.J.A.C. 7:50-3; or (2) the amendment procedures under N.J.A.C. 7:50-7.1 to 7.11.

EXCEPTIONS

Petitioner filed exceptions to the Initial Decision on January 12, 2016. Petitioner's exceptions primarily reiterate the arguments made in its motion for summary decision and therefore considered and rejected by the ALJ in the Initial Decision. Framed as exceptions, Petitioner again claims that the ALJ: (1) failed to properly find that the June 8, 2009 COF indicated that the issue of non-conformance with the CMP was "potentially resolvable by providing a determination from an appropriate municipal official which confirms the [Commission's] certified municipal zoning;" (2) failed to find that despite the fact that Ordinance 06-05 had been invalidated by the court, Jackson neglected to amend the zoning map to show that Ordinance 06-05 was no longer valid; (3) failed to conclude that the Land Capability Map should not have been revised since Ordinance 06-05 was defective; (4) failed to find that adherence to the certification process under N.J.A.C. 7:50-3; or the amendment procedures under N.J.A.C. 7:50-7.1 to 7.11 as the only methods to amend the Land Capability Map would result in a violation of the Municipal Land Use Law, N.J.S.A. 40:55D-90(b) (MLUL) in this instance by creating a de facto moratorium on development; and (5) failed to find that Judge Grasso's opinion changed the zoning of the Property under the CMP.

The Commission's response, dated January 28, 2016, disputed each of Petitioner's exceptions. Specifically, the Commission argued that: (1) while the ALJ may have omitted the language quoted by Petitioner from the COF, the COF is not a final determination under N.J.A.C. 7:50-4.34 and, in any event, the Commission properly relied upon the Property designation in the CMP and that the Commission is not permitted to defer to Jackson's interpretation of its zoning ordinances where it is inconsistent with the CMP; (2) while the ALJ did properly find that Jackson

had not amended its zoning maps after Judge Grasso's decision, such an amendment is irrelevant as the Commission properly relied upon the Land Capability Map which was not modified by Judge Grasso's decision; (3) the Commission complied with N.J.A.C. 7:50-5.11 by certifying Ordinance 06-05 and subsequently amending the Land Capability Map, none of which was affected by Judge Grasso's subsequent invalidation of Ordinance 06-05; (4) any claim of inconsistency with the MLUL is misplaced because the PPA, and therefore the CMP, supersedes and that certain development would still be allowed in the Forest Area under Jackson's code; (5) the Commission was not a party to the Sickle litigation and it therefore could not have affected an indispensable party under R. 4:28-1 and that the issue is not how Petitioner's party is designated under Jackson's ordinances but rather its designation on the Land Capability Map.

DISCUSSION

The Commission adopts the Initial Decision in full, providing only the following to supplement the ALJ's conclusions.

We find that there is no dispute as to the intent of both Jackson and the Commission in the adoption and certification of Ordinance 06-05 to include the Property in the Forest Area. This is clearly evidenced by the Commission's passage of PC4-04-22 directing its Executive Director to work with Jackson to implement the recommendations of the TRC Task Force, Jackson's passage of Ordinance 40-04 adopting a revised zoning map, the Commission's identification of the inadvertent failure to include the Property in the area to the rezoned from Rural Development Area to Forest Area and Jackson's adoption of Ordinance 06-05 which stated that "Block 32.01, Lot 13 [the Property] was recommended in the Toms River Corridor study for inclusion in the FA-2 forest area zoning district" and was "left in the RD-9 rural development district [in Ordinance 40-04], but will be changed consistent with the Toms River Corridor study recommendations." This intent is only

further evidenced by Jackson's submission for certification to the Commission of Ordinance 07-06 and Ordinance 02-11, which while not seeking to change designation of the Property both depicted the Property within the Forest Area.

We concur with the ALJ that the parties properly undertook the certification process under N.J.A.C. 7:50-3 to change the designation of the Property from the Rural Development Area to the Forest Area.³ We find, however, that Executive Director's determination is governed solely by CMP and not, as the ALJ states "the relevant certified local ordinance." We find it necessary to determine which local ordinance is currently operative in Jackson with regard to the Property because of Judge Grasso's opinion. Because the CMP is the controlling regulatory mechanism, once the Land Capability Map was modified the Executive Director is required to apply the standards contained therein, regardless of whether an inconsistent municipal ordinance exists. See N.J.S.A. 13:18A-10; N.J.S.A. 13:18A-27; N.J.A.C. 7:50-1.4.

This conclusion is the same where, as here, the local ordinance and the Land Capability Map were modified concurrently. While the Land Capability Map – and therefore the CMP – can be modified in conjunction with a local ordinance, modification of the CMP and the local ordinance are properly understood as separate processes. Therefore, modification to one does not result in an automatic change in the other. As the ALJ correctly determined, once the Land Capability Map was modified it could only be further modified by either the certification process under N.J.A.C. 7:50-3 or the amendment procedures under N.J.A.C. 7:50-7.1 to 7.11. Neither of which occurred here.

Accordingly, while we do not dispute that Judge Grasso's opinion invalidated Ordinance 06-05 inasmuch as it sought to change the zoning of the Property in the local ordinance, we also find that the Commission was not a party to that litigation and that Judge Grasso's opinion did invalidate

³ The Commission would have also been within its power to make the same changes to the Land Capability Map through rulemaking and, if so, Jackson would have had to act to bring its ordinances into compliance with any newly adopted standards in the CMP. N.J.A.C. 7:50-7.1 to 7.11.

the Commission's changes to the Land Capability Map. As the ALJ correctly determined, even if, as Petitioner argues, the 1983 Ordinance was, in effect, "revived" as to the Property upon invalidation of Ordinance 06-05, its revival could not amend the Land Capability Map. We further find, however, that the invalidation of Ordinance 06-05 placed Jackson out of compliance with the CMP because Jackson no longer had an ordinance consistent with the duly modified Land Capability Map. It was therefore incumbent upon Jackson to take the necessary steps to correct its non-compliance by either passing an ordinance readopting Ordinance 06-05 or seeking Commission certification of an ordinance adjusting the zoning designation for the Property. Jackson took no such steps. While this consistency created confusion, it did not and cannot not relieve the Executive Director of her duty to comply with the minimum standards of the CMP in the face of an inconsistent municipal ordinance.

We therefore conclude that, as the CMP contains the controlling land use standards for the Property and any inconsistent municipal ordinance does not affect the Executive Director's determination. It only places Jackson out of compliance with the CMP. As the Property is within the Forest Area in the Land Capability Map where the resource extraction operation authorized in the Preliminary Approval is not a permitted use, we concur with the ALJ that the Executive Director correctly determined the Preliminary Approval does not conform to the minimum standards of the CMP. See N.J.S.A. 13:18A-10, -27; N.J.A.C. 7:50-1.4, 2.1, -2.2; Fine, 190 N.J. Super. 432.

Further, Petitioner's exceptions, which merely repeat arguments made in its motion for summary decision and rejected by the ALJ, do not establish a basis to reject the Initial Decision. Petitioner first claims that the ALJ omitted a factual finding that the COF stated that the issue of CMP inconsistency could be potentially resolvable by providing a determination from an appropriate municipal official that confirms the Commission's certified municipal zoning. Petitioner claims that the omission of this fact is critical because the Commission did not accept by the Zoning Board of

Adjustment's resolution finding that the Property was zoned Rural Development. We disagree. First, as noted in our response to Petitioner's exceptions, the COF is not a final determination and does not bind the Commission. N.J.A.C. 7:50-4.34. Additionally, the statement in the COF that any municipal official's determination must "confirm the [Commission's] certified municipal zoning" cannot imply that Commission will be bound by a municipal official's determination if it is, as it was here, contrary to the CMP. See N.J.S.A. 13:18A-10, -27; N.J.A.C. 7:50-1.4, 2.1, -2.2; Fine, 190 N.J. Super. 432.

Petitioner also claims that the Initial Decision omits the fact that Jackson did not amend its zoning map to reflect the invalidation of Ordinance 06-05. We do not believe this fact to be either in dispute or relevant. As stated above, upon invalidation of Ordinance 06-05, Jackson was out of compliance with the CMP and took no corrective measures. The CMP contained the controlling standards and modification of the zoning map would not have resulted in a change to those standards. See N.J.S.A. 13:18A-10, -27; N.J.A.C. 7:50-1.4, 2.1, -2.2; Fine, 190 N.J. Super. 432.

Petitioner takes further exception with the ALJ's conclusion that the Commission properly relied on Ordinance 06-05 as the relevant certified local ordinance. While, we do not believe the terms of the local ordinance to be controlling, the arguments advanced by Petitioner repeat those raised and properly rejected by the ALJ and therefore do not require full discussion. We note, however, that Petitioner's claims that the CMP's certification process violates the rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the holding in Dragon v. NJDEP, 405 N.J. Super. 478 (App. Div. 2009) to be meritless. With regard to the former argument, the Commission possesses all powers necessary to implement the purposes of the PPA. N.J.S.A. 13:18A-4. Primary among these purposes is the need to ensure consistency between local ordinances and the terms of the CMP and the PPA. N.J.S.A. 13:18A-10. Therefore, it was well

within the Commission's powers to adopt the certification procedure set forth at N.J.A.C. 7:50-3. Further, as noted in the Commission's response to exception, the certification procedure was duly and amended in accordance with the PPA including public hearings, consultation with local, State and federal agencies and submittal to the Governor, Legislature and Secretary of the Interior. See N.J.S.A. 13:18A-8, -10; 33 N.J.R. 1095(a).

Additionally, Dragon held that the New Jersey Department of Environmental Protection could not waive substantive regulatory requirements through a settlement agreement. See Dragon v. NJDEP, 405 N.J. Super. 478. The Commission has not waived any substantive regulatory requirement here. In contrast, the Commission has followed the certification procedure under N.J.A.C. 7:50-3 and now is requiring compliance with the Land Capability Map, and therefore the CMP by calling-up the Preliminary Approval. The Commission's strict compliance with its regulations does not place it in violation of the court's ruling in Dragon. Indeed, the outcome sought by Petitioner, whereby the Commission would ignore the Land Capability Map and allow the Preliminary Approval to go into effect would result in the exact outcome prohibited by Dragon.

Petitioner also takes exception to the ALJ's finding that the Land Capability Map can only be changed via the certification or amendment processes. As discussed above, the Commission agrees with the ALJ's determination. Petitioner raises only ancillary issues regarding whether the inconsistency between a local ordinance and the CMP would create an impermissible moratorium on development under the MLUL. While it is not necessary to reach that issue here nor is Jackson's compliance with the MLUL at issue, even assuming for the sake of argument that the Petitioner's argument is valid, the Commission would still be justified in rejecting the Township's approval here as the CMP controls over the provisions of the MLUL. See N.J.S.A. 13:18A-10, -27; Uncle v. N.J. Pinelands Comm'n, 275 N.J. Super. 82, 90 (App. Div. 1994). Moreover, while the type of

development proposed by Petitioner may be precluded by the CMP, under both Jackson's municipal code and the CMP various other types of development would be allowed on the Property. N.J.A.C. 7:50-5-23(a) (allowing construction of certain residential dwelling units, agriculture, forestry and certain low intensity recreational uses in the Forest Area).

Lastly, Petitioner claims that the ALJ erred in finding that Judge Grasso's opinion did not alter the CMP. For all the reasons stated herein, we find that the ALJ made the correct determination in this regard. Petitioner's arguments incorrectly focus on the Executive Director's determination vis-à-vis the municipal ordinances as opposed to the CMP. But the CMP that controls and the Executive Director must determine compliance with the CMP, not an inconsistent municipal ordinance. Where an ordinance and the CMP are at odds, the ordinance must change, not the CMP. This matter is not, as Petitioner argues, analogous to a situation where a regulation is based on a subsequently invalidated statute because, unlike the relationship between a regulation and its enabling statute, a municipal ordinance must conform with the CMP as the CMP controls. Ordinance 06-05 did not enable the modifications of the Land Capability Map as argued by Petitioner. The adoption of Ordinance 06-05 and the modification of the Land Capability Map may have occurred in tandem here but that process is designed to ensure consistency with the CMP, not to allow an ordinance to control. Indeed, the certification process is designed to allow for changes to both the CMP and the municipal ordinances but at all times, those changes must meet the CMP's minimum standards. See N.J.S.A. 13:18A-10, -27; N.J.A.C. 7:50-1.4, 2.1, -2.2; Fine, 190 N.J. Super. 432.

CONCLUSION

For all the reasons set forth here and therein, The Commission **ADOPTS** the Initial Decision granting the Commission's motion for summary decision and denying Petitioner's motion for summary decision. The Executive Director's determination to call-up the Preliminary Approval

pursuant to N.J.A.C. 7:50-4.37 because the proposed development raised substantial issues with respect to conformance with the minimum standards of the CMP is correct.

SO ORDERED.



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-16- 10

TITLE: Approving With Conditions Applications for Public Development (Application Numbers 1981-0837.028, 1983-5837.059 & 1991-0820.103)

Commissioner Avery moves and Commissioner Mc Glinchey 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 applications for Public Development be approved with conditions:

1981-0837.028
Applicant: The Cape May County Municipal Utilities Authority (Clean Energy)
Municipality: Borough of Woodbine
Management Area: Pinelands Town
Date of Report: February 22, 2016
Proposed Development: Construction of a compressed natural gas fueling facility;

1983-5837.059
Applicant: South Jersey Transportation Authority
Municipality: Egg Harbor Township
Galloway Township
Management Area: Pinelands Military/Federal Installation Area
Date of Report: February 19, 2016
Proposed Development: 15 feet of widening to an existing aircraft taxiway at the Atlantic City International Airport; and

1991-0820.103
Applicant: North Hanover Township School District
Municipality: North Hanover Township
Management Area: Pinelands Military/Federal Installation Area
Date of Report: February 22, 2016
Proposed Development: Demolition of three schools, 50 years old or older and the construction of a 134,506 square foot school.

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

WHEREAS, the Pinelands Commission hereby adopts the Conclusion of the Executive Director for each of the proposed developments; and

WHEREAS, the Pinelands Commission hereby determines that each of the proposed public developments conform 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.

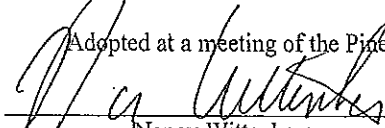
NOW, THEREFORE BE IT RESOLVED that Application Numbers 1981-0837.028, 1983-5837.059 & 1991-0820.103 for public development are hereby approved subject to the conditions recommended by the Executive Director.

Record of Commission Votes

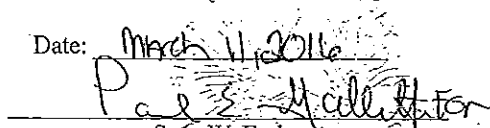
AYE NAY NP A/R*				AYE NAY NP A/R*				AYE NAY NP A/R*			
Ashmun	X			DiBello	X			McGlinchey	X		
Avery	X			Galletta	X			Prickett	X		
Barr	X			Jannarone	X			Quinn	X		
Brown	X			Lloyd	X			Rohan Green	X		
Chila	X			Lohbauer	X			Earlen			X

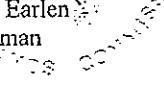
* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission


 Nancy Wittenberg
 Executive Director

Date: March 11, 2016


 Sean W. Earlen
 Chairman





State of New Jersey
 THE PINELANDS COMMISSION
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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

February 22, 2016

Troy Paionk
 Clean Energy
 4675 MacArthur Court, Suite 800
 Newport Beach, CA 92660

Re: Application # 1981-0837.028
 Block 123, Lot 1
 Borough of Woodbine

Dear Mr. Paionk:

The Commission staff has completed its review of this application for construction of a compressed natural gas vehicle fueling facility. 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 March 11, 2016 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
 7/20/2015 Public Comment Letter
 2/9/16 Public Comment Letter
- c: Secretary, Borough of Woodbine Planning Board (via email)
 Borough of Woodbine Construction Code Official (via email)
 Secretary, Cape May County Planning Board (via email)
 Keith Davis, Esq.
 Ken McNeeley
 Mayor William Pikolycky





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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

PUBLIC DEVELOPMENT APPLICATION REPORT

February 22, 2016

Troy Paionk
 Clean Energy
 4675 MacArthur Court, Suite 800
 Newport Beach, CA 92660

Application No.: 1981-0837.028

Location: Block 123, Lot 1
 Borough of Woodbine

This application proposes construction of a compressed natural gas vehicle fueling facility located on a 0.61 acre portion of the above referenced 219 acre lot in the Borough of Woodbine. The Cape May County Landfill is located on the lot. The proposed fueling facility will be serviced by an existing natural gas main located within the Dennisville-Petersburg road right-of-way.

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. 7:50-5.27(a))

The proposed development is located in the Pinelands Town of Woodbine. The proposed development is a permitted land use in a Pinelands Town.

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

The proposed development will be located within a wooded area. The proposed development will disturb approximately 0.61 acres of wooded lands. The proposed clearing and soil disturbance is limited to that which is necessary to accommodate the proposed development.

The Landscaping and Revegetation guidelines of the CMP recommend the use of grasses that are tolerant of droughty, nutrient poor conditions. To stabilize disturbed areas, the applicant proposes to utilize grass species which meet that recommendation.

Threatened and Endangered Species Standards (N.J.A.C. 7:50-6.33)

On May 22, 2009, the Commission approved an application for a 74 acre expansion of the existing Cape May County Landfill (App. No. 1981-0837.024). To avoid irreversible adverse impacts on habitat critical to the survival of a local population of Red-headed woodpeckers located on the lot, the Cape May County Municipal Utilities Authority (CMCMUA) deed restricted eleven acres of critical Red-headed woodpecker habitat on the lot. The deed restriction prohibits future development or disturbance of the concerned eleven acres.

A disagreement exists between the CMCMUA staff and the Commission staff regarding whether a 200 foot wide undisturbed wooded habitat area (“additional habitat”) around the perimeter of the eastern portion of the lot was also required to be protected for Red-headed woodpecker habitat as part of the Commission’s approval of App. No. 1981-0837.024. The 200 foot wide additional habitat area contains approximately 35 acres.

The proposed natural gas fueling station will disturbed 0.61 acres within the 200 foot wide additional habitat area. It is the Commission staff’s position that the 200 foot wide additional habitat area was required to be protected. It is the CMCMUA staff’s position that the 200 foot wide additional habitat area was not required to be protected.

The CMCMUA is proposing to preserve certain other Red-headed woodpecker habitat on the parcel to offset for the development proposed in the current application within the 200 foot wide additional habitat area. It is clearly understood by both the CMCMUA staff and the Commission staff that the CMCMUA proposal to offset the concerned Red-headed woodpecker habitat is not an admission or agreement by either the CMCMUA or the Pinelands Commission as to the respective positions of either agency regarding the need to protect the 200 foot wide additional habitat area. Any future application to the Commission proposing to disturb the 200 foot wide additional habitat area must resolve this issue.

To offset for the loss of 0.61 acres of additional habitat area, the applicant proposes to increase the width of wooded areas previously proposed for protection along both sides of an existing utility corridor on the lot. Specifically, the applicant proposes to protect an additional 0.62 acres of wooded land located along both sides of the existing utility corridor. The utility corridor is located in proximity to both the deed restricted eleven acres and the 200 foot additional habitat area. During the threatened and endangered species study for App. No. 1981-0837.024, Red-headed woodpeckers were observed utilizing the concerned utility corridor.

The applicant has demonstrated that the proposed development is consistent with the CMP threatened and endangered species protection standards.

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 stormwater management standards contained in the CMP. To meet the stormwater management standards, the applicant will be constructing three stormwater infiltration basins.

PUBLIC COMMENT

The applicant has provided the requisite public notices. Notice to required land owners within 200 feet of the above referenced lot was completed on July 10, 2015. Newspaper public notice was completed on

July 9, 2015. The application was designated as complete on the Commission's website on January 11, 2016. The Commission's public comment period closed on February 12, 2016. The Commission received two written public comments (enclosed) regarding this application.

Public Comment One: The first public commenter expressed concern over the danger that the proposed fueling facility may pose.

Staff Response: The staff appreciates the concern of the commenter. The Pinelands Comprehensive Management Plan does not contain regulations that address the commenter's concern. The Commission staff encourages the commenter to attend any necessary municipal site plan approval public hearing to express their concerns.

Public Comment Two: The second public commenter expressed their support for the project and that the proposed development is complimentary to the CMP.

Staff Response: The staff appreciates the commenter's interest in the Pinelands and agrees that the proposed development is consistent with the standards of the CMP.

CONDITIONS

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of nine sheets, prepared by GreenBergFarrow and dated as follows:
 Sheets 1 & 3-9 - February 12, 2014; revised to November 30, 2015
 Sheet 2 - July 18, 2014
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.

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.



Chris Christie
Governor

Kim Guadagno
Lt. Governor

State of New Jersey

THE PINELANDS COMMISSION

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



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 by the 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 within eighteen days of the date of the Executive Director's determination and 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.

BOROUGH OF WOODBINE

Mayor's Office

*Municipal Building
501 Washington Avenue
Woodbine, NJ 08270
(609) 861-2153*

Fax: (609) 861-2529

<http://www.boroughofwoodbine.net>

*William Pikolycky
Mayor*

*Lisa Garrison
Clerk*

February 09, 2016

Pinelands Commission
15 Springfield Road
New Lisbon, NJ 08064

RE: Application# 1981-0837.028 - Clean Energy

Dear Pinelands Commission Members:

As Mayor of the Borough of Woodbine, I am writing in support of this Clean Energy project. As you know, the Borough under my administration has had a history of supporting and encouraging the development of alternate fuel technologies within the strict requirements of the New Jersey Pinelands Commission. An opportunity has been presented to the Borough and the Pinelands Commission involving the development of a Compressed Natural Gas ("CNG") Fueling Station ("Station") to be located in the Borough on County Route 610 on property owned by the Cape May County Municipal Utilities Authority ("CMCMUA").

Since its inception, I have been discussing this project to locate a station, which would be the first such CNG station in the County of Cape May, in Woodbine with both the Cape May County Municipal Utilities Authority and the members of the Pinelands Commission staff. The proposed station would be adjacent to the CMCMUA Landfill, for which Woodbine is a host community.

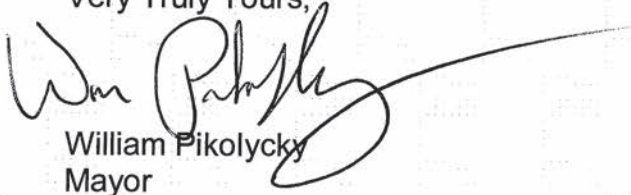
The Borough, as well as the CMCMUA, believes that this proposed CNG Station will be beneficial to both the Borough and to the County as a whole by providing an additional service to existing businesses and attracting additional customers and businesses through an environmentally positive means. By working closely with the New Jersey Pinelands Commission the Borough has ensured that opportunities for growth and development in the Borough are complimentary to the Pinelands Comprehensive Management Plan.

In addition to the potential economic benefits to the Borough and to Cape May County, there is environmental benefit to encouraging the use of cleaner burning vehicle fuels. The U.S. Department of Energy asserts that because of its lower carbon content, CNG is the cleanest burning transportation fuel on the market today. CNG produces the fewest emissions of all other fuels and emits significantly less Greenhouse Gas contributing pollutants as compared to other petroleum based fuels. Almost all existing solid waste hauling vehicles in Cape May County burn diesel fuel. It is anticipated that many entities, public and private, will begin switching over their fleets to CNG once the fuel source is locally available; thereby contributing to improvements in local air quality, reducing the global impact of Greenhouse Gas Emissions, and contributing to the success of the Borough and County's economies.

However, delays in starting construction are threatening to make this project cost-prohibitive and further such delays could promise the integrity of the project, especially in light of changes in the economic landscape affecting and driving fuel-pricing.

The Borough believes that the CMCMUA and the Applicant Clean Energy have been cooperative in adjusting their site design to meet the requirements and requests of Pinelands staff and as such the Borough of Woodbine supports this project and would respectively encourage the Pinelands Commission to issue all necessary approvals without placing additional restrictions on the use of the site for either the Applicant or the CMCMUA.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'William Pikolycky', with a long horizontal flourish extending to the right.

William Pikolycky
Mayor

Cc: CMCMUA
Clean Energy

AppInfo - application No.1981-0837.028

From: <kmcneeley1@verizon.net>
To: <appinfo@njpines.state.nj.us>
Date: 7/20/2015 1:05 PM
Subject: application No.1981-0837.028

I have a concern about what dangers are being posed to owners at 1324 Freidriechstadt Road 08270. I would like to know the findings.

Thank you
Ken McNeeley
PO Box 74
Woodbine, NJ 08270



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

Sean W. Earlen
 Chairman

Nancy Wittenberg
 Executive Director

February 19, 2016

Stephen Mazur
 South Jersey Transportation Authority
 P.O. Box 351
 Hammonton, NJ 08037

Re: Application # 1983-5837.059
 Block 516, Lot 13.01
 Galloway Township
 Block 101, Lot 9
 Egg Harbor Township

Dear Mr. Mazur:

The Commission staff has completed its review of this application for 15 feet of widening to an existing aircraft taxiway at the Atlantic City International Airport. 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 March 11, 2016 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. Honder, P.P.
 Director of Regulatory Programs

- Enc: Appeal Procedure
 c: Secretary, Egg Harbor Township Planning Board (via email)
 Egg Harbor Township Construction Code Official (via email)
 Egg Harbor Township Environmental Commission (via email)
 Secretary, Galloway Township Planning Board (via email)
 Galloway Township Construction Code Official (via email)
 Galloway Township Environmental Commission (via email)
 Atlantic County Department of Regional Planning and Development (via email)
 Amy S. Greene





State of New Jersey
 THE PINELANDS COMMISSION
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Chris Christie
 Governor

Kim Guadagno
 Lt. Governor

General Information: Info@njpines.state.nj.us
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Sean W. Earlen
 Chairman

Nancy Wittenberg
 Executive Director

PUBLIC DEVELOPMENT APPLICATION REPORT

February 19, 2016

Stephen Mazur
 South Jersey Transportation Authority
 P.O. Box 351
 Hammonton, NJ 08037

Application No.: 1983-5837.059

Location: Block 516, Lot 13.01
 Galloway Township
 Block 101, Lot 9
 Egg Harbor Township

This application proposes 15 feet of widening to an existing aircraft taxiway at the Atlantic City International Airport located on the above referenced 3,212.16 acre parcel in Galloway and Egg Harbor Townships.

This application proposes to widen 5,450 linear feet of "Taxiway A" by 7.5 feet on each side of the existing taxiway to conform to current Federal Aviation Authority standards. In addition, an abandoned 324 foot long taxiway identified as "Taxiway F" will be reduced in paved width from 50 feet to 25 feet and utilized as an emergency vehicle route.

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. 7:50-5.29(a))

The project is located in a Pinelands Military and Federal Installation Area. The proposed development will be located in the Pinelands Protection Area. No development is proposed in the Preservation Area District or a Pinelands Forest Area. The proposed development is a permitted land use in a Pinelands Military and Federal Installation Area.

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

There are wetlands located on the above referenced parcel. An approximately 600 linear foot section of the proposed paved taxiway will be located 7.5 feet closer to wetlands than the existing taxiway. This section of the proposed widened taxiway will be located approximately 140 feet from wetlands. The 600 linear foot section of taxiway will be located in the required buffer to wetlands.

The CMP permits linear improvements, such as an aircraft taxiway, in the required buffer to wetlands provided the applicant demonstrates that certain conditions are met. The applicant has demonstrated that there is no feasible alternative for the proposed taxiway that does not involve development in wetland buffers or that will result in a less significant adverse impact to the wetland buffers. In addition, the proposed development will not result in a substantial impairment of the resources of the Pinelands. With the conditions below, all practical measures are being taken to mitigate the impact on the wetland buffers. The applicant has represented that the FAA requires the proposed widening to conform to current standards. The applicant has demonstrated that the need for the proposed development overrides the importance of protecting the wetland buffers.

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

The proposed development will be located within existing paved and grassed areas. The proposed clearing and soil disturbance is limited to that which is necessary to accommodate the proposed development.

The Landscaping and Revegetation guidelines of the CMP recommend the use of grasses that are tolerant of droughty, nutrient poor conditions. To stabilize disturbed areas, the applicant proposes to utilize a seed mixture which meets that recommendation.

Threatened and Endangered Species Standards (N.J.A.C. 7:50-6.33)

Local populations of Upland sandpiper and Grasshopper sparrow have been documented at the Atlantic City International Airport. The two concerned bird species typically arrive at the airport in mid-April to early May and proceed to nest and rear broods through July 31. Upland sandpiper nest in extensive, open tracts of grassland habitat containing a mixture of short grass areas for feeding and courtship interspersed with taller grasses for nesting and brood cover. Grasshopper sparrow nesting habitat consists of mixed grass and old-field communities dominated by clump grasses interspersed by areas of bare ground.

From April 15 through August 15 of each year, the airport performs seasonal short grass mowing within 30 feet of the existing taxiway to discourage the Upland sandpiper and Grasshopper sparrow from nesting in the aircraft movement area. This mowing regime maintains the grass at a height of five inches or less. The proposed paving of 7.5 feet on each side of the existing taxiway will result in the elimination of 2.6 acres of short grasses and 0.10 acres of tall grasses.

Revisions to the 30 foot wide mowing regime required by the proposed taxiway widening will result in the conversion of 1.2 acres of tall grass to short grass.

The short and tall grass communities located adjacent to the taxiway have been previously surveyed and are generally considered low quality nesting habitat for Upland sandpiper and Grasshopper sparrow due to a number of factors including the mowing regime that results in a lack of nesting features described

above. These grass communities immediately adjacent to the taxiway may be used by Upland sandpiper and Grasshopper sparrow for foraging by adults and fledgling young.

The applicant proposes to install fencing around the project area, including the area subject of the revised 30 foot wide mowing regime. Prior to the start of any development, all grasses within the project area will be mowed and maintained at a height of five inches or less between April 1st and September 30th of any year in which proposed development will occur. This mowing regime will discourage Upland sandpiper and Grasshopper sparrow from nesting within the project area.

Based on the proposed plan and with the conditions recommended below, the proposed development has been designed to avoid irreversible adverse impacts that are critical to the survival of local populations of Upland sandpiper and Grasshopper sparrow.

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

On August 11, 2000, the Commission approved an application for the rehabilitation of an existing runway at the Atlantic City International Airport (App. No. 1983-5837.024). That application proposed the removal of 33.47 acres of pavement from existing runways and abandoned taxiways and the revegetation of those areas. The current application proposes a total of 2.4 acres of new impervious surfaces within the same drainage areas where the applicant removed the concerned 33.47 acres of pavement. There will be no increase in the volume and rate of stormwater runoff from the project area after development than occurred prior to the removal of the 33.47 acres of pavement. The applicant has demonstrated that the proposed development is consistent with the CMP stormwater management standards.

PUBLIC COMMENT

The applicant has provided the requisite public notices. Newspaper public notice was completed on August 2, 2015. The application was designated as complete on the Commission's website on January 11, 2016. The Commission's public comment period closed on February 12, 2016. The Commission received one oral public comment regarding this application.

Public Comment: The commenter indicated that an existing Memorandum of Agreement (MOA) between the South Jersey Transportation Authority (SJTA) and the Pinelands Commission required the establishment of a Grassland Advisory Committee for the Atlantic City Airport and required regular meetings of that Committee. The commenter further indicated that the Advisory Committee has not met in years, questioned whether the Grassland Conservation and Management Area required in the MOA has been established and whether the development proposed in this application is subject of the concerned MOA.

Staff Response: The development proposed in this application is not subject of the MOA. The concerned MOA only addresses development of certain projects specifically identified in the MOA as "Short Term Development Projects." The MOA required a Grassland Conservation and Management Area for the creation and enhancement of grassland habitat to compensate for the loss of critical habitat resulting from the "Short Term Development Projects." The MOA also provided for the establishment of a Grassland Advisory Committee. The purpose of the Grassland Advisory Committee is to provide guidance on all grassland

management activities proposed within the Grassland Conservation and Management Area. The MOA provides that the SJTA is the responsible entity for administering the Grassland Advisory Committee. The Commission staff agrees that the Grassland Advisory Committee has not recently met. The Commission staff will contact the SJTA regarding the scheduling of a meeting of the Grassland Advisory Committee.

CONDITIONS

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of 105 sheets, prepared by AECOM and dated as follows:

Sheet 1 - May 20, 2015
Sheets 2-105 - June 23, 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. The applicant shall maintain all grasslands within the project area at a height of five inches or less between April 1st and September 30th of any year in which the proposed development will occur.
6. Prior to development, the applicant shall install fencing along the boundary of the project area and shall maintain the fencing until all development has been completed and the area has been stabilized.
7. Appropriate measures shall be taken during construction to preclude sediment from entering wetlands and shall be maintained in place until all development has been completed and the area has been stabilized.

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.



Chris Christie
Governor

Kim Guadagno
Lt. Governor

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



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 by the 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 within eighteen days of the date of the Executive Director's determination and 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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Chris Christie
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Sean W. Earlen
 Chairman

Nancy Wittenberg
 Executive Director

February 22, 2016

Helen Payne, Superintendent
 North Hanover Township School District
 331 Monmouth Road
 Wrightstown, NJ 08562

Re: Application # 1991-0820.103
 Block 802, Lot 2
 North Hanover Township

Dear Ms. Payne:

The Commission staff has completed its review of this application for demolition of three schools, 50 years old or older and the construction of a 134,506 square foot school on Joint Base McGuire-Dix-Lakehurst. 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 March 11, 2016 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, North Hanover Township Planning Board (via email)
- North Hanover Township Construction Code Official (via email)
- Secretary, Burlington County Planning Board (via email)
- Chad Gaulrapp, PE, CME (via email)
- Michael Gross, Esq. (via email)





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

Sean W. Earlen
 Chairman

Nancy Wittenberg
 Executive Director

PUBLIC DEVELOPMENT APPLICATION REPORT

February 22, 2016

Helen Payne, Superintendent
 North Hanover Township School District
 331 Monmouth Road
 Wrightstown, NJ 08562

Application No.: 1991-0820.103

Location: Block 802, Lot 2
 North Hanover Township

This application proposes demolition of three schools, 50 years old or older and the construction of a 134,506 square foot school served by public sanitary sewer located on the above referenced 193.57 acre parcel. The parcel is located on Joint Base McGuire-Dix-Lakehurst in North Hanover Township. The three concerned schools are named Atlantis, Discovery and Columbia.

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. 7:50-5.29 (a))

The proposed development is located in a Pinelands Military and Federal Installation Area. The proposed development will be located in the Pinelands Protection Area portion of the Military and Federal Installation Area. No development is proposed in the Pinelands Preservation Area District or a Pinelands Forest Area. The proposed development is a permitted land use in a Pinelands Military and Federal Installation Area.

Wetlands Standards (N.J.A.C. 7:50-6.14)

The area of the parcel where the three existing schools are located is surrounded by a wetlands complex associated with a stream known as the North Run. The three existing schools and development associated with the existing schools are maintaining a variable buffer to wetlands ranging from 0 feet to approximately 150 feet. The proposed development will maintain a variable buffer to wetlands ranging from 0 feet to approximately 150 feet.

The CMP (N.J.A.C. 7:50-5.29(a)4) requires that any development associated with the function of a Military and Federal Installation Area must be substantially consistent with the CMP wetlands protection standards. The proposed development is substantially consistent with the CMP wetlands protection standards.

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

The proposed development will be located within a forested area and grassed areas. The proposed soil disturbance is limited to that which is necessary to accommodate the proposed development.

The Landscaping and Revegetation guidelines of the CMP recommend the use of grasses that are tolerant of droughty, nutrient poor conditions. The grasses proposed for the demolished Atlantis School and Discovery School sites meet this recommendation. The applicant proposes to utilize other grasses for maintained lawn areas at the redeveloped Columbia school site.

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

To meet the stormwater management standards, the application proposes one stormwater infiltration basin on the parcel.

The CMP (N.J.A.C. 7:50-5.29(a)4) requires that any development associated with the function of a Military and Federal Installation Area must be substantially consistent with the CMP stormwater management standards. The proposed development is substantially consistent with the CMP stormwater management standards.

Cultural Resource Standards (N.J.A.C. 7:50-6.151)

Based on a review of information available to the Commission staff, it was determined that a cultural resource survey was not required for the proposed demolition.

PUBLIC COMMENT

The applicant has provided the requisite public notices. Newspaper public notice was completed on January 13, 2016. Notice to required land owners within 200 feet of the above referenced development was completed on January 25, 2016. The application was designated as complete on the Commission's website on February 2, 2016. The Commission's public comment period closed on February 12, 2016. No public comment was submitted to the Commission regarding this application.

CONDITIONS

1. For the proposed new school and demolition of Columbia School: Except as modified by the below conditions, the proposed development shall adhere to the "New Pre-K to 4th Grade School" plan, consisting of 19 sheets, prepared by Pennoni Associates and dated as follows:

Sheets 1, 3-7, 11-12, 14, 18-19 - dated 10/16/2015; last revised 2/19/2016
 Sheets 2, 8-10, 13, 15-16 - dated 10/16/2015; last revised 2/11/2016
 Sheet 17 - dated 10/16/2015

For the proposed event parking area and demolition of Discovery School: Except as modified by the below conditions, the proposed development shall adhere to the "Discovery School" plan, consisting of 6 sheets, prepared by Pennoni Associates and dated as follows:

Sheets 1, 5 - dated 10/16/2015; last revised 2/11/2016
 Sheets 2, 3, 6 - dated 10/16/2015; last revised 2/19/2015
 Sheet 4 - dated 10/16/2015

For the proposed demolition of Atlantis School: Except as modified by the below conditions, the proposed development shall adhere to the "Atlantis School" plan, consisting of 5 sheets, prepared by Pennoni Associates and dated as follows:

Sheets 1, 4 - dated 10/16/2015; last revised 2/11/2016
 Sheets 2, 5 - dated 10/16/2015; last revised 2/19/2016
 Sheet 3 - dated 10/16/2015

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. 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.
5. All development, including clearing and land disturbance, shall be located outside of wetlands and required wetland buffers as depicted on the above referenced plans.
6. Any proposed revegetation shall adhere to the "Vegetation" standards of the CMP. Any areas on the Discovery and Atlantis School sites proposed for demolition that are not to be redeveloped must be restored to a native Pinelands grassland consisting of the following native Pinelands grass species: Switch grass, Little bluestem and Broom-sedge. These areas shall be allowed to revegetate to Pinelands grassland and no mowing of these areas shall occur.

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.



Chris Christie
Governor

Kim Guadagno
Lt. Governor

State of New Jersey

THE PINELANDS COMMISSION

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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 by the 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 within eighteen days of the date of the Executive Director's determination and 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.



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-16- 11

TITLE: Issuing an Order to Certify Ordinance 15-009, Amending Chapter 245 (Land Use and Development) of the Code of Manchester Township

Commissioner Arcy moves and Commissioner Ball seconds the motion that:

WHEREAS, on December 3, 1982, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Manchester Township; and

WHEREAS, Resolution #PC4-82-93 of the Pinelands Commission specified that any amendment to the 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 #PC4-82-93 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 July 13, 2015, Manchester Township adopted Ordinance 15-009, amending Chapter 245 (Land Use and Development) of the Township's Code by eliminating certain affordable housing zoning designations and adopting a revised zoning map to correct inconsistencies between the Township's mapping and the Commission's zoning records; and

WHEREAS, Ordinance 15-009 also adopts three additional zoning changes, two of which result in changes to Pinelands management area boundaries; and

WHEREAS, the Pinelands Commission received a certified copy of Ordinance 15-009 on August 5, 2015 and a copy of the revised Zoning Map adopted by Ordinance 15-009 on December 8, 2015; and

WHEREAS, by letter dated December 17, 2015, the Executive Director notified the Township that Ordinance 15-009 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 Ordinance 15-009 was duly advertised, noticed and held on January 19, 2016 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 15-009 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 the issuance of an order to certify that Ordinance 15-009, amending Chapter 245 (Land Use and Development) of the Code of Manchester Township, 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 recommended that Ordinance 15-009 be certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning Ordinance 15-009 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 Ordinance 15-009, amending Chapter 245 (Land Use and Development) of the Code of Manchester Township, is 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				DiBello	X				McGlinchey	X			
Avery	X				Galletta	X				Prickett	X			
Barr	X				Jannarone	X				Quinn	X			
Brown	X				Lloyd	X				Rohan Green	X			
Chila	X				Lohbauer	X				Earlen			X	

* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: March 11, 2016

Nancy Wittenberg
 Nancy Wittenberg
 Executive Director

Sean W. Earlen for
 Sean W. Earlen
 Chairman



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Chris Christie
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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

**REPORT ON MANCHESTER TOWNSHIP ORDINANCE 15-009, AMENDING CHAPTER 245
 (LAND USE AND DEVELOPMENT) OF THE CODE OF MANCHESTER TOWNSHIP**

February 26, 2016

Manchester Township
 1 Colonial Drive
 Manchester, NJ 08759

FINDINGS OF FACT

I. Background

The Township of Manchester is located in northwest Ocean County, in the northern portion of the Pinelands Area. Pinelands municipalities that abut Manchester Township include the Borough of Lakehurst and the Townships of Berkeley, Dover, Jackson, Lacey and Plumsted in Ocean County and the Townships of Pemberton and Woodland in Burlington County.

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

On October 14, 2014, Manchester Township adopted Ordinance 14-016, amending Chapter 245 (Land Use and Development) of the Township's Code by eliminating certain affordable housing zoning designations and adopting a revised zoning map to correct inconsistencies between the Township's mapping and the Commission's zoning records. The Pinelands Commission received a certified copy of Ordinance 14-016 on October 20, 2014 and a copy of the revised Zoning Map adopted by Ordinance 14-016 on December 11, 2014. By letter dated December 24, 2014, the Executive Director notified the Township that the amendments made by Ordinance 14-016 raised no substantial issues with respect to CMP standards. Therefore, no further Commission review was required. Subsequently, the Township notified the Commission that it would be readopting Ordinance 14-016 due to notice issues with a prior master plan amendment.

On July 13, 2015, Manchester Township adopted Ordinance 15-009, effectively readopting the amendments previously made by Ordinance 14-016. Ordinance 15-009 amends Chapter 245 (Land Use and Development) of the Township's Code by eliminating certain affordable housing zoning designations and adopting a revised zoning map to correct inconsistencies between the Township's mapping and the Commission's zoning records. The zoning map adopted by Ordinance 15-009 also reflects three additional zoning changes, two of which result in changes to Pinelands management area

boundaries. The Pinelands Commission received a certified copy of Ordinance 15-009 on August 5, 2015 and a copy of the revised Zoning Map adopted by Ordinance 15-009 on December 8, 2015.

By letter dated December 17, 2015, the Executive Director notified the Township that Ordinance 15-009 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 15-009, amending Chapter 245 (Land Use and Development) of the Code of Manchester Township, including a Zoning Map with a last revision date of May 26, 2015, introduced on May 26, 2015 and adopted on July 13, 2015.

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**

Pinelands Management Area Changes

Ordinance 15-009 rezones Block 79, Lot 8 and a portion of Block 79, Lot 7, from the BVR-40 (Beckerville Village Residential) Zone to the PPA (Pinelands Preservation Area) Zone. The map attached as Exhibit #1 shows the two affected properties, the larger of which is currently under agricultural assessment as a horse farm. Approximately 20 acres are affected by the zoning change, which is being made in order to correct an unintentional error on the Township's 1997 zoning map that had been carried forward on subsequent maps. As a result, Block 79, Lot 7 will no longer be split between two zoning districts and Pinelands management areas; it will be located entirely in the PPA Zone. More importantly, the boundary of Beckerville Village will return to what was originally certified by the Commission in 1994. This ensures that the boundaries of and development potential within Beckerville remain consistent with the standards for Pinelands Villages set forth at N.J.A.C. 7:50-5.16.

Ordinance 15-009 also rezones portions of several lots in Blocks 87 and 89 from the PFA-S (Pinelands Forest Area – Sending) Zone to the WTRC (Whiting Town Retirement Community) Zone along Manchester's border with Berkeley Township. As is evident from the map attached as Exhibit #2, the lots in question are part of two existing residential retirement communities (Pine Ridge at Crestwood and Pine Ridge South), which were developed decades ago. When the Commission certified Manchester's master plan and land use ordinances in 1983, the lots in

question were included in what was then the Pinelands Village of Whiting (since redesignated as a Pinelands Town), with the exception of a small strip of land bordering Berkeley Township that remained in the Forest Area. At the time, adjacent lands in Berkeley were privately owned and designated as Pinelands Forest Area. The expectation was that the Berkeley lands would be zoned and residentially developed at the low density permitted by the CMP in the Forest Area (one unit per 15.8 acres of vacant upland). The Commission felt it was important to maintain a small area of similarly zoned land in Manchester Township so as not to create land use conflicts. Since that time, the adjacent lands in Berkeley have been permanently protected and are now owned and managed by the State of New Jersey as part of the Crossley Preserve and the Greenwood Forest Wildlife Management Area. The Manchester lots were intensively developed as retirement communities, with the land adjacent to Berkeley Township incorporated in the common open space areas associated with the two residential communities. As a result, there is no further development potential on either side of the municipality boundary and no longer any reason for the narrow strip of land in Manchester to be designated as Pinelands Forest Area. The Township is merely seeking to place the lots, in their entirety, in one Pinelands management area and one zoning district to simplify administration of their zoning map. Approximately 30 acres are affected by this change.

Other Zoning Changes

Ordinance 15-009 rezones a portion of one lot (Block 98, Lot 7) from the WTRC (Whiting Town Retirement Community) Zone to the WTB-1 (Whiting Town Business) Zone, within the Pinelands Town of Whiting. This 2.5 acre commercially developed lot is currently split between the two zones. The zoning change adopted by Ordinance 15-009 aligns zoning and lot lines such that all of Lot 7 will now be located in the WTB-1 Zone.

Other Amendments

Ordinance 15-009 amends Chapter 245 by revising the PRC/RCL-AF Retirement Community Zone to PRC/RCL, thereby eliminating the AF – Affordable Housing – designation for this Regional Growth Area zoning district. Ordinance 14-016 also eliminates the WTRC-AF Whiting Town Retirement Community Zone entirely, along with Section 245-69A, which specified that garden apartments were a permitted conditional use in the zone. These amendments raise no substantial issues with respect to CMP standards.

Ordinance 15-009 is consistent with the land use and development standards of 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

Not applicable.

9. Referral of Development Applications to Environmental Commission

Not applicable.

10. General Conformance Requirements

Ordinance 15-009, amending Chapter 245 (Land Use and Development) of the Code of Manchester Township, 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 15-009, amending Chapter 245 (Land Use and Development) of the Code of Manchester Township, 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

As discussed in detail in Section 2 above, Ordinance 15-009 rezones a narrow strip of land on Manchester Township's boundary with Berkeley Township from the PFA-S Zone in the Forest Area to the WTRC Zone in the Pinelands Town of Whiting. Adjacent lands in Berkeley are located in a residential zone in the Pinelands Forest Area. Although the narrow strip of Forest Area in Manchester was originally created at the Commission's request as a way of avoiding land use conflicts, it is no longer necessary. The lands in Manchester are now deed restricted as common open space associated with two existing retirement communities, while the adjacent lands in Berkeley are permanently protected and under State ownership. The map attached as Exhibit #2 illustrates both the existing development in Manchester and the extent of State ownership in Berkeley. The change in zoning and Pinelands management area designation accomplished by Ordinance 15-009 will not result in any land use changes or facilitate any additional development. It merely aligns zoning and management area boundaries with parcel lines for administrative purposes. Therefore, no intermunicipal conflicts are anticipated. This standard for certification is met.

PUBLIC HEARING

A public hearing to receive testimony concerning Manchester Township's application for certification of Ordinance 15-009 was duly advertised, noticed and held on January 19, 2016 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 January 26, 2016; however, none were received.

CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that Ordinance 15-009 complies 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 Ordinance 15-009 of Manchester Township.

SRG/CMT
Attachments

Manchester Township

Proposed Zoning Changes

Executive Director's Report
Manchester Township
Ordinance 15 - 009
February 26, 2016
Exhibit 1

Preservation Area District
Pinelands Village

BVR-40 District

Pinelands Village
Forest Area

PFA-S District





Preservation Area District
Forest Area

Block 79, Lot 8

Part of Block 79, Lot 7

PPA District

Legend

-  Proposed Area for Rezoning
-  Parcel Boundary
-  Zoning Boundary
-  Permanently Protected Land

