



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-13- 35

TITLE: Approving With Conditions Applications for Public Development (Application Numbers 1982-3981.005 & 1987-0565.013)

Commissioner Galletta moves and Commissioner Brown seconds the motion that:

WHEREAS, the Pinelands Commission has reviewed the Findings of Fact, Conclusion and the recommendation of the Executive Director that the following applications for Public Development be approved with conditions:

Application Number: **1982-3981.005**
Applicant: **HAMILTON TOWNSHIP**
Municipality: Hamilton Township
Management Area: Rural Development Area
Proposed Development: Re-subdivision of a 154.073 acre parcel, resulting in two lots and no further development.

Application Number: **1987-0565.013**
Applicant: **NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**
Municipality: Jackson Township
Management Areas: Pinelands Preservation Area District & Rural Development Area
Proposed Development: Construction of a 1,573 square foot storage building accessory to an existing firearms training range.

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 Findings of Fact and Conclusion of the Executive Director for each of the proposed developments; 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; 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.

NOW, THEREFORE BE IT RESOLVED that the following applications for public development are hereby **approved** subject to the conditions recommended by the Executive Director.

Application Number: **1982-3981.005**
Applicant: **HAMILTON TOWNSHIP**
Municipality: Hamilton Township
Management Area: Rural Development Area
Proposed Development: Re-subdivision of 154.073 acre parcel, resulting in two lots and no further development.

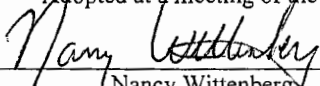
Application Number: **1987-0565.013**
 Applicant: **NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**
 Municipality: Jackson Township
 Management Areas: Pinelands Preservation Area District & Rural Development Area
 Proposed Development: Construction of a 1,573 square foot storage building accessory to an existing firearms training range.

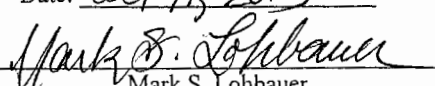
Record of Commission Votes

AYE NAY NP ABS				AYE NAY NP ABS				AYE NAY NP ABS						
Ashmun	<input checked="" type="checkbox"/>				Galletta	<input checked="" type="checkbox"/>				Prickett	<input checked="" type="checkbox"/>			
Brown	<input checked="" type="checkbox"/>				Haas	<input checked="" type="checkbox"/>				Quinn	<input checked="" type="checkbox"/>			
DiBello			<input checked="" type="checkbox"/>		Jackson	<input checked="" type="checkbox"/>				Rohan Green			<input checked="" type="checkbox"/>	
Earlen	<input checked="" type="checkbox"/>				Lloyd	<input checked="" type="checkbox"/>				Witt	<input checked="" type="checkbox"/>			
Ficcaglia	<input checked="" type="checkbox"/>				McGlinchey	<input checked="" type="checkbox"/>				Lohbauer	<input checked="" type="checkbox"/>			

Adopted at a meeting of the Pinelands Commission

Date: Oct 11, 2013


 Nancy Wittenberg
 Executive Director


 Mark S. Lohbauer
 Chairman



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

Mark S. Lohbauer
 Chairman

Nancy Wittenberg
 Executive Director

September 18, 2013

Philip Sartorio
 Hamilton Township
 6101 Thirteenth Street
 Mays Landing, NJ 08330

Re: Application # 1982-3981.005
 Block 1127, Lots 2, 3, 10, 22 & 24
 Hamilton Township

Dear Mr. Sartorio:

The Commission staff has completed its review of this application for the re-subdivision of the above referenced parcel resulting in two lots and no further development. 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 October 11, 2013 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, Hamilton Township Planning Board
 Hamilton Township Construction Code Official
 Hamilton Township Environmental Commission
 Atlantic County Department of Regional Planning and Development





Chris Christie
Governor

Kim Guadagno
Lt. Governor

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Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

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

PUBLIC DEVELOPMENT **APPLICATION REPORT**

September 18, 2013

Philip Sartorio
Hamilton Township
6101 Thirteenth Street
Mays Landing, NJ 08330

Application No.: 1982-3981.005

Location: Block 1127, Lots 2, 3, 10, 22 & 24
Hamilton Township

This application is for a re-subdivision of the above referenced 154.073 acre parcel, resulting in two lots and no further development, in Hamilton Township. The parcel is owned by Atlantic County.

The proposed re-subdivision will create a 125.042 acre lot and a 29.031 acre lot. The applicant has indicated that the proposed 125.042 acre lot will be conveyed to the New Jersey Natural Lands Trust and the 29.031 will be conveyed to Hamilton Township for the potential development of a recreational facility.

STANDARDS

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

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

The parcel is located in a Pinelands Rural Development Area. The proposed re-subdivision is permitted in a Rural Development Area.

PUBLIC COMMENT

Public notice is not required by the CMP for "minor" development. The application was designated as complete on the Commission's website on August 9, 2013. The Commission's public comment period closed on September 13, 2013. No public comments regarding the application were submitted to the Commission.

CONDITIONS

1. The proposed re-subdivision shall adhere to the plan, prepared by Remington, Vernick & Walberg Engineers, dated April 2011 and revised to January 11, 2012.
2. This application is for the proposed re-subdivision only. Any future development of the resulting lots requires the completion of an application with the Commission.

CONCLUSION

As the proposed subdivision 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 subdivision subject to the above conditions.



Chris Christie
Governor

Kim Guadagno
Lt. Governor

State of New Jersey

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Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

PINELANDS COMMISSION APPEAL PROCEDURE

The Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal any determination made the by Executive Director to the Commission in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission 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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Mark S. Lohbauer
 Chairman

Nancy Wittenberg
 Executive Director

September 20, 2013

John Piccolo
 New Jersey Department of Environmental Protection
 Division of Fish & Wildlife
 275 Freehold-Englishtown Road
 Englishtown, NJ 07726

Re: Application # 1987-0565.013
 Block 18301, Lot 1
 Jackson Township

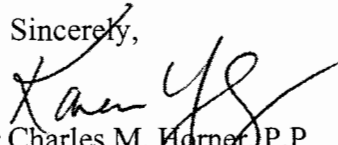
Dear Mr. Piccolo:

The Commission staff has completed its review of this application for the construction of a 1,573 square foot storage building accessory to an existing firearms training range. 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 October 11, 2013 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,


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

Enc: Appeal Procedure

c: Secretary, Jackson Township Planning Board
 Jackson Township Construction Code Official
 Jackson Township Environmental Commission
 Secretary, Ocean County Planning Board
 Teal Jefferis





Chris Christie
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Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

PUBLIC DEVELOPMENT
APPLICATION REPORT

September 20, 2013

John Piccolo
New Jersey Department of Environmental Protection
Division of Fish & Wildlife
275 Freehold-Englishtown Road
Englishtown, NJ 07726

Application No.: 1987-0565.013

Location: Block 18301, Lot 1
Jackson Township

This application proposes the construction of a 1,573 square foot storage building accessory to an existing firearms training range on the above referenced 7,915 acre lot in Jackson Township. The Colliers Mills Wildlife Management Area is located on the lot.

The proposed storage building will be developed at the existing New Jersey Department of Environmental Protection law enforcement firearms training range located on the concerned lot.

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. 7:50-5.2)

The lot is located partially in a Pineland Preservation Area District (7,888.17 acres) and partially in a Pinelands Rural Development Area (26.83 acres). The proposed development will be located in the Preservation Area District.

The CMP (N.J.A.C. 7:50-5.2(b)) permits the 50 percent expansion of a nonconforming use in a Preservation Area District provided the area of the expansion does not exceed 50 percent of the area of the use or the capacity of the use, whichever is applicable, that existed on January 14, 1981. The firearm training range existed prior to 1981. The applicant has demonstrated that the proposed development constitutes a less than 50 percent expansion of the area and capacity of the existing training range.

Wetlands Standards (N.J.A.C. 7:50-6.7 & 6.14)

There are wetlands located on the above referenced lot. The CMP provides that no development shall be carried out within 300 feet of any wetland unless the applicant demonstrates that the proposed development will not result in a significant adverse impact on the wetlands in accordance with the criteria contained in the CMP (N.J.A.C. 7:50- 6.7(a)). The applicant has demonstrated that the proposed 160 foot buffer to wetlands will not result in a significant adverse impact on the wetlands.

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

The proposed development will be located within a maintained grassed area. 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. The applicant proposes to utilize a seed mixture which meets that recommendation.

PUBLIC COMMENT

Public notice is not required by the CMP for “minor” development. The application was designated as complete on the Commission’s website on August 26, 2013. The Commission’s public comment period closed on September 13, 2013. No public comments were submitted to the Commission regarding the application.

CONDITIONS

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of three sheets, prepared by Jefferis Engineering Associates, LLC, all sheets dated April 20, 2012 and revised to February 8, 2013.
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. 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.

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
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1. the name and address of the person requesting the appeal;
2. the application number;
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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. PC4-13- 36

TITLE: Issuing an Order to Certify Ordinance 011-2013, Amending Chapter 175 (Land Development) of the Code of the Town of Hammonton

Commissioner M. Blinkey moves and Commissioner Ashmun
seconds the motion that:

WHEREAS, on November 9, 1984, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of the Town of Hammonton; and

WHEREAS, Resolution #PC4-84-73 of the Pinelands Commission specified that any amendment to the Town'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 #PC4-84-73 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 22, 2013, Hammonton Town adopted Ordinance 011-2013, amending Chapter 175 (Land Development) of the Town's Code by revising and clarifying permitted uses and standards applicable to development in the AP/CLI (Agricultural Production/Compatible Light Industry) District; and

WHEREAS, Ordinance 011-2013 also reduces the size of the AP/CLI District by rezoning six lots from the AP/CLI District to the AP (Agricultural Production) District; and

WHEREAS, the Pinelands Commission received a certified copy of Ordinance 011-2013 on July 31, 2013; and

WHEREAS, by letter dated August 6, 2013, the Executive Director notified the Town that Ordinance 011-2013 would require formal review and approval by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony concerning the Town's application for certification of Ordinance 011-2013 was duly advertised, noticed and held on September 4, 2013 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 011-2013 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 011-2013, amending Chapter 175 (Land Development) of the Code of the Town of Hammonton, 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 011-2013 be certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning Ordinance 011-2013 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

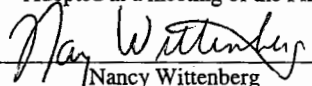
1. An Order is hereby issued to certify that Ordinance 011-2013, amending Chapter 175 (Land Development) of the Code of the Town of Hammonton, is in conformance with the Pinelands Comprehensive Management Plan.
2. Any additional amendments to the Town's certified Master Plan and Land Use Ordinances shall 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.

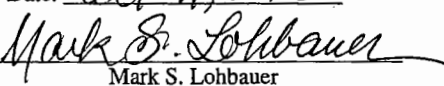
Record of Commission Votes

AYE NAY NP ABS				AYE NAY NP ABS				AYE NAY NP ABS				
Ashmun	<input checked="" type="checkbox"/>			Galletta			<input checked="" type="checkbox"/>	Prickett	<input checked="" type="checkbox"/>			
Brown	<input checked="" type="checkbox"/>			Haas	<input checked="" type="checkbox"/>			Quinn	<input checked="" type="checkbox"/>			
DiBello			<input checked="" type="checkbox"/>	Jackson	<input checked="" type="checkbox"/>			Rohan Green			<input checked="" type="checkbox"/>	
Earlen	<input checked="" type="checkbox"/>			Lloyd	<input checked="" type="checkbox"/>			Witt	<input checked="" type="checkbox"/>			
Ficcaglia	<input checked="" type="checkbox"/>			McGlinchey	<input checked="" type="checkbox"/>			Lohbauer	<input checked="" type="checkbox"/>			

Adopted at a meeting of the Pinelands Commission

Date: Oct. 11, 2013


 Nancy Wittenberg
 Executive Director


 Mark S. Lohbauer
 Chairman



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

Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

REPORT ON ORDINANCE 011-2013, AMENDING CHAPTER 175 (LAND DEVELOPMENT) OF THE CODE OF THE TOWN OF HAMMONTON

September 27, 2013

Town of Hammonton
100 Central Avenue
Hammonton, NJ 08037

FINDINGS OF FACT

I. Background

The Town of Hammonton is located in western Atlantic County, in the central portion of the Pinelands Area. Pinelands municipalities that abut Hammonton Town include the Borough of Folsom and the Townships of Hamilton and Mullica in Atlantic County, the Townships of Waterford and Winslow in Camden County, and the Townships of Shamong and Washington in Burlington County.

On November 9, 1984, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of the Town of Hammonton.

On July 22, 2013, Hammonton Town adopted Ordinance 011-013, amending Chapter 175 (Land Development) of the Town's Code by revising and clarifying permitted uses and standards applicable to development in the AP/CLI (Agricultural Production/Compatible Light Industry) District. Ordinance 011-2013 also reduces the size of the AP/CLI District by rezoning six lots from the AP/CLI District to the AP (Agricultural Production) District. The Pinelands Commission received a certified copy of Ordinance 011-2013 on July 31, 2013.

By letter dated August 6, 2013, the Executive Director notified the Town that Ordinance 011-2013 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 011-2013, amending Chapter 175 (Land Development) of the Code of the Town of Hammonton, introduced on May 28, 2013 and adopted on July 22, 2013.

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

1. Natural Resource Inventory

Not applicable.

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

Ordinance 011-2013 amends Chapter 175 (Land Development) of the Code of the Town of Hammonton by clarifying and revising permitted uses in the AP/CLI (Agricultural Production/Compatible Light Industry) Zone. Established in 1984 as part of the Town's original certification, this zoning district was intended to recognize an existing publicly owned airport in Hammonton's Agricultural Production Area, provide an opportunity for limited expansion of airport facilities and allow for development of new light industrial uses. Over the years, the distinction between airport facilities, airport-related facilities and light industrial uses has become somewhat blurred and difficult to administer, due to the different standards applicable to each type of use. The amendments adopted by Ordinance 011-2013 are intended to simplify the ordinance provisions while retaining appropriate development standards for purposes of consistency with the Comprehensive Management Plan.

N.J.A.C. 7:50-5.24(b)13 of the Comprehensive Management Plan provides municipalities with the opportunity to permit "airport facilities" in their Agricultural Production Areas, provided the airport is publicly owned or serves a Pinelands Town, the area of the airport is limited in size to that which existed in 1981 and the proposed airport facilities will not generate subsidiary or satellite development not otherwise permitted in the Forest Area, Preservation Area District, Special Agricultural Production Area or Agricultural Production Area. Pursuant to N.J.A.C. 7:50-5.24(b)4, municipalities may also permit light industrial uses in their Agricultural Production Areas, provided they do so within an area that adjoins a publicly owned airport, contains developable land and is limited in size so that it will not exceed the area of the airport itself.

Ordinance 011-2013 specifies that "airport facilities", including facilities for the takeoff and landing of aircraft, such as runways, aprons, taxi-ways, helicopter pads, air traffic control facilities, terminal buildings, fences, lighted antennae systems, driveways and access roads, are to be considered permitted uses in the AP/CLI Zone. In addition, Ordinance 011-2013 permits "ancillary airport uses" such as airport maintenance facilities, aviation instruction facilities, aircraft chartering and aircraft storage buildings. As originally certified, Hammonton's land use ordinance merely listed "airport facilities" as a permitted use in the AP/CLI Zone, without providing examples or a definition of the term. Light industrial uses, including distribution centers, warehouses, enclosed services and repair facilities, business offices and similar activities will continue to be permitted in the AP/CLI Zone.

A series of other standards will now apply to all development in the zone, whether that development involves an airport facility, an ancillary airport use or a light industrial use. Specifically, a planted buffer of at least 50 feet must be provided along all property lines where any proposed use in the AP/CLI Zone abuts or may abut a residential use, a residential zoning district and AP (Agricultural Production) Zone or an active agricultural use. Previously, this standard applied only to light industrial uses. In addition, airport facilities, ancillary airport uses and light industrial uses will be permitted only if they will not generate subsidiary or satellite development not otherwise permitted in the Forest Area, Preservation Area District, Special Agricultural Production Area or Agricultural Production Area. Previously, this requirement applied only airport facilities. As a result of the amendments made by Ordinance 011-2013, the same standards will be applied to all development in the AP/CLI Zone, thereby simplifying administration and providing a consistent approach to development in the zone.

In addition to clarifying permitted uses, Ordinance 011-2013 also amends the Town's Zoning Map by rezoning six lots from the AP/CLI Zone to the AP Zone (see Exhibit #1). Five of the affected lots contain existing single family homes. In total, approximately 35 acres are rezoned, of which 25 are currently vacant. None of the rezoned lots are related to the adjoining airport or have pending applications for industrial or airport-related development. Their inclusion in the AP/CLI Zone was therefore unnecessary and they are being returned to the general AP Zone, within which agriculture, forestry and related uses are permitted. As a result of this zoning change, the AP/CLI Zone will now contain a total of 150 acres, rather than the 185 acres approved under the Town's original certification. The reduction in size of the zone is significant in that the revised zone boundaries will now be fully consistent with N.J.A.C. 7:50-5.24(b)4. This section of the Comprehensive Management Plan specifies that the area in which light industrial uses may be permitted should not exceed the size of the adjoining airport. In this case, the parcel on which the existing airport is located is approximately 88 acres in size. An additional 63 acres are included within the revised boundaries of the AP/CLI Zone for light industrial development (or other airport facilities or ancillary airport uses) by virtue of the amendments made by Ordinance 011-2013. Previously, 97 additional acres were included, exceeding the size of the area that a strict application of Comprehensive Management Plan standards would have permitted.

The amendments made by Ordinance 011-2013 effectively blend the Comprehensive Management Plan's provisions for airport facilities and light industrial uses in the Agricultural Production Area together so that all development in the Town's AP/CLI Zone will be subject to the same standards. As a result, airport facilities may now be developed not only on the 88-acre parcel of the existing airport but also on the adjacent municipally owned lands in the zone. Likewise, light industrial uses may be developed on any lands in the AP/CLI Zone, which has been reduced in size. A strict application of Comprehensive Management Plan standards would produce a slightly different result, with very similar types of uses subjected to different sets of standards. However, Pinelands municipalities have always had the ability to refine the various standards and provisions of the Comprehensive Management Plan and tailor them to local conditions, provided Comprehensive Management Plan goals and objectives continue to be achieved. Subchapter 5 (Minimum Standards for Land Uses and Intensities) of the Comprehensive Management Plan expressly recognizes this general ability. In this case, Hammonton has elected to reduce the size and modify the provisions of an existing zone within its Agricultural Production Area to provide increased flexibility for development related to an existing airport, while at the same time strengthening standards for the protection of adjacent residential and agricultural uses and the surrounding environmentally sensitive Pinelands

management areas. The revised AP/CLI Zone is in keeping with the goals and objectives of the Comprehensive Management Plan.

Ordinance 011-2013 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 011-2013, amending Chapter 175 (Land Development) of the Code of the Town of Hammonton, 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 011-2013, amending Chapter 175 (Land Development) of the Code of the Town of Hammonton, is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan. No special issues exist relative to the Federal Act. Therefore, this standard for certification is met.

13. Procedure to Resolve Intermunicipal Conflicts

The lots rezoned by Ordinance 011-2013 are not adjacent to any other municipalities. Therefore, intermunicipal conflicts are not anticipated and this standard for certification is met.

PUBLIC HEARING

A public hearing to receive testimony concerning Hammonton Town's application for certification of Ordinance 011-2013 was duly advertised, noticed and held on September 4, 2013 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.

CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that Ordinance 011-2013 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 011-2013 of the Town of Hammonton.

SRG/CHT
Attachment



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-13- 37

TITLE: Issuing an Order to Certify the Master Plan and Land Use Ordinances of the Borough of South Toms River

Commissioner Ashmun moves and Commissioner Ficcaglia seconds the motion that:

WHEREAS, the Pinelands Protection Act and the Comprehensive Management Plan require that each municipality with land in the Pinelands Area submit its master plan and land use ordinances to the Commission for review and determination of whether such master plan and ordinances are in conformance with the minimum standards of the Comprehensive Management Plan; and

WHEREAS, in 2012, the Borough indicated an interest in adopting amendments to its master plan and land use ordinances that would serve to bring those documents into conformance with the Comprehensive Management Plan; and

WHEREAS, Commission staff subsequently provided the municipality with draft land use ordinance amendments for the Borough's consideration that would, if adopted, render the Borough's ordinances consistent with the Comprehensive Management Plan; and

WHEREAS, on December 18, 2012, the South Toms River Borough Planning/Zoning Board adopted a revised Master Plan for the Borough that assesses current conditions, recommends a variety of zoning changes and circulation improvements, sets forth economic objectives and recognizes the need for compatibility with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Pinelands Commission received an adopted copy of the 2012 Master Plan, along with the Planning/Zoning Board's resolution of adoption, on February 19, 2013; and

WHEREAS, on March 18, 2013, the South Toms River Borough Council adopted Ordinance 3-13, amending Chapter 26 (Land Development Regulations) of the Borough's Code for purposes of consistency with the Comprehensive Management Plan; and

WHEREAS, the Pinelands Commission received a certified copy of Ordinance 3-13 on April 1, 2013; and

WHEREAS, on April 15, 2013, the Pinelands Commission received adopted copies of the Borough's 2006 Stormwater Management Plan and Ordinance 18-06, the Stormwater Control Ordinance for the Pinelands Portion of South Toms River Borough; and

WHEREAS, on July 15, 2013, the South Toms River Borough Council adopted Ordinance 8-13, amending Chapter 26 (Land Development Regulations) of the Borough's Code for purposes of implementing the recommendations of the 2012 Master Plan; and

WHEREAS, Ordinance 8-13 establishes new zoning districts within the Pinelands Area and adopts a revised Zoning Map for the Borough, dated July 2013; and

WHEREAS, the Pinelands Commission received an adopted copy of Ordinance 8-13 on July 30, 2013; and

WHEREAS, by letter dated July 31, 2013, the Executive Director notified the Borough that the above-referenced documents would require formal review and approval by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony on the Borough's revised master plan and land use ordinances was duly advertised, noticed and held on August 28, 2013 at the South Toms River Municipal Building, 144 Mill Street, South Toms River, New Jersey; and

WHEREAS, the Executive Director has found that the revised master plan and land use ordinances of South Toms River Borough are consistent with the 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 the revised master plan and land use ordinances of South Toms River Borough are in conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that South Toms River Borough's revised master plan and land use ordinances be fully certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning the Borough's revised master plan and land use ordinances 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

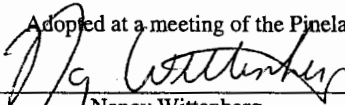
1. An Order is hereby issued to certify that South Toms River Borough's 2012 Master Plan, 2006 Stormwater Management Plan, Ordinance 18-06 and Chapter 26 (Land Development Regulations) of the Borough's Code, as last amended by Ordinances 3-13 and 8-13, are in conformance with the Pinelands Comprehensive Management Plan.
2. As of October 11, 2013, the procedures for review of local permits in certified municipalities set forth in N.J.A.C. 7:50-4, Part III, of the Comprehensive Management Plan shall apply.

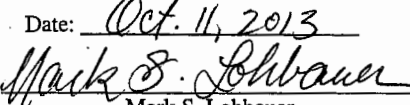
Record of Commission Votes

AYE NAY NP ABS				AYE NAY NP ABS				AYE NAY NP ABS			
Ashmun	X			Galletta	X			Prickett	X		
Brown	X			Haas	X			Quinn	X		
DiBello			X	Jackson	X			Rohan Green			X
Earlen	X			Lloyd	X			Witt	X		
Ficcaglia	X			McGlinchey	X			Lohbauer	X		

Adopted at a meeting of the Pinelands Commission

Date: Oct. 11, 2013


 Nancy Wittenberg
 Executive Director


 Mark S. Lohbauer
 Chairman



Chris Christie
Governor

Kim Guadagno
Lt. Governor

State of New Jersey

THE PINELANDS COMMISSION

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Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

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

REPORT ON THE MASTER PLAN AND LAND USE ORDINANCES OF THE BOROUGH OF SOUTH TOMS RIVER

September 27, 2013

Borough of South Toms River
144 Mill Street
South Toms River, NJ 08757

FINDINGS OF FACT

I. Background

The Borough of South Toms River is located in north-central Ocean County, in the northeastern portion of the Pinelands Area. Adjacent municipalities include Toms River Township to the north and east, Berkeley Township to the north and west and Beachwood Borough to the south and east.

South Toms River Borough has a total land area of 1.2 square miles, of which 360 acres (47 percent) lie within the Pinelands Area. Another 20 acres lie within the Pinelands National Reserve, outside the state-designated Pinelands Area. The Pinelands Area line is the Garden State Parkway and Route 9 on the east and the abandoned Penn Central right-of-way on the north. The Comprehensive Management Plan designates the entire Pinelands Area section of the Borough as a Regional Growth Area.

The Pinelands Protection Act and the Comprehensive Management Plan require that each municipality with land in the Pinelands Area submit its master plan and land use ordinances to the Commission for review and determination of whether such master plan and ordinances are in conformance with the minimum standards of the Comprehensive Management Plan. Although South Toms River Borough has been sporadically involved with the conformance process since 1981, little progress was made until recently. The Borough's disinterest in pursuing certification is likely due to the very limited amount of vacant land in the Pinelands Area portion of the municipality and the resulting lack of development activity.

In 2012, the Borough indicated an interest in adopting amendments to its master plan and land use ordinances that would serve to bring those documents into conformance with the Comprehensive Management Plan. Commission staff subsequently provided the municipality with draft land use ordinance amendments for the Borough's consideration that would, if adopted, render the Borough's ordinances consistent with the Comprehensive Management Plan.

On December 18, 2012, the South Toms River Borough Land Use Board adopted a revised Master Plan for the Borough that assesses current conditions, recommends a variety of zoning changes and circulation improvements, sets forth economic objectives and recognizes the need for compatibility with the Pinelands Comprehensive Management Plan. The Pinelands Commission received an adopted copy of the 2012 Master Plan, along with the Land Use Board's resolution of adoption, on February 19, 2013.

On March 18, 2013, the South Toms River Borough Council adopted Ordinance 3-13, amending Chapter 26 (Land Development Regulations) of the Borough's Code for purposes of consistency with the Comprehensive Management Plan. The Pinelands Commission received a certified copy of Ordinance 3-13 on April 1, 2013.

On April 15, 2013, the Pinelands Commission received adopted copies of the Borough's 2006 Stormwater Management Plan and Ordinance 18-06, the Stormwater Control Ordinance for the Pinelands Portion of the Borough of South Toms River.

On July 15, 2013, the South Toms River Borough Council adopted Ordinance 8-13, amending Chapter 26 (Land Development Regulations) of the Borough's Code for purposes of implementing the recommendations of the 2012 Master Plan. Ordinance 8-13 establishes new zoning districts within the Pinelands Area and adopts a revised Zoning Map for the Borough, dated July 2013. The Pinelands Commission received an adopted copy of Ordinance 8-13 on July 30, 2013.

By letter dated July 31, 2013, the Executive Director notified the Borough that the above-referenced documents would require formal review and approval by the Pinelands Commission.

II. Master Plans and Land Use Ordinances

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

* Master Plan Documents:

Stormwater Management Plan, adopted by the Land Use Board on October 9, 2006; and
2012 Master Plan of the Borough of South Toms River, adopted by the Land Use Board on December 18, 2012.

* Land Use Ordinances:

Ordinance 18-06, adopting a Stormwater Control Ordinance for the Pinelands Portion of the Borough of South Toms River, now codified as part of Chapter 24 (Stormwater Management) of the Code of the Borough of South Toms River, introduced on November 13, 2006 and adopted on December 18, 2006;

Chapter 26 (Land Development Regulations) of the Code of the Borough of South Toms River (through December 31, 2012 publication);

Ordinance 3-13, amending Chapter 26 (Land Development Regulations) of the Code of South Toms River Borough, introduced on February 19, 2013 and adopted on March 18, 2013; and

Ordinance 8-13, amending Chapter 26 (Land Development Regulations) of the Code of South Toms River Borough, including a Zoning Map, dated July 2013, introduced on June 17, 2013 and adopted on July 30, 2013.

- * The 2013 Capital Budget and Capital Improvement Program of South Toms River Borough

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

1. **Natural Resource Inventory**

A Natural Resource Inventory was prepared by South Toms River Borough in cooperation with the Pinelands Commission in 1982. The 2012 Master Plan encourages the conservation and protection of environmentally sensitive areas in the Borough but also recognizes the fully developed nature of the Borough's Pinelands Area, save for the 22 vacant acres discussed in section 2 below. This standard for certification is met.

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

Management areas and zoning

As noted above, all of South Toms River Borough's Pinelands Area is designated as a Regional Growth Area by the Comprehensive Management Plan. No changes in management area boundaries have been adopted by the Borough.

In terms of zoning, the Borough's Zoning Map depicts four zones within the Pinelands Area (see Exhibit #1). The R-7 (Medium-High Density Residential) encompasses the majority of the Borough's Pinelands Area and is already fully developed. Permitted uses in the R-7 Zone are limited to single-family residential uses, home occupations and family day-care homes. In keeping with the existing development pattern, the minimum lot size for development is 7,000 square feet, with slightly larger area required for corner lots.

Publicly owned lands in the Borough's Pinelands Area are included in the ML (Municipal Lands) Zone. Chapter 26 (Land Development) specifies that this zone is designated for and permits public structures to be owned solely by governmental entities and to be used solely for public purposes. The ML Zone encompasses an existing public school, first aid station and recreation complex. The standards established by Chapter 26 for this zone (e.g., 30% lot coverage; 30 foot maximum height) are appropriate for a Regional Growth Area.

Ordinance 8-13 creates and establishes standards for a new commercial zone within the Pinelands Area, the C-N (Neighborhood Commercial) Zone. Permitted uses in the C-N Zone include a wide variety of nonresidential uses, among them retail stores, service establishments, offices, banks, restaurants, clubs, lodges, motor vehicle service stations and music, art and dancing studios. The minimum lot size requirement is 40,000 square feet. Located on both sides of Dover Road, the new C-N Zone contains no vacant land. Only commercially developed properties have been included.

The fourth zoning district within the Pinelands Area is the SED (Special Economic Development) Zone, newly created by Ordinance 8-13. Principal permitted uses in the SED Zone are limited to planned development on tracts of at least five acres in size. Planned developments may include hotels, restaurants, outdoor recreation facilities, retail stores, business service establishments, banks, offices and personal service establishments. Permitted conditional uses in the SED Zone include self storage facilities and flex warehouses, as well as "Planned Retirement/Senior Citizen/Active Adult Development" consisting of townhouses, quadrplexes and multifamily apartment buildings. A maximum density of eight units per acre is permitted for such residential development.

Based on the revised Zoning Map adopted by Ordinance 8-13, the SED Zone in the Pinelands Area is located on Route 530, adjacent to an existing Garden State Parkway interchange and on the Borough's boundary with Berkeley Township. Approximately 22 vacant acres are included in the zone, the only privately owned vacant acreage in the Pinelands Area portion of South Toms River Borough. As depicted on page L-9 of the Borough's 2012 Master Plan (see Exhibit #2), the SED Zone is largely surrounded by existing residential and commercial development. The Borough has elected to permit a mixture of uses in the new zone, including residential development at a density that is consistent with N.J.A.C. 7:50-5.28(a)1 of the Comprehensive Management Plan. The Borough has therefore met its residential zoning obligation.

As discussed above, South Toms River Borough's zoning plan appropriately recognizes existing development and provides opportunities for new development on the very limited amount of vacant land remaining in the Pinelands Area in a manner that is consistent with the land use standards of the Comprehensive Management Plan.

Development standards

Section 26-5.1 of the Borough's Code, as amended by Ordinance 3-13, requires that all development in the Pinelands Area of the Borough comply with the land use and development standards of the Pinelands Comprehensive Management Plan.

In addition to the general requirement for compliance adopted by Ordinance 3-13, Ordinance 18-06 adopts stormwater control regulations and incorporates a series of design and performance standards. These standards apply to major development projects of one acre or greater in the Pinelands Area in order to address stormwater related impacts, including those associated with groundwater recharge, stormwater quantity, and stormwater quality. Design and performance standards target operation and maintenance measures for existing and future stormwater facilities and encourage the use of low-impact development techniques. Such low impact measures include non-structural stormwater management measures and the application of best management practices, such as bioretention systems, constructed stormwater wetlands, infiltration basins, pervious paving systems, and vegetative filter strips. Ordinance 18-06 also

provides the opportunity for off-site mitigation as an exception from strict compliance from the groundwater recharge, stormwater runoff quantity and stormwater runoff quality requirements. Any such mitigation must occur in accordance with the mitigation measures outlined in Borough's 2006 Stormwater Management Plan. As adopted in 2006, this Plan currently indicates that a mitigation plan is unnecessary as the Borough is entirely developed. Therefore, should mitigation be proposed in association with a particular development application, it will be necessary for the Borough to amend its Stormwater Management Plan to identify specific mitigation projects and parcels within the Pinelands Area where mitigation may occur and have the amendment certified by the Pinelands Commission.

This standard for certification is met.

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

Section 26-5.3 of the Borough's Code, as amended by Ordinance 3-13, requires that all development in the Pinelands Area obtain a Certificate of Filing from the Pinelands Commission pursuant to N.J.A.C. 7:50-4.34.

In addition, Ordinance 18-06 specifies that all applications for major development include the required components of the checklist for a "Site Development Stormwater Plan", when applying for a subdivision or site plan approval. Any application for approval of a major development is further referred to the Borough and Pinelands Commission for review, requiring submission of all engineering plans, topographic maps, site analysis, project description and site plan, land use planning and source control plan, stormwater management facilities map, and a calculations, inspection, maintenance and repair plan.

Therefore, this standard for certification is met.

4. Requirement for Municipal Review and Action on All Development

Chapter 26 (Land Development) of the Borough's Code, as amended by Ordinance 3-13, requires that all development activities and applications be reviewed in a manner consistent with the application standards and procedures of the Comprehensive Management Plan. Therefore, this standard for certification is met.

5. Review and Action on Forestry Applications

Given the lack of vacant, forested land in that portion of the Borough located in the Pinelands Area, this standard is not applicable.

6. Review of Local Permits

Section 26.5.3.b of the Borough's Code, as amended by Ordinance 3-13, requires that all development approvals in the Pinelands Area be forwarded to the Pinelands Commission

pursuant to the notice and review provisions set forth in N.J.A.C. 7:50-4, Part III – Review of Local Permits in Certified Municipalities. Therefore, this standard for certification is met.

7. Requirement for Capital Improvement Program

South Toms River Borough's 2013 Municipal Budget includes a three year Capital Budget and Improvement Program. The Capital Improvement Program lists 18 projects to be completed within the three year period, including improvements to the public works yard which is located in the Pinelands Regional Growth Area. Adverse effects on the Borough's Pinelands Area are not anticipated to result from any of the listed projects.

Therefore, this standard for certification is met.

8. Accommodation of Pinelands Development Credits

Ordinances 3-13 and 8-13 amend Chapter 26 (Land Development) of the Borough's Code by requiring that Pinelands Development Credits (PDCs) be used in association with variances or other municipal approvals for residential development in the ML (Municipal Lands) and C-N (Neighborhood Commercial Zones), and for variances or other municipal approvals that grant relief from minimum lot size requirements in the R-7 (Medium-High Density Residential) Zone.

In addition, Ordinance 8-13 amends Chapter 26 by creating a new zoning district, the SED Zone, within which the use of PDCs is required for any residential development. Specifically, PDCs must be acquired and redeemed for 25 percent of the residential units developed in the SED Zone. As noted previously, the Borough has elected to permit "Planned Retirement/Senior Citizen/Active Adult Development" as a conditional use in this zone, with a maximum permitted density of eight units per acre. The 25 percent PDC obligation applies regardless of the density at which any particular project is proposed or constructed.

Ordinance 8-13 accommodates PDC use in a different manner than has traditionally been the case. Instead of providing a base density for the SED Zone and giving developers the opportunity to use PDCs to increase that density if they so choose, the Borough has elected to make PDC use a mandatory component of all new residential development in the SED Zone.

N.J.A.C. 7:50-3.39(a)8 specifies that in order to be certified by the Commission, municipal land use ordinances must provide for sufficiently residentially zoned property in the Regional Growth Area to be eligible for an increase in density to accommodate PDCs as provided for in N.J.A.C. 7:50-5.28(a)3. N.J.A.C. 7:50-5.28(a)7i then authorizes Pinelands municipalities to employ additional density bonus or incentive programs, provided such programs do not interfere with or otherwise impair in any way the required municipal program for use of PDCs. Additional flexibility is provided in more general terms in the introduction to subchapter 5 of the CMP, which states that CMP standards may be refined by local agencies, provided that the objectives and goals the minimum standards represent will be achieved. In this context, the PDC requirements implemented by Ordinance 8-13 are consistent with the Comprehensive Management Plan. While the 25 percent requirement applied to the new SED Zone is not as high a number as would be provided through the more traditional zoning approach (where PDCs would account for 33 percent of the total number of permitted units), it is important to remember

that the traditional base density/bonus density approach utilized throughout the Pinelands Area only provides an *opportunity* for the use of PDCs. There is no requirement under the traditional approach that any PDCs be used in any particular development project. Ordinance 8-13 *guarantees* a certain level of PDC use in association with any residential development in the SED Zone, regardless of project density or number of units that are ultimately built. Given the greater certainty provided by this approach, the Executive Director believes that the PDC requirements adopted by Ordinance 8-13 should be viewed as being consistent with Comprehensive Management Plan standards.

Therefore, this standard for certification is met.

9. Referral of Development Applications to Environmental Commission

South Toms River Borough does not currently have an Environmental Commission. Therefore, this standard is not applicable.

10. General Conformance Requirements

South Toms River Borough's master plan and land use ordinances contain all of the standards and provisions necessary to implement the objectives of the Pinelands Comprehensive Management Plan. Therefore, this standard for certification is met.

11. Conformance with Energy Conservation

The Borough's 2012 Master Plan contains as one of its objectives promotion of the conservation of energy through the use of planning practices designed to reduce energy consumption and to provide for maximum utilization of renewable energy sources. In addition, the Master Plan recommends that new development in the Borough utilize energy-efficient technologies and that the use of LEED (Leadership in Energy and Environmental Design) standards be encouraged in all development. Therefore, this standard for certification is met.

12. Conformance with the Federal Act

South Toms River Borough's master plan and land use ordinances contain all of the standards and provisions necessary to implement the objectives of the Pinelands Comprehensive Management Plan. No special issues exist relative to the Federal Act.

Therefore, this standard for certification is met.

13. Procedure to Resolve Intermunicipal Conflicts

The Pinelands Area portion of South Toms River Borough is adjacent to two municipalities: Beachwood Borough and Berkeley Township. Lands along the boundary with Beachwood Borough are included in South Toms River's ML (Municipal Land) and R-7 (Medium-High

Density Residential) Zones, coinciding with similar zoning districts in Beachwood. All lands in both Boroughs are designated as Pinelands Regional Growth Area.

Lands along South Toms River Borough's boundary with Berkeley Township have been included in the ML, R-7 and SED Zones, within the Regional Growth Area. Adjacent lands to the north in Berkeley Township are located in a Regional Growth Area within the Pinelands National Reserve, but outside the Pinelands Area. Adjacent lands to the west in Berkeley's Pinelands Area are designated as either Pinelands Forest Area or Pinelands Agricultural Production Area. The Forest and Agricultural Production Areas are vastly different than the Regional Growth Area in terms of permitted uses and development intensities; therefore, intermunicipal conflicts would normally be of concern. However, in this case, conflicts are not anticipated because all adjacent lands in Berkeley's Forest Area are permanently preserved and in public (State) ownership. The majority of Berkeley's Agricultural Production Area is similarly preserved, with the exception of one parcel that is adjacent to existing residential development in South Toms River. The zoning plan adopted by South Toms River for the area merely recognizes existing land uses. Therefore, no new intermunicipal conflicts are anticipated.

This standard for certification is met.

PUBLIC HEARING

A public hearing to receive testimony concerning South Toms River Borough's application for certification of its master plan and land use ordinances was duly advertised, noticed and held on August 28, 2013 at the Borough Hall, 144 Mill Street, South Toms River, New Jersey at 7:00 p.m. Ms. Grogan conducted the hearing, at which the following testimony was received:

Ms. Carla Kearney, a member of the South Toms River Land Use Board, stated that the Board worked very hard to complete the Borough's 2012 Master Plan and was anxious to obtain Commission approval.

Mayor Joseph Champagne stated that it was the Borough's intended goal in revising its master plan and ordinances to obtain Commission certification. The Borough Council, Land Use Board and the municipality's consultants have all worked diligently to achieve this goal. They have taken the necessary steps and now request that the Commission review and approve the Borough's master plan and ordinances.

There being no further testimony, the hearing was concluded at 7:15 p.m.

Written comments were accepted through August 30, 2012 and were received from the following individual:

August 22, 2013 letter from Stephen R. Nehmad, Esq., Nehmad, Perillo & Davis (see Exhibit #3)

EXECUTIVE DIRECTOR'S RESPONSE

Mr. Nehmad raises two issues in his August 22, 2013 letter, both tied to the fact that his client currently has an application for a use variance and site plan approval pending before the South Toms River Borough Land Use Board. The application in question, which involves the development of a commercial use in the new SED Zone, received a Certificate of Completeness from the Commission in January of 2012 and was filed with the municipal Land Use Board shortly thereafter. A Certificate of Completeness is the equivalent of a Certificate of Filing in a certified municipality.

First, Mr. Nehmad submits that Ordinance 8-13 does not provide reasonable, definitive, understandable regulations for the newly created SED Zone, and, thus, fails to regulate the character, location and magnitude of development within the Regional Growth Area, fails to ensure all development in the Pinelands Area is consistent with N.J.A.C. 7:50-5, and fails to implement management area and zoning boundaries in a manner that provides consistent treatment of similarly situated lands and considers the suitability of lands for their assigned zoning designation. He notes that it is unclear whether the single commercial use proposed by his client would be considered a permitted use under the new SED Zone standards as they permit only "planned development". Second, Mr. Nehmad states that Ordinance 8-13 does not deal with the unique facts and circumstances presented by his client's application. He suggests that the ordinance be amended to explicitly recognize his client's application and specify that the application shall continue to be reviewed by both the Borough and the Commission under the municipal ordinance that was in effect at the time the application was filed. He notes that his client obtained a Certificate of Completeness from the Commission, which he hopes the Commission will honor, even after the Borough's master plan and land use ordinances are certified.

With respect to Mr. Nehmad's first point, the CMP gives Pinelands municipalities maximum flexibility to zone how they wish within their Regional Growth Areas, provided any residential zoning obligation is met. Indeed, N.J.A.C. 7:50-5.28(a) specifies that any use may be permitted in a Regional Growth Area. South Toms River has elected to zone its Regional Growth Area in a way that recognizes existing development and provides an opportunity for both residential and nonresidential development on the only parcel of privately owned vacant land in its Pinelands Area. Given the vacant parcel's location on Dover Road, adjacent to the Parkway and existing residential and commercial development, the new zoning plan is appropriate. There are no similarly situated lands in the Pinelands Area to be considered in the analysis. Ordinance 8-13 adequately addresses the Borough's residential zoning obligation. As far as development standards are concerned, enough specificity in terms of permitted uses and development intensities in the new SED Zone has been included in Ordinance 8-13 for purposes of consistency with the CMP. It is up to the Borough to interpret its ordinance and determine whether or not a single commercial use would qualify as a permitted use under the standards for planned development in the SED Zone. Whether the Borough has met all Municipal Land Use Law standards for planned development is not for the Commission to determine.

As to second point, it would be highly unusual for an ordinance to recognize a pending use variance application that has not yet been acted on by a municipality. Granted, it is unclear whether the commercial use proposed in that application would be considered a permitted use under the new SED Zoning adopted by the Borough. However, if Mr. Nehmad is correct and "time of application" regulations set forth in the Municipal Land Use Law apply, the Land Use Board will be obligated to complete its review of the use variance and site plan application under the zoning that was in effect at the time the application was filed. The prior zoning designation for the parcel in question was H-D (Highway Development) and R-10 (Medium Density Residential). The Borough would then also be obligated to comply with the notice provisions contained in the CMP for uncertified municipalities as

those were the regulations that applied to the Borough at the time the use variance application was filed. Those notice provisions (N.J.A.C. 7:50-4.18(e)) require the Borough to give notice to the Commission of any final determination approving or denying an application for development in the Pinelands Area. If the use variance and site plan are ultimately approved by the Land Use Board, the Commission would receive notice of that approval. The Commission would then review the approval to determine whether the approved commercial use raises any substantial issues with the standards of the CMP.

In an uncertified municipality, N.J.A.C. 7:50-4.16 permits any land use allowed by the CMP in a Pinelands Regional Growth Area. If the use variance and site plan were to be denied by the Land Use Board, the Commission would receive notice of the denial. Pursuant to N.J.A.C. 7:50-4.25, if the denial were based on matters not regulated by the CMP, no further review by the Commission would occur. If the denial did not conform to the minimum standards set forth at N.J.A.C. 7:50-4.16, the Commission would review the denial. In either case, a decision would be rendered on the application by the Commission.

In addition, the Commission will honor the Certificate of Completeness that was issued in January of 2012; the applicant will not be required to obtain a Certificate of Filing.

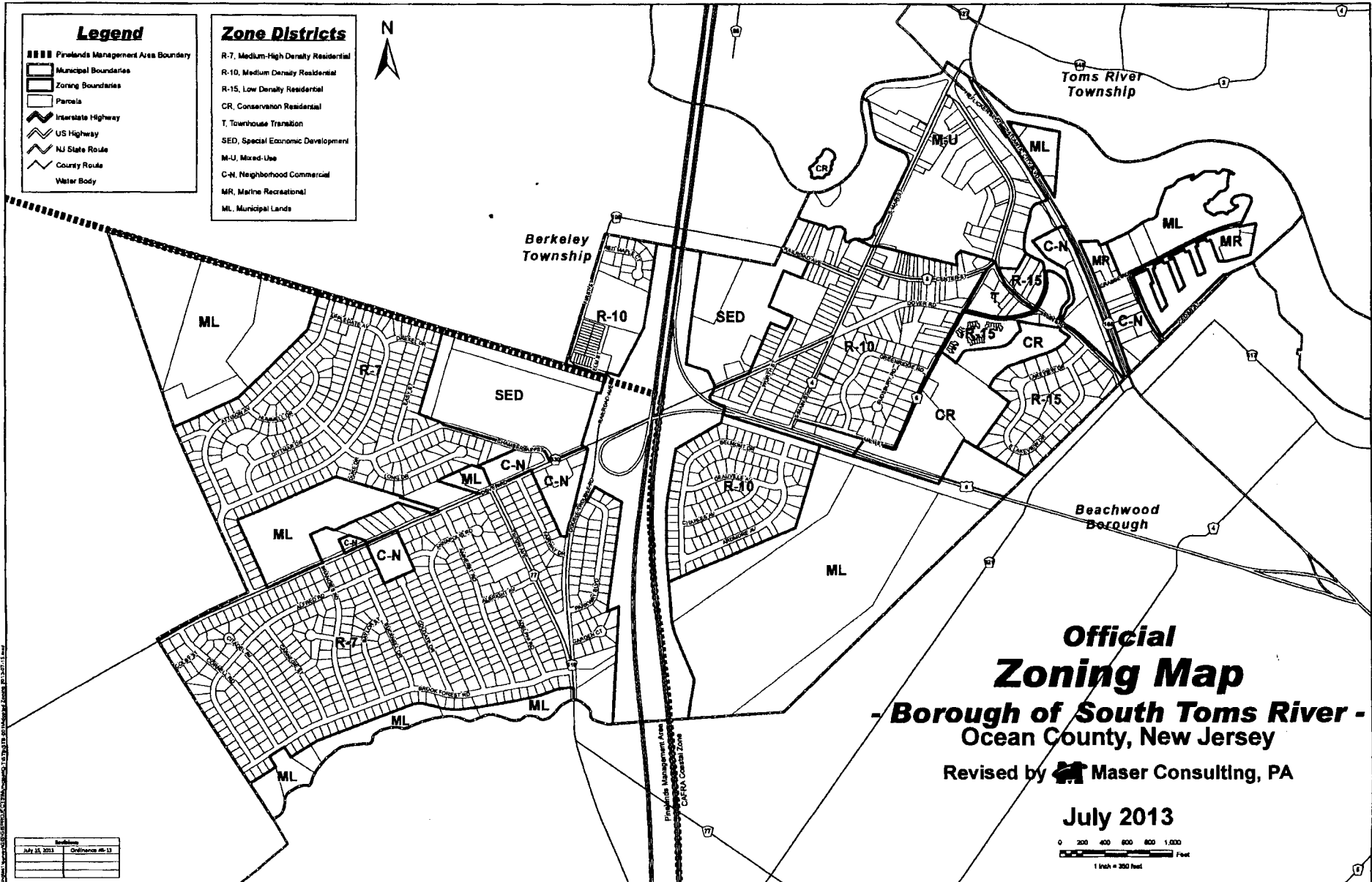
CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that the Borough of South Toms River's master plan and land use ordinances comply with Comprehensive Management Plan standards for the certification of municipal master plans and land use ordinances. Accordingly, the Executive Director recommends that the Commission issue an order to certify the master plan and land use ordinances of the Borough of South Toms River.

SRG/CSR
Attachments

Executive Director's Report on
 South Toms River Borough's Master Plan
 and Ordinances (original certification)
 September 27, 2013 EXHIBIT #1

REC'D 7/30/13



- 5. Restrict access to Dover Road to limit traffic through the residential neighborhoods.

Clayton Block Tract

Similar to the Former BD tract, significant economic development potential exists for the Clayton Block tract. Although the tract is located in the Pinelands portion of the Borough, its Regional Growth Area designation does not restrict its economic development potential. While the tract is vacant, remnants of a previous building foundation remain. At the time this Plan was prepared, information pertaining to on-site contamination from the preexisting use were not available. The Borough should begin working with the property owner to better understand any existing development limitations. Similar zoning characteristics and uses recommended for the Former BD tract are appropriate for the Clayton Block tract as well.



Executive Director's Report on
South Toms River Borough's
Master Plan and Ordinances
(original certification)
September 27, 2013 EXHIBIT #2



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Reply to Atlantic County Address

Executive Director's Report on
South Toms River Borough's
Master Plan and Ordinances
(original certification)
September 27, 2013 EXHIBIT #3

August 22, 2013

VIA EMAIL: Susan.Grogan@njpinelands.state.nj.us
& REGULAR MAIL

The New Jersey Pineland's Commission
15 Springfield Road
P.O. Box 359
New Lisbon, New Jersey 08064

Attn: Susan R. Grogan, PP, AICP

Re: Proposed Master Plan and Land Use Ordinance of
Borough South Toms River
Ordinance 8-13
Our File No.: 4024-69

Dear Ms. Grogan:

Please be advised that this office represents Wawa, Inc. with respect to its pending application before the joint land use board for the Borough of South Toms River (the "Board") seeking a use variance and specified bulk variances and preliminary and final site plan approval for a proposed Wawa retail store and fueling station, together with associated site improvements, to be constructed in and upon Lots 11 and 13 in Block 20. As you know, this application has received the Certificate of Compliance from the Pinelands (Application No. 1987-0925.004). Please consider the following as our client's objections to Pinelands Commission Certification of the above noted Ordinance as currently written.

I. The Ordinance does not promote growth in a regional growth area as encouraged by the Comprehensive Management Plan ("CMP").

As you well know, N.J.A.C. 7:50-3.39 establishes the standards for certification of municipal master plans and land use ordinances such as the one here in issue. For the reasons that follow, we submit that the Ordinance as written does not appropriately regulate the character, location and magnitude of development (N.J.A.C. 7:50-3.39(2)(i)); does not implement the overall development intensity standards in the CMP (N.J.A.C. 7:50-3.39(a)(2)(iii)) and do not implement Pinelands Management Area and zoning district boundaries in a manner which provides consistent treatment of similarly situated lands and considers the suitability of lands for their assigned management area and

zoning district designations (N.J.A.C. 7:50-3.39(2)(vi)). Our position is illustrated by understanding the nature of our client's current application, and how it would be affected by the proposed ordinance.

Our client's application was deemed complete by the Board on December 14, 2012. The application has literally been pending for almost two years. The delays have been occasioned by the initial selection of consultants by the Borough who were unable to act on our client's application by reason of conflict of interest and, more recently and more significantly, by represented opposition from a business competitor who we submit is opposing our application merely for anticompetitive reasons. To date we have had five hearings before the Board, and there is no end yet in sight as the Board is only giving us about two to three hours of hearing time per hearing.

When we filed the Wawa application, the Borough's land use ordinance was not Pinelands certified and thus, as you also well know, governed by the use regulations that apply per the CMP. Our client's site is located in a split zoning district, with the majority located in the current Highway Development ("HD") Zone, with the balance located in the R-10 (single family residential) Zone. As the Certificate of Completion letters (as well as oral representations at two meetings with the Commission staff) have attested, "any use" is allowed in the Zone pursuant to N.J.A.C. 7:50-5.28.

The proposed new ordinance places our client's tract in an "SED" Special Economic Development Zone. Pursuant to proposed Section 26-28.1, permitted principal uses include "planned development" which may include a variety of intensive commercial uses including stores and shops for the conduct of any retail business.

Oddly, I see no definition in the proposed ordinance, nor the existing Ordinance, as to what constitutes a defined "planned development". Reference to the New Jersey Municipal Land Use Act ("MLUL"), N.J.S.A. 40:55D-6, is unavailing. The MLUL has alternate definitions for "planned commercial development", "planned development", and "planned unit development". Reference to any of those definitions does not assist in helping the reader of ordinary experience in real estate development to determine what constitutes a "planned development".

A later section of the proposed ordinance, Section 26-28.3, indicates that the minimum size of tract for a planned development is five acres. Exactly what type of development is allowed to occur on that five acres is entirely unclear. Thus, for example, it is not clear whether one pharmacy, restaurant or, as here, Wawa on a five acre tract would suffice to constitute a planned development.

We reasonably assume that the ordinance definition of "planned development" is intended to conform to the MLUL definition of "Planned Commercial Development" for obvious reasons since the site is in a special economic development zone and the uses allowed are intensively commercial in nature. However reference to N.J.S.A. 40:55D-6, and the definition of Planned Commercial Development, indicates that it:

"...means an area of a minimum contiguous or noncontiguous size as specified by ordinance to be developed according to a plan as a single entity containing one or more structures with pertinent common areas to accommodate commercial or office uses or both and any residential or other uses

incidental to the predominate use as may be permitted by ordinance”.

As you can readily see, the MLUL definition of Planned Commercial Development refers one to a local zoning ordinance for specifications and more definitive use regulations. All of those are palpably lacking in this instance. In short, there are no standards whatsoever regarding what constitutes a “planned development”.

To state the obvious, in a regional growth area such as this, zoning regulations, in order to be certified under N.J.A.C. 7:50-3.39, must contain objectively reasonable, definitive and understandable regulations in order to promote growth. For the reasons outlined above, the subject ordinance fails to establish understandable land use controls to regulate the character, location and magnitude of development within a regional growth area, fails to ensure that all development in the Pinelands area is in conformance with the development standards established by N.J.A.C. 7:50-5, and fails to implement Pinelands Management Area and Zoning District boundaries in a manner which provides consistent treatment of similarly situated lands and considers the suitability of lands for their assigned management area and zoning district designations.

II. The ordinance fails to deal with the unique facts and circumstances presented by the instant Wawa application. It should contain a savings clause in order to ensure consistency of treatment by the Board and the Commission as the matter evolves.

As you further know, our current application is to be adjudged by the local board in accordance with the ordinance that was in effect at the time our application was pending under N.J.A.C. 40:55D-10.5. The enactment of this provision of the MLUL changed the previously well established “time of decision” doctrine that had applied in this state for many decades. Accordingly there is the distinct possibility that this new zoning ordinance could be certified before our application is concluded. This would lead, for the reasons that follow, to a result which is legally unwieldy, legally awkward and certainly does not promote comity between decision making by a local board and the Pinelands Commission.

Assuming the ordinance were to be certified before the Joint Land Use Board decides the Wawa application, it is conceivable that upon review the Commission would honor the Certificate of Completeness (hopefully) but shift in the review of the application from an “uncertified” municipal review process to the “certified” municipal review process. Such circumstances would result in the municipal agency having to review use regulations in accordance with the CMP as they currently pertain, yet the Pinelands Commission (the very state agency charged with interpreting its own regulations) never determining whether the use is permitted in an uncertified municipality because the new ordinance will be certified before the local decision reaches the Commission. This will result in difficulty in administration if the application is appealed to the Courts, which is in all likelihood to occur given that the objectors are motivated purely by anticompetitive sentiments.

We respectfully submit that in view of this being a relatively small municipality and the Wawa application having been ongoing for many months, a saving clause should be inserted in the ordinance indicating that any application pending at the time this ordinance is adopted shall continue to be reviewed under the Ordinance then in effect, and shall further be reviewed by the Pinelands Commission in accordance with that ordinance or regulation. Such a provision will allow the

Pinelands Commission, in the final analysis, to interpret the meaning of its own use regulations. This will assist the decision making process, whether it be by the Commission itself or a reviewing Court since the Courts of course give deference to the Commission's interpretation of its own regulations.

If a saving provision is not inserted in the ordinance, then concededly Section 10.5 of the MLUL will govern as to the municipal decision, yet the Commission will never review the application under the very use regulations the local Board decided the case under – which are Pinelands regulations and not local zoning ordinance regulations. We urge that the Commission itself should make the call as to whether the use variance was properly granted or denied under Pinelands regulations for if that does not occur, then a reviewing Court may well be called upon to interpret the meaning of Pinelands regulations without the assistance of the Commission itself interpreting its own regulations.

I should lastly point out that we had originally attempted to discuss through our consultants the meaning of these use regulations with the scrivener of the ordinance but without success. We thus are in the position of having to urge that the use regulations be clarified through your good offices.

I thank you for your attention to this matter and await your reply.

Very truly yours,

NEHMAD PERILLO & DAVIS, P.C.

By: 

STEPHEN R. NEHMAD
snehmad@npdlaw.com

SRN:jlz

c: Michael S. Redel, PE (via email: Michael.s.redel@wawa.com)
Irv Szeller, Real Estate Manager (via email: irv.szeller@wawa.com)
Michael Viscuso, PE (via email: michael.viscuso@wawa.com)
Ms. Joanne Kostick (via email: joanne.e.kostick@wawa.com)
Creigh Rahenkamp, PP (via email: crahenkamp@comcast.net)
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Mark Whitaker, PE (via email: mwhitaker@dynamicec.com)
Timothy Prime, Esquire (Via Email: timprime@lawyerprime.com)
Michael R. Peacock, Esquire (Via Email)



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-13- 30

TITLE: To Develop a Plan to Strengthen the Commission's Internal Financial Controls

Commissioner Hereis moves and Commissioner Witt seconds the motion that:

WHEREAS, the Pinelands Audit Committee is responsible for overseeing the annual audit process in addition to other responsibilities; and

WHEREAS, the State Auditor completes an annual audit of Pineland's financial reporting and related internal controls; and

WHEREAS, the State Auditor's last audit finding at the Pinelands Commission was in 2007 and it noted internal control weaknesses, and the 2008 audit indicated that management had implemented needed changes to eliminate this finding; and

WHEREAS, the State Auditor has not had any audit findings since 2007; and

WHEREAS, the Pinelands Commission Audit Committee encourages a best practice level of internal financial control that is a higher standard than current guidelines followed by the State Auditor; and

WHEREAS, Pinelands Commissions internal financial controls are adequate for the annual audit and management continues to implement significant efforts to achieve a best practice level that the Audit Committee prefers; and

WHEREAS, Pinelands management has plans to meet this best practice level of internal control including an accounting and budgeting system.

WHEREAS, the Pinelands Commission Audit Committee reviewed this resolution and recommend Commission approval.

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 pending the outcome of management's plan to meet this best practice level, the Pinelands Audit Committee is pleased to report that it is completing its current review of Pinelands internal financial controls.

Record of Commission Votes

AYE NAY NP ABS				AYE NAY NP ABS				AYE NAY NP ABS			
Ashmun	<input checked="" type="checkbox"/>			Galletta	<input checked="" type="checkbox"/>			Prickett	<input checked="" type="checkbox"/>		
Brown	<input checked="" type="checkbox"/>			Haas	<input checked="" type="checkbox"/>			Quinn	<input checked="" type="checkbox"/>		
DiBello			<input checked="" type="checkbox"/>	Jackson	<input checked="" type="checkbox"/>			Rohan Green			<input checked="" type="checkbox"/>
Earlen	<input checked="" type="checkbox"/>			Lloyd	<input checked="" type="checkbox"/>			Witt	<input checked="" type="checkbox"/>		
Ficcaglia	<input checked="" type="checkbox"/>			McGlinchey	<input checked="" type="checkbox"/>			Lohbauer	<input checked="" type="checkbox"/>		

Adopted at a meeting of the Pinelands Commission
Nancy Wittenberg
Nancy Wittenberg
Executive Director

Date: Oct 11, 2013
Mark S. Lohbauer
Mark S. Lohbauer
Chairman