State of New Jersey
THE PINELANDS COMMISSION
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TAHESHA L. WAY
Lt. Governor

LAURA E. MATOS
Chair
SUSAN R. GROGAN
Executive Director

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NEW JERSEY PINELANDS COMMISSION MEETING AGENDA

Friday, October 13, 2023 - 9:30 a.m.

This meeting will be held in-person and virtually.

Richard J. Sullivan Center for Environmental Policy and Education
Terrence D. Moore Conference Room
15C Springfield Road
New Lisbon, New Jersey

Watch the meeting on the Pinelands Commission YouTube channel via the following link:
https://www.youtube.com/watch?v=btXk_Kce8Q0

To Provide Public Comment, Please Dial: 1-929-205-6099 Meeting ID: 859 0893 9724

1. Call to Order

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

2. Adoption of Minutes

   - September 8, 2023

3. Committee Chairs' and Executive Director's Reports

4. Matters for Commission Consideration ***Where the Record is Closed***

   A. Permitting Matters

   - Office of Administrative Law
     - None
   - Review of Local Approvals
     - None
   - Public Development Projects and Waivers of Strict Compliance:
     - None

B. Planning Matters

- Municipal Master Plans and Ordinances
  - None
- Other Resolutions
  - None
- CMP Amendments
  - None

5. Public Comment on Public Development Applications and Waivers of Strict Compliance ***Where the Record is Not Closed***

A. Public Development Projects

- Application No. 1981-0390.003 - Ocean County Vocational Technical School
  Construction of a 20,138 square foot school building
  Jackson Township

- Application No. 1988-1286.002 - Hammonton Board of Education
  Construction of a 25,050 square foot addition to an existing school building
  Town of Hammonton

- Application No. 1989-0089.013 - Hamilton Township Board of Education
  Installation of an irrigation well at an existing elementary school
  Hamilton Township

- Application No. 1997-0045.014 - Lenape Regional High School District
  Construction of six outdoor tennis courts at the Seneca High School
  Tabernacle Township

- Application No. 2023-0043.001 – Town of Hammonton
  Installation of 6,780 linear feet of potable water main within the Twelfth Street, Chew Road, First Road and Second Road rights-of-way
  Town of Hammonton

B. Waiver of Strict Compliance

- None

6. Master Plans and Ordinances Not Requiring Commission Action

- Buena Vista Township Ordinance 133-2023
- Evesham Township Ordinance 13-8-2023

- Medford Township Ordinance 2023-10
- Stafford Township Ordinances 2023-24 & 2023-33
- Tabernacle Township Ordinances 2023-3 & 2023-4
- Upper Township Ordinance 013-2023
- Waterford Township Ordinance 2023-20
- Woodland Township Ordinances 2023-2 & 2023-3

7. Other Resolutions

    - Authorizing an Additional Extension of the Deadline for Recordation of a Deed Restriction on the Parcel Where the New Grassland Conservation and Management Area Will Be Constructed in Accordance with the April 16, 2019 First Amendment to the February 26, 2004 Memorandum of Agreement Between the New Jersey Pinelands Commission and the South Jersey Transportation Authority

8. Presentation: Annual Update on Permanent Land Protection and the Pinelands Development Credit Program

9. General Public Comment

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

11. Adjournment

Upcoming Meetings

Tues., October 17, 2023	Personnel & Budget Committee Meeting (9:30 a.m.)
Fri., October 27, 2023	Policy & Implementation Committee Meeting (9:30 a.m.)
Thurs., November 9, 2023	Pinelands Commission Meeting (9:30 a.m.)

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

Pinelands Commission and Committee meeting agendas are posted on the Commission's Website and can be viewed at www.nj.gov/pinelands/ for more information on agenda details, e-mail the Public Programs Office at Info@pinelands.nj.gov.

PINELANDS COMMISSION MEETING

MINUTES
September 8, 2023

All participants were either in-person or present via Zoom conference and the meeting was livestreamed through YouTube: https://www.youtube.com/watch?v=Uxs4ydfEBns

Commissioners Participating in the Meeting

Nicholas Asselta, Alan W. Avery Jr., Dan Christy, John Holroyd, Theresa Lettman, Mark Lohbauer, Mark Mauriello, Jonathan Meade, William Pikolycky, and Chair Laura E. Matos. Also participating were Executive Director Susan R. Grogan, Deputy Attorney General (DAG) Jay Stypinski and Governor's Authorities Unit representative Janice Venables.

Commissioners Absent

Jerome H. Irick & Douglas Wallner

Call to Order

Chair Matos called the meeting to order at 9:33 a.m.

DAG Stypinski read the Open Public Meetings Act Statement (OPMA).

Executive Director (ED) Grogan called the roll and announced the presence of a quorum. Ten Commissioners participated in the meeting.

The Commission pledged allegiance to the Flag.

Minutes

Chair Matos presented the minutes from the Commission's August 11, 2023 meeting. Commissioner Pikolycky moved the adoption of the minutes. Commissioner Lohbauer seconded the motion.

The minutes from the August 11, 2023 Commission meeting were adopted by a vote of 10 to 0.

Committee Reports

Chair Matos provided a summary of the August 25, 2023 Policy and Implementation Committee meeting:

The Committee was briefed on Bass River Township's 2022 Master Plan Reexamination Report and Ordinance 2023-2. The ordinance implements the suggestions of the reexamination report and adopts a revised zoning map and amends the Township's code. The changes establish three infill districts in the Township; two of these districts are intended to facilitate residential development and one is intended to facilitate commercial development. Commissioners were generally supportive of the changes and noted the Township should remain aware of septic requirements and forest fire risk. The Committee recommended the matter to the full Commission.

The Committee was briefed on a request by Atlantic County to extend the deadline for fulfilling its land acquisition obligations under the Secondary Impacts Agreement associated with improvement of Garden State Parkway Exit 44. The County has already acquired 352 of the 356 required acres in the Tier 1 area, which was defined as the area within 1.5 miles of Interchange 44. An additional one-year extension was requested to address title issues and acquire the four remaining acres. The County will seek to acquire an additional 95 acres as well. The Committee was supportive of the extension and recommended the matter to the full Commission.

The Committee was updated on the status of the Kirkwood-Cohansey water management CMP amendments. In response to public comment and concerns from the resource extraction industry, a Notice of Substantial Change was published in April 2023. A public hearing was held in May and a 60-day public comment period ended in early June. An adoption notice was drafted and submitted to the Governor's office in late June. Approval to move forward with adoption was received on August 9th. The current schedule calls for the Commission's adoption of the rules on September 8th, which would allow the rules to take effect in early December. The Committee was supportive of the rule adoption and recommended the matter to the full Commission.

ED Grogan gave a presentation on FY23 accomplishments and the Committee's FY24 work plan. Staff has had great success with Pinelands Conservation Fund (PCF)-related projects, advancing rulemaking initiatives, supporting the Pinelands Infrastructure Trust Fund (PITF) and Climate Committee, National Park Service (NPS) economic monitoring, and other initiatives and unanticipated projects. The FY24 work plan will address more conformance matters, amendments to the Comprehensive Management Plan (CMP), Memorandums of Agreement (MOAs), Pinelands Development Credit (PDC) Bank legislation and other projects. Commissioners suggested possible ways to advance PDC legislation and provide continuing education to municipal representatives on Pinelands

zoning and application matters. A request to consider updating various CMP definitions was also made. No formal action was needed from the Committee on this matter.

Commissioner Avery provided a summary of the August 29, 2023 Personnel and Budget Committee meeting:

The Committee adopted the minutes from the June 20, 2023 meeting.

The Executive Director reviewed the check registers, electronic disbursements, and application fees from June 2023. It was noted that FY 2023 application fee revenue totaled 169.91% of the anticipated amount.

The Executive Director requested fixed assets deletion for various Information System (IS) equipment no longer in use and an old Commission vehicle that had to be replaced due to the transmission. The motion for deletion was unanimously approved by the Committee.

The Executive Director and Human Resources Manager provided an update on employee actions and recruitment efforts.

The Executive Director made a presentation on the recommended Fiscal Year 2024 Operating Fund, Pinelands Conservation Fund and Fenwick Manor Preservation Fund Budgets.

The Executive Director reviewed in detail anticipated revenue from grants and the state appropriation, as well as key expenditures. She also provided an overview of FY 2024 initiatives that would be supported by the budgets.

The Commission indicated its support for the budgets and recommended their adoption by the full Commission.

Executive Director's Report

ED Grogan provided information on the following matters:

- The final Draft of the Preservation Plan for Fenwick Manor was received and provided to the NJ Historic Trust. The NJ Historic Trust is reviewing the plan to ensure it doesn't have any questions for the Commission's consultants, Connolly and Hickey. Later this month, the Commission will be notified if it has been awarded a Capital Fund grant. That application was submitted this past spring.

- At the end of August, staff issued the Pinelands Development Credit Bank's Annual Report for 2023. During the October Commission meeting, staff will present the data from that report, as well as other permanent land protection accomplishments.

- The Commission will soon launch an online payment portal to accept application fees.

- Staff from the New Jersey Board of Public Utilities (NJBPU) came to the Commission's offices on August 29th for a scheduled meeting. During the meeting, the NJBPU provided an update on its community solar pilot program, which recently became permanent, and its competitive solar program. The NJPBU also discussed its latest dual use solar pilot program, which incorporates farming and solar (agrivoltaics) on unpreserved farmland. An overview of Pinelands standards, including the application process, and an update on certain solar energy applications was provided. The meeting was the first step in a good working relationship and future coordination.

- Staff participated in a meeting with the Highlands Council at its headquarters in Chester, New Jersey. The meeting was organized by the Pinelands Preservation Alliance. The Highlands Coalition Executive Director also participated in the meeting. The discussion centered around similarities and differences between the two agencies, matters of concerns, education and outreach and the use of social media.

- Staff attended the August monthly meeting of the Interagency Council on Climate Change (IAC). A revised schedule was provided in order to complete the Extreme Heat Resilience Action Plan, with the goal of issuing the plan in the spring of 2024. The Council is looking for ways to report on state agency accomplishments related to the Climate Change Resilience Strategy as the two-year anniversary of its approval approaches.

- Staff also attended an Interagency Task force meeting arranged by the Executive Director of the State Planning Commission. The State Planning Commission is preparing to issue a new State Plan by the end of 2024. They plan to hold a number of stakeholder meetings this fall. The Pinelands Area is not subject to the State Plan but staff will be making suggestions and be available as a resource.

Chuck Horner, Director of Regulatory Programs, provided information on the following regulatory matters and encouraged the Commission to read the August Management Report, which highlights a wide range of ongoing development applications.

- Staff continues to receive inquiries from the public and the press about the future of the former Atco Dragway property. Several years ago, the Commission issued a Certificate of Filing for conversion of the dragway into an auto auction. At this time, no additional information or applications have been submitted.

- Staff recently met with a developer regarding its application to build a large residential development on Lakehurst Road in Pemberton Township. The application has been ongoing for decades. A Threatened and Endangered (T&E) species study was undertaken during 2005-2007 and determined the presence of T&E species. Commission staff is requiring updated T&E survey work due to the long lapse of time. Staff is seeing this issue arise more often as projects sat with no

movement for years. He said applicants do not want to complete additional T&E work. Staff advises applicants who are unhappy with a staff determination that they have the option to proceed with a Commission public hearing.

- Director Horner said that a memo and additional information was shared with Commissioners concerning a residential subdivision application in Woodland Township. He said the matter is similar to the Pemberton Township residential development application in that T&E surveys were conducted many years ago and now the applicant would like to proceed with developing the parcel. Staff is requesting additional T&E work and the applicant doesn't feel that staff kept them apprised of the requirements.

Commissioner Meade asked if a Commission public hearing allows for a waiver of the Commission's rules.

Director Horner said no. He described the public hearing process. He said once the Commission issues a Certificate of Filing, which is a completeness document that allows the applicant to secure municipal and county approvals, an applicant must submit local approvals to the Commission for review. At this time, the staff issues a letter advising that the approval or permit can take effect or that a Commission public hearing is necessary to resolve an issue. He said should the applicant choose to proceed with the hearing, it is conducted at the Commission's offices and the Executive Director serves as the hearing officer. Staff generates a report on the matter and presents it to the Commission at a monthly meeting where a vote is taken on the record.

Stacey Roth said alternatively an applicant can request an administrative hearing at the Office of Administrative Law (OAL) rather than a Commission public hearing. The decision from the OAL judge would come back before the full Commission for a vote to either accept or deny.

Paul Leakan, Communications Officer, said a panel of experts nominated the Pine Barrens as one the best haunted destinations in America. Commission staff provided a spooky photo, and the public can vote on the 18 different destinations to determine America's top haunted site. He said currently the Pine Barrens is in eighth place and voting will end on September 18th.

He said the Commission officially launched its new online store. A shopping cart icon was added to the home page of the Commission's website, and it links to our online store, which is powered by Square. Square is a point of sales platform used by tens of thousands of small and medium sized retail businesses around the world.

Through Square, the Commission is selling three different Pinelands-themed mugs. The thick, two-sided, 11-ounce mugs feature the iconic Pine Barrens treefrog, pine barren gentian or the Jersey Devil. The mugs are dishwasher and microwave safe: they will not fade in the dishwasher. The mugs are also 100% made in the USA.

Meanwhile, the Commission is also selling reusable grocery/market tote bags. The sturdy, two-sided bags are made of 15-ounce, natural cotton. They feature an extraordinary photo of our mascot, the Jersey Devil. The bags are also 100% made in the USA.

Through our Square site, the Commission is also selling our remaining stock of Pinelands note cards.

Mr. Leakan noted that all proceeds from merchandise sales will benefit the Kathleen M. Lynch-van de Sande Fund for the Reforestation of the Pinelands. The fund was established in memory of Ms. Lynch-van de Sande, a Pinelands Commission Environmental Specialist who died in a car accident in June 1989. It funds the planting of native Pinelands species and projects that raise awareness of native Pinelands plants. More recently it funded the design and installation of our 340-square-foot rain garden, which is currently thriving with hundreds of native flowers.

Through the Commission's Square site, the public can donate directly to the Katie Fund. After building up the fund, the Commission could enact a plan to award Katie Fund grants to worthy projects that focus on native Pinelands plants.

Lastly, Mr. Leakan noted that the Pinelands merchandise is on display in a glass case located in the lobby. The public can purchase items onsite by scanning a QR code with their cellphone.

Public Development Projects and Other Permit Matters

Chair Matos introduced a resolution for the installation of 12-inch water main within the Route 72, Atlantic Hills Boulevard and Neptune Drive right-of-way in Stafford Township.

Commissioner Lohbauer made a motion Approving With Conditions an Application for Public Development (Application Number 2003-0403.005) (See Resolution # PC4-23-32). Commissioner Pikolycky seconded the motion.

Director Horner noted that the water main extension is approximately three-quarters of a mile long and will be installed in the disturbed grass shoulder along Route 72. He said some portions of the route are adjacent to wetlands. He said the water main will be installed using horizontal directional drilling (HDD) due to the existing utilities in the roadway. He noted that an HDD contingency plan has been provided in case a breakout occurs.

Commissioner Lohbauer asked if the contingency plan requires that Commission staff be notified in the event of a breakout and, if so, how quickly staff will be notified.

Ernest Deman of the Regulatory Programs office said staff will be notified within 24 hours should a breakout occur.

The resolution was adopted by a vote of 10 to 0.

Chair Matos introduced a resolution for the expansion of the Berkeley Township municipal complex.

Commissioner Avery made a motion Approving With Conditions an Application for Public Development (Application Number 1986-0127.012) (See Resolution # PC4-23-33). Commissioner Lohbauer seconded the motion.

Director Horner said this application is to legitimize development that occurred at the Berkeley Township municipal site without application to the Commission. He said the development that took place is listed in the August 18, 2023 Public Development Application Report. He displayed an aerial of the site (see attached), which is located on Pinewald Keswick Road. He noted that all the development occurred on the north side of the road, including a municipal public works building, a firehouse and a school bus parking yard.

He said the northern portion of the site is located in a Pinelands Forest Area and the road frontage portion of the site is located in the Preservation Area District. A new municipal complex is not a permitted land use in the Preservation Area District or the Forest Area. He said the Berkeley Township municipal complex existed prior to the 1981 effective date of the CMP. He said the municipal complex is a non-confirming use and is only permitted to expand by 50 percent in area, capacity or intensity, whichever may be applicable. He said when the Commission certified the Berkeley Township land use ordinance, a specific provision was included, and it permitted the 50 percent expansion of the municipal complex.

He said staff needed to determine the acreage of the municipal complex that existed as of January 14, 1981. He said the areas outlined in red depict the portions of the property that were used to calculate the acreage (15.7 acres). A chart was included on the aerial, and it breaks down the acreage of existing development. The 70 acres associated with the landfill was not included in the application. The total area of expansion is 7.85 acres in order to be consistent with the CMP.

Lastly, Director Horner said that a recycling facility was previously established in the western portion of the site along an existing utility right-of-way. The recycling facility will be removed. He added that all development will be maintaining a 300-foot buffer to wetlands.

Commissioner Meade asked about what was located in the square box outlined in black on the aerial.

Director Horner said a firehouse is located in the square and was treated separately and qualified to be expanded under the Commission’s 50 percent expansion provision.

Commissioner Meade asked if the capping of the landfill and solar application are separate from the municipal complex.

Director Horner said the solar facility is a permitted use and neither it, nor the capping of the landfill are part of the 50 percent expansion of the municipal complex.

The resolution was adopted by a vote of 10 to 0.

Chair Matos introduced a resolution approving a Waiver of Strict Compliance for the development a single-family dwelling in Southampton Township.

Commissioner Asselta made a motion Approving With Conditions an Application for a Waiver of Strict Compliance (Application Number 1989-0308.001) (See Resolution # PC4-23-34). Commissioner Lohbauer seconded the motion.

Director Horner said an applicant can apply for a Waiver of Strict Compliance when a proposed development cannot meet a CMP standard. He said for example if an applicant is applying to build a single-family dwelling and they cannot meet the five-foot seasonal high water table requirement, they may qualify to build so long as they can demonstrate certain conditions. He said a waiver is a legal examination to ensure that the Commission is not taking anyone's land. He said the language in the CMP states that a minimum beneficial use of the parcel may be provided consistent with constitutional requirements.

He said in rare instances if the environmental impacts from a proposed development are too substantial, Pinelands Development Credits can be allocated to the property owner instead of the right to build.

He said in this instance the applicant is proposing to build a single-family dwelling on a 19-acre agricultural field and could not meet the buffer to wetlands standard or the five-foot to seasonal high water table standard. He said staff is recommending approval of the waiver.

The resolution was adopted by a vote of 10 to 0.

Planning Matters

Chair Matos introduced a resolution certifying a Bass River Township Master Plan and ordinance.

Commissioner Lohbauer made a motion Issuing an Order to Certify the Bass River Township 2022 Master Plan Reexamination Report and Ordinance 2023-2, Amending Title 17 (Zoning) of the Code of Bass River Township (See Resolution # PC4-23-35). Commissioner Pikolycky seconded the motion.

ED Grogan said Bass River Township reached out to the Commission a number of years ago because they were interested in increasing the development potential, including residential development, in the Pinelands Area portion of their town. She said staff is happy to recommend the amended zoning map, ordinance and master plan. She said in the early 2000s the Township changed the residential building lot size requirement from one acre to two acres in the Pinelands Village (shown in the purple/pink color on the map (see

attached)). She said by reverting back to the original lot size of one acre, which is consistent with the CMP's density for a Pinelands Village, the Township will have the potential to increase its residential development. The zoning map also makes minor adjustments to lot lines in two village zoning districts to eliminate split-zoned lots. She noted that this ordinance is not the controversial zoning change that Bass River Township proposed that would have extended the commercial zone further within the Village of New Gretna.

She said additionally, the Township has adopted three separate Infill Area Districts. She said the CMP permits the establishment of Infill Area Districts within the Preservation Area District. She said Infill Areas recognize existing development patterns, typically houses. She said these areas are not large enough to be Villages but allow additional development to occur between the current development on existing roads. These areas do not permit new subdivisions; only the development of existing lots. Maps were displayed of where the Infill Areas will be located. She said the challenge for Bass River Township is that much of its Preservation Area District is preserved or constrained by wetlands and wetlands buffers. She said staff estimates the potential of 14 new homes in the Infill Area and possibly one or two new commercial uses.

Ms. Roth said Commissioner Asselta is recusing on this matter because one of his clients is involved. Commissioner Asselta left the dais.

The resolution was adopted by a vote of 9 to 0. Commissioner Asselta did not participate in the vote and returned to the meeting after the vote.

Chair Matos introduced a resolution to revise and adopt CMP amendments related to water management.

Commissioner Avery made a motion To Revise and Adopt Proposed Amendments to the Comprehensive Management Plan (Water Management) (See Resolution # PC4-23-36). Commissioner Lohbauer seconded the motion.

ED Grogan said the process to protect the Kirkwood-Cohansey aquifer began many years ago when the Legislature called for a study to determine the ecological impacts of human activities, including wells and diversions, on the ecology of the Pinelands Area. During that time, staff has spent countless hours meeting with the NJDEP, the US Geological Survey (USGS), stakeholders and a variety of interested parties. This eventually led to drafting of the rule and 60-day public comment period. During that time period, the resource extraction industry raised significant concerns about its non-consumptive water use. She said this issue had never been raised before but staff and the Commission determined it was something that needed to be addressed.

A second formal rule making process began with the publication of a Notice of Substantial Change to address the non-consumptive water use by the resource extraction industry. Another public hearing was held and an additional 60-day public comment period followed that ended in early June. Staff spent the summer preparing responses to all the public

comments. Staff is recommending adoption of the rule today. The draft adoption notice was shared with the Governor's office, who gave approval to move forward today. The Governor will have a 30-day review period of the meeting minutes, and the rule is expected to be published in the New Jersey Register in early December.

The resolution was adopted by a vote of 10 to 0.

Public Comment on Development Applications and Items Where the Record is Open

No comment was provided.

Ordinances Not Requiring Commission Action

ED Grogan said the ordinance not requiring Commission action was submitted by Berlin Township in response to the Department of Community Affairs model ordinance for electric vehicle charging stations.

Other Resolutions

Chair Matos introduced a resolution to grant an extension to Atlantic County in order for the County to complete its obligation to purchase land associated with the Garden State Parkway Exit 44 expansion.

Commissioner Lohbauer made a motion To Authorize an Additional Extension of the Time Period for Atlantic County to Complete its Obligations Under the Secondary Impacts Agreement for Interchange 44 of the Garden State Parkway (See Resolution # PC4-23-37). Commissioner Pikolycky seconded the motion.

ED Grogan said Atlantic County needs additional time to acquire the remaining four acres. She said the lots are very small, and the County is in the midst of contacting many owners and there are title issues. A map was displayed (see attached) to show the lands the county has acquired (yellow area) since 2013 and the 10 acres (orange area) it acquired in the last year. She noted that the county has bigger plans of acquiring additional land in the vicinity to create as much open space as possible.

Ms. Roth said the Atlantic Board of Commissioners voted in favor of using eminent domain if necessary to acquire the remaining lots.

Commissioner Avery asked if the County was first attempting to acquire the lots through voluntary sales.

Ms. Roth said yes and noted the County has sent letters to the property owners, received some positive responses and is working on additional title work.

The resolution was adopted by a vote of 10 to 0.

Chair Matos introduced a resolution to adopt the Fiscal Year (FY) 2024 Budgets.

Commissioner Pikolycky made a motion To Adopt the Pinelands Commission's Fiscal Year 2024 Budgets for the Operating Fund, Fenwick Manor Preservation Fund and the Pinelands Conservation Fund (See Resolution # PC4-23-38). Commissioner Avery seconded the motion.

Jessica Lynch, Business Services Manager said the FY 24 Budget consists of three budgets. (see attached presentation slides) She highlighted the Operating Fund Revenue. She said the state appropriation has been increasing by $150,000 annually since (FY 2019), while the state supplemental fund that is used to pay for health benefits has remained at the same level of funding since 2004. Staff has forecasted application fee revenue to be $700,000. Grant funding includes money from the National Park Service, the NJDEP (future Box Tuttle study) and the Environmental Protection Agency.

Ms. Lynch then reviewed the Operating Fund Expenditures. She said salaries and fringe benefits have increased because of budgeting for three new positions.

ED Grogan said an Energy Conservation Fund was created as part of last year's budget. She reviewed the FY24 initiatives of the fund, noting that it includes a future composting program at the office. She said the many HVAC units on the Commission property eventually will need to be replaced.

Ms. Lynch reviewed the Fenwick Manor Preservation Budget that totals $575,000 and was required as part of a 50 percent match for the capital fund grant the Commission applied for. She also reviewed the Pinelands Conservation Fund, which is only increasing by ½ a percent.

ED Grogan reviewed a list of projects that staff and the Commission will be working on during FY24. She noted one new initiative using the Pinelands Conservation Fund will be to choose five properties that have received funding for preservation and make site visits. Staff will be taking photos and recording certain attributes to see how the properties have fared because long-term maintenance of properties has proven to be challenging but necessary. She noted that stewardship concerns were highlighted during the Land Preservation Summit the Commission held earlier this year. She reviewed other initiatives and ongoing projects, including various Science Office studies, Memoranda of Agreement and rulemaking efforts. See presentation slides for the full list of FY 2024 initiatives.

The resolution was adopted by a vote of 10 to 0.

<u>General Public Comment</u>

Heidi Yeh, of the Pinelands Preservation Alliance, thanked the Commission for adopting amendments that will protect the Kirkwood-Cohansey aquifer. She said this is a perfect example of a commissioned scientific study that later was directly incorporated into policy.

Kevin Coakley, an attorney representing the Clayton Companies, said Clayton companies mine sand in the Pinelands along with approximately 70 other mining operations that will be affected by the water management amendments. He said in April the Commission published the new rule proposal that included language to recognize the non-consumptive water use by the mining industry. He said the NJDEP has regulated groundwater for many years and the mining industry believe that the NJDEP has the exclusive right to regulate water allocation diversion permits. He said that NJDEP bases its diversion permits on estimates of water use, not exact quantification. Mr. Coakley said that he had submitted several letters to the Commission requesting additional changes to the rule to make clear that estimates of water use are acceptable; however, staff refused to distribute these letters to the Commission because the record was closed. He said that the rule was adopted this morning without public comment. He said the Commission's process was defective because no opportunity had been provided for a public hearing before the Commission. Instead, staff conducted the previous public hearings. He concluded by stating that his client wants the rule to be modified.

John Camera, Berkeley Township Administrator, thanked the Commissioners and Director Horner and ED Grogan for working with the Township on resolving the long-standing issues at the municipal complex. He extended that sentiment on behalf of Mayor Carmen Amato. He said it's a new day for Berkeley Township.

Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Avery seconded the motion. The Commission agreed to adjourn at 11:21 a.m.

Certified as true and correct:

_____ Date: September 15, 2023

Jessica Noble, Executive Assistant

MUNICIPAL COMPLEX AREA PRE-1981

PROPOSED EXPANSION AREA POST 1981

MUNICIPAL OFFICE PARK=	7.5 ACRES
PUBLIC WORKS BUILDING AND PARKING=	1.0 ACRES
BUS PARKING FACILITY=	1.8 ACRES
TRUCK PARKING AREA=	1.0 ACRES
DPW PARKING AND FUEL STATION=	0.6 ACRES
SAND/SALT MIX AREA AND STORAGE YARD=	0.3 ACRES
GUN RANGE=	1.0 ACRES
OLD COMPOST AREA=	2.5 ACRES
TOTAL MUNICIPAL COMPLEX AREA PRE-1981 =	15.7 ACRES

MUNICIPAL COMPLEX AREA PRE-1981=	15.7 ACRES
MUNICIPAL COMPLEX AREA POST-1981=	7.85 ACRES
TOTAL =	23.55 ACRES

BLOCK 23
LOT 2

LIMIT OF LANDFILL (TYP.)

BLOCK 23
LOT 2.01

BLOCK 22
LOT 4

BLOCK 23
LOT 2.01

NEW JERSEY 2020 HIGH RESOLUTION
ORTHOPHOTOGRAPHY, NAD83 (2011)
NJ STATE PLANE FEET, MRSID MG3L

GRAPHIC SCALE

150 0 75 150 300 600

(IN FEET)
1 inch = 150 ft.

RVE 1901
REMINGTON & VERNICK **ENGINEERS**
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No.	DATE	BY	CHK
1	REVISED PER PINELANDS 8-1-2023 LETTER	8/3/2023	PJO	TD

MUNICIPAL COMPLEX AREA INCLUDING EXPANSION

TOWNSHIP OF BERKELEY

BERKELEY TOWNSHIP MUNICIPAL COMPLEX PINELANDS PERMITTING

BERKELEY TOWNSHIP OCEAN COUNTY NEW JERSEY

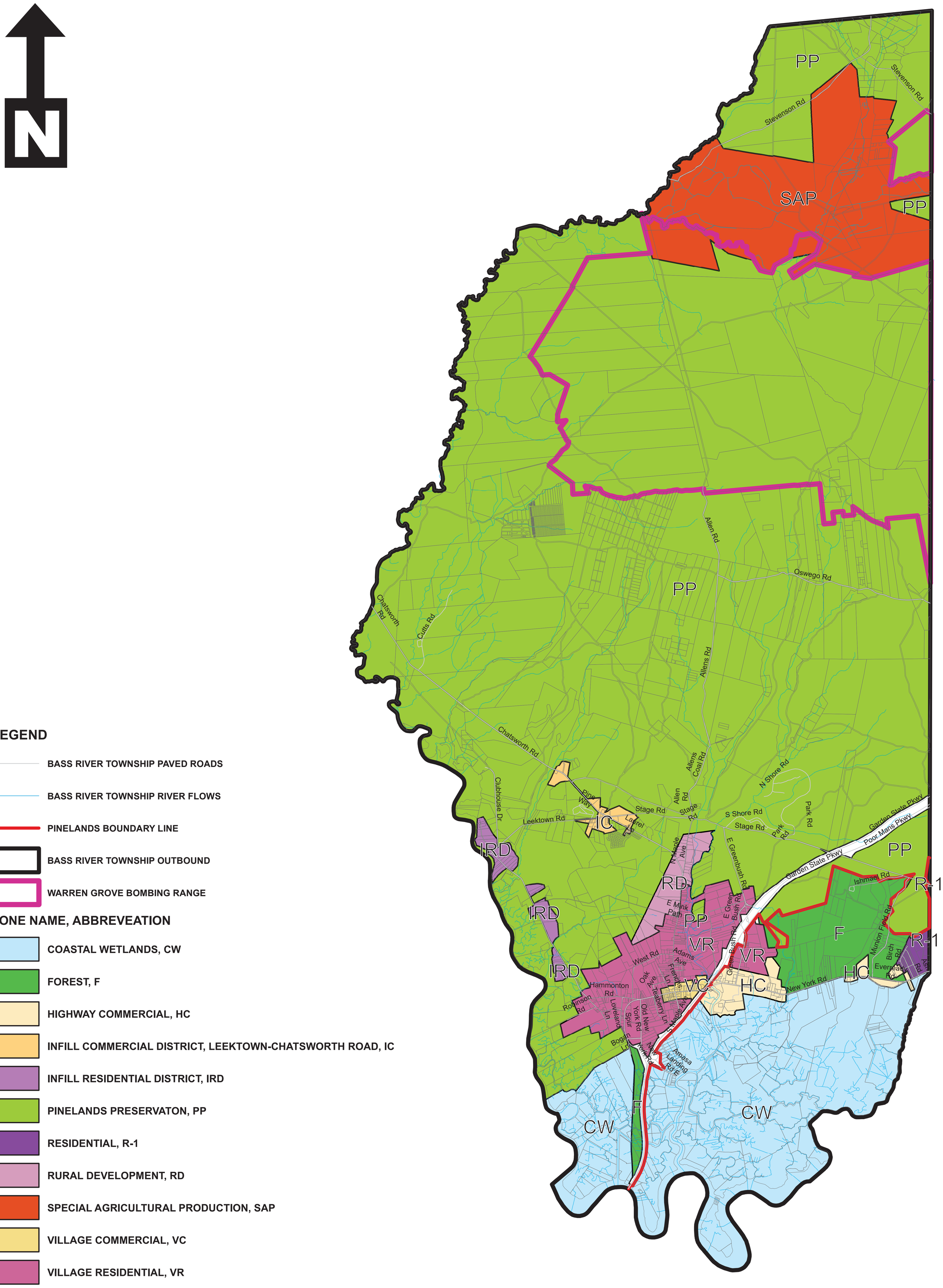
DRAWN BY:	DESIGN BY:	CHECKED BY:	SCALE:
PJO	PJO	JL	AS SHOWN
DATE: 9/6/2023		SHEET No.: 1 of 1	
JOB No.: 1506 - U - 121			

K:\DRAFTING\DRAW\Berkeley\1506U121\MUNICIPAL EXPANSION 9-6-23.dwg 9/6/2023 11:33:00 AM

K:\DRAFTING\DRAW\Berkeley\1506U121\MUNICIPAL EXPANSION 9-6-23

ZONE MAP

BASS RIVER TOWNSHIP



LEGEND

- BASS RIVER TOWNSHIP PAVED ROADS
- BASS RIVER TOWNSHIP RIVER FLOWS
- PINELANDS BOUNDARY LINE
- BASS RIVER TOWNSHIP OUTBOUND
- WARREN GROVE BOMBING RANGE

ZONE NAME, ABBREVEATION

- COASTAL WETLANDS, CW
- FOREST, F
- HIGHWAY COMMERCIAL, HC
- INFILL COMMERCIAL DISTRICT, LEEKTOWN-CHATSWORTH ROAD, IC
- INFILL RESIDENTIAL DISTRICT, IRD
- PINELANDS PRESERVATON, PP
- RESIDENTIAL, R-1
- RURAL DEVELOPMENT, RD
- SPECIAL AGRICULTURAL PRODUCTION, SAP
- VILLAGE COMMERCIAL, VC
- VILLAGE RESIDENTIAL, VR

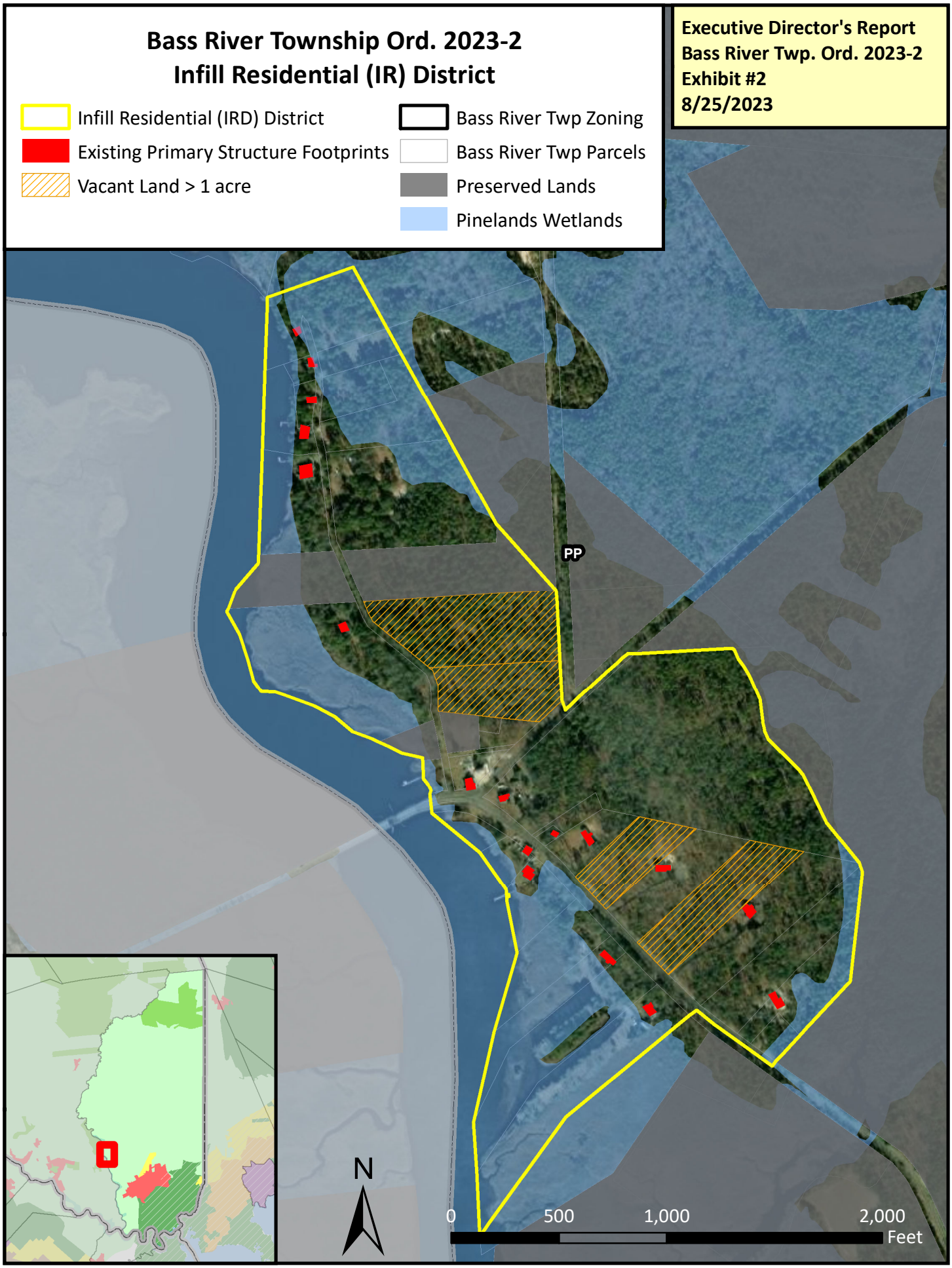
0 0.5 1 2 3 4 Miles

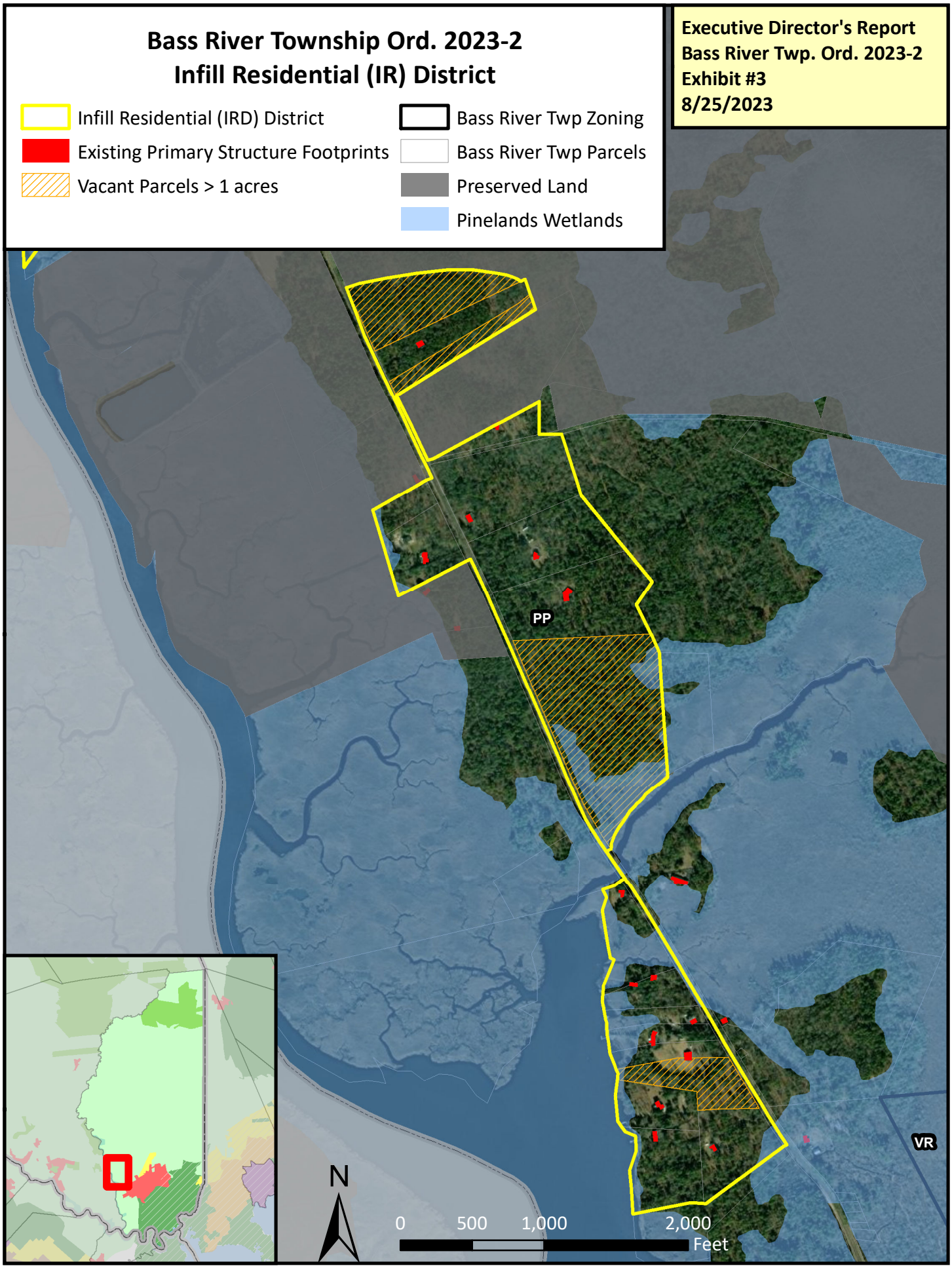
Map Sources: NJDOT, NJGIN, Pinelands, Bass River Township Official Zone Map DD December 2012

CME ASSOCIATES
Consulting & Municipal ENGINEERS

CONSULTING & MUNICIPAL ENGINEERS
3141 BORDENTOWN AVENUE, PARLIN, N.J. 08859
1460 ROUTE 9 SOUTH HOWELL, N.J. 07731
3759 ROUTE 1 SOUTH SUITE 100, MONMOUTH JUNCTION, NJ 08852
ONE MARKET STREET SUITE 1F, CAMDEN, NJ 08102
WWW.CMEUSA1.COM

DATE	SCALE	LAST REVISED	CREATED BY
December 2012	1 in = 2,500 feet	2/6/2023	DE


Bass River Township Ord. 2023-2
Infill Residential (IR) District
Infill Residential (IRD) District
Existing Primary Structure Footprints
Vacant Land > 1 acre
Bass River Twp Zoning
Bass River Twp Parcels
Preserved Lands
Pinelands Wetlands
Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #2
8/25/2023
PP
N
0
500
1,000
2,000
Feet


Bass River Township Ord. 2023-2
Infill Residential (IR) District
Infill Residential (IRD) District
Existing Primary Structure Footprints
Vacant Parcels > 1 acres
Bass River Twp Zoning
Bass River Twp Parcels
Preserved Land
Pinelands Wetlands
Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #3
8/25/2023
PP
VR
N
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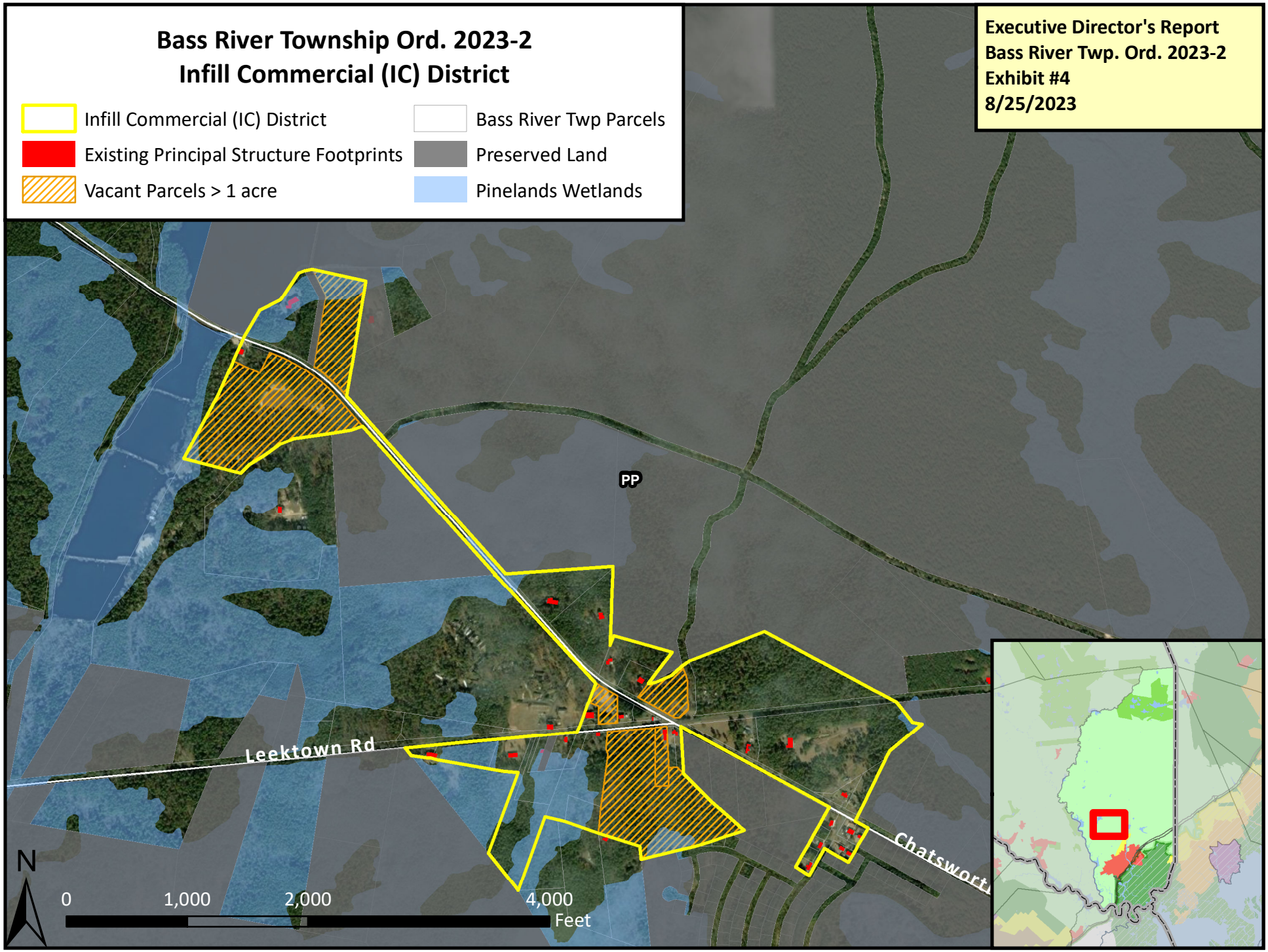
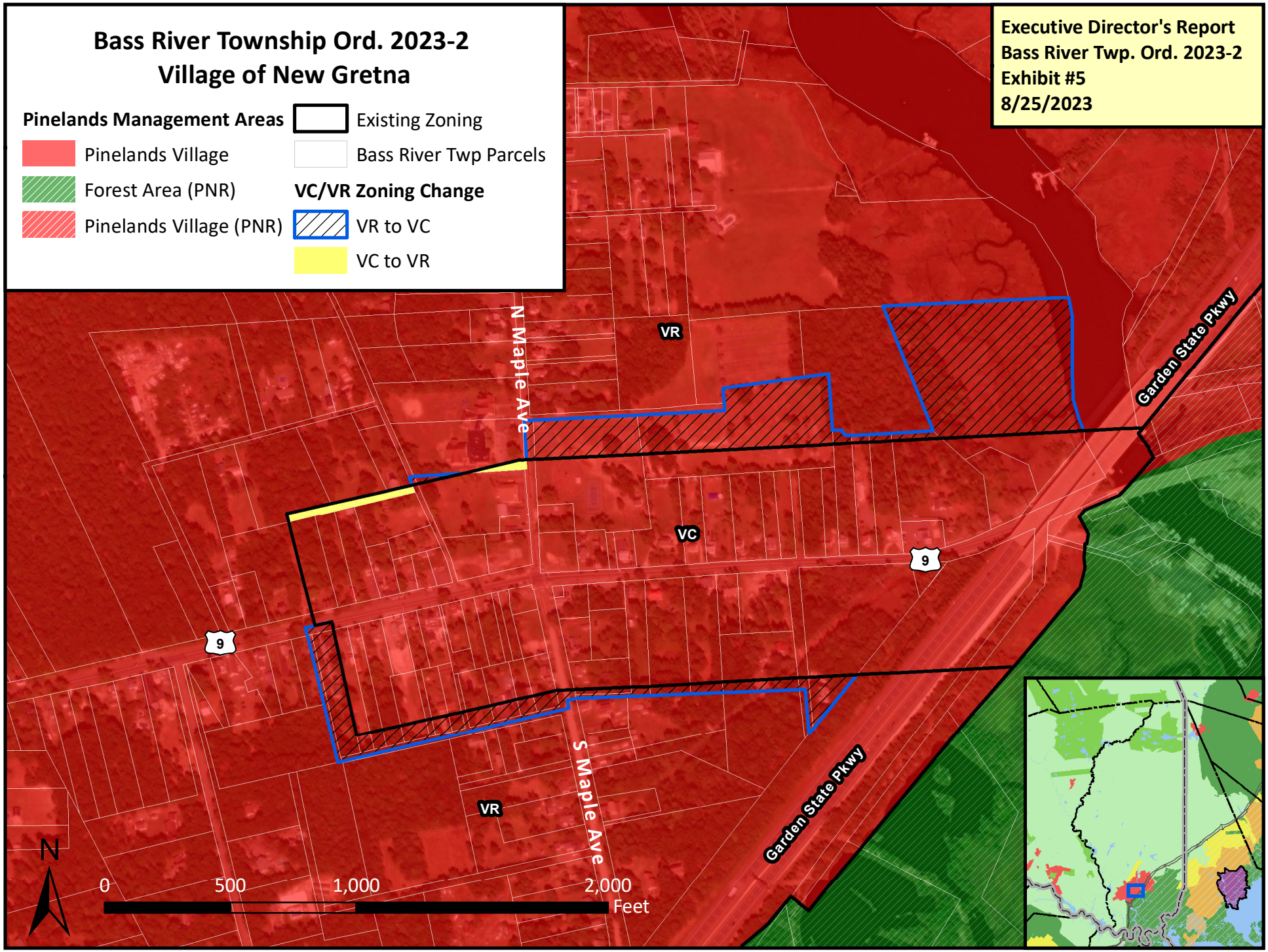
1,000
2,000
Feet


Bass River Township Ord. 2023-2
Infill Commercial (IC) District
Infill Commercial (IC) District
Existing Principal Structure Footprints
Vacant Parcels > 1 acre
Bass River Twp Parcels
Preserved Land
Pinelands Wetlands
Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #4
8/25/2023
PP
Leektown Rd
Chatsworth
N
0
1,000
2,000
4,000
Feet


Bass River Township Ord. 2023-2
Village of New Gretna
Pinelands Management Areas
Pinelands Village
Forest Area (PNR)
Pinelands Village (PNR)
Existing Zoning
Bass River Twp Parcels
VC/VR Zoning Change
VR to VC
VC to VR
Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #5
8/25/2023
N Maple Ave
S Maple Ave
Garden State Pkwy
Garden State Pkwy
VR
VC
VR
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9
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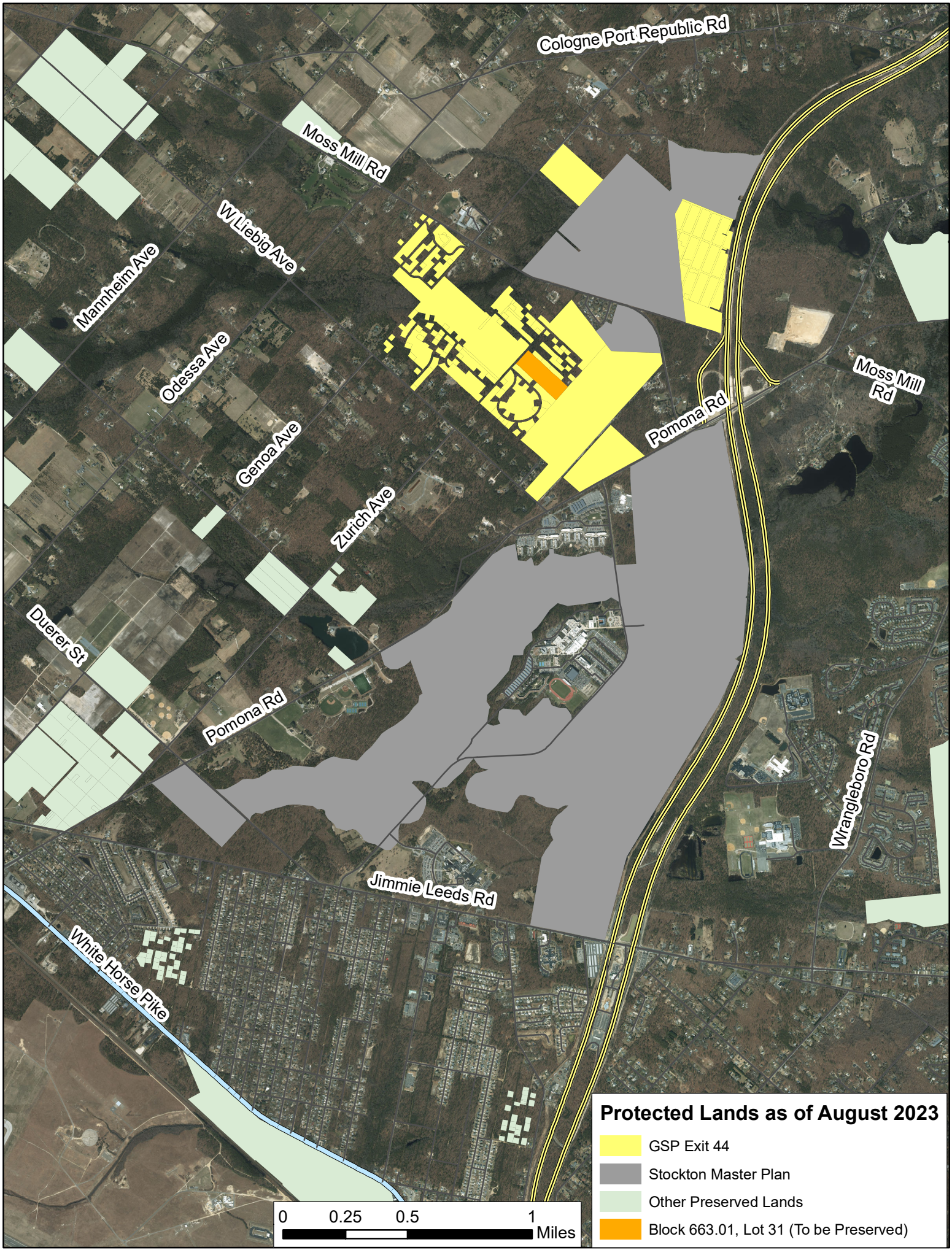
1,000
2,000
Feet


Cologne Port Republic Rd
Moss Mill Rd
W Liebig Ave
Mannheim Ave
Odessa Ave
Genoa Ave
Zurich Ave
Pomona Rd
Moss Mill Rd
Pomona Rd
Duerer St
Pomona Rd
Wrangleboro Rd
Jimmie Leeds Rd
White Horse Pike
0
0.25
0.5
1
Miles
Protected Lands as of August 2023
GSP Exit 44
Stockton Master Plan
Other Preserved Lands
Block 663.01, Lot 31 (To be Preserved)

Personnel & Budget Committee
Fiscal Year 2024 Initiatives

August 28, 2023

FY 2024 BUDGETS

- Operating Fund - $6,896,895
- Pinelands Conservation Fund - $964,866
- Fenwick Manor Preservation Fund - $575,000

Operating Fund Revenue

	FY21 Unaudited	FY22 Unaudited	FY23 Unaudited	FY24 Anticipated
State Appropriation	$3,099,000	$3,249,000	$3,399,000	$3,549,000
State Supplemental Funding	$687,000	$687,000	$687,000	$687,000
Application Fees	$380,000	$500,000	$650,000	$700,000
Grants/Special Purpose	$585,000	$618,000	$383,000	$480,500
Other	$5,000	$5,000	$12,500	$80,000
Fund Balance & Reserves	$1,159,074*	$907,202*	$1,368,078*	$1,400,395*
TOTAL	$5,915,074	$5,966,202	$6,499,578	$6,896,895

* Includes:

- $886,395 from the Undesignated Fund Balance
- $505,000 Reserves – Fenwick, Energy Conservation and Shelving
- $9,000 PCF Administrative Assessment

Operating Fund Expenditures

	FY21 Unaudited	FY22 Unaudited	FY23 Unaudited	FY24 Anticipated
Salary and Wages	$3,050,972	$3,021,984	$3,374,398	$3,783,408
Fringe Benefits	$1,904,593	$1,910,905	$2,188,901	$2,250,922
Supplies	$128,784	$131,712	$148,202	$141,621
Professional Services	$485,652	$462,728	$222,500	$259,540
Other Services	$216,315	$259,623	$282,877	$297,983
Maintenance/Rent	$83,620	$132,620	$119,070	$122,020
Improvements and Acquisitions	$45,138	$46,630	$163,630	$41,400
Total Expenditures	$5,915,074	$5,966,202	$6,499,578	$6,896,895

FY2024 Initiatives: Energy Conservation Reserve

Projects and Capital Expenditures
Electric vehicle charging station(s): grant funding, evaluation and installation
Solar energy facility consultant: assess feasibility and options for solar installation at Commission's offices
Purchase new and replacement energy efficient office equipment
Office composting program
Develop long-term plan for replacement of existing HVAC systems

Fenwick Manor Preservation Budget

	FY24 Anticipated
Partial Exterior Restoration	$330,850
Structural Reinforcement/Maintenance	$101,150
Partial Interior Restoration	$92,700
Non-Construction Costs	$50,300
Total Expenditures	$575,000*
*Total funds available to match requested NJHT capital grant	

Pinelands Conservation Fund Expenditures

	FY21 Unaudited	FY22 Unaudited	FY23 Unaudited	FY24 Anticipated
Land Acquisition	$ 24,696	$ 30,600	$ 8,350	**$21,060**
Conservation Planning & Research	$480,452	$695,027	$703,011	**$660,876**
Community Planning & Design	$211,148	$175,655	$154,070	**$162,030**
Education and Outreach	$114,320	$142,350	$95,400	**$120,900**
Total PCF Expenditures	$830,616	$1,043,632	$960,831	**$964,866**

FY2024 Initiatives: Pinelands Conservation Fund

Project/Initiative	Account
Land preservation summit	Land Acquisition
Acquisition priorities and funding policy review	Land Acquisition
Stewardship and monitoring report on PCF-funded properties	Land Acquisition
Acquisition funding round	Land Acquisition

FY2024 Initiatives: Pinelands Conservation Fund

Project/Initiative	Account
Landfill closure assessment	Conservation Planning & Research
Septic pilot program	Conservation Planning & Research
Kirkwood-Cohansey water management rules	Conservation Planning & Research
ROW Pilot Program rules	Conservation Planning & Research
Black Run watershed protection rules	Conservation Planning & Research
Permanent land protection data and reporting	Conservation Planning & Research

FY2024 Initiatives: Pinelands Conservation Fund

Project/Initiative	Account
Corn snake research/study	Conservation Planning & Research
King Snake research/study	Conservation Planning & Research + EPA grant
Box turtle research/study	Conservation Planning & Research

FY2024 Initiatives: Pinelands Conservation Fund

Project/Initiative	Account
Forest and Rural Development Area clustering rules	Community Planning & Design
PDC rules	Community Planning & Design
PDC supply and demand	Community Planning & Design
PDC Bank administration, including legislative changes	Community Planning & Design
Pinelands Infrastructure Trust Fund administration	Community Planning & Design
Climate Committee support and initiatives • Management area boundaries • IAC/Resilience Action Plans • BPU dual use solar program and CMP amendments	Community Planning & Design

FY2024 Initiatives: Pinelands Conservation Fund

Project/Initiative	Account
Pinelands Short Course(s)	Education & Outreach
World Water Monitoring Challenge	Education & Outreach
Pinelands Speakers Series	Education & Outreach
Bog garden maintenance	Education & Outreach
Visitors Center programs and supplies	Education & Outreach
On-line store	Education & Outreach

FY2024 Initiatives: Operating Fund (NPS)

Project/Initiative	Account
Economic Monitoring Statistics: 5-Year Update	NPS – Economic Monitoring
Economy of Parks and Open Space study	NPS – Economic Monitoring
Local conformance & Zoning System Database	NPS – Economic Monitoring
Scenic Byway support	NPS – Economic Monitoring
Historic cemetery GPR mapping	NPS – Economic Monitoring
Native American site: field school	NPS – Economic Monitoring
Annual Pinelands calendar	NPS – Economic Monitoring

FY2024 Initiatives: Operating Fund (NPS)

Project/Initiative	Account
Water Quality Monitoring	NPS – Environmental Monitoring
Forest and pond water level monitoring	NPS – Environmental Monitoring
Annual Anuran surveys	NPS – Environmental Monitoring
Rare Snake Monitoring	NPS – Environmental Monitoring
Snake Fungal Disease and Adenovirus Monitoring	NPS – Environmental Monitoring
Box Turtle study	NPS – Environmental Monitoring

FY2024 Initiatives: Operating Fund

Project/Initiative
Procedural CMP amendments • "Gap" process • Expiration of old waivers and CFs • Increased fees for applications involving violations, waivers and wetlands-related Letters of Interpretation
Municipal "model" stormwater ordinances & NJDEP amendments • Draft, distribute and monitor municipal adoption
Local communications facility plan amendment
Affordable housing: preparation for 2025 round
ORV/ATV model municipal ordinances
Methodology to assess restoration costs for damaged habitats

FY2024 Initiatives: Operating Fund

Project/Initiative
Stockton University 2020 Facilities Master Plan • DCR amendment and offset
Secondary Impacts Agreement for GSP Interchange 44 • Extension and monitoring of land preservation obligation
Memoranda of Agreement • Accessible Trails (Pemberton, Stafford + other municipalities) • SJTA – AC Airport and Atlantic City Expressway expansion • Update (old) MOAs with NJDEP
Review and respond to other agency rulemaking (NJDEP, NJBPU, SADC)

FY2024 Initiatives: Operating Fund

Project/Initiative
Develop/enhance databases and tracking systems
Launch on-line application fee payment capability
Continue participation in Rutgers internship program
Recruitment and training: Environmental Technologies Coordinator, Applicant Services Representative, Planning Director
CWA contract negotiations
Litigation
New seminars for municipal officials (e.g., zoning officers)
Preparation for website update
Pinelands Municipal Council assistance
Unanticipated Projects

FY2024 Ongoing Work: Operating Fund

Review and processing of development applications, Letters of Interpretation and CAFRA permits
Review and processing of municipal master plans, land use ordinances and redevelopment plans
Committee and Commission meeting support
Reports (annual and monthly)
Website and social media
Interpretation database maintenance
Audit(s) and Audit Committee
Training (office-wide, supervisory)
Records management

RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-23- 32

TITLE: **Approving** With Conditions an Application for **Public Development** (Application Number 2003-0403.005)

Commissioner Lohbauer moves and Commissioner Pikolycky seconds the motion that:

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

2003-0403.005	
Applicant:	**Stafford Township**
Municipality:	Stafford Township
Management Area:	Pinelands Regional Growth Area
Date of Report:	August 17, 2023
Proposed Development:	Installation of 4,500 linear feet of 12 inch potable water main within the Route 72, Atlantic Hills Boulevard and Neptune Drive rights-of-way.

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

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

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

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

NOW, THEREFORE BE IT RESOLVED that Application Number 2003-0403.005 for public development is hereby **approved** subject to the conditions recommended by the Executive Director.

Record of Commission Votes

	AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*
Asselta	X				Lettman	X				Wallner			X	
Avery	X				Lohbauer	X				Matos	X			
Christy	X				Mauriello	X								
Holroyd	X				Meade	X								
Irick			X		Pikolycky	X								

*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission Date: September 8, 2023

Susan R. Grogan
Executive Director

Laura E. Matos
Chair

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

PHILIP D. MURPHY
Governor
SHEILA Y. OLIVER
Lt. Governor

General Information: Info@pinelands.nj.gov
Application Specific Information: AppInfo@pinelands.nj.gov

LAURA E. MATOS
Chair
SUSAN R. GROGAN
Executive Director

August 17, 2023

Matthew R. von der Hayden, Administrator (via email)
Stafford Township
260 East Bay Ave.
Manahawkin NJ 08050

Re: Application # 2003-0403.005
State Highway Route 72, Atlantic Hills Boulevard & Neptune Drive rights-of-way
Block 43, Lot 3
Stafford Township

Dear Mr. von der Hayden:

The Commission staff has completed its review of this application for installation of 4,500 linear feet of 12 inch potable water main within the Route 72, Atlantic Hills Boulevard and Neptune Drive rights-of-way. 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 September 8, 2023 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, Stafford Township Planning Board (via email)
Stafford Township Construction Code Official (via email)
Stafford Township Environmental Commission (via email)
Secretary, Ocean County Planning Board (via email)
Alan Dittenhofer, PE, PP, CME (via email)

State of New Jersey
THE PINELANDS COMMISSION
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PHILIP D. MURPHY
Governor
SHEILA Y. OLIVER
Lt. Governor

LAURA E. MATOS
Chair
SUSAN R. GROGAN
Executive Director

General Information: Info@pinelands.nj.gov
Application Specific Information: AppInfo@pinelands.nj.gov

PUBLIC DEVELOPMENT APPLICATION REPORT

August 17, 2023

Matthew R. von der Hayden, Administrator (via email)
Stafford Township
260 East Bay Ave.
Manahawkin NJ 08050

Application No.: 2003-0403.005
State Highway Route 72, Atlantic Hills Boulevard
& Neptune Drive rights-of-way
Block 43, Lot 3
Stafford Township

This application proposes installation of 4,500 linear feet of 12 inch potable water main within the Route 72, Atlantic Hills Boulevard and Neptune Drive rights-of-way.

The proposed water main will be extended primarily within the Route 72 right-of-way from the intersection of Ash Road and Route 72 to the intersection of Neptune Drive and Route 72. The proposed water main will connect to existing water mains near both intersections.

The proposed water main is intended to interconnect and loop the Township's water supply mains in the area. The Township's water main system is available to service existing and proposed land development. The 4,500 linear foot water main extension is not proposed to service currently proposed land development.

A construction staging area for the proposed development will be located on Block 43, Lot 3. Block 43, Lot 3 is owned by the Township.

The applicant proposes to install a 4,155 linear foot section of the water main via horizontal directional drilling (HDD). The HDD is proposed to avoid existing underground utilities within the Route 72 right-of-way, including telecommunications lines, and to minimize disturbance to the right-of-way. No HDD will occur within or under wetlands. The applicant has submitted a HDD Contingency Plan to address any potential break out of drilling fluid.

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. 7:50-5.28)

The proposed development is located in a Pinelands Regional Growth Area. The proposed development is a permitted use in a Pinelands Regional Growth Area.

Wetlands Standards (N.J.A.C. 7:50-6.6 & 6.13)

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

An approximately 1,000 foot section of the proposed water main will be located within the required 300 foot buffer to wetlands. This 1,000 foot section of the water main will be installed within the maintained grass shoulder of Route 72.

The CMP permits the installation of linear improvements (water mains) in the required buffer to wetlands provided the applicant demonstrates that certain CMP specified conditions are met. The applicant has demonstrated that there is no feasible alternative to the proposed development that does not involve development in the required buffer to wetlands that will result in a less significant adverse impact to wetlands. In addition, the proposed development will not result in a substantial impairment of the resources of the Pinelands. With the conditions below, all practical measures are being taken to mitigate the impact on the required buffer to wetlands. The development proposed within the required buffer to wetlands is necessary to provide water service to existing development in the Township. The applicant has demonstrated that the need for the proposed development overrides the importance of protecting the required buffer to wetlands.

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

The proposed water main will be located within a maintained grass road shoulder and under paved surfaces. The proposed soil disturbance is limited to that which is necessary to accommodate the development.

The Landscaping and Re-vegetation 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.

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

The Commission staff reviewed the application for evidence of significant cultural resources on the parcel. Based upon the lack of potential for significant cultural resources on the parcel, a cultural resource survey was not required.

PUBLIC COMMENT

The applicant has provided the requisite public notices. Notice to required landowners within 200 feet of Block 43, Lot 3 was completed on May 2, 2023. Newspaper public notice was completed on May 4, 2023. The application was designated as complete on the Commission's website on August 1, 2023. The Commission's public comment period closed on August 11, 2023. No public comment was submitted to the Commission regarding this application.

CONDITIONS

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of 20 sheets, prepared by Remington & Vernick Engineers and dated as follows:

   Sheets 1-3 & 10-20 - February 27, 2023
   Sheets 4, 5, 8 & 9 - February 27, 2023; last revised June 7, 2023
   Sheets 6 & 7 - February 27, 2023; last revised August 1, 2023

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.

6. The applicant shall engage an independent licensed professional engineer with proven experience in Horizontal Directional Drilling (HDD) to be present at all times HDD activities are being undertaken. The independent engineer shall:

   a. Ensure that all HDD activities are conducted in accordance with all approved plans;

   b. Ensure that appropriate measures, such as installation of silt fence, hay bales, inflatable berm, etc. are taken during HDD activities to prevent the discharge of drilling fluid to wetlands, streams or any other water body or beyond the immediate confines of the drill site;

   c. Monitor drill hole pressures and walk the area in which HDD activities are being conducted to identify any potential break outs of drilling fluid; and

   d. Be responsible for immediate implementation of the Horizontal Directional Drilling Contingency Plan should a breakout of drilling fluid occur and require the immediate cessation of all HDD activities. The applicant shall within 24 hours notify the Pinelands Commission’s Executive Director via email at info@pinelands.nj.gov of the location of the breakout and advise as to the response actions being taken to address the breakout in accordance with the Horizontal Directional Drilling Contingency Plan.

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.

State of New Jersey
THE PINELANDS COMMISSION
PO BOX 359
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www.nj.gov/pinelands

PHILIP D. MURPHY
Governor
SHEILA Y. OLIVER
Lt. Governor

General Information: Info@pinelands.nj.gov
Application Specific Information: AppInfo@pinelands.nj.gov

LAURA E. MATOS
Chair
SUSAN R. GROGAN
Executive Director

PINELANDS COMMISSION
APPEAL PROCEDURE

The Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal any determination made the by Executive Director to the Commission in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission and received by the Commission's office no later than 5:00 PM on September 5, 2023 and 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. PC4-23- 33

TITLE: **Approving** With Conditions an Application for **Public Development** (Application Number 1986-0127.012)

Commissioner Avery moves and Commissioner Lohbauer seconds the motion that:

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

1986-0127.012	
Applicant:	**Berkeley Township**
Municipality:	Berkeley Township
Management Area:	Pinelands Forest Area Pinelands Preservation Area District
Date of Report:	August 18, 2023
Proposed Development:	Expansion of an existing municipal complex.

WHEREAS, development listed on pages two and three in the August 18, 2023 Public Development Application Report occurred on the parcel without application to, and approval by, the Commission and constitutes a violation of the application requirements of the Pinelands Comprehensive Management Plan; and

WHEREAS, the applicant proposes to address this violation by completing this application; and

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

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

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

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

NOW, THEREFORE BE IT RESOLVED that Application Number 1986-0127.012 for public development is hereby **approved** subject to the conditions recommended by the Executive Director.

Record of Commission Votes

	AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*
Asselta	X				Lettman	X				Wallner			X	
Avery	X				Lohbauer	X				Matos	X			
Christy	X				Mauriello	X								
Holroyd	X				Meade	X								
Irick			X		Pikolycky	X								

*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission Date: September 8, 2023

Susan R. Grogan
Executive Director

Laura E. Matos
Chair

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

PHILIP D. MURPHY
Governor
SHEILA Y. OLIVER
Lt. Governor

General Information: Info@pinelands.nj.gov
Application Specific Information: AppInfo@pinelands.nj.gov

LAURA E. MATOS
Chair
SUSAN R. GROGAN
Executive Director

August 18, 2023

John Camera, Administrator (via email)
Berkeley Township
627 Pinewald-Keswick Road
Bayville NJ 08721

Re: Application # 1986-0127.012
Block 22, Lot 4
Block 23, Lots 2, 2.01 & 2.02
Berkeley Township

Dear Mr. Camera:

The Commission staff has completed its review of this application for expansion of the existing Berkeley Township municipal complex. 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 September 8, 2023 meeting.

Development specified in the attached August 18, 2023 Public Development Application Report occurred on the parcel without application to the Commission. That development constitutes a violation of the application requirements of the Pinelands Comprehensive Management Plan. Completion of this application is intended to address the violation.

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, Berkeley Township Planning Board (via email)
Berkeley Township Construction Code Official (via email)
Berkeley Township Environmental Commission (via email)
Secretary, Ocean County Planning Board (via email)
Ocean County Health Department (via email)
John LeCompte (via email)

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Chair
SUSAN R. GROGAN
Executive Director

General Information: Info@pinelands.nj.gov
Application Specific Information: AppInfo@pinelands.nj.gov

PUBLIC DEVELOPMENT APPLICATION REPORT

August 18, 2023

John Camera, Administrator (via email)
Berkeley Township
627 Pinewald-Keswick Road
Bayville NJ 08721

Application No.: 1986-0127.012
Block 22, Lot 4
Block 23, Lots 2, 2.01 & 2.02
Berkeley Township

This application proposes expansion of the existing Berkeley Township municipal complex located on the above referenced 178.66 acre parcel.

The 178.66 acre Berkeley Township municipal complex is comprised of two parcels that are located on the opposite sides of Pinewald-Keswick Road. A 33.5 acre portion (Block 22, Lot 4) of the 178.66 acre parcel is located on the south side of Pinewald-Keswick Road. A 145.16 acre portion (Block 23, Lots 2, 2.01 and 2.02) of the parcel is located on the north side of Pinewald-Keswick Road.

An existing municipal building and an existing police station building are located on the south side of Pinewald-Keswick Road. No development is proposed in this application on the south side of Pinewald-Keswick Road.

A municipal public works building, associated municipal public works facilities, a firehouse and a school bus parking yard are located on the north side of Pinewald-Keswick Road. The applicant undertook the following development/construction on the north side of Pinewald-Keswick Road in violation of the application requirements of the Pinelands Comprehensive Management Plan (CMP):

1. A three lot subdivision of former Lot 2, resulting in the creation of current 138.26 acre Lot 2, 0.92 acre Lot 2.01 and 5.98 acre Lot 2.02.
2. Surfacing with pavement, concrete and stone;
3. Paving of a stone bus parking area;
4. Placement of structures, including five sheds;
5. A metal building;
6. A gas pump canopy and two fuel tanks;
7. A garage for bulldozer storage;
8. A 10,000 square foot salt and sand shed;
9. A 2.4 acre bus parking area;

10. A 1,684 square foot addition to the existing fire house;
11. A 2,500 square foot building located next to the existing fire house;
12. The placement of several accessory structures in the vicinity of the fire house;
13. A recycling center and associated site improvements;
14. The placement of millings for access ways in the portion of the parcel containing the vegetative waste composting facility;
15. Establishment of a model plane airport, including the placement of millings;
16. The placement of dredge materials on the parcel; and
17. A pistol range and the surfacing of a portion of the range with stone.

The application proposes to remove from the parcel the development listed in items No.13 through No.16 above. It is proposed to revegetate the areas subject of the development listed in items No. 13 through No. 16 above with native Pinelands vegetation. The pistol range listed in item No. 17 above will be removed as part of the soil capping of the closed existing municipal landfill located on Block 23, Lot 2. The soil capping of the closed municipal landfill was approved by the Commission on January 27, 2023 in App. No. 1986-0127.001.

Completion of this application is intended to address the remaining land development violations listed in items No. 1 through No. 12 above.

STANDARDS

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

Land Use (N.J.A.C. 7:50-5.2(b))

The 178.66 acre parcel is located partially in the Pinelands Preservation Area District (48.14 acres) and partially in a Pinelands Forest Area (130.52 acres). The Township municipal complex existed prior to the January 14, 1981 effective date of the regulations contained in the CMP. A new municipal complex is not a permitted land use in the Pinelands Preservation Area District or in a Pinelands Forest Area. Since the Berkeley Township municipal complex existed prior to January 14, 1981, it is considered a pre-existing nonconforming use.

The 178.66 acre parcel is located in Berkeley Township's Municipal/County Facilities zoning district. The Commission certified (approved) Berkeley Township land use ordinance permits the expansion of the existing municipal complex, including the 67,581 square feet of building space existing as of the date of Commission certification (approval) of the Berkeley Township land use ordinance, provided the area of the expansion does not exceed 50 percent of the floor area, the area of the municipal complex or the capacity of the municipal complex, whichever is applicable. The CMP (N.J.A.C. 7:50-5.2(b)) contains a comparable 50 percent expansion provision for a nonconforming use existing as of January 14, 1981.

The area of the municipal complex existing as of January 14, 1981 was 15.7 acres. The total area of proposed expansion is 7.85 acres. The development subject of this application constitutes a maximum 50 percent expansion of the area of the use existing as of January 14, 1981. The area of the development subject of this application meets the Berkeley Township land use ordinance and CMP provision permitting the 50 percent expansion of a nonconforming use existing as of January 14, 1981.

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

There are wetlands located on the parcel. Development existing on the parcel prior to January 14, 1981, including a Berkeley Township public works building and associated parking areas, was located within 300 feet of wetlands. After January 14, 1981, the applicant constructed a recycling center within the required 300 foot buffer to wetlands. This application proposes to remove the recycling center, regrade the area and revegetate the area with native Pinelands vegetation. All other development subject of this application is located at least 300 feet from wetlands.

Threatened and Endangered Species Standards (N.J.A.C. 7:50-6.27 & 6.33)

A prior threatened and endangered (T&E) plant and animal species survey was completed on the parcel for the proposed soil capping of the closed landfill (App. No. 1986-0127.001).

The T&E species survey confirmed the presence of a population of Pine Barrens treefrog within a wetland complex located on the northerly side of Pinewald-Keswick Road. After January 14, 1981, the applicant constructed a recycling center within 300 feet of the wetlands complex. This application proposes to remove the recycling center, regrade the area and revegetate the area with native Pinelands vegetation. To avoid irreversible adverse impacts on habitats that are critical to the survival of the local population of Pine Barrens treefrog, all development subject of this application will be located at least 300 feet from the wetlands complex containing the local population of Pine Barrens treefrog.

The T&E species survey completed for the proposed soil capping of the closed landfill (App. No. 1986-0127.001) included an investigation for Northern pine snake. Double Trouble State Park is located immediately adjacent to the overall 178.66 acre parcel containing the municipal complex. One Northern pine snake was located on the parcel during that survey. There are numerous reported Northern pine snake sightings located approximately 2,800 linear feet to the north of the parcel in Double Trouble State Park. To determine if the proposed development has been designed to avoid irreversible adverse impacts on habitats critical to the survival of any local population of T&E species, the Commission staff reviewed the currently existing habitat on the parcel and the surrounding areas and the findings of the prior T&E species survey. The radio tracked Northern pine snake remained approximately 1,500 feet from the development subject of this application. Based upon the tracking data, the majority of the activity range of the Northern pine snake was located within Double Trouble State Park during the period that the snake was tracked.

Based upon the currently existing conditions and the above information, the proposed development subject of this application will not result in an irreversible adverse impact on habitats that are critical to the survival of the local populations of Pine Barrens treefrog and Northern pine snake.

No T&E plant species were discovered during the survey.

Water Quality Standard (N.J.A.C. 7:50-6.83)

The existing and proposed development at the municipal complex is serviced by an on-site septic system(s). All development subject of this application is located on the north side of Pinewald-Keswick Road on a 145.16 acre portion of the overall parcel. The applicant has demonstrated that the existing and proposed development on the 145.16 acre portion of the overall parcel will not exceed the CMP two parts per million groundwater quality (septic dilution) standard.

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

The applicant has demonstrated that the proposed development is consistent with the CMP stormwater management standards. To meet the stormwater management standards, the applicant proposes to utilize an existing stormwater infiltration basin and to construct five stormwater infiltration basins.

PUBLIC COMMENT

The applicant has provided the requisite public notices. Newspaper public notice was completed on May 12, 2023. Notice to required land owners within 200 feet of the above referenced parcel was completed on May 16, 2023. The application was designated as complete on the Commission's website on August 1, 2023. The Commission's public comment period closed on August 11, 2023. The Pinelands Commission received one written comment (attached) regarding the application.

Public Commenter: The commenter asked if this application was a retroactive application for development that occurred prior to the approval of the Commission and which was required to be completed to allow the construction of a ground mounted solar energy facility previously approved by the Commission in App. No. 1986-0127.015.

Staff Response: By email dated August 8, 2023, the Commission staff responded to the commenter noting that this application was submitted to resolve existing violations of the application requirements of the CMP on the parcel and to allow the construction of the ground mounted solar energy facility previously approved by the Commission in App. No. 1986-0127.015.

CONDITIONS

1. Except as modified by the below conditions, the proposed development shall adhere to the following plans:

    - Overall Site Plan, consisting of one sheet, prepared by Remington & Vernick Engineers and dated August 7, 2023.

    - Site plan, including the stormwater management plan, consisting of eight sheets, prepared by Remington & Vernick Engineers, all sheets dated June 12, 2023 and last revised August 7, 2023.

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. 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. For the development proposed to be removed from the parcel, listed in items No. 13

through 16 above, the applicant shall complete the removal of all structures and fill by April 30, 2024 and revegetate with native Pinelands vegetation by May 31, 2024.

6. By January 1, 2024, the applicant shall submit a copy of a recorded deed for the 178.66 acre parcel containing a deed restriction. The deed restriction shall indicate that, based upon the 50 percent expansion provision for a nonconforming use contained in the Berkeley Township land use ordinance and the Pinelands Comprehensive Management Plan, no additional development shall occur on the 178.66 acre parcel outside of the 23.55 acres that constitutes the 15.7 acres of preexisting 1981 development on the parcel and a 50 percent, or 7.85 acre expansion, of that 15.7 acres. The deed restriction shall also indicate that any proposed development within the concerned 23.55 acres requires approval from the Pinelands Commission pursuant to the provisions of the Pinelands Comprehensive Management Plan and it must be demonstrated that the proposed development qualifies for the 50 percent expansion provision of the Commission certified Berkeley Township land use ordinance and the Pinelands Comprehensive Management Plan.

CONCLUSION

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

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PHILIP D. MURPHY
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SHEILA Y. OLIVER
Lt. Governor

General Information: Info@pinelands.nj.gov
Application Specific Information: AppInfo@pinelands.nj.gov

LAURA E. MATOS
Chair
SUSAN R. GROGAN
Executive Director

PINELANDS COMMISSION
APPEAL PROCEDURE

The Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal any determination made the by Executive Director to the Commission in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission and received by the Commission's office no later than 5:00 PM on September 5, 2023 and 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.

From: Heidi Yeh (heidi@pinelandsalliance.org)
Received: 8/8/2023 4:26:24 PM
To: Carter, Keith [PINELANDS] (Keith.Carter@pinelands.nj.gov)
CC:
Subject: [EXTERNAL] Questions about 1986-0127.012
Attachments: None

Hello Keith,

I was wondering what the basic details are of this application? Is this one of the retroactive applications for developments that were made without commission approval that are now being completed to make way for a solar farm?

Best,
Heidi

Heidi Yeh, Ph.D.
Policy Director
Pinelands Preservation Alliance
17 Pemberton Road
Southampton, NJ 08088
609-859-8860 ext. 122

RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-23- 34

TITLE: **Approving** With Conditions an Application for a **Waiver of Strict Compliance** (Application Number 1989-0308.001)

Commissioner Asselta moves and Commissioner Lohbauer seconds the motion that:

WHEREAS, the Pinelands Commission has reviewed each of the Findings of Fact, Conclusion and the recommendation of the Executive Director that the following application for Waiver of Strict Compliance be approved with conditions:

1989-0308.001	
Applicant:	**Todd Pulley**
Municipality:	Southampton Township
Management Area:	Pinelands Agricultural Production Area
Date of Report:	August 16, 2023
Proposed Development:	Single family dwelling.

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

WHEREAS, the Pinelands Commission hereby adopts the Findings of Fact and Conclusion of the Executive Director for the requested Waiver of Strict Compliance; and

WHEREAS, the Pinelands Commission hereby determines that the requested Waiver conforms to the standards for approving an application for a Waiver of Strict Compliance based on extraordinary hardship as set forth in N.J.A.C 7:50-4.62, N.J.A.C. 7:50-4.63 and N.J.A.C. 7:50-4.65 if the conditions recommended by the Executive Director are imposed; and

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

NOW, THEREFORE BE IT RESOLVED that Application Number 1989-0308.001 for a Waiver of Strict Compliance is hereby **approved** subject to the conditions recommended by the Executive Director.

Record of Commission Votes

	AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*
Asselta	X				Lettman	X				Wallner			X	
Avery	X				Lohbauer	X				Matos	X			
Christy	X				Mauriello	X								
Holroyd	X				Meade	X								
Irick			X		Pikolycky	X								

*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission Date: September 8, 2023

Susan R. Grogan
Executive Director

Laura E. Matos
Chair

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Lt. Governor

General Information: Info@pinelands.nj.gov
Application Specific Information: AppInfo@pinelands.nj.gov

LAURA E. MATOS
Chair
SUSAN R. GROGAN
Executive Director

REPORT ON AN APPLICATION FOR A WAIVER OF STRICT COMPLIANCE

August 16, 2023

Todd Pulley (via email)
6 Linda Lane
Suite A
Southampton NJ 08088-9177

Re: Application # 1989-0308.001
Block 802, Lot 2
Southampton Township

Dear Mr. Pulley:

The Commission staff has completed its review of the above referenced application for a Waiver of Strict Compliance ("Waiver") based upon an extraordinary hardship. The Waiver application proposes the development of one single family dwelling on the above referenced 19.17 acre parcel. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its September 8, 2023 meeting.

FINDINGS OF FACT

This application is for the development of one single family dwelling serviced by an on-site septic system on the above referenced 19.17 acre parcel. The parcel is located in a Pinelands Agricultural Production Area and in Southampton Township's Agricultural Production (AP) zoning district. In this zoning district, the Commission certified (approved) Southampton Township land use ordinance establishes a minimum lot size of ten acres to develop a single family dwelling provided the proposed dwelling qualifies as accessory to an active agricultural operation.

The majority of the parcel is currently in active soy bean and corn field agriculture. The applicant is proposing to develop a single family dwelling accessory to the existing field agricultural operation on the parcel. The applicant has submitted information demonstrating that the parcel is under agricultural assessment for the existing soy bean and corn agricultural use. The proposed dwelling will be occupied by the applicant. The applicant will be actively engaged in and essential to the existing agricultural operation as the owner/operator of the farm. The single family dwelling proposed as accessory to an active agricultural operation is a permitted use in a Pinelands Agricultural Production Area (N.J.A.C. 7:50-5.24(a)2).

The parcel has been site inspected by two members of the Commission's staff. In addition, the appropriate resource capability maps and data available to the staff have been reviewed.

The Pinelands Comprehensive Management Plan (CMP, N.J.A.C. 7:50-6.84(a)4iv) requires that a septic system be located in an area where the depth to the seasonal high water table is at least five feet below the natural ground surface. The Burlington County Soils Survey indicates that there are Buddtown, Mullica, Galloway and Fluvaquents soils on this parcel. These soils may have a seasonal high water table of less than five feet below the natural ground surface. Four soil borings were performed on the parcel by the applicant's consultant. The soil borings confirmed a seasonal high water table of less than five feet below the natural ground surface at the location of the borings. The applicant has submitted no information to demonstrate that the septic system could be located in an area on the parcel where the seasonal high water table is at least five feet below the natural ground surface. Since available information indicates the seasonal high water table on the parcel is less than five feet below the natural ground surface, the applicant is requesting a Waiver from the seasonal high water table requirement contained in N.J.A.C. 7:50-6.84(a)4iv.

The CMP (N.J.A.C. 7:50-6.14) requires that the development maintain a 300 foot buffer to wetlands unless the applicant demonstrates that a lesser buffer to wetlands will not result in a significant adverse impact on wetlands. A portion of the parcel is wetlands as defined in the CMP (N.J.A.C. 7:50-6.5(a)2). The wetlands continue onto adjacent lands. Any development of the parcel would be located within 300 feet of these wetlands. The applicant has submitted no information to demonstrate that the proposed development will not cause a significant adverse impact on the wetlands. Based on the quality and location of the wetlands, the proposed development will cause a significant adverse impact on the wetlands. As there will be a significant adverse impact on wetlands located within 300 feet of the proposed development, the applicant is requesting a Waiver from the buffer to wetlands standard contained in N.J.A.C. 7:50-6.14.

The CMP (N.J.A.C. 7:50-4.65(b)6) requires that to qualify for a Waiver to develop a single family dwelling in a Pinelands Agricultural Production Area, it must be demonstrated that any required wastewater disposal field will be located in an area where the seasonal high water table is at least two feet (24 inches) below the natural ground surface. The wastewater disposal field proposed to service the single family dwelling subject of this application will be located in an area where the seasonal high water table is between 42 and 44 inches below the natural ground surface.

The CMP (N.J.A.C. 7:50-4.65(b)5&6) requires that to qualify for a Waiver to develop a single family dwelling in a Pinelands Agricultural Production Area, it must be demonstrated that no development, including clearing and land disturbance, except for development otherwise permitted in wetlands and the required buffer to wetlands, will be located within 50 feet of wetlands. The proposed single family dwelling, septic system and a proposed agricultural barn will not be located on or within 50 feet of wetlands. Approximately 365 linear feet of a proposed approximately 915 linear foot driveway will be located in wetlands. Approximately 225 linear feet of the proposed driveway will be located within the required 50 foot buffer to wetlands. The CMP (N.J.A.C. 7:50-6.13(a)) permits driveways (linear improvements) in wetlands provided certain conditions are met. The CMP (N.J.A.C. 7:50-6.14) permits development in the required buffer to wetlands provided the development is otherwise permitted in wetlands. The proposed driveway in an active agricultural field meets the conditions of N.J.A.C. 7:50-6.13(a) and is permitted in the wetlands and the required buffer to wetlands.

The parcel includes all contiguous land in common ownership on or after January 14, 1981. The proposed single family dwelling will be the sole principal use of the entire contiguous parcel. The development of a single family dwelling on the parcel will not require any lot area or residential density variances pursuant to Southampton Township's certified land use ordinance. The development of a single family dwelling on the parcel will be consistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act and the CMP. The proposed single family dwelling will not result in a substantial impairment of the resources of the Pinelands Area as required by the CMP (N.J.A.C. 7:50-4.65(b)).

Only if the parcel is developed in accordance with the conditions recommended below will the adverse impacts on groundwater quality and wetlands be minimized.

PUBLIC COMMENT

The applicant has provided the requisite public notices. Public notice to all property owners within 200 feet of the parcel was completed on June 8, 2023. Newspaper public notice was completed on June 9, 2023. The application was designated as complete on the Commission's website on July 7, 2023. The Commission's public comment period closed on August 11, 2023. One written public comment (attached) was received by the Pinelands Commission on June 12, 2023 regarding this application.

Written Public Comment:	The commenter expressed opposition to the Waiver application. The commenter also indicated that the applicant should abide by Pinelands wetlands restrictions.
Commission Response:	The Commission staff appreciates the commenter's interest in the Pinelands. The applicant has demonstrated that the proposed dwelling will meet the minimum standards of the CMP to qualify for a Waiver. The Commission's Waiver regulations are designed to provide all property owners in the Pinelands Area with at least a minimum beneficial use of a parcel consistent with constitutional requirements. The proposed development, except for the proposed driveway, will maintain a 50 foot buffer to wetlands.

CONCLUSION

The CMP (N.J.A.C. 7:50-4.62) sets forth the standards which must be met before a Waiver can be approved. The CMP (N.J.A.C. 7:50-4.62(a)) requires that for a Waiver application to be approved based on extraordinary hardship, the applicant must demonstrate that the conditions of either N.J.A.C. 7:50-4.63(a) or (b) have been met.

N.J.A.C. 7:50-4.63(a) sets forth five conditions which must be met to qualify for a Waiver based on an extraordinary hardship.

The first condition is that the only relief sought is from one or more of the standards contained in N.J.A.C. 7:50-6 for certain specified development. One of the specified types of development is a single family dwelling accessory to an active agricultural operation in a Pinelands Agricultural Production Area. This application is for a Waiver from the minimum depth to seasonal high water table standard when utilizing an onsite septic system and the required buffer to wetlands standard contained in N.J.A.C. 7:50-6. The applicant is proposing to develop a single family dwelling accessory to an active

agricultural operation serviced by an onsite septic system on a 19.17 acre parcel. The applicant submitted an affidavit demonstrating he will be essential to and actively engaged in the agricultural operation on the parcel and will reside in the proposed single family dwelling. As a result, the applicant meets the criteria set forth in N.J.A.C. 7:50-4.63(a)1ix.

The second condition is that the parcel includes all contiguous land in common ownership on or after January 14, 1981, including lands which are contiguous as a result of ownership of other contiguous lands. Since the parcel includes all such contiguous land, the applicant meets the criteria set forth in N.J.A.C. 7:50-4.63(a)2.

The third condition is that the proposed use will be the sole principal use on the entire contiguous parcel, except as expressly provided in N.J.A.C. 7:50-5.1(c). As the proposed single family dwelling will be the sole principal use on the parcel, the applicant meets the criteria set forth in N.J.A.C. 7:50-4.63(a)3.

The fourth condition is that all necessary municipal lot area and density variances have been obtained if the parcel is located in a municipality whose master plan and land use ordinances have been certified by the Pinelands Commission. The Southampton Township land use ordinances have been certified by the Pinelands Commission. In the AP zoning district, Southampton Township's certified land use ordinance establishes a minimum lot size of 10 acres to develop a single family dwelling accessory to an active agricultural operation. This application proposes to develop a single family dwelling accessory to an active agricultural operation on a 19.17 acre parcel. No municipal lot area or density variance is required to develop the proposed single family dwelling. As a result, the applicant meets the criteria set forth in N.J.A.C. 7:50-4.63(a)4.

The fifth condition is that the development of the parcel will not violate any of the criteria contained in N.J.A.C 7:50-4.65(b). N.J.A.C. 7:50-4.65(a) precludes the granting of a Waiver which permits a parcel to be developed unless such development will be consistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act and the CMP and will not result in a substantial impairment of the resources of the Pinelands Area. N.J.A.C. 7:50-4.65(b) sets forth the circumstances which do not comply with N.J.A.C. 7:50-4.65(a). With the conditions recommended below, the proposed development will not violate any of the circumstances contained in N.J.A.C. 7:50-4.65(b). As a result, the applicant meets the criteria set forth in N.J.A.C. 7:50-4.63(a)5.

Since the applicant meets all five conditions set forth in N.J.A.C. 7:50-4.63(a), the applicant has demonstrated that an extraordinary hardship exists pursuant to N.J.A.C. 7:50-4.62(a).

As required by N.J.A.C. 7:50-4.62(b), the proposed dwelling will not result in substantial impairment of the resources of the Pinelands or be inconsistent with the provisions of the Pinelands Protection Act, the Federal Act or the CMP in accordance with the criteria set forth in N.J.A.C. 7:50-4.65.

As required by N.J.A.C. 7:50-4.62(c), and with the conditions recommended below, the proposed dwelling will not involve trespass or create a public or private nuisance by being materially detrimental or injurious to other property or improvements in the area in which the parcel is located, increase the danger of fire or endanger public safety.

The CMP (N.J.A.C. 7:50-4.62(d)) requires that the Waiver only grant the minimum relief necessary to relieve the extraordinary hardship. The proposed single family dwelling is the minimum relief necessary to relieve the extraordinary hardship which has been shown to exist.

The CMP (N.J.A.C. 7:50-4.62(d)1i) requires that the Pinelands Development Credit (PDC) entitlement for a parcel shall be reduced by 0.25 PDCs for each reserved right to build a single family dwelling on a parcel. The parcel subject of this Waiver application is located in a Pinelands Agricultural Production Area. The parcel is eligible for an allocation of PDCs. Any future allocation of PDCs to this parcel shall be reduced by 0.25 PDCs for the reserved right to develop the single family dwelling subject of this Waiver application. A condition is included to require a 0.25 PDC reduction in any future allocation of PDCs to the parcel.

The CMP (N.J.A.C. 7:50-4.62(d)1iii) requires the acquisition and redemption of 0.25 PDCs whenever a Waiver provides relief from one or more of the standards of N.J.A.C. 7:50-6. As the applicant is obtaining a Waiver from the minimum depth to seasonal high water table standard (N.J.A.C. 7:50-6.84(a)4iv) and the required buffer to wetlands standard (N.J.A.C. 7:50-6.14), a condition is included to require the applicant to acquire and redeem the requisite 0.25 PDCs.

To meet the requirements of N.J.A.C. 7:50-4.62, N.J.A.C. 7:50-4.63(a) and N.J.A.C. 7:50-4.65, the Pinelands Commission staff has determined that the parcel must be developed in accordance with the following conditions:

1. Except as modified by the below conditions, the proposed development shall adhere to the plot plan prepared by Schaeffer Nassar Scheidegg Consulting Engineers, LLC dated May 11, 2022 and last revised April 27, 2023.

2. All development associated with the single family dwelling, including clearing and land disturbance, except for the proposed driveway and the existing field agricultural use, shall maintain the maximum feasible buffer to wetlands, but not less than 50 feet.

3. Prior to receipt of a Commission Certificate of Filing denoting completion of a development application with the Commission for the proposed dwelling, the “limits of disturbance” on the plot plan shall be revised to provide the maximum feasible buffer to wetlands for the proposed driveway, single family dwelling and agricultural barn. A note shall also be added to the plot plan clarifying that the 50 foot buffer to wetlands delineated on the plot plan is solely for the purposes of demonstrating consistency with the CMP minimum 50 foot buffer to wetlands requirement to qualify for a Commission Waiver of Strict Compliance.

4. Drywells, pervious pavement, small scale infiltration basin(s) or comparable alternative measures designed in accordance with the New Jersey Department of Environmental Protection, Best Management Practice shall be installed to retain and infiltrate stormwater runoff generated from the total roof area of the single family dwelling by a 10-year, 24-hour storm.

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.

6. The driveway shall be constructed of crushed stone or other permeable material.

7. In accordance with the CMP (N.J.A.C. 7:50-4.62(d)1i), any future allocation of Pinelands Development Credits to this parcel shall be reduced by 0.25 Pinelands Development Credits to reserve the right to develop the single family dwelling subject of this Waiver application.

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

9. Prior to Commission issuance of a letter advising that any municipal or county permit or approval may take effect, the Commission must receive a letter from the Pinelands Development Credit Bank indicating that the requisite 0.25 PDCs have been acquired and submitted to the PDC Bank for redemption.

10. The septic system shall be located in an area where the seasonal high water table is at least two feet below the natural ground surface. Sufficient fill shall be placed in the area of the septic system to meet the requirements of Chapter 9A.

11. Except as provided in N.J.A.C. 7:50-5.1(c), the single family dwelling approved herein shall be the sole principal use of the parcel.

12. This Waiver shall expire September 8, 2028 unless all necessary construction permits have been issued by that date. The Waiver shall also expire if any construction permit is allowed to expire or lapse after September 8, 2028 or if any renewal or extension of any permit or approval or issuance of a new construction permit is necessary after that date.

13. Prior to receipt of a Commission Certificate of Filing denoting completion of a development application with the Commission for the proposed dwelling, a copy of a recorded deed containing all of the above conditions shall be submitted to the Pinelands Commission. The deed shall specify that the conditions are being imposed pursuant to a September 8, 2023 Pinelands Commission Report on an Application for a Waiver of Strict Compliance for Application # 1989-0308.001. The deed shall also indicate that the conditions are enforceable by the Pinelands Commission, the Burlington County Health Department, Southampton Township and any other party of interest.

With the above conditions, the applicant qualifies for a Waiver from the requirements of N.J.A.C. 7:50-6.84(a)4iv and N.J.A.C. 7:50-6.14.

Since the applicant meets the provisions of N.J.A.C. 7:50-4.62, N.J.A.C. 7:50-4.63(a) and N.J.A.C. 7:50-4.65 for the development of a single family dwelling on the parcel, it is recommended that the Pinelands Commission **APPROVE** the requested Waiver of Strict Compliance subject to the above conditions.

APPEAL

The CMP (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal this recommendation in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission and received by the Commission's office no later than 5:00 PM on September 5, 2023 and include the following information:

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

2. the application number;

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

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

If no appeal is received, the Pinelands Commission may either approve the determination of the Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

Recommended for Approval by: _____

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

c: Secretary, Southampton Township Planning Board (via email)
Southampton Township Construction Code Official (via email)
Secretary, Burlington County Planning Board (via email)
Burlington County Health Department (via email)
Bill Gonnelly (via email)
Andrew Schaeffer (via email)
Sandra Gordon-Cram (via email)

From: Sandra Gordon-Cram (sandrajean0809@gmail.com)
Received: 6/12/2023 8:04:40 AM
To: AppInfo, PC [PINELANDS] (AppInfo@pinelands.nj.gov)
CC:
Subject: [EXTERNAL] Wetlands waiver request from Todd Pulley
Attachments: None

Please be advised that I strongly oppose the application for this waiver. This property was purchased with full knowledge of Wetlands restrictions. Pinelands and Wetlands restrictions were enacted for a reason and need to be upheld.

Thank you for your consideration of my response.

Sincerely,
Sandra Gordon-Cram
422 Ongs Hat Rd
Southampton, NJ 08088
609-320-5027

Sent from my iPad

RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-23-__35____

TITLE: Issuing an Order to Certify the Bass River Township 2022 Master Plan Reexamination Report and Ordinance 2023-2, Amending Title 17 (Zoning) of the Code of Bass River Township

Commissioner ____Lohbauer_____ moves and Commissioner ____Pikolycky_____ seconds the motion that:

WHEREAS, on July 9, 1982, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Bass River Township; and

WHEREAS, Resolution #PC4-82-41 of the Pinelands Commission specified that any amendment to the Township's certified Master Plan and codified Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, Resolution #PC4-82-41 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

WHEREAS, on December 21, 2022, the Bass River Township Land Use Board adopted Resolution 2022-04, approving the Bass River Township 2022 Master Plan Reexamination Report, dated November 30, 2022; and

WHEREAS, the Bass River Township 2022 Master Plan Reexamination Report recommends, among other things, amending the Township's zoning plan within the Pinelands Area to establish two new infill area zones; and

WHEREAS, the Pinelands Commission received a certified copy of Land Use Board Resolution 2022-04 and the 2022 Master Plan Reexamination Report on December 22, 2022; and

WHEREAS, pursuant to N.J.A.C. 7:50-3.32 of the Comprehensive Management Plan, the Executive Director cannot accept a master plan amendment for formal review and certification without an adopted ordinance that implements said master plan, unless no such ordinance is necessary; and

WHEREAS, by letter dated January 18, 2023, the Executive Director notified Bass River Township that the 2022 Master Plan Reexamination Report would be deemed incomplete until such time that the necessary implementing ordinances were adopted and submitted to the Commission for certification; and

WHEREAS, on July 10, 2023, Bass River Township adopted Ordinance 2023-2, amending Title 17 (Zoning) of the Code of Bass River Township, which implements the recommendations of the 2022 Master Plan Reexamination Report; and

WHEREAS, the Pinelands Commission received a certified copy of Ordinance 2023-2 on July 17, 2023; and

WHEREAS, by letter dated July 21, 2023, the Executive Director notified Bass River Township that the 2022 Master Plan Reexamination Report and Ordinance 2023-2 would require formal review and approval by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony on the Bass River Township 2022 Master Plan Reexamination Report and Ordinance 2023-2 was duly advertised, noticed and remotely held on August 9, 2023 at 9:30 a.m. with live broadcast on the Pinelands Commission's public YouTube channel and opportunity for the public to call-in during the live broadcast; and

WHEREAS, the Executive Director has found the Bass River Township 2022 Master Plan Reexamination Report and Ordinance 2023-2 are consistent with the standards and provisions of the Pinelands Comprehensive Management Plan; and

WHEREAS, the Executive Director has submitted a report to the Commission recommending issuance of an order to certify the Bass River Township 2022 Master Plan Reexamination Report and Ordinance 2023-2 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 the Bass River Township 2022 Master Plan Reexamination Report and Ordinance 2023-2 be certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning the Bass River Township 2022 Master Plan Reexamination Report and Ordinance 2023-2 and has reviewed the Executive Director's report; and

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

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

NOW, THEREFORE BE IT RESOLVED that

1. An Order is hereby issued to certify that the Bass River Township 2022 Master Plan Reexamination Report and Ordinance 2023-2, amending Title 17 (Zoning) of the Code of Bass River Township, are in conformance with the Pinelands Comprehensive Management Plan.

2. Any additional amendments to Bass River 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*
Asselta				R	Lettman	X				Wallner			X	
Avery	X				Lohbauer	X				Matos	X			
Christy	X				Mauriello	X								
Holroyd	X				Meade	X								
Irick			X		Pikolycky	X								

*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission Date: September 8, 2023

Susan R. Grogan
Executive Director

Laura E. Matos
Chair

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

PHILIP D. MURPHY
Governor
SHEILA Y. OLIVER
Lt. Governor

General Information: Info@pinelands.nj.gov
Application Specific Information: AppInfo@pinelands.nj.gov

LAURA E. MATOS
Chair
SUSAN R. GROGAN
Executive Director

Report on the Bass River Township 2022 Master Plan Reexamination Report and Ordinance 2023-2, Amending Title 17 (Zoning) of the Code of Bass River Township

August 25, 2023

Bass River Township
PO Box 307
New Gretna, NJ 08224

Findings of Fact

I. Background

The Township of Bass River is located in the eastern-central portion of the Pinelands Area in southeastern Burlington County. Pinelands municipalities adjacent to Bass River Township include the Townships of Washington and Woodland in Burlington County; the Townships of Barnegat, Little Egg Harbor, and Stafford in Ocean County; and the Township of Galloway and the City of Port Republic in Atlantic County.

On July 9, 1982, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Bass River Township.

On December 21, 2022, the Bass River Township Land Use Board adopted Resolution 2022-04, approving the Bass River Township 2022 Master Plan Reexamination Report, dated November 30, 2022. The report recommends, among other things, amending the Township's zoning plan within the Pinelands Area to establish two new infill area zones as well as other revisions to the Township's zoning code. The Pinelands Commission received a certified copy of Land Use Board Resolution 2022-04 and the 2022 Master Plan Reexamination Report on December 22, 2022.

By letter dated January 18, 2023, the Executive Director notified Bass River Township that, in accordance with N.J.A.C. 7:50-3.32, the 2022 Master Plan Reexamination Report would be deemed incomplete until such time that one or more necessary implementing ordinances were adopted and submitted to the Commission for certification.

On July 10, 2023, Bass River Township adopted Ordinance 2023-2, amending Title 17 (Zoning) of the Code of Bass River Township and implementing the recommendations of the 2022 Master Plan

Reexamination Report. The Pinelands Commission received a certified copy of Ordinance 2023-2 on July 17, 2023.

By letter dated July 21, 2023, the Executive Director notified Bass River Township that the 2022 Master Plan Reexamination Report and Ordinance 2023-2 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:

* Land Use Board Resolution 2022-04, approving the Bass River Township 2022 Master Plan Reexamination Report, adopted December 21, 2022; and

* Ordinance 2023-2, amending Title 17 (Zoning) of the Code of Bass River Township, introduced on June 28, 2023, and adopted on July 10, 2023.

This master plan reexamination report and ordinance 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 (CMP). 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 Master Plans and Land Use Ordinances Relating to Development Standards

2022 Master Plan Reexamination Report
Bass River Township's 2022 Master Plan Reexamination Report reviews the major problems and objectives related to land development identified in the Township's previous master plan (1982) and subsequent reexamination reports (2002, 2008, 2019). It discusses the extent to which those problems and objectives have been addressed or remain valid and the extent to which there have been changes in the assumptions, policies, and objectives that previously informed the Township's master plan and development regulations.

The 2022 report describes the recommendation from the Township's 2019 report calling for the removal of the Village of New Gretna from the Pinelands Area. The 2022 report goes on to describe that the Pinelands Commission cannot approve a master plan or ordinance amendment that does not align with the Pinelands Protection Act, and specifically the boundaries of the Pinelands Area. It notes that any change to the Pinelands Area boundary can only be made by an act of legislation by the State of New Jersey. The 2022 Report recommends a dual strategy of working with the Pinelands Commission to maximize development potential within the Village of New Gretna and elsewhere in the Township, to the extent that the CMP allows, while also advocating to the legislature for a changes to the Pinelands Area boundary. It is noted that the

Pinelands Commission staff have made clear that it will not support the Township's effort to amend the Pinelands Area boundary via legislation.

The 2022 report also includes various recommendations for revising the Township's master plan, zoning code, and zoning map. The recommended changes to the Township's land development regulations and zoning map include the establishment of an Infill Residential (IR) District and an Infill Commercial (IC) District within the Pinelands Preservation Area District. It was also recommended that the minimum lot size requirements in the existing Village Residential (VR) and Village Commercial (VC) districts be reduced from 2 acres to 1 acre. Additionally, the report recommends changes to permitted uses with the VC District. A draft revised zoning map was included as an appendix to the report, which included the boundaries of the new IR and IC districts as well as minor changes to the boundaries of the VR and VC districts to eliminate the occurrence of split-zoned lots.

Ordinance 2023-2

Ordinance 2023-2 amends Title 17, Zoning, of the Code of Bass River Township and implements the recommendations of the 2022 Master Plan Reexamination Report. It adopts an amended zoning map, dated February 6, 2023 (see Exhibit 1) and includes various revisions to the Township's zoning regulations.

Infill Area Districts

The revised zoning map delineates two discrete Infill Residential (IR) Districts as well as an Infill Commercial (IC) District within the Township's existing Pinelands Preservation (PP) Zoning District. One of the IR Districts is in the vicinity of Hammonton Road and Leektown Road (see Exhibit 2). This area is approximately 118 acres and contains 39 lots. The second IR District is located further south along Hammonton Road (see Exhibit 3). This area is approximately 117 acres and contains 19 lots. Lastly, the IC District is in the vicinity of Leektown Road and Chatsworth Road (see Exhibit 4). This area is approximately 140 acres and contains 43 lots. Each of these infill areas is located within the Pinelands Preservation District management area. There are no changes required to the underlying Pinelands management area.

Ordinance 2023-2 amends Title 17 to establish district regulations for the new IR and IC districts. The IR District permits detached single-family dwellings on lots of at least one acre, existing as of January 14, 1981, provided that no new subdivisions may occur. The IR District also permits berry agriculture, public service infrastructure, and Pinelands Development Credits, which are permitted uses under the existing PP District zoning designation. The IC District permits the same uses as the IR District, and permits the following commercial uses on lots of at least one acre, existing as of January 14, 1981, provided that no new subdivisions may occur: retail, trade, and service establishments; convenience stores; bed and breakfast inns and tourist homes; restaurants; and roadside stands for retail sale of garden produce, similar goods and related supplies and products.

The CMP allows municipalities to designate residential and commercial infill areas within the Preservation Area District, provided that certain criteria are met (N.J.A.C. 7:50-5.22(b)7). Infill areas allow for residential or commercial uses on lots existing as of January 14, 1981 of at least one acre in size. The CMP requires that three criteria be met for delineating either a residential or commercial infill area: (1) The area must have direct access to an improved public road; (2) The area must exhibit a compact pattern of existing development generally exhibited by more than 20 principal structures and the boundary shall generally conform to that of the existing developed

area so that extensive amounts of adjoining vacant land are not included; and (3) The area must contain vacant lots of at least one acre in size or smaller lots which could reasonably be assembled into one acre or greater lots. Additionally, the CMP limits commercial infill areas to areas that are predominantly occupied by existing commercial uses.

The district regulations for the IR and IC districts are in accordance with the uses permitted by the CMP for infill areas. Regarding the infill area delineation criteria, all lots contained within the three discrete infill areas have frontage to an improved public road. The three discrete infill areas exhibit existing compact development. Existing principal structures are rendered in Exhibits 2, 3, and 4. In each discrete infill area there are about 20 principal structures. In some instances, adjacent lots with existing principal structures were not included in the infill area because they were located on lands that were permanently preserved or would have led to the inclusion of an extensive amount of adjoining land. Lastly, each of the discrete infill areas contain some vacant lots greater than one acre. Commission staff's analysis indicates that the IR and IC districts would allow for the development of up to 14 new residential dwelling units. These lots are shown in orange hatching in Exhibits 2, 3, and 4. These units would not be permitted under the existing PP District zoning designation, unless cultural housing provisions were met, or a waiver of strict compliance was granted by the Pinelands Commission. Additionally, the IC District contains an existing convenience store and two campgrounds. The creation of the IC District provides a limited opportunity for the development of new commercial uses, which would not be permitted under the existing PP District zoning designation.

Village of New Gretna

The revised zoning map adopted by Ordinance 2023-2 also includes minor changes to the boundary between the Township's VR and VC districts to eliminate the occurrence of split-zoned lots (see Exhibit 5). Approximately 18 acres are rezoned from VR to VC, while approximately 0.5 acres are rezoned from VC to VR. The VC and VR districts are located within a Pinelands Village. There are no changes required to the underlying Pinelands management area.

Single-family dwellings are currently permitted in both the VC and VR districts. Ordinance 2023-2 revises the minimum lots size requirement for single family dwellings in the VC and VR districts from 2.0 acres to 1.0 acre. In 2004, the Township voluntarily adopted, and the Commission certified, Ordinance 2004-04, which increased the minimum lot size requirement for residential uses within the village from 1.0 acre to 2.0 acres. The Township is, therefore, reverting to its previously certified minimum lot size requirement for the VR and VC districts. It is noted that any new dwelling units on lots of less than 3.2 acres will require the use of an alternate design septic system. It is also noted that there is no predominant subdivision or lot size pattern within the Pinelands Village of New Gretna. The core village area is characterized by lots between one and two acres in size while the outlying areas consist of significantly larger parcels. Therefore, the revised lot size requirements are consistent with the existing character and magnitude of development within the Village.

The Pinelands Village of New Gretna totals 1,808 acres in size, with 1,478 acres in the Pinelands Area and 330 acres outside the Pinelands Area but within the Pinelands National Reserve. As of 1979, that portion of the village in the Pinelands Area contained 315 dwelling units. As of 2004, approximately 415 acres of vacant land remain in the Pinelands Area portion of the village, of which approximately 300 consist of uplands. The 1.0-acre lot size requirement theoretically provided the potential for about 400 new units within the village. However, recognizing that

wetlands serve as a significant constraint to future development within the village, previous Commission staff analyses suggested the potential for only 228 new principal structures. According to the Township's 2022 Reexamination Report, about 28 residential units have been developed in the Township since 2000, so the development potential is still in the range of about 200-228 new principal structures.

The ordinance also adds the following permitted uses to the VC District: bed and breakfast inns and tourist homes; day nursery; funeral homes; restaurants; automotive filling stations; automotive repair garages; vehicle body shops; ambulance dispatch service; roadside stands for the retail sale of garden produce, similar goods and related supplies and products; medical/recreational cannabis dispensary; small boat sales; antique shops; and convenience stores.

The CMP permits a variety of uses within Pinelands Villages, provided that public service infrastructure necessary to support the use is available and the character and magnitude of the use is compatible with existing structures and uses in the Village (N.J.A.C. 7:50-5.27). The uses permitted in the VC District are consistent with the CMP, and the various area, bulk and design standards included in the ordinance ensure that such uses are compatible with existing structures and uses in the Village.

Miscellaneous Amendments

The ordinance replaces the schedule of district regulations, which dated back to the early 1980s. Many elements of the former schedule have been included in individual district regulations, with the remaining bulk and area requirements included in a modernized schedule. The ordinance also prohibits earth extraction within the Township. The ordinance permits kennels and animal hospitals in the Rural (RD) Zone, which is located within a Rural Development Area. The ordinance also includes landscaping and buffer requirements for commercial and industrial uses that are adjacent to existing residential districts or uses.

Ordinance 2023-2 also includes a variety of amendments to ensure that the latest Pinelands CMP standards are properly incorporated into the Township's zoning code. These include minor revisions to the standards for: existing substandard lots, the location and screening of utility structures, water quality and stormwater standards, the Township's density transfer program, as well as for agricultural commercial establishments.

Outside the State-designated Pinelands Area, but within the Pinelands National Reserve, the Township has revised its zoning map to expand the existing Highway Commercial (HC) District to include 13 lots, approximately 65 acres, along U.S. Route 9. The area rezoned include the limited areas of uplands along U.S. Route 9 east of the Garden State Parkway near the border with Little Egg Harbor Township. The Highway Commercial District permits single family dwelling units and a variety of commercial uses. During Bass River Township's initial certification in 1982, the Pinelands Commission certified the Township's zoning plan for the portion of the Township outside of the State-designated Pinelands Area, but within the Pinelands National Reserve. The changes adopted by Ordinance 2023-2 for this portion of the Township substantially conform with subchapters 5 and 6 of the CMP, as required by N.J.A.C. 7:50-3.39(b).

The Bass River Township 2022 Master Plan Reexamination Report and Ordinance 2023-2 are 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 2023-2 is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan. Therefore, this standard for certification is met.

11. Conformance with Energy Conservation

Not applicable.

12. Conformance with the Federal Act

Ordinance 2023-2 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

Ordinance 2023-2 creates two discrete IR Districts near the Bass River Township border with Washington Township. Adjacent lands within Washington Township are located within the Preservation Area District or Special Agricultural Production Area. Since there is only a small amount of increased residential development potential that could occur from these zoning changes, intermunicipal conflicts are not anticipated. Therefore, this standard for certification is met.

Public Hearing

A public hearing to receive testimony on Bass River Township's application for certification of its 2022 Master Plan Reexamination Report and Ordinance 2023-2 was duly advertised, noticed and held on August 9, 2023, at 9:30 a.m. Mr. Lanute conducted the hearing, which was held remotely and broadcasted live on the Pinelands Commission's public YouTube channel. The public was provided the opportunity to call-in during the public hearing to provide testimony. The following oral testimony was provided:

Rick Adams, resident of Bass River Township, stated that he opposed the reduction in minimum lot size in the Village Commercial and Village Residential Zones because there are a lot of properties in that area that do not meet the required setback standards.

Written comments on the Bass River Township 2022 Master Plan Reexamination Report and Ordinance 2023-2 were accepted through August 11, 2023, and were received from the following individuals:

Pamela Heinrichs (see Exhibit 6)

Linda Quigley (see Exhibit 7)

Dolores Mackay (see Exhibit 8)

Joel Kelley (see Exhibit 9)

Laura Philips (see Exhibit 10)

Cynthia Shelby (see Exhibit 11)

William Shelby (see Exhibit 12)

Toni Collins (see Exhibit 13)

Executive Director's Response

Comments were received from several Bass River Township residents who stated their opposition to the rezoning of North Maple Avenue (Exhibits 6, 7, 8, and 9). While Ordinance 2023-2 does include a minor zoning change along North Maple Avenue in the Village of New Gretna (see Exhibit 5), the commenters appear to be responding to Bass River Township Ordinance 2023-7, which was introduced at the Township Commission's July meeting. Ordinance 2023-7 would rezone multiple lots along North Maple Avenue from Village Residential to Village Commercial. These zoning changes were not included in the 2022 Master Plan Reexamination Report, nor were they adopted as part of Ordinance 2023-2. Therefore, Ordinance 2023-7 has no bearing on the findings of this report. It is our understanding that the Township voted down Ordinance 2023-7 at its August meeting.

Comments were also received from three residents who were opposed to the change in minimum lot size from 2 acres to 1 acre in the Village Commercial and Village Residential Zones (Rick Adams; Exhibits 11 and 12). The CMP provides Pinelands municipalities with the flexibility to set residential minimum lot size requirements as low as 1 acre within Pinelands Villages. As described in Section 2 above, the Township has opted to revert to its previous minimum lot size requirement of 1 acre, which was previously certified by the Commission. As noted above, staff finds that the revised lot size requirement is consistent with the existing character and magnitude of development within the Village.

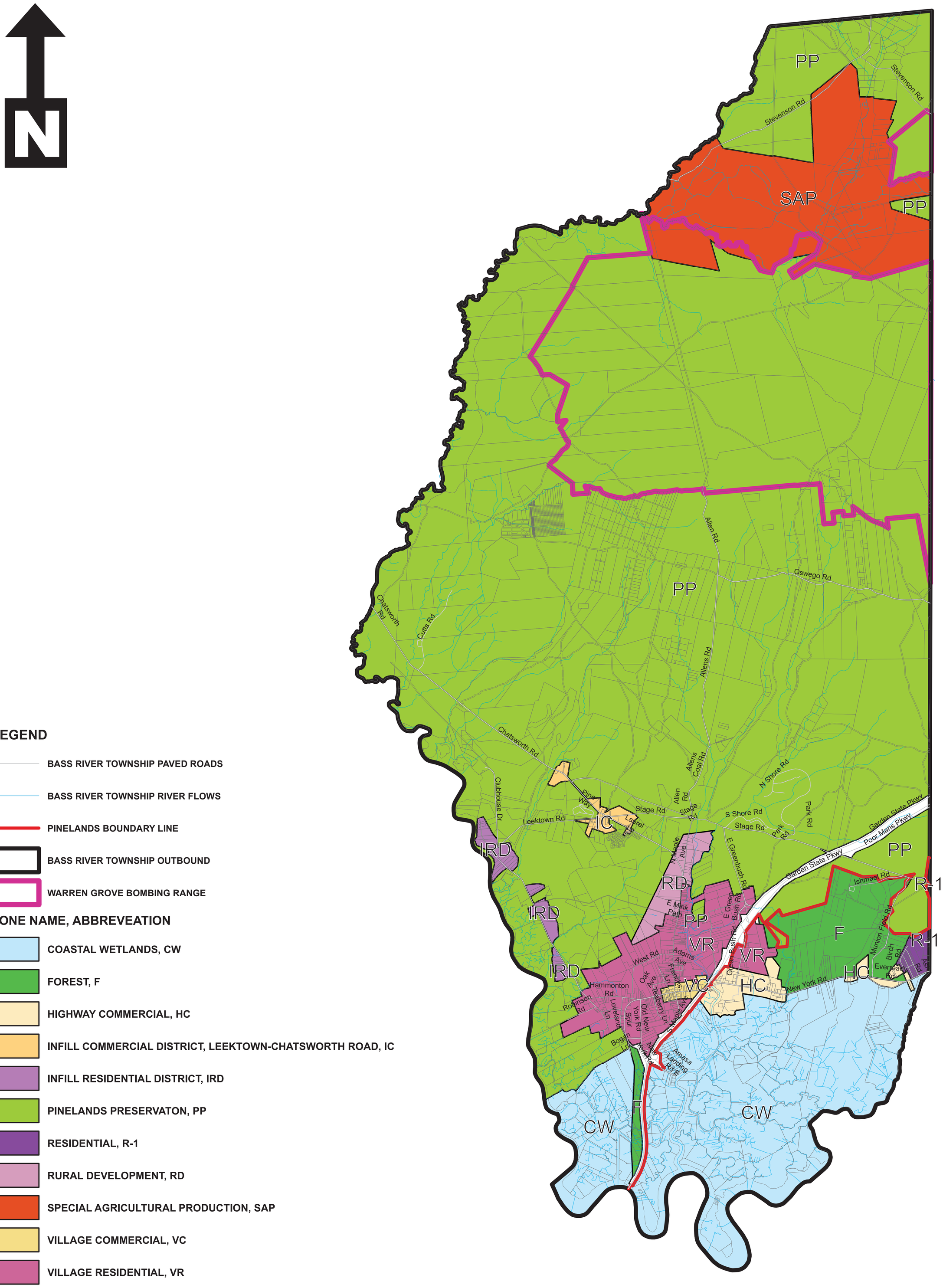
Conclusion

Based on the Findings of Fact cited above, the Executive Director has concluded that the Bass River Township 2022 Master Plan Reexamination Report and Ordinance 2023-2, amending Title 17, Zoning, of the Code of Bass River Township, 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 2022 Master Plan Reexamination Report and Ordinance 2023-2 of Bass River Township.

SRG/DBL/CBR
Attachments

ZONE MAP

BASS RIVER TOWNSHIP



LEGEND

- BASS RIVER TOWNSHIP PAVED ROADS
- BASS RIVER TOWNSHIP RIVER FLOWS
- PINELANDS BOUNDARY LINE
- BASS RIVER TOWNSHIP OUTBOUND
- WARREN GROVE BOMBING RANGE

ZONE NAME, ABBREVEATION

- COASTAL WETLANDS, CW
- FOREST, F
- HIGHWAY COMMERCIAL, HC
- INFILL COMMERCIAL DISTRICT, LEEKTOWN-CHATSWORTH ROAD, IC
- INFILL RESIDENTIAL DISTRICT, IRD
- PINELANDS PRESERVATON, PP
- RESIDENTIAL, R-1
- RURAL DEVELOPMENT, RD
- SPECIAL AGRICULTURAL PRODUCTION, SAP
- VILLAGE COMMERCIAL, VC
- VILLAGE RESIDENTIAL, VR

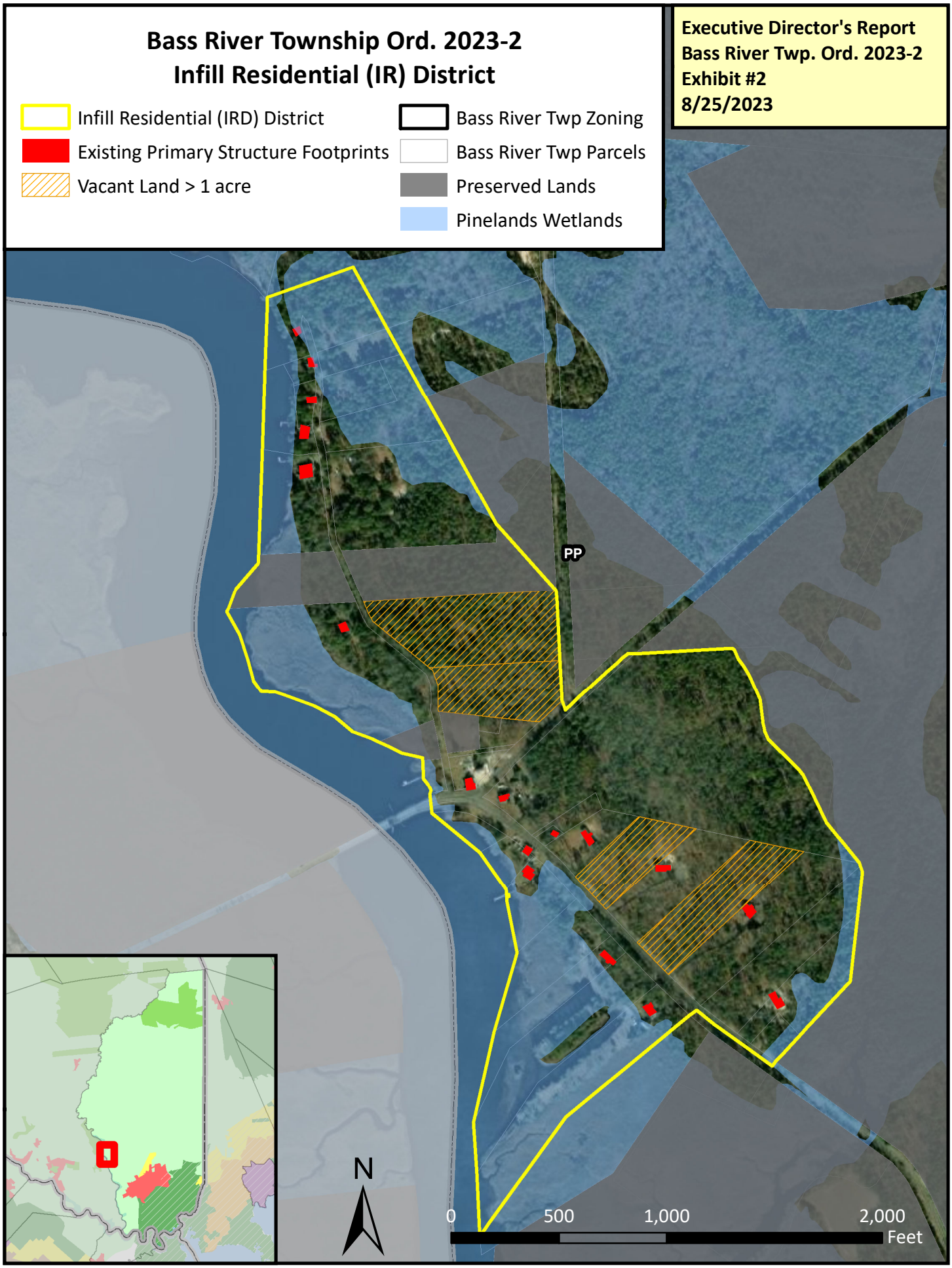
0 0.5 1 2 3 4 Miles

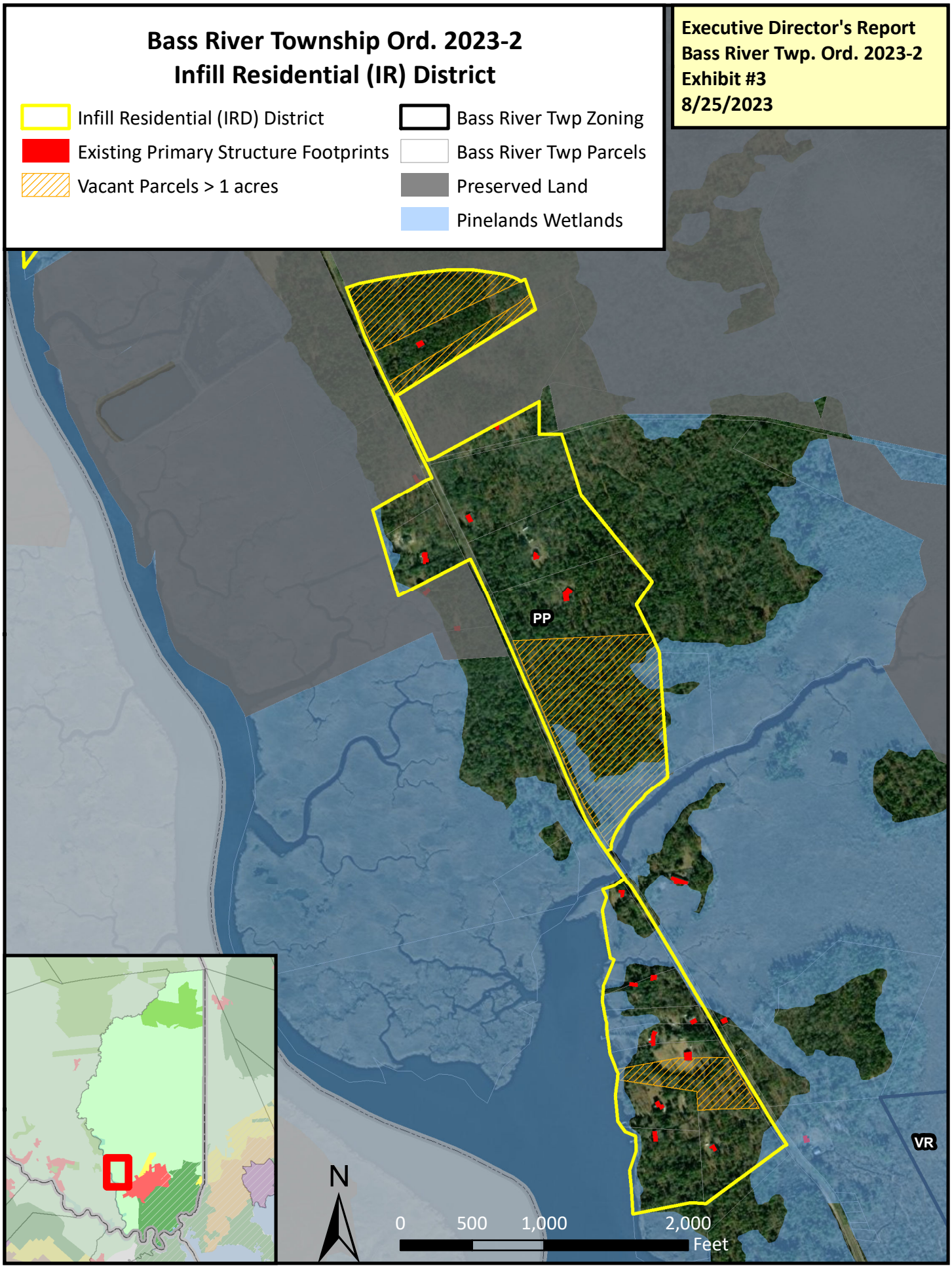
Map Sources: NJDOT, NJGIN, Pinelands, Bass River Township Official Zone Map DD December 2012

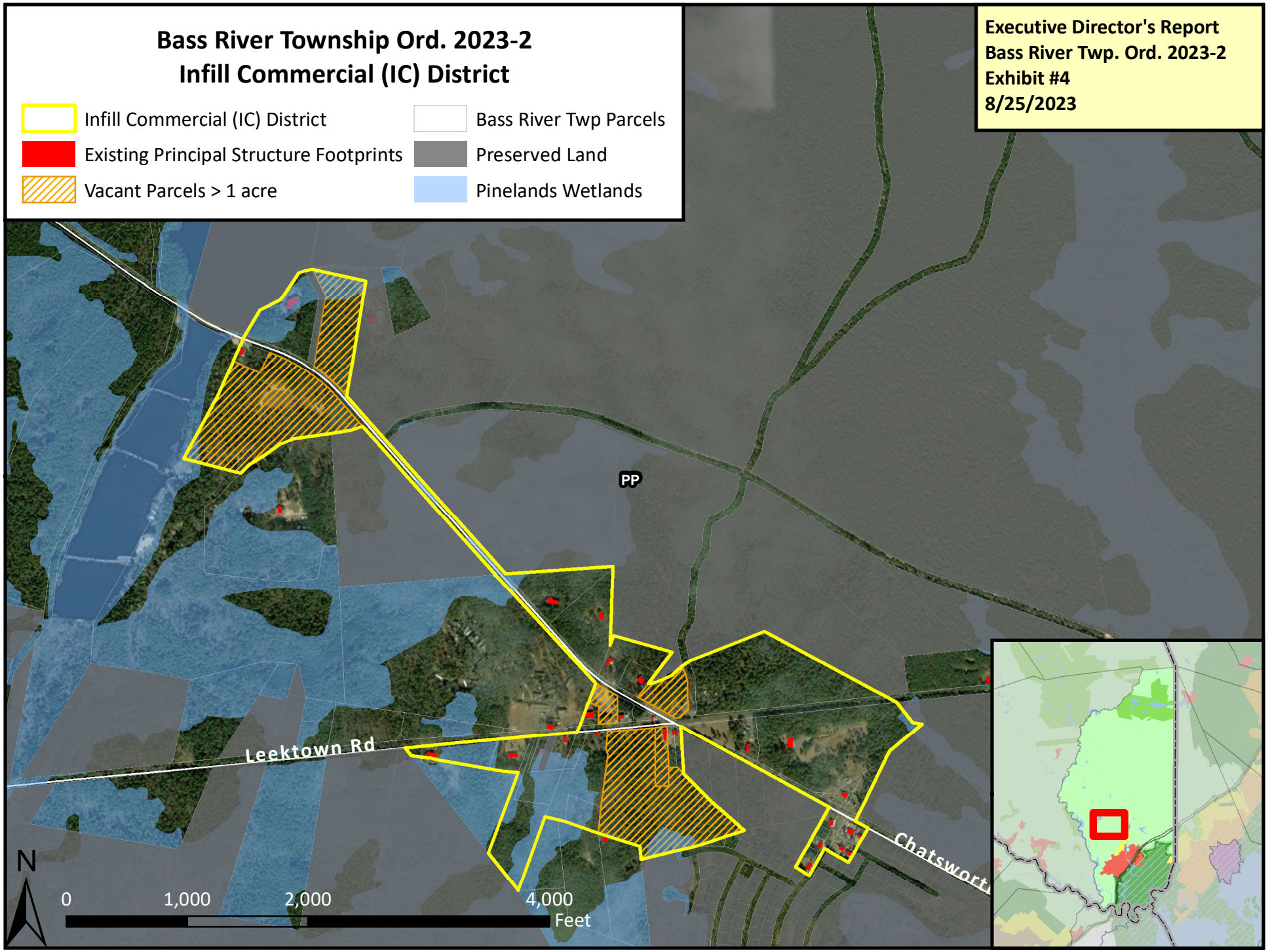
CME ASSOCIATES
Consulting & Municipal ENGINEERS

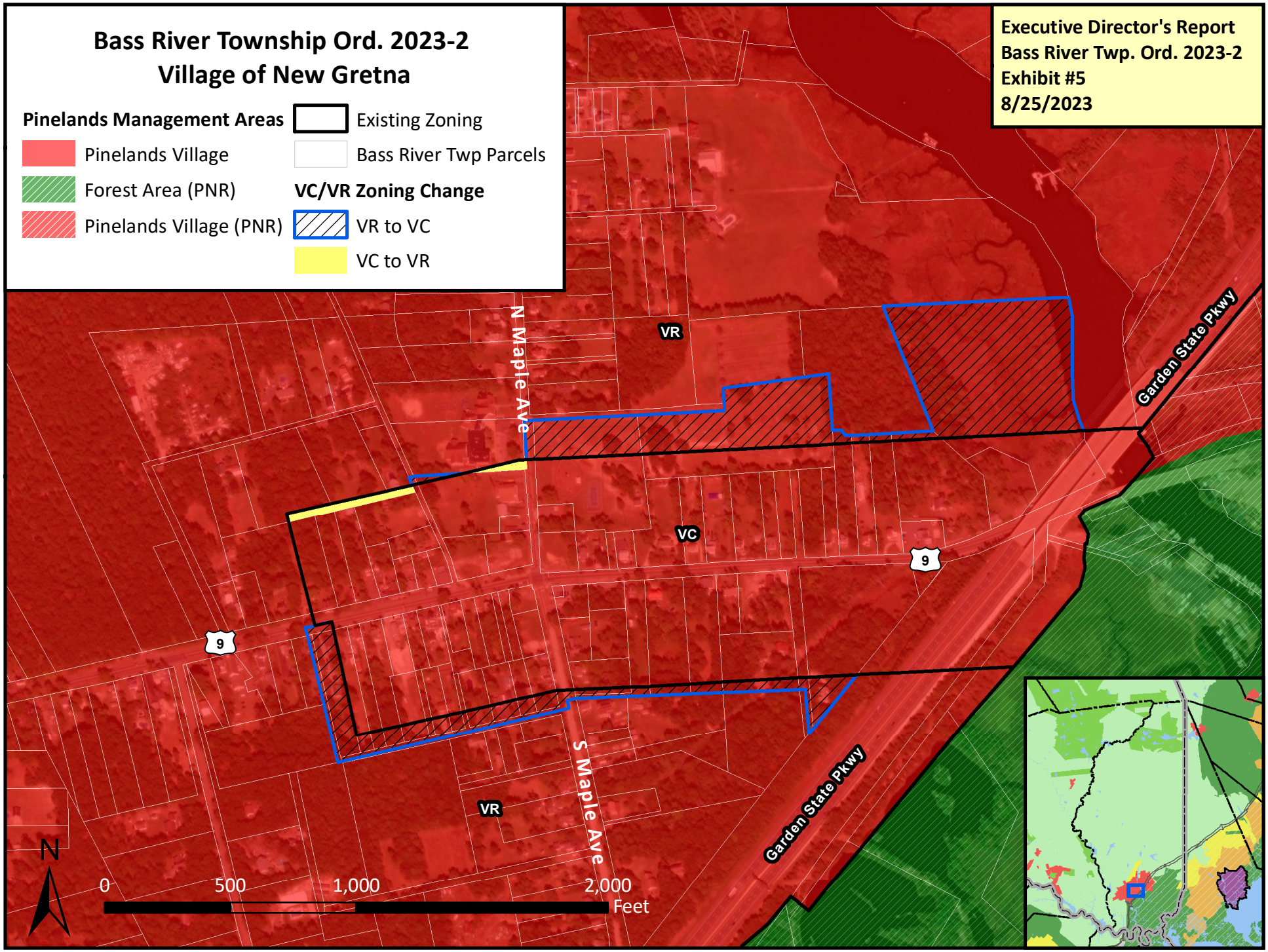
CONSULTING & MUNICIPAL ENGINEERS
3141 BORDENTOWN AVENUE, PARLIN, N.J. 08859
1460 ROUTE 9 SOUTH HOWELL, N.J. 07731
3759 ROUTE 1 SOUTH SUITE 100, MONMOUTH JUNCTION, NJ 08852
ONE MARKET STREET SUITE 1F, CAMDEN, NJ 08102
WWW.CMEUSA1.COM

DATE	SCALE	LAST REVISED	CREATED BY
December 2012	1 in = 2,500 feet	2/6/2023	DE


Bass River Township Ord. 2023-2
Infill Residential (IR) District
Infill Residential (IRD) District
Existing Primary Structure Footprints
Vacant Land > 1 acre
Bass River Twp Zoning
Bass River Twp Parcels
Preserved Lands
Pinelands Wetlands
Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #2
8/25/2023
PP
N
0
500
1,000
2,000
Feet


Bass River Township Ord. 2023-2
Infill Residential (IR) District
Infill Residential (IRD) District
Existing Primary Structure Footprints
Vacant Parcels > 1 acres
Bass River Twp Zoning
Bass River Twp Parcels
Preserved Land
Pinelands Wetlands
Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #3
8/25/2023
PP
VR
N
0
500
1,000
2,000
Feet


Bass River Township Ord. 2023-2
Infill Commercial (IC) District
Infill Commercial (IC) District
Existing Principal Structure Footprints
Vacant Parcels > 1 acre
Bass River Twp Parcels
Preserved Land
Pinelands Wetlands
Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #4
8/25/2023
PP
Leektown Rd
Chatsworth
N
0
1,000
2,000
4,000
Feet


Bass River Township Ord. 2023-2
Village of New Gretna
Pinelands Management Areas
Pinelands Village
Forest Area (PNR)
Pinelands Village (PNR)
Existing Zoning
Bass River Twp Parcels
VC/VR Zoning Change
VR to VC
VC to VR
Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #5
8/25/2023
N Maple Ave
S Maple Ave
Garden State Pkwy
Garden State Pkwy
VR
VC
VR
9
9
N
0
500
1,000
2,000
Feet

Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #6
8/25/2023

Lanute, Brad [PINELANDS]

From: Heinrichs Pamela <newgretnagirl@outlook.com>
Sent: Friday, August 4, 2023 1:32 PM
To: Comments, PC [PINELANDS]
Subject: Public Comment Submissions

Below is the result of your feedback form. It was submitted by Heinrichs Pamela (newgretnagirl@outlook.com) on Friday, August 4, 2023 at 13:32:28

---

email: newgretnagirl@outlook.com

subject: Public Comment Submissions

Name: Heinrichs Pamela

Mailing Address: P O BOX 387

Phone Number: 6097093884

Comment Topic: selected=

Message: Please do not allow North Maple Ave to be zoned village commercial. That section of the road is 35 miles per hour and there is a big problem with speeding in that area. We don't need more traffic. Also, West Rd is used as a cut through to get from Route 542 to North Maple and has a speeding problem. West Rd is a very narrow road with chikdren, pets, and wildlife. It doesn't need more traffic. Route 9 is zoned commercial and some of it is unused. We should use the commerc I al property on Route 9 before we change North Maple Ave. Please keep our quaint little town as it is.

Submit: Submit

Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #7
8/25/2023

Lanute, Brad [PINELANDS]

From: Linda Quigley <lindaquigley3@gmail.com>
Sent: Friday, August 4, 2023 4:13 PM
To: Comments, PC [PINELANDS]
Subject: Public Comment Submissions

Below is the result of your feedback form. It was submitted by Linda Quigley (lindaquigley3@gmail.com) on Friday, August 4, 2023 at 16:13:19

---

email: lindaquigley3@gmail.com

subject: Public Comment Submissions

Name: Linda Quigley

Mailing Address: 5541 Rt. 9 New Gretna

Comment Topic: selected=

Message: I would like to express my thoughts on some of the changes being brought forth to the Bass River 2022 Master Plan, specifically the re zoning of residential property to commercial property on North Maple Ave.
I see no benefit for the towns people to warrant a change in zone. There are no health or safety benefits and the possible economic growth for our town is a far reach considering over the last 25+ years I've been a homeowner, I have seen commercial property on the major Route 9 remain empty for all of those 25 years.Our little side road North Maple which has a speed limit of 35mph can not possibly accommodate commerce traffic. Children stand outside for school busses with no sidewalks, it would most definitely pose a threat to our children's safety should a large increase of traffic occur. Our roads will not be able to withstand an influx of traffic in addition to traffic of Viking Yacht yard at the end of the workday. Living on Route 9 I sometimes have a hard time even getting out of my driveway during rush hour traffic. Our small village has withstood the ti.es and remained a charming close community. I personally would like our town to remain a quiet community surrounded by the beautiful nature of the Pinelands.
Thank you for your time and consideration Linda Quigley

Submit: Submit

Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #8
8/25/2023

Lanute, Brad [PINELANDS]

From: Dolores Mackay <Doloresmackay@aol.com>
Sent: Saturday, August 5, 2023 3:01 PM
To: Comments, PC [PINELANDS]
Subject: Public Comment Submissions

Below is the result of your feedback form. It was submitted by Dolores Mackay (Doloresmackay@aol.com) on Saturday, August 5, 2023 at 15:01:21

---

email: Doloresmackay@aol.com

subject: Public Comment Submissions

Name: Dolores Mackay

Affiliation: Resident

Mailing Address: 1797 rt 542 egg harbor nj 08215

Phone Number: 609 204 3779

Comment Topic: selected=

Message: As a long time resident I am against this plan to make parts of N Maple Avenue commercial and I do mot want New Gretna to be taken from under the Pinelands Commission oversight. At least not without a ballot vote of the current residents. Thank you

Submit: Submit

Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #9
8/25/2023

Lanute, Brad [PINELANDS]

From: Joel Kelley <joelkelley1974@icloud.com>
Sent: Saturday, August 5, 2023 6:11 PM
To: Comments, PC [PINELANDS]
Subject: Public Comment Submissions

Below is the result of your feedback form. It was submitted by Joel Kelley (joelkelley1974@icloud.com) on Saturday, August 5, 2023 at 18:10:43

---

email: joelkelley1974@icloud.com

subject: Public Comment Submissions

Name: Joel Kelley

Mailing Address: 5645 rt 9 new gretna nj 08224

Phone Number: 6097135422

Comment Topic: selected=

Message: This is in reference to the master plan for bass River Township New Jersey. There is not one resident on North Maple that wants it to be commercial. That road is very busy as it is. Then we find out the school want to do dormitories there, and the septic could barely keep up with, the elementary school. The board already seems like made up there minds and is not listening to the township residence. We are hoping the pinelands commission will help us. Please look into this situation for the township of Bass River for the residence. Thank you for reading this.

Submit: Submit

Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #10
8/25/2023

Lanute, Brad [PINELANDS]

From: laura phillipd <laugik@gmail.com>
Sent: Saturday, August 5, 2023 6:57 PM
To: Comments, PC [PINELANDS]
Subject: Public Comment Submissions

Below is the result of your feedback form. It was submitted by laura phillipd (laugik@gmail.com) on Saturday, August 5, 2023 at 18:57:17

---

email: laugik@gmail.com

subject: Public Comment Submissions

Name: laura phillipd

Mailing Address: 166 leektown road

Phone Number: 6097091472

Comment Topic: selected=

Message: no to the master plan

Submit: Submit

Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #11
8/25/2023

Lanute, Brad [PINELANDS]

From: Cynthia Shelby <poohinlacey@aol.com>
Sent: Tuesday, August 8, 2023 7:44 AM
To: Comments, PC [PINELANDS]
Subject: Public Comment Submissions

Below is the result of your feedback form. It was submitted by Cynthia Shelby (poohinlacey@aol.com) on Tuesday, August 8, 2023 at 07:43:35

---

email: poohinlacey@aol.com

subject: Public Comment Submissions

Name: Cynthia Shelby

Mailing Address: 7 Frenchs Lane, New Gretna

Comment Topic: selected=

Message: Please do not allow our beautiful little community to be over runned with housing or whatever by passing the minimum to build to 1 acre. The community of New Gretna village wants to keep it the way it is. These are mostly generation folks that reside here.

Submit: Submit

Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #12
8/25/2023

Lanute, Brad [PINELANDS]

From: william shelby <punch1500@aol.com>
Sent: Tuesday, August 8, 2023 11:51 AM
To: Comments, PC [PINELANDS]
Subject: Public Comment Submissions

Below is the result of your feedback form. It was submitted by william shelby (punch1500@aol.com) on Tuesday, August 8, 2023 at 11:51:08

---

email: punch1500@aol.com

subject: Public Comment Submissions

Name: william shelby

Mailing Address: 7 frenchs lane new gretna nj

Phone Number: 9089107746

Comment Topic: selected=

Message: please don't allow the zoning change from 3 to 1 acres

Submit: Submit

Executive Director's Report
Bass River Twp. Ord. 2023-2
Exhibit #13
8/25/2023

Lanute, Brad [PINELANDS]

From: Toni Collins <Tonilee5890@gmail.com>
Sent: Tuesday, August 8, 2023 11:55 AM
To: Comments, PC [PINELANDS]
Subject: Public Comment Submissions

Below is the result of your feedback form. It was submitted by Toni Collins (Tonilee5890@gmail.com) on Tuesday, August 8, 2023 at 11:55:20

---

email: Tonilee5890@gmail.com

subject: Public Comment Submissions

Name: Toni Collins

Affiliation: Resident

Mailing Address: 5658 rt 9 New Gretna NJ 08087

Phone Number: 6092766523

Comment Topic: selected=

Message: I don't agree with the master plan and I would like to keep the things in place that are currently in place.

Submit: Submit

RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-23-__36____

TITLE: To Revise and Adopt Proposed Amendments to the Comprehensive Management Plan (Water Management)

Commissioner ____Avery_____ moves and Commissioner ____Lohbauer_____ seconds the motion that:

WHEREAS, the Kirkwood-Cohansey aquifer is a fresh-water reservoir underlying the New Jersey Pinelands that contains at least 17 trillion gallons of water; and

WHEREAS, the Kirkwood-Cohansey aquifer provides potable and non-potable water to hundreds of thousands of people in South Jersey and sustains the ecology of the Pinelands by supporting wetlands and unique Pinelands vegetation and animal communities; and

WHEREAS, withdrawals from the Kirkwood-Cohansey aquifer can adversely impact the essential character of the Pinelands environment if they cause changes to habitats, reduce the quantity of water in the Preservation Area or encourage inappropriate patterns of development; and

WHEREAS, in 2001, the New Jersey Legislature enacted a law (P.L. 2001 c.165) calling for a study of the ecological impacts of human activities, including wells and diversions, on the ecology of the Pinelands Area; and

WHEREAS, the law directed the Commission, in cooperation with the New Jersey Department of Environmental Protection, Rutgers University, the United States Fish and Wildlife Service and the United States Geological Survey, to "assess and prepare a report on the key hydrologic and ecological information necessary to determine how the current and future water supply needs within the Pinelands Area may be met while protecting the Kirkwood-Cohansey aquifer system"; and

WHEREAS, twelve separate studies were ultimately completed in order to address two major questions: the hydrologic effects of groundwater diversions from the Kirkwood-Cohansey aquifer on stream flows and wetland water levels; and the ecological effects of streamflow and groundwater-level changes on aquatic and wetland communities; and

WHEREAS, pump tests, monitoring, and hydrologic modeling and assessment studies characterized the aquifer and generated data and an understanding of the changes to groundwater levels and streamflow that might occur from groundwater pumping; and

WHEREAS, the habitat, plant, and animal studies simulated changes to groundwater levels and evaluated the impacts of the lowered water table on those habitats, plants, and animals; and

WHEREAS, the water depth reductions simulated in the "Frog Development" study showed a clear increase in impacts to the studied species, including Pine Barrens tree frog, spring peeper, and southern leopard frog, beginning at 10 cm (4 inches) of groundwater drawdown with increasing impacts from successively greater drawdown depths; and

WHEREAS, based on these findings, the Pinelands Commission has determined that it is appropriate and necessary to amend the Comprehensive Management Plan to significantly strengthen the ecological protections of the Kirkwood-Cohansey aquifer; and

WHEREAS, the Commission additionally determined that amendments would provide clearer, quantifiable standards for assessing the ecological impacts of nonagricultural diversions from the aquifer, introduce new, quantifiable standards to protect the available water supply in the watershed in which a diversion will be located, expand the scope of wells that will be subject to the new standards, limit new or increased diversions from the Kirkwood-Cohansey to appropriate Pinelands management areas and clarify and expand water conservation requirements; and

WHEREAS, on July 8, 2022, the Pinelands Commission authorized the publication of the proposed amendments through adoption of Resolution PC4-22-25; and

WHEREAS, the proposed amendments were published in the September 6, 2022 New Jersey Register at 54 N.J.R. 1668(a), posted on the Commission's website and distributed to all Pinelands municipalities and counties, the Pinelands Municipal Council and a wide range of interested parties; and

WHEREAS, the Pinelands Commission held a public hearing to elicit public comment on the proposed amendments on October 12, 2022; and

WHEREAS, as the result of an error in the original public notice, the Pinelands Commission held a second public hearing on November 2, 2022; and

WHEREAS, the Pinelands Commission also solicited written comment on the proposed amendments through November 5, 2022; and

WHEREAS, the Pinelands Commission received both oral and written comments on the proposed amendments; and

WHEREAS, the Commission received many comments concerning non-consumptive water diversions in resource extraction operations; and

WHEREAS, at its November 29, 2022 meeting, the Commission's Policy & Implementation Committee reviewed all comments regarding non-consumptive water diversions for resource extraction, the responses prepared by Commission staff, and proposed substantial changes to the rule amendments to address those non-consumptive water diversions as well as minor clarifications and corrections to the amendments; and

WHEREAS, the Pinelands Commission reviewed the substantial changes to the proposed amendments at its February 10, 2023 meeting and authorized publication of a notice of proposed substantial changes upon adoption through adoption of Resolution PC4-23-08; and

WHEREAS, the notice of proposed substantial changes upon adoption was published in the April 3, 2023 New Jersey Register at 55 N.J.R. 577(a), posted on the Commission's website and distributed to all Pinelands municipalities and counties, the Pinelands Municipal Council and a wide range of interested parties; and

WHEREAS, the Pinelands Commission held a public hearing to elicit public comment on the notice of proposed substantial changes upon adoption on May 3, 2023; and

WHEREAS, the Pinelands Commission also solicited written comment on the notice of proposed substantial changes upon adoption through June 3, 2023; and

WHEREAS, the Pinelands Commission received both oral and written comments on the notice of proposed substantial changes upon adoption; and

WHEREAS, at its August 25, 2023 meeting, the Commission's Policy & Implementation Committee reviewed all public comments received on the proposed Comprehensive Management Plan amendments and on the notice of proposed substantial changes upon adoption, the responses prepared by Commission staff, and minor clarifications and corrections to the amendments, and

WHEREAS, the substantial changes to the original proposed amendments, as well as minor clarifications and corrections, are reflected in the attached Notice of Adoption, dated August 16, 2023; and

WHEREAS, the Pinelands Commission has reviewed the August 16, 2023 Notice of Adoption and all public comments received by the Commission on the rule proposal and notice of proposed substantial changes upon adoption; and

WHEREAS, the Pinelands Commission desires to revise and adopt the proposed amendments in accordance with the August 16, 2023 Notice of Adoption; and

WHEREAS, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission in adopting the Comprehensive Management Plan or amendments thereto shall have force or effect until thirty (30) 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. The Pinelands Commission hereby revises the proposed Comprehensive Management Plan amendments, as published in the September 6, 2022 New Jersey Register and the April 3, 2023 New Jersey Register, in accordance with the attached August 16, 2023 Notice of Adoption.

2. The Pinelands Commission hereby adopts the proposed Comprehensive Management Plan amendments, as published in the September 6, 2022 New Jersey Register and the April 3, 2023 New Jersey Register, and in accordance with the attached August 16, 2023 Notice of Adoption.

3. The Executive Director shall forward the amendments and minutes of this action to the Governor of the State of New Jersey, and shall also forward these amendments to the United States Secretary of the Interior for review in accordance with Section 502 of the National Parks and Recreation Act of 1978.

4. The amendments shall take effect as provided in the Pinelands Protection Act and upon publication in the New Jersey Register.

Record of Commission Votes

	AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*
Asselta	X				Lettman	X				Wallner			X	
Avery	X				Lohbauer	X				Matos	X			
Christy	X				Mauriello	X								
Holroyd	X				Meade	X								
Irick			X		Pikolycky	X								

*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission Date: September 8, 2023

Susan R. Grogan

Laura E. Matos

Executive Director

Chair

ENVIRONMENTAL PROTECTION

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Fees; Definitions; Development Review; Water Quality

Adopted Amendments: N.J.A.C. 7:50-1.6, 2.11, 4.2, and 6.86

Proposed: September 6, 2022 at 54 N.J.R. 1668(a).

Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments: April 3, 2023 at 55 N.J.R. 577(a).

Adopted: _____, by the New Jersey Pinelands Commission, Susan R. Grogan, Executive Director.

Filed: _____, as R._____ with **substantial and technical changes** to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-10 and **with a non-substantial change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:18A-6.j.

Effective Date: _____.

Expiration Date: Exempt.

The New Jersey Pinelands Commission (Commission) is adopting amendments to Subchapter 1, General Provisions; Subchapter 2, Interpretations and Definitions; Subchapter 4, Development Review; and Subchapter 6, Management Programs and Minimum Standards of the Pinelands Comprehensive Management Plan (CMP). The amendments were proposed on September 6, 2022 at 54 N.J.R. 1668(a). Substantial changes to the proposed amendments were proposed on April 3, 2023 at 55 N.J.R. 577(a). The adopted amendments relate to water

withdrawals from the Kirkwood-Cohansey aquifer and to inter- and intra-basin transfers of water.

The Pinelands Commission transmitted the notice of proposal and notice of proposed substantial changes upon adoption to proposed amendments to each Pinelands municipality and county, as well as to other interested parties, for review and comment.

Additionally, the Pinelands Commission:

- Sent notice of the public hearings to all persons and organizations that subscribe to the Commission's public hearing registry;
- Sent notice of the public hearing and provided a copy of the notice of proposal and notice of proposed substantial changes upon adoption to proposed amendments to all Pinelands counties and municipalities, and other interested parties;
- Placed advertisements of the public hearings in the four official newspapers of the Commission, as well as on the Commission's own webpage;
- Submitted the proposed amendments and substantial changes to the Pinelands Municipal Council, pursuant to N.J.S.A. 13:18A-7.f;
- Distributed the proposed amendments and substantial changes to the news media maintaining a press office in the State House Complex; and
- Published a copy of the proposed amendments and substantial changes on its webpage at www.nj.gov/pinelands.

Summary of Public Comments and Agency Response:

Formal public hearings were held in live video format (Zoom) before the Commission staff on October 12, 2022 and November 2, 2022 on the original proposal and on May 3, 2023 on the notice of proposed substantial changes. Instructions for how to participate in the video

hearing were included in the public hearing notices, as well as on the Commission's website. The public hearings were recorded in video format and are on file in the Commission's digital records.

Six people called in to provide oral testimony on the notice of proposal and two people called in to provide testimony on the notice of proposed substantial changes.

In addition to the oral comments, the Commission received 20 written comments on the original proposal, six of which were from individuals that provided oral comment at the public hearings, and six written comments on the notice of proposed substantial changes, two of which were from individuals that provided oral comment at the public hearing.

Comments on the original notice of proposed amendments were received from the following individuals. The numbers in parentheses after each comment summarized below correspond to the following list of commenters.

1. William Layton, Executive Director (written comment) and Kyle England, CLB Partners (public hearing), NJ Concrete & Aggregate Association
2. Ryan Benson, Esq., (public hearing), Kevin Coakley, Esq. (written comment), and Brian Blum, CPG, LSRP (written comment), Clayton Companies
3. Robert S. Baranowski, Jr., Esq. (public hearing and written comment), Wade Sjogren (written comment) Whibco, Inc.
4. Joseph Gallagher, Township Administrator, Winslow Township
5. Jeffrey L. Hoffman, State Geologist, New Jersey Department of Environmental Protection, Division of Water Supply and Geoscience
6. Paul Connolly
7. Ed Beckett

8. Janet Drew
9. Logan Penna
10. David Harpell, Jackson Township
11. Dan Osterman
12. Rick Prickett
13. Brooke Handley, River Administrator (written comment) and Fred Akers, Operations Manager (public hearing and written comment), Great Egg Harbor Watershed Association
14. Sandy Van Sant
15. Grant Lucking, Chief Operating Officer, NJ Builders Association (NJBA)
16. Ryck Suydam President, Farm Bureau
17. Jennifer Moriarty, Director, New Jersey Department of Environmental Protection, Division of Land Resource Protection
18. Robert Kecskes (public hearing and written comment)
19. Jack McCausland (public hearing), Pinelands Preservation Alliance
20. Rebecca

Comments on the notice of proposed substantial changes upon adoption to proposed amendments were received from the following individuals. The numbers in parentheses after each comment summarized below correspond to the following list of commenters.

21. Kevin Coakley, Esq. (public hearing and written comment), and Brian Blum, CPG, LSRP (written comment), Clayton Companies
22. Robert S. Baranowski, Jr., Esq. (public hearing and written comment), Whibco, Inc.
23. Joseph Gallagher, Township Administrator, Winslow Township

24 Rick Prickett

25. George Lobman, Utility and Transportation Contractors Association of New Jersey

26. Bill Wolfe

1. Comments Received During Initial Comment Period Giving Rise to Substantial Changes in Proposal upon Adoption

Resource Extraction (N.J.A.C. 7:50-2.11; 4.2(b)6xi; 6.86(d)2iii)

1. COMMENT: Resource extraction operations use mechanical and hydraulic dredging that typically involves "nonconsumptive" water use. The water is returned to the source with little or no change in the quality or quantity of water. The amendments would impose a disproportionate regulatory burden on such nonconsumptive diversions and would not accomplish the purpose of protecting the aquifer. The proposed amendments are punitive of nonconsumptive uses as they do not account for aquifer replenishment in a closed-loop use. (1, 2, and 3)

2. COMMENT: The proposed regulations will hurt the mining industry. Additional constraints on mining in the Preservation Area District, Forest Area, and Special Agricultural Production Area will hasten the demise of the industry. (1, 2, and 3)

3. COMMENT: The proposed rule will force resource extraction operations to reduce production of mined sand, gravel, and crushed stone, resulting in a shortage of the products, which will threaten vital transportation projects and negatively impact the construction industry. The Commission should identify and protect these resources to ensure an uninterrupted, economical supply. The proposed rule is contrary to the Federal ROCKS act (part of the Infrastructure and Jobs Act of 2021), designed to keep aggregate building materials sustainable.

The general mid-Atlantic region is dependent on these already scarce materials used for construction of buildings and roads. (1, 2, and 3)

4. COMMENT: The proposed rules will result in a shortage of sand, gravel, and crushed stone, which could result in the doubling of price for those materials. (2)

5. COMMENT: The proposed rule is arbitrary in regulation of non-consumptive uses. (2)

RESPONSE TO COMMENTS 1, 2, 3, 4 AND 5: The Commission thanks the resource extraction industry for its comments and explanations regarding the specific nonconsumptive uses of water for hydraulic dredging operations. Given that there are over 70 existing resource extraction operations in the Pinelands Area, approximately half of which are located in the Preservation Area District and Forest Area where the proposed amendments would prohibit new diversions of 50,000 gallons of water per day or more from the Kirkwood-Cohansey aquifer, the industry raised valid concerns about the impact of the amendments proposed at 54 N.J.R. 1668(a) ("original proposal" or "original proposed amendments").

In order to avoid unintended negative impacts on the resource extraction industry, the Commission revised its original proposal in a Notice of Proposed Substantial Changes ("amended proposal"). The amended proposal included a new provision at N.J.A.C. 7:50-6.86(d)2iii to state that the standards at N.J.A.C. 7:50-6.86(d)3 through 9 will not apply to proposed diversions for resource extraction operations that constitute a nonconsumptive use, provided that the water returned to the source is not discharged to a stream or waterbody or otherwise results in offsite flow, and the diversion and return are located on the same parcel. A definition of "nonconsumptive use" was also added at N.J.A.C. 7:50-2.11 to mean the use of water diverted from surface or ground waters in such a manner that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it

was taken. This new definition focuses on water quantity and does not explicitly reference water quality, because all development in the Pinelands Area, including diversions from the Kirkwood-Cohansey aquifer, are required to meet the existing water quality standards of the Comprehensive Management Plan.

A resource extraction operation located in the Pinelands Area will continue to be required to apply to the Commission for any new or increased diversion. If the applicant for such a diversion can demonstrate as part of the application process that the proposed diversion meets the definition of nonconsumptive use at N.J.A.C. 7:50-2.11 and the conditions at N.J.A.C. 7:50-6.86(d)2iii (described in the paragraph above), the water management standards at N.J.A.C. 7:50-6.86(d)3 through 9 will not apply, even if the proposed diversion involves the withdrawal of 50,000 gallons of water per day or more from the Kirkwood-Cohansey aquifer.

In its amended proposal, the Commission also added a new provision to the application requirement section, N.J.A.C. 7:50-4.2(b)6xi, to specify the information a resource extraction operation must provide to the Commission. This information would most likely be submitted as part of an application for renewal of a resource extraction permit or as a separate application for development that would also necessitate a modification of a New Jersey Department of Environmental Protection (DEP) Water Allocation Permit. Specifically, the application for resource extraction will require submission of a hydrogeologic report that estimates both the volume of the diversion and the volume of water to be returned to the source, describes the route of return to the source and the methodology used to estimate the volume of water returned to the source, and describes any other existing or proposed water diversions or discharges on or from the parcel. Reports of this type comport with reports routinely submitted to NJDEP for water allocation permit modifications for nonconsumptive use by sand and gravel operations. A "parcel" will be considered as all tax lots that are a part of a resource extraction operation for which a municipal

approval has been reviewed by the Commission, determined to be consistent with all CMP standards and allowed to take effect pursuant to N.J.A.C. 7:50-4.37 and 4.40. The hydrogeologic report will have to include a map that depicts the location of the diversion, the location of the return to source, the location of all existing or proposed resource extraction operations, and the location of all wetlands on or within 300 feet of the parcel on which the diversion is proposed.

6. COMMENT: Along with recognizing mining as a nonconsumptive use, the definition of "divert" or "diversion" should be modified to exclude "mining of sand or similar materials, as long as the mining is conducted by mechanical or hydraulic dredging" and state that such mining shall not be considered development. (3)

RESPONSE: The Commission believes these concerns were addressed in its amended proposal, described in the Response to Comments 1 through 5, above. It should also be noted that the suggested revision would conflict with the definition of "divert" and "diversion" in the DEP's water supply allocation rules at N.J.A.C. 7:19-1.3.

7. COMMENT: The definition of "allocation" at N.J.A.C. 7:50-6.86(b), and the standards at proposed paragraphs (d)3 through 9, should also exclude the taking or discharge of water for mining of sand or other earthen materials, even if permitted pursuant to a Water Allocation Permit, Water Use Registration, Number, NPDES, or NJPDES permit, as long as such mining is conducted by mechanical or hydraulic dredging. (3)

RESPONSE: The Commission believes that its amended proposal, described in the Response to Comments 1 through 5, sufficiently addresses the resource extraction industry's concerns

regarding compliance with the proposed new water management standards when an operation involves nonconsumptive use of water.

Definitions (N.J.A.C. 7:50-2.11)

8. COMMENT: The definition of "stream low flow margin" should be the same as the definition in the New Jersey Statewide Water Supply Plan. (5)

RESPONSE: The Commission agrees and changed the definition of stream low flow margin at N.J.A.C. 7:50-2.11 in its amended proposal to make it consistent with the New Jersey Statewide Water Supply Plan. The definition clarifies "September Median Flow" to mean a stream's normal dry-season flow; replaces the term and definition of "statistical flow" with "drought flow;" and removes the explanation of statistical flow.

Interbasin Transfer (N.J.A.C. 7:50-6.86(b))

9. COMMENT: There are unavoidable interbasin transfers because some diversions that are located near the border of the Atlantic and Delaware River Basins are pulling water from both basins. This is difficult for municipalities whose land areas straddle both basins and can be problematic for municipalities that currently depend on interbasin transfer for a potable water source and wastewater treatment. Winslow Township purchases 1.5 million gallons per day (MGD) from New Jersey American Water that is sourced from the Delaware River Basin and is mostly transferred to the Atlantic Basin. (4)

RESPONSE: The Commission thanks the commenter for raising this concern. The Commission is aware that for Winslow Township and other municipalities, water procurement involves the transfer of water between the Atlantic and Delaware River Basins and that these transfers are

from diversions located outside the Pinelands Area. In response to this issue, the Commission's amended proposal clarifies at N.J.A.C. 7:50-6.86(b) that the prohibition against interbasin transfers applies only to transfers of water "from sources within" the Pinelands Area. It should be noted that water sourced from outside the Pinelands Area that is distributed to development within the Pinelands Area through a public or community water system will not result in an interbasin transfer, as the water will be conveyed back out of the Pinelands Area through the public sanitary sewer system or completely consumed.

Water Management Standards (N.J.A.C. 7:50-6.86(d), N.J.A.C. 7:50-6.86(d)2i)

10. COMMENT: The proposed rule does not clearly state that any proposed increase in diversion over 50,000 gpd triggers review. (4)

RESPONSE: In its original proposal, the Commission expanded the scope of wells that will be subject to the water management standards by lowering the water volume threshold from 100,000 gallons of water or more per day to 50,000 gallons of water or more a day. The original proposal at N.J.A.C. 7:50-6.86(d) specified that the 50,000 gallon per day threshold includes all of an applicant's existing diversions in the same HUC-11 watershed, in addition to the new or increased diversion. In response to the commenter's request for greater clarification, however, the Commission added "and new" at N.J.A.C. 7:50-6.86(d), pertaining to diversions in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer. Examples and additional explanations of how this threshold will be calculated and applied can be found in the original proposal.

11. COMMENT: The cross-reference at N.J.A.C. 7:50-6.86(d)2i is incorrect. N.J.A.C. 7:9-9 was repealed and replaced with N.J.A.C. 7:9D-3. (5)

RESPONSE: The Commission corrected the cross-reference in its amended proposal.

Adverse Regional Impact (N.J.A.C. 7:50-6.86(d)6)

12. COMMENT: It is unclear which datasets in the Water Supply Plan the Commission will rely upon to determine whether a proposed diversion exceeds 20 percent of the stream low flow margin. It is unclear if the proposed amendment is referring to allocations or peak reported use, which are estimated differently in the Water Supply Plan. Additionally, the information referred to is in Appendix A of the Water Supply Plan, which is not the referenced document. The correct reference is https://www.state.nj.us/dep/watersupply/pdf/wsp-appendix-a.pdf. (5)

RESPONSE: In its amended proposal, the Commission revised N.J.A.C. 7:50-6.86(d)6 to make the language consistent with the New Jersey Statewide Water Supply Plan and to specify that applicants should use Appendix A of that Plan. The revisions also included correcting the link to Appendix A, and specifying the exact datasets/tables applicants should use at Appendix A.

2. Comments Received During Initial Comment Period, Not Giving Rise to Substantial Changes in the Rule Proposal

General Comments

13. COMMENT: Seven commenters supported the original proposal and specifically supported lowering the application threshold of water withdrawal to 50,000 gallons per day and setting the low flow margin at 20 percent. Some of those who supported the rule also requested specific revisions, addressed in the summary of comments below. (7, 8, 9, 12, 13, 14, 15, 19)

RESPONSE: The Commission thanks the commenters for their support.

14. COMMENT: One commenter questioned the role played by Nestle and its subsidiary Nespresso in the rule. The commenter questioned how the companies' extraction operations "support and protect our New Jersey water" and questioned if the rule was a way for Nestle "to get its hands on our aquifer for its profit making enterprise as it has in so many other places." (11)

RESPONSE: Nestle and Nespresso played no role in this rulemaking. If a commercial water extraction company were to apply for a diversion from the Kirkwood-Cohansey aquifer, it would have to meet the standards, which are designed to provide ecological protections of the Kirkwood-Cohansey aquifer. One of those standards prohibits the transport of water outside the Pinelands. N.J.A.C. 7:50-6.86(a).

15. COMMENT: The commenter appreciates that agricultural water use is exempt from the application and review process but is concerned that regulating water supply on non-agricultural businesses will negatively impact the local economy, which could have an indirect impact on the agricultural industry in the Pinelands. Agriculture is reliant on the Pinelands Development Credit (PDC) program as its sole opportunity to preserve land values and any impact on development in the Pinelands is likely to affect PDC values. (16)

RESPONSE: The CMP currently regulates water supply for non-agricultural businesses. Many of the changes in this rulemaking merely clarify and quantify the existing standards. For those standards that the Commission is strengthening, such as expanding the standards to a limited set of new wells (between 50,000 gpd and 100,000 gpd), there is no evidence that these changes will

have a negative impact on the local economy, nor affect development potential in Pinelands Regional Growth Areas or the demand for and value of PDCs (transferable development rights).

16. COMMENT: The Pinelands Commission does not have the regulatory authority to require application or issue permits or regulate water use. The DEP has exclusive authority to regulate water diversions and evaluate alternative source requirements where critical water areas are established. The Pinelands Protection Act does not authorize the Pinelands Commission to help implement the Water Supply Management Act. (2, 3, 4 and 16)

RESPONSE: The Commission respectfully disagrees with these statements. The Pinelands Protection Act, N.J.S.A. 13:8A-1 et seq., directs the Commission to regulate development and establish standards to allow development without a significant adverse impact to the resources of the Pinelands Area. The Act specifically authorizes the Commission to regulate land and water management. N.J.S.A. 13:18A-8d. This statutory authority to regulate water management is independent of the DEP's authority pursuant to the Water Supply Management Act. The Commission also notes that it does not issue permits; rather, it evaluates development applications and municipal approvals to ensure compliance with the standards established in the Comprehensive Management Plan, adopted to implement the Pinelands Protection Act.

17. COMMENT: The proposed rule is duplicative of DEP rules. (2, 3, 4, and 16)

RESPONSE: The Commission respectfully disagrees, as it is not issuing water allocation permits. The proposed amendments establish standards and criteria for diversions in the Pinelands Area, some of which are more stringent than those administered by the DEP. The Commission's evaluation of a diversion application does rely upon a modeling process similar to

the DEP's to avoid the need for duplicative modeling by applicants in those situations where there is regulatory overlap.

18. COMMENT: Holders of current water allocation permits issued by the DEP should be "grandfathered" pursuant to the proposed amendments. The proposed amendments will prohibit new diversions or increases in diversions even though a resource extraction operation may have had a DEP-issued water allocation permit for many years. (1 and 2)

RESPONSE: There is no need for a grandfathering provision because, pursuant to the amendments, a holder of a current water allocation permit is not required to apply to the Commission for an existing diversion. The holder is required to complete an application only for a new diversion or an increase in allocation from either a single existing diversion source or from combined existing and new diversion sources in the same HUC-11 watershed in the Kirkwood-Cohansey aquifer, that results in a total diversion of 50,000 gallons of water per day or more. A resource extraction operation that is increasing its existing water allocation will not have to meet the standards at N.J.A.C. 7:50-6.86(d) if it demonstrates the use is nonconsumptive. N.J.A.C. 7:50-6.86(d)2iii.

19. COMMENT: Developers will install private wells at each house/use rather than one large utility well or instead of connecting to a utility that might trigger compliance with the rule. (10)

RESPONSE: The Commission acknowledges that developers could circumvent the new 50,000 gpd threshold by installing individual, private wells, just as they were able to circumvent the 100,000 gpd threshold under the former rule. Possible solutions to eliminate the loophole would present other issues. For example, the Commission could require all development proposals of

over 100 dwelling units or over approximately 500,000 square feet to apply for diversions for every well on the development parcel. It is not technically feasible, however, to model impacts from small wells. Alternatively, the Commission could require applicants to simultaneously apply for development of a water supply well for the needs of the proposed development. The unknown ramifications of requiring large projects to include development of a large water supply well could result in unintended obstacles to development in growth-oriented Pinelands management areas and/or result in more adverse impacts to the Kirkwood-Cohansey aquifer.

20. COMMENT: In the DEP's anticipated proposal amending N.J.A.C. 7:19, a link between volumes of water (e.g., 100,000 gallons per day) and pumping rates (e.g., 70 gallons per minute) will be addressed. The commenter recommends the Commission include a similar link to equate new wells being installed with their pump capacity and relationship to the volumetric regulatory thresholds. (5)

RESPONSE: The Commission thanks the commenter for the suggestion but does not agree that including the suggested link will benefit applicants for development in the Pinelands Area.

21. COMMENT: One commenter noted that the United States Geological Survey (USGS) no longer supports the HUC-11 mapping and DEP is most likely going to shift to HUC-12s for future analyses and recommends that the Commission also shift to HUC-12s. (5)

RESPONSE: It would be premature to shift to HUC-12s at this time, as the amended rule relies on the New Jersey Statewide Water Supply Plan (Water Supply Plan) for low flow margin data in each HUC-11. If the Water Supply Plan is revised to shift to HUC-12 for future analyses, the Commission may propose a CMP amendment to align with that change.

22. COMMENT: A commenter suggested that the Commission coordinate with USGS and DEP to calculate low flow margin (LFM) for HUC-14 watersheds. (18)

RESPONSE: If the DEP decides at some point to shift to HUC-14s in the Statewide Water Supply Plan, the Commission will consider amending the rule to use LFM data for HUC-14s. There has been no indication, however, that DEP is shifting to HUC-14s.

23. COMMENT: The proposed amendments rely upon flawed studies that model "excessive" drawdown of up to 30 percent of streamflow, six inches of water table lowering, or pumping at 30 percent of groundwater recharge. (2)

RESPONSE: The Commission disagrees that the studies are flawed. The studies provide insight into the level of impact that can occur before those impacts have significant adverse effects on the Pinelands ecology.

24. COMMENT: The proposed rule does not address surface water withdrawals. (18)

RESPONSE: The rulemaking does address surface water withdrawals by defining “Divert” or “Diversion” to include taking water from a river, stream lake, etc., and by requiring applicants for all proposed increases in diversion to demonstrate that no adverse impacts will occur. Specific modeling standards for stream withdrawals are not necessary because the immediate impacts to streamflow, wetlands, and habitats that would be caused by these large diversions are more easily recognized and quantified.

25. COMMENT: The commenter believes the rule should require a more in-depth analysis of increased land subsidence and associated increase in rate of sea level rise from groundwater withdrawals. (18)

RESPONSE: Such impacts are beyond the scope of the current rule, particularly if the effects occur outside the Pinelands Area.

Resource Extraction

26. COMMENT: Disparate treatment of different Pinelands Management Areas is arbitrary, and nothing in the Pinelands studies supports a prohibition on diversions in the Forest Area and Preservation Area District. Most mines are located in the Forest Area or Preservation Area District; therefore, the proposed standard at N.J.A.C. 7:50-6.86(d)3 is a problem. (2 and 3)

RESPONSE: The Commission disagrees. The Pinelands Protection Act, N.J.S.A. 13:8A-1 et seq., authorizes greater protections for the Pinelands Preservation Area, and a fundamental premise of the CMP is the importance of providing enhanced protection to both the Preservation Area District and the Forest Area based on the ecology of these management areas. The Commission recognizes, however, that certain nonconsumptive uses of water can be consistent with those necessary protections and, as discussed above, revised the original proposal to recognize that such uses can maintain the values of the most ecologically valuable management areas.

27. COMMENT: One of the commenters noted that its resource extraction site is bisected by watershed management area boundaries and by the nature of the extraction operation, it cannot avoid interbasin transfers. (3)

RESPONSE: If a resource extraction company can demonstrate that its operation constitutes a nonconsumptive use of water, then, by definition, there will be no interbasin transfer of water. Nonconsumptive use is being defined to mean that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken. No interbasin transfer of water will occur if 90 percent of the diverted water is returned in this manner. In addition, where permitted resource extraction results in open water mining that straddles the mapped boundary of the Basins defined in the rule, the mapped Basin boundary can no longer be considered accurate, and the non-consumptive use would not constitute an interbasin transfer.

28. COMMENT: The Commission should identify and protect sand, gravel, and crushed stone resources to ensure an uninterrupted, economical supply. (1)

RESPONSE: The CMP has long recognized existing extraction operations in the Pinelands Area and provided for their continuation, even in the most ecologically important portions of the Pinelands region. The amended proposal, described in the response to prior comments, further recognizes the extraction industry's nonconsumptive use of water and should help to ensure the continued production and supply of the resources.

Definitions (N.J.A.C. 7:50-2.11)

29. COMMENT: Various definitions in the rule proposal are already defined in N.J.A.C. 7:19-1.3. The commenter recommends for consistency that the definitions of these terms in the CMP be revised to say that the term has the same meaning as that in N.J.A.C. 7:19-1.3. (5)

RESPONSE: For the terms defined in the current rulemaking, the Commission has decided to adopt its own definitions that it deems more aligned with the intent and goals of the CMP.

Interbasin Transfer (N.J.A.C. 7:50-6.86(b))

30. COMMENT: The Pinelands Protection Act already prohibits the export of water greater than 10 miles, so there is no need for interbasin transfer prohibition. (2)

RESPONSE: The Commission disagrees. The prohibition against interbasin transfer of water is not necessarily the same as the prohibition in the Pinelands Protection Act against exporting water greater than 10 miles (N.J.S.A. 58:1A-7.1), as there could be instances where an interbasin transfer of water occurs within a 10-mile area or simply occurs within the Pinelands Area regardless of distance. In addition, the amendments merely strengthen the existing restriction against interbasin transfer at N.J.A.C. 7:50-6.86(a) and clarify that restriction by defining the basins.

Water Management Standards (N.J.A.C. 7:50-6.86(d))

31. COMMENT: The Commission's existing 100,000 gallon per day threshold pumping volume at which a diversion would need to meet the existing standards at N.J.A.C. 7:50-6.86 adequately prevents excessive or nonessential diversions from the Kirkwood-Cohansey aquifer and does not need to be modified. (3)

RESPONSE: The Commission respectfully disagrees. The 12 studies on the impacts of diversions on the Kirkwood-Cohansey aquifer, described in the original notice of proposal and at https://www.nj.gov/pinelands/science/complete/kc/, revealed a need to update the CMP to better protect the aquifer.

Replacement Wells (N.J.A.C. 7:50-6.86d(2)i)

32. COMMENT: The proposed reference to replacement wells at N.J.A.C. 7:50-6.86(d)2i is current with respect to DEP's current policy for replacement wells and N.J.A.C. 7:19-1.5(b)3. The DEP anticipates revising its rule to make it less stringent and suggests that the Commission's rule refer to DEP's rule at N.J.A.C. 7:19-1.5(b)3 so that the two rules will be consistent when DEP amends its rule. (5)

RESPONSE: The Commission will review any adopted amendments to the DEP rule and consider amending the CMP if deemed appropriate but will not modify a reference to DEP's rule before DEP makes the changes. While the Commission often adopts rules that are consistent with DEP rules, there are instances where it opts for different or more stringent standards to provide greater protection of the Pinelands resources.

33. COMMENT: Several references to N.J.A.C. 7:9D are inconsistent with those rules, including the requirement to decommission wells that are replaced. The Commission's proposal is more in line with how replacement wells are modified under the water allocation rules at N.J.A.C. 7:19-1.5. The Commenter recommends that the Commission clarify its proposed requirements on replacement wells and impacts on individual domestic wells, and the proposed requirements for Allocation Permit or Registration wells to make them consistent. Typically, replacement wells are needed on an emergency basis. See N.J.A.C. 7:19-1.4(a)4 for the DEP's applicability provisions regarding emergency diversions from wells. (5)

RESPONSE: The only reference to N.J.A.C. 7:9D in the current rulemaking is at N.J.A.C 7:50-6.86(d)2, which, as originally proposed, stated that for a replacement well to be exempt from meeting the standards at N.J.A.C 7:50-6.86(d), it must be sealed in accordance with

N.J.A.C. 7:9D-3, be located less than 100 feet from the existing well, be at the same depth and in the same aquifer, and have the same or lesser pump capacity. These requirements mirror the definition of replacement well found in N.J.A.C. 7:19-1.3. The Commission recognizes that DEP changed the terminology at N.J.A.C.7:9D-3.1 from "sealing" abandoned wells to "decommissioning" wells and is making this non-substantial change at N.J.A.C 7:50-6.86(d)2 upon adoption to reflect DEP's change. (Note that the reference to N.J.A.C. 7:9-9 at N.J.A.C 7:50-6.86(d)2 was corrected in the Notice of Proposed Substantial Changes Upon Adoption so that it now refers to N.J.A.C. 7:9D.)

The DEP provision for minor modification of water allocation permits or registrations to allow similar replacement wells is not analogous.

34. COMMENT: Replacement wells should be required to be located in the same HUC-11 watershed. (6, 19, 20)

RESPONSE: The Commission agrees. The amended rule, at N.J.A.C. 7:50-6.86(d)2i(4), does require that a replacement well be located in the same HUC-11 watershed as the existing well.

Agricultural and horticultural exemption (N.J.A.C. 7:50-6.86d(2)ii)

35. COMMENT: Four commenters believe that horticultural operations should not be exempt from the new standards for diversions. (6, 7, 9, 19)

RESPONSE: Both the Pinelands Protection Act (N.J.S.A. 13:18A-3b) and the CMP (N.J.A.C. 7:50-4.1(a)3) expressly state that no application to the Commission is required for the improvement, expansion, construction or reconstruction of any structure used exclusively for agricultural or horticultural purposes. "Agricultural or horticultural purpose or use" is defined broadly in both the Act and CMP. No distinction is made between agricultural operations and

horticultural operations in terms of the applicability of the CMP's application requirements. The Commission believes it is inappropriate to do so in the water management section of its regulations.

It is worth noting that the concerns raised by these commenters appear to be related to the growing interest in developing cannabis facilities in the Pinelands Area. To the extent that such facilities involve processing of cannabis and are not purely cultivation facilities, they will be subject to the CMP's application requirements and need to demonstrate consistency with all CMP environmental standards, including those related to water management.

36. COMMENT: The proposal exempts agricultural activities but does not include reference to aquaculture which is clearly defined as agriculture in N.J.A.C. 7:20A. The DEP has received multiple inquiries regarding aquaculture facilities proposed in southern New Jersey, including in the Pinelands Area. Aquaculture should be included in this section and continue to be exempt from the proposed rule. (5)

RESPONSE: The CMP definition of "agricultural or horticultural purpose or use" at N.J.A.C. 7:50-2.11 includes aquaculture, specifically, "the production of plants or animals useful to man, including…aquatic organisms as part of aquaculture." As discussed in response to comment #35, agricultural or horticultural uses are exempt from application to the Commission.

<u>Viable alternative water supply</u> (N.J.A.C. 7:50-6.86(d)4)

37. COMMENT: Several commenters requested that applicants not be able to use "prohibitive cost" as a way of demonstrating that there are no viable alternative water supply sources. (7, 9, 15, 19, 20)

38. COMMENT: There should be specific and reliable criteria regarding prohibitive cost, technological limits, and significant timing issues. (15)

RESPONSE TO COMMENTS 37 AND 38: The new standards will permit diversions from the Kirkwood-Cohansey aquifer only if an applicant demonstrates that no alternative water supply source is available or viable. N.J.A.C. 7:50-6.86(d)4. Information regarding viable alternative water sources will be maintained on the Commission's website. In the summary of the original proposal, the Commission explained that if there is an alternative water supply source that an applicant does not believe is viable, the applicant will have to demonstrate to the Commission the reason why the source is not viable. 54 N.J.R. 1668(a). It then gave examples of reasons for lack of viability, including prohibitive cost, limits on available technology, and significant timing issues. 54 N.J.R. 1668(a).

Reasons why a particular source is not viable will vary, however, and will be too project-specific to be codified in a rule. The Commission believes that, in limited circumstances, prohibitive cost may be an appropriate reason for determining that an alternative source is not viable. For example, this may be the case when installing water distribution lines over great distances and at great impact to the resources of the Pinelands, including wetlands, wetlands transition areas and critical habitat.

39. COMMENT: Leakage to confined aquifers may be increased by the requirement to seek alternative sources. Those alternative sources might be confined aquifers that will lead to greater leakage from the Kirkwood-Cohansey aquifer into confined aquifers. (18)

RESPONSE: The impacts from leakage to confined aquifers are not quantifiable in such a way that the Commission can evaluate those impacts to the Kirkwood-Cohansey aquifer.

Applicability (N.J.A.C. 7:50-6.86(d))

40. COMMENT: Three commenters expressed concerns regarding existing wells and whether they are required to meet the new standards or whether only the development of additional wells or additional allocations are required to meet the new standards. (4, 5, and 15)

RESPONSE: The new standards at N.J.A.C. 7:50-6.86 apply only to new or increased diversions. Existing wells are not considered development and therefore do not trigger a review under the new rules. Only a new well or an increase in allocation resulting in withdrawals of more than 50,000 gpd would be considered development and would have to meet the new standards. All diversions by the same applicant or owner in the same HUC-11 will be considered for the purpose of determining whether the 50,000 gpd threshold is met, but only the new or increased diversion will be evaluated under the new standards at N.J.A.C. 7:50-6.86(d).

Adverse Regional Impact (N.J.A.C. 7:50-6.86(d)6)

41. COMMENT: The State Water Supply Plan low flow margin data includes non-Kirkwood-Cohansey aquifer water in some HUC-11s, particularly in those that are split between Pinelands and non-Pinelands areas and the proposed rule does not deal with this split. (5)

RESPONSE: While the Commission agrees that there are some HUC-11 watersheds that straddle the Pinelands Area boundary where non-Pinelands areas contribute to stream flow, the bulk of the land area contributing to streamflow in the HUC-11 watersheds is in the Pinelands Area, where the Kirkwood-Cohansey is the surface aquifer. The number of HUC-11 watersheds that include unconfined aquifers other than the Kirkwood-Cohansey formation contributing to surface water flow and that extend beyond the Pinelands Area are very limited (Evesham,

Medford, Southampton and Pemberton Townships) and should not affect the Commission's reliance on the low flow margin (LFM) data in the Water Supply Plan.

The HUC-11 watersheds in Monroe and Winslow Townships that have some volume attributable from areas outside the Pinelands Area are stressed watersheds and 20 percent of the LFM is entirely used by existing diversions. The Pinelands Commission has monitoring agreements and limits in place on water use and sewer exports for those two municipalities which act as further protections against regional adverse impacts to the resources of the Pinelands.

It would also be difficult to distinguish between the portions of the LFM from the Kirkwood-Cohansey aquifer from those outside the aquifer, as the volume of the LFM in the Water Supply Plan that is associated with non-Kirkwood-Cohansey aquifers is not published.

42. COMMENT: The LFM data maintained by the Division of Water Supply and Geosciences of DEP includes agricultural, horticultural and aquacultural water use and allocations. The proposed rule refers to these results, but the Department is unaware of the authority to regulate water withdrawals regulated pursuant to N.J.A.C. 7:20A under the proposed rule. (5)

RESPONSE: The Commission is not regulating agricultural and horticultural uses but rather, has established a proposed impact standard in recognition of the fact that the LFM includes agricultural and horticultural water use. The amended rules use the LFM as a tool for evaluating regional adverse impacts of non-agricultural development. To allow for the additional agricultural/horticultural diversions, the Commission has set an impact standard of 20% of the LFM rather than 25% of the LFM.

43. COMMENT: The proposed rule should take into account the fact that LFM methodology is based on consumptive and depletive losses in a watershed. (5)

RESPONSE: Although the Commission intends to base its determination of remaining stream volume on current depletive-consumptive net use as published in the Water Supply Plan, it will base its evaluation of regional adverse impact on the potential for full use (100%) of the new diversion. Because the Commission's evaluation is not for the purpose of issuing a water use permit but rather to assess the potential impact of a proposed diversion, it is reasonable and acceptable to rely upon the LFM, a published value, as a benchmark.

44. COMMENT: The commenter supports the ability of a diversion applicant to permanently offset the new diversion and encourages the Commission to provide a list of acceptable offsets. (5)

RESPONSE: The amended rule permits an applicant who proposes a diversion in an HUC-11 watershed that is already constrained by withdrawals exceeding 20 percent of the stream low flow margin -- before the proposed diversion is even factored in – to permanently offset the new diversion. N.J.A.C. 7:50-6.86(d)6i. The Commission decided not to include a list in the rule because it did not want to preclude any offset solutions that an applicant may propose nor encourage debate as to the value or appropriateness of any particular offset as part of the rulemaking process.

45. COMMENT: The Commission should consider requiring offsets to be located toward the portion of the watershed where impacts are greatest. (18)

RESPONSE: The Commission thanks the commenter for the suggestion and notes that the rule does not prohibit or discourage applicants from locating offsets toward the portion of the watershed where diversion impacts will be greatest. Making it a requirement, however, may have unintended consequences that prevent implementation of offset projects.

Adverse Local Impact (N.J.A.C. 7:50-6.86(d)7)

46. COMMENT: The Commission should accept historical aquifer pump test data instead of requiring an applicant conduct its own hydrogeological testing to show that a diversion will not have an adverse local impact. The Commenter noted that diversion applicants can submit a pump test waiver to DEP pursuant to N.J.A.C. 7:19-2.2(c) where recent and applicable pump test data can be used to evaluate the hydrogeological impacts of a diversion on the aquifer and watershed. (4)

RESPONSE: Submission of historic pump test data is not prohibited by N.J.A.C. 7:50-6.86(d)7i(3). The Commission, however, reserves the right to require a new pump test if the location of the well has changed, other pumping in the area has changed, or the historic pump data has not been reviewed for consistency with the CMP.

47. COMMENT: The requirements at N.J.A.C. 7:50-6.86(d) are redundant with current DEP water allocation permitting requirements, specifically for applicants that request a major modification to their water allocation permit. The DEP already requires applicants to prepare an extensive and technical pump test work plan and hydrogeological report that "fully encompasses evaluations of regional and local ecological impacts. (4)

RESPONSE: The proposed rule was designed to substantially align with DEP's water allocation permitting process to reduce the need for an applicant to conduct additional hydrogeologic design, testing and modeling. The review of an applicant's hydrogeologic report is not redundant with DEP's review, however, as the Commission's standards are different than DEP's. The Commission's review involves an evaluation of ecological impacts of the diversion that DEP's review does not entail.

48. COMMENT: Alternative guidance should be prepared by the Commission rather than using procedures referenced in DEP's Technical Memorandum 12-2 (TM 12-2). TM12-2 procedures are only accurate for greater than 100,000 gpd and only for evaluating one foot of drawdown, especially in the Kirkwood-Cohansey aquifer. (5)

RESPONSE: The Commission disagrees that alternative guidance is necessary. When drafting the rule, the Commission consulted with the United States Geological Survey (USGS), which advised that the data required under the new rule is acceptable for the evaluation of the impacts of a proposed diversion from the Kirkwood-Cohansey aquifer, using the standards at N.J.A.C. 7:50-6.86(d).

49. COMMENT: Evaluating the potential impact of a new diversion without considering existing diversions is inconsistent the evaluation methodology of DEP, Division of Water Supply and Geosciences. (5)

RESPONSE: The amended rules do require an evaluation of all existing permitted allocations for the purpose of determining whether the new or increased diversion will have an adverse regional impact. N.J.A.C. 7:50-6.86(d). Specifically, a proposed diversion will be deemed to

have an adverse regional impact if it, combined with all existing permitted allocations in the same HUC-11 watershed, exceeds a specific threshold at which water availability in that watershed will be deemed to be adversely impacted. N.J.A.C. 7:50-6.28(d)6. The low flow margin in the State Water Supply Plan will be used in this evaluation.

All diversions under the same water allocation permit are also collectively considered for the purposes of determining whether the new or increased diversion meets the 50,000gpd threshold in the amended rule (N.J.A.C. 7:50-6.28(d)), but not in determining whether the new or increased diversion will result in adverse impacts to the resources of the Pinelands.

50. COMMENT: The commenter supports measures to prevent drawdown in wetlands. (17)
RESPONSE: The Commission thanks the commenter for its support.

51. COMMENT: The LFM volume should be based on HUC-14 rather than HUC-11, to be more protective because the volume of LFM is set for the lowest elevation is the watershed and wells not at the lowest point will have a greater impact. By decreasing the watershed size, this impact will be minimized.(18)
RESPONSE: The Commission relies upon LFM data in the State Water Supply Plan but the Plan does not currently include LFM data for all HUC-14s in the Pinelands Area. The Commission will consider using LFM data in HUC-14s if the State Water Supply Plan is updated to include such data.

Water Conservation (N.J.A.C. 7:50(d)8)

52. COMMENT: The Commission should require soil moisture sensors for all landscape irrigation systems for customers served by purveyors with wells in the Kirkwood-Cohansey aquifer. (18)

RESPONSE: The rulemaking strengthens and clarifies the water conservation requirement currently in the CMP by requiring documentation of measures that have been implemented or that are planned for implementation and requiring that the conservation efforts be measurable. The amended rules also broaden the water conservation requirements of the current rule by requiring conservation to occur not just in areas served by centralized sanitary sewer systems, but throughout all areas to be served by the proposed diversion. N.J.A.C. 7:50(d)8. Mandatory soil moisture/rain sensors for landscape irrigation systems is one of many examples the Commission noted in the summary section of its original proposal.

3. Comments Received upon Publication of Notice of Proposed Substantial Changes upon Adoption to Proposed Amendments to N.J.A.C. 7:50-1.6, 2.11, 4.2, and 6.86

General Comments

53. COMMENT: The commenter objects to the Commission staff's meeting with the DEP after the close of the comment period. (26)

RESPONSE: The Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., does not prohibit a state agency from meeting with any stakeholders, including another state agency, to discuss possible changes to a proposed rule at any time during or after the comment period.

Resource Extraction (N.J.A.C. 7:50-2.11; 4.2(b)6xi; 6.86(d)2iii)

54. COMMENT: The commenters thank the Commission for its consideration of their comments on the original proposal and support the changes in the amended proposal related to the resource extraction industry and nonconsumptive use. (21, 22, 24 and 25)

RESPONSE: The Commission thanks the commenters for their support.

55. COMMENT: The Commission should add a definition of "parcel," consistent with the language in the response to Comments 1 to 4 in the Notice of Proposed Substantial Changes (21 and 22)

RESPONSE: In its response to Comments 1 to 4 in the Notice of Proposed Substantial Changes and its response to Comments 1 to 5 above, the Commission described the new diversion application requirements at N.J.A.C. 7:50-4.2(b)6xi. An applicant will have to provide a description of any other existing or proposed water diversions or discharges on or from the parcel. The Commission explained that for the purposes of this provision, "parcel" will be considered as all tax lots that are a part of a resource extraction operation for which a municipal approval has been reviewed by the Commission, determined to be consistent with all CMP standards and allowed to take effect pursuant to N.J.A.C. 7:50-4.37 and 4.40.

The term "parcel" is already defined in the CMP at N.J.A.C. 7:50-2.11 as "any quantity of land, consisting of one or more lots, that is capable of being described with such definiteness that its location and boundaries may be established." The Commission's description of what will constitute a parcel for the purposes of N.J.A.C. 7:50-4.2(b)6xi is wholly consistent with this

definition and therefore, it is neither necessary nor appropriate to adopt a new definition of the term solely for resource extraction water diversions.

56. COMMENT: A commenter suggested that a provision be added to specifically state that if a resource extraction company demonstrates that its operation constitutes a nonconsumptive use, then the diversion will not be deemed an interbasin transfer of water. The Commission explained in a response to comment in the Notice of Proposed Substantial Changes that nonconsumptive use is being defined to mean that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken and that no interbasin transfer of water will occur if 90 percent of the diverted water is returned in this manner. The commenter would like this language incorporated into the rule amendments. (22)
RESPONSE: The Commission included the explanation noted in the comment in its response to Comment 10 in the Notice of Proposed Substantial Changes. It is not necessary or appropriate to codify this explanation in a rule, as it does not set a new standard or clarify existing language. The explanation was offered merely to explain a regulatory conclusion based on the definition of interbasin transfer at N.J.A.C. 7:50-6.86(b).

57. COMMENT: The commenter objects to the requirement at N.J.A.C. 7:50-4.2(b)xi in the amended proposal that an applicant for a proposed diversion demonstrate that the diversion is a nonconsumptive use of water. The commenter believes that the determination should be based on DEP's determination that such operations return more than 90 percent of water to source. The commenter submits that due to the nature of sand mining, it is "virtually impossible" to calculate the exact amount of water returned to the source because a sand mine operation does not return

the water to the ground through a single metered pipe–- that water returns to ground through land runoff as much as by piping. There are too many variables to account for, including rainfall, hours of sunlight, and evaporation.

The commenter further states that the amended proposal will pose a significant burden on the resource extraction industry, that exact or empirical measurements of flow to account for the water diverted and returned in an undiminished manner is impracticable for the resource extraction industry. The specific location from which the diverted water is removed in the resource extraction industry is not typically from a fixed point, but instead from a water body where the point of diversion is dynamic (i.e., not static or fixed) as is the water body itself. In addition, the water that is returned to the environment during mechanical/hydraulic mining operation is also not to a specific location. (21)

RESPONSE: The Commission disagrees. Applicants for DEP water allocation permits are required to submit hydrogeologic reports that include a quantitative discussion of the nonconsumptive nature of the diversion. Contrary to what the commenter states, it is possible for applicants to accurately estimate the amount of water returned to the source. The Commission has, in fact, reviewed a recent report from a resource extraction applicant that included a quantitative analysis of the diverted water that will be returned to the source.

The added requirement under proposed N.J.A.C. 7:50-4.2(b)xi was drafted with DEP's water allocation permit requirements in mind. It was intended to facilitate the application process for resource extraction applicants, as those applicants would be providing similar, if not identical, information to DEP in a water allocation permit application.

The email correspondence with DEP that the commenter attached to its comment seems to relate to TM12-2 and consumptive use coefficients assigned to certain water uses. The emails

further indicate that increased evaporation may occur and thereby raise the consumptive nature of the resource extraction operation. The Commission notes that the DEP email suggested a depletive/consumptive rate for a mining operation of greater than 10%.

Adverse Local Impact (N.J.A.C. 7:50-6.86(d)7)

58. COMMENT: The commenter submitted a new comment to reiterate concerns that were included in a comment submitted on the original proposal, and summarized in COMMENT 47 above, regarding the need for technical reviews by two state agencies. The commenter added that simultaneous reviews of the same technical reports are redundant, time-consuming, and an inefficient use of agency resources and can be problematic if the agencies reach differing conclusions on the same report. (23)

RESPONSE: Please see RESPONSE TO COMMENT 47 above.

59. COMMENT: The commenter submitted a new comment to reiterate its request in a comment submitted on the original proposal, and summarized in COMMENT 46 above, that the Commission accept historical aquifer pump data instead of having to conduct its own hydrogeological testing to show that a diversion will not have an adverse local impact. (23)

RESPONSE: Please see RESPONSE TO COMMENT 46, above.

Summary of Agency-Initiated Changes:

The Commission is clarifying N.J.A.C. 7:50-6.86(d)2ii by adding the word "proposed" before "diversion."

Federal Standards Statement

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. § 471i) called upon the State of New Jersey to develop a comprehensive management plan for the Pinelands National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals that the plan must meet, including the protection, preservation, and enhancement of the land and water resources of the Pinelands. The proposed amendments are designed to meet those goals by imposing stringent requirements and restrictions on groundwater withdrawals from the Kirkwood-Cohansey aquifer, which, in turn, will protect wetlands habitats and plants and animals that are characteristic of undisturbed Pinelands ecosystems, including at least one wetlands plant that is on the Federal endangered species list.

There are no other Federal requirements that apply to the subject matter of these amendments.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings ascribed to them.

…

"Nonconsumptive use" means the use of water diverted from surface or ground waters in such a manner that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken.

…

"Stream low flow margin" means the difference between a stream's *[September median flow and its statistical flow, which is the seven-day flow average in the 10-year period for the stream]* ***normal dry-season flow (September Median Flow) and drought flow*** (7Q10) as reported in the New Jersey Statewide Water Supply Plan, New Jersey Department of Environmental Protection, 2017, New Jersey Water Supply Plan 2017-2022: 484p, http://www.nj.gov/dep/watersupply/wsp.html, as amended and supplemented.

…

SUBCHAPTER 4. DEVELOPMENT REVIEW

7:50-4.2 Pre-application conference; application requirements

(a) (No change.)

(b) Application requirements.

1.-5. (No change.)

6. Application for resource extraction: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for resource extraction shall include at least the following information:

i.-ix. (No change.)

x. A financial surety, guaranteeing performance of the requirements of N.J.A.C. 7:50-6.68 and 7:50-6.69 in the form of a letter of credit, certified check, surety bond or other

recognized form of financial surety acceptable to the Commission. The financial surety shall be equal to the cost of restoration of the area to be excavated during the duration of any approval which is granted. The financial surety, which shall name the Commission and the certified municipality, if applicable, as the obligee, shall be posted by the property owner or his agent with the municipality if the municipality has had its master plan and ordinances certified pursuant to N.J.A.C. 7:50-3 or with the Pinelands Commission if the municipality has not had its master plan and ordinances so certified*[.]* ***; and**

xi. If the application includes a proposed diversion from the Kirkwood-Cohansey aquifer, a hydrogeologic report that identifies the volume of the diversion, the volume of water to be returned to the source, a description of the route of return to the source, the methodology used to quantify the volume of water returned to the source, and a description of any other existing or proposed water diversions or discharges on or from the parcel. The report shall also include a map that depicts the location of the diversion, the location of the return to source, the location of all existing or proposed resource extraction operations, and the location of all wetlands on or within 300 feet of the parcel on which the diversion is proposed.

7.-9. (No change.)

(c) (No change.)

SUBCHAPTER 6. MANAGEMENT PROGRAMS AND MINIMUM STANDARDS

7:50-6.86 Water management

(a) (No change.)

(b) A diversion that involves the interbasin transfer of water *[in]* ***from sources within*** the Pinelands Area between the Atlantic Basin and the Delaware Basin, as defined at (b)1 and 2 below, or outside of either basin, shall be prohibited.

1. The Atlantic Basin is comprised of Watershed Management Areas 13, 14, 15, and 16, as identified by the New Jersey Department of Environmental Protection at **https://www.state.nj.us/dep/seeds/docs/watersheds.pdf**.

2. The Delaware Basin is comprised of Watershed Management Areas 17, 18, 19, and 20 as identified by the New Jersey Department of Environmental Protection at https://www.state.nj.us/dep/seeds/docs/watersheds.pdf.

(c) (No change.)

(d) A new diversion or an increase in allocation from either a single existing diversion source or from combined existing ***and new*** diversion sources in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer, that results in a total diversion of 50,000 gallons of water per day or more (hereafter referred to as "proposed diversion") shall meet the criteria and standards set forth at (d)3 through 9 below. "Allocation" shall mean a diversion permitted pursuant to a Water Allocation Permit or Water Use Registration Number issued by the New Jersey Department of Environmental Protection pursuant to N.J.A.C. 7:19.

1. When evaluating whether the proposed diversion meets the criteria set forth at (d)3 through 9 below, all of the applicant's allocations in an HUC-11 watershed, in addition to the proposed diversion, shall be included in the evaluation.

2. The standards set forth at (d)3 through 9 below shall not apply to:

i. A new well that is to replace an existing well, provided the existing well is *[sealed]* ***decommissioned*** in accordance with N.J.A.C. *[7:9-9]* ***7:9D-3*** and the new replacement well will:

(1) Be approximately the same depth as the existing well;

(2) Divert from the same aquifer as the existing well;

(3) Have the same or lesser pump capacity as the existing well; and

(4) Be located within 100 feet of, and in the same HUC-11 watershed as, the existing well; *[or]*

ii. Any ***proposed*** diversion that is exclusively for agricultural or horticultural use *[.]* ***or***

iii. Any proposed diversion for a resource extraction operation that constitutes a nonconsumptive use, provided the water returned to the source is not discharged to a stream or waterbody or otherwise results in offsite flow, and the diversion and return are located on the same parcel.

3. (No change.)

4. (No change.)

5. (No change.)

6. A proposed diversion shall be deemed to have an adverse regional impact if it, combined with all *[existing permitted allocations*] ***current depletive-consumptive net use**** in the same HUC-11 watershed, exceeds 20 percent of the stream low flow margin for the year of peak use *[established in]*. ***. For this analysis, applicants shall use Appendix A of*** the New Jersey Statewide Water Supply Plan at {https://www.nj.gov/dep/watersupply/pdf/wsp.pdf for} https://www.state.nj.us/dep/watersupply/pdf/wsp-appendix-a.pdf, ***as amended and**

supplemented, and refer to* the HUC-11 watershed where the proposed diversion will be located (hereafter referred to as "the affected HUC-11 watershed"). ***Applicants shall use the tables in Appendix A entitled "Summary of HUC-11 area, Low Flow Margin and Remaining Water" and specifically, the values for the HUC-11 Low Flow Margin in the column labeled LFM(mgd) and the values for current depletive-consumptive net use in the column labeled "Current Net Dep-Con (mgd)."***

i. - iii. (No change.)

7. (No change.)

8. (No change.)

9. (No change.)

From: William Layton <bill@clbnj.com>
Sent: Friday, November 4, 2022 5:32 PM
To: Comments, PC [PINELANDS] <comments@pinelands.nj.gov>
Subject: Public Comment Submissions

Below is the result of your feedback form. It was submitted by
William Layton (bill@clbnj.com) on Friday, November 4, 2022 at 17:32:30
---

email: bill@clbnj.com

subject: Public Comment Submissions

Name: William Layton

Affiliation: New Jersey Concrete and Aggregate Association

Mailing Address: 130 West State Street Trenton, NJ 08608

Comment Topic: selected=

Message: On behalf of the NJ Concrete & Aggregate Association, we have provided some points below expressing our concerns in response to Water Diversion Regulations proposed by the New Jersey Pinelands Commission, as they pertain to crucial material mining operations as well as projects constructed by the Department of Transportation.

- We have a concern about the regulations - as they would pertain to mining operations - being based on "diversion" or "withdrawal", which in the case of mining operations does not take into account replenishment via "closed loop" type water management systems at mining sites (where groundwater is inadvertently penetrated due to excavation, used for material processing, then returned almost undiminished back to the immediate excavated area (not a distance away, or to a wetland or stream in nearly all cases) where groundwater replenishment can occur. The industry has come to an agreement with the NJDEP (informally) that allows the use of a 10% total loss due to evaporation, possible thermal loss, and incorporation into material (much/most of which would drain back into the excavation anyway). This figure, the 10% of the total diversion, is what is reported to NJDEP as "water use", a far more meaningful number in the case of mining operations, rather than total diversion (which is the basis for NJDEP Water Allocation Permitting applicability, but not for diversion reporting, which the NJDEP considers more critical). This should be taken into account in these proposed regulations.

- Mining operations are primarily located in the more sensitive areas of the Pinelands, those where future proposed restrictions would essentially prohibit new or increased diversions. Water diversions in the Pinelands Area need both Pinelands Commission approval (as a Certificate or Filing or "COF") for the diversion, followed thereafter by a Water Allocation Permit ("WAP") issued by the NJDEP. While this has been a requirement, in practice this has not happened consistently in the past, resulting in a number of mining operations that may lack that "initial" COF for a water diversion from years ago, when the WAP was initially issued by NJDEP (and copied to the Pinelands Commission). As a result, there are a number of mining operations (exact number unknown) that lack that initial COF, but have had WAP from the NJDEP for years. It is the request of NJCAA and the mining industry that these currently permitted (WAP)

mining operations, regardless of which management area they may be located in, be "grandfathered" to the existing limits of their current, approved WAP permits issued by NJDEP. We recognize that any increases or new diversions would require an initial COF for water diversion from the Pinelands Commission followed by NJDEP WAP approval, in accordance with any regulations currently proposed which may ultimately be enacted as law. The timing of this issue is critical as if the Commission does not grandfather these facilities - and they are required at this time to retroactively seek a COF for diversions permitted by NJDEP years ago - applications for these diversions would be made almost immediately by any mining facility lacking that initial COF prior to the enactment of these newly proposed regulations, which might otherwise prohibit the issuance of said COF (even retroactively) due to their locations in the more sensitive areas of the Pinelands.

- To ensure a continuing, uninterrupted and economical supply of sand, gravel and crushed stone, it is necessary to identify and protect existing aggregate resources in the state. This is of vital importance, not only in areas where supplies may be limited, but also in high-demand areas where sources are abundant. New Jersey already faces a shortage in cement, stone, asphalt and ready-mix concrete products.

- Mining operations are already severely constrained as to future growth in those areas in which diversions would be prohibited (e.g., Preservation, Forest, Special Agricultural), which is where most mining operations are located. Additional diversion, without impact, would not further the growth of these industries, and in fact would likely serve to hasten their demise in those areas by allowing for faster material withdrawal and resource exhaustion.

- Like many others, this proposed regulation will continue to serve to hurt the aggregates industry, which the Pinelands Area, southern NJ, the entirety of NJ, and the general mid-Atlantic region is dependent upon for the material to make the concrete, asphalt and other building materials that our homes, roads, schools, hospitals, and more are constructed of.

It is our feeling, if adopted as currently written without clarification, the industry will have to cut production by 50%. This will lead to a huge shortage, only exacerbating the current shortage and will threaten the contractors in our state's ability to complete vital DOT projects such as bridges, highways and local roads. In addition to a lack of materials, the shortage from these regulations could mean a doubling in material price. Given the current inflationary environment we live in today, these regulations, as currently written, will threaten the New Jersey Department of Transportation's Capital Program.

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November 3, 2022

VIA EMAIL AND FEDEX OVERNIGHT
Susan R. Grogan, P.P., AICP
Acting Executive Director
Pinelands Commission
P.O. Box 359
New Lisbon, New Jersey 08064
planning@pinelands.nj.gov

Re: Written Comments of Clayton Companies on Pinelands Rule Proposal Set Forth at 54 N.J.R. 1668(a)

Dear Ms. Grogan:

This firm represents Clayton Companies ("Clayton"), which mines sand in the Pinelands Region. We write to comment on the Pinelands Commission's proposed rule concerning diversions of water in the Pinelands, *i.e.*, 54 N.J.R. 1668(a) (the "Proposed Rule" or the "Rule Proposal"). These written comments supplement the oral remarks made by this firm at the public hearing on October 12, 2022.

Clayton submits that the Proposed Rule is *ultra vires* and unlawful on multiple grounds:

First, the Legislature did not empower the Pinelands Commission to regulate water supply, particularly diversions and water allocations.

Second, the Pinelands Commission is preempted from regulating water supply. The Legislature granted that power to the New Jersey Department of Environmental Protection ("NJDEP," "DEP", or the "Department") in the Water Supply Management Act, N.J.S.A. 58:1A-1 *et seq.* (the "WSM Act"), and NJDEP promulgated comprehensive regulations in that domain.

Third, the Rule Proposal is contradicted not only by NJDEP's regulations, but also by higher legal authorities, *i.e.*, statutes and perhaps even the U.S. Constitution. The Proposed Rule sets a different gallon per day threshold than does the WSM Act, ignores statutory procedures for limiting or reducing diversion amounts and requiring use of alternative water sources, and potentially results in an unconstitutional taking of rights to expand mining operations without just compensation.

Finally, the Rule Proposal is overbroad, arbitrary, and unreasonable inasmuch as it has no rational nexus to the problems it purports to solve. It fails to distinguish between consumptive

and nonconsumptive diversions, imposes heavier restrictions on certain Pinelands Management Areas and uses without any justification, provides no evidence that aquifer levels will actually decrease to the levels it modeled in its studies, and fails to meaningfully consider economic impacts.

The Rule Proposal is therefore *ultra vires* and *void ab initio* and should be withdrawn.

I. THE RULE PROPOSAL IS *ULTRA VIRES* BECAUSE THE LEGISLATURE DID NOT EMPOWER THE PINELANDS COMMISSION TO REGULATE WATER SUPPLY.

The Rule Proposal seems to invoke P.L. 2001, c. 165 as its authority for the Rule Proposal. See 54 N.J.R. at 1668. However, that statute only authorizes the Pinelands Commission to prepare a report. It states:

> The Pinelands Commission shall . . . assess and prepare a report on the key hydrologic and ecological information necessary to determine how the current and future water supply needs within the pinelands area may be met while protecting the Kirkwood-Cohansey aquifer system and while avoiding any adverse ecological impact on the pinelands area.
>
> [P.L. 2001, c. 165.]

This language clearly does not authorize the Commission to promulgate regulations relating to water or anything else. Nor does the remainder of the statute.

The Pinelands Protection Act, N.J.S.A. 13:18A-1 *et seq.*, does not support the Rule Proposal either. The Act does not grant the Pinelands Commission any power to regulate diversions or allocations of water:

- The section of the Pinelands Protection Act enumerating the powers of the Pinelands Commission does not list any power to regulate water. N.J.S.A. 13:18A-6. The only mention of water in that section states that the Commission has the power merely to "prepare and transmit to the Commissioner of Environmental Protection such ***recommendations*** for water quality standards for surface and ground waters in the pinelands area, or in tributaries and watersheds thereof, as the commission deems appropriate." N.J.S.A. 13:18A-6i (emphasis added).

- The section of the Pinelands Protection Act granting the power to prepare the Pinelands Comprehensive Management Plan is also unsupportive. See N.J.S.A. 13:18A-8. Although it mentions water, it does not bestow any power to regulate diversions and allocations of water. It is primarily focused on regulation of land, which of course indirectly impacts water. See, *e.g.*, N.J.S.A. 13:18A-8d (authorizing the Pinelands Commission to prepare a "***land use*** capability map and a statement of policies for planning and managing the development and use ***of land*** in the pinelands area") (emphasis added). With regard to water, it only authorizes the Pinelands Commission to: (1) prepare a "resource assessment" that "[d]etermines the amount and type of human development and activity which the ecosystem of the pinelands area can sustain . . ., with special reference to ground

and surface water supply and quality," among other things, N.J.S.A. 13:18A-8a; and (2) to include in its "***land use*** capability map and comprehensive statement of policies for planning and managing the development and ***use of land***" certain "policies" for protection of land and water, N.J.S.A. 13:18A-8d.

- While the Pinelands Protection Act expressly authorizes the Pinelands Commission to help prepare a "plan to implement the provisions of the [Clean Water Act] and the [Safe Drinking Water Act]," it includes no such authorization for the Pinelands Commission to help implement the WSM Act, the statute that governs diversions and allocations of water. See N.J.S.A. 13:18A-8j. That is because the Legislature made NJDEP solely responsible for regulating diversions and allocations of water, as is explained below.

II. THE RULE PROPOSAL IS *ULTRA VIRES* BECAUSE THE PINELANDS COMMISSION IS PREEMPTED FROM REGULATING WATER SUPPLY.

Comparison of the Pinelands Commission's powers with NJDEP's powers shows that all authority to regulate diversions and water allocations lies with NJDEP and not the Commission:

The Appellate Division of the New Jersey Superior Court stated as follows about NJDEP's power to regulate in this domain:

> Under the [WSM Act], the ***NJDEP*** has the ***exclusive*** authority to "control, conserve, and manage the ***water supply*** of the State ***and the diversions*** of that water supply."
>
> [United Water New Jersey, Inc. v. Boro. of Hillsdale, 438 N.J. Super. 309, 319 (App. Div. 2014) (citing N.J.S.A. 58:1A-5) (emphasis added).]

Even a cursory review of the WSM Act illuminates why the Appellate Division reached that conclusion.

NJDEP POWERS

The legislative findings and declarations section of the WSM Act makes clear that water supply should be regulated by an entity with Statewide purview, not a regional body such as the Pinelands Commission. It asserts that the "water resources ***of the State*** are public assets ***of the State*** held in trust for its citizens and are essential to the health, safety, economic welfare, recreational and aesthetic enjoyment, and general welfare, ***of the people of New Jersey***." N.J.S.A. 58:1A-2 (emphasis added). The "ownership of these assets is ***in the State*** as trustee ***of the people***." Ibid. (emphasis added). "[B]ecause some areas within the State do not have enough water to meet their current needs and provide an adequate margin of safety, the water resources of the State . . . must be planned for and managed ***as a common resource*** from which

the requirements of the ***several regions and localities in the State*** shall be met." Ibid. (emphasis added).

The WSM Act is unequivocal as to what entity with Statewide purview is charged with regulating the State's water supply:

> [T]o ensure an adequate supply and quality of water for citizens of the State . . . and to protect the natural environment of the waterways of the State, it is necessary that the State, ***through its Department of Environmental Protection***, have the power to manage the water supply by adopting a ***uniform*** water diversion permit system and fee schedule, a monitoring, inspection and enforcement program, a program to study and manage the State's water sources and plan for emergencies and future water needs, and regulations to manage the waters of the State during water supply and water quality emergencies.
>
> [N.J.S.A. 58:1A-2 (emphasis added).]

The WSM Act thus provides:

> The ***commissioner [of NJDEP[1]]*** shall have the power to adopt, enforce, amend or repeal . . . rules and regulations to ***control, conserve, and manage*** the ***water supply*** of the State ***and the diversions*** of that water supply to assure the citizens of the State an adequate supply of water under a variety of conditions and to carry out the intent of this act. These rules and regulations may apply ***throughout the State or in any region thereof*** and shall provide for the ***allocation*** or the ***reallocation*** of the waters of the State . . . .
>
> [N.J.S.A. 58:1A-5.]

Moreover:

- The "department [of Environmental Protection[2]]," not the Pinelands Commission, is empowered by the WSM Act to "[e]valuate and determine the adequacy of ground and surface water supplies and develop methods to protect aquifer recharge areas." N.J.S.A. 58:1A-15m (emphasis added).

- The "commissioner" of NJDEP, not the Pinelands Commission, is empowered to set "[s]tandards and procedures to be followed to maintain the minimum water levels and flow necessary to provide adequate water quality and quality." N.J.S.A. 58:1A-5e.

[1] See N.J.S.A. 58:1A-3 (defining "commissioner" as the "Commissioner of the Department of Environmental Protection").

[2] See N.J.S.A. 58:1A-3 (defining "department" as the "Department of Environmental Protection").

- The "commissioner" of NJDEP, not the Pinelands Commission, is empowered to institute a "permit system to allocate or reallocate any or all of the waters of the State, which system shall provide for the issuance of permits to diverters of more than 100,000 gallons per day[3] of the waters of the State." N.J.S.A. 58:1A-5a; see also N.J.S.A. 58:1A-6a(3) ("The ***department [of Environmental Protection]*** in developing the permit system . . . shall . .. . [r]equire any person diverting more than 100,000 gallons per day of any waters of the State . . . to obtain a diversion permit.") (emphasis added);

- NJDEP (through its permits), not the Pinelands Commission, shall "[f]ix[] the maximum allowable diversion" and "[identify[] and limit[] the use or uses to which the water may be put"). N.J.S.A. 58:1A-8b & -8c.

- The "commissioner" of NJDEP, not the Pinelands Commission, is empowered promulgate "[s]tandards and procedures to be followed by diverters to ensure that . . . [NJDEP] is provided with adequate and accurate reports regarding the diversion and use of water." N.J.S.A. 58:1A-5b(4); see also N.J.S.A. 58:1A-5c (stating the "commissioner" of NJDEP rules may also set "monitoring" and "reporting procedures").

- The "commissioner" of NJDEP, not the Pinelands Commission, is empowered to set "[s]tandards and procedures to be followed to determine the location, extent and quality of the water resources of the State ***and plan for their future use*** to meet the needs of the citizens of the State." N.J.S.A. 58:1A-5d (emphasis added). Similarly, the "department" of Environmental Protection, not Pinelands, is tasked with preparing, adopting, and maintaining the New Jersey Statewide Water Supply Plan. N.J.S.A. 58:1A-13a. That Plan "shall" touch on "***maintenance and protection of watershed areas***" and "[r]ecommendations for administrative actions to ensure the ***protection of ground and surface water quality and water supply sources***." N.J.S.A. 58:1A-13b(5) and -13b(7) (emphasis added). Notably, the Legislature required NJDEP to "consult with the Highlands Water Protection and Planning Council" before the "adoption of any revision to the New Jersey Statewide Water Supply Plan" concerning possible effects on the Highlands region. N.J.S.A. 58:1A-13d. By contrast, the Legislature did not include any such provision requiring consultation with the Pinelands Commission for revisions impacting the Pinelands Region. See ibid.

- The "commissioner" of NJDEP, not the Pinelands Commission, is empowered to "[p]erform any and all acts and issue such orders as are necessary to carry out the purposes and requirements of [the WSM Act]," N.J.S.A. 58:1A-15a, and to "[a]dminister and enforce the provisions of [the WSM Act] and rules, regulations and orders adopted, issued or effective thereunder," N.J.S.A. 58:1A-15b.

[3] This figure, which clashes with the threshold set by the Proposed Rule, is discussed further below.

Even a crisis of the type proclaimed by the Rule Proposal does not detract from NJDEP's sole power in this domain. The WSM Act states:

> In exercising the water supply management and planning functions . . ., particularly in a region of the State where excessive water usage or diversion present undue stress, or wherein conditions pose a significant threat to long-term integrity of a water supply source, including a diminution of surface water supply due to excess groundwater diversion, the ***commissioner [of NJDEP]*** shall . . . designate that region as an area of critical water supply concern.
>
> [N.J.S.A. 58:1A-6b (emphasis added).]

After such a designation, NJDEP "***in consultation with . . . local governing bodies*** . . . shall," among other things, "select and adopt appropriate water supply alternatives." N.J.S.A. 58:1A-6c(4) (emphasis added). Clearly, this language puts NJDEP in the primary position of power and limits local governing bodies such as the Pinelands Commission to merely being consulted. Only NJDEP can "revise the designation and impose further restrictions" if it determines "that the alternatives selected are not effective." N.J.S.A. 58:1A-6d.

NJDEP REGULATIONS

Not only is NJDEP authorized to regulate these matters, but it has actually promulgated relevant regulations at N.J.A.C. 7:19-1.1 *et seq*. Those regulations describe themselves as "***governing the establishment of privileges to divert water, the management of water quantity and quality***, the issuance of permits, and the handling of drought warnings, water emergencies and water quality emergencies." N.J.A.C. 7:19-1.1a (emphasis added). The NJDEP regulations thus "prescribe[] the application, review, notification and hearing procedures for establishing those [diversion] privileges," N.J.A.C. 7:19-1.1(a), and "establish[] the procedures for . . . areas of critical water supply concern . . . and water emergency allocation," N.J.A.C. 7:19-1.1(b).

Consistent with the WSM Act, the NJDEP regulations set the de fault threshold for regulated diversions at 100,000 gallons per day. See N.J.A.C. 7:19-1.10 ("No person shall divert water either from a single diversion source or from combined diversion sources at a rate in excess of 100,000 gallons of water per day without obtaining a Water Supply Allocation Permit or a Temporary Dewatering Permit, a Water Use Registration, or complying with the requirements for a Short Term Water Use Permit-by-Rule or Dewatering Permit-by-Rule in accordance with this chapter or a water usage certification in accordance with N.J.A.C. 7:20A."); N.J.A.C. 7:19-1.7(a) ("Any person presently diverting or claiming the right to divert more than 100,000 gallons of water per day and who does not hold a valid permit is subject to penalties provided for under N.J.A.C. 7:19-1.8 and shall apply for a permit immediately.").

The NJDEP regulations also "prescribe[] the procedures which shall be followed by applicants when applying for . . . water supply allocation permits . . . ." N.J.A.C. 7:19-2.1 & -2.2; see also United Water N.J. Inc., supra, 438 N.J. Super. at 320 (stating NJDEP "has adopted comprehensive regulations governing the water supply, which include a detailed application process for water supply allocation or diversion in the public interest," and citing N.J.A.C. 7:19-

2.2 as an example). These procedures include requirements for specific reports that must be provided. See, *e.g.*, N.J.A.C. 7:19-2.2(d) ("The applicant for the diversion of surface water shall provide information on the watershed, including . . . [among other things] [a] comprehensive hydrological evaluation of the proposed diversion . . . .").

Moreover, the NJDEP regulations set standards for who may obtain a permit to divert. See, *e.g.*, N.J.A.C. 7:19-2.2(f) & (g). These standards require the applicant to demonstrate, among other things, "[t]hat the diversion shall not exceed the natural replenishment or safe yield of the water resources or threat to exhaust such waters," and "[t]hat the plans for the proposed diversion are just and equitable to the other water users affected thereby, and that the withdrawal does not adversely affect other existing withdrawals, either ground or surface." N.J.A.C. 7:19-2.2(f). The applicant must also "substantiate[] the need for the proposed allocation and support[] the designated choice of water resource for the allocation." N.J.A.C. 7:19-2.2(g). The application will be denied if the applicant fails to establish any of the various items at N.J.A.C. 7:19-2.2(f) & (g), or if NJDEP "determines that a more viable alternative source of water is available, or if the proposed diversion is not in accordance with the New Jersey Statewide Water Supply Plan." N.J.A.C. 7:19-2.2(h). These regulations apply to increased diversions as well as new diversions. N.J.A.C. 7:19-2.2(c) ("An applicant whose application includes a new well, an increase in diversion capacity, and/or an increase in monthly or yearly allocation shall conduct a hydrogeologic test . . . .").

Similarly, those who already have a permit must continually meet certain standards and requirements. See, *e.g.*, N.J.A.C. 7:19-2.14. These include, among other things, a maximum allowable diversion and a requirement that the "permittee is responsible for mitigating adverse impacts on ground or surface waters or the users thereof caused as a direct result of their diversion." See, *e.g.*, N.J.A.C. 7:19-2.14(a)2 & 11. It also includes reporting requirements. See, *e.g.*, N.J.A.C. 7:19-2.14(a)3 (requiring "[t]hat the monthly diversion amount be reported on a quarterly basis on forms provided by the Department") & -2.14(a)7 (requiring "[t]hat the static water levels for ground water sources be determined and reported on the quarterly diversion"). The NJDEP regulations additionally address fee calculations for water allocation permits. See N.J.A.C. 7:19-3.1.

Perhaps most importantly, the NJDEP regulations institute a system, and criteria, for identifying and protecting aquifers that have reached dangerously low water levels. For example:

> The Commissioner [of NJDEP] shall, after notice and public hearing, designate as areas of critical water supply concern those areas in which the Department determines that adverse conditions exist, related to the ground or surface water, such that special measures are required to ensure the integrity and viability of the water supply source and to protect the public health, safety or welfare. The Department shall demonstrate that the designation is warranted through the use of a water supply availability study.
>
> [N.J.A.C. 7:19-8.2(a).]

In such areas of critical water supply concern, N.J.A.C. 7:19-8.3(a) indicates that NJDEP shall:

1. Study water supply availability;

2. Estimate future water supply needs;

3. Identify appropriate and reasonable alternative water supply management strategies, including, but not limited to:

    i. Water conservation;

    ii. Substitution of alternative water sources;

    iii. Participation in a Department approved regional water supply project;

    iv. Transfer of diversion rights;

    v. Artificial recharge of diversion sources; and

    vi. Substitution of water supply from a noncritical aquifer; and

4. Select and adopt water supply alternatives after notice and public hearing.

NJDEP "will not issue new or increased diversions from affected aquifers within an area of critical water supply concern," with limited exceptions. N.J.A.C. 7:19-8.3(i). In such areas, NJDEP can also "[modify the conditions of an existing water supply allocation permit or water usage certification in order to limit or reduce the quantity of water which may be diverted" and "[r]equire the permittee to use alternate sources of water." N.J.A.C. 7:19-8.3(c). NJDEP apparently considers the following to be "additional controls and requirements" for use in areas of critical water supply concern in certain, but not all, circumstances: "metering, additional reporting requirements, restrictions of inter-basin diversions of water for water supply or wastewater discharge, restriction of consumptive uses and water quality testing of wells." See N.J.A.C. 7:19-8.2(d). And the "Commissioner [of NJDEP] . . . may impose such additional restrictions and requirements during a water emergency [as] he deems necessary to alleviate the water emergency." N.J.A.C. 7:19-10.1.

Simply put, there is no need for the Proposed Rule given NJDEP's comprehensive regulatory scheme. The Proposed Rule actually interferes with and unnecessarily complicates NJDEP's regulation of water allocations and diversions. For example, whereas NJDEP has an elaborate process for restricting diversions in areas it designates as being of critical water supply concern, the Proposed Rule simply ignores that procedure, confounding the whole system. (See more on this topic below.)

Accordingly, the Pinelands Commission is preempted from regulating diversions and water allocations. As the Appellate Division explained:

> The NJDEP has adopted ***comprehensive*** regulations governing the water supply, which include a detailed application for water supply allocation ***or diversion*** in the public interest. See, *e.g.*, N.J.A.C. 7:19-2.2(a) to (f). Decisions as to the allocation ***and diversion of water*** . . . are conferred upon the ***NJDEP*** by the [WSM Act], and the NJDEP's ***pervasive*** authority in this area ***precludes*** local regulation . . . .."
>
> [United Water N.J., Inc., supra, 438 N.J. Super. at 320 (emphasis added).]

See also Tp. of Montville v. Lotta Lettuce J.T.S. Farms LLC, Docket No. A-6036-10T3, 2013 N.J. Super. Unpub. LEXIS 1424 (App. Div. 2013) ("Statewide legislation and DEP implementing regulations regarding water supply . . ., well construction . . ., and agricultural activities and water usage . . . together evince a clear intention to preempt local legislation . . . ."). The "confluence of the State's stewardship of the water supply, comprehensive oversight of well construction, and protection of farming activities demonstrably bespeak the need for a ***one-voice*** approach." Id. at 24. The one voice is NJDEP's voice, and there is no room for the Pineland's Commission's Rule Proposal.

III. THE RULE PROPOSAL IS *ULTRA VIRES* BECAUSE IT IS CONTRADICTED BY HIGHER LEGAL AUTHORITY.

Even if the Pinelands Commission had authority to regulate here (and it does not), its Proposed Rule actually clashes with the requirements of the Legislature. It might also be unconstitutional.

THE GALLONS PER DAY THRESHOLD

As is mentioned above, the WSM Act calls for the commissioner of NJDEP to institute a "permit system to allocate or reallocation any or all of the waters of the State,"

> which system shall provide for the issuance of permits to diverters of ***more than 100,000 gallons per day*** of the waters of the State.
>
> [N.J.S.A. 58:1A-5a (emphasis added).]

That ***100,000 GPD*** threshold is repeated multiple times in the WSM Act. For instance:

- "The department [of Environmental Protection] in developing the permit system . . . shall . . . [r]equire any person diverting more than ***100,000 gallons per day*** of any waters of the State . . . to obtain a diversion permit." N.J.S.A. 58:1A-6a(3) (emphasis added).

- "A person shall not divert more than ***100,000 gallons per day*** of any waters of the State . . . unless the person obtains a diversion permit or water usage certification, as appropriate, pursuant to [N.J.S.A. 58:1A-6]." N.J.S.A. 58:1A-7a (emphasis added).

This statutory authority directly contradicts the Proposed Rule. The Proposed Rule purports, without authority, to regulate diversions of half that 100,000 GPD figure (*i.e.*, 50,000

GPD), not to mention that it adds new diversion restrictions not contemplated by the statute or by NJDEP. See Rule Proposal at proposed N.J.A.C. 7:50-6.86(d).

The Legislature could have set a 50,000 GPD threshold for the Pinelands, but it chose not to do so. In fact, the Legislature did set a 50,000 GPD threshold for the Highlands Region, but did not do so for the Pinelands, stating in the WSM Act that NJDEP:

> shall establish a permit system to provide for review of allocation or reallocations, for other than agricultural or horticultural purposes, ***of waters of the Highlands*** . . . to provide for the issuance of permits for diversions either individually or cumulatively of more than ***50,000 gallons per day*** of waters ***of the Highlands in the Highlands preservation area***.
>
> [N.J.S.A. 58:1A-5.1 (emphasis added).]

PROCEDURE FOR LIMITING OR REDUCING DIVERSION AMOUNTS AND REQUIRING USE OF ALTERNATIVE SOURCES OF WATER

The Proposed Rule also contradicts the section of the WSM Act that states diversion permits "shall" include a provision:

> [p]ermitting the department [of Environmental Protection] to modify the conditions of a diversion permit issued . . . ***in a designated area of critical water supply concern*** in order to (1) limit or reduce the quantity of water which lawfully may be diverted to the safe or dependable yield of the resource; (2) transfer the point of diversion; or (3) require a permittee to utilize alternate sources of water, upon a determination that the existing diversion or continued use of the same source in excess of the safe or dependable yield, as the case may be, adversely impacts or threatens to adversely impact the water resources of the State.
>
> [N.J.S.A. 58:1A-8j.]

There is a process for designating a region as an "area of critical water supply concern"; such a designation cannot simply be declared. See N.J.S.A. 58:1A-6b; see also N.J.A.C. 7:19-8. Even in a designated area of critical water supply concern, such requirements for reduction and use of alternative sources are limited by N.J.S.A. 58:1A-7.3.

Despite the above, the Proposed Rule purports to limit or reduce the quantity of water that may be diverted and to require a permittee to utilize alternate sources of water without requiring that the area in question be a designated area of critical water supply concern. For example, proposed N.J.A.C. 7:50-6.86(d)3 limits diversions to specific areas without the need for prior designation of those areas as areas of critical water supply concern. Yet there is no statutory support for imposing restrictions in some areas and not others absent an NJDEP designation of an area as a critical water supply concern, defined in the NJDEP regulations as a "region of the State where excessive water usage or diversion presents undue stress, or wherein conditions pose a significant threat to the long-term integrity of a water supply source, including a diminution

of surface water due to excess groundwater diversion." N.J.A.C. 7:19-1.3.[4] Similarly, without any limitation to designated areas of critical water supply concern, proposed N.J.A.C. 7:50-6.86(d)4 prohibits a proposed diversion unless the "applicant demonstrates that no alternative water supply source is available or viable."[5]

INTERBASIN TRANSFERS

And whereas the Proposed Rule tries to regulate "interbasin" transfers of water, see proposed N.J.A.C. 7:50-6.86(b), the Legislature has already accounted for the transfer of Pinelands water:

> "The provisions of any law, rule or regulation to the contrary notwithstanding, no person shall transport, or cause to be transported, more than 10 miles outside the boundary of the Pinelands National reserve, any ground or surface water therefrom . . . ."
>
> [N.J.S.A. 58:1A-7.1.]

The most the Pinelands Protection Act has to say on the matter is that "[n]othing in this act shall be construed to authorize or permit the exportation of any ground or surface waters from the pinelands area." N.J.S.A. 13:18A-25a. In short, the Rule Proposal's prohibition on water transfers goes far beyond the regulation contemplated by the Legislature.

UNCONSTITUTIONAL TAKING WITHOUT JUST COMPENSATION

Finally, the Proposed Rule is tantamount to a taking of sand mines' property rights without just compensation in violation of the 5th Amendment to the United States Constitution. Mining

[4] N.J.A.C. 7:19-1.3 also defines "water supply critical aquifer" as an "aquifer within an area of critical water supply concern where there may be either insufficient water supply, shortage of ground water by overdraft, threat of salt water intrusion or contamination, or where other circumstances exist requiring the Department to impose special water supply management provisions by rule under N.J.A.C. 7:19-8."

[5] The Proposed Rule also contradicts the section of the WSM Act that states: "Every diversion permit issued . . . shall be renewed by [NJDEP] upon the expiration thereof, with any conditions deemed appropriate by [NJDEP], except that the [NJDEP] may, ***after notice and public hearing***, limit the quantity to the amount currently diverted, subject to contract, or reasonably required for a demonstrated future need." N.J.S.A. 58:1A-7b (emphasis added); see also N.J.A.C. 7:19-2.5(d) ("The Department will issue a permit renewal, with any conditions deemed appropriate by the Department, for the same allocation, except that the Department may, after notice and public hearing, if requested by the applicant, pursuant to N.J.A.C. 7:19-2.7 through 2.11, reduce the allocation to that quantity currently diverted, subject to contract, or reasonably required for a demonstrated future need."). Ignoring this statutory provision, the Proposed Rule purports to prohibit increases in diversion volume in certain regions of the Pinelands, as is mentioned above, without prior notice and public hearing. See Proposed Rule at proposed N.J.A.C. 7:50-6.86(d)3; see also 54 N.J.R. at 1670 ("[T]he Commission is proposing to limit new ***or increased*** diversions from the Kirkwood-Cohansey aquifer to the following Pinelands Management Areas . . . .") and at 1674 ("[T]he Commission is proposing to limit new ***or increased*** diversions from the Kirkwood-Cohansey aquifer to the Agricultural Production Area and the following growth-oriented Pinelands Management Areas . . . .") (emphasis added).

permits include certain rights to continued expansion of mining operations. If increased diversions are prohibited by the Proposed Rule, the Pinelands Commission will be negating those rights.

For all of these reasons, the Rule Proposal is contradicted by higher law and cannot stand.

IV. THE RULE PROPOSAL IS *ULTRA VIRES* BECAUSE IT IS OVERBROAD, ARBITRARY, AND UNREASONABLE

The Proposed Rule is also *ultra vires* because it is overbroad, arbitrary, and unreasonable inasmuch as its requirements have no rational nexus to the problems they purport to solve. This problem is discussed at length in the attached expert report prepared by Brian Blum, CPG, LSRP of Langan and dated November 2, 2022 (the "Expert Report").

LACK OF DISTINCTION BETWEEN CONSUMPTIVE AND NONCONSUMPTIVE DIVERSIONS

The Proposed Rule's most glaring flaw is its failure to distinguish between "consumptive" diversions and "nonconsumptive" diversions, as is explained in the Expert Report. In the WSM Act, the Legislature explained this distinction by defining "nonconsumptive use" as:

> The use of water diverted from surface or ground waters in such a manner that it returned to the surface or ground water at or near the point from which it was taken without substantial diminution in quantity or substantial impairment of quality.
>
> [N.J.S.A. 58:1A-3e.]

By contrast, "consumptive use" is defined as "any use of water diverted from surface or ground waters other than a nonconsumptive use." N.J.S.A. 58:1A-3e.

Even though the professed, overarching purpose of the Proposed Rule is "to better protect the aquifer," 54 N.J.R. at 1668, "there is no distinction or recognition in the New Rule between the diversion of water that is consumed or depleted versus water that is returned in an un-depleted manner." Expert Report at 2. As a result, sand mining operations (recognized by NJDEP as returning 95 percent or more of their diversions back to the water source, see Expert Report at 2, and not addressed at all in the Kirkwood-Cohansey Project studies)[6] are regulated as much as uses that return 0 percent of their diversions back to the water source. Imposing such a disproportionate regulatory burden on nonconsumptive diversions does not accomplish the purpose of protecting the aquifer, and none of the studies in the Kirkwood-Cohansey Project

[6] "There are no documented ecological impacts associated with water diversions for hydraulic dredging from manmade ponds as the water is returned to the water table in an undiminished manner. Therefore, mining operations do not affect water levels, stream flow, or the ecological environment." Expert Report at 3-4. See also N.J.A.C. 7:19-2.2(i). That section explicitly exempts "[s]and and gravel mining," along with other diversions of "[w]ater which is returned to its source without a substantial diminution in quantity," from the requirement that water allocation permit applicants submit to NJDEP a Water Conservation and Drought Management Plan. Ibid. N.J.A.C. 7:19-2.2(i) is thus another acknowledgement from NJDEP that sand mining is nonconsumptive and does not impair aquifer water levels.

provide any evidence to the contrary. See Expert Report at 1, 3. That imposition thus is overbroad, arbitrary, unreasonable, and *ultra vires*.

DISPARATE TREATMENT OF DIFFERENT PINELANDS MANAGEMENT AREAS AND USES WITHOUT JUSTIFICATION

The Proposed Rule is also overbroad, arbitrary, and unreasonable because it prohibits new and increased diversions in some Pinelands Management Areas and not others without any regard to relative impact on the aquifer. "Nothing in the Pinelands Studies supports the absolute prohibition of new or increased diversions in the Forest and Preservation Areas while imposing no such prohibition in other areas." Expert Report at 3. This apparent oversight leads to the incongruous result that new or increased sand mine diversions are absolutely prohibited in the Preservation Area (where virtually no development is allowed anyway, and only limited diversions are occurring) even if completely nonconsumptive, while agricultural diversions, which tend to be highly consumptive, are encouraged in the Agricultural Production Areas. See Expert Report at 3. In other words, without any supporting evidence, the Proposed Rules actually results, in some cases, in consumptive uses being regulated less than nonconsumptive uses simply because of geography.[7] Such a result does not further the professed regulatory goal of protecting the aquifer and is thus overbroad, arbitrary, unreasonable and *ultra vires*.

LACK OF EVIDENCE THAT AQUIFER LEVELS WILL DECREASE TO THE MODELED LEVELS

Even the premise on which the Proposed Rule is based is hollow. To demonstrate the need for additional protection of the aquifer, the Pinelands Commission relied on studies (the Kirkwood-Cohansey Project) that "simulated or modeled reductions in stream flow of up to 30 percent, lowering of groundwater levels by up to 6-inches (15 cm), or pumping withdrawal rates at upwards of 30 percent of the ground water recharge." Expert Report at 3. However:

> ***These studies present no evidence that existing groundwater levels in the Pinelands will be reduced to the extent simulated by models***. The Kirkwood-Cohansey Project studies have not established a nexus to actual hydrological impacts from the presumed diversions.
>
> [Expert Report at 3 (emphasis added).]

In other words, the basis for increased regulation is speculative, and certainly does not justify the dramatic regulatory steps that the Pinelands Commission is proposing. Nothing could be more arbitrary and unreasonable.

[7] This possibility is not hypothetical. Clayton actually has nonconsumptive sand mine operations in the Preservation Area that the Proposed Rule, as currently drafted, would prohibit from implementing new or increased diversions. Expert Report at 3, Figure 1. Meanwhile, highly consumptive agricultural uses are able to continue obtaining and increasing diversions in the Agricultural Production Areas, which depletes the aquifer.

LACK OF ECONOMIC CONSIDERATIONS

Similarly, the Proposed Rule is based entirely on studies of ecological impacts without any consideration of economic impacts. The statute that the Pinelands Commissions invokes as its authority for the Proposed Rule (which, as is explained above, authorizes only studies, not regulation) directs the Pinelands Commission to:

> assess and prepare a report on the key hydrologic and ecological information necessary to determine ***how the current and future water supply needs within the pinelands area may be met*** while protecting the Kirkwood-Cohansey aquifer system and while avoiding any adverse ecological impact on the pinelands area.
>
> [P.L. 2001, c. 165 § 1 (emphasis added).

This accounting for "water supply needs" is consistent with the Pinelands Protection Act itself, which requires the Pinelands' Commission's Comprehensive Management Plan to "[r]ecognize existing economic activities within the area and provide for the protection and enhancement of . . . ***those indigenous industries and commercial and residential developments which are consistent with such purposes and provisions***." N.J.S.A. 13:18A-8(d)(3) (emphasis added); see also N.J.S.A. 13:18A-56 (expressing concern about the "Pinelands comprehensive management plan and its accompanying land use regulations plac[ing] a number of restrictions on opportunities for economic development"); N.J.S.A. 13:18A-5b ("The membership of the entire commission shall include residents of the pinelands area who represent ***economic activities***, such as agriculture, in the area . . . .") (emphasis added). It is also consistent with the WSM Act, which declares that the "water resources of the State are . . . essential to the . . . ***economic welfare*** . . . of the people of New Jersey," among other things. N.J.S.A. 58:1A-2 (emphasis added). Nevertheless, the Commission chose to focus on the ecological aspect of its directives and completely ignored "water supply needs" and economic concerns.

The Rule Proposal itself (in its "Summary" section) describes the "series of studies that resulted from this law" accordingly: "The [Kirkwood-Cohansey] Project addressed two major questions: (1) hydrologic effects of groundwater diversions from the Kirkwood-Cohansey aquifer on stream flows and wetland water levels; and (2) the ecological effects of stream flow and groundwater-level changes on aquatic and wetland communities." 54 N.J.R. at 1668. Notably absent from those two major questions is the question of "how the current and future water supply needs within the pinelands area may be met." See ibid. Even the "Economic Impact" section of the Rule Proposal fails to address how the "water supply needs within the pinelands area" can/will be met. See id. at 1673

Apparently cognizant of the above shortcoming, the Pinelands Commission tries to make up for it in way that is not meaningful. It claims in the Rule Proposal that the Proposed Rule "ensur[es] a sufficient water supply for development in the more growth-oriented areas of the Pinelands Area." 54 N.J.R. at 1668. Specifically, while new and increased diversions are prohibited in certain Pinelands Management Areas, new and increased diversions are still permissible in other Pinelands Management Areas, subject to the Proposed Rule's new restrictions on diversions. See proposed N.J.A.C. 7:50-6.86(d)3.

However, the Rule Proposal does not mention any study supporting its conclusory statement that it has ensured a sufficient water supply for development in the more growth-oriented areas of the Pinelands Area. And it simply ignores whether there is a sufficient water supply for uses in the non-growth-oriented areas of the Pinelands. Further, the Proposed Rule totally ignores the economic impact from the loss of sand resources necessary for public and private construction projects which will occur if future sand mining is prohibited.

The Rule Proposal also fails to appreciate the distinction between securing water supply and meeting water supply needs. For purposes of "water supply needs," it does not matter if high water levels are maintained in the aquifer if no one can use the water—whether because of increased regulatory costs or outright prohibition. Unsurprisingly, the Pinelands Commission's failure to study how water supply needs could be met resulted in water supply needs being omitted from the Rule Proposal.

In short, the Proposed Rule is overbroad, arbitrary, and unreasonable.

CONCLUSION

For the reasons listed above, the Proposed Rule is *ultra vires* and should be withdrawn.

Respectfully submitted,

/s/Kevin J. Coakley

Kevin J. Coakley

Enclosure
cc: William Layton
Robert Baranowski, Esq.
William Clayton
Gordon Milnes, P.E.
Brian Blum, C,P.G., LSRP
William J. Castner, Esq.
Ryan A. Benson, Esq.

2 November 2022

Via email: planning@pinelands.nj.gov

Susan R. Grogan, P.P., AICP
Acting Executive Director
Pinelands Commission
P.O. Box 359
New Lisbon, New Jersey 08064

Re: Pinelands Comprehensive Management Plan
Proposed Amendments – N.J.A.C. 7:50-1-6, 2.11, and 6.86
Langan Project No. 101022401

Dear Ms. Grogan:

I am employed by Langan Engineering and Environmental Services, Inc. On behalf of the Clayton Companies of Wall Township, New Jersey ("Clayton"), I have reviewed the above-referenced Proposed Amendments (referred to herein as the "New Rule") and have provided these comments challenging the propriety of the same. A copy of my C.V. is attached. As set forth therein, I have extensive experience with water diversion permits in New Jersey. In preparation for this assignment I visited the Clayton mine known as the Woodmansie mine in Woodland Township on October 10, 2022. I was able to freely and fully inspect mine operations.

Clayton mines sand from the Kirkwood-Cohansey Formation ("Kirwood-Cohansey") at four (4) locations in the following Townships within the Pinelands Area: Woodland, Jackson, and Lacey. While my observations herein apply to the Clayton mines, they also likely apply to all sand mines that utilize hydraulic dredging to mine sand.

The New Rule is inappropriately punitive with respect to diversions of groundwater that are associated with non-consumptive uses that are common to mines. The New Rule will severely impact Clayton's mining operations that rely on the diversion of water from the Kirkwood-Cohansey aquifer utilizing mechanical/hydraulic dredging procedures. Based on my review of the New Rule and the series of studies performed by the Pinelands Commission and known as the so-called "Kirkwood-Cohansey Project", I believe there is no demonstrated nexus between Clayton's diversion of water and the stream, wetlands, or ecological health of the Pinelands. The Proposed Amendments are broad and sweeping and will place an unsupported burden on Clayton's future operations without any empirical evidence to suggest that their permitted undiminished diversion and use of water will have a direct or material impact on the Pinelands environment. We recommend that the proposed New Rule be withdrawn or at minimum, that Clayton's mining operations be exempt from the New Rule or "grandfathered" so that future mining operations are not in any way affected by the New Rule or limited when water allocation permit renewals or permit modifications are put forth by Clayton in the future. In short, the New Rule is simply not justified as related to mine operations such as those operated by Clayton.

Background

Clayton has been mining sand from the Pinelands since the 1990s. Clayton's mining operations rely upon mechanical sand excavation to the water table to create a manmade pond and then utilizes the more energy efficient process of mechanical/hydraulic dredging. The dredge operation consists of mechanically cutting sand at the base of the manmade pond while simultaneously pumping (i.e., hydraulic or suction dredging) water with entrained sand through an approximate 18-inch diameter plastic pipe to a processing plant. At the processing plant, the sand is screened and sorted while the water diverted from the pond to extract the sand is returned to the pond in an undiminished or non-altered manner via pipes and overland flow. The water diverted from the pond acts only to entrain and transport the sand that is pumped during the dredging process. Water diverted from the pond, pursuant to existing permits from the NJDEP's Bureau of Water Allocation and Well Permitting, is not consumed with the exception of the potential for minimal evaporative loses.

Currently the NJDEP considers consumptive water use for sand mining as having an "undiminished return" of less than 10 percent consumptive, and "The New Jersey Water Supply Plan 2017-2022" (NJDEP, 2017) ("Water Supply Plan") is based on a 5% consumptive use rate for mining activities. In other words, the State Water Supply Plan assumes that 95% of water "diverted" for mining operations is returned to the water table in the same quantity and quality it was when diverted. Neither the New Rule nor any Pinelands' study supportive of the New Rule makes any mention of the findings of the Water Supply Plan. This assigned rate of 5% for mining is broad and not specific to Clayton's hydraulic dredging operation.

We understand the New Rule is focused on water withdrawals or "diversions" from the Kirkwood-Cohansey because of the potential to impact the character of the Pinelands environment. However, the New Rule fails to distinguish between the effects of "diversion" versus "consumptive use" of groundwater. The Water Supply Plan 2017-2022 (NJDEP 2017) establishes that "total withdrawal and total use can be somewhat misleading when it comes to hydrologic impacts, because not all water use results in a consumptive or depletive loss to the basin". The New Rule fails to recognize this distinction.

Additional Comments to the Proposed New Rule

The following additional comments are related to specific aspects of the New Rule for your consideration:

- (i) Consumptive Versus Non-Consumptive Use – the New Rule cites the multiple studies of the Kirkwood-Cohansey Project that were undertaken to document the potential for environmental/ecological impacts based on modelling scenarios that incorporate diversions of groundwater that might result in a direct imbalance to the water/hydrologic budget. Yet there is no distinction or recognition in the New Rule between the diversion of water that is consumed or depleted versus water that is returned in an un-depleted manner. Clayton's diversion of water has little, if any, impact of the water budget because the water is returned in an un-diminished manner.

The threats to ecological sustainability as presented in the Kirkwood-Cohansey Project studies relied on by the Pinelands Commission are based upon modelled scenarios of increased groundwater withdrawals that result in depletion of water and the associated lowering of water levels that result in stream flow reduction. While theoretical consumptive demand increases may result in lowering water levels, non-consumptive uses (undiminished return) will have little bearing on water levels and therefore will not result in a threat to ecological sustainability. Because Clayton's mining operations results in an undiminished use of groundwater, its operations have little threat to the overall ecological health of the Pinelands and the New Rule should not apply to them. Nothing in the Pinelands' studies supports the proposed New Rule as applied to mines.

- (ii) The Proposed Rule is Arbitrary With Respect to its Disparate Treatment of Different Pinelands Management Areas and Different Types of Uses – Whereas the New Rule prohibits new or increased diversions in the Preservation Area and certain other areas (see proposed N.J.A.C. 7:50-6.86(d)3), it aims only to regulate (but not prohibit) new or increased diversions from the Kirwood-Cohansey to Agricultural Production Areas and the more growth-oriented Pinelands Management Areas (e.g., Regional Growth Area, Pinelands Towns, Rural Development Area, Military and Federal Installation Area, and the 24 Pinelands Villages). Agricultural water uses are mostly consumptive and will have associated hydrological impacts to the watershed. By contrast, Clayton, whose water diversion is associated with little, if any, consumptive use, operates at Pinelands locations (see Figure 1) within the already heavily restricted Preservation Area (at two locations) and therefore their business stands to be directly impacted despite the fact that its diversion of water will not result in an associated hydrological or ecological impact. Nothing in the Pinelands Studies supports the absolute prohibition of new or increased diversions in the Forest and Preservation Areas while imposing no such prohibition in other areas.

  (iii) The Simulated Studies Are Flawed - The studies performed in connection with the Kirkwood-Cohansey Project simulated or modeled reductions in stream flow of up to 30 percent, lowering of groundwater levels by up to 6-inches (15 cm), or pumping withdrawal rates at upwards of 30 percent of the groundwater recharge. These studies using excessive hypothetical conditions create a flawed scenario of hydrological impacts. These studies present no evidence that existing groundwater levels in the Pinelands will be reduced to the extent simulated by models. The Kirkwood-Cohansey Project studies have not established a nexus to actual hydrological impacts from the presumed diversions. Therefore, while Clayton's operations don't come close to approaching the excessive hypothetical simulations of the Kirkwood-Cohansey Project's studies, the New Rule will prohibit diversions in the Preservation and Forest Areas and while only regulating diversions elsewhere

  (iv) Sand Mines Do Not Require Wells - The New Rule specifically addresses wells that are more often associated with a consumptive use such as farming or residential real estate. Clayton does not operate wells for the purpose of mining. Its diversions are for hydraulic dredging. The only well(s) at its sites are for domestic/sanitary purposes (e.g., for bathrooms) which use a de minimis quantity of water, as there are typically less than ten full-time employees per day associated with the mining operations.

Conclusion

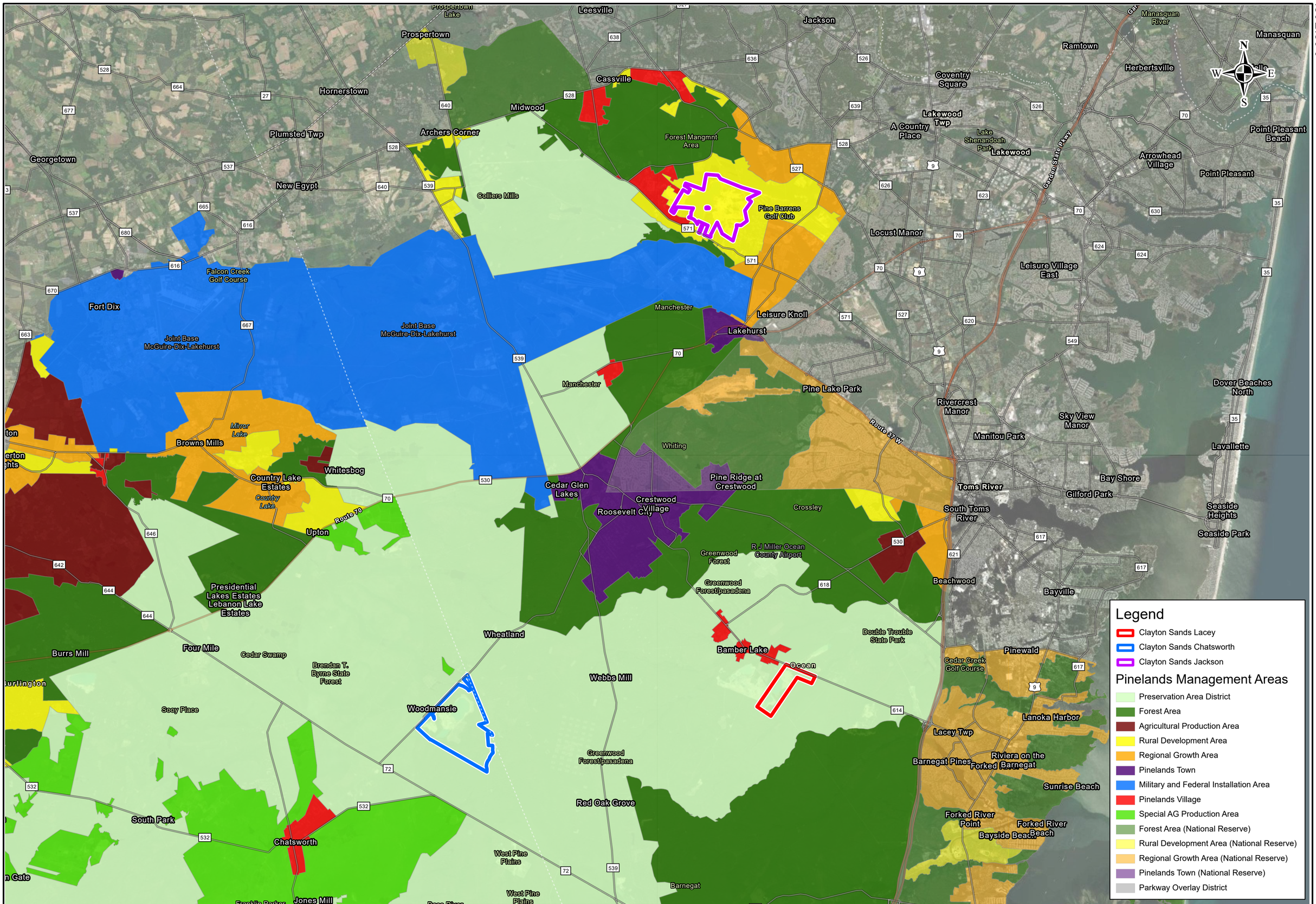
Clayton has been operating mines in the Pinelands for decades, each diverting water under NJDEP Water Allocation Permits. There are no documented ecological impacts associated with water diversions for hydraulic dredging from manmade ponds as the water is returned to the water table in an undiminished manner. Therefore, mining operations do not affect water levels, stream flow, or the ecological environment. However, the broad application of the New Rule, based on unrealistic and unsupported simulated groundwater water level drops and stream flow reductions, stand to directly impact Clayton's business despite there being no nexus between their mining operations and the ecological health of the Pinelands. Therefore, the New Rule should be withdrawn because it is not related to empirical data supportive of the rule.

Sincerely,
Langan Engineering and Environmental Services, Inc.

Brian A. Blum, CPG, LSRP
Associate Principal

BAB:mf
Attachments:
Figure 1 – Pinelands Management Areas
C.V. for Brian Blum

cc: Kevin J. Coakley, Esq.
William J. Castner, Esq.



Legend

- Clayton Sands Lacey
- Clayton Sands Chatsworth
- Clayton Sands Jackson

Pinelands Management Areas

- Preservation Area District
- Forest Area
- Agricultural Production Area
- Rural Development Area
- Regional Growth Area
- Pinelands Town
- Military and Federal Installation Area
- Pinelands Village
- Special AG Production Area
- Forest Area (National Reserve)
- Rural Development Area (National Reserve)
- Regional Growth Area (National Reserve)
- Pinelands Town (National Reserve)
- Parkway Overlay District

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Miles

NAME DATE

PROFESSIONAL XXXXXXXXXX
STATE LIC. No. XXXXX

LANGAN
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Langan Engineering, Environmental, Surveying, Landscape Architecture and Geology, D.P.C.
Langan International LLC
Collectively known as Langan

Project
PINELANDS PROPOSED RULE AMENDMENT
OCEAN COUNTY STATE

Drawing Title
PINELANDS MANAGEMENT AREAS

Project No.	101022401
Date	10/27/2022
Scale	1" = 2 Miles
Drawn By	ATR

Figure 1

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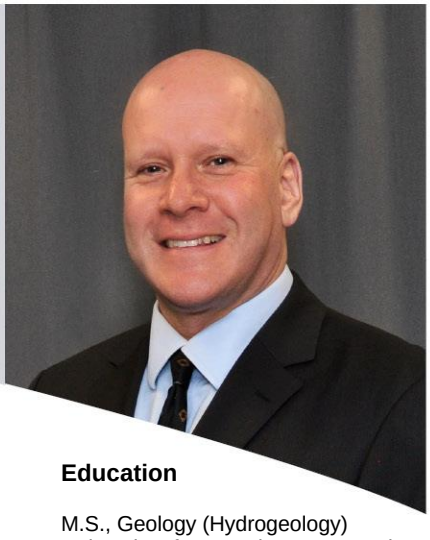
Path: \\langan.com\data\PAR\data4\101022401\Project Data\ArcGIS\APRX\101022401\101022401.aprx Date: 10/27/2022 User: aruane Time: 9:05 AM

Brian Blum, CPG, LSRP

Associate Principal/Vice President
Hydrogeology, Geology, Geothermal Systems



37 years in the industry ~ 21 years with Langan

Mr. Blum is a hydrogeologist certified by the American Institute of Professional Geologists (AIPG-Certified Professional Geologist), a New York State licensed Professional Geologist, and a New Jersey-Licensed Site Remediation Professional (LSRP). He has over 37 years of experience in environmental contamination investigation and remediation mostly relating to groundwater impacts, water resource permitting and development for irrigation and water supply systems, and geothermal ground-coupling in support of constructing indoor heating and cooling systems.

Mr. Blum has managed a multitude of investigation and remediation projects ranging in size and scope from relatively small assessments to multi-million dollar, multi-discipline investigations that involved coordination and management of efforts in geology, hydrogeology, geochemistry, geophysics, groundwater modeling, air quality modeling, health risk assessment, baseline ecological evaluation, remedial engineering, site/civil engineering, and geotechnical engineering. Mr. Blum has managed some of the largest Industrial Site Recovery Act (ISRA)-related remedial investigations in New Jersey. As a result, he is extremely familiar with the environmental regulatory and site closure processes. Mr. Blum has developed expertise in delineating TCE sources and contaminant migration within fractured rock and has worked with the NJDEP in assessing impacts to water supplies and indoor areas via vapor intrusion. He has managed a unique, full-scale, remediation project integrating the construction of blast fracture trenches in a crystalline bedrock unit to enhance chemical oxidant (permanganates) delivery to the subsurface to mitigate the source of a trichloroethene (TCE) plume.

Mr. Blum has authored several published proceedings and presented at technical conferences mostly relating to innovative delineation and remediation of TCE in fractured media. He was also a participant on the DEP/Stakeholder Committee that drafted NJDEP's Vapor Intrusion Guidance Document. Was aslo He has given numerous American Institute of Architects (AIA) and American Council of Engineering Companies of New York accredited presentations on the "Fundamentals of Geothermal Ground Couples" to architectural and MEP engineering firms throughout the northeast U.S.

RELEVANT EXPERIENCE – Water Supply / Environmental / Geothermal Systems

WATER SUPPLY

Bluewater Industrial Partners, Montgomery, New York – An Aquifer Testing Plan and Engineer's Report for a New Water Supply System were developed in support of a potable water supply system for a new warehouse designed for e-commerce. The warehouse employs a total of over 1,000 workers (all shifts) and has a water supply capacity of 20,000

Education

M.S., Geology (Hydrogeology)
University of Massachusetts at Amherst

B.S., Geology
State University of New York at Binghamton

Professional Registration

Certified Professional Geologist (CPG)

Licensed Geologist in State of NY

Licensed Site Remediation Professional (LSRP) in NJ

Affiliations

American Institute of Professional Geologists

National Ground Water Association

Licensed Site Remediation Professional Association

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gallons per day (gpd) for average demands and 60,000 gpd for peak demands. Mr. Blum managed aquifer testing to establish viable safe yield and water quality from on-site supply wells.

F&S Produce Co., Inc., Rosenhayn, New Jersey - A Water Allocation Test Plan, Hydrogeologic Report, and Water Allocation Permit were prepared on behalf of the F&S Produce Company. The New Jersey DEP approved the Permit to divert groundwater rates of 350-gallons per minute (gpm), 7.75 million gallons per month, and 93 million gallons per year. The application to divert groundwater was also submitted to the Delaware River Basin Commission for review and approval. The water diversion is critical to food processing and cleaning operations. Water supply development included installing monitoring wells and conducted required aquifer pumping tests of existing production wells.

Village Grande at Bear Creek, West Windsor, New Jersey – An irrigation pilot study was undertaken to evaluate hydrological impacts associated with irrigation of turf and landscape areas. The pilot study consisted of monitoring groundwater diversion for irrigation vs. aquifer water-levels, surface water levels, and precipitation. The pilot study was implemented in order to settle a dispute between Village Grande Homeowner's Association, the developer of the property, and NJDEP regarding Water Allocation Permit limits and conditions.

Test Drilling and Aquifer Testing Program, American Cyanamid, West Windsor, NJ - A Water Allocation Test Plan, Hydrogeologic Report, and Water Allocation Permit were prepared on behalf of the American Cyanamid Company. The New Jersey DEP approved the Permit for a 600- gpm diversion of groundwater and surface water for a Non-Community, Non-Transient Public Supply. Water supply development included installing new supply wells and conducted required aquifer pumping and water quality tests.

Town of Harrison and Mobil Oil Company, Harrison, NY – Managed a hydrogeological investigation that supported a legal settlement in which a 500-gpm capacity well was refurbished for the municipality and an air stripping system (packed aeration tower) capable of treating volatile organic compounds was constructed.

Hydrogeologic Investigation, Hop Brook Drainage Basin, Town of Amherst, Amherst, Massachusetts - This study was used as a groundwater management plan that helped Amherst obtain funds from the Commonwealth of Massachusetts as part of their Aquifer Land Acquisition program. Drilling and aquifer testing activities lead to the design and development of a 1.5 million-gallon per day (mgd) municipal supply well.

Croton-On-The-Hudson, Westchester County, New York – A comprehensive aquifer drilling, exploration, and testing program was conducted for the town of Croton-On-The-Hudson. The results of the comprehensive program supported the design and development of an additional 2-mgd community water supply.

Aquifer Exploration and Testing, Southington, Connecticut - An aquifer exploration and testing program was conducted to prepare a water balance and calculate safe yields to develop a 2-mgd supply well for the town of Southington. The information obtained was used to design and construct a community potable supply well.

Industrial Supply Well Development, Carmel, New York - Conducted well drilling and aquifer testing for the development of industrial supply wells. The obtained water supply information was used as a management tool by IBM to determine the potential location of a new facility.

Sun Oil Company Facility, Yabucoa, Puerto Rico - Mr. Blum evaluated well efficiencies and safe yields of a well field. The study was used to determine which supply wells warranted redevelopment and whether additional wells were needed to meet facility demands.

General Electric, Vega Alta, Puerto Rico - Managed a large-scale RI/FS in Vega Alta, Puerto Rico. The project scope included an extensive field investigation precipitated by the contamination of a municipal wellfield. Well installation, groundwater sampling, water-level measurements, aquifer pumping tests, soil-gas surveys, geophysical surveys, soil borings, and trenching were conducted. Data collected were utilized in a groundwater flow model used to negotiate with the USEPA to modify a Record of Decision (ROD) calling for a costly pump-and-treat remedy of groundwater to a more pragmatic pump-and-treat remedy at half the original estimated cost. Technical and administrative tasks included cost tracking and scheduling; coordinating a team of 50 professionals in a multitude of disciplines; preparing monthly progress reports, technical reports and presentations; and participating in negotiations.

Town of Islip, Hauppauge, New York - Managed a multi-million dollar RI/FS at an active municipal landfill on Long Island, New York. A complex environmental investigation and conceptual remedial design was developed to cleanup groundwater within the “Sole Source Aquifer” of Suffolk County, New York.

Golf Club Water Supply – Conducted water supply-related permitting and/or irrigation-related feasibility studies and water supply development for the following golf clubs:

- Ardsley Country Club – Ardsley-on-Hudson, New York
- Beacon Hill Country Club – Atlantic Highlands, New Jersey
- Cobbs Creek Golf Club – Philadelphia, Pennsylvania
- Colonia Country Club – Woodbridge, New Jersey
- Hackensack Golf Club – Oradell, New Jersey
- Huntsville Golf Club – Shaverton, Pennsylvania
- Maidstone Club – East Hampton, New York
- Montclair Golf Club – West Orange, New Jersey
- Navesink Country Club – Middletown, New Jersey
- Plainfield Country Club – Edison, New Jersey
- Rumson Country Club – Rumson, New Jersey
- Saucon Valley Country Club – Bethlehem, Pennsylvania
- Shark River Golf Course – Neptune City, New Jersey
- Spring Brook Country Club – Morristown, New Jersey
- Spring Lake Golf Club – Spring Lake, New Jersey
- TPC Jasna Polana – Princeton, New Jersey
- White Beeches Country Club – Haworth, New Jersey

ENVIRONMENTAL

NJDEP LSRP

Mr. Blum is the LSRP for over 45 sites and has issued about 30 Response Action Outcomes (RAOs) since the inception of the LSRP program. Mr. Blum also performs routine remedial action permit compliance monitoring and maintenance for a portfolio of New Jersey industrial properties Highlighted below are selected projects in which an RAO has been issued where Mr. Blum was the LSRP of record.

PSE&G Former Front Street Gas Works, Newark, N.J. – Mr. Blum is the LSRP for the former Front Street MGP site, located along the west bank of the Passaic River. The site consists of two separate parcels that are separated by New Jersey Route 21 (McCarter Highway). Parcel 1 of the Site is located immediately adjacent to and west of the Passaic River and east of McCarter Highway, and Parcel 2 is located west of McCarter Highway. An RAO was issued in connection with both parcels. Parcel 1 remediation was completed along the Passaic riverbank within a 500 foot long, 15 foot wide cofferdam constructed to remove MGP impacted soils. The remedial activities consisted of the removal of approximately 29,500 tons of MGP-impacted, non-hazardous soil for off-site thermal desorption and disposal as well as excavation of 1,000 tons of lead hazardous soil for disposal.

Morgan Village Junior High School, Camden, New Jersey
Mr. Blum was retained as the LSRP by the New Jersey Schools Development Authority to evaluate environmental conditions and issue a Response Action Outcome (RAO) in connection with a portion of an Area of Concern that was incorporated into a new school built directly adjacent to an older school where environmental impacts to soil were documented. The scope of work included conducting a supplemental site investigation to delineate polynuclear aromatic hydrocarbons in soil above the Soil Remediation Standards and working with NJDEP to develop a creative RAO that allowed the SDA to obtain a temporary certificate of occupancy. Once the entire school site was fully constructed an unconditional Site RAO was issued by Mr. Blum.

New York Jets Training Center, Florham Park, NJ
Mr. Blum was retained as the LSRP for a relatively recent and minor petroleum spill that occurred at this sports facility. Langan has filed a spill report with the NJDEP and we have conducted post remediation monitoring and sampling in accordance with the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) regulations. Upon completion of post remediation sampling, Mr. Blum issued a RAO for the spill and related Area of Concern.

Federal Realty Investment Trust – Blue Star Shopping Center, Watchung, New Jersey
Mr. Blum served as the LSRP for a tetrachloroethene (PCE) release associated with historical dry cleaning operations at a tenant space in a commercial strip mall. An unrestricted use RAO was issued after the PCE impacts were delineated and mitigated. As part of the cleanup effort, a site-specific Impact to Groundwater Soil Cleanup Standard was established. The remediation effort included the removal and off-site disposal of 250 tons of hazardous soil. The soil remediation effort incorporated geotechnical elements because the building foundation needed to be secured while the PCE impacted soils were being excavated.

Scannell Properties # 139, LLC – Fed Ex Ground Parking Area, Woodbridge, New Jersey
Mr. Blum was retained as the LSRP for Site-wide soil areas of concern (for a total of 59 AOCs) related to former chemical manufacturing operations that triggered remediation pursuant to the Industrial Site Recovery Act. Scannell Properties, # 139, LLC, in connection with their purchase of a property in Woodbridge, assumed responsibility for environmental remediation associated with Sherwin Williams and PMC Specialties past industrial processes. Upon completion of site development that capped the Site, Mr. Blum filed a Deed Notice, applied for and obtained a Remedial Action Permit for soils and issued an RAO to Scannell.

Cranbury Brick Yard, LLC, Former Munitions Manufacturing Facility, Cranbury, New Jersey
Mr. Blum was retained as the LSRP for a total of 26 AOCs related to former munitions manufacturing operations that triggered remediation pursuant to terms of an Administrative Consent Order. Cranbury Brickyard, LLC, in connection with their purchase of the property, assumed responsibility for environmental remediation associated with the former manufacturing operations that ceased in the early 1950s. Upon completion of the RI, Mr. Blum has issued an unconditional RAO for 20 AOCs. Six AOCs have or are undergoing remediation. Once the site development is completed the remaining six AOCs will be issued a conditional RAO.

NYSDEC

Orange & Rockland Utilities, Inc., Middletown, New York – Developed and implemented a Supplemental Remedial Investigation (SRI) Work Plan aimed toward fulfilling delineation requirements in connection with a former manufactured gas plant (MGP) site. The work included a soil-gas survey, soil borings, monitoring well installation and associated sampling. The SRI work incorporated an evaluation of potential vapor intrusion into buildings in the immediate vicinity of MGP impacts to the environment. An RI report was submitted to NYSDEC in January 2004.

Orange & Rockland Utilities, Inc., Port Jervis, New York – Developed and implemented a Supplemental Remedial Investigation (SRI) Work Plan aimed toward fulfilling delineation requirements in connection with a former manufactured gas plant (MGP) site. The SRI work consisted of a soil-gas survey, indoor air sampling, soil borings, monitoring well installation, and a fish and wildlife assessment.

Cornell University, Lansing, New York - Managed an investigation and an interim remedial measures project to prevent migration of contaminants (mostly 1,4-dioxanne in groundwater) from both a former radiation disposal site and a former chemical disposal site in Lansing, New York.

General Electric, Hudson Falls and Ft. Edward, New York - Carried out field investigations, supervised test drilling, mapped groundwater quality patterns, and evaluated a remedial extraction system at industrial sites, contaminated with polychlorinated biphenyls (PCBs) and other organic compounds.

110 Sand and Gravel, Melville, New York - Supervised the installation of monitoring wells, conducted six aquifer pumping tests, and conducted geophysical logging and groundwater sampling as part of a work plan designed for a New York State Department of Environmental Conservation Part NYCRR 360 Application for solid waste disposal.

NJDEP ISRA

Mr. Blum is the project manager for numerous ISRA-related remedial investigations / remedial actions. Several on-going projects are at various stages of the ISRA process ranging from the preliminary assessment phase to final closure. Several closures have required the filing of a Deed Notice for impacted soils or notification of a Classification Exception Area for groundwater as part of the site remedy. Several of the projects summarized below involved and evaluation of vapor intrusion in residential settings, requiring community interaction.

Nokia (formerly Alcatel-Lucent Inc.), Murray Hill, New Jersey - Project Manager for an ISRA-related groundwater remediation project with a TCE plume in fractured rock. Remediation activities focused on delineating a TCE source in fractured basalt by employing creative site area mapping to expedite characterization. Geologic mapping and borehole televiewing were employed to delineate faults that have a major control on contaminant migration. An off-site soil-gas survey and associated indoor air monitoring was conducted to evaluate and remediate vapor intrusion to mostly residential buildings. Indoor air remediation of a residential building was performed by installing a sub-slab ventilation system. Groundwater-related remedial efforts have consisted of source removal, and in-situ chemical oxidation with both sodium and potassium permanganate. In-situ chemical oxidation was conducted in connection with the construction of blast fracture trenches in the bedrock to enhance oxidant delivery and contact with the TCE in bedrock. Remediation efforts eliminated TCE in groundwater by approximately 95% and NJDEP approved a Technical Impracticability (TI) waiver for the remaining groundwater plume and impacts to a surface water body.

Nokia formerly (Alcatel-Lucent Inc.), Chester, New Jersey - Project Manager for two neighboring ISRA-related groundwater remedial efforts involving mostly TCE groundwater plumes in fractured rock. An off-site vapor intrusion evaluation consisting of soil-gas and indoor air monitoring program was undertaken to evaluate potential vapor intrusion to residential and commercial buildings). Remediation consisted in in-situ chemical oxidation with sodium permanganate and deployment of “permanganate candles” in wells constructed within bedrock.

Novartis Pharmaceuticals Corporation, Summit, New Jersey – Project Manager for a Preliminary Site Assessment, Site Investigation and Remedial Investigation at a 65-year old facility with over 60 Areas of Concern (AOCs). The work included negotiations with NJDEP regarding AOC closure and investigative scope. Off-site sampling activities included sediment and surface water sampling of the Passaic River in support of an Ecological Exposure Assessment.

Exxon, USA, Linden, New Jersey - Managed a multi-million dollar Remedial Investigation of a 1,300-acre refinery / petroleum facility in Linden, New Jersey. Project scope included a multi-phased field investigation consisting of soil borings and drivepoint sampling, groundwater monitoring well installation and sampling, borehole geophysics, a ground penetrating radar study, surface-water sediment sampling, a tidal study, aquifer testing, and non-aqueous phase liquid (NAPL) delineation. The RI was considered by the New Jersey Department of Environmental Protection as one of the largest (in terms of scope and budget) environmental studies conducted in New Jersey, under state oversight. The RI was one of the first implemented under New Jersey’s

Technical Requirements for Site Remediation. All RI work was coordinated with interim remedial measures (IRMs) designed to mitigate environmental releases deemed an immediate threat.

Exxon, USA, Bayonne, New Jersey - Managed a multi-million dollar RI/IRM study at a 115-year old petroleum products blending and storage facility in Bayonne, New Jersey. An RI work plan, calling for an extensive field program to determine the nature and extent of contamination for remedial decision making, was developed. Fieldwork included borings and temporary well points for NAPL determination and delineation, and groundwater monitoring well installation and sampling. Activities were coordinated in connection with IRMs focused on containment and removal of hydrocarbon product from the subsurface.

Litigation Support

Confidential Client, West Caldwell, New Jersey – A large New Jersey Utility Company and a developer were represented in support of litigation involving the deposition of materials containing polycyclic aromatic hydrocarbons (PAHs) at a residential property in Essex County, New Jersey. Managed a soils investigation and provided deposition testimony substantiating a position to leave materials with PAH concentrations in place due to no demonstrated threat to human health or the environment.

Town of Harrison, Harrison, New York - Managed a groundwater resource investigation for a municipality in Westchester County, New York. Findings supported a legal settlement in which the municipality obtained a 500 gallons per minute (gpm) refurbished well with an air stripping system (packed aeration tower) capable of treating volatile organic compounds (VOCs).

Confidential Client, Tenafly, New Jersey - Provided technical support for allocation and arbitration of cleanup costs for a site in Tenafly, New Jersey. Mr. Blum represented the interests of a former owner of a chemical manufacturing facility that released chlorinated aliphatic hydrocarbons that impacted soils, groundwater, and surface water. Responsibilities included development and review of settlement terms, file review, and support for the interrogatories and deposition process.

Confidential Client, Trenton, New Jersey - Managed an underground storage tank (UST) site characterization and closure at property in Trenton, New Jersey. Site work was conducted in connection with litigation activities. The project involved representing a property owner who purchased a site that contained four USTs containing hazardous substances. Remediation costs were estimated to serve as the basis for settlement negotiations.

GEOTHERMAL SYSTEMS

Private Residence at 655 Park Avenue, New York, New York - Managed the permitting, design, and construction administration of a standing column well (SCW) required for a 12-ton residential cooling system. Permits and/or approvals were obtained from NYSDEC-Division of Mineral Resources, USEPA, NYCDOT, NYCDEP, MTA-NYC Transit, and the NYC Department of Parks and Recreation. A 1,500-foot deep SCW was installed in the sidewalk. Aquifer and water quality testing were conducted to evaluate the SCW's ability to yield sufficient water and to determine what effects the water quality would have on the well components and related pump and flow regulator appurtenances.

Columbia University Knox Hall, New York, New York - Managed the permitting and part-time construction administration associated with a four SCW system for heating and cooling of Knox Hall. Wells were installed to a total depth of 1,800 ft below grade. Aquifer testing and water quality testing revealed that the wells were not capable of yielding significant quantities of water and therefore could only be relied upon for minimum groundwater exchange. The water quality results were used to identify piping, pumps, and related flow appurtenances that were compatible with poor quality water. The work was conducted with close interaction between the owner, building architect, MEP engineer, general contractor, and drilling contractor who installed the four SCWs.

Brooklyn Botanic Gardens Visitor's Center – Managed the design of a 28 well, 400-foot deep vertical closed-loop geothermal cooling system. The design warranted detailed coordination with the owner, building architect, other design engineers, and the landscape architect to assure that the piping associated with the geothermal well system would not interfere with other components of the Visitor's Center design.

Visiting Nurse Association of Northern New Jersey, Morristown, New Jersey - Managed a hydrogeologic and environmental due diligence effort in support of installing a vertical closed-loop geothermal well field. Based on the favorable findings of the due diligence effort, a 400-foot deep test loop was installed and a 48-hour thermal conductivity test was conducted in support of the full-scale closed-loop well field design.

PROFESSIONAL ASSOCIATIONS

Licensed Site Remediation Professional Association
American Institute of Professional Geologists
National Ground Water Association

PUBLICATIONS

Blum, B.A. et al. 2008, "In Situ Oxidation of TCE Using Permanganate via Blast Fracture Trenches in the Preakness Basalt". Proceedings from the Battelle Environmental Conference entitled – "Remediation of Chlorinated and Recalcitrant Compounds".

Blum, B.A., et al. 2004, "In-Situ TCE Oxidation Using Potassium Permanganate in the Columnar-Jointed Preakness Basalt of New Jersey". Proceeding from the 2004 USEPA/NGWA Fractured Rock Conference: State of the Science and Measuring Success in Remediation.

Blum, B.A., and G.M. Fisher, 2000, "Trichloroethene Plume Source Area Delineation in the Preakness Basalt", Treating Dense Nonaqueous Phase Liquids (DNAPLs): Remediation of Chlorinated and Recalcitrant Compounds. Battelle Press, Columbus, Ohio, p. 25.

PRESENTATIONS (Past 10 Years)

Annual Environmental Workshop - developed an "in-house" Langan training workshop entitled "Vapor Intrusion". This workshop is given in October (beginning in 2007) and provides training to engineers and environmental scientists.

"Fundamentals of Geothermal Ground Couplings" – numerous American Institute of Architects (AIA) presentations have been and will continue to be

given to firms or AIA chapters in the northeast U.S. These presentations are registered with AIA for continual professional education. The presentations, often given with an MEP engineer teaming partner, serve as a primer for architects interested in learning about the installation of geothermal heating and cooling systems.

"Vapor Intrusion in New Jersey" – organized and participated as an instructor associated with vapor-intrusion related continued and professional education seminars at Rutgers and Montclair State Universities. These programs have been in place for six years.

October 6, 2021, LSRPA Course on "Successful Remediation – Pitfalls to Avoid, and Remediation In Bedrock". Presentation on "Bedrock Remediation in New Jersey and Technical Impracticability Waiver"

October 10, 2017, LSRPA and NJSWEP Annual Golf Network Event. "Getting Golf Greens Greener in the Garden State"

April 12, 2017, RTM Conference - Sustainable Property and Asset-Based Transactions: Closing Deals and Capturing Market Opportunities. "Vapor Intrusion – What's New and Hot Topics", Philadelphia, PA.

September 30, 2016, Langan Remediation Summit, Hamburg, NJ - "Vapor Intrusion – What's New".

October 15, 2014, Langan Remediation Summit, Hamburg, NJ - "Vapor Intrusion - Regulatory Framework and Mitigation".

June 5, 2014, New Life for Closed Gas Stations Conference, Orlando, FL. - "Digging Deeper on Design – Vapor Intrusion Risks & Solutions".

April 15, 2013, and April 10, 2014, Rutgers University Training Program, New Brunswick - "Vapor Intrusion in New Jersey".

June 5, 2012, Langan Engineering and Environmental Services Program on Integrating Site Remediation and Sustainable Redevelopment in Woodbridge, NJ – "Vapor Intrusion and Sustainable Redevelopment".

May 3, 2012, RTM Conference of Sustainable Property Transactions in Cambridge, Massachusetts – "Vapor Intrusion: Assessment and Remediation".

February 13 and 27, 2012, NJDEP Vapor Intrusion Technical (VIT) Guidance Training at NJDEP headquarters in Trenton, New Jersey. A technical presentation focused on reviewing pertinent aspects of the NJDEP's January 2012 VIT Guidance document.

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November 4, 2022

Via E-Mail (planning@pinelands.nj.gov)

Susan R. Grogan, P.P., AICP
Acting Executive Director
Pinelands Commission
P.O. Box 359
New Lisbon, NJ 08064

Re: Comments on Pinelands Comprehensive Management Plan
Proposed Amendments: N.J.A.C. 7:50-1.6, 2.11,
and 6.86, 54 N.J.R. 1668(a)

Dear Ms. Grogan:

This firm represents Whibco of New Jersey, Inc. ("Whibco"). On behalf of Whibco, please accept the following comments on the proposed amendments to the Comprehensive Management Plan ("Rule Proposal") noted above, in addition to the comments provided verbally during the hearing on the Rule Proposal that was conducted virtually on October 12, 2022.

Whibco conducts permitted resource extraction activities on multiple sites throughout Cumberland County, including areas within the Pinelands. In connection with such activities involving the processing of sand or other earthen materials that are conducted by mechanical or hydraulic dredging, Whibco obtains water allocation permits from the State of New Jersey, Department of Environmental Protection ("NJDEP"). Such use is generally considered "nonconsumptive" under the Water Supply Management Act, meaning the water is "diverted from surface or ground waters in such a manner that it is returned to the surface or ground water at or near the point from which it was taken without substantial diminution in quantity or substantial impairment of quality." See N.J.S.A. 58:1A-3. Based on the above, Whibco offers the following comments on the Rule Proposal:

1. The Rule Proposal exceeds the Commission's regulatory authority. Under the Water Supply Management Act, only NJDEP is granted the power "to adopt, enforce, amend or repeal rules to control, conserve, and manage the water supply of the State and the diversions of that water supply. . . ." N.J.S.A. 58:1A-5. Under the Pinelands Protection Act, the Commission is given the authority only to make recommendations for water

quality standards for surface and ground waters in the Pinelands area, N.J.S.A. 13:18A-6(i), not develop its own procedures for allocations. NJDEP has the exclusive authority to implement such controls and requirements, including "metering, additional reporting requirements, restriction of inter-basin diversions of water for water supply or wastewater discharge, restriction of consumptive use and water quality testing of wells" in "areas of critical water supply concern." See N.J.A.C. 7:19-8.2. The proposed rule modifications attempt to establish new criteria for withdrawals, lowers the threshold pumping volumes from 100,000 gpd to 50,000 gpd that trigger applicability of new proposed standards, prohibits interbasin transfers, and proposes the use of the USGS MODFLOW model to calculate the zone of influence, which is not used by NJDEP. As such, the Rule Proposal would create a duplicative and inconsistent permitting system that conflicts with existing regulation of water allocation and diversion by the NJDEP.

2. The prohibition on interbasin transfers as set forth in the Rule Proposal disregards the location of existing and active mining sites that may be located in areas where WMA boundaries cross and divide existing operations, which would inhibit future permitting applications for new or increased allocation as needed to operate and expand to supply mining products as needed for construction and infrastructure improvements. All such existing sites should be acknowledged and accounted for in the Rule Proposal to allow for full utilization of the resources of these sites consistent with existing mining permits.

3. The Rule Proposal does not account for resource extraction as a non-consumptive use. Whibco's operations under its water allocation permits return over 90% of the water being pumped back into the aquifer. NJDEP rules recognize non-consumptive use as "the use of water diverted from surface or ground waters in such a manner that it is returned to the surface or ground water at or near the point from which it was taken without substantial diminution in quantity or substantial impairment of quality." N.J.S.A. 58:1A-3. The proposed rule should properly account for a non-consumptive use such as resource extraction that returns 90% of the water pumped back to the aquifer. This can be accomplished by adding a definition for "nonconsumptive use" to the CMP at N.J.A.C. 7:50-2.11, consistent with the definition at N.J.S.A. 58:1A-3 as set forth above, with mining to be further noted as an example of a nonconsumptive use: "Nonconsumptive use" means the use of water diverted from surface or ground waters in such a manner that it is returned to the surface or ground water at or near the point from which it was taken without substantial diminution in quantity or substantial impairment of quality; for purpose of this definition, mining or processing of sand or other earthen materials, as long as such mining is conducted by mechanical or hydraulic dredging, shall be considered a nonconsumptive use."

4. Nonconsumptive uses such as mining should be exempt from the Rule Proposal, and the CMP at N.J.A.C. 7:50-6.83 should be modified as follows: "(a) All development permitted under this Plan, or under a certified county or municipal master plan or land

use ordinance, shall be designed and carried out so that the quality of surface and ground water will be protected and maintained. For the purpose of this Part, agricultural use and nonconsumptive uses such as mining or processing of sand or other earthen materials, as long as such mining is conducted by mechanical or hydraulic dredging, shall not be considered development."

5. Along with recognizing mining as a nonconsumptive use, the definition of "Divert" or "Diversion" at N.J.A.C. 7:50-2.11 should be modified to exclude "mining of sand or similar materials, as long as the mining is conducted by mechanical or hydraulic dredging, shall not be considered development."

6. The definition of "Allocation" at proposed N.J.A.C. 7:50-6.86(d), and the standards set forth at proposed (d)(3) through (d)(9), should also exclude the "taking or discharge of water for mining of sand or other earthen materials, even if permitted pursuant to a Water Allocation Permit, Water Use Registration Number, NPDES or NJPDES permit, as long as such mining is conducted by mechanical or hydraulic dredging operations."

7. Unless mining is exempted as a nonconsumptive use, the standard of no drawdown within Forest Area as set forth in the Rule Proposal is problematic as active mine sites exist within these areas, and prohibition on new or increased diversion would inhibit utilization of existing permitted mining reserves and improperly restrict access to those resources. The Rule Proposal should expressly recognize and permit the continuation of existing mining sites including all reserve areas, and the non-consumptive nature of mining activities.

8. The Rule Proposal also needs to be reconciled with the Federal ROCKS Act, which was part of the Infrastructure and Jobs Act of 2021. The Federal ROCKS Act encourages the preservation of access to and reduction of costs for resources needed for infrastructure projects, such as stone, sand and gravel. Unless the Rule Proposal is revised consistent with the comments set forth herein, or withdrawn, the Rule Proposal would have the contrary effect of restricting access to resources needed for infrastructure projects and would increase the costs of these resources, contrary to the Federal ROCKS Act.

9. In response to comments received in connection with rule amendments promulgated in 1994, the Commission previously indicated that: "The proposed standards for water supply diversion in N.J.A.C. 7:50-6.86(e) prohibit diversions or increases in diversions of over 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer unless it is demonstrated that no alternative water sources are available and that no adverse ecological impact on the Pinelands Area will result. The Commission believes that these two standards will prevent excessive or nonessential diversions from the Kirkwood-Cohansey aquifer and that additional requirements, such as the purchase of Pinelands Development Credits, are unnecessary." See 26 N.J.R. 4803 (December 5,

1994). The Commission's reasoning as set forth above remains applicable and no modification of these standards is warranted.

Whibco reserves the right to submit additional or supplemental comments as may be warranted upon the publication of any amended or revised Rule Proposal concerning the subject matter set forth herein, and Whibco further reserves the right to seek judicial review of any final, adopted rule addressing the above issues.

Very truly yours,

Robert S. Baranowski, Jr.

RSB/amb

cc: Whibco of New Jersey, Inc.

JOSEPH GALLAGHER Jr., MPA
TOWNSHIP ADMINISTRATOR

November 2, 2022

planning@pinelands.nj.gov
Pinelands Commission Office
P.O. Box 359
New Lisbon, NJ 08064

Re: Written Formal Comments – Township of Winslow
Proposed Amendments to the Pinelands Comprehensive Management Plan

Dear Ms. Grogan:

In response to the public hearing held October 12, 2022 regarding the proposed amendments to the Pinelands Comprehensive Management Plan, the Township of Winslow provides the following comments.

1) Winslow Township seeks clarification as to the applicability of these regulations to existing wells and existing water allocation permit limits. The proposed regulations read as they apply to:

> *A new diversion or increase in allocation from either a single existing source or from combined existing diversion sources in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer, that results in a total diversion of 50,000 gallons of water per day or more (hereafter referred to as "proposed diversion") shall meet the criteria and standards set forth at (d)3 through 9 below. "Allocation" shall mean a diversion permitted pursuant to a Water Allocation Permit or Water Use Registration Number issued by the New Jersey Department of Environmental Protection pursuant to N.J.A.C. 7:19.* ***Proposed 7:50-6.86(d), New Jersey Register, Tuesday, September 6, 2022 (CITE 54 N.J.R. 1676)***

Therefore, it is understood that the existing Winslow Township wells, as they are currently

operating, do not need to meet the criteria and standards set forth at Proposed 7:50-6.86 (d)3 through 9 in the proposed regulations even though, they currently pump more than 50,000 gallons of water per day. In addition, it is understood that increased withdrawals from the Kirkwood-Cohansey aquifer are not subjected to the criteria and standards set forth at Proposed 7:50-6.86 (d)3 through 9 in the proposed regulations if the increased withdrawals are from existing wells and do not exceed existing water allocation limits specified in the Township's water allocation permit since this would not be a "new diversion" or "increase in allocation".

2) The Township seeks clarification for the threshold pumping volume at which a proposed diversion or increase in water allocation will be subjected to the new standards. The proposed rule indicates that a proposed diversion or requested increase in allocation must be at least 50,000 gallons per day to trigger the application of the criteria and standards set forth in the proposed regulations.

> *A new diversion or increase in allocation from either a single existing source or from combined existing diversion sources in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer, that results in a total diversion of 50,000 gallons of water per day or more (hereafter referred to as "proposed diversion") shall meet the criteria and standards set forth at (d)3 through 9 below. "Allocation" shall mean a diversion permitted pursuant to a Water Allocation Permit or Water Use Registration Number issued by the New Jersey Department of Environmental Protection pursuant to N.J.A.C. 7:19.* ***Proposed 7:50-6.86(d), New Jersey Register, Tuesday, September 6, 2022 (CITE 54 N.J.R. 1676)***

While it appears as though a new diversion or new increase in allocation of 50,000 gallons per day or more is the threshold pumping volume that would require the detailed criteria and standards put forth in **Proposed 7:50-6.86(d)3 through 9 ("proposed standards")**, various examples and explanations throughout the document indicate that if combined new and existing diversions exceed the 50,000 gallons per day threshold, this would trigger compliance with the new proposed standards. These examples are confusing and contradict the proposed regulatory language.

Example 1: The proposed amendments also specify that the 50,000 gallon per day threshold includes all of an applicant's existing diversions in the same HUC-11 watershed, in addition to the new or increased diversion. For example, if an applicant currently diverts 40,000 gallons of water a day and is proposing to divert an additional 20,000 gallons of water a day through a new well or from one of the applicant's existing wells in the same HUC-11 watershed, the new diversion will be subject to the new standards even though it is less than 50,000 gallons of water per day, as the total diversion would be 60,000 gallons of water a day. ***New Jersey Register, Tuesday, September 6, 2022 (CITE 54 N.J.R. 1670)***

Example 2: For example, if an applicant already has a DEP water allocation permit for 100,000 gallons a day and has applied to the Commission for a new well that will withdraw an additional

20,000 gallons a day under the same permit, the Commission will evaluate the ecological impacts from the total withdrawal of 120,000 gallons per day. The new standards and review process set forth in these amendments will apply. ***New Jersey Register, Tuesday, September 6, 2022 (CITE 54 N.J.R. 1671)***

Example 3: Of the 30 applications for new or increased diversions received by the Commission since 2017, it is estimated that only eight would have incurred these additional costs, either because of the new 50,000 gallons per day threshold or because the proposed rule clarifies that wells owned in common will be grouped for purposes of determining whether the 50,000 gallons per day threshold is exceeded. ***New Jersey Register, Tuesday, September 6, 2022 (CITE 54 N.J.R. 1673)***

Example 4: The proposed amendments expand the scope of diversions that will be subject to the stricter standards and criteria. The CMP's water management provisions currently apply only to total diversions of 100,000 gallons or more per day. The Commission is proposing to lower this threshold to total diversions of 50,000 gallons or more per day from the Kirkwood-Cohansey aquifer in the same HUC-11 watershed. The volume determination is based on all of an applicant's allocations under a water allocation permit, water use registration issued by the DEP, which will ensure that more wells will be subject to the proposed new standards and further protect the Pinelands ecology and water supply. ***New Jersey Register, Tuesday, September 6, 2022 (CITE 54 N.J.R. 1673)***

The proposed codified regulatory language in ***Proposed 7:50-6.86(d), New Jersey Register, Tuesday, September 6, 2022 (CITE 54 N.J.R. 1676)*** does not make any mention of the volume determination being based on all of an applicant's allocations under a water allocation permit and/or water use registration issued by the DEP. There is also no mention of combining existing and proposed volumes to determine if the 50,000 gallons a day threshold is exceeded and if the new diversion is now subjected to the proposed standards. This explanation is confusing and contradicts the proposed regulatory language.

3) Winslow Township disagrees with the prohibition of interbasin transfer.

> *A diversion that involves the interbasin transfer of water in the Pinelands Area between the Atlantic Basin and the Delaware Basin, as defined at (b)1 and 2 below, or outside of either basin, shall be prohibited.* ***Proposed 7:50-6.86(b), New Jersey Register, Tuesday, September 6, 2022 (CITE 54 N.J.R. 1676)***

The language in the current regulations "should be avoided to the maximum extent practical" is better suited to allow for unavoidable interbasin transfers. Basin boundaries don't translate directly to the aquifer and some diversions that are located near the border between the Atlantic and Delaware Basins are pulling water from both basins. This also makes things difficult for Townships that straddle both the Delaware and Atlantic Basins and can be problematic for municipalities that currently depend on interbasin transfer for a potable water source and wastewater treatment. Winslow Township currently purchases 1.5 MGD from New Jersey

American Water (NJAW) which is sourced from the Delaware Basin and is transferred mostly to the Atlantic Basin.

4) Winslow Township recommends the allowance of historical aquifer pump test data to determine if a proposed diversion will be deemed to have an adverse local impact in the Pinelands Area ***(Proposed 7:50-6.86(d)7, New Jersey Register, Tuesday, September 6, 2022 (CITE 54 N.J.R. 1676)).*** A request for a pump test waiver is currently accepted (as written in the regulations N.J.A.C. 7:19-2.2(c)) by the NJDEP Division of Water Supply and Geoscience for hydrogeological reports in certain instances where recent and applicable pump test data can be used to evaluate the hydrogeological impacts on the aquifer and watershed.

5) Winslow Township does not agree with the addition of the ***Proposed 7:50-6.86(d), New Jersey Register, Tuesday, September 6, 2022 (CITE 54 N.J.R. 1676)***. We believe it to be redundant with the current NJDEP water allocation permitting requirements, specifically for applicants that request a major modification to their water allocation permit. The language in the document states that the Commission wants to promote consistency with NJDEP review procedures:

The decision to consider all of an applicant's diversions in the same HUC-11 watershed requires the DEP to consider all diversions covered under one DEP Water Allocation Permit when evaluating new water allocation permit applications. Structuring the Commission's evaluation of water diversion impacts to groups of wells and diversions proposed or operated by the same applicant or owner mirrors the DEP requirement and should promote consistency between the two agency's review procedures. ***New Jersey Register, Tuesday, September 6, 2022 (CITE 54 N.J.R. 1670)***

The NJDEP already requires applicants to prepare an extensive and technical pump test work plan and hydrogeological report that fully encompasses evaluations of regional and local ecological impacts. Consistency between two agency's review procedures is essential yet can be very difficult when dealing with two different sets of regulations trying to enforce the same thing. The Commission's proposed regulations already differ from the NJDEP's with the requirements for local ecological impacts ***(Proposed 7:50-6.86(d)7, New Jersey Register, Tuesday, September 6, 2022 (CITE 54 N.J.R. 1676))*** that includes specific requirements for aquifer pump testing.

Summary

Overall, Winslow Township objects to the proposed regulations because they are superfluous and ask for the same requirements from an applicant as it would be for a Major Modification to a Water Allocation Permit. The NJDEP regulations for water allocation permits at N.J.A.C 7:19 are much more comprehensive and are sufficient to evaluate adverse ecological impacts in the Pinelands Area. The NJDEP regulations also include tasks such as compiling a well inventory list within a 1-mile radius, a contaminated sites search, and significant mapping requirements.

The addition of a second set of redundant regulations will be confusing for the applicant and difficult to enforce with another similar set of regulations. Applicants can potentially spend a lot of time and money on aquifer pump tests only to lead to an approval from the NJDEP but a denial from the Pinelands Commission or vice versa.

As it stands now, the Commission must provide an approval letter for water allocation permits and major modification requests in the Pinelands Area, therefore, the Commission currently has a say in the allowance of Kirkwood-Cohansey withdrawals in the Pinelands Area. With the Commission establishing their own independent review of Kirkwood-Cohansey withdrawals, this could lead to interagency conflicts between the NJDEP and the Pinelands Commission.

As mentioned during the hearing, Winslow Township objects to the proposed amendments based on the Pinelands Authority to determine water allocation. This authority was specifically given to the NJDEP and should remain with them to prevent conflicting regulations.

The Township appreciates the opportunity to provide comment regarding these proposed changes and looks forward to a response.

Regards,

Joseph Gallagher
Township Administrator

JG/mb

cc: Mayor and Township Committee (via email)
Stuart Platt, Township Solicitor, The Platt Law Group (via email)
Louis Bowman, Superintendent of Municipal Utilities, Township of Winslow (via email)
Monica Bell, Project Manager, Remington and Vernick Engineers (via email)
Steven Donohue, Utilities Engineer, Remington and Vernick Engineers (via email)
Dennis Yoder, Director of Engineering, Remington and Vernick Engineers (via email)

State of New Jersey

PHILIP D. MURPHY
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DEPARTMENT OF ENVIRONMENTAL PROTECTION

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SHAWN M. LATOURETTE
COMMISSIONER

November 4, 2022

Susan R. Grogan, P.P., A.I.C.P.
Acting Executive Director
Pinelands Commission
P.O. Box 389
New Lisbon, NJ 08064

Re: Proposed Amendments to the Pinelands Comprehensive Management Plan
Proposal Number: PRN 2022-110

Dear Ms. Grogan:

The Division of Water Supply and Geoscience (DWSG) has reviewed the Pinelands Commission's (Commission) proposed amendments to the Pinelands Comprehensive Management Plan as published in the September 6, 2022, New Jersey Register (54 N.J.R. 1668(a)). DWSG provides these comments for your consideration. For organizational purposes, the comments are broken down into following categories: "Technical Manual 12-2," "Low Flow Margin," "Programmatic," and "General."

Technical Manual 12-2

1. Proposed N.J.A.C. 7:50-6.86(d)7 references DWSG's Technical Manual 12-2, "Hydrogeologic Testing and Reporting Procedures in Support of New Jersey Water Allocation Permit Applications" (TM 12-2). The purpose of TM 12-2 is to provide guidance on conducting aquifer tests and submitting hydrogeological reports in support of requests for new and revised water allocation permits under the Water Allocation Permits rules at N.J.A.C. 7:19. TM 12-2 was developed in consideration of the withdrawal limits under N.J.A.C. 7:19 (100,000 gallons per day or greater) and DWSG's standard evaluation criteria for impact analysis (one (1) foot of drawdown). The recommendations for number and location of observation wells, and pumping volume and duration, are based on the need to generate and observe sufficient groundwater drawdowns that can be analyzed for aquifer properties and then used to predict a one-foot drawdown zone of influence. Aquifer tests conducted using the document's guidance but with lower withdrawal rates may not produce data that can be accurately analyzed for aquifer parameters that in turn can be used to reliably predict a four-inch drawdown zone of influence. This may be especially true for the prolific Kirkland-Cohansey aquifer, where significant withdrawals are required to see measurable

drawdowns. DWSG recommends that the Commission consider a "Pinelands-specific" guidance based on TM12-2 so that aquifer tests are to more likely produce appropriate results that can provide insight to groundwater impacts at the proposed lower withdrawal rates and smaller allowed impacts.

2. DWSG notes that under the proposal, the potential impact of a new or increased diversion may be evaluated without consideration of all other existing diversions and the potential four-inch drawdown impact on wetlands and surface water bodies. Existing ground water conditions reflect current diversions and the need to base evaluations without considering all pre-existing diversions is not consistent with DWSG's evaluation methodology, including using the model impacts based upon one foot of drawdown.

Low Flow Margin

3. Proposed N.J.A.C. 7:50-6.86(d) references Hydrologic Unit Code 11 (HUC-11) watersheds. HUC-11s are no longer supported by the U.S. Geological Survey's and the Department's Watershed mapping groups. HUC-11s do 'neatly aggregate up' into larger HUCs (with smaller HUC numbers). DWSG will continue with HUC-11s for the Low Flow Margin (LFM) 2023 New Jersey Statewide Water Supply Plan (WSP) update, but then will most likely switch to HUC-12s for future analyses. DWSG recommends that the Commission shift to HUC-12s for consistency with its analyses.

4. DWSG's LFM results for some HUC-11s include diversions from unconfined aquifers that are not the Kirkland-Cohansey aquifer. Some of these same HUC-11s may also be only partially inside the Pinelands Area (Pinelands). The Commission's proposal does not address how to handle HUC-11s that are both in- and outside of the Pinelands, and which might include both the Kirkland-Cohansey aquifer as well as other aquifers.

5. DWSG's LFM results also include agricultural, horticultural and aquacultural water use and allocations. The proposed rule refers to these results, but the Department is unaware of the authority to regulate water withdrawals regulated pursuant to N.J.A.C. 7:20A under the proposed rule.

6. The Commission proposes at N.J.A.C. 7:50-2.11 to define "stream low flow margin" as "the difference between a stream's September median flow and its statistical flow, which is the seven-day flow average in the 10-year period for the stream (7Q10) as reported in the New Jersey Statewide Water Supply Plan, New Jersey Department of Environmental Protection, 2017, New Jersey Water Supply Plan 2017-2022: 484p, http://www.nj.gov/dep/watersupply/wsp.html, as amended and supplemented". DWSG notes that the WSP on page 19 defines "low flow margin" as "…the difference between the median September flow and the 7Q10 flow at the lowest elevation of each Hydrologic Unit Code (HUC) 11." The WSP defines September median and 7Q10 in its glossary. DWSG recommends that the Commission modify the proposed definition of "stream low flow margin" to reference the definition in the WSP.

7. Proposed N.J.A.C. 7:50-6.86(d)6 states "[a] proposed diversion shall be deemed to have an adverse regional impact if it, combined with all existing permitted allocations in the same HUC-11 watershed, exceeds 20 percent of the stream low flow margin for the year of peak use established in the New Jersey Statewide Water Supply Plan at

https://www.nj.gov/dep/water supply/pdf/wsp.pdf for the HUC-11 watershed where the proposed diversion will be located (hereafter referred to as 'the affected HUC-11 watershed')." DWSG recommends that the Commission clarify this language as it is unclear if the proposed rule is referring to allocations or peak reported use. The WSP considers allocations and peak water use, based on reported actual water use, which are two different factors and the WSP estimates them differently. Additionally, the information referred to is in Appendix A of the WSP, which is not the referenced document. The correct reference is https://www.state.nj.us/dep/watersupply/pdf/wsp-appendix-a.pdf.

8. The LFM method is designed to evaluate the net loss of water to a HUC-11 and as such considers consumptive and non-consumptive water uses plus imports and exports (e.g. 90% of a golf course irrigation is assumed to be consumptive and 10% is assumed to return to the local aquifer). The proposed rules do not appear to make this distinction. The proposal seems to refer to the diversion and assume that all of it is lost, which is incorrect. The proposed rule should be clarified so that the LFM refers to the net loss of the diversion to the HUC-11.

Programmatic

9. The proposal limits new or increased diversions from the Kirkwood-Cohansey aquifer in specific areas of the Pinelands including but not limited to Pinelands towns, villages, and rural development areas. Proposed new or increased diversions are not permitted in preservation, forest, or special agricultural areas. Under the proposal, there may be specific existing diversions in these restricted areas that could be impacted by this restriction. Notably, this would seem to impact diversions from sand quarries where water is returned to the source, minimally impacting the aquifer. Modifications are necessary for those facilities as they often relocate sources due to the nature of mining as well as changing of pumps and associated capacities, which often require modification of the permit. DWSG recommends that the Commission create exceptions to the proposed limitations.

10. Proposed N.J.A.C. 7:50-6.86(d)6 allows for the offset of potential impacts with alternatives which include the recharge of treated wastewater and, stormwater recharge. The offset of potential impacts also includes reduction of infiltration/inflow and water leak audits, which DWSG supports. DWSG encourages the Commission to provide a list of acceptable alternatives.

11. The proposal refers to agricultural activities which include some of the activities regulated by the Department in accordance with N.J.A.C. 7:20A but does not include reference to aquaculture which is clearly defined as agriculture in N.J.A.C. 7:20A. The Department has received multiple inquiries regarding proposed aquaculture facilities proposed in southern New Jersey, including in the Pinelands Area. Aquaculture should be included in this section and continue to be exempt from the proposed rule.

12. DWSG notes that, under the Commission's proposal, an existing diversion that exceeds 100,000 gallons per day and is permitted in accordance with N.J.A.C. 7:19 (and methodologies in TM 12-2) will be subject to the Commission's review and may not meet the new proposed standards proposed by the Pinelands.

General

13. The proposal summary and proposed N.J.A.C. 7:50-6.86(d)2i refer to N.J.A.C. 7:9-9. N.J.A.C. 7:9-9 was repealed and replaced by N.J.A.C. 7:9D-3 in 2001 (see 32 N.J.R. 2832(a), 33 N.J.R. 3194(a)). The Commission's proposal should be updated accordingly.

14. The Commission proposes to define at N.J.A.C. 7:50-2.11 the terms "divert" or "diversion," "well", and "zone of influence," which are also defined at N.J.A.C. 7:19-1.3. DWSG anticipates amending its definition of "well" to have "…the same meaning as the term defined at N.J.A.C. 7:9D." For consistency, DWSG recommends that the Commission follow the same approach for its proposed definitions.

15. The proposed reference to replacement wells at N.J.A.C. 7:50-6.86(d)2i is current with respect to DWSG's current policy for replacement wells and N.J.A.C. 7:19-1.5(b)3. This existing policy is more restrictive than what is being planned to be proposed in future rulemaking. DWSG suggests that the Commission amend the proposed rule language to state that a replacement well is any well considered a replacement well under N.J.A.C. 7:19.

16. Several references to N.J.A.C. 7:9D are inconsistent with those rules, including the requirement to decommission wells that are replaced. The Commission's proposal is more in line with how replacement wells are modified under the water allocation rules at N.J.A.C. 7:19-1.5. DWSG recommends that the Commission clarify its proposed requirements and their impacts on individual domestic wells, and the proposed requirements for Allocation Permit or Registration wells. Typically, replacement wells are needed on an emergency basis. See N.J.A.C. 7:19-1.4(a)4 for the Department's applicability provisions regarding emergency diversions from wells.

17. At proposed N.J.A.C. 7:50-6.86(b), the Commission states, "[a] diversion that involves the interbasin transfer of water in the Pinelands Area between the Atlantic Basin and the Delaware Basin, as defined at (b)1 and 2 below, or outside of either basin, shall be prohibited." DWSG interprets this as meaning that if there is an existing diversion that meets this criterion, it would now be prohibited. DWSG recommends that the Commission clarify this provision, including any process that would be followed if an applicable facility is identified.

18. Any references to the Department of Environmental Protection's (Department) Bureau of Water Allocation & Well Permitting should be updated as needed.

19. In the Department's anticipated proposal amending N.J.A.C. 7:19, a link between volumes of water (e.g., 100,000 gallons per day) and pumping rates (e.g., 70 gallons per minute) will be addressed. We would recommend the Commission include a similar link to identify new wells more readily being installed by their pump capacity and relationship to the volumetric regulatory thresholds.

DWSG appreciates the opportunity to submit these written comments in response to the proposal at 54 N.J.R. 1668 for the written record.

Respectfully submitted,

Jeffrey L. Hoffman, State Geologist
New Jersey Geological and Water Survey
Division of Water Supply & Geoscience

C: Trish Ingelido, Director, Division of Water Supply and Geoscience
Terry Pilawski, Chief, Bureau of Water Allocation and Well Permitting

From: Paul Connolly <paul.connolly61@gmail.com>
Sent: Wednesday, October 12, 2022 10:51 PM
To: Planning, PC [PINELANDS] <planning@pinelands.nj.gov>
Subject: [EXTERNAL] Public comment

I support the recommendations of the PPA including their concerns regarding horticulture, prohibitive cost and existing wells.

See '**Blog Post**

By Jaclyn Rhoads, Ph.D. October 7, 2022'

Paul Connolly
917.743.3302

From: Edward Beckett <ebeckett3@verizon.net>
Sent: Thursday, October 20, 2022 1:17 PM
To: Planning, PC [PINELANDS] <planning@pinelands.nj.gov>
Subject: [EXTERNAL] Proposed rule changes

To the members of the Pinelands Commission,

The Kirkwood-Cohansey aquifer is a critical source of drinking water and for protecting the Pinelands' ecology. I support the following proposed changes to the rules governing its protection and use

- That a minimum water level must be maintained to sustain essential Pinelands habitat. I support the Pinelands Commission's call to restrict withdrawals further at 20%, particularly as a buffer against climate change.
- I agree with the Commission proposal increasing the range of wells within the K-C aquifer that would require approval based on their size (lowering the threshold from 100,000 gallons of water withdrawn per day to 50,000), as well as the proposal of a new paradigm for how water transfers can be calculated among the various subdivisions of the K-C aquifer. Although a single aquifer system is shared by most of the Pinelands, the land can be divided into two "basins" defined by which water body they flow into: the Atlantic Ocean or the Delaware Bay. The new rules would eliminate transfers of water between the two basins. These basins are further divided into different "HUC-11" areas defined by the US Geological Survey; the new rules would ensure that all existing withdrawals in a given HUC-11 would be included when considering an application for a new withdrawal.
- I also urge the Commission to remove horticulture use from exemption to strict compliance with these new regulations and to strike from the draft amendment "prohibitive cost" as an acceptable loophole to overburdening the Kirkwood-Cohansey aquifer .

Thank you for your attention to these recommendations.

All the best,

Ed Beckett
156 Lawnside Ave.
Collingswood, NJ 08108

From: janet drew <jdrew22222@yahoo.com>
Sent: Friday, October 21, 2022 4:27:36 PM
To: Planning, PC [PINELANDS] <planning@pinelands.nj.gov>
Subject: [EXTERNAL] Kirkland Cohansey aquifir rules Yes

Commissioners

I strongly support the proposed strengthened rules to protect the KC Aquifir.
In addition, as a member of Pinelands Preservation Alliance, & other local and national environmental groups, I'm very concerned that all of our official representatives, consistently act as thoughtful, dedicated environmental stewards.

TY
Janet Drew
N. Beach Haven, NJ 08008

From: L P <lpdealz@gmail.com>
Sent: Saturday, October 22, 2022 2:43 PM
To: Planning, PC [PINELANDS] <planning@pinelands.nj.gov>
Subject: [EXTERNAL] re: Public Comments for Pinelands Commission Proposes Stronger Rules to Protect Water

Hello,

I am very excited about the following changes which will support the health of the NJ Pinelands, reduce global warming and climate change impact, and contribute to the overall wellbeing of the plants, animals, and people who call the Pinelands home, as well as visitors to the Pinelands for whom this ecosystem is treasured as a special, critical place in our world.

Rule changes I am excited about:

- In the NJ Department of Environmental Protection's (NJDEP) Water Supply Plan, the agency recommends withdrawing no more than 25% of this minimum volume, but the Pinelands Commission proposes to restrict withdrawals further at just 20%.
- The Commission proposes increasing the range of wells within the K-C aquifer that would require approval based on their size (lowering the threshold from 100,000 gallons of water withdrawn per day to 50,000).
- The Commission proposes a new paradigm for how water transfers can be calculated among the various subdivisions of the K-C aquifer.

I am however, a little concerned about the following changes:

- Diversions of water for agricultural and horticultural uses continues to be exempt from these regulations. This seems overly broad, especially given the rise of new-technology operations within the agricultural and horticultural industries (such as cannabis). I urge the Commission to remove horticulture use from exemption to strict compliance with these new regulations.
- The draft amendment offers "prohibitive cost" as an acceptable loophole. Allowing this rationale opens the door for applicants to justify overburdening the Kirkwood-Cohansey aquifer simply because it is cheaper and easier. This loophole needs to be closed so that it isn't exploited. NJ must be committed to sustainable policy that puts the planet and the environment first above business and capitalism. Industries are what got us into this global warming mess, and they need to pay to get us out of it.
- Among wells that will not be subject to the new standards are replacements of wells with at least 50,000 gallons of water per day—provided that the new well is the same depth and pump capacity, is from the same aquifer, and is within 100 feet of the existing well, but I would like to see it added that the new well must also be within the same HUC-11 watershed, since placing the well in a different watershed may present a different ecological impact.

Thank you for reading and considering my concerns regarding the protection of a place and habitat that is near and dear to my heart, as well as the hearts of many of my family members and their friends.

Sincerely,

Logan Penna
19 Silverwood Dr
Delran, NJ 0807

From: David Harpell <dharpell@jacksonmua.com>

Sent: Wednesday, September 21, 2022 12:11 PM

To: Maxwell, Trent [PineLands]

Subject: [EXTERNAL] RE: Public Notice for Proposed Amendments to Pinelands Comprehensive Management Plan

Trent,

The Jackson MUA likes the idea of protecting the shallow groundwater. I left you a message regarding how this 50,000 GPD threshold will be determined as it seems like there is a workaround with Water Allocation where a developer can give each homeowner a private well to avoid the 100,000 GPD threshold. Would the Pinelands regulate the project or just the community wells when determining the 50,000 GPD?

Thanks,

Dave

From: Dan Osterman <dan_illustration@yahoo.com>
Sent: Wednesday, November 2, 2022 12:36 AM
To: Planning, PC [PINELANDS] <planning@pinelands.nj.gov>
Subject: [EXTERNAL] Aquifer depletion

In what way does nestle and it's subsidiary nespresso have anything to add to this conversation around conservation? In what way do their extraction operations support and protect our New Jersey water? Is this a shell game for nestle to get its hands on our aquifer for its profit making enterprise as it has in so many other places.
Who told nestle to cuddle up close to our decision making and planning process?

From: Rick Prickett <candle55rp@yahoo.com>
Sent: Monday, October 17, 2022 7:54:02 AM
To: Planning, PC [PINELANDS] <planning@pinelands.nj.gov>
Subject: [EXTERNAL] Public Comment - Amendments N.J.A.C. 7:50-1.6, 2.11 and 6.86

Commissioners:

I feel very fortunate to live in the Pinelands where the pristine water held in the Kirkwood/Cohansey aquifers sustains our lives and is protected by State law, especially as I think about how people in other parts of the country are coping with extreme drought, resulting in rationing and the decreasing quality of life.

I would like to express my support for the proposed CMP Amendments N.J.A.C. 7:50-1.6, 2.11 and 6.86 that have been designed to more carefully manage Pineland aquifers in a way that protects their integrity, benefitting all living things, including the people residing in the Pinelands currently and in the future.

I want to thank Pineland Commissioners and Staff for their commitment and proactivity in implementing the CMP as is clearly illustrated in the rule changes currently being considered by the Commission.

In my view, the CMP is a living document that needs to be refined over time to adjust to our constantly changing environment to protect the unique and invaluable resources of the Pinelands. These changes include development, climate change and other factors.

I recognize the monumental effort that has gone into the proposed CMP amendments, starting with the comprehensive scientific investigations that took place over many years, and the professional interpretation of the scientific findings by the Commission's Staff, which in consultation with the Commission and the public, developed rules to assure the precious water of the Pinelands is managed in a responsible and renewable way.

I would also like to express my appreciation for the New Jersey State Legislature and the Federal Government for their commitment to the Pinelands, providing funding and support for the scientific research that evaluated how much water can be withdrawn from Pineland aquifers for development, without damaging the ecosystems that collect rainfall, purify runoff and recharge the Kirkwood and Cohansey aquifers in which we all depend.

Rick Prickett
181 Vincentown Road Pemberton, New Jersey, 08068

The Great Egg Harbor Watershed Association

P.O. Box 109
Newtonville, NJ 08346

Brooke Handley, Administrator
609-602-0334
bhandley99@gmail.com

OFFICERS

Julie Akers
President

Ed Curry
Vice President

Dick Colby
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Pat Sprigman

Clay Emerson

Paul Ludgate

Carol Jones

Bill Stuempfig

STAFF

Brooke Handley
River Administrator

Lynn Maun
Secretary & Coordinator

Fred Akers
Operations Manager

11/2/22

Susan R. Grogan, P.P., AICP
Acting Executive Director
Pinelands Commission
PO Box 359
New Lisbon, NJ 08064
Submitted Via planning@pinelands.nj.gov

RE: Kirkwood-Cohansey Amendments to the CMP

Dear Director Grogan:

The Great Egg Harbor Watershed Association fully supports the proposed Pinelands Comprehensive Management Plan Amendments to protect the Kirkwood-Cohansey Aquifer and the ground water ecology of the Pinelands.

We recall that back in the late 1990's, Cape May County was experiencing saltwater intrusion and water supply problems, and was looking to the Pinelands as a future source of water supply for Cape May.

In 2001, State Senator Jack Gibson from Cape May sponsored, and the New Jersey Legislature enacted, a law calling for a study of the ecological impacts of human activities, such as diversions, on the ecology of the Pinelands Area. This Public Law appropriated $5.5 million for the Pinelands studies, and it also appropriated $2 million for water supply studies in Cape May County.

These studies identified the key hydrologic and ecological information necessary to determine how the current and future water supply needs within the Pinelands area may be met while protecting the Kirkwood-Cohansey aquifer system.

And now, 21 years later, the Pinelands Comprehensive Management Plan is finally being amended to implement the study conclusions and to protect the Kirkwood-Cohansey aquifer system.

One of the key amendments to strengthen the protections to the Kirkwood-Cohansey aquifer will be by reducing the application threshold pumping volume from 100,000 gallons per day to 50,000 gallons per day. This will be far better protection than NJDEP will provide at 100,00 gallons per day.

In 2012 when NJDEP was updating their Water Allocation Rules, we asked NJDEP to reduce their 100,00 gallons per day permit threshold to 50,000 gallons per day. At that time we were told that NJDEP did not have enough resources to manage the number of permits at 100,000 gallons per day, let alone less than that.

So based on this long ago comment from NJDEP, we recognize and support the Pinelands Commission's wisdom in proposing an application fee of $6,000 for any well in the Kirkwood-Cohansey aquifer that is required to meet the criteria and standards with a more extensive review process for wells as large as 50,000 gallons per day or more.

The proposed amendments, based on the twelve studies that predicted reductions in the plants and animals that are characteristic of undisturbed Pinelands ecosystems caused by groundwater withdrawals, have been carefully and thoughtfully developed by the Pinelands Commission and its staff to increase the protections of the Pinelands.

We fully support these amendments, and we congratulate the Pinelands Commission for getting them across the finish line and into the Pinelands Comprehensive Management Plan.

Sincerely,

Brooke Handley, River Administrator
Fred Akers, Operations Manager

From: Sandy Van Sant <svansant36@gmail.com>
Sent: Monday, October 24, 2022 10:32 AM
To: Planning, PC [PINELANDS] <planning@pinelands.nj.gov>
Subject: [EXTERNAL] Pinelands Commission Proposal for Stronger Rules

Hello. I am writing to support the following proposed changes to the rules--

That a minimum water level must be maintained to sustain essential Pinelands habitat. I support the Pinelands Commission's call to restrict withdrawals further at 20%, particularly as a buffer against climate change.

I agree with the Commission proposal increasing the range of wells within the K-C aquifer that would require approval based on their size (lowering the threshold from 100,000 gallons of water withdrawn per day to 50,000), as well as the proposal of a new paradigm for how water transfers can be calculated among the various subdivisions of the K-C aquifer. Although a single aquifer system is shared by most of the Pinelands, the land can be divided into two "basins" defined by which water body they flow into: the Atlantic Ocean or the Delaware Bay. The new rules would eliminate transfers of water between the two basins.

Thank you very much for considering these changes.

Sandra Van Sant, RN, MPH

27 Tocci Avenue, Monmouth Beach, NJ

NewJersey Builders Association

Jeff Kolakowski
CHIEF EXECUTIVE OFFICER

Grant Lucking
CHIEF OPERATING OFFICER

Kyle Holder
VP OF LEGISLATIVE AFFAIRS

VIA ELECTRONIC MAIL

November 4, 2022

Susan R. Grogan, P.P., AICP, Acting Executive Director
New Jersey Pinelands Commission
planning@pinelands.nj.gov

Attn.: PRN 2022-110

Dear Susan R. Grogan, P.P., AICP:

The New Jersey Builders Association (NJBA) submits the following comments regarding the New Jersey Pinelands Commission's (Commission) proposal to amend the Pinelands Comprehensive Management Plan, PRN 2022-110.

General Comments
NJBA appreciates the Commission's efforts to protect the Kirkwood Cohansey aquifer and its ecological benefits while also ensuring that adequate water supply is available for current and future residents of the Pinelands Region.

Diversions from the Kirkwood-Cohansey Aquifer
NJBA notes that the proposed amendments would require the Commission to take all of an applicant's diversions in the same HUC-11 into account when an additional allocation is requested. NJBA believes that such scenarios should subject only the new allocation to the newly proposed standards at N.J.A.C. 7:50-6.86(d) while applying existing standards to existing allocations.

Alternative Sources
NJBA requests that specific and reliable criteria are available for applicants seeking to demonstrate that an alternative water supply source is not available due to prohibitive cost, limits on available technology, and/or significant timing issues.

Thank you for your consideration of these comments. If you should have any questions, please feel free to reach out to me directly.

Sincerely,

Grant Lucking
Chief Operating Officer

Since 1948, the New Jersey Builders Association (NJBA) has been the State's leading trade association and voice of the homebuilding industry in Trenton. As a major influencer on the state's economic strength, its mission is to advocate for a sustainable and healthy economy and a more affordable and vibrant housing market. NJBA's diverse membership includes residential builders, developers, remodelers, subcontractors, suppliers, engineers, architects, lawyers, consultants and industry professionals that are involved in constructing entry-level to luxury units in for-sale, rental and mixed-use developments.

New Jersey Builders Association
(609) 570-2157, grant@njba.org

C: NJBA Environmental Counsel, Michael J. Gross, Esq., Giordano, Halleran & Ciesla, P.C.

New Jersey Farm Bureau

168 West State St. – Trenton, NJ 08608 – Phone: 609-393-7163 – Fax: 609-393-7072 – Email: mail@njfb.org

November 4, 2022

To : Susan R. Grogan, P.P., AICP Acting Executive Director

From : Ryck Suydam President

Re: Proposed Amendments to the Pineland Comprehensive Management Plan

Thank you for the opportunity to comment on the Pinelands Comprehensive Management Plan Fees, Definitions, and Water Quality Proposed Amendments: N.J.A.C. 7:50-1.6, 2.11, and 6.86 The New Jersey Farm Bureau opposes any change that would provide review authority for water withdrawals beyond the current NJDEP authority. We appreciate that agricultural water use is exempt from the review process but have concerns that regulating water supply on surrounding businesses will have negative economic implications on the local economy.

The impact this will cause on surrounding business could also have an indirect impact on the agricultural industry in the Pinelands. Agriculture is reliant on the PDC program as its sole opportunity to preserve their value land values. Any impact on development in the pinelands is likely to have consequences on PDC values that are already undervalued relative to market potential.

I would hope the Pinelands Commission will reconsider implementing additional regulations above and beyond the NJDEP criteria for water withdrawals. Agriculture is extremely reliant on water supply because of the high value crops grown in the Pinelands of New Jersey. The Farm Bureau is concerned that this opens the door for agriculture water certifications to be micromanaged in the future. We want to live with one system of allocation oversight

The water supply plan specifically authorizes the NJDEP to have authority over the allocation and issuance of permits for water use in the state. Although agriculture is not addressed in this rule specifically, we have concerns that the Pinelands Commission is overstepping its authority by circumventing the NJ Water Supply Act that gives DEP the exclusive control to control, conserve and mange and diversion of the state water supply.

Thank You.

#

cc: Doug Fisher, Secretary of Agriculture
Peter Furey, Executive Director, NJ Farm Bureau
Ben Casella, NJFB Staff

State of New Jersey

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SHAWN M. LATOURETTE
Commissioner

Watershed and Land Management
Mail Code 501-02A
P.O. Box 420
Trenton, New Jersey 08625-0420
www.nj.gov/dep/landuse

November 4, 2022

Susan R. Grogan, P.P., A.I.C.P.
Acting Executive Director
Pinelands Commission
P.O. Box 389
New Lisbon, NJ 08064

Re: Proposed Amendments to the Pinelands Comprehensive Management Plan
Proposal Number: PRN 2022-110

Dear Ms. Grogan:

The Division of Land Resource Protection (DLRP) has completed a review of your proposed amendments to the Pinelands Comprehensive Management Plan, as published in the September 6, 2022 New Jersey Register. The DLRP provides these comments for your consideration regarding our freshwater wetlands jurisdiction in the Pinelands. The deadline for submission of written comments is November 5, 2022 and therefore these comments are timely submitted.

In general, the proposed amendments do not directly impact DLRP's regulatory authority in the Pinelands Area (Pinelands), since the Commission holds freshwater wetland jurisdiction within the Pinelands, and has more stringent regulatory requirements than DEP's in most cases. For those limited exceptions where DLRP has permitting authority, such as agriculture, airport runway clearing, maintenance projects, and work on Joint Base McGuire-Dix-Lakehurst, DLRP's review is limited to the discharge of fill to wetlands. Thus, it is unlikely these activities would be impacted by the proposed amendments to the threshold for review of water well withdraws.

However, DLRP shares your concern about impacts to groundwater levels within wetlands caused by installation of wells outside of wetlands and transition areas. We are keenly interested in and supportive of the proposed amendments, as they provide an example of how we might

address impacts to wetlands and transition areas throughout the State that have long concerned DLRP. We would welcome collaboration and discussion in this regard.

DLRP appreciates the opportunity to submit these written comments in response to the proposal at 54 N.J.R. 1668 for the written record.

Respectfully submitted,

Jennifer Moriarty, Director
Division of Land Resource Protection
NJ Department of Environmental Protection

C: Katrina Angarone, Assistant Commissioner, Watershed and Land Management
Patrick Ryan, Assistant Director, Division of Land Resource Protection
Ryan J. Anderson, Manager, Bureau of Freshwater Wetlands and Highlands Permitting

MEMORANDUM

From: Robert Kecskes
To: Susan R. Grogan, Acting Executive Director, NJ Pinelands Commission
Re: Proposed Amendments to the Pinelands Comprehensive Management Plan
Date: November 4, 2022

Dear Ms. Grogan,
I congratulate the New Jersey Pinelands Commission (Commission) for its effort to protect the natural resources of the Pinelands region. The introduction of an approach to protect the region's natural resources from excessive withdrawals from the Kirkwood-Cohansey (Cohansey) aquifer is long overdue. I make the following comments on the proposed revisions to the Pinelands Comprehensive Management Plan:

LOW FLOW MARGIN METHOD

The use of the New Jersey Department of Environmental Protection (NJDEP) Low Flow Margin (LFM) method will be valuable in assessing new withdrawals from the Cohansey Aquifer. However, caution is needed due to its scale and the manner in which the LFM threshold results are understood and employed.

As you know, the LFM is defined as the difference between the median September flow and the 7Q10 flow at the lowest elevation of each HUC-11 watershed. The NJDEP uses 25% of the LFM as a statewide planning threshold of excessive depletive and consumptive water loss from unconfined aquifer wells and surface water intakes. It has determined that this percentage can be removed from a HUC-11 watershed without causing adverse ecological impacts. If there is more water loss by current depletive and/or consumptive water withdrawals than this threshold, a HUC-11 is considered to be stressed. If there will be more water loss by current depletive and/or consumptive water allocations than this threshold, a HUC-11 is considered to be stressed at full allocation. The LFM method is not meant to replace more rigorous groundwater or surface water modeling or other detailed hydrogeologic-hydrologic assessment methods. Instead, it provides an estimate of water availability. It serves as a screening tool that can identify watersheds with potential water availability shortages that may require more detailed evaluations. The HUC-11s in New Jersey range in size from 3 to 349 square miles, and average about 60 square miles. HUC-11s are aggregated together to form 20 Watershed Management Areas

The threshold is set at the very bottom of the HUC watershed, where all the water from throughout the watershed is discharged. The threshold essentially represents the entire cumulative amount of water that can be depletively or consumptively withdrawn from the watershed in question. The NJDEP arrived at the 25% of the LFM limit by testing it in various watersheds and concluding that withdrawals in excess of the limit contributed to aquatic resource impairment. In consideration of the exceptional resources of the Pinelands region, the Commission is now proposing that 20% of the LFM threshold serve as the water availability limit for the HUC-11 watersheds in the Pinelands region.

It goes to say that if one assumes that the LFM threshold is protective of a HUC 11 watershed, one should also believe that the threshold is protective of a HUC 14 watershed. I believe that most water professional would concur with this assertion. Allow me to give a very simplified example of why I am emphasizing this notion.

Let us say that Pinelands Commission staff are evaluating a new request for a 0.2 million gallon per day (mgd) water allocation (0.1 mgd to be used upon approval) to serve a growth area in a hypothetical 100-square mile HUC-11 watershed that is comprised of ten 10 square-mile HUC- 14s. The NJDEP estimates that this HUC-11 watershed's September flow is 20 mgd and the 7Q10 is 10 mgd, for a LFM of 10 mgd, which translates to a 2.5 mgd NJDEP LFM threshold and a 2.0 mgd Pinelands LFM threshold. Now, let's say that there is already 0.5 mgd of existing streamflow loss in this HUC-11 and a potential full allocation loss of 1 mgd from these existing users. However, since the new withdrawal would use 0.1 mgd upon approval and 0.2 mgd at full allocation, there would be at total loss of 0.6 mgd in this HUC-11 upon approval of the growth area's request and 1.2 mgd at full allocation, well below the NJDEP 2.5 mgd and Pinelands 2.0 mgd LFM thresholds. Planning approvals would likely thus be granted. Of course, the planning approval would not supersede the more rigid adverse local impact analysis on wetlands that the applicant would be required of the Commission.

Let us now say that the existing withdrawals and the newly proposed withdrawal were all in the same HUC-14 watershed. If each of the ten 10 square-mile HUC-14 watersheds were extrapolated to have a Pinelands LFM threshold that is one-tenth of the HUC-11 watershed, each would have a Pinelands LFM threshold of 0.2 mgd. This would result in a 300% exceedance of the HUC-14 watershed with the combined new and current withdrawals, and a 600% exceedance at full allocation. Consequently, the evaluation of the proposal at the HUC-11 watershed level would have resulted in a potential approval that would have critically impacted a part of the watershed that seemed reasonable when assessing it on such a large scale. Utilization of the larger HUC-11s for water availability analysis is essentially "diluting" the negative effects in the HUC-14 watersheds.

It is realized that there are issues with the "transfer" of streamflow statistical information from a large HUC-11 watershed down to a smaller HUC-14 watershed. However, it is quite likely that the transfer would yield reasonable results. Furthermore, it should not be forgotten that most of the streamflow statistics to estimate September and 7Q10 flows were transferred from stream gages that are not located in the actual HUC-11s that were evaluated, that a good deal of "averaging" occurred due to the variation in watershed characteristics, and that recent streamflow patterns are evolving due to climate change, etc. In other words, the LFM threshold is not as precise as we would like it to be.

Based on the potential to approve water withdrawal projects that can severely impact local resources without realizing it, consequently, it is recommended that the Pinelands Commission revise its proposed amendment so as to review proposed withdrawals from the Cohansey Aquifer at the HUC-14 watershed level with streamflow statistical data extrapolated from the HUC-11 data. I am also making the same recommendation to the NJDEP in its development of the recently initiated NJ Statewide Water Supply

Plan. As you probably know, the Highlands Council has employed the HUC-14 watersheds for its water availability analysis. For the Pinelands, this can be implemented in three different ways.

First, the United States Geological Survey (USGS) can develop the water availability assessment for the HUC-14 that a proposed Cohansey Aquifer well would be located in. The additional fee should not be excessive since much of the current and full allocation water withdrawal and wastewater discharge information has already been collected and located. It would be a matter of extrapolating and transferring this information from the HUC-11 watershed to the HUC-14 watershed, correlating stream gage and partial record station data, and evaluating local topography and watershed characteristics to re-estimate stream low flows.

Second, the Pinelands Commission and the NJDEP can coordinate with the USGS to develop water availability estimates for HUC-14 watersheds. If this approach was acceptable, I would approximate that the results could be available in about two years.

Third, the Pinelands Commission itself can develop these estimates by transferring the existing HUC-11 watershed LFM estimates down to the HUC-14 level, and assuming that LFM threshold for the larger watershed can be prorated to area occupied by the HUC-14 watershed. In the example above, the 100 square mile HUC-11 watershed generated a 20% of the LFM availability of 0.02 mgd per square mile. If a HUC-14 watershed in that HUC-11 watershed was 15 square miles, water availability for that HUC-14 watershed would be estimated at 0.3 mgd.

Whichever approach was used, it would be significantly more protective of the ecological resources of the Pinelands region. It would also provide a much improved “road map” for the Commission and applicants to employ to identify where and how much water is available and where potential offsets should be implemented.

I should also note that the NJDEP is considering making modifications to the LFM method that appear to make more water available to the HUC-11s as part of the next NJ State Water Supply Plan (2020 – 2050). I make this comment since the Commission is considering adopting the current LFM statistics. Among the changes are reducing the baseflow effects caused by withdrawals from unconfined aquifers; the current LFM method assumes that baseflow is reduced by 90% of the withdrawal. Using rolling averages of demand, rather than one peak year, is also being contemplated. In addition, agricultural withdrawal demand is likely to be reduced to reflect a recent pilot project. On the other hand, including the effects of upstream HUC-11 withdrawals on downstream HUC-11s is a much more realistic approach. Nonetheless, the number of HUC-11 watersheds with surplus water availability would somewhat increase in New Jersey. And none of these changes would resolve the potential impairment of HUC-14 watersheds from being over-utilized. I am in the process of request that the next NJ State Water supply Plan perform its water availability assessment at the HUC-14 levels, and that the streamflows and peak water demands that are used in the analysis consider the effects of climate change.

SURFACE WATER WITHDRAWALS

The proposed amendment does not appear to address potential impacts that would be associated with public surface water withdrawals. It would seem possible that a growth area near a large stream or river might chose that source over an aquifer. An intake on a large stream or river, even if it was within the LFM threshold, could theoretically reduce surface water flow levels that could trigger accelerated ground water discharge to the waterway, and thus potentially affect important wetlands.

OUT-OF-BASIN TRANSFERS

Several HUC-11 watersheds in the Pinelands region are affected by confined aquifer pumpage along the New Jersey shore. Leakage in the Pinelands HUC-11 recharge area induced by these confined aquifer withdrawals are reducing water availability in these recharge areas. In fact, confined aquifer pumpage is the primary cause of the current LFM threshold exceedance in two Pinelands HUC-11s and a major contributor to exceedance to the LFM threshold in several other HUC-11s. One can expect these exceedances to increase as demand in the New Jersey shore communities grow. The Commission should call this to the attention of the NJDEP so that it can be raised as an issue in the next NJ State Water Supply Plan.

Related to the above is the Commission's policy to steer withdrawals from within the Pinelands region toward confined aquifers rather than the Cohansey Aquifer. As suggested above, withdrawals from confined aquifers can reduce groundwater levels in their recharge areas. If the Commission steers too many entities in the Pinelands region to confined aquifers that have their recharge areas also in the region, it appears possible that excessive surface and ground water declines can result. This might be especially true as many shore town are also using the same confined aquifers. Consideration should be given on whether impact analysis should be conducted in such cases.

OFFSETS

In the event that a proposed diversion cannot meet the LFM threshold, the amendments allow applicants to offset the diversion on a gallon-for-gallon basis, so that the proposed diversion, combined with all other allocations in the watershed, no longer exceeds LFM threshold. It is suggested that the amendments consider requiring the offsets to be guided toward the portion of the watershed most impacted (i.e., near where the wetlands are most severely reduced or where major streamflow depletion might be occurring).

LAND SUBSIDENCE/SEA LEVEL RISE

A recent investigation conducted by Rutgers University concluded that groundwater pumpage in coastal New Jersey partially contributed to land subsidence that in turn increased the perils of sea level rise. It is hoped that the Commission would request more in-depth analysis of this phenomenon since subsidence and sea level rise will have such a large impact on the water resources of the Pinelands. See link below:
https://njclimateresourcecenter.rutgers.edu/climate_change_101/sea-level-rise-in-new-jersey-projections-and-impacts/

IRRIGATION SOIL MOISTURE SYSTEMS

The proposed amendment will be requiring mandatory soil moisture/rain sensors for all landscape irrigation systems. While rain sensors are certainly in order, the Commission should give some thought about requiring soil moisture sensors. As inferred, sensors trigger irrigation as drier conditions prevail. As the Pinelands region evolves into future drought conditions, these irrigation systems will be activated more frequently. If the customers using these systems are served by a purveyor that uses the Cohansey Aquifer, ground water levels will decline at a faster rate and spread further. Drought warnings are typically of little help. Some of the highest demand periods occur during drought warnings, primarily as a result of irrigation. It is recommended that the Commission reconsider this recommendation. Rather, using native vegetation for landscaping would be more prudent.

Before I end, I would like to provide you with some of my background. I have been involved in water issues for nearly 50 years including being involved in the development of the last three State Water Supply Plans. I have served as the Chief of the Water Supply Planning Section for 25 years, and I am now working as a part-time freelance environmental consultant.

Some of the above topics I described are rather complex. Please let me know if you have any questions.

Thank you and good luck with your proposed plan amendment!

Robert Kecskes
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From: Rebecca <rebeccagroovypeace@gmail.com>
Sent: Wednesday, October 12, 2022 7:11 AM
To: Planning, PC [PINELANDS]
Subject: [EXTERNAL] In support of water/ aquifer protection

Greetings! I am a young person who cares about protecting water.

The Kirkwood-Cohansey (K-C) aquifer is a critical source of water in the Pinelands. Ninety percent of the water found our streams, rivers and wetlands is supplied by this aquifer system. I support all of these proposed changes to protect the aquifer, but I am concerned about a few others as noted below:

• Diversions of water for agricultural and horticultural uses continues to be exempt from these regulations. We believe that this categorization is overly broad, especially given the rise of new-technology operations within the agricultural and horticultural industries. Depending on how the Pinelands Commission handles applications for cannabis cultivation facilities, these water-intensive horticulture operations may experience much growth in the near future. As the Pinelands approaches buildout, and sea level rise pushes development pressure inland, the Commission needs to be prepared for conflicting demands on the aquifer. I respectfully urge the Commission to remove horticulture use from exemption to strict compliance with these new regulations.

• Specifically, the draft amendment offers “prohibitive cost” as an acceptable loophole. Allowing this rationale opens the door for applicants to justify overburdening the Kirkwood-Cohansey aquifer simply because it is cheaper and easier. This lack of clarity around what defines a “viable” alternative fails to match the efforts in other areas of the draft language which attempt to reduce ambiguity to best protect the aquifer. This loophole could seriously undermine the new regulations unless the language is made tighter and more objective.

• Among wells that will not be subject to the new standards are replacements of wells with at least 50,000 gallons of water per day—provided that the new well is the same depth and pump capacity, is from the same aquifer, and is within 100 feet of the existing well. I recommend adding that the new well must also be within the same HUC-11 watershed, since placing the well in a different watershed may present a different ecological impact.

Thanks for your time and consideration! Take care, Rebecca

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Kevin J. Coakley
Partner
KCoakley@connellfoley.com

May 25, 2023

VIA EMAIL AND FEDEX
Susan R. Grogan, P.P., AICP
Acting Executive Director
Pinelands Commission
P.O. Box 359
New Lisbon, New Jersey 08064
planning@pinelands.nj.gov

Re: Written Comments of Clayton Companies on Pinelands Rule Proposal Set Forth at 55 N.J.R. 577(a)

Dear Ms. Grogan:

This firm represents Clayton Companies ("Clayton"), which mines sand in the Pinelands Region. We write to comment on the Pinelands Commission's proposed rule concerning diversions of water in the Pinelands, *i.e.*, 55 N.J.R. 577(a) (the "Proposed Rule" or the "Rule Proposal"). Clayton thanks the Pinelands Commission for its consideration of Clayton's comments on the original version of this Rule Proposal, but notes two remaining issues in the current version:

First, proposed N.J.A.C. 7:50-2.11 defines "nonconsumptive use" as the "use of water diverted from surface or ground waters in such a manner that at least 90 percent of the diverted water is returned to the source." That definition is fine in isolation, but the "Economic Impact" section of the Rule Proposal states that a resource extraction operation is only exempted from the "hydrogeologic modeling required at N.J.A.C. 7:50-6.86(d) if it can ***demonstrate*** that the diversion constitutes a nonconsumptive use." 55 N.J.R. at 580 (emphasis added). The Economic Impact section further states that "[t]o demonstrate that the application meets" this standard,

> a resource extraction operation will have to provide a hydrogeologic report that identifies the volume of the diversion, the volume of water to be returned to the source, a description of the route of return to the source, the methodology used to quantify the volume of water returned to the source, and a description of any other existing or proposed water diversions or discharges from the parcel.
>
> [Ibid.]

These requirements are reflected in proposed N.J.A.C. 7:50-4.2(b)6xi.

However, because of the nature of sand mining, it is virtually impossible for a such a sand mining operation to calculate the exact amount of water it returns to the source, as is explained in greater detail in the enclosed report prepared by by Brian A. Blum, Certified Professional Geologist, dated May 25, 2023. A sand mine operation does not return the water to the ground through a single metered pipe. Rather, water returns to the ground through over land runoff as much as by piping. There are also too many variables to account for, *e.g.*, rainfall on the mined sand, hours of direct sunlight, evaporation, *etc*.

In short, hydraulic/mechanical sand mining should be exempted based on NJDEP's determination (see attached NJDEP emails marked as **Exhibit A** and **Exhibit B** hereto) that such operations return more than 90% of the water to the source. Such operations should not be required to demonstrate their rate of consumption with measurements and calculations. Clayton therefore suggests that proposed N.J.A.C. 7:50-4.2(b)6xi and proposed N.J.A.C. 7:50-6.86(d)2iii be revised as shown on the enclosed redline of the Proposed Rule to ensure that a hydraulic/mechanical sand mining operation's hydrogeologic report may be prepared based on the assumption that such an operation returns 90% of diverted water back to the aquifer from which it was diverted.

Second, proposed N.J.A.C. 7:50-6.86(d)2iii exempts:

> Any proposed diversion for a resource extraction operation that constitutes a nonconsumptive use, provided the water returned to the source is not discharged to a stream or waterbody or otherwise results in offsite flow, and ***the diversion and return are located on the same parcel***.
>
> [55 N.J.R. at 582 (emphasis added).]

"Same parcel" should be defined. Fortunately, the Pinelands Commission's response to comments 1 through 4 in the Rule Proposal (attached) states that a parcel "will be considered as all tax lots that are a part of a resource extraction operation for which a municipal approval has been reviewed by the Commission, determined to be consistent with all CMP standards and allowed to take effect pursuant to N.J.A.C. 7:50-4.37 and 4.40." 55 N.J.R. at 578. We would just ask that the Commission add this definition to proposed N.J.A.C. 7:50-6.86(d)2iii along with the other clarifications to that subsection shown on the enclosed redline.

All of the above comments are addressed in greater detail in the above-referenced Blum report (enclosed) and reflected in the above-referenced redline (enclosed). Clayton requests that the Commission revise the Proposed Rule accordingly.

Respectfully submitted,

/s/Kevin J. Coakley

Kevin J. Coakley

Enclosures
cc: William Layton
Robert Baranowski, Esq.
William Clayton
Gordon Milnes, P.E.
Brian Blum, C,P.G., LSRP
William J. Castner, Esq.
Ryan A. Benson, Esq.

EXHIBIT A

From: Domber, Steven [DEP] <Steven.Domber@dep.nj.gov>
Sent: Tuesday, October 11, 2022 5:12 PM
To: Brian Blum <bblum@Langan.com>
Subject: [External] RE: NJ Geological and Water Survey Technical Memorandum 13-3

Hi Brian, Sorry for the delay, but I was waiting for a confirmation on part of my response.

You are interpreting the report correct, however we have updated our methodology since then. We are currently assuming a 5% consumptive use rate for mining activities. This percentage was used in the 2017 Water Supply Plan and will also be used in the 2023 update. The value was derived and then updated based upon an initial literature review and then modified based upon feedback from government and industry experts. Overall the research is pretty sparse on the subject matter (at least it was when we initially derived the 12% sometime back in the early 2000s). I agree that 12% is

high, but there is definitely some increased evaporation occurring as a result of the water's exposure to sunlight and atmosphere (plus other water quality related impacts possible as well).

The water allocation program typically views sand and gravel operations as an 'undiminished return' which they define as less than 10% consumptive so presumably your client would also fall into that category- but the water allocation program would make the final determination depending on the specifics of the operation.

Hope that helps clarify,

Steve

Steven Domber
Section Chief, Water Supply Modeling and Planning
New Jersey Geological and Water Survey
New Jersey Department of Environmental Protection
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From: Brian Blum <bblum@Langan.com>
Sent: Monday, October 10, 2022 9:24 AM
To: Domber, Steven [DEP] <Steven.Domber@dep.nj.gov>
Subject: [EXTERNAL] RE: NJ Geological and Water Survey Technical Memorandum 13-3

Steven,

Good morning. Just a friendly reminder of the email inquiry I sent you last week (please see below).

Brian

Brian Blum, CPG, LSRP
Associate Principal

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From: Brian Blum
Sent: Wednesday, October 5, 2022 2:07 PM
To: 'steven.domber@dep.nj.gov' <steven.domber@dep.nj.gov>
Subject: NJ Geological and Water Survey Technical Memorandum 13-3

Steven,

Good afternoon and I hope all is well. I just called and left you a voicemail message. The purpose of my call was to gain some clarity with regard to the above-referenced Technical Memorandum that I am aware you co-authored. Specifically, my inquiry is related to Table 1 – "Water Use Groups and Types with Annual and Monthly Consumptive Use Coefficients". Under the water use type of "mining", the consumptive use coefficient is 0.12. My question is how was that value derived because my client, who mines sand via a hydraulic dredging process, believes that their diversion is associatred with little, if any, consumptive water use? Water that is diverted during hydraulic dregding of a dug pond for sand minng is almost immediately returned to the pond after the sands that are dredged are screened.

If you get a moment, I would greatly appreciate a call back to diuscuss this matter. The best way to reach me is via my cell phone as I am not in my office every day.

Brian

Brian Blum, CPG, LSRP
Associate Principal

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EXHIBIT B

From: Hudgins, Robert [DEP] <Robert.Hudgins@dep.nj.gov>
Sent: Monday, April 24, 2023 1:24 PM
To: Brian Blum <bblum@Langan.com>
Subject: [External] RE: Consumptive Use Question

Brian,

For most sand and gravel operations, we assume the consumptive use is at most 10%. I believe our source of data is a USGS report on Water Use in the United States. The report breaks down the water use by type. Older reports would estimate the consumptive use of water for mining operations of different types. However, the report only calculated the consumptive use for mining until 1995. Rough data is available through the USGS website: USGS Water Use Data for New Jersey.

The water supply plan is still being finished up, but I believe it is still the goal to publish it by the end of this year.

Sincerely,
Rob Hudgins

From: Brian Blum <bblum@Langan.com>
Sent: Friday, April 21, 2023 1:35 PM
To: Hudgins, Robert [DEP] <Robert.Hudgins@dep.nj.gov>
Subject: [EXTERNAL] Consumptive Use Question

Rob,

Good afternoon and I hope all is well. I am working for a sand mining interest who diverts water in support of their hydraulic sand dredging operations, and for the most part the diverted water is returned undiminished (except that which may evaporate during sand processing [i.e., screening] or latent moisture that sticks to the dredged sands that are trucked off).

I am wondering what the NJDEP assigns for consumptive use for sand mining operations, and if you can send me any citations for the published reference that Department relies upon?

Lastly, do you know when the Department is going to issue the next "Water Supply Plan"?

I greatly appreciate any feedback you can offer.

Brian

Brian Blum, CPG, LSRP
Associate Principal

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25 May 2023

Via email: planning@pinelands.nj.gov

Susan R. Grogan, P.P., AICP
Acting Executive Director
Pinelands Commission
P.O. Box 359
New Lisbon, New Jersey 08064

Re: Pinelands Comprehensive Management Plan
Proposed Substantial Changes – N.J.A.C. 7:50-2.11, 4.2, and 6.86
Langan Project No. 101022401

Dear Ms. Grogan:

I am employed by Langan Engineering and Environmental Services, Inc. On behalf of the Clayton Companies of Wall Township, New Jersey ("Clayton"), on 2 November 2022, I provided you with written comment to the Commission's 5 September 2022 proposed amendments to the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50-1.6, 2.11, and 6.86 (referred to herein as the "New Rule"). This letter is in follow-up to my 2 November 2022 letter and addresses the Commission's 3 April 2023 proposed substantial changes to the proposed New Rule. Based on comments the Commission received in connection with the proposed New Rule, the Commission is proposing substantial changes to recognize the impacts of the New Rule on the resource extraction industry, such as Clayton who mines sand and gravel from the Kirkwood-Cohansey aquifer utilizing mechanical/hydraulic dredging procedures.

The Commission's responses to several public comments on the New Rule document that the proposed substantial changes were meant to mitigate unintended negative impacts to the resource extraction industry. However, addressed herein are select instances where the specific, detailed language of the proposed substantial changes to the New Rule apparently fails to account for the manner in which mining operations are performed. Therefore, some of the proposed substantial New Rule changes will still pose a significant burden on the resource extraction industry.

The New Rule is apparently written to address the most common types of water diversions that are either from a water supply well or surface water through a fixed intake structure, whereby water is piped and the flow can be measured and recorded by common metering methods. In the case of the resource extraction industry, mechanical/hydraulic dredging operations divert water and sand together in a manner that is altogether different than the typical diversion from a water supply well or fixed surface water intake structure. Exact or empirical measurements of flow to account for the water diverted and returned in an undiminished manner is impracticable for the resource extraction industry. In addition, the specific location from which the diverted water is removed in the resource extraction industry is not typically from a fixed point, but instead from a water body where the point of diversion is dynamic (i.e., not static or fixed) as is the water

body itself. The water that is returned to the environment during mechanical/hydraulic mining operation is also not to a specific location. While the water is returned in the general proximity from where it was diverted, and in a manner that does not impact the aquifer or surface water body that is hydraulically connected to the aquifer, the specific location of the water that is returned cannot be pinpointed as this too is as inherently dynamic as the mining operations.

Outlined below is specifically why the New Rule remains unworkable with respect to diversions of groundwater associated with non-consumptive uses that are common to the resource extraction industry and especially mechanical/hydraulic mining operations. The New Rule, even with the proposed substantial changes, will still adversely impact Clayton's mining operations that rely on the diversion of water from the Kirkwood-Cohansey aquifer.

.

Background

This section contains some information that was also provided in my 2 November 2022 comment letter to the Commission, but I thought it bears repeating and an expansion to help the Commission better understand the nature of the resource extraction industry as it relates to the diversion of water. Clayton mines sand from the Kirkwood-Cohansey Formation ("Kirwood-Cohansey") at four (4) locations in the following three Townships within the Pinelands Area: Woodland, Jackson, and Lacey. While my observations herein apply to the Clayton mines, they also likely apply to all sand mines that utilize mechanical/hydraulic dredging to mine sand.

Clayton's mining operations rely upon mechanical sand excavation to the water table to create a manmade pond and then utilizes the more energy efficient process of mechanical/hydraulic dredging. The dredge operation consists of mechanically cutting sand at the base of the manmade pond while simultaneously pumping (i.e., hydraulic or suction dredging) water with entrained sand through an approximate 18-inch diameter plastic pipe to a processing plant. The water diversion, on a gallon per minute basis, is estimated based on the manufacturer's dredge pump capacity (not empirically measured), and is typically overestimated because the total volume pumped includes the solids (at approximately 25 to 30%) that are entrained in the water. The total water diverted on a daily, monthly or annual basis is derived based on the capacity of the dredge pump and the total hours of dredging operations.

The specific point of diversion varies constantly because the dredge location routinely changes, and with time the area of the pond that is dredged changes too. The dredged water and solids (e.g., sand and gravel) mixture is routed to a processing plant where the solids are screened and sorted. Water diverted from the pond to extract the sand and gravel is eventually returned to the pond via pipes, overland flow, or directly to the ground. The water is generally returned from where the water is extracted, but not at the exact point of extraction or not always necessarily directly to the pond from which the extraction occurred. But ultimately, the water is returned to the pond or to the ground to percolate to the groundwater that is in hydraulic connection with the pond.

Specific Comments To The Proposed Substantial Changes to the New Rule

1. 7:50-2.11 Definitions - The definition of "nonconsumptive use" means the use of water diverted from surface or ground waters in such a manner that at least 90 percent of the

diverted water is returned to the source surface or ground water at or near the point from which it was taken.

Large resource extraction operation may return water over a thousand feet from the specific point in the pond from where it was diverted because the mining pond can be on the order of several acres and the facility can extend hundreds of acres. Therefore, in some specific circumstances, one may interpret the return water at a resource extraction site to not be "at or near" the point of extraction because as mentioned above, the extraction and return water is dynamic and the distance between the two can change over time under normal operating conditions. However, water is returned to the same "parcel" from which it is diverted, and to the same hydraulic flow regime, provided that the word "Parcel" is defined as all tax lots that are part of a resource extraction operation in the text of the regulation.

2. 7:50-4.2(b)6xi - The new provision requires submission of a hydrogeologic report that identifies the volume of the diversion, the volume of water to be returned to the source, a description of the route of return to the source, the methodology used to quantify the volume of water returned to the source, and a description of any other existing or proposed water diversions or discharges on or from the parcel.

The resource extraction industry cannot empirically derive the information cited to be included in a hydrogeologic report as it would be impracticable. Instead, the following information can be provided:

- Volume of the diversion – the volume is to be estimated based on the capacity of the pumping equipment and time of dredging operations.
- Volume of water returned to the source – the volume is to be derived using literature that is currently accepted and used by NJDEP's Bureau of Water Allocation. The NJDEP acknowledges that the resource extraction industry consumes between 5 and 10 percent of water that is diverted[1]. The losses are due to evaporation and latent moisture adhering to the dredged sand and gravel.
- The methodology used to quantify the volume of water returned to the source is the difference between the estimated volume extracted as outlined above and the percent consumed based on NJDEP literature. There is no practicable way of empirically deriving the exact volume of water returned on a day-to-day basis by the resource extraction industry.
- A description of other existing or proposed water diversions at a typical mining operation will likely only include a minimal diversion (less than 2,000 gallons per day) from a well in support of worker sanitary needs.

3. 7:50-6.86(d)2iii - "Any proposed diversion for a resource extraction operation that constitutes a nonconsumptive use, provided the water returned to the source is not discharged to a stream or waterbody or otherwise results in offsite flow, and the diversion and return are located on the same parcel."

[1] See attached emails from NJDEP.

Parcel as defined in response to New Rule Comments 1, 2, 3, and 4 and as set forth above should be defined in the regulation to avoid any ambiguity.

Conclusion

Clayton has been operating mines in the Pinelands for decades with each mine diverting water under NJDEP Water Allocation Permits. There are no documented impacts associated with water diversions for hydraulic dredging from manmade ponds as the water is returned to the water table (i.e., the same hydrogeological flow regime) in an undiminished manner. Therefore, mining operations do not affect water levels, stream flow, or the ecological environment. While the Commission has recognized and acknowledged that the 5 September 2022 proposed New Rule would adversely affect the resource extraction industry, the proposed significant changes proposed on 3 April 2023 includes specific sections that will burden the industry as written, and therefore those specific sections should be modified accordingly.

Sincerely,
Langan Engineering and Environmental Services, Inc.

Brian A. Blum, CPG, LSRP
Associate Principal

BAB:mf

cc: Kevin J. Coakley, Esq.
William J. Castner, Esq.

Full text of the proposed changes to the proposed amendments follows (additions to proposal indicated in italicized boldface ***thus***; deletions from proposal indicated in italicized cursive brackets *[*thus*]*):

SUBCHAPTER 1. GENERAL PROVISIONS

7:50-1.6 Fees

(a) (No change from proposal.)

(b) (No change.)

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(c) (No change from proposal.)

(d)-(l) (No change.)

SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings ascribed to them.

…

"Divert" or "Diversion" means the taking of water from a river, stream, lake, pond, aquifer, well, other underground source, or other waterbody, whether or not the water is returned thereto, consumed, made to flow into another stream or basin, or discharged elsewhere.

…

"Nonconsumptive use" means the use of water diverted from surface or ground waters in such a manner that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken.

…

"Stream low flow margin" means the difference between a stream's *normal dry-season flow (*September *M*edian *F*low*) and drought flow [* its statistical flow, which is the seven-day flow average in the 10-year period for the stream*]* **(7Q10) as reported in the New Jersey Statewide Water Supply Plan, New Jersey Department of Environmental Protection, 2017, New Jersey Water Supply Plan 2017-2022: 484p, http://www.nj.gov/dep/watersupply/wsp.html, as amended and supplemented.**

…

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"Well" means a hole or excavation deeper than it is wide, that is drilled, bored, core driven, jetted, dug, or otherwise constructed for the purpose of the removal of, investigation of, or exploration for water.

…

"Zone of influence" means the area of ground water that experiences an impact attributable to a pumping well.

…

SUBCHAPTER 4. DEVELOPMENT REVIEW

7:50-4.2 Pre-application conference; application requirements

(a) (No change).

(b) Application requirements

1.-5. (No change).

6. Application for resource extraction: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for resource extraction shall include at least the following information:

i.-x. (No change).

xi. If the application includes a proposed diversion from the Kirkwood-Cohansey aquifer, a hydrogeologic report that ~~identifies~~estimates the volume of the diversion~~, the volume of water to be returned to the source~~ for the NJDEP Water Allocation Permit, , a description of the route of return to the source, the methodology used to ~~quantify~~estimate the volume of water ~~returned to~~diverted from the source and a description of any other existing or proposed water diversions or discharges on or from the parcel. For the volume of the diversion and the methodology used to quantify the volume of water returned to the source, the applicant shall provide that diversion information that is already required by NJDEP for a Water Allocation

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Permit. ***The report shall also include a map that depicts the location of the diversion, the location of the return to***

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source, the location of all existing or proposed resource extraction operations and the location of all wetlands on or within 300 feet of the parcel on which the diversion is proposed.

SUBCHAPTER 6. MANAGEMENT PROGRAMS AND MINIMUM STANDARDS

7:50-6.86 Water management

[(a) Interbasin transfer of water between watersheds in the Pinelands should be avoided to the Maximum extent practical. In areas served by central sewers, water-saving devices such as water saving toilets, showers and sink faucets shall be installed in all new development.]

[(b)] **(a)** Water shall not be exported from the Pinelands except as otherwise provided [in] **at** N.J.S.A. 58:1A-7.1.

[(c) All wells and all increases in diversion from existing wells which require water allocation permits from the New Jersey Department of Environmental Protection shall be designed and located so as to minimize impacts on wetlands and surface waters. Hydrologic analyses shall be conducted in accordance with the New Jersey Department of Environmental Protection Guidelines for Water Allocation Permits, with an Appendix on Aquifer-Test Analysis Procedures, New Jersey Geological Survey Report GSR 29, 1992, incorporated herein by reference, as contained in pages 53 through 91 of the Technical Manual for Water Supply Element, Bureau of Water Allocation, Water Allocation Permits dated May 19, 1993, as amended.

(d) All applications for the development of water supply wells or the expansion of existing water distribution systems shall address measures in place or to be taken to increase water conservation in all areas to be served by the proposed well or system. This shall include efforts

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by water purveyors and local governments to reduce water demands by users and to reduce losses in the supply and distribution system.

(e) Except for agricultural uses, all new potable and non-potable water supply diversions of more than 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer as a source of water supply and new increases in existing potable and non-potable water supply diversions of over 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer may be permitted only if it is demonstrated that:

1. No viable alternative water supply sources are available; or

2. The proposed use of the Kirkwood-Cohansey aquifer will not result in any adverse ecological impact on the Pinelands Area.]

(b) A diversion that involves the interbasin transfer of water *from sources within* [in] the Pinelands Area between the Atlantic Basin and the Delaware Basin, as defined at (b)1 and 2 below, or outside of either basin, shall be prohibited.

1.-2. (No change from proposal.)

(c) (No change from proposal.)

(d) A new diversion or an increase in allocation from either a single existing diversion source or from combined existing *and new* diversion sources in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer, that results in a total diversion of 50,000 gallons of water per day or more (hereafter referred to as "proposed diversion") shall meet the criteria and standards set forth at (d)3 through 9 below. "Allocation" shall mean a diversion permitted pursuant to a Water Allocation Permit or Water Use Registration Number issued by the New Jersey Department of Environmental Protection pursuant to N.J.A.C. :19.

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1. (No change from proposal.)

2. **The standards set forth at (d)3 through 9 below shall not apply to:**

i. A new well that is to replace an existing well, provided the existing well is sealed in accordance with N.J.A.C. 7:9-9*D-3* and the new replacement well will:

(1)-(3) (No change from proposal.)

(4) Be located within 100 feet of, and in the same HUC-11 watershed as, the existing well; *[or]*

ii. Any *proposed* diversion that is exclusively for agricultural or horticultural use*; or [.]*

iii. Any proposed diversion for a resource extraction that constitutes a nonconsumptive use, provided the water is returned to or near the source from which it was diverted (e.g., the same pond/lake or adjacent hydrologically connected ground from which it was diverted, or a pond/lake or ground that is adjacent to and hydrologically connected to the pond/lake or ground from which it was diverted) and is not discharged to a stream or other different waterbody or otherwise results in offsite flow, and the diversion and return are located on the same parcel. For purposes of this subsection, "parcel" will be considered as all tax lots that are part of a resource extraction operation for which a municipal approval has been reviewed by the Commission, determined to be consistent with all CMP standards and allowed to take effect pursuant to N.J.A.C. 7:50-4.37 and 4.40. To demonstrate that the proposed diversion for a resource extraction constitutes a nonconsumptive use, the resource extraction operation shall provide that diversion information that is already required by NJDEP for a Water Allocation Permit. NJDEP determinations as to the

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percentage of diverted water that is generally returned to the source by resource extraction operations shall be determinative.

3.-5. (No change from proposal.)

6. A proposed diversion shall be deemed to have an adverse regional impact if it, combined with all *current depletive-consumptive net use* *[*existing permitted allocations*]* **in the same HUC-11 watershed, exceeds 20 percent of the stream low flow margin for the year of peak use**. ***For this analysis, applicants shall use Appendix A of*** *[*established in*]* **the New Jersey Statewide Water Supply Plan at *https://www.state.nj.us/dep/watersupply/pdf/wsp-appendix-a.pdf*** *[*https://www.nj.gov/dep/watersupply/pdf/wsp.pdf*]* ***as amended and supplemented, and refer to*** *[*for*]* **the HUC-11 watershed where the proposed diversion will be located (hereafter referred to as "the affected HUC-11 watershed").** ***Applicants shall use the tables in Appendix A entitled "Summary of HUC11 area, Low Flow Margin and***

Remaining Water" and specifically, the values for the HUC-11 Low Flow Margin in the column labeled LFM(mgd) and the values for current depletive-consumptive net use in the column labeled "Current Net Dep-Con (mgd)".

i.-iii. (No change from proposal.)

7.-9. (No change from proposal.)

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June 1, 2023

Via E-Mail (planning@pinelands.nj.gov)

Susan R. Grogan, P.P., AICP
Executive Director
Pinelands Commission
P.O. Box 359
New Lisbon, NJ 08064

Re: Comments on Pinelands Comprehensive Management Plan
Notice of Proposed Substantial Changes Upon
Adoption to Proposed Amendments: N.J.A.C. 7:50-1.6, 2.11,
and 6.86, 55 N.J.R. 577(a), April 13, 2023
Proposed September 6, 2022 at 54 N.J.R. 1668(a)

Dear Ms. Grogan:

This firm represents Whibco of New Jersey, Inc. and Whibco, Inc. (collectively "Whibco"). On behalf of Whibco, please accept the following comments on the notice of proposed substantial changes upon adoption of proposed amendments to the Comprehensive Management Plan ("Amended Rule Proposal") noted above, in addition to the comments provided verbally during the hearing on the Amended Rule Proposal that was conducted virtually on May 3, 2023.

As noted in our letter submitted in connection the initial rule proposal on November 4, 2022, Whibco conducts permitted resource extraction activities on multiple sites throughout Cumberland County, including areas within the Pinelands. In connection with such activities involving the processing of sand or other earthen materials that are conducted by mechanical or hydraulic dredging, Whibco obtains water allocation permits from the State of New Jersey, Department of Environmental Protection ("NJDEP"). Such use is generally considered "nonconsumptive" under the Water Supply Management Act, meaning the water is "diverted from surface or ground waters in such a manner that it is returned to the surface or ground water at or near the point from which it was taken without substantial diminution in quantity or substantial impairment of quality." See N.J.S.A. 58:1A-3.

Based on the above, Whibco supports the addition of a definition of nonconsumptive use at N.J.A.C. 7:50-2.11 as set forth in the Amended Rule Proposal, specifically to clarify that this term "means the use of water diverted from surface or ground waters in such a manner that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken."

Consistent with this newly added definition, proposed N.J.A.C. 7:50-6.86(d)2iii exempts "Any proposed diversion for a resource extraction operation that constitutes a nonconsumptive use, provided the water returned to the source is not discharged to a stream or waterbody or otherwise results in offsite flow, and the diversion and return are located on the same parcel." While the term "parcel" is not defined, Whibco supports the recognition in the responses to comments set forth at 55 N.J.R. 578 that a parcel "will be considered as all tax lots that are a part of a resource extraction operation for which a municipal approval has been reviewed by the Commission, determined to be consistent with all CMP standards and allowed to take effect pursuant to N.J.A.C. 7:50-4.37 and 4.40." 55 N.J.R. at 578. It is respectfully suggested that a definition of "parcel" consistent with the response to the comment noted above should be added to the Amended Rule Proposal at N.J.A.C. 7:50-2.11 for adoption.

Lastly, the Commission's responses to comments on the initial rule proposal also makes clear that "[i]f a resource extraction company can demonstrate that its operation constitutes a nonconsumptive use of water, then, by definition, there will be no interbasin transfer of water. Nonconsumptive use is being defined to mean that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken. No interbasin transfer of water will occur if 90 percent of the diverted water is returned in this manner." It is respectfully suggested that a provision consistent with the response to the comment as noted above should be added to the Amended Rule Proposal at N.J.A.C. 7:50-6.86 for adoption.

Whibco reserves the right to submit additional or supplemental comments as may be warranted upon the publication of any further amended or revised Rule Proposal concerning the subject matter set forth herein, and Whibco further reserves the right to seek judicial review of any final, adopted rule addressing the above issues.

Very truly yours,

Robert S. Baranowski, Jr.

RSB/amb

cc: Whibco, Inc.
Whibco of New Jersey, Inc.

JOSEPH GALLAGHER Jr., MPA
TOWNSHIP ADMINISTRATOR

May 31, 2023

planning@pinelands.nj.gov
Pinelands Commission Office
P.O. Box 359
New Lisbon, NJ 08064

Re: Written Formal Comments – Township of Winslow
Proposed Amendments to the Pinelands Comprehensive Management Plan

Dear Ms. Grogan:

Proposed amendments to the Pinelands Comprehensive Management Plan related to the Kirkwood-Cohansey aquifer and water management in the Pinelands Area were published in the April 3, 2023, issue of the New Jersey Register. The amendments constituted revisions to the rules proposed by the Commission in September 2022 and were being made in response to public comments received on the earlier rule proposal.
In response to the proposed amendments published in the April 3, 2023 issue of the New Jersey Register and the responses to the public comments, the Township of Winslow provides the following comments.

1) The previously submitted comment regarding the use of historical aquifer pump test data in order to determine if a proposed diversion will be deemed to have an adverse local impact in the Pinelands Area was not addressed. Winslow Township recommends the allowance of historical aquifer pump test data in order to determine if a proposed diversion will be deemed to have an adverse local impact in the Pinelands Area ***(Proposed 7:50-6.86(d)7, New Jersey Register, Tuesday, September 6, 2022 (CITE 54 N.J.R. 1676))*** A request for a pump test waiver is currently accepted by the NJDEP Division of Water Supply and Geoscience for hydrogeological reports in certain instances where recent and applicable pump test data can be used to evaluate the hydrogeological impacts on the aquifer and watershed. A waiver from pump test requirements is specified in the water supply allocation permits rule N.J.A.C. 7:19-2.2(c).

2) Winslow Township would like to reiterate its opposition to the addition of the proposed regulations in 7:50-6.86(d), New Jersey Register, April 3, 2023 (CITE 54 N.J.R. 1677). The simultaneous redundant reviews of the same technical reports is time-consuming and an inefficient use of agency resources.

MUNICIPAL COMPLEX 125 South Route 73, Braddock, NJ 08037-9422
Telephone: (609) 567-0700 Email: administration@winslowtownship.com

Two different government agencies reviewing the same technical reports can become problematic, especially when the scientific conclusions drawn from the reports differ between the two agencies. While we can all agree that protection of the Kirkwood-Cohansey aquifer is important, the regulatory mechanism to protect this aquifer should come from the New Jersey Department of Environmental Protection, Division of Water Supply and Geoscience with any proposed regulations being incorporated in N.J.A.C. 7:19.

The Township appreciates the opportunity to provide comments regarding these proposed changes and looks forward to a response.

Regards,

Joseph Gallagher
Township Administrator

JG/mb
Enc.

cc: Mayor and Township Committee (via email)
Louis Bowman, Superintendent of Municipal Utilities, Township of Winslow (via email)
Monica Bell, Project Manager, Remington and Vernick Engineers (via email)
Steven Donohue, Utilities Engineer, Remington and Vernick Engineers (via email)
Dennis Yoder, Director of Engineering, Remington and Vernick Engineers (via email)

MUNICIPAL COMPLEX 125 South Route 73, Braddock, NJ 08037-9422
Telephone: (609) 567-0700 Email: administration@winslowtownship.com

Interbasin Transfer (N.J.A.C. 7:50-6.86(b))
17. COMMENT: There are unavoidable interbasin transfers because some diversions that are located near the border of the Atlantic and Delaware River Basins are pulling water from both basins. This is difficult for municipalities whose land areas straddle both basins and can be problematic for municipalities that currently depend on interbasin transfer for a potable water source and wastewater treatment. Winslow Township purchases 1.5 million gallons per day (MGD) from New Jersey American Water that is sourced from the Delaware River Basin and is mostly transferred to the Atlantic Basin. (4)
RESPONSE: The Commission thanks the commenter for raising this concern. The Commission is aware that for Winslow Township and other municipalities, water procurement involves the transfer of water between the Atlantic and Delaware River Basins and that these transfers are from diversions located outside the Pinelands Area. Therefore, the Commission is proposing to amend N.J.A.C. 7:50-6.86(b) to clarify that the prohibition against interbasin transfers applies only to transfers of water "from sources within" the Pinelands Area. It should be noted that water sourced from outside the Pinelands Area that is distributed to development within the Pinelands Area through a public or community water system will not result in an interbasin transfer, as the water will be conveyed back out of the Pinelands Area through the public sanitary sewer system or completely consumed.

Water Management Standards/50,000 gpd Threshold (N.J.A.C. 7:50-6.86(d))
18. COMMENT: The proposed rule does not clearly state that any proposed increase in diversion over 50,000 gpd triggers review. (4)
RESPONSE: In its initial notice of proposal, the Commission expanded the scope of wells that will be subject to the water management standards by lowering the water volume threshold from 100,000 gallons of water or more per day to 50,000 gallons of water or more a day. The proposed amendments at N.J.A.C. 7:50-6.86(d) specify that the 50,000 gallon per day threshold includes all of an applicant's existing diversions in the same HUC-11 watershed, in addition to the new or increased diversion. In response to the commenter's request for greater clarification, however, the Commission is proposing to add "and new" at N.J.A.C. 7:50-6.86(d) pertaining to diversions in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer. Examples and additional explanations of how this threshold will be calculated and applied can be found in the initial notice of proposal.

Rick Prickett
181 Vincentown Road
Pemberton, New Jersey 08068

May 15, 2023

Pineland Commissioners,

I would like to express my support for the previously proposed amendment to the CMP related to water withdrawals from the Kirkwood-Cohansey aquifer, as well as the substantial and non-substantial changes the Commission identified after reviewing the initial public comment on the amendment.

As a previous Commission member, I have been impressed with the comprehensive scientific research and planning that has occured to understand, document and protect the ecology and hydrology of the Kirkwood-Cohansey aquifer. I remember clearly the well thought out ideas, complicated testing methods and plans Commission staff presented during numerous meetings over many years, so that the public, stakeholders and Commissioners could ask questions and provide continual feedback to staff on the developing rules.

Over the years, after listening to the many informative presentations on the aquifers, I became impatient on how long the process was taking to finalize the rules needed to protect these invaluable resources. During this time, I do not remember hearing about concerns related to the “nonconsumptive” use of Kirkwood-Cohansey water. I now realize the lengthy process of developing amendments to the CMP has worked very well in identifying and addressing everyone’s concerns.

I appreciate the Commission developing the needed adjustments to the proposed amendment as a result of the initial public comment. Once the amendment passes, I think the fine-tuned rules will enable the Commission to effectively and fairly manage the Kirkwood-Cohansey aquifers for the benefit of human beings as well as all the living things residing in the Pinelands, currently and into the future.

Getting to this point has been a monumental collaborative process in order to protect the monumental 17 trillion-gallon aquifer, for which I am very thankful.

The Legislature initiated the collaboration in 2001 by passing Chapter 165 and providing 5.5 million dollars to implement the Kirkwood-Cohansey Project. The science staff of the Pinelands Commission, in cooperation with the New Jersey Department of Environmental Protection, Rutgers University, the U. S. Fish and Wildlife Service, and the U.S. Geological Survey completed 12 peer reviewed comprehensive scientific studies.

The Commission's Planning Staff interpreted the results of these studies using input from the public, Commissioners and others to develop the rules to protect and manage the Kirkwood-Cohansey aquifers. In my experience on the Commission, the Governor's Office has also been a supportive and essential partner to this project over the years.

In my view the ongoing CMP amendment process needed to protect Pinelands water has been an amazingly inclusive and worthwhile effort.

Sincerely,

Rick Prickett

UTILITY and TRANSPORTATION CONTRACTORS ASSOCIATION of NEW JERSEY

ROBERT A. BRIANT, JR.
CEO

DAVID RIBLE
EXECUTIVE DIRECTOR

May 31, 2023

25

Susan R. Grogan, P.P., AICP
Executive Director
Pinelands Commission
PO Box 359
New Lisbon, NJ 08064
TRANSMITTED VIA EMAIL (planning@pinelands.nj.gov)

Re: Proposed Substantial Changes: N.J.A.C. 7:50-2.11, 4.2, and 6.86

Executive Director Grogan:

Please accept the following comments on the above referenced rule proposal on behalf of the Utility and Transportation Contractors Association of NJ (UTCA). **UTCA supports the proposed substantial changes to the amendments in response to comments received specific to the resource extraction industry in the Pinelands Area.**

During the public comment period on the original notice of proposal, the Commission received comments expressing concern regarding the impact of the proposed amendments on the resource extraction industry in the Pinelands Area. Since mining sand and gravel in the Pinelands Area often involves mechanical or hydraulic dredging, it is only appropriate that the original proposal be amended to address how these **nonconsumptive water uses** are addressed within the context of this broader proposal.

The proposed substantial changes to the amendments will ensure that resource extraction operations that produce mined sand, gravel, and crushed stone can continue to serve their vital role in delivering on critical infrastructure projects. As such, the Pinelands Commission should adopt the proposed substantial changes to avoid the unintended negative impacts to the construction industry, which relies heavily on the lawfully mined sand, gravel, and crushed stone. New Jersey and the entire region is dependent on these already scarce materials used for construction and rehabilitation of critical infrastructure, a clear priority for our Nation and State.

Thank you for the opportunity to comment on this proposal.

Sincerely,

George Lobman
Director of Transportation Agencies

About the UTCA of NJ

The Utility and Transportation Contractors Association of New Jersey (UTCA) is a non-profit trade association headquartered in Wall Township, New Jersey. Founded in 1965, UTCA represents approximately 1,000 member firms in the public and private sectors, active in all phases of heavy, highway, utility, and marine construction, as well as site work including remediation of brownfields and contaminated sites. UTCA strives to create a positive impact on New Jersey citizens, the health of the environment and our shared economic prosperity by leveraging its respected expertise and relationships to promote a sustainable infrastructure sector.

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From: Bill WOLFE <bill_wolfe@comcast.net>
Sent: Sunday, March 26, 2023 6:37 PM
To: Info, PC [PINELANDS] <info@pinelands.nj.gov>; Grogan, Susan [PINELANDS] <Susan.Grogan@pinelands.nj.gov>; Mark Lohbauer <mlohbauer@jgscgroup.com>; Roth, Stacey [PINELANDS] <Stacey.Roth@pinelands.nj.gov>; fkummer@inquirer.com; wparry (ap.org) <wparry@ap.org>; carleton@pinelandsalliance.org; Anjuli Ramos <anjuli.ramos@sierraclub.org>
Subject: [EXTERNAL] Irregularities in rulemaking procedure

Dear Pinelands Commission:

Please accept these public comments on the Commission's rulemaking procedures on the recent *"Kirkwood-Cohansey water rule"* to amend the CMP.

I request that these comments: 1) be provided to the full Commission, 2) be considered as public comments during and incorporated in the minutes of your next meeting; and 3) included in the administrative record of the subject rulemaking and contemplated substantive changes to the original proposal.

The Commission's rules to amend the CMP (i.e. original proposal, or "*Kirkwood-Cohansey water rule"*) were proposed on September 6 and the public comment period closed on November 5:
https://www.state.nj.us/pinelands/cmp/amend/PRN%202022-110%20(54%20N.J.R.%201668(a)).pdf

After the close of the public comment period, the Commission admits that it met with DEP and the mining industry regarding impacts of the proposal. This meeting generated information upon which the Commission somehow decided to substantively amend the original proposal. This meeting occurred *after* the close of the public comment period on the rule proposal.

The minutes of the Commission's February 14 meeting state:

"After discussion of the changes with the P&I Committee at its November 2022 meeting, ***staff met with New Jersey Department of Environmental Protection (NJDEP) and the aggregate industry to gather further information*** *on the water allocation permitting process and regulation of water quality."*

https://www.nj.gov/pinelands/home/meetings/documents/031023%20Meeting%20Packet.pdf

I find this meeting highly improper -

The Commission staff selectively met with just one specific interested party that was impacted by the rule. This existence and substance of this meeting were not conducted "on the record" and a formal part of the subject rulemaking. The public had no opportunity to participate in or to be made aware of and rebut the mining industry's arguments.

It also appears that the Commission made a highly substantive legal and regulatory policy decision to defer to the DEP water allocation regulations to address overlapping issues implicit in the subject CMP original rule proposal. Additionally, this deference to DEP appears to be part of the basis for the substantive change change to exempt the mining from the subject original proposal. Yet that basis is not specifically stated in the Commission's response to comments and as the basis for:

Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments
https://www.nj.gov/pinelands/cmp/amend/Notice%20of%20substantial%20changes%20FINAL.pdf

As such, this staff level decision is not transparent, lacks any articulated basis, was not preceded by policy guidance from the Commission, and there was no prior public notice and comment opportunity.

This is a violation of fundamental due process and transparency and may violate the rulemaking procedures under the NJ Administrative Procedure Act.

Please provide the legal basis in the NJ APA the Commission relies on for authorization of this kind of procedural maneuver.

Respectfully,
Bill Wolfe

curriculum of all elementary and secondary schools, as developmentally appropriate, pursuant to N.J.S.A. 18A:35-28[.]**; and**

7. Ensuring that all curricular requirements pursuant to N.J.A.C. 6A:8 and the NJSLS are taught, including any curriculum developed concerning any of the protected categories listed at N.J.A.C. 6A:7-1.1(a) or curriculum developed by any commissions constituted for the development of curriculum concerning any of the protected categories listed at N.J.A.C. 6A:7-1.1(a).

(c) The district board of education shall ensure all students have access to adequate and appropriate counseling services.

1. When informing students about possible careers or professional or vocational opportunities, the district board of education shall not restrict or limit the options presented to students on the basis of [race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status] **the protected categories listed at N.J.A.C. 6A:7-1.1(a)**.

2. The district board of education shall not use tests or guidance or counseling materials that are biased or stereotyped on the basis of [race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status] **the protected categories listed at N.J.A.C. 6A:7-1.1(a)**.

(d) The district board of education shall ensure the school district's physical education [and athletic programs are equitable and] **is in a** co-educational **setting that is developmentally appropriate** and do**es** not discriminate on the basis of [race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status] **the protected categories listed at N.J.A.C. 6A:7-1.1(a)**, as follows:

1. (No change.)

2. A school **district** may choose to operate separate teams [for the two sexes] **based on sex** in one or more sports or single teams open competitively to members of [both] **all** sexes, as long as the athletic program as a whole provides equal opportunities for students of [both] **all** sexes to participate in sports at comparable levels of difficulty and competency; and

3. (No change.)

[6A:7-1.8 Equality in employment and contract practices

(a) Each district board of education shall ensure all persons, regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, have equal and bias-free access to all categories of employment in the State's public educational system, pursuant to N.J.A.C. 6A:7-1.1.

(b) A district board of education shall not enter into any contract with a person, agency, or organization that discriminates on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, either in employment practices or in the provision of benefits or services to students or employees, pursuant to N.J.A.C. 6A:7-1.1.

(c) A district board of education shall not assign, transfer, promote, or retain staff, or fail to assign, transfer, promote, or retain staff, on the sole basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, pursuant to N.J.A.C. 6A:7-1.1.

(d) The district board of education shall ensure equal pay for equal work among members of the school district's staff, regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, pursuant to N.J.A.C. 6A:7-1.1.]

6A:7-[1.9]**1.8** Accountability

(a) The district board of education's obligation to be accountable for the chapter's requirements is not precluded or alleviated by any rule or regulation of any **recreational** organization, club, athletic association, or other league or **organizing** group.

(b) Each school district shall complete a comprehensive equity plan that includes a cohesive set of policies, programs, and practices that ensure high expectations, positive achievement patterns, and [equal] **equitable** access to [education opportunity] **educational opportunities** for all learners, including students and teachers.

(c) [A] **The** comprehensive equity plan shall include the following:

1. An assessment of the school district's needs for achieving equity in educational **activities and** programs. The assessment shall include staffing practices, quality-of-program data, stakeholder-satisfaction data, and student assessment [and behavioral] data disaggregated by gender, race, ethnicity, [limited English proficiency] **multilingual learner status, homeless status,** special education, migrant, date of enrollment, student suspension, expulsion, child study team referrals, preschool-through-grade-12 promotion/retention data, preschool-through-grade-12 completion rates, **attendance data,** and re-examination and re-evaluation of classification and placement **process** of students in special education programs if there is [overrepresentation] **disproportionality** within certain group**s**;

2. (No change.)

3. Progress targets for closing the achievement **and opportunity** gap**s**;

4. Professional development targets regarding the knowledge and skills needed to provide a thorough and efficient education as defined by the New Jersey Student Learning Standards (NJSLS), differentiated instruction, and formative assessments aligned to the NJSLS and [high expectations for teaching and learning] **professional standards for teachers and school leaders**; and

5. (No change.)

[(d) The comprehensive equity plan shall be written every three years.]

[(e)] **(d)** The district board of education shall [initiate] **implement** the comprehensive equity plan within 60 days of [its approval, and shall implement the plan in accordance with the timelines approved by the Department] **the executive county superintendent's certification of completion**.

[(f)] **(e)** If the district board of education does not implement the comprehensive equity plan within [180] **60** days of the [plan's approval] **executive county superintendent's certification of completion** date, or fails to report its progress annually, sanctions deemed to be appropriate by the Commissioner or [his or her] **the Commissioner's** designee shall be imposed. Sanctions may include action to suspend, terminate, or refuse to award continued Federal or State financial assistance, pursuant to N.J.S.A. 18A:55-2.

[6A:7-1.10 Appeals

Pursuant to N.J.S.A. 18A:6-9, any individual may petition the Commissioner in writing to resolve a dispute arising under the chapter, pursuant to procedures set forth in N.J.A.C. 6A:3, Controversies and Disputes.]

ENVIRONMENTAL PROTECTION

(a)

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan Fees; Definitions; Development Review; Water Quality

Proposed Substantial Changes: N.J.A.C. 7:50-2.11, 4.2, and 6.86

Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments

Proposed: September 6, 2022, at 54 N.J.R. 1668(a).

Authorized By: New Jersey Pinelands Commission, Susan R. Grogan, Executive Director.

Authority: N.J.S.A. 13:18A-6.j.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

A **public hearing** concerning this notice of substantial changes upon adoption will be held on:

Wednesday, May 3, 2023, at 9:30 A.M.
Richard J. Sullivan Center

15C Springfield Road
New Lisbon, New Jersey

Submit written comments by regular mail, facsimile, or email by June 2, 2023, to:

Susan R. Grogan, P.P., AICP
Executive Director
Pinelands Commission
PO Box 359
New Lisbon, NJ 08064
Facsimile: (609) 894-7330
Email: planning@pinelands.nj.gov or through the New Jersey Pinelands Commission's website at http://nj.gov/pinelands/home/contact/planning.shtml.

The full name and mailing address of the commenter must be submitted with all public comments. Commenters who do not wish their names and affiliations to be published in any notice of adoption subsequently prepared by the New Jersey Pinelands Commission (Commission) should so indicate when they submit their comments.

Take notice that the Commission proposed amendments to the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50-1.6, 2.11, and 6.86 on September 5, 2022, at 54 N.J.R. 1668(a) to strengthen protections to the Kirkwood-Cohansey aquifer and the ecology of the Pinelands Area. Public hearings were held on October 12 and November 2, 2022, and the public comment period closed on November 5, 2022. This notice of proposed substantial changes is published pursuant to N.J.S.A. 52:14B-4.10.

The Commission is proposing three substantial changes to the amendments in response to comments received. During the public comment period on the original notice of proposal, the Commission received comments expressing concern regarding the impact of the proposed amendments on the resource extraction industry in the Pinelands Area. Resource extraction in the Pinelands Area involves mining sand and gravel, typically by mechanical or hydraulic dredging, a process that uses water directly from water bodies created by excavations below the water table of the Kirkwood-Cohansey aquifer.

The Commission is also proposing non-substantial changes to the amendments in response to public comments and one very minor agency-initiated change. These changes clarify language in the proposed amendments and correct a citation.

The following individuals and organizations submitted comments that gave rise to the substantial and non-substantial changes being proposed in this notice. The Commission has also responded to comments received from those same individuals, but which did not result in revisions to the original proposal. The Commission will respond to the remaining comments received, as well as any new comments, when it files a final notice of adoption. The numbers in parentheses after each comment summarized below correspond to the following list of commenters.

1. William Layton, Executive Director (written comment) and Kyle England, CLB Partners (public hearing), NJ Concrete & Aggregate Association

2. Ryan Benson, Esq., (public hearing), Kevin Coakley, Esq. (written comment), and Brian Blum, CPG, LSRP (written comment), Clayton Companies

3. Robert S. Baranowski, Jr., Esq. (public hearing and written comment), Whibco, Inc.

4. Joseph Gallagher, Township Administrator, Winslow Township

5. Jeffrey L. Hoffman, State Geologist, New Jersey Department of Environmental Protection, Division of Water Supply and Geoscience

6. Robert Kecskes (public hearing and written comment)

Summary of Public Comments and Agency Responses:

Resource Extraction (N.J.A.C. 7:50-2.11; 4.2(b)6xi (new); 6.86(d)2iii)

1. COMMENT: Resource extraction operations use mechanical and hydraulic dredging that typically involves "nonconsumptive" water use. The water is returned to the source with little or no change in the quality or quantity of water. The amendments would impose a disproportionate regulatory burden on such nonconsumptive diversions and would not accomplish the purpose of protecting the aquifer. The proposed amendments are punitive of nonconsumptive uses as they do not account for aquifer replenishment in a closed-loop use. (1, 2, and 3)

2. COMMENT: The proposed regulations will hurt the mining industry. Additional constraints on mining in the Preservation Area District, Forest Area, and Special Agricultural Production Area will hasten the demise of the industry. (1, 2, and 3)

3. COMMENT: The proposed rule will force resource extraction operations to reduce production of mined sand, gravel, and crushed stone, resulting in a shortage of the products, which will threaten vital transportation projects and negatively impact the construction industry. The Commission should identify and protect these resources to ensure an uninterrupted, economical supply. The proposed rule is contrary to the Federal ROCKS act (part of the Infrastructure and Jobs Act of 2021), designed to keep aggregate building materials sustainable. The general mid-Atlantic region is dependent on these already scarce materials used for construction of buildings and roads. (1, 2, and 3)

4. COMMENT: The proposed rules will result in a shortage of sand, gravel, and crushed stone, which could result in the doubling of price for those materials. (2)

RESPONSE TO COMMENTS 1, 2, 3, AND 4: The Commission thanks the resource extraction industry for its comments and explanations regarding the specific nonconsumptive uses of water for hydraulic dredging operations. Given that there are over 70 existing resource extraction operations in the Pinelands Area, approximately half of which are located in the Preservation Area District and Forest Area where the proposed amendments would prohibit new diversions of 50,000 gallons of water per day or more from the Kirkwood-Cohansey aquifer, the industry has raised valid concerns about the impact of the proposed amendments.

In order to avoid unintended negative impacts on the resource extraction industry, the Commission is proposing a new provision at N.J.A.C. 7:50-6.86(d)2iii, which states that the standards at N.J.A.C. 7:50-6.86(d)3 through 9 will not apply to proposed diversions for resource extraction operations that constitute a nonconsumptive use, provided that the water returned to the source is not discharged to a stream or waterbody or otherwise results in offsite flow, and the diversion and return are located on the same parcel. A definition of "nonconsumptive use" is being added at N.J.A.C. 7:50-2.11 to mean the use of water diverted from surface or ground waters in such a manner that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken. This new definition focuses on water quantity and does not explicitly reference water quality, because all development in the Pinelands Area, including diversions from the Kirkwood-Cohansey aquifer, are required to meet the existing water quality standards of the Comprehensive Management Plan.

A resource extraction operation located in the Pinelands Area will continue to be required to apply to the Commission for any new or increased diversion. If the applicant for such a diversion can demonstrate as part of the application process that the proposed diversion meets the definition of nonconsumptive use at N.J.A.C. 7:50-2.11 and the conditions in new N.J.A.C. 7:50-6.86(d)2iii (described in the paragraph above), the water management standards at N.J.A.C. 7:50-6.86(d)3 through 9 will not apply, even if the proposed diversion involves the withdrawal of 50,000 gallons of water per day or more from the Kirkwood-Cohansey aquifer. To clarify the application process, the Commission is also proposing a new provision at its application requirement section, N.J.A.C. 7:50-4.2(b)6xi, to specify the information a resource extraction operation must provide to the Commission. This application would most likely be submitted as part of an application for renewal of a resource extraction permit or as a separate application for development that would necessitate a modification of a New Jersey Department of Environmental Protection (DEP) Water Allocation Permit. The new provision requires submission of a hydrogeologic report that identifies the volume of the diversion, the volume of water to be returned to the source, a description of the route of return to the source, the methodology used to quantify the volume of water returned to the source, and a description of any other existing or proposed water diversions or discharges on or from the parcel. A "parcel" will be considered as all tax lots that are a part of a resource extraction operation for which a municipal approval has been reviewed by the Commission, determined to be consistent with all CMP standards and allowed to take effect pursuant to N.J.A.C. 7:50-4.37 and 4.40. The report shall also include a map that depicts the location of the diversion, the location of the

return to source, the location of all existing or proposed resource extraction operations, and the location of all wetlands on or within 300 feet of the parcel on which the diversion is proposed.

5. COMMENT: Holders of current water allocation permits issued by the New Jersey Department of Environmental Protection (DEP) should be "grandfathered" pursuant to the proposed amendments. The proposed amendments will prohibit new diversions or increases in diversions even though a resource extraction operation may have had a DEP-issued water allocation permit for many years. (1 and 2)

RESPONSE: There is no need for a grandfathering provision because, pursuant to the proposed amendments, a holder of a current water allocation permit is not required to apply to the Commission for an existing diversion. The holder is required to complete an application only for a new diversion or an increase in allocation from either a single existing diversion source or from combined existing and new diversion sources in the same HUC-11 watershed in the Kirkwood-Cohansey aquifer, that results in a total diversion of 50,000 gallons of water per day or more.

6. COMMENT: Disparate treatment of different Pinelands Management Areas is arbitrary, and nothing in the Pinelands studies supports a prohibition on diversions in the Forest Area and Preservation Area District. Most mines are located in the Forest Area or Preservation Area District; therefore, the proposed standard at N.J.A.C. 7:50-6.86(d)3 is a problem. (2 and 3)

RESPONSE: The Commission disagrees, as the Pinelands Protection Act, N.J.S.A. 13:8A-1 et seq., authorizes greater protections for the Forest Area and Preservation Area District based on the ecology of these management areas. The Commission recognizes, however, that certain nonconsumptive uses of water can be consistent with those necessary protections and, as discussed above, is proposing revisions to recognize that such uses can maintain the ecological values of the most ecologically valuable management areas.

7. COMMENT: The proposed amendments rely upon flawed studies that model "excessive" drawdown of up to 30 percent of streamflow, six inches of water table lowering, or pumping at 30 percent of groundwater recharge. (2)

RESPONSE: The Commission disagrees that the model is flawed. The studies provide insight into the level of impact that can occur before those impacts have significant adverse impacts on the Pinelands ecology.

8. COMMENT: The Pinelands Commission does not have the regulatory authority to require or issue permits or regulate water use. The New Jersey Department of Environmental Protection has exclusive authority to regulate water diversions and evaluate alternative source requirements where critical water areas are established. The Pinelands Protection Act does not authorize the Pinelands Commission to help implement the Water Supply Management Act. (2 and 3)

RESPONSE: The Commission respectfully disagrees with these statements. The Pinelands Protection Act, N.J.S.A. 13:8A-1 et seq., directs the Commission to regulate development and establish standards to allow development without a significant adverse impact to the resources of the Pinelands Area. The Act specifically authorizes the Commission to regulate land and water management. N.J.S.A. 13:18A-8d. This statutory authority to regulate water management is independent of the DEP's authority pursuant to the Water Supply Management Act. The Commission also notes that it does not issue permits; rather, it evaluates development applications and municipal approvals to ensure compliance with the standards established in the Comprehensive Management Plan, adopted to implement the Pinelands Protection Act.

9. COMMENT: The proposed rule is duplicative of DEP rules. (3)

RESPONSE: The Commission respectfully disagrees, as it is not issuing water allocation permits. The proposed amendments establish standards and criteria for diversions in the Pinelands Area, some of which are more stringent than those administered by the DEP. The Commission's evaluation of a diversion application does rely upon a modeling process similar to the DEP's in an effort to avoid the need for duplicative modeling by applicants in those situations where there is regulatory overlap.

10. COMMENT: One of the commenters noted that its resource extraction site is bisected by watershed management area boundaries and by the nature of the extraction operation, it cannot avoid interbasin transfers. (3)

RESPONSE: If a resource extraction company can demonstrate that its operation constitutes a nonconsumptive use of water, then, by definition, there will be no interbasin transfer of water. Nonconsumptive use is being defined to mean that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken. No interbasin transfer of water will occur if 90 percent of the diverted water is returned in this manner.

11. COMMENT: The Pinelands Protection Act already prohibits the export of water greater than 10 miles, so there is no need for interbasin transfer prohibition. (2)

RESPONSE: The Commission disagrees. The prohibition against interbasin transfer of water is not necessarily the same as the prohibition in the Pinelands Protection Act against exporting water greater than 10 miles (N.J.S.A. 58:1A-7.1) as there could be instances where an interbasin transfer of water occurs within a 10-mile area. In addition, the proposed amendments merely strengthen the existing restriction against interbasin transfer at N.J.A.C. 7:50-6.86(a) and clarify that restriction by defining the basins.

12. COMMENT: Along with recognizing mining as a nonconsumptive use, the definition of "divert" or "diversion" should be modified to exclude "mining of sand or similar materials, as long as the mining is conducted by mechanical or hydraulic dredging" and state that such mining shall not be considered development. (3)

RESPONSE: The Commission believes that its proposed changes, described in the Response to Comments 1, 2, 3, and 4, above, sufficiently address the resource extraction industry's concerns regarding compliance with the proposed new water management standards when an operation involves nonconsumptive use of water. In addition, the suggested revision would conflict with the definition of "divert" and "diversion" in the DEP's water supply allocation rules at N.J.A.C. 7:19-1.3.

13. COMMENT: The definition of "allocation" at N.J.A.C. 7:50-6.86(b), and the standards at proposed paragraphs (d)3 through 9, should also exclude the taking or discharge of water for mining of sand or other earthen materials, even if permitted pursuant to a Water Allocation Permit, Water Use Registration, Number, NPDES, or NJPDES permit, as long as such mining is conducted by mechanical or hydraulic dredging. (3)

RESPONSE: The Commission believes that its proposed changes, described in the Response to Comments 1, 2, 3, and 4, sufficiently address the resource extraction industry's concerns regarding compliance with the proposed new water management standards when an operation involves nonconsumptive use of water.

14. COMMENT: The Commission's existing 100,000 gallon per day threshold pumping volume at which a diversion would need to meet the existing standards at N.J.A.C. 7:50-6.86 adequately prevents excessive or nonessential diversions from the Kirkwood-Cohansey aquifer and does not need to be modified. (3)

RESPONSE: The Commission respectfully disagrees. The 12 studies on the impacts of diversions on the Kirkwood-Cohansey aquifer, described in the original notice of proposal and at https://www.nj.gov/pinelands/science/complete/kc/, revealed a need to update the Comprehensive Management Plan to better protect the aquifer.

15. COMMENT: The Commission should identify and protect sand, gravel, and crushed stone resources to ensure an uninterrupted, economical supply. (1)

RESPONSE: The Commission does not have the statutory authority to directly protect sand, gravel, or crushed stone resources, but the proposed revisions, described in the response to prior comments, recognize the industry's nonconsumptive use of water and should help to ensure the continued production and supply of the resources.

Stream Low Flow Margin (N.J.A.C. 7:50-2.11)

16. COMMENT: The definition of "stream low flow margin" should be the same as the one in the New Jersey Statewide Water Supply Plan. (5)

RESPONSE: The Commission is proposing to change the definition of stream low flow margin at N.J.A.C. 7:50-2.11 to make it consistent with the New Jersey Statewide Water Supply Plan. Specifically, the definition

will clarify "September Median Flow" to mean a stream's normal dry-season flow and will replace the term and definition of "statistical flow" with "drought flow" and remove the explanation of statistical flow.

Interbasin Transfer (N.J.A.C. 7:50-6.86(b))

17. COMMENT: There are unavoidable interbasin transfers because some diversions that are located near the border of the Atlantic and Delaware River Basins are pulling water from both basins. This is difficult for municipalities whose land areas straddle both basins and can be problematic for municipalities that currently depend on interbasin transfer for a potable water source and wastewater treatment. Winslow Township purchases 1.5 million gallons per day (MGD) from New Jersey American Water that is sourced from the Delaware River Basin and is mostly transferred to the Atlantic Basin. (4)

RESPONSE: The Commission thanks the commenter for raising this concern. The Commission is aware that for Winslow Township and other municipalities, water procurement involves the transfer of water between the Atlantic and Delaware River Basins and that these transfers are from diversions located outside the Pinelands Area. Therefore, the Commission is proposing to amend N.J.A.C. 7:50-6.86(b) to clarify that the prohibition against interbasin transfers applies only to transfers of water "from sources within" the Pinelands Area. It should be noted that water sourced from outside the Pinelands Area that is distributed to development within the Pinelands Area through a public or community water system will not result in an interbasin transfer, as the water will be conveyed back out of the Pinelands Area through the public sanitary sewer system or completely consumed.

Water Management Standards/50,000 gpd Threshold (N.J.A.C. 7:50-6.86(d))

18. COMMENT: The proposed rule does not clearly state that any proposed increase in diversion over 50,000 gpd triggers review. (4)

RESPONSE: In its initial notice of proposal, the Commission expanded the scope of wells that will be subject to the water management standards by lowering the water volume threshold from 100,000 gallons of water or more per day to 50,000 gallons of water or more a day. The proposed amendments at N.J.A.C. 7:50-6.86(d) specify that the 50,000 gallon per day threshold includes all of an applicant's existing diversions in the same HUC-11 watershed, in addition to the new or increased diversion. In response to the commenter's request for greater clarification, however, the Commission is proposing to add "and new" at N.J.A.C. 7:50-6.86(d) pertaining to diversions in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer. Examples and additional explanations of how this threshold will be calculated and applied can be found in the initial notice of proposal.

Water Management Standards (N.J.A.C. 7:50-6.86(d)2i)

19. COMMENT: The cross-reference at N.J.A.C. 7:50-6.86(d)2i is incorrect. N.J.A.C. 7:9-9 was repealed and replaced with N.J.A.C. 7:9D-3. (5)

RESPONSE: The Commission has corrected the cross-reference in this notice.

Adverse Regional Impact (N.J.A.C. 7:50-6.86(d)6)

20. COMMENT: It is unclear which datasets in the Water Supply Plan the Commission will rely upon to determine whether a proposed diversion exceeds 20 percent of the stream low flow margin. It is unclear if the proposed amendment is referring to allocations or peak reported use, which are estimated differently in the Water Supply Plan. Additionally, the information referred to is in Appendix A of the Water Supply Plan, which is not the referenced document. The correct reference is https://www.state.nj.us/dep/watersupply/pdf/wsp-appendix-a.pdf. (6)

RESPONSE: The Commission has revised proposed N.J.A.C. 7:50-6.86(d)6 to make the language consistent with the New Jersey Statewide Water Supply Plan and to specify that applicants should use Appendix A of that Plan. The revisions also include correcting the link to Appendix A, and specifying the exact datasets/tables applicants should use at Appendix A.

Summary of Agency-Initiated Changes:

The Commission is clarifying N.J.A.C. 7:50-6.86(d)2ii by adding the word "proposed" before "diversion."

Effect of Proposed Changes on Impact Statements Included in Original Proposal

None of these changes affect the Social, Agriculture Industry, or Racial and Ethnic Community Criminal Justice and Public Safety Impacts, the Federal Standards Statement, or the Housing Affordability and Smart Growth Development Impact Analyses, as published in the original notice of proposal. The following is a discussion on how the revisions change the Economic, Environmental, and Jobs Impact, as well as the Regulatory Flexibility Analysis.

Economic Impact

When the Commission initially proposed the amendments, it was not aware of the potential impacts on the resource extraction industry in the Pinelands Area or the construction industry in general. If the rule changes remained unchanged, there would be a negative economic impact on both of those industries -- but with the proposed changes, it is anticipated that these impacts will be avoided.

There will, however, continue to be some costs for a resource extraction operation proposing a new or expanded diversion from the Kirkwood-Cohansey aquifer that meets the volume threshold specified at N.J.A.C. 7:50-6.86(d). Pursuant to the revisions, an operation will still have to apply for a diversion, but it will not have to conduct the hydrogeologic modeling required at N.J.A.C. 7:50-6.86(d) if it can demonstrate that the diversion constitutes a nonconsumptive use, the water returned to the source is not discharged to a stream or waterbody or otherwise results in offsite flow, and the diversion and return are located on the same parcel that is the subject of the application to the Commission. To demonstrate that the application meets these three standards, a resource extraction operation will have to provide a hydrogeologic report that identifies the volume of the diversion, the volume of water to be returned to the source, a description of the route of return to the source, the methodology used to quantify the volume of water returned to the source, and a description of any other existing or proposed water diversions or discharges on or from the parcel. The report shall also include a map that depicts the location of the diversion, the location of the return to source, the location of all existing or proposed resource extraction operations, and the location of all wetlands on or within 300 feet of the parcel on which the diversion is proposed.

Although there could be engineering and other professional costs associated with the preparation of the application and hydrogeologic report, the DEP requires similar information from a resource extraction operation that is applying for a modification to a water allocation permit (WAP). Thus, if the operation is simultaneously applying for a WAP modification, there should not be any significant additional costs associated with the application to the Commission.

Ultimately, the revisions will result in greater economic protection to the resource extraction industry and the associated construction industries.

Environmental Impact

The revisions should not have a negative impact on the environment. The revisions are being proposed to recognize that the nonconsumptive use of water by a resource extraction operation need not be subject to the new Kirkwood-Cohansey aquifer water management standards, provided the specified conditions are met to ensure the protection of the aquifer and ecology. Specifically, a resource extraction operation will have to demonstrate that it meets the new definition of nonconsumptive use, that the water returned to the source is not discharged to a stream or waterbody or otherwise results in offsite flow, and that the diversion and return are located on the same parcel. All other CMP environmental standards will continue to apply to such proposed diversions, including those related to water quality.

Jobs Impact

The Commission does not anticipate that the revisions will have any significant impact on job creation and retention in New Jersey. Engineering and other professional work will be needed for the hydrogeologic report required at new N.J.A.C. 7:50-4.2(b)6xi, but the requirements for the report align closely with those currently imposed by the DEP on the resource extraction industry. Pursuant to the proposed amendments, however, the report requirements will apply to a slightly larger group of proposed diversions in the Pinelands Area (those that will

pump 50,000 gallons per day or more from the Kirkwood-Cohansey aquifer).

Regulatory Flexibility Analysis

The revisions do not alter the Commission's initial evaluation of whether the proposed amendments will impose any reporting, recordkeeping, and other compliance requirements on small businesses pursuant to the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As discussed above, resource extraction operations that are deemed small businesses may incur costs from hiring professional consultants, such as engineers, when proposing new or increased diversions in the Kirkwood-Cohansey reservoir.

The Commission has balanced the costs imposed by the proposed revisions on small resource extraction businesses against the environmental benefits to be achieved by ensuring that a diversion for resource extraction purposes should not have to comply with the proposed water management standards and determined that it would be inappropriate to exempt small businesses from these new application requirements.

Full text of the proposed changes to the proposed amendments follows (additions to proposal indicated in italicized boldface ***thus***; deletions from proposal indicated in italicized cursive brackets *{*thus*}*):

SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings ascribed to them.

. . .

"Nonconsumptive use" means the use of water diverted from surface or ground waters in such a manner that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken.

. . .

"Stream low flow margin" means the difference between a stream's *{*September median flow and its statistical flow, which is the seven-day flow average in the 10-year period for the stream*}* *normal dry-season flow (September Median Flow) and drought flow* (7Q10) as reported in the New Jersey Statewide Water Supply Plan, New Jersey Department of Environmental Protection, 2017, New Jersey Water Supply Plan 2017-2022: 484p, http://www.nj.gov/dep/watersupply/wsp.html, as amended and supplemented.

. . .

SUBCHAPTER 4. DEVELOPMENT REVIEW

7:50-4.2 Pre-application conference; application requirements

(a) (No change.)

(b) Application requirements.

1.-5. (No change.)

6. Application for resource extraction: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for resource extraction shall include at least the following information:

i.-ix. (No change.)

x. A financial surety, guaranteeing performance of the requirements of N.J.A.C. 7:50-6.68 and 7:50-6.69 in the form of a letter of credit, certified check, surety bond or other recognized form of financial surety acceptable to the Commission. The financial surety shall be equal to the cost of restoration of the area to be excavated during the duration of any approval which is granted. The financial surety, which shall name the Commission and the certified municipality, if applicable, as the obligee, shall be posted by the property owner or his agent with the municipality if the municipality has had its master plan and ordinances certified pursuant to N.J.A.C. 7:50-3 or with the Pinelands Commission if the municipality has not had its master plan and ordinances so certified*{.}**; and*

xi. If the application includes a proposed diversion from the Kirkwood-Cohansey aquifer, a hydrogeologic report that identifies the volume of the diversion, the volume of water to be returned to the source, a description of the route of return to the source, the methodology used to quantify the volume of water returned to the source, and a description of any other existing or proposed water diversions or discharges on or from the parcel. The report shall also include a map that depicts the location of the diversion, the location of the return to source, the location of all existing or proposed resource extraction operations, and the location of all wetlands on or within 300 feet of the parcel on which the diversion is proposed.

7.-9. (No change.)

(c) (No change.)

SUBCHAPTER 6. MANAGEMENT PROGRAMS AND MINIMUM STANDARDS

7:50-6.86 Water management

[(a) Interbasin transfer of water between watersheds in the Pinelands should be avoided to the maximum extent practical. In areas served by central sewers, water-saving devices such as water saving toilets, showers and sink faucets shall be installed in all new development.]

[(b)] **(a)** Water shall not be exported from the Pinelands except as otherwise provided [in] **at** N.J.S.A. 58:1A-7.1.

[(c) All wells and all increases in diversion from existing wells which require water allocation permits from the New Jersey Department of Environmental Protection shall be designed and located so as to minimize impacts on wetlands and surface waters. Hydrologic analyses shall be conducted in accordance with the New Jersey Department of Environmental Protection Guidelines for Water Allocation Permits, with an Appendix on Aquifer-Test Analysis Procedures, New Jersey Geological Survey Report GSR 29, 1992, incorporated herein by reference, as contained in pages 53 through 91 of the Technical Manual for Water Supply Element, Bureau of Water Allocation, Water Allocation Permits dated May 19, 1993, as amended.

(d) All applications for the development of water supply wells or the expansion of existing water distribution systems shall address measures in place or to be taken to increase water conservation in all areas to be served by the proposed well or system. This shall include efforts by water purveyors and local governments to reduce water demands by users and to reduce losses in the supply and distribution system.

(e) Except for agricultural uses, all new potable and non-potable water supply diversions of more than 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer as a source of water supply and new increases in existing potable and non-potable water supply diversions of over 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer may be permitted only if it is demonstrated that:

1. No viable alternative water supply sources are available; or

2. The proposed use of the Kirkwood-Cohansey aquifer will not result in any adverse ecological impact on the Pinelands Area.]

(b) A diversion that involves the interbasin transfer of water *{*in*}* *from sources within* the Pinelands Area between the Atlantic Basin and the Delaware Basin, as defined at (b)1 and 2 below, or outside of either basin, shall be prohibited.

1. The Atlantic Basin is comprised of Watershed Management Areas 13, 14, 15, and 16, as identified by the New Jersey Department of Environmental Protection at https://www.state.nj.us/dep/seeds/docs/watersheds.pdf.

2. The Delaware Basin is comprised of Watershed Management Areas 17, 18, 19, and 20 as identified by the New Jersey Department of Environmental Protection at https://www.state.nj.us/dep/seeds/docs/watersheds.pdf.

(c) A diversion involving the intrabasin transfer of water between HUC-11 watersheds in the same basin, Atlantic Basin or Delaware Basin as defined at (b) above, shall be permitted. If such an intrabasin transfer involves water sourced from the Kirkwood-Cohansey aquifer, the diversion shall meet the criteria and standards set forth at (d) below.

(d) A new diversion or an increase in allocation from either a single existing diversion source or from combined existing *and new* diversion sources in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer, that results in a total diversion of 50,000 gallons of water per day or more (hereafter referred to as "proposed diversion") shall meet the criteria and standards set forth at (d)3 through 9 below. "Allocation" shall mean a diversion permitted

pursuant to a Water Allocation Permit or Water Use Registration Number issued by the New Jersey Department of Environmental Protection pursuant to N.J.A.C. 7:19.

1. When evaluating whether the proposed diversion meets the criteria set forth at (d)3 through 9 below, all of the applicant's allocations in an HUC-11 watershed, in addition to the proposed diversion, shall be included in the evaluation.

2. The standards set forth at (d)3 through 9 below shall not apply to:

i. A new well that is to replace an existing well, provided the existing well is sealed in accordance with N.J.A.C. *{7:9-9} 7:9D-3* and the new replacement well will:

(1) Be approximately the same depth as the existing well;

(2) Divert from the same aquifer as the existing well;

(3) Have the same or lesser pump capacity as the existing well; and

(4) Be located within 100 feet of, and in the same HUC-11 watershed as, the existing well; *{or}*

ii. Any *proposed* diversion that is exclusively for agricultural or horticultural use*{.}; or*

iii. Any proposed diversion for a resource extraction operation that constitutes a nonconsumptive use, provided the water returned to the source is not discharged to a stream or waterbody or otherwise results in offsite flow, and the diversion and return are located on the same parcel.

3. A proposed diversion shall be permitted only in the following Pinelands Management Areas:

i. Regional Growth Area;

ii. Pinelands Towns;

iii. Rural Development Area;

iv. Agricultural Production Area;

v. Military and Federal Installation Area; and

vi. The following Pinelands Villages: Milmay; Newtonville; Richland; Folsom; Cologne-Germania; Pomona; Mizpah; Nesco-Westcoatville; Port Republic; New Gretna; New Lisbon; Indian Mills; Tabernacle; Blue Anchor; Elm; Tansboro; Waterford Works; Winslow; Dennisville; Petersburg; Tuckahoe; Delmont; Dorchester; and Port Elizabeth-Bricksboro.

4. A proposed diversion shall only be permitted if the applicant demonstrates that no alternative water supply source is available or viable. Alternative water supply sources include, but are not limited to, groundwater and surface water sources that are not part of the Kirkwood-Cohansey aquifer, and public water purveyors and suppliers, as defined at N.J.A.C. 7:19-1.3. A list of alternative water supply sources is available at the offices of the Pinelands Commission and at https://www.nj.gov/pinelands/.

5. A proposed diversion shall not have an adverse ecological impact on the Kirkwood-Cohansey aquifer. Adverse ecological impact means an adverse regional impact and/or an adverse local impact, as described at (d)6 and 7 below.

6. A proposed diversion shall be deemed to have an adverse regional impact if it, combined with all *{*existing permitted allocations*}* *current depletive-consumptive net use* in the same HUC-11 watershed, exceeds 20 percent of the stream low flow margin for the year of peak use {established in*}*. *For this analysis, applicants shall use Appendix A of* the New Jersey Statewide Water Supply Plan at *{*https://www.nj.gov/dep/watersupply/pdf/wsp.pdf for*}* *https://www.state.nj.us/dep/watersupply/pdf/wsp-appendix-a.pdf, as amended and supplemented, and refer to* the HUC-11 watershed where the proposed diversion will be located (hereafter referred to as "the affected HUC-11 watershed"). *Applicants shall use the tables in Appendix A entitled "Summary of HUC-11 area, Low Flow Margin and Remaining Water" and specifically, the values for the HUC-11 Low Flow Margin in the column labeled LFM(mgd) and the values for current depletive-consumptive net use in the column labeled "Current Net Dep-Con (mgd)."*

i. If a proposed diversion is deemed to have an adverse regional impact, it shall be permitted only if an applicant permanently offsets the diversion on a gallon-for-gallon basis in accordance with the following:

(1) Offsets shall be implemented in the affected HUC-11 watershed and include, but are not limited to:

(A) The recharge of previously non-infiltrated stormwater runoff in the Pinelands Area;

(B) The recharge of treated wastewater that is currently discharged through a regional sewage treatment plant that discharges treated wastewater into the Delaware River or Atlantic Ocean;

(C) Development of a desalinization facility; and

(D) Sewerage system inflow and infiltration abatement and/or water distribution infrastructure leak auditing and correction.

ii. A proposed diversion in an HUC-11 watershed where water withdrawals already exceed 20 percent of the stream low flow margin established in the New Jersey Statewide Water Supply Plan shall be deemed to have an adverse regional impact unless an applicant can permanently offset the entire diversion in accordance with (d)6i(1) above.

iii. Unless the submission requirements are modified or waived pursuant to N.J.A.C. 7:50-4.2(b)3, all applications shall include the information required at N.J.A.C. 7:50-4.2(b)4 or 5, as well as the following:

(1) Using data on low flow margins in the New Jersey Statewide Water Supply Plan in effect at the time of application, the applicant shall calculate the sum of the proposed diversion and all existing permitted allocations in the affected HUC-11 watershed, and show whether that sum exceeds 20 percent of the stream low flow margin for the year of peak use established in the New Jersey Statewide Water Supply Plan. The applicant shall submit a report that includes all required calculations and a summary of the impact of the proposed diversion on the available portion of the 20 percent stream low flow margin in the affected HUC-11.

(2) The applicant shall identify all offset measures and provide to the Commission a detailed description of the measures, including the volume of water that will be offset, timeframes for implementing the offsets, a description of the entity that will be implementing the offset measures, and an explanation of the entity's authority to implement the measures.

7. A proposed diversion shall be deemed to have an adverse local impact in the Pinelands Area if it results in the drawdown of the water table as defined at N.J.A.C. 7:19-6.2 of any portion of the Preservation Area District, Forest Area, or Special Agricultural Production Area in the affected HUC-11 watershed, or of more than four inches of the wetlands nearest to the estimated zone of influence in the affected HUC-11 watershed.

i. Application requirements:

(1) The applicant shall submit an analysis of potential drawdown impacts using the Thiem method in accordance with the New Jersey Geological & Water Survey Technical Memorandum 12-2, Hydrogeologic Testing and Reporting Procedures in Support of New Jersey Water Allocation Permit in effect at the time of application (hereafter referred to as "TM 12-2").

(2) Upon completion of the Thiem analysis, the applicant shall submit a proposed hydrogeologic test procedure, developed in accordance with TM 12-2, which shall include, at a minimum, the installation of:

(A) A single pumping well;

(B) Observation wells to sufficiently monitor water levels while the test well is pumped at a constant rate;

(C) Observation wells to collect time-drawdown data for aquifer characterization; and

(D) At least one piezometer to measure surface water and water table decline at: the nearest boundaries of the Preservation Area District, Forest Area, or Special Agricultural Production Area in the affected HUC-11 watershed found in any direction from the proposed well location; and the wetlands nearest to the estimated zone of influence in the affected HUC-11 watershed.

I. If the applicant cannot gain access to the parcels at the locations listed at (d)7i(2)(D) above for placement of piezometer(s), the applicant may propose to install piezometers at comparable locations if the alternate placement will adequately measure surface water and water table decline at the locations listed at (d)7i2(D) above.

II. Piezometers shall be tested to ensure hydraulic responsiveness and the results of such testing shall be included in the report submitted pursuant to (d)7i(3) below;

(3) Following the Commission's review of the hydrogeologic test procedure, the applicant shall complete the test and submit a final hydrogeologic report prepared in accordance with the "Hydrogeological Report" section of TM 12-2, which shall describe the field procedures used, all data gathered, analysis of the data, and evaluation of the effect of the proposed diversion on the Kirkwood-Cohansey aquifer.

(4) Using the results of the hydrogeologic testing performed in accordance with (d)7i(3) above, the applicant shall calculate an estimated zone of influence created by the proposed diversion and submit a groundwater flow model using the modular hydrologic model of the United States Geological Survey, (MODFLOW) in use at the time of the application. The MODFLOW model shall calculate the zone of influence of the water table at: the nearest boundaries of the Preservation Area District, Forest Area, or Special Agricultural Production Area in the affected HUC-11 watershed; and the boundary of the wetland nearest to the proposed diversion in the same HUC-11 watershed.

8. An applicant for a proposed diversion shall provide written documentation of water conservation measures that have been implemented, or that are planned for implementation, for all areas to be served by the proposed diversion. Water conservation measures are measurable efforts by public and private water system operators and local agencies to reduce water demand by users and reduce losses in the water distribution system.

9. The following notice requirements shall apply to the proposed diversions:

i. For applications submitted pursuant to N.J.A.C. 7:50-4.31 through 4.50, the applicant shall provide notice of the application to the municipality and county in which the proposed diversion will be located, as well as all other municipalities and counties in the affected HUC-11 watershed. The notice shall state:

(1) The nature of the application submitted to the Pinelands Commission and a detailed description of the proposed diversion, including the source, location, quantity, and/or allocation of water to be diverted;

(2) The potential impact of the proposed diversion on the volume of water in the affected HUC-11 watershed that will be available for future diversions;

(3) That written comments on the application may be submitted to the Pinelands Commission;

(4) That the application is available for inspection at the office of the Pinelands Commission; and

(5) The address and phone number of the Pinelands Commission.

ii. For applications submitted pursuant to N.J.A.C. 7:50-4.51 through 4.60, the applicant shall provide notice of the application for public development pursuant to N.J.A.C. 7:50-4.53. In addition, the applicant shall provide notice of the application to all municipalities and counties in the affected HUC-11 watershed. The notice shall include the information required at N.J.A.C. 7:50-4.53(e), as well as the following:

(1) A detailed description of the proposed diversion, including the source, location, quantity and/or allocation of water to be diverted; and

(2) A statement of the potential impact of the proposed diversion on the volume of water in the affected HUC-11 watershed that will be available for future diversions.

iii. No application for which notice pursuant to (d)9i or ii above is required shall be deemed complete until proof that the requisite notice that has been given is received.

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Background Checks

Proposed Readoption with Amendments: N.J.A.C. 10:48A

Proposed Repeal and New Rule: N.J.A.C. 10:48A-3.7

Authorized By: Sarah Adelman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:6D-63 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirements.

Proposal Number: PRN 2023-022.

Submit written comments by June 5, 2023, electronically to:

DDD-CO.LAPO@dhs.state.nj.us, or by regular mail or facsimile to:
Carol Jones
Administrative Practice Officer
Division of Developmental Disabilities
PO Box 726
Trenton, NJ 08625-0726
Fax: (609) 341-2451

The agency proposal follows:

Summary

The Department of Human Services ("Department" or "DHS") proposes to readopt N.J.A.C. 10:48A, Background Checks, with amendments. Chapter 48A establishes the guidelines for obtaining criminal history background checks for employees of agencies under contract with the Division of Developmental Disabilities (Division).

On January 14, 2000, P.L. 1999, c. 358 was enacted. This statute, later amended at P.L. 2000, c. 97, requires employees of community agencies under contract with the Department to provide services to individuals who have developmental disabilities to submit to a criminal history background check. The statute was again amended at P.L. 2017, c. 328 to expand the scope of background check requirements to include community care residence applicants, alternates, and household members. This law also requires the Department to determine whether an individual is disqualified based on the background check, rather than a community agency board or community agency head. The proposed amendments to the rules reflect these statutory changes. The Division is also proposing additional technical amendments that reflect current operations.

The Department adopted N.J.A.C. 10:48A, Background Checks, as new rules effective June 2, 2003. The Department readopted Chapter 48A effective September 11, 2008, and again effective March 2, 2016. Chapter 48A was set to expire on March 2, 2023. As the Department has filed this notice of proposed readoption with amendments with the Office of Administrative Law on that date, the expiration date was extended 180 days to August 29, 2023, pursuant to N.J.S.A. 52:14B-5.1.(c)2.

The Division provides services and supports for eligible individuals with developmental disabilities. Services and supports may be provided in settings such as group homes, day programs, community care residences, or in an individual's home. The rules screen out persons unfit to provide services to Division clients due to a disqualifying criminal history and are, therefore, an important part of health and safety protections. The Division has reviewed this chapter, and has found that, with the proposed amendments, the rules are reasonable, necessary, and proper for the purpose for which they were originally promulgated.

The Department is providing a 60-day comment period on this notice of proposal. Therefore, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

A summary of the rules proposed for readoption with amendments follows.

1. Group R-1: Single or multiple station smoke alarms shall be installed and maintained as required by Section [907.2.10.1] **907.2.11.1** of the building subcode.

2. Groups R-2, R-3, R-4, R-5, and I-1: Smoke alarms shall be installed and maintained as required by Section [907.2.10.2] **907.2.11.2** of the building subcode or Section R314 of the one- and two-family dwelling subcode, as applicable.

3. (No change.)

(j)-(l) (No change.)

(m) Electrical Requirements: The following electrical requirements shall apply in changes of use:

1. When the character of the use of a building or portion thereof is changed to one of the following special occupancies as described [in] **at** Chapter 5 of the electrical subcode, the electrical wiring and equipment of the building or portion thereof that contains the proposed use shall comply with all applicable requirements of the electrical subcode regardless of whether a change of group is involved:

i.-iii. (No change.)

[iv. Gasoline Dispensing and Service Stations;]

iv. Motor Fuel Dispensing Facilities;

v. (No change.)

vi. Spray Application, Dipping, [and] Coating**, and Printing** Processes;

vii. (No change.)

viii. [Places of] Assembly **Occupancies**;

ix. Theaters, [Audience Areas of] Motion Picture and Television Studios**,** and Similar Locations;

x.-xi. (No change.)

2. (No change.)

(n)-(q) (No change.)

5:23-6.32 Additions

(a)-(f) (No change.)

(g) All additions shall comply with the requirements [of] **at** Chapter 11 of the building subcode for accessibility, where applicable.

1. The addition shall include accessible entrance(s) unless the requirement that [50] **60** percent of the building entrances be accessible has been met in the existing building. (For purposes of calculating the number of accessible entrances required, all entrances in the existing building and planned for the addition shall be included.)

i. (No change.)

2. (No change.)

(h)-(i) (No change.)

ENVIRONMENTAL PROTECTION

(a)

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan Fees; Definitions; and Water Quality

Proposed Amendments: N.J.A.C. 7:50-1.6, 2.11, and 6.86

Authorized By: New Jersey Pinelands Commission, Susan R. Grogan, Acting Executive Director.

Authority: N.J.S.A. 13:18A-6.j.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-110.

A **public hearing** concerning this notice of proposal will be held on:

October 12, 2022, at 9:30 A.M.
Richard J. Sullivan Center
15C Springfield Road
New Lisbon, New Jersey

Submit written comments by regular mail, facsimile, or email by November 5, 2022, to:

Susan R. Grogan, P.P., AICP
Acting Executive Director
Pinelands Commission
PO Box 359
New Lisbon, NJ 08064
Facsimile: (609) 894-7330
Email: planning@pinelands.nj.gov or through the New Jersey Pinelands Commission's website at http://nj.gov/pinelands/home/contact/planning.shtml.

The name and mailing address of the commenter must be submitted with all public comments. Commenters who do not wish their names and affiliations to be published in any notice of adoption subsequently prepared by the Commission should so indicate when they submit their comments.

The agency proposal follows:

Summary

The New Jersey Pinelands Commission (Commission) proposes to amend Subchapter 1, General Provisions; Subchapter 2, Interpretations and Definitions; and Subchapter 6, Management Programs and Minimum Standards of the Pinelands Comprehensive Management Plan (CMP). The CMP has been guiding land use and development activities in the Pinelands since it took effect on January 14, 1981. The CMP has been amended many times, most recently in January 2022 through a set of amendments related to stormwater management (see 54 N.J.R. 138(b)).

The Kirkwood-Cohansey aquifer is a fresh-water reservoir underlying the New Jersey Pinelands and containing an estimated 17 trillion gallons of water. It is a source of potable and non-potable water to hundreds of thousands of people in South Jersey and sustains the ecology of the Pinelands by supporting wetlands and unique Pinelands vegetation and animal communities. As a result, withdrawals from the aquifer can impact the essential character of the Pinelands environment if they cause changes to habitats, reduce the quantity of water in the Preservation Area, or encourage inappropriate patterns of development. Water withdrawals are also referred to as diversions or wells throughout this rulemaking.

The current standards in the CMP that govern water withdrawals in the Pinelands Area were last amended in 1994. As explained in greater detail below, a series of studies on the impacts of diversions on the Kirkwood-Cohansey aquifer illuminated the need to update the CMP to better protect the aquifer. The proposed amendments strengthen protections to the Kirkwood-Cohansey aquifer and the Pinelands ecology while ensuring a sufficient water supply for development in the more growth-oriented areas of the Pinelands Area.

The New Jersey Legislature enacted a law in 2001 calling for a study of the ecological impacts of human activities, such as diversions, on the ecology of the Pinelands Area. The law directed the Commission, in cooperation with the Department of Environmental Protection, Rutgers University, the United States Fish and Wildlife Service, and the United States Geological Survey, to "assess and prepare a report on the key hydrologic and ecological information necessary to determine how the current and future water supply needs within the pinelands area may be met while protecting the Kirkwood-Cohansey aquifer system." (P.L. 2001, c. 165).

The series of studies that resulted from this law became collectively known as the Kirkwood-Cohansey Project (Project). The Project addressed two major questions: (1) the hydrologic effects of groundwater diversions from the Kirkwood-Cohansey aquifer on stream flows and wetland water levels; and (2) the ecological effects of streamflow and groundwater-level changes on aquatic and wetland communities.

Twelve separate studies were completed as part of the Kirkwood-Cohansey Project, which are described at https://www.nj.gov/pinelands/science/complete/kc/. They showed a direct correlation between simulated groundwater withdrawals and/or simulated streamflow reductions on the distribution and composition of wetland-forest communities, individual wetland species, and wetland-indicator groups. The studies assessed impacts from diversions on nine frog species, the Federally endangered wetlands plant swamp pink, fish and invertebrate assemblages, and vegetation types. Taken together, the studies predicted reductions in the plants and animals that are characteristic of undisturbed Pinelands ecosystems caused by groundwater withdrawals. In particular,

the studies showed that a decline of the water table by more than four inches in wetlands caused a sharp decline in wetlands vegetation and reduced the survival rates of three species of frogs found in the Pinelands, including the spring peeper, the southern leopard frog, and the State-threatened Pine Barrens tree frog.

Multiple studies in the Project assessed impacts related to water supply in terms of the water budget. These studies compared water inputs through rainfall and infiltration versus water losses through transpiration and pumping. A hydrologic framework study characterized the hydrogeology of the aquifer. A hydrologic assessment of three watersheds modeled changes to the water budget and created water table maps. An evapotranspiration study evaluated impacts to the water budget due to loss of water evaporated from surfaces or transpired by vegetation. Finally, a hydrologic modeling study was built on the other water budget studies by measuring groundwater and stream flow responses to groundwater withdrawal scenarios. Models were developed to estimate withdrawal impacts. The findings of the Kirkwood-Cohansey Project form the basis for most of the proposed amendments, which significantly strengthen the ecological protections of the Kirkwood-Cohansey aquifer. The Commission is proposing clearer, quantifiable standards for assessing the ecological impacts of non-agricultural diversions from the Kirkwood-Cohansey aquifer (hereinafter referred to as "adverse local impact") and introducing new, quantifiable standards to protect the available water supply in the watershed in which a diversion will be located (referred to in the rule as "adverse regional impact'').

The protections to the Kirkwood-Cohansey aquifer will also be strengthened by expanding the scope of wells that will be subject to the proposed standards. The threshold pumping volume at which a well will need to meet the standards at N.J.A.C. 7:50-6.86 is being reduced from 100,000 gallons per day to 50,000 gallons per day.

The proposed amendments require applicants for diversions in the Kirkwood-Cohansey aquifer to conduct specific tests, analyses, and modelling to demonstrate whether the proposed diversion will have an adverse regional or local impact.

To protect the more ecologically sensitive areas of the Pinelands Area, the Commission is proposing to limit new or increased diversions from the Kirkwood-Cohansey aquifer to the Agricultural Production Area and the more growth-oriented Pinelands Management Areas. In addition, a diversion will only be permitted if an applicant can demonstrate that no alternative water supply source is available or viable.

The amendments clarify the current water conservation requirements and impose notice requirements on well applicants in the Kirkwood-Cohansey aquifer to better address issues associated with potential limits on water available for future growth and water demand.

The only two amendments that do not apply solely to the Kirkwood-Cohansey aquifer are those related to inter- and intra-basin transfers of water. The Commission is proposing to strengthen and clarify provisions related to such transfers.

New definitions are being proposed at N.J.A.C. 7:50-2.11 for terms that are used in the proposed amendments at N.J.A.C. 7:50-6.86. The Commission is also proposing to amend its fee schedule at N.J.A.C. 7:50-1.6 to specifically address applications for wells, in addition to making minor, non-substantive changes to the existing fee rules.

The current water management rule is broader, in that it addresses diversions from all aquifers in the Pinelands Area, except for one provision that applies only to diversions in the Kirkwood-Cohansey aquifer. As explained in greater detail below, the Commission is proposing to eliminate the standards for diversions in the other aquifers and adopt standards that will apply only to diversions in the Kirkwood-Cohansey aquifer that are above the pumping threshold of 50,000 gallons per day or more. All other wells, however, will be considered development pursuant to N.J.A.C. 7:50-2.11 and subject to all other applicable provisions of the CMP. These include geothermal wells, wells not in the Kirkwood-Cohansey aquifer, and wells that are below the threshold pumping volume in the proposed new standards.

It is also important to note that the proposed new water management standards do not replace any development standards in the CMP. Well applicants must continue to comply with all other applicable standards in the CMP, including those related to the protection of threatened and endangered species at N.J.A.C. 7:50-6.27 and 6.33 and wetlands and wetlands transition areas at N.J.A.C. 7:50-6, Part 1.

Given the technical nature of the proposed standards and analysis, the United States Geological Survey (USGS) will be assisting the Commission in its review of diversion applications. To offset the costs of the USGS's review, the Commission intends to require escrow payments from diversion applicants pursuant to N.J.A.C. 7:50-1.7.

The proposed amendments were discussed and reviewed during various focus group and stakeholder meetings from 2015 to 2022 hosted by the Commission, through presentations at the New Jersey Water Supply Advisory Council, and during multiple public meetings of the full Commission and the CMP Policy and Implementation Committee. If requested, Commission staff will also provide a presentation on the proposed amendments at a public meeting of the Pinelands Municipal Council ("PMC" or "Council"). The PMC, created by the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.), is made up of the mayors of the 53 municipalities in the Pinelands Area, or their designees. The Council is empowered to review and comment upon changes to the CMP proposed by the Commission and advises the Commission on matters of interest regarding the Pinelands.

A more detailed description of the proposed amendments follows.

Subchapter 1

The Commission is proposing to amend its existing fee schedule to include a specific fee for certain well applications at N.J.A.C. 7:50-1.6. The current fee rule does not distinguish wells from other types of non-residential development and does not adequately represent the projected costs for reviewing well applications pursuant to the proposed new standards. The Commission is proposing an application fee of $6,000 for any well in the Kirkwood-Cohansey aquifer that is required to meet the criteria and standards at proposed N.J.A.C. 7:50-6.86(d). For all other wells, including geothermal wells and those that are not subject to the standards at proposed N.J.A.C. 7:50-6.86(d), the application fee will continue to be calculated based on construction costs as set forth at N.J.A.C. 7:50-1.6(c). The difference in the two fees reflects the more extensive review process that is concurrently being proposed at N.J.A.C. 7:50-6.86 for wells of a certain size in the Kirkwood-Cohansey aquifer.

Additional amendments to the existing fee schedule are proposed to correct a cross-reference at N.J.A.C. 7:50-1.6(c), relocate the existing text at N.J.A.C. 7:50-1.6(c) describing typical construction costs, so that it more logically follows the table provided in the subsection, and clarify, at N.J.A.C. 7:50-1.6(a), that development application fees, once submitted to the Commission, are not transferable to subsequent applicants.

Subchapter 2

New definitions are being added at N.J.A.C. 7:50-2.11 for terms in the proposed amendments at N.J.A.C. 7:50-6.86: "divert" or "diversion," "stream low flow margin," "well," and "zone of influence." The definitions of "divert" or "diversion" and "well" refer to withdrawals of water and are identical to those used by the New Jersey Department of Environmental Protection (hereafter referred to as "DEP") in its water supply allocation permits rules at N.J.A.C. 7:19-1.3. "Stream low flow margin" and "zone of influence" are hydrogeologic terms used to measure the impacts of a diversion on the available water supply and the hydrogeology surrounding the diversion, respectively.

Subchapter 6

The Commission is proposing amendments to the water management rule, at N.J.A.C. 7:50-6.86, which governs the transfer, exportation, and withdrawal of water in and from the Pinelands Area.

Export of Water Outside the Pinelands Area (recodified N.J.A.C. 7:50-6.86(a))

The Commission is proposing to recodify N.J.A.C. 7:50-6.86(b), which prohibits the export of water outside the Pinelands Area, except as provided for at N.J.S.A. 58:1A-7.1, as N.J.A.C. 7:50-6.86(a).

Interbasin Transfer of Water (recodified N.J.A.C. 7:50-6.86(b))

The proposed amendments clarify and strengthen the current restriction on transferring water between different basins in the Pinelands Area (interbasin transfer) by explicitly prohibiting such transfers and

identifying and defining two basins in the Pinelands Area at recodified N.J.A.C. 7:50-6.86(b).

The current rule, at existing N.J.A.C. 7:50-6.86(a), merely requires that interbasin transfers be avoided to the "maximum extent practical." The Commission is proposing to prohibit such transfers, to better align with the intent of the statute and reflect past policy, and to limit adverse impacts to the Pinelands environment related to the reduction in stream base flows that can result from interbasin transfers.

The current rule does not define the term "basin," which can describe many different drainage areas or watersheds. Using watershed management areas designated by the DEP, the Commission has clarified what the term "basin" means by delineating two basins in the proposed amendments: the Atlantic and Delaware basins. As used in this provision, the Atlantic Basin includes those portions of watershed management areas within the Pinelands Area that drain to the Atlantic Ocean, including the Barnegat Bay Watershed (WMA 13), the Mullica Watershed (WMA 14), the Great Egg Harbor Watershed (WMA 15), and the Cape May Watershed (WMA 16). The Delaware River Basin includes those portions of watershed management areas that drain to the Delaware River or the Delaware Bay, including the Rancocas Watershed (WMA 19) and the Maurice, Salem, and Cohansey Watershed (WMA 17). Delineating specific basins in this way reduces ambiguity in the existing rule.

Intrabasin Transfer of Water (new N.J.A.C. 7:50-6.86(c))

The Commission is proposing to add a provision to explicitly allow the transfer of water between HUC-11 watersheds within either the Atlantic or Delaware basins at proposed N.J.A.C. 7:50-6.86(c). HUC-11 watersheds are geographic areas delineated by the United States Geological Survey and are defined in the CMP at N.J.A.C. 7:50-2.11.

This provision is intended to add clarity and flexibility to the water management standards, as the current rule is unclear as to whether such transfers are permissible. The specific allowance of intrabasin transfers is designed to provide an opportunity to address the needs of future permitted growth in the Pinelands Area. If the intrabasin transfer involves water sourced from the Kirkwood-Cohansey aquifer, it must meet the criteria and standards set forth at proposed N.J.A.C. 7:50-6.86(d).

Diversions from the Kirkwood-Cohansey Aquifer (recodified N.J.A.C. 7:50-6.86(d))

The current standard in the CMP for non-agricultural diversions from the Kirkwood-Cohansey aquifer requires only that the diversion "not result in any adverse ecological impact on the Pinelands Area." Existing N.J.A.C. 7:50-6.86(e). The Commission is proposing to recodify this provision at N.J.A.C. 7:50-6.86(d) and strengthen it by: (1) defining "ecological impact" with specific, measurable standards; (2) requiring well applicants to conduct tests, analyses, and modelling to evaluate ecological impacts; and (3) expanding the scope of wells that will be subject to the new standards and requirements. Proposed N.J.A.C. 7:50-6.86(d).

Scope of proposed rule

The current water management standards for withdrawals from the Kirkwood-Cohansey aquifer apply only to diversions over 100,000 gallons of water per day. Existing N.J.A.C. 7:50-6.86(e). The Commission is proposing, at recodified N.J.A.C. 7:50-6.86(d), to expand the scope of wells that will be subject to the proposed new requirements by lowering that threshold to 50,000 gallons of water or more a day.

The proposed amendments also specify that the 50,000 gallon per day threshold includes all of an applicant's existing diversions in the same HUC-11 watershed, in addition to the new or increased diversion. For example, if an applicant currently diverts 40,000 gallons of water a day and is proposing to divert an additional 20,000 gallons of water a day through a new well or from one of the applicant's existing wells in the same HUC-11 watershed, the new diversion will be subject to the new standards even though it is less than 50,000 gallons per day, as the total diversion would be 60,000 gallons of water a day. The decision to consider all of an applicant's diversions in the same HUC-11 watershed is based upon DEP's Technical Memorandum 12-2 (TM 12-2), which requires the DEP to consider all diversions covered under one DEP Water Allocation Permit when evaluating new water allocation permit applications. Structuring the Commission's evaluation of water diversion impacts to groups of wells and diversions proposed or operated by the same applicant or owner mirrors the DEP requirement and should promote consistency between the two agency's review procedures.

There are two categories of wells in the Kirkwood-Cohansey aquifer that will not be subject to the new standards: (1) diversions to be used exclusively for agricultural or horticultural use; and (2) the replacement of an existing well with a diversion rate of 50,000 gallons of water per day or more, provided the existing well is sealed in accordance with N.J.A.C. 7:9-9 and the replacement well is approximately the same depth as the existing well, diverts from the same aquifer, has the same or lesser pump capacity, is within 100 feet of the existing well, and is in the same HUC-11 watershed as the existing well. N.J.A.C. 7:50-6.86(d)2.

The new standards proposed at N.J.A.C. 7:50-6.86(d) will apply only to diversions from the Kirkwood-Cohansey aquifer. All other wells will continue to be considered development pursuant to N.J.A.C. 7:50-2.11 and subject to all other applicable provisions of the CMP. These include geothermal wells, wells not in the Kirkwood-Cohansey aquifer, and wells that pump less than 50,000 gallons per day.

It should be noted that the DEP requires water allocation permits for diversions greater than 100,000 gallons per day. There could be instances under the Commission's proposed amendments where an applicant in the Pinelands Area is required to meet the CMP standards for a new or increased diversion but is not required to apply for a water allocation permit from the DEP for the same diversion because it is less than 100,000 gallons per day.

Permissible Areas

To protect the more ecologically sensitive portions of the Pinelands Area, the Commission is proposing to limit new or increased diversions from the Kirkwood-Cohansey aquifer to the following Pinelands Management Areas: Regional Growth Area, Pinelands Towns, Rural Development Area, Military and Federal Installation Area, and the 24 Pinelands Villages that are not located in the Pinelands Preservation Area. Not only is most existing development in the Pinelands Area located in these management areas, but the CMP also directs and encourages new development here as well. Requiring new and increased diversions to be located in the same management areas as the existing and new development to be served is fully in keeping with long-standing CMP requirements for other types of infrastructure. New and increased diversions from the Kirkwood-Cohansey aquifer will also continue to be permitted in the Agricultural Production Area, where the Commission is charged with maintaining agriculture as an essential element of the Pinelands region. Such diversions will not be permitted in the Preservation Area District, Forest Area, or Special Agricultural Production Area, which comprise the most ecologically sensitive portions of the Pinelands Area. Proposed N.J.A.C. 7:50-6.86(d)3.

Alternative Sources

Diversions from the Kirkwood-Cohansey aquifer are currently permitted only if there are no "viable alternative water supply sources" available. Existing N.J.A.C. 7:50-6.86(e)1. The Commission proposes to clarify this standard at N.J.A.C. 7:50-6.86(d)4 by permitting diversions only if an applicant demonstrates that no alternative water supply source is available or viable. The proposed amendment provides examples of alternative sources, which include non-Kirkwood-Cohansey aquifer sources and public water purveyors and suppliers. The Commission will maintain a list of alternative water supply sources, referenced in the proposed rule, which can be found on the Commission's website. If there is an alternative water supply source on the Commission's list that an applicant does not believe is viable, the applicant will have to demonstrate to the Commission the reason why the source is not viable. Reasons for lack of viability could include prohibitive cost, limits on available technology, and significant timing issues.

Adverse Ecological Impact

Existing N.J.A.C. 7:50-6.86(c) requires all wells to be "designed and located so as to minimize impacts on wetlands and surface waters" but provide no quantifiable measures to ensure the well meets that standard. Existing N.J.A.C. 7:50-6.86(e)2 is similarly vague as it requires well applicants in the Kirkwood-Cohansey aquifer to demonstrate that the diversion "will not result in any adverse ecological impact on the

Pinelands Area," without defining adverse ecological impact or providing any criteria for measuring the ecological impacts.

The amendments reframe the existing standards, adding clarity and measurable criteria. Proposed N.J.A.C. 7:50-6.86(d)5 defines "adverse ecological impact" as an adverse regional impact and/or adverse local impact, which are each explained in detail at N.J.A.C. 7:50-6.86(d)6 and 7. Quantifiable standards are being proposed at N.J.A.C. 7:50-6.86(d)6 and 7 to help determine whether a proposed withdrawal from the Kirkwood-Cohansey aquifer will have a regional or adverse local impact.

When determining impacts to the Kirkwood-Cohansey aquifer, the Commission will consider all of the applicant's allocations under one water allocation permit or water use registration issued by the DEP in the same HUC-11 watershed. Although the existing rule at N.J.A.C. 7:50-6.86(c) was always intended to require consideration of all allocations under one permit, the language was not clear and caused confusion. Proposed N.J.A.C. 7:50-6.86(d)1 clarifies that all allocations, in addition to the proposed diversion, will be included in the evaluation if they are under one DEP water allocation permit or water use registration. For example, if an applicant already has a DEP water allocation permit for 100,000 gallons a day and has applied to the Commission for a new well that will withdraw an additional 20,000 gallons a day under the same permit, the Commission will evaluate the ecological impacts from the total withdrawal of 120,000 gallons per day. The new standards and review process set forth in these amendments will apply.

Although the existing rule at N.J.A.C. 7:50-6.86(c) requires that all wells be designed to minimize impacts on wetlands and surface waters, the proposed amendments remove that requirement for wells outside the Kirkwood-Cohansey aquifer. The decision to eliminate the requirement is based on the fact that the Kirkwood Cohansey aquifer is the primary source of water supporting the Pinelands Area and Pinelands ecosystems. Drawdowns from other aquifers do not have the same impact on water availability and ecosystems in the Pinelands as do those from the Kirkwood-Cohansey aquifer. Wells proposed outside the Kirkwood-Cohansey aquifer will remain subject to the wetlands protection standards of the CMP, which apply to all development in the Pinelands Area. At the same time, wells in other aquifers will be required to meet other development standards in the CMP, including those at Subchapter 6 that prohibit certain impacts to wetlands (N.J.A.C. 7:50-6), vegetation (N.J.A.C. 7:50-6.23 through 6.27), and to fish and wildlife (N.J.A.C. 7:50-6.33 and 6.34).

Adverse Regional Impact

One of the major goals of the proposed rulemaking is to protect against decreases in regional water availability due to new or increased water diversions. A proposed diversion will be deemed to have an adverse regional impact if it, combined with all existing permitted allocations in the same HUC-11 watershed, exceeds a specific threshold at which water availability in that watershed will be deemed to be adversely impacted. Proposed N.J.A.C. 7:50-6.28(d)6. When determining whether a diversion meets this criteria, all allocations permitted and registered by the DEP in that HUC-11 watershed will be considered, not just the applicant's permitted allocations.

The water availability threshold proposed by the Commission is based on the stream low flow margin, which is defined in the proposed amendments at N.J.A.C. 7:50-2.11, and used by the DEP to estimate water availability throughout the State of New Jersey. Computations of the stream low flow margin are published in the New Jersey Statewide Water Supply Plan (Water Supply Plan) for each HUC-11 in the State. They are an estimate of the amount of water that would remain in a stream system during a specified drought period. The Water Supply Plan includes calculations for the volume of water that can be removed from an HUC–11 watershed without impacting the stream low flow margin and stressing the watershed based on all known allocations.

The Commission is proposing to restrict the amount of water that can be diverted from an HUC-11 watershed to 20 percent of the stream low flow margin. In the event a proposed diversion cannot meet this threshold, the amendments allow applicants to offset the diversion on a gallon-for-gallon basis, so that the proposed diversion, combined with all other allocations in the watershed, no longer exceeds 20 percent of the stream low flow margin. Proposed N.J.A.C. 7:50-6.86(d)6i. Examples of offset measures include: the recharge of previously non-infiltrated stormwater runoff in the Pinelands Area; the recharge of treated wastewater that is currently discharged through a regional sewage treatment plant that discharges treated wastewater into the Delaware River or Atlantic Ocean; development of a desalinization facility; and sewerage system inflow and infiltration abatement and/or water distribution infrastructure leak auditing and correction.

This same flexibility is being offered to an applicant who proposes a diversion in an HUC-11 watershed that is already constrained by withdrawals exceeding 20 percent of the stream low flow margin -- before the proposed diversion is even factored in. In those situations, the diversion will be allowed if the applicant can permanently offset the new diversion in the same manner as described at N.J.A.C. 7:50-6.86(d)5i. N.J.A.C. 7:50-6.86(d)6ii.

An applicant will be required to identify all offset measures and provide the Commission a detailed description of the measures, including the volume of water that will be offset, timeframes for implementing the offsets, a description of the entity that will be implementing the offset measures, and an explanation of the entity's authority to implement the measures. N.J.A.C. 7:50-6.86(d)6iii(2).

It should be noted that the Commission is proposing a more stringent standard for maintaining water availability than that advised by the DEP in the Water Supply Plan. As a tool for regional protection of the water table aquifer contributing to stream flows, the Water Supply Plan recommends limiting aquifer withdrawals to no more than 25 percent of the stream low flow margin. The Commission is proposing a lower threshold of total withdrawals from an HUC-11 watershed to better protect water supply in the Kirkwood-Cohansey aquifer. The more restrictive 20 percent of the stream low flow margin volume is intended to recognize climate change effects on aquifer recharge due to greater extremes in drought and rainfall patterns.

In addition, the five percent difference between the Commission's proposal and the DEP's threshold also accounts for water diverted for agricultural and horticultural purposes, which the Commission does not have the authority to review or limit. The lower stream low flow margin threshold being proposed by the Commission assures that the additional five percent of the stream low flow margin allowed by the DEP could be dedicated to agricultural and horticultural purposes.

The proposed amendments at N.J.A.C. 7:50-6.86(d)6 require an applicant to calculate the sum of the proposed diversion and all existing permitted allocations in the affected HUC-11 watershed. Using data from the Water Supply Plan, the applicant is required to show whether that sum exceeds 20 percent of the stream low flow margin for the year of peak use established in the New Jersey Statewide Water Supply Plan. Lastly, the applicant is required to submit a report to the Commission detailing the calculations and the impact of the proposed diversion on the available portion of the 20 percent stream low flow margin in the affected HUC-11.

Adverse Local Impact

Proposed N.J.A.C. 7:50-6.86(d)7 prohibits a proposed diversion from having an adverse impact on wetlands and the most ecologically sensitive areas in the Pinelands Area, also referred to as an "adverse local impact." The Commission is proposing specific, quantifiable standards to determine whether a well will have an adverse local impact. The standards are based on the studies of the Kirkwood-Cohansey Project, which revealed the adverse effects of aquifer withdrawals on the distribution of wetlands and wetland habitats necessary for the survival of threatened and endangered plant and animal species. The proposed amendments also update the methodologies at existing N.J.A.C. 7:50-6.86(c) for measuring the impact of a diversion on wetlands and surface water.

A diversion will be deemed to have an adverse local impact if it results in any drawdown of the water table in the most ecologically sensitive areas of the Pinelands, which include any portion of the Preservation Area District, a Forest Area, or a Special Agricultural Production Area in the affected HUC-11 watershed. A diversion will also be deemed to have an adverse local impact if it results in a drawdown of the water table by more than four inches of the wetland nearest to the "zone of influence," defined at N.J.A.C. 7:50-2.11 as the area of ground water in the affected HUC-11 watershed that experiences an impact attributable to the pumping well. N.J.A.C. 7:50-6.28(d)7.

The applicant is required to conduct tests and run models to establish whether the diversion will have an adverse local impact. N.J.A.C. 7:50-6.28(d)7i. The proposed application requirements clarify, strengthen, and update the testing methodologies at existing N.J.A.C. 7:50-6.86(c), which requires only that "hydrologic analyses" be conducted in accordance with DEP guidelines from a technical manual that has since been replaced with a newer manual with a different title. (Technical Memorandum 12-2, Hydrogeologic Testing and Reporting Procedures in Support of New Jersey Water Allocation Permit in effect at the time of application ("TM 12-2"). N.J.A.C. 7:50-6.28(d)7i(1)).

The applicant will first be required to submit an analysis of potential drawdown impacts using the Thiem analysis. After completing the Thiem analysis, the applicant is required to submit to the Commission a proposed hydrogeologic test (also known as a pump test) developed in accordance with TM 12-2. N.J.A.C. 7:50-6.28(d)7i(2). This design phase gives applicants the opportunity to demonstrate to the Commission how the pump test will provide accurate results.

The pump test design can be flexible, but the proposed rule lists the minimum required design elements, which include installation of a single pumping well, observation wells to monitor water levels and collect time-drawdown data, and at least one piezometer to measure surface water and water table decline at the wetlands nearest to the proposed well. Other locations to be monitored are the nearest boundaries of a Forest Area or a Special Agricultural Production Area, or the Preservation Area District in the same HUC-11 watershed. Where one of the designated boundaries is located further from, but in the same direction as, another management area boundary to be monitored (nested), the more distant boundary would not be required to have a piezometer. Where different management area boundaries are located in different directions from the proposed diversion (not nested, but adjacent), a piezometer would be required at each management area boundary. N.J.A.C. 7:50-6.28(d)7i(2)(A), (B), (C), and (D). The applicant may include additional observation wells or piezometers at additional locations in the design of the pump test. As pump test design is also required by the DEP, it is expected that applicants will also be conferring with the DEP Bureau of Water Allocation during pump test design to assure that the design meets requirements of that agency.

If an applicant is unable to gain access to properties where piezometers are required, the applicant may propose to install them at comparable locations if the alternate placement will adequately measure surface water and water table decline at the locations specified at N.J.A.C. 7:50-6.28(d)7i(2). In such circumstances, the applicant would be required to provide information to the Commission to show how the alternate locations will provide measurements of surface water and water table decline that are comparable to the measurements that would be taken at the preferred locations. Factors that would go into a determination of whether the alternate locations could produce comparable measurements include comparable distance from the preferred location, no known differences in other withdrawals between the preferred and alternate locations, and no known naturally occurring differences in hydrologic or hydrogeologic characteristics. An example of an alternate location that would not be approved is one where there is a 100,000 gallon per day well that is pumping between the proposed new well and the alternate location, but not between the proposed new well and the preferred location. Another example of an unacceptable alternate location is where the preferred location is a wetlands that is fed by groundwater, but the alternate location is known to be perched and fed only by infiltration (rain).

After completing the pump test, the applicant is required to submit to the Commission a hydrogeologic report prepared in accordance with TM12-2 that includes the testing procedures, data collected and analyzed, and evaluation of the effect of the proposed diversion on the Kirkwood-Cohansey aquifer. N.J.A.C. 7:50-6.28(d)7i(3). The Commission will notify the applicant regarding whether the pump test design, test, and report have been completed appropriately in a consecutively executed application process. Applicants will be encouraged to concurrently consult with the DEP, as a pump test is also required by that agency.

Using the results of the hydrogeologic test, the applicant is next required to calculate an estimated zone of influence created by the proposed diversion and submit a groundwater flow model using the modular hydrologic model of the United States Geological Survey, MODFLOW. The MODFLOW model will enable the applicant to calculate the zone of influence of the water table at the nearest boundaries of the Preservation Area District, Forest Area, and Special Agricultural Production Area in the affected HUC-11 watershed as well as the boundary of the wetland nearest to the proposed diversion in the same HUC-11 watershed. N.J.A.C. 7:50-6.28(d)7i(4).

Water Conservation

The current water management rule at existing N.J.A.C. 7:50-6.86(d) requires all well applicants to "address measures in place or to be taken to increase water conservation in all areas to be served by the proposed well or system." The Commission is proposing to reword this requirement and add clarity by defining water conservation measures as "measurable efforts by public and private water system operators and local agencies to reduce water demand by users and reduce losses in the water distribution system." N.J.A.C. 7:50-6.86(d)8. Examples of water conservation measures include implementation of the WaterSense water conservation program of the United States Environmental Protection Agency, or of the LEEDs building standards of the United States Green Building Council, implementation of a peak demand fee structure, or requiring mandatory soil moisture/rain sensors for all landscape irrigation systems.

The Commission will no longer require water saving devices to be installed in all new development in areas served by central sewers, as is currently required at N.J.A.C. 7:50-6.86(a). Instead, it is proposing at N.J.A.C. 7:50-6.86(d)8 to broaden the water conservation measures that will be deemed acceptable as part of a well application. The current water conservation requirement is limited to areas served by sewers and was meant to be an indirect conservation measure to limit the amount of water exported from the Pinelands Area by sewer pipes, by also targeting those areas likely to be served by public community water systems. The Commission is replacing this requirement with broader and more flexible conservation requirements that do not preclude the implementation of conservation measures in sewer service areas, but add options for conservation other than the difficult to enforce requirement to install water saving devices. At the same time, the proposed rule recognizes that there are some areas that may be served by public community water systems but are not connected to public sewers. While those areas may be considered to recharge any water used that is discharged to individual subsurface disposal systems, those areas may also be using large volumes of water for lawn irrigation or other consumptive uses.

Notice Requirements

Recognizing that a diversion in one municipality may affect the availability of water in another municipality, the Commission is proposing, at N.J.A.C. 7:50-6.86(d)9, to require that well applicants are required to notify the municipality and county in which the proposed diversion will be located, as well as all other municipalities and counties in the affected HUC-11 watershed of the proposed diversion. This requirement will apply to private well applicants, as well as public well applicants.

Notice for private and public well applicants is to include: a detailed description of the proposed diversion, including the source, location, quantity, and/or allocation of water to be diverted; and the potential impact of the proposed diversion on the volume of water in the affected HUC-11 watershed that will be available for future diversions. Private well applicants will also have to include in their notice: a statement advising that written comments on the application may be submitted to the Pinelands Commission; a statement advising that the application is available for inspection at the office of the Pinelands Commission; and the address and phone number of the Pinelands Commission. Public well applicants are also required to comply with the existing notice provisions at N.J.A.C. 7:50-4.53(e), which apply to all major public development.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Kirkwood-Cohansey aquifer is a vital resource that sustains the Pinelands ecosystem and provides potable and non-potable water to hundreds of thousands of people, businesses, and farms in southern New

Jersey. The proposed amendments establish stricter standards for withdrawals from the aquifer, which will result in stronger protections to the ecosystem and greater protections to the supply of water for agricultural operations in the Pinelands Agricultural Production Area and permitted development in the more growth-oriented areas of the Pinelands Area. These enhanced protections to the Pinelands ecology and regional water supply are expected to have a positive social impact in the Pinelands Area, as protection of resources in the Pinelands benefits society within the Pinelands and in the surrounding areas. These stronger protections will ensure that existing users will be able to continue to rely on the Kirkwood-Cohansey aquifer for community water supplies, private home wells, and industrial and agricultural uses in southern New Jersey.

Economic Impact

The proposed amendments will have a positive economic impact on the growth-oriented areas of the Pinelands, as they limit new diversions from the Kirkwood-Cohansey aquifer to the Regional Growth Area, Pinelands Towns, Rural Development Area, Agricultural Production Area, Military and Federal Installation Area, and 24 specific Pinelands Villages. Wells that support new or existing development in these areas will be permissible if they meet the new proposed standards and criteria. For the existing residential and non-residential uses and agricultural operations that currently withdraw water from the Kirkwood-Cohansey aquifer, the rules are designed to ensure continued reliance on the aquifer. This translates into an economic benefit for those water users, as accessing new water sources, such as wells, distribution lines, or utility fees, could be very costly.

There will be added costs for applicants proposing new or expanded non-agricultural diversions of at least 50,000 gallons per day from the Kirkwood-Cohansey aquifer. An application fee of $6,000 has been established for all such proposed projects, and an escrow payment will be required to fund the USGS's review of the testing, modelling, and analysis required by the proposed amendments. Since 2017, the Commission has received 30 applications for new or increased diversions, most of which proposed withdrawals from the Kirkwood-Cohansey. Of those applications, only 13 would have been subject to the application fee and escrow requirements proposed in this rulemaking.

There will be additional costs associated with new non-agricultural withdrawals of between 50,000 to 100,000 gallons per day from the aquifer, as the proposed amendments require testing, modeling, and analyses to assess the ecological impact of the proposed withdrawal. The DEP already requires similar analyses and modeling for diversions of 100,000 gallons per day or more. By lowering the threshold to 50,000 gallons per day, the proposed amendments will result in smaller wells in the Pinelands Area incurring costs for testing, modeling, and analyses that are not currently required by the DEP rules. Of the 30 applications for new or increased diversions received by the Commission since 2017, it is estimated that only eight would have incurred these additional costs, either because of the new 50,000 gallons per day threshold or because the proposed rule clarifies that wells owned in common will be grouped for purposes of determining whether the 50,000 gallons per day threshold is exceeded. Based on its past application activity, and the limitations imposed in the proposed amendments, the Commission anticipates that the total number of applications for new and increased divisions in the Kirkwood-Cohansey aquifer will continue to be low, with a small percentage subject to the additional costs associated with the proposed amendments.

Additional costs may also be incurred to meet the proposed water conservation and offset requirements, which will vary depending on the type of measures that are implemented. For individual users served by the water system, however, conservation measures may reduce costs based on lower water usage. For the system owner, development costs could potentially be reduced through the Pinelands Infrastructure Trust, which provides low-cost loans and grants to municipalities developing infrastructure to support growth in Pinelands Regional Growth Areas.

In some instances, the proposed amendments will require that new development rely on water outside the Kirkwood-Cohansey aquifer—from alternative water sources in deeper aquifers or from water purveyors or public community system interconnections. The initial costs associated with deeper wells or creating more extensive water supply distribution systems and interconnections may initially be greater than the costs of a new well in the Kirkwood-Cohansey aquifer.

Environmental Impact

The Kirkwood-Cohansey aquifer contains at least 17 trillion gallons of fresh water that lies beneath a 3,000 square mile area of the Pinelands Area. It sustains a vast ecosystem by supplying water to almost all the wetlands, streams, and rivers in the Pinelands, as well as being the primary water source for people, business, and farms in and immediately around the Pinelands Area. The proposed amendments prohibit diversions that will adversely impact the Pinelands ecology and the local water supply based on clear, measurable standards. These enhanced protections are anticipated to have a positive environmental impact.

Through legislation enacted in 2001, the New Jersey Legislature directed the Pinelands Commission to study how future water supply needs can be met from the Kirkwood-Cohansey aquifer without adversely impacting the ecosystem. P.L. 2001, c. 165. The studies, conducted jointly by the Commission and other government and educational entities and known collectively as the Kirkwood-Cohansey Project, established a clear link between the aquifer and the ecosystem. Simulated groundwater withdrawals and streamflow reductions reduced the distribution and composition of wetland-forest communities, individual wetland species, and wetland-indicator groups. In turn, there was a reduction in the survival rate of certain animal and plant species, including the State-threatened Pine Barrens tree frog and Federally endangered wetland plant, swamp pink, when the water table in the wetlands declined. The study of frogs, in particular, demonstrated a sharp decline in populations when the water table was lowered by four inches. Taken together, the studies predicted that groundwater withdrawals will reduce the populations of plants and animals that are characteristic of undisturbed Pinelands ecosystems.

Based on these studies, the Commission is proposing to strengthen protections for wetlands, and the animal and plant species that rely on wetlands habitats for survival, by requiring an assessment of the ecological impact of a proposed diversion. The amendments will prohibit diversions that would result in the drawdown of the water table of any portion of the most ecologically sensitive Pinelands management areas: the Preservation Area District, Forest Area, and Special Agricultural Production Area. In less restrictive management areas, the amendments will prohibit diversions that result in the drawdown of the water table by more than four inches in wetlands nearest to the zone of influence (the area of ground water that experiences an impact attributable to a pumping well).

The proposed amendments expand the scope of diversions that will be subject to the stricter standards and criteria. The CMP's water management provisions currently apply only to total diversions of 100,000 gallons or more per day. The Commission is proposing to lower this threshold to total diversions of 50,000 gallons or more per day from the Kirkwood-Cohansey aquifer in the same HUC-11 watershed. The volume determination is based on all of an applicant's allocations under a water allocation permit, water use registration issued by the DEP, which will ensure that more wells will be subject to the proposed new standards and further protect the Pinelands ecology and water supply.

The proposed amendments also limit the adverse effects of withdrawals on the sustainability of the water supply in HUC-11 watersheds in the Kirkwood-Cohansey aquifer. Excessive withdrawals can diminish available water supply for existing uses such as community water systems, private home wells, businesses, agriculture, and ecosystems. The Commission is proposing a specific, measurable standard to assess and limit the impact of a proposed diversion on water availability in a particular watershed. The standard is based on the stream low flow margin, a tool formulated by the DEP for regional protection of the water table aquifer. The New Jersey Statewide Water Supply Plan (Water Supply Plan) includes estimates of this stream low flow margin for each HUC–11 watershed in the State. Withdrawals in any HUC-11 watershed that exceed a specific portion of that low flow margin are expected to reduce stream flows such that a stream may dry up during annual low flow periods or droughts, thus impacting wetlands habitats and species, existing human uses, and stressing the watershed. These calculations are based on all known allocations approved and registered by the DEP.

The Commission's rulemaking to limit aquifer withdrawals to no more than 20 percent of the stream low flow margin for each HUC-11 watershed will strengthen the protections of the water supply in the Pinelands Area, as the CMP does not currently impose specific limits on withdrawals. This threshold limit of 20 percent is also stricter than that recommended by the Water Supply Plan, which says that up to 25 percent of the stream low flow margin could be diverted without causing streams to dry up during annual low flow periods or droughts. The lower threshold will protect Pinelands plants, animals, and habitats, as well as existing withdrawals for public water supplies, agriculture, and other businesses. The Commission also chose a lower threshold in recognition that climate change may result in longer or more frequent drought periods.

When evaluating whether a proposed diversion meets this stream low flow margin threshold, the proposed amendments require the Commission to consider all the existing permitted allocations in the same HUC-11 watershed, not just the proposed diversion. This consideration mirrors the methodology by which the low flow margin is estimated in the Water Supply Plan and will ensure a more complete and accurate evaluation of how stressed the watershed will be from the proposed new diversion in light of all existing allocations.

Other provisions in the proposed amendments also serve to protect the environment, including the explicit prohibition on the interbasin transfers of water. Prohibiting such transfers is a key tool in limiting adverse environmental impacts related to the reduction in stream base flows that can result from the transfers. The restriction against interbasin transfers is also strengthened by defining the two basins between which water cannot be transferred.

To better protect the most ecologically sensitive areas of the Pinelands, the Commission is proposing to limit new or increased diversions from the Kirkwood-Cohansey aquifer to the Agricultural Production Area and the following growth-oriented Pinelands Management Areas: Regional Growth Area, Pinelands Towns, Rural Development Area, Military and Federal Installation Area, and 24 specific Pinelands Villages. This is expected to minimize future impacts to groundwater quantities in the Preservation Area District, the Special Agricultural Production Area, and the Forest Area.

The Commission is proposing to strengthen and clarify the water conservation requirement currently in the CMP by requiring documentation of measures that have been implemented or that are planned for implementation and requiring that the conservation efforts be measurable. The amendments also broaden the water conservation requirements of the current rule by requiring conservation to occur not just in areas served by centralized sanitary sewer systems, but throughout all areas to be served by the proposed diversion.

Federal Standards Statement

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. § 471i) called upon the State of New Jersey to develop a comprehensive management plan for the Pinelands National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals that the plan must meet, including the protection, preservation, and enhancement of the land and water resources of the Pinelands. The proposed amendments are designed to meet those goals by imposing stringent requirements and restrictions on groundwater withdrawals from the Kirkwood-Cohansey aquifer, which, in turn, will protect wetlands habitats and plants and animals that are characteristic of undisturbed Pinelands ecosystems, including at least one wetlands plant that is on the Federal endangered species list.

There are no other Federal requirements that apply to the subject matter of these amendments.

Jobs Impact

The Commission anticipates that this rulemaking will not have any significant impact on job creation and retention in New Jersey. Engineering and other professional work will be needed to comply with the testing and modeling requirements in the proposed amendments. These requirements align closely with those currently imposed by the DEP, but under the proposed amendments, they will apply to a slightly larger group of wells (those that will pump 50,000 gallons per day or more). Overall, the Pinelands Commission does not believe that the rulemaking will result in a significant impact on jobs.

Agriculture Industry Impact

The rulemaking will have no direct impact on the agriculture industry, as exclusively agricultural uses are not deemed development under the CMP and do not require application to the Commission. The proposed amendments permit new and expanded diversions in the Pinelands Agricultural Production Area and explicitly exempt diversions exclusively for agricultural or horticultural use from complying with the new standards. It is anticipated that the amendments will indirectly benefit farm operations that rely upon the Kirkwood-Cohansey aquifer for water by protecting regional water supply.

The Kirkwood-Cohansey aquifer provides water for upland agriculture and for the cranberry bogs and blueberry farms throughout the Pinelands Area. Farmers depend on water from the aquifer for irrigation and cranberry growers use large amounts of water from the aquifer to maintain their bogs. The amendments strengthen the protections to the Kirkwood-Cohansey aquifer water supply, which, in turn, will benefit the agriculture industry in the Pinelands Area and surrounding areas.

The proposed standard for maintaining water availability could benefit the agricultural industry. The Commission is proposing to limit withdrawals from the Kirkwood-Cohansey aquifer to no more than 20 percent of the stream low flow margin for the HUC-11 watershed in which a proposed diversion is located. This represents a five percent difference between the Commission's rulemaking and the DEP's recommended threshold, which is 25 percent of the stream low flow margin. The difference in the threshold suggests that an additional five percent of the stream low flow margin might be allowed by the DEP for agricultural and horticultural purposes that the Commission does not regulate.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Commission has evaluated whether the proposed amendments will impose any reporting, recordkeeping, and other compliance requirements on small businesses. Most businesses in the Pinelands Area may be characterized as small in size and employment compared to the rest of New Jersey. However, the proposed amendments do not differentiate by size of business and thus will impact all businesses equally in terms of absolute costs.

Small businesses proposing new or increased diversions in the Kirkwood-Cohansey reservoir may incur costs from hiring professional consultants, such as engineers. Although under the current rules small businesses incur similar costs, the proposed rules require additional analyses and modeling, which could increase the costs. Also, where new or increased diversions require offsets on a gallon-per-gallon basis for withdrawals beyond 20 percent of the stream low flow margin, small businesses may incur costs associated with those offsets depending on the method of implementing the offsets. Similarly, businesses served by a water supply system that is the subject of an application for a new or increased withdrawal from the Kirkwood-Cohansey aquifer may also be required to institute water conservation measures and may, therefore, incur a cost depending on the method of implementing conservation.

The Commission has balanced the costs imposed on small businesses by the proposed amendments against the environmental benefits to be achieved by the amended well requirements and determined that it would be inappropriate to exempt small businesses from these requirements. As noted above in the Environmental Impact statement, the amendments impose stricter requirements on water withdrawals from the Kirkwood-Cohansey aquifer, which will result in healthier ecosystems and less threats to the plants and animals that thrive in those undisturbed ecosystems.

Housing Affordability Impact Analysis

The Commission does not anticipate this rulemaking will have a significant impact on the affordability of housing. Costs may be incurred by developers, municipalities, or utilities related to implementing conservation measures or offsets, where required. Those upfront costs may result in a minor incremental increase in housing costs where a community water supply is served by a new or increased diversion from the Kirkwood-Cohansey aquifer. Additional impacts to housing

affordability are expected to be minimal, as DEP already imposes similar requirements for well modeling and testing. There may be situations, however, where the regional impact to the aquifer cannot be offset and a housing project may be required to seek an alternative water supply source. The additional costs for extending the infrastructure would likely be passed along in housing prices.

Smart Growth Development Impact Analysis

N.J.S.A. 52:14B-4 requires that proposed amendments be evaluated to determine their impacts, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan (State Plan). Planning Areas 1 and 2 do not exist in the Pinelands Area. Likewise, the State Plan does not designate centers within the Pinelands Area. Instead, N.J.S.A. 52:18A-206.a provides that the State Plan shall rely on the Pinelands CMP for land use planning in the Pinelands. The Commission has evaluated the impact of the proposed amendments on Pinelands management areas designated by the CMP that are equivalent to Planning Areas 1 and 2 and designated centers, namely, the Regional Growth Areas, Pinelands Villages, and Pinelands Towns.

These three management areas are designated for development by the CMP and are equivalent to designated centers under the State Plan. The rulemaking will not increase the amount of permitted residential development in these management areas and is not expected to result in any changes in housing density within designated centers or in any other portions of the Pinelands Area.

There will be no effect on new construction in Planning Areas 1 and 2, as designated by the State Development and Redevelopment Plan, as these State Planning Areas do not exist in the Pinelands Area.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commission has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

7:50-1.6 Fees

(a) Except as provided [in] **at** (a)1 and 2 below, all applications required or permitted by any provision of this Plan shall be accompanied by a nonrefundable**, nontransferable,** application fee of $250.00 or a fee calculated according to the fee schedule set forth [in] **at** (b) through (l) below, whichever is greater. No application filed pursuant to this Plan shall be reviewed or considered complete**,** unless all fees required by this Part have been paid and any escrow required pursuant to N.J.A.C. 7:50-1.7 has been submitted.

1.-2. (No change.)

(b) (No change.)

(c) The application fee for a commercial, institutional, industrial, or other non-residential development application submitted pursuant to N.J.A.C. 7:50-4.14, 4.33, 4.52, or 4.66 shall be calculated in accordance with the following, based on typical construction costs, except as provided [in] **at** (c)1 through [9] **10** below: [Typical construction costs shall include all costs associated with the development for which the application is being submitted, including, but not limited to, site improvement and building improvement costs, but shall not include interior furnishings, atypical features, decorative materials or other similar features.]

Construction Cost	Required Application Fee
$0 - $500,000	1.25 percent of construction costs
$500,001-$1,000,000	$6,250 + one percent of construction costs above $500,000
Greater than $1,000,000	$11,250 + 0.75 percent of construction costs above $1,000,000

Typical construction costs shall include all costs associated with the development for which the application is being submitted, including, but not limited to, site improvement and building improvement costs, but shall not include interior furnishings, atypical features, decorative materials or other similar features. Supporting documentation of the expected construction costs shall be submitted as part of the application for development, unless the maximum fee pursuant to [(e)4] **(e)3** below is required, in which case no such documentation shall be necessary.

1.-7. (No change.)

8. For the demolition of a structure 50 years or older, the fee shall be $250.00; [and]

9. For the development of a solar energy facility, the fee shall be $1,500 plus $500.00 per acre of land to be developed, or portion thereof, including any off-site development[.]**; and**

10. For a well, the application fee shall be:

i. $6,000 for any well in the Kirkwood-Cohansey aquifer that is required to meet the criteria and standards at N.J.A.C. 7:50-6.86(d); or

ii. Calculated based upon construction costs as set forth in this subsection for wells that are not subject to the criteria and standards at N.J.A.C. 7:50-6.86(d).

(d)-(l) (No change.)

SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings ascribed to them.

. . .

"Divert" or "Diversion" means the taking of water from a river, stream, lake, pond, aquifer, well, other underground source, or other waterbody, whether or not the water is returned thereto, consumed, made to flow into another stream or basin, or discharged elsewhere.

. . .

"Stream low flow margin" means the difference between a stream's September median flow and its statistical flow, which is the seven-day flow average in the 10-year period for the stream (7Q10) as reported in the New Jersey Statewide Water Supply Plan, New Jersey Department of Environmental Protection, 2017, New Jersey Water Supply Plan 2017-2022: 484p, http://www.nj.gov/dep/watersupply/wsp.html, as amended and supplemented.

. . .

"Well" means a hole or excavation deeper than it is wide, that is drilled, bored, core driven, jetted, dug, or otherwise constructed for the purpose of the removal of, investigation of, or exploration for water.

. . .

"Zone of influence" means the area of ground water that experiences an impact attributable to a pumping well.

. . .

SUBCHAPTER 6. MANAGEMENT PROGRAMS AND MINIMUM STANDARDS

7:50-6.86 Water management

[(a) Interbasin transfer of water between watersheds in the Pinelands should be avoided to the maximum extent practical. In areas served by central sewers, water-saving devices such as water saving toilets, showers and sink faucets shall be installed in all new development.]

[(b)] **(a)** Water shall not be exported from the Pinelands except as otherwise provided [in] **at** N.J.S.A. 58:1A-7.1.

[(c) All wells and all increases in diversion from existing wells which require water allocation permits from the New Jersey Department of Environmental Protection shall be designed and located so as to minimize impacts on wetlands and surface waters. Hydrologic analyses shall be conducted in accordance with the New Jersey Department of Environmental Protection Guidelines for Water Allocation Permits, with an Appendix on Aquifer-Test Analysis Procedures, New Jersey Geological Survey Report GSR 29, 1992, incorporated herein by reference, as contained in pages 53 through 91 of the Technical Manual for Water Supply Element, Bureau of Water Allocation, Water Allocation Permits dated May 19, 1993, as amended.

(d) All applications for the development of water supply wells or the expansion of existing water distribution systems shall address measures in place or to be taken to increase water conservation in all areas to be served by the proposed well or system. This shall include efforts by water purveyors and local governments to reduce water demands by users and to reduce losses in the supply and distribution system.

(e) Except for agricultural uses, all new potable and non-potable water supply diversions of more than 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer as a source of water supply and new increases in existing potable and non-potable water supply diversions of over 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer may be permitted only if it is demonstrated that:

1. No viable alternative water supply sources are available; or

2. The proposed use of the Kirkwood-Cohansey aquifer will not result in any adverse ecological impact on the Pinelands Area.]

(b) A diversion that involves the interbasin transfer of water in the Pinelands Area between the Atlantic Basin and the Delaware Basin, as defined at (b)1 and 2 below, or outside of either basin, shall be prohibited.

1. The Atlantic Basin is comprised of Watershed Management Areas 13, 14, 15, and 16, as identified by the New Jersey Department of Environmental Protection at https://www.state.nj.us/dep/seeds/docs/watersheds.pdf.

2. The Delaware Basin is comprised of Watershed Management Areas 17, 18, 19, and 20 as identified by the New Jersey Department of Environmental Protection at https://www.state.nj.us/dep/seeds/docs/watersheds.pdf.

(c) A diversion involving the intrabasin transfer of water between HUC-11 watersheds in the same basin, Atlantic Basin or Delaware Basin as defined at (b) above, shall be permitted. If such an intrabasin transfer involves water sourced from the Kirkwood-Cohansey aquifer, the diversion shall meet the criteria and standards set forth at (d) below.

(d) A new diversion or an increase in allocation from either a single existing diversion source or from combined existing diversion sources in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer, that results in a total diversion of 50,000 gallons of water per day or more (hereafter referred to as "proposed diversion") shall meet the criteria and standards set forth at (d)3 through 9 below. "Allocation" shall mean a diversion permitted pursuant to a Water Allocation Permit or Water Use Registration Number issued by the New Jersey Department of Environmental Protection pursuant to N.J.A.C. 7:19.

1. When evaluating whether the proposed diversion meets the criteria set forth at (d)3 through 9 below, all of the applicant's allocations in an HUC-11 watershed, in addition to the proposed diversion, shall be included in the evaluation.

2. The standards set forth at (d)3 through 9 below shall not apply to:

i. A new well that is to replace an existing well, provided the existing well is sealed in accordance with N.J.A.C. 7:9-9 and the new replacement well will:

(1) Be approximately the same depth as the existing well;

(2) Divert from the same aquifer as the existing well;

(3) Have the same or lesser pump capacity as the existing well; and

(4) Be located within 100 feet of, and in the same HUC-11 watershed as, the existing well; or

ii. Any diversion that is exclusively for agricultural or horticultural use.

3. A proposed diversion shall be permitted only in the following Pinelands Management Areas:

i. Regional Growth Area;

ii. Pinelands Towns;

iii. Rural Development Area;

iv. Agricultural Production Area;

v. Military and Federal Installation Area; and

vi. The following Pinelands Villages: Milmay; Newtonville; Richland; Folsom; Cologne-Germania; Pomona; Mizpah; Nesco-Westcoatville; Port Republic; New Gretna; New Lisbon; Indian Mills; Tabernacle; Blue Anchor; Elm; Tansboro; Waterford Works; Winslow; Dennisville; Petersburg; Tuckahoe; Delmont; Dorchester; and Port Elizabeth-Bricksboro.

4. A proposed diversion shall only be permitted if the applicant demonstrates that no alternative water supply source is available or viable. Alternative water supply sources include, but are not limited to, groundwater and surface water sources that are not part of the Kirkwood-Cohansey aquifer, and public water purveyors and suppliers, as defined at N.J.A.C. 7:19-1.3. A list of alternative water supply sources is available at the offices of the Pinelands Commission and at https://www.nj.gov/pinelands/.

5. A proposed diversion shall not have an adverse ecological impact on the Kirkwood-Cohansey aquifer. Adverse ecological impact means an adverse regional impact and/or an adverse local impact, as described at (d)6 and 7 below.

6. A proposed diversion shall be deemed to have an adverse regional impact if it, combined with all existing permitted allocations in the same HUC-11 watershed, exceeds 20 percent of the stream low flow margin for the year of peak use established in the New Jersey Statewide Water Supply Plan at https://www.nj.gov/dep/watersupply/pdf/wsp.pdf for the HUC-11 watershed where the proposed diversion will be located (hereafter referred to as "the affected HUC-11 watershed").

i. If a proposed diversion is deemed to have an adverse regional impact, it shall be permitted only if an applicant permanently offsets the diversion on a gallon-for-gallon basis in accordance with the following:

(1) Offsets shall be implemented in the affected HUC-11 watershed and include, but are not limited to:

(A) The recharge of previously non-infiltrated stormwater runoff in the Pinelands Area;

(B) The recharge of treated wastewater that is currently discharged by a regional sewage treatment plant that discharges treated wastewater into the Delaware River or Atlantic Ocean;

(C) Development of a desalinization facility; and

(D) Sewerage system inflow and infiltration abatement and/or water distribution infrastructure leak auditing and correction.

ii. A proposed diversion in an HUC-11 watershed where water withdrawals already exceed 20 percent of the stream low flow margin established in the New Jersey Statewide Water Supply Plan shall be deemed to have an adverse regional impact unless an applicant can permanently offset the entire diversion in accordance with (d)6i(1) above.

iii. Unless the submission requirements are modified or waived pursuant to N.J.A.C. 7:50-4.2(b)3, all applications shall include the information required at N.J.A.C. 7:50-4.2(b)4 or 5, as well as the following:

(1) Using data on low flow margins in the New Jersey Statewide Water Supply Plan in effect at the time of application, the applicant shall calculate the sum of the proposed diversion and all existing permitted allocations in the affected HUC-11 watershed, and show whether that sum exceeds 20 percent of the stream low flow margin for the year of peak use established in the New Jersey Statewide Water Supply Plan. The applicant shall submit a report that includes all required calculations and a summary of the impact of the proposed diversion on the available portion of the 20 percent stream low flow margin in the affected HUC-11.

(2) The applicant shall identify all offset measures and provide to the Commission a detailed description of the measures, including the volume of water that will be offset, timeframes for implementing the offsets, a description of the entity that will be implementing the offset measures, and an explanation of the entity's authority to implement the measures.

7. A proposed diversion shall be deemed to have an adverse local impact in the Pinelands Area if it results in the drawdown of the water table as defined at N.J.A.C. 7:19-6.2 of any portion of the Preservation Area District, Forest Area, or Special Agricultural Production Area in the affected HUC-11 watershed, or of more than four inches of the wetlands nearest to the estimated zone of influence in the affected HUC-11 watershed.

i. Application requirements:

(1) The applicant shall submit an analysis of potential drawdown impacts using the Thiem method in accordance with the New Jersey Geological & Water Survey Technical Memorandum 12-2, Hydrogeologic Testing and Reporting Procedures in Support of New Jersey Water Allocation Permit in effect at the time of application (hereafter referred to as "TM 12-2").

(2) Upon completion of the Thiem analysis, the applicant shall submit a proposed hydrogeologic test procedure, developed in accordance with TM 12-2, which shall include, at a minimum, the installation of:

(A) A single pumping well;

(B) Observation wells to sufficiently monitor water levels while the test well is pumped at a constant rate;

(C) Observation wells to collect time-drawdown data for aquifer characterization; and

(D) At least one piezometer to measure surface water and water table decline at: the nearest boundaries of the Preservation Area District, Forest Area, or Special Agricultural Production Area in the affected HUC-11 watershed found in any direction from the proposed well location; and the wetlands nearest to the estimated zone of influence in the affected HUC-11 watershed.

I. If the applicant cannot gain access to the parcels at the locations listed at (d)7i(2)(D) above for placement of piezometer(s), the applicant may propose to install piezometers at comparable locations if the alternate placement will adequately measure surface water and water table decline at the locations listed at (d)7i(2)(D) above.

II. Piezometers shall be tested to ensure hydraulic responsiveness and the results of such testing shall be included in the report submitted pursuant to (d)7i(3) below;

(3) Following the Commission's review of the hydrogeologic test procedure, the applicant shall complete the test and submit a final hydrogeologic report prepared in accordance with the "Hydrogeological Report" section of TM 12-2, which shall describe the field procedures used, all data gathered, analysis of the data, and evaluation of the effect of the proposed diversion on the Kirkwood-Cohansey aquifer.

(4) Using the results of the hydrogeologic testing performed in accordance with (d)7i(3) above, the applicant shall calculate an estimated zone of influence created by the proposed diversion and submit a groundwater flow model using the modular hydrologic model of the United States Geological Survey, (MODFLOW) in use at the time of the application. The MODFLOW model shall calculate the zone of influence of the water table at: the nearest boundaries of the Preservation Area District, Forest Area, or Special Agricultural Production Area in the affected HUC-11 watershed; and the boundary of the wetland nearest to the proposed diversion in the same HUC-11 watershed.

8. An applicant for a proposed diversion shall provide written documentation of water conservation measures that have been implemented, or that are planned for implementation, for all areas to be served by the proposed diversion. Water conservation measures are measurable efforts by public and private water system operators and local agencies to reduce water demand by users and reduce losses in the water distribution system.

9. The following notice requirements shall apply to the proposed diversions:

i. For applications submitted pursuant to N.J.A.C. 7:50-4.31 through 4.50, the applicant shall provide notice of the application to the municipality and county in which the proposed diversion will be located, as well as all other municipalities and counties in the affected HUC-11 watershed. The notice shall state:

(1) The nature of the application submitted to the Pinelands Commission and a detailed description of the proposed diversion, including the source, location, quantity, and/or allocation of water to be diverted;

(2) The potential impact of the proposed diversion on the volume of water in the affected HUC-11 watershed that will be available for future diversions;

(3) That written comments on the application may be submitted to the Pinelands Commission;

(4) That the application is available for inspection at the office of the Pinelands Commission; and

(5) The address and phone number of the Pinelands Commission.

ii. For applications submitted pursuant to N.J.A.C. 7:50-4.51 through 4.60, the applicant shall provide notice of the application for public development pursuant to N.J.A.C. 7:50-4.53. In addition, the applicant shall provide notice of the application to all municipalities and counties in the affected HUC-11 watershed. The notice shall include the information required at N.J.A.C. 7:50-4.53(e), as well as the following:

(1) A detailed description of the proposed diversion, including the source, location, quantity and/or allocation of water to be diverted; and

(2) A statement of the potential impact of the proposed diversion on the volume of water in the affected HUC-11 watershed that will be available for future diversions.

iii. No application for which notice pursuant to (d)9i or ii above is required shall be deemed complete until proof that the requisite notice that has been given is received.

HIGHER EDUCATION

(a)

HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY

Primary Care Practitioner Loan Redemption Program

Proposed Readoption with Amendments: N.J.A.C. 9A:16

Authorized By: Higher Education Student Assistance Authority, Christy Van Horn, Chairperson.

Authority: N.J.S.A. 18A:71C-32 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-109.

Submit written comments by November 5, 2022, to:

Marnie B. Grodman, Esquire
Administrative Practice Officer
Higher Education Student Assistance Authority
PO Box 545
Trenton, NJ 08625-0545
Email: Regulations@hesaa.org

The agency proposal follows:

Summary

The Higher Education Student Assistance Authority (Authority) proposes to readopt N.J.A.C. 9A:16 governing the Primary Care Practitioner Loan Redemption Program ("PCPLRP" or "Program"). Pursuant to N.J.S.A. 52:14B-5.1, this chapter was scheduled to expire on August 4, 2022. In accordance with N.J.S.A. 52:14B-5.1.c(2), the filing of this notice of proposal with the Office of Administrative Law prior to August 4, 2022, extended that date 180 days to January 31, 2023.

The Authority has reviewed the rules and determined that they continue to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The rules proposed for readoption with amendments will continue to provide the Authority with the ability to administer the Primary Care Practitioner Loan Redemption Program in an efficient and economic matter. Pursuant to N.J.S.A. 18A:71C-48, the Authority is statutorily responsible for the administration of the PCPLRP and for the promulgation of all rules to that effect. To ensure the continued efficient administration and operation of this program, the Authority is proposing the readoption of this chapter with amendments, all of which are summarized below.

Subchapter 1 sets forth the general provisions of the Program, explaining that the Program provides for the redemption of eligible

RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-23-__37____

TITLE: To Authorize an Additional Extension of the Time Period for Atlantic County to Complete its Obligations Under the Secondary Impacts Agreement for Interchange 44 of the Garden State Parkway

Commissioner ____Lohbauer_____ moves and Commissioner ____Pikolycky_____ seconds the motion that:

WHEREAS, on January 7, 2014, the Pinelands Commission (Commission) and Atlantic County (the County) entered into a Secondary Impacts Agreement (the Agreement) as a means of obviating the potential secondary impacts associated with the completion of Interchange 44 of the Garden State Parkway; and

WHEREAS, this Agreement obligated the County to limit the development potential of parcels totaling 356 acres located within 1.5 miles of Interchange 44 within the Pinelands Area; and

WHEREAS, the County had 3 years to obviate the secondary impacts within this 1.5 mile area, referred to in the Agreement as Tier 1; and

WHEREAS, based on the terms of the Agreement, the County requested, and the Executive Director granted an 18-month extension of the deadline for completion of the County's obligation; and

WHEREAS, by letter dated March 5, 2020, the County advised the Commission that it had completed acquisition of 327 acres of lands within Tier 1 and requested an additional 18-month extension to complete its acquisition of the remaining 29 acres required by the Agreement; and

WHEREAS, on May 8, 2020, the Commission approved Resolution PC4-20-14, granting the County an extension from January 7, 2020 to January 7, 2022 to complete its obligations under the Agreement; and

WHEREAS, by letter dated August 15, 2022, the County advised the Commission that it has acquired 342 of the required 356 acres of lands within Tier 1 and requested an additional 12-month extension to complete acquisition of the 14 remaining acres; and

WHEREAS, on September 9, 2022, the Commission approved Resolution PC4-22-36 granting the County an extension from January 7, 2022 until September 7, 2023 to acquire the remaining 14 acres within Tier 1; and

WHEREAS, by letter dated August 2, 2023, the County advised that it had acquired 10 of the remaining 14 acres of land within Tier 1, bringing the total to 352 of the 356 acres of land within Tier 1 targeted for preservation; and

WHEREAS, the County also advised that it continues to pursue acquisition of approximately 110 lots within Tier 1 that total approximately 95 acres and has sought updated appraisals for these lots; and

WHEREAS, title issues associated with some of the lots have complicated the County's acquisition process; and

WHEREAS, on July 5, 2022 the Atlantic County Board of Commissioners adopted Ordinance #7 of 2022, which authorizes the acquisition of the 110 lots either through negotiation or the use of eminent domain for those lots where clear title cannot be established; and

WHEREAS, the County also renewed its commitment to preserve not only the remaining 4 acres within Tier 1, but the additional acreage within Tier 1 that it has identified for acquisition; and

WHEREAS, the County has requested an additional 12-month extension to acquire the last 4 acres of land within Tier 1 to complete its obligation under the Agreement; and

WHEREAS, the County anticipates closing on the remaining 4 acres by September 7, 2024; and

WHEREAS, the County has acquired 98.9% of the 356 acres of land within Tier 1 necessary to obviate the potential secondary impacts associated with the Interchange 44 project; and

WHEREAS, the extension granted by Resolution PC4-22-36 expired on September 7, 2023; and

WHEREAS, the Agreement contains a provision that requires the County to pay an amount equal to fair market value of any acreage that it fails to acquire within Tier 1 within six years from the effective date of the Agreement (i.e. January 7, 2020) to a non-profit, government entity or university or college to undertake the acquisition of Pinelands Development Credits from agricultural lands or other projects, including land acquisition, to improve water quality within the boundaries of Tiers 1 through 3 in Atlantic County; and

WHEREAS, the Commission's CMP Policy & Implementation Committee has reviewed the County's extension requested and recommended its approval by the Commission; and

WHEREAS, given the County's continued diligent efforts to complete its obligations under the Agreement, and its commitment to preserve substantially more acreage within Tier 1 than required by the Agreement, the Commission believes it is preferable to allow the County to complete its acquisition of the remaining 4 acres rather than having the County provide funds to a non-profit, governmental entity or university for that purpose; and

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

NOW, THEREFORE BE IT RESOLVED that the Commission grants Atlantic County an additional extension from September 7, 2023 until September 7, 2024 to acquire the remaining 4 acres within Tier 1 or the required acreage in Tiers 2 or 3 to satisfy its obligations under the Secondary Impacts Agreement.

Record of Commission Votes

	AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*
Asselta	X				Lettman	X				Wallner			X	
Avery	X				Lohbauer	X				Matos	X			
Christy	X				Mauriello	X								
Holroyd	X				Meade	X								
Irick			X		Pikolycky	X								

*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission Date: September 8, 2023

Susan R. Grogan
Executive Director

Laura E. Matos
Chair

Atlantic County
Department of Regional Planning and Development

Dennis Levinson
County Executive

Ranae Fehr
Department Head

Division of Planning
609/645-5898 FAX: 609/645-5836
TDD: 348-5551

Division of Engineering
609/645-5898 FAX: 609/645-5836

Office of GIS

August 2, 2023

Susan Grogan, Executive Director
NJ Pinelands Commission
PO Box 359
15 Springfield Road
New Lisbon, New Jersey 08064

RE: GSP Interchange 44, Galloway Twp. – Secondary Impacts Agreement

Dear Ms. Grogan,

Please accept this letter as a request to extend the agreement between Atlantic County and the NJ Pinelands Commission, previously executed in connection with the NJ Turnpike Authority's expansion of Interchange 44 of the Garden State Parkway. To date, Atlantic County has acquired most of the land required to satisfy the requirements of that agreement, including the purchase of 352 of 356 acres of land within the Tier 1 area targeted for preservation. Since the time of our last update, the County acquired 10 additional acres in April of this year, with 4 acres remaining to satisfy the terms of the agreement.

As previously reported, the County is currently pursuing acquisition of approximately 110 lots within the Tier 1 target area, totaling approximately 95 acres, more or less. Title searches have been obtained for the individual lots and the County has developed a plan to phase the acquisitions of these lots to keep the project manageable. An updated appraisal report is being sought to reflect current market value. Also as previously reported, title issues impact some of the lots which has complicated the acquisition process.

On July 5, 2022, the Atlantic County Board of Commissioners adopted Ordinance #7, which authorizes acquisition of the subject lots. The Ordinance allows for the County to purchase the lots via negotiations or Eminent Domain action (mostly in cases where clear title cannot be established). Formal offer packages will be sent out to the initial phase once of lots the appraisal report is complete.

Based on our progress to date and our ongoing commitment to purchase and preserve the remaining acreage, we respectfully request the Commission's consideration of an additional 12-month extension of time to complete this project.

The Commission's consideration of this request is greatly appreciated. If you or your staff have any questions regarding this request or the County's progress to date, please feel free to contact me at 609-645-5898. Thank you.

Respectfully,

Ranae L. Fehr, PP, AICP, CPM
Department Head

cc: Stacey Roth, Esq., Chief, Legal and Legislative Affairs, NJ Pinelands Commission

RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-23-__38____

TITLE: To Adopt the Pinelands Commission's Fiscal Year 2024 Budgets for the Operating Fund, Fenwick Manor Preservation Fund and the Pinelands Conservation Fund

Commissioner ____Pikolycky_____ moves and Commissioner ____Avery_____ seconds the motion that:

WHEREAS, pursuant to the Pinelands Protection Act, the Pinelands Commission is charged with the continuing implementation and monitoring of the Pinelands Comprehensive Management Plan; and

WHEREAS, the State of New Jersey has appropriated $3,549,000 to support the Commission's operations during Fiscal Year 2024; and

WHEREAS, the Department of the Treasury has informed the Commission that $687,000 (31%) of budgeted health benefits and pension costs will be covered through the State's interdepartmental accounts in Fiscal Year 2024; and

WHEREAS, the Commission anticipates that additional funding sources of $1,260,500 will be available to further support the Commission's operations, including grants from the National Park Service, the Environmental Protection Agency and the New Jersey Department of Environmental Protection, interest income and application fee revenue; and

WHEREAS, the Fenwick Manor Preservation Fund Budget includes the State's $500,000 special appropriation to the Pinelands Commission in Fiscal Year 2023 and $75,000 from the Commission's Fenwick Manor Painting Reserve, with all funds to be used for the refurbishment, maintenance and preservation of Fenwick Manor; and

WHEREAS, a financial plan for the Pinelands Conservation Fund (PCF), which includes four programs (Land Acquisition, Conservation Planning and Research, Community Planning and Design and Education and Outreach), was approved by the Commission in April 2005 and last revised in August 2014; and

WHEREAS, the Fiscal Year 2024 budget for the Land Acquisition program totals $21,060; and

WHEREAS, the Fiscal Year 2024 budget for the Conservation Planning and Research program totals $660,876; and

WHEREAS, the Fiscal Year 2024 budget for the Community Planning and Design program totals $162,030; and

WHEREAS, the Fiscal Year 2024 budget for the Education and Outreach program totals $120,900; and

WHEREAS, the total Fiscal Year 2024 budget for the Pinelands Conservation Fund is $964,866; and

WHEREAS, the Operating Budget for Fiscal Year 2024 totals $6,896,895; and

WHEREAS, the Fiscal Year 2024 Operating Budget reflects the continuation of the Energy Conservation Reserve established in Fiscal Year 2023 at the request of the Pinelands Climate Committee, with funds to be used for projects and capital expenditures that foster the Commission's mission toward improved energy conservation, sustainability and mitigation of greenhouse gas emissions to the greatest extent feasible, consistent with Pinelands Commission Resolutions PC4-20-37 and PC4-22-15; and

WHEREAS, in order to accomplish these and other important initiatives and to continue to carry out the Commission's regulatory responsibilities, the Fiscal Year 2024 Operating Budget anticipates the need for a $886,395 draw from the Commission's unreserved, undesignated fund balance; and

WHEREAS, the remaining unreserved, undesignated fund balance amount is sufficient to cover unforeseen or emergency expenditures in the near future; and

WHEREAS, the Commission's Personnel & Budget Committee has reviewed the FY 2024 budgets for the Operating Fund, Fenwick Manor Preservation Fund and Pinelands Conservation Fund and has recommended their adoption by the Commission; and

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

NOW, THEREFORE BE IT RESOLVED that the Pinelands Commission hereby adopts the attached Fiscal Year 2024 Budgets for the Operating Fund totaling $6,896,895, the Fenwick Manor Preservation Fund totaling $575,000 and the Pinelands Conservation Fund totaling $964,866.

Record of Commission Votes

	AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*
Asselta	X				Lettman	X				Wallner			X	
Avery	X				Lohbauer	X				Matos	X			
Christy	X				Mauriello	X								
Holroyd	X				Meade	X								
Irick			X		Pikolycky	X								

*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission Date: September 8, 2023

Susan R. Grogan
Executive Director

Laura E. Matos
Chair

PINELANDS COMMISSION
OPERATING BUDGET REVENUES
GENERAL FUND
FISCAL YEAR 2024

Revenue Source	FY2021 Unaudited	FY2022 Unaudited	FY2023 Unaudited	FY2024 Anticipated	Notes
State Appropriation	3,099,000	3,249,000	3,399,000	3,549,000	1
State Supplemental Funding (Fringe Benefits)	687,000	687,000	687,000	687,000	2
Interest Income	4,000	4,000	6,500	75,000	3
NPS - Long Term Environmental Monitoring	144,000	155,400	145,055	138,975	4
NPS - Long Term Economic Monitoring	156,000	142,600	152,945	159,025	4
EPA - Micro	125,000	95,000	0	0	
EPA - Kingsnake	160,000	225,000	85,000	92,500	5
NJDEP Box Turtle	0	0	0	90,000	6
Wetlands Permitting	1,000	1,000	6,000	5,000	7
Pinelands Application Fees	380,000	500,000	650,000	700,000	8
TOTAL REVENUE	4,756,000	5,059,000	5,131,500	5,496,500	
Microfilm Reserve Anticipated	3,650	3,650	0	0	
Computer Reserve Anticipated	18,420	18,420	0	0	
Fenwick Manor Painting Reserve Anticipated	120,000	120,000	120,000	120,000	9
Energy Conservation Reserve	0	0	500,000	375,000	10
Regulatory Programs Shelving Reserve	0	0	0	10,000	11
Administrative Assessment (PCF)	60,000	60,000	60,000	9,000	12
Undesignated Fund Balance Anticipated	957,004	705,132	688,078	886,395	13
TOTAL OTHER INCREASES	1,159,074	907,202	1,368,078	1,400,395	
TOTAL REVENUE AND OTHER INCREASES	5,915,074	5,966,202	6,499,578	6,896,895	

PINELANDS COMMISSION
OPERATING BUDGET EXPENDITURES
GENERAL FUND
FISCAL YEAR 2024

Expenditure Account	FY2021 Unaudited	FY2022 Unaudited	FY2023 Unaudited	FY2024 Anticipated	Notes
PERSONNEL					
Salaries & Wages	3,050,972	3,021,984	3,374,398	3,783,408	14
Fringe Benefits	1,904,593	1,910,905	2,188,901	2,250,922	15, 16
TOTAL PERSONNEL	4,955,565	4,932,889	5,563,299	6,034,330	
SUPPLIES					
Printing & Office Supplies	35,275	26,420	34,040	36,675	17
Vehicular Supplies	6,900	10,900	11,400	12,600	18
Household Supplies	10,800	10,400	18,420	12,100	19
Fuel & Utilities	42,500	42,500	47,500	50,000	20
Other Supplies	33,309	41,492	36,842	30,246	21
TOTAL SUPPLIES	128,784	131,712	148,202	141,621	
SERVICES					
Travel	4,445	5,925	4,190	10,713	22
Telephone	40,500	45,120	46,120	45,900	23
Postage	3,650	2,175	1,725	1,750	24
Insurance	55,136	59,225	64,260	72,760	25, 26
Information Processing	85,082	108,861	126,835	135,847	27
Household Services	2,600	2,600	4,600	3,700	28
Professional Services	485,652	462,728	222,500	259,540	29
Other Services	24,901	35,717	35,147	27,313	30
TOTAL SERVICES	701,966	722,351	505,377	557,523	
MAINTENANCE & RENT					
Maintenance - Buildings & Grounds	47,000	94,000	75,500	81,000	31
Maintenance - Equipment	21,850	21,350	23,500	26,400	32
Maintenance - Vehicular	6,720	6,720	9,720	5,720	33
Rent - Other	8,050	10,550	10,350	8,900	34
TOTAL MAINTENANCE & RENT	83,620	132,620	119,070	122,020	
IMPROVEMENTS & ACQUISITIONS					
Acquisitions - Equipment	20,730	10,130	106,630	10,300	35
Acquisitions - Information Processing Equipment	24,408	36,500	57,000	31,100	36
TOTAL IMPROVEMENTS & ACQUISITIONS	45,138	46,630	163,630	41,400	
TOTAL EXPENDITURES	5,915,074	5,966,202	6,499,578	6,896,895	37,38,39

PINELANDS COMMISSION
OPERATING BUDGET
FISCAL YEAR 2024 NOTES
August 29, 2023

1. The Governor's budget includes a FY 2024 State Appropriation to the Commission in the amount of $3,549,000.

2. State Supplemental Funding (Fringe Benefits) totaling $687,000 helps to offset the Commission's health and pension costs. Since FY 2004, the Department of the Treasury agreed to help the Commission finance its escalating health benefits premiums through an Interdepartmental Account. Beginning in FY 2009, the amount of assistance was calculated using projected health and pension costs not funded through other sources. Using this calculation, the Commission requested $838,218 in FY 2012, $837,927 in FY 2013, $844,809 in FY 2014 and $840,455 in FY 2015 but was only approved to receive $687,000. No increase in funding occurred between FY 2016-FY 2023. The FY 2024 budget once again anticipates receipt of only $687,000.

3. Interest Income is earned in the Commission's checking account and the cash management fund designated for general use. Interest income for the Pinelands Conservation Fund is reflected in the budgets for those programs. Interest rates have fluctuated in recent years and have greatly affected interest income over several years. FY 2024 will see an increase in interest due to the Federal Reserve's continued rate increases that began in June of 2022.

4. The Commission is entering its 28th year of the Environmental and Economic Long Term Monitoring programs. This anticipated revenue from the National Park Service is based upon that program's projected expenses during the fiscal year and unspent funds from the prior year, which are reimbursed in full.

5. The EPA Kingsnake Study remains an active grant; staff will continue their work in Fiscal Year 2024.

6. The Commission anticipates receiving grant funding from NJDEP for the continuation of the Box Turtle study that began in FY 2022.

7. The anticipated revenue from the NJDEP Wetlands Permitting program that the Commission helps to administer reflects the estimated permit fees to be received and is authorized through language in the Appropriations Act.

8. Application Fees of $700,000 are anticipated to be received during FY 2024, based on an average of the past five years of application fee revenue. This important component of the Commission's Operating Budget fluctuates tremendously from month to month. This funding source will be closely monitored throughout the fiscal year.

9. The Fenwick Manor Painting Reserve was established in FY 2015 to earmark funds for exterior painting of Fenwick Manor. Funds were added annually as follows: $40,000 in FY 2015; $40,000 in FY 2016; $20,000 in FY 2017 and $20,000 in FY 2018. A total of $120,000 remains available in the reserve, of which $75,000 is earmarked as a match toward New Jersey Historic Trust 2023 Preserve New Jersey Capital Improvement Grant.

10. FY 2024 will be the second year of the Commission's Energy Conservation Reserve. This reserve will be for projects and capital expenditures that foster the Commission's mission toward energy conservation and sustainability. Some of the projects earmarked are installation of an electric vehicle charging station; retention of a solar facility expert to assess the feasibility of installing a solar energy facility on the Commission's property; development of a long-term plan for replacement of the Commission's existing HVAC systems; and other initiatives recommended in the Local Government Energy Audit reports or by the Pinelands Climate Committee. Grants available to state agencies will also be pursued.

11. FY 2024 will see the establishment of the Regulatory Programs Shelving Reserve. The current automated shelving has reached its life expectancy of twenty years. This reserve will prepare the Commission for when the shelving needs to be replaced.

12. In April 2005, the Commission adopted a financial plan for the Pinelands Conservation Fund, which was amended in 2014. Included in the plan is an annual assessment of $20,000 from three of the programs in the Fund (see Pinelands Conservation Fund budget note #3). FY 2024 will see a reduction of the $60,000 administrative assessment to $9,000 due to efficiency measures made by both the MIS and Business Services.

13. The projected amount needed from the Undesignated Fund Balance to balance the FY2024 budget deficit is $886,395.

14. The Commission's authorized staffing level is 66 full time equivalent positions (FTEs). Since FY 2007, unfilled vacancies have steadily increased to a total of 22 unfilled full time equivalent positions, or more than 33% of the authorized staffing level. The FY 2024 salaries and wages budgets (Operating and Pinelands Conservation Fund) finance only 44 of the 66 authorized full time equivalent positions.

15. The fringe benefits budget includes expenditures for the employer's share of Social Security ($225,000), Medicare ($65,000), disability insurance ($1,000), flexible savings accounts ($1,500) and miscellaneous administrative charges ($500). The employer liability of pension related funds is estimated at $650,000. The Commission's escalating health benefit premiums for active and retired employees are estimated at $1,250,000 with a $210,000 reduction for coinsurance payments from staff members. Also included is $13,000 for dental insurance premiums and $500 for participation in the Employee Advisory Service.

16. Upon Commission approval of the FY 2024 Operating Budget, the Executive Director will be authorized to pay the employer share of Social Security and Medicare at an amount not to exceed the budgeted funding of $290,000.

17. The printing and office supplies budget includes expenditures for printing; office, computer, mailing, copying, and meeting supplies; office and computer equipment with an item cost of less than $1,000; reference materials; scientific report printing/publication; and staff and Commissioner service awards. Grant-related expenses account for $5,100 of this budget.

18. The majority of the vehicular supplies budget covers gasoline for Commission vehicles. Other costs budgeted in this account include replacement tires, supplies used for routine vehicular maintenance and other miscellaneous supplies such as keys, mats, scrapers and first aid kits.

19. The household supplies budget provides for the purchase of materials to perform minor buildings and grounds maintenance, cleaning supplies, household paper products, basic kitchen supplies, household equipment costing less than $2,000 and other operating supplies.

20. The fuel and utilities budget covers expenditures for heating fuel, electricity, water and sewer.

21. The other supplies budget covers expenditures for supplies and equipment (less than $1,000) supporting map-making, scientific research, fieldwork, and photographic needs. Grant related expenditures are a significant portion (over 98%) of this account, totaling $29,546 for FY 2024.

22. The travel budget covers reimbursements to Commissioners and staff for business mileage on their personal vehicles, tolls and parking, and meal allowances.

23. The telephone budget includes basic service, toll charges, the service cost of a data circuit, conference calls, and cellular phone service.

24. The postage budget finances general postage fees, parcel delivery charges and post office box rental charges. Over the last several years, this account has decreased as more correspondence is sent electronically, including letters, reports, and public outreach materials.

25. The insurance budget covers estimated premiums for automobiles, general liability, fire, theft, workers compensation, volunteers, and the umbrella liability policy.

26. Upon Commission approval of the FY 2024 Operating Budget, the Executive Director will be authorized to pay the State's insurance broker an amount not to exceed the budgeted funding of $72,760 to cover the Commission's insurance premiums.

27. The FY 2024 budget for information processing includes $117,347 for software maintenance agreements and data purchases, $6,500 for payroll processing, $3,000 for database administration services and $1,000 for online legal services. Over $8,000 of this budget is reimbursable through grants or special revenue.

28. The household services budget covers trash removal, alarm (security and fire) monitoring, and exterminating services.

29. The professional services account covers expenditures for legal fees, technical and consulting services, and other miscellaneous services. Estimated costs include $75,000 for legal fees associated with DAG services; $75,000 for labor counsel and $7,500 for publication of the Commission's rulemaking documents by the Office of Administrative Law. Grant related technical services totaling $15,240 are budgeted.

30. Expenditures in the other services budget include annual subscriptions ($2,800), required memberships and professional licenses ($4,783); meeting expenses ($1,900); advertising ($2,775), research related fees ($600), training ($13,805), and banking fees ($650).

31. The maintenance buildings and grounds budget for FY 2024 includes an estimated cost for implementation of Energy Efficiency measures and installation of an Electric Vehicle Charging Station (the cost of which may be partially offset by grant funding). The remaining amount is available for minor maintenance services (plumbing, electrical, HVAC, Tree Trimming, etc.).

32. The maintenance - equipment budget provides for the inspection, maintenance and repair of certain building systems and other equipment.

33. The maintenance vehicular budget finances routine maintenance, vehicular fees, and repairs, including any needed body work not performed by the Commission's Maintenance Technician.

34. The FY 2024 budget includes $300 for the postage meter, $6,000 for the lease of (2) black and white copiers, and $100 for excess copy charges. Leasing of a Large Format Scanner for $2,500 per year is also included to facilitate scanning and saving of site plans and zoning maps.

35. The acquisitions - equipment budget contains $8,300 for scientific equipment supporting grant related projects and $2,000 for unanticipated telephone system expenses

36. The acquisitions - information processing equipment budget includes the replacement of outdated computers and servers.

37. The total estimated Operating Budget expenditures for FY 2024 equal $6,896,895. During the fiscal year, certain unforeseen and/or emergency expenditures may become necessary. The Personnel and Budget Committee has discussed this issue and recommends that the Executive Director be authorized to exceed the budget of an expenditure category (personnel, supplies, services, maintenance/rent, improvements/acquisitions) by no more than 10% provided that funds are available in other expenditure categories to ensure that the total Operating Budget is not exceeded and provided further that the combined salary budgets for the Operating Fund and the Pinelands Conservation Fund do not exceed $4,319,632.

36. Several expenditure account budgets include funding for various services and benefits that are reimbursed to the State of New Jersey and are over the Executive Director’s authorized contracting limit of $200,000 (OMB 23-09-DPP). These consist of employee health benefits; the employer liability assessed by the Division of Pensions and the Commission's attorney (DAG) fees.

37. Upon Commission approval of the FY 2024 Operating Budget, the Executive Director will be authorized to pay the State of New Jersey for the aforementioned items in an amount not to exceed the budgeted funding.

PINELANDS COMMISSION
PINELANDS CONSERVATION FUND
FISCAL YEAR 2024 BUDGET

Revenue Source	FY2021 Unaudited	FY2022 Unaudited	FY2023 Unaudited	FY2024 Anticipated	Notes
Interest Income - Land Acquisition	1,640	1,050	5,100	45,000	1
Interest Income - Conservation Planning & Research	3,200	1,800	5,000	30,000	1
Interest Income - Community Planning & Design	1,600	900	2,800	25,000	1
Interest Income - Education & Outreach	620	1,100	950	5,000	1
SJTA - MOA	500,000	500,000	500,000	500,000	2
Total Revenue	507,060	504,850	513,850	605,000	
Cancellation of Prior Year Encumbrances	0	0	0	0	
Reserves for Pinelands Conservation Activities	323,556	538,782	446,981	359,866	
Total Revenue/Other Sources Anticipated	**830,616**	**1,043,632**	**960,831**	**964,866**	

Expenditure Account	FY2021 Unaudited	FY2022 Unaudited	FY2023 Unaudited	FY2024 Anticipated	Notes
Land Acquisition					
Salaries & Wages	16,800	20,000	5,000	12,000	
Fringe Benefits	7,896	10,600	2,650	8,160	
Land Acquisition	0	0	0	0	
Printing & Office Supplies	0	0	600	600	
Travel	0	0	100	300	
Total Land Acquisition Expenditures	**24,696**	**30,600**	**8,350**	**21,060**	4
Conservation Planning and Research					
Salaries & Wages	232,346	363,812	372,616	365,224	
Fringe Benefits	109,203	192,820	191,937	248,352	
Printing & Office Supplies	0	0	0	4,250	
Other Supplies	15,125	15,500	35,150	25,610	
Travel	3,100	5,421	7,421	4,100	
Information Processing	1,410	500	1,110	1,110	
Technical Services	5,300	5,300	0	0	
Professional Services	90,868	88,199	67,647	0	
Other Services	100	75	330	6,230	
Acquisitions - Equipment	3,000	3,400	6,800	3,000	
Administrative Assessment	20,000	20,000	20,000	3,000	3
Total Conservation Planning/Research Expenditures	**480,452**	**695,027**	**703,011**	**660,876**	5
Community Planning and Design					
Salaries & Wages	129,000	101,000	90,000	94,000	
Fringe Benefits	60,630	53,530	42,370	63,920	
Printing & Office Supplies	100	100	200	50	
Travel	0	0	0	110	
Postage	500	500	500	600	
Information Processing	618	250	750	250	
Other Services	300	275	250	100	
Administrative Assessment	20,000	20,000	20,000	3,000	3
Total Community Planning/Design Expenditures	**211,148**	**175,655**	**154,070**	**162,030**	6
Education and Outreach					
Salaries & Wages	60,000	75,000	40,000	65,000	
Fringe Benefits	28,200	39,750	21,200	44,200	
Printing & Office Supplies	0	0	2,000	0	
Travel	100	100	100	100	
Other Supplies	1,320	1,600	4,500	7,200	
Other Services	4,700	5,000	7,600	1,400	
Acquisitions - Equipment		900	0	0	
Administrative Assessment	20,000	20,000	20,000	3,000	3
Total Education and Outreach	**114,320**	**142,350**	**95,400**	**120,900**	7
Total Expenditures	**830,616**	**1,043,632**	**960,831**	**964,866**	

PINELANDS COMMISSION
PINELANDS CONSERVATION FUND
FISCAL YEAR 2024 BUDGET NOTES
August 29, 2023

1. The funds provided from Atlantic City Electric (formerly Conectiv) and other related revenue sources are kept in four separate cash accounts, one for each program of the Fund. The FY 2024 estimated interest income totals are anticipated to reach $105,000 and are comprised of interest income from the four cash accounts. All interest income stays within the particular program and is available to help fund the associated projects. The Federal Reserve has been consistently raising interest rates since June of 2022.

2. This revenue results from the SJTA MOA Amendment executed in April of 2019, under which SJTA is required to contribute a total of $3,000,000 for land acquisition in the Pinelands Area. The Pinelands Commission will receive six annual payments of $500,000.00. Payment #6 will be made in FY2024.

3. The financial plan that designated the three original programs within the Fund (Land Acquisition, Conservation Planning & Research and Community Planning & Design) was approved by the Commission in April 2005 and included a $20,000 annual assessment from each program to cover administrative expenses as described in Operating Budget note #12. The Commission amended the PCF policies in 2014 to include a fourth program, Education & Outreach, from which a $20,000 annual administrative assessment was also to be drawn. The annual assessment from the Land Acquisition program was eliminated in FY 2019. This year's budget reflects a reduced administrative assessment of $3,000 from each of the other three programs.

4. The Land Acquisition program budget for FY 2024 totals $21,060. Personnel costs (salaries/wages and fringe benefits) are estimated at $20,160 in support of the Commission's permanent land protection initiatives, which include development of updated PCF acquisition priorities and funding policies, a new round of land acquisition, PCF deed restriction monitoring and the second annual permanent land protection summit. An additional $900 is included to coverage mileage and meeting supplies.

5. The Conservation Planning and Research program budget for FY 2024 totals $660,876 Personnel costs (salaries/wages and fringe benefits) are estimated at $613,576 to support the following initiatives and special projects: landfill closure assessments; continued implementation of the alternate septic system pilot program; completion of rulemaking and implementation of the Kirkwood-Cohansey aquifer water management amendments; rulemaking related to the Electric Transmission Right of Way Maintenance Pilot Program; rulemaking associated with protection of the Black Run Watershed; and data maintenance and reporting related to permanent land protection. In addition, the Science Office will be continuing to conduct Corn Snake and King Snake research, now having the ability to perform pit tag implants in-house. In FY2024, the Science Office's research related to box turtles will also be partially funded from this account. An additional $42,500 is included for

other expenses (supplies, services, software maintenance, printing, mileage, training and legal advertising) to support these initiatives. Rounding out the budget is the $3,000 administrative assessment mentioned above.

6. The Community Planning and Design program budget for FY 2024 totals $162,030. Personnel costs (salaries/wages and fringe benefits) are estimated at $157,920 to support the following initiatives and special projects: proposal of CMP amendments related to Forest and Rural Development Area clustering, solar energy facilities and the use of Pinelands Development Credits; maintenance of updated PDC supply and demand estimates; administrative responsibilities supporting the Pinelands Development Credit Bank; and administration of the Pinelands Infrastructure Trust Fund. Also reflected in the budget are funds to support a variety of climate change initiatives and efforts, including support for the Pinelands Climate Committee, participation on the state's Interagency Council on Climate Resilience, completion of the management area boundary assessment, coordination with NJBPU on their dual-use solar program and research to support future CMP amendments. A total of $1,110 is budgeted for expenses related to legal advertising, mileage, postage, software maintenance and office supplies. Rounding out the budget is the $3,000 administrative assessment mentioned above.

7. The Education and Outreach program budget for FY 2024 totals $120,900. Personnel costs (salaries/wages and fringe benefits) are estimated at $109,200 to support the two annual Pinelands Short Courses, the World Water Monitoring Challenge and other outreach programs. Also included is a total of $4,200 for supplies related to the Visitors Center, the World Water Monitoring Challenge and maintenance of the bog garden, as well as $3,000 for services and supplies associated with the Commission's on-line store. Miscellaneous expenses (honoraria for participants in the Pinelands Speakers Series and mileage) supporting the program equal $1,500. Rounding out the budget is the $3,000 administrative assessment mentioned above.

PINELANDS COMMISSION
Fenwick Manor Preservation Budget
FISCAL YEAR 2024 BUDGET

Revenue	FY 2024 Anticipated	Notes
State Aid Received	500,000	
Fund Balance Anticipated	75,000	
Total Reserve Anticipated	575,000	1

Expenditure Account	FY 2024 Anticipated	Notes
Partial Exterior Restoration	330,850	2
Structural Reinforcement/Maintenance	101,150	2
Partial Interior Restoration	92,700	2
Non Construction Cost	50,300	3
Total Expenditures	575,000	

PINELANDS COMMISSION
FENWICK MANOR PRESERVATION FUND
FISCAL YEAR 2024 BUDGET NOTES
August 29, 2023

1. The anticipated Fund Balance includes the $500,000 in State Aid provided to the Commission in the State of New Jersey FY 2023 Budget (Pages 79-80 of P.L. 2022, Chapter 49) as well as $75,000 from the Commission's Fenwick Manor Reserve. The total of $575,000 is the funding available to satisfy the 50% match requirement for a New Jersey Historic Trust 2023 Preserve New Jersey Capital Improvement Grant for Fenwick Manor. The Commission applied for the grant in April 2023. Grant awards will be announced in late September 2023. If the grant is received, significantly more work will be able to be completed and a budget revision is anticipated.

2. Costs associated with Exterior Restoration, Structural Reinforcement/Maintenance and Interior Restoration are based on the estimates provided in the Fenwick Manor Preservation Plan prepared by the Commission's consultant, Connolly & Hickey.

3. Non-construction related costs include engineering services, design development, and contract administration.

RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-23-

TITLE: Authorizing an Additional Extension of the Deadline for Recordation of a Deed Restriction on the Parcel Where the New Grassland Conservation and Management Area Will Be Constructed in Accordance with the April 16, 2019 First Amendment to the February 26, 2004 Memorandum of Agreement Between the New Jersey Pinelands Commission and the South Jersey Transportation Authority

Commissioner _____ moves and Commissioner _____ seconds the motion that:

WHEREAS, on April 16, 2019, the Pinelands Commission (the Commission) and the South Jersey Transportation Authority (SJTA) entered into an amendment of the February 26, 2004 Memorandum of Agreement (MOA) for certain development at Atlantic City International Airport; and

WHEREAS, under the terms of the April 2019 MOA Amendment, SJTA is obligated to acquire lands within the Pinelands Area, fund the creation and long-term maintenance of a new Grassland Conservation and Management Area (GCMA) thereon, and preserve the new GCMA in perpetuity through the execution and filing of a deed restriction; and

WHEREAS, the April 2019 MOA Amendment required acquisition of land for the new GCMA within one year of SJTA's execution of the MOA Amendment (April 16, 2020) and establishment of the new GCMA within three years of execution (April 16, 2022); and

WHEREAS, by letter dated March 11, 2020, SJTA requested an extension of the deadline to acquire the site for the new GCMA; and

WHEREAS, the Executive Director, in accordance with the MOA Amendment and with the concurrence of the Commission Chair, extended the acquisition deadline until October 12, 2020; and

WHEREAS, by letter dated September 29, 2020, SJTA requested additional time to acquire the site for the new GCMA; and

WHEREAS, at its October 9, 2020 meeting, the Pinelands Commission approved an additional extension for acquisition of the new GCMA until February 28, 2021; and

WHEREAS, Atlantic County, acting on behalf of SJTA, acquired the new GCMA site consisting of 102.6 acres in Hamilton Township on December 28, 2020; and

WHEREAS, based on the original terms of the April 2019 MOA Amendment, preservation of the new GCMA parcel through recordation of a Deed of Conservation Restriction (DCR) was required within ninety (90) days of site acquisition; and

WHEREAS, based on a request from SJTA for additional time to create and maintain the new GCMA, the Commission approved Resolution PC4-22-03 on January 14, 2022, extending the deadline for deed restriction of the new GCMA parcel to April 16, 2023; and

WHEREAS, on August 12, 2022, the Commission approved establishment of the new GCMA through its adoption of Resolution PC4-22-27, conditioned upon the SJTA's provision of a recorded DCR to the Commission by April 16, 2023; and

WHEREAS, since that time, Atlantic County has worked with Commission staff to draft the language of the required DCR for the parcel; and

WHEREAS, because of the existence of an Atlantic City Electric Company easement on the parcel, Atlantic County has also needed to coordinate with Atlantic City Electric Company's counsel on the language of the DCR; and

WHEREAS, as a result of the time required for coordination with the Atlantic City Electric Company, Atlantic County has not yet filed the required DCR for the new GCMA parcel; and

WHEREAS, Atlantic County, on behalf of SJTA, has requested a further extension until April 16, 2024 to complete its process to record the required DCR; and

WHEREAS, the Commission's CMP Policy & Implementation Committee has reviewed the extension request and, in recognition of the significant progress made to date relative to the new GCMA, recommends the Commission's approval of the additional extension; and

WHEREAS, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force and 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 review same, in which case the action shall become effective upon such approval.

NOW, THEREFORE BE IT RESOLVED that the Commission grants an additional extension of the deadline for recordation of the Deed of Conservation Restriction for the new Grassland Conservation and Management Area until April 16, 2024. Unless expressly authorized herein, all other provisions and deadlines pertaining to the GCMA set forth in the April 16, 2019 MOA Amendment and the extension resolutions subsequently approved by the Commission shall remain in full force and effect.

Record of Commission Votes

	AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*
Asselta					Lettman					Wallner				
Avery					Lohbauer					Matos				
Christy					Mauriello									
Holroyd					Meade									
Irick					Pikolycky									

*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission Date: _____

Susan R. Grogan
Executive Director

Laura E. Matos
Chair

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Governor
TAHESHA L. WAY
Lt. Governor

LAURA E. MATOS
Chair
SUSAN R. GROGAN
Executive Director

General Information: Info@pinelands.nj.gov
Application Specific Information: AppInfo@pinelands.nj.gov

MEMORANDUM

To: Members of the Pinelands Commission

From: Katie Elliott KE
Planning Specialist

Date: October 2, 2023

Subject: No Substantial Issue Findings

During the past month, the Planning Office reviewed 11 ordinance amendments that were found to raise no substantial issues with respect to the standards of the Pinelands Comprehensive Management Plan (CMP). They included the following:

Buena Vista Township Ordinance 133-2023 – amends Chapter 115, Development Regulations, and Chapter 248, Stormwater Management, of the Code of Buena Vista Township in response to amendments to the CMP. The amendments incorporate revised stormwater management regulations applicable to development in the Pinelands Area.

Evesham Township Ordinance 13-8-2023 – adopts the Evesham Landfill Solar Energy Redevelopment Plan, dated July 7, 2023. This redevelopment area consists of six lots (Block 48, Lots 19.01, 33.02; Block 50, Lots 18, 19, 20.01, 21) approximating 55 acres in area. The redevelopment area contains the site of a former municipal landfill that ceased operation in 1983 and has been capped. The redevelopment area spans portions of the existing Institutional Zone and the Rural Development-3 Zone and is located entirely within a Rural Development Area. The purpose of the redevelopment plan is to permit the redevelopment of the former municipal landfill site into a solar energy facility. To that end, the redevelopment plan supersedes the underlying zoning and permits the following uses in the redevelopment area: ground-mounted solar and photovoltaic energy facilities as well as police training facilities operated primarily by the Evesham Township Police Department. The plan includes various bulk, landscaping and design requirements including standards consistent with the CMP's standards for the development of solar energy facilities in a Rural Development Area (N.J.A.C. 7:50-5.36). The plan also requires that all development within the redevelopment area comply with minimum environmental standards of the CMP.

Medford Township Ordinance 2023-10 – amends the Land Development Regulations of the Code of Medford Township to clarify that the conditional use standards for home occupations are intended to regulate formal businesses operating at a residence, not an individual working remotely at home. It

further provides that an individual working from home with a "virtual office" shall not require any Township approval provided that: the individual is a resident of the home, there is no sign or other indication of a business being operated on the property, there are no employees other than the individual working from home, no customers or clients meet on the property to conduct business, and no business equipment is stored at the home or property. Home occupations are a conditional use in multiple zones within the Pinelands Area portion of the Township.

Stafford Township Ordinance 2023-24 – amends Chapter 130, Land Use and Development, and Chapter 211, Zoning, of the Code of Stafford Township in response to amendments to the CMP. The amendments incorporate revised stormwater management regulations applicable to development in the Pinelands Area.

Stafford Township Ordinance 2023-33 – adopts an amended Redevelopment Plan for the Stafford Business Park, dated August 2023. The redevelopment plan is amended to specify that the bulk standards applicable to the plan's Traditional Neighborhood (TN) Zone shall apply to the five residential lots to be created by subdivision in accordance with the terms of an amended redevelopment agreement, dated June 9, 2021. The area of the proposed subdivision is Block 25, Lot 34.08, which is located in the TN Zone. The Stafford Business Park Redevelopment Area is located in a Pinelands Regional Growth Area.

Tabernacle Township Ordinance 2023-3 – amends the Code of Tabernacle Township by establishing provisions authorizing and encouraging the installation of Electric Vehicle Supply/Service Equipment and Make-Ready parking spaces.

Tabernacle Township Ordinance 2023-4 – amends Chapter 17, Zoning, and Chapter 20, Stormwater Control, of the Code of Tabernacle Township in response to amendments to the CMP. The amendments incorporate revised stormwater management regulations applicable to development in the Pinelands Area.

Upper Township Ordinance 013-2023 – amends Chapter 19, Land Subdivision, Site Plan and Land Use Administration, and Chapter 20, Zoning, of the Code of Upper Township in response to amendments to the CMP. The amendments incorporate revised stormwater management regulations applicable to development in the Pinelands Area.

Waterford Township Ordinance 2023-20 – amends the Official Township Zoning Map of Waterford Township. The ordinance revises the zoning designation for two lots: Block 4301, Lots 9 and 10. Lot 9 is approximately 1 acre and is privately-owned and vacant. Lot 10 is approximately 2 acres, is privately-owned, and contains an existing building. The most recent Township Official Zoning Map certified by the Pinelands Commission erroneously located Lot 9 within the Rural Public Facilities (RPF) District and Lot 10 within the Pinelands Village (PV) District. They were previously zoned within the Rural Residential (RR) and RPF districts, respectively. Ordinance 2023-20 rezones Lot 9 back to the Rural Residential (RR) District, which is an existing zone within the Township's Rural Development Area. The ordinance maintains the PV District designation for Lot 10.

Woodland Township Ordinance 2023-2 – amends the Code of Woodland Township by establishing provisions authorizing and encouraging the installation of Electric Vehicle Supply/Service Equipment and Make-Ready parking spaces.

Woodland Township Ordinance 2023-3 – amends Woodland Township Ordinances 1998-3 and 1998-4, and repeals Ordinance 2008-1 in response to amendments to the CMP. The amendments incorporate revised stormwater management regulations applicable to development in the Pinelands Area.