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

LAURA E. MATOS
Chair
SUSAN R. GROGAN
Acting Executive Director

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

MEMORANDUM

To: CMP Policy & Implementation Committee

From: Susan R. Grogan
Acting Executive Director

Date: November 21, 2022

Subject: November 30, 2022 Committee meeting

Enclosed please find the agenda for the Committee's upcoming meeting on Wednesday, November 30, 2022. We have also enclosed the following:

- The minutes from the Committee's September 30, 2022 meeting.
- A memorandum summarizing the Kirkwood-Cohansey water management rulemaking process and describing the staff's recommended revisions to the proposed CMP amendments. We are also including copies of all written public comments received on the rule proposal, as well as a summary of the oral testimony received at our two public hearings. Draft rule revisions are also enclosed.
- A memorandum and draft amendment to the 1998 Memorandum of Agreement between the Commission and Atlantic County concerning development at Atlantic County Park at Lake Lenape.
- A memorandum related to Stockton University's 2020 Facilities Master Plan and a map depicting the University's proposed revisions to its Deed of Conservation Restriction.

The Committee meeting will be conducted in-person and via teleconference. Specific access information will be provided to all Committee members in a separate email. The public is invited to attend the meeting in-person or view and participate in the meeting through the following YouTube link:

www.youtube.com/c/PinelandsCommission

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CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

November 30, 2022 – 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:
www.youtube.com/c/PinelandsCommission
To Provide Public Comment, Please Dial: 1-929-205-6099 Meeting ID: 890 0604 8756

Agenda

1. Call to Order

2. Adoption of minutes from the September 30, 2022, CMP Policy & Implementation Committee meeting

3. Proposed water management (Kirkwood-Cohansey) CMP amendments

   - Review of public comments
   - Discussion of suggested revisions to rule proposal

4. 1998 Memorandum of Agreement between the Pinelands Commission and Atlantic County concerning Atlantic County Park at Lake Lenape

   - Review of draft amendment
   - Discussion of process and schedule

5. Stockton University

   - Review of map and proposed changes to the deed of conservation restriction
   - Discussion of process and schedule

6. Update on upcoming CMP amendments

7. Public Comment

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING
This meeting was conducted both remotely and in-person
The public could view/comment through Pinelands Commission YouTube link:
https://www.youtube.com/watch?v=DJe5rMKNkzY
Meeting ID: 818 8378 9174
Richard J. Sullivan Center
15C Springfield Rd
New Lisbon, New Jersey 08064
September 30, 2022 – 9:30 a.m.

Members in Attendance – Alan W. Avery, Jr., Jerome H. Irick, Theresa Lettman, Edward Lloyd, Mark Lohbauer, Laura E. Matos

Members Absent – None

Other Commissioners in Attendance – Doug Wallner

Commission Staff in Attendance – John Bunnell, Marci Green, Susan R. Grogan, Charles Horner, Brad Lanute, Paul Leakan, Jessica Lynch, Trent Maxwell, Jessica Noble, Stacey Roth, Steve Simone, Ed Wengrowski

1. Call to Order

Chair Matos called the meeting order at 9:32 am.

2. Adoption of the Minutes from the August 26, 2022, Meeting of the CMP Policy & Implementation Committee

Chair Matos asked for a motion to adopt the minutes from the August 26, 2022, meeting of the CMP Policy and Implementation Committee. Commissioner Irick made the motion. Commissioner Lohbauer seconded. Commissioners Lloyd and Avery voted in favor. Commissioner Lettman abstained.

Jeff Nielsen of the Governor's Authorities Unit (GAU) thanked the staff for the opportunity to participate in the meeting. He suggested taking roll call.

Chair Matos replied that roll call is normally only taken at full Commission meetings.

3. Discussion of CMP Amendments related to the Electric Transmission Right-of-Way Maintenance Pilot Program

Stacey Roth, Chief, Legal and Legislative Affairs, gave a presentation on recommended CMP amendments to codify the Electric Transmission Right-of-Way (ROW) Vegetation Maintenance

requirements (attached). The Electric Transmission ROW Vegetation Maintenance Pilot Program expired in September 2021.

Ms. Roth said that the New Jersey Pinelands Electric Transmission ROW Vegetation-Management Plan was developed in 2009 jointly by the Commission Science Office, Rutgers University, the Board of Public Utilities (BPU) and three utility companies. That study included approximately 2,000 transmission lines located in the Pinelands Area. The researchers looked at the natural resources and Threatened and Endangered Species (T&E) presence along each line and developed appropriate prescriptions to maintain the ROW. Under federal law, the ROW must be maintained to prevent vegetation overgrowth from interfering with the lines.

When the pilot program expired, the Executive Director recommended incorporating the ROW Plan vegetation maintenance prescriptions into the Pinelands Comprehensive Management Plan (CMP). Ms. Roth said staff had been working on the draft rule text for several months.

Commissioner Lohbauer asked if the differentiation between mineral soil wetlands and organic wetlands was something that the Commission has already mapped out. Ms. Roth said yes, it is mapped out. The Commission uses the Soil Survey Geographic Database (SSURGO) developed by the National Resources Conservation Service (NRCS) in the U.S. Department of Agriculture (USDA). The SSURGO layers are GIS-based. The tool allows the user to zoom in on a particular span, which contains mapping units that delineate the soil series in that area.

Ms. Roth said the staff is also proposing amendments to the definition of wetlands soils as part of this rule proposal to reference current soil series designations. Staff also plans to identify in the rules which soil series names are organic and which are minerals, so that the utility can refer to SSURGO and know the soil contents down to the span level.

Commissioner Lohbauer said he is glad the staff can map with that level of detail, and thanked Ms. Roth for her explanation.

Ms. Roth said the proposed rules would continue to require utility companies to submit a spreadsheet by January 31 of each year that reports on maintenance activities. This spreadsheet will need to contain GIS coordinates for the maintained spans, a list of each activity conducted during the management period, and any issue that arose during the timespan. This is so Commission staff can audit the maintenance activities conducted.

Ms. Roth noted there were times during the pilot program when minor adjustments to the ROW Plan prescriptions were necessary. The ROW Plan allows the Executive Director to make those adjustments. If the utility needs to make such changes, it will have to submit a letter to the director. There will also be escrow payments to fund periodic monitoring and inspection by Commission staff.

Commissioner Lohbauer asked what constitutes a minor adjustment to a prescription. Ms. Roth said the timing constraints within the rule proposal will be very narrow, ranging from December to February. If the utility could demonstrate they would not disturb threatened and endangered species in a ROW in November or March, this is the type of minor adjustment the Executive Director could authorize.

Ms. Roth thanked Marci Green, Commission rule writing attorney, for her help with the draft proposal.

Commissioner Irick said he was concerned with mowing and creating ruts, and also that fill in the ROW would impact streams and stream crossings in wetland areas. He asked if there was any way to tighten that language. Ms. Roth said that language only applies to existing roads, and that the rules will explicitly state that increases in the width or height of the roadway are not permitted without application to the Commission.

Susan Grogan, Acting Executive Director, said the presentation makes the prescriptions appear simple and clear; however, staff has struggled to translate that specificity and clarity into actual rule language. It has taken longer than anticipated to produce a draft rule, but she thinks this will be a positive outcome because staff is spending so much time on the rule language.

Ms. Grogan mentioned that Chair Matos and Commissioner Lettman were not present when the ROW rules were last discussed in 2021, so it was good to introduce them to the ROW Plan.

Commissioner Lloyd said he did not see any reference to herbicides in the presentation. He asked if herbicides would be an issue in the rule language, and if it is allowed or prohibited. Ms. Roth stated that herbiciding was not addressed in the rule proposal because there is an existing prohibition against herbiciding within ROW within the CMP.

Commissioner Lloyd said there should be express prohibition in the new section on vegetation maintenance. He said that he did not want Commissioners and applicants to presume that the absence of an explicit prohibition implies permission. Chair Matos said it makes sense to reiterate and ensure there is no ambiguity. Commissioner Lloyd suggested cross referencing the existing provision.

Commissioner Lohbauer thanked Commissioner Lloyd for his question and said that he agreed with him.

4. Discussion of the Pinelands Development Credit Program: opportunities for use of Pinelands Development Credits in association with nonresidential development

Ms. Grogan gave a presentation on opportunities for use of Pinelands Development Credits (PDCs) with nonresidential development. Ms. Grogan shared a slideshow on warehouse demands in the Pinelands Area (attached). The Commission is receiving development applications and requests for zoning changes, primarily in Regional Growth Areas (RGA). Many municipalities are pursuing zoning changes through site-specific redevelopment plans in areas zoned for residential development. The residential zoning districts often have existing mandatory requirements for the redemption of PDCs.

Ms. Grogan described the PDC implications of rezoning lands from residential to nonresidential in the RGA. The issue relates to the goals of the CMP and the PDC program to accommodate growth in the RGA and preserve land in the Preservation Area District, Special Agricultural

Production Area and Agricultural Production Area. Changes in permitted densities in residential areas and rezoning lands from residential to nonresidential present substantial issues.

She continued to describe the municipal flexibility provisions of the CMP, which extend to zoning and the accommodation of PDC obligations. Ms. Grogan said the goal is to ensure the PDC program is not harmed by the changes that municipalities are seeking, and to maintain municipal zoning flexibility in the RGAs afforded by the CMP.

Commissioner Lloyd expressed concern about a substantial shift from residential to nonresidential development. He stated that the Commission should carefully consider the criteria they will use to evaluate changes from residential to nonresidential zoning. He further noted that staff's recommendations alleviate some of his fears about municipal flexibility and put the Committee's decision making on the right track.

Commissioner Lohbauer echoed Commissioner Lloyd's comments and he said any development in the RGA should contribute to the PDC program, not just residential development. He indicated that it makes sense to investigate nonresidential development as a contributing factor to the program. He also requested additional discussion about the desirability of warehouse development in the Pinelands.

Commissioner Irick commended Ms. Grogan on her presentation. He asked if Dr. Jordan Howell's report had been distributed to all Commissioners. Ms. Grogan said that it will be distributed leading up to the full Commission meeting in October.

Commissioner Irick asked how many PDCs have been assigned and are available that have not been used. He feels the program has been underutilized and that impacts Atlantic County, which he represents.

Ms. Grogan said this would also be discussed at the October Commission meeting, with a presentation on overall supply and demand of PDCs.

Commissioner Irick said he agrees with Commissioner Lohbauer that mandatory PDCs should be enacted for nonresidential development. He said this goes further than warehouse considerations and should consider development projects and utility expansions. He does not want to see any net loss in PDC potential for any municipality. He asked how the Commission arrived at the 20,000 square foot figure for warehouse development. Ms. Grogan said this was purely how the math worked out in the hypothetical scenario, and the actual number would be based on specific municipal zoning. It is a function of vacant acreage, CMP density assignments, and the number of units and PDCs that would normally be necessary on that acreage.

Ms. Grogan said many Commissioners have voiced support for requiring PDCs for nonresidential uses over the years. She also noted that previous efforts to amend the CMP to require PDCs for nonresidential development did not move forward, due largely to municipal concerns that doing so would place them at a competitive disadvantage with municipalities outside the Pinelands when it came to attracting commercial ratables. Ms. Grogan said municipalities now see zoning changes and shifting PDC obligations as an opportunity to allow these very large uses in a manner that is sustainable.

Commissioner Avery asked about the number of severed PDCs that are for sale, and if there is enough to accommodate this type of proposal. Ms. Grogan said in theory right now there are a good number of credits for sale that could be used for these projects.

Commissioner Irick said if demand increases more people would be willing to put their PDCs on the market.

Commissioner Avery asked if a Letter of Interpretation (LOI) for PDCs expires.

Ms. Grogan said LOIs are valid for five years.

Commissioner Avery said switching the burden of PDC purchases away from solely residential development to nonresidential uses is a positive change. Regarding the CMP's emphasis on residential housing early in the Commission's operation, he said it was the primary type of development occurring in the Pinelands at the time.

Commissioner Avery indicated that the state has issued guidance on warehouses. Ms. Grogan said the State Planning Commission (SPC) and the Governor's interagency task force put together a lengthy paper on warehouse guidance for New Jersey municipalities. The State Planning Commission does not have any enforcement capabilities, so it was largely just recommendations. Commissioner Avery asked if he could find this on a web search.

Ms. Grogan said yes, but that she would be happy to send the link to Committee members.

Commissioner Lohbauer added that there is a bill introduced in the Assembly, which was introduced by Assemblywoman Sawyer of Gloucester County. This would require that any warehouse development in New Jersey obtain the approval of a county planning board and that municipal approval would not be sufficient.

Ms. Grogan said the warehouse guidance assembled by the task force propose a coordinated review involving adjacent municipalities so to remain cognizant of regional impacts.

Ms. Roth provided the bill number (A4475). Ms. Roth also mentioned A4527, the Warehouse Development Control Bond Act, sponsored by Assemblyman Alex Sauickie. This bill would authorize the issuance of $150 million in State general bonds to provide matching grants to municipalities to fund the cost of purchasing development rights from proposed warehouse sites. The intent of the bill is to offer municipalities through this bond act to preserve the fiscal benefit of real property proposed for warehouse use, by providing compensation to the landowner, and avoiding the negative consequences associated with warehouse development.

Ms. Grogan mentioned that the Commission has invited several municipal representatives to attend today in person or via Zoom. She said some of them may be interested in providing public comment.

5. Public Comment

Fred Akers of the Great Egg Harbor Watershed Association (GEHWA) thanked the Commission for addressing the ROW program. He said it is a leading planning initiative and he is happy to see it moving into a permanent status. Mr. Akers mentioned continued issues with use of illegal motorized vehicles in the ROW areas, particularly around Gravelly Run. He said he wanted to draw attention to the issue.

Jeromie Lange, Director of Development at Active Acquisitions, stated he is a potential developer of warehouses in the Pinelands, including in Waterford Township. He said he is more than happy to contribute to the PDC program, and that it is an excellent program. From a developer's standpoint, predictability is the key issue. Mr. Lange continued that warehouse impacts should be reviewed at the local level.

He said that he has done engineering work with the New Jersey Department of Environmental Protection (NJDEP) on stormwater rules and warehousing development. He said there are solutions to these problems, and that it is just a matter of implementation. One of the sites is forested but outside the Pinelands Area, though he thinks it would serve as an appropriate model for Pinelands warehouses. Mr. Lange said he participated in a study that assessed the capacity of sandy soil to absorb stormwater, and a joint study that assessed infiltration basins. He mentioned a church in Atlantic County that had cleared a pine forest to make room for infiltration basins and would have been less land consumptive if the area was not forested.

Commissioner Irick asked Mr. Lange to provide that information on using forested properties for stormwater to the Commission staff.

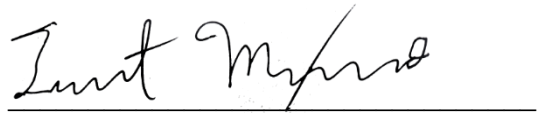
Chair Matos closed public comment at 11:03 am.

Commissioner Lloyd mentioned the passing of Governor James Florio, whom he called a champion of Pinelands preservation at nearly every level of government. He noted that Governor Florio sponsored the federal Pinelands legislation and served as Chair of the Commission for three years. Governor Florio also sponsored the predecessor bill to the Superfund Act and signed the Clean Water Enforcement Act. The Commissioner called him a mentor and said his legacy was substantial.

Chair Matos called Governor Florio's passing a tremendous loss and said his great work will be memorialized in the future.

Chair Matos asked for a motion to adjourn the meeting. Commissioner Irick made the motion. Commissioner Avery seconded. The meeting adjourned at 11:06 am.

Certified as true and correct:



Trent R. Maxwell, Planning Technical Assistant

Date: November 1, 2022

Recommended CMP Amendments to Codify the Electric Transmission ROW Vegetation Management Requirements

Pinelands Commission
CMP Policy & Implementation Committee
September 30, 2022

N.J.A.C. 7:50-4.1

- A development application will not be required for:
  - Vegetation management activities conducted within existing rights-of-way for electric transmission lines so long as there is:
    - No increase or expansion in the width of the area historically subject to vegetation management or areas of existing managed rights of way; or
    - No new or expanded development is proposed; and
  - Provided, all such vegetation management activities are conducted:
    - In accordance with the New Jersey Pinelands Electric Transmission Line Right-of-Way Vegetation Management Plan, dated February 2009; or
    - Complies with the vegetation management prescriptions in N.J.A.C. 7:50-6.28

N.J.A.C. 7:50-6.28

- Existing Pinelands Commission Electric Transmission Line Rights-of-Way Vegetation Management Plan
  - Will be incorporated by reference and will prescribe the vegetation management required for the rights-of-way for existing electric transmission rights-of-way span contained within the plan (69Kv or larger lines existing in 2009)
- Hand Cutting/Manual Clearing
  - Permitted year round in uplands and wetlands
  - May ONLY utilize hand cutting/manual clearing in muck soil wetlands

N.J.A.C. 7:50-6.28 (cont.)

- Mowing
  - Permitted in:
    - Uplands
    - Mineral Soil Wetlands
  - But, limited to Winter Months (December 1 through February 28)
  - NOT permitted in organic soil wetlands
- Removal of Vegetative Debris
  - Vegetative debris from mowing may remain in ROW provided the volume of debris will not prevent the sprouting shrub and herbaceous vegetation.
  - Hand cut saplings and small branches may be left in place
  - Larger branches shall be chipped into a vehicle that must be located on the access road.
  - Tree trunks and logs shall either be chipped in a vehicle on the access road or stacked in the ROW.

N.J.A.C. 7:50-6.28 (cont.)

- Use of Motorized Vehicles
  - Permitted in uplands and mineral soil wetlands, but only in the winter months
  - Use of motorized vehicles NOT permitted in organic soil wetlands
  - Permitted on the access roads within rights-of-way year round
- Maintenance of Existing Roads
  - No expansion of existing access roads or construction of new roads (temporary or permanent) without submission of an application to the Commission.
  - Development of any new or expanded structures (e.g. culverts, coffer dam, bridges (temporary or permanent) requires an application to the Commission.
  - Maintenance shall not result in increase of width or elevation of access road
  - Fill materials shall be devoid of debris and hazardous contaminants and consist of natural materials

N.J.A.C. 7:50-6.28 (cont.)

- Reporting requirements:
  - Utilities will submit an EXCEL spreadsheet to the Commission no later than January 31st of the year following vegetation management activities.
  - Spreadsheet will contain:
    - Identifying information, including GIS coordinates in degree format for the starting and stopping points within spans in which vegetation management activities were conducted;
    - A list of the vegetation management prescriptions conducted in each span during the reporting period and the dates of such work;
    - Any issues that may have arisen during implementation of the vegetation management prescriptions in each span.

N.J.A.C. 7:50-6.28 (cont.)

- Minor Adjustments to Vegetation Management Plan Prescriptions
  - Made in writing to the Executive Director
  - If approved, will be posted on the Commission's website and applicable solely to specific ROW.
- Escrow
  - Utilities to make escrow payments to the Commission to fund periodic monitoring/inspection of the vegetation management prescriptions conducted in their spans.

N.J.A.C. 7:50-10.31 - 10.35

- Repeal existing Electric Transmission Line Rights-of-Way Vegetation Management Pilot Program

PDC PROGRAM DISCUSSION:
OPPORTUNITIES FOR USE OF PDCS WITH NON-RESIDENTIAL DEVELOPMENT

Pinelands Commission
Policy & Implementation Committee
9/30/2022

WAREHOUSE DEMANDS REACH REGIONAL GROWTH AREAS

- Pinelands municipalities are fielding many warehouse development proposals
- Developers are targeting tracts of land with access to highways to site large (½ million sqft+) warehouses
- Municipalities are interested in the tax ratables and associated economic development impacts; expect that residents will have similar concerns as seen statewide
- Multiple Pinelands municipalities are actively considering zoning changes to allow warehouse development via redevelopment plans

A PATTERN EMERGES IN RESPONSE

- Warehouse proposals for sites in residentially zoned RGAs with existing, mandatory PDC requirements
- Without a zoning change, the CMP imposes a large PDC obligation through a use variance
- Rezoning vacant land from residential to non-residential within the RGA has barriers based on CMP rules
- Opportunities to transfer residential development potential to other lands in a municipality's RGA have become more limited over time

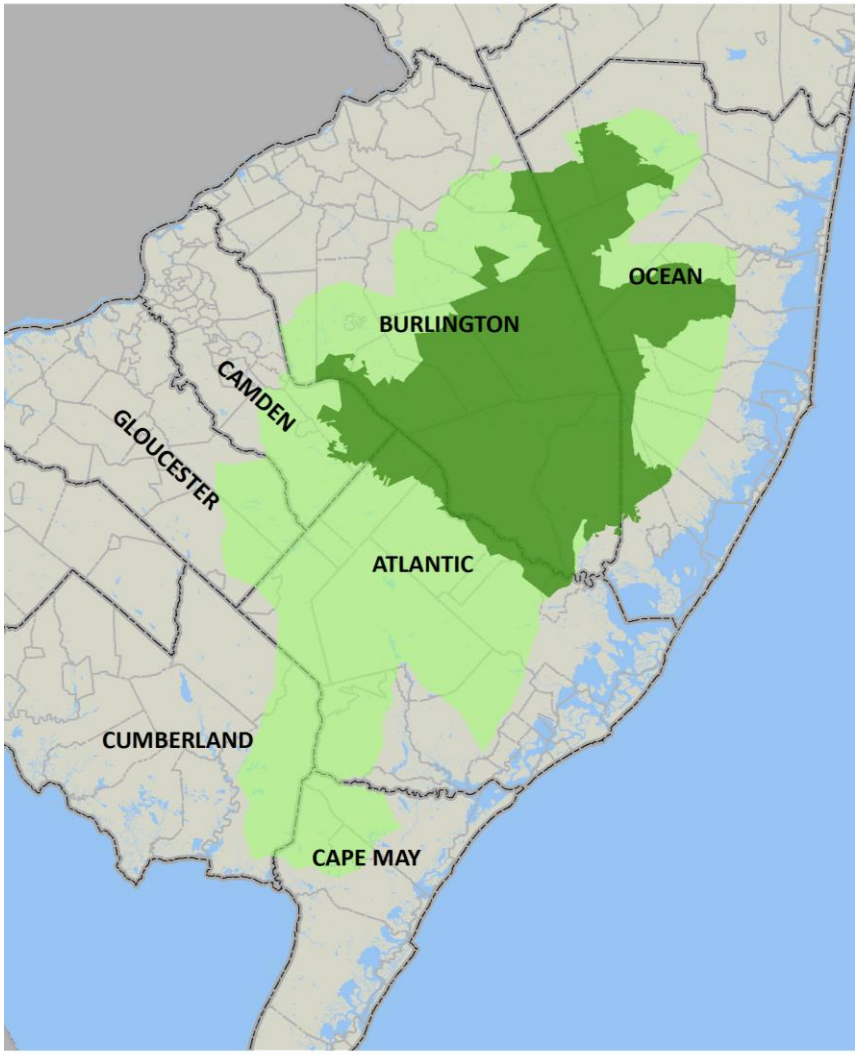
DISCUSSION FOCUS

- **Purpose**: Multiple municipalities are seeking guidance from the Commission on acceptable rezoning approaches to facilitate development of large non-residential uses in Regional Growth Areas.

- **Primary Question**: Do the CMP's municipal flexibility provisions provide the Commission with the ability to certify municipal ordinances that effectively transfer PDC requirements from residential to non-residential uses?

- **Secondary Question:** Are there other regional warehouse development impacts that should be taken into consideration?

BACKGROUND:
REGIONAL GROWTH AREA PLANNING



PINELANDS PROTECTION ACT

- Established the **Pinelands Area**
- Divides it further between the **Preservation Area** and the **Protection Area**
- Each area has a separate set of goals established in the Act

= Preservation Area

= Protection Area

	Acres	Counties	Municipalities
Pinelands Area	934,000	7	53
Preservation Area	368,000	4	25
Protection Area	566,000	7	51

PINELANDS PROTECTION ACT: PROTECTION AREA GOALS

- Preserve and maintain the essential character of the existing pinelands environment, including the plant and animal species indigenous thereto and the habitat therefor
- Protect and maintain the quality of surface and ground waters
- Promote the continuation and expansion of agricultural and horticultural uses
- Discourage piecemeal and scattered development
- **Encourage appropriate patterns of compatible residential, commercial and industrial development, in or adjacent to areas already utilized for such purposes, in order to accommodate regional growth influences in an orderly way while protecting the pinelands environment from the individual and cumulative adverse impacts thereof**

PINELANDS CMP - PINELANDS MANAGEMENT AREAS

Both the Federal and State legislation called for a land capability map. The original CMP established a variety of management areas to meet the goals of the Preservation and Protection Areas.

<u>Preservation Area</u>

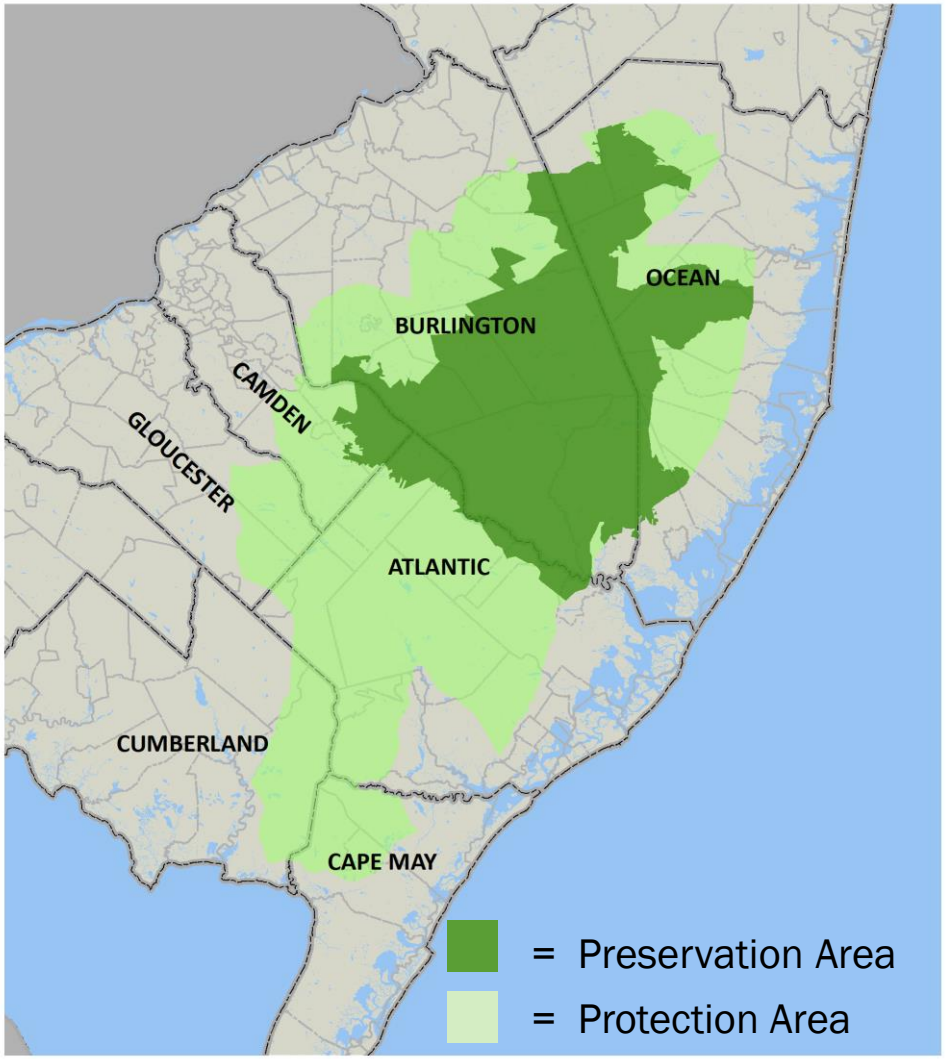
- Preservation Area District
- Special Agricultural Production Area

<u>Protection Area</u>

- Forest Areas
- Rural Development Areas
- Pinelands Towns
- Regional Growth Areas

<u>Both</u>

- Military and Federal Installation Areas
- Pinelands Villages
- Agricultural Production Area

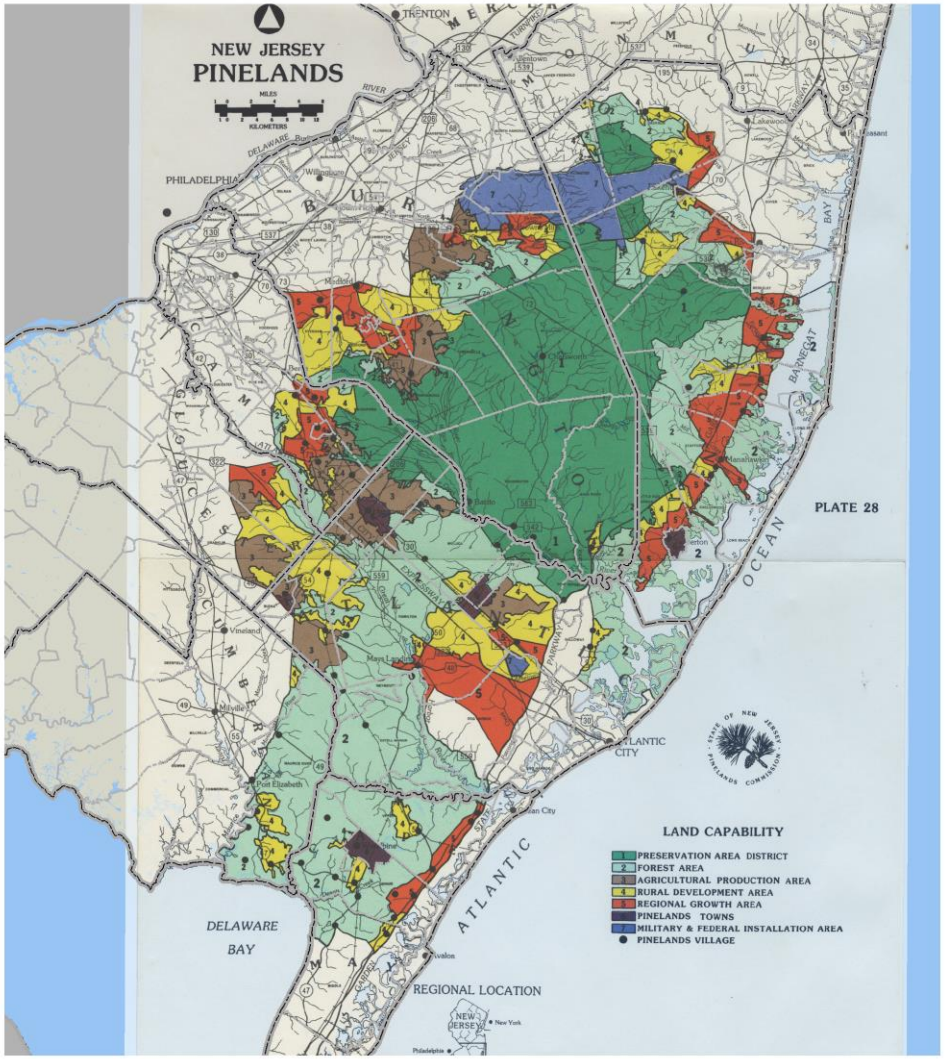


ORIGINAL LAND CAPABILITY MAP

Volume I of the CMP established criteria for mapping the management areas based on environmental characteristics and existing land uses

- = Preservation Area District
- = Forest Area
- = Agricultural Production Area
- = Rural Development Area
- = Regional Growth Area
- = Pinelands Towns
- = Military and Federal Installation Areas

Note: Villages and Special Ag Areas were not delineated on the original map



THE PURPOSE OF REGIONAL GROWTH AREAS – ENCOURAGING APPROPRIATE PATTERNS OF DEVELOPMENT

- Regional Growth Areas were established to meet the legislative mandate to:
  - *encourage appropriate patterns of compatible residential, commercial and industrial development, in or adjacent to areas already utilized for such purposes, in order to accommodate regional growth influences in an orderly way while protecting the pinelands environment from the individual and cumulative adverse impacts thereof*
- Volume I of the CMP defined Regional Growth Areas as those land areas which are:
  - In or adjacent to existing developed areas;
  - Experiencing growth demands and pressure for development; and
  - Capable of accommodating development without jeopardizing the most critical elements of the Pinelands environment

THE PURPOSE OF REGIONAL GROWTH AREAS – PDC PROGRAM RECEIVING AREA

- The PDC program was established to provide an alternative use to property owners in the PAD, SAPA, and APA management areas, where development was greatly restricted.
- PDCs provided a mechanism for landowners in these restrictive areas to benefit from the expected increase in land values in Regional Growth Areas.
- Regional Growth Areas are the only receiving area for Pinelands Development Credits.

CMP REQUIREMENTS IN REGIONAL GROWTH AREAS

- The CMP permits “any use” in a RGA. Therefore, permitted uses are generally at the discretion of the municipality, provided that:
  - Developable lands are zoned to authorize the CMP prescribed base residential density specific to that municipality (CMP ranges between 1 and 3.5 du/acre)
  - Opportunities to achieve bonus density via PDCs must also be provided in the zoning such that the base residential density can be exceeded by at least 50%
- Developable land is defined as privately held, non-wetlands, with a DTSH water table of at least 5’ (or 1.5’ in sewered areas)
- Developable land may exclude lands which are zoned exclusively for commercial or industrial use, predominantly developed as such, and which otherwise form a part of a reasonable balance between industrial or commercial zoned property and residential zoned lands.

HOW MUNICIPALITIES INITIALLY RESPONDED - AN EXAMPLE

Pitch Pine Township *(hypothetical municipality)*

- CMP Prescribed Base Density: 2 du/acre
- Township evaluated existing uses and developable land and proposed the zoning plan below for its RGA
- The process involved various adjustments to zoning boundaries and zone densities to meet the density and PDC requirements of the CMP

Zone	Total Acres	Developable Acres	Residential Base Density	Residential Bonus Density	Base Units Authorized	Bonus Units Authorized
Industrial (I)	200	-	N/A	N/A	-	-
Highway Commercial (HC)	300	-	N/A	N/A	-	-
Residential (R-1)	300	250	1 du/acre	N/A	250	0
Residential (R-2)	600	500	2 du/acre	1 du/acre	1,000	500
Residential (R-3)	500	250	3 du/acre	2 du/acre	750	500
Total	1,900	1,000			2,000	1,000

ONGOING ZONING CHANGES IN RGAS

- Pinelands municipalities engage in on-going planning activities
- RGAs tend to have relatively more zoning changes given the greater flexibility provided by the CMP and their ability to accommodate changing development pressures
- Zoning changes in RGAs that raise no substantial issues:
  - Boundary changes to recognize existing uses and lot sizes
  - Changes in permitted uses within non-residential districts
- Zoning changes in RGAs that raise substantial issues and are often challenging
  - Revisions to permitted densities within residential districts (either increases or decreases)
  - Rezoning lands from residential to non-residential districts (or vice versa)

THE CMP'S MUNICIPAL FLEXIBILITY PROVISION AND THE EVOLUTION OF PDC REQUIREMENTS

- "It is the policy of this Plan to allow municipalities the greatest degree of flexibility and discretion in the preparation of locals plans and ordinances so long as the plans and ordinances do not conflict with the ultimate objectives and minimum requirements of this Plan."

- In the mid-2000's, municipalities began proposing rezonings to accommodate higher density residential projects in their RGAs, often to facilitate a wider variety of housing types, affordable housing, mixed use development and site-specific redevelopment plans. Utilizing the CMP's municipal flexibility provisions, the Commission was able to certify these ordinances, provided they included mandatory PDC requirements for residential development as opposed to the traditional base/bonus system.

- The incorporation of mandatory PDC requirements has significantly improved the functioning of the PDC Program by increasing demand. Of the 216.75 PDCs redeemed between January 2015 and September 2022, nearly half were used for projects where a mandatory PDC requirement was in effect.

REVISITING TODAY'S CHALLENGE

- Warehouse proposals for sites in residentially zoned RGAs with existing, mandatory PDC requirements
- Without a zoning change, the CMP imposes a large PDC obligation through a use variance
- Rezoning vacant RGA land from residential to non-residential has barriers based on CMP rules
- Opportunities to transfer residential development potential to other lands in a municipality's RGA have become more limited over time

AN APPROACH FOR PDC USE IN RGA NON-RESIDENTIAL DEVELOPMENT

PDC USE IN RGA NON-RESIDENTIAL DEVELOPMENT A POTENTIAL APPROACH

- Drawing upon CMP's municipal flexibility provisions
  - Allow municipalities to meet their PDC obligations by adopting mandatory PDC requirements for non-residential uses
    - Precedent: Berlin Township & (formerly) Winslow Township - Bonus FAR achieved via PDC use
  - Allow reduction in authorized residential units in municipal RGAs where overall residential zoning capacity exceeds CMP base/bonus density minimum
    - Many RGA municipalities have been opting to increase RGA residential density above the required CMP minimum. Mandatory PDC requirements were incorporated in these zoning plans to accommodate affordable housing and ensure redemption of PDCs.
    - A municipality should be given the flexibility to reduce residential zoning capacity so long as the CMP minimum continues to be met
  - Calculate PDC obligation required by the CMP for lands being rezoned and assign that obligation to the newly permitted non-residential uses

A HYPOTHETICAL EXAMPLE

- 50-acre site in an existing residential RGA zone that permits a maximum density of 6 units/acre with a 25% mandatory PDC requirement.
- The municipality wants to rezone the site to non-residential via a redevelopment plan.
- Offsetting lands are limited in the municipality's RGA.

A HYPOTHETICAL EXAMPLE

- **Step 1:** Determine whether the municipality is eligible for a reduction in residential density in their RGA
  - For this hypothetical municipality, the CMP requires 2 units/acre base density + 1 unit/acre bonus with PDC use
  - An analysis of Township's RGA shows that the remainder of the zoning plan authorizes units in excess of the CMP's mandatory minimum density requirements

A HYPOTHETICAL EXAMPLE

- **Step 2:** Determine the PDC obligation to be transferred:
  - Under the CMP's minimum residential zoning requirements, the 50-acre area would need to be zoned for 2 units/acre base (100 units) and 1 unit/acre bonus (50 units) for a total of 150 units
  - Minimum PDC obligation of 50 rights (12.50 PDCs) would be transferred to the non-residential use
  - Redevelopment plan would authorize up to 1,000,000 million square feet of non-residential floor area
  - A mandatory PDC requirement of 1 right for every 20,000 sqft of proposed non-residential floor area would be applied (~1 million sqft/50 rights)

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
Acting Executive Director

MEMORANDUM

To: CMP Policy & Implementation Committee

From: Gina A. Berg, Resource Planner

Marci Green, Legal Specialist

Date: November 21, 2022

Subject: Proposed CMP Amendments for Water Management (Kirkwood Cohansey)

This memo provides an update on the status of proposed amendments to the water management section (Kirkwood Cohansey Aquifer) of the Pinelands Comprehensive Management Plan (CMP), which were published in the New Jersey Register on September 6, 2022. Attached to this memo, please find copies of the written testimony that was received during the 60-day comment period, a brief summary of the oral comments received at two public hearings, and a draft of the revised rule that we recommend be re-proposed.

The 60-day public comment period closed on November 5, 2022. As explained in detail below, staff is recommending re-proposing the rule to address some of the concerns expressed in the comments received. The Commission received 19 written public comments (attached). Six people testified at two public hearings, which were held on October 12 and November 2, 2022 (summary attached). Public comments generally fell into three categories: (1) opposition from the resource extraction industry and associated building and road maintenance/construction industries; (2) support for the amendments, with some requests to strengthen the rule; and (3) requests for minor changes to technical standards and citations.

Resource extraction in the Pinelands involves mining sand and gravel by mechanical or hydraulic dredging, a process that uses water directly from water bodies as well as from diversions from the Kirkwood-Cohansey Aquifer. Some commenters explained that resource extraction operations typically involve "nonconsumptive" water use, meaning water is returned to the source with little or no change in the quality or quantity of water. The industry believes the rule would impose a disproportionate regulatory burden on such nonconsumptive diversions and would not accomplish the purpose of protecting the aquifer. Industry representatives also asserted that the rule would impact related building

and road maintenance/construction industries in the State that rely upon the mined materials. The commenters noted that the New Jersey Department of Environmental Protection (DEP), Bureau of Water Allocation & Well Permitting has developed policies and procedures to address the nonconsumptive nature of water use for sand and gravel mining operations. We note that the impacts of the proposed rule on the resource extraction industry were not raised during any of the focus group or stakeholder meetings during the development of this rule proposal between 2015 and 2022.

After careful consideration of the comments received, staff is recommending a change to the rule proposal related to the nonconsumptive use of water for resource extraction operations. The revised draft rule would exempt a proposed diversion for a resource extraction operation from the requirements of the rule if the applicant can demonstrate that the diversion is a nonconsumptive use. This new exception would appear at N.J.A.C. 7:50-6.86(d)2iii (see page 7 of the attached revised draft rule). A definition of nonconsumptive use will also need to be added to the CMP at N.J.A.C. 7:50-2.11 (see page 3). The definition is based on the DEP regulatory definition and specifies that the water must be returned without substantial diminution in quantity or substantial impairment of quality.

Based on other comments received, staff also recommends making minor, additional changes to the rule to clarify language and correct citations. These corrections and clarifications are considered technical in nature and could be made upon adoption of the rules. However, the changes to recognize nonconsumptive resource extraction water withdrawals are considered substantive. Therefore, the Commission is required to re-propose the entire rule to incorporate the recommended exception for resource extraction nonconsumptive use. We will include the other minor changes in the re-proposal as well. Staff requests that the Policy and Implementation (P&I) Committee make a recommendation to the full Commission to authorize re-proposing the rule with the changes described above and in the attached document. If such recommendation is provided, staff would submit the revised rule to the Governor's office for review. Upon approval by the Governor's office, the Commission would be asked to authorize the re-proposal. The formal rule proposal would then be submitted to the Office of Administrative Law for publication in the New Jersey Register and a new 60-day public comment period would be initiated, including a public hearing.

Staff will be available at the November 30, 2022, P&I meeting to discuss the proposed changes.

Attachments:

1. List of commenters
2. Written comments
3. Summary of public hearings
4. List of rule revisions
5. Draft revisions to proposed rules

Comments Received on Kirkwood-Cohansey Aquifer Rule Proposal

1. William Layton, Executive Director (written comment) and Kyle England, CLB Partners (public hearing), NJ Concrete & Aggregate Association
2. Paul Connolly
3. Ed Beckett
4. Janet Drew
5. Logan Penna
6. David Harpell, Jackson Township
7. Dan Osterman
8. Rick Prickett
9. Brooke Handley, River Administrator (written comment) and Fred Akers, Operations Manager Great (public hearing and written comment), Egg Harbor Watershed Association
10. Joseph Gallagher, Township Administrator, Winslow Township
11. Sandy Van Sant
12. Ryan Benson, Esq., (public hearing), Kevin Coakley, Esq. (written comment), and Brian Blum, CPG, LSRP (written comment), Clayton Companies
13. Robert S. Baranowski, Jr., Esq. (public hearing and written comment) , Whibco, Inc.
14. Grant Lucking, Chief Operating Officer , NJ Builders Association (NJBA)
15. Ryck Suydam President, Farm Bureau
16. Jeffrey L. Hoffman, State Geologist, New Jersey Department of Environmental Protection, Division of Water Supply and Geoscience
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

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.

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

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

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)

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

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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

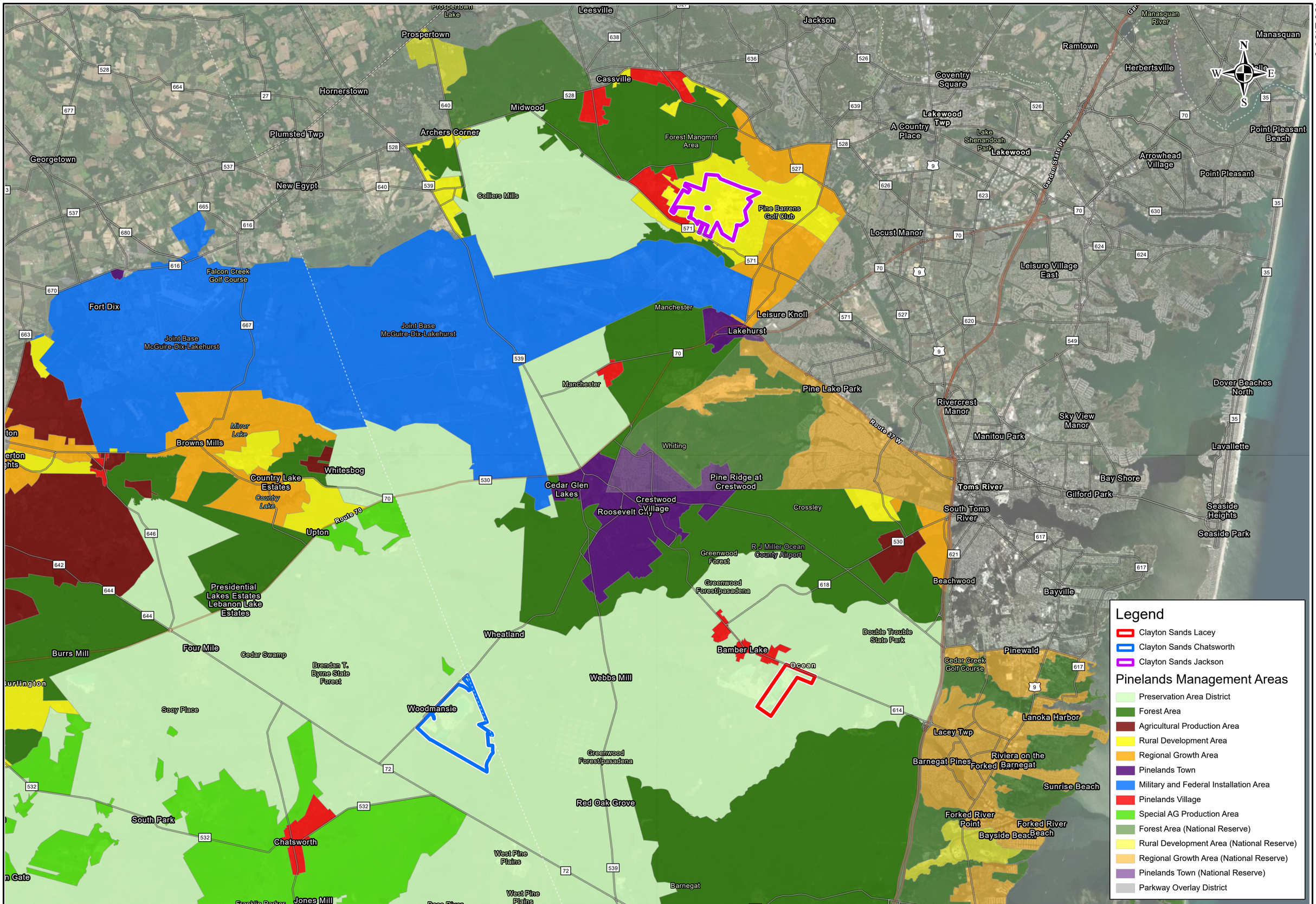
Clayton has been operating mines in the Pinelands for decades, each diverting water under NJDEP Water Allocation Permits. There are no documented ecological impacts associated with water diversions for hydraulic dredging from manmade ponds as the water is returned to the water table in an undiminished 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

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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
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Figure	1

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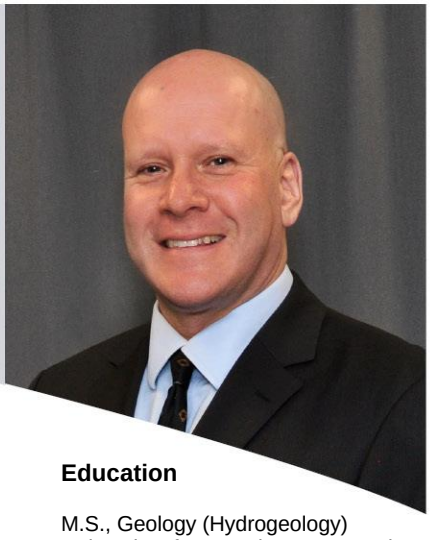
Brian Blum, CPG, LSRP

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.

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

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

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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

State of New Jersey

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DEPARTMENT OF ENVIRONMENTAL PROTECTION

SHAWN M. LATOURETTE
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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

Water Management Rule Proposal
Public Hearing Testimony Summary
October 12, 2022 and November 2, 2022

Testimony List

1. Robert Baranowski (Hyland Levin Shapiro) on behalf of Whibco
2. Jack McCausland, Pinelands Preservation Alliance
3. Ryan Benson (Connell Foley) on behalf of Clayton Co.
4. Kyle England (CLB Partners) on behalf of NJ Concrete & Aggregate Association
5. Robert Kecskes
6. Fred Akers, Great Egg Harbor Watershed Association

Six people testified at the two public hearings. Four of the six also submitted written comments that restated their oral testimony, and in some instances, included additional information. One commenter, Jack McCausland of the Pinelands Preservation Alliance did not submit written comments, nor did anyone else from the Alliance. Kyle England, who testified on behalf of the NJ Concrete & Aggregate Association, did not provide written comments, but the Executive Director of the Association, William Layton, provided written comments that reiterated the oral testimony of Mr. England.

October 12, 2022 Hearing Comments

Robert Baranowski, Hyland Levin Shapiro, on behalf of Whibco

Mr. Baranowki expressed concern about the impacts of the proposed rule on sand and gravel mining and noted that only the New Jersey Department of Environmental Protection has the authority to regulate water supply. The proposed rule would create duplicative regulations. He stated that the prohibition on interbasin transfer does not consider existing mining sites that cross watershed management areas which could affect future water allocation permits. Mr. Baranowski testified that existing mining operations should be excluded from the rule because the proposed rule does not recognize the nonconsumptive nature of water use for mining activities.

Jack McCausland, Pinelands Preservation Alliance

Mr. McCausland testified on behalf of the Pinelands Preservation Alliance (Alliance) and stated that the Alliance strongly supports the amendments but recommends three changes.

The PPA believes that horticultural and agricultural uses should not be exempt from the proposed regulations. He stated that as the Pinelands reaches buildout and rises in sea level push development pressures inland, the Commission needs to be prepared for conflicting demands on

the aquifer. Mr. McCausland also raised a particular concern about cannabis cultivation facilities, which are water intensive, and which may experience growth in the near future.

Mr. McCausland also suggested that language in the proposed amendments be tightened to eliminate language allowing developers to demonstrate that they do not have a viable alternative water source. He stated that this loophole undermines the regulation and that PPA recommends tightening the language. Permitting developers to establish a lack of viable water supply sources by showing prohibitive cost is too permissive and would open the door for applicants to justify overburdening the K-C Aquifer simply because it's cheaper and easier to do so. Mr. McCausland also stated that there is a lack of clarity regarding what constitutes a viable alternative, and this is inconsistent with efforts in other areas of the proposal that reduce ambiguity to protect the aquifer.

Lastly, Mr. McCausland recommended that well replacements should have to be in the same HUC-11 as the original well, as placing the well in a different watershed may present a different ecological impact.

Ryan Benson, Connell Foley on behalf of Clayton Companies

Mr. Benson testified that the proposed rule is arbitrary and capricious in that it does not recognize nonconsumptive water uses for sand and gravel mining. Mr. Benson also stated that the Pinelands Commission does not have the authority to regulate water use in this way and listed various regulations that deal with NJDEP water supply authority. These comments are essentially the same as the written comments submitted by Kevin Coakley.

Kyle England (CLB Partners) on behalf of NJ Concrete & Aggregate Association

Mr. England's oral testimony was identical to the written comments provided by William Layton, Executive Director of the NJ Concrete & Aggregate Association, except that Mr. England's testimony also included a statement that the proposed rules will result in a shortage of sand, gravel, and crushed stone, which could result in the price doubling for those materials. This statement was not included in Mr. Layton's written comment.

November 2, 2022 Hearing

Robert Kecskes

Mr. Kecskes indicated that he was encouraged that the Commission is getting to the point of adopting the rule. He expressed concern that the size of the HUC-11 watershed used in the rule is too large to adequately protect the aquifer because the Low Flow Margin is a reflection of the water available at the lowest point of the watershed and that could lead to wells in the uppermost

reaches of the HUC-11 watershed to be adversely impacted. He recommends that the rule rely on HUC-14 watershed low flow margin instead. Mr. Kecskes also stated that leakage to confined aquifers can also have an impact on the Kirkwood Cohansey water table. He expressed concern that too many wells in the confined or semi-confined aquifers will increase that leakage and drawdown the water table of the Kirkwood Cohansey. Mr. Kecskes' third issue dealt with the relationship between water withdrawals from aquifers causing land subsidence in southern New Jersey and that sea level rise is increasing more quickly here as a result. He noted that Rutgers completed a study on this issue.

Fred Akers, Great Egg Harbor Watershed Association

Mr. Akers expressed support for the amendment. He indicated that the purpose of the Gibson bill was to get water for Cape May. He noted specific support for reducing the threshold from 100,000 gallons per day to 50,000 gallons per day for water diversions that will have to meet the standards of the proposed rule. Mr. Akers also expressed specific support for the increased fee associated with development involving diversions of water from the Kirkwood Cohansey aquifer.

Summary of revisions to draft Kirkwood-Cohansey rule proposal

Substantive changes

7:50-2.11 – added definition of “nonconsumptive use”

7:50-6.86(d)iii – added exemption for resource extraction operation

Minor changes/clarifications

7:50-2.11 – minor changes/clarifications to definition of “stream low flow margin”

7:50-6.86(b) – added “from sources within”

7:50-6.86(d) – added “and new” to first sentence”

7:50-6.86(d)2i – corrected DEP citation

7:50-6.86(d)2ii – added word “proposed”

7:50-6.86(d)6 – clarifications and more specificity

Full text of the proposal follows (additions to proposal indicated with boldface and underline **thus**; deletions from the proposal indicated in brackets with strikethroughs [~~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.

…

"Nonconsumptive use" means the use of water diverted from surface or ground waters in such a manner that it is returned to the source surface or ground water at or near the point from which it was taken without substantial diminution in quantity or substantial impairment of quality.

…

"Stream low flow margin" means the difference between a stream's normal dry-season flow (September Median Flow) 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.**

…

"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 <u>from sources within</u> [~~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 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. 7:9-9D 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 <u>proposed</u> diversion that is exclusively for agricultural or horticultural use<u>; or</u> [.]

<u>iii. Any proposed diversion for a resource extraction operation that is demonstrated to be a nonconsumptive use.</u>

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 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).2**

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) below, 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.

State of New Jersey
THE PINELANDS COMMISSION
PO BOX 359
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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
Acting Executive Director

MEMORANDUM

To: Members of the CMP Policy & Implementation Committee

From: Stacey P. Roth, Chief, Legal & Legislative Affairs

Date: November 21, 2022

Subject: Draft Amendment of the 1998 Memorandum of Agreement Between the Pinelands Commission and Atlantic County Involving Lake Lenape Park

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On August 23, 2019, Atlantic County representatives attended the Comprehensive Management Plan Policy & Implementation Committee meeting to request that the Commission commence the process the amend the above referenced Memorandum of Agreement (MOA). This MOA authorized certain development in Atlantic County's Lake Lenape Park along the western lake shore. With regard to the requested amendment, the 1998 MOA authorized the construction of a 120 foot L-shaped dock proximate to the boathouse. As part of the 1998 MOA, a Deed of Conservation Restriction (DCR) was filed by Atlantic County that referenced the 1998 MOA and prohibited all development in the Park that was not authorized by the 1998 MOA.

The County seeks to amend the MOA to permit it to remove the L-shaped dock and replace it with two separate floating docks. The existing dock configuration no longer meets the County's needs and raises safety concerns.

In order to assist the County with its proposed dock project and afford it flexibility to change the configuration of its docks in the future as necessary, the Commission staff worked with the County to identify a 200' x 300' rectangular section within Lake Lenape proximate to the boathouse. The proposed MOA Amendment would eliminate the reference in Paragraph II.C.2(h) in the 1998 MOA to the 120-foot L-shaped dock and allow the County to amend its DCR to release this 200'x 300' rectangular section of Lake Lenape. The 200' x 300' section contains 1.39 acres. The County is proposing to offset the release of the 1.39 acres by deed restricting a comparably sized area near the group camping area. This new offset would eliminate construction of an L-shaped dock in this area that had been authorized by the 1998 MOA.

The 1998 MOA between Atlantic County and the Pinelands Commission may be found at https://nj.gov/pinelands/infor/moa/Local%20Agencies/Atlantic%20County/Atlantic%20County%20-%20Lake%20Lenape%20March%201998.pdf. Attached you will also find a GIS map depicting the area that the County is requesting to be eliminated from the MOA and DCR and the new offset area as well as a draft of the MOA Amendment.

I look forward to discussing this matter with you at the November 30, 2022 meeting.

LAKE LENAPE WEST
ATLANTIC COUNTY, NJ

Area of Replacement Offset

Area of Replacement Offset Inset

Atlantic County Board of Taxation

Lelling

Tanglewood Drive

Tunnywood

Tunney Avenue

Rundle Avenue

Park Road

Lake Drive

Area to be Released from
Deed of Conservation Restriction Inset

Atlantic County Board of Taxation

Area to be Released from
Deed of Conservation Restriction

1 in - 125 feet

1 in - 0.02 miles

60 30 0 60 120 180
Feet

This map is for demonstration purposes only and was not developed in accordance with National Map Accuracy Standards. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user. The map was developed, in part, using New Jersey Department of Environmental Protection Geographic Information System (GIS) digital data, in conjunction with the Atlantic County Office of Geographic Information Systems, but this secondary product has not been verified by NJDEP and is not state authorized. The geodetic accuracy and precision of the GIS data contained in this map has not been developed nor verified by a professional licensed land surveyor and shall not be nor is intended to be used in matters requiring delineation and location of true ground horizontal and/or vertical controls File: LakeLenapeWest.mxd Printed on: 11/18/2022

Atlantic County Board of Taxation

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
Acting Executive Director

MEMORANDUM

To: Members of the CMP Policy & Implementation Committee

From: Stacey P. Roth, Chief, Legal & Legislative Affairs

Date: November 21, 2022

Subject: Stockton University – Revised Map for the Deed of Conservation Restriction

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At the May 27, 2022 Comprehensive Management Plan (CMP) Policy & Implementation Committee meeting, Commission staff and representatives from Stockton University made presentations concerning the University's 1990, 2010 and 2020 Master Plans. Part of these presentations included a discussion of the inadvertent impacts associated with the exhibit included in the 2014 Deed of Conservation Restriction (DCR) that defines the conservation area on Stockton's Galloway Township Campus. As previously discussed, the 2014 DCR failed to identify existing infrastructure located within the Conservation Area. As a result, subsequent changes to this infrastructure had resulted in unforeseen violations of the DCR and the CMP.

In order to address these concerns, Commission staff and representatives of Stockton University have been working a developing a new map of the Conservation Area using a geographic information systems approach. This new GIS map is more precise than the exhibit in the 2014 DCR depicting the Conservation Area. Additionally, the map is now in a form that can be used with GIS to readily identify the conserved lands on the campus as Stockton considers future development plans.

I have attached a copy of the main cover sheet of the plans to this memorandum. As depicted on the map, Stockton is proposing to remove certain areas from the DCR and offset the exclusion of those areas through the deed restriction of other lands on its campus. I look forward to reviewing the details of the map with you at your November 30, 2022 meeting. Additionally, if the map is viewed favorably by the Committee, staff will move forward to present the University's 2020 Master Plan for the Commission's approval in the beginning of 2023.

STOCKTON UNIVERSITY

PROPOSED EXEMPTION AREAS FROM THE PINELANDS COMMISSION'S CONSERVED LANDS

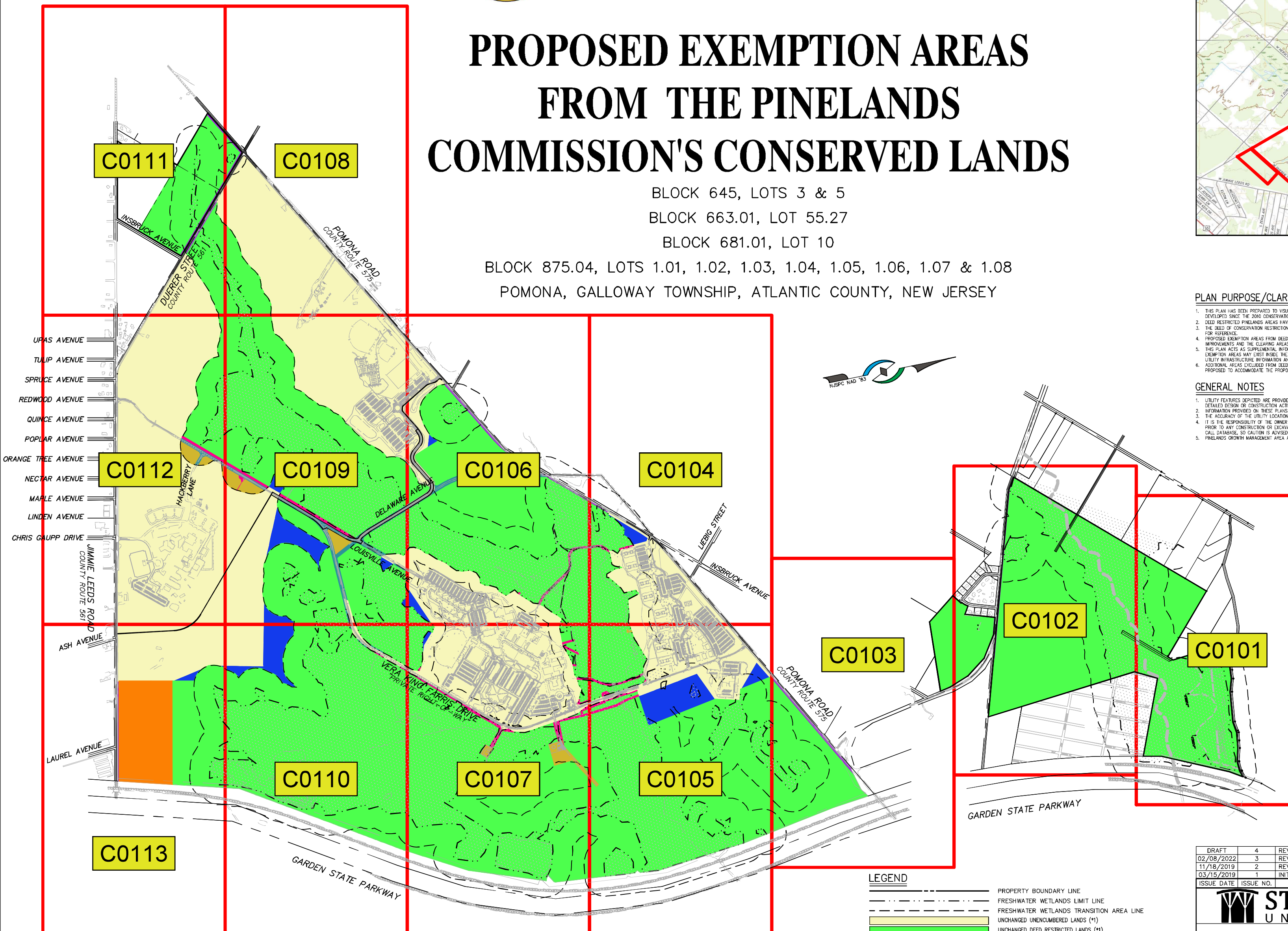
BLOCK 645, LOTS 3 & 5

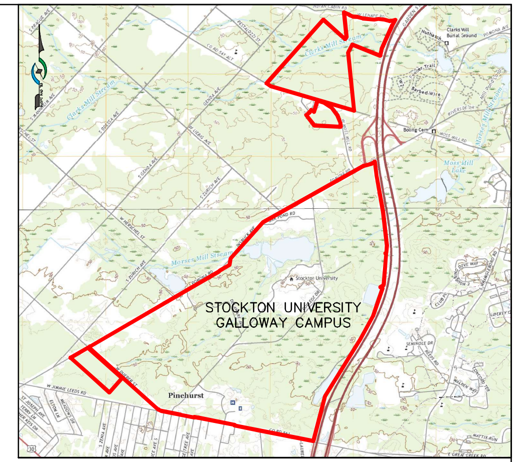
BLOCK 663.01, LOT 55.27

BLOCK 681.01, LOT 10

BLOCK 875.04, LOTS 1.01, 1.02, 1.03, 1.04, 1.05, 1.06, 1.07 & 1.08

POMONA, GALLOWAY TOWNSHIP, ATLANTIC COUNTY, NEW JERSEY





LOCATION MAP

U.S.G.S PLEASANTVILLE/GREEN BANK QUAD SHEET
SCALE: 1" = 2,000'

PLAN PURPOSE/CLARIFICATION NOTES

1. THIS PLAN HAS BEEN PREPARED TO VISUALLY DELINEATE ALL AREAS WITHIN THE THE PINELANDS PRESERVATION DEED RESTRICTION. THESE AREAS INCLUDE THE IMPROVEMENTS DEVELOPED SINCE THE 2010 CONSERVATION RESTRICTION AND THE PROPOSED AREAS REQUESTING EXEMPTION FROM DEED RESTRICTION.
2. DEED RESTRICTED PINELANDS AREAS HAVE BEEN INTERPOLATED FROM EXHIBIT #7 OF THE 2010 MASTER PLAN AND EXHIBIT "C" FROM THE AMENDED 2014 M.O.A.
3. THE DEED OF CONSERVATION RESTRICTION DATED OCTOBER 7, 2010 (INSTRUMENT #2010065939, RECORDED ON 11/5/2010 WITH THE ATLANTIC COUNTY CLERK) HAS ALSO BEEN USED FOR REFERENCE.
4. PROPOSED EXEMPTION AREAS FROM DEED RESTRICTION SHALL INCLUDE ALL FORESEEABLE FUTURE ROADWAYS, WALKWAYS & OTHER PEDESTRIAN CONVEYANCE PATHS, GENERAL IMPROVEMENTS AND THE CLEARING AREAS REQUIRED TO CONSTRUCT & MAINTAIN THOSE IMPROVEMENTS.
5. THIS PLAN ACTS AS SUPPLEMENTAL INFORMATION TO THE 2010 CONSERVATION RESTRICTION AND DOES NOT EXCLUDE OR REPLACE ALL AREAS LISTED TO BE EXEMPT. ADDITIONAL EXEMPTION AREAS MAY EXIST INSIDE THE LIMITS OF THE DEED RESTRICTED CONSERVATION AREA BUT HAVE NOT BEEN SHOWN HEREON DUE TO A LACK OF DETAILED UNDERGROUND UTILITY INFRASTRUCTURE INFORMATION AND UPDATED PLANIMETRIC INFORMATION.
6. ADDITIONAL AREAS EXCLUDED FROM DEED RESTRICTION INCLUDE THE 20 ACRES ASSOCIATED WITH THE STORAGE, STAGING, STOCKPILING & SIMILAR ACTIVITIES AND THE 9 ACRES PROPOSED TO ACCOMMODATE THE PROPOSED GARDEN STATE PARKWAY EXIT AT THE CORNER OF JIMMIE LEEDS ROAD AND THE GARDEN STATE PARKWAY.

GENERAL NOTES

1. UTILITY FEATURES DEPICTED ARE PROVIDED FOR INFORMATION PURPOSES ONLY AND WILL DRAW ATTENTION TO THE AREAS IN NEED OF FURTHER INVESTIGATION PRIOR TO ANY DETAILED DESIGN OR CONSTRUCTION ACTIVITIES CAN TAKE PLACE IN THOSE AREAS.
2. INFORMATION PROVIDED ON THESE PLANS IS AS PROVIDED BY DESIGN PROFESSIONALS AND CONTRACTORS.
3. THE ACCURACY OF THE UTILITY LOCATIONS WILL ONLY BE RELIABLE ENOUGH FOR GENERAL LOCATIONS OF UNDERGROUND FEATURES.
4. IT IS THE RESPONSIBILITY OF THE OWNER AND/OR CONTRACTOR TO CONTACT NEW JERSEY ONE CALL AT 811 OR 1-800-272-1000 FOR FIELD LOCATION OF UNDERGROUND UTILITIES PRIOR TO ANY CONSTRUCTION OR EXCAVATION. IT SHALL BE NOTED THAT MOST OF THE UTILITIES ON THE CAMPUS ARE PRIVATELY OWNED AND MAY NOT BE INCLUDED IN THE NJ ONE CALL DATABASE, SO CAUTION IS ADVISED.
5. PINELANDS GROWTH MANAGEMENT AREA AS SHOWN HEREON ARE FOR INFORMATIONAL PURPOSES ONLY AND REPRESENT THE GENERAL AREA OF INTEREST.

PLAN REFERENCES

1. EXISTING UTILITY INFORMATION IS AS TAKEN FROM PLANS ENTITLED "THE RICHARD STOCKTON COLLEGE OF NEW JERSEY, TOPOGRAPHIC SURVEY, MAIN CAMPUS AREA AND NORTH STUDENT HOUSING AREA" BY PENNONI ASSOCIATES INC., WITH INFORMATION BASED ON FIELD SURVEYS COMPLETED FROM 10/06 TO 12/06, UNLESS OTHERWISE NOTED.
2. EXISTING BOUNDARY INFORMATION IS AS TAKEN FROM PLAN ENTITLED "BOUNDARY SURVEY THE RICHARD STOCKTON COLLEGE OF NEW JERSEY" BY PENNONI ASSOCIATES INC., REVISED 07-18-2007, UNLESS OTHERWISE NOTED.
3. TOPOGRAPHIC AND WETLANDS INFORMATION TAKEN FROM PLAN ENTITLED "WETLANDS DELINEATION PLAN FOR THE RICHARD STOCKTON COLLEGE OF NEW JERSEY" PREPARED BY PENNONI ASSOCIATES INC., AND BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC., PROJECT NO. MEES 0602, DATED 02/16/2007, REVISED 07/18/2007.
4. FIELD DELINEATION OF WETLANDS WAS PERFORMED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC.
5. WETLANDS FLAGGING WAS FIELD LOCATED BY PENNONI ASSOCIATES INC. DURING NOVEMBER 2006 TO MARCH 2007.
6. ADDITIONAL PLAN REFERENCES:
   - "STOCKTON STATE COLLEGE SITE PLAN PHASE I UTILITIES/DRAINAGE", PREPARED BY STOCKTON STATE COLLEGE OFFICE OF COLLEGE PROJECTS, UNDATED (DESIGN PLAN)
   - "CABLE TRENCH ON COLLEGE DRIVE" AS-BUILT PREPARED BY STOCKTON STATE COLLEGE, APRIL 1987
   - "TELECOMMUNICATIONS PROJECT SITE PLAN AT RICHARD STOCKTON COLLEGE OF NEW JERSEY" AS-BUILT DRAWING PREPARD BY SUNROSE ENGINEERS, INC. DATED 9/17/99, AS-BUILT 10/14/99
   - "CABLE TRENCH LOCATION DIRT ACCESS ROAD" PREPARED BY STOCKTON STATE COLLEGE, DATED FEBRUARY 17, 1989 (AS BUILT)
   - "AC MEDICAL CENTER STOCKTON STATE COLLEGE SANITARY SEWER AS-BUILT" PREPARED BY BIRDSALL ENGINEERING, UNDATED (PLOTTED 07/08/04)
   - "ADDITIONAL CAMPUS HOUSING AREA STOCKTON STATE COLLEGE SANITARY SEWER AS-BUILT" PREPARED BY BIRDSALL ENGINEERING, UNDATED (PLOTTED 07/08/04)
   - "MAIN CAMPUS AREA STOCKTON STATE COLLEGE SANITARY SEWER AS-BUILT" PREPARED BY BIRDSALL ENGINEERING, UNDATED (PLOTTED 07/08/04)
   - "NEW JERSEY STATE COLLEGE AND UNIVERSITIES RICHARD STOCKTON COLLEGE POMONA NEW JERSEY" FIRE WATER LINES, PREPARED BY FACTORY MUTUAL INSURANCE COMPANY ENGINEERING PLAN SERVICES, DATED JUNE 20, 2006 (DESIGN PLAN)
   - "JIMMIE LEEDS ROAD SANITARY SEWER EXTENSION" PREPARED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC., PROJECT NO. RSC 005.24, DATED 05/01/07, REVISED 04/18/08 (DESIGN PLAN)
   - "CHEMICAL STORAGE RELOCATION & CAMPUS CENTER SITE UTILITIES, UTILITY PLAN - WEST PORTION, C0301" PREPARED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC., ISSUED 12/14/07, REVISED 03/27/08 (DESIGN PLAN)
   - "CHEMICAL STORAGE RELOCATION & CAMPUS CENTER SITE UTILITIES, THE RICHARD STOCKTON COLLEGE OF NEW JERSEY" PREPARED BY KSS ARCHITECTS, ISSUED 12/14/07, ISSUED FOR BID 03/04/08 (DESIGN PLAN)
   - "TELECOMMUNICATIONS DESIGN & INSTALLATION - STOCKTON COLLEGE" PREPARED BY OLIVER COMMUNICATIONS, DRAWING NO. RSCNJ-01, DATED 01-28-08 (DESIGN PLAN)
   - "GAS CHILLER RELOCATION, UTILITY PLAN" PREPARED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC., ISSUED 4/11/08 (DESIGN PLAN)
   - "GAS CHILLER RELOCATION, UTILITY PLAN, GATEWAY BUILDING, C0303" PREPARED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC., PROJECT NO. 20842.09, ISSUED 04/11/2008 (DESIGN PLAN)
   - "GAS CHILLER RELOCATION, SITE PLAN, SMPE100" PREPARED BY VINOKUR - PACE ENGINEERING SERVICES, INC., PROJECT NO. 20842.09, ISSUED 4/25/08 (AS BUILT PLAN)
   - "AS-BUILT PLAN OF JIMMIE LEEDS ROAD SANITARY SEWER EXTENSION STATION 10+00 TO 35+00, GALLOWAY TOWNSHIP, ATLANTIC COUNTY" PREPARED BY GRAVATT CONSULTING GROUP, PROJECT NO. 8678, DATED JUNE 27, 2008, REVISED 8/17/08.
   - "CAMPUS CENTER - CIVIL SITE, UTILITY PLAN - WEST PORTION" PREPARED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC., ISSUED JUNE 02, 2008, REVISED 09/23/08 (DESIGN PLAN)
   - "HOUSING V AND VA, THE RICHARD STOCKTON COLLEGE, POMONA, NEW JERSEY, RECORD DRAWINGS" PREPARED BY HILLIER ARCHITECTS AND VINOKUR-PACE ENGINEERING DATED 10-15-2008
   - "CAMPUS CENTER - CIVIL SITE, DEMOLITION PLAN - THE RICHARD STOCKTON COLLEGE OF NEW JERSEY" PREPARED BY KSS ARCHITECTS, LLP AND MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC., ISSUED JUNE 02, 2008, REVISED 12/12/08 (DESIGN PLAN)
   - "WALK LIGHTING, THE RICHARD STOCKTON COLLEGE HOUSING V PROJECT" PREPARED BY VINOKUR-PACE ENGINEERING, PROJECT NO. P01.07786.002, SHEET NO. E0.14, ISSUED 7/02/2008. (AS-BUILT PLAN)
   - POTABLE WELL LOCATION PLAN, RICHARD STOCKTON COLLEGE OF NEW JERSEY, AS-BUILT" PREPARED BY VARGO ASSOCIATES, DATED 12/15/08 (SURVEY PLAN), ISSUED BY MARATHON ENGINEERING AND ENVIRONMENTAL SERVICES 01/09/09, REVISED TO 2/14/2017.
   - MARKED UP PLANS PROVIDED BY OFFICE OF FACILITIES PLANNING AND CONSTRUCTION, RICHARD STOCKTON COLLEGE OF NJ, UNDATED, PROVIDED 05/2009.
   - "PROPOSED NEW JIMMIE LEEDS ROAD DRIVE ENTRANCE THE RICHARD STOCKTON COLLEGE OF NEW JERSEY EXISTING CONDITIONS PLAN" PREPARED BY PENNONI ASSOCIATES INC., DATED 3/5/2009.
   - "RICHARD STOCKTON STATE COLLEGE, PHASE ONE" RECORD DRAWINGS AS BUILT PREPARED BY JACKSON & MORELAND, REVISED 9-22-77.

LEGEND

- PROPERTY BOUNDARY LINE
- FRESHWATER WETLANDS LIMIT LINE
- FRESHWATER WETLANDS TRANSITION AREA LINE
- UNCHANGED UNENCUMBERED LANDS (*1)
- UNCHANGED DEED RESTRICTED LANDS (*1)
- LANDS WITHIN THE ATLANTIC COUNTY ULTIMATE R.O.W. TO BE EXCLUDED (*1)
- LANDS EXCLUDED FROM DEED RESTRICTION PER 2014 AMENDED M.O.A. (*1)
- PROPOSED LANDS OF INTERNAL ROADWAYS TO BE EXCLUDED (*1)(*2)
- PROPOSED LANDS OF INTERNAL SITE IMPROVEMENTS TO BE EXCLUDED (*1)(*2)
- PROPOSED LANDS OF UTILITY INFRASTRUCTURE TO BE EXCLUDED (*1)(*2)
- UNENCUMBERED LANDS PROPOSED FOR COMPENSATION (*1)

(*1) SEE PLAN PURPOSE/CLARIFICATION NOTES FOR ADDITIONAL INFORMATION.
(*2) AREA INCLUDES EXISTING AND POTENTIAL FUTURE DEVELOPMENTS.

GRAPHIC SCALE
600 0 300 600 1200 2400
1 INCH = 600 FEET

EXISTING UTILITY INFORMATION SHOWN ON THESE PLANS IS FURNISHED BY THE UTILITY COMPANIES AND/OR THE SURVEYOR AND THE ACCURACY THEREOF IS NOT THE RESPONSIBILITY OF MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC. IT IS THE RESPONSIBILITY OF THE OWNERS AND/OR CONTRACTOR TO CALL 1-800-272-1000 FOR FIELD LOCATION OF UNDERGROUND UTILITIES PRIOR TO CONSTRUCTION.

ISSUE DATE	ISSUE NO.	SUBMISSION/REVISION	BY	APPR.
DRAFT	4	REVISED PER REVIEW COMMENTS	CWH	AWR
02/08/2022	3	REVISED PER REVIEW COMMENTS	CWH	AWR
11/18/2019	2	REVISED PER REVIEW COMMENTS	CWH	AWR
03/15/2019	1	INITIAL SUBMISSION	CWH	EW

STOCKTON UNIVERSITY

COVER SHEET

STOCKTON UNIVERSITY
101 VERA KING FARRIS DRIVE
GALLOWAY, NEW JERSEY 08205-9441

DAVID J. FLEMING, P.E.
PROFESSIONAL ENGINEER
NEW JERSEY LICENSE NO. 24GE03321600

DRAFT 11/14/2022

RSC 043.01

MARATHON
Engineering & Environmental Services
Atlantic City Office
1616 Pacific Avenue, Suite 501, Atlantic City, NJ 08401
ph (609) 437-2100 fax (609) 437-2101
Certificate of Authorization #24GA27995700

SCALE	APPROVED
1" = 600'	DJF
DRAWN BY	SHEET
C. HARRIS	1 OF 16

DRAWING NO. C0001