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Chris Christie
Governor

Kim Guadagno
Lt. Governor

State of New Jersey

THE PINELANDS COMMISSION

PO Box 359
NEW LISBON, NJ 08064
(609) 894-7300
www.nj.gov/pinelands



Sean W. Earlen
Chairman

Nancy Wittenberg
Executive Director

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

December 17, 2018

Mr. Robert Lupp
State Library – NJ Reference Section
185 West State Street
P.O. Box 520
Trenton, New Jersey 08625

Dear Mr. Lupp:

Enclosed is the Pinelands Commission meeting minutes and attachments for November 9, 2018 for your information.

Sincerely,

Teri Melodick

Teri Melodick
Principal Clerical Assistant



PC1
Enclosure: Minutes

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

MINUTES

November 9, 2018

Commissioners Present

Alan W. Avery Jr., Bob Barr, Paul E. Galletta, Jordan P. Howell, Ed Lloyd, Mark Lohbauer, William Pikolycky, Richard Prickett, D'Arcy Rohan Green and Chairman Sean Earlen. Also present were Executive Director Nancy Wittenberg, Governor's Authorities Unit representative Craig Ambrose and Deputy Attorney General (DAG) Kristina Miles.

Commissioners Absent

Candace Ashmun, Giuseppe Chila, Gary Quinn and Jane Jannarone.

Chairman Earlen called the meeting to order at 9:36 a.m.

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

Executive Director Nancy Wittenberg called the roll and announced the presence of a quorum. (There were 10 Commissioners present at the meeting.)

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

Minutes

Chairman Earlen presented the open session minutes from the October 12, 2018 Commission meeting. Commissioner Prickett moved the adoption of the minutes. Commissioner Pikolycky seconded the motion.

The October 12, 2018 Commission meeting minutes were adopted by a vote of 9 to 0. Commissioner Rohan Green abstained from the vote.

Chairman Earlen presented the closed session minutes from the October 12, 2018 Commission meeting. Commissioner Barr moved the adoption of the minutes. Commissioner Lohbauer seconded the motion.

The October 12, 2018 closed session Commission meeting minutes were adopted by a vote of 8 to 0. Commissioner Rohan Green and Commissioner Howell abstained from the vote.

Committee Chairs' Reports

Chairman Earlen said the October 26, 2018 Policy and Implementation Committee was canceled.

Executive Director's Reports

ED Wittenberg said the Audit Committee will meet to discuss the Draft FY 2017 Audit Report immediately following this meeting. She added that she met with Brian Wilton, who now serves as the head of the Governor's Authorities Unit.

Director Chuck Horner provided information on the following regulatory matters:

- A meeting took place with Pemberton Township Officials and an applicant proposing a large residential development off of Lakehurst Road. The Mayor would like the applicant to construct a secondary access road. Staff suggested that the Township undertake a traffic study to determine if the secondary access road is necessary.
- The Commission received a letter from the New Jersey Department of Environmental Protection (NJDEP) formally withdrawing its Bass River Fire Tower application.
- Staff met with the Mayor of Woodland Township and the owner of an existing commercial use to discuss expansion options. The business is located on Route 72 and there are limitations due to the size of the parcel.

Stacey Roth reminded Commissioners that Annual Ethics training must be completed by November 19, 2018.

Paul Leakan said the new floor was installed in the Richard J. Sullivan Center lobby in preparation for the exhibit center. He said a truck delivered the exhibits and the installers from Split Rock arrived that same day and began the installation process. He said 175 students participated in the Pinelands Water Monitoring Challenge. He said the 3rd edition of the Pinelands National Reserve calendar will be available for Commissioners at the December Commission meeting and available to the public at state parks.

Commissioner Avery asked about the status of the Heritage Minerals settlement agreement and how it relates to the NJDEP's recent Coastal Area Facility Review Act (CAFRA) permit denial.

Stacey Roth said it is the NJDEP's position that the settlement agreement is no longer valid. She said the applicant reinvigorated the federal suit sometime ago and the matter remained in a holding position due to the CAFRA permit review. Ms. Roth added that she will check with the DAG assigned to the matter and see if anything has changed given the recent appeal of the CARFA denial. Ms. Roth added that although certain requirements of the settlement agreement occurred, the applicant never met the requirement to deed restrict land.

Public Development Projects and Other Permit Matters

Chairman Earlen presented a resolution recommending approval of 300 linear feet of sanitary sewer main in Galloway Township.

Commissioner Galletta moved the adoption of a resolution Approving With Conditions an Application for Public Development (Application Number 2018-0152.001) (See Resolution # PC4-18-38). Commissioner Barr seconded the motion.

Commissioner Prickett asked about the existing dirt roadway referenced in the report.

Director Horner said that the sanitary sewer main is proposed within the dirt roadway, which is a municipal right of way. He said the sanitary sewer will serve future development.

The Commission adopted the resolution by a vote of 10 to 0.

Chairman Earlen presented a resolution recommending denial of a Waiver of Strict Compliance for the development of a single family dwelling.

Commissioner Lohbauer moved the adoption of a resolution Denying an Application for a Waiver of Strict Compliance (Application Number 2016-0115.001) (See Resolution # PC4-18-39). Commissioner Barr seconded the motion.

The Commission adopted the resolution by a vote of 10 to 0.

Public Comment on Public Development Applications and Items where the record is open
No one from the public spoke.

Ordinances Not Requiring Commission Action

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

- Barnegat Township Ordinance 2018-32
- Medford Township Ordinance 2018-21
- Stafford Township Ordinance 2017-23

No members of the Commission had questions.

General Public Comment

Lee Yeash said she is an avid hiker and spoke about the unique attributes of the Pinelands. She said she feels that Commissioners are not taking Pinelands issues seriously.

Jason Howell of the Pinelands Preservation Alliance said the Commission offers a balance to protecting the Pinelands both economically and ecologically. He said he would like to see the Commission move in a different direction and create a new approach in protecting the Pinelands.

Carl Christianson said he appreciates the Pinelands for its unique ecology. He suggested that the Commission hold its meeting at a time when more people are available to attend. He encouraged Commissioners to uphold the Comprehensive Management Plan and avoid fragmentation of the Pines.

Paula Yudkowitz of Oaklyn, NJ, said she sees the destruction of ORV use to ponds in the Pinelands. She said the Commission's agenda was lacking important subject matters.

Balvir Singh, Burlington County Freeholder, introduced himself to the Commission and said he looks forward to working with the Commission. He said a substantial portion of Burlington County lies within the Pinelands Area and many of his constituents live in the Pinelands. He said he enjoys hiking and camping and wants to protect the uniqueness of the Pinelands.

Roger Schneider of Hainesport, NJ, said the Pinelands is a treasure. He raised concerns about encroachment in the Pinelands.

Hara Rola of Haddon Township said she was disappointed that the Commission has not upheld the CMP. She said the Commission has approved pipelines, taken too long to restrict ORV use and attempted to restrict public comment. She asked Commissioners to protect the Pinelands or step down.

Tosanna Rahner of Pemberton Township said the Commission's meetings are held at an inconvenient time. She said the Commission has not upheld the CMP and she hopes Commissioners will make a better effort at protecting the Pinelands ecosystem.

Rhyan Grech of the Pinelands Preservation Alliance introduced herself to the Commission. She said she looks forward to working with the Commission and protecting the Pinelands.

Resolution to Retire into Closed Session

Stacey Roth read a resolution to enter into closed session to discuss a personnel matter.

Commissioner Lloyd made a motion to enter into closed session. Commissioner Rohan Green seconded the motion. The Commission agreed to retire into closed session by a vote of 10 to 0, beginning at 10:19 a.m.

Return to Open Session

Commissioner Howell left during the closed session portion of the meeting.

The Commission entered back into open session at 10:59 a.m. Stacey Roth provided a summary of the closed session. She said as a result of the closed session discussion the Commission will act on a resolution.

Commissioner Lohbauer moved the adoption of a resolution for the Executive Director to Revise the FY2019 Operating Budget and enter into a settlement agreement to resolve an employment litigation matter (Resolution # PC4-18-40). Commissioner Avery seconded the motion.

The Commission adopted the resolution by a vote of 9 to 0.

Commissioner Lohbauer said he appreciates the comments provided by the public today. He said the Commission is committed to protecting the state's forests from ORV damage.

Commissioner Prickett agreed with the public that the agenda was light. He said the time can be filled with educational presentations, especially on fire ecology.

ED Wittenberg said there was a scheduled presentation today by the Buena Borough Municipal Utilities Authority to highlight the success of the facility that was built and an update on the Memorandum of Agreement. She said unfortunately the presentation had to be postponed. She said there are many topics that the Commission can cover through educational presentations.

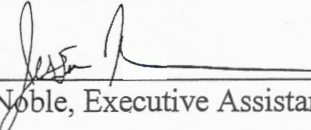
Commissioner Avery said that the Commission works on matters at its Committee meetings. He said he appreciates the public's comments and added that this Commission has been doing good work for many years.

Commissioner Lloyd thanked the public for providing comments. He said the Commission has tried a number of times to hold meetings at different times and it has not generated any more public interest than today's meeting.

Adjournment

Commissioner Avery moved to adjourn the meeting. Commissioner Rohan Green seconded the motion. The Commission agreed to adjourn at 11:07 a.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: November 20, 2018



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-18- 38

TITLE: Approving With Conditions an Application for Public Development (Application Number 2018-0152.001)

Commissioner Galletta moves and Commissioner Barr seconds the motion that:

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

2018-0152.001

Applicant:	Galloway Township
Municipality:	Galloway Township
Management Area:	Pinelands Village
Date of Report:	October 18, 2018
Proposed Development:	Construction of 300 linear feet of sanitary sewer main within the Atlantic Avenue right-of-way.

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

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

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

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

NOW, THEREFORE BE IT RESOLVED that Application Number 2018-0152.001 for public development is hereby **approved** subject to the conditions recommended by the Executive Director.

Record of Commission Votes

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

*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Nancy Wittenberg
Nancy Wittenberg
Executive Director

Date: November 9, 2018

Sean W. Earlen
Sean W. Earlen
Chairman



State of New Jersey

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

SEAN W. EARLEN
Chairman
NANCY WITTENBERG
Executive Director

October 18, 2018

Anthony Coppola, Jr., Mayor (via email)
Galloway Township
300 East Jimmie Leeds Road
Galloway, NJ 08205

Re: Application # 2018-0152.001
Atlantic Avenue
Galloway Township

Dear Mayor Coppola:

The Commission staff has completed its review of this application for construction of 300 linear feet of sanitary sewer main within the Atlantic Avenue right-of-way. Enclosed is a copy of a Public Development Application Report. On behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its November 9, 2018 meeting.

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

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

Sincerely

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

Enc: Appeal Procedure

- c: Secretary, Galloway Township Planning Board (via email)
Galloway Township Construction Code Official (via email)
Galloway Township Environmental Commission (via email)
Atlantic County Department of Regional Planning and Development (via email)
Vincent J. Polistina, PE, PP, CME (via email)





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

SEAN W. EARLEN
Chairman
NANCY WITTENBERG
Executive Director

PUBLIC DEVELOPMENT APPLICATION REPORT

October 18, 2018

Anthony Coppola, Jr., Mayor (via email)
Galloway Township
300 East Jimmie Leeds Road
Galloway, NJ 08205

Application No.: 2018-0152.001
Atlantic Avenue
Galloway Township

This application proposes construction of 300 linear feet of sanitary sewer main within the Atlantic Avenue right-of-way in Galloway Township.

STANDARDS

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

Land Use (N.J.A.C. 7:50-5.27(a))

The proposed development is located in the Pinelands Village of Pomona. The proposed sanitary sewer main is a permitted land use in a Pinelands Village.

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

The proposed development will be located within the limits of an existing dirt roadway. All soil disturbance is limited to that which is necessary to accommodate the proposed development.

PUBLIC COMMENT

The CMP defines the proposed sanitary sewer main as "minor" development. The CMP does not require public notice for minor public development applications. The application was designated as complete on the Commission's website on October 1, 2018. The Commission's public comment period closed on October 12, 2018. No public comment was submitted to the Commission regarding this application.

CONDITIONS

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of two sheets, prepared by Polistina & Associates, LLC and dated as follows:

Sheet 1 - September 2018

Sheet 2 - September 28, 2018

2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.
3. Prior to any development, the applicant shall obtain any other necessary permits and approvals.

CONCLUSION

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



Philip D. Murphy
Governor

Sheila Y. Oliver
Lt. Governor

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



Sean W. Earlen
Chairman

Nancy Wittenberg
Executive Director

PINELANDS COMMISSION **APPEAL PROCEDURE**

The Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal any determination made the by Executive Director to the Commission in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission and received at the Commission office no later than 4:00 PM on November 5, 2018 and include the following information:

1. the name and address of the person requesting the appeal;
2. the application number;
3. the date on which the determination to be appealed was made;
4. a brief statement of the basis for the appeal; and
5. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

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



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-18- 39

TITLE: Denying an Application for a Waiver of Strict Compliance (Application Number 2016-0115.001)

Commissioner Lohbauer moves and Commissioner Barr seconds the motion that:

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

2016-0115.001

Applicant: Barbara Baldwin
Municipality: Buena Vista Township
Management Area: Pinelands Rural Development Area
Date of Report: October 18, 2018
Proposed Development: Single family dwelling.

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

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

WHEREAS, the Pinelands Commission hereby determines that the requested Waiver does not conform to the standards for approving an application for a Waiver of Strict Compliance based on extraordinary hardship as set forth in N.J.A.C. 7:50-4.62, N.J.A.C. 7:50-4.63 and N.J.A.C. 7:50-4.65 if the conditions recommended by the Executive Director are imposed; and

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

NOW, THEREFORE BE IT RESOLVED that Application Number 2016-0115.001 for a Waiver of Strict Compliance is hereby **denied**.

Record of Commission Votes

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

*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: November 9, 2018

Nancy Wittenberg
 Executive Director

Sean W. Earlen
 Chairman



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Lt. Governor

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

SEAN W. EARLEN
Chairman
NANCY WITTENBERG
Executive Director

REPORT ON AN APPLICATION FOR A WAIVER OF STRICT COMPLIANCE

October 18, 2018

Barbara Baldwin
6909 100th Avenue
Lanham, MD 20706

Re: Application # 2016-0115.001
Block 3003, Lot 14
Buena Vista Township

Dear Ms. Baldwin:

The Commission staff has completed its review of this application for a Waiver of Strict Compliance ("Waiver") proposing development of one single family dwelling on the above referenced parcel. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission deny the application at its November 9, 2018 meeting.

You have expressed an interest in the New Jersey Department of Environmental Protection acquiring the parcel under the Commission's Limited Practical Use (LPU) Program. One of the requirements to qualify for the LPU Program is Pinelands Commission denial of a Waiver application. If the Pinelands Commission denies this application for a Waiver, please complete and return the enclosed New Jersey Pinelands Commission-Landowner Questionnaire.

FINDINGS OF FACT

This application is for the development of one single family dwelling, serviced by an on-site septic system, on the above referenced 0.57 acre parcel in Buena Vista Township. The parcel is located in Buena Vista Township's RDR1 zoning district and within a Pinelands Rural Development Area. To conform with the overall residential density requirements in a Pinelands Rural Development Area, Buena Vista Township has established a residential density requirement of 1 dwelling unit per 3.2 acres in the RDR1 zoning district. As the proposed development is not consistent with this residential density requirement, the applicant is requesting a Waiver from the residential density requirements in a Pinelands Rural Development Area contained in N.J.A.C. 7:50-5.26(c).

The Commission's staff has reviewed the appropriate resource capability maps and available information.



The Pinelands Comprehensive Management Plan (CMP, N.J.A.C. 7:50-6.84(a)4iv) requires that if development is proposed to be serviced by an on-site septic system, the proposed on-site septic system wastewater disposal field must be located in an area where the depth to seasonal high water table is at least five feet below the natural ground surface. The Atlantic County Soils Survey indicates that the soils on this parcel have a seasonal high water table of less than two feet below the natural ground surface. The applicant has submitted no information to demonstrate that the septic system could be located in an area where the seasonal high water table is at least five feet below the natural ground surface. Since the available information indicates the seasonal high water table on the entire parcel is less than five feet below the natural ground surface, the applicant is requesting a Waiver from the seasonal high water table requirement for an on-site septic system wastewater disposal field contained in the CMP (N.J.A.C. 7:50-6.84(a)5vi).

The CMP (N.J.A.C. 7:50-6.6) prohibits most development in wetlands. Available information indicates that a portion of the parcel is wetlands. The wetlands on the parcel do not meet the CMP definition of an impaired wetlands (N.J.A.C. 7:50-2.11). The applicant has not demonstrated that no development would be located in these wetlands. The CMP (N.J.A.C. 7:50-6.14) also prohibits most development within 300 feet of wetlands unless it is demonstrated that the proposed development will not result in a significant adverse impact on wetlands. The applicant has submitted no information to demonstrate that no development would be located within 300 feet of wetlands. The applicant has submitted no information to demonstrate that proposed development within 300 feet of wetlands would not cause a significant adverse impact on the wetlands. Based on the quality and location of the wetlands, the proposed development will cause a significant adverse impact on the wetlands. As there will be a significant adverse impact on wetlands, the applicant is also requesting a Waiver from the wetlands and wetlands buffer requirements contained in the CMP (N.J.A.C. 7:50-6.6 and N.J.A.C. 7:50-6.14).

The CMP (N.J.A.C. 7:50-6.84(a)5iv) requires that groundwater exiting from a parcel that is proposed to be serviced by an on-site septic wastewater treatment system shall not exceed two parts per million nitrate/nitrogen. The dwelling is proposed to be serviced by an on-site septic system. As no Commission accepted on-site septic wastewater treatment system will result in an average concentration of nitrate/nitrogen in the groundwater at the property line of the 0.57 acre parcel of two parts per million nitrate/nitrogen or less, the applicant is also requesting a Waiver from the water quality requirements contained in N.J.A.C. 7:50-6.84(a)5iv.

PUBLIC NOTICE

The applicant has provided the requisite public notice. Public notice to all property owners within 200 feet of the parcel was completed on July 7, 2017. Newspaper public notice was completed on July 10, 2017. The application was designated as complete on the Commission's website on September 11, 2018. The Commission's public comment period closed on October 12, 2018. No public comment regarding this application was submitted to the Commission.

CONCLUSION

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

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

The first condition is that the only relief sought is from one or more of the standards contained in the CMP (N.J.A.C. 7:50-6) for certain specified types of development. A single family dwelling on a parcel of less than one acre in a Pinelands Rural Development Area is not one of the specified types of development. As the parcel is less than one acre, the application does not meet the criteria contained in N.J.A.C. 7:50-4.63(a)1 vii or viii and, therefore, the application does not meet the condition set forth in N.J.A.C. 7:50-4.63(a)1.

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

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

The fourth condition is that all necessary municipal lot area and density variances have been obtained if the parcel is located in a municipality whose master plan and land use ordinances have been certified by the Pinelands Commission. Buena Vista Township's master plan and land use ordinances have been certified by the Pinelands Commission. The certified ordinances require a municipal lot area or density variance. No such variance has been obtained. The application does not meet the condition set forth in N.J.A.C. 7:50-4.63(a)4.

The fifth condition is that the development of the parcel will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b). The CMP (N.J.A.C. 7:50-4.65(a)) precludes the granting of a Waiver which permits a parcel to be developed unless such development will be consistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act and the CMP and will not result in substantial impairment of the resources of the Pinelands Area. The CMP (N.J.A.C. 7:50-4.65(b)) provides that the following circumstances will result in substantial impairment of the resources of the Pinelands Area:

- | | |
|------------------------|---|
| N.J.A.C. 7:50-4.65(b)5 | The development of a single family dwelling and associated improvements in wetlands unless that wetland is an impaired wetland; |
| N.J.A.C. 7:50-4.65(b)6 | Any development which will be located within 50 feet of any wetland unless the wetland is an impaired wetland; and |
| N.J.A.C. 7:50-4.65(b)8 | Any development which will require the location of an onsite wastewater disposal field in an area where the seasonal high water table is within two feet of the natural ground surface or within 50 feet of any surface water body. |

The proposed development is not permitted in wetlands. The wetlands on the parcel do not meet the CMP definition of "impaired wetlands." The applicant has not demonstrated that proposed development

will not be located in wetlands as required by N.J.A.C. 7:50-4.65(b)5. As a result, the applicant has not demonstrated that the proposed development will not violate the criteria contained in N.J.A.C. 7:50-4.65(b)5.

The applicant has not demonstrated that the proposed development will not be located within 50 feet of wetlands. The wetlands on the parcel do not meet the CMP definition of "impaired wetlands." As a result, the applicant has not demonstrated that the proposed development will not violate the criteria contained in N.J.A.C. 7:50-4.65(b)6.

The applicant has not demonstrated that a proposed on-site septic system wastewater disposal field can be located in an area where the seasonal high water table is two feet or more below the natural ground surface or will not be located within 50 feet of any surface water body. As a result, the applicant has not demonstrated that the proposed development will not violate the criteria contained in N.J.A.C. 7:50-4.65(b)8.

The applicant has not demonstrated that the proposed development will not result in substantial impairment of the resources of the Pinelands Area. The application does not meet the condition set forth in N.J.A.C. 7:50-4.63(a)5.

As the application does not meet all five conditions set forth in N.J.A.C. 7:50-4.63(a), the applicant does not qualify for a Waiver pursuant to that subsection of the CMP.

N.J.A.C. 7:50-4.63(b) sets forth four conditions which must be met for an applicant to qualify for a Waiver based on an extraordinary hardship pursuant to that subsection of the CMP.

The first condition is that the parcel includes all contiguous lands in common ownership on or after January 14, 1981, including lands which are contiguous as a result of ownership of other contiguous lands. As concluded above, the concerned parcel includes all contiguous lands that were in common ownership on or after January 14, 1981. The application meets the condition contained in N.J.A.C. 7:50-4.63(b)1.

The second condition is that the parcel includes all contiguous land with no substantial improvements which is available for purchase at fair market value, including lands which are contiguous as a result of the acquisition of other contiguous lands. There is vacant land bordering the parcel. The applicant has not demonstrated that this contiguous vacant land is not available for purchase at fair market value. The application does not meet the condition set forth in N.J.A.C. 7:50-4.63(b)2.

The third condition is that the parcel, including all contiguous lands which are available pursuant to N.J.A.C. 7:50-4.63(b)1 and 2, may not have a beneficial use considering five factors.

The first factor to be considered is the value of any existing development or use of the overall parcel, including any allocation of Pinelands Development Credits (PDCs). The overall parcel is vacant and no use has been established on the parcel. PDCs are not allocated to lands in a Pinelands Rural Development Area.

The second factor to be considered is the value of any use or development of the parcel that is authorized by the provisions of the CMP. The applicant has submitted no information to address the value of any use or development of the parcel that is authorized by the provisions of the CMP.

The third factor to be considered is the ability of the property owner to sell the parcel to the owner of a contiguous parcel, any governmental agency or to a nonprofit conservation group for its fair market value. The applicant submitted no additional information to demonstrate that the parcel cannot be sold to the owner of a contiguous parcel, any governmental agency or to a nonprofit conservation group for its fair market value.

The fourth factor is the ability of the property owner to either buy noncontiguous land or to sell the parcel to a noncontiguous property owner under a residential density transfer provision contained in a certified municipal land use ordinance or pursuant to the CMP (N.J.A.C. 7:50-5.30). Buena Vista Township's certified land use ordinances contain a residential density transfer provision which applies to lands in Buena Vista Township's RDR1 zoning district. The applicant has submitted no information to demonstrate that this parcel could not be sold to the owner of a non-contiguous parcel located in the RDR1 zoning district in the Rural Development Area. The applicant has submitted no information to demonstrate that there is no non-contiguous land available to be purchased in the RDR1 zoning district to meet the 3.2 acre residential density requirement.

The fifth factor to be considered is whether any inability to have a beneficial use relates to or arises out of the characteristics of the parcel and results from unique circumstances peculiar to the parcel which are not the result of any personal situation of the applicant and are not the result of any action or inactions by the application or any predecessor in title. The minimum depth to seasonal high water table for an onsite septic system wastewater disposal field and wetland protection requirements apply to all other vacant parcels in the area. Any hardship which does exist is a result of the applicant's personal circumstances and their actions and inactions.

Based on these five factors, the application does not meet the condition set forth in N.J.A.C. 7:50-4.63(b)3.

The fourth condition is that the development of the parcel will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b). As concluded above, the applicant has not demonstrated that a single family dwelling can be developed on the concerned parcel without violating N.J.A.C. 7:50-4.65(b)5, 6 and 8. As a result, the applicant does not meet the condition contained in N.J.A.C. 7:50-4.63(b)4.

As the applicant does not meet all the conditions for demonstrating extraordinary hardship contained in N.J.A.C. 7:50-4.63(b), the applicant does not qualify for a Waiver pursuant to that subsection of the CMP.

As N.J.A.C. 7:50-4.63(a) and (b) are the exclusive means of establishing extraordinary hardship, the applicant does not qualify for a Waiver.

As a result, it is recommended that the Pinelands Commission **DENY** the requested Waiver of Strict Compliance.

APPEAL

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

received at the Commission offices no later than 4:00 PM on November 5, 2018 and include the following information:

1. the name and address of the person requesting the appeal;
2. the application number;
3. a brief statement of the basis for the appeal; and
4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

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

Recommended for Denial by: _____


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

Encl. (1) Landowner Questionnaire

- c: Secretary, Buena Vista Township Planning Board (via email)
Buena Vista Township Construction Code Official (via email)
Atlantic County Department of Regional Planning and Development (via email)
Atlantic County Division of Public Health (via email)
Susan Grogan, Chief Planner (via email)