



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-23- 05

TITLE: **Approving** With Conditions an Application for **Public Development** (Application Number 1986-0127.001)

Commissioner Avery moves and Commissioner Lohbauer seconds the motion that:

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

1986-0127.001

Applicant:	CS Energy on behalf of Berkeley Township
Municipality:	Berkeley Township
Management Area:	Pinelands Forest Area Pinelands Preservation Area District
Date of Amended Report:	January 20, 2023
Proposed Development:	Soil capping of a closed municipal landfill.

WHEREAS, the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-6.75(c) requires that a plan for an impermeable landfill cap or alternative landfill treatment be submitted to the Commission by May 20, 1997 for all landfills located in a Pinelands Forest Area that ceased operation after January 14, 1981; and

WHEREAS, the closed municipal landfill subject of this application is located in a Pinelands Forest Area and available information indicates that the landfill ceased operation after January 14, 1981; and

WHEREAS, a plan for an impermeable landfill cap or alternative landfill treatment was not submitted to the Commission by May 20, 1997 and constitutes a violation of the regulations contained in the Pinelands Comprehensive Management Plan (CMP); and

WHEREAS, certain other land development violations specified in the January 20, 2023 Amended Public Development Application Report have occurred on the parcel without approval of the Pinelands Commission and also constitute a violation of the regulations contained in the CMP; and

WHEREAS, the applicant proposes to address these violations by completing this application for the proposed soil capping of the closed municipal landfill and completing an application for the certain other land development violations specified in the January 20, 2023 Amended Public Development Application Report that have occurred on the parcel without approval of the Pinelands Commission; and

WHEREAS, the application was originally scheduled to be acted on at the January 13, 2023 regular monthly meeting of the Commission; and

WHEREAS, during the January 13, 2023 regular monthly meeting of the Commission, several Commissioners posed questions regarding this application; and

WHEREAS, to allow the Commission staff sufficient time to respond to those questions, by email dated January 13, 2023, the applicant granted an extension of time until February 10, 2023 for the Commission to act on the application; and

WHEREAS, the Commission staff has incorporated revisions into this Amended Public Development Application Report to respond to the questions posed by the Commissioners; and

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

WHEREAS, the Pinelands Commission hereby adopts the Conclusion of the Acting 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 Acting Executive Director are imposed; and

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

NOW, THEREFORE BE IT RESOLVED that Application Number 1986-0127.001 for public development is hereby **approved** subject to the conditions recommended by the Acting Executive Director.

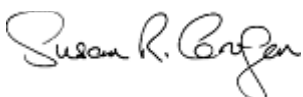
Record of Commission Votes

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

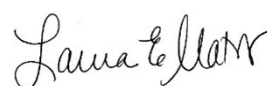
*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: January 27, 2023



Susan R. Grogan
Acting Executive Director



Laura E. Matos
Chair



State of New Jersey

THE PINELANDS COMMISSION

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

January 20, 2023

John Ervin, CS Energy (via email)
On behalf of Berkeley Township
2045 Lincoln Highway
Edison NJ 08817

Re: Application # 1986-0127.001
Block 23, Lot 2
Berkeley Township

Dear Mr. Ervin:

The Commission staff has completed its review of this application for soil capping of a closed municipal landfill. Enclosed is a copy of an Amended Public Development Application Report. On behalf of the Commission's Acting Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at a special Commission meeting currently scheduled for January 27, 2023.

This application was originally scheduled to be acted on at the January 13, 2023 regular monthly meeting of the Commission. At that meeting, several Commissioners posed questions regarding this application. To allow the Commission staff sufficient time to respond to those questions, by email dated January 13, 2023, the applicant granted an extension of time until February 10, 2023 for the Commission to act on the application. The Commission staff has incorporated revisions into this Amended Public Development Application Report to respond to the questions posed by the Commissioners.

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 Acting Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

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

Sincerely,

Charles M. Horner, P.P.

Director of Regulatory Programs

Enc: Appeal Procedure

c: Secretary, Berkeley Township Planning Board (via email)
Berkeley Township Construction Code Official (via email)
Berkeley Township Environmental Commission (via email)
Secretary, Ocean County Planning Board (via email)
Eric Millard (via email)
William Geoghengan (via email)



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 Application Specific Information: AppInfo@pinelands.nj.gov

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

AMENDED PUBLIC DEVELOPMENT APPLICATION REPORT

January 20, 2023

John Ervin, CS Energy (via email)
 On behalf of Berkeley Township
 2045 Lincoln Highway
 Edison NJ 08817

Application No.: 1986-0127.001
 Block 23, Lot 2
 Berkeley Township

This application proposes a 41.8 acre soil cap on a closed 42.5 acre municipal landfill located on the above referenced 138.25 acre parcel in Berkeley Township. Approximately 0.7 acres of the landfill will not be subject of the proposed soil cap to protect habitat for an identified threatened and endangered species. The parcel is owned by Berkeley Township.

This application was originally scheduled to be acted on at the January 13, 2023 regular monthly meeting of the Commission. At that meeting, several Commissioners posed questions regarding this application. To allow the Commission staff sufficient time to respond to those questions, by email dated January 13, 2023, the applicant granted an extension of time until February 10, 2023 for the Commission to act on the application. The Commission staff has incorporated revisions into this Amended Public Development Application Report to respond to questions posed by the Commissioners. Those revisions are noted using a bolded font.

Proposed Development

The applicant proposes the removal of all forest and shrub vegetation from a 41.8 acre portion of the existing closed landfill in order to accomplish the soil capping. The existing landfill will then be graded to final design grades. Any waste or existing cover soils disturbed during the proposed grading will remain within the limits of the existing landfill and ultimately be placed under the soil cap. The soil cap will be comprised of 18 inches of cover soil topped with 6 inches of topsoil. The soil capped landfill will then be revegetated with native grasses.

CMP Landfill Capping Regulations

Available information indicates that the landfill ceased operation between 1984 and 1986. The closed landfill is located in a Pinelands Forest Area. The Pinelands Comprehensive Management Plan (CMP) requires that all landfills located in a Pinelands Forest Area that ceased operation on or after January 14, 1981 shall be capped with an impermeable material unless it can be clearly demonstrated that one of

four CMP conditions are met. If one of those four conditions can be met, the landfill can be subject of an alternative treatment, other than an impermeable cap. One of those four conditions is that if a leachate plume associated with the landfill exists, it poses no significant ecological risk to wetlands.

Prior Commission Approval of an Application to “Close” the Berkeley Township Landfill

On June 25, 1990, the Commission staff issued a Report on an Application for Public Development recommending approval of an application to “close” the Berkeley Township landfill subject of the current application. The 1990 application proposed the excavation and use of soil from the parcel as landfill cover material and to provide for uniform grading of the landfill surface. On July 13, 1990, the Commission approved the application.

At the time of Commission approval of the application, the CMP required that landfills located in a Pinelands Forest Area be “terminated” not later than August 8, 1990. At the time of Commission approval of the application, the CMP also required that all areas of a landfill that were filled to final design elevation be capped with an impervious material within one year. Neither the June 25, 1990 Report on an Application for Public Development nor the information contained in the Commission’s application file addressed if any areas on the landfill had been filled to final design elevation and, therefore, were required to be capped with an impervious material within one year. The application also did not address the type of waste that was disposed of in the landfill or possible groundwater or soil contamination associated with the landfill. As part of its review for the current application, the Commission staff concluded that the July 13, 1990 Commission approval of the “closure” of the Berkeley Township landfill was solely to meet the CMP requirement that landfills located in a Pinelands Forest Area be “terminated” by August 8, 1990.

Land Development Violations on the Parcel

Since 1996, the CMP has required that landfills in a Pinelands Forest Area that ceased operation on or after January 14, 1981 be capped with an impermeable material or an alternative landfill treatment. Available information indicates that the Berkeley Township landfill ceased operation between 1984 and 1986. The CMP requires that plans for an impermeable landfill cap or for an alternative landfill treatment were to be submitted to the Commission by May 20, 1997 and that the capping or alternative landfill treatment begin immediately following approval of such a plan by the Commission. A plan for an impermeable landfill cap or alternative landfill treatment at the Berkeley landfill was not submitted to the Commission by May 20, 1997. This constitutes a violation of the requirements of the CMP.

Development has occurred on the 138.25 acre parcel subject of this application and on contiguous Block 22, Lot 4, also owned by Berkeley Township, without approval by the Pinelands Commission. By letter dated April 24, 2013, the Commission staff first advised Berkeley Township of certain land development violations on Block 23, Lot 2 and Block 22, Lot 4. The following development has occurred on Block 23, Lot 2 and Block 22, Lot 4 without approval by the Pinelands Commission:

- Development of a recycling center and associated improvements;
- Surfacing with pavement and stone in almost all areas of the parcel;
- Paving of a stone bus parking area;
- Various buildings and site improvements to the Public Works building;
- A garage for bulldozer storage;
- An approximately 10,000 square foot salt and sand shed;

- The establishment of an approximately 2.4 acre bus parking area
- The placement of millings for access ways and drives on the parcel;
- Establishment of a model plane airport, including the placement of millings;
- The placement of dredge materials on the parcel;
- Improvements to the existing Police pistol range; and
- A three lot subdivision of Lot 2, resulting in the creation of current 138 acre Lot 2, 0.92 acre Lot 2.01 and 5.98 acre Lot 2.02.

The CMP (N.J.A.C. 7:50-4.2(c)1.ii) provides that, except for an application made exclusively to resolve an outstanding violation, no application shall be deemed complete by the Executive Director if there are outstanding unresolved violations of the CMP on the parcel which is subject of the application. The current application is exclusively for a 41.8 acre soil cap on a closed municipal landfill has been completed to resolve an outstanding violation resulting from Berkeley Township not filing an application for an impermeable landfill cap or an alternative landfill treatment by May 20, 1997.

The CMP (N.J.A.C. 7:50-4.2(c)1.ii) further provides that, except for an application made exclusively to resolve an outstanding violation, no other application shall be deemed complete by the Executive Director if there are outstanding unresolved violations of the CMP on the parcel which is subject of the application until such time as the violator has specifically agreed in writing to take all measures that have been specified by the Executive Director as being necessary to eliminate the violation in a time period acceptable to the Executive Director.

The Commission deemed an application complete for a proposed 28.8 acre solar energy facility on the parcel. On November 9, 2022, the Commission issued a Certificate of Filing for the solar energy facility. The solar energy facility will be located on the proposed landfill soil cap. The Acting Executive Director determined that the application for the solar energy facility could be deemed complete based upon the filing of an application(s) for the development that occurred on Block 23, Lot 2 and Block 22, Lot 4 without approval by the Pinelands Commission and the Township's provision of a timetable to complete such application(s). The Certificate of Filing contained a condition that no development of the proposed solar energy facility could occur until the soil capping of the landfill has been completed and the application(s) required to address the other violations on Block 23, Lot 2 and Block 22, Lot 4 is approved by the Commission. The Acting Executive Director determined that filing of the application(s) and provision of a timetable to complete the application(s), in combination with the conditions specified in the Certificate of Filing for the solar energy facility, fulfilled the CMP requirement to eliminate the violations in a time period acceptable to the Acting Executive Director.

CMP REVIEW STANDARDS

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

Land Use (N.J.A.C. 7:50-5.22 & 5.23)

The parcel is located in the Pinelands Preservation Area District (14.28 acres) and a Pinelands Forest Area (123.97 acres). All development associated with the soil capping of the closed landfill will be located in a Pinelands Forest Area. The capping of a closed landfill is permitted in all Pinelands land management areas.

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

There are wetlands located on the parcel. All development associated with the soil capping of the closed landfill will be located at least 300 feet from the wetlands.

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

The proposed development will be located within the limits of the existing landfill. The existing landfill has naturally revegetated with pine and hardwood trees. The proposed development will result in the clearing of 41.8 acres of forest. The proposed clearing and soil disturbance is limited to that which is necessary to accommodate the proposed development associated with the soil capping of the closed landfill.

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

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

A threatened and endangered (T&E) plant and animal species survey was completed on the parcel.

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

The T&E species survey confirmed the presence of a population of Pine Barrens treefrog within a wetland located on the parcel. To avoid irreversible adverse impacts on habitats that are critical to the survival of the local population of Pine Barrens treefrog, all development associated with the proposed soil capping of the landfill has been designed to be located at least 300 feet from the wetlands complex containing the local population of Pine Barrens treefrog.

The T&E species survey also included an investigation for Northern pine snake. Double Trouble State Park is located immediate adjacent to the parcel. During the survey, it was discovered that a Northern pine snake that was being radio-tracked for another project had entered the parcel from Double Trouble State Park. The tracking of the snake was taken over by the consultant completing the T&E species survey for this application. The snake was tracked to a hibernaculum located on the parcel. The hibernaculum is located approximately 400 feet east of all development associated with the landfill soil capping. The hibernaculum was encircled with fencing to capture any snakes leaving the hibernaculum in the spring of 2022. The Northern pine snake and two Eastern black racers emerged from the hibernaculum. The Northern pine snake was radio-tracked from May 5 until June 15, 2022 and was found to travel within the parcel and back into Double Trouble State Park. Tracking ceased on June 15, 2022 when the radio transmitter was removed from the snake due to an injury to the snake at the transmitter implant location. The radio-tracking of the snake indicated that, at its closest point, the snake remained approximately 400 feet from the project area. At no point during radio-tracking did the snake travel within the limits of the project area. Additional survey work, comprised of an intensive visual investigation and shelter board survey, was completed within the project area from March 31 until July 15, 2022. No T&E snake species were identified during this additional survey work.

The CMP requires that development be designed to avoid irreversible adverse impacts on habitats critical to the survival of any local population of Northern pine snake. One Northern pine snake was located on the parcel during the survey. There are numerous reported Northern pine snake sightings located approximately 2,800 linear feet to the north of the parcel on Double Trouble State Park. To determine if the proposed development has been designed to avoid irreversible adverse impacts on habitats critical to the survival of any local population of T&E species, the Commission staff reviewed the habitat on the parcel and the surrounding areas and the findings of the T&E species survey. The radio tracked Northern pine snake remained approximately 400 feet from the project area. Based upon the tracking data, the majority of the activity range of the Northern pine snake was located within Double Trouble State Park during the period that the snake was tracked. No T&E snake species were identified during the intensive visual survey of the project area between March 31 until July 15, 2022. The intensive visual survey included the monitoring of 88 shelter boards placed on the landfill and the immediate area.

Based on the site specific facts set forth above, the applicant has demonstrated that the proposed soil capping will not result in an irreversible adverse impact on habitats that are critical to the survival of the local population of Northern pine snake.

Landfill Standards (N.J.A.C. 7:50-6.75)

The CMP requires that all landfills located in a Pinelands Forest Area that ceased operation on or after January 14, 1981 be capped with an impermeable material unless it can be clearly demonstrated that one of four CMP specified conditions can be met. If one of those four conditions can be met, the landfill can be subject of an alternative treatment, other than an impermeable cap. One of the four CMP specified conditions that can be met to allow for an alternative landfill treatment is that if a leachate plume associated with the landfill exists, it poses no significant ecological risk to wetlands.

There is a leachate plume associated with this landfill. The nearest downgradient wetland that is in the path of the leachate plume is located approximately 1,250 feet south/southeast of the landfill. To demonstrate that the leachate plume poses no significant ecological risk to wetlands, the applicant evaluated the water quality of the plume and concluded that the plume will not discharge any contaminant at a level that would pose an ecological risk to the wetlands. The applicant's evaluation included preparation and detailed review of a conceptual site model that depicts and evaluates the landfill and its surroundings environs, a hydrogeologic framework model, groundwater monitoring data, New Jersey Department of Environmental Protection ecological screening criteria and an ecotoxicology report. All of this information was submitted to and reviewed by the Commission. The applicant also submitted a certification by the applicant's New Jersey Licensed Site Remediation Professional stating that the landfill does not pose a significant ecological risk to wetlands and may be closed by using a soil cover. The applicant has demonstrated that the proposed soil cap is consistent with the landfill standards of the CMP.

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

The applicant has demonstrated that the proposed development is consistent with CMP stormwater management standards. To meet the stormwater management standards, the applicant will be constructing a stormwater infiltration basin.

PUBLIC COMMENT

The applicant has provided the requisite public notices. Notice to required land owners within 200 feet of the above referenced parcel was completed on November 22, 2022. Newspaper public notice was completed on November 26, 2022. The application was designated as complete on the Commission's website on November 29, 2022. The Commission's public comment period closed on December 9, 2022. The Commission received one oral public comment regarding this application.

Public Comment: The commenter inquired as to what would be involved in the soil capping of the landfill, whether there was waste in the landfill and if the landfill had passed testing requirements.

Staff Response: The Commission staff met with the commenter after the December 9, 2022 Commission meeting. The Commission staff advised the commenter that the soil capping would involve the removal of vegetation within the limits of the existing landfill and the placement of a layer of soil over the limits of the existing landfill. The staff also advised that there is waste in the landfill and that testing had shown that the landfill was not resulting in impacts to the environment and surrounding area.

CONDITIONS

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of 11 sheets, prepared by Geosyntec Consultants, all sheets dated November 2022.
2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.
3. Any proposed revegetation shall adhere to the "Vegetation" standards of the CMP. Where appropriate, the applicant is encouraged to utilize the following Pinelands native grasses for revegetation: Switch grass, Little bluestem and Broom-sedge.
4. Prior to any development, the applicant shall obtain any other necessary permits and approvals.
5. No development of the proposed solar energy facility may occur until the soil capping of the landfill has been completed and an application for the development specified in this Report that occurred on Block 23, Lot 2 and Block 22, Lot 4 without approval by the Pinelands Commission has been approved by the Commission.

CONCLUSION

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



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Application Specific Information: AppInfo@pinelands.nj.gov

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

PINELANDS COMMISSION **APPEAL PROCEDURE**

The Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal any determination made by the Executive Director to the Commission in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission and received by the Commission's office no later than 5:00 PM on January 10, 2023 and include the following information:

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

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