



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-12- 04

TITLE: Approving With Conditions Applications for **Public Development** (Application Numbers 1986-0122.022, 1987-1058.066, 1998-0575.002 & 2007-0300.002)

Commissioner Galle He moves and Commissioner Witt seconds the motion that:

- 1986-0122.022 **NEW JERSEY DEPARTMENT OF HUMAN SERVICES**, Woodland Township, Pinelands Village, installation of two potable water test wells (Date of Report: February 17, 2012);
- 1987-1058.066 **U.S. DEPARTMENT OF HOMELAND SECURITY**, Egg Harbor Township, Military and Federal Installation Area, construction of a 17,000 square foot building and a 54 space parking lot (Date of Report: February 17, 2012);
- 1998-0575.002 **WOODLAND TOWNSHIP**, Woodland Township, Pinelands Village, demolition of an existing building 50 years old or older (Date of Report: February 17, 2012); and
- 2007-0300.002 **STAFFORD TOWNSHIP**, Stafford Township, Regional Growth Area, incorporation of three existing water wells into a NJDEP water allocation permit (Date of Report: February 17, 2012).

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

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

WHEREAS, the Pinelands Commission hereby adopts the Findings of Fact and Conclusion of the Executive Director for each of the proposed developments; and

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

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

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

- 1986-0122.022 **NEW JERSEY DEPARTMENT OF HUMAN SERVICES**, Woodland Township, Pinelands Village, installation of two potable water test wells (Date of Report: February 17, 2012);
- 1987-1058.066 **U.S. DEPARTMENT OF HOMELAND SECURITY**, Egg Harbor Township, Military and Federal Installation Area, construction of a 17,000 square foot building and a 54 space parking lot (Date of Report: February 17, 2012);
- 1998-0575.002 **WOODLAND TOWNSHIP**, Woodland Township, Pinelands Village, demolition of an existing building 50 years old or older (Date of Report: February 17, 2012); and

2007-0300.002

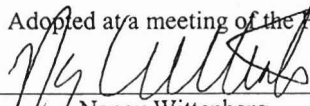
STAFFORD TOWNSHIP, Stafford Township, Regional Growth Area,
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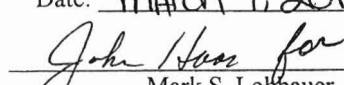
Record of Commission Votes

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

Adopted at a meeting of the Pinelands Commission

Date: MARCH 9, 2012


Nancy Wittenberg
Executive Director


Mark S. Lohbauer
Chairman



State of New Jersey
THE PINELANDS COMMISSION

PO Box 359
NEW LISBON, NJ 08064
(609) 894 7300

CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

Nancy Wittenberg
Executive Director

**REPORT ON AN APPLICATION FOR
MINOR PUBLIC DEVELOPMENT**

February 17, 2012

Katherine Fling
New Jersey Department of Human Services
PO Box 700
Trenton, NJ 08625

Application Information:	App. No. 1986-0122.022 Area of Parcel: 86.92 Acres Block 601, Lots 3 & 4 Woodland Township
Proposed Development:	Installation of two potable water test wells
Management Area:	Preservation Area
Relevant Facts:	<ul style="list-style-type: none"> • An application was filed with the Commission for the installation of two permanent potable water wells in the Kirkwood-Cohansey Aquifer. • The two proposed potable water wells would replace two existing potable water wells also located in the Kirkwood-Cohansey aquifer. • Because the applicant could not specify the proposed depth of the two proposed permanent potable water wells, the application was amended on January 31, 2012 to propose two potable water test wells only. • The test wells are proposed to be installed to an approximate depth of 100 feet in the Kirkwood-Cohansey aquifer. • An application must be completed with the Commission for the conversion of the test wells into permanent potable water supply wells.



www.nj.gov/pinelands

General Information: Info@njpines.state.nj.us


Application Specific Information: AppInfo@njpines.state.nj.us 1 9 8 6 0 1 2 2 . 0 2 2 *

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Public Notice:	<ul style="list-style-type: none"> • Public notice not required by the Pinelands Comprehensive Management Plan (CMP). • On January 31, 2012, the application was designated as complete on the Commission's website. One public comment (enclosed) was received prior to the close of public comment period on February 10, 2012. • See Attachment One for summary of public comment and response to public comment.
Conclusion	<ul style="list-style-type: none"> • The proposed development is consistent with the standards contained in the CMP.
Recommendation:	<ul style="list-style-type: none"> • On behalf of the Commission's Executive Director, I recommend that the Pinelands Commission approved this application at its March 9, 2012 meeting with the following condition: <ol style="list-style-type: none"> 1. Prior to the completion of an application for the conversion of the test wells into permanent potable water supply wells, the applicant must demonstrate that no increase in potable water allocation has occurred from the two concerned wells since January 14, 1981. Alternatively, the applicant must demonstrate consistency with the Water Management standards of the CMP (N.J.A.C. 7:50-6.8), including demonstrating that there is no alternative water supply sources other than the Kirkwood-Cohansey (N.J.A.C. 7:50-6.86(e)1.) or that the proposed use of the Kirkwood-Cohansey aquifer will not result in any adverse ecological impact on the Pinelands Area (N.J.A.C. 7:50-6.86 (e)2.)
Appeal of Recommendation:	<p>The CMP (N.J.A.C. 7:50-4.91) provides that parties who meet the legal requirement to qualify as an "interested party," the right to appeal this recommendation. Any appeal must be made in writing to the Commission within 18 days of the date of this Report and include the information specified in the CMP (N.J.A.C. 7:50-4.91). Any valid appeal will be forwarded to the New Jersey Office of Administrative Law for a hearing.</p>



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

Encl(1) 2/10/12 Public Comment

Attch: (1) Public Comment

- c. Woodland Township Planning Board
 Burlington County Planning Board
 Ericka Naklicki, T&M Associates
 Richard Bizub, Pinelands Preservation Alliance

ATTACHMENT ONE

Public Comment One: The commenter was concerned that the use of the two existing potable water wells at the New Lisbon Developmental Center has impacted stream flow and wetlands areas. The commenter recommends that any proposed permanent water supply well be located in an aquifer other than the Kirkwood-Cohansey Aquifer.

Staff Response to Public Comment: The application originally filed with the Commission proposed two permanent water supply wells. The application was amended on January 31, 2012 to propose only the installation of two test wells. January 31, 2012 was the last date on which the Commission staff could determine that an application was complete for public comment at the February 10, 2012 Commission meeting.

Information submitted by the applicant indicates that the two concerned wells (Well #1 and Well #2) were constructed in 1982 and that the two wells replaced two previously existing wells that were installed prior to January 14, 1981. (The Pinelands Comprehensive Management Plan (CMP) took effect on January 14, 1981.) If the wells pre-existed the CMP and the allocation has not increased, the Commission could not require the relocation of the wells.

To complete an application for the conversion of the test wells into permanent potable water supply wells, the applicant must demonstrate that either no increase in potable water allocation has occurred for the two concerned wells since January 14, 1981 or demonstrate that the proposed permanent wells meet the requirements of N.J.A.C. 7:50- 6.86 which, in part, requires that the applicant demonstrate that there is no viable alternative water supply sources other than the Kirkwood-Cohansey or that the proposed use of the Kirkwood-Cohansey aquifer will not result in any adverse ecological impact on the Pinelands Area.

With respect to the commenter concern that the use of the two existing potable water wells at the New Lisbon Developmental Center has impacted stream flow and wetlands areas, as indicated above, the applicant must either demonstrate that there has been no increase in potable water allocation for the two concerned wells since January 14, 1981 and therefore, the use is a continuing pre-1981 use or the applicant must demonstrate consistency of the two proposed permanent wells with the above referenced standards of the CMP.



PINELANDS PRESERVATION ALLIANCE

Bishop Farmstead, 17 Pemberton Road, Southampton, New Jersey 08088

Phone: 609-859-8860

Fax: 609-859-8804

E-mail: ppa@pinelandsalliance.org

Website: www.pinelandsalliance.org

February 10, 2012

Ms. Nancy Wittenberg, Executive Director
The Pinelands Commission
P.O. Box 359
New Lisbon, NJ 08064

**Re: New Lisbon Development Center
NJ Department of Human Services
Application #1986-0122.022
Woodland Township**

Dear Ms. Wittenberg:

The Pinelands Preservation Alliance (PPA) is pleased to offer the following comments on the above referenced public development application. We recommend that the Commission not approve this application in its current form since it will perpetuate the use of the Kirkwood-Cohansey Aquifer that has resulted in the loss of streams and wetlands in the area of the New Lisbon Development Center. We therefore recommend that the new wells be placed in a deeper aquifer instead of the shallow water table aquifer.

Background

The New Jersey Department of Human Services has submitted an application for the installation of two potable water wells at their New Lisbon Development Center (Center) in Woodland Township. The Center is located in the Preservation Area of the Pinelands. The two proposed wells will replace two existing wells that were installed in the Kirkwood-Cohansey Aquifer during 1982. The existing wells (No. 1 & 2) were installed to a total depth of approximately 85 feet.¹ The proposed wells will also be installed in the Kirkwood-Cohansey Aquifer to approximately the same depth.²

The Center is allowed to divert a maximum of 8 million gallons of water per month not to exceed 80 million gallons of water per year at a maximum rate of 700 gallons per minute from three wells (# 1, 2 and 4).³ Approximately 2000 people utilize water from the three wells.

¹ Staff Report for Renewal of Water Allocation Permit No. 2362P, New Lisbon Development Center, New Jersey Department of Environmental Protection, Bureau of Water Allocation, July 13, 2012

² Correspondence (Project Description) of T&M Associates to the Pinelands Commission, dated January 3, 2012.

³ Water Allocation Permit WAP 100001, (Program ID 2362P), New Lisbon Developmental Center, Effective date 8/1/2010.

The average peak monthly usage (July & August) from 2005 to 2009 was 6 million gallons. The ten-year projection is that this amount will increase to 7.150 million gallons per month.

The New Jersey Department of Environmental Protection (DEP) estimates that 50 percent of the water is a consumptive loss and therefore, not returned to the groundwater system. Treated wastewater is discharged into lagoons and lost through evapotranspiration and the remaining part percolated into the ground.

Stream and Wetlands Impacts

Historic stream and wetlands mapping for the Center and surrounding area indicates that groundwater withdrawals at the facility have impacted streamflow and wetlands on-site and off-site (Figure 1). Between 1987 and 2002 headwater streams east and west of the Center have vanished. It is estimated that approximately 3,000 linear feet of stream have been dewatered as a result of the lowering of the shallow groundwater table due to onsite pumping. The DEP estimates that the static groundwater level beneath the facility has been lowered approximately 3 feet. However, this may be a very optimistic estimate since pump tests conducted directly after construction of the three wells during 1962 and 1982 indicated that the static water levels were depressed from 7 to 20 feet during well testing. Since the shallow groundwater table provides between 85 and 95 percent of stream flow in the area, lowering of the water table will result in loss of stream baseflow.

PPA reviewed 1987 and 2002 stream data for a radius of approximately 1.5 miles from the Center. Only in the area of the Center, where a large volume of groundwater is being removed from the aquifer, is there a loss of streams and associated wetlands. Figure 1 clearly shows that there have been no stream and wetland losses between 1987 and 2002 southeast and northwest of the facility. These streams are all located greater than 3,000 feet from the wells and beyond the reach of the effects of pumping.

Since the wastewater lagoons are located downstream of the impacted streams, these lagoons provide no groundwater recharge to the affected streams. As a result, groundwater is being lowered in the area of the streams because the shallow aquifer is being depleted by as much as 6 million gallons of water per month.

Recommendations

PPA recommends that the two replacement wells not be located in the Kirkwood-Cohansey aquifer. Instead they should be screened in a deeper confined aquifer. Based on United States Geological Survey (USGS) data, the most probable aquifer would be the Wenonah-Mount Laurel Aquifer. This aquifer is a productive aquifer and is used by municipalities in Burlington County. Pemberton Township for example, has six production wells in this aquifer.⁴ Beneath the Center the top of the aquifer is approximately 350 feet below sea level

⁴ Water Allocation Permit No. 5129, Pemberton Township Water Department.

or 450 feet below ground surface (Figure 2).⁵ In addition, the aquifer is approximately 100 feet thick in the area of the Center (Figure 3).⁶

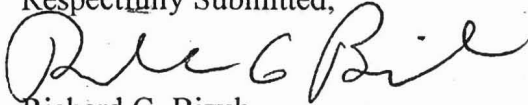
Placing the new wells in a deeper, confined aquifer will avoid further environmental impacts that result in the loss of local streams and wetlands, as would likely be the case if these wells are placed in the shallow aquifer. Using water from a deeper aquifer will also result in increased stream flows downstream of the site.

Locating the two replacement wells in a confined aquifer also offers an added advantage in that the water supply is less likely to be impacted by contamination since it is separated from the ground surface by restrictive layers.

It is for the above stated reasons that we believe that the resources of the Pinelands will be better served if the two replacement wells are relocated to a deeper aquifer. We hope that you will look favorably at our request.

Should you have any questions, I can be reached at (609) 859-8860 ext. 16.

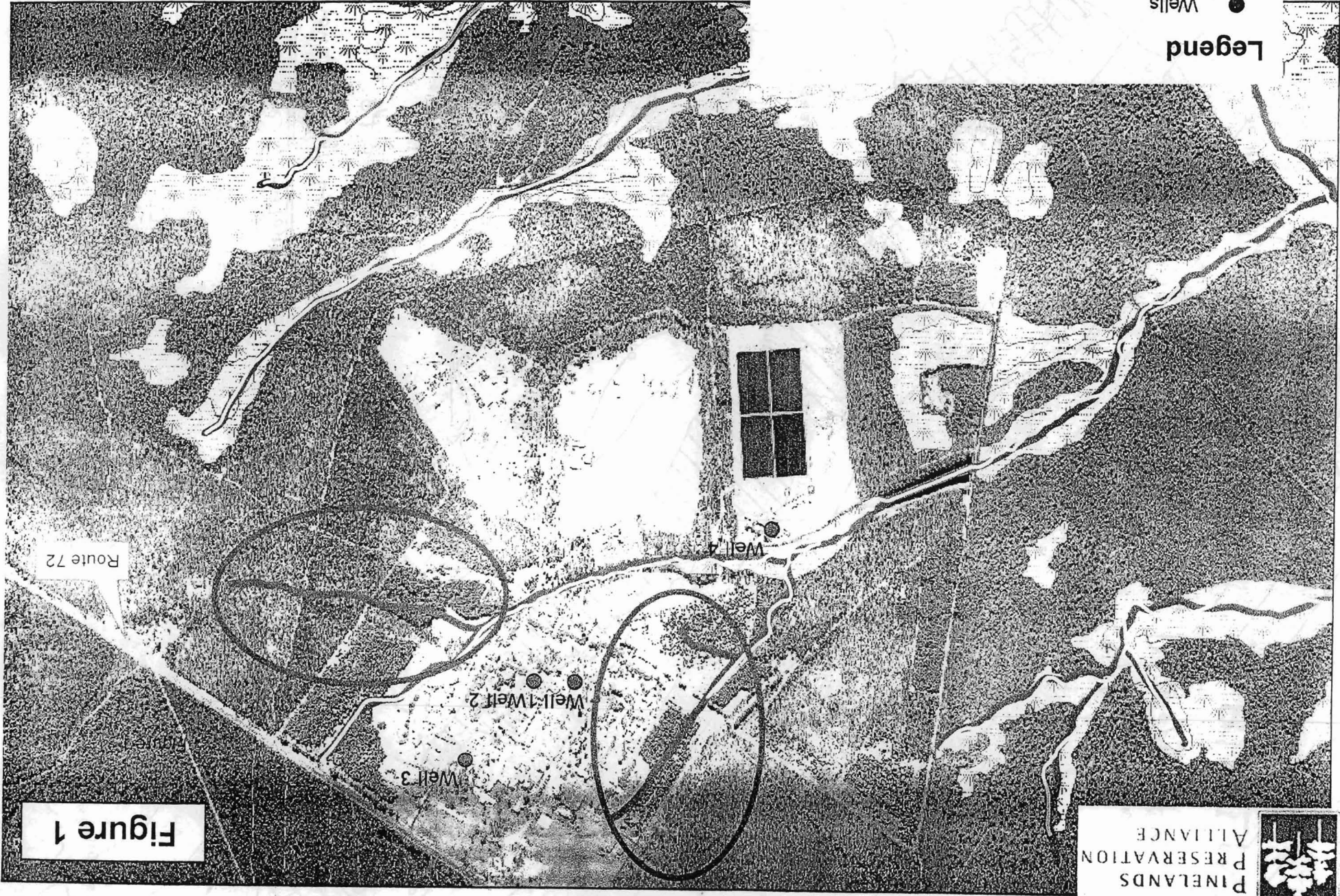
Respectfully Submitted,



Richard G. Bizub
Director for Water Programs

⁵ Otto S. Zapecza, Hydrogeologic Framework of the New Jersey Coastal Plain, United States Geological Survey, Open-File Report 84-730, 1984.

⁶ Zapecza, 1984



New Lisbon Development Center

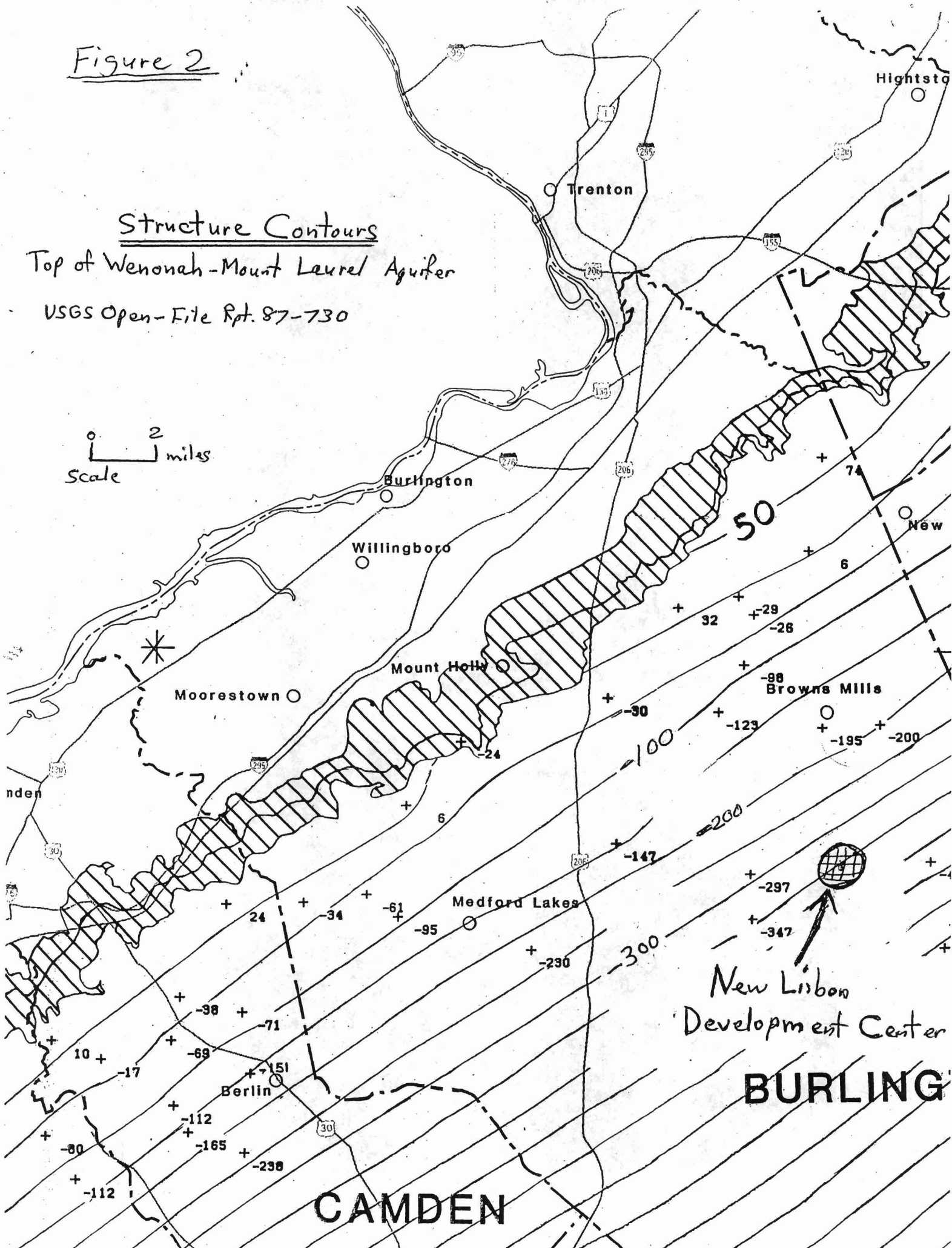
Figure 1

Figure 2

Structure Contours

Top of Wenonah-Mount Laurel Aquifer

USGS Open-File Rpt. 87-730



Scale
0 2 miles

New Lisbon
Development Center

BURLING

CAMDEN

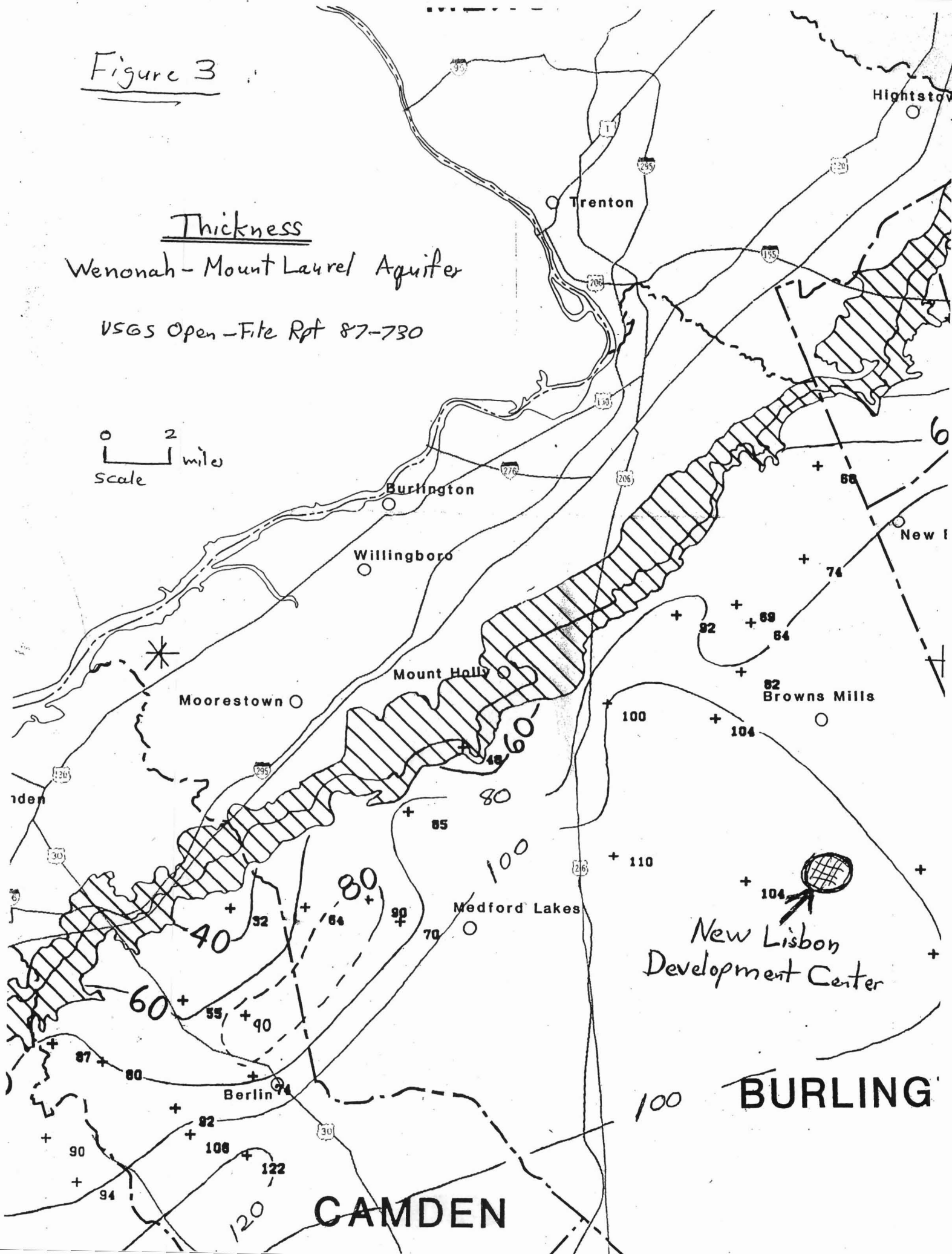
Figure 3

Thickness

Wenonah - Mount Laurel Aquifer

USGS Open-File Rpt 87-730

0 2
|
Scale mile



CAMDEN

BURLING

New Lisbon
Development Center



State of New Jersey
THE PINELANDS COMMISSION

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CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

Nancy Wittenberg
Executive Director

**REPORT ON AN APPLICATION FOR
MAJOR PUBLIC DEVELOPMENT**

February 17, 2012

Douglas Yale
U.S. Department of Homeland Security
200 West Parkway Drive, Suite 300
Egg Harbor Township, NJ 08234

Please Always Refer To
This Application Number

Re: Application #: 1987-1058.066
William J. Hughes Technical Center
Block 101, Lot 9
Egg Harbor Township

Dear Mr. Yale:

The Commission staff has completed its review of the above referenced application. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its March 9, 2012 meeting.

FINDINGS OF FACT

This application is for the construction of a 17,000 square foot, two story building served by public sanitary sewer and a 54 space parking lot on the above referenced 2,397 acre lot in Egg Harbor Township. The William J. Hughes Technical Center is located on the lot. The lot is located in a Military and Federal Installation Area. As required by the Pinelands Comprehensive Management Plan (CMP), the proposed development in the Military and Federal Installation Area will not require any development, including public service infrastructure, in the Pinelands Preservation Area District or in a Pinelands Forest Area.

The proposed building will be utilized as a support facility for the Office of Law Enforcement Federal Air Marshal Service. The building will consolidate personnel and functions from several facilities located throughout the William J. Hughes Technical Center into one building.

The applicant has demonstrated that the proposed development is consistent with the stormwater management standards contained in the CMP. The applicant will be utilizing an existing

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Application Specific Information: ApplInfo@njpines.state.nj.us 1 9 8 7 1 0 5 8 . 0 6 6 *

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stormwater infiltration basin and constructing two stormwater bioretention basins. The existing basin has sufficient capacity to accommodate both the proposed development and the existing development for which the basin was designed.

The proposed development will be located within existing maintained grass areas, successional field and pine-oak forest. There are no wetlands located within 300 feet of the proposed development. Approximately 8,782 square feet (0.20 acre) of pine-oak forest will be disturbed to accommodate the construction of the proposed development. The proposed clearing and soil disturbance appears to be limited to that which is necessary to accommodate the proposed development. The Landscaping and Revegetation guidelines of the Pinelands Comprehensive Management Plan (CMP) recommend the use of grasses that are tolerant of droughty, nutrient poor conditions. The applicant proposes to utilize a seed mixture that does not meet this recommendation.

A threatened and endangered plant and animal species habitat survey was completed for the proposed development. The survey determined that the project area does not contain any suitable habitat for any threatened or endangered plant species and is not critical habitat for any threatened or endangered animal species.

Information available to the Commission staff did not provide sufficient evidence of significant cultural resources to require a full cultural resource survey.

PUBLIC COMMENT

This applicant provided the requisite public notice. Newspaper public notice was completed for the application on November 28, 2011. The application was designated as complete on the Commission's website on January 31, 2012. The Commission's public comment period closed on February 10, 2012. The Pinelands Commission has not received any public comments regarding the application.

CONCLUSION

The proposed development is a permitted use in a Military and Federal Installation Area (N.J.A.C. 7:50-5.29(a)). If the following conditions are imposed, the proposed development will be consistent with the management standards contained in Subchapter 6 of the CMP.

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of four sheets, prepared by Camp, Dresser & McKee Inc. and dated as follows:

Sheet 1 – November 2011
Sheets 2-4 – January 2012
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. Any change of use of the facilities previously occupied by the Office of Law Enforcement Federal Air Marshal Service will required the completion of an application with the Commission.
5. Prior to any development, the applicant shall obtain any other necessary permits and approvals.

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.

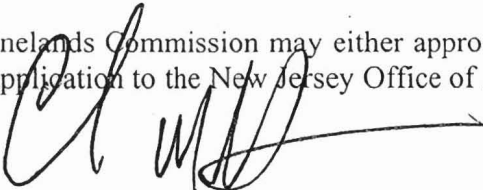
APPEAL

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 within eighteen days of the date of this Report and must 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 recommendation of the Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

Recommended for Approval by: _____


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

EMD/CMH

- c: Secretary, Egg Harbor Township Planning Board
Egg Harbor Township Environmental Commission
Atlantic County Department of Regional Planning and Development
Lynn Brass-Smith
Ernest Deman



State of New Jersey

THE PINELANDS COMMISSION

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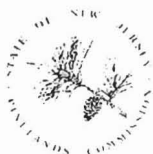
Nancy Wittenberg
Executive Director

**REPORT ON AN APPLICATION FOR
MINOR PUBLIC DEVELOPMENT**

February 17, 2012

Maryalice Brown, RMC
Woodland Township
PO Box 388
Chatsworth, NJ 08019

Application Information:	App. No. 1998-0575.002 Area of Parcel: 0.34 Acres Block 3807, Lot 3 Woodland Township
Proposed Development:	Demolish existing building 50 years old or older
Management Area:	Pinelands Village of Chatsworth
Relevant Facts:	<ul style="list-style-type: none"> The Commission's Executive Director issued a letter on January 31, 2012 authorizing the immediate demolition of the building. The Township had determined that immediate action was necessary to remedy a condition dangerous to life, health and safety.
Public Notice:	<ul style="list-style-type: none"> Public notice not required by the Pinelands Comprehensive Management Plan (CMP). On January 30, 2012, the application was designated as complete on the Commission's website. No public comments received through the close of public comment period on February 10, 2012.
Conclusion	<ul style="list-style-type: none"> The proposed demolition is consistent with CMP standards.



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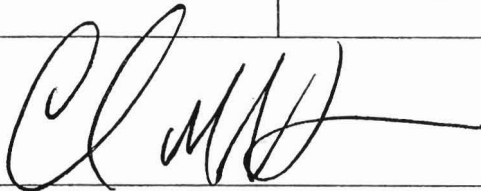
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Recommendation:	<ul style="list-style-type: none"> On behalf of the Commission's Executive Director, I recommend that the Pinelands Commission approve this application at its March 9, 2012 meeting.
Appeal of Recommendation:	<p>The CMP (N.J.A.C. 7:50-4.91) provides that parties who meet the legal requirement to qualify as an "interested party," the right to appeal this recommendation. Any appeal must be made in writing to the Commission within 18 days of the date of this Report and include the information specified in the CMP (N.J.A.C. 7:50-4.91). Any valid appeal will be forwarded to the New Jersey Office of Administrative Law for a hearing.</p>



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

- c. Woodland Township Planning Board
 Burlington County Planning Board
 Kenneth Knapp



State of New Jersey

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KIM GUADAGNO
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Nancy Wittenberg
Executive Director

**REPORT ON AN APPLICATION FOR
MINOR PUBLIC DEVELOPMENT**

February 17, 2012

James Moran
Township of Stafford
260 East Bay Avenue
Manahawkin, NJ 08050

Application Information:	App. No. 2007-0300.002 Block 44.61, Lot 24.03 (8.3 acres) Block 44.211, Lots 3 & 4 (0.60 acres) Block 44.213, Lot 9 (0.85 acres) Stafford Township
Proposed Development:	Incorporation of three existing water wells into a NJDEP water allocation permit
Management Area:	Regional Growth Area
Relevant Facts:	<ul style="list-style-type: none"> • The three concerned wells are located within the Kirkwood-Cohansey Aquifer. • Two of the wells are used for irrigation and one for water supply at a sanitary sewer pump station. • The maximum pumping rate for each of the three wells is 65 gallons per minute. • New Jersey Geological Survey determined that groundwater diversion increase will be confined to small areas around each well and that NJGS does not foresee any increased impact to wetlands. • In accordance with the CMP (N.J.A.C. 7:50-6.86 (c)), the three concerned wells are designed and located to minimize impacts on wetlands and surface waters.



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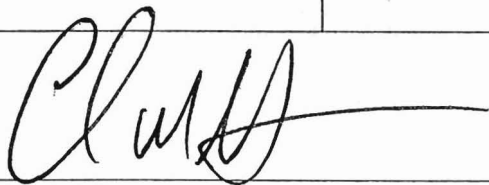
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Public Notice:	<ul style="list-style-type: none"> • Public notice not required by the Pinelands Comprehensive Management Plan (CMP). • On January 24, 2012, the application was designated as complete on the Commission's website. No public comments received through the close of public comment period on February 10, 2012.
Conclusion	<ul style="list-style-type: none"> • The proposed development is consistent with the standards contained in the CMP.
Recommendation:	<ul style="list-style-type: none"> • On behalf of the Commission's Executive Director, I recommend that the Pinelands Commission approve this application at its March 9, 2012 meeting.
Appeal of Recommendation:	<p>The CMP (N.J.A.C. 7:50-4.91) provides that parties who meet the legal requirement to qualify as an "interested party," the right to appeal this recommendation. Any appeal must be made in writing to the Commission within 18 days of the date of this Report and include the information specified in the CMP (N.J.A.C. 7:50-4.91). Any valid appeal will be forwarded to the New Jersey Office of Administrative Law for a hearing.</p>



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

- c. Stafford Township Planning Board
Stafford Township Environmental Commission
Ocean County Planning Board
Paul Kittner



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-12- 05

TITLE: Approving With Conditions a Request for a Waiver of Strict Compliance (Application Number 2010-0118.001)

Commissioner Lloyd moves and Commissioner Ficcaglia seconds the motion that:

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

2010-0118.001 AARON DEVELOPERS, INC., Manchester Township, 0.86 acre lot, development of a single family dwelling served by an onsite septic system, Pinelands Town (Date of Report: February 16, 2012).

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

WHEREAS, the Pinelands Commission hereby adopts the Findings of Fact and Conclusion of the Executive Director; and

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

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

NOW, THEREFORE BE IT RESOLVED that the following application for a Waiver of Strict Compliance is hereby approved subject to the conditions recommended by the Executive Director:

2010-0118.001 AARON DEVELOPERS, INC., Manchester Township, 0.86 acre lot, development of a single family dwelling served by an onsite septic system, Pinelands Town (Date of Report: February 16, 2012).

Record of Commission Votes

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

Adopted at a meeting of the Pinelands Commission

Date: MARCH 9, 2012

Nancy Wittenberg
Nancy Wittenberg
Executive Director

John Haas for
Mark S. Lohbauer
Chairman



State of New Jersey
THE PINELANDS COMMISSION

PO Box 359
NEW LISBON, NJ 08064
(609) 894-7300

CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

Nancy Wittenberg
Executive Director

**REPORT ON AN APPLICATION FOR A
WAIVER OF STRICT COMPLIANCE**

February 16, 2012

Aaron Developers, Inc.
Richard Krupnick, President
P.O. Box 109
Lakewood, NJ 08701

Please Always Refer To
This Application Number

Re: Application # 2010-0118.001
Block 99.93, Lot 10
Manchester Township

Dear Mr. Krupnick:

The Commission staff has completed its review of the above referenced application. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its March 9, 2012 meeting.

FINDINGS OF FACT

This application is for the development of one single family dwelling served by an alternate design onsite septic system on the above referenced 0.86 acre (37,400 square foot) lot in Manchester Township. The lot is located in the Pinelands Town of Whiting

The lot is located in Manchester's WTR-40 zoning district. For lots existing as of August 5, 2002 in this zoning district, the Manchester Township's certified land use ordinances establish a minimum lot size of 40,000 square feet for a single family dwelling when an onsite sewage disposal system is utilized.

The Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-5.27(b)) provides that no residential dwelling served by an onsite septic system shall be located on a parcel of less than one acre. As the proposed dwelling will be served by an onsite septic system and be located on a



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lot of less than one acre, the applicant is requesting a Waiver of Strict Compliance (Waiver) from N.J.A.C. 7:50-5.27(b).

As any onsite sewage disposal system approved for use by the Pinelands Commission will result in an average concentration of nitrate-nitrogen in the groundwater at the property line of a lot of this size of more than 2 ppm, the applicant is also requesting a Waiver from the groundwater quality standard contained in N.J.A.C. 7:50-6.84(a)5iv.

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

The lot includes all contiguous land in common ownership on or after January 14, 1981. The proposed single family dwelling will be the sole principal use of the lot. The development of a single family dwelling on the lot requires a lot area or residential density variance pursuant to Manchester Township's certified land use ordinance. A single family dwelling can be developed on the lot without violating any of the criteria contained in N.J.A.C. 7:50-4.65(b) if the conditions recommended below are imposed.

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

PUBLIC COMMENT

The required public legal notices for the Waiver application were completed in 2010 and again in 2011. The application was designated as complete on the Commission's website on January 23, 2012. The Commission's public comment period closed on February 10, 2012. On December 1, 2010, the Commission received one written public comment (enclosed) regarding the application. No public comment was offered at the Commission's February 10, 2012 meeting regarding the application.

Public Comment: The one submitted written comment indicated opposition to granting of the Waiver. The commenter indicated that, for the 2010 public notice, the Pinelands application number was invalid and the applicant's name was unreadable. The commenter also indicated that, although it appears that the applicant is a private party, the applicant is in fact a realtor and that special treatment should not be granted to a realtor.

Staff Response to Comment: The newspaper and surrounding 200 foot property owner's public notices completed by the applicant in 2010 included an incorrect Pinelands application number. Unto itself, this error does not invalidate the public notices. Portions of the 2010 public notice were hand written. The commenter is apparently indicating that they could not discern the applicant's signature on the notice. The applicant's name is provided elsewhere on the concerned notice. Unto itself, the legibility of the applicant's signature does not invalidate the public notices. Subsequently, the applicant repeated both public legal notices in 2011. The repeated public notices contained the correct Pinelands application number. The Commission's Waiver regulations uniformly apply to all applicants regardless of whether an applicant is a private party, a company or a realtor.

CONCLUSION

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

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

The first condition is that the only relief sought is from one or more of the standards contained in N.J.A.C. 7:50-6 for certain specified development. One of the specified categories of development is as follows:

- v. A single family dwelling on a lot within a Regional Growth Area, Pinelands Town or Pinelands Village which is at least 20,000 square feet, excluding road rights of way, in size and is not served by a centralized wastewater treatment system.

This application is only for a Waiver from the minimum lot size and groundwater quality standards contained in N.J.A.C. 7:50-6. The applicant is proposing to develop a single family dwelling with a septic system on a lot containing at least 20,000 square feet, excluding road rights-of-way, located in a Pinelands Town. As a result, the application meets the criteria set forth in N.J.A.C. 7:50-4.63(a)1.v.

The second condition is that the lot 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 lot includes all such contiguous land, the application meets the criteria set forth in N.J.A.C. 7:50-4.63(a)2.

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

The fourth condition is that all necessary municipal lot area and residential density variances have been obtained if the lot is located in a municipality whose master plan and land use ordinance have been certified by the Pinelands Commission. Manchester Township's master plan and land use ordinance have been certified by the Pinelands Commission. The applicant has received the required municipal lot size variance. As a result, the application meets the criteria set forth in N.J.A.C. 7:50-4.63(a)4.

The fifth condition precludes the granting of a Waiver unless the development will be consistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act and the Pinelands Comprehensive Management Plan (CMP) and will not result in a substantial impairment of the resources of the Pinelands Area. N.J.A.C. 7:50-4.65(b) specifies the criteria that must be met to comply with this requirement. With the conditions specified in this Report on an Application for a Waiver, the proposed development meets this the criteria set forth in N.J.A.C. 7:50-4.63(a)5.

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

N.J.A.C. 7:50-4.62(d)1.iii requires the acquisition and redemption of 0.25 Pinelands Development Credits whenever a Waiver provides relief from one or more of the standards of N.J.A.C. 7:50-6. As the applicant is obtaining a Waiver from the minimum lot size (N.J.A.C. 7:50-5.27(b)) and the ground water quality standard contained in N.J.A.C. 7:50-6.84(a)5iv, a condition requiring the applicant to purchase the requisite 0.25 Pinelands Development Credits to meet this CMP regulation is included in the conditions below.

N.J.A.C. 7:50-4.62(d)1.ii requires the acquisition and redemption of any Pinelands Development Credits that are otherwise required pursuant to N.J.A.C. 7:50-5.27, 5.28, or 5.32. The lot is located in a Pinelands Town. The CMP (N.J.A.C. 7:50-5.27(c)) provides, in part, that any local approvals, including variances, which grants relief from density or lot area requirements for a residential use shall require that PDCs be used for all dwelling units or lots in excess of that otherwise permitted, unless a Waiver for the dwelling unit or lot has been approved by the Commission. Since the lot qualifies for Waiver, no PDCs are required for the municipal residential variance.

With the conditions recommended below, the application meets the requirements contained in N.J.A.C. 7:50-4.62(d).

CONDITIONS

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

1. Except as modified by the below conditions, the proposed development shall adhere to the Plot Plan, prepared by Lines Engineering, dated July 28, 2010.
2. The septic system shall be located in an area where the seasonal high water table is at least 5 feet below the natural ground surface.
3. The house shall use an alternate design septic wastewater system designed so that the average nitrogen concentration in the groundwater at the limits of the lot does not exceed 2 ppm. The system must be approved for use by the Pinelands Commission and the Department of Environmental Protection. The Pinelands

Comprehensive Management Plan identifies the alternate design systems that may be used in the Pinelands Area and specifies the conditions for their use.

4. Except as provided in N.J.A.C. 7:50-5.1(c), the single family dwelling approved herein shall be the sole principal use of the lot.
5. Prior to Commission issuance of a letter advising that any municipal construction permit may take effect, the Commission must receive a letter from the Pinelands Development Credit Bank indicating that the requisite 0.25 PDCs have been acquired and submitted to the Pinelands Development Credit Bank for redemption.
6. This Waiver shall expire March 9, 2017 unless all necessary construction permits have been issued by that date. The Waiver shall also expire if any construction permit is allowed to expire or lapse after March 9, 2017 or if any renewal or extension of any permit or approval or issuance of a new construction permit is necessary after that date.
7. A copy of the recorded deed containing all of the above conditions shall be submitted to the Pinelands Commission prior to completing a Commission application for development. The deed shall specify that the conditions are being imposed pursuant to a Waiver of Strict Compliance referring to the application number. The deed shall state that the conditions are enforceable by the Pinelands Commission, the Ocean County Health Department, Manchester Township and any other party of interest.

With the above conditions, the application qualifies for a Waiver from the requirements of N.J.A.C. 7:50-5.27(b) and N.J.A.C. 7:50-6.84(a)5iv.

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

APPEAL

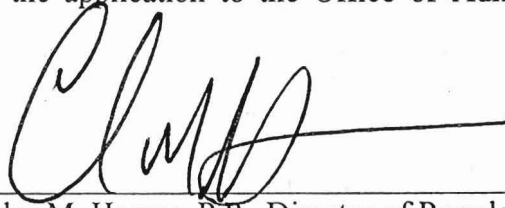
Any interested person may appeal the Executive Director's determination on this application to the Commission. The request to appeal the decision must be made within 18 days of the date of this letter by giving notice, by Certified mail, of the appeal to the Pinelands Commission. Said notice shall include:

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:
 - a. the applicant (unless the applicant is requesting the appeal);
 - b. Secretary, Manchester Township Planning Board; and
 - c. Manchester Township Environmental Commission.

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

Recommended for approval by: _____



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

JM/ED/CMH

Encl(1) 12/1/12 public comment

- c: Secretary, Manchester Township Planning Board
Manchester Township Construction Code Official
Manchester Township Zoning Officer
Manchester Township Environmental Commission
Executive Director, PDC Bank
Betsy Piner
Donna Graham
Jean Montgomerie

Ken Zakar
551 Bloomfield Ave., Whiting, NJ
(732) 908-3165 Cell (732) 606-2288 Fax (888) 739-4232

FAX COVER SHEET

December 1, 2010

From:
Ken Zakar
(732) 350-1637

App # 20100118.001
DocType 100

DEC - 1 2010

Scanned ✓

Inc 4 ✓
11/5/10

To: NJ Pinelands Commission
Fax: (609) 894-7331

Re: Regarding pinelands App. # 2010-0188.001 on Block# 99.93 Lot 10 Bloomfield Ave., Manchester Township, NJ

Please be advised that I am against any waiver that allows the non compliance of the standards set forth by the Pinelands Commission.

The notification has an invalid permit # and an unreadable name (see attached).

Also the inference is that a private party is asking for a permit while the envelope's return address is Sydney Krupnik Realty.

There are plenty of buildable lots in the area and I don't agree that smaller lots receive special treatment for big name realtors.

Kenneth Zakar
551 Bloomfield Ave.
Whiting, NJ 08759
e-mail kenr2121@aol.com

THIS FAX CONTAINS 3 PAGES, INCLUDING THIS COVER SHEET.

This fax contains confidential information and is intended solely for the person, persons or entity named above. If you are not the addressee you are hereby notified that any use, disclosure or copying of this and the following documents sent with this facsimile is strictly prohibited.

If received in error or incomplete please contact us at (732) 908-3165

This notice must be sent by Certified Mail, Return Receipt Requested to all owners of real property within 200 feet in all directions of the property subject to the application and published for one day in the official newspaper of the municipality in which the property is located.

NOTICE

WAIVER OF STRICT COMPLIANCE

ZAKAR, KENNETH
551 BLOOMFIELD AVE
WHITING, NJ 08759

(Name & Address of property owner within 200 feet)

RE: Pinelands App. # 2010-0188.001

To Whom It May Concern:

Please take notice that MARION Di PERNA
(applicant's name) has applied to the Pinelands Commission for a Waiver of Strict Compliance from the following standards:

- _____ development on wetlands
- _____ buffer requirements to wetlands
- _____ seasonal high water table
- minimum lot size requirement
- water quality

The Waiver(s) is necessary to permit the development of a single family dwelling on Block(s) 99.93 Lot(s) 10, located on Bloomfield Avenue (street address) in Manchester Township (municipality).

The application is on file and available for inspection by appointment at the Pinelands Commission office. Interested persons may comment, in writing, to the Pinelands Commission within ten days of the date of receipt of this notice. Comments should be sent to the Pinelands Commission, P.O. Box 359, New Lisbon, New Jersey 08064.

Marion Di Perna
Applicant



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-12- 06

TITLE: Issuing an Order to Certify Ordinance 14-2011, Amending Chapter 49 (Development Regulations) of the Code of Buena Vista Township

Commissioner Ficcoaglia moves and Commissioner McGlinchey seconds the motion that:

WHEREAS, on July 12, 1991, the Pinelands Commission fully certified the Master Plan and codified Land Use Ordinances of Buena Vista Township; and

WHEREAS, Resolution #PC4-91-97 of the Pinelands Commission specified that any amendment to the Township's certified Master Plan and codified Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, Resolution #PC4-91-97 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

WHEREAS, on January 16, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to mandatory residential cluster development in the Pinelands Forest and Rural Development Areas; and

WHEREAS, on October 9, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to wetlands management; and

WHEREAS, on November 13, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to forestry; and

WHEREAS, these three sets of amendments took effect on April 6, 2009, December 21, 2009 and March 1, 2010, respectively; and

WHEREAS, municipalities located within the Pinelands Area are required to adopt ordinance amendments necessary for conformance with any Comprehensive Management Plan amendments within one year of the effective date of any such amendments; and

WHEREAS, on June 11, 2010, the Pinelands Commission adopted Resolution PC4-10-27, extending the time period for response to the clustering and wetlands management amendments to March 1, 2011 in order to provide municipalities with sufficient time for consideration, preparation and adoption of master plan and ordinance amendments to address the three sets of Comprehensive Management Plan amendments simultaneously; and

WHEREAS, Commission staff subsequently provided a model ordinance and other guidance to Buena Vista Township to assist the municipality in completing its response to the three sets of Comprehensive Management Plan amendments; and

WHEREAS, by email dated August 9, 2011, Buena Vista Township notified the Commission of the need for an extension of the March 1, 2011 deadline for adoption and submission of the necessary ordinance amendments; and

WHEREAS, by letter dated August 10, 2011, the Executive Director notified the Township that an extension was granted until November 30, 2011; and

WHEREAS, November 28, 2011, Buena Vista Township adopted Ordinance 14-2011, amending Chapter 49 (Development Regulations) of the Township's Code in response to the forestry, wetlands management and clustering amendments to the Pinelands Comprehensive Management Plan; and

WHEREAS, the Commission received a certified copy of Ordinance 14-2011 on December 28, 2011; and

WHEREAS, by letter dated January 5, 2012, the Executive Director notified the Township that Ordinance 14-2011 would require formal review and approval by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony on Ordinance 14-2011 was duly advertised, noticed and held on February 1, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

WHEREAS, the Executive Director has found that Ordinance 14-2011 is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan; and

WHEREAS, the Executive Director has submitted a report to the Commission recommending issuance of an order to certify that Ordinance 14-2011, amending Chapter 49 (Development Regulations) of the Code of Buena Vista Township, is in conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that Ordinance 14-2011 be certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning Ordinance 14-2011 and has reviewed the Executive Director's report; and

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

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

NOW, THEREFORE BE IT RESOLVED that

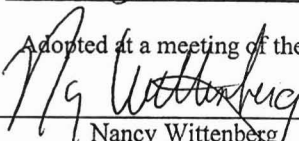
1. An Order is hereby issued to certify that Ordinance 14-2011, amending Chapter 49 (Development Regulations) of the Code of Buena Vista Township, is in conformance with the Pinelands Comprehensive Management Plan.
2. Any additional amendments to Buena Vista Township's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

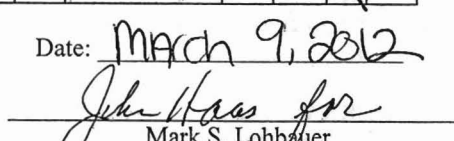
Record of Commission Votes

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

Adopted at a meeting of the Pinelands Commission

Date: March 9, 2012


 Nancy Wittenberg
 Executive Director


 Mark S. Lohbauer
 Chairman



State of New Jersey
THE PINELANDS COMMISSION

PO Box 359
NEW LISBON, NJ 08064
(609) 894-7300

CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

Nancy Wittenberg
Executive Director

REPORT ON ORDINANCE 14-2011, AMENDING CHAPTER 49 (DEVELOPMENT REGULATIONS) OF THE CODE OF BUENA VISTA TOWNSHIP

February 24, 2012

Buena Vista Township
P.O. Box 605
Buena, NJ 08310

FINDINGS OF FACT

I. Background

The Township of Buena Vista is located in western Atlantic County, in the southern portion of the Pinelands Area. Pinelands municipalities adjacent to Buena Vista Township include the Boroughs of Buena and Folsom and the Townships of Hamilton and Weymouth in Atlantic County, the Townships of Franklin and Monroe in Gloucester County and the Township of Maurice River in Cumberland County.

On July 12, 1991, the Pinelands Commission fully certified the Master Plan and codified Land Use Ordinances of Buena Vista Township.

On January 16, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to mandatory residential cluster development in the Pinelands Forest and Rural Development Areas. On October 9, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to wetlands management. On November 13, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to forestry. These three sets of amendments took effect on April 6, 2009, December 21, 2009 and March 1, 2010, respectively.

Municipalities located within the Pinelands Area are required to adopt ordinance amendments necessary for conformance with any Comprehensive Management Plan amendments within one year of the effective date of any such amendments. On June 11, 2010, the Pinelands Commission adopted Resolution PC4-10-27, extending the time period for response to the clustering and wetlands management amendments to March 1, 2011 in order to provide municipalities with sufficient time for consideration, preparation and adoption of master plan and ordinance amendments to address the three sets of Comprehensive Management Plan amendments



www.nj.gov/pinelands

General Information: Info@njpines.state.nj.us

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

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simultaneously. Commission staff subsequently provided a model ordinance and other guidance to the Township to assist the municipality in completing its response to the three sets of Comprehensive Management Plan amendments.

By email dated August 9, 2011, Buena Vista Township notified the Commission of the need for an extension of the March 1, 2011 deadline for adoption and submission of the necessary ordinance amendments. By letter dated August 10, 2011, the Executive Director notified the Township that an extension was granted until November 30, 2011.

On November 28, 2011, Buena Vista Township adopted Ordinance 14-2011, amending Chapter 49 (Development Regulations) of the Township's Code in response to the forestry, wetlands management and residential clustering amendments to the Pinelands Comprehensive Management Plan. The Pinelands Commission received a certified copy of Ordinance 14-2011 on December 28, 2011.

By letter dated January 5, 2012, the Executive Director notified the Township that Ordinance 14-2011 would require formal review and approval by the Pinelands Commission.

II. Master Plans and Land Use Ordinances

The following ordinance has been submitted to the Pinelands Commission for certification:

- * Ordinance 14-2011, amending Chapter 49 (Development Regulations) of the Code of Buena Vista Township, introduced on November 7, 2011 and adopted on November 28, 2011.

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

1. **Natural Resource Inventory**

Not applicable.

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

Forestry

Ordinance 14-2011 amends Chapter 49 of the Township's Code by revising and adding definitions related to forestry. Specifically, terms for such forestry activities as "artificial regeneration," "clearcutting" and "disking" are added and the existing definition of

“forestry” is revised to make clear that it includes these and other silvicultural practices. Ordinance 14-2011 further amends Chapter 49 by replacing Section 49-49C, in its entirety, with an amended set of standards applicable to forestry activities in the Pinelands Area. Included in this revised section are detailed standards for a wide variety of silvicultural practices, as well as limitations on amount of land that may be subject to these practices and the Pinelands Native Forest Types in which such practices may or may not be conducted.

The amended forestry standards adopted by Ordinance 14-2011 are consistent with the March 2010 amendments to the Pinelands Comprehensive Management Plan.

Wetlands Management

Ordinance 14-2011 amends Chapter 49 of the Township’s Code by adding wetlands management to the list of uses permitted in the Township’s Pinelands Forest Area zoning districts (FA-1, FA-2 and FA-3). Ordinance 14-2011 also revises Section 49-46A(5) to indicate that wetlands management may be permitted in wetlands, subject to the standards of the Comprehensive Management Plan. In so doing, Ordinance 14-2001 sufficiently responds to the December 2009 Comprehensive Management Plan amendments relative to wetlands management

Development Transfer Program

Ordinance 14-2011 amends Chapter 49 by revising the provisions of the Township’s Combined Parcel Homestead program to clarify the types of uses which may be permitted on noncontiguous lands used to meet density requirements. Specifically, Ordinance 14-2011 states that all noncontiguous lands utilized in the development transfer program must be permanently protected through recordation of a deed of restriction, with only the following uses permitted: low intensity recreation, ecological management and forestry. Limits on clearing and impervious surface then also apply to these uses. In addition, in cases where agricultural uses exist on the lands to be protected, Ordinance 14-2011 provides that such agricultural uses may be permitted to continue and, in some cases, expand, if certain conditions related to impervious surface and the preparation of Resource Management System Plans are met.

The amended development transfer program standards adopted by Ordinance 14-2011 are consistent with the April 2009 amendments to the Pinelands Comprehensive Management Plan.

Cluster Development

Ordinance 14-2011 amends Chapter 49 by adding residential cluster development as a permitted use in the Township’s Pinelands Forest Area zoning districts (FA-1, FA-2 and FA-3) and Pinelands Rural Development Area zoning Districts (RDR1, RDR2, RDR1C and RDR1I). Furthermore, Ordinance 14-2011 indicates that whenever two or more residential units are proposed in these zoning districts, cluster development will be

required. The ordinance then sets forth the standards which all such cluster developments must meet, including a one acre lot size requirement, the location of the development area itself on a parcel and the provision of accessory recreational amenities.

According to Ordinance 14-2011, the balance of the parcel located outside the residential cluster development area must be permanently protected through recordation of a deed of conservation restriction. This open space area must be owned and managed by a homeowners association, a non-profit conservation organization or the Township, or it may be incorporated as part of one of the lots within the cluster development area. Permitted uses in the open space area are limited to low intensity recreation, ecological management and forestry, subject to specific limitations on clearing and impervious surface. In addition, in cases where agricultural uses exist on the lands to be protected, Ordinance 14-2011 provides that such agricultural uses may be permitted to continue and, in some cases, expand, if certain conditions related to impervious surface and the preparation of Resource Management System Plans are met. Should a cluster development applicant elect to continue or expand an existing agricultural use on the parcel, Ordinance 14-2011 requires that all of the new dwelling units to be constructed in the cluster development utilize on-site septic waste water treatment systems designed to reduce the level of nitrate/nitrogen in the waste water.

Ordinance 14-2011 specifies that the number of residential lots permitted within a cluster development will be calculated based on the size of the parcel of land and the permitted density allowed in Chapter 49 for the zoning district(s) in which the project will be located. For example, ten units would be permitted on a 200 acre parcel located in the Township's FA-3 District, where the permitted density is one unit per 20 acres. Ordinance 14-2011 also provides bonus density to parcels of 50 or more acres in size. This bonus density ranges from 10 to 40%, depending on the size of the parcel and the permitted density of the zone in which the parcel is located. The larger the parcel and the lower the permitted density, the larger the percentage of bonus density provided.

The bonus density percentages and acreage thresholds adopted by Ordinance 14-2011 are identical to those contained in N.J.A.C. 7:50-5.19(d)1 of the Comprehensive Management Plan. However, the Township has elected to make one change involving applicability of the bonus provisions. Whereas the Comprehensive Management Plan provides bonus density to any parcel of 50 acres or more, Ordinance 14-2011 specifies that bonus density shall not apply to parcels in common ownership as of April 6, 2009 (the effective date of the Comprehensive Management Plan's clustering amendments). In order to be eligible for bonus density, an applicant must document the acquisition of additional vacant, contiguous land on or after April 6, 2009. Such land must be included in the application for cluster development and result in the preservation of a larger area of open space. Upon the acquisition of such lands, the bonus density provided in Ordinance 14-2011 will then apply to the entire contiguous parcel which is the subject of the cluster development application.

Pinelands municipalities have always had the general ability to refine the various standards and provisions of the Comprehensive Management Plan and tailor them to local

conditions, provided Comprehensive Management Plan goals and objectives continue to be achieved. Subchapter 5 (Minimum Standards for Land Uses and Intensities) of the Comprehensive Management Plan expressly recognizes this general ability. Moreover, when the Commission adopted its clustering amendments, a new certification standard was incorporated in order to make clear that this practice extends to the Forest and Rural Development Area residential clustering program. N.J.A.C. 7:50-3.39(a)2ix provides that municipalities may propose and the Commission may approve clustering ordinances that contain different standards than those set forth at N.J.A.C. 7:50-5.19(c) and (d), provided such standards are supported through the application of sound land use planning principles, are based upon local conditions or circumstances and do not undermine the overall objectives of the Forest and Rural Development clustering program.

In this case, Buena Vista Township has chosen to modify the bonus density provisions now contained in the Comprehensive Management Plan. These provisions were included in the clustering amendments for two reasons: to provide a measure of equity to property owners who will now be required to develop homes on one acre lots rather than on the large estate lots they may have originally anticipated; and, to **encourage** and reward lot consolidation in the Forest and Rural Development Areas in the hope that this would result in larger contiguous areas of protected open space and, consequently, reduced forest fragmentation. Ordinance 14-2011 focuses on the importance of this second objective and takes it one step further, by **requiring** that some amount of lot consolidation occur in order for an application to be eligible for any bonus density. As a result, the owner of an existing 200 acre lot will not be eligible for bonus density unless he or she acquires additional vacant contiguous land and includes that acreage in the cluster development application. Given the size of Buena Vista's Forest and Rural Development Areas (approximately 7,700 and 12,300 acres, respectively), acquisition of contiguous vacant lands is likely to be feasible in most cases. Ordinance 14-2011 does not specify that any particular amount of contiguous land must be acquired. Thus, the acquisition of even a few vacant acres will render a project eligible for the bonus units and permit an increase the number of permitted units. Applicants are therefore being provided a sufficient opportunity to become eligible for bonus density and take advantage of the additional equity this may provide.

Upon adoption of the clustering amendments, the Commission expressly acknowledged that the above-described variation on the bonus density provisions could be considered by Pinelands municipalities, provided it would not serve to discourage meaningful cluster development in the municipality, and further provided that the municipality in question had the ability to administer such a provision. It is clear that the bonus density standards adopted by Ordinance 14-2011 will not discourage cluster development. On the contrary, they should serve to encourage the acquisition and creation of larger and larger parcels for cluster development, leading to the permanent protection of larger and more meaningful open space areas. There is no question that such an outcome is consistent with the objectives of the clustering amendments. As for administration, the Township will be responsible for determining whether its bonus density standards are met. Commission staff has alerted the municipality to a number of issues which may arise as

part of this effort and is confident the Township will address them in an appropriate fashion.

The amendments adopted by Ordinance 14-2011 sufficiently respond to the April 2009, Comprehensive Management Plan amendments relative to cluster development.

Ordinance 14-2011 is consistent with the land use and development standards of the Comprehensive Management Plan. Therefore, this standard for certification is met.

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

Ordinance 14-2011 amends Chapter 49 by replacing Section 49-49B, in its entirety, with an amended set of application requirements for municipal forestry permits. For forestry activities on parcels of land enrolled in the New Jersey Forest Stewardship Program, an applicant needs only to submit to the municipality a copy of his or her approved Stewardship Plans. For all other forestry applications, the list of submission requirements includes a forestry management plan, information concerning threatened and endangered plants and animals, cultural resources and the use of herbicides, written comments from the New Jersey State Forester and a Certificate of Filing issued by the Pinelands Commission.

The amended forestry application requirements adopted by Ordinance 14-2011 are consistent with the March 2010 amendments to the Pinelands Comprehensive Management Plan. Therefore, this standard for certification is met.

4. Requirement for Municipal Review and Action on All Development

Not applicable.

5. Review and Action on Forestry Applications

Not applicable.

6. Review of Local Permits

Not applicable.

7. Requirement for Capital Improvement Program

Not applicable.

8. Accommodation of Pinelands Development Credits

Not applicable.

9. Referral of Development Applications to Environmental Commission

Not applicable.

10. General Conformance Requirements

Ordinance 14-2011, amending the Chapter 49 (Development Regulations) of the Code of Buena Vista Township, is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan.

This standard for certification is met.

11. Conformance with Energy Conservation

Not applicable.

12. Conformance with the Federal Act

Ordinance 14-2011, amending Chapter 49 (Development Regulations) of the Code of Buena Vista Township, is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan. No special issues exist relative to the Federal Act.

This standard for certification is met.

13. Procedure to Resolve Intermunicipal Conflicts

Not applicable.

PUBLIC HEARING

A public hearing to receive testimony concerning Buena Vista Township's application for certification of Ordinance 14-2011 was duly advertised, noticed and held on February 1, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which the following testimony was received:

Jaclyn Rhoads, representing the Pinelands Preservation Alliance, indicated her support for Ordinance 14-2011. She stated that she was pleased with the change the Township had made to the bonus density provisions of the clustering amendments and noted that one of the reasons for those provisions was to provide an incentive for the aggregation of land.

There being no further testimony, the hearing was concluded at 10:15 a.m.

Written comments on Ordinance 14-2011 were accepted through February 6, 2012 and were received from David Scheidegg on behalf of Buena Vista Township (see Exhibit #1).

CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that Ordinance 14-2011 sufficiently implements the April 2009, December 2009 and March 2010 amendments to the Pinelands Comprehensive Management Plan and complies with Comprehensive Management Plan standards for the certification of municipal master plans and land use ordinances. Accordingly, the Executive Director recommends that the Commission issue an order to certify Ordinance 14-2011 of Buena Vista Township.

SRG/CBV
Attachment



Schaeffer Nassar Scheidegg
CONSULTING ENGINEERS, LLC

Engineers • Surveyors • Environmental Specialists • Planners

Rami N. Nassar, PE, PP, CME
David S. Scheidegg, PE, PP, CME
Andrew F. Schaeffer, PE, PP
Daniel F. Kwapinski, PE, PP
Howard A. Transue, PLS

February 6, 2012

Ms. Susan R. Grogan, PP, AICP, Chief Planner
New Jersey Pinelands Commission
P. O. Box 359
New Lisbon, NJ 08064

RE: Buena Vista Township Ordinance #14-2011
Justification for Revisions to
Pinelands Cluster Development Regulations
Our File #8000.93

Dear Ms. Grogan:

Thank you for the opportunity to allow Buena Vista Township to provide justification for our changes to the Pinelands Model Cluster Ordinance.

Through several meetings with the Planning / Zoning Board and the Township Committee, representatives of Buena Vista Township expressed concerns with regard to the bonus density portions of the Model Cluster Ordinance. In an effort to balance the goals of the mandatory Cluster Ordinance and to potentially reduce the amount of bonus units, the municipality decided that in order to be eligible for the bonus density, an applicant must acquire additional vacant contiguous land after April of 2009. They believe that only projects which make a concerted effort to acquire additional lands and consequently deed restrict larger contiguous tracts of undeveloped land as common open space, should be entitled to the bonus density provisions.

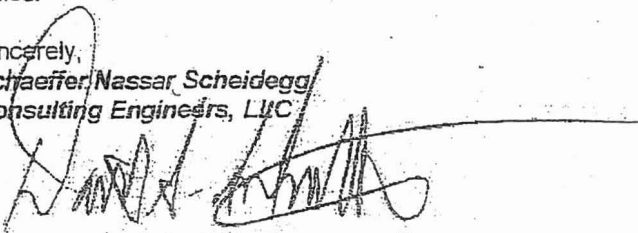
Therefore, the Township has amended paragraph 2 of Article VII of the Pinelands Model Cluster Ordinance to limit the awarding of density bonus. The township's adopted ordinance includes the following paragraph;

"The bonus density in (a) above shall not apply to parcels in common ownership as of April 6, 2009. In order to be eligible for the bonus density provided in (a) above, an applicant must document the acquisition of additional vacant contiguous land on or after April 6, 2009. Such land must be included in the application for cluster development and result in the preservation of a larger area of open space. Upon the acquisition of such lands, the bonus density set forth in (a) above shall apply to the entire contiguous parcel which is the subject of the cluster development application."

We thank you for this opportunity to provide justification for our amendments to the Pinelands Model Cluster Ordinance. Should you have any questions or require any additional information, please feel free to contact our office.

Sincerely,

~~Schaeffer Nassar Scheidegg~~
Consulting Engineers, LLC



David S. Scheidegg, PE, PP, CME
Buena Vista Township Municipal Engineer

cc: Linda Gonzales, Buena Vista Township Deputy Clerk
Dawn Gorman, CMFO / Administrator
Mayor Peter Bylone and Township Committee