



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-13- CE

TITLE: Approving With Conditions Applications for Public Development (Application Numbers 1981-1833.066, 1987-0914.008, 2008-0305.001 & 2012-0109.001)

Commissioner McGlinchey moves and Commissioner Ugaj 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 applications for Public Development be approved with conditions

1981-1833.066 **RICHARD STOCKTON COLLEGE OF NEW JERSEY**, Galloway Township, Regional Growth Area, construction of eight tennis courts (Date of Amended Report: February 27, 2013);

1987-0914.008 **EVESHAM TOWNSHIP**, Evesham Township, Rural Development Area, replacement of a 228 +/- square foot existing spillway with a 1,265 +/- square foot spillway for Tomlinson Mill Road Dam (Date of Report: February 14, 2013);

2008-0305.001 **BOROUGH OF FOLSOM**, Borough of Folsom, Pinelands Village, construction of a 57 stall parking lot (Date of Report: February 11, 2013); and

2012-0109.001 **MANCHESTER TOWNSHIP**, Manchester Township, Forest Area, installation of approximately 7,500 linear feet of 16 inch potable water main within the Manchester Boulevard and State Highway Route 70 rights-of-way (Date of Report: February 12, 2013).

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.

1981-1833.066 **RICHARD STOCKTON COLLEGE OF NEW JERSEY**, Galloway Township, Regional Growth Area, construction of eight tennis courts (Date of Amended Report: February 27, 2013);

1987-0914.008 **EVESHAM TOWNSHIP**, Evesham Township, Rural Development Area, replacement of a 228 +/- square foot existing spillway with a 1,265 +/- square foot spillway for Tomlinson Mill Road Dam (Date of Report: February 14, 2013),

2008-0305.001 **BOROUGH OF FOLSOM**, Borough of Folsom, Pinelands Village, construction of a 57 stall parking lot (Date of Report: February 11, 2013); and

2012-0109.001

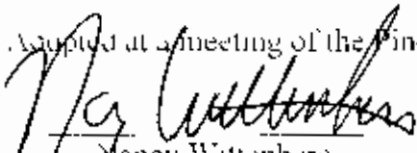
MANCHESTER TOWNSHIP, Manchester Township, Forest Area, installation of approximately 7,500 linear feet of 16 inch potable water main within the Manchester Boulevard and State Highway Route 70 rights-of-way (Date of Report February 12, 2013)

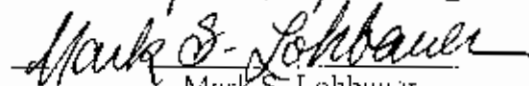
Record of Commission Votes

AYE				NAY				ABSEN			
AYE	NAY	ABSEN	RES	AYE	NAY	ABSEN	RES	AYE	NAY	ABSEN	RES
Ashmun	X			Galletta	X			Prickett	X		
Brown				Haas	X			Quinn	X		
DiBello				Jackson	X			Rohan Green	X		
Larlen				Lloyd	X			Witt	X		
Ficcaglia	X			McGiinchey	X			Lohbauer	X		

Adopted at a meeting of the Pinelands Commission

Date: March 8, 2013


Nancy Wittenberg
Executive Director


Mark S. Lohbauer
Chairman



State of New Jersey
 THE PINELANDS COMMISSION
 P.O. Box 659
 New Lisbon, NJ 08004
 (908) 694-7100
 www.nj.gov/pinelands



Chris Christa
 Governor

Kim Cardagno
 Executive Director

General Information: 1206@pinelands.state.nj.us
 Application Specific Information: App10@pinelands.state.nj.us

Mark S. Leibaert
 Chairman

Nancy Wittenberg
 Executive Director

**AMENDED REPORT ON AN APPLICATION FOR
 MAJOR PUBLIC DEVELOPMENT**
 (Revised pg. 2, para. 2 & pg. 3, para 2.)

February 27, 2013

Charles West, Director of Facilities
 The Richard Stockton College of New Jersey
 Office of Facilities Planning and Construction
 101 Vera King Farris Drive, Building 70
 Pomona, NJ 08240

Re: Application No : 1981-1833.066
 Block 875.04, Lots 1.01 - 1.08
 Galloway Township

Dear Mr. West

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 8, 2013 meeting.

FINDINGS OF FACT

This application is for the construction of eight tennis courts at the Richard Stockton College located on the above referenced 1,586 acre lot in Galloway Township. The lot is located partially in a Pinelands Regional Growth Area (983 acres) and partially in a Pinelands Rural Development Area (603 acres). The proposed development is located entirely in a Pinelands Regional Growth Area.

On September 10, 2012, the Pinelands Commission approved a "Facilities Master Plan, The Richard Stockton College of New Jersey," dated April 2010. The Master Plan designated 586 acres into ten "development areas" where future development is proposed to occur. The Master Plan also designated 1,000 acres as "preserved areas." Preserved areas are wetlands, wetlands buffers and areas to be preserved to avoid irreversible adverse impacts on the survival of any threatened or endangered plant and animal species. The "preserved areas" are permanently protected from most types of development by a deed of conservation restriction. Types of development permitted in the "preserved areas" include forestry, low intensity recreational uses and fish and wildlife management. The development proposed in this application will be located in an area that was designated in the Master Plan as a "development area."



The proposed development will be primarily located within existing oak-pine wooded areas and partially within maintained grassed areas. The proposed development will result in the clearing of approximately 6.7 acres of forest. As required by the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-6.23 (a)), the proposed clearing and soil disturbance is limited to that which is necessary to accommodate the proposed development.

The Landscaping and Revegetation guidelines of the CMP recommend the use of grasses that are tolerant of droughty, nutrient poor conditions. In the areas between the proposed development and the existing forest, the application proposes to utilize Pinelands native grasses that meet this recommendation. In areas proposed to be maintained, such as the stormwater basins and areas located immediately adjacent to existing maintained grass areas, the application proposes to utilize non-native grasses.

There are freshwater wetlands located on and within 300 feet of the above referenced parcel. As required by the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-6.14), the proposed development will be located at least 300 feet from wetlands.

The applicant has demonstrated that the proposed development is consistent with the stormwater management standards of the CMP. The applicant will be constructing two stormwater infiltration basins and enlarging an existing stormwater infiltration basin.

As part of developing the Master Plan, the applicant completed comprehensive threatened and endangered plant and animal species surveys on the above referenced lot. The survey documented the presence of populations of threatened and endangered plant and animal species on the lot. As part of developing the Master Plan, the applicant demonstrated that the proposed development within the "development areas" would not result in an irreversible adverse impact on the survival of any local populations of threatened or endangered plant species or on habitat critical to the survival of a local population of threatened or endangered animal species.

The Pinelands Commission's cultural resource inventories did not provide sufficient evidence of a significant resource to require a full cultural resource survey.

PUBLIC COMMENT

The applicant has provided the requisite legal notices. Newspaper public notice was completed for the application on November 20, 2012. The application was designated as complete on the Commission's website on January 29, 2013. The Commission's public comment period closed on February 8, 2013. The Commission received one public comment regarding the application.

Public Comment:

Public Comment One: The commenter raised concerns regarding whether the proposed tennis courts were included in the Master Plan and whether the proposed tennis courts would replace buildings that were included on the Development Area Map included in the Master Plan.

Staff Response to Public Comment One: The Description of Development Areas (Exhibit 16), page 40, of the Master Plan specifically references the potential construction of six tennis courts within the Athletic Complex "development area." The Master Plan further indicates that a total

of 12,000 square feet of building(s) is proposed within the Athletic Complex “development area.” The Master Plan notes on page 5 that the building types and footprints within the proposed development areas are merely illustrative. This means that other types of development could occur within a “development area” even if that specific development is not identified in the Master Plan. Provided any proposed development is located within a “development area,” and not a “preserved area,” the development would be consistent with the Commission approved Master Plan.

Public Comment Two The commenter inquired whether Stockton College would insist on being allowed to construct development included in the Master Plan in addition to the proposed tennis courts and if the “development area” would need to expand because the tennis courts were included in a development area.

Staff Response to Public Comment Two The Master Plan, page 5, indicates that Stockton College retains the ability to propose development within development areas, other than what is shown for illustrative purposes. To the extent that Stockton College proposes development in a “development area” that was not previously identified or anticipated in the Master Plan, the College is making a decision that other development identified and anticipated in the Master Plan may not be accommodated in a designated “development area.”

Public Comment Three The commenter noted that the project area was assigned an Ecological Integrity Assessment (EIA) of 90 percent by the Pinelands Commission.

Staff Response to Public Comment Three In April 2008, the Commission staff prepared a report titled “An Ecological Integrity Assessment of the New Jersey Pinelands.” The purpose of the report was to evaluate the current ecological status of the entire Pinelands Area and to evaluate Pinelands Management Area and zoning designations, the development of habitat conservation plans, identify areas for acquisition and for the evaluation of wetland integrity within the Pinelands Area. The Stockton College Master Plan considered the EIA score of the entire 1,586 acre parcel as one of the many factors in designating “development areas” and “preserved areas”. However, the EIA score was not the sole determining factor in including or excluding a given area from a “development area” or a “preserved area”.

CONCLUSION

The proposed development is a permitted use in a Pinelands Regional Growth Area (N.J.A.C. 7:50-5.28(a)). If the following conditions are imposed, the proposed development will be consistent with the standards contained in Subchapters 5 & 6 of the CMP.

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of ten sheets, prepared by Marathon Engineering & Environmental Services, Inc. and dated as follows:

Sheets 1, 2, 7 & 8 – December 7, 2012

Sheets 3-6, 9 & 10 - December 7, 2012; revised January 23, 2013

2. The proposed development shall adhere to the “Vegetation” standards of the CMP.

3. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility
4. 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

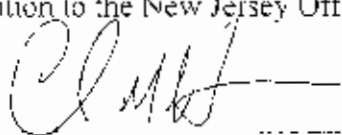
APPEAL

The CMP (N.J.A.C. 7:50-4.55) 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 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

- c. Secretary, Galloway Township Planning Board
Galloway Township Environmental Commission
Atlantic County Department of Regional Planning and Development
Jason Scullo



State of New Jersey
 THE PINELANDS COMMISSION
 PO Box 859
 NEW LISBON, NJ 08064
 (609) 891-7300
 www.nj.gov/pinelands



Chris Christie
 Governor

Kim Guadagno
 Lt. Governor

General Information: Info@njpines.state.nj.us
 Application Specific Information: ApplInfo@njpines.state.nj.us

Mark S. Lotbauer
 Chairman

Nancy Wittenberg
 Executive Director

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

February 14, 2013

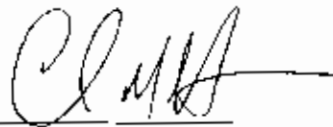
William Cromie, Township Manager
 Evesham Township
 984 Tuckerton Road
 Marlton, NJ 08053

Application Information:	App. No. 1987-0914.008 Area of Parcel: 9.34 Acres Block 41, Lot 12.01 Evesham Township
Proposed Development:	Replacement of a 228 +/- square foot existing spillway with a 1,265 +/- square foot spillway for Tomlinson Mill Road Dam.
Management Area:	Rural Development Area
Relevant Facts:	<ul style="list-style-type: none"> ▪ The plan, containing 15 sheets, was prepared by Remington, Vernick & Arango Engineers and dated as follows: Sheets 1, 2, 4, 6, 7 & 11-15 dated 9/11 Sheet 3 dated 7/12, revised to 11/12/12 Sheets 5 & 8 dated 9/11, revised to 11/12/12 Sheet 9 dated 9/11, revised to 1/29/13 Sheet 10 dated 9/11, revised to 8/12 ▪ A portion of the proposed development will occur outside of the Pinelands Area. • A threatened and endangered plant survey was performed for <i>Utricularia biflora</i> (Two-flowered bladderwort plant) and the survey results were negative. • The proposed development will disturb approximately 0.016 acre of wetlands in the Pinelands Area. The proposed wetlands disturbance is permitted by CMP standards and it requires a NJDEP Freshwater Wetlands Permit.
Public Notice:	<ul style="list-style-type: none"> • Public notice not required by the Pinelands Comprehensive Management Plan (CMP). On January 29, 2013, the application was designated as complete on the Commission's website. No public comments received through the close of public comment period on Feb. 8, 2013.



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Conclusion:	<ul style="list-style-type: none"> • The proposed development is consistent with the standards contained in the CMP.
Conditions:	<ul style="list-style-type: none"> • Prior to any construction of any portion of the proposed development which will result in disturbance of wetlands, the applicant shall obtain a Freshwater Wetlands Permit pursuant to the New Jersey Freshwater Wetlands Protection Act.
Recommendation:	<ul style="list-style-type: none"> • On behalf of the Commission's Executive Director, I recommend that the Pinelands Commission approve this application, with condition, at its March 8, 2013 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: Sec., Evesham Township Planning Board
 Burlington County Planning Board
 Frank Scney, Jr. Remington, Vernick & Arango Engineers
 Rhonda Ward



Chris Christie
Governor

Kim Guadagno
Lt. Governor

State of New Jersey

PINELANDS COMMISSION

P.O. Box 359

New Brunswick, NJ 08904

(609) 894-7300

www.nj.gov/pinelands



Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

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

REPORT ON AN APPLICATION FOR MAJOR PUBLIC DEVELOPMENT

February 11, 2013

Thomas Ballistreri, Mayor
Borough of Folsom
1700 12th Street
Folsom, NJ 08037

Re: Application No.: 2008-0305.001
Block 801, Lots 1 & 3
Borough of Folsom

Dear Mayor Ballistreri:

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 8, 2013 meeting.

FINDINGS OF FACT

This application is for the construction of a 57 stall parking lot on the above referenced 5.2 acre parcel in the Borough of Folsom. There is an existing recreational facility (baseball field, playground) located on the parcel. The proposed development is located in the Pinelands Village of Folsom.

On September 8, 2006, the Commission approved the realignment of the intersection of 13th Street and Mays Landing Road (App No. 1993-0894.002). That application proposed the removal of the existing pavement and the revegetation of the concerned area. The municipal parking lot proposed in the current application will be located primarily within the previously vacated 13th Street road right-of-way.

There are no wetlands located within 300 feet of the above referenced parcel.

The applicant has demonstrated that the proposed development is consistent with the stormwater management standards contained in the Pinelands Comprehensive Management Plan (CMP). To meet the stormwater management standards, the application proposes construction of two stormwater infiltration basins and an underground stormwater infiltration trench.



The proposed development will be located over existing maintained grassed areas. 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 CMP recommend the use of grasses that are tolerant of droughty, nutrient poor conditions. All areas to be revegetated are currently maintained grass

Based upon the existing conditions, the location of proposed development relative to existing development and a review of information available to the Commission staff, it was determined that a survey for the presence of threatened and endangered species of plants and animals was not required.

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

PUBLIC COMMENT

This applicant provided the requisite legal notices. Legal notice to required land owners within 200 feet of the above referenced parcel was completed on October 23, 2012. Newspaper public notice was completed for the application on October 22, 2012. The application was designated as complete on the Commission's website on January 23, 2013. The Commission's public comment period closed on February 8, 2013. No public comment regarding this application was submitted to the Pinelands Commission.

CONCLUSION

The proposed development is a permitted use in a Pinelands Village (N.J.A.C. 7:50-5.27(a)). If the following conditions are imposed, the proposed development will be consistent with the management standards contained in Subchapters 5 & 6 of the CMP and the Borough of Folsom's certified master plan and land use ordinance.

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

 Sheet 1 – March 2009
 Sheets 2 & 5 – December 12, 2008; revised March 16, 2009
 Sheets 3 & 4 – December 12, 2008; revised January 8, 2013
2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility
3. Any proposed development shall adhere to the "Vegetation" standards of the CMP. Where appropriate, the applicant is encouraged to utilize the following 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.

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.

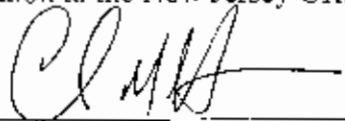
APPEAL

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

c: Secretary, Borough of Folsom Planning Board
Borough of Folsom Environmental Commission
Atlantic County Department of Regional Planning and Development
Vincent Polistina, P.E.



State of New Jersey
 THE PINELANDS COMMISSION
 PO Box 159
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Chris Christie
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 Lt. Governor

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

Mark S. Lohbauer
 Chairman

Nancy Wittenberg
 Executive Director

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

February 12, 2013

Stephen Stanziano
 Manchester Township Department of Public Works
 1 Colonial Drive
 Manchester, NJ 08759

Re Application #: 2012-0109.001
 New Jersey State Highway Route 70 &
 Manchester Boulevard
 Manchester Township

Dear Mr. Stanziano:

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 8, 2013 meeting.

FINDINGS OF FACT

This application is for the installation of approximately 7,500 linear feet of 16 inch potable water main within the Manchester Boulevard and State Highway Route 70 rights-of way. The proposed development is located in a Pinelands Forest Area.

The proposed potable water main will extend northeasterly from the intersection of Manchester Boulevard and Wranglebrook Road for approximately 3,500 linear feet along Manchester Boulevard to its intersection with State Highway Route 70. The proposed potable water main will then extend northeasterly along State Highway Rt. 70 for approximately 4,000 linear feet.

A potable water main is defined by the Pinelands Comprehensive Management Plan as public service infrastructure. The CMP permits public service infrastructure in a Pinelands Forest Area provided the proposed public service infrastructure is intended to primarily serve only the needs of the Pinelands. The CMP defines "Pinelands" as the Pinelands Area and the Pinelands National Reserve. The proposed potable water main is intended to provide potable water service to 2,405 age restricted housing units and a commercial retail plaza project proposed for the Heritage Mineral parcel in Manchester Township.



The portion of the Heritage Mineral parcel (Block 75.01, Lot 1) proposed for development is located in a Pinelands Regional Growth Area within the Pinelands National Reserve.

The proposed potable water main will be located under existing paved surfaces.

Based upon the existing conditions, the location of proposed development relative to existing development and a review of information available to the Commission staff, it was determined that a survey for the presence of threatened and endangered species of plants and animals was not required.

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

PUBLIC COMMENT

This applicant provided the requisite legal notice. Newspaper public notice was completed for the application on December 26, 2012. The application was designated as complete on the Commission's website on January 4, 2013. The Commission's public comment period closed on February 8, 2013. The Pinelands Commission received one public comment regarding the application.

Public Comment:

1. The Commenter raised concerns regarding whether the installation of the proposed potable water main would result in disturbance to the existing vegetated road shoulders and how any disturbed area would be revegetated

Staff Response: The applicant has indicated, in writing and on the submitted plan that no disturbance will occur within the vegetated shoulder of Manchester Boulevard and Route 70. In the event that the vegetated shoulder is disturbed, the Soil Erosion and Sediment Control Plan contains the New Jersey Department of Agriculture's latest Standards for Permanent Vegetative Cover for Soil Stabilization within the Pinelands National Reserve which includes a Pinelands Roadside Native Seed Mixture.

CONCLUSION

The proposed potable water main is a permitted use in a Pinelands Forest Area (N.J.A.C. 7:50-5.23(b)12). If the following conditions are imposed, the proposed development will be consistent with the management standards contained in Subchapters 5 & 6 of the CMP and Manchester Township's certified master plan and land use ordinance.

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of 16 sheets, prepared by the Manchester Township Department of Public Works, all sheets dated December 13, 2012.
2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.
3. Any proposed development shall adhere to the "Vegetation" standards of the CMP. Where appropriate, the applicant is encouraged to utilize the following 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.

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.

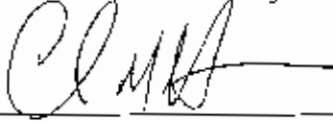
APPEAL

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

c: Secretary, Manchester Township Planning Board
Manchester Township Environmental Commission
Ocean County Planning Board



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-13- 09

TITLE: Issuing an Order to Certify Ordinance 2012-09. Amending Chapter 110 (Land Development) of the Code of Shamong Township

Commissioner McGlinchey moves and Commissioner Gralletta seconds the motion that:

WHEREAS, on October 6, 1989, the Pinelands Commission fully certified the Master Plan and Land Development Ordinance of Shamong Township; and

WHEREAS, Resolution #PC4-89-132 of the Pinelands Commission specified that any amendment to the Township's certified Master Plan and 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 #PC4-89-132 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 Shamong Township to assist the municipality in completing its response to the three sets of Comprehensive Management Plan amendments; and

WHEREAS, by email dated October 21, 2011, Shamong 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 October 24, 2011, the Executive Director notified the Township that an extension was granted until April 27, 2012; and

WHEREAS, by email dated July 25, 2012, Shamong Township notified the Commission that a further extension was needed to complete the ordinance adoption process; and

WHEREAS, by letter dated July 27, 2012, the Executive Director notified the Township that an extension was granted until December 31, 2012; and

WHEREAS, on December 18, 2012, Shamong Township adopted Ordinance 2012-09, amending Chapter 110 (Land Development) of the Township's Code in response to the forestry, wetlands management and residential clustering amendments to the Pinelands Comprehensive Management Plan; and

WHEREAS, the Pinelands Commission received a certified copy of Ordinance 2012-09 on January 3, 2013; and

WHEREAS, by letter dated January 7, 2013, the Executive Director notified the Township that Ordinance 2012-09 would require formal review and approval by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony on Ordinance 2012-09 was duly advertised, noticed and held on January 30, 2013 at the Richard J. Sullivan Center, 203C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

WHEREAS, the Executive Director has found that Ordinance 2012-09 sufficiently implements the cluster development, forestry and wetlands management amendments to the Comprehensive Management Plan; and

WHEREAS, the Executive Director has submitted a report to the Commission recommending issuance of an order to certify that Ordinance 2012-09, amending Chapter 110 (Land Development) of the Code of Shamong 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 2012-09 be certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning Ordinance 2012-09 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

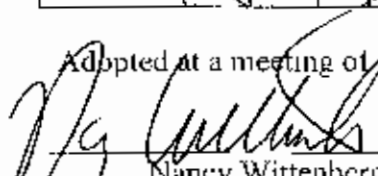
1. An Order is hereby issued to certify that Ordinance 2012-09, amending Chapter 110 (Land Development) of the Code of Shamong Township, is in conformance with the Pinelands Comprehensive Management Plan.
2. Any additional amendments to Shamong Township's certified Master Plan and Land Use Ordinances 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.

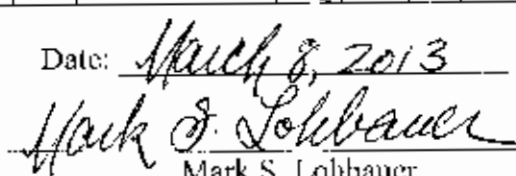
Record of Commission Votes

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

Adopted at a meeting of the Pinelands Commission

Date: March 8, 2013


 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
 www.nj.gov/pinelands



Chris Christie
 Governor

Kim Guadagno
 Lt. Governor

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

Mark S. Lobbaner
 Chairman

Nancy Wittenberg
 Executive Director

**REPORT ON ORDINANCE 2012-09, AMENDING CHAPTER 110
 (LAND DEVELOPMENT) OF THE CODE OF SHAMONG TOWNSHIP**

February 22, 2013

Shamong Township
 105 Willow Grove Road
 Shamong, NJ 08088

FINDINGS OF FACT

I. Background

The Township of Shamong is located in south-central Burlington County, in the midwestern sector of the Pinelands Area. Pinelands municipalities that abut Shamong Township include the Townships of Washington, Tabernacle and Medford in Burlington County, Waterford Township in Camden County and the Town of Hammonton in Atlantic County.

On October 6, 1989, the Pinelands Commission fully certified the Master Plan and Land Development Ordinance of Shamong 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 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 October 21, 2011, Shamong 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 October 24, 2011, the Executive Director notified the Township that an extension was granted until April 27, 2012.

By email dated July 25, 2012, Shamong Township notified the Commission that a further extension was needed to complete the ordinance adoption process. By letter dated July 27, 2012, the Executive Director notified the Township that an extension was granted until December 31, 2012.

On December 18, 2012, Shamong Township adopted Ordinance 2012-09, amending Chapter 110 (Land Development) 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 2012-09 on January 3, 2013.

By letter dated January 7, 2013, the Executive Director notified the Township that Ordinance 2012-09 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 2012-09, amending Chapter 110 (Land Development) of the Code of Shamong Township, introduced on November 13, 2012 and adopted on December 18, 2012.

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 2012-09 amends Chapter 110 (Land Development) 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 2012-09 further amends Chapter 110 by replacing Section 110-30C, 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 2012-09 are consistent with the March 2010 amendments to the Pinelands Comprehensive Management Plan.

Wetlands Management

Ordinance 2012-09 Chapter 110 by adding a definition of "wetlands management". Ordinance 2012-09 also revises Section 110-27 to indicate that wetlands management may be permitted in wetlands, subject to the standards of the Comprehensive Management Plan. In so doing, Ordinance 2012-09 sufficiently responds to the December 2009 Comprehensive Management Plan amendments relative to wetlands management.

Development Transfer Program

Ordinance 2012-09 amends Chapter 110 by revising the provisions of the Township's development transfer program to clarify the types of uses which may be permitted on noncontiguous lands used to meet density requirements. Specifically, Ordinance 2012-09 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 2012-09 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 2012-09 are consistent with the April 2009 amendments to the Pinelands Comprehensive Management Plan.

Cluster Development

Ordinance 2012-09 amends Chapter 110 by adding residential cluster development as a permitted use in the Township's Pinelands Forest Area Zone and Pinelands Rural Development Area zoning districts (RD-1, RD-2, RD-3 and RD-4). Furthermore, Ordinance 2012-09 indicates that whenever two or more residential units are proposed in these zoning districts, cluster development will be required. According to Section 110-110.4.A(6), clustering shall only be permitted on contiguous lands and any application for cluster development must include all contiguous lands in common ownership. These two provisions were included in Shamong Township's prior clustering standards and have been retained by Ordinance 2012-09. The ordinance then sets forth additional 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 2012-09, 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 2012-09 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 2012-09 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 2012-09 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 110 for the zoning district(s) in which the project will be located. For example, 29 units would be permitted on a 200 acre parcel located in the Township's RD-4 District, where the permitted density is one unit per 6.7 acres. Ordinance 2012-09 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 2012-09 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 2012-09 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 2012-09 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, Shamong 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 2012-09 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. Ordinance 2012-09 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 2012-09 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 2012-09 sufficiently respond to the April 2009, Comprehensive Management Plan amendments relative to cluster development.

Ordinance 2012-09 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 2012-09 amends Chapter 110 by replacing Section 110-30B, 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 2012-09 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 2012-09, amending Chapter 110 (Land Development) of the Code of Shamong 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 2012-09, amending Chapter 110 (Land Development) of the Code of Shamong Township, is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan. No special issues exist relative to the Federal Act. Therefore, this standard for certification is met.

13. Procedure to Resolve Intermunicipal Conflicts

Not applicable.

PUBLIC HEARING

A public hearing to receive testimony concerning Shamong Township's application for certification of Ordinance 2012-09 was duly advertised, noticed and held on January 30, 2013 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 no testimony was received.

Written comments were accepted through February 1, 2013 and were received from the following individuals, both of whom support certification of Ordinance 2012-09:

February 1, 2013 letter from Jaclyn Rhoads, Ph D., Director for Conservation Policy, Pinelands Preservation Alliance (see Exhibit #1)

February 1, 2013 letter from Fred Akers, Administrator, Great Egg Harbor Watershed Association & River Council (see Exhibit #2)

CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that Ordinance 2012-09 sufficiently implements the April 2009, December 2009 and March 2010 amendments to the Pinelands Comprehensive Management Plan related to cluster development, wetlands management and forestry. The Executive Director has further concluded that Ordinance 2012-09 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 2012-09 of Shamong Township.

SRG/CSH
Attachments



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

Executive Director's
Report on
Shamong Twp.
Ordinance 2012-09
February 22, 2012
Exhibit #1

February 1, 2013

Susan Grogan
NJ Pinelands Commission
15 Springfield Road
P.O. Box 359
New Lisbon, New Jersey 08064

Re: Shamong Township Cluster Ordinance – 2012-09

Dear Ms. Grogan:

Please find below Pinelands Preservation Alliance (PPA) comments in support of Shamong Township's cluster ordinance 2012-09. Pinelands Preservation Alliance (PPA) supports clustering development, but not the bonus densities unless specifically tied to aggregation of lots.

The CMP cluster development rules say developers of cluster developments must be given "bonus" units beyond what the local zoning currently allows. However, the CMP also expressly states that municipalities may propose alternative cluster rules that do not include a bonus density. The CMP rule that allows this flexibility to municipalities states as follows:

N.J.A.C. 7:50-3.39(a)2.ix:

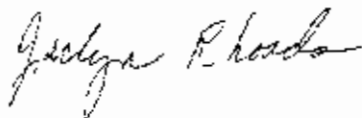
The Commission may certify municipal clustering ordinances that contain different clustering standards than those set forth in N.J.A.C. 7:50-5.19 (c) and (d) provided that those standards are supported through sound land use planning principles, are based upon local conditions or circumstances that warrant such changes and do not undermine the overall goals and objectives of the Forest and Rural Development Area clustering program set forth at N.J.A.C. 7:50-5.19 (c) and (d) ..

Shamong Township achieves a limit on bonus densities in two ways. First, the bonus densities are only applicable to the aggregation of lots after the date of passage of the clustering provisions in the CMP. Second, clustering is only permitted on contiguous lands and all contiguous lands in same ownership must be included in the application and plan. This last provision allows for true clustering of developments and the preservation of large tracts of intact forested lands rather than piecemeal clustering development that undermines the purpose and intent of the Pinelands Commission rules.

Sound planning principles support restricting the intensity of development and the number of additional units in environmentally intact and important areas of the Pinelands, because more units bring more disturbance and more pollutants from septic systems, lawns, and impervious surfaces. For this reason, PPA supports Shamong's cluster ordinance and the ability for other towns to include similar language in their clustering provisions.

Please contact me at 609-859-8860 x18 or by email at Jaelyn@pinelandsalliance.org with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jaelyn Rhoads".

Jaelyn Rhoads, Ph.D.
Director for Conservation Policy



**The Great Egg Harbor
Watershed Association &
River Council**

Fred Akers - Administrator
P.O. Box 109
Newtonville, NJ 08346
856-697-6114
Fred_akers@gchwa.org

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Upper Twp.

February 1, 2013

NJ Pinelands Commission
15 Springfield Road, P.O. Box 359
New Lisbon, New Jersey 08064

Executive Director's Report on
Shamong Twp. Ord #2012-09
February 22, 2013
Exhibit #2

RE: Shamong Township Ordinance 2012-09

Dear Pinelands Commission:

We believe that Shamong Township Ordinance 2012-09 is in conformance with the Pinelands Comprehensive Management Plan (CMP).

More specifically, we write in support of Section 110.110.4-A-(6) on page 19 which states: "With regard to any residential clustering application or proposal, clustering shall only be permitted on contiguous lands, as defined in § 110-1.04 and N.J.A.C. 7:50-2.11 and shall include the entirety of the property in the same ownership, such that all contiguous lands under common ownership must be included in the application and plan. Dedicated and public paved streets shall be deemed to make land non-contiguous for the purposes of this section.

We believe that this is very important language that closes several loop holes inherent in the Pinelands CMP, outlined as follows:

A. While the "clustering shall only be permitted on contiguous lands" language has already been instituted, the new definition here that "dedicated and public paved streets shall be deemed to make land non-contiguous for the purposes of this section" is particularly consistent and useful in protecting forested lands in mandatory clusters from being fragmented by roads.

The Commission has already certified a large mandatory cluster in Buena Vista Township where the open space is not contiguous and is substantially piecemeal and fragmented by planned paved roads. This new language in Shamong Township Ordinance 2012-09 provides an additional level of protection to prevent forest fragmentation and assure solid ecological contiguity of the open space areas to be protected. It should also be recognized that contiguous forests and fire safety for nearby residents may be in conflict.

(continued on next page)

B. The requirement that mandatory clustering in the Pinelands "shall include the entirety of the property in the same ownership, such that all contiguous lands under common ownership must be included in the application and plan", is necessary and important for at least two good reasons:

1. Without this provision, a developer can acquire contiguous parcels for development under the existing mandatory clustering language, and then remove some of those parcels from a single development to create two or more separate cluster developments with contiguous lots, similar to what is known as a "creeping sub-division". And since there is no minimum percentage requirement for the quantity of deed restricted open space in the CMI' mandatory clustering rules, a developer can reduce the deed restricted open space from the first development of contiguous lots, and then provide a similarly reduced deed restricted open space percentage to gain more units in the second development. A perfect example of this can be seen in the large mandatory cluster in Buena Vista Township that the Commission staff has already certified.

2. Similar to the CAFRA loopholes and other loopholes where 2 smaller developments can avoid the rules and regulations of a single larger development, allowing a developer to separate contiguous parcels into separate developments under the mandatory clustering rules in the Pinelands creates a way to avoid certain rules and regulations.

For example, a developer in Buena Vista Township accumulated substantial contiguous acreage in the Rural Development Area that yielded a mandatory clustering unit potential of over 100 units. But when he was told by the Commission staff that according to 7:50-6.124, all residential development of 100 dwelling units or more in high or extreme high hazard areas will have a 200-foot perimeter fuel break between all structures and the forest, he decided to have 2 cluster developments instead of one to avoid this requirement. The Commission staff has already certified the first development that was not required to use all the contiguous land, and this development only offers a 45% deed restricted open space set aside and reduced fire safety provisions in a high hazard area.

Final Comment:

While there are not yet any examples of successful mandatory cluster developments that we know of in the Pinelands, the one case that we have to study in Buena Vista Township has many very serious flaws. We did formally comment against requiring mandatory clustering in the Rural Development Area during its creation process. We still believe that it will not work to protect forested lands from fragmentation in the RDA, and will only serve to force large scattered and piecemeal clusters of development that will not perform as planned and degrade the Pinelands.

But it is encouraging to see that in the Municipal Mandatory Clustering Ordinance adoption process, many towns have offered some insightful and innovative ideas to better protect the Pinelands from mandatory clustering than the current language in the CMP.

We suggest to the Commission that if your intent is to protect the Pinelands through your mandatory clustering requirements, that you should listen to the towns and revise the CMP.

Respectfully,

Fred Akers

