



## State of New Jersey

THE PINELANDS COMMISSION

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

## MEMORANDUM

To: CMP Policy & Implementation Committee

From: Susan R. Grogan   
Acting Executive Director

Date: May 18, 2022

Subject: May 27, 2022 Committee meeting

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Enclosed please find the agenda for the Committee's upcoming meeting on May 27, 2022. We have also enclosed the following:

- The minutes from the Committee's April 29, 2022, meeting;
- A memorandum related to Stockton University's 2020 Facilities Master Plan, and a draft map provided by the University. For background information, we have also enclosed a copy of the Executive Director's report on the University's 2010 Plan. Please use the following link to access the University's 2020 Facilities Master Plan:  
<https://stockton.edu/facilities-construction/documents/master-plan-2020.pdf>

You may also wish to review the Commission's 2015 Memorandum of Agreement with the University, which is posted on our website:

<https://www.nj.gov/pinelands/infor/moa/State%20Agencies/Stockton%20College/Stockton%20MOA%20final%2011-5-14.pdf>

Representatives of Stockton University will be attending the Committee meeting to make a presentation.

- A draft resolution and rule proposal for the Kirkwood-Cohansey water management CMP amendments; and
- A copy of a petition to amend the Pinelands Comprehensive Management Plan, the Highlands Council Regional Master Plan and New Jersey Department of Environmental Protection (NJDEP) regulations submitted by Bill Wolfe via email on March 9, 2022. Also enclosed are the notices of denial recently filed with the Office of Administrative Law by NJDEP and the

Highlands Council. As of the date of this memorandum, Mr. Wolfe's petition remains incomplete pursuant to CMP requirements.

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

[www.youtube.com/c/PinelandsCommission](http://www.youtube.com/c/PinelandsCommission)



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## CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

May 27, 2022 – 9:30 a.m.

**This meeting will be held in-person and virtually**

Richard J. Sullivan Center for Environmental Policy and Education  
Terrence D. Moore Conference Room  
15C Springfield Road  
New Lisbon, New Jersey

Watch the meeting on the Pinelands Commission YouTube channel:

[www.youtube.com/c/PinelandsCommission](https://www.youtube.com/c/PinelandsCommission)

To Provide Public Comment, Please Dial: 1-929-205-6099 Meeting ID: 822 7489 6113

### Agenda

1. Call to Order
2. Adoption of minutes from the April 29, 2022 CMP Policy & Implementation Committee meeting
3. Stockton University 2020 Facilities Master Plan
  - Presentation by Stockton University representatives
  - Overview of 2010 Master Plan, 2015 Memorandum of Agreement and Deed of Conservation Restriction
4. Kirkwood-Cohansey (Water Management) amendments
  - Review of final amendments and recommendation of formal rule proposal
5. Overview and update on CMP amendment petition submitted by Bill Wolfe
6. Public Comment

**CMP POLICY & IMPLEMENTATION COMMITTEE MEETING**

This meeting was conducted both remotely and in-person  
The public could view/comment through Pinelands Commission YouTube link:

<https://www.youtube.com/watch?v=My3rrm77nf8>

Meeting ID: 821 0187 6065

New Lisbon, New Jersey

**April 29, 2022 - 9:30 a.m.**

**Members in Attendance** – Alan W. Avery Jr., Jerome H. Irick, Mark Lohbauer, Laura E. Matos

**Members Absent** – Ed Lloyd

**Other Commissioners in Attendance** – Theresa Lettman, Davon McCurry

**Commission Staff in Attendance (TDM Room)** – Ernest Deman, Katie Elliot, April Field, Susan R. Grogan, Charles Horner, Brad Lanute, Paul Leakan, Jessica Lynch, Trent Maxwell, Stacey Roth. Also in attendance was Janice Venables from the Governor’s Authorities Unit

**1. Call to Order**

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

**2. Adoption of the Minutes from the March 25, 2022, P&I Committee Meeting**

Chair Matos asked for a motion to adopt the minutes from the March 25, 2022, meeting of the CMP Policy & Implementation Committee. Commissioner Lohbauer made the motion to adopt the minutes. The motion was seconded by Commissioner Irick. All voted in favor.

**3. Winslow Township’s 2019 Master Plan Reexamination Report Phase II, Master Plan Reexamination Report Addenda and Ordinance O-2022-004, amending Chapter 296 (Zoning Within Pinelands) of the Township’s Code by implementing zoning changes along Route 73 within the Regional Growth Area**

Planning Specialist Brad Lanute presented the staff’s findings regarding the Township’s submitted master plan and ordinance. Mr. Lanute described the Township’s multi-year planning process to rezone the New Jersey Route 73 corridor in Winslow’s Regional Growth Area (RGA). For decades the township has desired to develop mixed-use and commercial development along the highway.

In April 2018, the Township presented the findings and recommendations from its master plan reexamination process to the P&I Committee. Following a favorable reception from the Committee, Winslow officials continued to finalize their master plan and zoning amendments. This culminated in the adoption of the 2019 Master Plan Reexamination Report and Ordinance O-2022-004.

Mr. Lanute provided a detailed review of the various zoning changes implemented by the ordinance, referring to different displayed maps and summary charts (see attached). Mr. Lanute clarified that none of the zoning changes necessitated any changes to Pinelands management area boundaries.

Mr. Lanute stated that during the Township's 2002 effort to rezone this area, the Commission required various growth controls to ensure that the permitted development potential did not adversely impact the Kirkwood-Cohansey (K-C) aquifer. In the following years, the Commission, the Township, and Camden County MUA agreed to a Memorandum of Understanding (MOU) that was most recently amended in 2017 to protect the K-C aquifer and address export of water from the Pinelands.

Importantly, the MOU caps the Township's withdrawals from K-C wells and requires the Township to acquire water from alternative sources once the limit on withdrawals has been reached. Through the MOU, the Commission receives annual reports from Winslow on well withdrawals and has received the most recent report through February 2022. The Township is still below the agreed-upon limit. With the resource protections provided by the MOU in place, the Township is proposing greater intensity to both residential and non-residential uses in its RGA. Mr. Lanute reviewed the various residential and non-residential development standards adopted by the ordinance, referencing various summary charts (see attached).

Regarding non-residential intensity, the Township opted to eliminate the existing bonus floor-area ratio (FAR) standards, which required the use of Pinelands Development Credits (PDCs) to achieve bonus FAR, in favor of a single maximum FAR. The ordinance also provides an increase in the maximum FAR for the Major Commercial Zone.

In terms of residential development, the Township opted to eliminate the traditional base density/bonus density PDC structure in favor of a 25% mandatory PDC requirement for all its residential RGA zones.

Mr. Lanute summarized the changes to the maximum permitted density in each of the residential RGA zones as well as the impacts on the Township's residential zoning capacity in its RGA. Mr. Lanute stated that the ordinance would lead to an increase in overall residential zoning capacity by about 1,200 units, and that the average density for developable lands in Winslow's RGA would increase from 1.9 to 2.6 du/acre. This is greater than the 1.125 du/acre prescribed for Winslow Township's RGA by the CMP.

Mr. Lanute summarized how this elevated level of permitted density met the CMP's criteria for zoning at higher densities in the RGA. He discussed the suitability of lands in question to be

developed at higher densities, including the availability of sewer and water, the existing MOU and the necessary accommodation of PDCs.

He reiterated that the Township is adopting the 25% mandatory PDC requirement. Based on the projected residential zoning capacity of the Township's RGA, it will provide an opportunity for use of about 1,087 rights, and these would be guaranteed if any residential units are developed in

these zones. Under the minimum prescribed densities for Winslow's RGA, the Township would be required to zone for approximately 1,100 units and provide an opportunity for use of 949 rights.

Mr. Lanute stated that two public hearings were held on these matters. No public comment was provided at either public hearing nor were any written comments received. In conclusion, Commission staff finds that the Winslow Township 2019 Master Plan Reexamination Report and Ordinance O-2022-004 are consistent with CMP.

Mr. Lanute asked for any questions from the Commissioners and asked the Committee to make a recommendation to the full Commission on whether to certify Winslow Township's master plan and ordinance.

Commissioner Lohbauer noted an area bordering Route 73 was zoned residential (see Route 73 Rezoning Segment 2) and asked why the Township is interested in having the residential zone border Route 73 in that area.

Winslow Township Administrator Joe Gallagher said that he was not sure why this area was included in a residential zone but speculated that it may be because of existing residential development.

Ms. Grogan said it is also possible that there are approved residential projects in the zone, and they are not visible on the aerial image because they have not been built yet. She said they may be in various stages of approval, though it is hard to know exactly. There are applications with approvals issued and others in progress in various portions of the Township's RGA.

Commissioner Lohbauer said he appreciated Ms. Grogan's input and commented on a clear trend in recent years. Over time, the trend has been for commercial development to march southward along Route 73. He has witnessed the development throughout his lifetime and remembers when former orchards were cleared for major commerce and box store development.

Commissioner Lohbauer asked what sort of uses would be permitted in the Major Commercial Zone. Mr. Lanute said he does not believe the ordinance changes any uses permitted in the Major Commercial Zone. Commissioner Lohbauer said that imposing new limits on FAR would probably limit the type of commercial development that could occur there.

Mr. Lanute said the Township is removing base-density/bonus-density FAR, which should remove one impediment to commercial development, and the Township has increased the permitted FAR slightly. Mr. Lanute restated the permitted uses in the zone, which include office

buildings, research facilities, hospitals, healthcare facilities, hotels, motels, and retail services. The Township does have restaurants and grocery stores along the stretch. Mr. Lanute said the list of retail and personal services is quite long.

Commissioner Lohbauer assumed that supermarkets would be allowed in this district, which would be necessary to accommodate the added development. Lastly, he asked where Winslow

Township will draw water once it reaches its K-C capacity limit. Mr. Lanute said that Winslow has an existing interconnection with New Jersey American Water, and the Township already draws some of its water from there. Mr. Lanute noted that he does not think the MOU places any stipulations on where the Township can draw its water after exhausting its K-C wells.

Ms. Grogan said the MOU is very detailed but does not require Winslow to draw additional water from a specific source once the thresholds on K-C aquifer withdrawals are reached. She said that since the Township already received some of its water from New Jersey American Water, it was assumed that the Township would likely continue to draw from them in the future. She said the Commission will be monitoring their usage carefully and that they have a sizable RGA and commercial zone. At some point, they will reach the threshold and both the Commission and Winslow Township should be planning for that.

Commissioner Lohbauer said that all the development is appropriate for the area but wants to make sure that by certifying this ordinance the Commission is not sending a signal to Winslow Township that the Commission would relax the MOU requirements to facilitate the permitted development.

Commissioner Irick said he was not part of the 2018 study, and commended Commission staff and Winslow for working diligently towards this plan. He stated that he has expressed his concerns about recent trends in municipal ordinances that promote redevelopment, affordable housing, and super housing densities in RGAs. He said that this ordinance is no exception. This ordinance increases the housing units by 1,203 units and increases the density to 2.6 du/acre versus the CMP's 1.125 du/acre. He said that he fails to see how this would not create a negative effect on the Pinelands, mentioning such impacts as traffic.

Ms. Grogan responded by saying that development impacts like traffic are not directly addressed by Commission rules. She continued that Winslow's zoning plan does not expand the RGA; it simply shifts zoning within the area. Although zoning capacity has been increased, these numbers are largely theoretical. The Commission does not expect that every unit in the RGA will be developed, and many project proposals are approved at lower densities than what is permitted in the zoning ordinance.

She also said one of the things Winslow has done with its residential zone is to shift the number of vacant acres from the lower density zone to the higher density zone. This increases the potential number of units but also provides more flexibility and additional housing types that can be developed. This is contrasted with the low-density zone that only permits single family development, which often encourages sprawl.

In this ordinance, Winslow is taking portions of the low-density zone and placing them into the higher density zone that allows for more clustering and different residential development types. Ms. Grogan said this is a more efficient use of the land than zoning it for lower density development. Although the number of housing units will increase, focusing the development along Route 73 will create a better pattern of development and exert less of an impact on the RGA.

Commissioner Irick said he appreciated the effort to consolidate and cluster the development but stated his concern that the increase in units is significant. It is not a 10% or 20% increase, and he reiterated he is concerned about that.

Commissioner Avery asked how many units would require PDCs in the hypothetical maximum buildout. Mr. Lanute said he believed 25% would require PDCs. Ms. Grogan said the number of PDC opportunities would increase significantly based on the ordinance and it is guaranteed that many PDCs would be used. She said that while this does not address the impacts of development in the RGA, the redemption of PDCs preserves land elsewhere in the Pinelands Area and could potentially preserve land in Winslow Township's Agricultural Production Area (APA).

Commissioner Avery said that from the Pinelands perspective, it would result in the permanent protection of a significant amount of land if PDCs are used to achieve the new densities. Ms. Grogan concurred and reiterated that the 25% PDC requirement would be mandatory.

Commissioner Avery asked if the hypothetical building would take into consideration all the CMP's environmental standards that would come into play for individual permit applications or if it is just gross.

Ms. Grogan replied that it is a theoretical zoning capacity and not a lot-by-lot analysis that considers wetlands buffers or how the lots would be clustered. She said the number of units would be lower than the proposal in real cases. She continued that there are no affordable housing requirements in the plan, and that Winslow is already meeting its affordable housing requirements elsewhere. As far as PDC requirements are concerned, the 25% requirement would apply to all projects in the RGA and serve as a huge benefit to the PDC program.

Ms. Grogan asked the Committee to recommend that the full Commission certify the Township's master plan reexamination report and implementing ordinance at the meeting in May.

Chair Matos asked for a motion to recommend that the full Commission certify Winslow Township's master plan reexamination report and implementing ordinance. Commissioner Lohbauer made the motion and Commissioner Avery seconded. Commissioners Matos, Lohbauer, and Avery voted in favor. Commissioner Irick abstained from the vote in recognition of the staff's hard work on this effort.

#### **4. Continued Discussion of CMP Amendments Schedule and Priorities**

Ms. Grogan presented a slideshow on potential CMP amendments compiled over the years. She recapped the status of the amendments, noting staff and Commissioners took the opportunity to rank them last year. She indicated that only a limited number of Commissioners participated in the ranking.

Ms. Grogan said that while there was consensus on the top three amendments, other amendments did not receive general support. She continued to say that the P&I Committee endorsed continued work by staff on several of the amendments in fall 2021. The Commission decided to move forward on three amendments: stormwater management rules, the Kirkwood-Cohansey water supply and management rules presented in March, and the electric transmission line right-of-way maintenance pilot program that will be presented in the next few months.

At the November P&I Committee meeting, staff recommended that amendment prioritizations be postponed until the spring. Ms. Grogan described how new members were expected to join the Commission by spring. She also indicated that this timing would coincide better with work plans and budgeting for upcoming Fiscal Year 2023 (FY23).

Ms. Grogan continued that it is now time to pick up the amendments again, with the hope of identifying amendments to work on in the future. This would allow the staff time to develop work plans and budget items for the Commission to consider during the fiscal year budget process.

Ms. Grogan transitioned to a slide depicting the progress of current rulemaking efforts for the three CMP amendments that were prioritized last November. The stormwater management rules are nearing completion, having gone into effect in January. As previously mentioned, Kirkwood-Cohansey water supply rules were presented to the P&I Committee at the March meeting, and Stacey Roth and Marci Green are preparing the right-of-way rules for an upcoming meeting.

Ms. Grogan moved on to FY23 CMP amendment considerations. She said she updated and distributed the full list of CMP amendments to the P&I Committee and sent the document out to the rest of the Commissioners separately. Ms. Grogan wanted to let the other Commissioners know that the discussion was occurring and encouraged them to vote or participate in the meeting if they wish. Staff hopes to gather feedback and recommendations from the Committee and any other Commissioners who would like to offer their priorities. They will then interpolate the input and turn it into a work plan for FY23 and formulate a budget by the August meeting.

Ms. Grogan shared her own recommendations for Committee consideration for the next fiscal year. Some of these amendments are written and ready for implementation, while others need more time but are close to fruition. She first listed clarifications and codifications to the PDC rules as a recommended priority.

Ms. Grogan then turned attention to the Black Run watershed CMP Management Area changes. She detailed the length of time the changes have been considered, the effort of Evesham Township to enact recommended zoning changes, and the appropriateness of moving forward with drafted CMP amendments to complement Evesham Township's efforts. These are the management area changes that were recommended in the Southern Medford/Evesham Plan

adopted in 2007. This amendment would change the Rural Development Area (RDA) designation to Forest Area (FA) to recognize the importance of protecting the Black Run in Evesham. Ms. Grogan noted that staff recently gave a presentation to Evesham representatives and received vocal support from the Township.

Next, Ms. Grogan discussed the gap rule permitting process. This is to amend the CMP to include an application and approval process largely for public service infrastructure projects that do not receive municipal approval but are submitted by private entities. There is no process in the CMP to address such applications. Ms. Grogan said the Commission developed a process to use for some applications in the past but has not formally amended the CMP to incorporate the process. She continued that it should be addressed soon before the court orders the Commission to devise a process for a second time.

Ms. Grogan next recommended moving forward with CMP amendments to clarify and revise the existing FA and RDA cluster development standards. A full evaluation of these standards was completed in recent years.

Ms. Grogan also mentioned amendments dealing with expiration dates for old waivers and Certificates of Filing. This is another amendment that has already been written but has not yet been codified into the CMP. Expiration dates for Certificates of Filing are a recurring issue, whereby new property owners can use valid certificates that predate changes in rules and zoning. There are other expiration dates that the Commission should consider for other documents, but Ms. Grogan stated it would be easiest to do this one quickly.

Finally, Director Grogan noted that amendments for increased fees for applications involving CMP violations are also drafted and could be moved quickly towards adoption.

Ms. Grogan then listed her recommendations for the staff. She suggested preparation of a work plan for the Climate Committee for FY23 to identify specific climate change-related CMP amendments to pursue. This could include solar facilities, management area boundary changes, clearing limitations, etc. She said the staff should also monitor the rulemaking activities of other state agencies, like initiatives undertaken by DEP and BPU. She said she would like to see what policies other state agencies are adopting before the Commission drafts its own rules.

Ms. Grogan said she would like to have the P&I Committee or even the full Commission identify and prioritize additional CMP amendments to research and draft over the next three fiscal years. Lastly, she thinks the work plans for these amendments should be prepared by the August Commission meeting.

Commissioner Lohbauer thanked Ms. Grogan for putting the presentation together and said that all the rule changes recommended by the staff are needed. He continued that it was difficult to rank one priority above any of the others. To him, prioritization is more a question of what can staff accomplish within a given amount of time. He sees that as more of a decision for Ms. Grogan.

Commissioner Lohbauer said he would normally bristle at the idea of waiting until FY23 to develop a climate change work plan. He then mentioned that FY23 is only a few months away and commented that it was a reasonable suggestion. He said that the Commission should come up with a draft rule as soon as possible, and that the Climate Committee's purpose (in addition to developing policy that can be recommended to the full Commission) is to recommend draft rule changes to the CMP. This is so that the CMP can include climate as a decision-making rationale that Commissioners can utilize as a basis for decision-making in applications and budgetary considerations.

Commissioner Lohbauer continued that climate touches on many parts of the Commission's work, whether it is forestry, heating and cooling in buildings, or several other things. He stated climate considerations are necessary as a frame-of-reference for decision-making so that the public and applicants know that the Commission is considering those impacts whenever an application is coming before the Committee. He said it is difficult to do good and effective work for climate but supports Ms. Grogan's suggestion to focus on this work plan in FY23.

Ms. Grogan also mentioned that the Climate Committee meeting is May 27, which is coming soon.

Commissioner Irick commended Ms. Grogan and Commission staff, saying the report was outstanding. He said his opinion was to keep moving with the three CMP amendments that are already in progress. Further, there were several amendments sent to the previous governor's office that did not receive approval, and he urged the Commission staff to move forward with written amendments for the new administration to review. He also said other easy amendments could be made to the CMP, like increased fees for expired applications and increased fees that demand a significant amount of staff time.

Commissioner Irick mentioned that he and Commissioner Lloyd felt it would be simple to repeal Section 4.1 paragraphs five and six and enhance the definitions in section 4.1 that pertain to Horizontal Directional Drilling (HDD). Ms. Grogan said the rules that Commissioner Irick mentioned that did not receive the governor's approval are included on the recommended list of amendments to proceed with.

Commissioner Irick asked if the Commission can increase fees without going to the governor's office. Ms. Grogan replied that fee increases require rulemaking and approval of the governor's office. However, staff can require escrow payments for applications that require significant staff review time or complex issues necessitating outside expertise. She suggested that greater use of these escrow provisions may be appropriate. Commissioner Irick said he would support both increasing fees and escrow payments.

Commissioner Lohbauer said he agreed with Commissioners Irick and Lloyd with new language on HDD, referencing the water main application that was addressed by the last full Commission meeting. He said it is clear the Commission needs to do something to tighten the agency's definition of HDD and set stricter standards for overseeing it.

Commissioner Lettman asked Ms. Grogan why the sixth item on the list of potential CMP amendments was not included in her recommendations. This referred to Offroad Recreational Vehicle (ORV) regulations. She asked if the DEP is moving forward with addressing it, why has the Commission not moved forward with its language on dealing with ORV usage.

Ms. Grogan said staff previously drafted amendments to deal with the application process only and did not address the larger issue of standards or anything substantive. The draft amendments proposed an application process for Enduro events, for when they request approval for the routes of events. The CMP does not currently contain a formal process for such applications. She continued that staff met with representatives of the Enduro community multiple times but were unable to reach an agreement on a workable application process. Recognizing that an application process for Enduro events was not going to address the larger issues surrounding ORV use in the Pinelands Area, staff set those amendments aside.

Commissioner Lettman said it was mentioned in the 2014 Plan Review, and that leaving it out as an amendment makes the public feel that it is not important, and she does not want to give that impression. She would like to see what is going on and what pieces are involved, because she missed that part of the process.

Commissioner Avery said that while he sincerely hopes there are no more applications exempt from municipal review, it would be an embarrassment if the Commission does not address the gap rule after the courts have ruled on it and the staff went through such anguish to create a process that the court found suitable. He said it seems relatively simple to fix the issue, since it does not require towns to amend their ordinances on solar and wind power applications. He would rather have a process in place that the courts approve of before applications for projects like solar and wind power come before the Commission.

Commissioner Lohbauer said he agreed with Commissioner Avery.

Commissioner Avery said he would very much like the Commission to get into the specifics of the climate change regulations that need to be done, whether it is solar, connecting solar to the grid, or clearing requirements. The BPU has taken the lead from DEP, and their regulations are not as specific as DEP. He agreed with the staff rationale that the Commission should be consistent with other agencies and their rule-making processes.

As chairman of the Personnel and Budget (P&B) Committee, Commissioner Avery said he has been talking with staff about the upcoming budget and energy audit that was done on facilities at the Commission's campus. The Commission must see what it can afford in order to finish projects that would reduce the agency's carbon footprint. The Commission must fund its own building improvements. As such, it needs to prioritize what it can do with the limited funds and assess what else can be done to its physical assets that extend beyond the audit recommendations, such as electric vehicles. He said the Commission will likely need replacement vehicles in FY23.

Commissioner Avery asked Ms. Grogan if the Commission must pay for its own vehicles. Ms. Grogan said that was correct.

He said the Commission needs to figure out how it can acquire a hybrid vehicle that is appropriate for routine and field use. The resolution that deals with climate change specifies that physical improvements at the Commission's offices are sent to P&B. Commissioner Avery said that Commissioner Lohbauer is a member of the P&B Committee and that his input will be essential as well. He said he would also like to tie the energy audit recommendations into the budget process and discuss what the Commission can afford to do with its own funding.

He continued that he understood concerns about specifics like exemptions and does not know if the Commission unanimously agrees with making wholesale changes there. He agreed with resurrecting amendments that were not approved by the governor previously, and that the sooner they are sent to the governor the better. He said that Ms. Grogan made a good point on escrow payments, and that the Commission should be careful on where they hire outside consultants to review a more complex application. His understanding was that this was for extraordinary cases that take up a significant amount of staff time.

Commissioner Irick said he does not fully understand the issues regarding the gap ruling, and that he agrees with Commissioner Avery that the Commission should look at that. There may be specific language that mandates all applications not requiring municipal approval be reviewed by the Commission. He said while there is not a full Commission consensus on HDD, he feels that minor changes to section 4.1 could be accomplished simply without altering procedures for soil testing or grout pressures. Some changes to section 4.1 need to be made.

Commissioner Avery responded that the Commission has only had limited input on HDD, and that it is a construction technique that is utilized by a variety of private and public entities. It is important to gauge stakeholder opinion before the Commission passes rule language banning it.

Commissioner Irick said eliminating the two exemptions should not be an issue and changing some of the language regarding distribution lines should not be contentious.

Commissioner Lohbauer said he is not calling for a ban on HDD, but merely asking for more oversight of the projects. The Commission needs the opportunity to stop and review projects once spills happen, rather than finding out retroactively. He said he understands that it is universally utilized.

Chair Matos said she agreed with the staff suggestions on moving forward with CMP amendments. She asked if it was necessary to hold a vote. Ms. Grogan said she would take input from the Committee today and prepare work plans for the staff and the Commission. She said there is a full agenda for the May meeting, and that work plans would likely be laid out at the June committee meeting.

Chair Matos thanked Ms. Grogan and the Commission staff, saying they took a thoughtful approach and made sure every angle was covered. She thanked everyone for their dedication and work.

Commissioner Avery mentioned the Black Run plan, asking if management area changes to the CMP would be necessary. Ms. Grogan said this is not something the Commission does often, but

it can happen when there is a large area that has been identified for additional protection. She referenced an example in Lacey and Ocean Townships in Ocean County, where about 4,000 acres were downzoned by the Commission from the Rural Development Area (RDA) to the Forest Area (FA). It was so large an area that it was not appropriate for the communities to address through their zoning. Similarly, in Evesham there is an area of similar size that would be downzoned from RDA to FA by the Commission and the community would have to respond via zoning ordinance.

Commissioner Avery asked if this would generate Department of Interior review and approval. Ms. Grogan said any amendment of the CMP must be filed with the Secretary of the Interior once it is adopted by the Commission. There are no other special requirements beyond that. Commissioner Avery said he suspected a downzoning of such magnitude would be viewed more favorably than an upzoning.

Ms. Grogan mentioned amendments that were made to the CMP several years ago to provide guidelines for management changes and how they could be accomplished in an appropriate fashion. There is a list of criteria that guides the Commission's determination as to whether a management area change is so great that it requires changes to the land capability map through rulemaking or if it is something the municipality can implement through zoning. In most cases, the municipality can implement it on its own and request Commission certification.

## **5. Public Comment**

Fred Akers of the Great Egg Harbor Watershed Association provided two comments. He first addressed Horizontal Directional Drilling (HDD), saying he learned that the National Park Service has conducted extensive research on the impacts of HDD on wild and scenic rivers. They published a handbook last year that included language favoring HDD as a preferred method to cross rivers with infrastructure rather than ditching straight through them. Mr. Akers mentioned that he sent this language to the Commission as a possible example for why it could be supported and how it could be monitored.

Mr. Akers expressed his surprise regarding NJDEP's proposed revisions of the Water Supply Master Plan. He said that he hoped regional planning was more included in the Water Supply Master Plan this time around. His understanding is that the DEP was working to incorporate regional planning considerations into a new plan due out in late 2022 or early 2023, and Mr. Akers said he hopes the Commission is included in the deliberation process.

Rhyan Grech of the Pinelands Preservation Alliance (PPA) commented on the testing of new technology during the meeting, saying it went well from the public's perspective. She said she had some issues hearing Director Grogan at certain points and mentioned that Commissioner attendance was never taken. Members of the public cannot see which Commissioners are present unless one is speaking.

Ms. Grech thanked the Commission for the thoughtful discussion about the CMP amendments, and encouraged the Commission not to wait on DEP, BPU, and other state agencies to move forward on climate policy. She thinks this is an opportunity for the Commission to distinguish itself amongst peer agencies and exercise its responsibility over the Pinelands National Reserve to demonstrate leadership and capability.

Ms. Grech continued that the PPA supports the Black Run headwaters project and expressed belief that the Township and the landowner all wish to see that area protected.

Ms. Grech commented on the gap rule process. She encouraged the Commission to replace the municipal planning board step with its own hearing process that allows expert testimony and public comment.

Ms. Grech further commented on HDD amendments. She states that a DEP Science Advisory Board report recommends that HDD be regulated based on high frequency of inadvertent returns in the Pinelands National Reserve and overall. She said CMP amendments could rectify the problem with HDD inadvertent returns on the Southern New Jersey Reliability pipeline. She said the report makes recommendations on using HDD in sandy soils and recommends specific construction and pre-construction planning.

Chair Matos closed public comment at 11:13 am.

Commissioner Irick asked that the NJDEP Science Advisory Board report be distributed to the Committee. Director Grogan indicated that the report or a link to the report would be distributed.

Commissioner Lohbauer commented that he wished to recognize DEP Assistant Commissioner Cecil, and DEP staff member, Robin Madden, for their work on forestry and off-road vehicle damage. He expressed gratitude for being included in a recent meeting to discuss the topic. He further noted that the DEP has an initiative to plant Atlantic white cedar in the Pinelands. He indicated that photographer, Al Horner, recommends and that he supports the restoration of the One Quarter Mile site by planting Atlantic white cedar.

Chair Matos requested a motion to end the meeting. A motion was made by Commissioner Lohbauer and moved and seconded by Commissioner Avery.

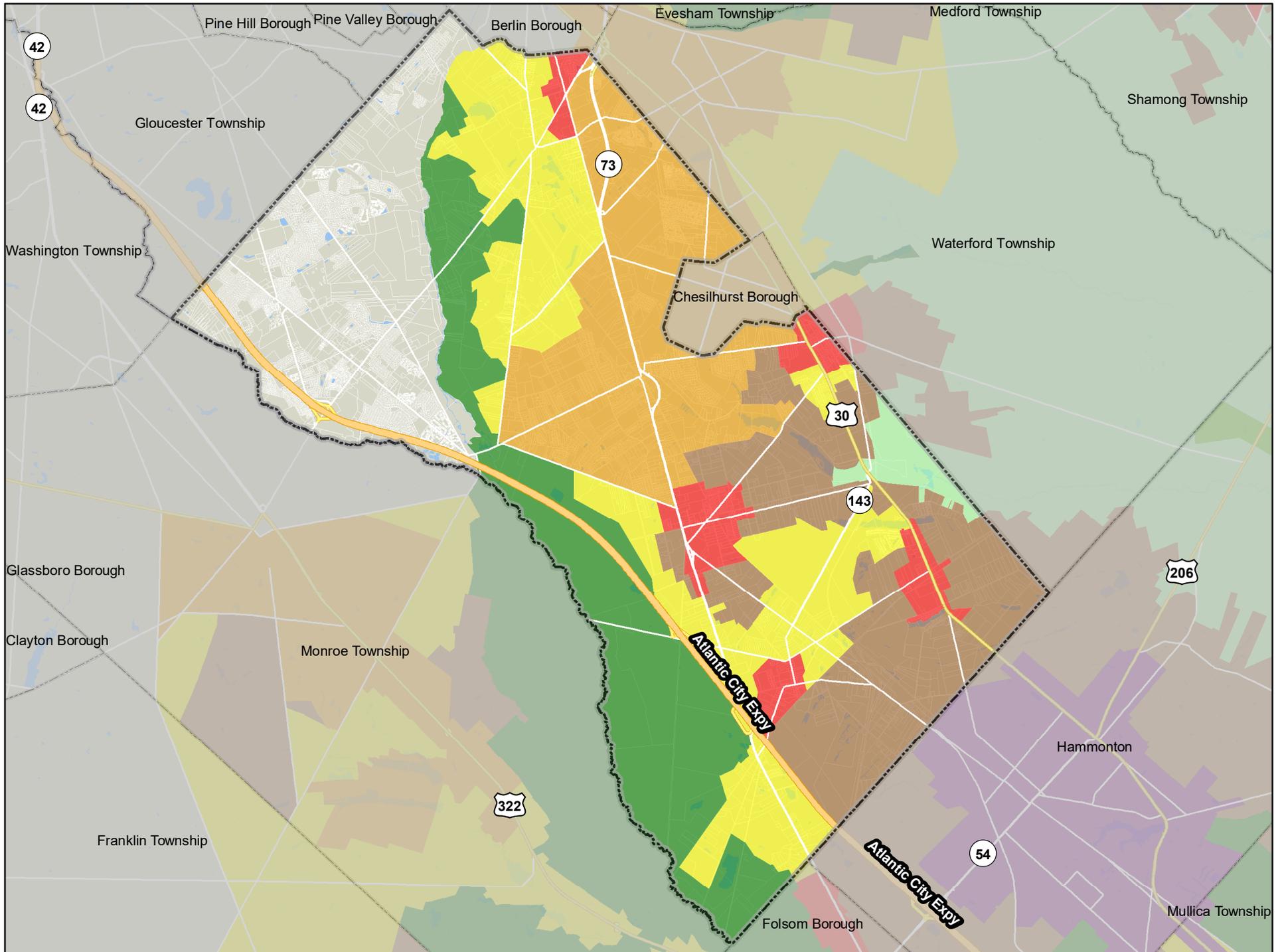
The meeting was adjourned at 11:18 am.

Certified as true and correct:



Trent Maxwell, Assistant Technical Planner

Date: May 13, 2022



Pine Hill Borough

Pine Valley Borough

Berlin Borough

Evesham Township

Medford Township

Shamong Township

Gloucester Township

73

Waterford Township

Washington Township

Chesilhurst Borough

30

143

Glassboro Borough

206

Clayton Borough

Monroe Township

Atlantic City Expy

Hammonton

Franklin Township

322

Atlantic City Expy

54

Folsom Borough

Mullica Township

# Winslow Township Ordinance O-2022-004

## Route 73 Rezoning Segment 1

### Pinelands Management Areas

- Rural Development Area
- Regional Growth Area
- Pinelands Village

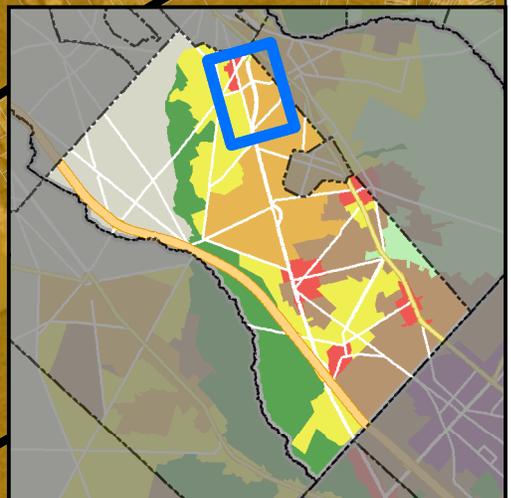
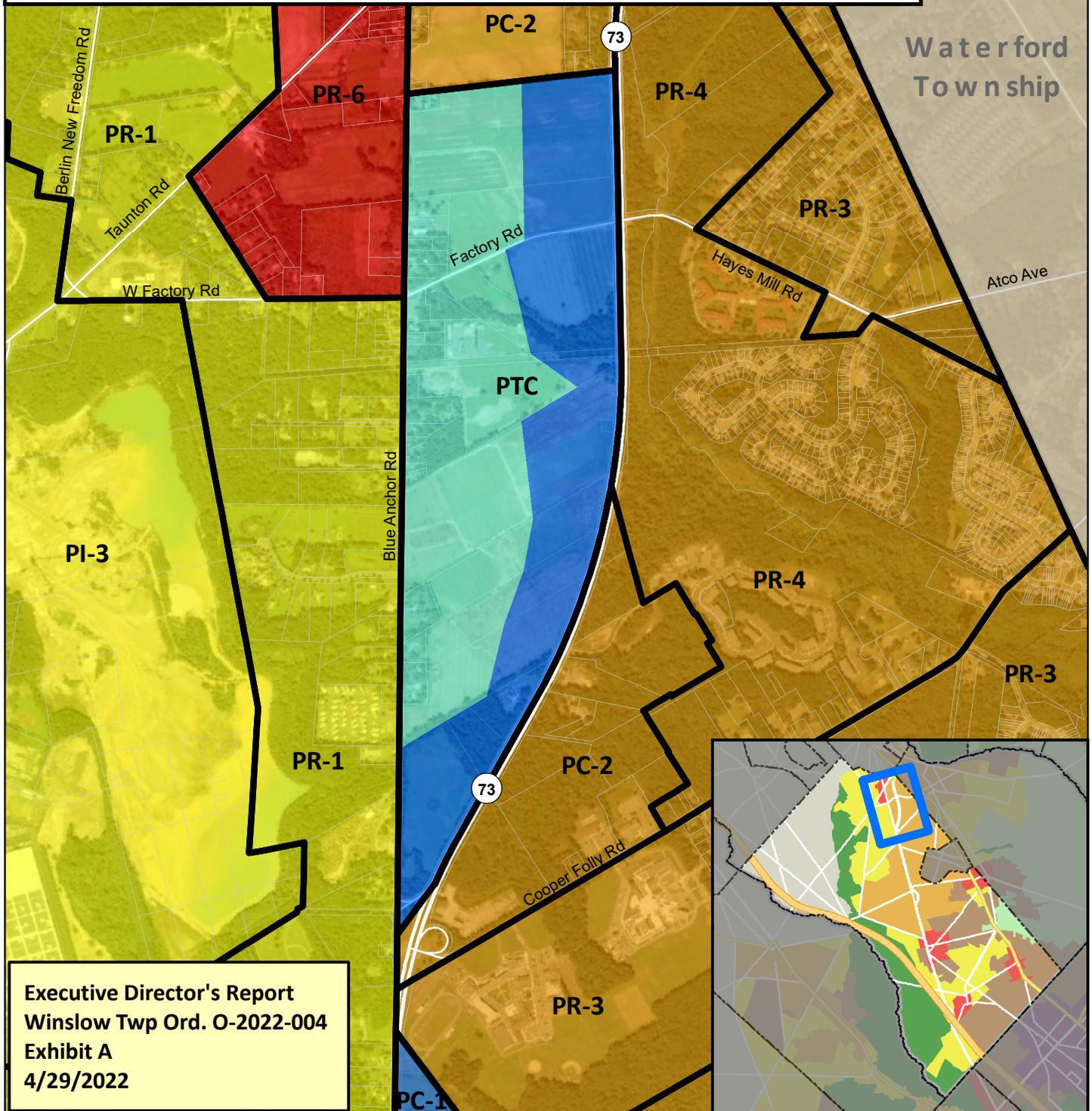
### RGA Zoning Changes

- Rezoned PC-2
- Rezoned PR-4

Certified Zoning

Lots

N



Executive Director's Report  
Winslow Twp Ord. O-2022-004  
Exhibit A  
4/29/2022

# Winslow Township Ordinance O-2022-004

## Route 73 Rezoning Segment 2

### Pinelands Management Areas

 Rural Development Area

 Regional Growth Area

### RGA Zoning Changes

 Rezoned PC-2

 Rezoned PR-4

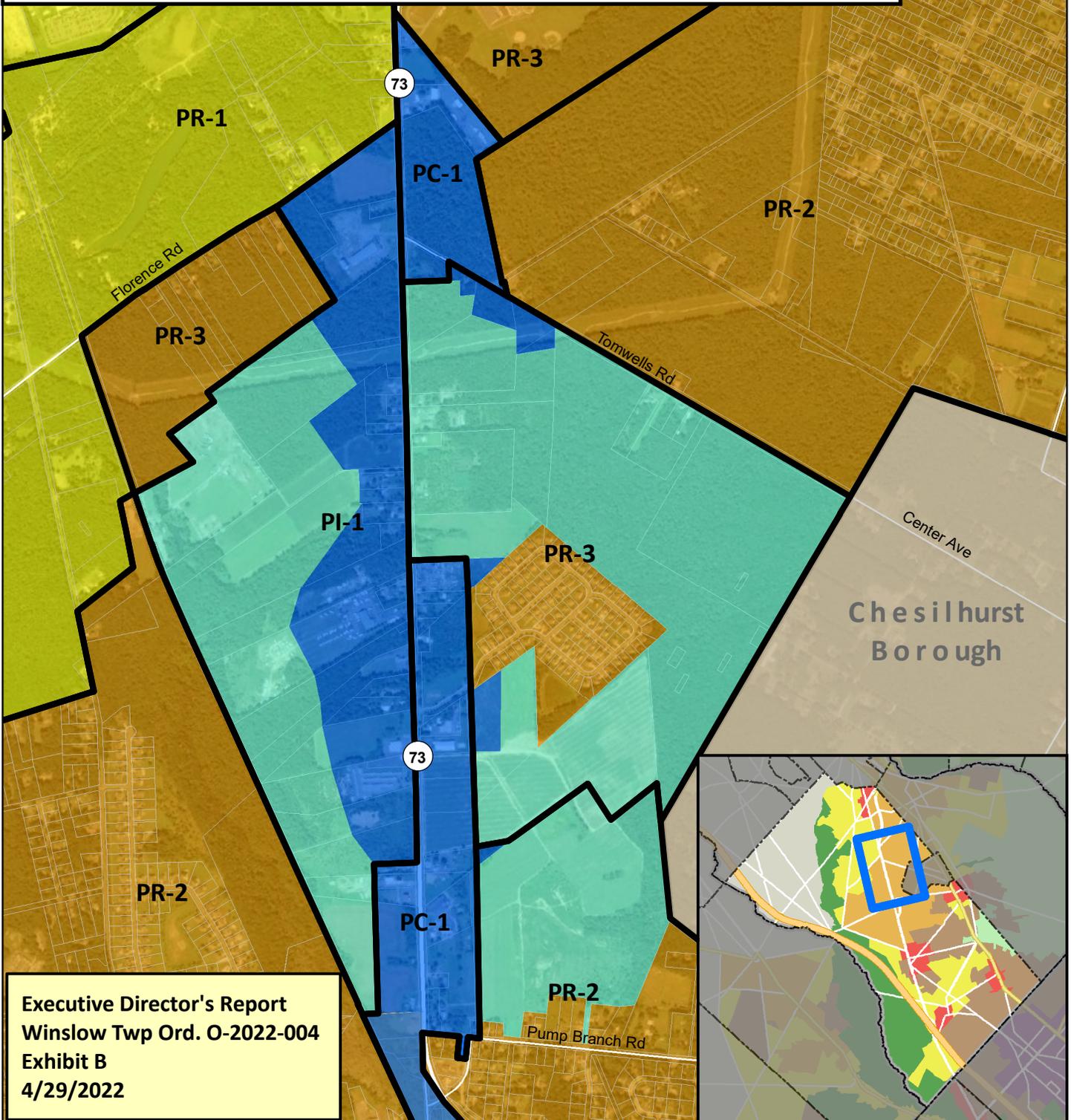
 Certified Zoning

 Lots

N



0 0.25 0.5 1 Miles



Executive Director's Report  
Winslow Twp Ord. O-2022-004  
Exhibit B  
4/29/2022

# Winslow Township Ordinance O-2022-004

## Route 73 Rezoning Segment 3

### Pinelands Management Areas

- Forest Area
- Agricultural Production Area
- Rural Development Area
- Pinelands Village
- Regional Growth Area

### RGA Zoning Changes

- Rezoned PC-2

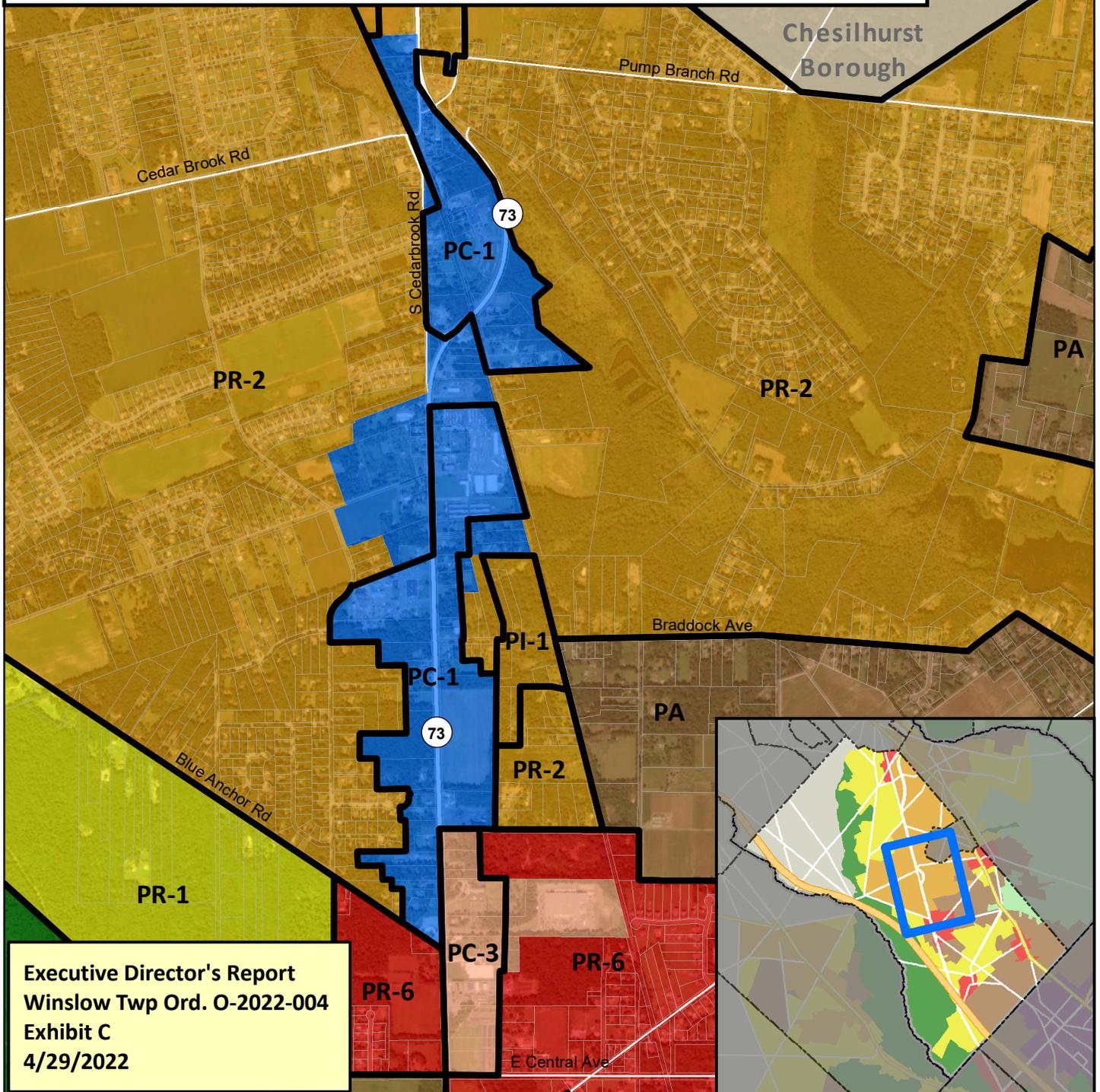
### PV Zoning Changes

- Rezoned PI-2

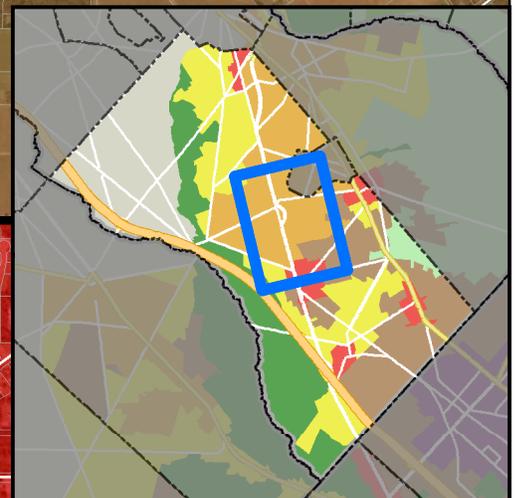
Certified Zoning

Lots

N



Chesilhurst  
Borough



Executive Director's Report  
Winslow Twp Ord. O-2022-004  
Exhibit C  
4/29/2022

Table 3. Summary of RGA Non-Residential FAR Standards

<b>Zoning District</b>	<b>Maximum Floor Area Ratio</b>		
	<b>Certified</b>		<b>Proposed</b>
	<b>Base</b>	<b>PDC</b>	
Major Commercial (PC-2)	0.15	0.225	0.30
Industrial (PI-1)	0.25	0.375	0.375
Minor Commercial (PC-1)	0.10	0.15	N/A
Pinelands Town Center (PTC)	0.22	0.33	N/A

Table 4. Summary of RGA Residential Density Standards

<b>Zoning District</b>	<b>Max Density (du/acre)</b>		
	<b>Certified</b>		<b>Proposed</b>
	<b>Base</b>	<b>PDC</b>	
Low-Density Residential (PR-2)	0.7	1.45	1.5
Medium-Density Residential (PR-3)	1.4	2.55	2.5
High-Density Residential (PR-4)	2.25	5.25	4.25
Pinelands Town Center (PTC)	2.0	5.25	N/A

Table 5. Summary of Changes to RGA Residential Zoning Capacity

<b>Zoning District</b>	<b>Certified Zoning Plan</b>		<b>Proposed Zoning Plan</b>	
	<b>Vacant Acres</b>	<b>Zone Capacity (units)</b>	<b>Vacant Acres</b>	<b>Zone Capacity (units)</b>
Low-Density Residential (PR-2)	1,102	1,598	1,022	1,575
Medium-Density Residential (PR-3)	239	610	15	38
High-Density Residential (PR-4)	118	620	642	2,731
Pinelands Town Center (PTC)	193	314	N/A	N/A
<b>Total</b>	<b>1,652</b>	<b>3,142</b>	<b>1,679</b>	<b>4,345</b>



State of New Jersey  
 THE PINELANDS COMMISSION  
 PO Box 359  
 NEW LISBON, NJ 08064  
 (609) 894-7300  
 www.nj.gov/pinelands



PHILIP D. MURPHY  
 Governor  
 SHEILA Y. OLIVER  
 Lt. Governor

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

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

## MEMORANDUM

To: CMP Policy & Implementation Committee

From: Stacey P. Roth, Chief, Legal & Legislative Affairs *slr*  
 Steven J. Simone, Planning Specialist *sj*

Date: May 19, 2022

Subject: Stockton University's 2020 Facilities Master Plan

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In September of 2020, Stockton University's Board of Trustees approved the "2020 Facilities Master Plan". This plan articulates the University's updated vision for the build-out of its Galloway Campus. Complicating the Commission's review of the 2020 Facilities Master Plan are outstanding violations stemming from a lack of clarity in the exhibit that formed the basis for the Deed of Conservation Restriction (DCR) that was recorded in 2010 as part of the Commission's approval of Stockton's prior 2010 Facilities Master Plan. During discussions with Stockton concerning the extent of the 2010 DCR, other issues were identified that necessitate amendment of the area on Stockton's campus that is subject to conservation restrictions. We believe we have identified a path forward and would like to discuss it with the Committee, while also affording the University an opportunity to present its 2020 Master Plan.

### *Background*

Two prior University master plans were reviewed and approved by the Commission, the 1990 Master Plan and the 2010 Facilities Master Plan. The 2010 plan proposed additional infill development on the University's Galloway Campus, along with the permanent deed restriction of wetlands, wetlands buffers, threatened and endangered species habitat and other forested lands on and around the campus. In August of 2010, the Executive Director determined that the 2010 plan complied with the Pinelands Comprehensive Management Plan and recommended Pinelands Commission approval. The Commission approved the 2010 Facilities Master Plan on September 10, 2010 (PC4-10-48) and the University recorded a Deed of Conservation Restriction on approximately 1,005 acres on November 5, 2010.

A Memorandum of Agreement (MOA) between the Commission and the University which effectuated the 2010 Master Plan was subsequently executed in May of 2015. Shortly thereafter, Commission staff determined that subsequent development activities undertaken by Stockton University were in violation the terms of the MOA, resulting in its suspension. Specifically, because the boundaries of the deed

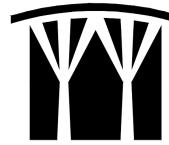
restricted area were not clear and improvement of existing rights-of-way for utilities and internal roadways was not permitted by the terms of the DCR, development conducted within the rights-of-way of one of the internal roads (Vera King Farris Drive) constituted a violation. The boundaries of the deed restricted area were established in the 2010 DCR using a color-coded exhibit that was part of the 2010 Facilities Master Plan. However, as Commission and University's facilities staff began to research the base maps that were used for the creation of the exhibit, it became clear that the exhibit lacked the level of accuracy required to determine the precise boundaries of the deed restricted lands at the Galloway campus.

### *Current Status*

Pinelands Commission staff has been working with staff from the University's Division of Facilities and Operations to address the above concerns. The outcome of these discussion is development of a path by which all outstanding violations may be addressed and the existing development application back log that has resulted therefrom may begin to be processed. Additionally, a baseline map of the deed restricted areas at the Galloway campus is under development. This map, which employs ArcGIS, will more accurately depict the boundaries of the restricted lands on the campus and will be used in the review of future plans and development proposals. A draft version of this new map is included for your reference.

This map will also serve as the foundation for a request by the University to the New Jersey Department of Environmental Protection (NJDEP) to amend the 2010 DCR. Because the current DCR does not exclude existing utility locations, other infrastructure and internal pathways from the 2010 DCR, the University will need to request that NJDEP authorize the release of these areas. To do so, the University will need to complete the process articulated in the NJ Conservation Restrictions and Historic Preservation Restrictions Act to obtain the release of these areas and file an amended DCR. Given it is likely that NJDEP will request replacement of the lands that are released, the draft map depicts the areas on the Galloway Campus that the University has identified as "proposed compensation lands to be deed restricted".

We look forward to discussing this matter with you at the May 27, 2022 CMP Policy & Implementation Committee meeting.

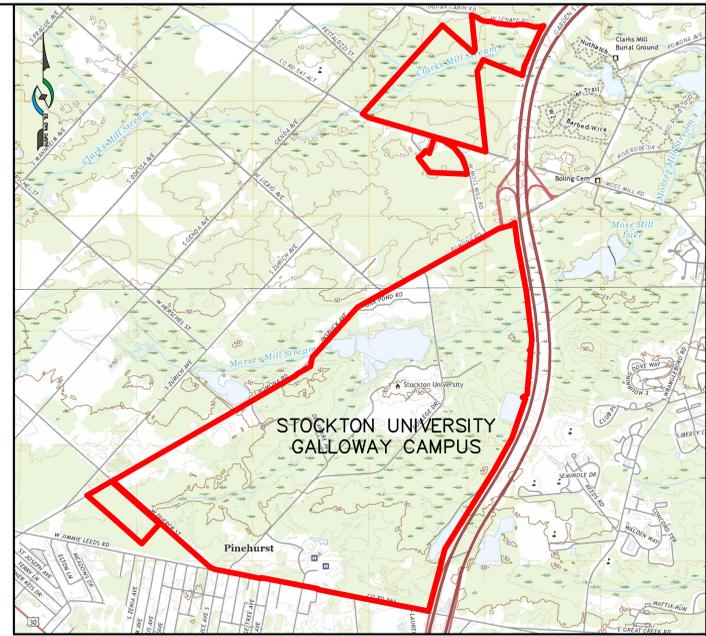


**STOCKTON UNIVERSITY**

# PROPOSED EXEMPTION AREAS FROM THE PINELANDS COMMISSION'S CONSERVED LANDS

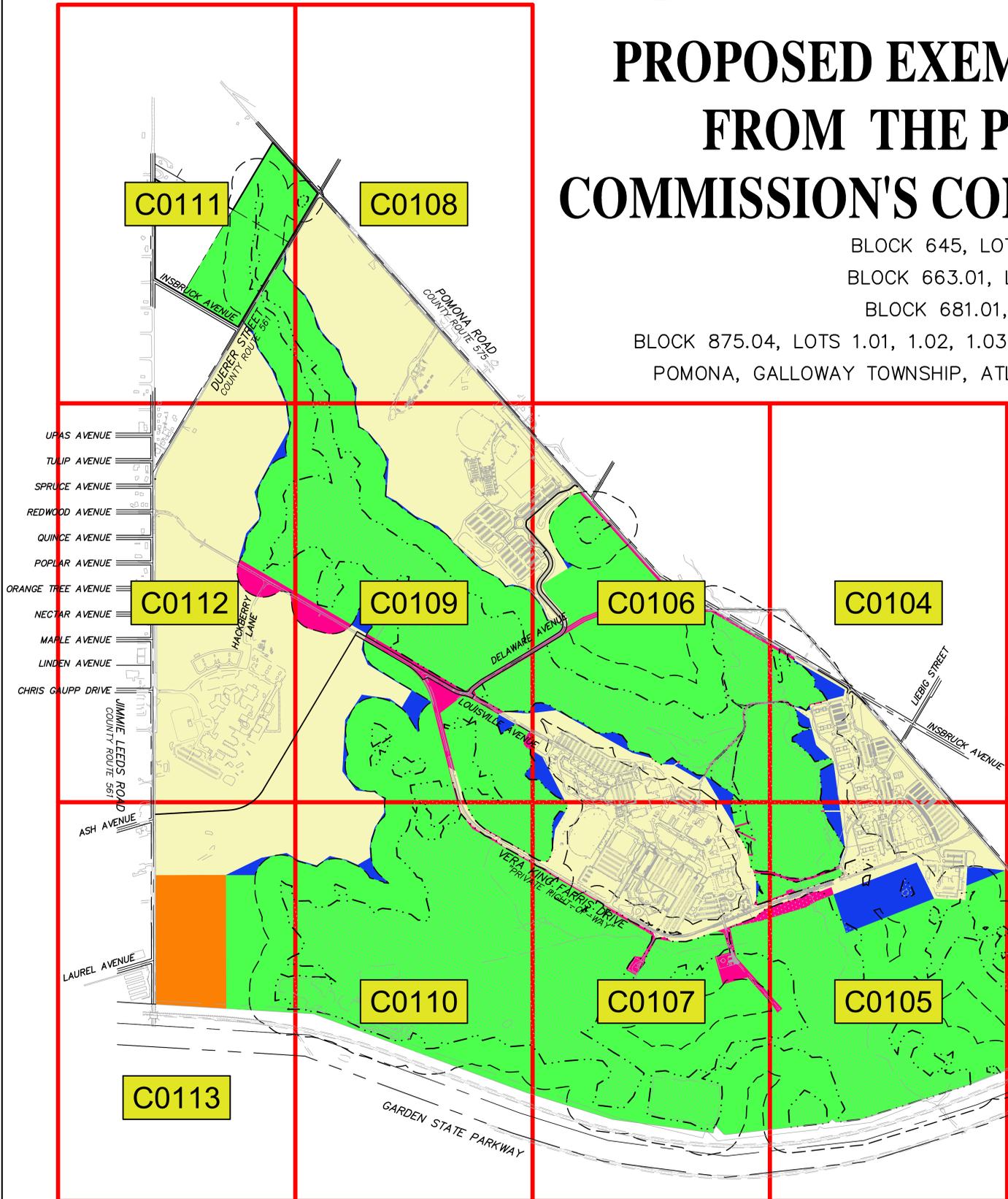
BLOCK 645, LOTS 3 & 5  
 BLOCK 663.01, LOT 55.27  
 BLOCK 681.01, LOT 10

BLOCK 875.04, LOTS 1.01, 1.02, 1.03, 1.04, 1.05, 1.06, 1.07 & 1.08  
 POMONA, GALLOWAY TOWNSHIP, ATLANTIC COUNTY, NEW JERSEY



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

CAMPUS AREA BREAKDOWN	
ITEM	ACRES
DEED RESTRICTED LANDS PER 2010 M.O.A.	1248.45 AC.
EXCLUDED LANDS PER 2014 AMENDED M.O.A.	28.96 AC.
<b>DEED RESTRICTED LANDS SUBTOTAL</b>	<b>1219.49 AC.</b>
PROPOSED LANDS TO BE REMOVED FROM DEED RESTRICTION	32.44 AC.
PROPOSED COMPENSATION LANDS TO BE DEED RESTRICTED	34.91 AC.
<b>NET TOTAL OF ADDITIONAL DEED RESTRICTED LANDS</b>	<b>2.47 AC.</b>
<b>PROPOSED TOTAL OF DEED RESTRICTED LANDS</b>	<b>1,221.96 AC.</b>



**PLAN PURPOSE/CLARIFICATION NOTES**

1. THIS PLAN HAS BEEN PREPARED TO VISUALLY DELINEATE ALL AREAS WITHIN THE PINELANDS PRESERVATION DEED RESTRICTION. THESE AREAS INCLUDE THE IMPROVEMENTS DEVELOPED SINCE THE 2010 CONSERVATION RESTRICTION AND THE PROPOSED AREAS REQUESTING EXEMPTION FROM DEED RESTRICTION.
2. DEED RESTRICTED PINELANDS AREAS HAVE BEEN INTERPOLATED FROM EXHIBIT #7 OF THE 2010 MASTER PLAN AND EXHIBIT "C" FROM THE AMENDED 2014 M.O.A.
3. THE DEED OF CONSERVATION RESTRICTION DATED OCTOBER 7, 2010 (INSTRUMENT #2010069539, RECORDED ON 11/5/2010 WITH THE ATLANTIC COUNTY CLERK) HAS ALSO BEEN USED FOR REFERENCE.
4. PROPOSED EXEMPTION AREAS FROM DEED RESTRICTION SHALL INCLUDE ALL FORESEEABLE FUTURE ROADWAYS, WALKWAYS & OTHER PEDESTRIAN CONVEYANCE PATHS, GENERAL IMPROVEMENTS AND THE CLEARING AREAS REQUIRED TO CONSTRUCT & MAINTAIN THESE IMPROVEMENTS.
5. THIS PLAN ACTS AS SUPPLEMENTAL INFORMATION TO THE 2010 CONSERVATION RESTRICTION AND DOES NOT EXCLUDE OR REPLACE ALL AREAS LISTED TO BE EXEMPT. ADDITIONAL EXEMPTION AREAS MAY EXIST INSIDE THE LIMITS OF THE DEED RESTRICTED CONSERVATION AREA BUT HAVE NOT BEEN SHOWN HEREON DUE TO A LACK OF DETAILED UNDERGROUND UTILITY INFRASTRUCTURE INFORMATION AND UPDATED PLANNING INFORMATION.
6. ADDITIONAL AREAS EXCLUDED FROM DEED RESTRICTION INCLUDE THE 20 ACRES ASSOCIATED WITH THE STORAGE, STAGING, STOCKPILING & SIMILAR ACTIVITIES AND THE 9 ACRES PROPOSED TO ACCOMMODATE THE PROPOSED GARDEN STATE PARKWAY EXIT AT THE CORNER OF JIMMIE LEEDS ROAD AND THE GARDEN STATE PARKWAY.

**GENERAL NOTES**

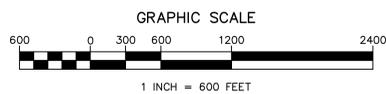
1. UTILITY FEATURES DEPICTED ARE PROVIDED FOR INFORMATION PURPOSES ONLY AND WILL DRAW ATTENTION TO THE AREAS IN NEED OF FURTHER INVESTIGATION PRIOR TO ANY DETAILED DESIGN OR CONSTRUCTION ACTIVITIES CAN TAKE PLACE IN THOSE AREAS.
2. INFORMATION PROVIDED ON THESE PLANS IS AS PROVIDED BY DESIGN PROFESSIONALS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

**PLAN REFERENCES**

1. EXISTING UTILITY INFORMATION IS AS TAKEN FROM PLANS ENTITLED "THE RICHARD STOCKTON COLLEGE OF NEW JERSEY, TOPOGRAPHIC SURVEY, MAIN CAMPUS AREA AND NORTH STUDENT HOUSING AREA" BY PENNINI ASSOCIATES INC. WITH INFORMATION BASED ON FIELD SURVEYS COMPLETED FROM 01/08 TO 12/08, UNLESS OTHERWISE NOTED.
2. EXISTING BOUNDARY INFORMATION IS AS TAKEN FROM PLAN ENTITLED "BOUNDARY SURVEY OF THE RICHARD STOCKTON COLLEGE OF NEW JERSEY" BY PENNINI ASSOCIATES INC., REVISED 07-18-2007, UNLESS OTHERWISE NOTED.
3. TOPOGRAPHIC AND WETLANDS INFORMATION TAKEN FROM PLAN ENTITLED "WETLANDS DELINEATION PLAN FOR THE RICHARD STOCKTON COLLEGE OF NEW JERSEY" PREPARED BY PENNINI ASSOCIATES INC. AND BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC. PROJECT NO. MEES 0602, DATED 02/16/2007, REVISED 07/18/2007.
4. FIELD DELINEATION OF WETLANDS WAS PERFORMED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC. PROJECT NO. MEES 0602, DATED 02/16/2007, REVISED 07/18/2007.
5. WETLANDS FLAGGING WAS FIELD LOCATED BY PENNINI ASSOCIATES INC. DURING NOVEMBER 2006 TO MARCH 2007.
6. ADDITIONAL PLAN REFERENCES:
  - "STOCKTON STATE COLLEGE SITE PLAN PHASE I UTILITIES/DRAINAGE", PREPARED BY STOCKTON STATE COLLEGE OFFICE OF COLLEGE PROJECTS, UNDATED (DESIGN PLAN)
  - "CABLE TRENCH ON COLLEGE DRIVE" AS-BUILT PREPARED BY STOCKTON STATE COLLEGE, APRIL 1987
  - "TELECOMMUNICATIONS PROJECT SITE PLAN AT RICHARD STOCKTON COLLEGE OF NEW JERSEY" AS-BUILT DRAWING PREPARED BY SUNROSE ENGINEERS, INC. DATED 9/17/99, AS-BUILT 10/14/99
  - "CABLE TRENCH LOCATION DRY ACCESS ROAD" PREPARED BY STOCKTON STATE COLLEGE, DATED FEBRUARY 17, 1989 (AS BUILT)
  - "AC MEDICAL CENTER STOCKTON STATE COLLEGE SANITARY SEWER AS-BUILT" PREPARED BY BRISCALL ENGINEERING, UNDATED (PLOTTED 07/08/04)
  - "ADDITIONAL CAMPUS HOUSING AREA STOCKTON STATE COLLEGE SANITARY SEWER AS-BUILT" PREPARED BY BRISCALL ENGINEERING, UNDATED (PLOTTED 07/08/04)
  - "MAN CAMPUS AREA STOCKTON STATE COLLEGE SANITARY SEWER AS-BUILT" PREPARED BY BRISCALL ENGINEERING, UNDATED (PLOTTED 07/08/04)
  - "NEW JERSEY STATE COLLEGE AND UNIVERSITIES RICHARD STOCKTON COLLEGE POMONA NEW JERSEY FIRE WATER LINES, PREPARED BY FACTORY MUTUAL INSURANCE COMPANY ENGINEERING PLAN SERVICES, DATED JUNE 20, 2006 (DESIGN PLAN)
  - "JIMMIE LEEDS ROAD SANITARY SEWER EXTENSION" PREPARED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC. PROJECT NO. RSC 005.24, DATED 05/01/07, REVISED 04/18/08 (DESIGN PLAN)
  - "CHEMICAL STORAGE RELOCATION & CAMPUS CENTER SITE UTILITIES, UTILITY PLAN - WEST PORTION, C0303" PREPARED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC. ISSUED 12/14/07, REVISED 02/27/08 (DESIGN PLAN)
  - "CHEMICAL STORAGE RELOCATION & CAMPUS CENTER SITE UTILITIES, THE RICHARD STOCKTON COLLEGE OF NEW JERSEY" PREPARED BY KSS ARCHITECTS, ISSUED 12/14/07, ISSUED FOR BID 03/04/08 (DESIGN PLAN)
  - "TELECOMMUNICATIONS DESIGN & INSTALLATION - STOCKTON COLLEGE" PREPARED BY VOICE COMMUNICATIONS, DRAWING NO. RSC04-01, DATED 01-28-08 (DESIGN PLAN)
  - "GAS CHILLER RELOCATION, UTILITY PLAN" PREPARED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC., ISSUED 4/11/08 (DESIGN PLAN)
  - "GAS CHILLER RELOCATION, UTILITY PLAN, GATEWAY BUILDING, C0303" PREPARED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC., PROJECT NO. 20842.09, ISSUED 04/11/2008 (DESIGN PLAN)
  - "GAS CHILLER RELOCATION, SITE PLAN, C06107" PREPARED BY VINKOUR - PACE ENGINEERING SERVICES, INC., PROJECT NO. 20842.09, ISSUED 4/25/08 (AS BUILT PLAN)
  - "AS-BUILT PLAN OF JIMMIE LEEDS ROAD SANITARY SEWER EXTENSION STATION 10+00 TO 35+00, GALLOWAY TOWNSHIP, ATLANTIC COUNTY" PREPARED BY BRAVATT CONSULTING GROUP, PROJECT NO. 8678, DATED JUNE 27, 2008, REVISED 6/17/08
  - "CAMPUS CENTER - CIVIL SITE, UTILITY PLAN - WEST PORTION" PREPARED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC., ISSUED JUNE 02, 2008, REVISED 09/23/08 (DESIGN PLAN)
  - "HOUSING V AND VA, THE RICHARD STOCKTON COLLEGE, POMONA, NEW JERSEY, RECORD DRAWINGS" PREPARED BY HILLER ARCHITECTS AND VINKOUR-PACE ENGINEERING DATED 10-15-2008
  - "CAMPUS CENTER - CIVIL SITE, ISOLATION PLAN - THE RICHARD STOCKTON COLLEGE OF NEW JERSEY" PREPARED BY KSS ARCHITECTS, LP AND MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC., ISSUED JUNE 02, 2008, REVISED 12/12/08 (DESIGN PLAN)
  - "WALK LIGHTING, THE RICHARD STOCKTON COLLEGE HOUSING V PROJECT" PREPARED BY VINKOUR-PACE ENGINEERING, PROJECT NO. P010786.002, SHEET NO. E014, ISSUED 7/02/2008, (AS-BUILT PLAN)
  - "POTABLE WELL LOCATION PLAN, RICHARD STOCKTON COLLEGE OF NEW JERSEY, AS-BUILT" PREPARED BY VARGO ASSOCIATES, DATED 12/15/08 (SUBMITTAL PLAN), ISSUED BY MARATHON ENGINEERING AND ENVIRONMENTAL SERVICES 01/09/09, REVISED TO 2/14/2017.
  - "LAND USE PLANS PROVIDED BY OFFICE OF FACILITIES PLANNING AND CONSTRUCTION, RICHARD STOCKTON COLLEGE OF NJ, UNDATED, PROVIDED 05/2009.
  - "PROPOSED NEW JIMMIE LEEDS ROAD DRIVE ENTRANCE THE RICHARD STOCKTON COLLEGE OF NEW JERSEY EXISTING CONDITIONS PLAN" PREPARED BY PENNINI ASSOCIATES INC., DATED 3/25/2009.
  - "RICHARD STOCKTON STATE COLLEGE, PHASE ONE" RECORD DRAWINGS AS BUILT PREPARED BY JACKSON & MORELAND, REVISED 9-22-77.

**LEGEND**

- PROPERTY BOUNDARY LINE
- FRESHWATER WETLANDS LIMIT LINE
- FRESHWATER WETLANDS TRANSITION AREA LINE
- UNNUMBERED LANDS (SEE PLAN PURPOSE/CLARIFICATION NOTES)
- UNCHANGED DEED RESTRICTED LANDS (SEE PLAN PURPOSE/CLARIFICATION NOTES)
- EXCLUDED LANDS FROM DEED RESTRICTION PER 2014 AMENDED M.O.A. (SEE PLAN PURPOSE/CLARIFICATION NOTES)
- PROPOSED LANDS TO BE REMOVED FROM DEED RESTRICTION (SEE PLAN PURPOSE/CLARIFICATION NOTES)
- PROPOSED COMPENSATION LANDS TO BE DEED RESTRICTED (SEE PLAN PURPOSE/CLARIFICATION NOTES)



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

05/18/2022	4	REVISED PER REVIEW COMMENTS	CWH	AWR
02/08/2022	3	REVISED PER REVIEW COMMENTS	CWH	AWR
11/19/2019	2	REVISED PER REVIEW COMMENTS	CWH	AWR
03/15/2019	1	INITIAL SUBMISSION	CWH	EW
ISSUE DATE	ISSUE NO.	SUBMISSION/REVISION	BY	APPR.

**STOCKTON UNIVERSITY**

OVERALL SITE PLAN

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

**DAVID J. FLEMING, P.E.**  
 ENGINEER LICENSE NO. 246503321600

**DRAFT**

**MARATHON**  
 Engineering & Environmental Services

Atlantic City Office  
 1616 Pacific Avenue, Suite 501, Atlantic City, NJ 08401  
 ph (609) 437-2100 fax (609) 437-2101  
 Certificate of Authorization #24GA2795700

SCALE = 600' = 1" SHEET 1 OF 15  
 DRAWN BY C. HARRIS  
 CHECKED BY J. HARRIS  
 APPROVED BY C. HARRIS

DATE: 05/18/2022  
 RSC 043.01

**C0100**



## State of New Jersey

THE PINELANDS COMMISSION

PO Box 359

NEW LISBON, NJ 08064

(609) 894-7300

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

JOHN C. STOKES  
Executive Director

### **REPORT ON THE APRIL 2010 MASTER PLAN OF THE RICHARD STOCKTON COLLEGE OF NEW JERSEY**

August 30, 2010

The Richard Stockton College of New Jersey  
Jimmie Leeds Road  
P.O. Box 195  
Pomona, New Jersey 08240

#### **FINDINGS OF FACT**

##### **I. Background**

N.J.A.C. 7:50-4.52 of the Pinelands Comprehensive Management Plan provides that any state agency with jurisdiction over land located within the Pinelands Area may submit to the Commission for review and approval a comprehensive plan of its existing and planned land use, resource management and development activities. This section also sets forth the elements that should be included in such plans and provides, upon Commission approval of these plans, that the Commission shall review proposed developments in accordance with the Pinelands Comprehensive Management Plan as modified by specific provisions of the approved state agency plans.

##### **1990 Stockton College Facilities Master Plan and Galloway Township Zoning**

The Richard Stockton College of New Jersey (College) is located in central Galloway Township on the eastern fringe of Atlantic County. The main campus of the College is a single large parcel with a land area of 1,566 acres<sup>1</sup>. It is bounded on the southwest, northeast and northwest along Pomona Road by a Rural Development Area and on the South by a Regional Growth Area. To the east, the site is bounded by the Garden State Parkway.

In April 1990, the Commission approved a Galloway Township zoning ordinance that designated approximately 503 acres of the College's campus within the GI (Government Institution) District in the Regional Growth Area (RGA). Permitted uses within the GI district are limited to

<sup>1</sup> All acreage estimates in this report are based upon PC analyses including delineated wetlands in 2009 and may vary from estimates in the 1990 and 2010 Master Plans and related documents. Almost all of the acreage estimates can be found in Exhibit E. Where estimates are derived from a calculation, the calculation will be explained in a footnote.

[www.nj.gov/pinelands](http://www.nj.gov/pinelands)

E-mail: [info@njpines.state.nj.us](mailto:info@njpines.state.nj.us)

**The Pinelands -- Our Country's First National Reserve and a U.S. Biosphere Reserve**

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institutional uses for the College, the Atlantic City Medical Center and the Betty Bacharach Rehabilitation Center only. Privately owned hospitals and medical office facilities are specifically prohibited. A small portion of the College site (approximately 26 acres) is located within the RGA's PO (Planned Office) District, which permits planned office and planned commercial development.

In 1990, the balance of the main campus (approximately 1,037 acres) is within the Township's R-5 (Rural Residential) District in a Rural Development Area (RDA). The Township's zoning ordinance permits residential development on five-acre lots, forestry, agriculture, recreational uses, airports and a variety of institutional uses.

The Township zoning was certified by the Commission in recognition of the College's pending 1990 Facilities Master Plan, with the general understanding that future use of the College site within the Rural Development Area would be lower intensity or conservation oriented.

The College's 1990 Facilities Master Plan was approved by the Commission three months later, in July 1990. It described existing and planned land uses in much more detail than the zoning ordinance. As Exhibits B, D and E illustrate, the so-called development areas of the College included the Regional Growth Area of 529<sup>2</sup> acres plus two other sites approximating 654<sup>3</sup> acres within the Rural Development Area designated for active recreation (including intercollegiate athletic fields) and an observatory. In addition, approximately 30 acres of a so-called passive area also included intramural athletic fields. The Facilities Master Plan also identified a 69-acre area within the Rural Development Area for a storage and soil borrowing area. The balance of the site (approximately 810 acres) was contemplated to be used for environmental study, experimentation and passive recreation

Concurrent with its approval of the College's 1990 Facilities Master Plan, the Commission approved an agreement with the College, the express purpose of which was to "implement the facilities master plan." That agreement was not dictated by or required pursuant to Pinelands regulations; rather it was an attempt by the College and the Commission to establish an approach to work together to implement and update the Master Plan. The agreement called on the College to, among other things, prepare any future amendments to the Plan in recognition of the purposes and intent of this Master Plan and to pursue additional options in cooperation with the Commission to permanently restrict lands outside the Regional Growth Area to the uses prescribed in the Plan.

### 2010 Stockton College Master Plan and Galloway Township Zoning

Since 1990, the College has grown faster than anticipated and has shifted emphasis from being a commuter school to a residence facility. As such, its campus needs are now different. The College approached the Commission six and a half years ago to discuss how it could meet these

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<sup>2</sup> The 529-acre portion of campus within the Regional Growth Area consists of 503 acres of College- and Health Care-related facilities as well as a 26-acre Planned Office Zone.

<sup>3</sup> The 654 acres includes the 503 acres of College- and Health Care-related facilities, the 26-acre Planned Office Zone, 111 acres of athletic fields, and the 14-acre observatory facility. Please note that it does not include the 30 acres of intramural athletic fields.

needs. Commission staff indicated that it would be best to maximize use of the College site and not expand across Pomona Road into the RDA. It was agreed that "infill" development in the existing RGA core campus areas would first be explored before looking at the RDA portions of the site. The College accomplished this in 2005 by proposing to eliminate surface parking and develop the core more intensely. Since this did not meet all of Stockton's new needs, the College approached the Commission's Policy and Implementation Committee with a variety of possible development area changes from RDA to RGA. The Policy and Implementation Committee directed the College to pursue its planning in two steps: first, complete rare species surveys and plan accordingly to protect any critical or important habitat; and, second, provide a 1:1 "offset" for any new uplands to be zoned for development by deed-restricting uplands either on-site or off-site.

After additional consultation with the Commission, the Board of Trustees of the Richard Stockton College of New Jersey approved a new master plan for the College on December 9, 2009. The Pinelands Commission received an adopted copy of the April 2010 Master Plan of The Richard Stockton College of New Jersey on April 29, 2010.

The 2010 Master Plan increases the size of the College's sewer development area by approximately 453 acres and proposes the permanent protection of more than 1,257<sup>4</sup> other acres, both on the College campus and off-site. As Exhibit E illustrates, the development areas, including a 51-acre off-site parcel to the south of the main campus and across Duerer Street, are coincident with the boundaries of the Regional Growth Area. As was the case in the 1990 plan, auxiliary areas remain in the Rural Development Area; however, the area's size has been reduced by 50%. The Master Plan also calls for significant natural resource protection, including the protection of two other off-site parcels totaling 227 acres to the northwest of the main campus.

To accommodate the increased development areas, Galloway Township adopted a 2010 Master Plan Reexamination Report and a revised zoning map which redesignates 453 acres from the Rural Development Area to the GI (Government Institution) District in the Regional Growth Area (see Exhibit A). The Galloway Township documents have been submitted to the Commission for certification and will be the subject of a separate Commission action.

## II. Land Use Documents

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

- The April 2010 Master Plan of the Richard Stockton College of New Jersey, approved by the Board of Trustees in December, 2009.<sup>5</sup>

This document has been reviewed to determine whether it conforms with the standards for approval of state agency comprehensive plans as set forth in N.J.A.C. 7:50-4.52 of the Pinelands Comprehensive Management Plan. The findings from this review are presented

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<sup>4</sup>The 1,257-acres of permanently protected land include 1,066 acres of wetlands and wetlands buffers as well as 191 acres of developable land.

<sup>5</sup> This plan incorporates and supersedes previous College master plans.

below. The numbers used to designate the respective items correspond to the numbers used to identify the standards in N.J.A.C. 7:50-4.52.

**i. Natural Resources Inventory**

The original College master plan, the June 1990 Facilities Master Plan, was based upon an analysis of wetlands, land use, and the availability of sewer infrastructure. The 2010 Master Plan was designed to update the 1990 Plan and to meet the Commission's charge to avoid sensitive lands. The College conducted numerous rare species' surveys (see Exhibits 12 and 13 in the 2010 Master Plan). These illustrate the areas initially determined to be critical habitat for threatened and endangered species along with associated wetlands, as had been researched and documented by Marathon Engineering Consultants. With the assistance of the Pinelands Commission, additional sensitive lands were identified and incorporated into the plan to protect the rare species by, among other things, establishing forested corridors of high ecological integrity.

These corridors and associated lands will be permanently protected. The primary tools to accomplish this are: substantial deed restrictions on sensitive lands on the main campus, including wetlands, full 300-foot-wetlands buffers (even though the buffer delineation model might suggest smaller buffers) and off-site lands purchased by the College for this specific purpose; and an agreement to re-examine development areas for rare species in 10 years.

As illustrated in Exhibit D, the deed restrictions called for in the 2010 Master Plan will protect all of the wetlands and buffers within the development areas (approximately 404 acres), all of the lands designated for environmental study and education, all of the lands designated for passive recreation (approximately 624<sup>6</sup> acres) and all of the off-site open space lands (approximately 229 acres). Thus, 1,257<sup>7</sup> acres of land will be permanently protected. The amount of land to be conserved now (approximately 1,257 acres) exceeds that which was to be effectively conserved (approximately 1,087<sup>8</sup> acres) in 1990. Moreover, these additions add ecologically important lands not proposed for protection in 1990.

Since significant natural resources have been inventoried and will be protected, including habitats important to the survival of rare species, this standard for approval is met.

**ii. Character, Location and Magnitude of Development**

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<sup>6</sup> The 624 acres of passive recreation lands includes 604 acres of lands devoted exclusively to passive recreation and 20 acres reserved for the College's arboretum.

<sup>7</sup> The 1,257-acres of permanently protected land include 191 acres of developable land as well as 1,066 acres of wetlands and wetlands buffers.

<sup>8</sup> In 1990, 1,087 acres were to be permanently protected, including 898 acres of wetlands and wetlands buffers and 189 acres of developable land.

The development proposed by the 2010 Plan is depicted on Exhibit 1 of the College's 2010 Master Plan. The changes made to the 1990 Plan by the 2010 Master Plan are highlighted on Exhibit D to this report and are tabulated on Exhibit E.

Of the new areas being redesignated from RDA to RGA (453 acres), roughly 168 acres are wetlands and buffers and will be deed restricted., leaving roughly 285 acres of developable land.

Of this 285 upland acres, 111<sup>9</sup> acres will be or is already disturbed. This includes 11 upland acres in an arboretum area that will be deed restricted and 100 acres already devoted to interscholastic and intramural athletic fields in "active" or so-called "passive" categories.

In the remaining areas of undeveloped upland, one off-site and three on-site development areas are proposed. They total roughly 172 acres, all of which are developable lands. Developable lands represent uplands that are located outside of the wetlands buffer, which the Master Plan generally sets at 300 feet. It should be noted that two of the offset properties discussed above include 42 acres of developable RGA lands to be deed restricted, thereby reducing the net gain of developable land overall to 130 acres. Conversely, a rezoning certified on October 12, 2001 added 22 acres of uplands to the RGA, thus, the total net change in RGA developable lands from 1990 to 2010 is 151 acres

Thus, the total amount of upland in areas planned for new and existing development is approximately 586<sup>10</sup> acres. As was noted above, this is roughly 151 acres more than that contemplated in the 1990 plan. 1,257<sup>11</sup> acres are planned for conservation, including wetlands in both the new and old development areas. This is 170<sup>12</sup> acres more than that contemplated in the 1990 plan.

To balance the changes made by the 2010 Plan, the College was charged by the Commission to match, on a 1:1 ratio, "up-zonings" of developable uplands that would permit new development with deed-restricting other uplands not designated for protection in 1990. The 151 new acres proposed for development are to be balanced by the College's 2010 Master Plan through deed restricting 170 acres of additional developable lands on- and off-site not designated for protection in the 1990 plan (see Exhibit E (cont.)). Because of inclusion of new off-site developable lands to be deed restricted, the conversion of the observatory land and a portion of the storage areas to conservation, and the re-designation of a prime development site to conservation, the 1:1 "offset" goal will

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<sup>9</sup> These 111 acres include 100 acres of athletic fields and the 11-acre arboretum.

<sup>10</sup> The 586 acres planned of developed and developable land includes 411 acres for College- and Health Care-related facilities, 100 acres for active recreation, the 26-acre Planned Office Zone, 20 acres of off-campus development, a 20-acre storage area, and 9-acres for a proposed GSP exit ramp.

<sup>11</sup> The 1,257 acres planned for conservation include 191 acres of developable land as well as 1,066 acres of wetlands and wetlands buffers.

<sup>12</sup> In 1990, a total of 1,087 acres were to be permanently preserved (898 acres of wetlands and wetlands buffers and 189 acres of developable land). In 2010, 1,257 acres will be permanently preserved (191 acres of developable land and 1,066 acres of wetlands and wetlands buffers). The difference between the two figures is 170 acres.

be achieved. Thus, this relatively small proposed change in landscape disturbance is offset by deed-restricting three areas formally targeted for disturbance and by off-site lands.

All such land area designations are consistent with the certified management areas of Galloway Township in terms of use, location, and magnitude. They are also consistent with the natural resources mapping noted above. Therefore, this standard for approval is met.

**iii. Ensure Conformance with N.J.A.C. 7:50-5 and 6.**

Relative to N.J.A.C. 7:50-5, the land uses and intensities described in the College's April 2010 Master Plan will be consistent with those contained in the Master Plan and land use ordinances of Galloway Township if the Commission decides to certify the pending request.

The 2010 Master Plan provides for compliance with the development standards of N.J.A.C. 7:50-6. Several more notable standards are discussed in the Master Plan and summarized below:

- The 1990 Plan anticipated 175 feet wetlands buffers in the central core development area. Unlike the 1990 Plan where other buffers were not yet set, Stockton has agreed to use a 300-foot buffer in all areas outside of the core. These extended buffers will apply to approximately 16,000 linear feet of wetlands and represent a significant protection measure. They will also be implemented through deed restrictions.
- Comprehensive stormwater management plans, while not part of this certification, are underway. They will either be applied to individual development applications as they are submitted for Commission approval or incorporated into a public development procedural agreement to be discussed with the Public and Government Programs Committee schedule in the Fall.
- As was noted earlier, the land use plan and the recommended deed restrictions protect rare species identified through extensive surveys. In addition, Stockton College has agreed to re-examine the development areas relative to the status of rare species in 10 years. In the unlikely event that rare species are found within the development areas at that time, steps will be taken to ensure their protection.

All other Subchapter 6 development standards will be met when individual development applications are prepared for the Commission's approval or addressed through a public development procedural agreement. Therefore, this standard for approval is met.

**iv. Standards for Capital Facilities Siting**

Two growth scenarios were presented in the 1990 Plan: one for 4,100 full-time equivalent (FTEs) students and one for 5,000 FTEs. The 2010 Master Plan updates these scenarios by presenting a single 20-year growth scenario: 5,000 FTEs in 2008-10 (the upper limit that was projected in 1990); 6,500 FTEs in 2019-22; and, 7,500 FTEs in 2027-30. The development areas proposed in the 2010 Master Plan are adequate to accommodate these projections. Six currently planned capital facilities are also described by the 2010 Master Plan. Four of these have previously obtained Pinelands Commission approvals (the Campus Center, the synthetic athletic field, the traffic signal, the Lane Roadway modifications, and the Louisville Avenue roadway paving). Two others are under design (the Science Center and College Walk renovation). All are consistent with the 2010 Master Plan's land use designations.

Moreover the College has agreed to use low impact design and construction principles by minimizing disturbance of forested areas, clustering development away from wetlands and deed restricted areas, and minimizing turf. Where there is sufficient design flexibility, proposed development areas along Pomona Road and Duerer Street will maintain or expand the setbacks from wetlands and buffer corridors as shown in the 2010 Master Plan. This will help to ensure better protection of an area utilized by threatened and endangered bird species as a pathway between a forested area to the west of Pomona Road (outside of the College's campus) through the College's campus to the forested area to be preserved on-campus between Vera King Farris Drive and the Garden State Parkway.

These additional protections beyond the requirements of the CMP enhance the land use plan in terms of siting and developing new structures.

This standard for approval is met.

**v. Resource Management Practices Consistent with the CMP, Pinelands Protection Act, and Federal Act**

The 2010 Master Plan continues the general purposes and development philosophy of the 1990 Plan: to protect important natural areas, landscape with native plant materials and use natural buffers wherever possible. A Forest Stewardship Plan is also underway and will be presented to the Commission in the future.

Therefore, this standard for approval is met.

**vi. Consistency with Municipal and County Plans**

The 2010 Master Plan is consistent with Galloway Township's 2010 Master Plan Reexamination Report and Ordinance 1817-2010. Atlantic County's certified Master Plan acknowledges and incorporates Stockton College. In addition, the College is working with Atlantic County on numerous transportation improvements.

Therefore, this standard for approval is met.

**vii. Otherwise Consistent with the CMP**

The 2010 Master Plan complies with all of the relevant standards and provisions of the Pinelands Comprehensive Management Plan. Therefore, this standard for approval is met.

**PUBLIC HEARING**

A public hearing to receive testimony concerning Stockton College's application for approval of its April 2010 Master Plan was duly advertised, noticed and held on July 7, 2010 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. The hearing was conducted simultaneously with a public hearing to receive testimony on Galloway Township's 2010 Master Plan Reexamination Report and Ordinances 1810-2010 and 1817-2010, due to the fact that a number of the changes in the Reexamination Report and Ordinance 1817-2010 relate to the College's 2010 Master Plan. No attempt has been made to separate those comments received on the College's 2010 Master Plan from those received on the Township's Reexamination Report or ordinances. Rather, all comments received at the hearing are summarized below.

Mr. Liggett conducted the hearing, at which the following testimony was offered:

- Mr. Donald E. Moore, Associate Vice President for Operations for The Richard Stockton College of New Jersey, introduced his associate, Mr. Jay Sciuillo, with Marathon Engineering, the entity charged with performing the threatened and endangered species surveys and wetlands delineations for Stockton. Mr. Moore said that Stockton believed its 2010 Master Plan met Pinelands standards and respected the environment and should be approved. Moreover, the stormwater management plan and deed restrictions associated with the 2010 Master Plan were being prepared and will be submitted shortly after the Commission's anticipated approval. Furthermore, the College was developing a Forest Stewardship Plan.
- Ms. Tiffany CuvIELLO, Planner for Galloway Township, said that Stockton College was established in 1969 and pre-dates the Pinelands. She said that the continuing student enrollment and expansion of programs has made it necessary to enlarge the campus and make changes to the 1990 MOA with the Pinelands Commission. She noted that the 2010 Master Plan provides for the permanent protection of more than 1,000 acres, some of which is on-campus and the remainder off-site near two Garden State Parkway interchanges. This Plan will lead to more land being preserved than under the 1990 MOA. The areas to be preserved are of high ecological integrity as identified through the Pinelands Commission's Environmental Integrity Assessment (EIA) project. She noted that the rezoning from RDA to RGA along Jimmie Leeds Road recognizes existing development on small lots across the road from a major retail area. The Township feels this is appropriate and will help maintain continuity between Pinehurst and the development anticipated by the College in this area. She said that the Township supports the 2010 Master Plan as it preserves a significant

amount of high integrity lands consistent with the goals of the CMP, promotes appropriate development in the RGA and supports the College, an institution that is part of Galloway's history and is the only State College to serve the southern Pinelands region.

- Ms. Theresa Lettman, with the Pinelands Preservation Alliance (PPA), said that PPA had not yet seen the 2010 Master Plan but would be submitting written comments in the future. She noted that PPA did not support the 2010 Master Plan because it would change the conditions of the 1990 MOA thereby breaking the College's commitment that any future uses of the College's campus would be conservation-oriented. She noted that Galloway Township's Reexamination Report, also subject of the public hearing, discusses an offset for the development that is to occur on-campus, but she could find no reference to such an offset or identification of the blocks/lots.

Ms. Lettman said that there had previously been a 35-percent impervious surface limitation for lands to be developed but that has now been increased to 60 percent. Along with allowing roadways through wetlands and reduced wetlands buffers, this is reducing the preserved area. She said that Galloway had objected to the EIA recommended changes and that she thought more protection was needed in the GI Zone. Ms. Lettman said that there is vague language regarding vegetative standards. The PPA has been talking for months about vegetation standards and this should be addressed.

- Ms. CuvIELLO said that the 2010 Master Plan is talking about setbacks from the road, not from wetlands, and it is applicable only within the RGA's GI Zone.
- Ms. Lettman questioned whether the Commission was choosing to ignore the 1990 MOA.

Mr. Liggett announced that written comments would be accepted through July 14, 2010.

The hearing was concluded at 9:52 a.m.

Written comments on the 2010 Master Plan Reexamination Report and Ordinances 1818-2010 and 1817-2010 were accepted through July 14, 2010 and were submitted by the following parties:

July 14, 2010 letter from Theresa Lettman, Director for Monitoring Programs, Pinelands Preservation Alliance (see Exhibit F)

July 14, 2010 letter from Fred Akers, River Administrator, Great Egg Harbor Watershed Association (see Exhibit G)

July 14, 2010 email from William J. Cromartie, PhD (see Exhibit H)

## **EXECUTIVE DIRECTOR'S RESPONSE**

Much of the public comment received at the hearing and subsequently in writing is focused on the 2010 Master Plan, the College's past and future development activities, the College's conservation obligations under the prior 1990 Plan and the Commission's 1990 MOA with the College. Other comments relating exclusively to Galloway Township's 2010 Master Plan Reexamination Report and Ordinance 1817-2010 were also received and are addressed in the Executive Director's August 20, 2010 report on those documents. Responses to comments relevant to the 2010 Stockton College Facilities Master Plan are addressed below.

*Comment:*

One commenter (Exhibit G) suggests that the related rezonings adopted by Galloway Township are inconsistent with the Comprehensive Management Plan because they do not meet the tests for an amendment to the Comprehensive Management Plan, a petition for amendment or a waiver of strict compliance based on compelling public need.

*Reponses:*

No amendment to the Comprehensive Management Plan, petition to amend the Comprehensive Management Plan or waiver of strict compliance has been proposed or is required. Likewise, no memorandum of agreement between the Commission and the Township or the Commission and Stockton College is required because there are no variations from CMP land use of environmental standards or application requirements being proposed.

*Comment:*

Two commenters (see Exhibits F and G) raise concerns about the suitability of the rezoned lands for their new Regional Growth Area designation and the lack of offsetting management area changes. In addition, one of the commenters (Exhibit F) points to the guidelines set forth at N.J.A.C. 7:50-5.11(b) which are used to determine whether a proposed management area change should be considered through the local conformance process or the formal Comprehensive Management Plan amendment process. A specific concern is raised relative to N.J.A.C. 7:50-5.11(b)4 which suggests that management area changes that substantially alter the character of a municipality's overall zoning plan should be handled through a formal Comprehensive Management Plan amendment. The commenter submits that this section calls for offsetting management area changes, none of which have been included in the related Galloway Township rezoning. Finally, one commenter (Exhibit F) states that the Commission's Ecological Integrity Assessment (EIA) has been misused and misinterpreted in the Township's 2010 Master Plan Reexamination Report, leading to the rezoning of inappropriate areas.

*Response:*

The lands subject to the management area change were carefully evaluated over an extended period of time to ensure that only those areas suitable for Regional Growth Area development were redesignated. The Commission's Ecological Integrity Assessment (EIA) provided a starting point for this evaluation and led to a general classification of lands that should be protected and lands that were more appropriate for development. The bulk of the land being added to the Regional Growth Area has a composite EIA score of less than 70 while the bulk of the lands which will be deed restricted have composite scores which would qualify them as high integrity.

Intensive on-site survey work was then completed in order to ensure that critical habitat for rare plants and animals would not be adversely affected by the Master Plan's recommendations. The results of these surveys were used to refine the boundaries of the areas to be rezoned. The Executive Director believes that the approval standards of N.J.A.C. 7:50-4.52(e) have been met.

The Executive Director does not believe the concerns about the guidelines set forth at N.J.A.C. 7:50-5.11(b) regarding management area changes are persuasive. Much has been made of the fact that the Galloway master plan and ordinances only increase the size of the Regional Growth Area; they do not include offsetting management area changes. Such offsetting changes are not strictly required by the Comprehensive Management Plan. They are but one of many factors to be considered when determining whether a proposed management change would more appropriately be considered through the local conformance process or a formal amendment to the Comprehensive Management Plan. In instances where a proposed management area change would substantially alter the character of a municipality's overall zoning plan for the Pinelands Area, offsetting management area changes become an important consideration. Even if one accepts the argument that this change will significantly alter the character of Galloway Township's overall zoning plan, an offset is being provided in the form of deed restrictions on well over 1,200<sup>13</sup> acres of land on and off the college campus in Galloway Township. The Executive Director believes that the permanent protection of lands serves as an even better offset than any rezoning could, given that zoning standards can change over time.

To ensure that the deed restrictions are implemented in a timely manner, the Executive Director recommends a condition of approval that development undertaken pursuant to the 2010 Master Plan shall not be approved by the Commission until it receives evidence of the recordation of the deed restrictions.

It should also be noted that the approval standards for state agency plans (N.J.A.C. 7:50-4.52(e)) expressly authorize "alternative or additional techniques" to meeting the standards of the CMP. The measures incorporated into the Master Plan, including but not limited to the deed restrictions, maximum wetland buffers and the protection of off-site resources, demonstrates adherence to CMP standards.

The main objection appears to be opposition to any changes which increase development potential on the College's campus. The Executive Director believes it would be unreasonable to preclude the College from modifying a plan that is 20 years old. Just as the Comprehensive Management Plan is a dynamic document, so too are State agency plans and municipal master plans and ordinances. The CMP expressly recognizes this and provides a process by which state agencies and municipalities may amend their plans. In this case, Stockton State College has responded to changing conditions by preparing a Master Plan with important development and conservation components and Galloway Township has agreed to reflect that approach in its master plan and ordinances.

*Comment:*

There were concerns that specific facilities to be built in the new development areas are uncertain (Exhibit H).

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<sup>13</sup> The 1,257-acres of permanently protected land include 1,066 acres of wetlands and wetlands buffers as well as 191 acres of developable land.

*Response:*

Long range master plans, such as this, typically do not attempt to lay out detailed development plans as would be done when engineered site plans are prepared. Rather, they identify use areas and are followed by detailed facility and site plans are engineered. More to the point, the goal of this specific plan is to define appropriate development “envelopes” and to conserve ecologically sensitive lands.

*Comment:*

Concerns were voiced that there is no meaningful protection of the environment and that development will occur on environmentally sensitive lands (Exhibit H).

*Response:*

The Executive Director respectfully disagrees. The Commission’s own Ecological Integrity Assessment, extensive surveys of rare species, wetlands mapping and other natural resource information were used to identify lands which would be appropriate for development and those which should be protected for their natural values. For example, a 42-acre major development area approved in the 1990 Master Plan will no longer be considered for development. In total, 1,000<sup>14</sup> acres will be deed restricted on-site and an additional 257<sup>15</sup> acres off-site. Within these 1,257 acres, forested corridors are identified and lands to protect them are included.

*Comment:*

There was a concern that the 1990 MOA is being “violated” (Exhibit F) because the 1990 Plan was seen by some as an end-point plan.

*Response:*

An end point plan is one which is presumed to reflect all final outcomes and will not change over time. The 1990 Facilities Master Plan was not an end point plan. In fact, the 1990 Master Plan recognizes that it is a “long range” (not end-point) plan and the Commission’s resolution approving the Plan, as well as the 1990 MOA, recognize that future amendments to the Master Plan will be considered.

*Comment:*

There were concerns that the 1990 MOA is also being violated because the permanent protections “proposed” in 1990 have never been accomplished (Exhibit F).

*Response:*

The Executive Director understands that some people may interpret this to be the case. However, the Commission must consider the following facts:

- When the Commission certified Galloway Township’s zoning in 1990, it did so knowing that the zoning provisions were general in nature and, because of this, the Commission

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<sup>14</sup> This 1,000 acres includes 898 acres of wetlands and wetlands buffers, 91 acres of passive recreation and 11 acres for the College’s arboretum.

<sup>15</sup> These 257 acres include 89 acres of developable land off-campus and 168 acres of off-campus wetlands and wetlands buffers that will be deed restricted.

expressed its general understanding that areas outside the Regional Growth Area (approximately 810 acres) would be used for “low intensity and conservation uses.” This was not a standard or condition; rather, it served as a goal which the Commission considered when it reviewed the much more detailed College Master Plan several months later.

- The 1990 Facilities Master Plan identified different geographic areas on the College’s property and identified specific uses within each such area. Within the Rural Development Area, for example, environmental study and experimentation was identified within an approximate 168-acre area and passive recreation (including intramural athletic fields) was identified for a 642-acre area. Other portions of the Rural Development Area were specified for intercollegiate athletic fields and related facilities (approximately 84 acres), an observatory and associated facilities (approximately 14 acres), and an approximately 69-acre area for the storage of clean soil and cut vegetation and a borrow pit.
- The Commission approved these specific uses within the Rural Development Area and it was these uses that the College was bound to abide by.
- The 1990 MOA does not impose an obligation on the College to permanently preserve those lands. The MOA specifically provides that the College will “pursue additional options” to permanently restrict those lands to the uses specified in the Master Plan.

The College has, in fact, restricted uses in the Rural Development Area to those specified in the Master Plan for the past 20 years. It has done so through administrative action rather than through other options, such as easements. Since the 2010 Plan focuses its protection efforts on lands to be managed for their natural resource values (rather than for a variety of other uses as was the case in 1990), deed restrictions (i.e., easements) are the appropriate means to achieve permanent protection of important natural resource lands on and proximate to the College’s campus.

*Comment:*

There were concerns that less land will be protected than was called for in 1990 when approximately 1,060 acres were proposed for protection (Exhibit F).

*Response:*

As stated above, in 1990 the Rural Development Area land was slated for a variety of uses, many of which would not typically be associated with protected natural areas. As Exhibit E illustrates, the 1990 Plan actually contemplated that about 810 acres in the Rural Development Area would be conserved in a relatively natural state. In addition, approximately 277<sup>16</sup> acres of wetlands and wetland buffers in the development areas of the Regional Growth Area and Rural Development Area would also be conserved.

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<sup>16</sup> The 277 acres of wetlands and wetlands buffers included 267 acres within the College and Health Care areas, 33 acres within the active recreation area, and 10 acres within the storage area.

Exhibit E also shows the outcomes to be achieved through the 2010 Plan. Approximately 404 acres of wetlands and buffers in the designated development areas on- and off-site, 624<sup>17</sup> acres elsewhere on the main campus and 229 acres off-site will be preserved (two entire parcels and 31 acres of the 51-acre parcel). Compared to the 1990 outcome, this is 170<sup>18</sup> acres more than in 1990. The table below compares the amount of preserved land under the 1990 Facilities Master Plan with 2010 Master Plan.

*Comment:*

There were concerns that, since the College site is not being maintained properly and problems that pre-date the Pinelands program have not been corrected, the Master Plan should not be approved until they have been addressed (Exhibit H).

*Response:*

Although the Commission is not aware of any outstanding violations, we are checking to ensure that post-CMP development activities have conformed to CMP requirements. With respect to the future, development will meet the terms of the Master Plan and all relevant CMP standards.

We have also taken the liberty of forwarding these public comments to President Saatkamp and other college officials for their action. Finally, we would encourage concerned citizens to work with the College to better maintain the site and correct old problems.

## CONCLUSION

Based on the Findings of Fact cited above, the Executive Director finds that:

1. The 2010 Master Plan continues the purposes and spirit of the 1990 Plan and MOA:

- The College has revised its 1990 plan on the basis of new conditions and has appropriately located new development areas. The 1990 documents recognize this and call for a collaborative process in evaluating changes.
- Areas to be developed and areas to be conserved have been identified on the basis of more current and extensive ecological information than existed in 1990.
- The 2010 plan was developed cooperatively between the College and the Commission. The College has worked with the staff and the Commission's Policy and Implementation Committee on this for over 6 years.

2. The natural resource protections afforded through this Plan exceed those of the 1990 Plan.

- Roughly 1,087 acres were to be conserved in 1990. Today, 1,257 acres (on-site and off-site) are to be conserved.

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<sup>17</sup> The 624 acres includes 604 acres within the passive recreation area and 20 acres within the arboretum area.

<sup>18</sup>In 1990, a total of 1,087 acres were to be permanently preserved (898 acres of wetlands and wetlands buffers and 189 acres of uplands). In 2010, 1,257 acres will be permanently preserved (191 acres of uplands and 1,066 acres of wetlands and wetlands buffers). The difference between the two figures is 170 acres.

- The 1,257 acres will be permanently protected through deed restriction before the plan goes into effect, including a 42-acre area slated for development in the 1990 Plan but now found to be a sensitive environmental resource.
- Special emphasis is placed on maintenance of forested corridors through the deed restrictions and enhanced buffers (mandatory 300’).

3. The 151-acre net gain in developable land is balanced by the deed restriction of 170 acres of developable land<sup>19</sup>.

Thus, the Executive Director has concluded that the April 2010 Master Plan of The Richard Stockton College of New Jersey complies with Comprehensive Management Plan standards for approval of state agency comprehensive plans as set forth in N.J.A.C. 7:50-4.52. Accordingly, the Executive Director recommends that the Commission issue an order to approve the April 2010 Master Plan of The Richard Stockton College of New Jersey. The Executive Director also recommends that no development, with the exception of that required for public health and safety purposes, be approved by the Pinelands Commission within the new development areas established in the 2010 Master Plan until such time as the College has recorded appropriate deed restrictions on the lands proposed for permanent protection in the Master Plan.

LLL/SP17A  
Attachments

---

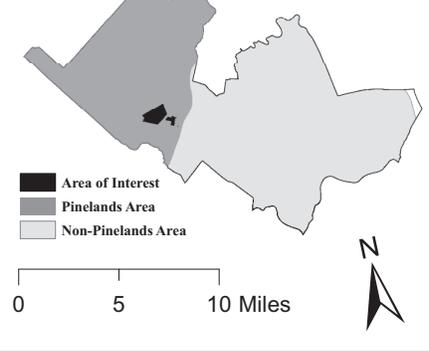
<sup>19</sup> Note: these acres are included in the 1,257-acre total.

# Exhibit A: Proposed Management Area Change

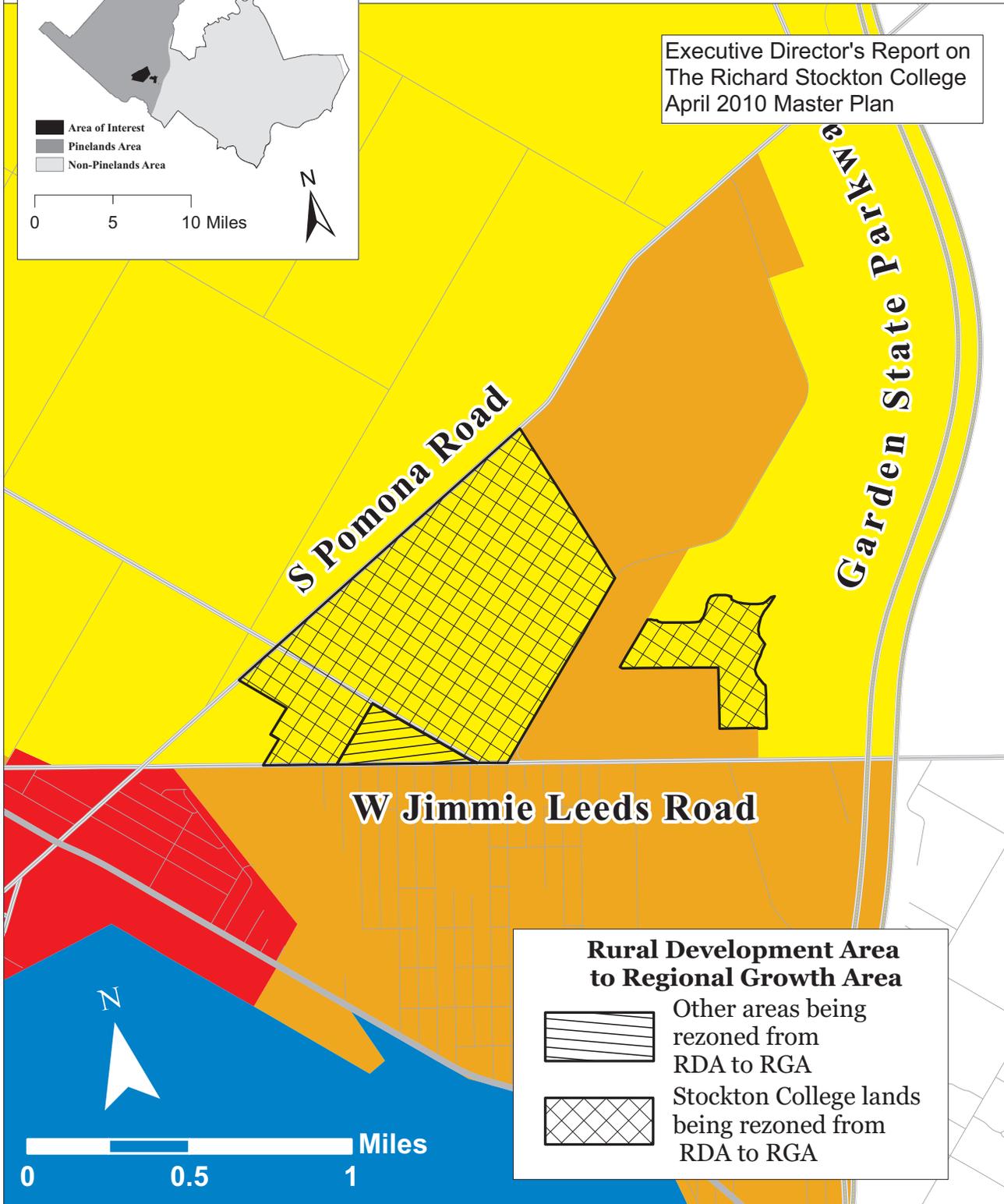
## Galloway Township, NJ



### Galloway Township



Executive Director's Report on  
The Richard Stockton College  
April 2010 Master Plan



### Pinelands Management Areas

- Preservation Area
- Forest Area
- Agricultural Production Area

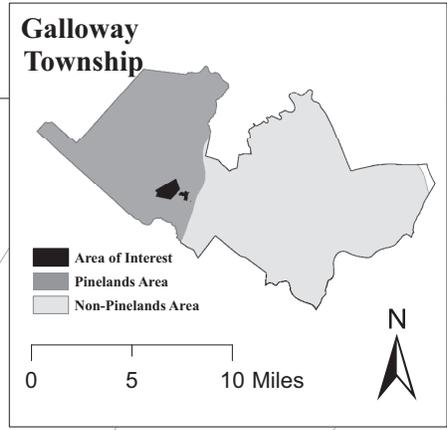
### Rural Development Area

- Rural Development Area
- Regional Growth Area
- Pinelands Town
- Federal or Military Facility

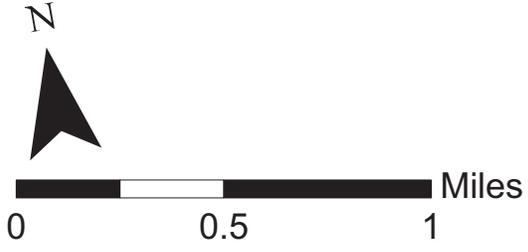
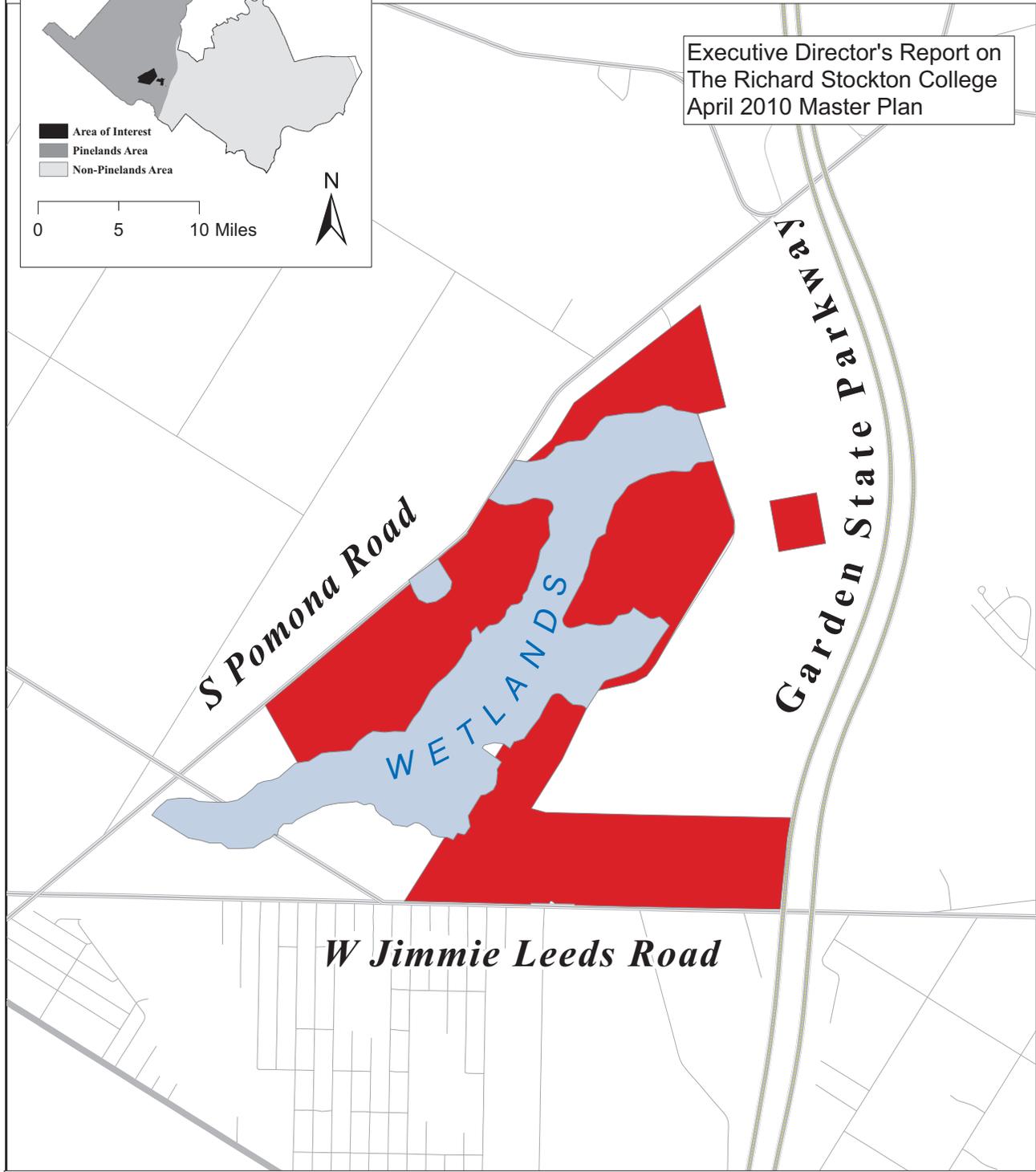
### Pinelands Village

- Pinelands Village
- Special AG Production Area

# Exhibit B 1990 Planned Development Potential Stockton College Campus Galloway Township, NJ



Executive Director's Report on  
The Richard Stockton College  
April 2010 Master Plan



**1990 Planned Development Potential**  
The Richard Stockton College  
of New Jersey Master Plan, 1990

# Exhibit C

Executive Director's Report on  
The Richard Stockton College  
April 2010 Master Plan

An area for storage, staging, stockpiling, and similar activities (not to exceed 20 acres) may be excluded from the deed-restricted lands in this approximate location.\*



Approximately 9 acres may be excluded from the deed-restricted lands to accommodate a proposed Garden State Parkway exit ramp and improvements ancillary thereto in this approximate location.\*

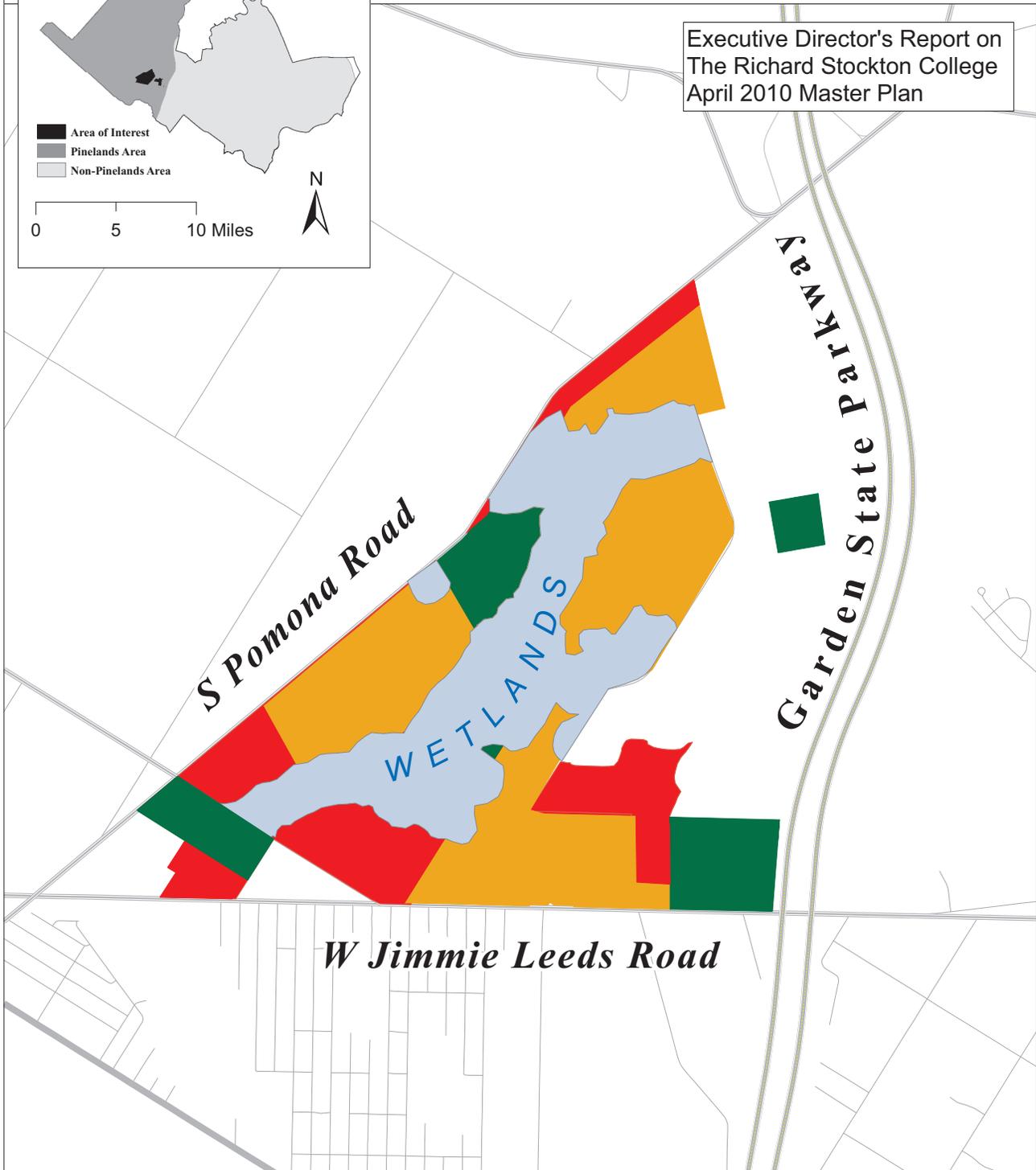
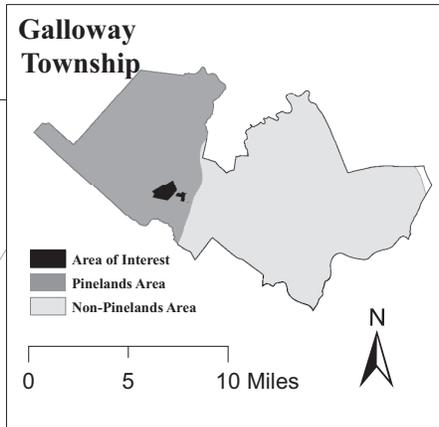
Exhibit C. – Sensitive Lands to be Deed Restricted  
(amended from Exhibit 7 of the Richard Stockton College  
of New Jersey April 2010 Master Plan)

\* Area not drawn to scale

# Exhibit D 2010 Planned Development Potential Stockton College Campus Galloway Township, NJ



Executive Director's Report on  
The Richard Stockton College  
April 2010 Master Plan



**1990 Planned Development Potential**  
The Richard Stockton College of New Jersey Master Plan, 1990



**Additional Development Areas in 2010 Campus Master Plan**  
Stockton College Campus Master Plan, 2010



**Development Areas in 1990 Plan To be Permanently Protected in 2010**  
Stockton College Campus Master Plan, 2010



**Exhibit E**

Executive Director's  
Report on The Richard  
Stockton College April  
2010 Master Plan

**The Richard Stockton College of New Jersey June 1990 Facilities Master Plan**

<b>Approximate Acreage</b>				
	<b>Developed or Developable Land</b>	<b>Wetlands (including buffers) <sup>1</sup></b>	<b>Total</b>	<b>RGA</b>
<b>Development Areas</b>				
College/Health Care	269	234	503	503
Active Recreation	111 <sup>2</sup>	33	144	
Observatory	14	0	14	
Planned Office	26	0	26	26
Off-Site Development	0	0	0	
	<b>420</b>	<b>267</b>	<b>687</b>	<b>529</b>
<b>Auxiliary Areas</b>				
Storage	59	10	69	
Other	0	0	0	
	<b>59</b>	<b>10</b>	<b>69</b>	<b>0</b>
<b>Open Space</b>				
Enviro. Study & Experimentation	56	112	168	
Passive Recreation	133	509	642	43
Off-Site	0	0	0	
	<b>189</b>	<b>621</b>	<b>810</b>	<b>43</b>
<b>Total Area</b>				
Main Campus	668	898	1,566	572
Off-Site	0	0	0	
	<b>668</b>	<b>898</b>	<b>1,566</b>	<b>572</b>

1 - Wetlands & wetlands buffers as depicted in the College's 2010 Master Plan.

2 - Includes approximately 30 upland acres of athletic fields outside of the active recreation area served by septic.

**The Richard Stockton College of New Jersey April 2010 Facilities Master Plan**

<b>Approximate Acreage</b>				
	<b>Developed or Developable Land</b>	<b>Wetlands (including buffers) <sup>3</sup></b>	<b>Total</b>	<b>RGA</b>
<b>Development Areas</b>				
College/Health Care	411	352	763	763
Active Recreation	100	24	124	124
Planned Office	26	0	26	26
Off-Site Development	20	28	48	48
	<b>557</b>	<b>404</b>	<b>961</b>	<b>961</b>
<b>Auxiliary Areas</b>				
Storage	20	0	20	
Other (GSP Exit Ramp)	9	0	9	
	<b>29</b>	<b>0</b>	<b>29</b>	<b>0</b>
<b>Open Space</b>				
Passive Recreation	91	513	604	42
Arboretum	11	9	20	20
Off-Site	89	140	229	2
	<b>191</b>	<b>662</b>	<b>853</b>	<b>64</b>
<b>Total Area</b>				
Main Campus	668	898	1,566	1,025
Off-Site	109	168	277	
	<b>777</b>	<b>1,066</b>	<b>1,843</b>	<b>1,025</b>

453

3 - Wetlands & wetlands buffers as depicted in the College's 2010 Master Plan.

**Exhibit E (cont.)****The Richard Stockton College of New Jersey April 2010 Master Plan**

Executive Director's  
Report on The Richard  
Stockton College April  
2010 Master Plan

		Approximate Acreage			
		Developed or	New Net	New Net Preserved	
		Developable Land	Developable Land	Land	Notes
<b>Development Areas</b>					
	College/Health Care	411	131	42	- A 42-acre site formerly proposed for development will now be preserved.
	Active Recreation	100			
	Former Observatory	0		14	- A 14-acre site formerly proposed as an observatory will now be preserved.
	Planned Office	26			
	Off-Site Development	20	20		
		<b>557</b>			
<b>Auxiliary Areas</b>					
	Storage	20		14	- A 69-acre area formerly planned for storage-use will now be split between a smaller 29-acre storage area, a proposed GSP interchange, a new development area, and 14-acre will be preserved.
	Other (GSP Exit Ramp)	9			
		<b>29</b>			
<b>Open Space</b>					
	Passive Recreation	91			11 - Virtually all of the arboretum will now be preserved.
	Arboretum	11			
	Off-Site	89		89	- An 87-acre upland portion of a parcel to the northwest of campus and a 2-acre upland portion of a parcel to the southwest of campus will be preserved.
		<b>191</b>			
<b>Total Area</b>					
	Main Campus	668			
	Off-Site	109			
		<b>777</b>	<b>151<sup>1</sup></b>	<b>170<sup>2</sup></b>	

1 - The 287 acres cited in the 2010 Master Plan Report represent a gross acreage figure that includes a 100-acre active recreation area. It does not reflect the 42-acre portion of campus, which will now be deed-restricted nor does it reflect the additional Regional Growth acreage from the 2001 rezoning. The 151-acre figure appropriately reflects the net change.

2 - The 287 acres cited in the 2010 Master Plan includes other lands that were proposed for protection in the 1990 Master Plan. While it is appropriate to preserve these lands, the acreage associated with those lands is not included in this figure.

# Exhibit F

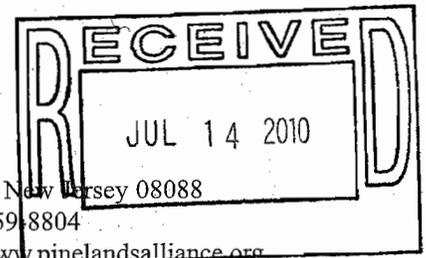
Executive Director's Report on  
The Richard Stockton College  
April 2010 Master Plan



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with linseed ink.

## 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](mailto:ppa@pinelandsalliance.org) Website: [www.pinelandsalliance.org](http://www.pinelandsalliance.org)



July 14, 2010

Mr. Larry Liggett  
Pinelands Commission  
15 Springfield Road  
P.O. Box 359  
New Lisbon, New Jersey 08064

**Re: Richard Stockton College – April 2010 Master Plan and  
Galloway Ordinance 1817 – 2010**

Dear Mr. Liggett:

The Pinelands Preservation Alliance is submitting the following comments on the conformance of the Richard Stockton College Master Plan and the Galloway Ordinance with the Pinelands Comprehensive Management Plan.

### **Stockton College Master Plan**

In 1990, Richard Stockton College entered into a memorandum of agreement (MOA) with the New Jersey Pinelands Commission for additional development in the Rural Development Area of Galloway Township. The college agreed in this MOA that any future use of the balance of the site, or the 1,050 acres, would be low intensity and/or conservation oriented.

The Pinelands Commission, when it entered into this MOA in 1990, found that the agreement afforded a greater level of protection for the balance of the property than if the general land use standards of Rural Development areas were followed. This MOA was not just about putting aside land for conservation, but also allowed for more development on the portions of the property that would be receiving the growth. This type of cluster development or planning trade off gave the College a higher density than would normally be permitted in a Rural Development area.

The protections that the environment received in 1990, by preserving 1,050 acres, will be taken away if this ordinance is certified. This would violate section 7:50-3.39(a)2.i. of the CMP that directs the Commission to regulate the character, location and magnitude of development within the Pinelands area. Through the 1990 MOA the Commission made a change that was certified and now needs to be carried out. The development has proceeded in the locations and magnitude since the 1990 MOA was signed, and so should the protections put in place for the environment. The environmental values and constraints that existed on this set aside land in 1990 are still valid.

Certification of the Galloway ordinance would make a mockery of the Commissions 1990 MOA and tell the public that the Commissions written comments are not worth the paper they are written on.

### **Galloway Ordinance 1817 – 2010**

PPA believes that certification of the Galloway ordinance, which allows for the expansion of the GI Zone onto lands that were protected under the 1990 MOA between the Pinelands Commission and Richard Stockton College, violates the Comprehensive Management Plan.

The lands which are being re-zoned from Rural Development to Regional Growth have Ecological Integrity Scores of 70%, 80% and 90%, making them suitable as Forest Area, not Regional Growth Area designation. The Comprehensive Management Plan Section 7:50-3.39 2.vi allows the Pinelands Commission only to certify municipal ordinances that include provisions which consider the suitability of lands for their assigned management area. With Ecological Integrity scores above 70%, the proposed land for redesignation cannot meet this standard of the plan and should be changed to a more protective management area designation.

Although the Re-examination Report talks about "an off-set of land elsewhere," there are no lands that are being redesignated from Regional Growth to Rural Development, making it unclear how this ordinance meets Section 7:50-3.39 (a) 2.i. of the CMP in regulating the magnitude of development within the Pinelands area. Without lands being reassigned from Regional Growth to Rural Development, there is no balance of development and the environment.

This Ordinance allows for development of land that was to be permanently protected under the 1990 MOA to be developed at a total impervious cover limit of 60%. This is much greater than the 35% which was allowed under the 1990 Galloway ordinance which implemented the MOA and created the GI Zone. Preserving and maintaining the essential character of the existing Pinelands environment does not happen by changing areas with a high ecological integrity score and allowing them to be developed.

Lastly, Item D Bulk Requirements, #5 of the ordinance states, "*In areas where the setback is reduced the development plan should give consideration to the appropriate landscaping and*

*screening.*" PPA thinks this language is too vague with respect to vegetation. It's not clear that the ordinance will direct the college or any development along Jimmie Leeds Roads to comply with the Vegetation Standards in the CMP.

In summary, the Pinelands Commission must meet its requirement to regulate the magnitude of development within the Pinelands area. Neither the Galloway Ordinance nor the Richard Stockton College Master Plan assure the offset that must be provided as a trade from changing the management area and the Richard Stockton College land that was originally set aside for preservation (1,050 acres).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Theresa Lettman". The signature is fluid and cursive, with a large initial "T" and "L".

Theresa Lettman  
Director for Monitoring Programs

# Exhibit G

Executive Director's Report on  
The Richard Stockton College  
April 2010 Master Plan

## The Great Egg Harbor Watershed Association

P.O. Box 109  
Newtonville, NJ 08346

856-697-6114  
akers@gowebway.com



July 14, 2010

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

RE: April 2010 Stockton Master Plan and Galloway Master Plan Comments

Dear Pinelands Commission:

The Great Egg Harbor Watershed Association does not believe that the proposed implementation of the added Regional Growth Area part of Richard Stockton College (RSC) of New Jersey's April 2010 Master Plan, and the proposed implementation of the Galloway Township 2010 Master Plan changes for RSC, meet the minimum standards required to protect the Pinelands under the Comprehensive Management Plan. In fact, we see these deviations from the protective standards of the CMP as a significant threat to Pinelands protection in Galloway Twp., and we are greatly concerned that the strategy and tactics of the Pinelands Commission to work around the basic protections of the Pinelands Comprehensive Management Plan in this case will set a precedent to reduce protections in other areas of the Pinelands, including in the Great Egg Harbor Watershed and in and near the federal boundaries of the Great Egg Harbor National Scenic and Recreational River in the Pinelands.

In general, we believe that the 1,560 acre RSC parcel was already granted the minimum necessary relief under the 1990 MOA to allow the development of the parcel in accordance with the CMP Waiver of Strict Compliance Part V, 7:50-4. More specifically, we outline our comments as follows:

**1. 1990 MOA** – Under this Memorandum of Agreement, Galloway Township adopted zoning changes that would permit a 500 acre Pinelands Management Area change from Rural Development Area to Regional Growth Area, with the following certification: *“WHEREAS, the Commission has certified this rezoning with the understanding that any future use of the balance of the site would be of low intensity and/or conservation oriented”* and *“WHEREAS, the College has adopted a master plan which reflects this approved zoning plan”*.

Furthermore, the 1990 MOA also stated that RSC would, “Pursue additional options, in cooperation with the Commission, to permanently protect the 1,060 acres outside the growth area by restricting its use to those specified in the Master Plan.”, and “Only apply for developments that are consistent with the approved Master Plan.

### OFFICERS

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President

**Ed Curry**  
Vice President

**Dick Colby**  
Treasurer

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**Sarah Summerville**

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**Clark Sprigman**

**Pat Sprigman**

### STAFF

**Lynn Maun**  
Secretary &  
Coordinator

**Fred Akers**  
Administrator

This 1990 MOA satisfied the compelling public need for RSC to have a college on 500 acres of new Regional Growth Area (RGA) through an amendment to the CMP, and balanced that with the protection of the remaining 1,060 acres in the Rural Development Area (RDA). But today, RSC is applying for developments that are inconsistent with the 1990 approved Master Plan, and asking the Pinelands Commission to change 470 of the “permanently protected” 1,060 acres in RDA to RGA.

And on top of that, RSC is now proposing to use the remaining land that they promised to protect in 1990 as a protection offset for the 470 acres of new RGA. Our points here are that the minimum standards to protect the Pinelands on this parcel were met 20 years ago, the Pinelands Commission is proposing to violate the 1990 waiver of strict compliance by reducing the certified protections on the parcel, and the Pinelands Commission is making a mockery out of the MOA process.

## **2. SUBCHAPTER 7. AMENDMENTS TO THE COMPREHENSIVE MANAGEMENT PLAN**

***“7:50-7.1 Purpose - It is not intended to be used as an alternative to the procedures set forth in N.J.A.C. 7:50- 4, Part V which are designed to provide relief of particular hardships and to satisfy compelling public needs, unless doing so would be of benefit to the Pinelands by furthering the intent of the Pinelands Protection Act and the Federal Act. Neither is it intended to be used to confer special privileges or rights as a means of solving the economic, competitive or other interests of particular individuals or as means of providing a specific benefit to a particular use or class of uses, except in cases where such changes would be of benefit to the Pinelands by furthering the intent of the Pinelands Protection Act and the Federal Act.”***

We believe that both the proposed Galloway Mater Plan changes and the Stockton Master Plan changes go way beyond the certified relief provided under the CMP to RSC in 1990, are not a benefit to the protection of the Pinelands, and are therefore being used to “*confer special privileges or rights as a means of solving the economic, competitive or other interests*”, which is contrary to the intent of the CMP.

## **3. 7:50-7.3 Proposed amendments; petitions for amendment**

***“5. If the proposed amendment involves the redesignation of Pinelands management areas for a particular parcel, documentation as to how the affected parcel meets the criteria established in this Plan for the management area to which it is proposed to be redesignated. Unless the Commission determines that it is unnecessary, any such amendment shall include a proposal for an offsetting management area change and documentation as to how all of the lands affected by the offset proposal meet the criteria established in this Plan for the management area to which they are proposed to be redesignated;”***

We believe that the Ecological Integrity Assessment, which was part of the documentation used to lower the natural resource values in the proposed 470 acres to become RGA, was misused and misrepresented in both the April 2010 Stockton Master and the 2010 Galloway Master Plan. Our GIS analysis shows that the EIA values in the majority of the 470 acre new RGA are 70% and above, which would be consistent with the 1990 MOA and consistent with the protection of these lands, and not their development.

Furthermore, we think that given the high EIA values of these 470 acres, the lack of a proposal for an offsetting management area change and documentation as to how all of the lands affected by the offset proposal meet the criteria for redesignation, is especially troubling. And even more troubling, is the proposal to use wetlands and wetlands buffers, already protected by Pinelands regulations and promised to be protected by RSC in 1990, as the offset for this new RGA management area change. We find this part of the proposals to be particularly egregious, making the Pinelands protections in these Master Plans and proposed by the Pinelands Commission a deceitful pretense of real protection.

#### **4. PART II-PINELANDS MANAGEMENT AREAS**

##### **7:50-5.11 Purpose**

***“4. The management area change(s) would substantially alter the character of a municipality’s overall zoning plan for the Pinelands Area as it relates to the standards and objectives of this Plan, considering the size and character of the area(s) proposed for redesignation and the extent to which increases in development potential are balanced by decreases in development potential through offsetting management area changes;”***

This section of the CMP is supposed to instruct the Commission ***“in determining whether a proposed management area change is more appropriate to consider through the Plan amendment procedures of N.J.A.C. 7:50-7 rather than through the certification procedures of N.J.A.C. 7:50-3 and shall be given proper consideration by the Commission when evaluating the need for an amendment to this Plan.”*** And it calls for offsetting management area changes.

It appears to us that the Commission is using the certification process to push through these questionable management area changes, especially given that Galloway did not propose any like other municipalities are required to do.

##### **5. 7:50-3.39 Standards for certification of municipal master plans and land use ordinances**

***“(a) 2 vi. Implement Pinelands management area and zoning district boundaries in a manner which provides consistent treatment of similarly situated lands and considers the suitability of lands for their assigned management area and zoning district designations as they relate to the standards and objectives of this Plan;”***

The Galloway Master Plan changes for RSC and the Pinelands Commission do not specifically address the above standards. In fact, it appears that Galloway is simply complying with the requests of RSC and the Pinelands Commission to go through the motions of supporting more RGA in Galloway. For example, in Part III of the Reexamination Report, Galloway writes, ***“As a result of the Review by the Pinelands Commission what the Township included as potential development and zoning changes in the 2007 Master Plan report has been modified to reflect the concerns of the Commission”***, and simply justifies the change by writing that, ***“The proposed development is not consistent with the purposes of the Rural Management Area,; therefore a change in the management area is required.”***

Instead of real planning to protect the Pinelands, we find Galloways Mater Plan for RSC to be nothing but a rubber stamp to “reflect the concerns of the Commission” to promote more development and less protection on the RSC parcel, and a sort of end run around the existing MOA and the Plan amendment procedures of N.J.A.C. 7:50-7.

**Conclusions:**

We are greatly concerned that the strategy and tactics of the Pinelands Commission and RSC to work around the basic protections of the Pinelands Comprehensive Management Plan in this case will set a precedent to reduce protections in other areas of the Pinelands, including in the Great Egg Harbor Watershed and in and near the federal boundaries of the Great Egg Harbor National Scenic and Recreational River in the Pinelands. We recommend that the Pinelands Commission reject the management area changes proposed in the April 2010 Stockton Master Plan and the 2010 Galloway Master Plan, and embrace the certified 1990 MOA with RSC which gave RSC a viable college campus that worked well for 20 years.

We have read in the newspapers that RSC is considering buying the Sea View Hotel and leasing the closed Ponder Lodge Golf Course buildings in Cape May as an alternative to building more in the Pinelands. So there are other alternatives than renegeing on the 1990 MOA and unnecessarily reducing the protection of the Pinelands.

Sincerely,

A handwritten signature in dark ink that reads "Fred Akers". The signature is written in a cursive style with a long horizontal stroke at the end.

Fred Akers, River Administrator

These comments address GALLOWAY TOWNSHIP - Resolution 10-2010, adopting the 2010 Master Plan Reexamination Report, and Ordinances 1810-2010 and 1817-2010 and RICHARD STOCKTON COLLEGE OF NEW JERSEY'S April 2010 Master Plan

While I am a member of the faculty of Richard Stockton College's Environmental Studies (ENVL) Program, I write as a private citizen of Galloway Township, New Jersey. The proposed changes embodied in this report and these ordinances represent ill-conceived, speculative plans, which if implemented, would further degrade the environment of the Pinelands.

Although it claims to be an environmental leader and "New Jersey's Green College," Stockton has failed to protect biodiversity and water quality, key values in the Pine Barrens.

The 1971 Comprehensive Architectural Master Plan emphasized the natural environment. It recommended setting aside areas for research and for aesthetic and recreational value. It stated, "The identification of the most desirable natural areas on the campus and administrative action now, to assure the recognition of their unique values and to insure their perpetual protection, will demonstrate the vision of the College's founders." This has not happened. The College has failed to permanently designate ecological research areas or to insure perpetual protection, except as required by outside agencies. In the early 1990's, the College announced that a memorandum of agreement had been signed with the Pinelands Commission to "deed restrict" a substantial portion of the campus and to confine development to the already utilized areas. Stockton recently requested changes to this agreement, so virtually the entire upland habitat of the campus could be slated for development, and preservation be limited to legally restricted wetlands and parcels of land located away from the campus, inaccessible for research or recreation. It also was announced that no "deed restriction" in fact existed, which casts doubt on the claim that there will be deed restrictions under the new plan. In any case, if the College and Commission can void the earlier agreement, what real meaning does any such agreement have? When the College decides it needs to build close to the Parkway or on the off-campus lots on Moss Mill Road, what is to prevent them asking and getting permission to void this new arrangement?

The 1971 master plan gathered more ecological information than any previous plan for a similar institution. The goal was to continue to develop a management plan that would serve as a model for others. Today, it appears that the only interest on the part of the College administration in such data is to find ways to expand the campus development to the maximum degree allowed by state regulations. Until 2010, Stockton had not contracted for a professional management plan for its forested areas. Despite recommendations from the ENVL Program, no management has been done except controlled burnings. The environmental assessments done by the College's hired consultants did not address numerous aspects of landscape and biological diversity that are of critical significance to the actual ecological and scientific values of the Campus. Neither the College nor the Pinelands Commission has sought the advice of the environmental faculty in determining the appropriate areas for development and protection. Indeed the campus arboretum was only excluded from the development zone after the plans were seen by a few faculty members, who protested.

The 1971 plan recommended innovative use of native plants, even for lawns, but Stockton has replaced natural forest and field cover with turf and ornamental trees, which require irrigation, fertilizing and noisy mowing. Besides soil compaction and air and water pollution, this has led to declines in diversity of plants and animals on the campus. Stockton ignores best management practices for roadside biodiversity, allowing only limited demonstration, so it is a follower, not a leader, in this area. The College has no effective policies to protect or enhance biodiversity or to control invasive plant species. Aggressive programs of growing season mowing of former fields have devastated the biodiversity of much of the campus acreage, and lack of any regenerating disturbance such as fire or cutting has converted much of the forest into "huckleberry barrens." Species such as turkey beard, pine barrens gentian and pixie moss have been nearly eliminated, although they were frequent in the 1970's. Even the new powerline along the Garden State Parkway, which was a possible area for new biodiversity, has been subjected to growing season mowing, contrary to all best management practices. As development squeezes ever tighter around the wetlands, lakes and streams, impacts such as light pollution, have greatly reduced the presence of characteristic Pine Barrens moths and other insects.

In 1971 runoff from buildings, parking lots, roads and sidewalks was channeled directly into Lake Fred and surrounding wetlands. One stream was converted into a drainage ditch. In 1971, these were legal methods, but despite changes in the laws and the science, they remain in place. The 1990 revision of the master plan emphasized that these were "grandfathered," and suggested that they be utilized for the indefinite future. Although new rules, under a reasonable interpretation, require ending direct discharges when new development takes place, Stockton and the Pinelands Commission seem content to let things be. During the building of the student center, the Natural Resources Conservation District issued a citation for allowing sediment to enter Lake Fred via the old stormwater system. Thus, one of the ecological jewels of "New Jersey's Green College" continues to be abused. While there are reports that a stormwater plan is being developed, there have been no opportunities for input by the faculty of the College, despite their considerable interest and expertise in this area. This stormwater plan should be fully vetted before the changes requested by the new Master Plan are approved. It is a shocking dereliction of responsibility by the Commission to allow otherwise.

Currently, developments like Housing One and most of the service roads on campus, along with numerous official and unofficial unpaved parking areas are experiencing soil erosion and contributing significant flows of sediment laden water to the campus's streams, lakes and wetlands. The newer developments, because of poorly maintained landscaping and failure to keep vehicles off unpaved areas, are not much better than the older sites. Nevertheless, the College and the

Township agree on allowing Housing One to become Stockton Towers, despite its being well inside the wetlands buffer of Lake Fred. Not only will the construction pollute the lake further, if the experience with the Student Center is any indication, but the towers will likely ruin what is at present an almost wholly natural skyline of the lake, further degrading the aesthetics that were such a key concern of the 1971 Master Plan.

In considering water quality overall, it is important to recall two key points:

1. Pinelands Waters is a non-degradation designation according to NJDEP
2. The Commission's own scientists have shown that development in excess of 20% in a watershed leads to serious degradation of water quality

The proposed developments in the new Master Plan comprise 36% of the watershed as an approximate estimate, with much of the new development directly adjacent to the wetlands buffers. No exact figure for overall development percentage has been reported by the College or its consultants. In fact, no such considerations appear to have been included in the plan at all. The ordinance allows up to 60% impervious cover on the developed sites. No effort is made to assess the impact of such ancillary structures as detention basins, a particularly bad example of which, having needlessly removed several acres of woodland that could have much more reliably absorbed stormwater from the new athletic fields, can be seen along Route 575. Nor is there any discussion of the likely future reliability of the underground recharge structures that are employed extensively for the various recent College developments.

The Ordinance calls for a buffer of 50 feet to be maintained along Route 575. A look at the new athletic field, now in the finishing stages of construction, will show that no such buffer is being maintained now. More sterile landscaping with non-native turf grass and a few pathetic trees is all that has been provided.

The new Master Plan, which was never available for review by the Stockton community in such a way as to allow meaningful input, is plainly intended to stake out for future development as much territory as possible. Many of these developments are of a quasi-commercial nature, designed to be sources of revenue for the College. The seriousness of the plans is called into question by the fact that eight new "administration" buildings are called for in the plans, for an institution that has already been described as "top heavy" with administrators. The logical conclusion is that these plans are a smoke screen, intended to accomplish the zoning changes, but not seriously intended to be built. Thus, the question arises as to what, if any, are the actual intentions. Since the only specifically prohibited uses are private mental hospitals and medical offices, it would appear that the College, along with private "partners," might propose uses quite at variance with the proffered plans and the functions of a college. Further doubt is cast upon the seriousness of the plans to build a hotel by the news that Stockton is negotiating to purchase another similar facility in the eastern part of the Township. None of this bespeaks a serious, careful planning process, building on existing strengths and honoring past commitments to the environment.

Stockton's environmental faculty and students are not only part of the College's educational mission but also professionally committed to the environment. This has led to collaboration among faculty, students and administration, such as the original sprayfield, the geothermal and related energy systems and the non-structural elements of stormwater management. More often, however, faculty have been left out, given limited information after decisions were made or only asked to fix problems when regulators rejected Stockton's proposals. Too often, faculty and students have been denied the opportunity to help Stockton lead with innovative solutions. Stockton has preferred to work with professional consultants who focus on getting development permissions, while doing the minimum the law or public relations requires for biodiversity and water quality. This has led to plans, such as the present one, that offer no meaningful protection to the environment.

In conclusion, speaking for myself as a citizen and not as a member of Stockton's Environmental Studies Faculty, I believe that this is a thoroughly bad, highly speculative plan and that the Commission should send Stockton and Galloway Township back to the drawing board. But first of all, the College needs to go back to the field and back to its own faculty and students to reassess the various issues. There is no harm in delay; neither the present economic situation nor the College's current projects require the zoning changes contemplated in these proposals. There is plenty of time to get things right.

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# ***RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION***

**NO. PC4-22-\_\_\_\_\_**

**TITLE:** To Authorize the Acting Executive Director to Propose Amendments to the Comprehensive Management Plan in Accordance with the Administrative Procedure Act (Water Management)

**Commissioner \_\_\_\_\_ moves and Commissioner \_\_\_\_\_ seconds the motion that:**

**WHEREAS**, the Kirkwood-Cohansey aquifer is a fresh-water reservoir underlying the New Jersey Pinelands that contains at least 17 trillion gallons of water; and

**WHEREAS**, the Kirkwood-Cohansey aquifer provides potable and non-potable water to hundreds of thousands of people in South Jersey and sustains the ecology of the Pinelands by supporting wetlands and unique Pinelands vegetation and animal communities; and

**WHEREAS**, withdrawals from the Kirkwood-Cohansey aquifer can adversely impact the essential character of the Pinelands environment if they cause changes to habitats, reduce the quantity of water in the Preservation Area or encourage inappropriate patterns of development; and

**WHEREAS**, in 2001, the New Jersey Legislature enacted a law (P.L. 2001 c.165) calling for a study of the ecological impacts of human activities, including wells and diversions, on the ecology of the Pinelands Area; and

**WHEREAS**, the law directed the Commission, in cooperation with the New Jersey Department of Environmental Protection, Rutgers University, the United States Fish and Wildlife Service and the United States Geological Survey, to “assess and prepare a report on the key hydrologic and ecological information necessary to determine how the current and future water supply needs within the pinelands area may be met while protecting the Kirkwood-Cohansey aquifer system”; and

**WHEREAS**, twelve separate studies were ultimately completed in order to address two major questions: the hydrologic effects of groundwater diversions from the Kirkwood-Cohansey aquifer on stream flows and wetland water levels; and the ecological effects of streamflow and groundwater-level changes on aquatic and wetland communities; and

**WHEREAS**, pump tests, monitoring, and hydrologic modeling and assessment studies characterized the aquifer and generated data and an understanding of the changes to groundwater levels and streamflow that might occur from groundwater pumping; and

**WHEREAS**, the habitat, plant, and animal studies simulated changes to groundwater levels and evaluated the impacts of the lowered water table on those habitats, plants, and animals; and

**WHEREAS**, the water depth reductions simulated in the “Frog Development” study showed a clear increase in impacts to the studied species, including Pine Barrens tree frog, spring peeper, and southern leopard frog, beginning at 10 cm (4 inches) of groundwater drawdown with increasing impacts from successively greater drawdown depths; and

**WHEREAS**, based on these findings, the Pinelands Commission has determined that it is appropriate and necessary to amend the Comprehensive Management Plan to significantly strengthen the ecological protections of the Kirkwood-Cohansey aquifer; and

**WHEREAS**, the Commission is therefore proposing amendments that will provide clearer, quantifiable standards for assessing the ecological impacts of nonagricultural diversions from the aquifer, introduce new, quantifiable standards to protect the available water supply in the watershed in which a division will be located, expand the scope of wells that will be subject to the new standards, limit new or increased diversions from the Kirkwood-Cohansey to appropriate Pinelands management areas and clarify and expand water conservation requirements; and

**WHEREAS**, the Acting Executive Director has submitted to the Commission draft amendments to N.J.A.C. 7:50-1.6, 2.11 and 6.86 of the Comprehensive Management Plan to accomplish the above-described objectives in a manner that furthers the goals of the Comprehensive Management Plan and recognizes the special resources of the Pinelands that the Commission is charged with protecting; and

**WHEREAS**, the proposed Comprehensive Management Plan amendments were discussed and reviewed during focus group meetings from 2015 to 2022 hosted by the Commission, through presentations at the New Jersey Water Supply Advisory Council and during multiple public meetings of the Commission’s CMP Policy & Implementation Committee over the past several years; and

**WHEREAS**, the proposed amendments to the Comprehensive Management Plan have been reviewed by the Pinelands Commission; and

**WHEREAS**, the Pinelands Commission wishes to formally consider the amendments to the Comprehensive Management Plan set forth in the attachment hereto, dated May 27, 2022; and

**WHEREAS**, the Administrative Procedure Act of 1968, as amended, and the Office of Administrative Law implementing regulations set forth a detailed procedure governing proposed rulemaking; and

**WHEREAS**, the Pinelands Commission also wishes to obtain the comments of the public, governmental agencies and the Pinelands Municipal Council on the proposed amendments, in accordance with the Pinelands Protection Act and Subchapter 7 of the Comprehensive Management Plan; 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. The Commission hereby authorizes the Acting Executive Director to submit the proposed amendments to the Comprehensive Management Plan, attached hereto and dated May 27, 2022, and the required supporting documentation to the Office of Administrative Law for publication as proposed regulations;
2. The Acting Executive Director shall transmit the proposed amendments to all Pinelands municipalities and counties and the Pinelands Municipal Council for review;
3. The public comment period on the proposed amendments shall extend 60 days from the date of publication of the proposal in the *New Jersey Register* and the Acting Executive Director shall affix the date of a public hearing to receive comments on the proposed amendments; and
4. Subsequent to the comment period, the Acting Executive Director shall expeditiously prepare proposed final amendments, with any pertinent changes to these amendments, for review by the Commission’s CMP Policy and Implementation Committee, and shall submit same to the Commission for final action.

**Record of Commission Votes**

	AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*
Avery					Lettman					Pikolycky				
Christy					Lloyd					Quinn				
Holroyd					Lohbauer					Matos				
Irick					McCurry									
Jannarone					Meade									

\*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: \_\_\_\_\_

\_\_\_\_\_  
Susan R. Grogan  
Acting Executive Director

\_\_\_\_\_  
Laura E. Matos  
Chair

**ENVIRONMENTAL PROTECTION**

**PINELANDS COMMISSION**

**Pinelands Comprehensive Management Plan**

**Fees; Definitions; and Water Quality**

**Proposed Amendments: N.J.A.C. 7:50-1.6, 2.11, and 6.86**

Authorized By: New Jersey Pinelands Commission, Susan R. Grogan, Acting Executive Director.

Authority: N.J.S.A. 13:18A-6.j.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number:

A **public hearing** concerning this notice of proposal will be held on:

\_\_\_\_\_, 2022, at 9:30 A.M.

Richard J. Sullivan Center

15C Springfield Road

New Lisbon, New Jersey

Submit written comments by regular mail, facsimile, or email by \_\_\_\_\_, 2022, to:

Susan R. Grogan, P.P., AICP

Acting Executive Director

Pinelands Commission

PO Box 359

New Lisbon, NJ 08064

Facsimile: (609) 894-7330

Email: [planning@pinelands.nj.gov](mailto:planning@pinelands.nj.gov) or through the Commission's website at

<http://nj.gov/pinelands/home/contact/planning.shtml>

The name and mailing address of the commenter must be submitted with all public comments. Commenters who do not wish their names and affiliations to be published in any notice of adoption subsequently prepared by the Commission should so indicate when they submit their comments.

The agency proposal follows:

### **Summary**

The New Jersey Pinelands Commission (Commission) proposes to amend Subchapter 1, General Provisions; Subchapter 2, Interpretations and Definitions; and Subchapter 6, Management Programs and Minimum Standards of the Pinelands Comprehensive Management Plan (CMP). The CMP has been guiding land use and development activities in the Pinelands since it took effect on January 14, 1981. The CMP has been amended many times, most recently in January 2022 through a set of amendments related to stormwater management (see 54 N.J.R. 138(b)).

The Kirkwood-Cohansey aquifer is a fresh-water reservoir underlying the New Jersey Pinelands and containing an estimated 17 trillion gallons of water. It is a source of potable and non-potable water to hundreds of thousands of people in South Jersey and sustains the ecology of the Pinelands by supporting wetlands and unique Pinelands vegetation and animal communities. As a result, withdrawals from the aquifer can impact the essential character of the Pinelands environment if they cause changes to habitats, reduce the quantity of water in the Preservation

Area, or encourage inappropriate patterns of development. Water withdrawals are also referred to as diversions or wells throughout this rulemaking.

The current standards in the CMP that govern water withdrawals in the Pinelands Area were last amended in 1994. As explained in greater detail below, a series of studies on the impacts of diversions on the Kirkwood-Cohansey aquifer illuminated the need to update the CMP to better protect the aquifer. The proposed amendments strengthen protections to the Kirkwood-Cohansey aquifer and the Pinelands ecology while ensuring a sufficient water supply for development in the more growth-oriented areas of the Pinelands Area.

The New Jersey Legislature enacted a law in 2001 calling for a study of the ecological impacts of human activities, such as diversions, on the ecology of the Pinelands Area. The bill directed the Commission, in cooperation with the Department of Environmental Protection, Rutgers University, the United States Fish and Wildlife Service and the United States Geological Survey, to “assess and prepare a report on the key hydrologic and ecological information necessary to determine how the current and future water supply needs within the pinelands area may be met while protecting the Kirkwood-Cohansey aquifer system.” (P.L. 2001 c. 165).

The series of studies that resulted from this bill became collectively known as the Kirkwood-Cohansey Project. The Project addressed two major questions: (1) the hydrologic effects of ground-water diversions from the Kirkwood-Cohansey aquifer on stream flows and wetland water levels and (2) the ecological effects of streamflow and ground-water-level changes on aquatic and wetland communities.

Twelve separate studies were completed as part of the Kirkwood-Cohansey Project, which are described at <https://www.nj.gov/pinelands/science/complete/kc/>. They showed a direct correlation between simulated groundwater withdrawals and/or simulated streamflow reductions

on the distribution and composition of wetland-forest communities, individual wetland species, and wetland-indicator groups. The studies assessed impacts from diversions on nine frog species, the federally endangered wetlands plant swamp pink, fish and invertebrate assemblages, and vegetation types. Taken together, the studies predicted reductions in the plants and animals that are characteristic of undisturbed Pinelands ecosystems caused by groundwater withdrawals. In particular, the studies showed that a decline of the water table by more than four inches in wetlands caused a sharp decline in wetlands vegetation and reduced the survival rates of three species of frogs found in the Pinelands, including the spring peeper, the southern leopard frog, and the state-threatened Pine Barrens tree frog.

Multiple studies in the K-C Project assessed impacts related to water supply in terms of the water budget. These studies compared water inputs through rainfall and infiltration versus water losses through transpiration and pumping. A hydrologic framework study characterized the hydrogeology of the aquifer. A hydrologic assessment of three watersheds modeled changes to the water budget and created water table maps. An evapotranspiration study evaluated impacts to the water budget due to loss of water evaporated from surfaces or transpired by vegetation. Finally, a hydrologic modeling study built on the other water budget studies by measuring groundwater and stream flow responses to groundwater withdrawal scenarios. Models were developed to estimate withdrawal impacts. The findings of the Kirkwood-Cohansey Project form the basis for most of the proposed amendments, which significantly strengthen the ecological protections of the Kirkwood-Cohansey aquifer. The Commission is proposing clearer, quantifiable standards for assessing the ecological impacts of nonagricultural diversions from the Kirkwood-Cohansey aquifer (referred to in the proposal as “adverse local impact”) and

introducing new, quantifiable standards to protect the available water supply in the watershed in which a diversion will be located (referred to in the rule as “adverse regional impact.”).

The protections to the Kirkwood-Cohansey aquifer will also be strengthened by expanding the scope of wells that will be subject to the proposed standards. The threshold pumping volume at which a well will need to meet the standards in N.J.A.C. 7:50-6.86 is being reduced from 100,000 gallons per day to 50,000 gallons per day.

The proposed amendments require applicants for diversions in the Kirkwood-Cohansey aquifer to conduct specific tests, analyses, and modelling to demonstrate whether the proposed diversion will have an adverse regional or local impact.

To protect the more ecologically sensitive areas of the Pinelands Area, the Commission is proposing to limit new or increased diversions from the Kirkwood-Cohansey aquifer to Agricultural Production Area and the more growth-oriented Pinelands Management Areas. In addition, a diversion will only be permitted if an applicant can demonstrate that no alternative water supply source is available or viable.

The amendments clarify the current water conservation requirements and impose notice requirements on well applicants in the Kirkwood-Cohansey aquifer to better address issues associated with potential limits on water available for future growth and water demand.

The only two amendments that do not apply solely to the Kirkwood-Cohansey aquifer are those related to inter- and intra-basin transfers of water. The Commission is proposing to strengthen and clarify provisions related to such transfers.

New definitions are being proposed at N.J.A.C. 7:50-2.11 for terms that are used in the proposed amendments at N.J.A.C. 7:50-6.86. The Commission is also proposing to amend its fee

schedule at N.J.A.C. 7:50-1.6 to specifically address applications for wells, in addition to making minor, non-substantive changes to the existing fee rules.

The current water management rule is broader in that it addresses diversions from all aquifers in the Pinelands Area, except for one provision that applies only to diversions in the Kirkwood-Cohansey aquifer. As explained in greater detail below, the Commission is proposing to eliminate the standards for diversions in the other aquifers and adopt standards that will apply only to diversions in the Kirkwood-Cohansey aquifer that are above the pumping threshold of 50,000 gallons per day or more. All other wells, however, will be considered development pursuant to N.J.A.C. 7:50-2.11 and subject to all other applicable provisions of the CMP. These include geothermal wells, wells not in the Kirkwood-Cohansey aquifer, and wells that are below the threshold pumping volume in the proposed new standards.

It is also important to note that the proposed new water management standards do not replace any development standards in the CMP. Well applicants must continue to comply with all other applicable standards in the CMP, including those related to the protection of threatened and endangered species at N.J.A.C. 7:50-6.27 and 6.33 and wetlands and wetlands transition areas at N.J.A.C. 7:50-6, Part 1.

Given the technical nature of the proposed standards and analysis, the United States Geological Survey (USGS) will be assisting the Commission in its review of diversion applications. To offset the costs of the USGS's review, the Commission intends to require escrow payments from diversion applicants pursuant to N.J.A.C. 7:50-1.7.

The proposed amendments were discussed and reviewed during various focus group and stakeholder meetings from 2015 to 2022 hosted by the Commission, through presentations at the New Jersey Water Supply Advisory Council, and during multiple public meetings of the full

Commission and the CMP Policy and Implementation Committee. If requested, Commission staff will also provide a presentation on the proposed amendments at a public meeting of the Pinelands Municipal Council (PMC). The PMC, created by the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.), is made up of the mayors of the 53 municipalities in the Pinelands Area, or their designees. The Council is empowered to review and comment upon changes to the CMP proposed by the Commission and advises the Commission on matters of interest regarding the Pinelands.

A more detailed description of the proposed amendments follows.

### **Subchapter 1**

The Commission is proposing to amend its existing fee schedule to include a specific fee for certain well applications at N.J.A.C. 7:50-1.6. The current fee rule does not distinguish wells from other types of nonresidential development and does not adequately represent the projected costs for reviewing well applications under the proposed new standards. The Commission is proposing an application fee of \$6,000 for any well in the Kirkwood-Cohansey aquifer that is required to meet the criteria and standards at proposed N.J.A.C. 7:50-6.86(d). For all other wells, including geothermal wells and those that are not subject to the standards at proposed N.J.A.C. 7:50-6.86(d), the application fee will continue to be calculated based on construction costs as set forth at N.J.A.C. 7:50-1.6(c). The difference in the two fees reflects the more extensive review process that is concurrently being proposed at N.J.A.C. 7:50-6.86 for wells of a certain size in the Kirkwood-Cohansey aquifer.

Additional amendments to the existing fee schedule are proposed to correct a cross-reference at N.J.A.C. 7:50-1.6(c), relocate the existing text in N.J.A.C. 7:50-1.6(c) describing

typical construction costs so that it more logically follows the table provided in the rule, and clarify at N.J.A.C. 7:50-1.6(a) that development application fees, once submitted to the Commission, are not transferable to subsequent applicants.

## **Subchapter 2**

New definitions are being added at N.J.A.C. 7:50-2.11 for terms in the proposed amendments at N.J.A.C. 7:50-6.86: “divert” or “diversion,” “stream low flow margin,” “well,” and “zone of influence.” The definitions of “divert” or “diversion” and “well” refer to withdrawals of water and are identical to those used by the New Jersey Department of Environmental Protection (hereafter referred to as DEP) in its water supply allocation permits rules at N.J.A.C. 7:19-1.3. “Stream low flow margin” and “zone of influence” are hydrogeologic terms used to measure the impacts of a diversion on the available water supply and the hydrogeology surrounding the diversion, respectively.

## **Subchapter 6**

The Commission is proposing amendments to the water management rule at N.J.A.C. 7:50-6.86, which governs the transfer, exportation, and withdrawal of water in and from the Pinelands Area.

### **Export of Water Outside the Pinelands Area (recodified N.J.A.C. 7:50-6.86(a))**

The Commission is proposing to recodify N.J.A.C. 7:50-6.86(b), which prohibits the export of water outside the Pinelands Area except as provided for in N.J.S.A. 58:1A-7.1, as N.J.A.C. 7:50-6.86(a).

### **Interbasin Transfer of Water (recodified N.J.A.C. 7:50-6.86(b))**

The proposed amendments clarify and strengthen the current restriction on transferring water between different basins in the Pinelands Area (“interbasin transfer”) by explicitly prohibiting such transfers and identifying and defining two basins in the Pinelands Area at recodified N.J.A.C. 7:50-6.86(b).

The current rule at existing N.J.A.C. 7:50-6.86(a) merely requires that interbasin transfers be avoided to the “maximum extent practical.” The Commission is proposing to prohibit such transfers, to better align with the intent of the statute and reflect past policy, and to limit adverse impacts to the Pinelands environment related to the reduction in stream base flows that can result from interbasin transfers.

The current rule does not define the term “basin,” which can describe many different drainage areas or watersheds. Using watershed management areas designated by the New Jersey Department of Environmental Protection (DEP), the Commission has clarified what the term “basin” means by delineating two basins in the proposed amendments: the Atlantic and Delaware basins. As used in this provision, the Atlantic Basin includes those portions of watershed management areas within the Pinelands Area that drain to the Atlantic Ocean, including the Barnegat Bay Watershed (WMA 13), the Mullica Watershed (WMA 14), the Great Egg Harbor Watershed (WMA 15), and the Cape May Watershed (WMA 16). The Delaware River Basin includes those portions of watershed management areas that drain to the Delaware River or the Delaware Bay, including the Rancocas Watershed (WMA 19) and the Maurice, Salem, and Cohansey Watershed (WMA 17). Delineating specific basins in this way reduces ambiguity in the existing rule.

**Intrabasin Transfer of Water (new N.J.A.C. 7:50-6.86(c))**

The Commission is proposing to add a provision to explicitly allow the transfer of water between HUC-11 watersheds within either the Atlantic or Delaware basins at proposed N.J.A.C. 7:50-6.86(c). HUC-11 watersheds are geographic areas delineated by the United States Geological Survey and are defined in the CMP at N.J.A.C. 7:50-2.11.

This provision is intended to add clarity and flexibility to the water management standards, as the current rule is unclear as to whether such transfers are permissible. The specific allowance of intrabasin transfers is designed to provide an opportunity to address the needs of future permitted growth in the Pinelands Area. If the intrabasin transfer involves water sourced from the Kirkwood-Cohansey aquifer, it must meet the criteria and standards set forth in proposed N.J.A.C. 7:50-6.86(d).

#### **Diversions from the Kirkwood-Cohansey Aquifer (recodified N.J.A.C. 7:50-6.86(d))**

The current standard in the CMP for nonagricultural diversions from the Kirkwood-Cohansey aquifer requires only that the diversion “not result in any adverse ecological impact on the Pinelands Area.” Existing N.J.A.C. 7:50-6.86(e). The Commission is proposing to recodify this provision at N.J.A.C. 7:50-6.86(d) and strengthen it by: (1) defining “ecological impact” with specific, measurable standards; (2) requiring well applicants to conduct tests, analyses, and modelling to evaluate ecological impacts; and (3) expanding the scope of wells that will be subject to the new standards and requirements. Proposed N.J.A.C. 7:50-6.86(d).

#### **Scope of proposed rule**

The current water management standards for withdrawals from the Kirkwood-Cohansey aquifer apply only to diversions over 100,000 gallons of water per day. Existing N.J.A.C. 7:50-6.86(e). The Commission is proposing, at recodified N.J.A.C. 7:50-6.86(d), to expand the scope

of wells that will be subject to the proposed new requirements by lowering that threshold to 50,000 gallons of water or more a day.

The proposed amendments also specify that the 50,000 gallon per day threshold includes all of an applicant's existing diversions in the same HUC-11 watershed, in addition to the new or increased diversion. For example, if an applicant currently diverts 40,000 gallons of water a day and is proposing to divert an additional 20,000 gallons of water a day through a new well or from one of the applicant's existing wells in the same HUC-11 watershed, the new diversion will be subject to the new standards even though it is less than 50,000 gallons per day, as the total diversion would be 60,000 gallons of water a day. The decision to consider all of an applicant's diversions in the same HUC-11 watershed is based upon DEP's Technical Memorandum 12-2 (TM 12-2), which requires DEP to consider all diversions covered under one DEP Water Allocation Permit when evaluating new water allocation permit applications. Structuring the Commission's evaluation of water diversion impacts to groups of wells and diversions proposed or operated by the same applicant or owner mirrors the DEP requirement and should promote consistency between the two agency's review procedures.

There are two categories of wells in the Kirkwood-Cohansey aquifer that will not be subject to the new standards: (1) diversions to be used exclusively for agricultural or horticultural use; and (2) the replacement of an existing well with a diversion rate of 50,000 gallons of water per day or more, provided the existing well is sealed in accordance with N.J.A.C. 7:9-9 and the replacement well is approximately the same depth as the existing well, diverts from the same aquifer, has the same or lesser pump capacity, and is within 100 feet of the existing well. N.J.A.C. 7:50-6.86(d)2.

The new standards proposed at N.J.A.C. 7:50-6.86(d) will apply only to diversions from the Kirkwood-Cohansey aquifer. All other wells will continue to be considered development pursuant to N.J.A.C. 7:50-2.11 and subject to all other applicable provisions of the CMP. These include geothermal wells, wells not in the Kirkwood-Cohansey aquifer, and wells that pump less than 50,000 gallons per day.

It should be noted that DEP requires water allocation permits for diversions greater than 100,000 gallons per day. There could be instances under the Commission's proposed amendments where an applicant in the Pinelands Area is required to meet the CMP standards for a new or increased diversion but is not required to apply for a water allocation permit from DEP for the same diversion because it is less than 100,000 gallons per day.

#### Permissible Areas

To protect the more ecologically sensitive portions of the Pinelands Area, the Commission is proposing to limit new or increased diversions from the Kirkwood-Cohansey aquifer to the following Pinelands Management Areas: Regional Growth Area, Pinelands Towns, Rural Development Area, Military and Federal Installation Area, and the 24 Pinelands Villages that are not located in the Pinelands Preservation Area. Not only is most existing development in the Pinelands Area located in these management areas, but the CMP also directs and encourages new development here as well. Requiring new and increased diversions to be located in the same management areas as the existing and new development to be served is fully in keeping with long-standing CMP requirements for other types of infrastructure. New and increased diversions from the Kirkwood-Cohansey aquifer will also continue to be permitted in the Agricultural Production Area, where the Commission is charged with maintaining agriculture

as an essential element of the Pinelands region. Such diversions will not be permitted in the Preservation Area District, Forest Area and Special Agricultural Production Area, which comprise the most ecologically sensitive portions of the Pinelands Area. Proposed N.J.A.C. 7:50-6.86(d)3.

#### Alternative Sources

Diversions from the Kirkwood-Cohansey aquifer are currently permitted only if there are no “viable alternative water supply sources” available. Existing N.J.A.C. 7:50-6.86(e)1. The Commission proposes to clarify this standard at N.J.A.C. 7:50-6.86(d)4 by permitting diversions only if an applicant demonstrates that no alternative water supply source is available or viable. The proposed amendment provides examples of alternative sources, which include non-Kirkwood-Cohansey aquifer sources and public water purveyors and suppliers. The Commission will maintain a list of alternative water supply sources, referenced in the proposed rule, which can be found on the Commission’s website. If there is an alternative water supply source on the Commission’s list that an applicant does not believe is viable, the applicant will have to demonstrate to the Commission the reason why the source is not viable. Reasons for lack of viability could include prohibitive cost, limits on available technology, and significant timing issues.

#### Adverse Ecological Impact

The current rules at existing N.J.A.C. 7:50-6.86(c) require all wells to be “designed and located so as to minimize impacts on wetlands and surface waters” but provide no quantifiable measures to ensure the well meets that standard. Existing N.J.A.C. 7:50-6.86(e)2 is similarly vague as it requires well applicants in the Kirkwood-Cohansey aquifer to demonstrate that the diversion “will not result in any adverse ecological impact on the Pinelands Area,” without

defining adverse ecological impact or providing any criteria for measuring the ecological impacts.

The amendments reframe the existing standards, adding clarity and measurable criteria. Proposed N.J.A.C. 7:50-6.86(d)(5) defines “adverse ecological impact” as an adverse regional impact and/or adverse local impact, which are each explained in detail at N.J.A.C. 7:50-6.86(d)(6) and (7). Quantifiable standards are being proposed at N.J.A.C. 7:50-6.86(d)(6) and (7) to help determine whether a proposed withdrawal from the Kirkwood-Cohansey aquifer will have a regional or adverse local impact.

When determining impacts to the Kirkwood-Cohansey aquifer, the Commission will consider all of the applicant’s allocations under one water allocation permit or water use registration issued by DEP in the same HUC-11 watershed. Although the existing rule at N.J.A.C. 7:50-6.86(c) was always intended to require consideration of all allocations under one permit, the language was not clear and caused confusion. Proposed N.J.A.C. 7:50-6.86(d)1 clarifies that all allocations, in addition to the proposed diversion, will be included in the evaluation if they are under one DEP water allocation permit or water use registration. For example, if an applicant already has a DEP water allocation permit for 100,000 gallons a day and has applied to the Commission for a new well that will withdraw an additional 20,000 gallons a day under the same permit, the Commission will evaluate the ecological impacts from the total withdrawal of 120,000 gallons per day. The new standards and review process set forth in these amendments will apply.

Although the existing rule at N.J.A.C. 6.86(c) requires that all wells be designed to minimize impacts on wetlands and surface waters, the proposed amendments remove that requirement for wells outside the Kirkwood-Cohansey aquifer. The decision to eliminate the

requirement is based on the fact that the Kirkwood Cohansey aquifer is the primary source of water supporting the Pinelands Area and Pinelands ecosystems. Drawdowns from other aquifers do not have the same impact on water availability and ecosystems in the Pinelands as do those from the Kirkwood-Cohansey aquifer. Wells proposed outside the Kirkwood-Cohansey aquifer will remain subject to the wetlands protection standards of the CMP, which apply to all development in the Pinelands Area. At the same time, wells in other aquifers will be required to meet other development standards in the CMP including those in Subchapter 6 that prohibit certain impacts to wetlands (N.J.A.C. 7:50 – 6.1 et seq), vegetation (N.J.A.C. 7:50-6.23 through 6.27), and to fish and wildlife (7:50-6.33 and 6.34).

#### Adverse Regional Impact

One of the major goals of the proposed rulemaking is to protect against decreases in regional water availability due to new or increased water diversions. A proposed diversion will be deemed to have an adverse regional impact if it, combined with all existing permitted allocations in the same HUC-11 watershed, exceeds a specific threshold at which water availability in that watershed will be deemed to be adversely impacted. Proposed N.J.A.C. 7:50-6.28(d)6. When determining whether a diversion meets this criteria, all allocations permitted and registered by DEP in that HUC-11 watershed will be considered, not just the applicant's permitted allocations.

The water availability threshold proposed by the Commission is based on the stream low flow margin, which is defined in the proposed amendments at N.J.A.C. 7:50-2.11, and used by DEP to estimate water availability throughout the State of New Jersey. Computations of the stream low flow margin are published in the New Jersey Statewide Water Supply Plan ("Water

Supply Plan”) for each HUC-11 in the State. They are an estimate of the amount of water that would remain in a stream system during a specified drought period. The Water Supply Plan includes calculations for the volume of water that can be removed from a HUC–11 watershed without impacting the stream low flow margin and stressing the watershed based on all known allocations.

The Commission is proposing to restrict the amount of water that can be diverted from a HUC-11 watershed to 20 percent of the stream low flow margin. In the event a proposed diversion cannot meet this threshold, the amendments allow applicants to offset the diversion on a gallon-for-gallon basis so that the proposed diversion, combined with all other allocations in the watershed, no longer exceeds 20 percent of the stream low flow margin. Proposed N.J.A.C. 7:50-6.86(d)5i. Examples of offset measures include: the recharge of previously non-infiltrated stormwater runoff in the Pinelands Area; the recharge of treated wastewater that is currently discharged via a regional sewage treatment plant that discharges treated wastewater into the Delaware River or Atlantic Ocean; development of a desalinization facility; and sewerage system inflow and infiltration abatement and/or water distribution infrastructure leak auditing and correction.

This same flexibility is being offered to an applicant who proposes a diversion in a HUC-11 watershed that is already constrained by withdrawals exceeding 20 percent of the stream low flow margin -- before the proposed diversion is even factored in. In those situations, the diversion will be allowed if the applicant can permanently offset the new diversion in the same manner as described at N.J.A.C. 7:50-6.86(d)5i. N.J.A.C. 7:50-6.86(d)6ii.

An applicant will be required to identify all offset measures and provide the Commission a detailed description of the measures, including the volume of water that will be offset,

timeframes for implementing the offsets, a description of the entity that will be implementing the offset measures, and an explanation of the entity's authority to implement the measures. N.J.A.C. 7:50-6.86(d)6iii(2).

It should be noted that the Commission is proposing a more stringent standard for maintaining water availability than that advised by DEP in the Water Supply Plan. As a tool for regional protection of the water table aquifer contributing to stream flows, the Water Supply Plan recommends limiting aquifer withdrawals to no more than 25 percent of the stream low flow margin. The Commission is proposing a lower threshold of total withdrawals from a HUC-11 watershed to better protect water supply in the Kirkwood-Cohansey aquifer. The more restrictive 20 percent of the stream low flow margin volume is intended to recognize climate change effects on aquifer recharge due to greater extremes in drought and rainfall patterns.

In addition, the five percent difference between the Commission's proposal and DEP's threshold also accounts for water diverted for agricultural and horticultural purposes, which the Commission does not have the authority to review or limit. The lower stream low flow margin threshold being proposed by the Commission assures that the additional five percent of the stream low flow margin allowed by DEP could be dedicated to agricultural and horticultural purposes.

The proposed amendments at N.J.A.C. 7:50-6.86(d)6 require an applicant to calculate the sum of the proposed diversion and all existing permitted allocations in the affected HUC-11 watershed. Using data from the Water Supply Plan, the applicant is required to show whether that sum exceeds 20 percent of the stream low flow margin for the year of peak use established in the New Jersey Statewide Water Supply Plan. Lastly, the applicant is required to submit a

report to the Commission detailing the calculations and the impact of the proposed diversion on the available portion of the 20 percent stream low flow margin in the affected HUC-11.

### Adverse Local Impact

Proposed N.J.A.C. 7:50-6.86(d)7 prohibits a proposed diversion from having an adverse impact on wetlands and the most ecologically sensitive areas in the Pinelands Area, also referred to as an “adverse local impact.” The Commission is proposing specific, quantifiable standards to determine whether a well will have an adverse local impact. The standards are based on the studies of the Kirkwood-Cohansey Project, which revealed the adverse effects of aquifer withdrawals on the distribution of wetlands and wetland habitats necessary for the survival of threatened and endangered plant and animal species. The proposed amendments also update the methodologies currently at N.J.A.C. 7:50-6.86(c) for measuring the impact of a diversion on wetlands and surface water.

A diversion will be deemed to have an adverse local impact if it results in any drawdown of the water table in the most ecologically sensitive areas of the Pinelands, which include any portion of the Preservation Area District, a Forest Area, or a Special Agricultural Production Area in the affected HUC-11 watershed. A diversion will also be deemed to have an adverse local impact if it results in a drawdown of the water table by more than four inches of the wetland nearest to the “zone of influence,” defined at N.J.A.C. 7:50-2.11 as the area of ground water in the affected HUC-11 watershed that experiences an impact attributable to the pumping well. N.J.A.C. 7:50-6.28(d)7.

The applicant is required to conduct tests and run models to establish whether the diversion will have an adverse local impact. N.J.A.C. 7:50-6.28(d)7i. The proposed application

requirements clarify, strengthen, and update the testing methodologies in existing N.J.A.C. 7:50-6.86(c), which requires only that “hydrologic analyses” be conducted in accordance with DEP guidelines from a technical manual that has since been replaced with a newer manual with a different title. (Technical Memorandum 12-2, Hydrogeologic Testing and Reporting Procedures in Support of New Jersey Water Allocation Permit in effect at the time of application (“TM 12-2”). N.J.A.C. 7:50-6.28(d)7i (1).)

The applicant will first be required to submit an analysis of potential drawdown impacts using the Thiem analysis. After completing the Thiem analysis, the applicant is required to submit to the Commission a proposed hydrogeologic test (also known as a pump test) developed in accordance with TM12-2. N.J.A.C. 7:50-6.28(d)7i(2). This design phase gives applicants the opportunity to demonstrate to the Commission how the pump test will provide accurate results.

The pump test design can be flexible, but the proposed rule lists the minimum required design elements, which include installation of a single-pumping well, observation wells to monitor water levels and collect time-drawdown data, and at least one piezometer to measure surface water and water table decline at the wetlands nearest to the proposed well. Other locations to be monitored are the nearest boundaries of a Forest Area or a Special Agricultural Production Area, or the Preservation Area District in the same HUC-11 watershed. Where one of the designated boundaries is located further from, but in the same direction as another management area boundary to be monitored (nested), the more distant boundary would not be required to have a piezometer. Where different management area boundaries are located in different directions from the proposed diversion (not nested, but adjacent), a piezometer would be required at each management area boundary. N.J.A.C. 7:50-6.28(d)7i(2)(A) to (D). The applicant may include additional observation wells or piezometers at additional locations in the

design of the pump test. As pump test design is also required by DEP, it is expected that applicants will also be conferring with the DEP Bureau of Water Allocation during pump test design to assure that the design meets requirements of that agency.

If an applicant is unable to gain access to properties where piezometers are required, the applicant may propose to install them at comparable locations if the alternate placement will adequately measure surface water and water table decline at the locations specified at N.J.A.C. 7:50-6.28(d)7i(2). In such circumstances, the applicant would be required to provide information to the Commission to show how the alternate locations will provide measurements of surface water and water table decline that are comparable to the measurements that would be taken at the preferred locations. Factors that would go into a determination of whether the alternate locations could produce comparable measurements include comparable distance from the preferred location, no known differences in other withdrawals between the preferred and alternate locations, and no known naturally occurring differences in hydrologic or hydrogeologic characteristics. An example of an alternate location that would not be approved is one where there is a 100,000 gallon per day well that is pumping between the proposed new well and the alternate location, but not between the proposed new well and the preferred location. Another example of an unacceptable alternate location is where the preferred location is a wetlands that is fed by groundwater, but the alternate location is known to be perched and fed only by infiltration (rain).

After completing the pump test, the applicant is required to submit to the Commission a hydrogeologic report prepared in accordance with TM12-2 that includes the testing procedures, data collected and analyzed, and evaluation of the effect of the proposed diversion on the Kirkwood-Cohansey aquifer. N.J.A.C. 7:50-6.28(d)7i(3). The Commission will notify the

applicant regarding whether the pump test design, test, and report have been completed appropriately in a consecutively executed application process. Applicants will be encouraged to concurrently consult with DEP as a pump test is also required by that agency.

Using the results of the hydrogeologic test, the applicant is next required to calculate an estimated zone of influence created by the proposed diversion and submit a groundwater flow model using the modular hydrologic model of the United States Geological Survey, MODFLOW. The MODFLOW model will enable the applicant to calculate the zone of influence of the water table at the nearest boundaries of the Preservation Area District, Forest Area, and Special Agricultural Production Area in the affected HUC-11 watershed as well as the boundary of the wetland nearest to the proposed diversion in the same HUC-11 watershed. N.J.A.C. 7:50-6.28(d)7i(4).

#### Water Conservation

The current water management rule at existing N.J.A.C. 7:50-6.86(d) requires all well applicants to “address measures in place or to be taken to increase water conservation in all areas to be served by the proposed well or system.” The Commission is proposing to reword this requirement and add clarity by defining water conservation measures as “measurable efforts by public and private water system operators and local agencies to reduce water demand by users and reduce losses in the water distribution system.” N.J.A.C. 7:50-6.86(d)8. Examples of water conservation measures include implementation of the WaterSense water conservation program of the United States Environmental Protection Agency, or of the LEEDs building standards of the United States Green Building Council, implementation of a peak demand fee structure, or requiring mandatory soil moisture/rain sensors for all landscape irrigation systems.

The Commission will no longer require water saving devices to be installed in all new development in areas served by central sewers, as is currently required at N.J.A.C. 7:50-6.86(a). Instead, it is proposing at N.J.A.C. 7:50-6.86(d)8 to broaden the water conservation measures that will be deemed acceptable as part of a well application. The current water conservation requirement is limited to areas served by sewers and was meant to be an indirect conservation measure to limit the amount of water exported from the Pinelands Area by sewer pipes, by also targeting those areas likely to be served by public community water systems. The Commission is replacing this requirement with broader and more flexible conservation requirements that do not preclude the implementation of conservation measures in sewer service areas but add options for conservation other than the difficult to enforce requirement to install water saving devices. At the same time, the proposed rule recognizes that there are some areas that may be served by public community water systems but are not connected to public sewers. While those areas may be considered to recharge any water used that is discharged to individual subsurface disposal systems, those areas may also be using large volumes of water for lawn irrigation or other consumptive uses.

#### Notice Requirements

Recognizing that a diversion in one municipality may affect the availability of water in another municipality, the Commission is proposing at N.J.A.C. 7:50-6.86(d)9 to require well applicants are required to notify the municipality and county in which the proposed diversion will be located as well as all other municipalities and counties in the affected HUC-11 watershed of the proposed diversion. This requirement will apply to private well applicants as well as public well applicants.

Notice for private and public well applicants is to include: a detailed description of the proposed diversion, including the source, location, quantity and/or allocation of water to be diverted; and the potential impact of the proposed diversion on the volume of water in the affected HUC-11 watershed that will be available for future diversions. Private well applicants will also have to include in their notice: a statement advising that written comments on the application may be submitted to the Pinelands Commission; a statement advising that the application is available for inspection at the office of the Pinelands Commission; and the address and phone number of the Pinelands Commission. Public well applicants are also required to comply with the existing notice provisions at N.J.A.C. 7:50-4.53(e), which apply to all major public development.

### **Social Impact**

The Kirkwood-Cohansey aquifer is a vital resource that sustains the Pinelands ecosystem and provides potable and non-potable water to hundreds of thousands of people, businesses, and farms in southern New Jersey. The proposed amendments establish stricter standards for withdrawals from the aquifer, which will result in stronger protections to the ecosystem and greater protections to the supply of water for agricultural operations in the Pinelands Agricultural Production Area and permitted development in the more growth-oriented areas of the Pinelands Area. These enhanced protections to the Pinelands ecology and regional water supply are expected to have a positive social impact in the Pinelands Area, as protection of resources in the Pinelands benefits society within the Pinelands and in the surrounding areas. These stronger protections will ensure that existing users will be able to continue to rely on the Kirkwood-Cohansey aquifer for community water supplies, private home wells, and industrial and agricultural uses in southern New Jersey.

## **Economic Impact**

The proposed amendments will have a positive economic impact on the growth-oriented areas of the Pinelands, as they limit new diversions from the Kirkwood-Cohansey to the Regional Growth Area, Pinelands Towns, Rural Development Area, Agricultural Production Area, Military and Federal Installation Area, and 24 specific Pinelands Villages. Wells that support new or existing development in these areas will be permissible if they meet the new proposed standards and criteria. For the existing residential and nonresidential uses and agricultural operations that currently withdraw water from the Kirkwood-Cohansey aquifer, the rules are designed to ensure continued reliance on the aquifer. This translates into an economic benefit for those water users, as accessing new water sources, such as wells, distribution lines, or utility fees, could be very costly.

There will be added costs for applicants proposing new or expanded non-agricultural diversions of at least 50,000 gallons per day from the Kirkwood-Cohansey aquifer. An application fee of \$6,000 has been established for all such proposed projects, and an escrow payment will be required to fund the USGS's review of the testing, modelling and analysis required by the proposed amendments. Since 2017, the Commission has received 30 applications for new or increased diversions, most of which proposed withdrawals from the Kirkwood-Cohansey. Of those applications, only 13 would have been subject to the application fee and escrow requirements proposed in this rulemaking.

There will be additional costs associated with new non-agricultural withdrawals of between 50,000 to 100,000 gallons per day from the aquifer, as the proposed amendments require testing, modeling and analyses to assess the ecological impact of the proposed withdrawal. DEP already requires similar analyses and modeling for diversions of 100,000

gallons per day or more. By lowering the threshold to 50,000 gallons per day, the proposed amendments will result in smaller wells in the Pinelands Area incurring costs for testing, modeling and analyses that are not currently required under DEP rules. Of the 30 applications for new or increased diversions received by the Commission since 2017, it is estimated that only eight would have incurred these additional costs, either because of the new 50,000 gallon per day threshold or because the proposed rule clarifies that wells owned in common will be grouped for purposes of determining whether the 50,000 gallon per day threshold is exceeded. Based on its past application activity, and the limitations imposed in the proposed amendments, the Commission anticipates that the total number of applications for new and increased divisions in the Kirkwood-Cohansey will continue to be low, with a small percentage subject to the additional costs associated with the proposed amendments.

Additional costs may also be incurred to meet the proposed water conservation and offset requirements, which will vary depending on the type of measures that are implemented. For individual users served by the water system, however, conservation measures may reduce costs based on lower water usage. For the system owner, development costs could potentially be reduced through the Pinelands Infrastructure Trust, which provides low-cost loans and grants to municipalities developing infrastructure to support growth in Pinelands Regional Growth Areas.

In some instances, the proposed amendments will require that new development rely on water outside the Kirkwood-Cohansey aquifer – from alternative water sources in deeper aquifers or from water purveyors or public community system interconnections. The initial costs associated with deeper wells or creating more extensive water supply distribution systems and interconnections may initially be greater than the costs of a new well in the Kirkwood-Cohansey aquifer.

## **Environmental Impact**

The Kirkwood-Cohansey aquifer contains at least 17 trillion gallons of fresh water that lies beneath a 3,000 square mile area of the Pinelands Area. It sustains a vast ecosystem by supplying water to almost all the wetlands, streams, and rivers in the Pinelands, as well as being the primary water source for people, business, and farms in and immediately around the Pinelands Area. The proposed amendments prohibit diversions that will adversely impact the Pinelands ecology and the local water supply based on clear, measurable standards. These enhanced protections are anticipated to have a positive environmental impact.

Through legislation enacted in 2001, the New Jersey Legislature directed the Pinelands Commission to study how future water supply needs can be met from the Kirkwood-Cohansey aquifer without adversely impacting the ecosystem. P.L. 2001, c. 165. The studies, conducted jointly by the Commission and other government and educational entities and known collectively as the Kirkwood-Cohansey Project, established a clear link between the aquifer and the ecosystem. Simulated groundwater withdrawals and streamflow reductions reduced the distribution and composition of wetland-forest communities, individual wetland species, and wetland-indicator groups. In turn, there was a reduction in the survival rate of certain animal and plant species, including the state-threatened Pine Barrens tree frog and federally endangered wetland plant, swamp pink, when the water table in wetlands declined. The study of frogs, in particular, demonstrated a sharp decline in populations when the water table was lowered by four inches. Taken together, the studies predicted that groundwater withdrawals will reduce the populations of plants and animals that are characteristic of undisturbed Pinelands ecosystems.

Based on these studies, the Commission is proposing to strengthen protections for wetlands, and the animal and plant species that rely on wetlands habitats for survival, by requiring an assessment of the ecological impact of a proposed diversion. The amendments will prohibit diversions that would result in the drawdown of the water table of any portion of the most ecologically sensitive Pinelands management areas: the Preservation Area District, Forest Area and Special Agricultural Production Area. In less restrictive management areas, the amendments will prohibit diversions that result in the drawdown of the water table by more than four inches in wetlands nearest to the zone of influence (the area of ground water that experiences an impact attributable to a pumping well).

The proposed amendments expand the scope of diversions that will be subject to the stricter standards and criteria. The CMP's water management provisions currently apply only to total diversions of 100,000 gallons or more per day. The Commission is proposing to lower this threshold to total diversions of 50,000 gallons or more per day from the Kirkwood Cohansey aquifer in the same HUC-11 watershed. The volume determination is based on all of an applicant's allocations under a water allocation permit, water use registration issued by DEP, which will ensure that more wells will be subject to the proposed new standards and further protect the Pinelands ecology and water supply.

The proposed amendments also limit the adverse effects of withdrawals on the sustainability of the water supply in HUC-11 watersheds in the Kirkwood-Cohansey aquifer. Excessive withdrawals can diminish available water supply for existing uses such as community water systems, private home wells, businesses, agriculture, and ecosystems. The Commission is proposing a specific, measurable standard to assess and limit the impact of a proposed diversion on water availability in a particular watershed. The standard is based on the stream low flow

margin, a tool formulated by the DEP for regional protection of the water table aquifer. The New Jersey Statewide Water Supply Plan (Water Supply Plan) includes estimates of this stream low flow margin for each HUC-11 watershed in the State. Withdrawals in any HUC-11 watershed that exceed a specific portion of that low flow margin are expected to reduce stream flows such that a stream may dry up during annual low flow periods or droughts, thus impacting wetlands habitats and species, existing human uses, and stressing the watershed. These calculations are based on all known allocations approved and registered by DEP.

The Commission's proposal to limit aquifer withdrawals to no more than 20 percent of the stream low flow margin for each HUC-11 watershed will strengthen the protections of the water supply in the Pinelands Area, as the CMP does not currently impose specific limits on withdrawals. This threshold limit of 20 percent is also stricter than that recommended by the Water Supply Plan, which says that up to 25 percent of the stream low flow margin could be diverted without causing streams to dry up during annual low flow periods or droughts. The lower threshold will protect Pinelands plants, animals, and habitats, as well as existing withdrawals for public water supplies, agriculture, and other businesses. The Commission also chose a lower threshold in recognition that climate change may result in longer or more frequent drought periods.

When evaluating whether a proposed diversion meets this stream low flow margin threshold, the proposed amendments require the Commission to consider all the existing permitted allocations in the same HUC-11 watershed, not just the proposed diversion. This consideration mirrors the methodology by which the low flow margin is estimated in the Water Supply Plan and will ensure a more complete and accurate evaluation of how stressed the watershed will be from the proposed new diversion in light of all existing allocations.

Other provisions in the proposed amendments also serve to protect the environment, including the explicit prohibition on the interbasin transfers of water. Prohibiting such transfers is a key tool in limiting adverse environmental impacts related to the reduction in stream base flows that can result from the transfers. The restriction against interbasin transfers is also strengthened by defining the two basins between which water cannot be transferred.

To better protect the most ecologically sensitive areas of the Pinelands, the Commission is proposing to limit new or increased diversions from the Kirkwood-Cohansey aquifer to the Agricultural Production Area and the following growth-oriented Pinelands Management Areas: Regional Growth Area, Pinelands Towns, Rural Development Area, Military and Federal Installation Area, and 24 specific Pinelands Villages. This is expected to minimize future impacts to groundwater quantities in the Preservation Area District, the Special Agricultural Production Area, and the Forest Area.

The Commission is proposing to strengthen and clarify the water conservation requirement currently in the CMP by requiring documentation of measures that have been implemented or that are planned for implementation and requiring that the conservation efforts be measurable. The amendments also broaden the water conservation requirements of the current rule by requiring conservation to occur not just in areas served by centralized sanitary sewer systems, but throughout all areas to be served by the proposed diversion.

### **Federal Standards Statement**

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. § 471i) called upon the State of New Jersey to develop a comprehensive management plan for the Pinelands

National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals that the plan must meet, including the protection, preservation, and enhancement of the land and water resources of the Pinelands. The proposed amendments are designed to meet those goals by imposing stringent requirements and restrictions on groundwater withdrawals from the Kirkwood-Cohansey aquifer, which in turn will protect wetlands habitats and plants and animals that are characteristic of undisturbed Pinelands ecosystems, including at least one wetlands plant that is on the federal endangered species list.

There are no other Federal requirements that apply to the subject matter of these amendments.

### **Jobs Impact**

The Commission anticipates that this rulemaking will not have any significant impact on job creation and retention in New Jersey. Engineering and other professional work will be needed to comply with the testing and modeling requirements in the proposed amendments. These requirements align closely with those currently imposed by DEP but under the proposed amendments, they will apply to a slightly larger group of wells (those that will pump 50,000 gallon per day or more). Overall, the Pinelands Commission does not believe that the rulemaking will result in a significant impact on jobs.

### **Agriculture Industry Impact**

The rulemaking will have no direct impact on the agriculture industry, as exclusively agricultural uses are not deemed development under the CMP and do not require application to

the Commission. The proposed amendments permit new and expanded diversions in the Pinelands Agricultural Production Area and explicitly exempt diversions exclusively for agricultural or horticultural use from complying with the new standards. It is anticipated that the amendments will indirectly benefit farm operations that rely upon the Kirkwood-Cohansey aquifer for water by protecting regional water supply.

The Kirkwood-Cohansey aquifer provides water for upland agriculture and for the cranberry bogs and blueberry farms throughout the Pinelands Area. Farmers depend on water from the aquifer for irrigation and cranberry growers use large amounts of water from the aquifer to maintain their bogs. The amendments strengthen the protections to the Kirkwood-Cohansey aquifer water supply, which in turn will benefit the agriculture industry in the Pinelands Area and surrounding areas.

The proposed standard for maintaining water availability could benefit the agricultural industry. The Commission is proposing to limit withdrawals from the Kirkwood-Cohansey aquifer to no more than 20 percent of the stream low flow margin for the HUC-11 watershed in which a proposed diversion is located. This represents a five percent difference between the Commission's proposal and DEP's recommended threshold, which is 25 percent of the stream low flow margin. The difference in the threshold suggests that an additional five percent of the stream low flow margin might be allowed by DEP for agricultural and horticultural purposes that the Commission does not regulate.

### **Regulatory Flexibility Analysis**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Commission has evaluated whether the proposed amendments will impose any

reporting, recordkeeping, and other compliance requirements on small businesses. Most businesses in the Pinelands Area may be characterized as small in size and employment compared to the rest of New Jersey. However, the proposed amendments do not differentiate by size of business and thus will impact all businesses equally in terms of absolute costs.

Small businesses proposing new or increased diversions in the Kirkwood-Cohansey reservoir may incur costs from hiring professional consultants, such as engineers. Although under the current rules small businesses incur similar costs, the proposed rules require additional analyses and modeling, which could increase the costs. Also, where new or increased diversions require offsets on a gallon-per-gallon basis for withdrawals beyond 20 percent of the stream low flow margin, small businesses may incur costs associated with those offsets depending on the method of implementing the offsets. Similarly, businesses served by a water supply system that is subject of an application for a new or increased withdrawal from the Kirkwood-Cohansey aquifer may also be required to institute water conservation measures and may therefore incur a cost depending on the method of implementing conservation.

The Commission has balanced the costs imposed on small businesses by the proposed amendments against the environmental benefits to be achieved by the amended well requirements and determined that it would be inappropriate to exempt small businesses from these requirements. As noted above in the Environmental Impact statement, the amendments impose stricter requirements on water withdrawals from the Kirkwood-Cohansey aquifer, which will result in healthier ecosystems and less threats to the plants and animals that thrive in those undisturbed ecosystems.

### **Housing Affordability Impact Analysis**

The Commission does not anticipate this rulemaking will have a significant impact on the affordability of housing. Costs may be incurred by developers, municipalities, or utilities related to implementing conservation measures or offsets, where required. Those upfront costs may result in a minor incremental increase in housing costs where a community water supply is served by a new or increased diversion from the Kirkwood-Cohansey aquifer. Additional impacts to housing affordability are expected to be minimal, as DEP already imposes similar requirements for well modeling and testing. There may be situations, however, where the regional impact to the aquifer cannot be offset and a housing project may be required to seek an alternative water supply source. The additional costs for extending the infrastructure would likely be passed along in housing prices.

### **Smart Growth Development Impact Analysis**

N.J.S.A. 52:14B-4 requires that proposed amendments be evaluated to determine their impacts, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan (State Plan). Planning Areas 1 and 2 do not exist in the Pinelands Area. Likewise, the State Plan does not designate centers within the Pinelands Area. Instead, N.J.S.A. 52:18A-206.a provides that the State Plan shall rely on the Pinelands CMP for land use planning in the Pinelands. The Commission has evaluated the impact of the proposed amendments on Pinelands management areas designated by the CMP that are equivalent to Planning Areas 1 and 2 and designated centers, namely, the Regional Growth Areas, Pinelands Villages, and Pinelands Towns.

These three management areas are designated for development by the CMP and are equivalent to designated centers under the State Plan. The rulemaking will not increase the amount of permitted residential development in these management areas and is not expected to result in any changes in housing density within designated centers or in any other portions of the Pinelands Area.

There will be no effect on new construction in Planning Areas 1 and 2, as designated by the State Development and Redevelopment Plan, as these State Planning Areas do not exist in the Pinelands Area.

#### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Commission has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated with boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

7:50-1.6 Fees

(a) Except as provided in (a)1 and 2 below, all applications required or permitted by any provision of this Plan shall be accompanied by a nonrefundable, **nontransferable** application fee of \$250.00 or a fee calculated according to the fee schedule set forth in (b) through (l) below, whichever is greater. No application filed pursuant to this Plan shall be reviewed or considered complete unless all fees required by this Part have been paid and any escrow required pursuant to N.J.A.C. 7:50-1.7 has been submitted.

1.-2. (No change.)

(b) (No change.)

(c) The application fee for a commercial, institutional, industrial, or other non-residential development application submitted pursuant to N.J.A.C. 7:50-4.14, 4.33, 4.52, or 4.66 shall be calculated in accordance with the following, based on typical construction costs, except as provided in (c)1 through **10** [9] below: [Typical construction costs shall include all costs associated with the development for which the application is being submitted, including, but not limited to, site improvement and building improvement costs, but shall not include interior furnishings, atypical features, decorative materials or other similar features.]

Construction Cost	Required Application Fee
\$0 - \$500,000	1.25 percent of construction costs
\$500,001 - \$1,000,000	\$6,250 + 1 percent of construction costs above \$500,000
Greater than \$1,000,000	\$11,250 + 0.75 percent of construction costs above \$1,000,000

**Typical construction costs shall include all costs associated with the development for which the application is being submitted, including, but not limited to, site improvement and building improvement costs, but shall not include interior furnishings, atypical features, decorative materials or other similar features.**

Supporting documentation of the expected construction costs shall be submitted as part of the application for development, unless the maximum fee pursuant to (e)3 [(e)4] below is required, in which case no such documentation shall be necessary.

1.-7. (No change.)

8. For the demolition of a structure 50 years or older, the fee shall be \$250.00; [and]

9. For the development of a solar energy facility, the fee shall be \$1,500 plus \$500.00 per acre of land to be developed, or portion thereof, including any off-site development; **and**[.]

**10. For a well, the application fee shall be:**

**i. \$6,000 for any well in the Kirkwood-Cohansey aquifer that is required to meet the criteria and standards at N.J.A.C. 7:50-6.86(d);**  
**or**

**ii. Calculated based on construction costs as set forth at N.J.A.C. 7:50-1.6(c) for wells that are not subject to the criteria and standards at N.J.A.C. 7:50-6.86(d).**

(d)-(l) (No change.)

## SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS

### 7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings ascribed to them.

...

**"Divert" or "Diversion"** means the taking of water from a river, stream, lake, pond, aquifer, well, other underground source, or other waterbody, whether or not the water is returned thereto, consumed, made to flow into another stream or basin, or discharged elsewhere.

...

**"Stream low flow margin"** means the difference between a stream's September median flow and its statistical flow (7Q10), which is the seven-day flow average in the 10-year period for the stream as reported in the New Jersey Statewide Water Supply Plan, New Jersey Department of Environmental Protection, 2017, New Jersey Water Supply Plan 2017-2022: 484p, <http://www.nj.gov/dep/watersupply/wsp.html> " as amended and supplemented.

...

**"Well"** means a hole or excavation deeper than it is wide, that is drilled, bored, core driven, jetted, dug or otherwise constructed for the purpose of the removal of, investigation of, or exploration for water.

...

**"Zone of influence"** means the area of ground water that experiences an impact attributable to a pumping well.

...

## SUBCHAPTER 6. MANAGEMENT PROGRAMS AND MINIMUM STANDARDS

### 7:50-6.86 Water Management

[(a) Interbasin transfer of water between watersheds in the Pinelands should be avoided to the maximum extent practical. In areas served by central sewers, water-saving devices such as watersaving toilets, showers and sink faucets shall be installed in all new development.]

*(Transport outside the Pinelands)*

[(b)](a) Water shall not be exported from the Pinelands except as otherwise provided in N.J.S.A. 58:1A-7.1.

*(Inter-basin Transfers)*

**(b) A diversion that involves the interbasin transfer of water in the Pinelands Area between the Atlantic Basin and the Delaware Basin, as defined in (1) and (2) below, or outside of either basin, shall be prohibited.**

- 1. The Atlantic Basin is comprised of Watershed Management Areas 13, 14, 15, and 16, as identified by the New Jersey Department of Environmental Protection at <https://www.state.nj.us/dep/seeds/docs/watersheds.pdf>.**
- 2. The Delaware Basin is comprised of Watershed Management Areas 17, 18, 19, and 20 as identified by the New Jersey Department of Environmental Protection at <https://www.state.nj.us/dep/seeds/docs/watersheds.pdf>.**

*(Intra-basin transfers)*

- (c) **A diversion involving the intrabasin transfer of water between HUC-11 watersheds in the same basin, Atlantic or Delaware as defined in (b) above, shall be permitted. If such an intrabasin transfer involves water sourced from the Kirkwood-Cohansey aquifer, the diversion shall meet the criteria and standards set forth at (d) below.**

*(Scope, standards and application requirements)*

- (d) **A new diversion or an increase in allocation from either a single existing diversion source or from combined existing diversion sources in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer, that results in a total diversion of 50,000 gallons of water per day or more, (hereafter referred to as “proposed diversion”) shall meet the criteria and standards set forth at (3) through (9) below. “Allocation” shall mean a diversion permitted under a Water Allocation Permit or Water Use Registration Number issued by the New Jersey Department of Environmental Protection pursuant to N.J.A.C. 7:19.**

1. **When evaluating whether the proposed diversion meets the criteria set forth in (3) through (9) below, all of the applicant’s allocations in a HUC-11 watershed, in addition to the proposed diversion, shall be included in the evaluation.**
2. **The standards set forth at (3) through (9) below shall not apply to:**
  - i. **A new well that is to replace an existing well, provided the existing well is sealed in accordance with N.J.A.C. 7:9-9 and the new replacement well will:**

- (1) Be approximately the same depth as the existing well;
  - (2) Divert from the same aquifer as the existing well;
  - (3) Have the same or lesser pump capacity as the existing well; and
  - (4) Be located within 100 feet of the existing well; or
- ii. Any diversion that is exclusively for agricultural or horticultural use.

*(Permissible management areas)*

3. A proposed diversion shall be permitted only in the following Pinelands Management Areas:
  - i. Regional Growth Area;
  - ii. Pinelands Towns;
  - iii. Rural Development Area;
  - iv. Agricultural Production Area;
  - v. Military and Federal Installation Area; and
  - vi. The following Pinelands Villages: Milmay; Newtonville; Richland; Folsom; Cologne-Germania; Pomona; Mizpah; Nesco-Westcoatville; Port Republic; New Gretna; New Lisbon; Indian Mills; Tabernacle; Blue Anchor; Elm; Tansboro; Waterford Works; Winslow; Dennisville; Petersburg; Tuckahoe; Delmont; Dorchester; and Port Elizabeth-Bricksboro.

*(No alternative sources)*

4. A proposed diversion shall only be permitted if the applicant demonstrates that no alternative water supply source is available or viable. Alternative water supply sources include, but are not limited to, groundwater and surface water sources that are not part of the Kirkwood-Cohansey aquifer, and public water purveyors and suppliers, as defined at N.J.A.C. 7:19-1.3. A list of alternative water supply sources is available at the offices of the Pinelands Commission and at <https://www.nj.gov/pinelands/>.

*(No adverse ecological impact)*

5. A proposed diversion shall not have an adverse ecological impact on the Kirkwood-Cohansey aquifer. Adverse ecological impact means an adverse regional impact and/or an adverse local impact, as described at (6) and (7) below.

*(No adverse regional impact)*

6. A proposed diversion shall be deemed to have an adverse regional impact if it, combined with all existing permitted allocations in the same HUC-11 watershed, exceeds 20 percent of the stream low flow margin for the year of peak use established in the New Jersey Statewide Water Supply Plan at <https://www.nj.gov/dep/watersupply/pdf/wsp.pdf> for the HUC-11 watershed where the proposed diversion will be located (hereafter referred to as “the affected HUC-11 watershed”).

**i. If a proposed diversion is deemed to have an adverse regional impact, it shall be permitted only if an applicant permanently offsets the diversion on a gallon-for-gallon basis in accordance with the following:**

**(1) Offsets shall be implemented in the affected HUC-11 watershed and include, but are not limited to:**

**(A) The recharge of previously non-infiltrated stormwater runoff in the Pinelands Area;**

**(B) The recharge of treated wastewater that is currently discharged via a regional sewage treatment plant that discharges treated wastewater into the Delaware River or Atlantic Ocean;**

**(C) Development of a desalinization facility; and**

**(D) Sewerage system inflow and infiltration abatement and/or water distribution infrastructure leak auditing and correction.**

**ii. A proposed diversion in a HUC-11 watershed where water withdrawals already exceed 20 percent of the stream low flow margin established in the New Jersey Statewide Water Supply Plan shall be deemed to have an adverse regional impact unless an applicant can permanently offset the diversion in accordance with (i)1 above.**

iii. Unless the submission requirements are modified or waived pursuant to N.J.A.C. 7:50-4.2(b)3, all applications shall include the information required at N.J.A.C. 7:50-4.2(b)4 or (5) as well as the following:

(1) Using data on low flow margin in the New Jersey Statewide Water Supply Plan in effect at the time of application, the applicant shall calculate the sum of the proposed diversion and all existing permitted allocations in the affected HUC-11 watershed, and show whether that sum exceeds 20 percent of the stream low flow margin for the year of peak use established in the New Jersey Statewide Water Supply Plan. The applicant shall submit a report that includes all required calculations and a summary of the impact of the proposed diversion on the available portion of the 20 percent stream low flow margin in the affected HUC-11.

(2) The applicant shall identify all offset measures and provide to the Commission a detailed description of the measures, including the volume of water that will be offset, timeframes for implementing the offsets, a description of the entity that will be implementing the offset measures and an explanation of the entity's authority to implement the measures.

*(No adverse local impact)*

**7. A proposed diversion shall be deemed to have an adverse local impact in the Pinelands Area if it results in the drawdown of the water table as defined at N.J.A.C. 7:19-6.2 of any portion of the Preservation Area District, Forest Area, or Special Agricultural Production Area in the affected HUC-11 watershed, or of more than four inches of the wetland nearest to the estimated zone of influence in the affected HUC-11 watershed.**

**i. Application requirements**

**(1) The applicant shall submit an analysis of potential drawdown impacts using the Thiem method in accordance with the New Jersey Geological & Water Survey Technical Memorandum 12-2, Hydrogeologic Testing and Reporting Procedures in Support of New Jersey Water Allocation Permit in effect at the time of application (hereafter referred to as “TM 12-2”).**

**(2) Upon completion of the Thiem analysis, the applicant shall submit a proposed hydrogeologic test procedure, developed in accordance with TM12-2, which shall include, at a minimum, the installation of:**

**(A) A single-pumping well;**

**(B) Observation wells to sufficiently monitor water levels while the test well is pumped at a constant rate;**

**(C) Observation wells to collect time-drawdown data for aquifer characterization; and**

**(D) At least one piezometer to measure surface water and water table decline at: the nearest boundaries of the Preservation Area District, Forest Area or Special Agricultural Production Area in the affected HUC-11 watershed found in any direction from the proposed well location; and the wetlands nearest to the estimated zone of influence in the affected HUC-11 watershed.**

**(I) If the applicant cannot gain access to the parcels at the locations listed in ii(4) above for placement of piezometer(s), the applicant may propose to install piezometers at comparable locations if the alternate placement will adequately measure surface water and water table decline at the locations listed in 2(D) above.**

**(II) Piezometers shall be tested to ensure hydraulic responsiveness and the results of such testing shall be included in the report submitted pursuant to N.J.A.C. 7:50-6.86(d)7i(3);**

**(3) Following the Commission's review of the hydrogeologic test procedure, the applicant shall complete the test and submit a final hydrogeologic report prepared in accordance with the "Hydrogeological Report" section of TM 12-2, which shall describe the field procedures used, all data gathered, analysis**

of the data, and evaluation of the effect of the proposed diversion on the Kirkwood-Cohansey aquifer.

- (4) Using the results of the hydrogeologic testing performed in accordance with N.J.A.C. 7:50-6.86(d)7i(3), the applicant shall calculate an estimated zone of influence created by the proposed diversion and submit a groundwater flow model using the modular hydrologic model of the United States Geological Survey, (MODFLOW) in use at the time of the application. The MODFLOW model shall calculate the zone of influence of the water table at: (1) the nearest boundaries of the Preservation Area District, Forest Area, or Special Agricultural Production Area in the affected HUC-11 watershed and (2) the boundary of the wetland nearest to the proposed diversion in the same HUC-11 watershed.

*(Water conservation)*

8. An applicant for a proposed diversion shall provide written documentation of water conservation measures that have been implemented, or that are planned for implementation, for all areas to be served by the proposed diversion. Water conservation measures are measurable efforts by public and private water system operators and local agencies to reduce water demand by users and reduce losses in the water distribution system.

*(Notice requirements)*

- 9. The following notice requirements shall apply to proposed diversions:**
- i. For applications submitted pursuant to N.J.A.C. 7:50-4.31 through 4.50, the applicant shall provide notice of the application to the municipality and county in which the proposed diversion will be located, as well as all other municipalities and counties in the affected HUC-11 watershed. The notice shall state:**
    - (1) The nature of the application submitted to the Pinelands Commission and a detailed description of the proposed diversion, including the source, location, quantity and/or allocation of water to be diverted;**
    - (2) The potential impact of the proposed diversion on the volume of water in the affected HUC-11 watershed that will be available for future diversions;**
    - (3) That written comments on the application may be submitted to the Pinelands Commission;**
    - (4) That the application is available for inspection at the office of the Pinelands Commission; and**
    - (5) The address and phone number of the Pinelands Commission.**
  - ii. For applications submitted pursuant to N.J.A.C. 7:50-4.51 through 4.60, the applicant shall provide notice of the application for public development pursuant to N.J.A.C. 7:50-4.53. In addition, the applicant shall provide notice of the application to all municipalities**

**and counties in the affected HUC-11 watershed. The notice shall include the information required at N.J.A.C. 7:50-4.53(e) as well as the following:**

**(1) A detailed description of the proposed diversion, including the source, location, quantity and/or allocation of water to be diverted; and**

**(2) A statement of the potential impact of the proposed diversion on the volume of water in the affected HUC-11 watershed that will be available for future diversions.**

**iii. No application for which notice pursuant to i. or ii. above is required shall be deemed complete until proof that the requisite notice has been given is received.**

**From:** Bill WOLFE <[bill\\_wolfe@comcast.net](mailto:bill_wolfe@comcast.net)>  
**Sent:** Wednesday, March 9, 2022 1:18 PM  
**To:** LaTourette, Shawn [DEP] <[Shawn.LaTourette@dep.nj.gov](mailto:Shawn.LaTourette@dep.nj.gov)>; Roth, Stacey [PINELANDS] <[Stacey.Roth@pinelands.nj.gov](mailto:Stacey.Roth@pinelands.nj.gov)>  
**Cc:** senbsmith <[SenBSmith@njleg.org](mailto:SenBSmith@njleg.org)>; sengreenstein <[sengreenstein@njleg.org](mailto:sengreenstein@njleg.org)>; Hurdle, Jon <[jonhurdle@gmail.com](mailto:jonhurdle@gmail.com)>; MJ King <[trhugger@yahoo.com](mailto:trhugger@yahoo.com)>; Ruga Elliott <[elliott@njhighlandscoalition.org](mailto:elliott@njhighlandscoalition.org)>; [emile@njconservation.org](mailto:emile@njconservation.org); Silvia Solaun <[ssolaun@gmail.com](mailto:ssolaun@gmail.com)>  
**Subject:** [EXTERNAL] Joint Petition for rulemaking

Dear DEP Commissioner LaTourette; Pinelands Commission; and Highlands Council:

This letter petition is filed via email pursuant to N.J.S.A. 52:14B-4, which provides that:

*“(f) An interested person may petition an agency to adopt a new rule, or amend or repeal any existing rule. Each agency shall prescribe by rule the form for the petition and the procedure for the submission, consideration and disposition of the petition. The petition shall state clearly and concisely:*

- (1) The substance or nature of the rule-making which is requested;*
- (2) The reasons for the request and the petitioner's interest in the request;*
- (3) References to the authority of the agency to take the requested action.”*

Accordingly, I hereby jointly petition the Department, the Pinelands Commission, and the Highlands Council for rulemaking as follows.

**(1) The substance or nature of the rule-making which is requested**

On February 10, 2022, DEP Commissioner LaTourette testified before the Senate Environment Committee to the effect, among other things, that he was "shocked" by the number of wildfires in NJ last year (apparently over 900) and that, according to the best available DEP science, wildfire risks and impacts were projected to increase due to climate change.

According to the most recent NJ Hazard Mitigation Plan (2019):  
[https://nj.gov/njoem/mitigation/pdf/2019/mit2019\\_section5-12\\_Wildfire.pdf](https://nj.gov/njoem/mitigation/pdf/2019/mit2019_section5-12_Wildfire.pdf)

Section 5.12.1:

*"New Jersey's high population density has created land use pressures in which more people are moving from urban areas to build homes in rural wildland areas. With more people living in the State's wildlands, the number of fires started could increase. **A potentially explosive combination is created when hazardous wildland fuels interface home development, and an increased risk of human-caused ignition come together under extreme fire weather conditions.**"*

Section 5.12.2.1

**5.12.2.1 NEW JERSEY PINELANDS AND PINE BARRENS**

The New Jersey Pinelands is a fire-adapted forest ecosystem that depends on wildfire for reproduction and the control of fuel buildup. **This forest community is one of the most hazardous wildland fuel types in the nation.** Pinelands fires burn extremely hot and spread rapidly. New Jersey has a high population density **and more people are moving from urban areas to build homes in rural wildland areas.** With more people living in and enjoying the State's wildlands for various forms of recreation, the number of potential fire starts and the seriousness of their consequences increases. **A potentially explosive combination is created when hazardous wildland fuels, home development, and an increased risk of human-caused ignition come together under extreme fire weather conditions.**

### 5.12.2 LOCATION

The ecosystems that are most susceptible to the hazard are pitch pine, scrub oak, and **oak forests.** These are the vegetative fuels that are the most flammable.

**In New Jersey's north, northern hardwood, white pine, eastern hemlock, mixed oak, and a variety of other species including isolated stands of red spruce are part of the forest composition.** The oak/hickory-type group is, and has been, the most common-type forest in New Jersey. This group makes up nearly half of New Jersey's forested area. This forest contains many mast-producing species that provide important forage for wildlife."

The Hazard Mitigation Plan classifies and maps wildfire risks, based upon DEP LU/LC data as "extreme", "very high" "high" moderate" and "low":

"NJFFS, a division of NJDEP, has developed Wildfire Fuel Hazard data for the State based upon NJDEP's 2002 Land Use/Land Cover (LU/LC) datasets and NJDEP's 2002 10-meter Digital Elevation Grid datasets. NJFFS took the NJDEP Modified Anderson Land Use/Land Cover Classification System 2002 and assigned Wildfire Fuel Hazard Rankings to it." (5.12.10)

(see Map as **Figure 5.12-4 Wildfire Fuel Hazard in New Jersey**)

The Hazard Mitigation Plan precuts these risks and impacts to increase significantly due to increased climate impacts and the effects of uncontrolled and poorly planned and regulated development:

"The likelihood of urban fires and wildfires is difficult to predict in a probabilistic manner. Estimating the approximate number of a catastrophic wildfire to occur in New Jersey every year is next to impossible because a number of variable factors impact the potential for a fire to occur and because some conditions (for example, **ongoing land use development patterns,** location, fuel sources, and construction sites) exert increasing pressure on the WUI zone. Based on available data, urban fires and wildfires may continue to present a risk." (5.12.5)

The Plan documents serious risks and impacts from wildfires:

#### 5.12.6.1 SEVERITY AND WARNING TIME

"Potential losses from wildfire include human life, structures and other improvements, and natural resources. Given the immediate response times to reported wildfires, the likelihood of injuries and casualties is minimal. Smoke and air pollution from wildfires can be a health hazard, especially for sensitive populations including children, the elderly, and those with respiratory and cardiovascular diseases. Wildfire may also threaten the health and safety of those fighting the

*fires. First responders are exposed to the dangers from the initial incident and after-effects from smoke inhalation and heat stroke. In addition, wildfire can lead to ancillary impacts such as landslides in steep ravine areas and flooding caused by the impacts of silt in local watersheds."* [...]

#### 5.12.6.3 ENVIRONMENTAL IMPACTS

*"Wildfire events can have significant positive and negative impacts on the environment. The loss of vegetation, biodiversity and habitat is a concern, especially where threatened and endangered species are located. However, many of the State's listed threatened and endangered species thrive in the open conditions that had historically resulted from the natural fire regime (NJFFS, 2013).*

*Exposed soils are vulnerable to wind and water erosion which may impact the quality of downstream water bodies and drinking water supplies. The composition of plant communities, as well as their vegetative and growth characteristics, is affected by fire. For example, many plant species have adapted to fire and are dependent on it for reproduction (NJFFS, 2013)."*

Based on the Plan's own findings, NJ's land use planning and regulatory framework are seriously flawed and incapable of preventing and reducing wildfire risks and impacts. Accordingly new and more stringent measures must be imposed to prevent and reduce such risks and impacts.

#### **(2) The reasons for the request and the petitioner's interest in the request**

The reasons for this request are

- to protect people and property from current and projected wildfire risks and impacts;
- to protect ecosystems, natural resources, air quality, water quality, wildlife, vegetation, and public health from current and projected risks and impacts of wildfire;
- to mitigate the risks and impacts of climate change; and
- to reduce the occurrence and damages from wildfire disasters and the disbursements of federal and state taxpayer funded disaster assistance and response programs

The petitioner is a former longtime NJ resident and retired NJ DEP planner and policy analyst, former Policy Director for NJ Chapter of Sierra Club, and former and Director of NJ PEER. During this 35 year career, Petitioner has advocated the public interest and protection of public health, safety and environment. The petitioner's interests are to continue that advocacy.

#### **(3) References to the authority of the agency to take the requested action**

This joint petition is filed pursuant to the Department's, Pinelands Commission's, and Highlands Council's various legal authorities and police powers, including but not limited to:

- The Highlands Act
- The Pinelands Act
- The DEP's Organic Act (NJSA 13:1D-1 et seq.
- CAFRA
- Freshwater Wetlands Act
- Air Pollution Control Act

- Water Pollution Control Act
- Endangered Species Act
- Flood Hazard Act

(4) Specific regulatory actions requested

The petitioner requests that the DEP, Pinelands Commission and Highlands Council use the aforementioned legal authorities to amend current DEP regulations, Pinelands CMP and Highlands RMP to:

- **ban new development in mapped "extreme" wildfire hazard areas**
- **restrict new development in mapped "very high" and "high" wildfire hazard areas**
- **mandate retrofit of state of the art fire prevention practices on existing development in mapped "extreme"; "very high" and "high" wildfire hazard areas**
- **prohibit reconstruction of fore damaged properties in mapped "extreme"; "very high" and "high" wildfire hazard areas**
- **monitor, quantify, and publicly Report in NJ's Clean Air Act SIP all air pollution emissions - including greenhouse gas emissions and fine particulate matter (including very fine particulates less than PM10) - and impacts of wildfires and prescribed burns**

We incorporate by reference the DEP's recent climate science report, the most recent DEP SIP, the DEP Commissioner's February 10, 2022 Senate testimony, as well as the wildfire and related findings of the 2019 NJ Hazard Mitigation Plan, the Pinelands CMP and the Highlands RMP.

We appreciate the Department, Pinelands Commission, and Highlands Council's timely and favorable response to this petition for rulemaking.

Respectfully,  
Bill Wolfe

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## **Highlands Council**

### **Legal Department**

#### **Notice of Action on Petition for Rulemaking**

Petition to Adopt Rules Limiting or Prohibiting Development in Certain Wildfire Hazard Areas; Mandating Retrofit of State-of-the-Art Fire Prevention Practices on Existing Development in Certain Wildfire Hazard Areas; and Requiring Monitoring and Reporting of Emissions of Air Pollutants from Wildfires and Prescribed Burns

N.J.A.C. 7:7, 7A, 13, 27, 38, and 50

Petitioner: Bill Wolfe

**Take notice** that the New Jersey Highlands Water Protection and Planning Council (Highlands Council) has determined to deny a petition for rulemaking received on March 9, 2022, from Bill Wolfe (Petitioner). Additionally, as discussed below, the Highlands Council does not and cannot respond to the petition on behalf of the New Jersey Department of Environmental Protection (DEP) or the New Jersey Pinelands Commission (Pinelands Commission) to the extent Petitioner asks for relief that is within the sole jurisdiction of either entity.

#### **The Petition**

The Petitioner requests that the Highlands Council, DEP and the Pinelands Commission amend the Highlands Regional Master Plan, DEP's regulations, and the Pinelands Comprehensive Management Plan to:

- Ban new development in mapped "extreme" wildfire hazard areas;
- Restrict new development in mapped "very high" and "high" wildfire hazard areas;
- Mandate retrofit of state-of-the-art fire prevention practices on existing development in mapped "extreme," "very high," and "high" wildfire hazard areas;
- Prohibit reconstruction of fire-damaged properties in mapped "extreme," "very high," and "high" wildfire hazard areas; and
- Monitor, quantify, and publicly report in the State's State Implementation Plan (SIP) under the Federal Clean Air Act all air pollution emissions, including greenhouse gas emissions and fine particulate matter (including very fine particulates less than PM10), and impacts of wildfire and prescribed burns.

In support of the petition, Petitioner cites to the authority of the Highlands Water Protection and Planning Act (N.J.S.A. 13:20-1 et seq.), the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.), the Coastal Area Facilities Review Act (N.J.S.A. 13:19-1 et seq.), the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.), the Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.), the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), the Endangered and Nongame Species Conservation Act (N.J.S.A. 23:2A-1 et seq.), the Flood Hazard Area Control Act (N.J.S.A. 58:16A50 et seq.), and the general powers of DEP (N.J.A.C. 13:1D-1 et seq.). As justification for the need for the requested action, Petitioner cites to the February 10, 2022, testimony of Commissioner Shawn M. LaTourette before the New Jersey Senate Environmental Committee, in which the Commissioner noted the number of wildfires in the State in 2021, and stated that the

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best available Department science indicates that wildfire risks and impacts are projected to increase due to climate change. Petitioner also refers to the 2019 New Jersey Hazard Mitigation Plan (2019), in particular Section 5.12, Wildfire ([https://nj.gov/njoem/mitigation/pdf/2019/mit2019\\_section5-12\\_Wildfire.pdf](https://nj.gov/njoem/mitigation/pdf/2019/mit2019_section5-12_Wildfire.pdf)), which assesses the risk and likely impact of wildfires in various regions of the State.

According to Petitioner, the State's land use planning and regulatory framework are seriously flawed and are incapable of preventing and reducing wildfire risks and impacts. Consequently, new and more stringent measures are necessary to prevent and reduce such risks and impacts. Petitioner states that he makes his petition "to protect people and property from current and projected wildfire risks and impacts; to protect ecosystems, natural resources, air quality, water quality, wildlife, vegetation, and public health from current and projected risks and impacts of wildfire; to mitigate the risks and impacts of climate change; and to reduce the occurrence and damages from wildfire disasters and the disbursements of [F]ederal and [S]tate taxpayer funded disaster assistance and response programs."

#### **The Highlands Council Response to the Petition**

The Highlands Council has determined to deny this petition for rulemaking. The Highlands Council agrees with Petitioner that wildfire prevention, combating climate change and protection of the natural resources in the Highlands Region are essential actions; however, the Highlands Council has determined that a rule change is unnecessary at this time. As outlined below, notwithstanding Petitioner's Petition for Rulemaking, the Highlands Council has strong protections in place to address the aforementioned issues.

The Highlands Council encourages a comprehensive regional approach to implementing the 2004 Highlands Water Protection and Planning Act (the Highlands Act) (N.J.S.A. 13:20-14 and 15). The Highlands Act established the Highlands Council and charged it with the creation and adoption of the Highlands Regional Master Plan (RMP) to protect and enhance the natural resources within the New Jersey Highlands. Many of the "extreme" wildfire hazard areas – areas where Petitioner would like to see development banned - are located in the Preservation areas of the New Jersey Highlands; in accordance with the Highlands Act and the RMP, strong restrictions on development are already in place in these areas. Additionally, the Highlands Act requires the Highlands Council to review and update the RMP every six years, after public hearings. The Highlands Act contemplates that amendments to the RMP will arise principally out of this six-year reexamination. Accordingly, the Highlands Council follows this outlined structure to review and update the RMP in a manner that is consistent with the Highlands Act and ensures robust public participation. The RMP was most recently amended in 2019; a public comment period was held from March 27 through May 28, 2019, and the Highlands Council held six public hearings in locations throughout the state to solicit public comment. Petitioner is encouraged to comment on the Highlands Council's next RMP amendment which will take place in 2024.

The Pinelands Protection Act gives the Pinelands Council the sole authority to amend the Pinelands Comprehensive Management Plan. N.J.S.A. 13:18A-6. The DEP has the sole authority to amend the various rules implicated by this petition. Accordingly, the Highlands Council does

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not and cannot respond to the petition to the extent that Petitioner requests amendments to the Pinelands Comprehensive Management Plan and any DEP regulations, or otherwise seeks relief that is beyond the Highlands Council's authority.

This notice and the full text of the petition filed in this matter are available on the Highlands Council's website at [www.nj.gov/njhighlands/act/#rules](http://www.nj.gov/njhighlands/act/#rules). Additionally, the notice of receipt of petition was published in the April 18, 2022 New Jersey Register (54 N.J.R.728(a)).

In accordance with N.J.A.C. 1:30-4.2, the Highlands Council will mail to Petitioner and file with the Office of Administrative Law for publication in the next New Jersey Register, a notice of action on the petition.

5/3/2022

\_\_\_\_\_  
Date



\_\_\_\_\_  
Lisa J. Plevin  
Executive Director

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## **ENVIRONMENTAL PROTECTION**

### **AIR QUALITY, ENERGY, AND SUSTAINABILITY**

### **WATER AND LAND MANAGEMENT**

### **PARKS, FORESTRY, AND HISTORIC SITES**

## **NOTICE OF ACTION ON PETITION FOR RULEMAKING**

N.J.A.C. 7:7, 7A, 13, 27, 38, and 50

Petitioner: Bill Wolfe

**Take notice** that the Department of Environmental Protection (Department) has denied the petition for rulemaking filed by Bill Wolfe (Petitioner) described below. The Department received the petition on March 9, 2022. Although Petitioner did not comply with N.J.A.C. 7:1D-1.1, Procedure to petition for a rule, the Department published notice of receipt of the petition in the April 18, 2022, New Jersey Register (54 N.J.R. 727(a)). As specified in the notice, the Department acknowledged the petition only to the extent it requests action within the Department's jurisdiction. The Department cannot and did not acknowledge the petition on behalf of the Pinelands Commission or the Highlands Water Protection and Planning Council (Highlands Council) to which the petition was also directed, nor does the Department seek to address requests made of the Commission or Council.

### **The Petition**

The Petitioner requests that the Department, Pinelands Commission, and Highlands Council amend the agencies' rules, the Pinelands Comprehensive Management Plan, and the Highlands Regional Master Plan to:

- Ban new development in mapped "extreme" wildfire hazard areas;

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- Restrict new development in mapped "very high" and "high" wildfire hazard areas;
- Mandate retrofit of state-of-the-art fire prevention practices on existing development in mapped "extreme," "very high," and "high" wildfire hazard areas;
- Prohibit reconstruction of fire-damaged properties in mapped "extreme," "very high," and "high" wildfire hazard areas; and
- Monitor, quantify, and publicly report in the State Implementation Plan (SIP) under the federal Clean Air Act all air pollution emissions, including greenhouse gas emissions and fine particulate matter (including very fine particulates less than PM10), and impacts of wildfires and prescribed burns.

Petitioner refers to the authority of the Highlands Water Protection and Planning Act (N.J.S.A. 13:20-1 et seq.) and the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.) in support of the petition. The Pinelands Protection Act gives the Pinelands Commission the sole authority to amend the Pinelands Comprehensive Management Plan. N.J.S.A. 13:18A-6. Similarly, the Highlands Water Protection and Planning Act gives the Highlands Council sole authority to prepare, adopt, and amend the Highlands Regional Master Plan (in consultation with the Department and other State agencies), and to promulgate regulations to exercise its powers and perform its duties and responsibilities. N.J.S.A. 13:20-6, -8 and -9. Accordingly, the Department does not acknowledge or respond to the petition insofar as the petition requests amendments to the Pinelands Comprehensive Management Plan and the Highlands Regional Master Plan or other actions that are beyond the Department's sole authority.

Petitioner also refers to the Coastal Area Facilities Review Act (N.J.S.A. 13:19-1 et seq.), the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.), the Air Pollution Control Act

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(N.J.S.A. 26:2C-1 et seq.), the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), the Endangered and Nongame Species Conservation Act (N.J.S.A. 23:2A-1 et seq.), the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.), and the general powers of the Department (N.J.A.C. 13:1D-1 et seq.) in support of the petition. The Department is charged with the implementation of these laws and responds accordingly herein.

Petitioner contends that the requested rulemaking is necessary due to wildfire risk in the state and refers to the February 10, 2022 testimony of Commissioner Shawn M. LaTourette before the New Jersey Senate Environment Committee in which the Commissioner noted the number of wildfires in the state in 2021 and stated that the best available Department science indicates that wildfire risks and impacts are projected to increase due to climate change. At said hearing, the Commissioner delivered copies of and referenced the 2020 New Jersey Scientific Report on Climate Change (<https://www.nj.gov/dep/climatechange/docs/nj-scientific-report-2020.pdf>), which explains the projected climate change impacts upon New Jersey's resources and ecosystems at section 5, and wildfire in particular at section 5.4.

Petitioner also refers to the 2019 New Jersey Hazard Mitigation Plan, in particular Section 5.12, Wildfire ([https://nj.gov/njoem/mitigation/pdf/2019/mit2019\\_section5-12\\_Wildfire.pdf](https://nj.gov/njoem/mitigation/pdf/2019/mit2019_section5-12_Wildfire.pdf)), which assesses the risk and likely impact of wildfires in various regions of the State. See State of New Jersey, Office of Emergency Management, New Jersey State Hazard Mitigation Plan 2019 (Jan. 25, 2019) (Hazard Mitigation Plan), <https://www.nj.gov/njoem/mitigation/2019-mitigation-plan.shtml>.

Petitioner asserts that the State's land use planning and regulatory framework are "seriously flawed and are incapable of preventing and reducing wildfire risks and impacts" and

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contends that new and more stringent measures are necessary to prevent and reduce such risks and “to protect people and property from current and projected wildfire risks and impacts; to protect ecosystems, natural resources, air quality, water quality, wildlife, vegetation, and public health from current and projected risks and impacts of wildfire; to mitigate the risks and impacts of climate change; and to reduce the occurrence and damages from wildfire disasters and the disbursements of federal and state taxpayer funded disaster assistance and response programs.”

## **Background**

### Climate change

There is scientific consensus that global atmospheric warming, caused largely by human activities, is leading to significant changes in climate patterns around the world. In its Sixth Assessment Report, the United Nations Intergovernmental Panel on Climate Change declared that “[i]t is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred.” Intergovernmental Panel on Climate Change (IPCC), 2021: Summary for Policymakers. In: *Climate Change 2021, The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S. L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M. I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T. K. Maycock, T. Waterfield, O. Yelekçi, R. Yu and B. Zhou (eds.)]. Cambridge University Press. In Press. [https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_SPM.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf). Rising sea-levels, higher temperature, more precipitation, more intense storms and drought, and flooding are only some of the climate change impacts the State will experience. These impacts in turn will

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stress the State's public health, ecological, social, and economic systems. See New Jersey Department of Environmental Protection, New Jersey's Global Warming Response Act 80x50 Report, October 15, 2020 (80x50 Report), <https://www.nj.gov/dep/climatechange/docs/nj-gwra-80x50-report-2020.pdf>; New Jersey Scientific Report on Climate Change, Version 1.0 (Eds. R. Hill, M.M. Rutkowski, L.A. Lester, H. Genievich, N.A. Procopio) Trenton, NJ (2020 Report on Climate Change), <https://www.nj.gov/dep/climatechange/docs/nj-scientific-report-2020.pdf>.

To better organize and advance the State's response climate change, Governor Philip D. Murphy has issued a series of Executive Orders, which together established the State's policy to take aggressive climate action by reducing the emissions of climate pollutants economy-wide, charting a just and equitable transition away from our reliance on fossil fuels while building a stronger and fairer economy fueled by clean and renewable energy, protecting and promoting the resilience of New Jersey's communities from the current and anticipated impacts of climate change through planning and regulation, and investing in climate solutions that create new economic opportunity and broadly shared prosperity. See Executive Orders Nos. 7, 8, 23, and 28 (2018), Nos. 89 and 92 (2019), No. 100 (2020), and Nos. 221 and 274 (2021).

Pursuant to the foregoing directives, the Department is taking significant, iterative steps to reduce emissions of climate pollutants to limit a worsening of adverse climate change impacts, while simultaneously working to enhance the State's resilience to those climate effects that cannot be avoided. See, e.g., New Jersey Department of Environmental Protection, Protecting Against Climate Threats website, <https://www.nj.gov/dep/njpac/>. In October 2020, the Department published the 80x50 Report, which includes current emissions data and projected emissions for eight different sectors under different scenarios, communicates the limitations of

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existing State legislation, policies, and programs in reaching the 80x50 goal, and provides detailed recommendations for each sector to assist policymakers in crafting new initiatives to bridge the resulting emissions reductions gap. See

<https://www.nj.gov/dep/climatechange/docs/nj-gwra-80x50-report-2020.pdf>. The Department, in partnership with the Department of Agriculture, also released a scoping document for its forthcoming Natural and Working Lands Strategy, as part of its efforts to identify and prioritize mitigation strategies through carbon storage and sequestration on the State's natural and working lands. 2021 Natural and Working Lands Strategy Scoping Document, <https://www.nj.gov/dep/climatechange/docs/nj-nwls-scoping-document.pdf>.

On the regulatory front, the Department has started the first phase of its Climate Pollutant Reduction (CPR) regulatory reforms, a part of the larger New Jersey Protecting Against Climate Threats (NJPACT) initiative directed by Executive Order 100 (2020). These include a proposed new Greenhouse Gas Monitoring and Reporting Rule, 53 N.J.R. 1063(a), which will better quantify emissions of climate pollutants to support future reduction reforms, an adopted Advanced Clean Trucks and Fleet Reporting Rule, 53 N.J.R. 588(a), 53 N.J.R. 2148(a), which will reduce the emissions of climate pollutants by increasing the percentage of electric vehicles sold in New Jersey through the institution of manufacturer sales requirements, and a proposed Control and Prohibition of Carbon Dioxide Emissions Rule, 53 N.J.R. 1945(a), which will reduce emissions from fossil fuel-powered electric generating plants over the next decade consistent with 2019 EMP, further supporting the State's clean energy transition. The Department intends to launch the second phase of its CPR regulatory reforms in or around July 2022.

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As the state works to reduce emissions of climate pollutants, the state must also respond to current climate change impacts and better prepare for future impacts by improving the State's resilience to circumstances like continuing extreme weather, including worsening flooding like that which the state experienced when the remnants of Hurricane Ida struck New Jersey in September 2021. To that end, in October 2021, the Department issued the State's inaugural Climate Change Resilience Strategy, which established six resilience policy priorities and over one-hundred specific recommendations to guide and inform state and local government resilience efforts to protect vulnerable communities, infrastructure, businesses, and the environment from climate impacts, including the state's unique risks from sea-level rise, chronic flooding, rising temperatures, more frequent and intense storm events, and wildfires. State of New Jersey, Climate Change Resilience Strategy (Oct. 2021) (Resilience Strategy), <https://www.nj.gov/dep/climatechange/docs/nj-climate-resilience-strategy-2021.pdf>.

### Wildfires

With respect to the specific management of the two million acres of forests in New Jersey, the Department published its latest Forest Action Plan in December 2020, after extensive study and stakeholder engagement and in cooperation with the United States Department of Agriculture Forest Service. State of New Jersey, Department of Environmental Protection, Forest Service, New Jersey State Forest Action Plan (Dec. 2020) (Forest Action Plan), <https://nj.gov/dep/parksandforests/forest/njsfap/docs/njsfap-final-12312020.pdf>. The Forest Action Plan explains the State's "holistic approach to forestry management that values the multitude of natural resources services that our forests provide including habitat and recreational areas, and ecosystem services such as contributions to clean air, water, global carbon cycles,

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wildfire and flood mitigation.” Id. at 9.

As described in the 2020 Report on Climate Change, climate change is expected to contribute to increases in the frequency and severity of wildfires. 2020 Report on Climate Change at 62, 93. A wildfire or “wildland fire” is defined as “any non-structural fire that occurs in the wildland,” which can be naturally occurring, human-caused, or prescribed and occur in forested, semi-forested, or less developed areas. Hazard Mitigation Plan at 5.12-2. The Department investigates the cause and origin of all wildfires, regardless of size. The Department also conducts an after-action review for every “major” wildfire, which is a wildfire over 100 acres. Smoke from in-State and upwind wildfires adversely affects air quality in the State, and wildfires are a major source of fine particulate matter, or PM2.5. 2020 Report on Climate Change at 67. Degraded air quality increases incidences of respiratory illness, reduces visibility, and disrupts outdoor activities. Id. at 62.

Although predicting wildfires is challenging due to the various factors and conditions that contribute to when and where a fire may start, increases in temperature, the frequency and severity of storms, and winds could all increase fire occurrences and intensify the spread and danger of fires. Id. at 93. Recognizing that forest management actions are necessary to mitigate the risk of wildfires, the Department takes a variety of actions to reduce the potential impacts of wildfires and protect residents and visitors to the State. Each year the Department conducts prescribed burns to reduce forest fuels and undergrowth that contribute to wildfire starts and spread. The prescribed burn program has expanded over time to include both public and private forests. In 2021, the Department conducted prescribed burns on 17,936 acres. For the 2022 season, the Department is targeting a program covering 20,000 to 25,000 acres. For information

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about prescribed burning, see

<https://www.nj.gov/dep/parksandforests/fire/program/aboutrx.html>.

In addition, through the Firewise Communities Program, communities at risk from wildfire can receive technical and financial assistance to conduct mitigation activities and create defensible space. See <https://www.nj.gov/dep/parksandforests/fire/program/firewise.html>. The Forest Fire Service also facilitates the development of Community Wildfire Protection Plans (CWPPs) at the municipal level by providing technical assistance and grants to implement hazard mitigation practices and build wildfire resiliency. See <https://www.nj.gov/dep/parksandforests/fire/program/cwpp.html>. Currently, there are 43 municipalities with CWPPs in place. Participation in these programs aids municipalities in qualifying for the Sustainable Jersey program. These efforts increase the capacity of the Forest Fire Service to minimize a conflagration from occurring, thus minimizing environmental impacts.

### **Response to Petition**

Petitioner requests that the Department amend its regulations in three general ways: to ban or restrict development and redevelopment in certain wildfire hazard areas, mandate retrofit of existing development in certain wildfire hazard areas, and “monitor, quantify, and publicly Report [sic] in NJ’s Clean Air Act SIP all air pollution emissions – including greenhouse gas emissions and fine particulate matter (including very fine particulates less than PM10) – and impacts of wildfires and prescribed burns.” Petition at 4.

While the Department has considerable authority to regulate certain activities in particular environmentally sensitive areas, the Department does not possess the sort of master

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land use planning or regulatory authority alluded to by Petitioner. In the particular areas over which the Department has regulatory authority, the development of many land areas that may be susceptible to wildfire is already minimized under the Department's regulation of impacts to natural resources such as wetlands, threatened and endangered species habitat, coastal areas, riparian areas, and certain forested areas. As discussed below, the Department is engaged in an ongoing analysis of wildfire risk in the state and is developing information and tools to reduce wildfire risk and mitigate wildfire hazards to the maximum extent possible.

Furthermore, and as explained in more detail below, criteria pollutant (including fine particulate matter), hazardous air pollutant, and greenhouse gas emissions estimates due to wildfires and prescribed burns are already publicly available.

Accordingly, the Department hereby denies the petition.

#### Forest and land management

The State Hazard Mitigation Plan is “the cornerstone to reducing New Jersey’s vulnerability to disasters” and reflects the State’s commitment to reducing hazard risks. See Hazard Mitigation Plan at 1-2, <https://www.nj.gov/njoem/mitigation/2019-mitigation-plan.shtml>. Although disasters will never be fully prevented from threatening the State, “planning for and implementing mitigation measures before disasters strike and by making sure that post-disaster recovery efforts include appropriate hazard mitigation measures” can reduce or avoid the devastating impacts and rising costs of disaster. *Id.* at 1-2 to 3. “Hazard mitigation focuses on actions that reduce impacts to hazards” and “[i]dentifying effective mitigation actions depends on the unique characteristics associated with specific hazards.” *Id.* at 1-2.

As explained, wildfires can be naturally occurring or human-caused, and occur in

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forested, semi-forested, or less developed areas. Hazard Mitigation Plan at 5.12-2. In New Jersey, wildfires are most frequently caused by humans. Ibid. “Wildfires result in the uncontrolled destruction of forests, brush, field crops, grasslands, real estate, and personal property, and have secondary impacts on other hazards such as flooding, by removing vegetation and destroying watersheds.” Ibid. Wildfires can also destroy or damage habitat for fish and wildlife and rare plants and animals and result in a catastrophic release of carbon. “A potentially dangerous combination is created when hazardous wildland fuels interface with residential development, and an increased risk of human-caused ignition come together under extreme fire weather conditions.” Ibid. “For wildfires, where suburban development has encroached upon susceptible areas, mitigation actions can include development setbacks, improved access for emergency vehicles, adequate water supplies, and vegetation management.” Id. at 1-2.

The 2021 Resilience Strategy addressed the threat of wildfire and explained the Department’s twofold approach to building resilience to this threat. Id. at p.35. First is to understand the risk, and second is to conduct preventative management. Ibid. Accordingly, the Forest Fire Service is developing a Wildfire Risk Assessment Portal (WRAP) to provide a standardized tool for quantifying and interpreting wildfire hazard and risk statement. Ibid. Through comprehensive data analysis and wildfire modeling, this information will enable the Forest Fire Service, as well as landowners and residents, to more precisely target preventative management in at-risk areas. Ibid.

Among the available forest management techniques are treatments to remove hazardous fuels and brush by thinning overstocked forests or creating fire breaks, as well as prescribed burning. Id. at 35-36. The Department also utilizes prescribed burning for public safety and

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wildfire control. See Forest Action Plan at 134-135. Note, the Department's Open Burning rules at N.J.A.C. 7:27-2 limit open burning in the state. One of the limited exceptions is a permit for prescribing burning, in accordance with a plan approved by and under the control and supervision of the Forest Fire Service. N.J.A.C. 7:27-2.6.

The Forest Action Plan recognizes that “[a]s the population in New Jersey continues to spread into the wildland or increase the amount of Wildland Urban Interface (WUI), community planning or the protection of both lives and property from wildfire is an unremitting challenge.” Forest Action Plan at 133. One effective tool to address this challenge is a network of Community Wildfire Protection Plans (CWPPs). Ibid. CWPP development focuses on restoring and maintaining landscapes that are resilient to fire-related disturbances, fire-adapting communities so that human populations and infrastructure can withstand a wildfire without loss of life and property, and engaging all jurisdictions to “participate in making and implementing safe, effective and efficient risk-based wildfire management decisions.” Ibid.

In sum, the Department is fully engaged in evaluating wildfire risk and developing information and tools to mitigate wildfire hazards and reduce wildfire risk to the maximum extent possible. As such, the Department has determined that the requested rulemaking to prohibit or restrict development and mandate building retrofits is unnecessary. Nevertheless, the Department remains committed to continued research, as well as monitoring and reducing wildfire risk through both direct action and work with community partners.

#### Emissions from wildfires and prescribed burns

The federal Clean Air Act (CAA) requires the United States Environmental Protection Agency (EPA) to establish primary and secondary National Ambient Air Quality Standards

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(NAAQS) for air pollutants, the emissions of which cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. 42 U.S.C. 7409. EPA has established NAAQS for ground-level ozone, particulate matter (PM), carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide, and lead. The primary NAAQS is established at a level requisite to protect public health, with an ample margin of safety. 42 U.S.C. 7409(b)(1). The secondary NAAQS is established at a level requisite to protect public welfare from adverse effects associated with the presence of the pollutant in the ambient air. 42 U.S.C. 7409(b)(2).

When EPA establishes or revises a NAAQS, states are required to adopt a State Implementation Plan (SIP), which establishes that the state has the infrastructure and authority for implementing, maintaining, and enforcing the NAAQS. There are additional SIP requirements for states in areas that exceed the NAAQS, referred to as nonattainment areas. For a general explanation of the NAAQS and New Jersey's attainment areas status, see <https://www.nj.gov/dep/baqp/aas.html>.

The entire State of New Jersey is in nonattainment for the 2008 (75 parts per billion (ppb)) and 2015 (70 ppb) ozone NAAQS. In November 2021, the Department finalized an ozone SIP revision which included the State's 2017 periodic emissions inventory. See State of New Jersey, Department of Environmental Protection, State Implementation Plan (SIP) Revision for the Attainment and Maintenance of the Ozone National Ambient Air Quality Standards, 2008 75 ppb 8-Hour Ozone Attainment Demonstration Northern New Jersey-New York-Connecticut Nonattainment Area, 2008 75 ppb and 2015 70 ppb 8-Hour Ozone Reasonably Available Control Technology (RACT) Determinations and Nonattainment New Source Review (NNSR) Program Compliance Certifications and 2017 Periodic Emissions Inventory (November 2021) (2021 Ozone SIP), Chapter 10, <https://www.nj.gov/dep/baqp/sip/OA.html>. As explained in the 2021

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Ozone SIP, the CAA requires states to submit periodic emissions reports and for nonattainment areas to show continued progress to attain the ozone NAAQS. Id. at 10-1. The 2017 emissions inventory serves as the State's periodic emissions inventory for the ozone NAAQS and base year to demonstrate continued progress. Ibid.

For the 2017 emissions inventory, the Department estimated and/or compiled emission estimates from various anthropogenic and biogenic sources of volatile organic compounds (VOCs), oxides of nitrogen (NO<sub>x</sub>), particulate matter less than 2.5 micrometers and 10 micrometers in diameter (PM<sub>2.5</sub> and PM<sub>10</sub>), SO<sub>2</sub>, and ammonia. Id. at 10-3. As shown in the inventory, the Department included estimated emissions from the "wildfire and prescribed burn" source sector utilizing EPA's emissions estimates in the National Emissions Inventory (NEI). See id., Tables 10-2 through 10-5 and Appendix 10-1: 2017 Point and Area PEI, Attachment 6: 2017 Events, at <https://www.nj.gov/dep/baqp/OA/App%2010-1%20Att%206%202017%20Events%2012-17-20.xlsx>. EPA prepares the NEI with information provided by the Department (as applicable to New Jersey). For wildfires and prescribed burns, the Department's Division of Air Quality submits information provided by the Forest Fire Service regarding location, acres burned, and dates of fires, which EPA uses in its calculations. All three-year NEI inventories are available on EPA's website. See EPA, National Emissions Inventory (NEI), <https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nej>. The Department's inclusion of emissions estimates from wildfires and prescribed burns is consistent with EPA's guidance that explains that "[b]ecause the CAA specifies that planning inventories (e.g., the base year inventory for the NAA [nonattainment area] must include all sources of emissions, the inventories should, therefore, include fires." EPA, Emissions Inventory

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Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations (May 2017) at 103,

[https://www.epa.gov/sites/default/files/2017-](https://www.epa.gov/sites/default/files/2017-07/documents/ei_guidance_may_2017_final_rev.pdf)

[07/documents/ei\\_guidance\\_may\\_2017\\_final\\_rev.pdf](https://www.epa.gov/sites/default/files/2017-07/documents/ei_guidance_may_2017_final_rev.pdf). New Jersey also works with other states,

regional organizations, and EPA to estimate and create regional modeling inventories, which include wildfires and prescribed burns. The regional modeling inventory for the ozone

attainment demonstration was also included in the ozone SIP, see 2021 Ozone SIP, Appendix 4-

4B, GAMMA 2011\_2020\_2023 Modeling Inventory Summary by Sector, at

[https://www.nj.gov/dep/baqp/OA/App%204-](https://www.nj.gov/dep/baqp/OA/App%204-4B%20GAMMA%202011_2020_2023%20Modeling%20Inv%20Summary%20by%20Sector%2012-2-20.xlsx)

[4B%20GAMMA%202011\\_2020\\_2023%20Modeling%20Inv%20Summary%20by%20Sector%2](https://www.nj.gov/dep/baqp/OA/App%204-4B%20GAMMA%202011_2020_2023%20Modeling%20Inv%20Summary%20by%20Sector%2012-2-20.xlsx)

[012-2-20.xlsx](https://www.nj.gov/dep/baqp/OA/App%204-4B%20GAMMA%202011_2020_2023%20Modeling%20Inv%20Summary%20by%20Sector%2012-2-20.xlsx).

The Department separately publishes information about climate pollution—specifically, black carbon—from wildfires and prescribed burns. Black carbon is an aerosol component of PM and is formed in varying concentrations with other PM through biomass burning and incomplete combustion of fossil fuels. See 80x50 Report at 133. Black carbon contributes to climate warming by absorbing sunlight directly and releasing heat energy into the atmosphere. *Ibid.* Unlike carbon dioxide, which remains in the atmosphere for hundreds of years, black carbon is removed by rain or by deposition in a matter of days or weeks. *Ibid.* Although black carbon is not a significant contributor to the State’s climate pollutant inventory, black carbon emissions compromise local air quality and reductions therefore have co-benefits. The 80x50 Report provided estimated black carbon emissions by source, including wildfires and prescribed burning. *Id.* at 134.

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The Department's Greenhouse Gas Inventory Mid-Cycle Update included black carbon estimates. See [https://www.nj.gov/dep/aqes/ghgarchive/MCU%20GHG%20Inventory\\_2021.pdf](https://www.nj.gov/dep/aqes/ghgarchive/MCU%20GHG%20Inventory_2021.pdf).

The Department will also include a comprehensive black carbon inventory in its next greenhouse gas emissions inventory, which is prepared biennially in accordance with the Global Warming Response Act, N.J.S.A. 26:2C-37 et seq. The black carbon emissions inventory will identify emissions associated with the combustion of fossil and biogenic materials, including emissions from wildfires and prescribed burns.

Accordingly, because the State's air pollutant emissions associated with wildfires and prescribed burns or estimates thereof are monitored, reported, and publicly available, the Department has determined that rulemaking as requested in the petition is not warranted.

#### Conclusion

For the reasons stated above, the petition is hereby denied. A copy of this notice has been mailed to the petitioner as required by N.J.A.C. 1:30-3.6.