



# RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-19- 13

**TITLE:** Approving With Conditions an Application for Public Development and Certificate of Appropriateness (Application Number 1990-0868.031)

Commissioner Avery moves and Commissioner Barr seconds the motion that:

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

**1990-0868.031**

<b>Applicant:</b>	NJDEP, Division of Parks and Forestry
<b>Municipality:</b>	Bass River Township
<b>Management Area:</b>	Pinelands Village Pinelands Preservation Area District Pinelands Rural Development Area
<b>Date of Report:</b>	March 22, 2019
<b>Proposed Development:</b>	Tree clearing to restore visibility from the Bass River State Forest fire tower.

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

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

WHEREAS, the Pinelands Commission hereby determines that the proposed public development and Certificate of Appropriateness both conform to the standards for approving an application for public development set forth in N.J.A.C. 7:50-4.57 and the standards for approving a Certificate of Appropriateness set forth in N.J.A.C. 7:50-6.156 if the conditions recommended by the Executive Director are imposed; and

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

WHEREAS, public comments on this application have raised questions regarding possible alternatives to the need for future tree clearing for fire towers, and the Commission staff will contact the New Jersey Department of Environmental Protection to further discuss these alternatives; and

**NOW, THEREFORE BE IT RESOLVED** that Application Number 1990-0868.031 for public development and a Certificate of Appropriateness is hereby **approved** subject to the conditions recommended by the Executive Director.

### Record of Commission Votes

AYE	NAY	NP	AR*	AYE	NAY	NP	AR*	AYE	NAY	NP	AR*
		X		Irick	X			Prickett	X		
X				Jannarone	X			Quinn	X		
X				Lloyd	X			Rohan Green			X
		X		Lohbauer		X		Earlen	X		
X				Pikolycky	X						

\*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: April 12, 2019

Nancy Wittenberg  
Nancy Wittenberg  
Executive Director

Sean W. Earlen  
Sean W. Earlen  
Chairman



## State of New Jersey

THE PINELANDS COMMISSION

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SHEILA Y. OLIVER  
Lt. Governor

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Application Specific Information: [AppInfo@pinelands.nj.gov](mailto:AppInfo@pinelands.nj.gov)

SEAN W. EARLEN  
Chairman  
NANCY WITTENBERG  
Executive Director

March 22, 2019

New Jersey Department of Environmental Protection  
Division of Parks and Forestry  
New Jersey State Forest Fire Service  
501 East State Street  
P.O. Box 420  
Mail Code 501-04  
Trenton, NJ 08625-0420

Re: Application # 1990-0868.031  
Bass River State Forest Fire Tower  
Block 48, Lots 1 & 2  
Block 49, Lot 12  
Bass River Township

Dear Applicant:

The Commission staff has completed its review of this application for tree clearing to restore visibility from the Bass River State Forest fire tower. Enclosed is a copy of a Public Development Application Report and Certificate of Appropriateness. On behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its April 12, 2019 meeting.

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

A copy of this Public Development Application Report and Certificate of Appropriateness is being provided to any persons who provided written and/or verbal public comments regarding this application and who also provided either a mailing address or an email address.

Public comments on this application have raised questions regarding possible alternatives to the need for future tree clearing for fire towers. Our staff will contact the New Jersey Department of Environmental Protection to further discuss these alternatives.

Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. M. Horner', with a long horizontal flourish extending to the right.

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

- Enclosures: Appeal Procedure  
Written public comments (52)  
Documents submitted by the public (9)
- c: Secretary, Bass River Township Planning Board (via email)  
Bass River Township Construction Code Official (via email)  
Secretary, Burlington County Planning Board (via email)  
Jeremy A. Webber, Assistant State Firewarden (via email)  
Cynthia Coritz (via email)  
Dianne Worthington (via email)  
Carol Bitzberger (via email)  
Kathy Gardiner (via email)  
Riki Losiewicz (via email)  
Rose Sweeney (via email)  
Mike Wilburt (via email)  
William Chadwick (via email)  
Tom Doherty (via email)  
Jeff Tittel (via email)  
Christopher Brower (via email)  
Richard Buzby (via email)  
Rhyan Grech (via email)  
Bill Brash (via email)  
John Waldrop (via email)  
Neil Alzamora (via email)  
John Speece (via email)  
Michelle Fox (via email)  
Alison Hall (via email)  
Sharon Tuscano (via email)  
Bruce Roop (via email)  
Donetta Waldrop (via email)  
Erica DiUlio (via email)  
Nancy Reid (via email)  
Katharine LaRocca (via email)  
Eileen Brower (via email)  
Nicole Babcock (via email)  
Lindsey Wasiuta (via email)  
Gale Labor (via email)  
Robert Graffin (via email)  
Lizabeth Carl (via email)  
Jeremy Price (via email)

Scott Wardenski (via email)  
Laura Phillips (via email)  
Dawn Markoski (via email)  
Ben Wurst (via email)  
Karl Swanseen (via email)  
Edward Lynch (via email)  
Arthur Abline (via email)  
William Cromartie (via email)  
Benjamin Brower (via email)  
Robyn and Jeffrey Firth (via email)  
Todd Tally (via email)  
Jason Hoger (via email)  
Dana Austin (via email)  
Amy Rasmussen (via email)  
Maria Cody (via email)  
Julie Berghoff (via email)  
Ed Kanitra (via email)  
Laura Rasmussen (via email)  
Rocquel Barretto (via email)  
Sarah Foti (via email)  
Marcia Evans (via email)  
Ronald Valentine (via email)  
Karren Amon (via email)  
Ted Paul (via email)  
James Casson (via email)  
Marlena Carlis (via email)  
John Steedle (via email)  
Paul Smikovecus (via email)  
Susan Hughes (via email)  
Candace Fykes (via email)  
Randy DePasquale (via email)



# State of New Jersey

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Application Specific Information: [AppInfo@pinelands.nj.gov](mailto:AppInfo@pinelands.nj.gov)

SEAN W. EARLEN  
Chairman  
NANCY WITTENBERG  
Executive Director

## **PUBLIC DEVELOPMENT APPLICATION REPORT AND CERTIFICATE OF APPROPRIATENESS**

March 22, 2019

New Jersey Department of Environmental Protection  
Division of Parks and Forestry  
New Jersey State Forest Fire Service  
501 East State Street  
P.O. Box 420  
Mail Code 501-04  
Trenton, NJ 08625-0420

Application No.: 1990-0868.031  
Bass River State Forest Fire Tower  
Block 48, Lots 1 & 2  
Block 49, Lot 12  
Bass River Township

This application proposes the clearing of 16.4 acres of trees on the above referenced 435.3 acre parcel located in Bass River State Forest in Bass River Township. The 86 foot tall Bass River State Forest fire tower is located on the parcel. The purpose of the tree clearing is to restore visibility in all directions from the fire tower.

The applicant represents that the fire tower covers an area of visibility of approximately 200 square miles for detecting and suppressing wildfire. The applicant further represents that due to obstructed views from the fire tower, a public safety threat is currently posed to numerous municipalities, individual communities such as New Gretna, Ocean Acres, Smithville, Tuckerton and the Garden State Parkway.

The 16.4 acres proposed for the tree clearing are comprised of eight separate forested areas surrounding the fire tower. All trees within the eight areas will be removed. The eight areas range in size from one acre to four acres. All eight areas are located within approximately 1,400 linear feet of the fire tower and contain trees in excess of 90 feet tall.

An application for tree clearing of 2.7 acres immediately adjacent to the Bass River fire tower to improve visibility was approved by the Commission in 1995 (App. No. 1995-1054.001).

An application for tree clearing of the same 16.4 acres subject of the current application was previously completed with the Commission. On June 22, 2018, the Commission staff issued a "Public Development Application Report and Certificate of Appropriateness" recommending approval of that application. The application was considered at the Commission's July 13, 2018 monthly meeting. At that meeting, no

action was taken on the application as it did not receive the required minimum of eight votes for either approval or denial. Based upon the regulations contained in the Pinelands Comprehensive Management Plan (CMP, N.J.A.C. 7:50-4.56), because no action was taken, the application was forwarded to the New Jersey Office of Administrative Law for a hearing. Thereafter, by letter dated October 10, 2018, the New Jersey Department of Environmental Protection withdrew the application from the Commission.

On January 25, 2019, the current application was submitted to the Commission proposing the clearing of the same 16.4 acres as proposed in the prior application. The current application proposes the tree clearing as forestry. The CMP definition of forestry specifically excludes the removal of trees for public safety. It is the Commission staff's judgment that the primary purpose of the proposed tree clearing is public safety. Accordingly, the Commission staff reviewed the application as proposed tree clearing for public safety.

The proposed tree clearing is required to meet all standards contained in the CMP. If the applicant demonstrates that the proposed tree clearing meets all CMP standards, the CMP does not require the applicant to demonstrate whether there is an alternative that results in less tree clearing. Notwithstanding this fact and for informational purposes only, the current application addresses certain alternatives to the proposed tree clearing.

The current application also incorporates responses to questions that were posed by the Pinelands Commissioners to the New Jersey Department of Environmental Protection during the review of the prior tree clearing application that was subsequently withdrawn.

### **STANDARDS**

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

#### **Land Use (N.J.A.C. 7:50-5.22)**

The 435.3 acre parcel is located partially in the Pinelands Preservation Area District (405.2 acres), partially in a Pinelands Rural Development Area (18.8 acres) and partially in a Pinelands Village (11.3 acres). The fire tower and the proposed tree clearing are located in the Pinelands Preservation Area District portion of the parcel. The fire tower is a permitted land use both as a structure that existed prior to the 1981 effective date of the CMP and as an accessory structure to Bass River State Forest.

#### **Vegetation Management Standards (N.J.A.C. 7:50-6.23)**

The CMP (N.J.A.C. 7:50-6.23(a)) requires that the proposed tree clearing be limited to that which is necessary to accommodate the use of the fire tower. Based upon a Commission staff site inspection, including observation from the fire tower, the proposed tree clearing is limited to that which is necessary to accommodate the use of the fire tower. The CMP (N.J.A.C. 7:50-6.23(b)) also requires that, where practical, all clearing activities associated with a permitted use shall avoid wooded areas. The applicant has demonstrated that it is not practical to avoid clearing the wooded areas to allow for the continued use of the existing fire tower.

After the proposed tree clearing, the application proposes site preparation of the 16.4 acres by drum chopping and wood disking. The application does not propose the use of herbicides.

After site preparation, the application proposes replanting of native tree seedlings and natural revegetation from the existing soil seedbank in the 16.4 acres proposed to be cleared.

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

Available information identifies known sightings of threatened and endangered (T&E) animal and plant species in the vicinity of the proposed tree clearing. The Commission staff reviewed the proposed tree clearing to determine whether it was designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of T&E animal species and irreversible adverse impacts on the survival of any local populations of T&E plant species. The New Jersey Department of Environmental Protection Endangered and Nongame Species Program staff also reviewed the proposed tree clearing to determine impacts on T&E animal and plant species.

To avoid potential irreversible adverse impacts on habitats that are critical to the survival of any local populations of Barred owl, prior to undertaking the proposed tree clearing, the applicant proposes to conduct visual surveys to identify and mark any trees containing potential cavities or nests for this T&E avian species. Any trees containing potential Barred owl cavities or nests will be marked and left standing.

To avoid any irreversible adverse impacts on habitats that are critical to the survival of any local populations of Northern pine snake or Timber rattlesnake, the applicant will utilize low ground pressure tree cutting equipment between November 1 and April 31. This will avoid the possibility of crushing potential snake dens. In addition, the applicant will undertake site preparation activities (e.g. drum chopping and wood disking) between May 16 and September 30. This will also avoid impacts to snakes in any potential dens in the area.

The proposed tree clearing and site preparation activities are designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of T&E animal species.

To avoid any potential irreversible adverse impact to any local population of Broom crowberry, a CMP designated T&E plant species, the applicant proposes to conduct a visual survey in the eight areas prior to tree clearing. Any identified population of Broom crowberry will be left undisturbed.

The proposed tree clearing and site preparation is designed to avoid irreversible adverse impacts on the survival of any local populations of T&E plant species.

Cultural Resource Standards (N.J.A.C. 7:50-6.151)

The 16.4 acres proposed for tree clearing are part of pine plantations established in Bass River State Forest between the years 1933 and 1942 by the Civilian Conservation Corps (CCC). The New Jersey Historic Preservation Office (NJHPO) determined in 2004 that Bass River State Forest was eligible for designation on the New Jersey and National Register of Historic Places as the Bass River State Forest Historic District (BRFHD). The NJHPO made this determination of eligibility based upon the Bass River State Forest's association with Franklin D. Roosevelt's New Deal CCC program. Approximately 4,500 acres of trees were planted in Bass River State Forest by the CCC.

In accordance with the CMP (N.J.A.C. 7:50-6.154), the Commission staff has determined that the trees proposed for removal constitute a significant historic resource. The CMP (N.J.A.C. 7:50-6.156) requires that a Certificate of Appropriateness be issued by the Commission that identifies the required treatment of

significant historic resources from among three alternatives: preservation of the resource in place, if possible; preservation of the resource at another location, if preservation in place is not possible; or recordation.

Based upon review of the application, the Commission staff has determined that preservation in place is not technically feasible because obscuring the line of sight from the Bass River Fire Tower will result in a risk to public safety. Preservation at another location, a treatment that could be required for certain historic resources such as a building, is also not feasible in this instance due to the nature of the resource.

The Commission staff has determined that recordation is the appropriate treatment of the significant historic resource. This Certificate of Appropriateness requires recordation of the significant historic resource in accordance with the CMP (N.J.A.C. 7:50-6.156(c)). Recordation will be accomplished through a combination of photo-documentation prior to and subsequent to tree removal, GIS mapping, updating of known documentary records on CCC planted stands, and, if appropriate, interpretive signage.

No disturbance will occur greater than six inches below the ground surface. Based upon its review, the Commission staff determined that, since the proposed tree clearing will result in minimal ground disturbance, a cultural resource survey was not required.

The Forest Fire Service represented that NJHPO recommended planting of tree seedlings that would maintain the character of the historic pine plantations. The applicant proposes to replant the area after clearing with native tree seedlings and allow for natural revegetation from the existing soil seedbank.

### **PUBLIC COMMENT**

The applicant has provided the requisite public notices. Newspaper public notice was completed on January 24, 2019. Notice to land owners within 200 feet of the 16.4 acres proposed for tree clearing was completed on January 25, 2019. The application was designated as complete on the Commission's website on February 11, 2019. The Commission's public comment period closed on March 8, 2019.

The Commission received 52 written public comments (attached) regarding the application. At the Commission's March 8, 2019 monthly meeting, 19 oral public comments were offered. A list of all public commenters is provided at the end of this section of the Public Development Application Report and Certificate of Appropriateness. In addition, 9 documents (attached) were submitted by the public for consideration regarding this application.

The Commission staff appreciates the interest in the Pinelands Area of all members of the public who offered the following comments regarding this application:

**I. Public Comments Regarding Visual, Aesthetic and Recreational Value Impacts to the Forest.** (Commenters: D, E, H, J, L, O, R, 1, 5, 8, 9, 10, 12, 13, 14, 15, 16, 18, 20, 21, 22, 23, 24, 25, 26, 28, 30, 33, 34, 36, 38, 39, 40, 41, 42, 44, 47, 48, 49, 50 & 52)

**Staff Response:** As a regional land use plan covering approximately 938,000 acres, the CMP establishes approximately 552,000 acres (Pinelands Preservation Area District and Pinelands Forest Area) as conservation oriented land management areas. These conservation oriented land management areas serve to protect the overall visual, aesthetic and recreational values of the Pinelands Area. On an application by application basis, the CMP regulates impacts to visual, aesthetic and recreational value via the CMP vegetation management standards. For this



application, the vegetation management standards of the CMP (N.J.A.C. 7:50-6.23(a)) require that the proposed tree clearing be limited to that which is necessary to accommodate the use of the fire tower. Prior to submission of an application to the Commission, in early 2018, the applicant considered tree clearing of approximately 81 acres in the vicinity of the fire tower. That acreage of tree clearing was reduced to the currently proposed 16.4 acres. Based upon a Commission staff site inspection, including observation from the fire tower, the proposed 16.4 acre tree clearing is limited to that which is necessary to accommodate the use of the fire tower. The applicant has demonstrated that to continue the use of the existing fire tower, it is not practical to avoid the clearing of wooded areas (N.J.A.C. 7:50-6.23(b)). The applicant proposes the replanting of the cleared acreage with native tree seedlings.

**II. Public Comments Regarding Use of Alternative Technologies.** (Commenters: F, G, H, J, L, O, R, 1, 2, 5, 8, 10, 12, 13, 14, 15, 16, 17, 27, 29, 30, 31, 45 & 52)

**Staff Response:** The proposed tree clearing meets the standards of the CMP. The CMP does not require the applicant to address alternative technologies or feasible alternatives for this application. The CMP specifically requires the consideration of alternatives in a very few instances including waivers of strict compliance, memoranda of agreements and linear improvements in wetlands.

Various alternatives to the proposed tree clearing were identified during public comment. Identified alternatives included the use of drones, camera systems and satellites.

Although not required by the CMP and for informational purposes only, the current application addressed certain alternative options to the proposed tree clearing. The applicant has concluded that “(w)hile all of the options provide some utility for fire detection and could supplement the fire tower’s system, none can provide all of the benefits and advantages in protection of public health and safety that the tower provides in New Jersey.”

**III. Public Comments Regarding Improving, Replacing or Relocating the Existing Tower and the Existing Tower Being Structurally Unsound.** (Commenters: F, G, L, O, R, S, 1, 2, 5, 10, 13, 16, 17, 27, 29, 30, 33, 37, 39, 42, 44, 48 & 52)

**Staff Response:** The applicant has represented that the existing tower is operational and not in need of replacement. The CMP does not regulate the structural integrity of either existing or proposed structures, such as a fire tower. However, the Commission staff does conduct “due diligence” in its review of applications. The existing fire tower is still in use. The CMP does not require an alternatives analysis addressing the improvement, replacement, relocation or abandonment of the existing structure.

**IV. Public Comments Regarding Historical Significance of the Pine Plantation.** (Commenters: E, L, R, 10, 15, 22, 26 & 48)

**Staff Response:** The CMP (N.J.A.C. 7:50-6.151) requires the proper management of historically distinctive resources. The trees proposed for removal constitute a significant historic resource. The CMP requires that a Certificate of Appropriateness be issued by the Commission that identifies the required treatment of the significant historic resource. Based upon review of the application, the Commission staff has determined that preservation of the resource in place is not technically feasible because obscuring the line of sight from the Bass River Fire Tower will

result in a risk to public safety.

Approximately 4,500 acres of trees were planted in Bass River State Forest by the CCC. Of those 4,500 acres, available information indicates that approximately 200 acres remain. This application proposes to clear 16.4 acres of the remaining 200 acres.

The Commission staff has determined that recordation is the appropriate treatment of the significant historic resource. Recordation will be accomplished through a combination of photo-documentation prior to and subsequent to tree removal, GIS mapping, updating of known documentary records on CCC planted stands, and, if appropriate, interpretive signage.

**V. Public Comments Regarding Forest Fragmentation and Negative Impacts to Biodiversity and Wildlife.**(Commenters: D, G, J, 8, 15, 25,28, 42, 46 & 48)

**Staff Response:** As a regional land use plan covering approximately 938,000 acres, the CMP establishes approximately 552,000 acres (Pinelands Preservation Area District and Pinelands Forest Area) as conservation oriented land management areas. On an application by application basis, the CMP regulates forest fragmentation, biodiversity and wildlife via the vegetation management standards and the T&E species protection standards.

The applicant has demonstrated consistency with the vegetation management standards (N.J.A.C. 7:50-6.23(a)&(b)) of the CMP. The proposed tree clearing is limited to that which is necessary to accommodate the continued use of the fire tower. The applicant has demonstrated that it is not practical to avoid clearing wooded areas.

Visual surveys will be performed for any potential Barred owl (threatened avian species) tree cavities or nests before any tree clearing occurs. Additionally, all proposed tree clearing and site preparation will be conducted during specified times of year so as to avoid potential impacts to T&E snake species. Visual surveys for Broom crowberry, a CMP designated T&E plant species, will occur prior to all tree clearing. The applicant has demonstrated consistency with the T&E species protection standards (N.J.A.C. 7:50-6.27) of the CMP.

**VI. Public Comments Supporting the Need to Clear Trees for Public Safety.** (Commenters: A, C, I, K, P, Q, 3, 4, 6, 7, 11 & 51)

**Staff Response:** The staff acknowledges the opinion of those commenters that indicated public safety comes first, common sense dictates that the trees should be cleared, the existing tower is important to the safety of a larger area and the continued use of the existing tower is essential for public safety.

**VII. Public Comment that the Proposed Tree Clearing Violates CMP Standards.** (Commenter: R)

**Staff Response:** It is the Commission staff's opinion that the proposed tree clearing meets all CMP standards. The staff understands and acknowledges that the proposed tree clearing will result in 16.4 acres of trees being cleared from the Pinelands Area.

**VIII. Public Comment that the Proposed Activity Meets the CMP Forestry Standards.**

(Commenters: N & P)

**Staff Response:** The submitted application proposes the tree clearing as forestry. The CMP definition of forestry specifically excludes the removal of trees for public safety. It is the Commission staff's judgment that the primary purpose of the proposed tree clearing is public safety. Accordingly, the Commission staff processed the application as tree clearing for public safety. The Commission staff recognizes that it could be reasonably argued that the proposed activity meets the CMP forestry standards. However, those standards do not apply to this application.

**IX. Public Comment that the Provided Public Notice identifies the Wrong Application.**

(Commenter: G)

**Staff Response:** The sample public notice form provided to applicants by the Commission staff suggests that the assigned Pinelands application number be included in the public notice. Provision of the application number within the public notice is not a legal requirement. The Commission staff initially advised the applicant to utilize the application number from the prior application for the current application. The applicant utilized that application number in its public notices. Upon receipt of the current application, the Commission staff decided for administrative purposes to assign the same application number, but a different application phase number. The fact that the public notice did not identify the correct application phase number eventually assigned by the Commission staff does not require that the applicant redo public notices.

**X. Public Comment that the White Pines to be Removed are Non-Native Pinelands Species.**

(Commenters: A, 3, 4, 6, 7, 35)

**Staff Response:** The Commission staff agrees that the White pines being cleared are not native Pinelands tree species.

**XI. Public Comments that the CMP does not Require the Applicant to Address Alternatives to the Proposed Tree Clearing.** (Commenters: P & 4)

**Staff Response:** The Commission staff agrees that the CMP does not require the applicant to address alternatives to the proposed tree clearing.

**XII. Public Comments Regarding Costs Estimates Associated with the Proposed Tree Clearing and Tower Alternatives.** (Commenters: G, H & 2)

**Staff Response:** The Commission staff agrees that the costs associated with the proposed tree clearing and the costs associated with possible alternatives to the tree clearing are informative. However, the CMP does not contain a standard that requires this applicant to address the cost of alternatives.

Oral commenters speaking at the March 8, 2019 Commission meeting are listed below:

A. Howard Chew

B. Greg McLaughlin- Chief, NJDEP Bureau of Forest Fire Management

- C. Mark Herndon
- D. Kathy Gariner (Submitted Document #1)
- E. Rose Sweeny
- F. Riki Loeiswicz (Submitted Document #2)
- G. Karl Swanseen (Re-submitted Document #1)
- H. Carol Bitsberger
- I. Buddie Pino
- J. Tom Doherty
- K. Bill Cutts
- L. Christopher Brower
- M. Rich Buzby (Submitted Document #3)
- N. Rhyan Grech-Pinelands Preservation Alliance
- O. John Waldrop
- P. Bill Brash-NJ Fire Safety Council President (Submitted Document #4)
- Q. Steve Lee (Submitted Document #5)
- R. Jeff Tittel-NJ Sierra Club
- S. Dan Gant (Submitted Document #6)

Written commenters on this application, received via email, except where noted, are listed below:

1. Donetta Waldrop, via mail
2. Karl Swanseen
3. Arthur Abline, Manchester Township OEM Coordinator
4. Martin Lynch, NJ Fire Safety Council, via mail
5. Deborah Buzby Cope, Mayor, Bass River Township
6. Jason Hoger
7. Nancy Reid, Chair, Horizons at Barnegat Firewise Committee
8. Todd Tally
9. Robyn Firth
10. Jeffrey Firth
11. Katharine LaRocca
12. Eileen Brower
13. Benjamin Brower
14. Diane Pett (Two written comments)
15. Todd Tally (Second written comment)
16. Karl Swanseen (Second written comment)
17. Dana Austin
18. Amy Rasmussen
19. Maria Cody
20. Julie Berghoff
21. Ed Kanitra
22. Laura Rasmussen
23. Rocquel Barretto
24. Sarah Foti
25. Marcia Evans
26. Ronald Valentine
27. Karen Amon
28. Ted Paul
29. James Casson

30. Marlena Carlis
31. John Steedle
32. Paul Smikovecus
33. Susan Hughes
34. Candace Fykes
35. Randy DePasquale
36. Erica DiUlio
37. William Cromartie
38. Alison Hall
39. Sharon Tuscano
40. Bruce Roop
41. Michelle Fox
42. Nicole Babcock
43. Lindsey Wasruta
44. Gale Labor
45. Robert Graffin
46. Lizabeth Carl
47. Jeremy Price
48. Scott Wardenski (Documents 7, 8 & 9)
49. Laura Phillips
50. Dawn Markoski
51. Dudley Lewis, Mayor, Washington Township
52. Ben Wurst

#### List of Documents Submitted by the Public

Document #1: Bass River State Forest Clearcutting Powerpoint presentation and State Forest Trail Map

Document #2: New York State DEC, Fire Tower Study for the Adirondack Park

Document #3: Burlington County Times article, August 10, 2018, "Bass River fire tower: Seeing the Entire Forest" by Ray Bukowski, Assistant Commissioner for Natural and Historic Resources, NJDEP

Document #4: New Jersey Fire Safety Council, March 8, 2019 Wildfire Report 1927-2010

Document #5: Rolling Stone Magazine May, 2016: "Apocalypse in the Garden State" by Kyle Dickman

Document #6: Bass River State Forest Fire Tower 2019 Two photographs of tower steel damage

Document #7: 1936 Brochure on Forest Fire Prevention in Bass River State Forest

Document #8: 2005 Bass River Gazette article on Bass River State Forest history

Document #9: New York Times article, October, 1905 "Saving Jersey's Forests"

#### **CONDITIONS**

1. Except as modified below, the proposed tree clearing shall adhere to the "Proposal for Silvicultural Activity on State Forest and Park lands, New Jersey State Forest Fire Service" submitted to the Pinelands Commission and dated January 24, 2019.
2. Prior to any tree clearing, the applicant shall obtain any other necessary permits and approvals.

3. To avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of T&E snake species, only low ground pressure equipment shall be used for any tree clearing undertaken between November 1 and April 30.
4. To avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of T&E snake species, site preparation activities (e.g. drum chopping or wood disking) shall only be conducted between May 16 and September 30.
5. To avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of Barred owl, the applicant shall complete a visual survey of the above referenced 16.4 acres proposed for tree clearing for potential Barred owl cavities or nests. Any trees containing potential Barred owl cavities or nests shall be marked and left standing.
6. To avoid irreversible adverse impacts on any local population of Broom Crowberry, a visual survey shall be completed of the 16.4 acres proposed for tree clearing prior to any tree clearing. If the visual survey identifies any Broom crowberry, the applicant shall install temporary protective fencing to ensure that the plant is not disturbed.
7. Prior to any clearing of the 16.4 acres, a copy of the cultural resource recordation report shall be submitted to the Commission staff. Recordation will be accomplished through a combination of photo-documentation prior to and subsequent to tree removal, GIS mapping, updating of known forestry documentary records on CCC planted stands, and, if appropriate, installation of interpretive signage.

### **CONCLUSION**

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



Philip D. Murphy  
Governor

Sheila Y. Oliver  
Lt. Governor

## State of New Jersey

THE PINELANDS COMMISSION

PO Box 359

NEW LISBON, NJ 08064

(609) 894-7300

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

General Information: [Info@njpines.state.nj.us](mailto:Info@njpines.state.nj.us)  
Application Specific Information: [AppInfo@njpines.state.nj.us](mailto:AppInfo@njpines.state.nj.us)



Sean W. Earlen  
Chairman

Nancy Wittenberg  
Executive Director

### **PINELANDS COMMISSION** **APPEAL PROCEDURE**

The Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal any determination made by the Executive Director to the Commission in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission and received by the Commission's office no later than 5:00 PM on April 9, 2019 and include the following information:

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

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



## RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-19- 14

**TITLE:** Issuing an Order to Certify Ordinance 2018-05, Amending Chapter 16 (Subdivisions and Site Plans) and Chapter 17 (Zoning) of the Code of Bass River Township

Commissioner Lohbauer moves and Commissioner Piholycky seconds the motion that:

WHEREAS, on July 9, 1982, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Bass River Township; and

WHEREAS, Resolution #PC4-82-41 of the Pinelands Commission specified that any amendment to the Township's certified Master Plan and codified Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, Resolution #PC4-82-41 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

WHEREAS, on June 16, 1995, the Pinelands Commission adopted a set of amendments to the Comprehensive Management Plan, effective August 21, 1995 that, among other things, affords Pinelands municipalities with increased flexibility in establishing and implementing alternative local permitting procedures; and

WHEREAS, the Pinelands Commission adopted three sets of amendments to the Comprehensive Management Plan that became effective on January 3, 2012, September 2, 2014, and March 5, 2018, respectively; and

WHEREAS, on January 7, 2019, Bass River Township adopted Ordinance 2018-05, amending Chapter 16 (Subdivisions and Site Plans) and Chapter 17 (Zoning) of the Township's Code by establishing an alternative local permitting program for the development of single-family dwelling units on existing lots of record and incorporating revisions necessary to comply with the 2012, 2014, and 2018 Comprehensive Management Plan amendments; and

WHEREAS, the Pinelands Commission received a certified copy of Ordinance 2018-05 on February 5, 2019; and

WHEREAS, by letter dated February 6, 2019, the Executive Director notified the Township that Ordinance 2018-05 would require formal review and approval by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony on Ordinance 2018-05 was duly advertised, noticed and held on March 6, 2019 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

WHEREAS, the Executive Director has found that Bass River Township Ordinance 2018-05 is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan; and

WHEREAS, the Executive Director has submitted a report to the Commission recommending issuance of an order to certify that Ordinance 2018-05, amending Chapter 16 (Subdivisions and Site Plans) and Chapter 17 (Zoning) of the Code of Bass River Township, is in conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that Ordinance 2018-05 be certified; and



WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning Ordinance 2018-05 and has reviewed the Executive Director's report; and

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

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

NOW, THEREFORE BE IT RESOLVED that

1. An Order is hereby issued to certify that Ordinance 2018-05, amending Chapter 16 (Subdivisions and Site Plans) and Chapter 17 (Zoning) of the Code of Bass River Township, is in conformance with the Pinelands Comprehensive Management Plan.
2. The Executive Director shall abide by the periodic monitoring program detailed in Exhibit C of the Executive Director's March 29, 2019 report.
3. Any additional amendments to Bass River Township's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

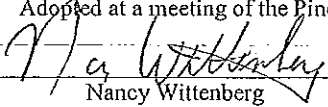
Record of Commission Votes

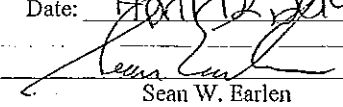
	AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*
Ashmun			X		Irick	X				Prickett	X			
Avery	X				Jannarone	X				Quinn	X			
Barr	X				Lloyd	X				Rohan Green			X	
Christy			X		Lohbauer	X				Earlen	X			
Howell	X				Pikolycky	X								

\*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: April 12, 2019

  
Nancy Wittenberg  
Executive Director

  
Sean W. Earlen  
Chairman

**Bass River Township**  
**Preliminary Zoning Permit Application**

Updated on 3/29/2019

1. Applicant Name(s)

\_\_\_\_\_

Mailing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number \_\_\_\_\_ Email Address \_\_\_\_\_

2. I authorize an agent to act on my behalf regarding this application: Yes  No

Agent Name

\_\_\_\_\_

Mailing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number \_\_\_\_\_ Email Address \_\_\_\_\_

3. Property Owner Name(s)

\_\_\_\_\_

Mailing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number \_\_\_\_\_ Email Address \_\_\_\_\_

4. Property Subject of Development Application:

Block # \_\_\_\_\_ Lot # \_\_\_\_\_      Block # \_\_\_\_\_ Lot # \_\_\_\_\_      Total Acreage of Property:

Block # \_\_\_\_\_ Lot # \_\_\_\_\_      Block # \_\_\_\_\_ Lot # \_\_\_\_\_      \_\_\_\_\_

Block # \_\_\_\_\_ Lot # \_\_\_\_\_      Block # \_\_\_\_\_ Lot # \_\_\_\_\_      (to the nearest tenth of a sq. ft.)

Block # \_\_\_\_\_ Lot # \_\_\_\_\_      Block # \_\_\_\_\_ Lot # \_\_\_\_\_

5. Attach written certification from the Bass River Township Tax Assessor that all municipal taxes on the property described in #4 above have been paid.
6. Attach a plot plan, with the date and scale clearly indicated, containing the following information:
  - a. The zoning district in which the property is located;
  - b. The location and dimensions of all property lines, easements affecting the property and streets abutting the property;
  - c. The location of all yards and setbacks required by Chapter 17 of the Code of Bass River Township;
  - d. The location and disposition of all existing structures and improvements on the property;
  - e. A building envelope in which the proposed dwelling is to be located;
  - f. The location and dimensions of the proposed driveway;
  - g. The location and dimensions of any proposed accessory structures or improvements;
  - h. The location and dimensions of the area in which any sewage disposal system, including the disposal field, is proposed to be located; and
  - i. The location of any proposed water supply well.
7. If the proposed dwelling will be served by central sewer or water, attach written certification from the Municipal Utilities Authority verifying that such service is available.
8. If the property is proposed to be developed via the Density Transfer Program (Section 17.20.240 of the Code of Bass River Township), provide the information of any non-contiguous property that will be used in the density transfer:

Block # _____ Lot # _____	Block # _____ Lot # _____	Total Acreage of Property:
Block # _____ Lot # _____	Block # _____ Lot # _____	_____
Block # _____ Lot # _____	Block # _____ Lot # _____	(to the nearest tenth of a sq. ft.)
Block # _____ Lot # _____	Block # _____ Lot # _____	

I hereby certify that the information furnished on this application form and all supplemental materials is true. I am aware that false swearing is a crime in this state and is subject to prosecution.

I hereby authorize the staff of Bass River Township and the Pinelands Commission to conduct such onsite inspections of the parcel as are necessary to review this application and ensure compliance with the requirements of the code of Bass River Township and the Pinelands Comprehensive Management Plan. I

**Signatures of Applicant(s):**

\_\_\_\_\_  
Signature Date Signature Date

Name (Print) \_\_\_\_\_ Name (Print) \_\_\_\_\_

**Signatures of Property Owner(s)**

\_\_\_\_\_  
Signature Date Signature Date

Name (Print) \_\_\_\_\_ Name (Print) \_\_\_\_\_

**BASS RIVER TOWNSHIP  
PRELIMINARY ZONING PERMIT**

Bass River Township Permit No. \_\_\_\_\_

Pinelands Application No. \_\_\_\_\_

Issue Date: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

The development of **BLOCK** \_\_\_\_\_, **LOT** \_\_\_\_\_, consisting of approximately \_\_\_\_\_ acres has been found to be consistent with Chapter 17 of the Code of Bass River Township, County of Burlington, State of New Jersey and the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50-1.1 et seq., subject to the conditions set forth below.

**CONDITIONS**

1. This permit is not valid unless accompanied by the plan dated \_\_\_\_\_ **and** signed by each of the individuals whose signatures appear on this permit.
  
2. The following type of sewer service or sewage disposal shall be required (check one):  
  
\_\_\_\_\_ Public Sewer      \_\_\_\_\_ Standard sewage disposal system  
  
\_\_\_\_\_ Other: \_\_\_\_\_
  
3. All development shall be located on the property as specified on the accompanying plan.
  
4. Conformance with the area, yard and bulk requirements of Chapter 17 of Bass River Township that are in effect as of the date this permit is issued shall be re-verified as a prerequisite to the issuance of a construction permit.
  
- 5.
  
- 6.



## **Periodic Review and Evaluation of the Bass River Township Alternative Permitting Program**

The Pinelands Comprehensive Management Plan (CMP) allows for municipalities to establish alternative local permitting programs that maintain consistency with CMP standards while providing more efficient or simplified review procedures of development applications (N.J.A.C. 7:50-3.81). Bass River Township Ordinance 2018-05 establishes an alternative local permitting program for the development of single-family dwellings on existing lots of record in the Township's Pinelands Area.

In accordance with N.J.A.C. 7:50-3.84(b), the Commission's Executive Director is required to report to the Commission on each alternative permitting program certified by the Commission. It requires that a specific review program be approved by the Commission at the time of certification of the alternative local permitting program. It specifies that the report submitted to the Commission by the Executive Director must describe the elements of the permitting program and evaluate their operation according to the standards of N.J.A.C. 7:50-3.83.

Three years from the date of Commission certification, and every three years thereafter, the Executive Director shall submit a written report to the Commission and the Township. The report shall describe the elements of the permitting program and evaluate the operation of the program in accordance with the standards of N.J.A.C. 7:50-3.83.

In addition to the periodic report to the Commission, the Bass River Township program incorporates application review procedures that allow for Commission staff to review and evaluate the program's performance on an application-by-application basis. This is accomplished by two mechanisms: (1) all preliminary zoning permits issued by the Township must be signed by a representative of the Pinelands Commission indicating a concurrence with the Zoning Officer's determination of consistency with the Township's development regulations and the standards of the CMP; and (2) any approvals or permits sought subsequent to the issuance of a preliminary zoning permit are subject to the notice, review, and decision requirements of the CMP (N.J.A.C. 7:50-4.31).

In the event that the Executive Director finds that the Township's implementation of the program is not meeting the standards of N.J.A.C. 7:50-3.83, a recommendation will be made to the Commission to revoke, suspend or modify its certification of the Bass River Township alternative permitting program.



## RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-19- 15

**TITLE:** Issuing an Order to Certify the Master Plan and Land Use Ordinances of Manchester Township, Up to and Including Ordinance 18-035, for That Portion of the Township Outside the Pinelands Area but Within the Pinelands National Reserve

Commissioner Lohbauer moves and Commissioner Avery seconds the motion that:

**WHEREAS**, on July 8, 1983, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Manchester Township; and

**WHEREAS**, N.J.A.C. 7:50-3.39(b) of the Comprehensive Management Plan specifies that municipalities with areas outside the Pinelands Area but within the Pinelands National Reserve may request review by the Commission of their land use ordinances and master plans for these areas to determine substantial compliance with the provisions of N.J.A.C. 7:50-5 and 6; and

**WHEREAS**, N.J.A.C. 7:50-3.39(b) further provides that upon determining that a municipality's master plan and land use ordinances are in substantial compliance with the provisions of N.J.A.C. 7:50-5 and 6, the Commission will rely upon the complying master plan and ordinances, rather than a strict interpretation of the Comprehensive Management Plan, to provide comment to state and federal regulatory agencies in its role as the planning entity for the Pinelands National Reserve; and

**WHEREAS**, by letter dated February 12, 2018, Manchester Township requested that the Pinelands Commission review and approve its master plan and ordinance amendments for that portion of the municipality located outside of the state-designated Pinelands Area but with the Pinelands National Reserve; and

**WHEREAS**, on December 10, 2018, the Manchester Township Committee adopted Ordinance 18-035, amending Chapter 245 (Land Use and Development) of the Code of Manchester Township by revising zoning district boundaries and regulations for that portion of Manchester Township located outside the state-designated Pinelands Area but within the Pinelands National Reserve; and

**WHEREAS**, on January 7, 2019, the Pinelands Commission received a certified copy of Ordinance 18-035; and

**WHEREAS**, on January 28, 2019, the Pinelands Commission received a copy of the Zoning Map adopted by Ordinance 18-035; and

**WHEREAS**, by letter dated February 6, 2019, the Executive Director notified Manchester Township that the municipality's master plan and land use ordinances, up to and including Ordinance 18-035, would be reviewed to determine whether they are in substantial compliance with the Comprehensive Management Plan; and

**WHEREAS**, a public hearing to receive testimony concerning Manchester Township's application for certification was duly advertised, noticed and held on February 27, 2019 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

**WHEREAS**, the Executive Director has found that Manchester Township's master plan and land use ordinances for that portion of the municipality outside the Pinelands Area but within the Pinelands National Reserve, up to and including Ordinance 18-035, are in substantial compliance with the standards and provisions of the Pinelands Comprehensive Management Plan; and

**WHEREAS**, the Executive Director has submitted a report to the Commission recommending issuance of an order to certify that Manchester Township's master plan and land use ordinances, up to and including Ordinance 18-035, are in substantial compliance with the Pinelands Comprehensive Management Plan; and



WHEREAS, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that the Township's master plan and land use ordinances applicable to that portion of the municipality outside the Pinelands Area but within the Pinelands National Reserve be certified; and

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

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

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

NOW, THEREFORE BE IT RESOLVED that

1. An Order is hereby issued to certify that Manchester Township's master plan and land use ordinances, up to and including Ordinance 18-035, as they apply to that portion of the municipality located outside the Pinelands Area but within the Pinelands National Reserve are in substantial compliance with N.J.A.C. 7:50-5 and 6 of the Pinelands Comprehensive Management Plan.
2. Any additional amendments to Manchester Township's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

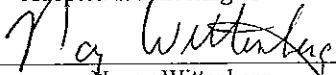
Record of Commission Votes

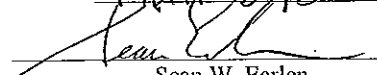
AYE	NAY	NP	A/R*	AYE	NAY	NP	A/R*	AYE	NAY	NP	A/R*
			X	Irick	X			Prickett	X		
	X			Jannarone	X			Quinn	X		
	X			Lloyd	X			Rohan Green		X	
		X		Lohbauer	X			Earlen	X		
	X			Pikolycky	X						

\*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: April 12, 2019

  
 Nancy Wittenberg  
 Executive Director

  
 Sean W. Earlen  
 Chairman



# MANCHESTER TOWNSHIP

1 COLONIAL DRIVE • MANCHESTER, NJ 08759 • (732)657-8121

DEPARTMENT OF ADMINISTRATION

FEB 15 2018

DONNA L. MARKULIC, MAS  
BUSINESS ADMINISTRATOR

KENNETH T. PALMER  
MAYOR

February 12, 2018

Susan R. Grogan, PP, AICP  
NJ Pinelands Commission  
PO Box 359  
New Lisbon, NJ 08064

Re: Manchester Township, Ocean County  
Request for Pinelands Certification of Township Zoning Ordinances  
Within Pinelands National Reserve

Dear Ms. Grogan:

This letter will serve as a follow-up to our December 5, 2017 meeting in Manchester to discuss Pinelands Commission certification of the Township Land Use Ordinance within the Pinelands National Reserve area in accordance with N.J.A.C. 7:50-3.39(b).

The Township understands this process may require amendments to the existing zoning ordinance and/or zoning map based on recommendations from Pinelands staff. The Township also understands the Pinelands Comprehensive Management Plan Map may also be changed through this process. The Township desires the existing Rural Development Area along Route 37 to be changed to Regional Growth Area in order to accommodate the Town Center (TC) Zone and the previously approved affordable housing project known as Presidential Gardens.

The Township hereby formally requests the Pinelands Commission to perform a review of the Township's zoning map and ordinance to certify compliance with the Pinelands Comprehensive Management Plan. We look forward to working with you and your staff on this effort.

Very truly yours,  
A handwritten signature in black ink, appearing to read "K. Palmer", written over a horizontal line.

Kenneth T. Palmer  
Mayor

cc: Robert Mullin, P.E., Township Engineer  
Daniel Bloch, P.P., AICP, Township Planner



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

SEAN W. EARLEN  
 Chairman  
 NANCY WITTENBERG  
 Executive Director

**REPORT ON MANCHESTER TOWNSHIP’S MASTER PLAN AND LAND USE  
 ORDINANCES FOR THAT PORTION OF THE MUNICIPALITY OUTSIDE THE  
 PINELANDS AREA BUT WITHIN THE PINELANDS NATIONAL RESERVE**

March 29, 2019

Township of Manchester  
 1 Colonial Drive  
 Manchester, NJ 08759

**FINDINGS OF FACT**

I. **Background**

The Township of Manchester is located in the northern portion of the Pinelands Area in northwestern Ocean County. Pinelands municipalities adjacent to Manchester Township include the Borough of Lakehurst and the Townships of Berkeley, Jackson, Lacey, Plumsted, and Toms River in Ocean County; and the Townships of Pemberton and Woodland in Burlington County.

On July 8, 1983, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Manchester Township applicable to that portion of the municipality located in the state-designated Pinelands Area.

***The Pinelands Commission’s Role as Planning Entity for the Pinelands National Reserve***

Manchester Township is one of several Pinelands municipalities that contain lands located within the Pinelands National Reserve but outside the state-designated Pinelands Area. In these areas, the Pinelands Commission does not exercise direct regulatory jurisdiction to implement the Comprehensive Management Plan (CMP). Instead, the Pinelands Protection Act designates the Commission as the “planning entity” for these areas. As such, the CMP includes policies that plan for the future use and development of lands within the entire Pinelands National Reserve area. In addition, sections 502(f)4 and 8 of the National Parks and Recreation Act of 1978 charge the Commission with the responsibility of preparing a management plan that details the ways in which local, state and federal programs and policies may best be coordinated to promote the goals and policies of the CMP and ensures that local government implementation of the plan provides “continued, uniform and consistent protection of” the entire Pinelands National Reserve.

In order to meet these directives, the Commission established Pinelands management area designations for that portion of the Pinelands National Reserve outside the state-designated Pinelands Area. The boundaries of these management areas are depicted on the Land Capability Map, which was adopted as part of the CMP in 1980 (N.J.A.C. 7:50-5.3(a)24). The Commission also entered into a Memorandum of Agreement with the New Jersey Department of Environmental Protection (NJDEP) under which the Department refers applications for development in the Pinelands National Reserve to the Commission for review and comment as to the consistency of those applications with the CMP. The Commission relies on the management area designations on the Land Capability Map when undertaking these advisory responsibilities.

The CMP specifies that municipalities with areas outside the Pinelands Area but within the Pinelands National Reserve may request review by the Commission of the land use ordinances and master plans applicable to those lands to determine substantial compliance with the provisions of subchapters 5 and 6 of the CMP (N.J.A.C. 7:50-3.39(b)). If certified under those provisions, the Commission will rely upon the complying master plan and ordinances, rather than a strict interpretation of the CMP, when providing comment to state and federal regulatory agencies in its role as the planning entity for the Pinelands National Reserve.

### ***Manchester Township's Certification Request for its Pinelands National Reserve Area***

By letter dated February 12, 2018 (see Exhibit 1), Manchester Township formally requested that the Pinelands Commission review the Township's zoning map and ordinances applicable to the portion of the municipality outside the state-designated Pinelands Area but within the Pinelands National Reserve (hereinafter referred to as Manchester Township's PNR area). In accordance with N.J.A.C. 7:50-3.39(b), the review would seek to determine whether the Township's regulations are in substantial compliance with subchapters 5 and 6 of the Pinelands Comprehensive Management Plan.

By email dated April 27, 2018, Commission staff advised the Township that various revisions to zoning district boundaries and regulations applicable to the Township's PNR area would be necessary to achieve substantial compliance with subchapters 5 and 6 of the CMP.

On December 10, 2018, Manchester Township adopted Ordinance 18-035, amending Chapter 245 (Land Use and Development) of the Township's Code by revising zoning district boundaries and regulations applicable to the Township's PNR area. The Pinelands Commission received a certified copy of Ordinance 18-035 on January 7, 2019. On January 28, 2019, the Pinelands Commission received a copy of the Zoning Map adopted by Ordinance 18-035.

By letter dated February 6, 2019, the Executive Director notified the Township that the municipality's master plan and land use ordinances applicable to the PNR area, up to and including Ordinance 18-035, would be reviewed by the Commission to determine whether they are in substantial compliance with subchapters 5 and 6 of the CMP.

The following three subsections contain a brief review of noteworthy administrative actions of relevance to the Township's PNR area.

### ***Settlement Agreement between the Pinelands Commission, NJDEP, and Hovsons, Inc.***

The Commission executed a settlement agreement in 2004 with the NJDEP and Hovsons, Inc., the owner of nearly 4,000 acres of land in Manchester Township's PNR area (also known as Heritage

Minerals). Under that agreement, a 995-acre development area was delineated to accommodate a maximum of 2,450 new residential units and 20,000 square feet of commercial space. The remainder of the Hovsons, Inc. property, as well as an additional 3,450 acres in the Pinelands Area, was to be dedicated to the State for open space preservation.

In order to implement the settlement agreement, the New Jersey State Planning Commission designated the 995-acre development area as a Planning Area 2 on the State Plan Map and the open space preservation area as a Planning Area 5. The Pinelands Commission amended the Land Capability Map in 2005 to redesignate the 995-acre development area as a Pinelands Regional Growth Area and the entire open space preservation area as a Pinelands Forest Area (37 N.J.R. 2013(b)). These revised management area boundaries appropriately reflected the permitted future use of lands authorized under the settlement agreement and were intended to prevent conflicts from arising between Pinelands management area and State planning area designations for the affected portion of Manchester Township.

In the interim, the development permitted under the settlement agreement has not occurred, nor have the 6,475 acres of Forest Area lands been deed restricted or conveyed to the State. Nevertheless, the management area designations necessary to implement the settlement agreement remain in place in Manchester's PNR area and have not been changed since 2005.

### ***Relevant Prior CMP Amendment Petitions***

The CMP provides that any person may petition the Commission for an amendment to the CMP, including a proposed change to the Land Capability Map (N.J.A.C. 7:50-7.3(b)). Two such petitions involving lands in Manchester Township's PNR area were submitted to the Commission: the Anatole Kalinuk et al. petition (1989) and the P. West, Jr. et al. petition (1991). Both petitions proposed the redesignation of lands on the southwesterly side of State Route 37 from a Rural Development Area to a Regional Growth Area. Kalinuk et al. petitioned for the redesignation of 130 acres. After a lengthy and detailed review, the Executive Director recommended that the Commission deny the Kalinuk et al. petition based on a number of considerations. The petitioners elected to withdraw the petition prior to formal Commission action. P. West, Jr. et al. petitioned for the redesignation of 75 acres within the same area. Similarly, P. West, Jr. et al. elected to withdraw their petition prior to formal Commission action. In both instances, the Commission encouraged the petitioners to work with Manchester Township toward certification of a comprehensive zoning plan for the entire PNR area, rather than focusing on the redesignation of one small area. Manchester Township requested such PNR area certification in 2018.

### ***Presidential Gardens Application***

Manchester Township's primary motivation for requesting certification of its PNR area is to implement the redesignation of Block 46.01, Lots 1.01 and 1.03 from Rural Development Area to Regional Growth Area (see Exhibit 1). These two lots, combining to be about 51 acres, were included in the 1989 and 1991 petitions discussed above. In recent years, these lands were proposed as the site of an inclusionary development known as Presidential Gardens. The project would include approximately 519 apartments with 20% set-aside as rental units made affordable to low- and moderate-income households. According to the Township's 2017 Housing Element and Fair Share Plan, certified by the Pinelands Commission in October of 2017, the affordable units resulting from the development of Presidential Gardens would account for a major portion of the Township's affordable housing obligation.

The project received preliminary and major subdivision approval from the Township in 2012, and conditional site plan approval from the Ocean County Planning Board in 2018. However, the NJDEP

denied the associated CAFRA Individual Permit application in 2014 because the project was not consistent with the Coastal Zone Management Rules.

Because the proposed development is located in the Pinelands National Reserve area of the CAFRA jurisdiction, NJDEP solicits and considers comments from the Pinelands Commission regarding application consistency with the CMP. In a memo to NJDEP dated December 4, 2012, Commission staff found that the Presidential Gardens application was not in substantial compliance with the CMP due to its designation as Rural Development Area. Under the CMP, residential development in the Rural Development Area is limited to a net density of one dwelling unit per 3.2 acres and sewer service is not permitted. The project's proposed density far surpasses the density limitation established for Rural Development Areas. The proposed connection to the existing sanitary sewer line servicing the adjacent Summit Park development is likewise inconsistent with the CMP due to the Rural Development Area designation.

The Commission's December 2012 memorandum to the NJDEP described two methods by which the management area designation of the lots could be changed. First, Manchester Township could seek Commission certification of its municipal master plan and land use ordinances for the entirety of the Township's PNR area. Alternatively, the Commission could adopt an amendment to the Pinelands Comprehensive Management Plan to redesignate the lots. In similar fashion to the petitions described above, the Commission encouraged the applicant to work with Manchester Township toward certification of a comprehensive zoning plan for the entire PNR area, rather than focusing on the redesignation of one small area. As noted above, the Township elected to request this review in 2018.

## II. Master Plans and Land Use Ordinances

Manchester Township's master plan and land use ordinances, up to and including Ordinance 18-035, that are applicable to those lands outside the state-designated Pinelands Area but within the Pinelands National Reserve have been reviewed to determine whether they substantially conform with the subchapters 5 and 6 of the CMP, as required by N.J.A.C. 7:50-3.39(b). The findings from this review are presented below.

### 1. **Pinelands Management Areas**

The current Pinelands Land Capability Map divides Manchester Township's PNR area between three management areas: Forest Area, Rural Development Area, and Regional Growth Area (see Exhibit 2; and Table 1).

The CMP anticipates that management area boundaries will be refined and/or adjusted through the Commission's certification of municipal master plans and land use ordinances, provided that the Commission determines that the goals and objectives of the CMP will be implemented (N.J.A.C. 7:50-5.11). In evaluating the existing development patterns and zoning configuration of Manchester's PNR area, there is clear justification for amending the existing management area boundaries in the Township's PNR area (see Exhibit 3; and Table 1).

There are two primary changes in management area designations proposed by the Township. One is the expansion of the Pinelands Town of Whiting that exists in the adjacent Pinelands Area to the south, and the other is the expansion of the existing Regional Growth Area in the northern

area of the Township's PNR area. There are additional minor adjustments that remedy management area boundaries that split lots. Finally, the Forest Area is expanded to include permanently preserved lands on the edge of the existing Rural Development Area.

**Table 1. Summary of Pinelands management areas in the Manchester Township PNR Area**

<b>Pinelands Management Areas</b>	<b>Existing Area (in acres)</b>	<b>Proposed Area (in acres)</b>	<b>Net change (in acres)</b>
Forest Area	5,151	5,132	-19
Rural Development Area	1,831	0	-1,831
Pinelands Town (Whiting)	0	1,587	+1,587
Regional Growth Area	1,359	1,623	+264

In the southern reaches of the Township's PNR area, the existing Pinelands Town of Whiting is expanded into the Township's PNR area. This area of the Township's PNR area exhibits similar development patterns as that of the Pinelands Town of Whiting in the Pinelands Area. The Township's PNR area will now include 1,587 acres of Pinelands Town, which is largely composed of lands that are currently designated as Rural Development Area (1,475 acres). The expanded Pinelands Town will also incorporate approximately 112 acres of Forest Area that contain developed lands more appropriate for Pinelands Town designation. Also in this southern area, approximately 92 acres of Rural Development Area are redesignated to Forest Area due to split lots or to recognize those lands adjacent to the existing Forest Area that have been permanently preserved.

In the northern reaches of the Township's PNR area, the existing Regional Growth Area fronting on State Route 37 is expanded. The Regional Growth Area will now extend northwest along a corridor between State Route 37 and an abandoned rail right-of-way from Alexander Avenue to Manchester's border with the Borough of Lakehurst. The existing Manchester Township High School and recreational complex to the south of the rail right-of-way are included in the redesignated area. In addition to the school and fields, the area also includes an existing bank and three single-family residential properties. In total, 240 acres are redesignated from the Rural Development Area to the Regional Growth Area. Approximately half of the redesignated area is currently vacant, including 23 acres of municipally owned property, the 51-acre Presidential Gardens tract, and 47 acres of other privately owned lands.

The area being redesignated to Regional Growth Area fronts on a state highway and constitutes the extension of an already defined development corridor. A portion of the redesignated area is already served by public sanitary sewer. With the exception of one municipally owned lot and the rear portion of the high school property, the State Plan Map designates this area as a Suburban Planning Area. In accordance with the 1999 Memorandum of Agreement between the Pinelands Commission and the State Planning Commission, the Suburban Planning Area designation equates to the Pinelands Regional Growth Area designation.

Importantly, the current management area designations for the Heritage Minerals tract remain unchanged. The 995-acre development area defined in the 2004 settlement agreement among the Commission, the NJDEP and Hovsons, Inc. remains in the Regional Growth Area with no changes in boundary. All other Hovsons, Inc. lands in the Township's PNR area remain in the Pinelands Forest Area.

## 2. Township Zoning Districts and District Regulations

Manchester Township's PNR area is divided into twelve zoning districts (see Exhibit 4; and Table 2). All of these zoning districts were adopted prior to the Township's request for certification of its PNR area zoning plan and regulations. Ordinance 18-035 revises zoning boundaries to avoid split lots as well as to align existing districts with the reconfigured management area boundaries discussed above.

**Table 2. Summary of Zoning Districts in the Manchester Township PNR Area by Proposed PMA Alignment**

<b>Pinelands Forest Area</b>	<b>Pinelands Town Area</b>	<b>Pinelands Regional Growth Area</b>
Forest Area - Sending Area (FA-S)	Retirement Community (RC)	Retirement Community 2 (RC-2)
Forest Area - Receiving Area (FA-R)	Residential (R-40)	Residential (R-40)
	Business (B-1)	Residential (R-10A)
	Office Professional (O-P)	Multifamily (MF)
	Rural Agricultural (R-A)	Mobile Home Park (MP)
		Highway Development (HD-3)
		Town Center (TC)

There are two large zoning realignments. One is to correct for the existing misalignment of the RC-2 district with the existing Regional Growth Area that resulted from the Hovsons, Inc. settlement agreement noted above. The misalignment appears to have been the result of a mapping error on the Township's previous zoning map. The ordinance also rezones the parcels containing the existing Manchester Township High School and adjacent recreational fields from FA-S to R-40, which is consistent with the underlying Regional Growth Area designation proposed.

The RC-2 district encompasses the entirety of the 995-acre development area delineated in the 2004 settlement agreement noted above. The RC-2 district regulations explicitly reference the settlement agreement and establish permitted uses and development intensity consistent with the terms of the settlement agreement. Ordinance 18-035 makes no changes to the RC-2 district regulations.

The area redesignated as Regional Growth Area along Route 37 is split between the Town Center (TC) district and the Residential (R-40) district. The Presidential Gardens site is located within the TC district, which permits a variety of nonresidential uses as well as planned multifamily development at a density of 10 units per acre. The R-40 district permits single-family dwelling units, churches, public and private schools, parks and playgrounds, and governmental buildings. The R-40 district requires that residential development meet a minimum lot size of 40,000 square feet.

The remainder of the existing Regional Growth Area is split between the R-40, R-10A, MF, MP and HD-3 zones. These remaining zones permit a variety of residential and non-residential uses. The zoning district designations and related district regulations applicable to the existing and proposed Regional Growth Areas are substantially consistent with the CMP.



Ordinance 18-035 makes minor zoning district boundary modifications in the southern reaches of the Township's PNR area to align with the proposed management area alignment. The expanded Pinelands Town management area is divided between the RC, R-A, R-40, B-1, and O-P zones. These zoning districts largely reflect the existing development conditions. They provide for a mix of residential and non-residential uses. The zoning district designations and related district regulations applicable to the proposed Pinelands Town management are substantially consistent with the CMP.

Ordinance 18-035 revises the district regulations of the Forest Area - Receiving (FA-R) district and Forest Area - Sending (FA-S) district in order to be consistent with the CMP. The ordinance eliminates multi-family residential dwelling units, commercial resort facilities and golf courses from the FA-R district as the CMP does not permit such uses in the Forest Areas. In both the FA-R and FA-S districts, the ordinance limits single-family dwelling units to 1 unit per 20 acres, with the option of clustering on one acre lots when two or more units are proposed. The ordinance includes the CMP's clustering standards. Lastly, Ordinance 18-035 eliminates a variety of institutional uses from the list of permitted uses in both the FA-R and FA-S districts. The result of the ordinance is that the FA-S and FA-R districts permit the same uses, with the exception that the FA-R district would conditionally permit single-family dwellings on lots of at least one acre via a density transfer program. The zoning district designations and related district regulations applicable to the existing and proposed Forest Areas are substantially consistent with the CMP.

### III. Public Hearing

A public hearing to receive testimony concerning Manchester Township's application for certification of Ordinance 18-035 was duly advertised, noticed and held on February 27, 2019 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which no testimony was received.

Written comments on Ordinance 18-035 were accepted through March 6, 2019. Written comments were received from the following individuals:

- Cynthia Light, Irene Tysh, Suellen Perlmutter, Margaret Middaugh, Bette Chosak, and Jeanne Kineyko (attached as Exhibit 5)
- Rhyan Grech, Policy Advocate with the Pinelands Preservation Alliance; and Britta Wenzel, Executive Director of Save Barnegat Bay (attached as Exhibit 6)
- Karen Argenti (attached as Exhibit 7)

### IV. Executive Director's Response

The three commenters raise various concerns with Ordinance 18-035 and the Township's PNR area certification request. These concerns include the limited opportunity to review and comment on the Township's ordinance, the location and intensity of permitted development in the Town Center zoning district and the potential impacts of increased development potential on wildlife habitat and water quality in the Township and larger Barnegat Bay watershed. The comments submitted by the Pinelands

Preservation Alliance (PPA) and Save Barnegat Bay also object to increased development potential in a “previously protected area,” implementation of a “single management area change” that increases development potential and, in general, the Township’s attempt to conform the Pinelands CMP to its own zoning map and prior approval for the Presidential Gardens project.

With respect to the procedural concerns raised regarding Ordinance 18-035, notice that the ordinance had been submitted to the Commission for review has been posted on the Commission’s website since October 2018. The Commission held a public hearing on the Township’s PNR area certification request, including Ordinance 18-035, on February 27, 2019. Notice of that hearing was duly advertised in the newspaper, provided to the Township, County and all individuals on the Commission’s hearing registry and posted on the Commission’s website. The Township has represented that Ordinance 18-035 was introduced on October 9, 2018 and duly adopted after a public hearing on December 10, 2018. It is the Executive Director’s understanding that the Township specifically delayed adoption of the ordinance for one month in order to provide additional time for public review and comment. Additional details, such as when and how the Township made copies of the ordinance and adopted zoning map available for public review, would need to be requested from the Township.

In general, the substantive comments submitted to the Commission all relate to the proposed redesignation of lands from the Rural Development Area to the Regional Growth Area. As discussed in the body of this report, the redesignated area consists of 240 acres and includes an existing high school and associated facilities, an existing recreational complex, an existing bank, three existing residential properties, the site of a municipally-approved 500-unit apartment project and the 70 acres of vacant land between the existing and approved developments. The area is located on State Route 37, across from the existing municipal complex, and represents an extension of the Regional Growth Area northwest to the Township’s boundary with Lakehurst Borough. Lands in the redesignated area are included in either the R-40 (Residential) or TC (Town Center) districts, both of which are entirely appropriate zoning designations for a Pinelands Regional Growth Area.

One commenter objects to the location of the TC district, stating that growth in this area is not needed, would significantly impact the character of the Township and should instead be located in the Pinelands Town of Whiting. The Executive Director agrees that the Pinelands Town of Whiting is an appropriate location for development, both in the Pinelands Area and in the PNR area. However, the expanded Regional Growth Area also appears to be an appropriate area for development, given the existing uses already in and around the area and its location on a major highway. Manchester Township clearly views this portion of the municipality as appropriate for additional growth, as reflected in the zoning plan and recently adopted Housing Element and Fair Share Plan, which targets one property in the area for significant residential and affordable housing development. Both the Regional Growth Area designation and TC zoning district are in keeping with the existing character of the area.

One commenter expresses a concern with the Township’s PNR area zoning plan because it allows residential development in two polluted areas that may not yet have been entirely cleaned. The commenter states that these polluted areas are located in the TC district and on the Heritage Minerals (Hovsons, Inc.) property. It is true that new residential development is permitted in both the TC and RC-2 districts. A variety of nonresidential uses is also permitted. Any necessary site remediation will be addressed by the NJDEP in its review of applications for development in these areas. All relevant State standards will need to be met before development, either residential or nonresidential, can proceed.

PPA and Save Barnegat Bay refer in their comments to the redesignation of a “previously protected area” from Rural Development to Regional Growth Area. The two organizations object to the increased

development potential the management area change would provide to such an area. The Executive Director is unaware of any permanently protected open space in the redesignated area. However, there is one property that is listed on the Township's Recreation and Open Space Inventory (ROSI). It contains an existing active recreational complex and is located immediately to the south of the Presidential Gardens project site. Other than providing the opportunity for sewer service for restroom or food service facilities associated with the recreational use, redesignation of the property to the Regional Growth Area has little to no impact. The property remains on the ROSI regardless of its zoning or management area designation.

PPA and Save Barnegat Bay also state that it is inappropriate for the Commission to approve a management area change through the municipal ordinance certification process when that redesignation constitutes a "single management area change" involving lands with environmental limitations. The guidelines for Pinelands management area changes provided at N.J.A.C. 7:50-5.11(b)3i are cited in support of this position. Were this a single management area change, the Executive Director would agree. In fact, the Commission has consistently taken that position, specifically with the area now being redesignated from the Rural Development Area to the Regional Growth Area, for decades. At the Township's request, the Commission is reviewing and certifying the management area designations and zoning plan for Manchester's entire PNR area, not one specific property. This more comprehensive approach allows the Commission to view all management area changes in the context of the Township's overall zoning plan. Management area adjustments are being made in a number of areas for a variety of reasons. Increased development potential will result for some properties in the expanded Regional Growth Area while, at the same time, certified zoning for thousands of Forest Area acres will ensure consistency of any future development with the CMP.

PPA and Save Barnegat Bay further object to a management area change designed to aid a particular non-conforming development (the Presidential Gardens project). They note that the NJDEP denied a CAFRA permit for this project in 2014, at least partially due to its inconsistency with CMP density limitations and prohibition on sewer service in Rural Development Areas. The NJDEP also cited potential impacts to suitable habitat for endangered or threatened species as a reason for the denial. Finally, the two organizations submit that it is inappropriate for the Township to seek to change the CMP to conform to the municipal zoning plan and, instead, the Township should conform its plan to the CMP.

Manchester Township has made no secret of the fact that its 2018 PNR area certification request was made primarily to recognize and accommodate the Presidential Gardens project. As noted previously, this is a 500-unit apartment project on a state highway (Route 37) that was approved by the Township years ago, placed in a sewer service area by the NJDEP and targeted for a significant number of affordable housing units in the Township's 2017 Fair Share Plan, pursuant to a settlement agreement with the Fair Share Housing Center. The project site has been included in the Township's TC district for many years and is located in a Suburban Planning Area on the State Plan Map where the approved project density (10 units per acre) is appropriate. The management area designation on the Pinelands Land Capability Map, now nearly 40 years old, was the only unmatching piece of the regulatory puzzle. It is precisely for situations such as this that the CMP has always acknowledged that Pinelands management area delineations can be refined by local agencies (municipalities), provided that CMP goals and objectives will still be achieved.

The commenters are correct that NJDEP denied a CAFRA permit for the Presidential Gardens project in 2014. The application for that project was resubmitted to the NJDEP and is undergoing review. It is the Executive Director's understanding, based on a recent meeting with NJDEP staff, that the applicant and

the NJDEP are in the process of resolving the environmental issues associated with the project, including those related to threatened and endangered species protection. Ultimately, all environmental standards of the Coastal Zone Management Rules will have to be met before any CAFRA permit can be issued for the Presidential Gardens project or any other development in the area being redesignated from Rural Development Area to Regional Growth Area. The certification of the Township's PNR area in no way alters the Coastal Zone Management Rules in the Pinelands National Reserve. The Commission will have the opportunity to review and comment on such applications when they are referred by the NJDEP, thereby providing an opportunity to ensure that CMP standards for the control of stormwater runoff and protection of critical habitat are adequately addressed.

#### V. Conclusion

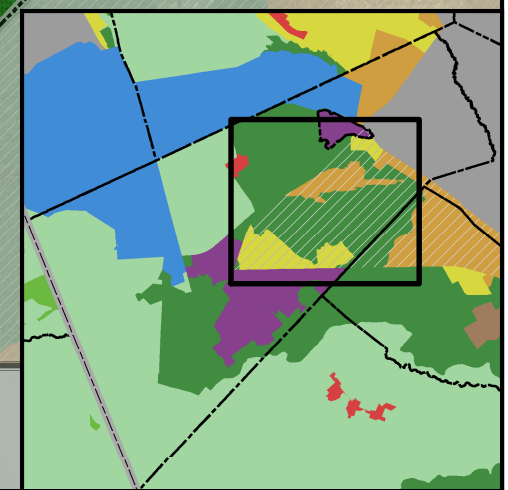
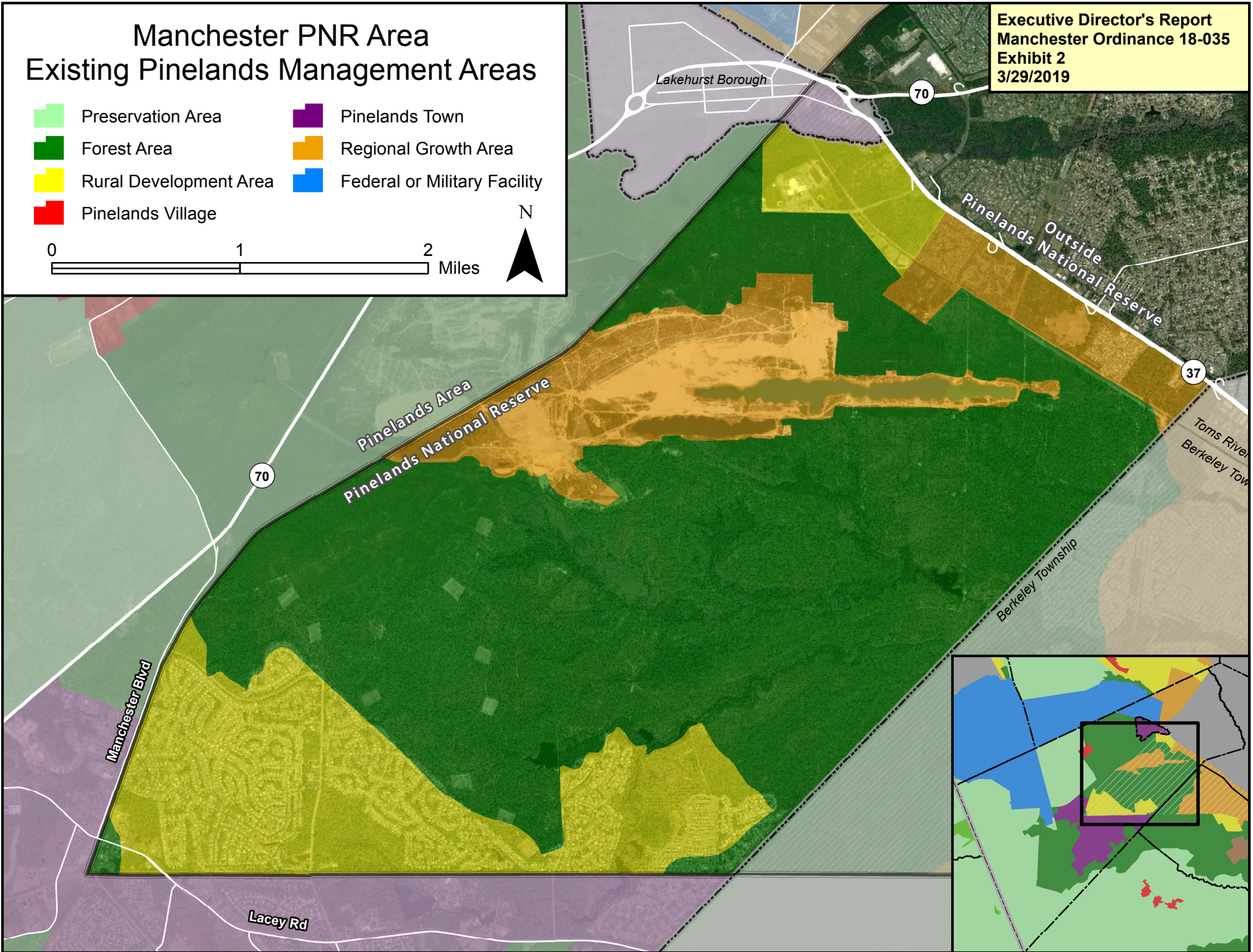
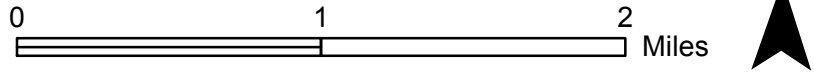
Based on the Findings of Fact cited above, the Executive Director has concluded that Manchester Township's master plan and land use ordinances, up to and including Ordinance 18-035, as they affect that portion of the municipality located within the Pinelands National Reserve but outside the state-designated Pinelands Area, are in substantial compliance with N.J.A.C. 7:50-5 and 6 of the Pinelands Comprehensive Management Plan. Accordingly, the Executive Director recommends that the Commission issue an order to certify Manchester Township's master plan and land use ordinances for Manchester Township's PNR area.

SRG/DBL/CMT  
Attachments

# Manchester PNR Area Existing Pinelands Management Areas

Executive Director's Report  
Manchester Ordinance 18-035  
Exhibit 2  
3/29/2019

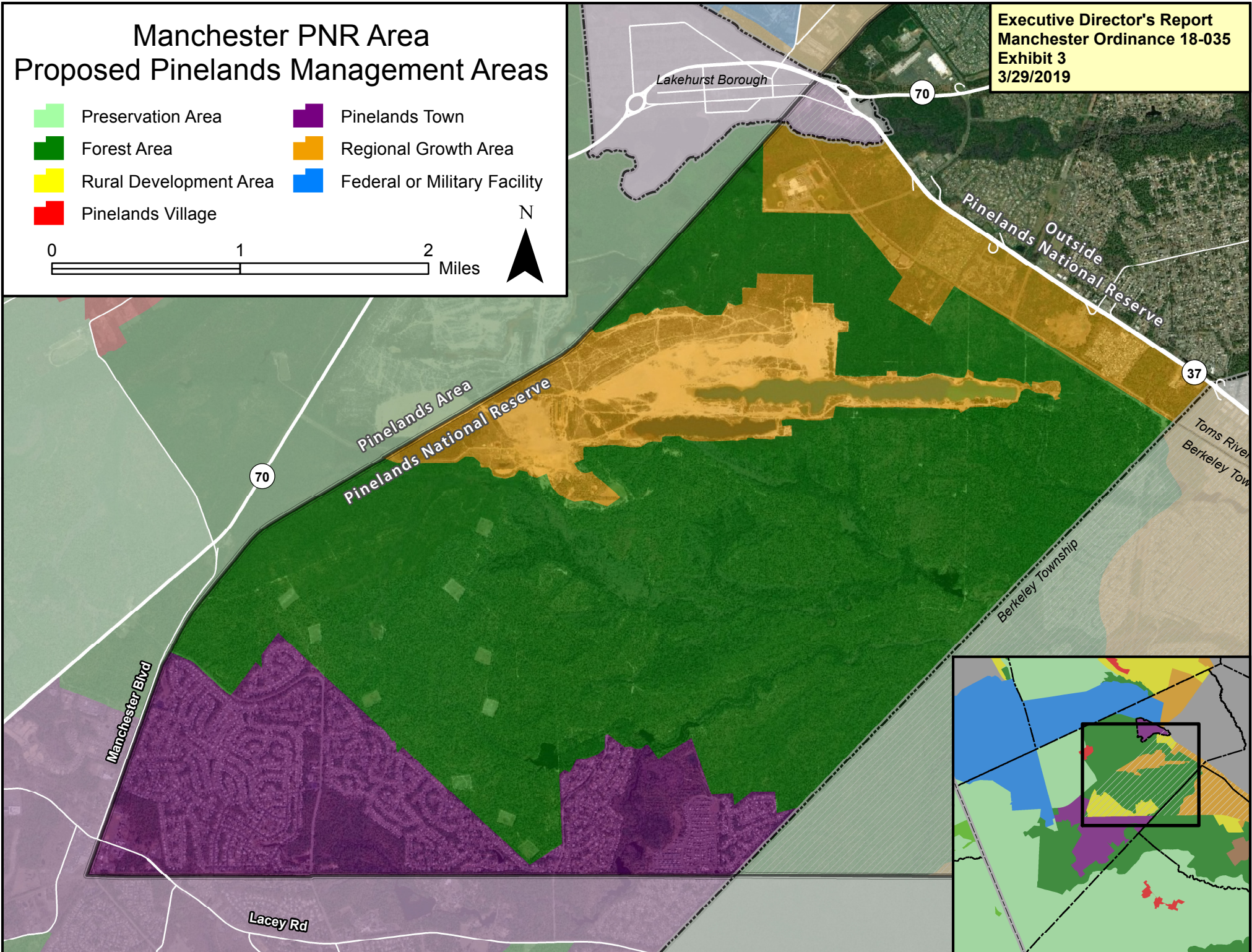
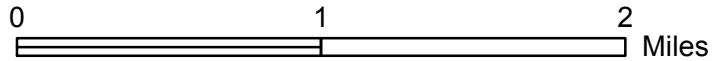
- Preservation Area
- Forest Area
- Rural Development Area
- Pinelands Village
- Pinelands Town
- Regional Growth Area
- Federal or Military Facility



# Manchester PNR Area Proposed Pinelands Management Areas

Executive Director's Report  
Manchester Ordinance 18-035  
Exhibit 3  
3/29/2019

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





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Application Specific Information: [AppInfo@pinelands.nj.gov](mailto:AppInfo@pinelands.nj.gov)

SEAN W. EARLEN  
Chairman  
NANCY WITTENBERG  
Executive Director

**REPORT ON BASS RIVER TOWNSHIP ORDINANCE 2018-05,  
AMENDING CHAPTER 16 (SUBDIVISIONS AND SITE PLANS) AND  
CHAPTER 17 (ZONING) OF THE CODE OF BASS RIVER TOWNSHIP**

March 29, 2019

Bass River Township  
PO Box 307  
New Gretna, NJ 08224

**FINDINGS OF FACT**

I. **Background**

The Township of Bass River is located in the eastern-central portion of the Pinelands Area in southeastern Burlington County. Pinelands municipalities adjacent to Bass River Township include the Townships of Washington and Woodland in Burlington County; the Townships of Barnegat, Little Egg Harbor, and Stafford in Ocean County; and the Township of Galloway and the City of Port Republic in Atlantic County.

On July 9, 1982, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Bass River Township.

The Pinelands Commission adopted three sets of amendments to the Pinelands Comprehensive Management Plan (CMP) that went into effect on January 3, 2012, September 2, 2014, and March 5, 2018, respectively. These amendments revised CMP provisions related to: definitions; types of development exempt from Pinelands Commission review; notification requirements; recordation of deed restrictions related to the severance of Pinelands Development Credits; individual on-site wastewater treatment systems intended to reduce nitrate/nitrogen; and the Alternate Design Treatment Systems Pilot Program.

On January 7, 2019, Bass River Township adopted Ordinance 2018-05, amending Chapter 16 (Subdivisions and Site Plans) and Chapter 17 (Zoning) of the Township's Code by establishing an alternative local permitting program for the development of single-family dwelling units on existing lots. The ordinance also contains revisions necessary for consistency with the amendments to the CMP adopted in 2012, 2014, and 2018. Lastly, the ordinance includes revisions to the standards and procedures related to performance and maintenance guarantees in response to amendments to the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.).

The Pinelands Commission received a certified copy of Ordinance 2018-05 on February 5, 2019. By letter dated February 6, 2019, the Executive Director notified the Township that Ordinance 2018-05 would require formal review and approval by the Pinelands Commission.

## II. Master Plans and Land Use Ordinances

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

- \* Ordinance 2018-05, amending Chapter 16 (Subdivisions and Site Plans) and Chapter 17 (Zoning) of the Code of Bass River Township, introduced on October 1, 2018 and adopted on January 7, 2019.

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

### 1. **Natural Resource Inventory**

Not applicable.

### 2. **Required Provisions of Master Plans and Land Use Ordinances Relating to Development Standards**

The Pinelands Commission adopted three sets of amendments to the CMP that went into effect on January 3, 2012, September 2, 2014, and March 5, 2018, respectively. Ordinance 2018-05 amends Chapter 16 and Chapter 17 of the code of Bass River Township in response to these recent CMP amendments. It incorporates new and/or revised definitions for alternate design pilot program treatment system, immediate family, and solar energy facilities. The ordinance also includes provisions allowing for the installation of advanced wastewater treatment systems by existing nonresidential uses in the Pinelands Forest Area and Rural Development Area of the Township, subject to CMP water quality standards (N.J.A.C. 7:50-6.84(a)5iii(2)).

Ordinance 2018-05 also revises section 16.16.010, Performance guarantees and inspections, of the Township code. These amendments are in response to revisions to the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) by Assembly Bill 1425/Senate Bill 3233 (P.L. 2017, c. 312). Revisions include changes to the types of site improvements for which the Township may require a developer to post a performance or maintenance guaranty, procedures for establishing the amount to be posted as well as procedures for the payment of fees related to the inspection of site improvements by Township professionals. It also includes provisions for the issuance of a temporary certificate of occupancy guarantee as well as a safety and stabilization guarantee.

This standard for certification is met.



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

#### *Response to CMP Amendments*

Ordinance 2018-05 amends Chapters 16 and 17 of the Township's code by expanding and revising the types of development that are exempt from application to the Township and the Commission, consistent with the exemptions set forth in the CMP (N.J.A.C. 7:50-4.1(a)).

#### *Alternative Permitting Program*

The CMP allows for municipalities to establish alternative local permitting programs that maintain consistency with CMP standards while providing more efficient or simplified review procedures of development applications. Such an alternative local permitting program must be locally adopted by ordinance and certified by the Commission prior to taking effect. The Commission may certify such an ordinance only if it meets the standards of N.J.A.C. 7:50-3.83.

Ordinance 2018-05 establishes an alternative local permitting program for the development of single-family dwellings on existing lots of record in the Township's Pinelands Area. Applicants for such development may opt to apply for a preliminary zoning permit under the alternative permitting procedures. The applicant maintains the option to submit the application under the existing development review procedures for minor development. The benefit to the applicant of applying for the preliminary zoning permit is that they are not required to apply for a Certificate of Filing from the Pinelands Commission, thus avoiding the fees and additional time required for the review and processing of the Certificate of Filing.

The alternative permitting program adopted by Ordinance 2018-05 includes application requirements and procedures by which the Zoning Officer is to render a decision to approve or deny applications. Ordinance 2018-05 also details the effect of issuing a preliminary zoning permit, the effect of denying the application and procedures to be followed should the Zoning Officer position become vacant.

Application submission requirements include general information regarding the applicant and subject parcel, a dated plot plan indicating the proposed location of the building envelope and any accessory structure, driveway, sewage disposal system, and water supply well. The provisions also allow the Zoning Officer to require additional information to be submitted to determine compliance with Chapter 17. The Zoning Officer may also waive any application requirement that is not necessary to determine compliance with Chapter 17. The preliminary zoning permit application form to be used by the Township is attached as Exhibit A.

The Zoning Officer shall determine whether the application is complete within fourteen days of application submission. If found to be complete, the Zoning Officer has another fourteen days to make a determination to approve or deny the application for a preliminary zoning permit. The ordinance requires that the Zoning Officer issue the preliminary zoning permit if and only if (1) the proposed development is consistent with all standards in the Township's Land Development Ordinance, (2) no Waiver of Strict Compliance is necessary from, or has been approved by, the Pinelands Commission, and (3) a representative of the Pinelands Commission has signed the preliminary zoning permit, thereby indicating concurrence with the Zoning Officer's determination. If any of those three provisions are not met, the Zoning Officer cannot issue the preliminary zoning permit.

If the Zoning Officer denies the application for a preliminary zoning permit, the application is thereafter processed by the Township and Pinelands Commission under the existing application procedures for minor development.

In the event that the application is denied on the basis that a variance from a standard in Chapter 17 is necessary (e.g., a reduction in side or rear yard requirements), an application for a preliminary zoning permit may be re-submitted to the Zoning Officer following the Township's approval of the variance.

If the preliminary zoning permit is issued, it must expressly incorporate the plot plan submitted with the application, specify any necessary conditions, and indicate the expiration date of the permit (two years from the date of issuance). The Township's preliminary zoning permit template is attached to this report as Exhibit B.

In the event that the Zoning Officer position becomes vacant for any reason, the alternative permitting program procedures have no force and effect, and until such time as a new Zoning Officer is appointed, all such eligible development applicants are to be processed under the existing development review procedures.

N.J.A.C. 7:50-3.84(b) requires that a review program be approved by the Commission concurrent with the certification of any municipal ordinance that implements an alternative permitting system. The purpose of the review program is to enable the Commission to evaluate the consistency of development approved under the alternative permitting program with all applicable standards of the CMP. In order to satisfy this requirement, it is recommended that the Commission approve the periodic review and evaluation program detailed in Exhibit C as part of the certification of Ordinance 2018-05.

The alternative local permitting program established by Ordinance 2018-05 is consistent with the standards of N.J.A.C. 7:50-3.83. Therefore, this standard for certification is met.

#### **4. Requirement for Municipal Review and Action on All Development**

Not applicable.

#### **5. Review and Action on Forestry Applications**

Not applicable.

#### **6. Review of Local Permits**

##### *Response to CMP Amendments*

Ordinance 2018-05 revises notice requirements for applicants and the Township by permitting the delivery of notices of municipal hearings, meetings, approvals and denials to the Commission via email. The requirement that such notices be sent via certified mail is eliminated. The required notices of local approvals and denials will no longer need to include the names and addresses of

persons who actively participated in local proceedings. Local approvals will need to include a copy of any preliminary or final plan, plot or similar document approved.

### *Alternate Permitting Program*

As noted above, Ordinance 2018-05 requires that a representative of the Pinelands Commission review and concur with the Zoning Officer's decision to issue a preliminary zoning permit prior to the issuance of the permit. Therefore, the Commission has the opportunity to work with the Zoning Officer to identify inconsistencies with the CMP's standards. If the Commission representative finds that the application is not consistent with the CMP, the preliminary zoning permit cannot be issued. If the applicant wishes to proceed with the application, they must apply to obtain a Certificate of Filing from the Commission and abide by the conventional application procedures provided by the CMP and Chapter 17 of the Township's code.

Ordinance 2018-05 also requires that the Township's Zoning Officer submit to the Commission a copy of any preliminary zoning permit issued along with associated application materials within five days of the permit's issuance. Likewise, if the Zoning Officer denies an application, the Zoning Officer must submit to the Commission documentation of the denial along with associated application materials within five days.

Any approvals or permits sought subsequent to the issuance of a preliminary zoning permit are subject to the notice, review and decision requirements of Sections 17.32.100 through 130 of Township's code. This requirement meets the standards of N.J.A.C. 7:50-3.83(a)5, which specifies that any alternative permitting program must either allow for Commission review of local approvals or provide for periodic review of local permits by the Commission.

The alternative local permitting program established by Ordinance 2018-05 is consistent with the standards of N.J.A.C. 7:50-3.83. Therefore, this standard for certification is met.

#### **7. Requirement for Capital Improvement Program**

Not applicable.

#### **8. Accommodation of Pinelands Development Credits**

Not applicable.

#### **9. Referral of Development Applications to Environmental Commission**

Not applicable.

#### **10. General Conformance Requirements**

Ordinance 2018-05 is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan. Therefore, standard for certification is met.

**11. Conformance with Energy Conservation**

Not applicable.

**12. Conformance with the Federal Act**

Ordinance 2018-05 is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan. No special issues exist relative to the Federal Act.

Therefore, this standard for certification is met.

**13. Procedure to Resolve Intermunicipal Conflicts**

Not applicable.

**PUBLIC HEARING**

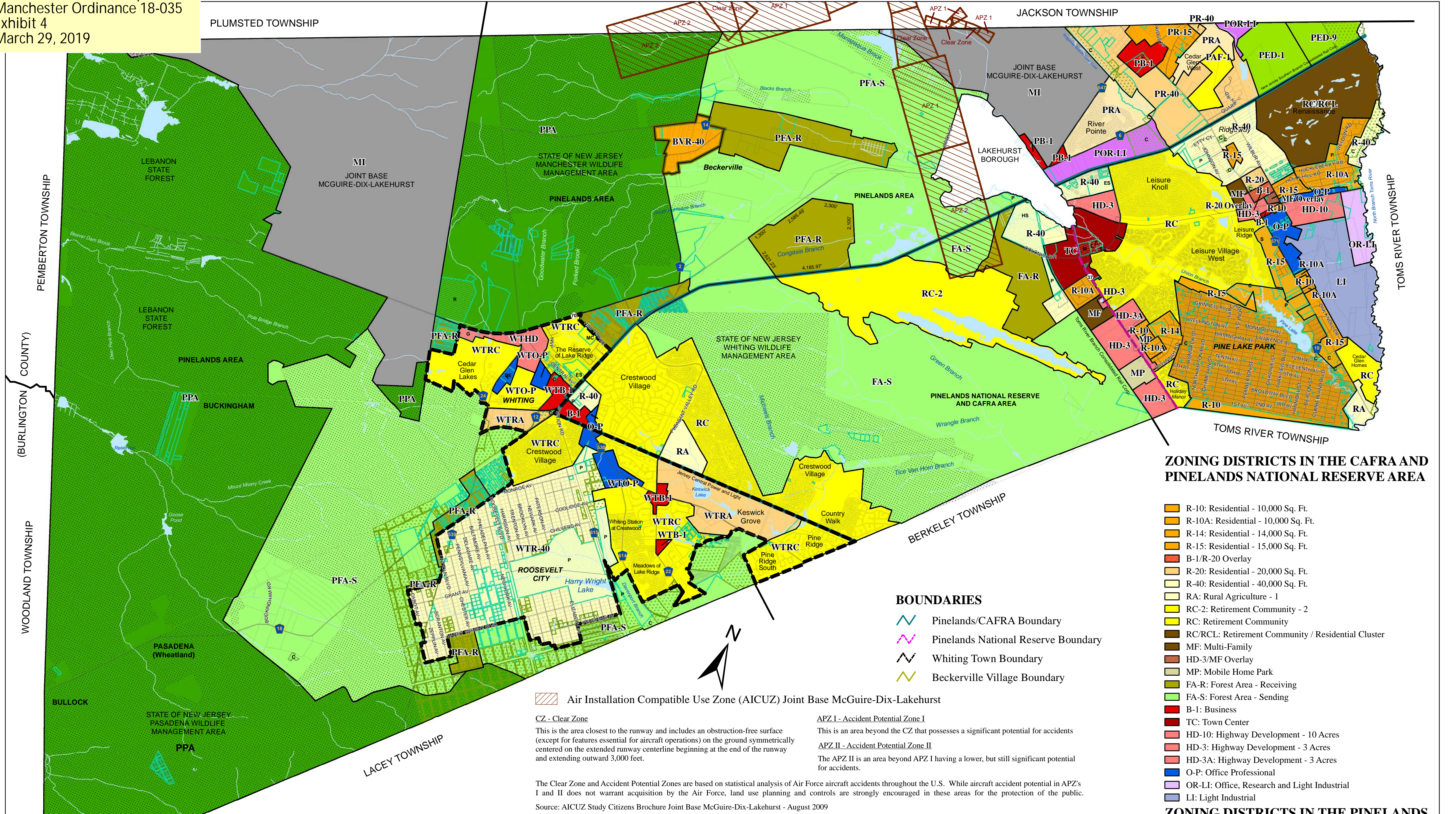
A public hearing to receive testimony concerning Bass River Township's application for certification of Ordinance 2018-05 was duly advertised, noticed and held on March 6, 2019 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Mr. Lanute conducted the hearing, at which no testimony was received.

Written comments on Ordinance 2018-05 were accepted through March 13, 2019. However, no written comments were received.

**CONCLUSION**

Based on the Findings of Fact cited above, the Executive Director has concluded that Ordinance 2018-05, amending Chapter 16 (Subdivisions and Site Plans) and Chapter 17 (Zoning) of the Code of Bass River Township, complies with Comprehensive Management Plan standards for the certification of municipal master plans and land use ordinances. Accordingly, the Executive Director recommends that the Commission issue an order to certify Ordinance 2018-05 of Bass River Township.

SRG/DBL/CBR  
Attachments



**ZONING DISTRICTS IN THE CAFRA AND PINELANDS NATIONAL RESERVE AREA**

- R-10: Residential - 10,000 Sq. Ft.
- R-10A: Residential - 10,000 Sq. Ft.
- R-14: Residential - 14,000 Sq. Ft.
- R-15: Residential - 15,000 Sq. Ft.
- B-1/R-20 Overlay
- R-20: Residential - 20,000 Sq. Ft.
- R-40: Residential - 40,000 Sq. Ft.
- RA: Rural Agriculture - 1
- RC-2: Retirement Community - 2
- RC: Retirement Community
- RC/RC/L: Retirement Community / Residential Cluster
- MF: Multi-Family
- HD-3/MF Overlay
- MP: Mobile Home Park
- FA-R: Forest Area - Receiving
- FA-S: Forest Area - Sending
- B-1: Business
- TC: Town Center
- HD-10: Highway Development - 10 Acres
- HD-3: Highway Development - 3 Acres
- HD-3A: Highway Development - 3 Acres
- O-P: Office Professional
- OR-LI: Office, Research and Light Industrial
- LI: Light Industrial

**ZONING DISTRICTS IN THE PINELANDS AREA**

- PR-15: Pinelands Residential - 15,000 Sq. Ft.
- PR-40: Pinelands Residential - 40,000 Sq. Ft.
- PRA: Pinelands Rural Agriculture - 1
- PAF-1: Pinelands Affordable Housing
- PED-1: Planned Environmental District - 1
- PED-9: Planned Environmental District - 9
- PFA-R: Pinelands Forest Area - Receiving (3.2 Acres)
- PFA-S: Pinelands Forest Area - Sending (20 Acres)
- PPA: Pinelands Preservation Area
- PB-1: Pinelands Business
- POR-LI: Pinelands Office, Research and Light Industrial
- BVR-40: Beckerville Village Single Family Residential
- WTRC: Whiting Town Retirement Community
- WTR-40: Whiting Town Residential - 40,000 Sq. Ft.
- WTRA: Whiting Town Rural Agriculture
- WTB-1: Whiting Town Business - 1 Acre
- WTHD: Whiting Town Highway Development
- WTO-P: Whiting Town Office - Professional
- MI: Military Installation

- BOUNDARIES**
- Pinelands/CAFRA Boundary
  - Pinelands National Reserve Boundary
  - Whiting Town Boundary
  - Beckerville Village Boundary

**Air Installation Compatible Use Zone (AICUZ) Joint Base McGuire-Dix-Lakehurst**

**CZ - Clear Zone**  
 This is the area closest to the runway and includes an obstruction-free surface (except for features essential for aircraft operations) on the ground symmetrically centered on the extended runway centerline beginning at the end of the runway and extending outward 3,000 feet.

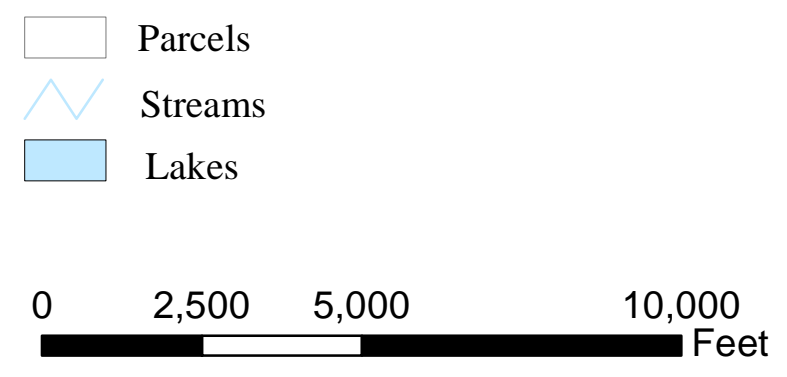
**APZ I - Accident Potential Zone I**  
 This is an area beyond the CZ that possesses a significant potential for accidents

**APZ II - Accident Potential Zone II**  
 The APZ II is an area beyond APZ I having a lower, but still significant potential for accidents.

The Clear Zone and Accident Potential Zones are based on statistical analysis of Air Force aircraft accidents throughout the U.S. While aircraft accident potential in APZs I and II does not warrant acquisition by the Air Force, land use planning and controls are strongly encouraged in these areas for the protection of the public.

Source: AICUZ Study Citizens Brochure Joint Base McGuire-Dix-Lakehurst - August 2009

12/10/18	18-035
11/13/17	17-025
11/13/17	17-024
02/13/17	17-002
12/12/16	16-036
05/26/15	15-009
10/14/14	14-016
10/14/14	14-015
11/28/11	11-025
02/22/10	10-006
05/29/07	07-018
11/28/05	05-053
05/23/05	05-025
05/09/05	05-023
01/22/01	00-044
08/14/00	00-019
02/22/99	99-001
01/26/98	97-038
05/22/97	97-008
Adoption Date	Ordinance Number



**PUBLIC OPEN SPACE AND FACILITIES \***

- State of New Jersey
- County of Ocean
- Manchester Township
- Facilities
- M: Municipal Complex
- L: Library
- F: Fire Station
- FS: First Aid Squad
- S: Elementary School
- HS: High School
- P: Park
- G: Township Garage
- MC: Medical Center
- BE: Board of Education
- R: Recycling Facility

\* For Informational Purposes Only  
 Source: Ocean County Parcels & Mod-IV database 2016

# ZONING MAP

## MANCHESTER TOWNSHIP

### Ocean County, New Jersey

Adopted December 10, 2018



Susan Grogan  
Chief Planner  
Pinelands Commission  
15 Springfield Road  
New Lisbon, NJ 08064

March 6, 2019

RE: Manchester Amendments to Master Plan and Land Use Ordinances

Dear Ms. Grogan:

As residents of the town of Manchester, New Jersey, we are concerned about the Pinelands Commission's pending approval of Manchester Township amendments to its Master Plan and Land Use Ordinances, specifically regarding modifications to the Pinelands Management Areas within the township.

We are concerned that these changes will result in a potential over development, loss of wildlife habitat, and degradation of waterways and groundwater. We are citizens engaged in our community. We attend and participate in a variety of public meetings on a regular basis, but were unaware of these changes or the opportunity to comment on them.

These changes would have significant impacts on the character of our town, ones which we believe may be negative, and as such deserve substantive public review and input.

We therefore ask you to reject the request to approve these amendments at this time.

Thank you for your consideration in listening to our voices.

Sincerely,

Cynthia Light – [clight@usa.com](mailto:clight@usa.com)  
Irene Tysh - [irenetysh@yahoo.com](mailto:irenetysh@yahoo.com)  
Suellen Perlmutter -  
Margaret Middaugh – [peggymiddaugh@gmail.com](mailto:peggymiddaugh@gmail.com)  
Bette Chosak – [bjchosak@aol.com](mailto:bjchosak@aol.com)  
Jeanne Kineyko – [jkineyko309@comcast.com](mailto:jkineyko309@comcast.com)



March 6, 2019

Susan Grogan, Chief Planner  
Pinelands Commission  
15 Springfield Road  
New Lisbon, NJ 08064  
*Via email: Susan.Grogan@pinelands.nj.gov*

**Re: Manchester Township Master Plan and Land Use Ordinances**

Dear Ms. Grogan,

We are writing on behalf of the Pinelands Preservation Alliance (PPA) and Save Barnegat Bay (SBB) to express our concerns regarding Manchester Township's Master Plan and Land Use Ordinances, which would alter a number of Pinelands Management Areas within the township. The plan and ordinances, if certified and implemented, would result in substantial loss of habitat and degradation of water quality in the Barnegat Bay watershed.

Manchester Ordinance #18-035 seeks to amend Chapter 245 of the township code by modifying zoning district boundaries, which would result in changes to Pinelands Management Areas if certified by the Pinelands Commission. According to N.J.A.C. 7:50-3.31, each municipality "shall conform its master plan and land use ordinances applicable to such land to the minimum standards of this Plan". The Commission's certification process allows for the Management Areas to be adjusted "provided that the Commission determines that the goals and objectives of this Plan will be implemented by the proposed municipal master plan or land use ordinance" (N.J.A.C 7:50-5.11(a)). Manchester instead seeks to conform the Comprehensive Management Plan (CMP) to its own master plan in order to increase development in a previously protected area, completely reversing the original intention of the CMP.

In a December 4, 2012 memo to the New Jersey Department of Environmental Protection (NJDEP), Executive Director Wittenberg stated that the proposed development on Block 46.01, Lots 1.01 and 1.03 ("Presidential Gardens") was stated to be "inconsistent with the residential density standard in a Rural Development Area." Additionally, the Pinelands Commission pointed out that the Presidential Gardens development intended to utilize public sanitary sewer lines. According to the Coastal Area Facility Review Act (CAFRA) Individual Permit (File No. 84-0677-5) issued for the installation of said sewer lines, "no tie-ins which would serve new development in a Pinelands Forest Area or Rural Development Area will be permitted...".

In their March 26, 2014 denial of a CAFRA Individual Permit for the Presidential Gardens development (File No. 1518-11-0001.1 CAF120001), the NJDEP cites the above points from the Pineland's Commission memo. In addition, the denial letter addresses a lack of compliance by the

application on the proposed site, which is designated Coastal Suburban Planning Area. Coastal Zone Management Rule N.J.A.C. 7:7E-3.38(b) states “[d]evelopment of endangered or threatened wildlife or plant species habitat is prohibited unless it can be demonstrated, through an Endangered or Threatened Wildlife or Plant Species Impact Assessment as described at N.J.A.C. 7:7E-3C.2, that endangered or threatened wildlife or plant species habitat would not directly or through secondary impacts on the relevant site or in the surrounding area be adversely affected.” The NJDEP determined that “...most, if not all of the site features characteristics consistent with suitable habitat for the Northern Pine Snake and Corn Snake.”, and that the Presidential Gardens development “will directly or indirectly impact endangered or threatened species habitat.” Therefore, the development was considered prohibited by this rule.

The denial letter goes on to identify a total of ten Coastal Zone Management Rules that prohibit the development on the site, including 7:7E-3.39 Critical Wildlife Habitats (CWH). NJDEP found that the development “results in a direct loss of 32.5 acres of CWH on-site as this represents the area of the site to be cleared.” Further, “[t]he applicant did not provide sufficient information to demonstrate that CWH impacts could be reduced.”

According to N.J.A.C. 7:50-5.11(b), management area change by certification procedures may be inappropriate if a “single management area change would [i]ncrease development potential for an area which predominantly includes land that [i]s not appropriate for increased development levels because of known environmental limitations or because of the known presence of important natural... resources”. This perfectly describes Block 46.01, Lots 1.01 and 1.03, the site of the proposed Presidential Garden development, which we highlight as an example of the negative impacts to be felt over the entire area included in the master plan, if certified and implemented.

Manchester Ordinance #18-035 states, in its first paragraph “Whereas, Manchester Township received a request from the developer of Presidential Gardens...” These changes to the Management Areas via the master plan are clearly an effort to change the CAFRA standards in the Pinelands National Reserve in aid of a particular non-conforming development. Changing Rural Development Area to Regional Growth Area, and Rural Development Area to Pinelands Town, will yield increased pollution in the form of run-off into the Barnegat Bay watershed during construction of the Presidential Gardens and other future developments, and the habitat of threatened and endangered species will be put at risk. We strongly encourage the Commission not to certify Manchester’s master plan.

Sincerely,

Rhyan Grech  
Policy Advocate  
Pinelands Preservation Alliance

Britta Wenzel  
Executive Director  
Save Barnegat Bay



Karen Argenti  
61 Clear Lake Road  
Whiting, NJ 08759  
[Kabx101@gmail.com](mailto:Kabx101@gmail.com)  
732-350-1183

March 6, 2019

Susan R. Grogan, PP, AICP  
NJ Pinelands Commission  
PO Box 359  
New Lisbon NJ 08064

[planning@pinelands.nj.gov](mailto:planning@pinelands.nj.gov)

Re: Manchester Township, Ocean County, Pinelands Certification  
of Township Zoning Ordinances within Pineland National Reserve

Dear Ms. Grogan:

As a resident of the Whiting section of Manchester Township of Ocean County, I offer the following comments to the Town's proposed changes. At the Town Council meeting, it was explained that the change was minimal and there was no map included in the Town Council resolution.

However, the February 2018 letter from the town asked for this:

*The Township desires the existing Rural Development Area along Route 37 to be changed to Regional Growth Area in order to accommodate the Town Center (TC) Zone and the previously approved affordable housing project known as Presidential Gardens.*

I oppose the change for the following reasons:

1. The regrowth Town Center area is not a town center and not in need of growth.
2. The proposed TC area is zoned residential and includes a polluted area that was only cleaned where the pollution was found, and not the complete area.
3. The attached map includes another area in yellow, which I circled below. This was not in the previous Master Plan. It is the Heritage Minerals site, is zoned senior residential and includes a polluted area the cleaning of which is undetermined.
4. A Town Center should not be at the edge of the town. It should be toward the middle and where most of the town population is found -- in the area known as Whiting. In Whiting, there are plenty of empty storefronts that once were trees. We should not be promoting new growth where there is ample space for the reuse of original areas that are vacant.

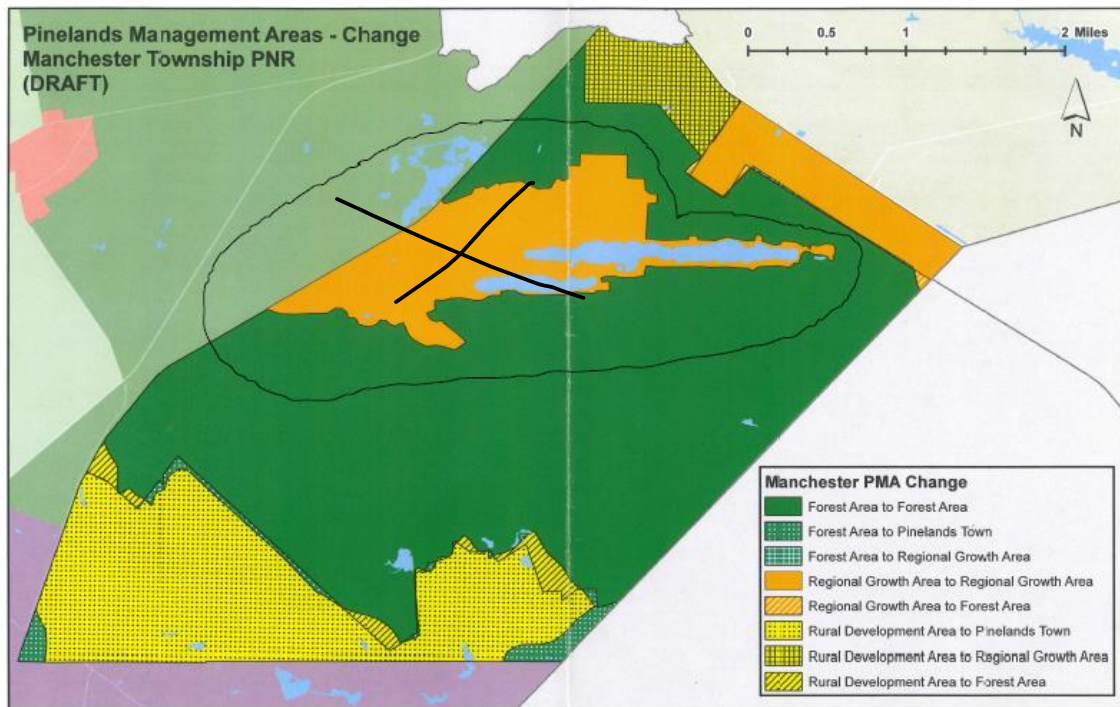
Thank you for your time and consideration. I look forward to your response.

Sincerely,

*Karen Argenti*

Attachments

Included here is a copy of the proposed map - section circled is not in the 2011 Master Plan:



The 2011 Master Plan states:

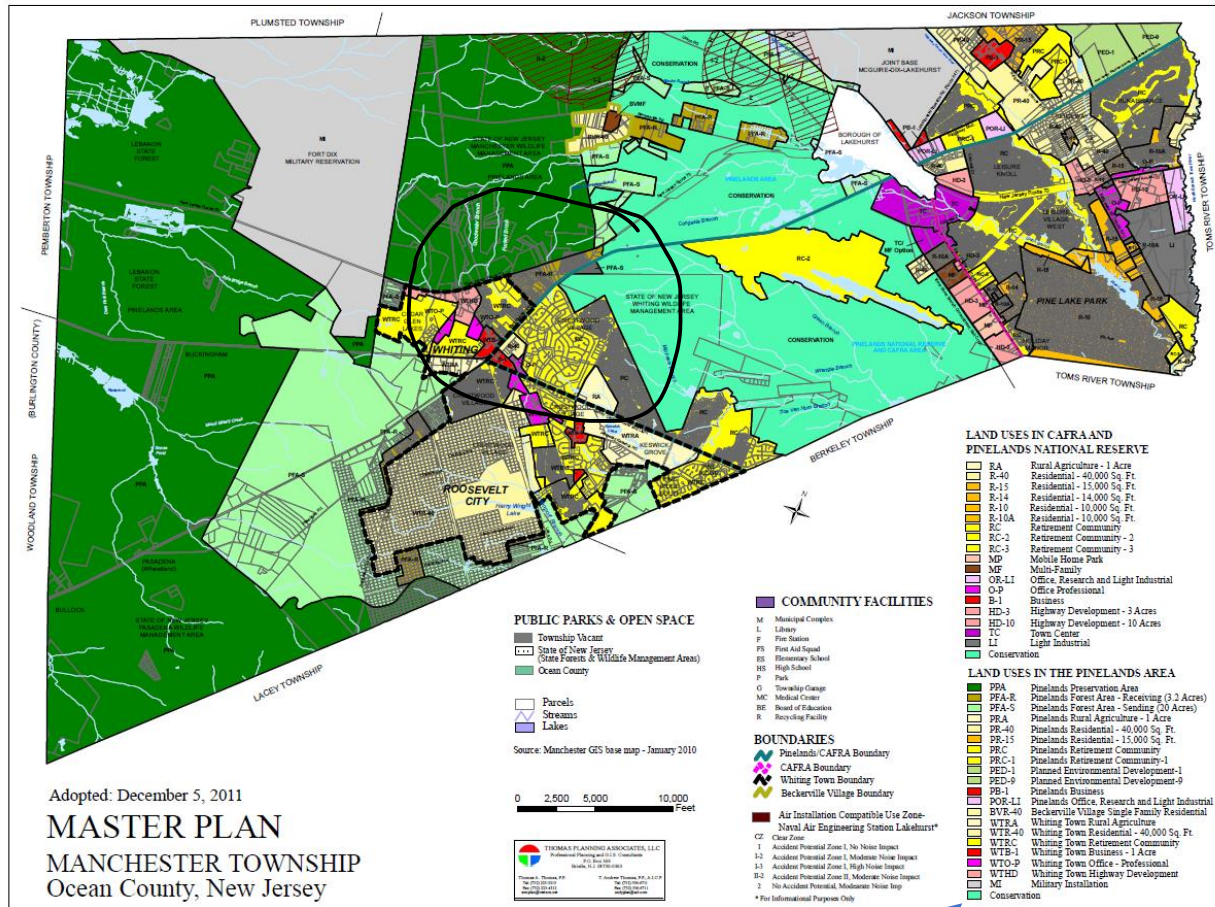
#### PINELANDS COMPREHENSIVE MANAGEMENT PLAN

Approximately 73 percent of Manchester Township in the area west of Route 70 and south of the Jersey Central Power and Light easement (north of and parallel to Route 530), is designated as the New Jersey Pinelands. The State Development and Redevelopment Plan has been designed to coordinate this designation with the "Pinelands Protection Act", N.J.A.C. 7:50-1 et seq. For the Pinelands portion of the Township, the Master Plan has been designed to be consistent with the adopted Pinelands Comprehensive Management Plan. Zoning changes adopted in 1993 to conform with mandatory conformance requirements provide the basis for the Master Plan designations for Preservation, Forest - Sending and Receiving, Whiting Town, and Beckerville Village, and for development densities consistent with Regional Growth Areas along Route 571 and Route 547.

#### CAFRA

The Manchester Master Plan incorporates the overall growth policies of the Coastal Area Facilities Review Act (adopted in 1973) within the Pine lands National Reserve Area and CAPRA areas north of Route 537. Development intensity provided within the Master Plan is less than the maximum permitted under CAPRA development policies but the permitted development densities and intensity are consistent with the rural/suburban character and desired policies of the Planning Board. The Master Plan will be submitted to CAPRA and to the Pinelands Commission for comments and recommendations.

The 2011 Master Plan is here – the center of town which is Whiting is circled:



Here is the enlarged legend:

LAND USES IN THE PINELANDS AREA	
PPA	Pinelands Preservation Area
PFA-R	Pinelands Forest Area - Receiving (3.2 Acre)
PFA-S	Pinelands Forest Area - Sending (20 Acres)
PRA	Pinelands Rural Agriculture - 1 Acre
PR-40	Pinelands Residential - 40,000 Sq. Ft.
PR-15	Pinelands Residential - 15,000 Sq. Ft.
PRC	Pinelands Retirement Community
PRC-1	Pinelands Retirement Community-1
PED-1	Planned Environmental Development-1
PED-9	Planned Environmental Development-9
PB-1	Pinelands Business
POR-LI	Pinelands Office, Research and Light Indust
BVR-40	Beckerville Village Single Family Residenti
WTRA	Whiting Town Rural Agriculture
WTR-40	Whiting Town Residential - 40,000 Sq. Ft.
WTRC	Whiting Town Retirement Community
WTB-1	Whiting Town Business - 1 Acre
WTO-P	Whiting Town Office - Professional
WTHD	Whiting Town Highway Development
MI	Military Installation
Conservation	Conservation



## RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-19- 116

**TITLE:** Authorizing the Executive Director to Execute the First Amendment to the February 26, 2004 Memorandum of Agreement between the South Jersey Transportation Authority and the New Jersey Pinelands Commission Eliminating the Seasonal Mowing Restriction Relating to the Grassland Conservation and Management Area at Atlantic City International Airport

Commissioner Barr moves and Commissioner Avery seconds the motion that:

WHEREAS, the New Jersey Pinelands Commission (hereinafter "Commission") is a public body, corporate and politic which was established to prepare and administer the Pinelands Comprehensive Management Plan (the "CMP") to protect the resources of the Pinelands Area of the State of New Jersey; and

WHEREAS, the South Jersey Transportation Authority is an instrumentality of the State of New Jersey exercising public and essential governmental functions and is the owner and operator of the Atlantic City International Airport ("ACY") located in Egg Harbor Township, Atlantic County, New Jersey; and

WHEREAS, the New Jersey Pinelands Commission (the "Commission") and the South Jersey Transportation Authority ("SJTA" or the "Authority") (both of which are collectively referred to herein as the "Parties") entered into a Memorandum of Agreement ("MOA"), dated February 26, 2004, which authorized the development of certain short-term development projects at ACY; and

WHEREAS, the ACY property is comprised of approximately 2,100 acres, approximately 84 acres of which are owned by the SJTA and upon which the terminal building and associated airport support facilities are located; the other 2,000+ acres of which the Authority leases from the United States of America (the "Property"); and

WHEREAS, as an airport that services commercial air carriers, ACY is required to be certified under 49 U.S.C. 44706 as implemented by 14 C.F.R. Part 139; and

WHEREAS, as a Part 139 Certified Airport, ACY is subject to regulation by the Federal Aviation Administration ("FAA"); and

WHEREAS, the Property is located within a Pinelands Regional Growth Area and a Pinelands Military and Federal Installation Area; and

WHEREAS, as part of the measures included in the February 26, 2004 MOA, intended to provide an equivalent level of protection for the resources of the Pinelands, the Authority was required to create and enhance a 290 acre modified grass community, the Grassland Conservation and Management Area, located in the northwest quadrant of the airport; and

WHEREAS, the Authority created the required Grassland Conservation and Management Area and has continued to manage it in accordance with Paragraph III.A.6.d of the February 26, 2004 MOA; and

WHEREAS, environmental commitments were incorporated into the February 26, 2004 MOA by Paragraph III.A.5 and designated as Attachment 3; and

WHEREAS, Paragraph 23 of Attachment 3 of the February 26, 2004 MOA prohibits activities within the Grassland Conservation and Management Area from April 15 through August 15 in order to protect the Upland sandpiper and Grasshopper sparrow during their critical breeding and brooding period; and

WHEREAS, Paragraph 9 of Attachment 3 of the February 26, 2004 MOA also requires all grassland management activities to adhere to the approved mowing plan that restricts mowing in the Grassland Conservation and Management Area from April 15 through August 15, to reduce potential nest destruction and mortality of incubating adults or flightless chicks; and

WHEREAS, following the execution of the February 26, 2004 MOA, the FAA issued updated Advisory Circular FAA AC 150/5200-33B, which was originally published in 1997 and updated in 2004 and again in

2007, and CertAlert 06-07 issued in 2006; Both the Advisory Circular FAA AC 150/5200-33B and CertAlert 06-07 relate to potential wildlife attractants and protection of state-listed species' habitat on airports.; and

WHEREAS, as a result of these updates, the Authority contracted with the United States Department of Agriculture, Wildlife Services in 2009 to conduct a new Wildlife Hazard Assessment for ACY, which was completed and accepted by FAA in March 2011, and which contained a recommendation for the Authority to re-examine the impact of the February 26, 2004 MOA on airport safety; and

WHEREAS, upon completion of the Wildlife Hazard Assessment, the United States Department of Agriculture, Wildlife Services, worked with Authority staff at ACY to develop a new Wildlife Hazard Management Plan for ACY and to implement wildlife hazard management activities according to such plan; and

WHEREAS, ACY currently operates under an FAA approved Wildlife Hazard Management Plan, dated April 2017, that continues to identify the need for reevaluation of the February 26, 2004 MOA, specifically, the continued requirement to maintain the Grassland Conservation and Management Area on the ACY property, in order to allow for management provisions to protect health and safety and continuation of safe airport operations; and

WHEREAS, on or about December 2017, representatives of the Authority in response to these safety concerns expressed an interest in pursuing an amendment of the February 26, 2004 MOA to a) relocate the Grassland Conservation and Management Area off the ACY property in order to b) allow the Authority to mow this area year-round without the existing seasonal restrictions contained with Attachment 3 of the February 26, 2004 MOA; and

WHEREAS, the Authority has submitted documentation, including letters from the FAA, the USDA Wildlife Biologist working with the Authority to implement the Wildlife Hazard Management Plan at ACY, the Commander of the New Jersey Air National Guard stationed at ACY to the Commission to substantiate its need to mow the Grassland Conservation and Management Area and maintain it a height of 5 to 10 inches after April 15, 2019, and to maintain the grass at that height year round, in order to address safety concerns related to its presence on the airport property; and

WHEREAS, removal of the Grassland Conservation and Management Area constitutes a change to one of the offset measures that was included in the February 26, 2004 MOA and was intended to afford, at a minimum, an equivalent level of protection of the resources of the Pinelands; and

WHEREAS, such measures were required pursuant to N.J.A.C. 7:50-4.52(c)2 in order for the Commission to permit the deviations from the standards of the Pinelands CMP that were authorized by the February 26, 2004 MOA; and

WHEREAS, the removal of the Grassland Conservation and Management Area, through mowing the grasses to a height that is not consistent with the habitat requirements of local populations of the Upland sandpiper, Grasshopper sparrow and the Frosted elfin butterfly would itself constitute a deviation from the threatened and endangered wildlife standards of the Pinelands CMP at N.J.A.C. 7:50-6.33; and

WHEREAS, the Authority has been working to identify new measures that will ameliorate the loss of the Grassland Conservation and Management Area and, thereby provide a replacement offset for the deviations from the standards of the Pinelands CMP authorized February 26, 2004 MOA; and

WHEREAS, the Authority has proposed to undertake the following offsetting measures:

- 1) Make an initial payment of \$500,000 to the Commission to be added to the Pinelands Conservation Fund ("PCF") for land acquisition within the Pinelands Area in accordance with the priorities established by the Commission for that fund and, if available, contains habitat suitable for threatened or endangered grassland birds;
- 2) Make five additional annual payments of \$500,000 each which would also be added to the PCF and dedicated for land acquisition in the same manner as the initial \$500,000 payment;
- 3) Acquire land within the Pinelands for and creation and long term maintenance of a new Grassland Conservation and Management Area, of which at least 62 acres is already cleared and located at least 50 meters from any structure or forest edge; and
- 4) Enhance an approximately twelve (12) acre site located adjacent to the Forest Preservation Area in the northeast quadrant of the airport, for the frosted elfin butterfly through the planting of wild indigo (hereinafter collectively referred to as the "offsetting measures"); and

WHEREAS, these offsetting measures are being offered by the Authority to ameliorate for the loss of the Grassland Conservation and Management Area and in order to demonstrate continued compliance with the threatened and endangered species standards of the Pinelands CMP, N.J.A.C. 7:50-6.33, as a result of the

elimination of the seasonal mowing restrictions and the construction of the short-term projects delineated in the February 26, 2004 MOA; and

WHEREAS, in addition to these offsetting measures, the proposed First Amendment to the February 26, 2004 MOA includes provisions to provide assurances to the Commission that these new offsetting measures will be implemented and completed timely, and include:

- 1) A suspension provision that prohibits any new development at ACY should the SJTA fail to make a required annual payment to the Commission or fails to meet the time lines for either 1) the acquisition, creation and maintenance of the new off-airport Grassland Conservation and Management Area or 2) the enhancement and maintenance of the Frosted elfin butterfly habitat in the northeast quadrant of the Property; and
- 2) An payment acceleration provision which would require immediate payment to the Commission of all remaining annual payments that have been not been made up to the date of the events listed in 1) above; and

WHEREAS, should the Authority be unable to obtain a suitable parcel of land for the creation of the new GCMA off the airport property, within the timelines designated in the proposed MOA Amendment, it is obligated to make an additional payment to the Commission based on the fair market value of land at that time and the present day value of the costs SJTA incurred to create and maintain the original GCMA; and

WHEREAS, Section 6 of the Pinelands Protection Act authorizes the Commission "to enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the Commission to carry out any power expressly given in this act"; and

WHEREAS, N.J.A.C. 7:50-4.52(c)2 authorizes the Commission to enter into intergovernmental memoranda of agreement with any agency of the Federal, State or local government which authorizes such agency to carry out specified development activities that may not be fully consistent with the provisions of N.J.A.C. 7:50-5 and 6, provided such agency demonstrates and the Commission finds that variation from the standards of the Pinelands CMP is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands as would be provided through strict application of the CMP's standards; and

WHEREAS, in accordance with the requirements of N.J.A.C. 7:50-4.52(c)3, a public hearing to receive testimony concerning the First Amendment to the February 26, 2004 MOA was duly advertised and noticed on March 8, 2019 in the Press of Atlantic City and on the Commission's website, and the public hearing was subsequently conducted on March 19, 2019 at the Commission's offices in New Lisbon, New Jersey; and

WHEREAS, the public was provided the opportunity to submit written comments concerning the proposed First Amendment to the February 26, 2004 MOA to the Commission until 5:00 p.m. on March 19, 2019; and

WHEREAS, the Commission's CMP Policy and Implementation Committee was briefed at a number of its meetings on the development and contents of the proposed First Amendment to the February 26, 2004 MOA in accordance with the Commission's "Process for Considering An Intergovernmental Agreement", last revised February 8, 2016; and

WHEREAS, the Commission's CMP Policy and Implementation Committee reviewed the draft of the proposed First Amendment to the February 26, 2004 MOA at its March 29, 2019 meeting, provided direction concerning revisions and referred the First Amendment to the full Commission for its consideration; and

WHEREAS, the Executive Director in her report entitled "Report on a Proposed First Amendment to the February 26, 2004 Memorandum of Agreement Between the South Jersey Transportation Authority and the New Jersey Pinelands Commission Regarding Atlantic City International Airport" dated April 10, 2019 concludes that the proposed First Amendment to the February 26, 2004 MOA is consistent with the requirements of the Pinelands CMP and, therefore, recommended that the Commission approve the First Amendment to the February 26, 2004 MOA; and

WHEREAS, the Commission finds that the offsetting measures proposed by the Authority provide an equivalent level of protection for the resources of the Pinelands as would be provided through strict application of the threatened or endangered wildlife standards of the Pinelands CMP as required by N.J.A.C. 7:50-4.52(c), because it will result in:

- 1) Funding, creation and maintenance of a new Grassland Conservation and Management Area, consisting of viable habitat for the Upland sandpiper and the Grasshopper sparrow, on a site where these species are not susceptible to airstrike and, resultant mortality;
- 2) As a result of the \$3,000,000 payment to the PCF over the course of six (6) years, the acquisition and preservation of the equivalent of approximately \$9,000,000 worth of ecologically sensitive lands located within the Pinelands Area, including lands containing grassland bird habitat, if available, will occur, because of the leveraging of these funds through 1/3 grants of the fair market value land acquisition cost; and

3) The enhancement and preservation of twelve (12) acres of land located within the northeast quadrant and outside of the airport's operation area for the Frosted elfin butterfly in the vicinity of an existing Frosted elfin butterfly colony.

WHEREAS, the Commission, based upon the Executive Director's Report dated April 10, 2019 and the administrative record, also finds that the First Amendment to the February 26, 2004 MOA, attached hereto, satisfies the standards of N.J.A.C. 7:50-4.52(c), which authorizes the Commission to enter into such agreements; 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 the Commission agrees to enter into the First Amendment to the February 26, 2004 MOA between the South Jersey Transportation Authority and the New Jersey Pinelands Commission, attached hereto.

BE IT FURTHER RESOLVED that the Commission authorizes its Executive Director to execute the First Amendment to the February 26, 2004 MOA between the South Jersey Transportation Authority and the New Jersey Pinelands Commission.

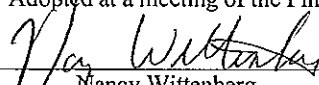
**Record of Commission Votes**

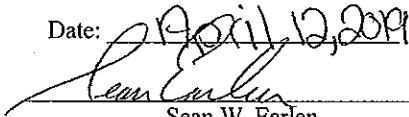
	AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*
Ashmun			X		Irick	X				Prickett	X			
Avery	X				Jannarone	X				Quinn	X			
Barr	X				Lloyd	X				Rohan Green			X	
Christy			X		Lohbauer	X				Earlen	X			
Howell	X				Pikolycky	X								

\*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: April 12, 2019

  
 Nancy Wittenberg  
 Executive Director

  
 Sean W. Earlen  
 Chairman



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THE PINELANDS COMMISSION  
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SEAN W. EARLEN  
Chairman  
NANCY WITTENBERG  
Executive Director

April 10, 2019

**REPORT ON A PROPOSED FIRST AMENDMENT TO THE FEBRUARY 26, 2004  
MEMORANDUM OF AGREEMENT BETWEEN THE SOUTH JERSEY TRANSPORTATION  
AUTHORITY AND THE NEW JERSEY PINELANDS COMMISSION REGARDING  
ATLANTIC CITY INTERNATIONAL AIRPORT**

**FINDINGS OF FACT**

The South Jersey Transportation Authority (the “Authority”) has requested an amendment of the February 26, 2004 Memorandum of Agreement (the “2004 MOA”), between it and the Pinelands Commission (the “Commission”) which authorized construction of certain short-term projects at the Atlantic City International Airport (“ACY”). The Proposed Amendment would eliminate the seasonal mowing restriction contained within the Environmental Commitments, Attachment 3, to the 2004 MOA and permit the Authority to mow the grass within the Grassland Conservation and Management Area (the “GCMA”) located at the airport to a height of 5 to 10 inches year round.

**I. Background and Purpose of the 2004 MOA**

Creation and maintenance of a 290-acre GCMA was one of the offsetting measures included in the 2004 MOA to provide an equivalent level of protection for the resources of the Pinelands as would be provide through strict application of the standards of the Pinelands Comprehensive Management Plan (the “Pinelands CMP”), N.J.A.C. 7:50. Specifically, the GCMA was intended to compensate for irreversible adverse impacts to critical habitat for two threatened and endangered grassland bird species, the Upland sandpiper (*Bartramia longicauda*), a State designated endangered species and Grasshopper sparrow (*Ammodramus savannarum*), a State designated threatened species, as well irreversible adverse impacts to suitable habitat for a State designated threatened species of Lepidoptera, the Frosted elfin butterfly (*Callophrys [Incisalia] iris*), associated with the development of the short-term projects at ACY.

**II. Atlantic City International Airport, Updated FAA Guidance, Subsequent Studies and Recommendations**

Following execution of the 2004 MOA, the Federal Aviation Administration (“FAA”) issued updated Advisory Circular FAA AC 150/5200-33B, which was originally published in 1997, updated in 2004 and updated again in 2007. It also issued Cert Alert 06-07 in 2006. Both FAA AC 150/5200-33B and Cert Alert 06-07 relate to potential wildlife attractants and protection of state-listed species’ habitat on airports. As a result of these updates, the Authority conducted a Wildlife Hazard Assessment for the Airport. This assessment was completed and accepted by the FAA in March 2011. One of the recommendations of this assessment was for the Authority to re-examine the impact of the 2004 MOA on airport safety, specifically the continuation of the Grassland Conservation and Management Area on site.



Upon completion of the initial Wildlife Hazard Assessment, the Authority contracted with the United States Department of Agriculture, Wildlife Services, to develop a Wildlife Hazard Management Plan for ACY and to implement wildlife hazard management activities at ACY. The current Wildlife Hazard Management Plan for the airport, dated April 2017, identifies the need for reevaluation of the 2004 MOA, specifically the continuation of the GCMA on the ACY property, in order to allow for management provisions to protect health and safety and continuation of safe airport operations.

In addition to the creation and maintenance of the GCMA, the 2004 MOA required the Authority to conduct development of the short-term projects according to specified environmental conditions. One of these conditions was a seasonal restriction, which prohibited the disturbance of grassland habitat on the airport between April 15 and August 15. The purpose of the seasonal restrictions were to protect the Upland sandpiper and Grasshopper sparrow during their critical breeding and brooding period. These seasonal restrictions were subsequently incorporated into the mowing plan (hereinafter referred to as the seasonal mowing restrictions) for the GCMA, which is a part of the Atlantic City International Airport – Wildlife Hazard Management Plan.

The Authority has indicated the need to mow the GCMA prior to the start of this year's seasonal restriction period, i.e. April 15, 2019, and to continue to mow the area year round in order to maintain the grass height at 5 to 10 inches. The basis for this request is its concern regarding bird strikes and airport safety. The Authority has submitted documentation, including letters from the FAA, USDA and the Commander of the New Jersey Air National Guard stationed at the airport substantiating airport safety concerns resulting from the presence of the GCMA at the airport.

### **III. FAA Regulations and Guidance**

Specifically, in its letter dated April 4, 2018, FAA stated its position that not only is the GCMA at ACY placing state-listed species in an unsafe wildlife setting, which is in direct conflict with the intent of the original conservation goal for this area, but it could be detrimental to aviation safety at ACY. In support of this position, the FAA provided details concerning its regulations and guidance relative to wildlife hazard management at Part 139 Certified Airports, such as ACY. ACY is a commercial service airport that is regulated by the FAA under 49 USC §§44701 *et seq.* as implemented through 14 CFR Part 139.

The regulations pertaining to wildlife hazard management at certified airports are set forth at 14 CFR 139.337. These provisions require the airport operator to take immediate action to alleviate wildlife hazards whenever they are detected. 14 CFR 139.337(a). Wildlife hazard is defined as the potential for a damaging aircraft collision with wildlife on or near an airport. 14 CFR 139.5. The regulations also require the airport operator to conduct a wildlife assessment when any of the following triggering events occur on or near the airport: 1) an air carrier aircraft experiences multiple wildlife strikes, 2) an air carrier aircraft experiences substantial damage from striking wildlife, 3) an air carrier aircraft experiences an engine ingestion of wildlife, or 4) wildlife of a size or in numbers capable of causing one of these enumerated events is observed to have access to any airport flight patterns or aircraft movement area. 14 CFR 139.337(b). The wildlife assessment must be conducted by a wildlife damage management biologist<sup>1</sup> or someone under direct supervision of such an individual. 14 CFR 139.337(c).

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<sup>1</sup> This title is outdated and was replaced by FAA with the term “qualified airport wildlife biologist”, which has the same meaning for the purposes of complying with Part 139. See AC 150/5200-38, dated August 20, 2018.

Once a wildlife hazard assessment is completed, it must be submitted to the FAA Administrator for approval and a determination of the need for a wildlife hazard management plan. Id. When the Administrator determines that a wildlife hazard management plan is needed, the airport operator must formulate and implement a plan, based on the wildlife hazard assessment that must, among other requirements, provide measures to alleviate or eliminate wildlife hazards to air carrier operations. 14 CFR 139.337(e).

SJTA contracted with the United States Department of Agriculture (“USDA”), Wildlife Services in 2009 to conduct a new Wildlife Hazard Assessment for ACY. This Assessment was completed and accepted by FAA in March 2011 and included a recommendation that SJTA re-examine the impact of the February 26, 2004 MOA on safety at ACY. Upon completion of the Wildlife Hazard Assessment, the USDA worked with SJTA’s staff at ACY to develop a new Wildlife Hazard Management Plan for and to implement wildlife hazard management activities at ACY. ACY currently operates under an FAA approved Wildlife Hazard Management Plan, dated April 2017. This current Plan continues to identify the need for reevaluation of the February 26, 2004 MOA, specifically, the continued requirement to maintain the Grassland Conservation and Management Area on the ACY property, in order to allow for the implementation of management practices that protect health and safety and continuation of safe operations at ACY.

As noted by FAA in its letter, in addition to the regulatory requirements delineated above, the FAA has published Cert Alert 06-07 regarding state-listed species at airports and Advisory Circular FAA AC 150/5200-33B, Hazardous Wildlife Attractants on or Near Airports. Since 2004, when the MOA requiring creation and maintenance of the GCMA at ACY was implemented, the FAA has put greater emphasis on controlling wildlife hazards and establishing minimum separation distances between an airport’s operations area (“AOA”) and identified hazardous wildlife attractants.

FAA AC 150/5200-33B provides guidance to airport operators on how to assess and address wildlife attractants when locating new facilities and implementing certain land-use practices on or near public use airports. The Advisory Circular contains separation distances between hazardous wildlife attractants and the AOA. According to the Advisory Circular, these separation distances were determined based on: 1) flight patterns of piston-powered and turbine powered aircraft, 2) the altitude at which most strikes happen (78% occur under 1,000 feet and 90% occur under 3,000 feet) and 3) the National Transportation Safety Board’s recommendations. The recommended separation established by FAA AC 150/5300-33B for piston-powered aircraft is a minimum of 5,000 feet and a minimum of 10,000 feet is the recommended separation for turbine-powered aircraft. Both types of aircraft utilize ACY. The GCMA is located approximately 30 feet from adjacent taxiway and aircraft ramps and 250 feet from adjacent runway centerlines. Thus, the GCMA is located within ACY’s AOA and within the minimum separation areas established in FAA AC 150/5200-33. Consequently, it would not be permissible to establish the GCMA on the airport today.

FAA’s Cert Alert 06-07 provides procedures for airport operators to use when responding to requests by state wildlife agencies to facilitate and encourage habitats for state-listed threatened or endangered species or species of concern that occur on airports and may pose a threat to aviation safety. As was the case with FAA AC 150/5200-33B, Cert Alert 06-07 was promulgated after the 2004 MOA was executed. Cert Alert 06-07 advises airport operators to decline to adopt habitat management techniques that jeopardize airport safety. Although it recognizes that not all state-listed threatened and endangered species pose a direct threat to aviation, it notes that these species may still pose an indirect threat and be hazardous, because they attract other wildlife species or support prey management practices attractive to species that are directly hazardous to aircraft. Notably, Cert Alert 06-7 illustrates this point through the

example of the grassland habitat preferred by the Grasshopper sparrow. This habitat supports a wide variety of insects and small mammals that pose an indirect threat to aviation, because they are very attractive to large birds (hawks, owls, gulls, etc.) that can pose a direct threat to aviation. Consequently, Cert Alert 06-07 states that on-airport habitat and wildlife management practices designed to benefit wildlife that directly or indirectly create safety hazards where none existed before are incompatible with safe airport operations. Moreover, it warns airport operators, to avoid adopting habitat management techniques that jeopardize aviation safety, because it could result in violation of their obligations and subject them to an enforcement action and possible civil penalties under 49 USC §44706, as implemented by 14 CFR §139.77.

#### **IV. Requirements Attributable to Federal Funding**

In addition to being a commercial service airport and certified under Title 14 CFR Part 139, ACY receives federal Airport Improvement Program (AIP) grants. As an AIP grant recipient, the SJTA is required to make certain assurances, which include: 1) Grant Assurance 19 (Operations and Maintenance) that requires SJTA to maintain the airport in a safe and serviceable condition and to avoid activities on the airport that would interfere with its use for airport purposes; 2) Grant Assurance 20 (Hazard Removal and Mitigation) that requires SJTA to take appropriate actions to assure ACY's terminal airspace is adequately cleared and protected by mitigating existing airport hazards and preventing the establishment or creation of future airport hazards; and 3) Grant Assurance 21 (Compatible Land Use) that requires SJTA to take appropriate action to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes that are compatible with normal airport operations. FAA letter dated April 4, 2018. Moreover, as an AIP grant recipient, SJTA is obligated to adhere to FAA Advisory Circulars, including the standards, practices and recommendations contained within FAA AC 150/5200-33B. Failure to adhere to Title 14 and FAA Advisory Circulars or to comply with its grant assurances could result in penalties or denial of future AIP funding. Id.

#### **V. Safety Concerns Raised by the Department of the Air Force, Headquarters Air Force Safety Center and the New Jersey Air National Guard 177<sup>th</sup> Fighter Wing**

In memoranda to the SJTA, dated November 17, 2017 and December 6, 2017, and a letter dated April 7, 2018 to the Pinelands Commission, both the Department of the Air Force, Headquarters Air Force Safety Center and the Commander of the New Jersey Air National Guard, 177<sup>th</sup> Fighter Wing, stationed at ACY, expressed safety concerns regarding the grass heights in the GCMA. As a result, both recommended that the 2004 MOA be reevaluated.

According to the Air Force Safety Center, airfields are artificially maintained environments designed for the safe launch and recovery of aircraft and, as such, should not be used as a wildlife conservation easement. Additionally, it advised that Air Force Instruction 91-202 mandates:

“Mow aircraft movement area (AMA) to maintain a grass height between 7 and 14 inches. The AMA is that area of the airfield encompassed by the Primary Surface and the Clear Zones, as well as apron areas and taxi ways, regardless of their location. As a minimum, turf shall be maintained 500 feet outside the AMA boundary where able....”

Additionally, it stated that maintaining or modifying vegetation on and/or surrounding an airfield to attract wildlife is in contrast to the flight safety paradigm.

Similarly, the Commander of the Air National Guard, 177<sup>th</sup> Fighter Wing, in his November 7, 2017 Memorandum of Record also referenced the Air Force's 7 to 14 inch airfield grass height recommendation and provided an excerpt current Bird Airstrike Hazard (BASH) Plan that recommends "a more uniform turf, elimination of bare areas, and management of grass heights between 7 to 14 inches (6-12 per FAA guidance) where possible." The Commander also expressed his support for a change to the airfield grass management strategy to enhance safety in support of the 117<sup>th</sup> Fighter Wing's mission.

The Commander reiterated his safety concerns in his April 7, 2018 letter to the Commission, in which he stated that, because the height of the grass surrounding the airport does not meet United States Air Force flight safety standards, the risks of wildlife strikes continues to present the risk of aircraft damage or destruction while engaged in flight operations. According to the Commander, the mowing restrictions create an extremely concerning hazard with respect to the safe operation of F-16 aircraft and that the 177<sup>th</sup> Fighter Wing continued to experience several wildlife strikes. To emphasize this concern, he provided information concerning a bird strike incident involving an F-16 that occurred two years prior and cause such significant damage to the front of the aircraft that it completely restricted the pilot's visibility. The aircraft could only be landed by flying in close formation with another F-16. He further stated that continued compliance with the mowing restrictions for the GCMA was incompatible with the 177<sup>th</sup> Fighter Wing's mission, safety and national defense and urged the Commission to mitigate for the environmental concerns in a manner that does not impact safety of flight.

## **VI. Technical Memorandum Prepared by ERS, Inc. for SJTA**

The potential safety concerns articulated by the FAA and others are substantiated by the data provided by SJTA in the report entitled "Technical Memorandum" dated August 31, 2017. This report was prepared by Sarah Brammell, a FAA qualified airport wildlife biologist. The report examines wildlife strike data for ACY including frequency of strikes, the time of year when strikes occur, the species involved and whether there has been a change in the strike data since the GCMA at ACY was implemented. Based on this data, the Technical Report concluded that the GCMA is functioning as a wildlife attractant and that should be eliminated.

As documented by the Technical Memorandum, since creation of the GCMA, the number of bird strikes at ACY has increased. On average, prior to 2004, there were approximately 23 bird strikes involving non-military aircraft a year. After implementation of the MOA, starting in 2004, the annual average increased to approximately 46 bird strikes per year. Additionally, the highest numbers of bird strikes involving non-military aircraft occur from May through August; this correlates with the time during which mowing of the GCMA is not permitted.

Additionally, bird strikes involving the two threatened and endangered bird species of concern, the Upland sandpiper and the Grasshopper sparrow, increased following creation of the GCMA. Prior to 2004, the number of strike reports involving the Upland Sandpiper and the Grasshopper sparrow were 2 and 0, respectively. After 2004, the number of strikes increased to 8 for the Upland sandpiper and 20 for the Grasshopper sparrow. This data indicates that not only is the GCMA acting as a hazardous wildlife attractant, it is negatively impacting the mortality of the threatened or endangered species sought to be conserved through its creation.

Moreover, based on a review of the data regarding the species of birds involved in collisions with aircraft from 1990 through 2017, the Technical Memorandum found that a higher percentage of species with potential to be attracted to the GCMA were reported struck after the establishment of the GCMA. Prior to 2004, 36% of the strikes involved species with the potential to be attracted to the GCMA and after 2004, 58% of the strikes involved these species.

The vegetative components of the GCMA are defined in paragraph 13 of the Environmental Commitments, Attachment 3 to the 2004 MOA, which required that the grassland creation and enhancement activities at ACY achieve the following vegetation characteristics:

a.	Grass Cover	Min 60%	Max 80%
b.	Forb Cover	Min 10%	Max 30%
c.	Total Herbaceous Cover	Min 70%	Max 80%
d.	Shrub Cover	Min 0%	Max 10%
e.	Nuisance Species	Min 0%	Max 10%
f.	Bare Ground	Min 20%	Max 30%
g.	Vegetation Height		
	Mid May through Mid June	Min 10"	Max 16"
	June through August	Min 10"	Max 16"

As discussed in Cert Alert 06-0, the grassland habitat preferred by grasshopper sparrows supports a wide variety of insects and small mammals. Thus, it is the above referenced vegetative characteristics that cause the GCMA to be a hazardous wildlife attractant. This was confirmed by the Technical Memorandum. According to the Technical Memorandum, the best way to manage an airfield is to have a dense monoculture of grass/fescue devoid of broad leaf species (weed, herbs, forbs) and bare ground patches, at a height of 6 to 12 inches. This is because such a monoculture is less attractive to smaller flocking birds than a mix of plants species with sparse vegetation. As noted in the Technical Memorandum, the birds commonly observed in the vicinity of ACY, with the exception of Canada geese, do not feed on grass. Rather, they forage in habitats with insects, seeds, broad leaf plants and small vertebrates. Additionally, the bare areas and less dense vegetation allow birds to move through the habitat easily.

With regard to grass height, grasses in excess of 12 to 14 inches create a habitat conducive to higher prey species populations such as mice, rats, rabbits, snakes, insects and other small animals. This food source attracts species with higher average body mass, such as raptors. Additionally, this taller vegetation provides cover areas for birds and larger animals such as Upland sandpipers, larks, sparrows, foxes, white-tailed deer and coyotes which are a greater risk to aircraft. Technical Memorandum, dated August 31, 2017, pg 23. These species would be considered higher ranked species relative to the hazard they present to aircraft. FAA AC 150/5200-33B, Table 5.

The taller vegetation heights at the GCMA during the seasonal mowing prohibition, also reduces the ability of wildlife hazard management staff to observe wildlife on the airfield that could pose a threat to aviation. FAA regulations require such situations, the inability to readily observe and detect a wildlife hazard that could a threat to aviation, to be remediated. 14 CFR §139.337

## **VII. Findings**

The data in the Technical Memorandum as delineated above supports the finding that the existence of the GCMA is acting as a wildlife hazard attractant, which in turn increases the risk of for a damaging

aircraft collision with wildlife on or near an airport. Moreover, in accordance with 14 CFR §139.377(a), SJTA as the operator of a certified Part 139 has the regulatory obligation to alleviate this wildlife hazard. The data provided in the Technical Memorandum documents the need to remove the seasonal mowing restrictions, and effectively the GCMA at ACY, by maintaining the grass in the area at a height between 5 to 10 inches year round.

Additional findings are included in the “whereas” paragraphs of the proposed MOA amendment and are incorporated herein by reference.

### **VIII. Basis for the First Amendment to the February 26, 2004 MOA**

In order for the Commission to enter into a MOA with a governmental entity that permits development that may not be fully consistent with the land use and development standards (N.J.A.C. 7:50-5 and 6) of the Pinelands CMP, the governmental entity must demonstrate and the Commission must find that variations from the Plan are accompanied by measures that will, at a minimum, afford an equivalent level of protection for the resources of the Pinelands than would be provided through strict application of the CMP. N.J.A.C 7:50-4.52(c)2. As discussed above, the creation and maintenance of the GCMA was one of the measure proposed in the 2004 MOA to offset the impacts to threatened or endangered wildlife from the short-term projects authorized through the MOA. Specifically, the GCMA was intended to compensate for irreversible adverse impacts to approximately 77 acres of critical habitat for the endangered Upland sandpiper and approximately 62 acres of critical habitat for the threatened Grasshopper sparrow. It also provided an offset for the impacts to approximately 4 acres of suitable habitat for the threatened Frosted elfin butterfly.

Mowing of the GCMA is inconsistent with the habitat requirements of the local populations of these threatened or endangered wildlife species. As a result, the continued mowing of this area to height of 5 to 10 inches will result in the elimination of the GCMA on ACY. In order to compensate for this loss, and thereby provide a replacement offset for the deviations from the standards of the Pinelands CMP authorized by the 2004 MOA, SJTA has proposed the following offsetting measures:

1. Make an initial payment of \$500,000 to the Commission to be added to the Pinelands Conservation Fund (“PCF”) for land acquisition within the Pinelands Area in accordance with the priorities established by the Commission for that fund and, if available, contains habitat suitable for threatened or endangered grassland birds;
2. Make five additional annual payments of \$500,000 each which would also be added to the PCF and dedicated for land acquisition in the same manner as the initial \$500,000 payment;
3. Fund the acquisition of land within the Pinelands for and create and maintain a new Grassland Conservation and Management Area, of which at least 25 hectares (62 acres) is already cleared and the cleared acreage is located at least 50 meters (164 feet) from any structure or forest edge;
4. Enhance an approximately twelve (12) acre site located adjacent to the Forest Preservation Area in the northeast quadrant of the airport, for the frosted elfin butterfly through the planting of wild indigo;

5. Execute and filing of a Deed of Conservation Restriction for the new Grassland Conservation and Management Area to protect it as grassland bird habitat in perpetuity; and
6. Amend the Layout Plan for ACY to extend the area currently designated as “Forest Preservation Area – to be Held in Reserve. No Development Shall Occur” to include not only the twelve (12) acres that will be enhanced for the Frosted elfin butterfly, but also the area approximately 2,000 feet away where are well-document colony of this species is currently located.

Development of the short-term projects authorized by the 2004 MOA was expected to result in the loss of approximately 77 acres of critical habitat for the Upland sandpiper and 62 acres of habitat for the grasshopper sparrow. In order to offset these habitat impacts, as required in the FEIS, the Commission accepted the creation and maintenance of the 290 acre GCMA. The FEIS derived the required acreage of the GCMA based on a no net loss of habitat value standard. The FEIS found that a 290 acre GCMA would not only result in no net loss of habitat value for the Upland sandpiper and the Grasshopper sparrow, it would yield a 24% and 14% increase in habitat value for each species, respectively. .

For determining whether an equivalent value is provided for a deviation of the threatened or endangered animal species standards at N.J.A.C. 7:50-6.33, The Commission applies a 3:1 replacement ratio for impacts to critical habitat and a 1:1 ratio for impacts to suitable habit. However, in the present case, the habitat needs of both the Upland Sandpiper and the Grasshopper sparrow are similar. Thus, in order to be considered an equivalent level of protection for these resources, the proposed offset must provide for the replacement of at least 231 acres (3 x 77 acres) of grassland bird habitat. As noted above, the offsetting measures provided by the SJTA include the creation of a new GCMA off the airport property that will consist of, at a minimum, 25 hectares (62 acres) of cleared land that is located 50 meters (164 feet) from any structure or tree edge. Given the 50 meter buffering requirements of the Upland sandpiper, the site acquired by SJTA for the new GCMA will need to be greater than 62 acres in size.

Moreover, because of the area sensitive species requirements of the Upland sandpiper and the lack of available and suitable property in the vicinity of the airport, SJTA has also agreed to make a \$3,000,000 payment over a six year time period to the Commission for land acquisition. These monies will be added to the Pinelands Conservation Fund and used for land acquisition within the Pinelands Area in accordance with the priorities established by the Commission for that fund and, if available, to preserve habitat suitable for threatened or endangered grassland birds. Through the Pinelands Conservation Fund, the Commission contributes up to 1/3 of the fair market value for acquisition of lands within the Pinelands that meet its guidelines. Consequently, in addition to creation of the new GCMA, SJTA’s \$3,000,000 monetary contribution will result in the conservation of the approximately \$9,000,000 worth of ecologically sensitive lands within the Pinelands. Based on historical land acquisition costs for comparable sites, such funds could be expected to result in the acquisition and preservation of an additional approximately 1125 acres of ecologically sensitive lands in the Pinelands Area depending upon land costs at the time of acquisition. Consequently, these two offsetting measures provide, at a minimum, an equivalent level of protection of the resources of the Pinelands as would have been provided through strict application of the CMP as required by N.J.A.C. 7:50-4.52(c)2.

Additionally, SJTA will be enhancing 12 acres of land in the northeast quadrant of the airport for the Frosted elfin butterfly. This results in a 3:1 replacement ratio to compensate for the impacts of the short-terms projects on suitable habitat for the Frosted elfin butterfly. However, the Commission only requires a 1:1 replacement ratio for impacts to suitable threatened or endangered wildlife habitat impacts.

Furthermore, not only is SJTA enhancing habitat for the Frosted Elfin, it will be preserving such habitat and habitat used by an existing colony of Frosted elfin butterfly at ACY, through the inclusion of both of these areas on ACY's layout plan as within the area designated as "Forest Preservation Area – to be Held in Reserve. No Development Shall Occur." Therefore, SJTA has provided measures for the Frosted elfin butterfly that, at a minimum, afford and equivalent level of protection as would be provided through strict application of the CMP.

## **IX. Assurances**

The proposed MOA Amendment includes a number of measures to ensure the SJTA undertakes and completes the offsetting measures which include the following:

1. A suspension provision that prohibits any new development at ACY should the SJTA fail to make a required annual payment to the Commission or fails to meet the time lines for either 1) the acquisition, creation and maintenance of the new off-airport Grassland Conservation and Management Area or 2) the enhancement and maintenance of the Frosted elfin butterfly habitat in the northeast quadrant of the Property (i.e. triggering events); and
2. A payment acceleration provision which would require immediate payment to the Commission of all remaining annual payments that have been not been made up to the date of the triggering event.

Additionally, should the SJTA be unable to obtain a suitable parcel of land for the creation of the new GCMA off the airport property, within the timelines designated in the proposed MOA Amendment, it is obligated to make an additional payment to the Commission based on the fair market value of land at that time and the present day value of the costs SJTA incurred to create and maintain the original GCMA. The proposed MOA Amendment also requires the SJTA to attend future meeting of the Commission's CMP Policy and Implementation Committee to provide updates as to its efforts to fulfill the offsetting measures required by the proposed MOA Amendment.

## **PUBLIC HEARING**

Pursuant to N.J.A.C. 7:50-4.52(c)3, a public hearing to receive testimony concerning the proposed First Amendment to the 2004 MOA was duly advertised and noticed. The hearing was held by Executive Director Nancy Wittenberg on March 19, 2019 at 10:00 a.m. at the Pinelands Commission's Offices at 15 Springfield Road, New Lisbon, New Jersey. Approximately ten (10) people attended the hearing of which two (2) individuals provided oral testimony. In addition to Executive Director Wittenberg, Stacey Roth and Jessica Noble of the Commission's staff were present at the hearing.

At the outset of the public hearing, Executive Director Wittenberg read a prepared statement informing the members of the public present as to the nature of the MOA amendment being requested and the offsets proposed by the Authority, as well as additional offsetting measures which the Commission was considering and about which it was seeking comment. Ms. Wittenberg also noted that written comment concerning the proposed amendment would be accepted by mail, fax or email until 5:00 p.m. that day.

Ms. Wittenberg advised the public that following the hearing a draft staff recommendation report would be prepared concerning the MOA amendment, which would include the relevant points raised during the hearing and through written comments and staff's analysis of the same for the Commission's review. Ms. Wittenberg further advised that the Commission's CMP Policy and Implementation Committee



would be discussing the proposed MOA Amendment at its March 29, 2019 meeting and that the full Commission would likely consider the proposed MOA Amendment at its meeting on April 12, 2019.

The following testimony was received at the hearing.

Rhyan Grech, Pinelands Preservation Alliance (PPA), Policy Advocate, submitted comments on behalf of PPA. Ms. Grech read her comment letter dated March 18, 2019 into the record. These comments will be summarized under written comments and a copy of this letter, as well as all other written comments received by the Commission are attached to this report.

Sarah Brammell, FAA Qualified Wildlife Biologist, Blue Wing Environmental, testified on behalf of SJTA<sup>2</sup> in support of the proposed MOA Amendment. She advised that she was the FFA qualified wildlife biologist who conducted a site visit at ACY and prepared the August 2017 Technical Memorandum. She stated that she had been working in the field of aviation for about 20 years. She has worked at ACY on both the civilian side and as part of the Air National Guard Bird/Wildlife Aircraft Strike Hazard Team. She stated that she has an undergraduate degree in biology and a Masters in Public Administration, with a focus on environmental policy. She also noted that she has worked as an environmental manager and planning coordinator for a medium hub and general aviation airports in Florida and that she had worked at probably over 30 civilian airports in Florida, California, Mexico and California. She also served over 35 Air National Guard Units. She stated that this was the background for her testimony.

Ms. Brammell said that at the times the GCMA was instituted at ACY, it was prior to FAA guidance (Advisory Circulars and Cert Alerts), referenced in the Technical Report, that advises airports not to accept conservation areas on the airport operations area due to a risk to aviation safety.

With regard to the proposed MOA Amendment, she said that from the information that SJTA provided, it was clear that the GCMA was a wildlife hazard attractant. She noted that when considering the GCMA, you have to consider not just the Upland sandpiper and the Grasshopper sparrow, but also other species the GCMA attracts, which are the real concern here. Rodents, broad leafed plant species, insects, lizards, amphibians, invertebrates, and anything that serves as a food or prey source will attract other wildlife such as raptors. The GCMA attracts those species and, thus could be a source of some of the raptor strikes at ACY.

The other difficulty from a wildlife hazard and attractant perspective is the height and type of vegetation within the GCMA. Ms. Brammell stated that when the airport cannot mow and the grass gets knee to hip high, you can't see potential hazards in the grasses. For instance, if a goose or a coyote was on the airport and decided to lie down, it could not be seen because of the grass. FAA requires airport operators to remediate situations when potential hazards can neither be seen nor identified. That is why mowing is so important. In addition, Ms. Brammell advised that mowing gets rid of all of the broad leafed species. She testified that the best way to manage an airfield for fewer invertebrates and birds is to have a thick monoculture of turf. According to Ms. Brammell, that is the ultimate, the gold standard for airport safety.

With regard to the Upland sandpiper and the Grasshopper sparrow, Ms. Brammell stated that although they do not present a high risk for damage to aircraft, there are F-16s at ACY, a single engine aircraft,

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<sup>2</sup> Ms. Brammell did not provide a written copy of her testimony. As a result, the full content of her testimony is provided here.

used by the Air National Guard at ACY and are always on alert. Ms. Brammell described the alert system like a fire truck getting a call. Neither the Air National Guard nor the USDA has time to go out and clear the airfield or conduct harassment activities to shoo the birds. Rather, according to Ms. Brammell, the Air National Guard gets the call, they spin out the F-16 aircraft and they take off immediately for their homeland security mission. Thus, she noted, there is a different scenario at ACY than at other civilian airports. She also stated that F-16s are more susceptible to a strike with a smaller bird. She relayed the example of a strike that occurred in Portland involving a horned lark that resulted in a Class A mishap; the aircraft was completely disabled and no longer viable for flight. She said that once ingested a small bird, such as an Upland sandpiper, could do that type of damage. She indicated that although bird strikes can be rare, when they do happen, they can be catastrophic, especially with an armed F-16.

Ms. Brammell also testified that when you look at the goals for the GCAM, i.e. the long term management of the Upland sandpiper and the grasshopper sparrow, you are actually putting the species at risk for strike and mortality. She stated that she did an analysis of the bird strike data prior to and after the creation of the GCMA. With regard to the Upland sandpiper, she found that there were two reported strikes prior to creation of the GCMA and 10 after. With regard to the Grasshopper sparrow, she found that there were over 20 strikes of Grasshopper sparrows and many unknown (unidentified) sparrows. She said that having these species breed and have site fidelity to ACY puts them in harm's way. She indicated that offsite mitigation, such as many airports do for wetland impacts, is more suitable for the species and meeting the long terms goals for the species.

In closing, Ms. Brammell stated that as a FAA qualified biologist, she is looking at whether the wildlife attractant of an area is different, higher and/or more risky than the rest of the airport. It was her opinion that, with regard to the GCMA, the answer to all three factors was an absolute "yes". She indicated that this is the reason that the GCMA needs to be addressed now. According Ms. Brammell, the airport has documented the issue and has the concurrence of a FAA qualified wildlife biologist and the FAA national wildlife coordinator. The GCMA is a wildlife hazard attractant that needs to be remediated. Lastly, she said that from her perspective as a wildlife biologist, not just an FAA qualified wildlife biologist, if you're worried about the species and the resource, adding to an existing preservation fund that can actually benefit the species in an area where they are not susceptible to strike and mortality, is a win-win.

There being no further testimony, the hearing concluded at approximately 10:30 a.m.

Written comments on the proposed MOA Amendment were accepted until 5:00 p.m. on March 19, 2019 and are summarized below:

- 1) March 18, 2019 email from Robert R. Blumberg, Margate resident, opposing the proposed MOA amendment, because of concerns regarding the potential impact on the overall survival of the Upland sandpiper and the Grasshopper sparrow of eliminating the GCMA. The Commenter was not aware of any safety issues at ACY since the 2004 MOA went into effect, felt it would be very difficult to duplicate the birds' habitat at another location, and was concerned about potential impacts on other bird species as a result of clear cutting of forested lands to create the new GCMA. The Commenter thought it would be more prudent to leave the existing MOA in place.
- 2) Letter dated March 19, 2019 from Rhyan Grech, Policy Advocate, PPA, urging the Commission not to approve the proposed Amendment and expressing PPA's concern that the proposed MOA

amendment set a bad precedent for the protection of rare species habitat throughout the Pinelands; that the offsetting measures were inappropriate here because SJTA has failed to demonstrate that there were genuine and unique public safety needs at ACY that could not be addressed another way; and that SJTA had failed to demonstrate that removal of the GCMA will impact the species that experience shows are a danger to aircraft at ACY.

- 3) Letter dated March 19, 2019, from David S. Mizrahi, Ph.D., Vice-President, Research and Monitoring, New Jersey Audubon petitioning the Commission not to approve the proposed MOA Amendment, because the increase in bird/aircraft interactions at ACY is not attributable to the bird species associated with GCMA; peer-reviewed literature indicates that the mowing of the GCMA can potentially attract avian species capable of causing greater damage to aircraft than species associated with the GCMA; the proposed MOA is not supported by the data provided given bird strikes involving non-grassland species have increased by the same magnitude since 2004; and allowing modification of the MOA sets a bad precedent regarding the safe guarding of protected species.

In accordance with N.J.A.C. 7:50-4.53(h), SJTA was advised of the written public comments that were submitted concerning the proposed MOA Amendment. SJTA requested copies of these comments and subsequently submitted additional information to the Commission in response to these comments.

### **EXECUTIVE DIRECTOR'S ANALYSIS OF THE COMMENTS**

As is evident from the oral testimony offered at the hearing and the written comments the Commission received, commenters cited a variety of reasons for supporting and opposing the proposed MOA Amendments. A number of points were raised that bear upon the Commission's decision in this matter. These generally relate to whether the SJTA has demonstrated a need for the elimination of the GCMA based on genuine and unique safety concerns; whether removal of the GCMA will address bird/aircraft interactions at ACY given that species of greatest danger to aircraft are purportedly not attracted to the GCMA; sufficiency of the proposed offsets with the requirements of the Pinelands CMP and the precedent set by the proposed MOA Amendment.

#### **A. Elimination of the GCMA Will Not Address the Safety Concerns at ACY Regarding Bird/Aircraft Collisions.**

##### **Comments:**

Three commenters expressed concerns regarding whether there was a safety concern at ACY as a result of the creation of the GCMA. All three commenters urged the Commission to leave the existing 2004 MOA in place and not to amend its terms. Specifically, one commenter noted that he was not aware of any safety issues that had arisen at ACY since the 2004 MOA went into effect. He found it disturbing that SJTA was attempting to change the MOA, which protects vital habitat for the Upland sandpiper and the Grasshopper sparrow. The commenter stated that prior to rendering a decision on the proposed MOA Amendment he hoped legitimate scientific studies and species impact statements would be addressed for the GCMA habitat and environment.

Another commenter stated that the safety concerns identified by SJTA had not been verified by relevant data. According to this commenter, the data needed to be verified by the FAA based on real data relevant to the species inhabiting ACY. The commenter was concerned that absent such data the safety concern was being used as an excuse to permit future development of the area occupied by the GCMA.

The commenter also felt that the SJTA must demonstrate that elimination of the GCMA will result in the removal of those bird species that endanger aircraft at ACY. The commenter felt that the data submitted, in particular the Technical Memorandum dated August 31, 2017, failed to meet this standard, because there had been a reduction in bird strikes between 2011 and 2016; Upland sandpipers and Grasshopper sparrows were not among the top ten species involved in bird/aircraft collisions at ACY; only one strike at ACY resulted in substantial damage and that involved an American kestrel and the 14 minor or uncertain damage incidents at ACY since 1990 involved species other than the species for which the GCMA was created; and of the 15 bird/aircraft strikes over the past 29 years, the memo only identifies the Cooper's hawk as likely attracted to the GCMA.

Another commenter also expressed concerns regarding the data supporting the relationship between increased bird strikes at ACY, i.e. safety concerns, and the creation and maintenance of the GCMA. That commenter felt the relationship had been overstated because, although the number of bird/aircraft interactions at ACY after creation of the GCMA nearly doubled, that increase was not attributable to grassland species that would be attracted to the GCMA. Similarly, this commenter stated that the request to amend the 2004 MOA was not supported by the data and will not address bird strikes involving non-grassland birds, which have increased by the same magnitude at ACY as those involving grassland species since 2004.

**Response:**

The data provide by the SJTA, including the Technical Memorandum dated August 31, 2017, amply document the safety concerns associated with the GCMA. As discussed in the Findings of Fact, ACY as a Part 139 certified airport is regulated by the FAA. 14 CFR §139.337 sets forth the regulations pertaining to Wildlife Hazard Management at certified airports. These provisions require the airport operator to take immediate action to alleviate wildlife hazards whenever they are detected. 14 CFR 139.337(a). Wildlife hazard is defined as the potential for a damaging aircraft collision with wildlife on or near an airport. 14 CFR 139.5. ACY also receives Airport Improvement Program grants from the FAA. As a grant recipient SJTA is obligated to comply with FAA Advisory Circulars and to operate in accordance with certain grant assurances.

As discussed in the August 31, 2019 Technical Memorandum, the GCMA has been found to be a wildlife hazard attractant. Although the species for which the GCMA was created and maintained, the Upland Sandpiper and the Grasshopper sparrow, do not, themselves, create a high risk of damage to aircraft if there is a collision, their habitat does provide a food/prey source for larger species that do pose a risk to aircraft. Technical Memorandum, dated August 31, 2017, pg 23. Moreover, the precise type of habitat found within the GCMA was used by the FAA in its Cert Alert 06-07 as an example of an indirect wildlife hazard attractant. This Cert-Alert noted that the grassland habitat preferred by the Grasshopper sparrow supports a wide variety of insects and small mammals that pose an indirect threat to aviation, because they are very attractive to large birds such as hawks, owls, gulls, and other birds that can pose a threat to aircraft.

As a result, Cert Alert 06-07 states that on-airport habitat and wildlife management practices designed to benefit wildlife that directly or indirectly create safety hazards where none existed before are incompatible with safe airport operations. Moreover, it warns airport operators, to avoid adopting habitat management techniques that jeopardize aviation safety, because it could result in violation of their obligations and subject them to an enforcement action and possible civil penalties under 49 USC §44706, as implemented by 14 CFR §139.77.

Although Cert Alert 06-07 was issued in 2006, approximately three years after execution of the 2004 MOA, it was issued specifically to provide guidance to airports on how to address state-listed species' habitat protections on airports when those species, either directly or indirectly pose a threat to aviation. Notably, Cert Alert 06-07's recommendations include reevaluation of existing agreements with federal, state or local wildlife agencies where the terms of the agreement are or may be contrary to federal obligations concerning hazardous wildlife on or near public-use airports and aviation safety. Recommendation #4. Cert Alert 06-07 also recommends that airports do not deliberately preserve or develop on-airport wildlife habitats such as wetlands, forest, brush, or native grasslands having characteristics that attract hazardous wildlife. Recommendation 1.a.

The USDA wildlife biologist at ACY, through submission of strike reports, has documented the direct and indirect wildlife hazard attractant created by the GCMA at the airport. The Technical Memorandum reviewed the wildlife strike data from the FAA Wildlife Strike Database and Air Force safety data from the Air Force Safety Automated System (AFSAS). Both of these databases include wildlife strike reports, for civilian operations and military operations, respectively, at ACY. Although the Upland sandpiper and the Grasshopper sparrow are not within the top ten birds reported struck at ACY, the data document that there has been an increase in the number of bird/aircraft collisions involving these species.

Although the commenter is correct that the number of bird strikes reported between 2012 and 2016 appears to have decreased, that does not support the conclusion that the GCMA is not having an impact on the number of bird strikes at ACY. The 2004 MOA was fully executed by the parties by February 26, 2004. However, it took three years for the GCMA to be created. Thus, it is not surprising that the impacts of the creation of the GCMA were not apparent until approximately 2007-08. Significantly, once the creation of the GCMA was completed, FAA bird strike reports at ACY more than doubled the number of reports from 1990 to 2008. This is further demonstrated when one considers the average number of bird strikes which occurred at ACY prior to the creation of the GCMA and after, 25 and 54, respectively.

Moreover, the data provided by SJTA supports the use of the GCMA by wildlife. Contrary to the commenter's assertions, whether the GCMA constitutes a wildlife hazard attractant does not hinge on whether the area is being used by certain grassland species, but rather whether the area is being used by any type of wildlife and thus creates the potential for a damaging aircraft collision with wildlife on or near an airport. Many different species of birds have been observed on-site by the USDA wildlife biologist including barn and tree swallows foraging for insects over the GCMA and American kestrel foraging over and perched on vegetation in the GCMA. Additionally, other species such as Mourning dove, Horned lark and Eastern meadow lark would be attracted to the habitat of the GCMA which includes bare patches of ground and broad leafed vegetation which creates a seed source and areas for these species to forage.

In sum, the data submitted by SJTA supports the finding that the GCMA is acting as a wildlife hazard attractant and, as such, must be alleviated. This finding is also supported by the FAA, an FAA Qualified Wildlife Biologist and the USDA wildlife biologist at ACY; all of whom have stated that the GCMA should be eliminated in order to reduce the potential for damaging bird/aircraft collisions.

**B. Mowing the GCMA Could Potentially Attract Avian Species With a Higher Hazard Index Rating and Result in Greater Damage to Civilian and Military Aircraft at ACY.**

**Comments:**

One commenter expressed concerns that mowing the GCMA could potentially result in greater numbers of bird species with higher Hazard Index Ratings and the potential to cause more significant damage to aircraft during bird strikes than the existing grassland bird species referred to in the Technical Memorandum. According to the commenter, peer-reviewed literature supports that geese, gulls, Killdeer, Mourning doves, and Horned lark, which have relatively high Hazard Index Ratings and occur at ACY, are attracted to areas of low vegetation height or bare ground.

The commenter cited a 2013 report from Schmidt et al. that found bird species with “moderate” to “extremely high” Hazard Index Ratings account for only 6% and 2% of all birds observed in airfield grasslands and native warm season grass areas, similar to the GCMA. The commenter also noted that, although small mammal densities were three times higher in native warm season grasses than airport habitats, raptor abundance did not differ between types. Lastly, the commenter said that several studies suggest that, if properly managed, airports can be important to maintaining stable breeding populations of grassland birds, that military airports have been specifically identified as key components in the conservation of rare and threatened grassland birds and that Department of Defense policy included provisions for protection and conservation of state listed species, so long as such actions do not interfere with the military mission.

**Response:**

The GCMA provides habitat and cover for a variety of species that present a strike risk to aviation either directly or indirectly. Additionally, the GCMA, which is near the aircraft movement area, provides shelter and food for potential prey species that can attract larger predators such as coyote and raptors. FAA Cert Alert 06-07 concurs and provides the example of Grasshopper sparrow habitat as an indirect wildlife hazard attractant.

Moreover, the FAA recommends airports to maintain a thick monoculture of grass airfield turf at heights between 6 to 10 inches. This is specifically cited in the USDA/FAA “Wildlife Hazard Management at Airports – A Manual for Airport Personnel” (2005) which states:

“Vegetation management on many USA airports consists of mowing the vegetation to some set height. The Federal Aviation Administration has not specified the height that vegetation is to be maintained away from the movement area. One method often suggested for reducing bird numbers on airports is to maintain vegetation at 6-10 inches, as opposed to standard mowing practices that maintain vegetation at 2-4 inches (Transport Canada 1994, US Department of Agriculture 1998, Civil Aviation Authority 2002).”

Although it is true that Canada geese are attracted to grass areas specifically to eat the grass. SJTA currently manages geese on and near the airfield. These management techniques include harassment with pyrotechnics and removal from the site.

Lastly, although the references to literature and Department of Defense policy purportedly supporting the use of airports as habitat for grassland birds, such use must not only be consistent with FAA regulations and guidance, but also must not interfere with the military mission. As noted above, retention of the GCMA is inconsistent with 14 CFR §139.337, FAA Cert 150/5200-33B and Cert Alert 06-7. Cert Alert 06-07 appears to directly refute the studies identified by the commenter given it finds that grassland habitats, such as the GCMA, do constitute wildlife hazard attractants.

Moreover, the New Jersey Air National Guard Commander has provided comments indicating that the practices established in the MOA pertaining to the GCMA do not meet United States Air Force flight safety standards and that these practices create an extremely concerning hazard with respect to the safe operation of F-16 aircraft. Continuation of the GCMA, therefore, has been documented to interfere with the mission the NJ air National Guard Unit at ACY.

C. **Allowing Modification of the 2004 MOA Sets a Bad Precedent Regarding the Protection of Threatened or Endangered Species and Their Habitats and Could Provide a Means Going Forward For Entities to Circumvent the Threatened and Endangered Wildlife Standards of the Pinelands CMP Simply by Making a Monetary Payment.**

**Comments:**

Two commenters commented that amending the 2004 MOA set a bad precedent. One commenter stated that the offsetting measures set forth in the proposed MOA Amendment would result in the loss of critical threatened or endangered species habitat throughout the Pinelands, including on public lands. Although the commenter was willing to accept that this approach might be justifiable for genuine and unique safety needs that cannot be met any other way, the commenter stated that the proposed MOA Amendment did not meet this threshold. According to the commenter, making cash payments does not satisfy the requirements of N.J.A.C. 7:50-4.52(c)2, because the payment does not mitigate for the loss of habitat and the ecosystem within the GCMA. The commenter also felt that SJTA's initial proposal to make one payment of \$500,000 did not yield an equivalent level of protection for the resources of the Pinelands. The other commenter indicated that allowing the proposed modification to the 2004 MOA set a bad precedent regarding the safeguarding of state protected species.

**Response:**

The offsetting measures that accompany this proposed MOA Amendment satisfy the requirements of the Pineland CMP at N.J.A.C. 7:50-4.52(c)2. As discussed above, the offsetting measures will result in the creation of at least 25 hectares (62 acres) of effective habitat, contiguous and located greater than 50 meters (164 feet) from any structure or forested edge, for the Upland sandpiper and the Grasshopper sparrow. An additional \$9,000,000 worth of ecologically sensitive lands, including grassland bird habitat if available, will be preserved within the Pinelands Area. This will occur, because the PCF provides 33% grant funding for projects involving acquisition and permanent land preservation in the Pinelands. The proposed MOA Amendment will also result in the enhancement of 12 acres of Frosted elfin butterfly habitat and the inclusion of this area and the location of an existing colony on ACY's Layout Plan within the "Forest Preservation Area – to be Held in Reserve. No Development Shall Occur."

The situation regarding the GCMA at ACY involves public safety concerns involving bird/aircraft collisions at ACY. As discussed above, there has been an increase in bird/aircraft collisions at ACY since the GCMA was created. The data provided by SJTA supports the safety concerns articulated by the FAA, the Commander of the 177<sup>th</sup> Fighter Wing of the Air National Guard, the USDA Wildlife Biologist at ACY and the Qualified Wildlife Biologist retained by SJTA. While none of the flights to or from ACY have experienced a bird/aircraft collision resulting in a catastrophic failure, as long as the GCMA remains on ACY, the risk of such a cataclysmic failure remains. We do not believe that there needs to be a demonstration of a near miss in order to justify the Commission's authorization of this proposed MOA Amendment.

D. **It Will Be Very Difficult to Duplicate Grassland Bird Habitat Offsite and Doing so will Result in the Possible Destruction of Habitat for other Bird Species.**

**Comments:**

One commenter expressed concerns regarding the ability to duplicate the current GCMA habitat on another location off the Airport property. The commenter stated that allowing the grassland vegetation at the airport to grow ensured the continuation of the Upland sandpiper and the Grasshopper sparrow. This commenter was also concerned about the potential impact to other bird species as a result of clear cutting to create the new GCMA habitat offsite.

**Response:**

The GCMA did not initially exist on the airport, but rather was created as a result of the 2004 MOA. Similarly, provided that SJTA obtains a parcel of cleared land of sufficient size that also provides sufficient effective habitat, of contiguous land at least 25 hectares (62 acres) in size, located greater than 50 meters (164 feet) from any structure or forested edge, the SJTA will be able to recreate the habitat offsite by following the vegetative requirements set forth in Attachment 3 of the 2004 MOA. However, in order to ensure that creation of the new GCMA will not result in harm to other threatened or endangered species, the proposed MOA Amendment requires the SJTA to submit its plans for such creation to the Commission and to demonstrate the project's compliance with the requirements of the Pinelands CMP, including the requirements pertaining to threatened or endangered wildlife.

### **CONCLUSION AND RECOMMENDATION**

The proposed amendment to the February 26, 2004 MOA between the SJTA and the Commission would permit mowing of the GCMA located in the Northwest quadrant of the airport to a height of 5 to 10 inches after April 15<sup>th</sup> and year round. Specifically, the proposed MOA Amendment would eliminate the seasonal restriction contained within Attachment A of the 2004 MOA as it applies to mowing of the GCMA. As discussed above, in accordance with the terms of the proposed MOA, SJTA is obligated to implement the following offsetting measures:

1. Make an initial payment of \$500,000 to the Commission to be added to the Pinelands Conservation Fund ("PCF") for land acquisition within the Pinelands Area in accordance with the priorities established by the Commission for that fund and, if available, contains habitat suitable for threatened or endangered grassland birds;
2. Make five additional annual payments of \$500,000 each which would also be added to the PCF and dedicated for land acquisition in the same manner as the initial \$500,000 payment;
3. Fund the acquisition of land within the Pinelands for and create and maintain a new Grassland Conservation and Management Area, of which at least 62 acres is already cleared and the cleared acreage is located at least 50 meters from any structure or forest edge;
4. Enhance an approximately twelve (12) acre site located adjacent to the Forest Preservation Area in the northeast quadrant of the airport, for the frosted elfin butterfly through the planting of wild indigo;
5. Execute and filing of a Deed of Conservation Restriction for the new Grassland Conservation and Management Area to protect it as grassland bird habitat in perpetuity; and



6. Amend the Layout Plan for ACY to extend the area currently designated as “Forest Preservation Area – to be Held in Reserve. No Development Shall Occur” to include not only the twelve (12) acres that will be enhanced for the Frosted elfin butterfly, but also the area approximately 2,000 feet away where are well-document colony of this species is currently located.

As a result, the proposed MOA Amendment is accompanied by measures that, at a minimum, afford an equivalent level of protection of the resources of the Pinelands as required by N.J.A.C. 7:50-4.52(c)2. Moreover, the proposed MOA Amendment contains timelines and other mechanisms to assure that these offsetting measures will be implemented within six years of the SJTA’s execution of the amendment. The proposed MOA Amendment also requires the Commission’s review and approval of development of the new GCMA and enhancement of the twelve acres Frosted Elfin butterfly habitat. In this way, the Executive Director can ensure that these developments are consistent with the requirements of the Pinelands CMP prior to their implementation. Given the proposed MOA is consistent with the requirements of the Pinelands CMP, the Executive Director recommends that the Commission approve the attached First Amendment to the February 26, 2004 MOA.