



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-12- 32

TITLE: Approving With Conditions Applications for **Public Development** (Application Numbers 1991-1269.004, 1996-1125.002 & 2004-0082.001)

Commissioner Haydel moves and Commissioner Jackson seconds the motion that:

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

- 1991-1269.004 LAKEHURST BOROUGH WATER DEPARTMENT**, Borough of Lakehurst, Pinelands Town, conversion of an existing potable water test well into a backup municipal potable water production well (Date of Report: September 24, 2012);
- 1996-1125.002 OCEAN COUNTY ENGINEERING DEPARTMENT**, Jackson Township, Forest Area, replacement of an existing bridge over the Toms River on Bowman Road (Date of Report: September 24, 2012); and
- 2004-0082.001 OCEAN COUNTY ENGINEERING DEPARTMENT**, Jackson Township, Regional Growth Area, improvements to the existing East Veterans Highway (CR 528) and Whitesville Road (CR 527) intersection (Date of Report: September 24, 2012).

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

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

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

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

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

- 1991-1269.004 LAKEHURST BOROUGH WATER DEPARTMENT**, Borough of Lakehurst, Pinelands Town, conversion of an existing potable water test well into a backup municipal potable water production well (Date of Report: September 24, 2012);
- 1996-1125.002 OCEAN COUNTY ENGINEERING DEPARTMENT**, Jackson Township, Forest Area, replacement of an existing bridge over the Toms River on Bowman Road (Date of Report: September 24, 2012); and

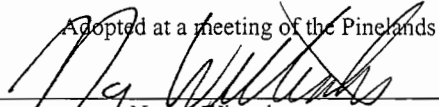
OCEAN COUNTY ENGINEERING DEPARTMENT, Jackson Township, Regional Growth Area, improvements to the existing East Veterans Highway (CR 528) and Whitesville Road (CR 527) intersection (Date of Report: September 24, 2012).

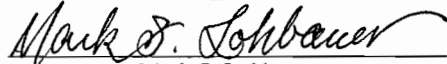
Record of Commission Votes

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

Adopted at a meeting of the Pinelands Commission

Date: Oct. 12, 2012


 Nancy Wittenberg
 Executive Director


 Mark S. Lohbauer
 Chairman



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



Chris Christie
 Governor

Kim Guadagno
 Lt. Governor

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

Mark S. Lohbauer
 Chairman

Nancy Wittenberg
 Executive Director

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

September 24, 2012

Bryan Levance
 Lakehurst Borough Water Department
 5 Union Avenue
 Lakehurst, NJ 08733

Re: Application #: 1991-1269.004
 Block 47, Lot 3
 Borough of Lakehurst

Dear Mr. Levance:

The Commission staff has completed its review of the above referenced application. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its October 12, 2012 meeting.

FINDINGS OF FACT

This application is for the conversion of an existing potable water test well (Well No. 16) into a backup municipal potable water production well on the above referenced 5.2 acre lot. The lot is located in the Pinelands Town of Lakehurst.

There is an existing potable water treatment facility, a potable water production well (Well No. 15) and a water storage tank located on the lot. The applicant has indicated that the proposed backup potable water production well will not result in an increase in the Borough's water allocation. Proposed potable water Well No. 16 will only be utilized when existing potable water Well No. 15 is out of service. Test Well No. 16, previously approved by the Commission, was installed to a depth of 1,189 feet in the Upper Potomac Raritan Magothy (PRM) aquifer. Existing potable water Well No. 15 is also located in the PRM aquifer.

There are no wetlands located within 300 feet of Well No. 16.



PUBLIC COMMENT

This applicant provided public notice of the application. Newspaper public notice was completed for the application on August 20, 2012. The application was designated as complete on the Commission's website on August 30, 2012. The Commission's public comment period closed on September 14, 2012. The Pinelands Commission has not received any public comments regarding the application.

CONCLUSION

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

1. Except as modified by the below conditions, the proposed development shall adhere to the plans consisting of four sheets, prepared by Remington, Vernick & Vena Engineers, all sheets dated August 13, 2007.
2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.
3. Any proposed revegetation shall adhere to the "Vegetation" standards of the CMP. Where appropriate, the applicant is encouraged to utilize the following Pinelands native grasses for revegetation: Switch grass, little bluestem and Broom-sedge.
4. Prior to any development, the applicant shall obtain any other necessary permits and approvals.

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

APPEAL

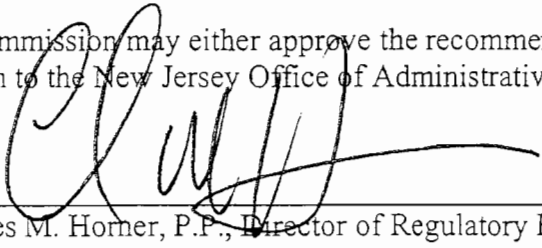
The CMP (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal this recommendation in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission within eighteen days of the date of this Report and must include the following information:

1. the name and address of the person requesting the appeal;
2. the application number;
3. a brief statement of the basis for the appeal; and
4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and

environmental commission with jurisdiction over the property which is subject of this decision.

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

Recommended for Approval by: _____



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

CMH/ED

- c: Secretary, Borough of Lakehurst Planning Board
- Ocean County Planning Board
- Felipe Contreras



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Chris Christie
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 Lt. Governor

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

Mark S. Lohbauer
 Chairman
 Nancy Wittenberg
 Executive Director

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

September 24, 2012

Frank S. Scarantino, P.E.
 Ocean County Engineering Department
 129 Hooper Ave.
 PO Box 2191
 Toms River, NJ 08754

Re: Application #: 1996-1125.002
 Bowman Road
 Block 16001, Lot 5
 Block 19301, Lot 3
 Jackson Township

Dear Mr. Scarantino:

The Commission staff has completed its review of the above referenced application. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its October 12, 2012 meeting.

FINDINGS OF FACT

This application is for proposed replacement of an existing bridge over the Toms River on Bowman Road. The proposed development is located in a Pinelands Forest Area.

On December 30, 2011, the Commission's Executive Director, in consultation with the Chairman of the Pinelands Commission, issued a letter authorizing the replacement of the existing Bowman's Road Bridge over the Toms River based upon the emergency provision of the Pinelands Comprehensive Management Plan (CMP, N.J.A.C. 7:50-4.5). The proposed bridge replacement was necessitated because the existing bridge failed and collapsed as a result of Hurricane Irene. The applicant indicated that Bowman Road is a main travel route for school buses and truck traffic. Due to the road closure, traffic had to be diverted through residential areas, creating traffic safety issues.

The bridge replacement proposed disturbance in wetlands. The disturbance required a New Jersey Department of Environmental Protection (NJDEP) Freshwater Wetlands General Permit 10B. In the Pinelands Area, the NJDEP has delegated to the Pinelands Commission the authority to issue freshwater



wetland General Permits. Accordingly, the Commission's December 30, 2011 letter also granted the County emergency authorization, in accordance with the NJDEP Freshwater Wetlands Protection Regulations (N.J.A.C. 7:7A-8.1), to undertake proposed wetlands disturbance associated with the proposed bridge replacement.

The Commission's December 30, 2011 emergency authorization letter required that an after the fact application be completed and approved by the Commission for the proposed bridge replacement. The emergency authorization also required that an after the fact application be completed with the Commission for a NJDEP Freshwater Wetlands General Permit 10B.

The existing bridge was 31 feet wide and 38 linear feet long with one travel lane in each direction. The proposed bridge is 39 feet wide and 42 linear feet long with one travel lane in each direction. The applicant has indicated that the existing bridge was not wide enough to safely accommodate the existing high volume of traffic and that the replacement bridge is designed to provide for safe travel lane conditions.

Bowman Road is approximately 27 feet in width in the vicinity of the proposed bridge replacement. As part of the proposed bridge replacement, Bowman Road will be widened to a width of 36 feet for 340 linear feet west of the bridge and 340 linear feet east of the bridge. Bowman Road will remain one travel lane in each direction.

The replacement bridge will be located primarily over existing impervious surfaces, maintained grassed shoulders and sparsely wooded areas. The Landscaping and Revegetation guidelines of the CMP recommend the use of grasses that are tolerant of droughty, nutrient poor conditions. The applicant proposes to utilize grasses that meet this recommendation.

The bridge replacement proposes disturbance in wetlands. The proposed bridge replacement will disturb a total of .04 acres of sparsely wooded wetlands and open water. The applicant has demonstrated that, in accordance with the following wetlands protection requirements of the CMP (N.J.A.C. 7:50-6.13), the proposed development is a permitted use in wetlands:

1. There is no feasible alternative to the bridge replacement that will result in a less significant adverse impact on wetlands;
2. The proposed bridge replacement will not result in substantial impairment of the resources of the Pinelands;
3. The need for the bridge replacement will provide for safe travel lane conditions which override the importance of protecting the wetlands; and
4. With the conditions recommended below, all practical measures are being taken to mitigate impacts on wetlands.

The applicant has represented that the CMP stormwater management standards cannot be met at the site of the proposed development because there is inadequate room adjacent to the bridge to provide for stormwater management facilities due to the presence of wetlands and state owned lands. The CMP (N.J.A.C. 7:50-6.84(a)6.vi(4)) provides that if an applicant demonstrates that for a specific project the stormwater management standards cannot be met or those standards would be more effectively achieved through alternative measures, the Commission may grant an exception to the CMP stormwater

management standards. To grant such an exception, the Commission must find that alternative stormwater measures are proposed elsewhere in the Pinelands Area and within the same drainage area and that sufficient stormwater measures are proposed to warrant granting the exception.

The approximately 4,790 square foot increase in impervious surfaces generated by the proposed bridge replacement requires that approximately 2,060 cubic feet of stormwater be retained and infiltrated to meet the CMP required standard to retain and infiltrate a 10 year storm of 24 hour duration. The applicant proposes to construct an oversized stormwater management basin at the intersection of East Veteran's Highway and Whitesville Road. The proposed oversized stormwater management basin is part of a separate Commission application for proposed improvements at the East Veterans Highway/Whitesville Road intersection in Jackson Township (Application No. 2004-0082.001). Application No. 2004-0082.001 is recommended for approval at the Commission's October 12, 2012 meeting.

Although the proposed oversized stormwater management basin is located outside of the Pinelands Area, it is immediately adjacent to the Pinelands Area boundary along East Veterans Highway. The proposed oversized stormwater basin is located in the same drainage area as Bowman's Bridge over the Toms River. The proposed oversized stormwater management basin is located approximately 1.5 miles from Bowman's Bridge.

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

A cultural resource survey was prepared for this application. No cultural resources eligible for Pinelands designation were found within the project area.

PUBLIC COMMENT

This applicant provided the requisite public notice. Newspaper public notice was completed for the application on September 4, 2011. The application was designated as complete on the Commission's website on May 29, 2012. The Commission's public comment period closed on September 14, 2012. The Pinelands Commission has not received any public comments regarding the application.

CONCLUSION

The proposed bridge replacement is a permitted use in a Pinelands Forest Area (N.J.A.C. 7:50-5.2(a)). If the following conditions are imposed, the proposed development will be consistent with the management standards contained in Subchapters 5 & 6 of the CMP.

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of 32 sheets, prepared by T&M Associates and dated as follows:

Sheets 1, 2, 4, 6, 8-13, 15, 17-25 & 27-32 – January 2011
 Sheets 3, 5, 7, 14, 16, 26 – January 2011, last revised December 22, 2011
2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.

3. Any proposed revegetation shall adhere to the "Vegetation" standards of the CMP. Where appropriate, the applicant is encouraged to utilize the following Pinelands native grasses for revegetation: Switch grass, Little blue stem and Broom sedge.
4. Silt fencing, hay bales or other appropriate measures shall be installed prior to construction to preclude sediment from entering freshwater wetlands and shall be maintained in place until all development has been completed and the area has been stabilized.
5. The applicant shall complete the required application for a Freshwater General Permit 10B by November 10, 2012.
6. The applicant shall obtain any other necessary permits and approvals.
7. The stormwater management facilities proposed in App. No. 2004-0082.001 (East Veteran's Highway/Whitesville Road intersection improvements) shall be constructed by March 26, 2013. If the stormwater management facilities proposed in App. No. 2004-0082.001 are not constructed by March 26, 2013, Ocean County shall secure an amended Commission approval for App. No. 1996-1125.002 by April 26, 2013.

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

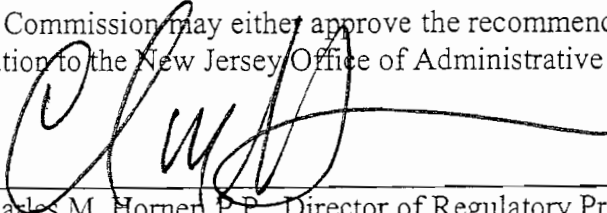
APPEAL

The CMP (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal this recommendation in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission within eighteen days of the date of this Report and must include the following information:

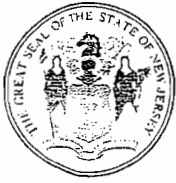
1. the name and address of the person requesting the appeal;
2. the application number;
3. a brief statement of the basis for the appeal; and
4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal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

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

Recommended for Approval by: _____


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

- c: Secretary, Jackson Township Planning Board
- Jackson Township Environmental Commission
- Ocean County Planning Board



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 Lt. Governor

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

Mark S. Lohbauer
 Chairman
 Nancy Wittenberg
 Executive Director

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

September 24, 2012

Frank Scarantino, Ocean County Engineer
 Ocean County Engineering Department
 P.O. Box 2191
 Toms River, NJ 08754

Re: Application #: 2004-0082.001
 East Veterans Highway (County Route 528) and Whitesville Road (County Route 527)
 Block 19602, Lot 5
 Block 20501, Lot 28.14
 Jackson Township

Dear Mr. Scarantino:

The Commission staff has completed its review of the above referenced application. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its October 12, 2012 meeting.

FINDINGS OF FACT

This application is for improvements to the existing East Veterans Highway (County Route 528) and Whitesville Road (County Route 527) intersection in Jackson Township. The proposed development is located in a Pinelands Regional Growth Area.

The existing roads form a three way "T" intersection. The proposed intersection improvements will provide for dedicated left turn lanes for both East Veterans Highway and Whitesville Road. To accommodate the proposed turn lanes, the application proposes to widen Whitesville Road to a maximum width of 50 feet for 975 linear feet south of East Veterans Highway. East Veterans Highway will be widened to a maximum width of 50 feet for 1,950 linear feet. No new through travel lanes are proposed. The proposed intersection improvements are intended to provide for safer travel conditions at the intersection.

The proposed development will be located primarily within existing paved, gravel and maintained grass areas and partially in sparsely wooded areas. The proposed clearing and soil disturbance appears to be limited to that which is necessary to accommodate the proposed intersection improvements. The



Landscaping and Revegetation guidelines of the Pinelands Comprehensive Management Plan (CMP) recommend the use of grasses that are tolerant of droughty, nutrient poor conditions. Except for the areas of existing maintained lawns, the applicant proposes to utilize grasses that meet this recommendation.

Development is proposed in wetlands and the required buffer to wetlands. The proposed development will result in the disturbance of 0.07 acres of wetlands. The applicant has demonstrated that, in accordance with the following wetland protection requirements of the CMP (N.J.A.C. 7:50-6.13), the proposed intersection improvements are a permitted use in wetlands and required buffers to wetlands:

1. There is no feasible alternative to the proposed intersection improvements that will result in a less significant adverse impact on wetlands;
2. The need for the proposed intersection improvements cannot be met by existing facilities or a modification thereof;
3. The proposed intersection improvements will not result in substantial impairment of the resources of the Pinelands;
4. The need for the proposed intersection improvements will provide for safe travel lane conditions which override the importance of protecting the wetlands; and
5. With the conditions recommended below, all practical measures are being taken to mitigate impacts on wetlands.

The applicant has demonstrated that the proposed development is consistent with the stormwater management standards contained in the CMP. This application proposes to both construct a new stormwater management basin and to utilize an existing stormwater management basin. The proposed stormwater basin will be located on Block 19602, Lot 5, just outside of the Pinelands Area boundary. However, the proposed stormwater basin is immediately contiguous to the Pinelands Area boundary designated in this area of Jackson Township by the East Veterans Highway right-of-way. The proposed stormwater basin is also located immediately adjacent to the proposed intersection improvements. The existing stormwater basin is located in the Pinelands Area.

The applicant proposes to utilize the stormwater management facilities proposed in this application to enable two other proposed Pinelands applications to meet the CMP stormwater management standards. The CMP (N.J.A.C. 7:50-6.84(a)6.vi(4)) provides that if an applicant demonstrates that for a specific project the stormwater management standards cannot be met or those standards would be more effectively achieved through alternative measures, the Commission may grant an exception to the CMP stormwater management standards. To grant such an exception, the Commission must find that alternative stormwater measures are proposed elsewhere in the Pinelands Area and within the same drainage area and that sufficient stormwater measures are proposed to warrant granting the exception. The stormwater management facilities proposed for this application will also manage stormwater for the following two proposed projects:

1. Widening of 1,300 linear feet of East Veterans Highway (App. No. 2011-0049.001). App. No. 2011-0049.001 was approved by the Commission on April 13, 2012.

2. Replacement of an existing bridge over the Toms River on Bowman Road (App. No. 1996-1125.002). App. No. 1996-1125.002 is recommended for approval at the October 12, 2012 Commission meeting.

As part of widening of 1,300 linear feet of East Veterans Highway (App. No. 2011-0049.001), the County demonstrated that, based upon traffic safety, the required stormwater management could not be accommodated at the project site. As part of the replacement of the Bowman's Road Bridge (App. No. 1996-1125.002), the County has demonstrated, based upon insufficient land area and the presence of wetlands, that the required stormwater management could not be accommodated at the project site. To demonstrate consistency with the stormwater management standards of the CMP, the County proposes to offset the stormwater generated by the proposed widening of 1,300 linear feet of East Veterans Highway and the Bowman's Road Bridge replacement by managing stormwater beyond that which would otherwise be required for just the East Veterans Highway/Whitesville Road intersection improvement application.

The proposed oversized basin for the East Veterans Highway/Whitesville Road intersection improvement application has a capacity of 24,300 cubic feet. In total, replacement of Bowman's Road Bridge (App. No. 1996-1125.001), widening of East Veterans Highway (App. No. 2011-0049.001) and the East Veterans Highway/Whitesville Road intersection improvements (App. No. 2004-0082.001) require 10,777 cubic feet of retention to meet the CMP stormwater management standard. Therefore, the proposed alternative stormwater measures are sufficient to warrant granting the stormwater exception for App. No. 2011-0049.001 and App. No. 1996-1125.002 in accordance with the CMP (N.J.A.C. 7:50-6.84(a)6.vi(4)).

Commission approval for the widening of East Veterans Highway (App. No. 2011-0049.001) was conditioned upon the applicant obtaining Commission approval of the East Veterans Highway/Whitesville intersection improvements (App. No. 2004-0082.001) by July 26, 2012 and construction of the stormwater facilities proposed in App. No. 2004-0082.001 by March 26, 2013. The applicant did not secure Commission approval for the East Veterans Highway/Whitesville Road intersection improvement (App. No. 2004-0082.001) application by July 26, 2012. However, by letter dated September 24, 2012, the applicant has confirmed that construction of the stormwater facilities proposed in the East Veterans Highway/Whitesville Road intersection improvement (App. No. 2004-0082.001) application will be completed by March 26, 2013.

If the stormwater facilities proposed in East Veterans Highway/Whitesville Road intersection improvement (App. No. 2004-0082.001) are not constructed by March 26, 2013, Ocean County shall secure amended Commission approval for the widening of East Veterans Highway (App. No. 2011-0049.001) and the replacement of Bowman's Road Bridge (App. No. 1996-1125.001) by April 26, 2013. The amended approval for the two concerned applications must demonstrate consistency with the stormwater management standards of the CMP (N.J.A.C. 7:50-6.84 (a) 6).

Based upon the location of existing development, the proposed limits of disturbance and review of information available to the Commission, it was determined that a survey for the presence of threatened or endangered species of plants and wildlife was not required.

A cultural resource survey was prepared for this application. No cultural resources eligible for Pinelands designation were found within the project area.

PUBLIC COMMENT

This applicant provided the requisite newspaper public notice. Newspaper public notice was completed for the application on March 14, 2012. The application was designated as complete on the Commission's website on September 4, 2012. The Commission's public comment period closed on September 14, 2012. The Pinelands Commission has not received any public comments regarding the application.

CONCLUSION

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

1. Except as modified by the below conditions, the proposed development shall adhere to the following plans, prepared by Professional Design Services:

Plan Entitled: Reconstruction of County Route 527

Sheets 1, 2, 6, 6, 7 & 10-20 – June 27, 2011, last revised September 19, 2012
Sheets 3, 4, 8 & 9 - June 27, 2011, last revised September 21, 2012

Plan Entitled: Basin Planting Plan

Sheet 1 of 1 – March 22, 2012, last revised September 19, 2012

Plan Entitled: Soil Erosion & Sediment Control Plan

Sheets 1-6 – March 20, 2012, last revised September 19, 2012

2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.
3. Any proposed revegetation shall adhere to the "Vegetation" standards of the CMP. Where appropriate, the applicant is encouraged to utilize the following Pinelands native grasses for revegetation: Switch grass, Little bluestem and Broom-sedge.
4. Silt fencing, hay bales or other appropriate measures shall be installed prior to construction to preclude sediment from entering freshwater wetlands and shall be maintained in place until all development has been completed and the area has been stabilized.
5. Prior to any development, the applicant shall obtain any other necessary permits and approvals. In addition, prior to the construction of any portion of the proposed development which will result in a disturbance of any wetland area, the applicant shall obtain a Freshwater Wetlands Permit pursuant to the New Jersey Freshwater Wetlands Protection Act.

6. The stormwater management facilities proposed in this application shall be constructed by March 26, 2013. If the stormwater management facilities proposed in this application are not constructed by March 26, 2013, Ocean County shall secure an amended Commission approval for App. Nos. 1996-1125.002 and 2011-0049.001 by April 26, 2013.

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

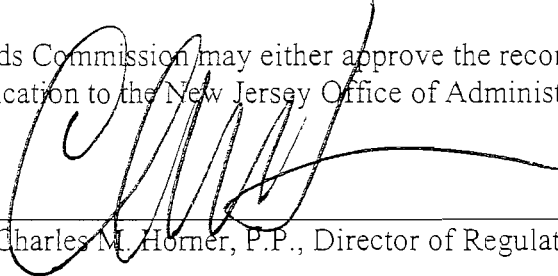
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1. the name and address of the person requesting the appeal;
2. the application number;
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4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by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

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

Recommended for Approval by: _____


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

- c: Secretary, Jackson Township Planning Board
Jackson Township Environmental Commission
Ocean County Planning Board
Ian Borden, PDS
Rhonda Ward



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-12- 33

TITLE: Issuing an Order to Conditionally Certify the April 2012 Master Plan Reexamination Report and Ordinance 1722-2012, Amending Chapter 203 (Land Use and Development) of the Code of Hamilton Township

Commissioner McGlinchey moves and Commissioner Pickett
seconds the motion that:

WHEREAS, on March 3, 1985, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Hamilton Township; and

WHEREAS, Resolution #PC4-85-10 of the Pinelands Commission specified that any amendment to Hamilton Township's certified Master Plan and Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, Resolution #PC4-85-10 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

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

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

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

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

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

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

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

WHEREAS, by email dated June 3, 2011, Hamilton Township notified the Commission of the need for an extension of the March 1, 2011 deadline for adoption and submission of the necessary ordinance amendments; and

WHEREAS, by letter dated June 15, 2011, the Executive Director notified the Township that an extension was granted until December 30, 2011; and

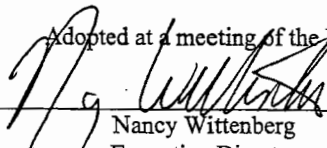
1. An Order is hereby issued to certify with conditions that the April 2012 Master Plan Reexamination Report and Ordinance 1722-2012, amending Chapter 203 (Land Use and Development) of the Code of Hamilton Township, are in conformance with the Pinelands Comprehensive Management Plan. To obtain full certification of the Master Plan Reexamination Report and Ordinance 1722-2012 by the Pinelands Commission, Hamilton Township must amend its Master Plan and Chapter 203 (Land Use and Development) of its Code in accordance with Attachment A of this Order. The Township need not adopt the conditions in Attachment A verbatim; revisions comparable thereto or consistent therewith in intent may also be acceptable.
2. Hamilton Township shall have until February 9, 2013 to adopt and submit the revisions to its Master Plan and Chapter 203 (Land Use and Development) of its Code to the Pinelands Commission for approval pursuant to N.J.A.C. 7:50-3.45 and Attachment A hereto.
3. If the Township fails to submit the revisions to its Master Plan and Chapter 203 (Land Use and Development) pursuant to N.J.A.C. 7:50-3.45 and Attachment A hereto by February 9, 2013, or if such a submission is not fully certified by the Pinelands Commission, the April 2012 Master Plan Reexamination Report and Ordinance 1722-2012 shall be disapproved.
4. In the event that the April 2012 Master Plan Reexamination Report and Ordinance 1722-2012 are disapproved, the certified status of the Master Plan and Land Use Ordinances of Hamilton Township shall be suspended until such time as the Township submits amendments which adequately address the April 2009 amendments to the Pinelands Comprehensive Management Plan. During such period of suspension, the Commission shall review all development applications in accordance with the procedures and standards which govern development in areas without certified local plans and ordinances (N.J.A.C. 7:50-4, Part II).
5. Any additional amendments to Hamilton Township's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

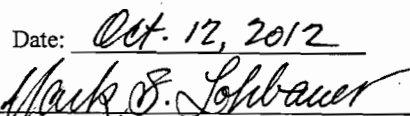
Record of Commission Votes

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

Adopted at a meeting of the Pinelands Commission

Date: Oct. 12, 2012


 Nancy Wittenberg
 Executive Director


 Mark S. Lohbauer
 Chairman

**ATTACHMENT A TO EXECUTIVE DIRECTOR'S SEPTEMBER 28, 2012
REPORT ON HAMILTON TOWNSHIP'S APRIL 2012 MASTER PLAN
REEXAMINATION REPORT AND ORDINANCE 1722-2012**

Adoption of the following amendments, or comparable revisions, to Chapter 203 (Land Use and Development) of the Code of Hamilton Township will make Ordinance 1722-2012 consistent with the Pinelands Comprehensive Management Plan and complete the Township's response to the August 2009 and December 2009 amendments to the Pinelands Comprehensive Management Plan:

1. Section 203-183, Wetlands development, is hereby amended by replacing Section 203-183A(5) with the following:
 - (5) Fish and wildlife activities and wetlands management in accordance with N.J.A.C. 7:50-6.10.

2. Section 203-196.1B(3)(a) is hereby amended to read as follows:
 - (a) A density bonus may be applied to the cluster development and shall be calculated on the basis of the size of the parcel of land and the density permitted in Subsection A(1) above. All area must be contiguous and no outparcels shall be permitted. The density bonus shall be applied in accordance with the following table:

Parcel Size	RD-2.5 District	RD-4 District	RD-5 District	FA-10 and RD-20 Districts	FA-25 and FA-70 Districts
<50 acres	0	0	0	0	0
50-99.99 acres	0	10%	15%	20%	25%
100-149.99 acres	0	15%	20%	25%	30%
≥150 acres	0	20%	25%	30%	40%



State of New Jersey
THE PINELANDS COMMISSION
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Chris Christie
Governor

Kim Guadagno
Lt. Governor

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

Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

**REPORT ON THE APRIL 2012 MASTER PLAN REEXAMINATION REPORT AND
ORDINANCE 1722-2012, AMENDING CHAPTER 203 (LAND USE AND
DEVELOPMENT) OF THE CODE OF HAMILTON TOWNSHIP**

September 28, 2012

Hamilton Township
6101 Thirteenth Street
Mays Landing, NJ 08330

FINDINGS OF FACT

I. Background

The Township of Hamilton is located in the south-central Pinelands in Atlantic County. Pinelands municipalities adjacent to Hamilton Township include the Townships of Mullica, Galloway, Egg Harbor, Weymouth and Buena Vista, Estell Manor City, Folsom Borough and the Town of Hammonton in Atlantic County.

On March 8, 1985, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Hamilton Township.

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

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

By email dated June 3, 2011, Hamilton Township notified the Commission of the need for an extension of the March 1, 2011 deadline for adoption and submission of the necessary ordinance amendments. By letter dated June 15, 2011, the Executive Director notified the Township that an extension was granted until December 30, 2011.

By email dated May 17, 2012, Hamilton Township notified the Commission of the need for a further extension. By letter dated May 23, 2012, the Executive Director notified the Township that an extension was granted until June 22, 2012.

On May 17, 2012, the Hamilton Township Planning Board adopted by resolution a Master Plan Reexamination Report, dated April 2012. This Master Plan Report discusses the need for adoption of an ordinance in response to the three sets of Comprehensive Management Plan amendments and incorporates a copy of the recommended ordinance therein. The Pinelands Commission received an adopted copy of the 2012 Master Plan Report, accompanied by a copy of the Planning Board's resolution of adoption, on May 21, 2012.

On June 18, 2012, Hamilton Township adopted Ordinance 1722-2012, amending Chapter 203 (Land Use and Development) of the Township's Code in response to the forestry, wetlands management and residential clustering amendments to the Pinelands Comprehensive Management Plan. Ordinance 1722-2012 also rezones lands from the GA-I (Growth Area – Intensive) District to the DC (Design Commercial) District, within the Pinelands Regional Growth Area. The Pinelands Commission received a certified copy of Ordinance 1722-2012 on June 29, 2012.

By letter dated July 3, 2012, the Executive Director notified the Township that the April 2012 Master Plan Reexamination Report and Ordinance 1722-2012 would require formal review and approval by the Pinelands Commission.

II. Master Plans and Land Use Ordinances

The following documents have been submitted to the Pinelands Commission for certification:

- * April 2012 Master Plan Reexamination Report, adopted by the Hamilton Township Planning Board on May 17, 2012; and
- * Ordinance 1722-2012, amending Chapter 203 (Land Use and Development) of the Code of Hamilton Township, introduced on May 21, 2012 and adopted on June 18, 2012.

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

1. **Natural Resource Inventory**

Not applicable.

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

Regional Growth Area rezoning

Ordinance 1722-2012 rezones Block 1319 from the GA-I (Growth Area – Intensive) District to the DC (Design Commercial) District, within the Pinelands Regional Growth Area. The rezoned area is located between the Black Horse Pike, the Atlantic City Expressway and Wrangleboro Road. Included in the rezoning are two lots totaling 85 acres in size. Although both of these lots are commercially developed, they are currently located in a residential zoning district (GA-I). The zoning change adopted by Ordinance 1722-2012 recognizes existing land uses and rezones the lots to an appropriate nonresidential zoning district. As the lots in question are already developed, there is no impact on residential zoning capacity. Therefore, the zoning change is consistent with the land use and development standards of the Comprehensive Management Plan.

Forestry

Ordinance 1722-2012 amends Chapter 203 (Land Use and Development) of the Township's Code by revising and adding definitions related to forestry. Specifically, terms for such forestry activities as "artificial regeneration," "clearcutting" and "disking" are added and the existing definition of "forestry" is revised to make clear that it includes these and other silvicultural practices. Ordinance 1722-2012 further amends Chapter 203 by replacing Section 203-174D, in its entirety, with an amended set of standards applicable to forestry activities in the Pinelands Area. Included in this revised section are detailed standards for a wide variety of silvicultural practices, as well as limitations on amount of land that may be subject to these practices and the Pinelands Native Forest Types in which such practices may or may not be conducted.

The amended forestry standards adopted by Ordinance 1722-2012 are consistent with the March 2010 amendments to the Pinelands Comprehensive Management Plan.

Wetlands Management

Ordinance 1722-2012 amends Chapter 203 of the Township's Code by adding a definition of "wetlands management" to Section 203-18. However, Ordinance 1722-2012 does not then amend Section 203-183A(5) to indicate that wetlands management may be permitted in wetlands, subject to the standards of the Comprehensive Management Plan. This amendment was included in the model ordinance provided by the Commission staff to Hamilton Township; however, it was omitted from Ordinance 1722-2012, likely inadvertently when the model ordinance was retyped by the municipality.

As a result, Ordinance 1722-2012 does not sufficiently respond to the December 2009 Comprehensive Management Plan amendments relative to wetlands management. Adoption of the language contained in Attachment A will be necessary in order for the Township's response to these amendments to be complete.

Development Transfer Program

Ordinance 1722-2012 amends Chapter 203 by revising the provisions of the Township's development transfer program to clarify the types of uses which may be permitted on noncontiguous lands used to meet density requirements. Specifically, Ordinance 1722-2012 states that all noncontiguous lands utilized in the development transfer program must be permanently protected through recordation of a deed of restriction, with only the following uses permitted: low intensity recreation, ecological management and forestry. Limits on clearing and impervious surface then also apply to these uses. In addition, in cases where agricultural uses exist on the lands to be protected, Ordinance 1722-2012 provides that such agricultural uses may be permitted to continue and, in some cases, expand, if certain conditions related to impervious surface and the preparation of Resource Management System Plans are met.

The amended development transfer program standards adopted by Ordinance 1722-2012 are consistent with the April 2009 amendments to the Pinelands Comprehensive Management Plan.

Cluster Development

Ordinance 1722-2012 amends Chapter 203 by adding residential cluster development as a permitted use in the Township's Pinelands Forest Area (FA-10, FA-25 and FA-70) and Pinelands Rural Development Area zoning districts (RD-2.5, RD-4 and RD-5). Furthermore, Ordinance 1722-2012 indicates that whenever two or more residential units are proposed in these zoning districts, cluster development will be required. The ordinance then sets forth the standards which all such cluster developments must meet, including a one acre lot size requirement, the location of the development area itself on a parcel and the provision of accessory recreational amenities.

According to Ordinance 1722-2012, the balance of the parcel located outside the residential cluster development area must be permanently protected through recordation of a deed of conservation restriction. This open space area must be owned and managed by a homeowners association, a non-profit conservation organization or the Township, or it may be incorporated as part of one of the lots within the cluster development area. Permitted uses in the open space area are limited to low intensity recreation, ecological management and forestry, subject to specific limitations on clearing and impervious surface. In addition, in cases where agricultural uses exist on the lands to be protected, Ordinance 1722-2012 provides that such agricultural uses may be permitted to continue and, in some cases, expand, if certain conditions related to impervious surface and the preparation of Resource Management System Plans are met. Should a cluster development applicant elect to continue or expand an existing agricultural use on the parcel, Ordinance 1722-2012 requires that all of the new dwelling units to be constructed in the cluster development utilize on-site septic waste water treatment systems designed to reduce the level of nitrate/nitrogen in the waste water in accordance with N.J.A.C. 7:50-6.84(a)5 or the standards set forth in the Commission's Alternate Design Treatment Systems Pilot Program.

Ordinance 1722-2012 specifies that the number of residential lots permitted within a cluster development will be calculated based on the size of the parcel of land and the permitted density allowed in Chapter 203 for the zoning district(s) in which the project will be located. For example, 20 units would be permitted on a 200 acre parcel located in the Township's FA-10 District, where the permitted density is one unit per 10 acres. Ordinance 1722-2012 also provides bonus density to parcels of 50 or more acres in size. This bonus density ranges from 10 to 40%, depending on the size of the parcel and the permitted density of the zone in which the parcel is located. The larger the parcel and the lower the permitted density, the larger the percentage of bonus density provided.

The bonus density percentages and acreage thresholds adopted by Ordinance 1722-2012 are identical to those contained in N.J.A.C. 7:50-5.19(d)1 of the Comprehensive Management Plan. However, the Township has elected to make two changes involving applicability of the bonus provisions. First, whereas the Comprehensive Management Plan provides bonus density to any parcel of 50 acres or more, Ordinance 1722-2012 specifies that bonus density shall not apply to parcels in common ownership as of April 6, 2009 (the effective date of the Comprehensive Management Plan's clustering amendments). In order to be eligible for bonus density, an applicant must document the acquisition of additional vacant, contiguous land on or after April 6, 2009. Such land must be included in the application for cluster development and result in the preservation of a larger area of open space. Upon the acquisition of such lands, the bonus density provided in Ordinance 1722-2012 will then apply to the entire contiguous parcel which is the subject of the cluster development application. Second, Ordinance 1722-2012 specifies that bonus density shall be provided only to the area of uplands on a parcel. Wetlands may not be included when calculating the number of bonus units to which a parcel is entitled. The Comprehensive Management Plan makes no such distinction and instead requires the allocation of bonus units on a gross acreage basis.

Ordinance 1722-2012 makes one other change to the clustering standards of the Comprehensive Management Plan. Whereas the CMP simply specifies that each residential lot within a cluster development shall be one acre in size, Ordinance 1722-2012 requires that each such one acre lot contain a minimum of 50% of upland, developable area exclusive of all wetlands and wetlands buffers.

Pinelands municipalities have always had the general ability to refine the various standards and provisions of the Comprehensive Management Plan and tailor them to local conditions, provided Comprehensive Management Plan goals and objectives continue to be achieved. In addition, Subchapter 6 (Management Programs and Minimum Standards) of the Comprehensive Management Plan expressly recognizes that municipalities may adopt more restrictive regulations, provided such regulations are compatible with the goals and objectives of the Plan. Moreover, when the Commission adopted its clustering amendments, a new certification standard was incorporated in order to make clear that this practice extends to the Forest and Rural Development Area residential clustering program. N.J.A.C. 7:50-3.39(a)2ix provides that municipalities may propose and the Commission may approve clustering ordinances that contain different standards than those set forth at N.J.A.C. 7:50-5.19(c) and (d), provided such standards are supported through the application of sound land use planning principles, are based upon local conditions or circumstances and do not undermine the overall objectives of the Forest and Rural Development clustering program.

In this case, Hamilton Township has chosen to incorporate three provisions which differ from those in the Comprehensive Management Plan. The first of these provisions, the requirement that individual residential lots contain a minimum of 50% developable land, does not raise any issues. Although the CMP does not contain an explicit requirement for a percentage of developable land, it is only reasonable to expect that each residential lot contain at least 22,000 square feet of usable space. Any less and it would become extremely difficult for the lot to accommodate a home, septic field and accessory uses. The fact that Hamilton's ordinance will contain a specific minimum percentage is not expected to create any conflicts with CMP clustering standards.

Hamilton Township has also chosen to modify the bonus density provisions now contained in the Comprehensive Management Plan. These provisions were included in the clustering amendments for two reasons: to provide a measure of equity to property owners who will now be required to develop homes on one acre lots rather than on the large estate lots they may have originally anticipated; and, to **encourage** and reward lot consolidation in the Forest and Rural Development Areas in the hope that this would result in larger contiguous areas of protected open space and, consequently, reduced forest fragmentation. Ordinance 1722-2012 focuses on the importance of this second objective and takes it one step further, by **requiring** that some amount of lot consolidation occur in order for an application to be eligible for any bonus density. The Township's reasons for doing so are outlined in a letter dated August 2, 2012 (see Exhibit #1).

As a result, the owner of an existing 200 acre lot will not be eligible for bonus density unless he or she acquires additional vacant contiguous land and includes that acreage in the cluster development application. Given the size of Hamilton's Forest and Rural Development Areas (approximately 38,000 and 17,000 acres, respectively), acquisition of contiguous vacant lands is likely to be feasible in most cases. Ordinance 1722-2012 does not specify that any particular amount of contiguous land must be acquired. Thus, the acquisition of even a few vacant acres will render a project eligible for the bonus units and permit an increase the number of permitted units. Applicants are therefore being provided a sufficient opportunity to become eligible for bonus density and take advantage of the additional equity this may provide.

Upon adoption of the clustering amendments, the Commission expressly acknowledged that the above-described variation on the bonus density provisions could be considered by Pinelands municipalities, provided it would not serve to discourage meaningful cluster development in the municipality, and further provided that the municipality in question had the ability to administer such a provision. It is clear that the bonus density standards adopted by Ordinance 1722-2012 will not discourage cluster development. On the contrary, they should serve to encourage the acquisition and creation of larger and larger parcels for cluster development, leading to the permanent protection of larger and more meaningful open space areas. There is no question that such an outcome is consistent with the objectives of the clustering amendments. As for administration, the Township will be responsible for determining whether its bonus density standards are met. Commission staff has alerted the municipality to a number of issues which may arise as part of this effort and is confident the Township will address them in an appropriate fashion.

The final change to the Comprehensive Management Plan's clustering standards adopted by Ordinance 1722-2012 limits the applicability of bonus units to the upland portions of a parcel. As a result, although gross acreage may be used when calculating the number of units to which a parcel is entitled based on permitted density, only the uplands may be used to generate bonus units. Wetlands may not be included in the bonus unit calculation. According to the Township's August 2, 2012 letter (see Exhibit #1), the incorporation of this provision in the cluster ordinance was felt to be necessary due to the extensive network of environmentally sensitive lands within the Township.

The Executive Director agrees that there are large areas of environmentally sensitive lands in Hamilton Township's Forest Area. This is the case in every Forest Area within the Pinelands Area. The Commission was well aware of the existence of wetlands, habitat and other environmental limitations in the Forest Area when it adopted the clustering amendments to the Comprehensive Management Plan. It was precisely those environmental conditions and the need

to prevent further fragmentation of the forest which led to a requirement for mandatory clustering and the incorporation of incentives for aggregation of additional lands. With respect to the Rural Development Area, it is true that this area also contains environmentally sensitive land. In fact, portions of Hamilton's Rural Development Area were previously identified by the Commission as candidates for redesignation to the Forest Area in light of environmental conditions. Such a redesignation would have reduced the density and number of units permitted on the affected lands and, through mandatory clustering, resulted in larger areas of protected open space. Although encouraged to consider clustering provisions which addressed specific areas or zoning districts, the Township instead chose to restrict the applicability of the bonus provision to uplands, throughout the entirety of its Forest and Rural Development Areas. A general concern with environmental limitations was cited as the reason for doing so. Unfortunately, that is not a sufficient justification for revising the mandatory bonus unit provisions of the Comprehensive Management Plan's clustering regulations. The revisions need to be based on local conditions or circumstances. In other words, there must be something specific to Hamilton Township which warrants a change to the clustering provisions adopted by the Commission for the entire Pinelands region.

In addition, the revisions must not undermine the overall objectives of the Forest and Rural Development clustering program. Hamilton has adopted two provisions which could significantly reduce or even eliminate the bonus units to which a parcel is entitled, one based on date of ownership and the other based on the amount of uplands contained within a parcel. The first provision, tied to date of ownership, is one which the Commission has already approved in other Pinelands municipalities and expressly acknowledged is an acceptable revision. Should someone acquire lands after the effective date of the clustering amendments and thereby become eligible for bonus units, the second limitation adopted by Ordinance 1722-2012 would come into play. Wetlands would have to be excluded from the bonus unit calculation. Although there would still be an incentive to acquire additional lands, this incentive has been reduced by the Township's ordinance. Equally important is the reduction in the number of lots which could result in any particular cluster development, an outcome which is contrary to one of the Commission's purposes in incorporating the bonus unit provisions in the Comprehensive Management Plan. Section 203-196.1B(3) will need to be revised to indicate that bonus density is to be applied to the gross acreage of a parcel, including both uplands and wetlands.

The amendments adopted by the April 2012 Master Plan Reexamination Report and Ordinance 1722-2012 do not sufficiently respond to the April 2009 Comprehensive Management Plan amendments relative to cluster development and are not fully consistent with the land use and development standards of the Comprehensive Management Plan.

With the adoption of the amendments set forth in Attachment A, this standard for certification will be met.

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

Ordinance 1722-2012 amends Chapter 203 by replacing Section 203-174C, in its entirety, with an amended set of application requirements for municipal forestry permits. For forestry activities on parcels of land enrolled in the New Jersey Forest Stewardship Program, an applicant needs only to submit to the municipality a copy of his or her approved Stewardship Plans. For all other forestry applications, the list of submission requirements includes a forestry management plan,

information concerning threatened and endangered plants and animals, cultural resources and the use of herbicides, written comments from the New Jersey State Forester and a Certificate of Filing issued by the Pinelands Commission.

The amended forestry application requirements adopted by Ordinance 1722-2012 are consistent with the March 2010 amendments to the Pinelands Comprehensive Management Plan. Therefore, this standard for certification is met.

4. Requirement for Municipal Review and Action on All Development

Not applicable.

5. Review and Action on Forestry Applications

Not applicable.

6. Review of Local Permits

Not applicable.

7. Requirement for Capital Improvement Program

Not applicable.

8. Accommodation of Pinelands Development Credits

The rezoning of Block 1319 from a residential zoning district (GA-I) to a commercial zoning district (DC) involves lands within the Regional Growth Area. If the affected lands were vacant, opportunities for the use of Pinelands Development Credits would be lost as a result of the zoning change and would need to be accommodated elsewhere in Hamilton's Regional Growth Area. In this case, the rezoned lands are already commercially developed and the zoning change merely reflects existing land use. Therefore, there is no impact on Pinelands Development Credit use in Hamilton's Regional Growth Area. This standard for certification is met.

9. Referral of Development Applications to Environmental Commission

Not applicable.

10. General Conformance Requirements

The April 2012 Master Plan Reexamination Report and Ordinance 1722-2012, amending Chapter 203 (Land Use and Development) of the Code of Hamilton Township, are not fully consistent with the standards and provisions of the Pinelands Comprehensive Management Plan.

With the adoption of the amendments set forth in Attachment A, this standard for certification will be met.

11. Conformance with Energy Conservation

Not applicable.

12. Conformance with the Federal Act

No special issues exist relative to the Federal Act. However, Hamilton Township's April 2012 Master Plan Reexamination Report and Ordinance 1722-2012, amending Chapter 203 (Land Use and Development) of the Code of Hamilton Township, are not fully consistent with the standards and provisions of the Pinelands Comprehensive Management Plan.

With the adoption of the amendments set forth in Attachment A, this standard for certification will be met.

13. Procedure to Resolve Intermunicipal Conflicts

The lands rezoned by Ordinance 1722-2012 within the Regional Growth Area (Block 1319) are not adjacent to any other municipalities. Therefore, intermunicipal conflicts are not anticipated and this standard for certification is met.

PUBLIC HEARING

A public hearing to receive testimony concerning Hamilton Township's application for certification of its April 2012 Master Plan Reexamination Report and Ordinance 1722-2012 was duly advertised, noticed and held on August 8, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which the following testimony was received:

Mr. Stephen Nehmad introduced himself as an attorney representing two property owners in Hamilton Township affected by Ordinance 1722-2012. He summarized his objections to the ordinance as outlined in detail in his letter of August 7, 2012 (see Exhibit #2) and submitted maps showing the size and shape of the two properties in question (see Exhibits #3 and #4). Mr. Nehmad stated that his remarks were not to be taken as any reflection on the work done by Hamilton Township on the ordinance. He noted that of all the communities he had worked in during his 37+ year legal career, Hamilton Township's officials and representatives are the most

dedicated and conscientious. Nevertheless, Mr. Nehmad indicated the strenuous objections of his clients to Ordinance 1722-2012 and asked that it not be approved by the Commission.

Mr. Vincent Polistina introduced himself as the planner for the Hamilton Township Planning Board and the author of the Township's April 2012 Master Plan Reexamination Report. He thanked Mr. Nehmad for his comments and described the very deliberative and lengthy process undertaken by Hamilton Township leading to the adoption of Ordinance 1722-2012. Mr. Polistina then summarized the contents of his August 2, 2012 letter (see Exhibit #1) and asked that the Commission approve the Township's ordinance.

Mr. Philip Sartorio, Hamilton Township's Community Development Director, staff planner and acting Zoning Officer, stated that the requirement for 50% developable land on each individual lot is just a practical matter. He noted concerns with local enforcement and stated that over time, as the houses and lots change hands, wetlands buffers often are not respected. Thus, the more usable, developable land area on a lot, the better.

Mr. Sartorio stated that the Commission's rule proposal for the clustering amendments specifically says that municipalities may consider restricting bonus density based on the date of ownership of lands in the Forest and Rural Development Areas, as long as meaningful cluster development is not discouraged. He referred to tax records in the Forest Area which show there are some 1,300 line items (potentially developable lots) in the Township's three Forest Area zoning districts. In the FA-10 Zone, there are only 13 lots greater than 20 acres in size. In the FA-25 Zone, there are zero lots above 50 acres in size. In the FA-70 Zone, there are only three lots over 140 acres in size. Aggregation of lots is clearly needed, and the provisions adopted by Ordinance 1722-2012 will help to make that happen.

Mr. Nehmad supplemented his earlier comments by stating that the 50% uplands requirement for individual residential lots runs afoul of the clustering rules. He reiterated his objections to the limitations on bonus density tied to the date of property ownership, indicating that he failed to see why only those who buy property after the date of the clustering rules should get the benefit of those rules. He stated that there are no planning reasons for such a provision. With respect to limiting bonus density to uplands, he said that it is a misperception to characterize this provision as a recognition of environmental limitations. Basing bonus density on gross acreage does not allow wetlands to be developed. Pinelands regulations clearly prohibit that. Finally, Mr. Nehmad noted that the Comprehensive Management Plan requires municipalities to implement and clear and straightforward process for cluster development. Clever land use lawyers will be able to find a way around the limitations of Ordinance 1722-2012 related to aggregation of lands and date of property ownership. Land use regulations should not be designed to create an "artifice".

There being no further testimony, the hearing was concluded at 10:21 a.m.

Written comments were accepted through August 13, 2012 and were received from the following individuals:

August 2, 2012 letter from Vincent J. Polistina, PE, PP, CME, Polistina & Associates, on behalf of Hamilton Township (see Exhibit #1)

August 7, 2012 letter from Stephen R. Nehmad, Nehmad, Perillo & Davis, P.C. (see Exhibit #2)

August 7, 2012 letter from Jaclyn Rhoads, Ph.D., Pinelands Preservation Alliance (see Exhibit #5)

August 10, 2012 letter from Stephen R. Nehmad, Nehmad, Perillo & Davis, P.C. (see Exhibit #6)

CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that the April 2012 Master Plan Reexamination Report and Ordinance 1722-2012 sufficiently implement the March 2010 amendments to the Pinelands Comprehensive Management Plan related to forestry. The Executive Director has further concluded that the 2012 Master Plan Reexamination Report and Ordinance 1722-2012 do not fully implement the April 2009 and December 2009 amendments to the Comprehensive Management Plan related to residential cluster development and wetlands management and therefore do not fully comply 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 conditionally certify the April 2012 Master Plan Reexamination Report and Ordinance 1722-2012 of Hamilton Township.

SRG/CHA
Attachments

**ATTACHMENT A TO EXECUTIVE DIRECTOR'S SEPTEMBER 28, 2012
REPORT ON HAMILTON TOWNSHIP'S APRIL 2012 MASTER PLAN
REEXAMINATION REPORT AND ORDINANCE 1722-2012**

Adoption of the following amendments, or comparable revisions, to Chapter 203 (Land Use and Development) of the Code of Hamilton Township will make Ordinance 1722-2012 consistent with the Pinelands Comprehensive Management Plan and complete the Township's response to the August 2009 and December 2009 amendments to the Pinelands Comprehensive Management Plan:

1. Section 203-183, Wetlands development, is hereby amended by replacing Section 203-183A(5) with the following:
 - (5) Fish and wildlife activities and wetlands management in accordance with N.J.A.C. 7:50-6.10.

2. Section 203-196.1B(3)(a) is hereby amended to read as follows:
 - (a) A density bonus may be applied to the cluster development and shall be calculated on the basis of the size of the parcel of land and the density permitted in Subsection A(1) above. All area must be contiguous and no outparcels shall be permitted. The density bonus shall be applied in accordance with the following table:

Parcel Size	RD-2.5 District	RD-4 District	RD-5 District	FA-10 and RD-20 Districts	FA-25 and FA-70 Districts
<50 acres	0	0	0	0	0
50-99.99 acres	0	10%	15%	20%	25%
100-149.99 acres	0	15%	20%	25%	30%
≥150 acres	0	20%	25%	30%	40%