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### **REPORT ON OCEAN COUNTY'S MAY 2017 AMENDMENT TO THE SITING POLICY OF THE COMPREHENSIVE PUBLIC SAFETY TOWER PLAN FOR PINELANDS**

June 30, 2017

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### **FINDINGS OF FACT**

#### **I. Background**

##### **A. Summary of Pinelands Local Communications Facility Plans**

In 1995 the Pinelands Commission amended the Pinelands Comprehensive Management Plan (CMP) in recognition of the legitimate and growing need for the delivery of wireless communication services within the Pinelands Area. The amendment allowed for local communication facilities taller than thirty-five feet to be permitted in those management areas outside of Regional Growth Areas and Pinelands Towns, provided that procedures and siting standards established in the amendment were met (N.J.A.C. 7:50-5.4(c)).

These procedures required the submission, and Commission certification, of a comprehensive local communications facilities plan (LCF Plan) for the Pinelands Area. LCF Plans are to be jointly submitted by providers of the same type of wireless service and include the locations of all proposed facilities within the Pinelands Area. As outlined in Table 1 below, there have been six certified LCF plans, each incorporating and expanding upon the proposed network configuration of all preceding LCF Plans. Once an LCF Plan is certified, applications seeking to construct individual facilities proposed within a plan are then reviewed in accordance with CMP's environmental regulations, the standards for siting local communications facilities, as well as the relevant LCF Plan(s).

**Table 1. Summary of Approved LCF Plans**

<b>LCF Plan</b>	<b>Certification Date</b>	<b>Participants</b>	<b>Service Frequency (in MHz)</b>	<b>Search Area Extent (in miles)</b>
Cellular Plan	9/11/1998	Bell Atlantic Mobile, Comcast, Nextel	800	5
PCS Plan	1/14/2000	Sprint, Omnipoint	1850-1900	0.5
AT&T Plan	12/12/2003	AT&T	1850-1900	0.5
T-Mobile Plan	11/10/2011	T-Mobile	1850-1900	1
Public Safety Tower Plan	5/11/2012	Pinelands Area Counties	700	1
Sprint Plan	11/8/2013	Sprint	1850-1900	1

## **B. Submission of the Proposed Amendment**

Ocean County is a participant of the Comprehensive Public Safety Tower Plan for Pinelands (Public Safety Tower Plan). The Public Safety Tower Plan, certified by the Pinelands Commission on May 11, 2012, includes the proposed locations of county local communications facilities needed to provide critical public safety communications coverage within the Pinelands Area. The Public Safety Tower Plan included a siting policy with a 1-mile radius search area (see Exhibit B).

The Public Safety Tower Plan includes a facility proposed by Ocean County to be located at Patriots Park in Jackson Township's Rural Development Area. Ocean County has since determined that a county-owned maintenance garage on Don Connor Boulevard in Jackson Township is a more suitable site (see Exhibit C). Patriots Park is on the state's Recreational and Open Space Inventory (ROSI). The park's inclusion on the ROSI means that, prior to any change of use other than recreation or conservation, the County would need to successfully obtain a diversion from the New Jersey Department of Environmental Protection's Green Acres Program, which is strongly discouraged by the program (N.J.A.C. 7:36-26.1). The County has also determined that construction of the tower at the garage would meet the same service needs that the Patriots Park site would provide, while requiring considerably less site disturbance and visual impact.

A new tower at the county-owned maintenance garage is not permitted because it is not within a 1-mile radius search area of a proposed site in the plan. The county-owned maintenance garage is approximately 2.5 miles from Patriots Park. Therefore, consideration of the maintenance facility as a viable site for a new public safety tower would require Ocean County to submit an amendment to the Public Safety Tower Plan. Applicants may propose amendments to an approved LCF Plan pursuant to N.J.A.C. 7:50-5.4(c)6v.

Between March and May of 2017, Commission staff, Ocean County, the New Jersey Office of Information Technology (OIT) Office of Emergency Telecommunications Services, and the other six Pinelands Area Counties worked to develop a revised siting policy for the Public Safety Tower Plan. On May 18, 2017, Ocean County submitted the proposed amendment (see Exhibit A). The amendment was deemed complete for the purposes of Commission review on May 19, 2017.

## **II. Comprehensive Local Communications Facilities Plans and Amendments**

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

- Ocean County's May 2017 Amendment to the siting policy of the Comprehensive Public Safety Tower Plan for Pinelands

### **A. Summary of the Proposed Amendment**

Ocean County's May 2017 Amendment seeks to revise the siting policy of the Public Safety Tower Plan in two ways: 1) to expand the size of the search area for the final siting of a proposed facility from a 1-mile radius to a 3-mile radius; and 2) to provide greater flexibility when siting a facility on developed, publically-owned land. It is important to note that the amendment does not include any additional proposed facilities and would apply only to facilities proposed in the Public Safety Tower Plan.

The Commission has approved a siting policy with each LCF Plan to be applied during the application process for siting individual facilities. This policy acknowledges that LCF Plans are akin to master plans in that they are long-range plans based on present conditions subject to change over time. Given this uncertainty, the siting policy provides flexibility to move a proposed site within an approved vicinity known as the search area. The search area recognizes that a facility can be moved within the approved vicinity without creating the need for additional facilities.

Each siting policy also provides constraints for siting towers within search areas that cross the Pinelands Area border or multiple management areas. In these cases, applicants seeking to construct a new tower must look for sites within the search area based on a hierarchy of preferred management areas as enumerated in the policy. This hierarchy directs applicants to search in the development-oriented management areas first. It is important to note that the CMP requires the use of existing suitable structures, to the extent practicable, as a first option prior to constructing a new tower or significantly altering an existing structure. This provision is incorporated into each siting policy and is included as part of the amendment under consideration.

In discussions between Ocean County and Pinelands Commission staff, it was determined that the 1-mile radius search area approved with the Public Safety Tower plan was overly-restrictive based on the frequencies used for public safety radio communications. The Commission has established the extent of a search area on a plan-by-plan basis based on the radio frequency of the service provided (see Table 1). This acknowledges that signals transmitted at lower frequencies in the spectrum (e.g., cellular service operating at 800 MHz) propagate over much greater distances than signals transmitted at higher frequencies in the spectrum (e.g., PCS service operating at 1850-1900 MHz). Given that the County Public Safety Agencies are using the 700 MHz frequency range, there is greater siting flexibility provided by the signal propagation characteristics than currently allowed for in the siting policy.

A 3-mile radius search area was selected in discussions with Ocean County and the OIT Office of Emergency Telecommunications Services, the latter of which has submitted written testimony supporting the technical justification for the expansion of the search area (see Exhibit D). This increased flexibility will not only benefit Ocean County as it will also apply to the other Pinelands Area counties that have proposed sites in the Public Safety Tower Plan.

County representatives also highlighted the differences between providers of commercial wireless services and providers of public safety communications services. The CMP regulations regarding local

communications facilities were written primarily in response to commercial wireless providers whose networks are designed around cellular arrays requiring relatively more towers that are more likely to be constructed on leased lands. Conversely, public safety towers have more powerful transmission systems that operate on a point-to-point basis requiring relatively fewer towers that are more likely to be sited on county-owned lands for both economic and security reasons.

While the CMP is explicit that proposed facilities utilize an existing suitable structure to the extent practicable, staff found that in instances when a new tower is needed, the current siting policy's hierarchy of preferred locations may create situations where counties would be forced to purchase land even if developed public lands may be available. The counties have indicated that such situations may be cost prohibitive, ultimately rendering a project infeasible, and prolong the deployment of critical public infrastructure. The amendment therefore provides added flexibility in siting new towers on developed, publically owned lands for public safety towers only. Again, this increased flexibility will not only benefit Ocean County as it will also apply to the other Pinelands Area counties that have proposed sites in the Public Safety Tower Plan.

The amendment under consideration would apply to proposed Phase-1 and Phase-2 facilities included within the Public Safety Tower Plan. There are a total of twenty-one proposed facilities in Phase-1 and 2, six of which are proposed in the most conservation-oriented management areas and five of which are proposed in a Regional Growth Area or Pinelands Town. It's important to note that proposed Phase-3 facilities are planned to be co-located on existing towers or proposed towers included in other plans.

## **B. Standards for Certification**

The above-referenced amendment has been reviewed to determine whether it conforms with the standards for certification of amendments to LCF Plans as set out in N.J.A.C. 7:50-5.4(c)6v of the Pinelands Comprehensive Management Plan. The various standards required to be met for certification of LCF Plans and their amendments contained in N.J.A.C. 7:50-5.4(c)6 are outlined below along with relevant findings for each standard.

- 1. The amendment shall be agreed to and submitted jointly by all providers of the same type of service, where feasible. In the event that any provider declines to participate in the amendment process, the Commission may proceed with its review of the amendment.**

On April 20, 2017, Commission staff briefed representatives of the Pinelands Area counties on the proposed amendment at the OIT Office of Emergency Telecommunications Services' regularly scheduled Statewide Regional Communications meeting.

On April 26, 2017, OIT Office of Emergency Telecommunications Services emailed representatives of the Pinelands Area counties. The correspondence included the proposed amendment, a summary of the briefing and discussion at the April 20, 2017 meeting, and a request for written comment on the proposed amendment by May 10, 2017. No comment was received from the other six Pinelands Area counties.

On May 17, 2017, OIT Office of Emergency Telecommunications Services emailed representatives of the Pinelands Area counties to inform them that no comments were received and that the Pinelands Commission was advising Ocean County to move forward with officially

submitting the amendment. No comments were received by any of the other six participating Counties during the official comment period ending June 12, 2017.

Ocean County, with the assistance of Commission staff and the OIT Office of Emergency Telecommunications Services, has offered the other six Pinelands Area counties opportunities to participate in the submission of this amendment. The Executive Director finds that the absence of response to these offers for the other Pinelands Area counties to participate or comment on the proposed amendment is recognized as their tacit decision to not formally participate in the submission of the amendment. Therefore, this standard for certification is met.

**2. The amendment shall include a review of alternative technologies that may become available for use in the near future.**

The certified Public Safety Tower Plan included a review of alternative technology known as Distributed Antenna Systems. The Commission accepted this review as part of its certification of the Public Safety Tower Plan. The Executive Director finds that this review continues to sufficiently address this requirement. Therefore, this standard for certification is met.

**3. The amendment shall include the approximate location of all proposed facilities.**

The certified Public Safety Tower Plan included the geographic coordinates of each proposed facility's location. The amendment under consideration does not include any additional proposed towers. The Executive Director finds that the Public Safety Tower Plan continues to sufficiently address this requirement. Therefore, this standard for certification is met.

**4. The amendment shall include five- and ten-year horizons.**

The certified Public Safety Tower Plan included three different planning phases. Phase-1 included seventeen facilities planned to be deployed within five years of certification. Phase-2 included six facilities planned to be deployed within five to ten years of certification. Phase-3 included twenty-seven facilities without a proposed timeline for deployment.

At present, only one Phase-1 facility has been built and an additional Phase-1 facility has received a public development approval from the Commission. There have been no other approved facilities. Given that the build-out of this plan has progressed more slowly than planned, the Executive Director finds that the phases within the certified plan still sufficiently provide five- and ten-year horizons. Therefore, this standard for certification is met.

**5. The amendment shall demonstrate the likely consistency that for each proposed facility there is a need for the facility to serve the local communication needs of the Pinelands, including those related to public health and safety, as well as a need to locate the facility in the Pinelands in order to provide adequate service to meet these needs.**

During the review of the Public Safety Tower Plan in 2012, the OIT Office of Emergency Communication Services, in its technical capacity, found that there was a critical public safety need for each of the facilities proposed in the plan. They noted that, wherever possible, sites outside of the Pinelands Area were selected to fulfill this critical public safety need. To further

support this demonstration, a consulting firm, V-COMM, analyzed data provided by the participating public agencies. This analysis resulted in signal propagation maps depicting both the existing coverage within the area of each proposed facility as well as the expected level of coverage post-installation. This analysis demonstrated the need for each of the proposed facilities to serve the communications needs of the plan participants, and V-COMM affirmed that the only way to provide adequate service was to locate the proposed facilities within the Pinelands Area.

Ocean County's May 2017 Amendment does not include any additional proposed towers. There has been no change in the radio frequency to be used by the proposed facilities within the certified Public Safety Tower Plan. The analysis described above conducted by the OIT Office of Emergency Communications Services and V-COMM was done independent of the siting policy approved for the plan and would be impacted only if new towers were proposed or if different radio frequencies would be used by the proposed facilities. The Executive Director finds that the analysis conducted by the OIT Office of Emergency Communication Services and V-COMM is still valid and continues to sufficiently demonstrate the stated need as required by the CMP. Therefore, this standard for certification is met.

- 6. The amendment shall demonstrate that the facilities to be located in the Preservation Area District, the Forest Area, the Special Agricultural Production Area and the seventeen Pinelands Villages enumerated in N.J.A.C. 7:50-5.4(c)6 are the least number necessary to provide adequate service, taking into consideration the location of facilities outside the Pinelands.**

During the review of the Public Safety Tower Plan in 2012, the OIT Office of Emergency Communication Services, in its technical capacity, and with support of a consulting firm V-COMM, demonstrated consistency with this standard based on the analysis described above. V-COMM demonstrated via signal propagation maps that, taking into account the location of facilities outside the Pinelands Area, the new facilities proposed in conservation-oriented management areas are the least number necessary to provide adequate service.

Ocean County's May 2017 Amendment does not include any additional proposed towers. There has been no change in the radio frequency to be used by the proposed facilities within the Public Safety Tower Plan. The analysis described above conducted by the OIT Office of Emergency Communications Services and V-COMM was done independent of the siting policy approved for the plan and would be impacted only if new towers were proposed or if different radio frequencies would be used by the proposed facilities. Furthermore, Ocean County's May 2017 Amendment includes provisions describing a hierarchy of preferred siting locations. These provisions ensure that movement of the final siting of a proposed facility within a given search area does not result in relocation of a facility to a more conservation-oriented management area, unless there are no viable sites available within the less-restrictive management areas or outside the Pinelands Area. The Executive Director finds that the analysis described above is still valid and continues to sufficiently demonstrate the stated need as required by the CMP. Therefore, this standard for certification is met.

- 7. The amendment shall demonstrate the likely consistency, and note the need to demonstrate consistency during the application process for siting individual facilities, that existing communications or other suitable structures have been used to the extent practicable.**

The certified Public Safety Tower Plan sufficiently demonstrated the likely consistency that existing communications structures or other suitable structures will be used. Furthermore, the siting policy adopted with the plan noted the need to demonstrate this during the application process for siting individual facilities.

Ocean County's May 2017 Amendment does not include any additional towers. The amendment maintains the siting policy provision that requires applicants to use existing suitable structures, to the extent practicable, prior to the construction of a new tower. Therefore, this standard for certification is met.

- 8. The amendment shall demonstrate the likely consistency, and note the need to demonstrate consistency during the application process for siting individual facilities, that if an existing communications structure or other suitable structure cannot be used, then the antenna and any necessary supporting structure is located to meet the siting criteria contained in N.J.A.C. 7:50-5.4(c)4.**

During the review of the Public Safety Tower Plan in 2012, Commission staff conducted an analysis of the 1-mile radius search area surrounding each of the proposed facilities included in the plan to determine the likely consistency that a tower could be sited within the search area consistent the CMP. The result of the analysis demonstrated a likely consistency that each proposed facility could be sited consistent with the CMP with the exception of two sites proposed by Burlington County. The consistency issues for these two sites were discussed at length in the 2012 Executive Director's report that reviewed Public Safety Tower Plan. The report concluded that this standard had been met, provided that the inconsistencies with the two sites were remedied at the time of application.

Ocean County's May 2017 Amendment expands the search area from a 1-mile radius to a 3-mile radius. An expanded search is not expected to decrease the likelihood for any of the proposed facilities to be sited consistent with the standards of the CMP. In fact, the expanded search area should provide more opportunities to search for permissible locations in the event that a new tower is necessary. The proposed amendment may in fact help with the siting of the two proposed facilities discussed above. However, if it is not possible to meet the CMP's siting criteria for these two facilities, or any other proposed facility included in an LCF Plan, the CMP includes provisions for these cases that would allow the Commission to require the implementation of alternative sites or tower designs that will result in the greatest avoidance or minimization of visual impacts. Therefore, this standard for certification is met.

- 9. The amendment shall note the need to demonstrate during the application process for siting individual facilities that support structures are designed to accommodate the needs of any other local communications provider that has identified a need to locate a facility within an overlapping service area and that the antenna and supporting structure does not exceed 200 feet in height, but if of a lesser height, can be increased to 200 feet to accommodate other local communications facilities in the future. The amendment shall also provide for the joint construction and use of the least number of facilities that will provide adequate service by all providers for the local communication system intended.**

The certified Public Safety Tower Plan acknowledged that, with respect to non-plan participants, all sites within the Public Safety Tower Plan are subject to the same co-location and design

policies as are incorporated into the four previous plans submitted by the commercial wireless providers. The amendment under consideration does not alter co-location or design policies incorporated in the Public Safety Tower Plan. Therefore, this standard for certification is met.

**10. The amendment shall include a plan for shared services, unless precluded by Federal law or regulation, if it reduces the number of facilities to be developed.**

The certified Public Safety Tower Plan did not include a plan for shared services. The purpose of this standard is to encourage wireless communications providers to consider the possibility of single server coverage. None of the certified LCF Plans have included a plan for shared services on the grounds that it is precluded by federal law. The amendment under consideration maintains this stated position and does not include any provisions related to shared services. Therefore, this standard for certification is met.

### **PUBLIC HEARING**

A public hearing to receive testimony concerning Ocean County's application for certification of its May 2017 Amendment to the Comprehensive Public Safety Tower Plan for Pinelands siting policy was duly advertised, noticed and held on June 7, 2017 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:

**Michael Fiure, Assistant County Administrator, Ocean County** stated that the County is upgrading its 500 MHz public radio system to a 700 MHz system due to existing radio interference. In the approved plan, Ocean County has a tower site located in Patriots Park. The County has a roads garage in Jackson that has been in existence for decades. The County would like to move the tower from the park. In order to build the tower in the park, the County would need to do clearing and cut trees down. The County does not want to site a public safety tower in a natural area. The County felt that the existing garage was a better location given that it is already developed land. The issue that the County encountered was that the garage is outside of the 1-mile search area of the Patriots Park site, which is what led the County to propose the amendment. This tower would be the last tower that would need to be built. All other Ocean County public safety towers are either constructed or in the permitting phase.

**Katherine Smith, Policy Advocate, Pinelands Preservation Alliance** provided testimony that was also submitted in writing (Exhibit D).

**David McKeon, Planning Director, Ocean County** testified in support of the proposed amendment. He stated that in the County's recent experience, they found no difference in how privately-owned towers and publicly-owned towers are treated by the Pinelands regulations. He stated that public safety towers are required for the safety of everybody including residents of the Pinelands, and they need to be in certain locations. The plan that was developed several years ago made an attempt to provide adequate coverage. However, it lacked consideration of developed versus undeveloped sites. The County agrees with the intent of the plan to minimize the visual impacts to the Pinelands, where possible, and that is what this amendment seeks to do.

He stated that the original location that was chosen was Patriots Park. It is a County park. While it does have an active component, the majority of the property is natural. It is also surrounded by thousands of acres of county-owned natural lands and state-owned forested areas. The County no longer desires to place the tower at this site, and it prefers to relocate the site to the County roads garage in Jackson. The garage is within 3miles of Patriots Park and is a fully developed site. The tower that the county proposes to construct works adequately in that area, and would not degrade the visual aesthetics of the area given current development.

He stated that Ocean County did meet with other counties in the area. This is not a problem unique to Ocean County. We need to be flexible with Public Safety Towers. The original plan's intent was to prevent the proliferation of many towers, most of those from private interests. These towers are publically-owned and have different needs, and in some cases publically-owned land is the only realistic location where these towers can be developed.

Written comments on Ocean County's application for certification of the May 2017 amendment were accepted through June 12, 2017 and were received from the following parties and included in Exhibit E:

**Katherine Smith, Policy Advocate, Pinelands Preservation Alliance**

**Lizzi Schippert**

**Sarah B. Dougan**

**Jody Vaughn**

**Jean Public**

### **EXECUTIVE DIRECTOR'S RESPONSE**

Ms. Smith, on behalf of the Pinelands Preservation Alliance, stated her concerns that: (1) the siting policy no longer maintains an initial presumption that a tower will be sited in the immediate area of the proposed location in the plan; and that the revisions to the hierarchy of preferred locations for new towers would (2) allow for more towers than necessary in the most conservation-oriented management areas and (3) not prevent or discourage the use of public recreation or conservation lands in Regional Growth Areas and Pinelands Towns as future tower sites.

With regard to (1) above, Ms. Smith is correct that Ocean County's May 2017 Amendment does not include a presumption that the final siting of a proposed facility will be located in the immediate area (as defined as within the municipality and management area of the proposed location). This change should in fact be recognized as helping to protect the conservation-oriented areas and undeveloped sites of the Pinelands from visual impacts. For example, in instances where the proposed location is in a conservation-oriented management area, the immediate area provision would lock proposed sites within the management area and municipality proposed unless there is not a feasible site within that area. With this presumption removed, the hierarchy policy would direct the siting to preferred locations within a larger search area that may include less sensitive developed sites or management areas. It is also important to note that development applications for individual facilities receive a greater degree of scrutiny than during the LCF Plan review process. Therefore, there should be no concern that individual applications are not adequately vetted.

With regard to (2) above, Ms. Smith's concern should be allayed by the demonstrations that were provided by the OIT Office of Telecommunications Services and V-COMM as described in II.B.6 above. In the certification of the Public Safety Tower Plan, the Commission affirmed the demonstration that the least number of towers necessary to provide adequate service were located in the most conservation-oriented areas. Ms. Smith correctly notes that there may be limited instances where a site proposed in a conservation-oriented management area may be moved to a different management area and still meet the coverage needs. However, the flexibility provided to the County Public Safety Agencies is limited to developed, publically owned sites and only for those sites already proposed in the most conservation-oriented management areas. In no case does the Amendment allow for the siting of a new tower in a more restrictive management area, although it may result in siting in an equally- or less-restrictive management area. This added flexibility is in recognition that public communications facilities face different constraints than commercial facilities and provide a critical public safety need.

With regard to (3) above, we respectfully disagree with Ms. Smith. Regional Growth Areas and Pinelands Towns are not subject to CMP height limitations. As such, CMP local communication facilities regulations do not apply to the siting of towers in these management areas. They need only comply with the minimum environmental standards included in Subchapter 6 of the CMP. To the extent that a publically-owned property in a Regional Growth Area, Pinelands Town or any other management area is deed restricted or otherwise reserved for recreation and/or open space, the development of a new tower would not be permitted unless a diversion were approved (as discussed in Section I.B above). The Amendment does not facilitate the development of new towers on deed restricted open space, conservation or recreation lands. If, however, a publically-owned property in the Regional Growth Area is not preserved as open space or subject to a deed restriction, the Amendment does indeed encourage a new tower to be sited there, whether or not the property is vacant. This is wholly in keeping with the primary objective of N.J.A.C. 7:50-5.4(c)6, which is to minimize the need for new towers in other more conservation-oriented portions of the Pinelands Area.

While we appreciate the other written comments received from the above stated parties, their expressed concerns are not germane to the particular provisions of the amendment currently under consideration.

### **CONCLUSION**

Based on the Findings of Fact cited above, the Executive Director has concluded that Ocean County's May 2017 Amendment complies with Comprehensive Management Plan standards for the certification of an amendment to a certified comprehensive local communications facilities plan. Accordingly, the Executive Director recommends that the Commission issue an order to certify Ocean County's May 2017 Amendment to the Comprehensive Public Safety Tower Plan for Pinelands siting policy.

LLL/SRG/DBL/  
Attachments