

# MEMORANDUM

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**TO:** Chairwoman Laverghetta and Planning Board Members

**FROM:** Leah Furey Bruder, PP, AICP

**CC:** Regina Kinney, Administrative Officer  
Nancy Jamanow, PE, CME, Director of Community Development  
Tom Czerniecki, PP, AICP Township Manager  
Stuart Platt, Esq

**DATE:** November 23, 2011

**RE:** Pinelands CMP, Township Master Plan, and Land Use Ordinance Amendments

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The purpose of this memo is to provide an overview of the Planning Board's responsibility related to implementation of the Pinelands CMP, an explanation of the CMP amendments and the contents of the draft ordinance prepared by Pinelands Commission staff, a narrative overview of the background and impetus for the residential clustering provisions, a review of the Township's current Master Plan policies related to the Pinelands area, and some policy considerations.

## **I. Overview**

The Township is occasionally required to revise its land use ordinances in order to remain consistent with the Pinelands Comprehensive Management Plan (CMP) requirements. In July 2011 the Executive Director of the Pinelands Commission sent a letter to the Township together with a sample ordinance for the Township's consideration, indicating that the Township is required to respond to three sets of amendments to the CMP that were adopted by the Commission over the last three years. The amendments relate to wetlands management, forestry, and residential cluster development in the Pinelands Forest and Rural Development Areas.

The Township's current Master Plan (adopted 2006) addresses amendments that had been proposed (but not mandated) by the Pinelands Commission related to the *Sub-Regional Resource Protection Plan for Southern Medford/Evesham Townships*, dated April 2006. The recommendations of the sub-Regional Resource Protection Plan have not been implemented. After consulting with the Township Manager, Director of Community Development, and Pinelands staff we determined the Planning Board should prepare and adopt a Master Plan Reexamination and Amendment to reconcile any discrepancies between the Master Plan and the Township's policy position related to land use in the Pinelands Area.

The Master Plan Reexamination will be conducted in accordance with the requirements of N.J.S.A. 40:55D-89 and will consist of a narrative report and land use policy recommendations. The purpose of a Master Plan Re-examination is to assess how the assumptions, policies and objectives that form the basis for the Master Plan and development regulations have changed since the last Master Plan adoption or Reexamination and to determine whether any specific changes to the Master Plan or development regulations are recommended, including underlying objectives, policies and standards.

This Reexamination of the Master Plan, will build upon, update, and amend the 2006 Master Plan and subsequent amendments (2009, 2010, 2011).

The Executive Director of the Pinelands Commission has approved the Township's proposed adoption schedule, and requires that the ordinances to adopt the changes required by the Comprehensive Management Plan (CMP) amendments be completed by April 30, 2012

## **II. Draft Ordinance Provided by Pinelands- Overview of Contents**

The following is an overview of the changes to the Township's zoning ordinance that are included in a draft prepared by Pinelands staff. Some items may need to be altered to reflect local context and policy objectives.

### **Definitions**

The ordinance proposes adding definitions to the Zoning Ordinance (section 160-5) related to: forestry, silviculture, and wetland management. Two of the proposed definitions (FORESTRY and IMPERVIOUS SURFACE) would replace existing definitions in the ordinance. The others are new.

### **Application Requirements and Standards for Forestry Operations**

The ordinance amends section 160-25B to revise the forestry application requirements, including the items and information that must be included in a forestry management plan. Section 160-25C is also amended to set forth revised standards for forestry operations.

### **Wetlands Management**

Amendment to Section 160-45 (should be section 160-51) alters the fish and wildlife activities permitted in wetlands areas.

### **Density Transfer**

Section 160-38A(3) is amended to provide additional requirements for deed restrictions on lands that are part of a density transfer option in the FA and FW zones.

Section 160-38B(1)(c), 160-38B(2)(c), and 160-38B(3)(c) are amended to provide that all non-contiguous lands acquired as permitted for density transfer in the RD zones must be deed restricted in accordance with the ordinance requirements

### **Residential Cluster Development in FA, FW, RD-1, RD-2, RD-3, and EP zones**

1. Section 160-55, the Forest Agriculture (FA) zone is altered to require clustering when more than one single family home is proposed and to permit single family homes that are not clustered as a conditionally permitted use in accordance with new standards proposed at 161-1C(21) – see number 7 below. Table 2 is amended to include the standards for residential cluster development.
2. Section 160-56 for the Forest Woodland (FW) zone is altered to require clustering when more than one single family home is proposed. The conditional use provision is also applied (in accordance with new standards proposed at 161-1C(21) – see number 7 below. Also the table governing area and bulk requirements is revised for the cluster housing provisions.

3. Section 160-57 for the Rural Development-1 (RD-1) zone is altered to require clustering when more than one single family home is proposed. The conditional use provision is also applied in accordance with new standards proposed at 161-1C(21) – see number 7 below. Also the table governing area and bulk requirements is revised for the cluster housing provisions.
4. Section 160-58 for Rural Development-2 (RD-2) zone is altered to require clustering when more than one single family home is proposed. The conditional use provision is also applied in accordance with new standards proposed at 161-1C(21) – see number 7 below. Also the table governing area and bulk requirements is revised for the cluster housing provisions.
5. Section 160-59 for Rural Development-3 (RD-3) zone is altered to require clustering when more than one single family home is proposed. The conditional use provision is also applied in accordance with new standards proposed at 161-1C(21) – see number 7 below. Also the table governing area and bulk requirements is revised for the cluster housing provisions.
6. Section 160-62 for Environmental Protection (EP) zone is altered in the same ways.
7. A new subsection is proposed to be added to 161-1C to provide standards for the conditionally permitted “nonclustered single family detached dwellings”. The section provides that single family detached dwellings in the FA, FW, RD-1, RD-2, RD-3, and EP that are not clustered in accordance with 160-19D may be permitted provided that the conditions are met. The conditional use standards need to be objectively measurable before getting to the planning board. If certain conditions are not met then the application falls to the jurisdiction of the Zoning Board and a D(3) variance is required.
8. A provision is added to 160-17E related to scenic corridors, to allow residential cluster development in the FA, FW, RD-1, RD-2, RD-3 and EP districts to be developed within 200 feet of the roadway. This would advance the intent to cluster development closer to existing disturbed areas to reduce fragmentation of the landscape.
9. A new subsection D is added to section 160-19 related to Cluster/Conservation Design Subdivision standards. The new subsection applies to cluster residential development in the Pinelands Forest and Rural Development Areas. The section requires that in the FA, FW, RD-1, RD-2, RD-3 and EP districts clustering is required whenever 2 or more units are proposed as part of a residential development. The permitted densities are affirmed as follows:

FA zone	1 unit/20 acres
FW zone	1 unit/12 acres
RD-1 zone	1 unit/6 acres
RD-2 zone	1 unit/4 acres
RD-3 zone	1 unit/3.2 acres
EP zone	1 unit/10 acres

The method for calculating the permitted number of units is described in the ordinance and a bonus density is prescribed based on the overall tract size (larger bonus for larger tracts). The bonus ranges from 0% to 20% for the RD-2 and RD-3 zones, from 0% to 25% for the RD-1 zone and from 0% to 30% for the FA, FW, and EP zones. The ordinance also specifies that the residential cluster areas should be located on the tract in accordance with the listed

parameters to minimize disturbance and fragmentation of the land. The means for permanently protecting the undeveloped areas are provided (deed restriction) and the ordinance specifies how the land may be used (low intensity recreation, forestry, agriculture).

The ordinance also amends section 160-21 to eliminate the requirement for a minimum upland area of 25% on residential cluster lots in the FA, FW, RD-1, RD-2, RD-3 and EP zones. I asked Sue Grogan why this amendment is proposed and she indicated that the intent is to reduce barriers to clustering. She indicated that the Township may keep this requirement as long as it is made clear that it applies to the individual lots (not the overall parcel).

### **III. Narrative Overview of CMP Amendments Related to Clustering**

Over the last several years a concern has arisen about the cumulative effects of low density residential development in the Pinelands Area over time; such that a vast tract of relatively unspoiled land would eventually be lost through the effects of scattered and piecemeal development. While each new development by itself may not cause irreparable harm to the unique Pinelands ecosystem, the continuation of the development patterns over time would result in fragmentation and scattered disturbance. While the Pinelands Regional Growth Areas and, to a lesser extent, Pinelands Towns and Villages, were designed to accommodate most of the anticipated growth in the Pinelands Area, the lands in the Protection Area, (i.e., the Forest, Rural Development and Agricultural Production Areas), currently allow varying degrees of large lot zoning. An initial assumption in designating the management areas and their overall densities was that relatively low residential densities, coupled with the minimum environmental standards set forth in the CMP, would protect the essential character of the Pinelands.

Over the last 30 years the CMP has been very effective in protecting many features of the Pinelands environment. Yet the Pinelands Commission had become increasingly mindful of the potential impacts large lot residential development may have on the landscape, particularly in the largely undisturbed Forest Area which comprises approximately 250,000 acres or 27 percent of the Pinelands Area. Similar to the Preservation Area District in terms of ecological value, the Forest Area represents a largely undeveloped forested area which is an essential element of the Pinelands environment. It contains high quality water resources and wetlands and provides suitable habitat for many threatened and endangered species. (The Forest Area in Evesham is located at the extreme southern end of the Township.) The Pinelands Commission's increasing concern with the negative environmental impacts of forest fragmentation prompted a reexamination of the cluster development provisions currently contained in the CMP, and ultimately led to the amendments that have been adopted and that the Township must now implement.

Clustering is a type of development that is familiar in Evesham, and allows reduced minimum lot sizes in exchange for the preservation of open space or some other desirable feature of the property (e.g., a historic site, a scenic vista, etc). The overall density remains the same, but the individual building lots are smaller than what would conventionally be permitted. The Pinelands Commission found that there were a number of deterrents inhibiting the use of clustering in the Forest and Rural Development Areas under current regulatory conditions. Recognizing that amendments to the CMP would be necessary in order to promote on-site cluster development in the Forest and Rural Development Areas, the Commission developed a series of guiding principles. Since property ownership is generally very fragmented in Forest and Rural Development management areas, it was determined that an incentive to assemble large tracts of land would have to be afforded. This

incentive is in the form of a density bonus that, although not specifically tied to assemblage, increases with the size of the tract. (N.J.A.C. 7:50-5.19(d)1). The density bonus is structured to provide further incentives for land assemblage in the more ecologically valuable areas of the Pinelands, which generally correspond to the lower density Forest Area zoning districts. (N.J.A.C. 7:50-5.19(d)1).

The density bonuses for clustering in the RD and Forest Areas range from 0 to 40%, with larger parcels in the lower density zones receiving the higher bonuses. Since the densities are relatively low, the bonuses would not result in many additional lots. For example, in the RD-3 zone, an assembled 100 acre property would permit a total of 31 units (density is .31 unit per acre) plus a 15% bonus, for an additional 4 lots. In the FA zone, an assembled 100 acre property would permit a total of 5 units (density is .05 unit per acre) plus a 25% bonus, for an additional 1 unit. The purpose of the density bonus is to off set the potential diminution of land value that may result from the smaller lot sizes. However, we have been advised by Pinelands staff that adoption of the bonus densities is not mandatory. The cluster provisions may be adopted without the bonus densities if reasoning is provided.

#### **IV. Evesham Township Master Plan**

The mandatory clustering provisions will alter (and dictate) the pattern of future residential development in the Township's FA, FW, RD-1, RD-2, RD-3 and EP zoning districts. The Township's three most recent Master Plan reexaminations/amendments have dealt with areas mostly outside the Pinelands and therefore did not recommend the Pinelands clustering revisions. In 2009 the Master Plan focused on the Municipal Center Overlay, in 2010 the focus was on the Evesham Crossroads area and Marlton Village, and in 2011 the focus was on residential areas in the northeastern area of the Township.

The 2006 Master Plan (adopted on August 17, 2006 and amended September 20, 2006) addresses amendments that had been proposed by the Pinelands Commission. The following recommendations are summarized from the list provided under "Amendments to the Future Land Use Plan" on pages 31 to 33 of the 2006 Master Plan. The recommendations in the Master Plan relate to the *Sub-Regional Resource Protection Plan for Southern Medford/Evesham Townships*, dated April 2006.

1. Expand the Forest Area: Rezone a 611 acre area from RD-1 and RD-2 to FA (585 acres of the area is already preserved).
2. Change the zoning designation for the southern area of Compass Point (153 acres) from FW to FW/RD-2 to reflect the existing development pattern.
3. Change the zoning designation of Kings Grant from RD-1 to Regional Growth Area to reflect existing development (total area 812 acres, of which 628 are recreation/open space).
4. Change the zoning of a 796 acre area in the southern area of the township (currently FA and FW) to create a 546 acre Forest Area sending zone and 250 acre Forest Area receiving zone. Also impose mandatory cluster requirements in these areas.
5. Designate an 81 acre area (currently zoned RD-3) at the Evesham/Voorhees border as a Rural Development receiving area. The area would be subject to modified and streamlined permitting.
6. In order to preserve the attributes of the Black Run watershed basin, rezone portions of the northerly area of the Black Run watershed consisting of 436 acres from RD-1 and RD-3 to RD-S. Rezone a 221 acre area currently in the RD-2 zone to RD-S. The RD-S area would permit development transfer to the RD receiving area. Rezone a 717 acre area in the southerly

portion of the Black Run watershed from RD-3 to RD-C, where mandatory clustering would be required.

7. Allow all parcels with vacant available land within the RD-1, RD-2, and RD-3 zones within the Evesham portions of the “study area” to serve as receiving areas (434 acres).

The strategies would have reduced overall development capacity in the area and would encourage development to be clustered in areas most appropriate for growth. The above items were included in the 2006 Master Plan, but have not been implemented by ordinance, and the Pinelands Commission did not adopt management area changes.

The changes set forth in the current draft ordinance to implement the recent CMP amendments are not specifically recommended by the Township’s current Master Plan. For this reason it makes sense for the Planning Board to prepare a Master Plan Reexamination/Amendment focused on these Pinelands issues. The recommendations in the 2006 Master Plan do not accurately reflect the recent CMP changes that require the Township to amend the zoning ordinance (related to mandatory clustering in the FA, FW, RD-1, RD-2, RD-3 zones) and the 2006 Plan does make some recommendations that the Township has not implemented to date, and may not wish to follow in the future. The Pinelands staff has indicated that if the Township wishes to implement any of the recommendations from the *Sub-Regional Resource Protection Plan*, they would work with us to do so.

## **V. Policy Considerations**

The draft ordinance provided by the Pinelands Commission incorporates the minimum revisions required to make Evesham's currently certified zoning plan consistent with the CMP's clustering provisions. It does not attempt to blend the recommendations of the Sub-Regional Natural Resource Protection Plan for Southern Medford/Evesham into the required clustering ordinance. However, the Pinelands staff has indicated that they would be happy to work with us if Township wants to incorporate such changes. The Pinelands Commission is not currently proposing any Management Area Boundary changes (such as those recommended in 2009 that would have changed significant portions of the RD area to Forest Area).

The Township must consider the environmental, infrastructure, public service, and neighborhood character impacts of potential changes to zoning.

### **Southern Medford/Evesham Sub-Regional Resource Protection Plan.**

The Sub-regional Resource Protection Plan was the culmination of a collaborative effort led by a four person Steering Committee and supported by a Project Advisory Committee and a Technical Support Group. The project was initiated in an effort to take a focused look at the sub-regional area (southern Medford and Evesham) in order to gather additional natural resources information and to consider means to address potential conflicts between natural resources and development objectives. When Pinelands regulations were initially adopted in the early 1980s, they were based on the best available information at the time. Since then much more of the ecological resources of the area have been documented. The ongoing natural resource inventory and watershed management efforts led Pinelands staff to believe that a re-evaluation of zoning and development policies was warranted in the study area (including a total of 22.7 square miles).

The Plan is guided by 7 core objectives, includes an extensive evaluation of natural resources and findings, and culminates with regulatory and non-regulatory protection strategies. The regulatory

strategies are intended to reduce development disturbance to protect areas with high resource values, protect uninterrupted forest areas, adjust zoning to reflect existing development patterns, shift potential development from areas with high resource value to areas for suited to growth, provide clustering opportunities to limit the effects of sprawl. Eight specific strategies were recommended, and are reflected in the 2006 Master Plan recommendations outlined above. Base densities would be reduced overall and development transfer opportunities would be provided. More details are within the Plan itself. Before amending the Master Plan we should determine whether the Township wishes to consider adopting any of the recommendations in the Plan.

### **Affordable Housing Requirements**

At our meeting with the Pinelands Commission staff and Carleton Montgomery in May 2011, the Township Manager raised a question about COAH obligations in the Pinelands area. Section 18 of P.L. 2008 Chapter 46 required that developments consisting of newly-constructed residential units within the Pinelands Area would be required to include a 20% set-aside for low and moderate income households, to the extent that such a set-aside is economically feasible. The position of the Pinelands Commission is that the Commission does not have the authority to implement the requirement. Given the current uncertainty surrounding affordable housing laws, it does not seem that the requirement is enforceable.

### **Pinelands Preservation Alliance Comments**

In comments sent to us via email, Carleton Montgomery of the Pinelands Preservation Alliance requested that in reviewing the ordinance to implement the CMP amendments the Township keep in mind the numbers for the Black Run headwaters area that were calculated by the Pinelands Commission during the Sub-Regional Resource Protection Plan process back in 2006. The current ordinance draft does not change the overall zoned density in the Rural Development Areas and includes a 20% bonus for development in RD-3. Carleton indicates that if the ordinance is adopted more or less "as is" the numbers for Black Run watershed would be as follows:

- Total Size of Basin 798 acres
- Current Zoned Yield 239 **houses**
- Add 20% Cluster Bonus 48 houses
- Total residential units in accordance with current zoning with 20% Cluster Bonus 287 houses
- Maximum units to protect water quality specified in the Sub-Regional Resource Protection Plan: 77 houses (1 unit per 10 acres)

**Thanks for your attention to these issues, I look forward to our work session discussion next week.**