

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

**NO. PC4-05-\_\_\_\_\_**

**TITLE:** Issuing an Order to Certify Resolution 2004-34, Adopting the “Reexamination of the 1982 Master Plan Addendum for the Pinelands Area of Jackson Township”, and Ordinances 40-04 and 06–05, Amending Chapter 109 (Land Use and Development) of the Code of Jackson Township

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

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

**WHEREAS**, Resolution #PC4-83-58 of the Pinelands Commission specified that any amendment to the 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 #PC4-83-58 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 April 10, 2003, the Pinelands Commission adopted Resolution #PC4-03-38 to authorize its Permanent Land Protection Committee and the Commission staff to pursue permanent land protection opportunities in the Toms River corridor area and to form a task force to further this effort; and

**WHEREAS**, twenty individuals representing natural resources, planning and governmental interests were invited to participate on the Toms River Corridor Task Force and asked to assess the natural resources of the corridor, prioritize protection areas, suggest and implement land protection strategies and craft a regional land use and natural resource protection plan for the area; and

**WHEREAS**, through a series of meetings in 2003 and 2004 and with the help of a number of technical contributors and Commission staff, the Toms River Corridor Task Force developed a comprehensive plan and implementation strategy for directing development within the corridor into clustered areas while preserving important natural resources, wildlife habitat and open space; and

**WHEREAS**, on February 13, 2004, the Toms River Corridor Task Force unanimously endorsed a Regional Natural Resource Protection Plan for the Toms River Corridor and recommended it to the Pinelands Commission, Ocean County, Jackson Township and Manchester Township for implementation; and

**WHEREAS**, on March 12, 2004, the Pinelands Commission adopted Resolution PC4-04-22, endorsing the

**WHEREAS**, on November 8, 2004, Jackson Township adopted Ordinance 40-04, amending Chapter 109 (Land Use and Development) of the Township's Code for purposes of implementing a number of the recommendations made in the Master Plan Reexamination Report, including creation of a new zone within the Pinelands Forest Area, adoption of requirements for the mandatory clustering of residential development in a number of Forest and Rural Development Area zones, and adoption of a revised Zoning Map, dated October 25, 2004; and

**WHEREAS**, the Pinelands Commission received a certified copy of Ordinance 40-04 on November 16, 2003; and

**WHEREAS**, the Pinelands Commission received an adopted copy of Resolution 2004-34 on November 17, 2004; and

**WHEREAS**, by letter dated November 23, 2004, the Executive Director notified the Township that Resolution 2004-34 and Ordinance 40-04 would require formal review and approval by the Pinelands Commission; and

**WHEREAS**, a public hearing to receive testimony on Resolution 2004-34 and Ordinance 40-04 was duly advertised, noticed and held on December 9, 2004 at the Jackson Township Justice Complex Court Room, 102 Jackson Drive, Jackson, New Jersey at 7:00 p.m.; and

**WHEREAS**, Commission staff and Township representatives subsequently identified a number of errors and omissions on the zoning map adopted by Ordinance 40-04; and

**WHEREAS**, on February 14, 2005, Jackson Township adopted Ordinance 06-05, amending Chapter 109 of the Township's Code by adopting a revised Zoning Map, dated January 24, 2005; and

**WHEREAS**, the Pinelands Commission received a certified copy of Ordinance 06-05 on February 22, 2005; and

**WHEREAS**, by letter dated February 28, 2005, the Executive Director notified the Township that Ordinance 06-05 would require formal review and approval by the Pinelands Commission; and

**WHEREAS**, a public hearing to receive testimony on Ordinance 06-05 was duly advertised, noticed and held on March 30, 2005 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

**WHEREAS**, the Executive Director has found that Resolution 2004-34 and Ordinances 40-04 and 06-05 are consistent with the standards and provisions of the Pinelands Comprehensive Management Plan; and

**WHEREAS**, the Executive Director has submitted a report to the Commission recommending the issuance of an order to certify that Resolution 2004-34, adopting the "Reexamination of the 1982 Master Plan Addendum for the Pinelands Area of Jackson Township", and Ordinances 40-04 and 06-05, amending Chapter 109 (Land Use and Development) of the Code of Jackson Township, are in conformance with the Pinelands Comprehensive Management Plan; and

**WHEREAS**, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that Resolution 2004-34 and Ordinances 40-04 and 06-05 be

**NOW, THEREFORE BE IT RESOLVED** that

1. An Order is hereby issued to certify that Resolution 2004-34, adopting the “Reexamination of the 1982 Master Plan Addendum for the Pinelands Area of Jackson Township”, and Ordinances 40-04 and 06-05, amending Chapter 109 (Land Use and Development) of the Code of Jackson Township, are in conformance with the Pinelands Comprehensive Management Plan.
2. Any additional amendments to the 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

Achman

Hogeman

Tomacello

**REPORT ON RESOLUTION 2004-34, ADOPTING THE “REEXAMINATION  
OF THE 1982 MASTER PLAN ADDENDUM FOR THE PINELANDS AREA  
OF JACKSON TOWNSHIP”, AND ORDINANCES 40-04 AND 06-05,  
AMENDING CHAPTER 109 (LAND USE AND DEVELOPMENT)  
OF THE CODE OF JACKSON TOWNSHIP**

April 1, 2005

Jackson Township  
Municipal Building  
95 W. Veterans Highway  
Jackson, NJ 08527

**FINDINGS OF FACT**

I. Background

The Township of Jackson is located in the northern portion of the Pinelands Area, in Ocean County. Pinelands municipalities that abut Jackson Township include the Townships of Dover, Plumsted and Manchester in Ocean County.

On July 8, 1983, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Jackson Township.

On April 10, 2003, the Pinelands Commission adopted Resolution #PC4-03-38, authorizing its Permanent Land Protection Committee and the Commission staff to pursue permanent land protection opportunities in the Toms River corridor area and to form a task force to further this effort. Twenty individuals representing natural resources, planning and governmental interests were invited to participate on the Toms River Corridor Task Force and asked to assess the natural resources of the corridor, prioritize protection areas, suggest and implement land protection strategies and craft a regional land use and natural resource protection plan for the area. Through a series of meetings in 2003 and 2004 and with the

help of a number of technical contributors and Commission staff, the Toms River Corridor Task Force developed a comprehensive plan and implementation strategy for directing development within the corridor into clustered areas while preserving important natural resources, wildlife habitat and open space. On February 13, 2004, the Toms River Corridor Task Force unanimously endorsed a Regional Natural Resource Protection Plan for the Toms River Corridor and recommended it to the Pinelands Commission, Ocean County, Jackson Township and Manchester Township for implementation. The Pinelands Commission adopted Resolution PC4-04-22 on March 12, 2004, endorsing the Toms River Corridor Task Force's Regional Natural Resource Protection Plan for the Toms River Corridor and directing the Executive Director to work with the Department of Environmental Protection, Ocean County, Jackson Township and Manchester Township on the implementation of the recommendations contained therein, recognizing that certain recommendations may need to be adapted to accommodate the particular circumstances of any of these entities.

On July 19, 2004, the Jackson Township Planning Board adopted Resolution 2004-34, approving a report entitled "Reexamination of the 1982 Master Plan Addendum for the Pinelands Area of Jackson Township". This Reexamination Report is based on a review of existing and changed conditions, policies and objectives, as well as the Regional Natural Resource Protection Plan for the Toms River Corridor issued in February of 2004 by the Toms River Corridor Task Force. The Reexamination Report recommends adoption of a revised zoning plan for the Pinelands Area which would incorporate changes in both zoning boundaries and permitted uses, as well as measures designed to enhance the protection of habitat for threatened and endangered species. An adopted copy of Resolution 2004-34 was received by the Commission on November 17, 2004.

On November 8, 2004, Jackson Township adopted Ordinance 40-04, amending Chapter 109 (Land Use and Development) of the Township's Code by creating a new zone within the Pinelands Forest Area, adopting requirements for the mandatory clustering of residential development in a number of Forest and Rural Development Area zones, and adopting a revised Zoning Map, dated October 25, 2004. The Pinelands Commission received a certified copy of Ordinance 40-04 on November 16, 2004.

By letter dated November 23, 2004, the Executive Director notified the Township that Resolution 2004-34 and Ordinance 40-04 would require formal review and approval by the Pinelands Commission.

Commission staff and Township representatives subsequently identified a number of errors and omissions on the revised zoning map adopted by Ordinance 40-04. The Township indicated it would make the necessary corrections and adopt an amended zoning map.

On February 14, 2005, Jackson Township adopted Ordinance 06-05, amending Chapter 109 by adopting a revised Zoning Map, dated January 24, 2005, for purposes of correcting a

number of inadvertent mapping errors and oversights previously made on the map adopted by Ordinance 40-04. The Pinelands Commission received a certified copy of Ordinance 06-05 on February 22, 2005.

By letter dated February 28, 2005, the Executive Director notified the Township that Ordinance 06-05 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:

- \* Resolution 2004-34, approving the “Reexamination of the 1982 Master Plan Addendum for the Pinelands Area of Jackson Township,” adopted by the Jackson Township Planning Board on July 19, 2004;
- \* Ordinance 40-04, amending Chapter 109 (Land Use and Development) of the Code of Jackson Township, introduced on October 25, 2004 and adopted on November 8, 2004; and
- \* Ordinance 06-05, amending Chapter 109 (Land Use and Development) of the Code of Jackson Township, introduced on January 24, 2005 and adopted on February 14, 2005.

These documents have 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 Master Plans and Land Use Ordinances Relating to Development Standards**

### *Master Plan Reexamination Report*

As adopted by Resolution 2004-34, Jackson Township's Pinelands Area Master Plan 2004 Reexamination Report contains a description of the major problems and objectives relating to land development at the time of adoption of the last reexamination report (1982), the extent to which such problems and objectives have subsequently been reduced or increased, the extent to which there have been significant changes in assumptions, policies and objectives, the specific changes recommended to the municipal master plan and land use ordinance, and the recommendations of the planning board relative to redevelopment plans. In making recommendations for amendments to the master plan and land use ordinance, the Reexamination Report relies heavily on the data and recommendations set forth in the Toms River Corridor Regional Natural Resource Protection Plan. Specifically, the Reexamination Report recommends a reduction in size of the Township's three Pinelands Villages, the creation of a new zone within the Pinelands Forest Area with requirements for mandatory cluster development, a reduction in size of the Regional Growth Area, a decrease in residential zoning capacity within the remaining Regional Growth Area, the creation of a planned environmental development zone encompassing lands in the Regional Growth and Rural Development Areas, the establishment of an expanded wetlands buffer requirement along the Toms River main stem and the Ridgeway branch and the use of conservation easements in association with permitted cluster development.

### *Zoning and Land Use Changes*

Ordinances 40-04 and 06-05 amend Chapter 109 (Land Use and Development) of Jackson Township's Code for purposes of implementing the majority of the recommendations made in the 2004 Reexamination Report. Included in the two ordinances are amendments which reduce the size of the Pinelands Villages and the Regional Growth Area, create a new zone within the Forest Area, require the clustering of residential development and promote the use of conservation easements. A detailed description of these amendments was provided in the Toms River Corridor Plan, the relevant portions of which are attached hereto as Exhibit #1. Further information on the amendments is presented below and for the most part is limited to a description of the additional changes which the Township elected to make when refining the recommendations of the Toms River Corridor Plan to reflect local conditions and municipal objectives. It is important to note that Ordinances 40-04 and 06-05 do not address several of the recommendations made in the Toms River

Corridor Plan; namely, decreased residential zoning capacity within the Regional Growth Area, creation of the planned environmental development zone and establishment of the expanded wetlands buffer. The Township recently adopted a separate ordinance (Ordinance 47-04) to implement the expanded wetlands buffer recommendations. While that ordinance is currently under review by the Commission, it is not the subject of this report. Discussions between the Township, Commission staff and Manchester Township are ongoing relative to the creation of a planned environmental development zone which would cross municipal boundaries. It is expected that the recommended decrease in residential zoning capacity within the Regional Growth Area will also be implemented as part of that effort.

### **Reduction in size of Pinelands Villages**

As recommended in the Toms River Corridor Plan and Jackson Township's 2004 Master Plan Reexamination Report, Ordinances 40-04 and 06-05 adopt a revised zoning map which reflects a significant reduction in the size of the Township's three Pinelands Villages. In total, nearly 1,100 acres have been removed from the villages and redesignated to the surrounding Forest and Rural Development Areas. The Pinelands Village of Cassville has been reduced in size by approximately 400 acres, the Pinelands Village of Legler by approximately 600 acres and the Pinelands Village of Vanhiseville by approximately 100 acres. All of the lands removed from the villages are returned to their original Comprehensive Management Plan designations as either Forest or Rural Development Areas.

A map depicting the village boundary changes is included in the attached excerpt from the Toms River Corridor Plan. The Township did make a number of revisions to the recommended boundaries in that Plan. While these revisions were made largely to reflect parcel boundaries and recently approved subdivisions, two actually involved the addition of lands to Legler and Vanhiseville Villages and so are worthy of attention.

In the case of Legler Village, Ordinance 40-04 redesignates approximately four acres of land from the Pinelands Forest Area to the PVC-1 (Pinelands Village Commercial) Zone. The redesignated area contains an existing convenience store as well as two small adjacent lots. The Township's goal in including these lots within the Pinelands Village was both to recognize an existing commercial use and to provide a limited opportunity for additional commercial development in an area which is currently devoid of convenience retail uses.

In the case of Vanhiseville, Ordinance 40-04 redesignates an approximately 40 acre portion of one lot (Block 40.68, Lot 18.01) from the Rural Development Area to the Pinelands Village. The remainder of the lot (approximately 70 acres) is redesignated

from the Rural Development Area to the Forest Area in recognition of its limited development potential due to wetlands. The lot in question is owned by the Township and is immediately adjacent to other municipally owned lands in the Pinelands Village which are the site of an existing high school, community center, elementary school and the municipal building. The Township plans to develop a recreation complex on the rezoned parcel. While redesignation from the Rural Development Area to the Pinelands Village is not strictly necessary to accomplish this objective as active recreational facilities are permitted in both Pinelands management areas, the Township wanted its zoning plan to reflect the fact that it considers the site to be part of its larger municipal and education complex. Additionally, there may be a desire in the future to extend sewer service to whatever recreational facilities are ultimately constructed; this could not be accomplished under the current Rural Development Area designation.

Given the significant reductions in size of the Pinelands Village areas implemented by Ordinances 40-04 and 06-05, the two small additions described above are not inconsistent with Comprehensive Management Plan standards and guidelines for Pinelands Villages.

It should also be mentioned that the revised zoning map adopted by Ordinances 40-04 and 06-05 reflects changes in the boundaries of the PVC-2 (Pinelands Village Commercial) Zone within both Cassville and Vanhiseville. A seven acre lot in Cassville has been rezoned from the PV (Residential) Zone to the PVC-2 Zone while in Vanhiseville, it appears that the PVC-2 Zone has been decreased in size, presumably to recognize existing residential development. These zoning changes are also in keeping with Comprehensive Management Plan standards and guidelines for Pinelands Villages.

### **Redesignation of land from the Regional Growth Area to the Rural Development Area**

Ordinance 40-04 rezones approximately 350 acres of land located along the north bank of the Toms River from the RG-2 Zone in the Regional Growth Area to the RD-9 Zone in the Rural Development Area. Permitted residential density in the RG-2 Zone is two units per acre while in the RD-9 Zone, a density of only one unit per nine acres is permitted. A significant reduction in theoretical residential zoning capacity therefore results from this zoning change, although environmental constraints and the lack of available sewer service greatly reduce the practical impact. As was noted in the Toms River Corridor Plan, approximately 42 percent of the affected area is comprised of wetlands. Redesignation of the area is a recognition of its limited development potential and also serves to return at least a portion of the area to the

Rural Development Area designation which was adopted in the original Comprehensive Management Plan.

**Redesignation of land from the Rural Development Area to Forest Area**

Ordinances 40-04 and 06-05 redesignate approximately 760 acres from the RD and RD-9 Zones in the Rural Development Area to the FA-2 Zone in the Forest Area where a residential density of one unit per 32 acres is permitted. The majority of the redesignated lands are either owned by the State or deed restricted to preclude further development as a result of a recently approved cluster development in the adjacent Rural Development Area. The site on which the units associated with this cluster development are located remains in the Rural Development Area, as is indicated on one of the maps included in the attached Toms River Corridor Plan.

The zoning changes implemented by Ordinances 40-04 and 06-05 differ slightly from those recommended in the Toms River Corridor Plan in that the Township has elected to redesignate additional lands from the Rural Development Area to the Forest Area. Specifically, in the areas surrounding the Pinelands Village of Vanhiseville, approximately 125 acres along the southern boundary of the village have been rezoned to the Forest Area, as have approximately 35 acres to the east. The main stem of the Toms River runs through these areas, constraining them from development and making them appropriate additions to the Forest Area.

**Summary of Management Area Changes**

The chart below shows the impact of the management area changes adopted by Ordinances 40-04 and 06-05 on the distribution of land in the Pinelands Area of Jackson Township.

| <b>Pinelands Management Area</b> | <b>As Currently Certified</b> | <b>As Amended by Ordinances 40-04 and 06-05</b> | <b>Net Change</b> |
|----------------------------------|-------------------------------|---|-------------------|
| Preservation Area District       | 9,400                         | 9,400   | 0                 |
| Forest Area                      | 4,700                         | 6,150   | +1,450            |
| Rural Development Area           | 4,900                         | 4,900   | 0                 |
| Pinelands Village                | 2,500                         | 1,400   | -1,100            |
| Regional Growth Area             | 2,600                         | 2,250   | -350              |
| Military and Federal             | 6,200                         | 6,200   | 0                 |

### **Zoning Changes Within the Regional Growth Area**

Ordinance 40-04 also rezones a portion of the RG-3 (Residential) Zone to the PM-1 (Pinelands Manufacturing) within the Regional Growth Area to better reflect the non-residential nature of the development that has occurred there. Approximately 115 acres are affected by this rezoning. Given the developed nature of the area, the rezoning has minimal implications in terms of future development potential or residential zoning capacity.

### **Zoning Changes Within the Forest Area**

Jackson Township's currently certified land use ordinance provides for three zoning districts within the Forest Area, the FA-1 District where a density of one unit per 70 acres is permitted, the FA-2 District with a permitted density of one unit per 32 acres, and the FA-3 District where the permitted density is one unit per 3.2 acres. Ordinance 40-04 modifies this zoning plan in two ways: first, by enlarging the size of the overall Forest Area through the redesignation of lands from the Rural Development Area and Pinelands Villages; and second, by creating a new zoning district within the Forest Area, the FA-6 District. In total, the new FA-6 District comprises close to 900 acres in size, including all lands previously located in the FA-3 District, approximately 400 acres removed from the Pinelands Village of Cassville and just over 100 acres removed from the Pinelands Village of Legler.

Permitted uses in the new FA-6 District include single family detached dwellings at a density of one unit per 6.0 acres. This six-acre density was established to ensure that the residential zoning capacity of the Township's Forest Area as a whole remains consistent with N.J.A.C. 7:50-5.23(a)2 which allows municipalities to zone for no more than one unit per 15.8 acres of privately owned vacant upland. As is discussed in more detail in the following section, the clustering of residential development on one acre lots is required in the FA-6 District. Other permitted uses in the new zone include agriculture, forestry and low intensity recreational uses. Ordinance 40-04 establishes a density transfer program for the FA-6 District as well, whereby existing undersized lots may be allowed to develop through the acquisition and permanent protection of sufficient vacant noncontiguous lands elsewhere in the Forest Area (either the FA-1, FA-2 or FA-6 Districts).

### **Cluster Development**

As recommended in the Toms River Corridor Plan, Ordinance 40-04 implements requirements for the mandatory clustering of residential development in a number of zoning districts. In the FA-6, RD and RD-9 Zones, clustering on one acre lots will be

required whenever two or more lots are proposed as part of a subdivision application. In the FA-1 and FA-2 Zones, clustering will be required on 3.2 acre lots. The Comprehensive Management Plan provides Pinelands municipalities with the option of permitting cluster development in both the Forest and Rural Development Areas (N.J.A.C. 7:50-5.23(c) and 5.26(c)). Jackson Township previously allowed cluster development only in its RD-9 Zone but has now elected to require it throughout significant portions of the municipality in an effort to maximize the efficiency of development while maintaining large, unbroken tracts of undisturbed land which serve as habitat for rare plants and animals.

Development in the Pinelands Forest Area on lots of less than 3.2 acres in size is not something which the Pinelands Commission has frequently authorized in its certification of municipal land use ordinances. In this case, however, allowing for the clustering of units on one acre lots in the FA-6 District is warranted as a means of facilitating the permanent protection of large amounts of environmentally sensitive land in the Forest Area while at the same time allowing what is a relatively small amount of residential development to be clustered in the most appropriate areas, adjacent to existing development and two of the Township's Pinelands Villages.

Ordinance 40-04 includes performance standards to ensure that the locations chosen for clustered residential development are consistent not only with the goals and objectives of the Toms River Corridor Plan and the Master Plan Reexamination Report but also with the principles of sound municipal planning as they apply to the environmental and economic concerns of all entities involved. Specifically, Ordinance 40-04 requires that cluster developments be designed to protect the environmental attributes of a site, to promote the establishment of greenways to and from adjacent sites and to maximize the contiguity of protected lands as a means of providing habitat for threatened and endangered plants and animals. Development must be located and designed to promote efficient use of existing infrastructure (roads, utilities, etc.) and to coordinate with development on adjacent parcels. Those portions of a site outside the lots to be developed are to be permanently deed restricted as open space and maintained in an undisturbed state. Ordinance 40-04 specifies that this latter requirement be met through imposition of a conservation easement which must be approved by the Township's Planning Board and its professionals. The Township's 2004 Master Plan Reexamination Report suggests, but does not require, that the draft conservation easement included in the Toms River Corridor Plan be used as a guide.

Resolution 2004-34 and Ordinances 40-04 and 06-05 are consistent with the land use and development standards of the Comprehensive Management Plan. Therefore, this standard for certification is met.

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

Not applicable.

**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**

As described above in section 2, Ordinances 40-04 and 06-05 adopt a revised zoning plan for the Pinelands Area portion of Jackson Township which reflects both a reduction in the overall size of the municipality's Regional Growth Area and the rezoning of land within the remaining Regional Growth Area from a residential to an industrial zone. With respect to the rezoning of land within the Regional Growth Area, there will be little if any impact on residential zoning capacity or the potential use of Pinelands Development Credits because the affected lands are already developed. Obviously, the redesignation of vacant land from the Regional Growth Area to the Rural Development Area reduces opportunities for the use of Pinelands Development Credits in Jackson Township but so too does it reduce the Township's obligation to provide these opportunities. The zoning plan in place for the remaining Regional Growth Area continues to comply with N.J.A.C. 7:50-5.28(a)3. Therefore, this standard for certification is met.

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

Not applicable.

**10. General Conformance Requirements**

Resolution 2004-34, approving the “Reexamination of the 1982 Master Plan Addendum for the Pinelands Area of Jackson Township,” and Ordinances 40-04 and 06-05, amending Chapter 109 (Land Use and Development) of the Code of Jackson Township, comply with the standards and provisions of the Pinelands Comprehensive Management Plan. Therefore, this standard for certification is met.

**11. Conformance with Energy Conservation**

Not applicable.

**12. Conformance with the Federal Act**

Resolution 2004-34, approving the “Reexamination of the 1982 Master Plan Addendum for the Pinelands Area of Jackson Township,” and Ordinances 40-04 and 06-05, amending Chapter 109 (Land Use and Development) of the Code of Jackson Township, comply with the standards and provisions of the Pinelands Comprehensive Management Plan. No special issues exist relative to the Federal Act.

Therefore, this standard for certification is met.

**13. Procedure to Resolve Intermunicipal Conflicts**

None of the Pinelands management area or zoning changes adopted by Ordinances 40-04 and 06-05 involve lands which are immediately adjacent to other municipalities. Although the Master Plan Reexamination Report adopted by Resolution 2004-34 does recommend changes in zoning for an area located along Jackson Township’s boundary with Manchester Township, those zoning changes have not yet been implemented through the adoption of land use ordinance amendments and therefore are not the subject of this report.

Intermunicipal conflicts are not expected to occur as a result of the zoning changes adopted by Ordinances 40-04 and 06-05. This standard for certification is met.

## **PUBLIC HEARING**

A public hearing to receive testimony concerning Jackson Township's application for certification of Resolution 2004-34 and Ordinance 40-04 was duly advertised, noticed and held on December 9, 2004 at the Jackson Township Justice Complex, 102 Jackson Drive, Jackson, New Jersey at 7:00 p.m. Approximately 15 people attended. Mr. Stokes conducted the hearing, at which the following testimony was offered:

Leah Furey, representing Ragan Design Associates, the consulting planners for Jackson Township, provided a brief summary of the master plan reexamination report and Ordinance 40-04.

Theresa Lettman, representing the Pinelands Preservation Alliance, stated that the Township had done a great job implementing the Toms River Corridor Plan and the Commission should approve Ordinance 40-04. She stated that she had two concerns. First, the Township has not yet adopted the recommended 600 foot buffer requirements. Second, although the master plan reexamination report indicates that the conservation easement provided in the Toms River Report should be used as a guide, use of the easement is not required in Ordinance 40-04. Ms. Lettman stated she had been hoping the conservation easement would be specifically referenced in the ordinance so as to provide confidence that lands would be protected as habitat in the long term and not simply considered as open space.

Craig Adams, Jackson Township resident, stated that he was supportive of Ordinance 40-04 but wished it were more restrictive and included the rezoning of additional areas.

Rich Bizub, Jackson Township resident, stated that he hoped the Commission would look favorably on the master plan and ordinance submitted by the Township. He stated that regional conservation and habitat planning is a new approach for the Commission and the Township is fortunate that it is the location of the first effort. Mr. Bizub stated that he strongly supports the 600 buffer recommended in the Toms River Report and noted that when he was a member of the Township's Environmental Commission, they also recommended increased buffers. He stated that there are other places in the State which are struggling to acquire even small parcels. Jackson Township presents a unique opportunity to do something important on a large scale.

Ian Borden introduced himself as a Jackson Township resident and certified forester. He stated that he was not in favor of Ordinance 40-04. Mr. Borden indicated that his main concern with the ordinance was the requirements for mandatory clustering in both the

Forest and Rural Development Areas. He stated that the Comprehensive Management Plan encourages clustering only in the Rural Development and Regional Growth Areas; therefore, in his opinion, clustering in the Forest Area is not consistent with the Comprehensive Management Plan. In addition, the Comprehensive Management Plan says nothing about mandatory conservation easements. Mr. Borden stated that requiring deed restrictions is a taking without compensation and noted that the Township's master plan reexamination report even states that it will result in more land going into the public domain. He stated that the required conservation easements will eliminate the ability to farm or carry out forestry, activities which are either exempt from or encouraged by the Comprehensive Management Plan. He stated that these activities can successfully coexist with threatened and endangered species. Mr. Borden stated that Ordinance 40-04 may violate the Right to Farm Act. He also noted that the ordinance does not implement all of the recommendations in the master plan reexamination report. For example, a PED Zone was not created, nor was a 600 foot buffer adopted. Mr. Borden stated that both of these changes would require an amendment to the Comprehensive Management Plan.

In response to a question from Mr. Stokes, Mr. Borden stated that Ordinance 40-04 does not require the imposition of a specific conservation easement, although the master plan report does recommend the easement provided in the Toms River Report. He stated that the ordinance merely says that lands must be preserved in their natural state.

David Williams, Jackson Township resident, questioned why the Commission had not accepted the municipality's previous request to implement 3-acre zoning. He stated that he definitely favored Ordinance 40-04 and preserving as much land in the Pinelands as possible. Mr. Williams stated that he supported the testimony offered by Ms. Lettman. He also suggested that the 600 foot buffer requirement should be applied to Dove Creek as well as it is a main tributary to the Toms River.

George Fisher, Jackson Township resident, stated that he appreciated the efforts of the Commission and the municipality to preserve land. He stated that more should be done in terms of zoning changes. Specifically, a better transition should be created between the RG-2 Zone and lands now in the RD-9 Zone. Mr. Fisher stated that lands remaining in the RG-2 Zone are extremely environmentally sensitive; they run right along the Toms River. He stated that while the residents were appreciative of what has been done so far, they question why zoning changes have not gone further to protect threatened and endangered species.

In response to a question from Mr. Stokes, Mr. Fisher stated that the Commission should approve Ordinance 40-04 and continue to work with the Township on additional zoning changes.

Garth Michels, Jackson Township resident, commended the Commission and the

Township for the rezoning of land from the RG-2 Zone to the RG-9 Zone. She stated that adjacent lands need to be addressed as well because a development of 4 units per acre is now being proposed there and this will have an impact on the lands which have been downzoned. She referred to the proposed development as Grawtown Estates and noted that a waiver had been granted allowing for all of the trees on the site to be cut down. She stated that the site is in the Pinelands but what is being proposed is an atrocity. Ms. Michels stated that she definitely favors approval of Ordinance 40-04 and that the Commission is headed in the right direction.

Sandy Midili, Jackson Township resident, stated that Ordinance 40-04 is very important to the environment and to wildlife. She stated that the 600 foot buffer should be adopted and made mandatory. She stated that the Toms River continues up through the Grawtown Estates area and the plan for that site is to locate stormwater basins behind the river which in her opinion is ridiculous. She stated that it does not make sense to preserve one area but not the adjacent area. She noted that pine snakes do move. Ms. Midili concluded by stating that the Commission should approve Ordinance 40-04 and allow the Township to implement additional downzonings.

Marie Hausner stated that she hoped the Commission would approve Ordinance 40-04. She stated that clustering is good and she hoped it would occur.

Ms. Furey stated that the waiver granted by the Township to the Grawtown Estates project was from a "tree count" requirement and the mapping of existing trees on the site; it did not allow all of the trees on the site to be cut down. She stated the engineers had agreed to do approximately 30 test plots, each 10,000 square feet in size, within which all trees were counted. The waiver simply relieved the applicant from having to count every single tree on the site.

Mr. Fisher stated that he was also concerned with the RG-2 area north of Grawtown Estates and noted that the residents are hoping to stop these developments.

Carl Midili, Jackson Township resident, stated that his main concern was with preserving threatened and endangered species. He stated that it would be better to have development spread out more consistently over a larger area than to have a density of 4 units per acre in one area and one unit per 9 acres in another. He stated that a density of one unit per 3 acres overall would have less impact. Mr. Midili stated that he was concerned with the intensity of development possible through clustering, particularly in the RG-2 Zone.

Rich Gogan, Jackson Township resident, stated that he supported Ordinance 40-04 but like everyone else, wanted the Township and the Commission to do more.

Mr. Stokes reminded those present that the hearing record would remain open until

December 17<sup>th</sup> for the submission of written comments.

There being no further testimony, the hearing was concluded at 8:00 p.m.

Written comments on Resolution 2004-34 and Ordinance 40-04 were accepted through December 17, 2004 and were submitted by the following parties:

December 9, 2004 letter from Ian M. Borden (see Exhibit #2)

December 15, 2004 letter from Ian M. Borden, Property Development Services, Inc. (see Exhibit #3)

December 17, 2004 letter from Paul H. Schneider, Giordano, Halleran & Ciesla, representing the Stavola companies (see Exhibit #4)

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

One commenter has asserted that because N.J.A.C. 7:50-5.19(a) encourages the clustering of residential development only on parcels in the Regional Growth Area and Rural Development Area, cluster development in the Pinelands Forest Area constitutes a violation of the Comprehensive Management Plan. In fact, N.J.A.C. 7:50-5.23(c) specifically recognizes that cluster development is permitted in the Forest Area.

This same commenter and one other have also objected to the Township's requirement for the imposition of conservation easements in association with residential cluster developments, indicating that such a requirement is inconsistent with and not authorized by the Comprehensive Management Plan. Specific objections were made to the requirement that all undeveloped lands associated with a cluster development in the Forest Area be permanently protected as open space with no further development permitted, including forestry and agriculture. It is true that the Comprehensive Management Plan does not require the use of conservation easements, but neither does it preclude a municipality from choosing to use that technique as a means of achieving its objectives. The Comprehensive Management Plan (N.J.A.C. 7:50-5.23(c) and 5.26(c)) requires only that when the residential density otherwise permitted on a Forest or Rural Development Area parcel is clustered on smaller lots, the remainder of the parcel must be permanently dedicated through recordation of a deed on the parcel as open space *with no further development permitted*. Jackson Township Ordinance 40-04 is fully consistent with this requirement.

It should be noted that Ordinance 40-04 does not require that a specific conservation easement be used by all applicants. The 2004 Master Plan Reexamination Report suggests that the easement included in the Toms River Corridor Plan be used as a guide, but this does not preclude the

Planning Board from approving other conservation easements if they are proposed by applicants. It is also the Executive Director's opinion that Ordinance 40-04 provides the Planning Board with the discretion to allow for limited forestry activities to occur on deed restricted lands, provided it does not involve significant amounts of clearing which might conflict with the Township's objective of minimizing disturbance and protecting important habitat. Likewise, existing agricultural activities (which are extremely limited within the areas in question) could be allowed to continue if requested by an applicant.

A number of commenters indicated support for or opposition to the imposition of a 600 foot wetlands buffer requirement for certain wetlands in the Township. Mention was also made of zoning changes within the Regional Growth and Rural Development Areas; namely, the creation of a planned environmental development zone. These land use changes were recommended in both the Toms River Corridor Report and the Township's 2004 Master Plan Reexamination Report. However, Ordinances 40-04 and 06-05 do not implement these recommendations and therefore they are not the subject of this report. As was discussed previously, the Township has adopted a separate ordinance which establishes the expanded wetlands buffer area. The consistency of that ordinance with the Comprehensive Management Plan will be addressed during the Commission's review of Ordinance 47-04. Likewise, if and when the Township adopts an ordinance to create a planned environmental development zone, the consistency of that zoning change with the Comprehensive Management Plan will be addressed.

### **PUBLIC HEARING**

A public hearing to receive testimony concerning Jackson Township's application for certification of Ordinance 06-05 was duly advertised, noticed and held on March 30, 2005 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Five members of the public were in attendance. Mr. Liggett conducted the hearing, at which the following testimony was received:

Steve Dalton, an attorney with Giordano, Halleran & Ciesla, submitted written comments on behalf of his client, an affected landowner, Mr. David Sickel, the owner of Jackson Township Block 32.01, Lot 13 (see Exhibit #5). Mr. Dalton summarized his submission by urging the Commission to disapprove the Ordinance as being a confiscatory "downzoning" that will deny Mr. Sickel the current potential use of his property. He noted that under proposed Ordinance 06-05, only three residential units would be permitted on his client's 100 acre parcel; the remainder of the parcel would be subject to a permanent open space conservation easement. He stated that he believed the ordinance was inconsistent with the Township Master Plan and Municipal Land Use Law. He then noted procedural defects in the adoption process by the Township. He said that the Township has already codified the ordinance; thus, the unwary might believe that this ordinance was already in effect. Mr. Dalton said that a complaint is being filed to challenge the ordinance. He said that the

Commission should show restraint and not certify the ordinance.

Bill Fox, Jackson Township resident, said that there is a difference between an ordinance being consistent with the Pinelands Comprehensive Management Plan and it being right or wrong from the point of view of the landowner. He acknowledged that some of his comment today would not address Ordinance 06-05 directly but, because of the relationship between this and other pending Township ordinances, he wanted his comments included in this record. He said that he opposed the ordinance because the limits that are placed on the use of property will be detrimental to agriculture and were inconsistent with the state's Right to Farm laws. He said that the conservation easements were too restrictive and expressed concern for the Forestry Stewardship and other such programs. He said that the Ocean County Agricultural Development Board had not offered any comment on this ordinance. He noted that the FA zone is being extended across a road into a current RD-9 zone. He said that the concerns he raised regarding conservation easements needed to be addressed prior to certification.

Daniel Black said that he supported the ordinance because he would benefit from its implementation. However, he did have concerns regarding the proposed conservation easements, because the landowner would be told where to place his home and then the remainder of the parcel would be deed restricted and precluded from use.

Bill Dodds, Jackson Township resident, said that the ordinance is unfriendly to agriculture. He said that with a clearing limit of 20,000 square feet, once a house is constructed, there will be no additional area available for paddocks, barns or animals.

Mr. Liggett stated that Jackson Township Ordinance 47-04, the subject of a public hearing this evening at the Township municipal building, is on a different track and will not be the subject of Commission action at its April meeting.

There being no further testimony, the hearing was concluded at 10:05 a.m.

Written comments on Ordinance 06-05 were also accepted and were submitted by the following parties:

March 30, 2005 letter from Steve Dalton, Giordano, Halleran & Ciesla (see Exhibit #6)

March 30, 2005 letter from Ian M. Borden, Property Development Services, Inc. (see Exhibit #7)

## **EXECUTIVE DIRECTOR'S RESPONSE**

One commenter indicated that there were procedural flaws in the adoption of the ordinance. The Commission staff is not aware of any such flaws. Data and findings from the Toms River Corridor Report were specifically made part of the Township's Master Plan and the report itself was included as an appendix in the master plan reexamination. This report, and the master plan reexamination itself, provide detailed justification for the zoning changes adopted by Ordinance 06-05.

The same commenter expressed the opinion that the proposed downzonings were a taking. This type of argument has been raised whenever a downzoning has been proposed. Commission staff does not believe that the proposed ordinance constitutes a taking. All parcels affected by the proposed ordinance have assigned densities and permitted uses, although, in some cases, these densities and uses are less than before.

Two commenters were concerned about the potential impacts of the ordinance on agriculture, due to the requirements for mandatory clustering of residential development and subsequent imposition of a conservation easement on those portions of a property not to be developed. There will be no impact on existing agriculture and there is no conflict with the Right to Farm Act as the restrictions only apply if a farmer chooses to forego farming and build houses. Future clearing is specifically limited in some zones due to the need to protect forested ecosystems (i.e., the predominant purpose of the Toms River Corridor plan).

Several commenters expressed concern about the restrictive nature of the mandatory conservation easements. As is discussed earlier in this report, the restrictions do not preclude a property from use; in fact, they are only to be imposed after an owner has "used" the property for the residential density permitted under the ordinance. Only then is the owner precluded from disturbing the balance of the property. As noted previously, it is the Executive Director's opinion that the Planning Board has the discretion to allow for limited, low intensity uses on deed restricted lands, provided they do not involve significant amounts of clearing which might conflict with the Township's objective of minimizing disturbance and protecting important habitat.

## **CONCLUSION**

Based on the Findings of Fact cited above, the Executive Director has concluded that Resolution 2004-34 and Ordinances 40-04 and 06-05 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 certify Resolution 2004-34 and Ordinances 40-04 and 06-05 of the Township of Jackson.

SRG/CJA  
Attachments