

**RESOLUTION 2013-240****RESOLUTION OF THE TOWNSHIP OF STAFFORD,  
COUNTY OF OCEAN, STATE OF NEW JERSEY,  
SUPPORTING AN APPLICATION TO THE NJDEP GREEN  
ACRES PROGRAM AND THE STATE HOUSE  
COMMISSION FOR AUTHORIZATION TO FURTHER  
AMEND AN EXISTING DECLARATION OF COVENANTS  
AND RESTRICTIONS TO PERMIT THE CONSTRUCTION  
AND OPERATION OF RENEWABLE ENERGY  
FACILITIES ON THE STAFFORD PARK LANDFILL**

**WHEREAS**, Block 25, Lot 39 contains the Stafford Municipal Landfill generally referred to as the "Licensed Landfill"; and

**WHEREAS**, the Licensed Landfill consists of approximately 77.834 acres; and

**WHEREAS**, in connection with the redevelopment of the property known as the Stafford Business Park, which includes the Licensed Landfill, Stafford Township (the "Township") executed a Declaration of Covenants and Restrictions dated December 7, 2006 and recorded with the Ocean County Clerk's office on December 11, 2006 in Book 13446, page 0118 (the "Original Declaration"); and

**WHEREAS**, the Original Declaration, in accordance with its terms, limited development on all of the Licensed Landfill in fulfillment of requirements imposed by the Memorandum of Agreement dated June 28, 2006 (the "MOA") by and between the Township, Ocean County and the New Jersey Pinelands Commission; and

**WHEREAS**, in order to allow the construction, use and operation of Renewable Energy Facilities on a portion of the Licensed Landfill, the Township sought the approval of the Pinelands Commission ("Commission"), New Jersey Department of Environmental Protection ("NJDEP") and the State House Commission ("SHC") to amend the Original Declaration; and

**WHEREAS**, a the Amended Declaration (as hereinafter defined) to the Original Declaration was approved by the Commissioner of the NJDEP by Certificate of the Department of Environmental Protection Granting Partial Release of Conservation Restrictions dated December 20, 2010 and recorded with the Ocean County Clerk's office on January 19, 2011 at Book 14802, page 0094; and

**WHEREAS**, the Amended Declaration was approved by the SHC on November 22, 2010; and

**WHEREAS**, the Amended Declaration was approved and authorized by the Commission by Amendment of the June 28, 2006 Memorandum of Agreement Amongst Stafford Township, Ocean County and the New Jersey Pinelands Commission; and

**WHEREAS**, with the approval of the Commission, the NJDEP and the SHC, the Original Declaration was amended by the Restated and Amended Declaration of Covenants and Restrictions dated January 11, 2011 and recorded with the Ocean County Clerk's office at Book 14802, page 0082 on January 19, 2011 ; (the "Amended Declaration") and

**WHEREAS**, approximately 12% of the Renewable Energy Facilities permitted by the First Amended Declaration have been constructed and are currently in operation on the Licensed Landfill; and,

**WHEREAS**, the NJDEP's action as described herein was appealed to the New Jersey Superior Court, Appellate Division in an action entitled I/M/O Certificate of the Department of Environmental Protection bearing Docket No. A-002316-10 (the "Litigation") challenging the NJDEP's authorization of the Amended Declaration and the partial diversion of parkland it authorized on a portion of the Licensed Landfill for Renewable Energy Facilities; and

**WHEREAS**, it has been determined by the NJDEP in connection with that Litigation to voluntarily accept a remand by the Appellate Division so that the process by which the Amended Declaration was adopted could be modified to address certain matters raised by the appellants in the Litigation and, as part of that process, it is necessary for the Township to seek a further amendment to the Original Declaration and the Amended Declaration; and

**WHEREAS**, in order to comply with applicable law, NJDEP has requested that other lands, not located at the Stafford Business Park, be deed restricted to compensate for the loss of that portion of the Licensed Landfill designated as "parkland" and being utilized for Renewable Energy Facilities; and

**WHEREAS**, the area proposed to be utilized for Renewable Energy Facilities is smaller than reflected in the Amended Declaration and therefore that area to be released from the Original Restriction should be reduced to 33.854 acres, as reflected on the attached map; and

**WHEREAS**, in accordance with NJDEP's request, the Township, subject to appropriate modifications in the existing lease with the current developer of the Renewable Energy facilities as described below, is willing to deed restrict certain lands it owns, consisting of 40.84 acres, and identified on the municipal tax map as lots 21.02 and 26 block 54; and

**WHEREAS**, since the Amended Declaration was filed, the market for solar energy projects has deteriorated to the point that no Renewable Energy Facilities project on any portion of the Licensed Landfill is economically feasible either now or for the foreseeable future; and

**WHEREAS**, unless the Township seeks the modification to the Amended Declaration, as described herein, the opportunity to construct Renewable Energy Facilities on the Licensed Landfill will be forever lost; and

**WHEREAS**, it is therefore in the Township's best interest to seek the necessary modifications to the Amended Declaration so long as the Township is adequately compensated for its agreement to deed restrict lands to compensate for the purported loss of the 33.854 acres

of land located on the Licensed Landfill proposed for Renewable Energy Facilities as "parkland", and so long as the existing Lease by and between the Township and Solar 1, LLC dated January 24, 2009 and assigned to Solar 3, LLC (the "Solar Lease") covering that portion of the Licensed Landfill is amended in order to protect the Township's right to construct Renewable Energy Facilities thereon in the event that the redeveloper is unable to do so at the time such a project becomes feasible; and

**WHEREAS**, the Township has also agreed to modify the rental obligations in the Lease to reflect the substantial change in the solar energy market so that when and if it becomes feasible to install Renewable Energy Facilities on a portion of the Licensed Landfill appropriate rent is paid by the tenant to the Township; and,

**WHEREAS**, the further modification of the Original Declaration and the Amended Declaration requires the approval of the Commissioner of the Department of Environmental Protection and the State House Commission pursuant to *N.J.A.C. 7:36-26*; and,

**WHEREAS**, in accordance with *N.J.A.C. 7:36-26.9(d)11*, it is necessary for the Township to submit, as part of the amended application, a Resolution endorsing the application to further amend the Original Declaration and the Amended Declaration;

**NOW THEREFORE, BE IT RESOLVED** by the governing body of the Township of Stafford, County of Ocean, State of New Jersey as follows:

1. The Township endorses the filing of an application to further modify the Original Declaration and the Amended Declaration to deed restrict certain lands consisting of 40.84 acres identified on the municipal tax map as lots 21.02 and 26, block 54 in order to compensate for the loss, as "parkland", of 33.854 acres of the Licensed Landfill to be utilized in the future as Renewable Energy Facilities pursuant to *N.J.A.C. 7:36-26*;
2. The Township of Stafford hereby reconfirms that the installation and operation of Renewable Energy Facilities on a portion of the closed and capped Licensed Landfill would meet the minimum substantive criteria at *N.J.A.C. 7:36-26.1(d)* by (i) generating clean renewable on the cap of a closed landfill; and (ii) continuing to provide electricity to Ocean County and The Township of Stafford at reduced rates; and,
3. The Township of Stafford acknowledges that in order to obtain the approval for the modification to the Amended Declaration the proposed Renewable Energy project must meet any applicable substantive and procedural requirements of *N.J.A.C. 7:36-26*, including compensation requirements, if any, at *N.J.A.C. 7:36-26.10*.

CERTIFICATION

I, **BERNADETTE M. PARK**, Clerk of Stafford Township, do hereby certify that the foregoing Resolution was adopted by the Stafford Township Council at a meeting held on the 10th day of **December**, 2013.



BERNADETTE M. PARK, RMC, CMC  
Township Clerk, Township of Stafford