



PINELANDS PRESERVATION ALLIANCE

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October 12, 2010

Mr. Jim Moran, Administrator
Stafford Municipal Building
260 E. Bay Avenue
Stafford Township, New Jersey 08050

DEP, Green Acres Program
Bureau of Legal Services and Stewardship
Mail Code 501-01, Box 420
Trenton, New Jersey 08625-0420

**Re: Stafford Township Parkland/Grassland diversion, Block 25, Lot 39,
Stafford Township**

Dear Sirs:

These comments are submitted by Pinelands Preservation Alliance and the New Jersey Conservation Foundation in response to the September 27, 2010 New Jersey Green Acres Program scoping hearing held in Stafford Township to divert 57.67 acres of municipally-owned parkland known as Block 25, lot 39 in Stafford Township.

This land has been preserved through a conservation deed restriction, as required by the Memorandum of Agreement between the New Jersey Pinelands Commission, Stafford Township and the Ocean County Board of Chosen Freeholders, dated June 2006. Stafford Township recorded the conservation deed restriction on December 11, 2006. Moreover, the area in question has been grassland and threatened and endangered species habitat for 30 years or more. Prior to the proper closure of the landfill, this site had been maintained with grasses since Stafford Township stopped accepting solid waste at the landfill in 1982. The public was not actively prevented from using the site, which is adjacent to state owned land.

We agree with the Department's conclusion that the land cannot be developed as proposed by the township's chosen contractor, Walters Group or one of its affiliates, unless the development meets the legal requirements for a diversion under Green Acres rules. The proposed solar facility clearly conflicts with the stringent terms of the conservation deed restriction, and Stafford Township has received Green Acres funds since recording this

restriction. Because the Department has informed Stafford Township that a diversion would be required, and the Township has initiated the process by submitting a pre-application for diversion, Stafford Township has conceded that the proposed solar development cannot take place unless the legal requirements for a diversion are satisfied.

The diversion application is currently at the scoping hearing phase, meaning the process is at the threshold stage of determining whether the proposed development can qualify for a diversion under the legal standards; if the project can qualify, specify what information the applicant should be required to provide in its final application; and verify that public notice and comment requirements have been met.

We submit that the application does not meet the Green Acres requirements in three critical respects:

1. The stated objectives to be achieved by the proposed development do not meet the threshold requirements for a diversion;
2. The applicant's proposed compensation does not address the legal standards; and
3. Procedural requirements for public notice have not been met.

For each of these reasons, the diversion process should be halted at this stage and not be approved for a public hearing.

1. The stated objectives to be achieved by the proposed development do not meet the threshold requirements for a diversion

The Green Acres regulations provide that a diversion may only be carried out if it will (a) fulfill a compelling public need by mitigating a hazard to the public health, safety or welfare; (b) yield a significant public benefit by improving the delivery of essential services to the public; or (c) provide an exceptional recreational and/or conservation benefit. N.J.A.C. 7:36-26.1(d).1.

According to the draft Pre-Application document, the applicant appears to assert that the solar facility fulfills standards (a) and (b) above. (See Pre-Application pp. 2-3.) Its brief and conclusory statements on this essential element show it has not come close to meeting either of these threshold standards. While the text is not particularly clear, it points to two good things about the project: That solar energy is cleaner than other sources of electricity, and that the Township and County will receive some financial benefit by obtaining electricity for their facilities "at a reduced cost." Neither of these points meet the legal standards, and similar benefits could be said to apply to literally *any* development of public conservation land so long as the applicant put solar panels into the development.

First, it is critical to recognize that the proposed diversion is for a private, for profit use of public conservation land. The Walters Group will lease the land, but it will own the solar facility and sell the electricity for its own financial benefit. The private developer is

proposing to make long-term lease payments to a public agency in order to exploit public conservation land for its own purposes, simply because the land is conveniently located within an area to which the local government appears to give it exclusive commercial rights. Once again, if this model for the use of public conservation land is approved for diversion, then the diversion rules will become meaningless as a guarantee of public open space protections.

To meet the standard for “compelling public need,” the project must “mitigate[e] a hazard to the public health, safety or welfare.” N.J.A.C. 7:36-26.1(d)1.i. The application does not identify any such hazard. The application makes a generalized reference to global warming, but there is nothing about this specific project that suggests it is necessary to reducing global warming (nor that it will have any measurable impact on global warming). It is not the intent of this standard to invite diversion projects to address generalized, global concerns, but instead to provide a means to allow actions needed to solve a particular hazard that can only be met by the specific diversion.

To meet the “significant public benefit” standard, the project must “improve[e] the delivery by the local government unit . . . of essential services to the public or to a segment of the public having a special need . . .” N.J.A.C. 7:36-26.1(d)1.ii. The applicant does not claim that there is any essential service that it does not currently provide, or that it will not provide, unless this solar facility is constructed. The applicant’s only claim is that there will be some – wholly un-quantified – financial benefit to the Township government by leasing the land for the proposed development. The applicant has made no case whatsoever that the diversion is necessary to improving any service it provides – nor could it. Once again, it would completely negate the protections of the diversion process if any transfer of funds to a local government can be the justification to divert preserved conservation lands.

In fact, the Ocean County Recycling Facility currently uses solar energy at the recycling facility that is located within the Stafford Business Park. One hundred and twenty panels were installed shortly after the Pinelands Commission public development application approval in November 2008 (copy attached). There is no claim here that essential services provided by Ocean County depend on construction of the solar facility as proposed.

2. The applicant’s proposed compensation does not begin to meet the legal standards

The Green Acres rules, N.J.A.C. 7:36 – 26.10(a), state “an applicant shall provide compensation for a major diversion . . . ensure that the public is adequately compensated for the market value of the parkland.” The Township, both at the scoping hearing and in its Pre-Application has simply failed to provide any preliminary compensation proposal. Its response to this part of the Pre-Application Form (question 5 on p. 14) points the reader to the explanation of what compensation the Township will receive for the lease agreement – a completely distinct question. The Township appears to be unaware of this provision of the regulations, or to have misinterpreted the requirement to refer to the funds the Township will receive for the benefit of its municipal budget in the form of lease payments. The Township has repeatedly stated that it will direct the funds to benefit its budget – not to purchase new

conservation lands. Such financial benefits to the local government are unrelated to the required Green Acres diversion compensation to the people of New Jersey for the loss of conservation land. Nor has the Township even quantified the financial benefit it will receive from Walters Group.

Since this provision requires the applicant, in this case Stafford Township, to compensate the public for the loss of conserved open space, the Township has wholly failed to address a critical element of the scoping process and diversion rules. The Department cannot approve this proposal to proceed to final application and hearing until the applicant has presented a proposed compensation plan that meets the regulatory requirements.

3. Procedural requirements for public notice and comment have not been met

The Green Acres rules, Section 7:36-26.8(c)1 v. state that the applicant must provide notice of the scoping hearing to include the following:

Post and maintain in a legible condition until the public comment period is concluded a sign on the parkland that is the subject of the proposed diversion or disposal. Such sign shall advise the public of the proposed diversion or disposal, the public hearing on the proposed disposal or diversion and the opportunity for public comment on the proposed disposal or diversion. Such sign shall be located at each public entrance to the parkland proposed for diversion or disposal and/or in other prominent location(s) approved by the Department. Such sign shall be of sufficient size and visibility and contain sufficient detail as to inform the general public of the proposed diversion or disposal of parkland and the method by which the public may obtain information about such proposed diversion or disposal, and shall be subject to the Department's approval (emphasis added)

PPA staff visited the site on two occasions and found that there has been no posting of a sign at any public entrance to the area. The land in question is adjacent to publicly owned open space, yet no sign was posted anywhere along this area. Those using the State owned land should have had an opportunity to know that the Stafford Landfill grassland park property was the subject of a proposed diversion. On September 19, 2010, PPA staff walked the entire length of the Stafford Landfill Grassland property, adjacent to the public land, and there was no posted sign to meet 7:36-26.8(c)1v.

On October 6, 2010, after PPA's third request to review the NJ Green Acres application file, Stafford Township called to set up an appointment. In the file, the applicant indicates that a sign was posted but gives no information where it was placed. It appears that at some point, the applicant placed a sign inside the county recycling/composting facility area. This is not a public entrance, since it is only accessible after one passes over the county scale, beyond the public area. In fact, when PPA staff visited the area on September 19, 2010, the facility was gated at the roadway (see pictures attached). A walk around the commercial and residential sides of the property did not reveal any posted signage to meet the Green Acres requirements.

Finally, the second and final public hearing on the diversion has already been improperly scheduled for October 14, 2010. N.J.A.C. 7:36-26.11(a) states that the applicant must file a final application *after* the Department gives its approval, based on the scoping hearing, to proceed with the application, and that the final application must be filed “*prior to* scheduling the public hearing on the application.” (Emphases added.) It is improper, therefore, for the applicant to have scheduled the public hearing. In order to provide the necessary information, moreover, the applicant must provide the 30-day public comment period after the Department determines whether the diversion can proceed to hearing and what information the applicant must provide. See N.J.A.C. 7:36-26.11(h).

The township, however, has noticed the hearing for a mere two weeks after the scoping hearing, one day after the final day for public comment on the scoping issues, and before the Department can have ruled on the scoping hearing and responded to public comment from the scoping hearing. On the applicant’s schedule, the Department has not even determined that the application can proceed, and the applicant cannot provide the public the actual application information it will have to submit if and when the Department determines a public hearing is appropriate under the diversion regulations. The applicant’s objective appears to be rushing the process and depriving the public of the full time required to review and comment on the final application.

On September 20, 2010, PPA staff went to Stafford Town Hall and asked the Township Clerk if an appointment could be made to review the Stafford Business Park Landfill/Grassland diversion file, which was the subject of the September 27th scoping hearing. The Township Clerk indicated that she did not have a file. PPA staff then walked to the Business Administrator’s office and left a written request and business card requesting an opportunity to review the file. When PPA did not receive a call back from Stafford Township after two days, PPA then faxed a written request to the mayor and again copied the Township Clerk. A copy of the fax receipt is attached. This inability to produce information to the public even about the pre-application and scoping hearing further demonstrates that the applicant has not met the requirement to provide public access to the information necessary for the public hearing currently scheduled for October 14th in the time required by the regulations.

Respectfully submitted:



Carleton Montgomery
Executive Director
Pinelands Preservation Alliance
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Southampton, NJ 08088
(609) 859-8860



Alison Mitchell
Policy Director
New Jersey Conservation Foundation
Bamboo Brook
170 Longview Rd
Far Hills, NJ 07931
(908) 234-1225

**REPORT ON AN APPLICATION FOR
PUBLIC DEVELOPMENT**

October 1, 2008

Alan Avery, Jr.
Ocean County
101 Hooper Avenue
Toms River, NJ 08754

Please Always Refer To
This Application Number

Re: Application #: 1987-1159.044
Block 25, Lot 37
Stafford Township

Dear Mr. Avery:

The Commission staff has completed its review of the above referenced application. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its November 14, 2008 meeting.

FINDINGS OF FACT

This application is for the construction of twenty-five 120 square foot solar photovoltaic panels mounted on twenty-five 8 foot high 6 inch diameter poles on the above referenced 28.01 acre lot. There is an Ocean County office building and several other County facilities located on the lot. The lot is located within the Stafford Township Business Park. The lot is located in a Pinelands Regional Growth Area.

At its July 14, 2006 meeting, the Pinelands Commission approved a Memorandum of Agreement (MOA) between the Commission and Stafford Township for the redevelopment of the Stafford Township Business Park (App. No. 1987-1159.001). It was previously determined that the resubdivision of Block 13, Lots 22.01, 60 & 65-68; Block 25, Lots 27.01, 61 & 63-93; Block 25.01, Lots 1-8 & 59; Block 25.02, Lots 1-8, 9.01, 9.02, 9.03, 10 & 11 and Block 25.03, Lot 1 in Stafford Township was consistent with the terms of the MOA and the requirements of the Pinelands Comprehensive Management Plan (CMP) and that a formal application to the



Commission for that resubdivision was not required (App. No. 1987-1159.026). That subdivision created the lot subject of the current application.

The purpose of the proposed development is to provide energy to the Ocean County office building and the other County facilities.

With the conditions recommended below, the proposed development will be consistent with all the management standards contained in Subchapter 6 of the CMP.

The Pinelands Commission has not received any public comments concerning the application.

CONCLUSION

The proposed solar photovoltaic panels are a permitted use in a Pinelands Regional Growth Area (N.J.A.C. 7:50-5.28(a)). If the following conditions are imposed, the proposed development will be consistent with the management standards contained in Subchapter 6 of the CMP.

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

1. Except as modified by the below conditions, the proposed development shall adhere to the plan prepared by Birdsell Engineering and dated September 3, 2008.
2. Except as modified by the below conditions, the proposed development shall adhere to the plans, consisting of four sheets, prepared by Birdsell Engineering, all sheets dated August 28, 2008.
3. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.
4. Landscaping shall adhere to the requirements of the CMP.
5. Prior to any development, the applicant shall obtain any other necessary permits and approvals.

APPEAL

Any interested person may appeal the Executive Director's determination on this application to the Commission. The appeal must be made within 18 days of the date of this letter by giving notice, by Certified mail, of the appeal to the Pinelands Commission. Said notice shall include:

1. the name and address of the person requesting the appeal;

2. the application number;
3. a brief statement of the basis for the appeal; and
4. a certificate of service, (a notarized statement), indicating that service of the notice has been made by Certified mail, on:
 - a. the applicant (unless the applicant is requesting the appeal);
 - b. Secretary, Stafford Township Planning Board;
 - c. Stafford Township Environmental Commission; and
 - d. Ocean County Planning Board.

Any appeal will be referred to the Office of Administrative Law for a hearing. If no appeal is received within 18 days of this letter, the Pinelands Commission will act on this application at its meeting on November 14, 2008. At this meeting, the Commission may either approve the determination of the Executive Director or refer the application to the Office of Administrative Law for a Hearing.

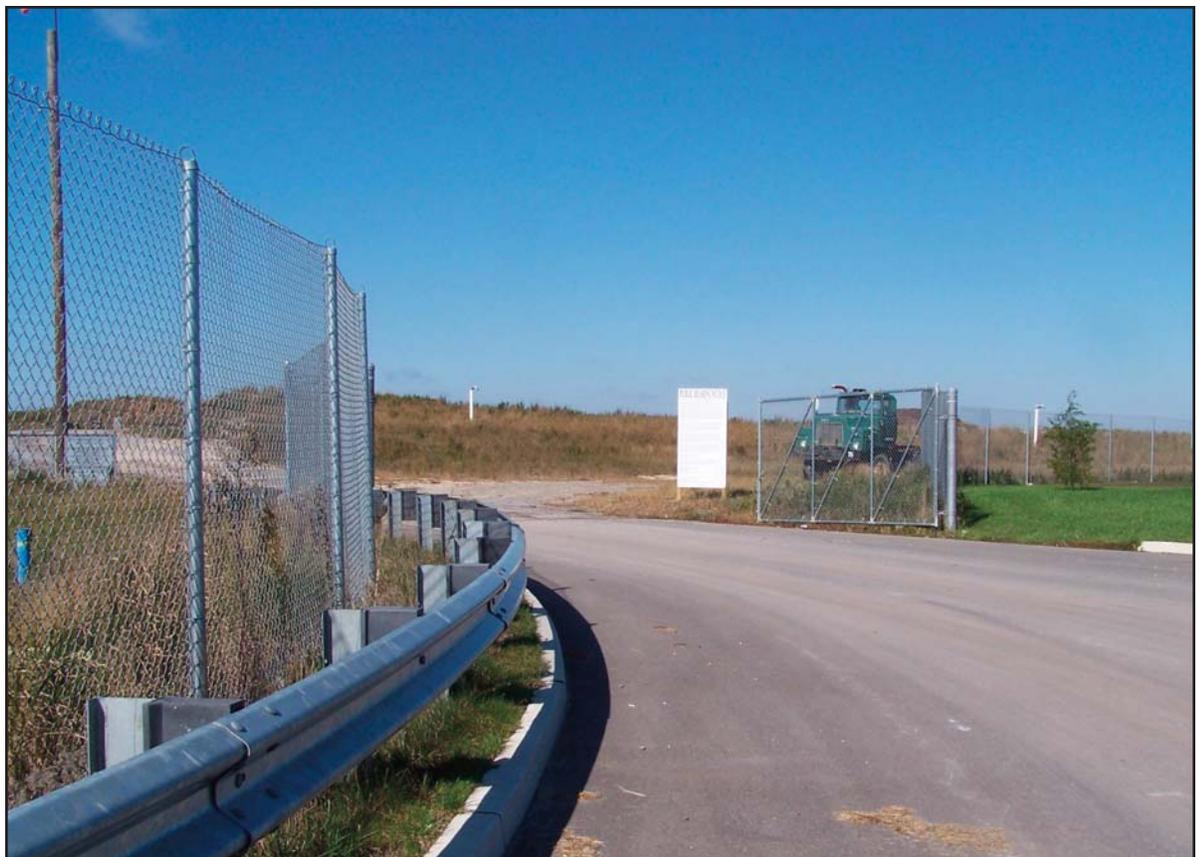
Recommended for Approval by: _____
Charles M. Horner, P.P., Director of Regulatory Programs

- c: Secretary, Stafford Township Planning Board
Stafford Township Environmental Commission
Ocean County Planning Board
Peter Van den Kooy
Ernest Deman



Gated entrance to the Ocean County Road Department and Recycling Facility area. This gate is before the scale house.

This area is after you get into the gated County Facilities and then beyond the scale and recycling drop off building.





This gate is after the scale house. After you pass through the scale and go beyond the recycling dump off building.

This is looking from the parking lot and towards the scale house. The Road Department building and gate is beyond the second building.



*** TX REPORT ***

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PINELANDS PRESERVATION ALLIANCE

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To: John McMenamin, Mayor
Bernadette Park, Township Clerk

From: Theresa Lettman

Date: September 22, 2010

I attended the September 21, 2010 Stafford Township Council meeting and heard that the Township Administrator is and will be out of the office due to a illness in his family.

I went to Town Hall on Monday, September 20th and put in a request to review the Stafford Business Park/Landfill Green Acres diversion file. This request was left with the Business Administers office for his return.

Now hearing that he may be back in the office this week, I am again making my request to you to review the file. I would like an opportunity to review the file prior to the September 27, 2010 public hearing.

Please let me know if this can be arranged. I can be reached at 609-859-8860. Ext. 22.