



PINELANDS PRESERVATION ALLIANCE

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Comments on Proposed Amendment of Memorandum of Agreement Between the Pinelands Commission, Stafford Township, and Ocean County To Eliminate Conserved Open Space for Renewable Energy Facilities

These comments are submitted by Pinelands Preservation Alliance in response to the Pinelands Commission's public hearing notice setting a hearing for October 12, 2010 on the proposed amendment of the Memorandum of Agreement Between the Pinelands Commission, Stafford Township, and Ocean County To Eliminate Conserved Open Space for Renewable Energy Facilities.

The amendment is designed to authorize the development and conversion of municipally-owned, preserved parkland in Stafford Township to a solar and wind energy generation facility.

The Pinelands Commission should not approve the proposed amendment because:

- It will further damage the reputation of the Pinelands Commission for keeping its conservation promises and applying its rules consistently.
- The amendment violates the Pinelands Comprehensive Management Plan.
- The development for which the amendment is designed is wholly unnecessary, and will serve the private economic interests of a particular developer rather than the interests of the public.
- The amendment is drafted in order to prevent the Commission and the public from reviewing detailed development plans as they are implemented over time.
- The manner in which the Commission is rushing the process is unseemly, giving the impression that the Commission is "bending over backwards" for a particular private developer, rather than fulfilling its statutory mandate to protect the Pinelands environment in a consistent and even-handed fashion.

The land in question 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 instituted in 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.

First, one has to ask, what do the members of the Pinelands Commission and its staff think the words “unmolested” and “in perpetuity” mean? These are the terms of the requirement the Commission placed on the Township as a condition of granting its private developer the right to avoid CMP requirements that apply to all housing and shopping mall developments, except this one. The Pinelands Commission should keep its promises. Release of this deed restriction would represent a direct breaking of the commitment to preserve this land “unmolested” and “in perpetuity.”

The great strength of the Pinelands Commission has been its reputation for consistency and rigor in applying its regulations. We are very worried that this reputation is in decline due to this kind of action. How can the public trust the Pinelands Commission if it would negate such a deed restriction because a local government, acting as sponsor for a private, for profit business, seeks the financial benefit of developing permanently preserved conservation lands? What can be the value of future promises the Commission purports to make in future cases? Approval of this amendment will be another blow to the Commission’s reputation for reliability and consistency.

Second, the proposed amendment violates the legal standards of the Comprehensive Management Plan, in the following respects:

- a. The CMP provisions governing intergovernmental memorandums of agreement require that the agreement achieve at least “equivalent protection of the resources of the Pinelands plan than would be provided through a strict application of the standards of this Plan.” N.J.A.C. 4.52(c)2. The original MOA required permanent protection of the land in question as one of the measures specifically identified as meeting this equivalent protection standard. The Commission’s draft resolution to approve the subject MOA amendment expressly acknowledges this fact, stating “Whereas, as part of the measures included in the July 28, 2006, MOA, intended to provide an equivalent level of protection of the resources of the Pinelands, the Township, as required by Paragraph VI.A.15 of the MOA, placed a Conservation Restriction upon the portions of the New Landfill ...” (p. 1) Without this element, therefore, the MOA, as amended, will violate the equivalent protection requirement.
- b. The proposed amendment purports to include an odd kind of “mitigation” for the loss of conservation open space in the form of a payment of \$152,900 to the Pinelands Commission, over time, which the resolution (but not the findings or MOA amendment) assert will be used “to fund an assessment of the existing landfills located in the Pinelands Area that have not, as of yet, been closed as required by

N.J.A.C. 7:50-6.75(c).” This payment for the Commission’s approval cannot be construed as providing “equivalent protection” because it does not provide any protection of resources at all. It simply funds a study. A study does not protect anything. There is nothing, then, in this proposed payment that will or even could provide protection of Pinelands resources to match the real loss of public, conserved open space.

- c. The proposed amendment provides no basis for the calculation of the payment for the Commission action, and no analysis of why this amount for this purpose provides any kind of equivalency for the particular lost open space, or for the lost resources destroyed in the original MOA. The amendment, therefore, relies on a wholly arbitrary decision, with no scientific basis, to meet a critical legal threshold.

Third, the development for which the amendment is designed is wholly unnecessary, and will serve the private economic interests of a particular developer rather than the interests of the public. The energy generation facilities are not necessary to serve the development within the Stafford Park area, which is already served through public utilities. It appears the new solar panels, like those already installed on the multi-family housing, will be hooked into the electrical grid, and the developer will simply sell the electricity to the utility for a profit. There is no necessity, therefore, to build such a facility on this particular piece of public open space, which the Commission promised to preserve “unmolested” and “in perpetuity.”

Fourth, the amendment is drafted to give the developer *carte blanche* on the manner in which this development takes place, including all the associated development that is required to transport the electricity to the grid and maintain the facility over time, without detailed Commission or public review. This approach to the use of MOAs to authorize private development under the thin veneer of “public” development short-circuits the Commission’s rigorous review requirements.

Fifth, the manner in which the Commission is rushing the process is unseemly, and it gives the public the strong impression that the Commission is “bending over backwards” for a particular private developer.

The fact that this public hearing was scheduled before there has been a full discussion and approval of the form of the MOA amendment by the Commission’s Public and Government Programs Committee is unusual, and suggests the Commission seeks to minimize deliberation and public input by constraining the record and opportunities for the public to speak. Normally, the shape of the MOA or amendment would have evolved through some deliberation at the Commission’s committee level. That has not happened at all in this case. We are also disturbed that the Commission proposes to agree to a sum of money for which it provides no rational basis, which bears no connection to the natural resource values it proposes to discard, and provides no incentive for future respect of conservation deed restrictions.

The Commission, moreover, after choosing not to vote on the form of the proposed amendment at the committee level, issued the public notice for tonight's hearing by mail (not by email) only on September 29th, providing only 6 business days to prepare for the hearing, and the Commission is providing only one day beyond today's hearing for written comments. This rushed scheduling, again, is unusual, especially in a case of controversy.

In its rush to show the world that it would never make trouble for this development, the Pinelands Commission is moving to approve the amendment before it even knows whether the deed restriction which it required will be lifted pursuant to state conservation restriction and Green Acres diversion laws. In fact, the proposed development does not fulfill any compelling public need by mitigating a hazard to the public health, safety or welfare; nor does it yield a significant public benefit by improving the delivery of essential services to the public. Nor has the applicant met other threshold procedural and substantive requirements for a diversion. We demonstrate these conclusions in the attached public comments which we are submitting simultaneously as part of the Green Acres scoping hearing procedure.

For all of these reasons, we ask the Commission not to approve the proposed MOA amendment.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Carleton Montgomery". The signature is fluid and cursive, with a large, stylized "M" at the end.

Carleton Montgomery
Executive Director
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