

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**SHC APPROVAL SUMMARY SHEET**

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**PARK NAME:** Stafford Business Park Open Space Areas

**PARK OWNER:** Township of Stafford

**COUNTY:** Ocean

**MUNICIPALITY:** Stafford Township

**REASON FOR REQUEST:**

Diversion   
Disposal   
Lease

Acre(s): 46.8 +/- (approx.)  
Block: 25 Lot: 39 (portion of)  
Value: N/A (see Compensation, below)

**COMPENSATION:**

Cash Payment

Value: \$75,000 to \$150,000 per year (phased)  
+ 6<sup>th</sup> and 11<sup>th</sup> year 10% escalator and  
other market-based adjustments  
(see Compensation, below)

**PUBLIC HEARING:**

**Dates:** September 27, 2010 and October 14, 2010

**Comments:** At both public hearings, procedural and substantive objections to the project were raised by local citizens and environmental groups. These objections are outlined and addressed in Attachments 2 and 3 to this Summary.

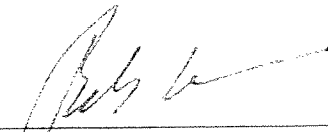
**APPLICABLE STATUTE:** *N.J.S.A. 13:8A-47(b) and N.J.S.A. 13:8C-32(b)*

**COMMENTS:** The New Jersey Department of Environmental Protection, on behalf of the Township of Stafford, requests approval to allow the diversion of approximately 46.8 acres of land by the Walters Group, the Township's designated redeveloper for the Stafford Business Park project, for the installation of a solar facility to serve the redevelopment project. The proposed diversion involves a 30-year lease between the Township and Walters for the use of the site. As compensation for the proposed lease, Walters will pay the Township annual rent ranging from \$75,000 (if only the first phase of the project is built) to

\$150,000 (if both phases of the project are built), along with a 6<sup>th</sup> and 11<sup>th</sup> year 10% escalator and other provisions allowing upward adjustment of the rental in response to market conditions. In accordance with *N.J.A.C. 7:36-26.10(c)2ii*, the Township is required to use the lease proceeds for its operating, maintenance or capital expenses related to its funded parkland or to its recreation program as a whole.

**APPROVAL:**

I, Bob Martin, Commissioner of the Department of Environmental Protection, hereby approve this request in accordance with the provisions of *N.J.S.A. 13:8A-47(b)*, *N.J.S.A. 13:8C-32(b)* and *N.J.A.C. 7:36*.

  
\_\_\_\_\_  
Bob Martin  
Commissioner

  
\_\_\_\_\_  
Date

## SHC FACT SHEET

The New Jersey Department of Environmental Protection, on behalf of the Township of Stafford, requests approval to allow the diversion of approximately 46.8 acres of land by the Walters Group, the Township's designated redeveloper for the Stafford Business Park project, for the installation of a solar facility to serve the redevelopment project. The proposed diversion involves a 30-year lease between the Township and Walters for the use of the site. As compensation for the proposed lease, Walters will pay the Township annual rent ranging from \$75,000 (if only the first phase of the project is built) to \$150,000 (if both phases of the project are built), along with a 6<sup>th</sup> and 11<sup>th</sup> year 10% escalator and other provisions allowing upward adjustment of the rental in response to market conditions. In accordance with *N.J.A.C. 7:36-26.10(c)2ii*, the Township is required to use the lease proceeds for its operating, maintenance or capital expenses related to its funded parkland or to its recreation program as a whole.

### **Description of Property and Proposed Diversion:**

Stafford Park is a 370-acre mixed use brownfield redevelopment project located in Stafford Township, Ocean County near the intersection of the Garden State Parkway and State Highway Route 72. The project is located within the Regional Growth area of the Pinelands region. Prior to 2006, the site was occupied by a 24-acre unlicensed landfill and a 55-acre licensed landfill. Neither landfill had been closed in accordance with State law or the Pinelands Comprehensive Management Plan ("CMP"). Walters was named as the redeveloper for the project after an RFP process conducted by the Township under the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-8*.

After an extensive review process at the Pinelands Commission, a Memorandum of Agreement between the Pinelands Commission, the Township and Ocean County (the "County") was executed dated June 28, 2006 ("the 2006 MOA"). The 2006 MOA requires the closure of the both landfills and permits the redevelopment of Stafford Park under certain terms and conditions. The redevelopment of Stafford Park was deemed "public development" under the 2006 MOA. However, without the mitigation measures required by the 2006 MOA, the project would not have been able to proceed due to impacts on threatened and endangered species habitat (for two plant species and one animal species) and impacts on wetland buffers that were determined to be inconsistent with the Pinelands CMP.

Under Paragraph VI.A.15 of the 2006 MOA, the Township was required to deed restrict (1) all but 20 acres of the surface of the licensed landfill and (2) other open space areas within the redevelopment site. The Township satisfied this condition by executing a deed restriction on December 7, 2006 covering 55 acres

of Block 25, Lot 93 (the landfill surface, now designated for tax purposes as Block 25, Lot 39) and portions of Block 13, Lots 22.01 and 68 (the other open space areas, now consolidated with and made a part of Block 25, Lot 39) ("the 2006 Conservation Restriction"). Based on the Township's acceptance of Green Acres funding for several other projects since 2006, its easement interest in Block 25, Lot 39 is now classified as Green Acres-restricted unfunded parkland and is required to be listed on the Township's Recreation and Open Space Inventory. However, this area is not used for recreation of any kind, and is in fact restricted from general public access due to security concerns associated with the landfill cap.

Although the Township and Walters have represented that discussions about locating renewable energy facilities on the surface of the closed landfill began in late 2006 and early 2007, the 2006 Conservation Restriction prohibits most disturbance of the restricted land except directly in connection with the closure and the capping of the landfill. Therefore, the Township has now requested approval for a diversion of Green Acres-restricted land in order to lease 46.8 acres of the 55-acre portion of the former landfill covered by the 2006 Conservation Restriction to Walters for the installation of a 6.5 megawatt (1,026 panel) solar array on the former landfill site on the site. The project would be constructed by Walters under a 30-year lease with the Township. The panels are to be anchored to concrete footings placed on top of the former landfill, thereby avoiding disturbance to the landfill cap.

At present, Walters has completed construction of 112 units of affordable housing (one apartment complex) and approximately 400,000 square feet of retail space on the Stafford Park site. Construction of 216 market rate apartments and 349 single family residences is scheduled to commence in the spring of 2011. The market rate apartments are planned to be fully built out by 2013 and the single family residences are planned to be built out over a ten year period. The retail space is anticipated to be completed in the next two to four years.

Walters has already installed solar panels on three of the retail stores, supplying about 30 percent of the energy used by the stores and almost all of the energy used by the common areas of the apartments. According to Walters, installation of renewable energy facilities (solar and wind) within the area proposed for diversion will bring onsite generation of energy to 70 percent of the total needed for the complete project. In addition, the proposed lease includes negotiated discounts for provision of energy to the County facilities and the Township facilities within the redevelopment area. On the Township side, this discount will save the Township an estimated \$6000 per year in utility costs.

On a parallel track, the Pinelands Commission is considering an amendment to the 2006 MOA to accommodate the proposed solar project. On October 25, 2010, a subcommittee of the Commission voted 7-0 to release the proposed

amendment for a full vote by the Commission, based on a staff recommendation in support of the amendment. A copy of the recommendation is included as Attachment 4 of this Summary. It is anticipated that the full Commission will meet on November 12, 2010 to consider approval of the amendment to the 2006 MOA.

In addition to requesting a release of the Green Acres restrictions on the proposed diversion area for the term of the lease, the applicant has requested approval for the partial release of the 2006 Conservation Restriction under the New Jersey Conservation Restriction and Historic Preservation Restriction Act, *N.J.S.A. 13:8B-1 et seq.* Although the NJDEP does not take lightly an easement release request of this magnitude, the NJDEP supports this request in the unique context of this project and for the reasons outlined in this Summary. However, any approval of the requested release will be issued under a separate certificate as required by Section 6 of that Act (*N.J.S.A. 13:8B-6.*)

The proposed lease between the Township and Walters, as approved by the Stafford Township Council on November 1, 2010, provides for two 10-year renewals subject to the approval of the Township. The lease also allows Walters to explore the possible future installation of four 1.5-megawatt wind turbines and the production of methane gas from the former landfill. The lease renewals, wind turbines and methane gas production are not part of this approval and must be brought back to the NJDEP (and the State House Commission, as applicable) for approval.

**Public Need/Public Benefit:**

As a redevelopment project undertaken under the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-8*, and as a privately financed landfill closure project, the Stafford Park project has provided a variety of public benefits in exchange for the development opportunities afforded to Walters. A listing of those benefits is included as Attachment 1 to this summary.

As indicated in Attachment 1, the 2006 MOA was instrumental in encouraging Walters to incorporate "green building" principles into the development in order to reduce the environmental impacts of the project on the Pinelands region. As a result, very early in the development process Walters, with the Township's help and support, began exploring the possibility of installing wind and solar facilities at Stafford Park. The Township's mayor attended a series of meetings with NJDEP, BPU and other agencies to explore this possibility, including utilizing the landfill lot. Walters and the Township were encouraged by all agencies to pursue this opportunity. Rutgers University also performed a more than two-year wind resource study to explore the feasibility of wind turbine installation on the site.

The rooftop solar arrays already installed by Walters provide approximately 30% of the energy needs for the retail stores they serve and nearly 100% of the common area power needs for the affordable housing residents.

Walters proposes to construct approximately 6.5 megawatts of new solar energy facilities on the now-capped surface of the former municipal landfill. Approximately 70% of the energy needs for the entire project can be provided through renewable energy if the proposed diversion and the future wind phase are approved. (If both solar phases and the future wind phase are built, the total energy generation is estimated to be 12.5 megawatts.) Walters will continue to explore methods to provide even more renewable energy to the users at Stafford Park. This level of renewable energy at a mixed use project of this scale is unprecedented. It will be a model for other development and redevelopment in New Jersey and nationally. The renewable energy facilities planned for the landfill lot are a critical element to the sustainable design and redevelopment of Stafford Park. The benefits of reducing the carbon footprint of development benefit the citizens of Stafford Township, Ocean County and the State of New Jersey.

As discussed above, the environmental features of the redevelopment project have been a direct benefit to the Township and County. Indirectly, the innovative design features have been a model for other development in the region and state. Walters has been able to prove that these sustainable building practices can be utilized in a cost-effective manner.

### **Environmental Impact**

Among other comments, the opponents of the proposed diversion have expressed concern that approval of the Township's application will lead to a loss of habitat for plant and animal species within the area proposed for lease. In its response to such comments, the Township stated:

The Township does not agree that the proposed project will lead to a loss of habitat. The environmental reports submitted with this Application confirm that the Landfill has little value as habitat and that neither plant nor animal species will be negatively affected. Further, the claim that the Landfill cap was always intended to serve as valuable habitat for northern pine snake and other rare plants or animals is not consistent with the record. While the Pinelands Commission MOA does require the [2006 Conservation Restriction] and does impose restrictions on the use of the Landfill, neither the MOA nor the [2006 Conservation Restriction] states or implies that the Landfill will ever be transformed into valuable habitat. At its Public and Governmental Programs (P&G) Committee meeting on September 27, 2010 the Executive Director, John Stokes, confirmed to committee members that the Commission had readily agreed to permit a

compost facility on 20 acres of the capped Landfill and would also have agreed to allow the entire capped Landfill to be used as a compost facility had the County asked. Further, he indicated that the Commission would have permitted the use of renewable energy facilities on the Landfill by the Township and its Redeveloper as an exception in the [2006 Conservation Restriction] had the Commission been asked. Also, in a settlement agreement with the Township [the New Jersey Conservation Foundation] confirmed in language that it inserted into the settlement agreement that any "habitat" for rare plants and animals on the Landfill was "destroyed" when the Landfill was capped and closed. For all these reasons the Township is convinced that there will be no loss of habitat on the Landfill. [See Attachment 2, Summary of Scoping Hearing Comments and Responses, Township's Response # 5.]

In their analysis of the Township's request to amend the 2006 MOA to accommodate this project, the staff of the Pinelands Commission also considered the habitat and other environmental impacts of this project, stating:

As discussed in the draft of the First Amendment to the June 28, [2006] MOA, the Township's proposal does not require a deviation from the requirements of the Pinelands Comprehensive Management Plan. The proposed MOA amendment would permit modification of the existing Declaration of Covenants and Restrictions to permit the development of Renewable Energy Facilities on the closed landfill at the Stafford Business Park site. The Stafford Business Park site is located in a Regional Growth Area. Renewable Energy Facilities are a permitted use within Regional Growth Areas. Additionally, the Township's Redeveloper engaged threatened and endangered plant and animal consultants to provide an ecological assessment of the closed landfill. These consultants determined that the closed landfill did not provide critical habitat for threatened or endangered animals and did not contain any threatened or endangered plants. Additionally, Commission staff reviewed the proposed Solar Facilities project with regard to that project's conformance with the requirements of the Pinelands Comprehensive Management Plan, including the wetlands and stormwater management requirements, and found the project to be in conformance with all of the applicable development standards. As a result, the proposed MOA amendment does not deviate from the standards of the Pinelands Comprehensive Management Plan and, therefore, does not require measures to be included that, at a minimum, afford an equivalent level of protection of the resources of the Pinelands Area as required by N.J.A.C. 7:50-4.52(c)2.

As discussed on page 8 of the June 28, 2006 MOA, the following offsets were provided in order to afford an equivalent level of protection of the resources of the Pinelands: preservation by Stafford Township, without utilization of funds from its open space acquisition program, of at least 570

acres of land, a portion of which was to be located within the Mill Creek drainage area and the remainder of which was to constitute suitable Northern Pinesnake habitat; preservation by the County of 75 acres of suitable Northern Pinesnake habitat as part of its open space acquisition program; incorporation of low impact site design measures into the residential and commercial components of the redevelopment project and incorporation of "green building" design into the residential component of the redevelopment project; revegetation of the closed landfill, with the exception of the 20 acre County composting facility, with native Pinelands vegetation; the implementation of stormwater quality improvements on Route 72; development and implementation of rare plant and animal management programs; and the recordation of conservation easements for a portion of the landfill and other open space areas, including wetland buffer areas, on the redeveloped Business Park site. As the County's use of a significant portion of the landfill for chipping and composting activities clearly indicates, the remaining portion of the landfill was not deed restricted for its natural resource values; rather it was expected to remain open space because no other alternate use had been identified at that time. Viewed in totality, deed restricting this approximately 30 acres portion of the closed landfill as open space represented a diminimus part of an extremely robust set of actions that benefited the Pinelands. Nonetheless, one could argue that some additional measures should be provided as recompense for the loss of this open space.

Additionally, although the 2006 MOA only required the preservation of approximately 645 acres of land to offset the wetland and habitat impacts associated with the closure of the landfills and the redevelopment of the Business Park site, approximately 1017 acres were actually deed restricted through the Township's and the County's efforts. Moreover, as a result of a Stipulation of Settlement entered into amongst the Pinelands Preservation Alliance, New Jersey Conservation Foundation, Stafford Township and the Stafford Business Park Commission on December 6, 2006, arising out of an appeal filed by PPA and NJCF concerning the June 28, 2006 MOA, as much as \$1 million dollars was to be paid to the Natural Lands Trust to be utilized for the permanent preservation of land that constituted Northern pinesnake habitat or that contained known populations of threatened or endangered Pinelands plants located within the boundaries of the Barnegat Bay watershed. Consequently, a significant quantity of land has been preserved to offset the impacts to threatened and endangered species habitat resulting from the 2006 MOA. [See Attachment 4, Executive Director's Analysis, Section A (pp. 6-8)]

As "recompense" for the amendment of the 2006 MOA to allow the proposed solar installation, the Pinelands Commission has proposed to accept a payment of \$153,000 from the Township to be used to fund a study of existing unclosed landfills located within the Pinelands Area in order to determine the continuing



environmental impacts associated with them and the appropriate means of closure in order to ameliorate these impacts. However, the Commission's staff recommendation would not require the Township to acquire additional open space as a mitigation measure.

Based on the above, the NJDEP does not believe that the proposed diversion will have any irreparable impacts on habitat for endangered or threatened plants or animals or that any additional mitigation or compensation is needed to address the anticipated environmental impacts of the proposed diversion.

**Alternatives:**

Unlike other recent proposals for renewable energy facilities on parkland or on capped landfills, the essence of the project for which this diversion application was filed is to maximize the provision of energy from renewable sources to end users within Stafford Park, not to generate renewable energy in the abstract. The former landfill is an integral part of the area originally designated by the Township as "in need of redevelopment," and, as discussed above, was selected as the location of the County's composting operations before the remainder was deed restricted. Although the Township considers the former landfill site to be the most logical location to meet the objective of maximizing renewable energy production, it did analyze both the "no action" alternative and other alternatives as required by the Green Acres rules. A summary of this analysis was included in the Township's response to comments received at the scoping hearing, as follows:

Alternative locations for the renewable energy facilities [are] more fully discussed in Section 2 of this Application. For the reasons noted in Section 2, logistical and safety issues, costs, limits on energy production, and other practical problems make it infeasible and unreasonable for [Walters] to locate the renewable energy facilities in the parking areas and a substantial portion of those areas are owned by third parties and are unavailable. Furthermore, the Township believes, for the reasons set forth in this Application, that the most appropriate location for renewable energy facilities is the top of the closed and capped Landfill. It is also infeasible to locate solar arrays off site at the "Meadowlands" or at any other off-site location because such a project is not permitted to provide energy to Stafford Park from off site under the public utilities laws. Even if it were, the cost to extend the infrastructure is prohibitive and the loss of electricity during its conveyance from the point of generation to the point of delivery, known as "line loss", would reduce the power at the point of delivery to unacceptable levels. Also, the available rooftops of the retail facilities and the affordable apartments have already been equipped with solar arrays and putting solar panels on street lights yields no energy that can be used for other than lighting the street lamp.

In addition to the above, the Township noted in its application that (1) Walters has already maximized its use of rooftop space for solar installations and will continue to do so as additional buildings are constructed and (2) the only land areas adjacent to Stafford Park are either part of the Garden State Parkway or restricted by the Pinelands Commission.

Since the Township has defined the objective of this project as maximizing the production of renewable energy to serve the Stafford Park project, it then concluded that the "no action" alternative was not reasonable or feasible since it would not support this goal. The record of the Stafford Park project demonstrates that both the Township and the Pinelands Commission have strongly encouraged the development of renewable energy facilities as an essential component of this project, that construction of the proposed solar facility would support this goal and that if discussions about this project had occurred as the 2006 MOA was taking shape, both the MOA and the 2006 Conservation Restriction would most likely have allowed these uses to occur without any additional compensation to either the Township or the Pinelands Commission. Taking into consideration the minimal environmental impacts associated with the proposed project, the lease revenue to be provided to the Township to be used for parkland purposes, the discounted energy to be provided to the County and the Township, the extensive mitigation and compensation already associated with the redevelopment project, and efforts undertaken by this administration to promote the use of capped landfills for solar energy generation, the NJDEP concurs that the rejection of the "no action" alternative is reasonable in the unique context of this project.

#### **Public Hearing:**

As required by *N.J.A.C 7:36-26.5* and *26.11*, public hearings on the proposed diversion were held on September 27, 2010 (scoping hearing) and October 14, 2010 (final public hearing.) At both public hearings, procedural and substantive objections to the project were raised by local citizens and environmental groups. These objections are outlined and addressed in Attachment 2 (Township's response to comments) and Attachment 3 (NJDEP's response to comments on Green Acres application process).

On October 19, 2010, after review and consideration of the adverse public comment on the proposed diversion, the Township passed a resolution affirming its support for the proposed diversion and requesting approval of its diversion application.

**Compensation:**

Under the Green Acres rules at *N.J.A.C. 7:36-26.2(c)*, the proposed diversion has been classified as a major diversion/disposal of parkland since the proposed project is to be constructed by a private entity. Under *N.J.A.C. 7:26-26.10(c)2*, the standard for compensation for a lease of parkland for other than a recreation and conservation purpose is as follows:

2. For a diversion of parkland that entails a lease or use agreement:
  - i. Green Acres shall assess whether the compensation that the applicant proposes to receive for the lease or use agreement is fair and appropriate; and, if not, advise the applicant as to the minimum amount of compensation that must be secured if the application is to be approved by the Commissioner and sent to the State House Commission for approval; and
  - ii. Green Acres shall require that any payments, rentals or other consideration received by the applicant from the lease or agreement be used by the applicant for its operating, maintenance or capital expenses related to its funded parkland or to its recreation program as a whole;

As originally proposed by Walters to the Township, the project will consist of two solar phases (approved under this application) and one possible wind phase (not approved under this application). The Township proposes to compensate for the proposed diversion and easement release by accepting from Walters annual payments ranging from \$75,000 (for the first phase of the project) to \$150,000 per year (if both phases of the solar project are completed.) On a per-acre basis, these rents equate to approximately \$1600 per acre per phase (assuming a 46.8-acre site.)

The base rents outlined above are subject to a 10% upward adjustment at the start of the 6<sup>th</sup> and 11<sup>th</sup> years of rental payments for each phase of the project. Assuming that both solar phases are constructed at once, this upward adjustment would occur in the first year that the project is projected to have a positive cash flow. (See Attachment 5, "pro forma" financial statement) On an annual basis, these increases average out to a 2% increase per year.

In addition, the lease provides for upward adjustment of the rental by the percentage that the "BGS Rate" increases in excess of four percent (4%) on a cumulative annual basis. The "BGS Rate" is the rate charged by regulated public utilities in New Jersey for providing electric service to customers as more particularly set forth in *N.J.S.A. 48:3-57*. The "BGS Rate" is also known as the default rate and is based on a series of auctions in the wholesale market

conducted during the three previous years of each current year. For example the BGS Rate for 2010 is based on auctions that were held in 2007, 2008, and 2009. The BGS rates change every year beginning on June 1 of each year.

Information on prevailing rental rates paid to landowners hosting solar projects of this scale is not readily available. The proposed rent of \$150,000/year equals 3.4% of the projected Year 1 gross "income" of \$4.356M, but the project is not expected to have a positive cash flow until Year 6. As indicated on the second page of the "pro forma" financial statement for the project (Attachment 5), a comparison of net cash flow to the rental to be paid to the Township yields a ratio of at least 22% over the life of the lease.

In addition to the lease compensation, Walters has agreed to provide discounted electricity to the Township as a condition of its approval to lease the site. The electricity will be sold at a 20% discount to the Township to serve the Township's public works garage and water treatment plant within Stafford Park. At current rates, the Township estimates that it will save \$6000 per year in utility costs through this arrangement.

Given the benefits of this project to the overall Stafford Park redevelopment project, including the provision of reduced rate energy to the Township, the NJDEP has determined that the proposed rental represents a "fair and appropriate" return to the public for the use of 46.8 acres of Green Acres-restricted land. As required by *N.J.A.C. 7:26-26.10(c)2ii*, the Township is required to use any rental payments received from Walters under this lease for its operating, maintenance or capital expenses related to its funded parkland or to its recreation program as a whole.

The lease negotiated between Walters and the Township for the solar and wind project allows for two 10-year renewals with the approval of the Township. As part of this approval, the NJDEP is only approving the release of Green Acres restrictions for the initial 30-year term of the lease; any renewals must be reviewed and re-approved by the NJDEP and the State House Commission in order to verify that the use of the landfill site and the financial terms of the lease are still in the public interest. The NJDEP feels this is a reasonable position since the financial information for the project indicates that Walters will recoup an adequate return on its investment in a 15-20 year time frame, but the Township and Walters have indicated that a 30-year base lease is necessary to obtain financing for the project.

The Green Acres rules for both minor and major diversions of parkland require that the applicant compensate for any trees of 6-inch caliper or greater that will be removed as part of a proposed diversion or disposal. There are no tree impacts associated with the proposed diversion and partial easement release.

**MAPS**   
**STATEMENT OF VALUE**

## STAFFORD PARK SOLAR PROJECT DIVERSION APPLICATION

### LIST OF ATTACHMENTS

- |              |                                                                                                            |
|--------------|------------------------------------------------------------------------------------------------------------|
| Attachment 1 | Public Benefits Associated with the Stafford Park Project                                                  |
| Attachment 2 | Township's Consolidated Response to Comments                                                               |
| Attachment 3 | NJDEP Response to Comments on Green Acres Application Process                                              |
| Attachment 4 | October 18, 2010 Staff Recommendation of Pinelands Commission in Response to Request to Amend the 2006 MOA |
| Attachment 5 | "Pro Forma" Financial Statement for Proposed Solar Project                                                 |
| Attachment 6 | General Location Map and Project Site Map                                                                  |

## ATTACHMENT 1

### PUBLIC BENEFITS ASSOCIATED WITH THE STAFFORD PARK PROJECT

The Stafford Park project has benefitted and will continue to benefit the citizens of Stafford Township, Ocean County and the State of New Jersey. In addition to the requirement that both landfills be closed in accordance with applicable State law, the Pinelands MOA requires that various measures be taken to assure that the redevelopment project will have as little adverse environmental impact as practicable. Walters, as the redeveloper, is ultimately responsible to implement these measures, many of which are detailed below.

#### THE LANDFILL CLOSURES

The "unlicensed landfill" (in use between 1955 and 1970) occupied approximately 24 acres of the Stafford Park site. Historical sampling revealed that the unlicensed landfill was contaminating the groundwater below. Constructed on top of the unlicensed landfill were numerous County facilities. Walters removed the entire contents of the unlicensed landfill, approximately 500,000 cubic yards of material. The contents of the unlicensed landfill were beneficially reused as fill material to properly cap and close the licensed landfill. More than 500,000 cubic yards of clean fill replaced the contents of the unlicensed landfill. All of the County facilities were demolished and recycled. The upfront cost to eliminate the unlicensed landfill was borne entirely by Walters.

The "licensed landfill" (former Stafford Township municipal landfill) is approximately 55 acres. Historical sampling showed that the licensed landfill was contaminating the groundwater below. For over 20 years, the Township was under the directive of both NJDEP and the Pinelands Commission to properly close and cap the licensed landfill. Walters completed the closure and capping of the licensed landfill in June 2009 and is now into the post closure period. The upfront cost to close and cap the licensed landfill was borne entirely by Walters.

In a "Fact Sheet" prepared during the MOA process the Township estimated that it would cost \$45 million in 2006 dollars to close cap and perform post closure work on the two landfills. (See <http://twp.stafford.nj.us/pdf/landfill2006.pdf>.) Including the cost of financing, the Township estimated that the cost to its taxpayers could have been as much as \$65 million. No public funds of any kind were available to the Township for the landfill closure project. A very sizable

increase to the local purpose tax would have been required in order to close the landfills.

The County operated several facilities that were located above the unlicensed landfill. The facilities were also generally substandard and in need of reconstruction and expansion. In addition, there was a legal issue as to what responsibility the County had for the closure and clean-up of the unlicensed landfill. As part of this redevelopment project, the County was given a larger and more suitable parcel of land for new County facilities in exchange for the lands located above the unlicensed landfill. In addition Walters paid the County \$2 million to assist in the construction of new facilities. Walters also constructed a new County animal shelter at a cost of approximately \$750,000.00. Walters also constructed a compost facility on the cap of the landfill for the County at a cost of over \$1 million. (This 20-acre area was excluded from the open space portion of the project and is not covered by the conservation easement.) The County and its workers now have a modern facility on lands that are not contaminated. The cost of these facilities was largely defrayed by Walters.

#### MITIGATION MEASURES AND ENVIRONMENTAL CONDITIONS ASSOCIATED WITH THE STAFFORD PARK PROJECT

Through the stringent requirements of the Pinelands MOA and the development decisions made by Walters as the project has progressed, the Stafford Park project features a number of mitigation measures and environmental conditions designed to minimize the environmental impacts of the redevelopment project and provide other public benefits, as follows:

- The project includes 112 units of affordable rental housing (already constructed), for which the Township has received a credit against its COAH obligation for 224 units (112 unit bonus credit for rental housing.)
- Every building at Stafford Park has surpassed the Pinelands MOA requirement to achieve basic LEED certification. All buildings are at least LEED silver. The affordable apartments are the first LEED gold affordable housing project in the State. It is estimated that energy usage in these buildings has been reduced by 30% due to the LEED and other sustainable building practices employed.
- The stormwater system retains all water on site for infiltration. Largely through the use of a series of bio-retention basins, 96% of total suspended solids are removed before the water is infiltrated. This is believed to be the highest standard achieved in New Jersey.
- The entire project is irrigated with recaptured rainwater. No public water or well water is utilized for irrigation purposes.

- A series of bio-retention basins was installed at Route 72. The basins capture over 50% of the untreated stormwater from Route 72 before it can discharge into open waters
- The wetlands system adjacent to Route 72 is being recharged by clean rainwater from rooftops rather than the dirty water that was previously being discharged to the wetlands system from the road.
- Walters has developed (with NJDEP and the Pinelands Commission) a unique 7-year species management plan under which rare plants were relocated from the landfills before they were disturbed. New habitat for tree frogs was constructed in place of the basin that was previously constructed on top of the unlicensed landfill. Most dramatically, new habitat for the northern pine snake has been constructed and an extensive monitoring program was implemented. Walters has borne the cost of the species management program. Over \$2 million has been expended to date. A formal report jointly authored by the herpetologist on site and NJDEP will be prepared at the end of the 7-year study.
- Although the 2006 MOA only required the preservation of approximately 645 acres of land to offset the wetland and habitat impacts associated with the closure of the landfills and the redevelopment of the Stafford Park site, approximately 1017 acres were actually deed restricted through the Township's and the County's efforts. Moreover, as a result of a Stipulation of Settlement entered into between the Pinelands Preservation Alliance, New Jersey Conservation Foundation, Stafford Township and the Stafford Business Park Commission on December 6, 2006, arising out of an appeal filed by PPA and NJCF concerning the June 28, 2006 MOA, as much as \$1 million dollars was to be paid to the Natural Lands Trust (PA) to be utilized for the permanent preservation of land that constituted Northern pine snake habitat or that contained known populations of threatened or endangered Pinelands plants located within the boundaries of the Barnegat Bay watershed. Approximately \$700,000 of this settlement has been paid by Walters to date, under a stipulation of settlement in which the parties specifically acknowledged that the habitat on the landfill has been "destroyed". Therefore, between the MOA and the settlement, a significant quantity of land has been preserved to offset the impacts to threatened and endangered species habitat resulting from the 2006 MOA.
- Under the 2006 MOA, Walters is required to acquire 170 quarter pinelands development credits. Under the transfer of development rights program this will result in the permanent preservation of well over 1,000 acres of additional land.



- Before the redevelopment of Stafford Park began the site produced nearly zero tax ratables for the Township. In 2009 the only partially finished project generated \$582,337.00 in local purpose funds. The cost of providing services was only a fraction of that revenue, resulting in a very substantial economic gain to the Township and its taxpayers. As the retail development continues the benefits to the Township will also continue. The State is also receiving sales tax revenue from the stores that would not exist but for the landfill closures and redevelopment of Stafford Park.
- Walters has agreed to replace an aging one million gallon water tank with a new tank during the residential redevelopment. This will save the Township an additional \$2 million.
- Walters also reconstructed the interchange at Exit 63 of the Garden State Parkway at a cost of between \$8 million and \$10 million. The state's taxpayers were spared this expense and the Township's residents enjoy more efficient highway access due to the improvements.

**ATTACHMENT 2**

**TOWNSHIP'S RESPONSE TO COMMENTS RECEIVED AT SEPTEMBER 27,  
2010 PUBLIC HEARING (SCOPING HEARING) AND OCTOBER 14, 2010  
PUBLIC HEARING (FINAL PUBLIC HEARING)**

**EXHIBIT L1**  
**SUMMARY OF SCOPING HEARING COMMENTS AND RESPONSES**

The scoping hearing for Stafford Township's Application for the Department's approval of a major diversion of parkland to authorize the lease of the Stafford Township Landfill for the development of renewable energy facilities occurred on September 27, 2010 at the municipal building at 260 East Bay Avenue in Manahawkin, New Jersey. The hearing began at 6:00 p.m. and was conducted by Kevin Starkey, the Township's attorney and Jennifer Beahm, the Township's designated planner for this project. A transcript of the proceedings is included at Exhibit K. The following presents a summary of the public comments presented at the hearing followed by the Township's responses.

**Summary of Public Comments**

Ten members of the public spoke at the hearing. They are identified below, followed by a summary of their comments,

1. Sal Sorce - Mr. Sorce complained that the process of permitting the Redeveloper to construct renewable energy facilities on the Township's Landfill was not sufficiently transparent and the public has not been sufficiently involved. Mr. Sorce was concerned about the proposed compensation proposed as rent. He calculated what he perceived to be the agreed upon rent on a square foot basis and concluded the rent was below fair market value. Mr. Sorce asserted that the solar panels are comprised of materials that are hazardous or toxic and will pose a health and safety risk at Stafford Park. Mr. Sorce asserted that energy generated from renewable energy facilities at Stafford Park should be provided to the residents of Stafford who reside outside Stafford Park.

2. Louis Castelli - Mr. Castelli favors the Township's plan to lease the Landfill lot to the Redeveloper for renewable energy facilities but he believes the rent should be as high as possible. Mr. Castelli stressed that the Township should take no risk in this venture but should share in the profits based on escalation clauses and profit sharing provisions in the lease agreement. Mr. Castelli noted that the mayor of Waretown recently spoke at a Township Council meeting. According to Mr. Castelli, Waretown's mayor asserted that for a solar project at the landfill in Waretown, which is of comparable size to the Stafford Township landfill, Waretown would realize between \$400,000 and \$600,000 in rent annually. Mr. Castelli felt these figures should be used as a benchmark by the Township. Mr. Castelli submitted written comments and they are attached as part of Exhibit L2.

3. Jeremy Alsobrooks - Mr. Alsobrooks agreed with placing renewable energy facilities on the landfill. He stressed that properly trained and properly compensated workers should be hired to install the renewable energy facilities.

4. Teresa Lettman, a representative of the Pinelands Preservation Alliance – Ms. Lettman asserted that the obligation to install a sign in accordance with Green Acres regulations was not met. She further asserted that the obligation to publish a "display advertisement" in accordance

with Green Acres regulations was not satisfied. Ms. Lettman also claimed that she has been unable to obtain “the file” associated with this project from Township officials. She asserted that the deed restriction on the landfill was intended to be permanent. Ms. Lettman submitted written comments and they are attached as part of Exhibit L2.

5. Emile DeVito, a representative of the New Jersey Conservation Foundation - Mr. DeVito acknowledged that no public funds were used to acquire the Landfill lot or to close and cap the Landfill. He asserted, however, that the capped Landfill is “parkland” and is equal in all respects under the law to all other parkland in New Jersey. He claimed that the circumstances of creating the parkland or the value of the constructed parkland are irrelevant. He noted that a public utility paid \$13 million to the Pinelands Commission for parkland adjacent to the Garden State Parkway and claimed that should be the basis for determining compensation for the diversion of this parkland. He proposed that the Landfill lot should be valued on a square foot basis and echoed Mr. Sorce’s comments (but noted that Mr. Sorce made an error in his calculations). He stated that the use of solar panels on the Landfill will result in a loss of habitat. Mr. DeVito asserted that the closed and capped Landfill was always intended to serve as critical habitat for northern pine snake and other plant and animal species. Mr. DeVito also suggested that solar arrays be placed on retail rooftops and in the parking areas of the retail shopping center instead of on the capped Landfill. He cited Stockton State College as an example of solar arrays being utilized in a parking area.

6. Jean Vogrin - Ms. Vogrin stressed the value of preserving the Pinelands ecosystem.

7. John Newcombe - Mr. Newcombe stressed the need to carefully study the proposal before making a decision.

8. Judy Carrara, a representative of ANJEC – Ms. Carrara asserted that she was unable to obtain suitable documentation about the project.

9. Peter Ferwerda – Mr. Ferwerda - proposed that the solar arrays could be installed at “the Meadowlands” on “Dock Road” and that windmills could be placed on the new buildings in Stafford Park. He was concerned about the safety of installing solar panels on a landfill where there could be methane gas.

10. Joanne Rist - Ms. Rist indicated that placing solar panels on street lights and in the parking lots (as they have done at Stockton) would be suitable alternatives to placing the renewable energy facilities on the Landfill lot.

### **Township’s Response to Public Comments**

The public raised concerns in the following categories: (1) the public’s ability to participate in the process; (2) health and safety issues; (3) the adequacy of the compensation being proposed; (4) the Township’s compliance with Green Acres regulations; (5) alternative locations for the renewable energy facilities; and, (6) loss of habitat. The Township has carefully considered each of these concerns and its responses are below.

## 1. Public Participation

The Township welcomes the public's input. There have been and will be numerous public meetings where the public can express its opinions on this project. They include the following hearings at the Pinelands Commission: (1) August 23, 2010, the Public and Government Affairs Committee hearing; (2) September 27, 2010, the P&G Committee hearing; (3) mid October, the public hearing on the amendment of the Memorandum of Agreement and the DCR; (4) November 12, 2010, the full Pinelands Commission hearing when the amendment to the MOA and the DCR are expected to be considered. The public hearings also include the following at the Township: (1) March 2, 2010, the public hearing when the Fifth Amendment to Redevelopment Agreement was adopted; (2) September 27, 2010 scoping hearing; (3) October 6, 2010, the planning board hearing on the site plan for the solar arrays proposed for the Landfill; (4) October 14, 2010, the second hearing on the proposed diversion of the Landfill lot; (5) late October, Township Council hearing to act on a fully negotiated lease agreement. Finally, if the Department and Pinelands Commission approve this Application and the amendment to the MOA, there will be a State House Commission hearing to consider the diversion of the Landfill lot. In total, there will be at least ten public hearings with opportunities for the public to comment on this project.

In addition to the scheduled public hearings the Township has regularly taken public comment on the proposed use of the Landfill for renewable energy facilities and all issues associated with that at recent Township Council and Planning Board hearings. Further, this application, all formal submissions to the Planning Board and Council are and will be available for public inspection during normal business hours. The public also has the right to submit written comments to the Township and the Department of Environmental Protection in accordance with the diversion process. The Township supports the public's right to provide input both in person and in writing and believes that sufficient opportunity has and will be provided so that all points of view are fully considered in this process.

## 2. Health and Safety Issues

The Township has considered the health and safety concerns raised by the public. The solar panels proposed will consist primarily of crystalline silicon material, tempered glass and aluminum frames. No cadmium or other hazardous materials are used in manufacturing the solar arrays. The solar modules do not contain combustible materials and are not likely to cause a fire. The electrical current poses the same fire risk associated with all electric transmission facilities. Methane gas emissions are very limited at Stafford Park and pose no material threat of fire. In connection with the land use process the Township will assure that all fire safety risks will be even more fully addressed. Further, this project was fully considered by the Department's landfill staff when it approved the Closure Plan Amendment for the Landfill (See Exhibits F4 and P to the Application). Finally, solar arrays have been successfully located on rooftops and grassland fields throughout New Jersey, the United States and in Europe. The risk of fire is considered to be minimal and controllable.

### 3. Compensation

The adequacy of the compensation is more fully discussed in Section 1 of this Application. The Township has engaged independent third parties to study the fair and reasonable value of leasing the closed and capped Landfill for renewable energy. Considering all the relevant circumstances, the Township believes that it is receiving fair and adequate compensation. The public's reference to other methodologies and projects does not consider all the relevant circumstances. For example the Township has determined that Waretown will not receive \$400,000 to \$600,000 per year in rent for a similar landfill. In response to an RFP an offer of \$400,000 per year was made. However, that offer was made in March 2009 and was conditioned on a number of outcomes that have not materialized. The offer is no longer valid and the Township has determined that Waretown has no present opportunity to use that landfill for renewable energy facilities. The costs associated with developing solar arrays on that landfill have increased and it appears unlikely that even if Waretown were ready to develop the landfill it is unrealistic to expect such a return under present circumstances. Similarly, what a utility company paid to acquire land that is not part of a landfill is not relevant to the lease value of this Landfill considering all the relevant facts and circumstances as set forth in our Application. Finally, the square footage lease value of commercial building space is not comparable to the lease value of a capped landfill in this redevelopment project.

The Township agrees that it should achieve the highest possible reasonable compensation for its lease of the Landfill while subjecting the taxpayers to no risk associated with this project. However, the Township must consider all of the relevant facts and circumstances associated with the Redeveloper's proposal (including those as set forth in our Application) and the Township has determined that the economic terms being proposed are very favorable.

### 4. Compliance with Green Acres Regulations

The Township is confident that it has complied with all relevant laws and regulations associated with the administrative process for noticing and holding public hearings under the Green Acres regulations. The comment that an appropriate sign was not placed at the site is inaccurate. The Township obtained concurrence for the location of the signage from the Green Acres staff and photographs of the sign have been provided with this Application. That sign was erected more than 30 days prior to the hearing on September 27, 2010 and has remained in place through the hearing. Similarly the legal notice and display advertisement were published and proof of that publication has been provided with the Application. The Township, with the assistance of its designated Redeveloper, has carefully followed all Green Acres and other requirements associated with this process.

### 5. Alternative Locations

Alternative locations for the renewable energy facilities is more fully discussed in Section 2 of this Application. For the reasons noted in Section 2, logistical and safety issues, costs, limits on energy production, and other practical problems make it infeasible and unreasonable for the Redeveloper to locate the renewable energy facilities in the parking areas and a substantial portion of those areas are owned by third parties and are unavailable. Furthermore,

the Township believes, for the reasons set forth in this Application, that the most appropriate location for renewable energy facilities is the top of the closed and capped Landfill. It is also infeasible to locate solar arrays off site at the "Meadowlands" or at any other off-site location because such a project is not permitted to provide energy to Stafford Park from off site under the public utilities laws. Even if it were, the cost to extend the infrastructure is prohibitive and the loss of electricity during its conveyance from the point of generation to the point of delivery, known as "line loss", would reduce the power at the point of delivery to unacceptable levels. Also, the available rooftops of the retail facilities and the affordable apartments have already been equipped with solar arrays and putting solar panels on street lights yields no energy that can be used for other than lighting the street lamp.

#### 6. Loss of Habitat

The Township does not agree that the proposed project will lead to a loss of habitat. The environmental reports submitted with this Application confirm that the Landfill has little value as habitat and that neither plant nor animal species will be negatively affected. Further, the claim that the Landfill cap was always intended to serve as valuable habitat for northern pine snake and other rare plants or animals is not consistent with the record. While the Pinelands Commission MOA does require the DCR and does impose restrictions on the use of the Landfill, neither the MOA nor the DCR states or implies that the Landfill will ever be transformed into valuable habitat. At its Public and Governmental Programs (P&G) Committee meeting on September 27, 2010 the Executive Director, John Stokes, confirmed to committee members that the Commission had readily agreed to permit a compost facility on 20 acres of the capped Landfill and would also have agreed to allow the entire capped Landfill to be used as a compost facility had the County asked. Further, he indicated that the Commission would have permitted the use of renewable energy facilities on the Landfill by the Township and its Redeveloper as an exception in the DCR had the Commission been asked. Also, in a settlement agreement with the Township NJCF confirmed in language that it inserted into the settlement agreement that any "habitat" for rare plants and animals on the Landfill was "destroyed" when the Landfill was capped and closed. For all these reasons the Township is convinced that there will be no loss of habitat on the Landfill.

## STAFFORD TOWNSHIP APPLICATION FOR MAJOR DIVERSION OF PARKLAND

### SUMMARY AND RESPONSE TO WRITTEN COMMENTS SUBMITTED DURING PUBLIC COMMENT PERIOD FOR SEPTEMBER 27, 2010 SCOPING HEARING

Stafford Township (the "Township") received six written comments during the public comment period subsequent to the scoping hearing on the Township's application to divert the parkland located on the property identified as lot 39 block 25 on the municipal tax map (the "Landfill Lot") for use for renewable energy facilities that was held on September 27, 2010. This submission is a summary of those comments and the Township's response, together with a set of copies of the comments as submitted. This submission is intended to supplement Exhibits L-1 and L-2 of the Combined Pre and Final Application for Major Diversion of Parkland submitted to the Department of Environmental Protection, Green Acres Program by the Township on September 30, 2010. Exhibit L-1 contains a summary of the comments delivered orally and submitted in writing to the Township at the scoping hearing. Exhibit L-2 contains the two sets of written comments that were submitted at the scoping hearing (as these written comments were addressed in Exhibit L-1, they will not be readdressed in this document).

#### Summary of Written Public Comments:

1. October 9, 2010 letter from Jean Vogrin. 1300 Pancoast Road, Warren Grove, New Jersey.

Ms. Vogrin's letter objects to using the Landfill Lot for the placement of solar arrays. She asserts that the parking areas or off-site locations are more suitable. If the diversion is permitted she seeks full compensation pursuant to Green Acres rules and regulations.

2. September 24, 2010 letter from Grace Gambino. 377A Old Nassau Road, Monroe, Township, New Jersey.

Ms. Gambino seeks protection of the Pinelands.

3. September 28, 2010 letter from Marge Camposano. 1781 Camden Avenue, Whiting, New Jersey.

Ms. Camposane asserts that the grassland associated with the landfill closure should be preserved.

4. Undated letter from Peter Ferwerda, 3<sup>rd</sup>. 14 Ferwerda Lane, Warren Grove, New Jersey.

Mr. Ferwerda asserts that the public has not had adequate opportunity to review all details of the proposed plan. He also states that the possible adverse environmental and safety impacts of the proposed facilities have not been properly considered. He characterizes the project as a co-generation facility and objects to any diversion. He claims that additional alternative proposals should be studied further.



5. October 7, 2010 letter from Susan Puder. 2 Newport Street, Barnegat, New Jersey.

Ms. Puder expresses concerns about lost habitat and suggests the parking lot and rooftops of the retail facilities as alternative locations.

6. October 11, 2010 letter from Dave DiEugenio, Forked River Mountain Coalition. P.O. Box 219 Forked River, New Jersey.

Mr. DiEugenio asserts that valuable grassland habitat will be impacted by the proposed renewable energy facilities.

### **Township's Response to Written Public Comments:**

Exhibit L-2 to the Township's Pre-application and Final Application for Major Diversion of Parkland summarizes the oral public comments made at the September 27, 2010 Scoping Hearing. As noted in the Township's response to public comments made at the scoping hearing, those comments raised issues that fell into the following categories: (1) the public's ability to participate in the process; (2) health and safety issues; (3) the adequacy of the compensation being proposed; (4) the Township's compliance with Green Acres regulations; (5) alternative locations for the renewable energy facilities; and, (6) loss of habitat. As can be seen from the summary of the written comments above, the public comments made at that hearing raise the identical issues as those stated in the written comments. Therefore, the Township's response to the oral testimony at the scoping hearing adequately responds to the written comments and the Township incorporates the response it made in Exhibit L-1 to the Application.

In addition, , concerning the issue of public participation, since the Scoping Hearing the Township has continued the public process of reviewing all aspects of this proposal. The Combined Pre and Final Application to the Department has been available for public review at the Township offices, the Stafford Township Public Library and the Department since it was submitted to the Department. On October 6, 2010 a site plan hearing on the project was held by the Township's Planning Board. That public hearing lasted in excess of 3 hours. The photovoltaic system, its components and associated facilities were described and explained in detail. The Township's professionals thoroughly reviewed every aspect of the proposed project including, but not limited to, the likelihood that the system would cause any significant environmental or safety threat to people, animals, plants or property. Only 1 member of the public chose to speak at that hearing. The Planning Board and its consultants unanimously concluded that the proposed project is not a threat to public health, welfare or safety. The site plan application was unanimously approved.

On October 12, 2010 the Executive Director of the Pinelands Commission, John Stokes, held a public hearing at the municipal building at the Township. The public was given the opportunity to speak at the hearing. Approximately six members of the public commented. No new issues or concerns were raised at that hearing.

On October 14, 2010 the Township held another public hearing in accordance with Green Acres rules and regulations. Five members of the public spoke at the hearing: Salvatore Sorce, Paul Krier, Margit Meissner-Jackson (Conservation Chair for the Sierra Club, Ocean County), Teresa Lettman (on behalf of the Pinelands Preservation Alliance and the New Jersey Conservation Foundation) and Joseph Mazzola. Their comments were consistent with the comments made at the Scoping Hearing and in the written comments summarized above.

There remain various public hearings to be held in connection with this project. A final Public and Governmental Programs (P&G) Committee hearing at the Pinelands Commission will be held on October 25, 2010. The full Pinelands Commission hearing on this matter is at least tentatively scheduled for November 12, 2010. Following what the Township hopes will be favorable final action by the Department and the Pinelands Commission, the State House Commission hearing will occur hopefully on or around November 15, 2010. In addition it is anticipated that at future Township Council hearings leading up to final action by the Department and the Pinelands Commission public comment will continue to be considered. The Township has and will continue to afford the public ample opportunity to express their positions in this matter.

**STAFFORD TOWNSHIP GREEN ACRES APPLICATION  
FOR MAJOR DIVERSION OF PARKLAND**

**SUMMARY AND RESPONSE TO TESTIMONY AT  
OCTOBER 14, 2010 PUBLIC HEARING**

The public hearing for Stafford Township's Combined Pre and Final Application for Major Diversion of Parkland Application (Application) for the Department's approval of a major diversion of parkland to authorize the lease of the Stafford Township Landfill for the development of renewable energy facilities occurred on October 14, 2010 at the Township's municipal building at 260 East Bay Avenue in Manahawkin, New Jersey. The hearing began at 6:00 p.m. and was conducted by Kevin Starkey, the Township's attorney, James Moran, the Township's Administrator, and Jennifer Beahm, the Township's designated planner for this project. A transcript of the proceedings is being submitted along with this summary. This submission is intended to supplement Exhibit L-1 of the Application.

The following presents a summary of the public comments presented at the hearing followed by the Township's responses.

**Summary of Public Comments:**

Five members of the public spoke at the hearing. They are identified below, followed by a summary of their comments.

1. Salvatore Sorce – Mr. Sorce discussed his comments presented to the Township Planning Board which asserted that solar panels are comprised of materials that are hazardous or toxic and will pose a health and safety risk at Stafford Park and that provision should be made for their proper recycling or disposal. Mr. Sorce also testified that energy generated at the Landfill would not be supplied to residents of the Township living outside of Stafford Park. Mr. Sorce also asserted that the procedures followed by the Township did not engender trust. Mr. Sorce also raised a number of issues outside the subject matter of the hearing.

2. Paul Krier – Mr. Krier asserted that that the rules applicable to the application should be followed strictly and that everyone "should get their due." He also asserted that the jury is still out on global warming so that should not be a major consideration in connection with the project. He also asserted that the net benefit of the project to the Township should be clearly defined. Finally, he testified that he was concerned that the placement of solar panels on the surface of the landfill might affect the integrity of the landfill and questioned whether there would be a loss of conservation and recreation facilities for which compensation was needed.

3. Margit Meissner-Jackson, Conservation Chair for the Sierra Club, Ocean County – Ms. Jackson asked the Township to investigate whether the public utility company would require an easement over the renewable energy facilities and how that might affect the project. She also asserted that the weight of the solar panels might affect the landfill cap and referenced the potential impact of possible hazardous materials in the solar panels.

4. Theresa Lettman (speaking on behalf of the Pinelands Preservation Alliance and the New Jersey Conservation Foundation) – Ms. Lettman asserted that the Green Acres regulations concerning the scheduling of public hearings and the posting of signage had not been satisfied. She further asserted that the standards for approving a diversion – that it fulfill a compelling public need or yield a significant public benefit – had not been met. Finally, she asserted the Township was not meeting the compensation requirements under the Green Acres regulations because it planned to use the lease payments for general budget purposes.

5. Joseph Mazzola – Mr. Mazzola asserted that the residents of the Township were not getting enough information about the project, that there is no public benefit from the project, that no grasses will grow on the landfill once the panels are placed there, that wildlife impacts could not be determined, and that the public did not know what was in the solar panels.

#### **Township's Response to Public Comments:**

As at the scoping hearing that took place on September 27, the public comments generally fell into the following categories: (1) the public's ability to participate in the process; (2) health and safety issues; (3) the adequacy of the compensation being proposed; (4) the Township's compliance with Green Acres regulations; (5) alternative locations for the renewable energy facilities; and, (6) loss of habitat. As can be seen from the summary of the public hearing testimony above, the comments made at the hearing raise many of the identical issues as those that were raised at the scoping hearing and in written comments submitted during the public comment period following the scoping hearing. Therefore, the Township's response to the oral testimony at the scoping hearing and the Township's response to the written comments adequately responds to most of the public hearing comments and the Township incorporates the response it made in Exhibit L-1 to the Application and the separate response that it submitted to the written comments.

Three additional issues were raised at the public hearing: (1) the adequacy of the public benefits of the project, (2) the use of project generated funds and (3) whether conservation or recreation facilities were affected by the project. With regard to the comments that questioned the public benefit of the project, the Township refers to Section 1 (including Exhibit A) of the Pre-Application portion of the Township's Green Acres Application for a detailed summary of the public benefits associated with the project. With regard to the Township's use of the funds generated in connection with the compensation for the diversion under the lease, the Township will follow rules and regulations applicable to the use of those funds. With regard to conservation and recreation facilities, no such facilities currently exist at the landfill so that no such facilities will be impacted.

## STAFFORD TOWNSHIP APPLICATION FOR MAJOR DIVERSION OF PARKLAND

### SUMMARY AND RESPONSE TO WRITTEN COMMENTS SUBMITTED DURING PUBLIC COMMENT PERIOD FOR OCTOBER 14, 2010 PUBLIC HEARING

Stafford Township (the "Township") received two written comments during the public comment period associated with the October 14, 2010 public hearing on the Township's application to divert the parkland located on the property identified as lot 39 block 25 on the municipal tax map (the "Landfill Lot") for use for renewable energy facilities. This submission is a summary of those comments and the Township's response, together with a set of copies of the comments as submitted.

This submission is intended to supplement Exhibits L-1 and L-2 of the Township's Combined Pre and Final Application for Major Diversion of Parkland (the "Application") submitted to the Department of Environmental Protection ("DEP" or "Department"), Green Acres Program by the Township on September 30, 2010, the Township's "Summary and Response to Written Comments Submitted During the Comment Period for the September 27, 2010 Scoping Hearing", submitted to the Green Acres Program on October 18, 2010 (the "Scoping Hearing Written Comment Response") and the Township's Summary and Response to Testimony at the October 14, 2010 Public Hearing (the "Public Hearing Testimony Response") also submitted by the Township to the Green Acres Program on October 18, 2010. Exhibit L-1 of the Application contains a summary of the comments delivered orally and submitted in writing to the Township at the September 27 scoping hearing and Exhibit L-2 contains the two sets of written comments that were submitted at the scoping hearing. The Scoping Hearing Written Comment Response contains a summary of and response to the six (6) additional letters received by the Township regarding the September 27 scoping hearing.

#### **Summary of Written Public Comments:**

The following are the written public comments submitted during the comment period in connection with the October 14, 2010 public hearing:

1. October 21, 2010 letter from Carleton Montgomery, Pinelands Preservation Alliance ("PPA"), 17 Pemberton Road, Southampton, New Jersey, 08088.

The PPA reiterates the objections detailed in the October 12, 2010 letter it submitted in connection with the scoping hearing, more specifically details some of those objections and raises some new concerns..

First, PPA asserts a failure to conform to certain procedural requirements which PPA asserts are applicable to the Application. Aside from the comments submitted in its prior written comments, PPA also argues that there was not sufficient time between the required submissions and hearings.

Second, PPA contends that the proposed diversion does not meet what it refers to as the “threshold” requirements for a diversion under the Green Acres Regulations in that the Township fails to satisfy the requirement for demonstrating a compelling public need or that the project will yield a significant public benefit as described in N.J.A.C. 7:36-26.1(d)(1).

Third, PPA claims that the compensation for the loss of “parkland” provided under the proposed lease between the Township and an affiliate of the Walters Group is not sufficient under Green Acres rules. In support, PPA cites various regulatory requirements applicable to compensation for the diversion of parkland that apply where replacement land is used as compensation. PPA also asserts that the lease must and does not include a compensatory mitigation plan for natural resource value impacts, and that it does not provide the public compensation for the loss of the parkland.

Fourth, PPA asserts that the alternative analysis presented in the Application is insufficient because the proposed solar array will feed into the general electrical grid and does not need to be located on the landfill cap. PPA also questions why it must be built on open space, why it must be located in the Township and why the commercial parking areas cannot be used to site the facility.

Fifth, PPA asserts that the failure to attach the “actual lease” to the Application, the failure to provide appraisals of the diverted land or the parkland, the failure to provide an identification of affected rare species or habitat and a compliant environmental assessment report violates Green Acres rules.

2. October 8, 2010 letter from Salvatore Sorce.31 Popper Street, Manahawkin, New Jersey. 08050.

Mr. Sorce reiterates the concerns raised in his previous correspondence and his public comments at the September 27<sup>th</sup> scoping hearing and the October 14<sup>th</sup> public hearing and the summary of his comments previously prepared by the Township is incorporated herein. Mr. Sorce claims that the public has not had sufficient opportunity to participate in the decision making process. He objects to the diversion of the Township’s “parkland”. Mr. Sorce also claims that the Township is not receiving adequate compensation. Finally, he expresses concerns regarding the composition of the solar panels.

### **Township’s Response to Written Public Comments:**

#### Prior Responses

Exhibit L-1 to the Township’s Application, the Scoping Hearing Written Comment Response and the Public Hearing Testimony Response summarize and respond to the oral public comments made at the September 27, 2010 Scoping Hearing and at the Public Hearing held on October 14<sup>th</sup> and the written comments made at the Scoping Hearing. As noted in Exhibit L-1 and the Scoping Hearing Written Comment Response, the public’s comments at the Scoping Hearing fell

into the following categories: (1) the public's ability to participate in the process; (2) health and safety issues; (3) the adequacy of the compensation being proposed; (4) the Township's compliance with Green Acres regulations; (5) alternative locations for the renewable energy facilities; and, (6) loss of habitat. The comments presented at the October 14 Public Hearing also generally fell into these categories. To the extent that the two (2) letters submitted during the Public Hearing comment period raise the identical issues as those stated previously, the Township's responses are incorporated by reference and will not be further addressed herein.

#### Pinelands Commission's Executive Director's Report

In further response to the comments raised by the public, the Township notes that John Stokes, the Executive Director of the Pinelands Commission, issued a Report, including response to public comments and recommendations dated October 18, 2010 (the "Report") in which he addressed and responded to many of the questions and objections raised in the two (2) letters and in prior comments. For example, with respect to compensation, the Executive Director found that (1) the deed restricting the use of the landfill was a "*deminimus part* of an extremely robust set of actions that benefitted the Pinelands [emphasis added]", (2) the more than 1000 acres that the Township and Ocean County had previously provided as compensation was far in excess of what the Pinelands Commission had required (570 acres), and (3) up to \$1 million was to be paid to Natural Lands Trust for additional land preservation. In addition, the Township's redeveloper will also be required to make an additional targeted monetary contribution of \$152,900 to the Commission in connection with its approval of this project. See pp. 7 – 8 of the Executive Director's Report.

The Report also commented on environmental and safety concerns raised by the public (e.g., the contents of the panels and their proximity to methane gas vents) and rejected those as unfounded (see Report, pp. 9 - 10) and made findings that the proposal was consistent with "all of the applicable development standards" of the Pinelands Comprehensive Management Plan, including specific reference to the absence of critical habitat for endangered and threatened animals, the absence of threatened and endangered plants, and compliance with wetlands and stormwater management requirements (Report, p. 7). Finally, in response to comments concerning the Pinelands MOA's compliance with the Green Acres rules, the Report cited, among other things, the Township's alternatives analysis (Report, pp. 13-14), which found that there were no feasible and/or available alternatives to the proposed site..

The Township agrees with the responses of the Executive Director of the Pinelands Commission to public comments and incorporates those responses by reference.

#### Additional Responses to New or Elaborated Comments

To the extent that the Public Hearing written comments elaborate on previous objections or raise new objections the Township offers the following response:

### *Public Involvement and Completeness of Application*

For the reasons previously expressed (including the numerous public hearings and opportunities to submit comments on the project catalogued in the Township's prior submissions) the Township believes that the public has been fully involved in this process and has been given more than ample opportunity to comment and participate. The Township recognizes the importance of public input and values it.

The PPA's most recent assertion that the lease itself has not been available for public review is not accurate. The Township's intention to enter into a lease with the Redeveloper was expressed in the Fifth Amendment to Redevelopment Agreement (the "Fifth Amendment"). A resolution authorizing the signature of the document was memorialized on March 2, 2010. The proposed financial terms of that lease were described in the Fifth Amendment. The March 2<sup>nd</sup> resolution and the Fifth Amendment were available for public review in early March. Due in large measure to the public's participation the financial terms of the proposed lease were substantially modified to the Township's benefit.

The draft of the full lease (which was recently supplemented to contain the improved financial terms) has been provided to the Department and is available for public inspection with the balance of the Application (although the PPA complains that the "actual lease" was not available, the Green Acres regulations at N.J.A.C. 7:36-26.9(d)1.vi, expressly require the submittal of a "draft of the lease"). It is available at the Township municipal building and at the public library. Additionally, a financial pro forma that was originally prepared by the Redeveloper but modified by the Township and its professionals, together with the proposed financial terms are also now available for public review at these same locations. The financial terms of the lease have been in the process of negotiation (with the public's input and assistance) which negotiations have only recently been completed so that this information could be made available for public review. Finally, the lease will be on the agenda for final action at the Township Council's meeting on November 1<sup>st</sup>. The public will have an opportunity to be heard again at that meeting.

PPA also cites the Township's failure to provide "identification of documented occurrences of rare species or habitat" and "an environmental assessment report prepared in accordance with an outline provided by Green Acres". PPA's insistence on an overly formalistic reading of the Green Acres Regulations is misplaced. As noted in previous submissions, the Township submitted several environmental reports prepared by experts in their fields that address rare species and habitat issues as follows:

- (1) Report entitled: "Re: Evaluation of the Proposed Solar Panels on Native Wildlife at Stafford Park Landfill Site in Stafford Township, Ocean County, New Jersey - HA File Number 2006.19-SP" prepared by Herpetological Associates dated August 10, 2010 and submitted to the New Jersey Pinelands Commission ("Wildlife Report", attached as Exhibit F1).



(2) Report entitled: “Stafford Landfill Vegetation Description *Species Cover and Composition*” prepared by Joseph Arsenault dated July 2010 and submitted to the New Jersey Pinelands Commission (“Vegetation Description Report”, attached as Exhibit F2).

(3) Report entitled: “Proposed Solar Panel Vegetation Impacts” prepared by Joseph Arsenault dated July 2010 and submitted to the New Jersey Pinelands Commission (“Vegetation Impact Report”, attached as Exhibit F3).

In addition, The Township’s Application describes how each applicable element of the Green Acres environmental assessment outline is satisfied by these reports and other information submitted in the Township’s Application in response to Question 3 in the Pre-Application form. Finally, as previously noted, the Executive Director of the Pinelands Commission has included affirmative findings relating to the absence of adverse impacts on rare plant and animal species. The Township believes that because one of the central roles of the Pinelands Commission is the protection of these species, its opinion should carry great weight.

#### *Adherence to Green Acres Procedural Rules*

For the reasons noted in previous submissions, the Township believes it has adhered to the Green Acres rules and regulations. Further, in response to a letter from James Moran, Township Administrator, dated September 20, 2010, the Department agreed to relax certain procedural requirements, including those identified by the PPA, pursuant to N.J.A.C. 7:36-1.6. For the reasons expressed in the Township’s letter and based upon the Department’s agreement to relax those requirements, the Township believes it has complied with all procedural requirements.

#### *Adherence to Green Acres Compensation Rules*

The Township disagrees with the PPA’s position concerning the compensation required under Green Acres rules and regulations. This transaction is a lease and not an outright conveyance of title. It does not require that compensation for the diversion be made via replacement land. As such the four (4) to one (1) offset requirements do not apply. Nor do the appraisal valuation requirements apply. Furthermore, the Township’s environmental reports cited above demonstrate that there will be no significant impact on the natural resource value of the landfill cap.

The Green Acres standard for leases is set forth at N.J.A.C. 7:39-26.10(c)2i and requires that the compensation be “fair and appropriate”. This is a legal issue to be ultimately determined by the Department, however, the Township is confident that the financial terms of the lease will meet this standard.

Also, it is important to note that there were no Green Acres funds used to close or cap the Landfill or to plant or maintain the grasses growing there now. That has all been done with private funds. In addition the Township, through its Redeveloper, is being required to pay the Pinelands Commission the sum of \$152,900.00 (in addition to the substantial sums required to conserve in excess of 1000 acres under prior Pinelands approvals and the agreement to pay up to \$1 million in settlement of litigation brought by PPA in connection with those approvals). Those

payments should all be relevant to the Department's consideration of the adequacy of the compensation.

### *Alternatives*

The Township has addressed the alternatives issues raised in the PPA's comments at length in its prior submissions and those will not be repeated here, except to note that the PPA is now asserting that (1) because the energy produced by the proposed renewable energy project enters the general electric grid, virtually any location that could house the project is an alternative location and (2) the Township has not justified why open space must be used. These assertions are incorrect.

First, the energy to be generated by the renewable energy facilities proposed to be placed on the surface of the landfill property are specifically targeted to serve the public within Stafford Park and not to service the general electric grid. Therefore, the PPA is simply not correct in its statement. .

Second, with respect to the issue of open space, there are no other feasible or available locations that will meet the project's objectives other than the landfill property - rooftops are already utilized, the feasibility/availability of the parking areas has been extensively analyzed in other submissions). While PPA may consider the landfill to be "open space", use of closed landfills to site renewable energy facilities is entirely consistent with and encouraged by state and federal policies.

### *Compelling Public Need or Significant Public Benefit*

The Township believes that it has satisfied the requirements under N.J.A.C. 7:36-26.1 that the diversion must fulfill a compelling public need or yield a significant public benefit for the reasons expressed in previous submissions. As stated in the Township's Application, the distribution of energy to the public is one of the most critical needs in modern society. Because of the growing concern about the significant adverse environmental effect on global warming associated with greenhouse gas generated by the prevalent forms of fossil fuel energy sources and additional concerns about reliance on foreign oil, both state and federal energy policy views the development of renewable energy sources and the distribution of these forms of energy to be vital to the future of our state and county. In addition, the development of a viable alternative energy industry is seen as a critical source of jobs and economic development. In recognition of these compelling state and national needs, the Township supports the utilization of renewable energy facilities wherever possible.

The utilization of the surface of a capped and closed landfill, which would be otherwise unusable space, is consistent with these vital State and Federal energy and environmental policies promoting the development of renewable energy. These governmental policies also strongly encourage the utilization of otherwise unused closed landfills for siting these facilities. For example, in connection with a recent settlement of compliance issues at the Middlesex County and Edgeboro Landfills, NJDEP Commissioner Martin stated that "Landfills not only provide

gases that can be converted to electricity, they are *ideal for solar and wind farms as well*. We need to continue working on projects that transform old landfills into green assets that create jobs and are good for the environment and our economy.[emphasis added]"

In this case, the development of renewable energy at the Landfill will enable the Township to provide essential public services, namely energy for use by the public at the Stafford Business Park, in a form that simultaneously achieves significant environmental objectives by providing that energy without generating green house gas emissions. In addition, the County and the Township expect to utilize a portion of this renewable energy at a reduced cost, thereby saving the taxpayers money and yielding additional significant public benefits.

In addition to the above, the New Jersey legislature has expressly weighed in on the subject by recently amending the Municipal Land Use Law (MLUL) to provide that solar and wind renewable energy facilities are land uses considered to be "inherently beneficial" as a matter of law (P.L. 2009, ch. 146). Under this legislation, the legislature defined an inherently beneficial use to mean "a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare." Certainly the Legislature's determination as to the public benefits of renewable energy facilities should carry heavy weight with the Department.

Against this overwhelming support for the compelling public need for renewable energy facilities and the significant public benefits they yield, the PPA belittles the importance of renewable energy by asserting that "it is not enough to simply be a good thing" and that the Township has not presented evidence of a "hazard to the public health, safety and welfare" that is being mitigated or an improvement in the delivery of essential public services to the public. In doing so, the PPA chooses to ignore (1) the serious hazard of global warming that Commissioner Martin and the Legislature have found to be mitigated by renewable energy and (2) the significant public benefit associated with the delivery of an essential service to the public – energy – in the form of renewable energy in Stafford Park. That these objectives are not compelling or significant to PPA (but merely "good"), detracts nothing from the conclusions to the contrary of the Legislature and the Commissioner of the Department.

For all of the above reasons the Township believes that the proposed project meets the threshold tests of the Green Acres regulations.

## ATTACHMENT 3

### NJDEP RESPONSE TO COMMENTS ON GREEN ACRES APPLICATION PROCESS

During the Green Acres diversion application process for the proposed diversion of a portion of the former Stafford Township municipal landfill, commenters opposed to the project have raised a number of procedural and substantive concerns pertaining to the application. The issues raised and the NJDEP's responses are as follows:

1. Failure to meet the public need/public benefit threshold at N.J.A.C. 7:36-26.1(d)1

A number of commenters have asserted that the proposed diversion does not meet the thresholds for consideration of a diversion application at N.J.A.C. 7:36-26.1(d)1, which states that an applicant must demonstrate that the proposed diversion is for a project that will either:

*i. Fulfill a compelling public need...by mitigating a hazard to the public health, safety or welfare; or*

*ii. Yield a significant public benefit...by improving the delivery by the local government unit or nonprofit, or by an agent thereof, of essential services to the public or to a segment of the public having a special need;*

As a matter of longstanding agency interpretation, the NJDEP has generally considered utility projects such as the proposed diversion to fall into the "public benefit" category (N.J.A.C. 7:36-26.1(d)1ii). Although most electric and gas projects are not constructed by a local government unit or nonprofit, the provision of energy is an essential service, and both public and private utility companies provide a commodity that local governments would otherwise be required to provide (such as many municipalities still do for water and sewer services.) Therefore, the fact that the project is sponsored by a private, for-profit enterprise has not in the past disqualified consideration of a diversion application.

2. Alternatives Analysis

Along with concerns about the public need/public benefit associated with the proposed diversion, several commenters have alleged that the applicant did not demonstrate a lack of alternative sites in accordance with N.J.A.C. 7:36-26.1(d)2. The NJDEP has reviewed the alternatives analysis submitted by the Township as part of the application, and concurs

that it would not be feasible to locate another site for this project outside the redevelopment area given the strict regulation of the surrounding area under the Pinelands Comprehensive Management Plan. Additional analysis of alternatives is discussed in the Alternatives section of this Summary (above).

3. Inadequate Compensation

Many commenters have asserted that the NJDEP should deny the proposed diversion because the applicant has not proposed replacement land for the project site at a 4 to 1 replacement ratio. Contrary to this assertion, the standard for compensation for this project is found at N.J.A.C. 7:36-26.10(c)2, as follows:

*2. For a diversion of parkland that entails a lease or use agreement:*

*iii. Green Acres shall assess whether the compensation that the applicant proposes to receive for the lease or use agreement is fair and appropriate; and, if not, advise the applicant as to the minimum amount of compensation that must be secured if the application is to be approved by the Commissioner and sent to the State House Commission for approval; and*

*iv. Green Acres shall require that any payments, rentals or other consideration received by the applicant from the lease or agreement be used by the applicant for its operating, maintenance or capital expenses related to its funded parkland or to its recreation program as a whole;*

As discussed in further detail in the Compensation section of this summary (above), the Township is proposing to lease the project site to Walters for a term of 30 years at an annual rental that will range from \$75,000 (if only the first phase of the project is built) to \$150,000 (if both phases of the project are built), along with a 2% annual escalator and other provisions allowing upward adjustment of the rental in response to market conditions. The Department's staff economist has reviewed the proposed lease terms and determined them to be "fair and appropriate" under the circumstances of this project.

Under N.J.A.C. 7:36-26.10(d)7, the NJDEP does have the ability to require additional compensation to address natural resource impacts or mitigate other adverse impacts associated with a proposed diversion or disposal. However, unlike the recent Tennessee Gas Pipeline transaction, in which the State requested replacement land for the subsurface installation of a natural gas pipeline that required blasting and trenching, this project

involves the minimally obtrusive installation of solar panels on the surface of a capped landfill. At the end of the lease, it is not unreasonable to assume that the panels can be removed and the site restored to its pre-lease condition. Therefore, the NJDEP has not required replacement land for this application.

As required by *N.J.A.C. 7:36-26.10(c)2ii*, the Township will use the lease proceeds for its operating, maintenance or capital expenses related to its funded parkland or to its recreation program as a whole.

4. Public Notice Deficiencies

A number of commenters have alleged public notice deficiencies relating to the proposed diversion, primarily that (a) the applicant failed to provide the required documents to the public prior to the public hearings, and (2) the applicant failed to provide adequate public notice for the public hearings. On the first point, *N.J.A.C. 7:36-26.11(h)3v* requires applicants to place a copy of the final application on file with municipal or County library serving the area in which a diversion or disposal is proposed, the municipal offices for that location and the Green Acres Program. The documents pertaining to this application were available at the Green Acres Program offices, and the Township has informed the NJDEP that they were available at both the municipal offices and the municipal library. As a point of information, documents pertaining to the scoping hearing are not required to be available before the hearing, since in most cases the applicant is still formulating its proposal at the time of the scoping hearing and has not yet filed an application with the Green Acres Program.

On the second point, the applicant requested and received from the NJDEP a procedural waiver allowing the applicant to provide 15 days notice of the public hearing on the final application (held October 14, 2010) instead of the 30 days normally required by the Green Acres rules, and to shorten the post-hearing public comment period from 14 days to 7 days. Under *N.J.A.C. 7:36-1.6*, the "Department may, in its discretion and if consistent with Green Acres laws, relax the strict application of any of the administrative or procedural requirements of this chapter when necessary and in the public interest, for good cause shown." In this case, the Township asked the NJDEP to allow a reduction of the public hearing notice and comment period in order to allow this project to be approved in time to take advantage of federal tax incentives that expire at the end of the calendar year. Given the public benefits associated with this project (see Attachment 1), and the fact that the project was also undergoing an open public process before the Pinelands Commission, the NJDEP determined that the applicant had demonstrated "good cause" for its waiver request. Although the NJDEP allowed the reduction of the notice and comment periods for the second public hearing, the notice period for

the scoping hearing was not reduced, and the public was afforded a full two-week post-hearing public comment period after the scoping hearing. In addition, any comments submitted to the NJDEP at any time during its review of a Green Acres diversion/disposal application are considered part of the record for the application and are considered in the final review of the application.

**ATTACHMENT 4**

**OCTOBER 18, 2010 STAFF RECOMMENDATION OF PINELANDS  
COMMISSION IN RESPONSE TO REQUEST TO AMEND THE 2006 MOA**





## State of New Jersey

### THE PINELANDS COMMISSION

PO Box 359

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(609) 894-7300

October 18, 2010

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

JOHN C. STOKES  
Executive Director

#### DRAFT

### REPORT ON A PROPOSED FIRST AMENDMENT TO THE JUNE 28, 2006 MEMORANDUM OF AGREEMENT AMONGST STAFFORD TOWNSHIP, OCEAN COUNTY AND THE NEW JERSEY PINELANDS COMMISSION

#### FINDINGS OF FACT

The proposed First Amendment to the June 28, 2006 Memorandum of Agreement (MOA) amongst Stafford Township, Ocean County and the New Jersey Pinelands Commission would permit the development of Renewable Energy Facilities at the closed landfill located at the Stafford Business Park parcel. Currently, the terms of the June 28, 2006 MOA require that the remaining undeveloped land within the Business Park, including portions of the closed landfill, be deed restricted as open space. In accordance with such terms, the Township recorded a Declaration of Covenants and Restrictions for portions of the closed landfill on December 11, 2006. Thus, although the Business Park is located within a Regional Growth Area and Renewable Energy Facilities are a permitted use within a Regional Growth Area, Renewable Energy Facilities may not be developed on portions of the closed landfill absent an amendment of the June 28, 2006 MOA that would permit modification of the Declaration of Covenant and Restrictions. Additionally, the proposed MOA amendment would authorize the development of proposed solar generation facilities on a portion of the closed landfill. Detailed development plans have been reviewed by the Commission staff for the proposed solar project and the project, as well as the proposed MOA amendment, has been determined to be consistent with the requirements of the Pinelands Comprehensive Management Plan. As a result, no deviation from the Plan's standards is proposed. Thus, an environmental offset is not required. The Township, however, is providing an additional measure as recompense for its requested modification. This measure, a monetary contribution to the Commission's assessment of existing unclosed landfills located elsewhere in the Pinelands, will facilitate proper environmental closure of these landfills, which have remained unclosed despite a requirement of the Pinelands Comprehensive Management Plan. As a result, the proposed MOA amendment is consistent with the goals and objectives as well as the requirements of the Pinelands Comprehensive Management Plan. Lastly, the proposed MOA amendment establishes an alternative application procedure in accordance with N.J.A.C. 7:50-4.52(c)1. Absent a material addition to, deviation from or modification to the proposed solar project, as delineated in the existing development plans (i.e. material change), no further action by the Commission, or its staff would be required. A formal development application, however, would be required for a material change in the solar project or for the development of another type of Renewable Energy Facility, such as electric energy generation



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facilities from wind. Additional findings are included in the “whereas” paragraphs of the proposed MOA amendment and are incorporated herein by reference.

### PUBLIC HEARING

Pursuant to N.J.A.C. 7:50-4.52(c)3, a public hearing to receive testimony concerning the proposed First Amendment to the June 28, 2006 MOA was duly advertised and noticed. The hearing was held by Executive Director John C. Stokes on October 12, 2010 at 7:00 p.m. at the Stafford Township Municipal Building, Council Room, 260 East Bay Avenue, Manahawkin, New Jersey. Approximately 15 people attended the hearing of which seven individuals provided oral testimony. In addition to Executive Director Stokes, Stacey Roth and Ken Carter of the Commission’s staff were present at the hearing.

At the outset of the public hearing, Executive Director Stokes introduced the Commission staff present and indicated that following the hearing a draft staff recommendation report will be prepared concerning the proposed MOA amendment, which will include the relevant points raised during the hearing and through the written comments and an analysis of such points for the Commission’s review. Mr. Stokes indicated that the draft staff recommendation report would be considered by a committee of the Commission at its October 25, 2010 meeting and that the full Commission would likely consider the proposed First Amendment to the June 28, 2006 MOA at its meeting on November 12, 2010.

Ms. Roth provided a summary of the proposed MOA amendment. She indicated that it would amend certain terms of the June 28, 2006 MOA amongst the Stafford Township, Ocean County and the Pinelands Commission that authorized the closure of the Landfills and implementation of the Redevelopment Plan at the Stafford Business Park parcel. Ms. Roth reviewed the status of the Business Park development in 2006 when the Commission considered this MOA. Ms. Roth also reviewed the offset requirements of the June 28, 2006 MOA, which included the preservation of 645 acres of off-site lands, incorporation of “Green Building” design, water quality improvements to Route 72, implementation of rare plant and animal management programs, and recordation of a conservation restriction to retain a portion of the Landfill and other open space at the Business Park parcel, including wetland buffers, as open space.

Ms Roth indicated that the proposed First Amendment to the June 28, 2010 would modify the requirement that the approximately 30 acres of the closed landfill be deed restricted as open space in order to permit Renewable Energy Facilities (i.e. facilities that produce electrical energy from wind, solar, photovoltaic or other renewable technologies) to be developed on the Landfill lot. Consistent with this, the proposed MOA amendment would permit the recordation of an amended and restated Declaration of Covenants and Restrictions. The proposed MOA amendment would also authorize the solar facility project proposed for the top of the closed Landfill to proceed and would not require submission of a public development application to the Pinelands Commission absent a material addition to, deviation from or modification to such solar project. The MOA, however, would not authorize any other Renewable Energy Facility project to proceed absent submission and approval of a public development application by the Commission. Finally, Ms. Roth explained the additional offset to be provided by the First Amendment to the June 28, 2006 MOA. Specifically, the Township would obligate its

redeveloper to make a monetary contribution to the Commission in the amount of \$152,900 to further an assessment of the existing landfills in the Pinelands Area in order to ascertain their associated environmental impacts and appropriate closure mechanism.

The following testimony was received at the hearing.

Kevin Starkey, Esq., Township Attorney, spoke on behalf of Stafford Township. He indicated that the Township supported the proposed MOA amendment and the solar facilities project and that the Township had taken substantial steps to approve the project. He conceded that there were still things for the Township to do, including adoption of an ordinance, but indicated that the Township was committed to completing the process.

Peter Ferwerda, a resident of the Warren Grove, stated that the proposed project is complex and constitutes a co-generation facility. He stated that he was concerned that the clearing from the Business Park redevelopment and Hay Road fire break projects had eliminated habitat and displaced T&E species. He stated that the vegetated top of the landfill was supposed to provide habitat for these displaced species. Mr. Ferwerda expressed a concern about the potential loss of buffers between the species habitat and the residences and development located within the Business Park. He indicated that a positive methane capture system was to be installed at the closed landfill. However, none of the documentation regarding the MOA amendment mentioned this. He stated that the mixture of electricity and methane gas could have explosive consequences. As a result, he opined that before a decision is made on the solar facility, there needs to be a risk analysis done of the potential for an explosion as a result of the presence of methane gas from the positive methane capture system and solar facilities. Additionally, Mr. Ferwerda questioned the benefit to the community from the installation of solar facilities at the closed landfill. He indicated that the power generated would be put into the grid and sold to the power company and that it was his understanding that the tenants in the affordable housing units were billed for their electric by the power company although solar panels were installed on the roof of their buildings. Mr. Ferwerda stated that he felt the proposed landfill assessment study was incomplete because it should address resource recovery operations as well as landfills and it was not likely to result in elimination of carcinogenic contaminants emanating from these facilities. Lastly, he indicated that the Commission appears to have forgotten the original purpose for establishment of the Pinelands National Reserve in its rush to accommodate development and that the proposed MOA amendment does not appear to advance the objectives of the Pinelands Comprehensive Management Plan and Pinelands Protection Act, which is concerned with ecosystems.

Joseph DelDuca, Esq. indicated that he was in-house counsel and a partner in the Walters Group, the Township's designated redeveloper for the Business Park Project. Mr. DelDuca indicated that he was here to answer any questions that the Commission staff might have regarding the Township's request for the MOA amendment or the solar facility project.

Joseph Mazzola, a resident of Stafford Township, expressed concerns regarding the potential environmental consequence associated with a rupture of the solar panels. He questioned whether the panels contained toxic constituents that could seep into the ground or groundwater as a result of a rupture of a panel. Mr. Mazzola also expressed concerns regarding the Township's conduct in this matter. He questioned the benefit of the overall solar facility to the residents and tax

payers of Stafford Township with regard to utilization of the energy that would be generated by the solar facilities, tax payments generated by the project and the low lease payments being paid to the Township. He also stated that the solar panels should be placed in the parking lots at the Business Park despite the objection of the commercial tenants.

Sal Sorce, a Manahawkin resident, expressed concerns regarding the potential toxic constituents of solar panels such as cadmium. He also indicated that solar panels and photovoltaics are the disposal problem of the future. He expressed concerns regarding the Township's conduct in its review of the solar project and the lack of transparency in the municipal process. He indicated that the Township is not following the Department of Environmental Protection, Green Acres' rules. He further indicated that the Township's agreement for the solar facilities does not provide any benefit to township residents because the landfill is being leased for less than pennies per sq. foot. Lastly, he stated that the Commission should not consider the proposed MOA amendment until the Township has satisfied its financial obligations under its \$1 million dollar settlement with the Pinelands Preservation Alliance and the New Jersey Conservation Foundation.

Jean Vogrin, a resident of Warren Grove, stated that the Green Acres diversion rules should be applied strictly to this project and there should be at least 4:1 mitigation for the diversion of the open space on top of the closed landfill. She also stated the utilization of the top of the landfill for the installation of solar panels did not appear to be necessary and that utilization of the parking lots within the Business Park should be explored for the solar project.

Theresa Lettman, Pinelands Preservation Alliance (PPA), submitted comments on behalf of PPA. She stated that the proposed MOA violates the requirements of the Pinelands Comprehensive Management Plan because a monetary contribution for a study does not provide an equivalent level of protection for the resources of the Pinelands as required by N.J.A.C. 7:50- 4.52(c)2 because it does not protect anything. Additionally, she indicated that the amount of this contribution is arbitrary. She stated that the development which is addressed through the proposed MOA amendment is unnecessary and will not serve the public interest. She further objected to the MOA amendment because as drafted it prevents the Commission and the public from reviewing detailed development plans as they are implemented over time. Additionally, she indicated that modification of the Declaration of Covenants and Restrictions for the landfill required by the 2006 MOA will further damage the Commission's reputation for keeping its conservation promises and applying its rules consistently and that the manner in which the Commission is rushing the process is unseemly, and gives 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 an even-handed fashion.

There being no further testimony, the hearing concluded at approximately 8:10 p.m.

Written comments on the proposed MOA amendment were accepted until 5:00 p.m. on October 13, 2010 and were submitted by the following:

- 1) October 7, 2010 letter from Susan Poder, Barnegat resident, opposing the proposed MOA amendment because of the impact from locating the proposed solar project on the deed

restricted landfill habitat instead of pursuing alternate locations within the Business Park and expressing concerns with the accelerated public review process.

- 2) October 8, 2010 emailed letter with attachments from S.J. Sorce, Manahawkin resident, expressing concerns regarding the local review process for the solar facilities project.
- 3) October 9, 2010 emailed letter from Jean Vogrin, Warren Grove resident, expressing opposition to the proposed MOA amendment and expressing concerns about the utilization of conserved open space, the closed landfill, for the installation of solar facilities rather than utilization of alternate locations within the Business Park such as the parking lots.
- 4) October 12, 2010 letter from Margaret Meissner-Jackson, Conservation Director, Sierra Club Ocean County Group opposing the proposed MOA amendment and expressing concerns regarding the diversion of open space without a 4:1 mitigation obligation as required by the Green Acres rules and objecting to installation of solar facilities on the deed restricted landfill without consideration of alternative locations such as the parking lots and roof tops within the Business Park.
- 5) October 12, 2010 letter from Carleton Montgomery, Executive Director, Pinelands Preservation Alliance objecting to the proposed MOA amendment on various grounds, including that it will further damage the Commission's reputation, violates the requirements of the Pinelands Comprehensive Management Plan, furthers unnecessary private development, prevents Commission and public review of detailed development plans as they are implemented over time and the Commission's apparent rush to make a decision.
- 6) October 13, 2010 email from Martha Steinberg opposing diversion of state tax funded open space for private use through installation of solar energy generation facilities on the deed restricted landfill and suggesting that an alternate location within the Business Park be used.
- 7) October 13, 2010 emailed memo from Theresa Lettman, Pinelands Preservation Alliance, attaching a copy of the minutes from the October 25, 2005 Public and Governmental Programs Committee meeting and reiterating that the Technical Group, comprised of NJDEP Solid Waste, NJDEP Endangered and Non-Game Species and Commission staff recommended deed restricting the undeveloped balance of the open space at the Business Park as open space.
- 8) October 13, 2010 letter from Alison Mitchell, Policy Director, New Jersey Conservation Foundation objecting to the proposed MOA amendment on various grounds, including the amendment violates the Pinelands Comprehensive Management Plan, the development for which the amendment is designed has viable practicable alternatives, the project serves a private economic interest and has no compelling public purpose, the amendment is drafted in order to prevent the Commission and the public from reviewing detailed development plans as they are implemented over time, and the Commission is

rushing the process to serve the interests of private development, rather than fulfilling its statutory mandate to protect the Pinelands environment.

- 9) October 13, 2010 emailed letter from Jean Vogrin, Warren Grove further objecting to the proposed MOA amendment because of diversion of open space in exchange for monetary contribution toward landfill study.

Copies of these 9 letters have been attached to this report.

### **EXECUTIVE DIRECTOR'S ANALYSIS OF THE COMMENTS**

As is evident from the oral testimony offered at the hearing and the written comments the Commission received, commenters cited a variety of reasons for supporting or for opposing the proposed First Amendment to the June 28, 2006 MOA. Some of these (such as lack of transparency in the Township's decision making process, the lack of benefit to the residents and tax payers of Stafford Township with regard to the utilization of the energy to be generated by the proposed solar facilities, potential tax payments and the low lease payments negotiated by the Township for utilization of the closed landfill, etc.) are valid concerns for the Township and its governing body to consider, but are not directly germane to the Pinelands Comprehensive Management Plan and the Commission's decision on the proposed MOA amendment.

However, a number of other points have been raised which do bear upon the Commission's decision in this matter. These generally relate to the consistency of the proposed MOA amendment with the requirements and objectives of the Pinelands Comprehensive Management Plan and the Pinelands Protection Act; the potential environmental impacts associated with the proposed solar energy generation facilities; the process utilized by the Commission in its development and consideration of the proposed MOA amendment; the impact of the proposed MOA amendment on the Commission's reputation; and the consistency of the Township's request to modify the Declaration of Covenants and Restrictions on the closed landfill to permit the development of solar energy generation facilities with the NJDEP, Green Acres diversion rules. To more fully inform the Commission's decision-making process, the Executive Director has focused the following analysis on those points that raise key issues about the merits of the Township's request for an amendment to the June 28, 2006 MOA.

#### **A. Consistency of the Proposed MOA Amendment with the requirements and objectives of the Pinelands Comprehensive Management Plan and the Pinelands Protection Act.**

**Comments:** Several different concerns were expressed regarding the consistency of the proposed MOA amendment with the requirements and objectives of the Pinelands Comprehensive Management Plan and the Pinelands Protection Act. Specifically, a number of commenters indicated that the proposed monetary contribution for a landfill assessment failed to provide an "equivalent level of protection for the resources of the Pinelands" as required by N.J.A.C. 7:50-4.52(c)2. They noted that the original MOA required permanent protection of the closed landfill and that, without this element, the MOA, as amended, would violate the equivalent protection requirement. Additionally, they stated that a monetary contribution for the

Commission to undertake a landfill assessment did not constitute an “equivalent level of protection for the resources of the Pinelands” because a study does not protect anything. They also indicated that because the proposed MOA amendment does not provide a basis for the calculation of the amount of the monetary contribution or any analysis of why this amount provides any equivalency for the particular open space to be lost, or for the resources lost as a result of the original MOA, it is arbitrary and fails to meet the requisite regulatory threshold. They also expressed concerns that the proposed amendment permitted the Township’s designated redeveloper *carte blanche* with regard to the manner in which the proposed solar project would be developed, including all the associated development that is required to transport the electricity generated by the facility and maintain the facility over time, without detailed Commission or public review and, thus, the proposed MOA amendment circumvents the rigorous development review requirements of the Pinelands Comprehensive Management Plan. Lastly, one commenter stated that the proposed MOA amendment did not advance the objectives of the Pinelands Comprehensive Management Plan and the Pinelands Protection Act, which were concerned with ecosystems. He also believed that the landfill assessment should be expanded to include an assessment of resource extraction operations.

**Analysis:** As discussed in the draft of the First Amendment to the June 28, 2010 MOA, the Township’s proposal does not require a deviation from the requirements of the Pinelands Comprehensive Management Plan. The proposed MOA amendment would permit modification of the existing Declaration of Covenants and Restrictions to permit the development of Renewable Energy Facilities on the closed landfill at the Stafford Business Park site. The Stafford Business Park site is located in a Regional Growth Area. Renewable Energy Facilities are a permitted use within Regional Growth Areas. Additionally, the Township’s Redeveloper engaged threatened and endangered plant and animal consultants to provide an ecological assessment of the closed landfill. These consultants determined that the closed landfill did not provide critical habitat for threatened or endangered animals and did not contain any threatened or endangered plants. Additionally, Commission staff reviewed the proposed Solar Facilities project with regard to that project’s conformance with the requirements of the Pinelands Comprehensive Management Plan, including the wetlands and stormwater management requirements, and found the project to be in conformance with all of the applicable development standards. As a result, the proposed MOA amendment does not deviate from the standards of the Pinelands Comprehensive Management Plan and, therefore, does not require measures to be included that, at a minimum, afford an equivalent level of protection of the resources of the Pinelands Area as required by N.J.A.C. 7:50-4.52(c)2.

As discussed on page 8 of the June 28, 2006 MOA, the following offsets were provided in order to afford an equivalent level of protection of the resources of the Pinelands: preservation by Stafford Township, without utilization of funds from its open space acquisition program, of at least 570 acres of land, a portion of which was to be located within the Mill Creek drainage area and the remainder of which was to constitute suitable Northern Pinesnake habitat; preservation by the County of 75 acres of suitable Northern Pinesnake habitat as part of its open space acquisition program; incorporation of low impact site design measures into the residential and commercial components of the redevelopment project and incorporation of “green building” design into the residential component of the redevelopment project; revegetation of the closed landfill, with the exception of the 20 acre County composting facility, with native Pinelands

vegetation; the implementation of stormwater quality improvements on Route 72; development and implementation of rare plant and animal management programs; and the recordation of conservation easements for a portion of the landfill and other open space areas, including wetland buffer areas, on the redeveloped Business Park site. As the County's use of a significant portion of the landfill for chipping and composting activities clearly indicates, the remaining portion of the landfill was not deed restricted for its natural resource values; rather it was expected to remain open space because no other alternate use had been identified at that time. Viewed in totality, deed restricting this approximately 30 acres portion of the closed landfill as open space represented a diminimus part of an extremely robust set of actions that benefited the Pinelands. Nonetheless, one could argue that some additional measures should be provided as recompense for the loss of this open space.

Additionally, although the 2006 MOA only required the preservation of approximately 645 acres of land to offset the wetland and habitat impacts associated with the closure of the landfills and the redevelopment of the Business Park site, approximately 1017 acres were actually deed restricted through the Township's and the County's efforts. Moreover, as a result of a Stipulation of Settlement entered into amongst the Pinelands Preservation Alliance, New Jersey Conservation Foundation, Stafford Township and the Stafford Business Park Commission on December 6, 2006, arising out of an appeal filed by PPA and NJCF concerning the June 28, 2006 MOA, as much as \$1 million dollars was to be paid to the Natural Lands Trust to be utilized for the permanent preservation of land that constituted Northern pinesnake habitat or that contained known populations of threatened or endangered Pinelands plants located within the boundaries of the Barnegat Bay watershed<sup>1</sup>. Consequently, a significant quantity of land has been preserved to offset the impacts to threatened and endangered species habitat resulting from the 2006 MOA.

The Commission staff, however, recognizing that some recompense might be appropriate, requested the Township to provide an additional measure to compensate for the modification of the Declaration of Covenants and Restrictions on the closed landfill, namely a monetary contribution toward the Commission's assessment of the existing unclosed landfills existing elsewhere in the Pinelands. Although there is not actual replacement of physical resources (in this case acres of land on top of a closed landfill), the monetary contribution will be utilized to fund a study of existing unclosed landfills located within the Pinelands Area in order to determine the continuing environmental impacts associated with them and the appropriate means of closure in order to ameliorate these impacts. As such, this study will facilitate proper environmental closure of these landfills, which have remained unclosed despite a requirement of the Pinelands Comprehensive Management Plan. Although one can argue that a study protects nothing, the absence of such a study to target remedial actions to those landfills which pose significant environmental risks has led to years of delay. Thus, this study is viewed as a significant conservation measure.

The amount of the monetary contribution being provided by the Township's Redeveloper is not arbitrary. The Commission's Land Use and Technology office has been pursuing such an assessment for a couple of years. During that time, the Commission's staff has developed a study outline that anticipates data collection from NJDEP files, identification of public health and

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<sup>1</sup> Full implementation of the Stipulation of Settlement appears to be in dispute. However, the Commission is not a party to the Settlement and is not in a position to rule on the merits of the dispute.



environmental receptors, construction of a geographic database, identification of critical leachate parameters and thresholds, and characterization of landfills on the basis of health and environmental risks. Based upon a sample of NJDEP files and data, it has been estimated that more than 1100 work hours will be required, leading to an overall cost of approximately \$180,000. Accounting for funds already available, the balance was estimated to be \$152,900. If one were to equate this to the cost of Pinelands Development Credits, such a contribution would serve to protect between 60 and 80 acres of land, at least twice the amount of land being affected here but a rather nominal conservation outcome compared to the closure of high risk landfills.

The landfill assessment is a targeted endeavor. Although there are a number of different types of research studies that might be worthwhile to undertake in the Pinelands, the June 28, 2006 MOA involved the closure of two municipal landfills and the amendment pertains to utilization of the top of the closed lined landfill. The landfill assessment here is quite a bit different than a study of resource extraction or other industrial uses would entail.

The proposed MOA amendment does not give the Township's Designated Redeveloper *carte blanche* with regard to the development of the proposed solar facilities or the associated sub-transmission lines. Rather, the Redeveloper submitted detailed development plans during the course of its discussions with the Commission staff regarding the proposed solar facilities. Commission staff reviewed these plans and other technical information submitted by the Redeveloper and determined that the proposed solar facilities project was consistent with the requirements of the Pinelands Comprehensive Management Plan. These development plans were available for review by the public and public comment thereon could have been provided as part of the public comment process for the proposed MOA amendment. Consequently, and despite comments to the contrary, the proposed solar facilities project has been subject to detailed Commission staff review and the proposed MOA amendment does not circumvent the rigorous review requirements of the Pinelands Comprehensive Management Plan.

The proposed MOA amendment is consistent with the goals and objectives of the Pinelands Comprehensive Management Plan and the Pinelands Protection Act. Although the Pinelands program is premised on the protection of the ecosystems of the Pinelands Area, that objective is achieved through a regulatory program that "encourage[s] appropriate patterns of compatible residential, commercial and industrial development, in or adjacent to areas already utilized for such purposes, in order to accommodate regional growth influences in an orderly way while protecting the pinelands environment from the individual and cumulative adverse impacts thereof." (N.J.S.A. 13:18A-9.b.(5)) As discussed above, the proposed MOA amendment involves land located within a Regional Growth Area. Regional Growth Areas are defined by the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50-5.13(g) as "areas of existing growth or lands immediately adjacent thereto which are capable of accommodating regional growth influences while protecting the essential character and environment of the Pinelands. The proposed MOA amendment is consistent with these goals and objectives.

**B. Potential Environmental Consequences Attributable to the Solar Facilities Project.**

**Comments:** Two commenters expressed concerns regarding the potential toxicity of the proposed solar arrays. The concerns included the potential for soil and/or groundwater

contamination from the rupture of an array to end term disposal issues. Additionally, one commenter expressed concerns regarding the explosion risk associated with the methane capture system at the landfill and the proposed installation of solar generation facilities.

**Analysis:** Commission staff reviewed scientific studies published by the Brookhaven National Laboratory, Columbia University and the National Renewable Energy Laboratory of the US Dept of Energy. These sources conclude that photovoltaic materials pose virtually no risk to the environment or human health. Photovoltaic materials in solar modules appear to be largely encased in glass or plastic and many are insoluble. Exposure risk occurs through accidental ingestion of flakes or dust. Thus, unless a solar array is crushed and ground into a fine powder, dust particles will not be generated. The photovoltaic materials are bonded and sealed and, even if they were to be released, they would be below hazardous levels. With regard to cadmium, solar arrays are cadmium telluride (CdTe). Elemental cadmium, from which CdTe is formed when elemental cadmium reacts with tellurium, is a lung carcinogen and long term exposure may cause detrimental effects on kidney and bone. CdTe, however, is less soluble than elemental cadmium and, therefore, is considered to be less toxic. Additionally, the amount of cadmium in a CdTe photovoltaic array of approximately 10.7 sq. ft in size is less than the amount in 1 C sized NiCd battery. Moreover, today's photovoltaic arrays pass federal (TCLP-RCRA) leaching criteria for non-hazardous waste, unlike fluorescent lights containing mercury and computer screens containing lead that do not pass landfill-leaching criteria, and can be legally disposed of in a landfill. In light of the above, the environmental, health and safety risks associated with the use of photovoltaic arrays appear to be minimal.

A passive methane venting system, not a positive capture system, exists at the closed landfill. Based on Commission staff discussions with the operators of the solar energy generation facilities at the Pennsauken Landfill, which also has a passive methane venting system, it appears that there is little risk of methane explosion as a result of the placement of solar energy generation facilities on a closed landfill. Commission staff was informed that methane gas explosions usually occur when methane gas concentrates within an enclosed area. With a passive venting system, the methane gas is being vented to the atmosphere. Consequently, there is no accumulation of the methane gas at the concentrations necessary to cause an explosion.

**C. The Commission's behavior in this matter will damage its reputation and is inappropriate.**

**Comments:** A number of commenters expressed concerns regarding the Commission's alleged rushing of the process for the proposed MOA amendment. According to these commenters this creates 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. The commenters pointed to the administrative process for the proposed MOA amendment that has occurred to date before the Public and Governmental Programs Committee and the length of notice provided prior to the public hearing as examples of the Commission's alleged rushing. The commenters questioned why the Commission was proceeding with a decision on the proposed MOA amendment in the absence of action of a modification of the Declaration of Covenants and Restrictions by the NJDEP. Implicit in their comments was a perception that the Commission should delay any action on the proposed MOA amendment until the NJDEP takes

action. Commenters also expressed concerns that modification of the Declaration of Covenants and Restrictions for the closed landfill would further damage the Commission's reputation for keeping its conservation promises and applying its rules consistently.

**Analysis:** As discussed in the proposed MOA amendment, the Township and the Township's Redeveloper approached the Commission staff to discuss the Township's desire to utilize the area of the closed landfill for the development of Renewable Energy Facilities on or about July 1, 2010. The Township applied to the New Jersey Department of Environmental Protection for an amendment to the Landfill Closure Plan for the closed landfill to permit the development of Renewable Energy Facilities on or about July 14, 2010 and secured approval of such amendment from the Department on August 5, 2010. Commission staff briefed the Public and Governmental Programs Committee regarding the Township's request at its August 23, 2010 meeting. Following this briefing, the Commission staff provided a draft of both the First Amendment to the June 28, 2006 MOA and the modified and restated Declaration of Covenants and Restrictions to the Public and Governmental Programs Committee at its September 27, 2010 meeting. Thus, the Commission staff has been working with the Township and its Designated Redeveloper on this fairly modest amendment to the June 28, 2006 MOA for three and a half months.

Additionally, and contrary to the representations of some commenters, the Committee did discuss the draft of both of these documents and agreed to move the matter forward to public hearing. It is true that no vote was taken at that time concerning the precise form of the proposed MOA amendment. However, it is not the Commission's practice to take a vote on a proposed MOA or amendment to a MOA prior to conducting a public hearing on the matter. Moreover, N.J.A.C. 7:50-4.52(c)3 does not anticipate a vote by the Committee or Commission before a public hearing is conducted. Rather, this provision authorizes the Executive Director to set the date, time and place of a public hearing for consideration of an intergovernmental agreement prior to execution of any such agreement by the Commission. This provision further provides that the public hearing be noticed and held by the Executive Director in accordance with the provisions of N.J.A.C. 7:50-4.3.

With regard to the time of notice required, N.J.A.C. 7:50-4.3(b)3 requires that notice of the public hearing be published, posted or mailed at least 10 days (not 10 "business" days) in advance of the hearing. In the present case, notice of the public hearing and links to the draft documents were posted on the Commission's website on September 30, 2010 and notice was published in the Asbury Park Press on October 1, 2010. Consequently, notice of the public hearing was provided at least 10 days prior to such hearing as required by the Pinelands CMP.

Another example of alleged "rushing" to action on the part of the Commission on the proposed MOA amendment is the Commission's consideration of the matter prior to action by the NJDEP on the request to modify the Declaration of Covenants and Restrictions in accordance with the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 *et seq.* and the Green Acres diversion rules, N.J.A.C. 7:36-26.8. The Commission's action, to agree to an amendment of a MOA that it has executed with other parties, is not predicated upon the NJDEP's action. In fact, the New Jersey Department of Environmental Protection could justifiably argue that the Commission must agree to permit modification of the conservation

easement recorded as a result of the June 28, 2006 MOA before a modified and restated Declaration of Covenants and Restrictions is considered by the Department. Absent the Commission agreeing to modify the terms of 2006 MOA, a release of the conservation easement even if approved by the NJDEP Commissioner, would constitute a breach of that agreement. Because the Department's and the Commission's actions are inextricably related, Commission staff has been consulting with the Department staff since July. As a result, the New Jersey Department of Environmental Protection has indicated in correspondence to the Commission's Executive Director that it would likely permit modification of the Declaration of Covenants and Restrictions barring anything unforeseen being elicited through the public hearing and comment process required by the Act and the diversion rules.

Modification or release of a conservation restriction, in whole or in part, is permitted by the New Jersey Conservation Restriction and Historic Preservation Restriction Act. Prior to such release, however, the holder of the restriction must conduct a public hearing. N.J.S.A. 13:8B-5. Additionally, the Commissioner of the Department of Environmental Protection must approve of the release as evidenced by his/her issuance of a certificate after taking into consideration the public interest in preserving the lands in their natural state, and any State, regional or local program in furtherance thereof, as well as any State, regional or local comprehensive land use or development plan affecting such property. N.J.S.A. 13:8B-6.

There is nothing unseemly about the Commission's consideration of a request to modify a conservation restriction under the present circumstance. Although the June 28, 2006 MOA required the recordation of a conservation easement for a portion of the landfill and other open space areas, including wetland buffer areas, on the redeveloped Business Park site, the approximately 30 acre area of the closed landfill represented a diminutive part of a much larger set of actions. The key measure was the preservation of at least 645 acres, most of which was to be suitable Northern pinesnake habitat. In actuality, approximately 1017 acres was preserved and potentially more habitat will be preserved as a result of the potential payment to the Natural Lands Trust as a result of the Stipulation of Settlement amongst the Pinelands Preservation Alliance, New Jersey Conservation Foundation and the Township. Moreover, this land preservation component accounted for the threatened and endangered species habitat losses attributable to the landfill closure. Additionally, as discussed in the reports prepared by Robert Zappalorti, Herpetological Associates and Joseph Arsenault, the closed landfill has at most modest ecological value and does not provide critical habitat for threatened or endangered animal species and does not contain threatened or endangered plants. Moreover, they concluded that no adverse impacts to such plants or species habitat would occur as a result of the proposed development of Renewable Energy Facilities on the closed landfill. Furthermore, the existing Declaration of Covenants and Restrictions exempts out the 20 acre County composting and brush chipping operation currently conducted on the top of the closed landfill. Lastly, the totality of the Stafford Business Park site, including the closed landfill, is located within a Regional Growth Area, where, but for the Declaration of Conservation Restriction, development of renewable energy facilities would be permitted. In light of these facts, the Commission is not ignoring its conservation promises and rules; rather, consistent with the goals and objectives of the Pinelands Comprehensive Management Plan and the Pinelands Protection Act, it is permitting appropriate industrial development in or adjacent to areas already utilized for such purposes, in order to

accommodate regional growth influences in an orderly way. In doing so, however, the overall Pinelands Protection program will be advanced as a result of the region wide landfill assessment.

**D. The proposed MOA amendment constitutes a diversion that is inconsistent with the Green Acres rules.**

**Comments:** A number of commenters expressed concerns regarding the proposed MOA amendment's compliance with the Green Acres diversion rules. Specifically, commenters were concerned that the reason for the modification of the open space restriction, the development of Renewable Energy Facilities, specifically solar facilities, is unnecessary and will serve the private interests rather than the interests of the public. According to the commenters, the electricity generated by the solar facilities would go into the grid "for profit" and would not service the commercial and residential uses on the Business Park. Additionally, a number of commenters indicated that alternate locations, including rooftops of the commercial developments and the commercial parking lots within the Business Park, should be considered, rather than permitting development of these facilities on the closed landfill. Lastly, commenters indicated that the Green Acres rules should be applied strictly to the proposed project and that 4:1 mitigation should be required for the diversion.

**Analysis:** Based upon documentation submitted by the Township's Redeveloper, the proposed solar facilities are intended to provide electricity to commercial and residential components of the Business Park. Two transmission lines are proposed to be constructed to convey electricity from the solar arrays to the County facilities located on Block 25, Lot 37 and along the southerly boundary of the parcel to the existing commercial development. Aside from the affordable housing apartments, for which direct billing for electricity provided by the rooftop solar arrays is not legally permitted, the Township's Redeveloper has indicated that the proposed solar project is intended to supplement the existing rooftop arrays on the commercial and multi-family affordable housing developments and ensure an adequate supply of renewable energy for the end users at the Business Park. The solar project is intended to result in the generation of 6 megawatts of energy from solar which will offset the need to generate this energy through the use of greenhouse gas generating fossil fuels.

With regard to utilization of alternate locations within the Business Park, as discussed above, solar arrays have already been installed on the roofs of many of the existing retail stores in the commercial development and on top of the multi-family affordable housing. The Township's Redeveloper has indicated that the energy generated by these panels, however, is insufficient to satisfy all of the needs of the end users in the Business Park. Additionally, the Township's Redeveloper did explore the possibility of utilizing the commercial parking areas for the solar project. However, it found this option infeasible because of the following: substantial areas of the parking lots are shaded by the large retail buildings for a good part of the day and, therefore, are unsuitable for solar installations; the orientation of the panels, which would have to be relatively flat in the parking lots, would greatly decrease the productivity of the system by as much as 2/3rds; installation would be very difficult given the need for extensive trenching within the parking lots to run underground wiring and could present issues regarding interference with existing utility lines, alteration of traffic patterns and loss of extensive areas of the parking lot during construction; and installation of the solar arrays within the parking lots would also present

significant challenges with regard to motorist safety and maintenance due to vehicular strikes and vandalism.

The Commission does not play a direct role with regard to the Green Acres diversion process and this issue is not within the Commission's purview. The Township has requested a partial release of the Declaration of Covenants and Restrictions for the landfill from the New Jersey Department of Environmental Protection in accordance with the requirements of the New Jersey Conservation Restriction and Historic Preservation Restriction Act. The public hearing required by N.J.S.A. 13:8B-5, as well as the scoping hearing required by N.J.A.C. 7:36-26.8, were conducted on September 27, 2010. A public hearing on the proposed diversion was conducted on October 14, 2010. The issue of the appropriate mitigation required for the diversion is solely within the Department's authority.

### **CONCLUSION AND RECOMMENDATION**

The proposed First Amendment to the June 28, 2006 MOA amongst Stafford Township, Ocean County and the New Jersey Pinelands Commission regarding the landfill closures and redevelopment of the Stafford Business Park parcel will authorize an amendment to the terms of that MOA to include Renewable Energy Facilities as a permitted use on the closed landfill. This would occur through the recordation of an amended and restated Declaration of Covenants and Restrictions for the landfill that would permit use of a portion of the closed landfill for the development of Renewable Energy Facilities in addition to use as open space. The proposed amended MOA would authorize construction of the proposed solar facilities project on the closed landfill. The proposed MOA amendment and the proposed solar facilities project are consistent with the requirements of the Pinelands Comprehensive Management Plan. Additionally, but for the Declaration of Covenants and Restrictions required to be recorded by the June 28, 2006 MOA, the development of Renewable Energy Facilities would be permitted on the Business Park parcel as it is located within a Regional Growth Area. Furthermore, the Township is providing an additional measure to compensate for its requested modification. This measure, a monetary contribution to the Commission's assessment of existing unclosed landfills located elsewhere in the Pinelands, will facilitate proper environmental closure of these landfills, which have remained unclosed despite a requirement of the Pinelands Comprehensive Management Plan. As discussed above, the proposed MOA amendment is consistent with the goals and objectives as well as the requirements of the Pinelands Comprehensive Management Plan. The Executive Director, therefore, recommends that the Commission approve the accompanying First Amendment to the June 28, 2008 MOA.



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

**NO. PC4-10-\_\_\_\_\_**

**TITLE:** Resolution Authorizing the Executive Director to Enter into a First Amendment of the June 28, 2006 Memorandum of Agreement amongst Stafford Township, Ocean County and the New Jersey Pinelands Commission Regarding the Landfill Closures and Redevelopment of the Stafford Business Park Parcel.

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

**WHEREAS**, the New Jersey Pinelands Commission (the Commission) is a public body, corporate and politic which was established to prepare and administer the Pinelands Comprehensive Management Plan (the "CMP") to protect the resources of the Pinelands Area of the State of New Jersey; and

**WHEREAS**, Section 6 of the Pinelands Protection Act authorizes the Commission "to enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the Commission to carry out any power expressly given in this act;" and

**WHEREAS**, N.J.A.C. 7:50-4.52(c)2 authorizes the Commission to enter into intergovernmental memoranda of agreement with any agency of the Federal, State or local government which authorizes such agency to carry out specified development activities that may not be fully consistent with the provisions of N.J.A.C. 7:50-5 and 6, provided such agency demonstrates and the Commission finds that variation from the standards of the Pinelands CMP is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands as would be provided through strict application of the CMP's standards; and

**WHEREAS**, N.J.A.C. 7:50-4.52(c)1 authorizes the Commission to enter into intergovernmental memoranda with any agency of the Federal, State or local government which authorizes such agency to carry out specified development activities without securing individual development approvals from the Commission; and

**WHEREAS**, Stafford Township is the owner of Block 25, Lot 39 on which the closed landfill is located; and

**WHEREAS**, in accordance with N.J.A.C. 7:50-4.52(c)2 and (c)1, the Commission entered into a Memorandum of Agreement with Stafford Township and Ocean County (the June 28, 2006 MOA) regarding the closure of the two landfills located at and the redevelopment of the Stafford Business Park parcel; and

**WHEREAS**, in accordance with the terms of the June 28, 2006 MOA, Stafford Township on December 11, 2006 filed a Declaration of Covenants and Restrictions for the portion of the Business Park upon which the closed former lined municipal landfill is located, currently Block 25, Lot 39; and

**WHEREAS**, Stafford Township now desires to utilize a portion of Block 25, Lot 39, for the development of facilities that will produce electrical energy from wind, solar, photovoltaics or other technologies that utilize renewable sources; and

**WHEREAS**, an amendment to the June 28, 2006 MOA and the Declaration of Covenants and Restrictions for the landfill are necessary in order to allow Renewable Energy Facilities to be developed on the closed landfill; and

**WHEREAS**, the Township, through its Designated Redeveloper, is proposing the construction of solar energy generation facilities on a portion of the closed landfill; and

**WHEREAS**, the proposed MOA amendment and the proposed solar project is consistent with the requirements of the Pinelands Comprehensive Management and, as such, no deviations of the Plan's requirements are required; and

**WHEREAS**, nevertheless, Stafford Township is providing an additional measure to compensate for its requested modification; and

**WHEREAS**, this measure, a monetary contribution to the Commission's assessment of existing unclosed landfills located elsewhere in the Pinelands, will facilitate proper environmental closure of these landfills, which have remained unclosed despite a requirement of the Pinelands Comprehensive Management Plan; and

**WHEREAS**, the proposed MOA amendment and the proposed solar project are consistent with the goals and objectives as well as the requirements of the Pinelands Comprehensive Management Plan; and

**WHEREAS**, the proposed MOA amendment only authorizes the recordation of an amended and restated Declaration of Covenants and Restrictions in the form attached thereto as Exhibit A; and

**WHEREAS**, the proposed MOA amendment would only permit development of the solar facilities as depicted on the plans and documents delineated in Exhibit B, attached thereto as Exhibit B, or non-material additions to, deviations from or modifications thereto as defined by Paragraph 6 of the proposed MOA amendment and according to the process contained therein;

**WHEREAS**, Paragraph 6 of the proposed MOA amendment requires the Township or its Designated Redeveloper to submit a formal application to the Commission if there is any material addition to, deviation from or modification to the proposed solar facilities project and for the development of any other type of Renewable Energy Facilities on portions of the closed landfill parcel; and

**WHEREAS**, in accordance with the requirements of N.J.A.C. 7:50-4.52(c)3, a public hearing to receive testimony concerning the proposed First Amendment to the June 28, 2006 MOA was duly advertised and noticed on October 1, 2010 and subsequently conducted on October 12, 2010 at the Stafford Township Municipal Building in Manahawkin, New Jersey; and

**WHEREAS**, the Executive Director in his report entitled "Report On A Proposed First Amendment To The June 28, 2006 Memorandum Of Agreement Amongst Stafford Township, Ocean County And The New Jersey Pinelands Commission" concluded that the project is consistent with the goals and objectives as well as the requirements of the Pinelands Comprehensive Management Plan and, therefore, recommended that the Commission approve the First Amendment to the June 28, 2006 MOA; and

**WHEREAS**, the Public and Governmental Programs Committee has reviewed the proposed MOA amendment and recommended it for approval to the full Commission; and

**WHEREAS**, the Pinelands Commission, based upon the Executive Director's November \_\_, 2010 report, finds that the First Amendment to the June 28, 2006 MOA, dated November \_\_, 2010, attached hereto, satisfies the standards of N.J.A.C. 7:50-4.52(c) which authorizes the Commission to enter into such agreements; and

**WHEREAS**, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

**NOW, THEREFORE BE IT RESOLVED** that the Pinelands Commission agrees to enter into the November \_\_, 2010 First Amendment to the June 28, 2006 Memorandum of Agreement Amongst Stafford Township, Ocean County and the New Jersey Pinelands Commission regarding the landfill closures and redevelopment of the Stafford Business Park parcel, attached hereto, and hereby authorizes the Executive Director to execute the amendment.

**Record of Commission Votes**

AYE				NAY				NP				ABS			
AYE	NAY	NP	ABS	AYE	NAY	NP	ABS	AYE	NAY	NP	ABS	AYE	NAY	NP	ABS
Brown				Henderson				McGlinchey							
Campbell				Jackson				McIntosh							
Ficcaglia				Kennedy				Witt							
Galletta				Link				Ashmun							
Haas				Lloyd											

Adopted at a meeting of the Pinelands Commission

Date: \_\_\_\_\_

\_\_\_\_\_  
John C. Stokes  
Executive Director

\_\_\_\_\_  
Candace Ashmun  
Acting Chairperson



FIRST AMENDMENT OF THE JUNE 28, 2006  
MEMORANDUM OF AGREEMENT  
AMONGST  
STAFFORD TOWNSHIP,  
OCEAN COUNTY,  
AND  
THE NEW JERSEY PINELANDS COMMISSION

Dated: \_\_\_\_\_, 2010

**WHEREAS**, Stafford Township (the "Township"), Ocean County and the New Jersey Pinelands Commission (the "Commission") (all of which are collectively referred to herein as the "Parties") entered into a Memorandum of Agreement (the "MOA"), dated June 28, 2006, which authorized the Township to proceed with closure of two landfills (known as the "New and Old" landfills) located at and redevelopment of property located in Stafford Township, Ocean County commonly known as the Stafford Business Park (the "Business Park"); and

**WHEREAS**, the Business Park site is located within the Pinelands Area in a Regional Growth Management Area;

**WHEREAS**, as authorized by the MOA, the Township, through its designated Redeveloper, implemented the following plans at the Business Park: 1) the Major Landfill Waste Disruption Approval Report and Request for Beneficial Reuse Approval for the Old Stafford Township Landfill (commonly referred to as the "Old Landfill") and the Landfill Closure Report for the Stafford Township Sanitary Landfill (commonly referred to as the "New Landfill") (collectively the "Landfill Closure Plans"); and 2) "Redevelopment Plan for the Stafford Business Park" adopted by the Mayor and Town Council of Stafford on November 1, 2005, by Ordinance No. 2005-102, as amended from time to time (the "Redevelopment Plan"); and

**WHEREAS**, the Redevelopment Plan called for, inter alia, the closure of the landfills in accordance with applicable law in order to protect the surface waters, groundwater and other resources of the Pinelands Area; and

**WHEREAS**, as part of its review process that resulted in the development and execution of the June 28, 2006 MOA, the Commission determined that implementation of the Landfill Closure Plans and the Redevelopment Plan would result in adverse impacts on wetland buffers, on the survival of two (2) local populations of threatened or endangered plants and on habitats that were critical to the survival of two (2) local populations of threatened or endangered animal species and, therefore, required deviations from the strict application of the requirements of the Pinelands Comprehensive Management Plan (the "CMP") that pertain to those resources; and

**WHEREAS**, as part of the measures included in the June 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 portions of the New Landfill, as depicted in cross hatch on the Lot Consolidation/Subdivision Plan, prepared for the

Stafford Business Park by Thomas J. Ertle & Associates, dated June 21, 2005, last revised on November 27, 2006, and filed in compliance with all provisions of the New Jersey Map Filing Law, N.J.S.A. 46:23-9.9, et. seq. in the Ocean County Clerk's Office, as Map Number L3511, on December 11, 2006 (the "Lot Consolidation/Subdivision Plan"), against future development and to retain this area, in perpetuity, as Open Space; and

**WHEREAS**, the two landfills have been closed in accordance with the requirements of the Closure Plans and the as-built certification for the landfill closures was approved by the New Jersey Department of Environmental Protection on June 18, 2009; and

**WHEREAS**, on or about, July 14, 2010, the Township, applied to the New Jersey Department of Environmental Protection for an amendment to the Landfill Closure Plan for the New Landfill in order to permit Renewable Energy Facilities (i.e. facilities that produce electrical energy from wind, solar, photovoltaic, or other technologies utilizing renewable resources) to be developed on the lot comprising the New Landfill; and

**WHEREAS**, on or about July 1, 2010, the Township and the Township's Redeveloper approached the Commission staff to discuss the Township's desire to utilize the area of the New Landfill, with the exception of the area of the existing Stormwater Basins, wetlands and wetland buffers located thereon, and the approximately 20-acres currently leased to the County for operation of its composting facility located on the surface of the New Landfill, for the development of Renewable Energy Facilities on the lot comprising the New Landfill; and

**WHEREAS**, on July 19, 2010, the Township's designated Redeveloper submitted to the Commission a summary of and site plans for the Renewable Energy Facilities proposed to be developed on the lot comprising the New Landfill; and

**WHEREAS**, on or about July 26, 2010, the Township's Redeveloper submitted to the Commission reports prepared by Robert Zappalorti, Herpetological Associates and Joseph Arsenault providing an ecological assessment of the capped New Landfill, discussing any potential impacts thereto as the result of the development of Renewable Energy Facilities on the New Landfill and concluding that development of Renewable Energy Facilities would not adversely effect threatened and/or endangered plant or animal species; and

**WHEREAS**, the New Jersey Department of Environmental Protection on August 5, 2010, approved an amendment to the Landfill Closure Plan for the New Landfill to provide for, and permit Renewable Energy Facilities to be developed on the lot comprising the New Landfill, subject to conditions set forth within the Closure Plans as amended and modified by that August 5, 2010 approval; and

**WHEREAS**, as noted above, Paragraph VI.A.15 of the June 28, 2006, MOA required the Township to file Conservation Restrictions with the Ocean County Clerk's office for the New Landfill and other open space areas on the Redeveloped Business Park site, including wetlands buffer areas; and

**WHEREAS**, on December 11, 2006, the Township filed the required Conservation Restrictions with the Ocean County Clerk's Office, including a Declaration of Covenants and Restrictions

specifically pertaining to the Landfill, entitled "Declaration of Covenants and Restrictions (11b.)(Landfill) which was dated December 7, 2006, and recorded at Deed Book 13446, Page 0118; and

**WHEREAS**, in order to develop Renewable Energy Facilities on the lot comprising the New Landfill, the Township has requested that the June 28, 2006, MOA be amended to modify the obligation of Paragraph VI.A.15 that the area of the New Landfill remain vacant open space; and

**WHEREAS**, likewise, in order for development of Renewable Energy Facilities to occur on the lot comprising the New Landfill, the Declaration of Covenants and Restrictions (11b.)(Landfill), must be amended and restated, because the existing Declaration would not permit the development of any structures in, on, and/or under the New Landfill; and

**WHEREAS**, in accordance with the requirements of the New Jersey Conservation Restriction and Historic Conservation Restriction Act, N.J.S.A. 13:8B-1 *et seq.*, the Township has conducted a public hearing and has requested the Commissioner of the New Jersey Department of Environmental Protection to issue a certification authorizing the Township to amend and restate the Declaration of Covenants and Restrictions for the New Landfill to permit the development and operation of Renewable Energy Facilities on the lot comprising the New Landfill; and

**WHEREAS**, on \_\_\_\_\_, 2010, the Commissioner of the New Jersey Department of Environmental Protection issued said certification; and

**WHEREAS**, the CMP at N.J.A.C. 7:50-4.52(c)2 authorizes the Commission to enter into a MOA with a governmental agency to authorize such agency to carry out specified development activities that may not be fully consistent with the provisions of N.J.A.C. 7:50-5 and 6, provided such agency demonstrates and the Commission finds that variation from the standards of the Pinelands CMP are accompanied by measures that, at a minimum, afford an equivalent level of protection for the resources of the Pinelands than would be provided through strict application of the standards of the Pinelands CMP; and

**WHEREAS**, although development of Renewable Energy Facilities on the lot comprising the New Landfill located at the Business Park arguably does not require a deviation from the standards of the Pinelands CMP, it will result in a change to one of the measures that was included in the June 28, 2006 MOA that was intended to afford, at a minimum, an equivalent level of protection of the resources of the Pinelands; and

**WHEREAS**, such measures were required in order for the Commission to authorize the deviations from the standards of the Pinelands CMP that were authorized by the June 28, 2006, MOA; and

**WHEREAS**, in order to mitigate for the loss of the open space on the lot comprising the New Landfill that will result from the development of the Renewable Energy Facilities, the Township, through its Redeveloper, is proposing an additional measure to afford an equivalent level of protection to the resources of the Pinelands. Specifically, the Township's Redeveloper has agreed to provide a monetary contribution to the Commission to be utilized 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); and

**WHEREAS**, the CMP at N.J.A.C. 7:50-4.52(c)1 authorizes the Commission to enter into a MOA with a governmental agency which authorizes such agency to carry out specified development activities without securing individual development approvals from the Commission, provided the specified development activities are consistent with the provisions of N.J.A.C. 7:50-5 and 6; and

**NOW THEREFORE**, in consideration of the promises, and of the mutual covenants and agreements contained herein, the Parties agree to amend the June 28, 2006, MOA as follows:

1. Unless expressly amended herein, all provisions of the June 28, 2006, MOA shall remain in full force and effect.
2. Notwithstanding the provisions of Paragraph VI.A.15 of the June 28, 2006, MOA to the contrary, the Parties agree that the development of Renewable Energy Facilities within the lot comprising the New Landfill, with the exception of the area of the Landfill Stormwater Basins, wetlands and wetland buffers located thereon, and the approximately 20-acres leased to the County for operation of its composting facility, shall be a permitted use.
3. Notwithstanding the provisions of Paragraph VI.A.15 of the June 28, 2006, MOA to the contrary, the Parties agree that the Declaration of Covenants and Restrictions (11b.) (Landfill) recorded for the New Landfill on December 11, 2006, may be amended and restated in the form attached hereto as Exhibit A and incorporated herein by reference.
4. The Commission agrees that it will not require the filing of a formal public development application in accordance with the Pinelands CMP, N.J.A.C. 7:50-4.52(b) for the development of the Renewable Energy Facilities depicted on the plans delineated in Exhibit B and incorporated herein by reference.
5. Based on its review of the plans and documents delineated in Exhibit B, the provisions of the Pinelands CMP, the terms of the June 28, 2006, MOA and the terms of this First Amendment of the June 28, 2006, MOA, the Commission finds that the proposed development of the Renewable Energy Facilities, depicted on the plans delineated in Exhibit B, on the lot comprising the New Landfill is consistent with the requirements of the Pinelands CMP and may proceed.
6. The Parties agree that any material addition to, deviation from or modification to the Renewable Energy Facilities depicted in the plans delineated in Exhibit B, shall require the Township or its designated Redeveloper to submit a formal application to the Commission in accordance with the Pinelands CMP (N.J.A.C. 7:50-4.52(b)) or request a further Amendment to the June 28, 2006, MOA ("Amendment") and that the proposed development may not occur until an

application or Amendment has been completed with the Commission and the Commission has issued an approval or agreed to such Amendment.

- a. For purposes of this Section, an addition to, deviation from, or modification to the Renewable Energy Facilities shall only be considered “Material”, if it is inconsistent with the requirements of the June 28, 2006, MOA, this First Amendment to the MOA, or a standard of the Pinelands CMP from which a deviation has not been authorized by the June 28, 2006, MOA or results in a material increase in the impacts to wetlands, wetland buffers, threatened or endangered plants or threatened or endangered animal species habitat associated with the Business Park project, which is the subject of, and for which deviations from these standards of the CMP have been authorized by the June 28, 2006, MOA.
7. The Parties agree that, to the extent that changes are made to the scope or design of the Renewable Energy Facilities depicted in the plans delineated in Exhibit B, that would result in more than a de minimis change to the same, but would not be considered Material in accordance with Paragraph 6 above, the Township or its designated Redeveloper shall provide a description of such Material addition to, deviation from or modification to the Renewable Energy Facilities as depicted in the plans delineated in Exhibit B, and any additional information concerning such additions, deviations, modifications or changes as requested by the Pinelands Commission staff for its review and for a consistency determination by the Commission’s Executive Director in accordance with Paragraph 8 below.
8. Within thirty (30) days of receipt of information submitted in accordance with Paragraph 7, the Commission agrees that its staff will provide written authorization in accordance with Paragraph 11 or a written explanation of inconsistencies in accordance with Paragraph 9.
9. If the Commission’s Executive Director determines that any addition, modification, deviation or change to the scope or design of the Renewable Energy Facilities submitted to him in accordance with Paragraph 7 is inconsistent with the requirements of the June 28, 2006, MOA, this First Amendment to that MOA or a standard of the Pinelands CMP from which a deviation has not been authorized by the June 28, 2006 MOA or results in a material increase in the impacts to wetlands, wetland buffers, threatened or endangered plants, or threatened or endangered animal species habitat associated with the Business Park project, which is the subject of and for which deviations have been authorized by the June 28, 2006 MOA, then the Commission staff shall provide a written explanation of the deficiencies/inconsistencies and identify specific actions that must be taken by the Township or its designated Redeveloper to remedy such deficiencies/inconsistencies.
10. If the Commission’s Executive Director determines that any addition, modification, deviation or change to the scope or design of the Renewable Energy

Facilities submitted to him in accordance with Paragraph 7 is inconsistent with the requirements of the June 28, 2006, MOA, this First Amendment to that MOA or a standard of the Pinelands CMP from which a deviation has not been authorized by the June 28, 2006, MOA or results in a material increase in the impacts to wetlands, wetland buffers, threatened or endangered plants or threatened or endangered animal species habitat associated with the Business Park project, which is the subject of and for which deviations have been authorized by the June 28, 2006 MOA, the Township agrees, on behalf of itself and its designated Redeveloper, to modify the Renewable Energy Facilities until the Executive Director determines that it is consistent with all requirements of the June 28, 2006 MOA, this First Amendment and/or the Pinelands CMP. If the Township or its designated Redeveloper disagrees with the Executive Director's determination, it may file a complete Public Development Approval application and seek formal approval from the Pinelands Commission.

11. If the Commission's Executive Director determines, after review of any information submitted in accordance with Paragraph 7 or in response to a deficiency letter issued by the Commission staff pursuant to Paragraph 9 that any addition, modification, deviation or change to the scope or design of the Renewable Energy Facilities is consistent with the requirements of the June 28, 2006, MOA, this First Amendment to that MOA or a standard of the Pinelands CMP from which a deviation has not been authorized by the June 28, 2006, MOA or will not result in a material increase in the impacts to wetlands, wetland buffers, threatened or endangered plants or threatened or endangered animal species habitat associated with the Business Park project, which is the subject of and for which deviations have been authorized by the June 28, 2006, MOA, he will issue a written authorization to the Township or its designated Redeveloper setting forth such determination. This written authorization shall constitute a public development approval.
12. In order to ensure that there continues to be adequate measures provided to afford, at a minimum, an equivalent level of protection of the resources of the Pinelands, despite the Parties agreeing to permit the development of Renewable Energy Facilities on the lot comprising the New Landfill in accordance with the terms herein, rather than retaining the area as vacant open space, the Township has obligated its designated Redeveloper to make a monetary contribution to the Commission in the amount of \$152,900. This contribution shall be utilized by the Commission to undertake an assessment of the existing landfills located in the Pinelands Area that have not, as yet, been closed as required by N.J.A.C. 7:50-6.75(c). This contribution may be paid in ten (10) monthly payments of \$15,290.00. The first payment shall be due upon commencement of development activities, including but not limited to site preparation, pertaining to the Renewable Energy Facilities and each subsequent payment shall be due on the first of each month thereafter.

13. The Township agrees that it shall legally obligate its designated Redeveloper to remove any structures associated with any Renewable Energy Facilities developed on the lot comprising the New Landfill within one (1) year of the complete cessation of operation of such facilities. This provision is not intended to, nor shall it prohibit periodic maintenance, repair or replacement of the Renewable Energy Facilities.
14. The Township agrees that it will legally obligate its designated Redeveloper to implement the development of the Renewable Energy Facilities on top or the New Landfill in accordance with the plans and documents set forth in Exhibit B, all obligations of the June 28, 2006 MOA and this First Amendment to that MOA and the requirements of the Pinelands CMP.
15. The Township agrees that it will legally obligate its designated Redeveloper to obtain any and all certificates, licenses, consent, approvals or permits required from any local, State and/or Federal entity prior to commencing development of the Renewable Energy Facilities on the lot comprising the New Landfill.
16. Any activity not specifically identified in the plans and documents delineated in Exhibit B, with the exception of any changes to the scope or design of the Renewable Energy Facilities discussed in Paragraph 7 that would result in more than a de minimis change to the same, but would not be considered material in accordance with Paragraph 6 above, shall require a formal application to Commission in accordance with the Pinelands CMP (N.J.A.C. 7:50-4.52(b)) and that proposed development may not commence until an application has been completed with the Commission and the Commission has issued an approval of same.
17. This MOA shall take effect upon approval and signature by the authorized representatives of all parties and following the conclusion of the Governor's review in accordance with N.J.S.A. 13:18A-5(h) .
18. This First Amendment to the June 28, 2006. MOA shall remain in effect unless amended or terminated by written consent of all parties.

#### VIII. SIGNATURES

#### NEW JERSEY PINELANDS COMMISSION

Date: \_\_\_\_\_

By: \_\_\_\_\_  
John C. Stokes, Executive Director

Approved as to form by:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jean Reilly, Deputy Attorney General  
State of New Jersey

TOWNSHIP OF STAFFORD

Date: \_\_\_\_\_

By: \_\_\_\_\_  
John McMenemy, Mayor

OCEAN COUNTY

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Carl W. Block, County Administrator



**RESTATED AND AMENDED DECLARATION OF COVENANTS AND  
RESTRICTIONS (11b)  
(LANDFILL)**

THIS RESTATED AND AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS (the "Declaration of Covenants and Restrictions"), is made on the \_\_\_\_ day of \_\_\_\_\_, 2010 by the TOWNSHIP OF STAFFORD, a body politic with its municipal office located at 260 East Bay Avenue, Manahawkin, New Jersey ("GRANTOR"), and is intended to amend, supersede and replace the Declaration Of Covenants And Restrictions (11b)(Landfill), dated December 7, 2006, and recorded in the Office of the Ocean County Clerk on December 11, 2006, at Deed Book 13446, Page 0118.

**WITNESSETH:**

WHEREAS, GRANTOR is the owner of Block 25, Lot 39 (and formerly known, as Block 25, Lot 93; and Block 13, Lots 22.01 & 68), as designated on the Stafford Township Tax Map ("the Landfill Property") and depicted on the Lot Consolidation-Subdivision Plan prepared for The Stafford Business park by Thomas J. Ertle & Associates dated June 21, 2005, last revised on November 27, 2006, and filed in compliance with all provisions of the New Jersey Map Filing Law, N.J.S.A. 46:23-9.9, et. seq. in the Ocean County Clerk's Office as Map L3511, on December 11, 2006, (the "Lot Consolidation/Subdivision Plan"); and

WHEREAS, Grantor's Property is located within the Stafford Business Park ("Business Park"); and

WHEREAS, Grantor, Ocean County ("County") and the New Jersey Pinelands Commission ("Commission") have entered into a Memorandum of Agreement, dated June 28, 2006 (the "MOA"), which authorized implementation of the following plans at the Business Park: 1) the Major Landfill Waste Disruption Approval Report and Request for Beneficial Reuse Approval for the Old Stafford Township Landfill (commonly referred to as the "Old Landfill") and the Landfill Closure Report for the Stafford Township Sanitary Landfill (commonly referred to as the "New Landfill") (collectively the "Landfill Closure Plans"); and 2) "Redevelopment Plan for the Stafford Business Park" adopted by the Mayor and Town Council of Stafford on November 1, 2005 by Ordinance No. 2005-102, and which has been amended (the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Plan calls for, inter alia, the closure of both the Old and the New Landfills in accordance with applicable law in order to protect the surface waters, groundwater, and other resources of the Pinelands Area; and

WHEREAS, as part of its review process that resulted in the development and execution of the June 28, 2006 MOA, the Commission determined that implementation of the Landfill Closure Plans and the Redevelopment Plan would result in adverse impacts on wetland buffers, on the survival of two (2) local populations of threatened or endangered plants and on habitats that were critical to the survival of two (2) local populations of threatened or endangered animal species and, therefore, required deviations from the strict application of the requirements of the Pinelands Comprehensive Management Plan ("CMP") that pertain to those resources; and

WHEREAS, as part of the measures included in the June 28, 2006 MOA intended to provide an equivalent level of protection of the resources of the Pinelands, Grantor as required by Paragraph VI.A.15 of that MOA placed a Conservation Restriction upon portions of the Landfill Property, as depicted in cross hatch on the Lot Consolidation/Subdivision Plan (the "Restricted Area"), against future development and to retain the Restricted Area, in perpetuity, as Open Space; and

WHEREAS, the two landfills have been closed in accordance with the requirements of the Closure Plans and the as-built certification for the landfill closures was approved by the New Jersey Department of Environmental Protection on June 18, 2009; and

WHEREAS, Grantor now desires to utilize the Landfill Property, with the exception of the 20-acre area currently leased to the County for its composting facility, any areas constituting wetlands or wetland buffers, and the existing Landfill Basins depicted on Exhibit \_\_\_\_, attached hereto and incorporated herein by reference, to develop facilities that produce electrical energy from wind, solar, photovoltaic, or other technologies utilizing renewable resources (the "Renewable Energy Facilities"); and

WHEREAS, the New Jersey Department of Environmental Protection on August 5, 2010, approved an amendment to the Land Fill Closure Plan for the New Landfill to provide for, and permit Renewable Energy Facilities to be developed on portions of the Landfill Property, subject to conditions set forth within the Closure Plans as amended and modified by the August 5, 2010 approval; and

WHEREAS, on \_\_\_\_\_, 2010, the Grantor, County and Commission entered into an amendment of the June 28, 2006 MOA, (the "Amended MOA") which authorized the development of Renewable Energy Facilities on the Landfill Property and consented to the imposition of this RESTATED AND AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS; and

WHEREAS, Grantor desires and intends to prohibit development activities in, on, and/or under the Restricted Area, in perpetuity, pursuant to the terms, covenants, conditions and restrictions set forth herein, other than the development and use of Renewable Energy Facilities as specifically permitted herein; and

WHEREAS, Grantor desires and intends to maintain and retain the Landfill Basins in their existing condition, state, design and footprint and to prohibit the location of Renewable Energy Facilities therein, on, and/or under; and

WHEREAS, the purposes of this Declaration of Covenants and Restrictions include:

- a. that the Restricted Area and any areas constituting wetlands or wetland buffers, that are the subject of this Declaration of Covenants and Restrictions be protected in its natural, scenic, open and existing state, in perpetuity, subject only to the specific rights reserved to the Grantor herein, including the right to allow the development and use of Renewable Energy Facilities;
- b. that the natural features of the Restricted Area and any areas constituting wetlands or wetland buffers, shall be respected and preserved to the maximum extent consistent with Grantor's exercise of the rights expressly reserved to Grantor by the terms of this Declaration of Covenants and Restrictions as restated and amended; and
- c. that subject only to the specific rights reserved to the Grantor herein, including the right to the development and use of Renewable Energy Facilities, the Restricted Area and any areas constituting wetlands or wetland buffers, be forever protected and preserved in its natural, scenic, open and existing state free from all activities that might damage, compromise or interfere with the ecological diversity, natural beauty or resource quality, or with the natural processes occurring therein; and
- d. that the Landfill Basins be maintained in their existing state, condition, design and/or footprint and Renewable Energy Facilities will not be located there in, on or under..

NOW THEREFORE, in consideration of the foregoing and the agreement, terms, covenants and restrictions contained herein, Grantor, for itself, its successors and assigns hereby declares that Grantor's Property shall be held, transferred, sold, conveyed, leased and occupied subject to the following covenants, conditions, obligations and restrictions hereafter set forth:

1. Except as specifically set forth herein, the Restricted Area, any areas constituting wetlands or wetland buffers, and the Landfill Basins may not be developed in any manner whatsoever and shall remain, with regard to the Restricted Area and any wetlands or wetland buffers, in their natural condition and, with regard to the Landfill Basins, in their existing state. The term "developed" shall include, but not be limited to, the following activities:

- a. The construction, placement, building, installation, erection, assembly, manufacture, fabrication, alteration, enlargement, renovation or replacement of any building, structure; or pavement in, on, above or beneath the surface of the Restricted Area, any areas constituting wetlands or wetland buffers or the Landfill Basins;
- b. Any disturbance or alteration of the surface topography and any natural features;
- c. Clearing, cutting, destruction or removal of any tree cover, tree limbs, trees, shrubs, plants, vegetation or other plant material, except that dead, fallen, diseased or infected tree limbs or other vegetation that poses a health or safety hazard may be trimmed or removed;
- d. The planting of any invasive or non-native plant species;

- e. Processing, storage, disposal, spreading, placing or dumping of refuse, rubbish, debris, dredge spoils, chemicals, hazardous materials, animal waste, fertilizers, herbicides, pesticides, fungicides, abandoned vehicles or other refuse or offensive materials;
- f. Placement, installation, dumping, side casting of any soils or other substances or materials as fill or the stockpiling of soils or other substances or materials on the Restricted Area, any areas constituting wetlands or wetland buffers or the Landfill Basins;
- g. Use of the Restricted Area, any areas constituting wetlands or wetland buffers or the Landfill Basins by automobiles, trucks, all-terrain vehicles, trail bikes, motorcycles snowmobiles or other motorized vehicles, except in the Restricted Area in connection with the Renewable Energy Facilities as specifically permitted herein;
- h. Use of the Restricted Area, any areas constituting wetlands or wetland buffers or the Landfill Basins for commercial or industrial uses other than the Renewable Energy Facilities as specifically permitted herein;
- i. Mining, quarrying, drilling, extraction, excavation, dredging, extraction or otherwise removing loam, peat, turf, soil, gravel, sand, coal, rock, mineral, petroleum, natural gas, or other natural resources from the Restricted Area, any areas constituting wetlands or wetland buffers or the Landfill Basins; and
- j. Other activities, uses, disturbances or development that could be detrimental to continuation of the Restricted Area or any areas constituting wetlands or wetland buffers in their natural state.

2. Notwithstanding the above, the Restricted Area may be disturbed solely to permit the construction, installation, maintenance and repair of the following: (i) storm water basins associated with the landfill closure; (ii) the landfill cap; (iii) access roads related to the landfill closure; (iv) the proposed 15' wide access road to the compost and chipping areas and the Renewable Energy Facilities approved by the Amended MOA and the approved August 5, 2010 amendment to the Land Fill Closure Plan for the New Landfill; and (v) development and use of Renewable Energy Facilities, in accordance with the terms of the Amended MOA, the Amended Closure Plans and such other plans as maybe approved by NJDEP and the Commission in the future, and subject to compliance with the requirements of the Pinelands CMP and any other applicable local, county, state and federal laws, rules, regulations and ordinances. Once implementation of the Closure Plans is completed, the Restricted Area, with the exception of the area utilized for the construction of stormwater basins shall be graded and revegetated with native Pinelands vegetation.

3. The Landfill Basins shall be maintained and retained in their existing state, condition, design and/or footprint and Renewable Energy Facilities will not be located there in, on or under.

4. Except as specifically set forth herein, Grantor for itself, its successors, transferees, or assignees, agrees to leave the Restricted Area, any areas constituting wetlands or wetland buffers, and the Landfill Basins unmolested and in their natural or, with regard to the basins, existing state;

5. Grantor agrees that any development of Renewable Energy Facilities shall be carried out subject to the terms and conditions herein and the terms and conditions of the Amended MOA and/or any subsequent NJDEP and Commission approvals relating to thereto and that no development shall occur in the Restricted Area prior to the issuance of all required approvals of all governmental entities with jurisdiction over the Restricted Area;

6. Grantor, its successors and assigns, and its Designated Developer or Redeveloper, and its agents, contractors, employees and assigns, shall, at all times, have the right to access the Restricted Area with personnel and necessary equipment, for the purpose of construction, installation, inspection, maintenance, repair and/or replacement of the Renewable Energy Facilities;

7. To accomplish the purposes of this Declaration of Covenants and Restrictions, the Commission, their respective employees, agents, representatives, successors or assigns shall have the following rights:

- a. To have access to and to enter upon the Restricted Area at all reasonable times for the purpose of inspecting the Restricted Area, the Landfill Basins, any areas constituting wetlands or wetland buffers and the Renewable Energy Facilities in order to enforce and assure compliance with the terms and conditions herein contained;
- b. In addition to the exercise of exercise of any statutory or common law right, the right to enforce this Declaration of Covenants and Restrictions by means of any remedy provided for herein or available at law or equity, including but not limited to, enjoining any activity on, or use of, the Restricted Area that is inconsistent with the purpose of this Declaration of Covenants and Restrictions;
- c. To require Grantor or third persons to restore the Restricted Area, or any portion thereof, as may be damaged by an inconsistent use or activity;
- d. To protect and preserve the Restricted Area, and in connection therewith, to determine the consistency of any activity or use for which no express provision is made herein with the purposes of this Declaration of Covenants and Restrictions.

8. This Declaration of Covenants and Restrictions may be further amended only by written instrument duly executed by Grantor, the Commission and the County, their respective successors or assigns. Such modification shall not be effective until duly recorded by the GRANTOR with the Office of the Recorder of Deeds in and for Ocean County, New Jersey.

9. The terms and conditions of this Declaration of Covenants and Restrictions shall be governed and construed in accordance with the laws of the State of New Jersey and is subject

to the requirements of the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq.

10. This Declaration of Covenants and Restrictions and all rights and obligations incidental thereto, whether expressed or implied, shall be construed to be a covenant running with the land and shall be binding upon and inure to the benefit and be enforceable by of any successor, transferee, or assignee to the parties hereto.

11. The terms of this Declaration of Covenants and Restrictions may be enforced by any appropriate proceeding in law or equity in any Court or administrative tribunal having jurisdiction, against any person or persons, firm or corporation violating or attempting to violate or circumvent any provision herein contained, either to restrain or enjoin such violation or threat of violation or to recover damages and the failure or forbearance by any party benefited by these restrictions to enforce any covenant or restriction contained within this document or to exercise their rights hereunder in the event of any breach by the Grantor or any third persons for any period of time shall in no event be deemed a waiver or estoppel of the right thereafter to enforce the same.

12. This Declaration of Covenants and Restrictions, and any further Amendments thereto, shall be recorded in the Office of the Recorder of Deeds for Ocean County, New Jersey and a reference to this Restated and Amended Declaration of Covenants and Restrictions shall be contained in a separate paragraph of any future deed, lease, or document of transfer or conveyance or any other legal instrument including or affecting the Restricted Area or any portion thereof. Grantor shall give written notice to the Commission of any such transfer or conveyance of interest in the Restricted Area prior to or within ten (10) days following such transfer or conveyance. Such notice shall include the name and address of the transferee of such interest. Grantor shall provide a copy of this instrument to all subsequent transferees of an interest in any part or all of the Restricted Area. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Declaration of Covenants and Restrictions or limit its enforceability in any way. Grantor shall not be responsible for the violation of the terms of this Declaration of Covenants and Restrictions by third parties unless they are acting under the control or authorization of Grantor.

13. Should any covenant or restriction herein contained, or any subsection, sentence, clause, phrase or term of this Declaration of Covenants and Restrictions be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any Court or other tribunal having jurisdiction, such a declaration shall not affect the validity of the remaining provision which are hereby declared to be severable and which shall continue to remain in full force and effect.

IN WITNESS WHEREOF, this Declaration of Covenants and Restrictions is made and amended on the day and year first above written.

TOWNSHIP OF STAFFORD

By: \_\_\_\_\_  
John McMenamin, Mayor

STATE OF NEW JERSEY :  
:SS  
COUNTY OF \_\_\_\_\_ :

I certify that on \_\_\_\_\_, 2010, before me the subscriber, a Notary Public of New Jersey, personally appeared John McMenamin, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the Mayor of the Township of Stafford, the Municipal Corporation named in the within Instrument; that the execution, as well as the making of this Instrument, has been duly authorized by a proper Resolution of the Township Council of the said Municipal Corporation; that the deponent well knows the corporate seal of said Municipal Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said Mayor as and for the voluntary act and deed of said Municipal Corporation, in the presence of deponent, who thereupon subscribed his/her name thereto as attesting witness.

Sworn and Subscribed to  
Before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2010

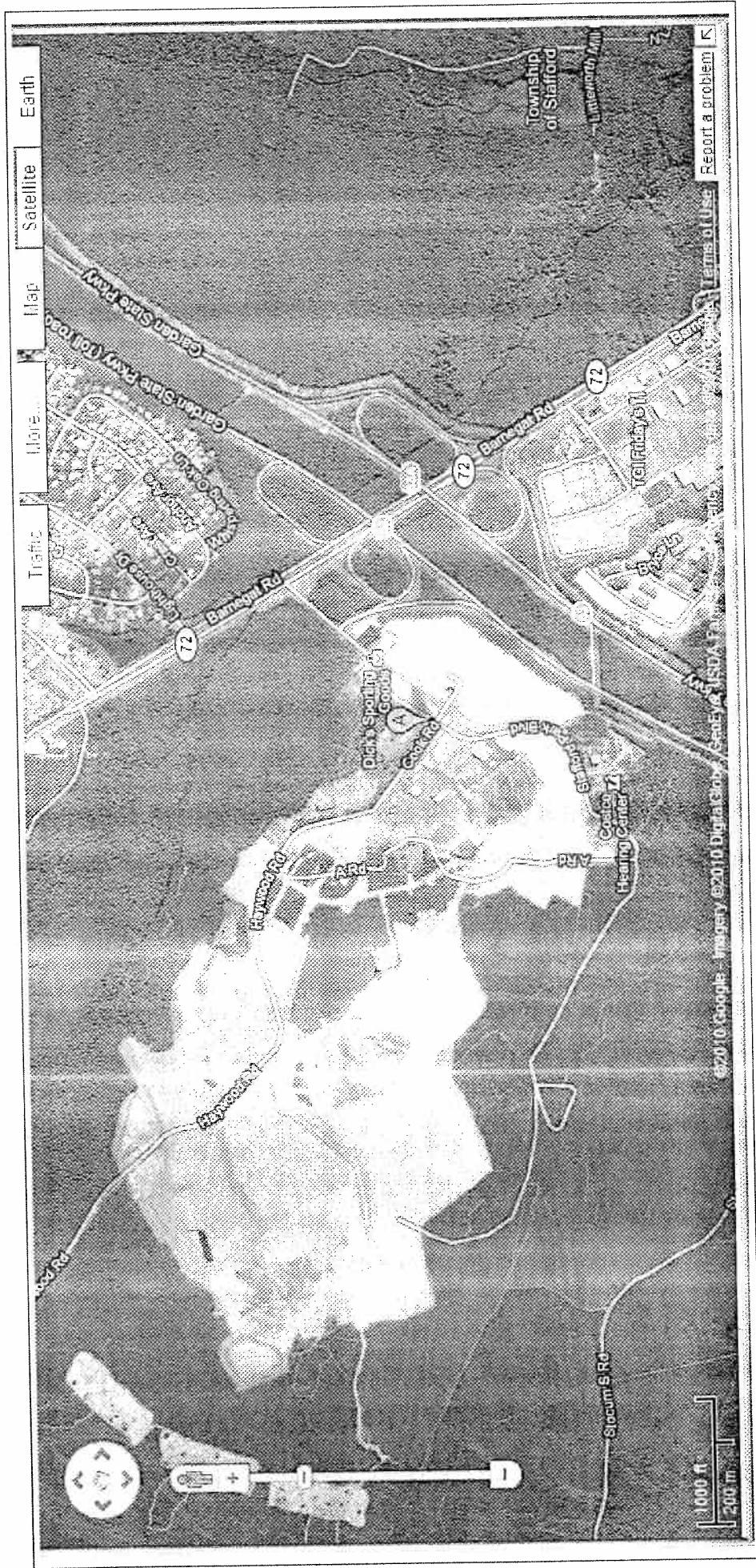
\_\_\_\_\_  
NOTARY PUBLIC OF NEW JERSEY

\_\_\_\_\_  
John McMenamin, Mayor

5760928v4







ATTACHMENT 6

TOWNSHIP OF STAFFORD, OCEAN COUNTY  
GENERAL LOCATION MAP—STAFFORD PARK SITE  
NJDEP STATE HOUSE COMMISSION FILE #1531003



