



*PINELANDS PRESERVATION ALLIANCE*

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October 12, 2010

Bob Martin  
Commissioner  
Department of Environmental Protection  
401 E. State Street, 7<sup>th</sup> Fl, East Wing  
PO Box 402  
Trenton, New Jersey 08625-0402

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

Dear Commissioner Martin:

These comments are submitted by the Pinelands Preservation Alliance and the New Jersey Conservation Foundation in response to the September 27, 2010 public hearing notice seeking comment on the application of Stafford Township under the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 through 9 (the Act), to release the conservation deed restriction on municipally-owned parkland on and near the Stafford Township landfill in order to develop a solar energy generation facility on that land.

The land in question has been preserved through a conservation deed restriction, as required by the Memorandum of Agreement (the MOA) between the New Jersey Pinelands Commission, Stafford Township and the Ocean County Board of Chosen Freeholders, dated June 2006. Stafford Township recorded the conservation deed restriction on December 11, 2006. Moreover, the area in question has been grassland and threatened and endangered species habitat for 30 years or more. The public was not prevented from using the site, which is adjacent to state owned land.

According to the Act in section 13:8B-6, the Commissioner of Environmental Protection shall, in determining whether the release should be approved, take into consideration the public interest in preserving these lands in their natural state.

The Act's legal standards require the Department to protect, and not release, the conservation deed restriction in this case. Even if this proposal did meet the legal standard for a release, the applicant has provided no concomitant benefit. Since the enactment of the Act,

from time to time certain releases have occurred, but in all cases the policy of the Department has been to ensure that any release is accompanied by a concomittant benefit of equal or greater value to the protection of natural resources in the immediate vicinity of the area to be released.

First, the proposed project does not meet the distinct threshold legal requirements to qualify for a Green Acres diversion. Specifically, the project does not fulfill any compelling public need by mitigating a hazard to the public health, safety or welfare; nor does it yield a significant public benefit by improving the delivery of essential services to the public. Nor has the applicant met other threshold procedural and substantive requirements for a diversion. We demonstrate these conclusions in the attached public comments which we are submitting simultaneously as part of the Green Acres scoping hearing procedure.

Second, government should maintain its commitment to preserve this land “unmolested” and “in perpetuity.” Release of this deed restriction would represent a direct breach of the commitment that is reflected in the recorded deed restriction. How could the public trust the Department in the future if it would release such a deed restriction because a local government seeks the non-conservation related financial benefit of leasing the land to a private firm for an economic use? The integrity of the Department requires it to respect and enforce the conservation deed restriction.

As part of the negotiation of the intergovernmental Memorandum of Agreement which allowed Stafford Township’s redeveloper to eliminate protected habitats under the Pinelands Comprehensive Management Plan, the Township permanently deed restricted the area in question to help offset the negative impacts on Threatened and Endangered species habitats. A technical group which included representatives from NJDEP Solid Waste, the Endangered and Non-game Species Program, and Pinelands Commission staff made the determination that the undeveloped balance of the Stafford Business Park property needed to be deed restricted and protected as open space in perpetuity. (The fact that some Pinelands Commission staff now claim they personally did not care about the landfill as offsetting habitat is legally irrelevant and inconsistent with the record in this matter. The Commission acted, the Memorandum of Agreement is unambiguous, and the deed restriction was recorded as promised.)

Third, the desirability of promoting solar energy generation does not justify building solar facilities everywhere and anywhere. The state of New Jersey can promote solar energy generation without building on legally preserved land, and the enormous proliferation of solar projects throughout southern New Jersey testifies to this fact. There simply is no compelling reason a solar facility has to be built on this particular piece of land.

Fourth, the existing parkland is of genuine value to the public and to natural resources. Contrary to the claims of the developer and Township, the preserved landfill cover has genuine conservation value and provides a rare example of a large grassland habitat for this region. New Jersey has long experience with the fact that valuable and environmentally productive habitat can be restored from disturbed or degraded sites. That is exactly what is happening at the Stafford landfill. Prior to the proper closure of the landfill,

this site had been maintained with grasses since Stafford Township stopped accepting solid waste at the landfill in 1982. After the landfill was capped in 2006, the cap was planted with native grasses, and the habitat has been developing successfully.

While Stafford Township asserts that studies done at the landfill support its position, in fact they make clear that the landfill in its current grassland form does provide valuable habitat for native and rare Pinelands wildlife, and that the solar project will damage the habitat value. Joseph Arsenault produced a report entitled Proposed Solar Panel Vegetation Impacts, which states that “The presence of solar panel on the Stafford landfill will impact the planted warm season grasses” and goes on to say there “will be a reduction in the grass cover under each panel.” (p. 7.) This conclusion is inescapable; warm-season grasses require full sun and the only plants that will survive beneath solar panels are weak-rooted annual weeds which do not hold soil in place and provide no habitat value. Though obvious, it is confirmed by Mr. Arsenault’s report.

The impact on grasses and the addition of more than 1,000 solar panels will eliminate the value of this habitat for bird species of conservation concern. Such a grassland takes time to recover after being completely cleared, so if not converted to a private, commercial solar installation facility, we can expect a greater density of rare birds to colonize the preserved land, especially given its relative large extent and the extreme rarity of surviving grassland habitat in southern New Jersey, similar to what has been documented at the air-drop circle just a few miles away at the Lakehurst Naval Air Base. The consultant report submitted by Herpetological Associates for the solar project focused only on Threatened and Endangered species. The same consultant, in a report entitled Northern Pine Snake Management and Conservation Plan, and Radio-tracking and Monitoring Plan for Stafford Business Park and Stafford Forge WMA (December 2006), stated that “Grassland field habitat supports a wide array of wildlife, including small mammals, birds, reptiles, amphibians, butterflies and insects.” In fact, on the parallel track of satisfying the Green Acres diversion requirements, a full survey of all the rare species utilizing the site, including all those now determined to be species of special concern, must be conducted during the growing season before the Green Acres diversion application should be considered administratively complete.

Moreover, while noting that there is not yet evidence that any Threatened or Endangered bird species are using the site, the Herpetological Associates report confirms that the site is already being used by nesting pairs of killdeer and the horned lark. The horned lark is a species of special concern in New Jersey. The NJ Green Acres diversion rules require that an environmental assessment report includes not only threatened and endangered species but also rare (special concern) species such as the horned lark, and how the habitat of the population of such species will be affected by the proposed diversion. The horned lark does not even tolerate scattered trees in its breeding habitat; the proposed solar facility will evict the entire population of this rare species population from this permanently protected parkland.

In addition, the Threatened Northern pine snake is beginning to re-colonize the little habitat left to it after most of the Stafford Business Park was cleared. Herpetological Associates has found a female pine snake which had nested on the preserved parkland area

after the closure, and the presence of a circular fence near the landfill edge indicates pine snakes are nesting or hibernating on the preserved land. Fences have kept snakes and other wildlife from moving easily onto the landfill cover area, and it is likely more wildlife will move onto the parkland when those fences are removed, as scheduled in November 2010.

Finally, the Department in all prior cases of releases of conservation easements under the Act of which we are aware has required the land owner to conserve at least an equal amount of land in compensation. Stafford Township has not proposed or offered to conserve any offsetting land in its application. Even if the release were permissible in other respects, it would be arbitrary and capricious to provide a release of the conservation easement in this case without requiring the conservation of at least equal land as a precondition of granting a release. (Again, this requirement for a release under the Act is independent of the requirements for a Green Acres diversion.)

For all of these reasons, we ask you to deny the request to release the conservation deed restriction on the subject land. Thank you for your consideration of our request.

Respectfully submitted:



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