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October 18, 2010

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 watershed¹. 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

¹ 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 diminimus 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 Arsenaault, 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

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 McMnamin, 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

DRAFT

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

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