RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-13-01

TITLE: **Approving** With Conditions Applications for **Public Development** (Application Numbers 1985-0104.014, 1991-0822.002 & 2012-0123.001)

Commissioner Galletta **moves and Commissioner** Jackson **seconds the motion that:**

1985-0104.014	**EVESHAM TOWNSHIP MUNICIPAL UTILITIES AUTHORITY**, Evesham Township, Rural Development Area, clearing of 11,400 square feet of vegetation to decommission 20 existing non-active potable water test and observation wells (Date of Report: December 24, 2012);
1991-0822.002	**EVESHAM TOWNSHIP MUNICIPAL UTILITIES AUTHORITY,** Evesham Township, Rural Development Area, clearing of approximately 2,000 square feet of vegetation to decommission 20 existing non-active potable water test and observation wells (Date of Report: December 24, 2012); and
2012-0123.001	**MONROE TOWNSHIP MUNICIPAL UTILITIES AUTHORITY**, Regional Growth Area, replacement of an existing sanitary sewer pump station (Date of Report: December 19, 2012).

WHEREAS, the Pinelands Commission has reviewed the Findings of Fact, Conclusion and the recommendation of the Executive Director that the following applications for Public Development be approved with conditions:

WHEREAS, no request for a hearing before the Office of Administrative Law concerning the Executive Director's recommendation has been received for any of these applications; and

WHEREAS, the Pinelands Commission hereby adopts the Findings of Fact and Conclusion of the Executive Director for each of the proposed developments; and

WHEREAS, pursuant to N.J.S.A. 13A-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 and Governor shall approve same, in which case the action shall become effective upon such approval; and

WHEREAS, the Pinelands Commission hereby determines that each of the proposed public developments conform to the standards for approving an application for public development set forth in N.J.A.C. 7:50-4.57 if the conditions recommended by the Executive Director are imposed.

NOW, THEREFORE BE IT RESOLVED that the following applications for public development are hereby **approved** subject to the conditions recommended by the Executive Director.

1985-0104.014	**EVESHAM TOWNSHIP MUNICIPAL UTILITIES AUTHORITY**, Evesham Township, Rural Development Area, clearing of 11,400 square feet of vegetation to decommission 20 existing non-active potable water test and observation wells (Date of Report: December 24, 2012);
1991-0822.002	**EVESHAM TOWNSHIP MUNICIPAL UTILITIES AUTHORITY,** Evesham Township, Rural Development Area, clearing of approximately 2,000 square feet of vegetation to decommission 20 existing non-active potable water test and observation wells (Date of Report: December 24, 2012); and

2012-0123.001 **MONROE TOWNSHIP MUNICIPAL UTILITIES AUTHORITY.**
Regional Growth Area, replacement of an existing sanitary sewer pump station
(Date of Report: December 19, 2012).

Record of Commission Votes

	AYE	NAY	NP	ABS		AYE	NAY	NP	ABS		AYE	NAY	NP	ABS
Ashmun	X				Galletta	X				Prickett	X			
Brown	X				Haas	X				Quinn	X			
DiBello	X				Jackson	X				Rohan Green			X	
Earlen	X				Lloyd			X		Witt			X	
Ficcaglia	X				McGlinchey	X				Lohbauer	X			

Adopted at a meeting of the Pinelands Commission Date: Jan. 11, 2013

Nancy Wittenberg
Executive Director

Mark S. Lohbauer
Chairman

State of New Jersey
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Chris Christie
Governor

Kim Guadagno
Lt. Governor

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

REPORT ON AN APPLICATION FOR MAJOR PUBLIC DEVELOPMENT

December 24, 2012

Evesham Municipal Utilities Authority
984 Tuckerton Road
Marlton, NJ 08053

Re: Application #: 1985-0104.014
Block 54, Lots 1 & 2
Application #: 1991-0822.002
Block 58.03, Lot 15
Evesham Township

Dear Applicant:

The Commission staff has completed its review of the above referenced applications. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its January 11, 2012 meeting.

FINDINGS OF FACT

These two applications propose the clearing of a total of 13,400 square feet of vegetation to decommission 20 existing non-active potable water test and observation wells. App. No. 1985-0104.014 proposes clearing of 11,400 square feet on 263.01 acre Block 54, Lots 1 and 2. App. No. 1991-0822.002 proposes clearing of approximately 2,000 square feet on 0.62 acre noncontiguous Block 58.03, Lot 15. The proposed development (clearing) is located in a Pinelands Rural Development Area.

The applicant has represented that the New Jersey Bureau of Water Allocation has directed the Evesham Municipal Utilities Authority to seal and abandon non-active potable water test and observation wells located throughout Evesham Township. This application proposes the necessary clearing to create a ten foot wide path to allow necessary equipment to access 20 of those existing wells. The majority of the clearing will take place to widen an existing sand road. The proposed clearing will not require any soil disturbance.

The proposed development will occur within oak-pine forest. The proposed clearing is limited to that which is necessary to accommodate the proposed development.

The Landscaping and Revegetation guidelines of the Pinelands Comprehensive Management Plan (CMP) recommend the use of grasses that are tolerant of droughty, nutrient poor conditions. The applicant proposes to utilize grass species that meet this recommendation.

There are no wetlands located within 300 feet of the proposed development.

Based upon the existing conditions, the limited amount of proposed clearing and a review of information available to the Commission staff, it was determined that a survey for the presence of threatened and endangered plants and animals was not required.

Information available to the Commission staff did not provide sufficient evidence of significant cultural resource to require a full cultural survey.

PUBLIC COMMENT

This applicant provided the requisite legal notices. Newspaper public notice was completed for the application on October 26, 2012. Legal notice to required land owners within 200 feet of the above referenced parcels was completed on October 25, 2012. The application was designated as complete on the Commission's website on November 19, 2012. The Commission's public comment period closed on December 14, 2012. The Pinelands Commission has not received any public comments regarding the application.

CONCLUSION

The proposed vegetation clearing is a permitted use in a Rural Development Area (N.J.A.C. 7:50-5.26(a)14). If the following conditions are imposed, the proposed development will be consistent with the management standards contained in Subchapters 5 & 6 of the CMP and Evesham Township's certified master plan and land use ordinance.

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of six sheets, prepared by Richard A. Alaimo Associates, all sheets dated November 2011.

2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.

3. Any proposed development shall adhere to the "Vegetation" standards of the CMP. Where appropriate, the applicant is encouraged to utilize the following native grasses for revegetation: Switch grass, Little bluestem and Broom-sedge.

4. Prior to any development, the applicant shall obtain any other necessary permits and approvals.

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

APPEAL

The CMP (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal this recommendation in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission within eighteen days of the date of this Report and must include the following information:

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

2. the application number;

3. a brief statement of the basis for the appeal; and

4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

If no appeal is received, the Pinelands Commission may either approve the recommendation of the Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

Recommended for Approval by: _____

Charles M. Horner, P.P., Director of Regulatory Programs

c: Secretary, Evesham Township Planning Board
Evesham Township Environmental Commission
Burlington County Planning Board
Thomas Cappetti, Jr.
Herman Maurer
Ernest Deman

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Chris Christie
Governor

Kim Guadagno
Lt. Governor

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

REPORT ON AN APPLICATION FOR MINOR PUBLIC DEVELOPMENT

December 19, 2012

George Cossabone
Monroe Township Municipal Utilities Authority
371 South Main Street
Williamstown, NJ 08094

Application Information:	App. No. 2012-0123.001 Area of Parcel: 5.08 Acres Block 10101, Lots 9 & 14 Monroe Township
Proposed Development:	Replacement of an existing sanitary sewer pump station
Management Area:	Regional Growth Area
Relevant Facts:	• The plan, dated October 9, 2012, was prepared by Federici &Akin Consulting Engineers. • The proposed sanitary sewer pump station will be located over an existing impervious area (abandoned basketball court). • There are wetlands within 300 feet of the proposed development. The proposed sanitary sewer pump station will located no closer to wetlands than existing development. • The existing sanitary sewer pump station will be removed and the area will be revegetated.
Public Notice:	• Public notice not required by the Pinelands Comprehensive Management Plan (CMP). • On December 4, 2012, the application was designated as complete on the Commission's website. No public comments were received through the close of the public comment period on December 14, 2012.
Conclusion	• The proposed development is consistent with the standards contained in the CMP.

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Recommendation:	• On behalf of the Commission's Executive Director, I recommend that the Pinelands Commission approve this application at its January 11, 2013 meeting.
Appeal of Recommendation:	The CMP (N.J.A.C. 7:50-4.91) provides that parties who meet the legal requirement to qualify as an "interested party," the right to appeal this recommendation. Any appeal must be made in writing to the Commission within 18 days of the date of this Report and include the information specified in the CMP (N.J.A.C. 7:50-4.91). Any valid appeal will be forwarded to the New Jersey Office of Administrative Law for a hearing.

Charles M. Horner, P.P., Director of Regulatory Programs

c: Sec., Monroe Township Planning Board
Monroe Township Environmental Commission
Gloucester County Planning Board
Stan Bitgood

RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-13- 02

TITLE: **Approving** With Conditions an Application for a **Public Development** (Application Number 1987-0959.004)

Commissioner Ficcaglia **moves and Commissioner** Earlen **seconds the motion that:** J

WHEREAS, the Pinelands Commission has reviewed the Findings of Fact, Conclusion and the recommendation of the Executive Director that the following application for a Public Development be approved with conditions:

1987-0959.004 **SHAMONG TOWNSHIP,** Shamong Township, Rural Development Area, development of recreational facilities (Date of Report: December 24, 2012);

WHEREAS, no request for a hearing before the Office of Administrative Law concerning the Executive Director's recommendation has been received; and

WHEREAS, the Pinelands Commission hereby adopts the Findings of Fact and Conclusion of the Executive Director; and

WHEREAS, pursuant to N.J.S.A. 13A-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 and Governor shall approve same, in which case the action shall become effective upon such approval; and

WHEREAS, the Pinelands Commission hereby determines that the proposed public development conforms to the standards for approving an application for Public Development set forth in N.J.A.C. 7:50-4.57 if the conditions recommended by the Executive Director are imposed; and

WHEREAS, at its January 11, 2013 meeting, the Commission voted to approve this application provided that, in addition to conditions specified in the December 24, 2012 Report on an Application for Major Public Development, prior to any development occurring on the lot, the applicant shall submit a copy of a proposed deed restriction for Commission staff review and approval for the approximate 8 acres of the 27.1 acre open space/recreation lot limiting use of the approximate 8 acres to only public recreation and upon Commission staff approval of the proposed deed restriction, a recorded copy of that deed restriction.

NOW, THEREFORE BE IT RESOLVED that the following application for Public Development is hereby **approved** subject to the conditions recommended by the Executive Director.

1987-0959.004 **SHAMONG TOWNSHIP,** Shamong Township, Rural Development Area, development of recreational facilities (Date of Report: December 24, 2012);

Record of Commission Votes

	AYE	NAY	NP	ABS		AYE	NAY	NP	ABS		AYE	NAY	NP	ABS
Ashmun	X				Galletta	X				Prickett	X			
Brown	X				Haas	X				Quinn	X			
DiBello	X				Jackson	X				Rohan Green			X	
Earlen	X				Lloyd			X		Witt			X	
Ficcaglia	X				McGlinchey		X			Lohbauer	X			

Adopted at a meeting of the Pinelands Commission

Date: Jan. 11, 2013

Nancy Wittenberg
Executive Director

Mark S. Lohbauer
Chairman

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Chris Christie
Governor

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Lt. Governor

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

REPORT ON AN APPLICATION FOR MAJOR PUBLIC DEVELOPMENT

December 24, 2012

Susan Onorato, Administrator
Shamong Township
105 Willow Grove Road
Shamong, NJ 08088

Re: Application #: 1987-0959.004
Saddlebrook Ridge Recreational Facilities
Block 9.02, Lots 1.01-1.03, 14.02 & 28
Shamong Township

Dear Ms. Onorato:

The Commission staff has completed its review of the above referenced application. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I recommend that the Pinelands Commission approve the application with conditions at its January 11, 2013 meeting.

FINDINGS OF FACT

This application is for the development of recreational facilities on the above referenced 27.1 acre parcel. The parcel is located within a Pinelands Rural Development Area.

This application proposes the following recreational facilities and associated site improvements:

a. Two softball fields
b. 700 linear foot gravel access drive from Atsion Road
c. Two tennis courts
d. One basketball court
e. 50 space parking area (southeast)
f. 930 linear foot bike path
g. Three soccer fields and the conversion of two softball fields (a. above) to two soccer fields
h. 60 space parking area and internal drive (northwest)
i. Three stormwater management basins and a stormwater infiltration swale

Recreational facilities a. through f. above, were developed between 1995 and 2000 on the concerned 27.1 acre parcel without application to the Commission. That development constitutes a violation of the application and approval requirements of the Pinelands Comprehensive Management Plan (CMP). This application is intended to resolve that violation. Recreational facilities g. through i. above are now proposed.

CMP (Subchapter 5.) Land Use and Intensity

In the mid-1990's, two residential developments known as Saddlebrook Ridge (App. No. 1987-0959.001) and Stony Point (App. No. 1988-0176.001), both located in Shamong Township, were approved in accordance with the provisions of the CMP. The 27.1 acre parcel subject of this application was jointly created by those two residential development applications. The 27.1 acres was designated as an open space/recreation parcel and is located contiguous to both concerned residential developments.

The two concerned residential developments proposed a total of 74 dwellings, including the 27.1 acre open space/recreation parcel subject of the current application, on a total of 288.6 acres. Based upon Commission records, the 288.6 acres was, and continues to be, located in Shamong Township's RD-1 zoning district. The RD-1 zoning district requires 3.9 acres per dwelling. Based upon this zoning, a total of 74 dwellings (288.6 acres /3.9 acres) could be developed on the 288.6 acre parcel. This means all of the acreage of the 288.6 acre parcel was used for residential density purposes and that most future development of the 288.6 acres is prohibited. An exception to that prohibition would be recreational facilities accessory to the Saddlebrook Ridge and Stony Creek residential developments.

In part, the CMP defines "accessory" as subordinate in area, extent and purpose to the principal use. In this instance, the principal use is the two concerned residential developments. The current application raises the question of whether the size and usage of the proposed recreational facilities would constitute an accessory use to the two concerned residential developments. A new principal use, such as a municipal recreation complex, would not be a permitted use because the entire acreage of the 288.6 acre parcel was already utilized to develop the dwelling units approved in the two concerned residential developments.

In the current application, the use of the existing recreational facilities and the proposed "new" recreational facilities is not limited to the residents of the two concerned residential developments. This is relevant because the size and usage of the existing and proposed "new" recreational facilities may exceed that which would be considered accessory to the two residential developments. The existing and "new" recreational facilities may not qualify as only accessory to the two concerned residential developments. However, certain existing recreational facilities have already been developed on the parcel without application to the Commission and the proposed "new" recreational facilities will be located in the same approximate 8 acre "footprint" as these existing recreational facilities. In addition, the Township proposes to impose a deed restriction prohibiting future development on the remaining 19.1 acres of the 27.1 acre open space parcel.

For future applications raising a question regarding the extent of recreational facilities that constitute accessory facilities to a residential development, the Commission and Pinelands municipalities will refer to the CMP residential clustering regulations adopted in 2009. The CMP clustering regulations address both the size of recreational areas and the types of recreational facilities that are permitted as accessory to a residential development.

CMP (Subchapter 6.) Management Programs and Standards

The proposed clearing and soil disturbance appears to be limited to that which is necessary to accommodate the proposed development.

There are wetlands located on the above referenced parcel. As part of the Saddlebrook Ridge development application, it was previously determined that all development, except for septic systems, must be located at least 200 feet from wetlands. The development proposed in the current application will be located at least 200 feet from wetlands.

The applicant has demonstrated that the proposed development is consistent with the stormwater standards of the CMP. The applicant proposes three stormwater new stormwater basins and one new stormwater infiltration swale.

The proposed development will be located within existing grassed and wooded areas. Based upon the existing conditions, the location of proposed development relative to existing development and a review of information available to the Commission staff, it was determined that a survey for the presence of threatened and endangered species of plants and animals was not required.

A cultural resource survey was prepared for this application. No cultural resources eligible for Pinelands designation were found within the project area.

PUBLIC COMMENT

This applicant provided the requisite legal notice. Newspaper public notice was completed for the application on August 24, 2012. Legal notice to required land owners within 200 feet of the above referenced parcel was completed on October 31, 2012. The application was designated as complete on the Commission's website on November 29, 2012. The Commission's public comment period closed on December 14, 2012. The Commission received one written public comment (enclosed) regarding the application.

Public Comment One: The commenter expressed concerns regarding stormwater management and the protection and preservation of the natural resources located on the parcel. The commenter also raises certain concerns (e.g. noise, idling cars, trash and behavior) that are not regulated by the CMP.

Response to Public Comment One: The applicant has demonstrated that the proposed development is consistent with the stormwater management, wetlands protection, threatened and endangered plant and animal species protection, air quality and all other environmental standards contained in the CMP. The provision of additional stormwater management facilities for the existing recreational facilities developed without application to the Commission and stormwater facilities for the currently proposed development will provide for improved stormwater management.

CONCLUSION

The proposed development is a permitted use in a Pinelands Rural Development Area (N.J.A.C. 7:50-5.26(b)4). If the following conditions are imposed, the proposed development will be consistent with the management standards contained in Subchapters 5 and 6 of the CMP and Shamong Township's certified master plan and land use ordinance.

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of 8 sheets, prepared by Remington, Vernick & Arango Engineers and dated as follows:

   Sheets 1, 2 & 7 – April 4, 2012; last revised September 7, 2012
   Sheets 4-6 & 8 – April 4, 2012; last revised November 7, 2012
   Sheet 3 – August 2011; last revised April 30, 2012

2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.

3. All proposed development, including clearing and land disturbance, shall be located at least 200 feet from wetlands.

4. The proposed development shall adhere to the "Vegetation" standards of the CMP. Where appropriate, the applicant is encouraged to utilize the following Pinelands native grasses for revegetation: Switch grass, Little bluestem and Broom-sedge.

5. Prior to any development, the applicant shall submit a copy of a recorded conservation easement to the Pinelands Commission that ensures that the open space wooded areas proposed to be deed restricted to meet the nonstructural stormwater management strategies on the above referenced plan will be maintained in perpetuity.

6. Prior to any development, the applicant shall submit to the Pinelands Commission a copy of a recorded deed restriction for the remaining 19.1 acres of the 27.1 open space/recreation lot (Block 9.02, Lots 1.01-1.03, 14.02 and 28).

7. Prior to any development, the applicant shall obtain any other necessary permits and approvals.

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

APPEAL

The CMP (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal this recommendation in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission within eighteen days of the date of this Report and must include the following information:

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

2. the application number;

3. a brief statement of the basis for the appeal; and

4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

If no appeal is received, the Pinelands Commission may either approve the recommendation of the Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

Recommended for Approval by: _____

Charles M. Horner, P.P., Director of Regulatory Programs

Enclosure: August 28, 2012 Comment Letter

c: Secretary, Shamong Township Planning Board
Shamong Township Planning Board
Burlington County Planning Board
Elizabeth and Charles Gibbons
Fredrick C. Seeber

APP# 19870959.004
Doc Type 100

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Inc Ltr 7/31/12

August 28, 2012

Pinelands Commission
PO Box 359
New Lisbon, NJ 08064

RE: Shamong Township Proposed Application

Dear Sir/Madam:

I am responding to the recent notice regarding Shamong Township application to the New Jersey Pinelands Commission to permit reconstruction and reconfiguration of active recreational improvements at the Stony Creek field complex. I am sending you notice of our opposition to stated plan of expansion for the following reasons.

1 – The charge of the New Jersey Pinelands Commission is "Preserving, protecting and enhancing the natural and cultural resource of the Pinelands Natural Reserve." We feel the expansion of this soccer field would violate your mission and disturb the beauty and natural resources that already exist in this area. This area provides a home for many animals such as the red fox and nesting opportunities for many of our birds such as the woodcock and the raptors.

2 – As an adjoining neighbor in this area, I can already attest to the noise and commotion that currently exist from the kids, adults and cars. Not to mention the adults often wait for their kids in their cars with the cars idling. I believe this is against State Law. Further expansion would make this situation worse not only for the neighbors but also for the environment.

3 – This area is not maintained properly as evidence of trash, broken glass, old signs and equipment that is left behind and not picked up.

4 – Since our property adjoins the recreation complex, we are greatly concerned as to the drainage in the area.

5 – The gate is not always kept closed which provides an open invitation for our youths to participate in illegal, immoral and destructive behavior during the night hours.

In closing, we ask that the New Jersey Pinelands Commission not make any exceptions for Shamong Township regarding this application that is not consistent with the Pinelands Commission Comprehensive Management Plan. Thank you for your consideration.

Concerned Citizen,

Elizabeth and Charles Gibbons
345 Atsion Road
Shamong, New Jersey

RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-13- 03

TITLE: Issuing an Order to Certify Barnegat Township Resolution P-2011-9, Adopting the Township's April 2011 Master Plan, and Ordinances 2012-05, 2012-06, 2012-07, 2012-09, 2012-10, 2012-12 and 2012-22, Amending Chapter 55 (Land Use) of the Code of Barnegat Township

Commissioner McGlinchey **moves and Commissioner** Earlen **seconds the motion that:**

WHEREAS, on April 8, 1983, the Pinelands Commission fully certified the Master Plan and codified Land Use Ordinances of Barnegat Township; and

WHEREAS, Resolution #PC4-83-29 of the Pinelands Commission specified that any amendment to the Township's certified Master Plan and codified Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, Resolution #PC4-83-29 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

WHEREAS, on June 7, 2004, Barnegat Township adopted Ordinance 2004-23, amending Chapter 55 (Land Use) of the Township's Code by adopting a revised zoning plan for that portion of the Township's Pinelands Regional Growth Area which contains an existing 810-acre subdivision known as Ocean Acres; and

WHEREAS, the revised zoning plan adopted by Ordinance 2004-23 created a new zone within the Regional Growth Area, the RC (Residential Conservation) Zone, and modified standards for development of undersized lots located in an existing zone within the Regional Growth Area, the RH (Residential High) Zone; and

WHEREAS, pursuant to Ordinance 2004-23, a single family residential unit could be developed on an undersized lot in the RH Zone if either Pinelands Development Credits were purchased or lands in the RC Zone were permanently preserved; and

WHEREAS, the Pinelands Commission certified Barnegat Township Ordinance 2004-23 on November 12, 2004; and

WHEREAS, also in 2004, the Commission entered into an agreement with Barnegat Township and Mark Madison, LLC, the owner of approximately 537 lots and much of the unsubdivided, vacant land within Ocean Acres; and

WHEREAS, the purpose of this agreement was to address the "overlay area" within Ocean Acres, an area consisting of 135 lots which Commission staff had determined constituted habitat critical for the survival of a local population of Northern pine snakes; and

WHEREAS, under the terms of the 2004 agreement, Mark Madison, LLC, was given two years to undertake additional survey work in an effort to demonstrate that the overlay area did not constitute critical habitat; and

WHEREAS, the agreement further provided that should the Commission determine, based on the new information submitted by Mark Madison, LLC, as part of the additional survey work, that the overlay area did not constitute critical habitat, Barnegat Township would amend its zoning ordinance to rezone the area from the RC Zone to the RH Zone and make it eligible for residential development; and

WHEREAS, subsequently, the applicant completed the survey work and submitted the results to the Commission for review; and

WHEREAS, after completing a preliminary and final review process for the applicant's survey results, soliciting comments from individuals with expertise in snake surveys and providing notice to over 200 property owners in the immediate vicinity of the overlay area, the Commission staff concluded that, in accordance with the terms of the 2004 agreement, the overlay area did not constitute critical habitat for Northern pine snakes; and

WHEREAS, on May 7, 2012, Barnegat Township adopted Ordinance 2012-12, amending the municipality's Zoning Map by rezoning the "overlay area" within the Ocean Acres subdivision from the RC (Residential Conservation) Zone to the RH (Residential High) Zone; and

WHEREAS, the Pinelands Commission received a certified copy of Ordinance 2012-12 on May 9, 2012; and

WHEREAS, by letter dated May 29, 2012, the Executive Director notified the Township that Ordinance 2012-12 would require formal review and approval by the Pinelands Commission; and

WHEREAS, on December 7, 2011, Barnegat Township received Initial Plan Endorsement and Town Center designation from the State Planning Commission; and

WHEREAS, the areas affected by the December 7, 2011 plan endorsement and center designation are located within the Pinelands National Reserve but outside the state-designated Pinelands Area; and

WHEREAS, N.J.A.C. 7:50-3.39(b) of the Comprehensive Management Plan specifies that municipalities with areas outside the Pinelands Area but within the Pinelands National Reserve may request review by the Commission of their land use ordinances and master plans for these areas to determine substantial compliance with the provisions of N.J.A.C. 7:50-5 and 6; and

WHEREAS, N.J.A.C. 7:50-3.39(b) further provides that upon determining that a municipality's master plan and land use ordinances are in substantial compliance with the provisions of N.J.A.C. 7:50-5 and 6, the Commission will rely upon the complying master plan and ordinances, rather than a strict interpretation of the Comprehensive Management Plan, to provide comment to relevant state and federal regulatory agencies in its role as the planning entity for the Pinelands National Reserve; and

WHEREAS, on April 26, 2011, the Barnegat Township Planning Board adopted Resolution P-2011-9, approving the Township's April 2011 Master Plan, consisting of updated Land Use Plan, Circulation Plan and Historic Preservation Plan Elements; and

WHEREAS, included in the April 2011 Master Plan are recommendations for zoning changes designed to implement revised center boundaries and planning area changes in the Pinelands National Reserve portion of the Township, consistent with Township's petition for Initial Plan Endorsement by the State Planning Commission; and

WHEREAS, on May 7, 2012, Barnegat Township adopted Ordinances 2012-05, 2012-06, 2012-07, 2012-08, 2012-09 and 2012-10, amending Chapter 55 (Land Use) of the Township's Code for purposes of implementing the recommendations of the April 2011 Master Plan and the Township's Initial Plan Endorsement Petition; and

WHEREAS, the Pinelands Commission received certified copies of the above-referenced ordinances on May 9, 2012; and

WHEREAS, the Pinelands Commission received an adopted copy of the April 2011 Master Plan and Planning Board Resolution P-2011-9 on June 8, 2012; and

WHEREAS, on June 8, 2012, the Pinelands Commission also received a copy of the Zoning Map adopted by Ordinance 2012-08; and

WHEREAS, by email dated June 12, 2012, Barnegat Township requested that the Pinelands Commission review and approve its master plan and land use ordinances for that portion of the municipality located east of the Garden State Parkway, within the Pinelands National Reserve but outside the state-designated Pinelands Area; and

WHEREAS, by letter dated July 2, 2012, the Executive Director notified the Township that pursuant to the municipality's request, Resolution P-2011-9 and Ordinances 2012-05, 2012-06, 2012-07, 2012-08, 2012-09 and 2012-10 would be formally reviewed by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony on Resolution P-2011-9 and Ordinances 2012-05, 2012-06, 2012-07, 2012-08, 2012-09 and 2012-10 was duly advertised, noticed and held on July 25, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

WHEREAS, subsequent to the public hearing, a number of errors were identified with the Ocean Acres subdivision zoning boundaries depicted on the Zoning Map adopted by Ordinance 2012-08, necessitating the adoption of a revised and corrected zoning map by the Township; and

WHEREAS, on October 15, 2012, Barnegat Township adopted Ordinance 2012-22, adopting a revised Zoning Map, dated May 10, 2012; and

WHEREAS, the Zoning Map adopted by Ordinance 2012-22 supersedes the map previously adopted by Ordinance 2012-08; and

WHEREAS, the Pinelands Commission received a certified copy of Ordinance 2012-22 on October 17, 2012 and a copy of the adopted Zoning Map on October 19, 2012; and

WHEREAS, by letter dated October 23, 2012, the Executive Director notified the Township that Ordinance 2012-22 would require formal review and approval by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony on Ordinance 2012-22 was duly advertised, noticed and held on November 7, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

WHEREAS, the Executive Director has found that Resolution P-2011-9 and Ordinances 2012-05, 2012-06, 2012-07, 2012-09, 2012-10, 2012-12 and 2012-22 are consistent with the standards and provisions of the Pinelands Comprehensive Management Plan; and

WHEREAS, the Executive Director has submitted a report to the Commission recommending issuance of an order to certify that Resolution P-2011-9 and Ordinances 2012-05, 2012-06, 2012-07, 2012-09, 2012-10, 2012-12 and 2012-22 are in conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that Resolution P-2011-9 and Ordinances 2012-05, 2012-06, 2012-07, 2012-09, 2012-10, 2012-12 and 2012-22 be certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning Resolution P-2011-9 and Ordinances 2012-05, 2012-06, 2012-07, 2012-08, 2012-09, 2012-10, 2012-12 and 2012-22 and has reviewed the Executive Director's report; and

WHEREAS, the Pinelands Commission accepts the recommendation of the Executive Director; 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

1. An Order is hereby issued to certify that Ordinance 2012-12, amending Chapter 55 (Land Use) of the Code of Barnegat Township, is in conformance with the Pinelands Comprehensive Management Plan.

2. Any additional amendments to Barnegat Township's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

BE IT FURTHER RESOLVED that:

3. Resolution P-2011-9, adopting the April 2011 Master Plan of Barnegat Township, and Ordinances 2012-05, 2012-06, 2012-07, 2012-09, 2012-10 and 2012-22, amending Chapter 55 (Land Use) of the Code of Barnegat Township, as they relate to those portions of the Township outside the Pinelands Area but within the Pinelands National Reserve, are in substantial compliance N.J.A.C. 7:50-5 and 6 of the Comprehensive Management Plan.

Record of Commission Votes

	AYE	NAY	NP	ABS		AYE	NAY	NP	ABS		AYE	NAY	NP	ABS
Ashmun	X				Galletta	X				Prickett	X			
Brown	X				Haas	X				Quinn	X			
DiBello	X				Jackson	X				Rohan Green			X	
Earlen	X				Lloyd			X		Witt			X	
Ficcaglia	X				McGlinchey	X				Lohbauer	X			

Adopted at a meeting of the Pinelands Commission

Date: Jan. 11, 2013

Nancy Wittenberg
Executive Director

Mark S. Lohbauer
Chairman

Executive Director's Report on
Barnegat Twp. Reso
PB-2011-9 & Ord. Nos.
2012-05, -06, -07, -09, -10 &
2012-22
January 4, 2013 Exhibit #1

AGREEMENT

The New Jersey Pinelands Commission, the Township of Barnegat and Mark Madison, LLC ("MM") hereby stipulate and agree as follows:

1. The Township of Barnegat ("Barnegat") is a municipal corporation of the State of New Jersey located in Ocean County.

2. MM is a limited liability company of the state of New Jersey.

3. The Pinelands Commission is an independent political subdivision of the State of New Jersey created pursuant to Section 4 of the Pinelands Protection Act, N.J.S.A. 13:18A-1, et seq., and charged with implementing the requirements of the Act. The Pinelands Commission is also the planning entity authorized in Section 502 of the "National Parks and Recreation Act of 1978" (PL-95-625).

4. Portions of Barnegat are located in the "Pinelands Area" as defined by the Pinelands Protection Act at N.J.S.A. 13:18A-11.

5. Barnegat's Zoning Ordinance, which was certified by the Pinelands Commission on April 8, 1983, includes a "RH-Residential High District". The RH District allows development of single family dwellings on lots 10,000 square feet or larger without the use of Pinelands Development Credits ("PDCs").

6. Barnegat's zoning ordinance also allows development of single family dwellings in the RH District on lots between 6,000 square feet and 10,000 square feet in size ("undersized lots") with the purchase of 0.25 PDC for each "undersized lot".

7. MM, through various affiliates, is the owner of approximately 537 existing lots (the "Subject Lots"), in the Ocean Acres section of Barnegat Township and situated in the

Pinelands Regional Growth Area of Barnegat Township in the RH District. The Subject Lots are listed on Exhibit "A".

8. MM also has an ownership interest in additional land that is not subdivided (the "Remaining Land"), also located in the section of Barnegat known as "Ocean Acres" and situated in the Pinelands Regional Growth Area of Barnegat Township in the RH District. The Remaining Land is shown on Exhibit "B".

9. "Ocean Acres" in Barnegat Township (hereinafter "Ocean Acres") is an existing subdivision consisting of approximately 2,000 lots that was subdivided prior to the enactment of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and the promulgation of the Pinelands Comprehensive Management Plan ("CMP"), N.J.A.C. 7:50.

10. Many of the Subject Lots owned by MM within Ocean Acres are non-contiguous and are interspersed with lots that have previously been developed as well as with undeveloped lots owned by others.

11. MM has conducted surveys of threatened or endangered plant and animal species in the Barnegat Township portion of Ocean Acres in accordance with survey protocols developed by MM's consultant, Ecolsciences, Inc., to identify species of concern. These surveys were accepted by the Pinelands Commission staff. These studies pertained to the Northern Pine Snake, swamp pink, Knieskern's beaked rush, pine barrens tree frog, barred owl, Cooper's hawk, and broom crowberry. The surveys also documented sightings of southern gray treefrog. The results of these surveys are set forth in reports entitled *Endangered and Threatened Species Study Results for Ocean Acres Phase I Study Area, Township of Barnegat, Ocean Acres, Township of Barnegat, Ocean County, New Jersey,* dated October 2002 and *Threatened and Endangered Species 2003 Study Results for Ocean Acres, Township of Barnegat, Ocean County,*

New Jersey, dated March 8, 2004. These studies document the presence of threatened and endangered species and their habitat, including Northern Pine Snake, swamp pink, Knieskern's beaked rush, and Pine Barrens tree frog, within portions of Ocean Acres located in Barnegat Township.

12. The Pinelands Commission has determined that portions of Ocean Acres constitute habitat which is critical to the survival of one or more local populations of threatened or endangered animal species and contains local populations of threatened or endangered plant species. The animal species include the Northern Pine Snake and Pine Barrens tree frog. The plant species include swamp pink and Knieskern's beaked rush. Both swamp pink and Knieskern's beaked rush are federally listed endangered species and, therefore, may be subject to additional federal regulation. The Pinelands Commission has determined that the protection of habitat critical to the survival of the local populations of threatened or endangered species found within Ocean Acres, as required pursuant to N.J.A.C. 7:50-6, Parts II and III, can be accomplished by establishing a "Conservation Area" comprised of a contiguous area of land that consists of habitat critical for the survival of the local populations of such threatened or endangered species.

13. In order to preserve and protect the threatened or endangered species located in the Barnegat Township portion of Ocean Acres and their critical habitat, as required pursuant to N.J.A.C. 7:50-6, Parts II and III of the Pinelands CMP, the Pinelands Commission, in conjunction with Barnegat Township is pursuing the establishment of such a "Conservation Area" in Ocean Acres. The anticipated Conservation Area is depicted on the map attached hereto as Exhibit "C". Barnegat Township is finalizing amendments to its zoning ordinance

(hereinafter the "Revised Ordinance") that are expected to establish this "Conservation Area" as a new zoning district within which residential development would be prohibited.

14. Additionally, certain areas within the Barnegat Township portion of Ocean Acres contain wetlands and required buffers to wetlands.

15. Barnegat Township and the Pinelands Commission have determined that amendments to Barnegat's zoning ordinance are required in order to (i) afford adequate protection to habitat critical for the survival of the threatened and endangered species delineated in paragraph 12 above as required pursuant to N.J.A.C. 7:50-6, Parts II and III of the CMP and Sections 55-295E and 55-299B of Barnegat's zoning ordinance through the establishment of a Conservation Area of approximately 730 lots, within which development would be prohibited; (ii) permit development to proceed where appropriate; and, (iii) allow the owners of land in the "Conservation Area" to realize some reasonable economic benefit for their land.

16. The Revised Ordinance is expected to permit development of the lots within the RH District located outside of the Conservation Area.

17. There is an area within the Conservation Area of Ocean Acres comprised of approximately 135-lots, which is generally defined as the area between Nautilus Drive, Avalon Avenue, Mutineer Avenue and Viking Drive, that the Pinelands Commission has determined constitutes habitat critical for the survival of the local population of Northern Pine Snakes that have been found within the Barnegat Township portion of Ocean Acres.

18. Were it not for the determination by the Pinelands Commission discussed in Paragraph 12 above, this 135-lot area would, given its location in a Pinelands Regional Growth Area, be available for residential development in accordance with the standards of the RH District.

19. MM contends that the area described in Paragraph 17 does not constitute critical habitat for Northern Pine Snake and has requested a period of two years from the date of the last signatory to this Agreement to undertake additional survey work in order to demonstrate this contention to the Pinelands Commission. The Northern Pinesnake Survey protocol and the necessary conclusions of the Northern Pine Snake Survey required for this demonstration will be developed by MM's consultant Ecolsciences, Inc. These protocols shall be approved by the Pinelands Commission staff prior to implementation of any additional survey work.

20. Given the unique and particular circumstances surrounding the development of Ocean Acres in Barnegat Township, namely the fact that this area was subdivided prior to the enactment of the Pinelands Protection Act and the promulgation of the Pinelands CMP, and that many of these lots remain under individual ownership, the Pinelands Commission has determined that, with the permanent protection of land located within the Conservation Area, in accordance with the anticipated provisions of the Revised Ordinance establishing the Conservation Area to protect habitat critical to the survival of the threatened or endangered species delineated in Paragraph 12 and located within the Barnegat Township portion of Ocean Acres, the development of the lots located outside of the Conservation Area, based upon currently available information, would be consistent with the standards regarding threatened and endangered species in N.J.A.C. 7:50-6, Part II and III.

21. MM has agreed to waive any and all rights it may have to challenge a Revised Ordinance, and agrees that the Subject Lots and Remaining Land shall be subject to a Revised Ordinance, so long as the Revised Ordinance adheres in all respects to the terms of this Agreement.

22. The Pinelands Commission, Barnegat and MM wish to set forth their agreement in writing and, therefore, mutually and voluntarily enter into this agreement.

NOW THEREFORE, the parties hereby stipulate and agree to the following:

23. The Parties' decision to enter into this Agreement is based solely on the considerations listed above.

24. As discussed in Paragraph 20 above, the Pinelands Commission has determined that, with the permanent protection of land located within the Conservation Area, in accordance with the anticipated provisions of the Revised Ordinance establishing the Conservation Area to protect habitat critical to the survival of the threatened or endangered species delineated in Paragraph 12 and located within the Barnegat Township portion of Ocean Acres, based upon currently available information, the development of the lots located outside of the Conservation Area would be consistent with the standards regarding threatened and endangered species in N.J.A.C. 7:50-6, Part II and III.

25. The Revised Ordinance is expected to include the following provisions:

a. All land located in the "Conservation Area" will be included in a new residential zoning district to be known as the RC - Residential Conservation ("RC") Zone. No development will be permitted in the RC Zone except for low intensity recreational uses and fish and wildlife management.

b. Subject to the terms and conditions set forth herein, detached single-family dwellings for residential purposes, together with accessory structures shall be permitted in the portions of Ocean Acres in Barnegat Township located outside of the Conservation Area in the RH-Residential High ("RH") Zone . This area is delineated in Exhibit "D" attached hereto.

c. Detached single-family dwellings for residential purposes, together with accessory structures may be constructed on all lots in the RH Zone that are 10,000 square feet or greater without the purchase and redemption of PDCs or the deed restriction of lots or vacant remaining land located in the RC Zone.

d. Detached single-family dwellings for residential purposes, together with accessory structures may be constructed on all lots in the RH Zone consisting of at least 9,000 square feet but less than 10,000 square feet provided that the owner of the lot proposed for development (i) purchases and redeems .25 PDCs ; (ii) permanently protects two existing lots in the RC Zone by dedicating them as open space through the recordation of a deed restriction with the Ocean County Clerk's Office, in a form approved by the Township Solicitor and the Pinelands Commission, prohibiting development with the exception of low intensity recreational uses and fish and wildlife management; (iii) permanently protects two thirds of an acre of vacant remaining land in the RC Zone, which is not defined as wetlands and is located outside of existing residentially subdivided lots, through the recordation of a deed restriction with the Ocean County Clerk's Office, in a form approved by the Township Solicitor and the Pinelands Commission, prohibiting development with the exception of low intensity recreational uses and fish and wildlife management; or (iv) permanently protects two (2.0) acres of vacant remaining land, which is defined as wetlands and is located outside of existing residentially subdivided lots, through the recordation of a deed restriction with the Ocean County Clerk's Office, in a form approved by the Township Solicitor and the Pinelands Commission, prohibiting development with the exception of low intensity recreational uses and fish and wildlife management.

e. All lots smaller than 9,000 square feet located within the RH Zone may not be developed for any purpose without dimensional variance relief.

f. Any person proposing to develop an undersized lot in the RH Zone, who, as of the effective date of the Revised Ordinance described herein, also owns one or more lots located in the RC Zone will be required to deed restrict the lot within the RC Zone (or two lots within the RC Zone for each undersized lot proposed for development within the RH Zone, if such person owns more than one lot within the RC Zone) prior to availing him or herself of the option to purchase PDCs.

g. Any person proposing to develop an undersized lot in the RH Zone, who, as of the effective date of the Revised Ordinance described herein, does not own a lot or remaining vacant land in the RC Zone, may either deed restrict land in the RC Zone or purchase and redeem .25 PDCs.

26. Barnegat agrees to take all steps necessary to revise its Zoning Ordinance in accordance with the terms of this Agreement and in compliance with the notice requirements of N.J.S.A. 40:55D-62.1.

27. As discussed in Paragraph 17 above, there is an area within the Conservation Area of Ocean Acres comprised of approximately 135-lots, which is generally defined as the area between Nautilus Drive, Avalon Avenue, Mutineer Avenue and Viking Drive, that the Pinelands Commission staff has determined constitutes habitat critical for the survival of the local population of Northern Pine Snakes found in the Barnegat Township portion of Ocean Acres.

28. MM contends that the area described in Paragraph 17 does not constitute critical habitat for Northern Pine Snake and has requested a period of two years to undertake additional survey work in order to demonstrate this contention to the Pinelands Commission staff.

29. During the two years that MM is undertaking the additional survey work discussed in Paragraph 28 above, and notwithstanding the requirements of Paragraph 25.f. above, a property owner proposing to develop an undersized lot in the RH Zone shall not be required to deed restrict any land that he or she may own in the area described in Paragraph 17 above. Rather, such individual, if he or she does not own additional lots located within the RC Zone located outside of the area described in Paragraph 17 above, may purchase and redeem .25 PDCs in exchange for developing an undersized lot in the RH zone. Any person who owns lots within the RC Zone both inside and outside of the area described by Paragraph 17, shall comply with the requirements of paragraph 25.f. above and shall deed restrict the lots that he or she owns within the RC Zone located outside of the area described by Paragraph 17, prior to availing him or herself of the option of purchasing and redeeming PDCs.

30. Should the Pinelands Commission determine, based on the submission of new information generated by the additional survey work discussed in Paragraph 28 above, that the area described in Paragraph 17 above or a designated portion thereof does not constitute habitat critical for the survival of the local population of Northern Pine Snake found in Ocean Acres, Barnegat agrees to promptly amend its Zoning Ordinance to remove this area or the designated portion thereof from the RC Zone and place it within the RH Zone and to submit such ordinance to the Pinelands Commission for certification pursuant to N.J.A.C. 7:50-3.45.

31. The parties agree that all development within Ocean Acres shall adhere to the requirements of Barnegat Township's certified Land Use Ordinance and the Pinelands CMP.

32. MM is not required to undertake additional studies, surveys, or investigations regarding the threatened or endangered species located in Ocean Areas and delineated in Paragraph 11 above in order to develop the areas of Ocean Acres located outside of the

Conservation Area for 5 years from the execution of this Agreement by all parties thereto unless, based on new information that differs from the information available to the Pinelands Commission at the time that it executes this Agreement, the Pinelands Commission determines habitat critical to the survival of the local population of such threatened or endangered species is being subjected to irreversible adverse impacts. At the expiration of this 5 year period, MM will only need to undertake additional studies, surveys or investigations regarding the threatened or endangered species located in Ocean Areas and delineated in Paragraph 11 above, if the Pinelands Commission determines that because of changes in the environmental conditions in Ocean Acres additional studies, surveys or investigations for such species are needed. The Pinelands Commission, in its review of development applications submitted for Ocean Acres, will consider the threatened or endangered species information regarding such species available to it at the time it reviews such applications for development, to determine that the development is consistent with the Pinelands CMP, including the standards regarding threatened and endangered species in N.J.A.C. 7:50-6, Parts II and III of the Pinelands CMP. Notwithstanding the foregoing, MM acknowledges that it is required to conduct the additional survey work for Northern Pine Snake that is discussed in Paragraph 28 above in order for MM to demonstrate its contention that the area described in Paragraph 17 above does not constitute critical habitat for the survival of the local population of Northern Pine Snakes.

33. With regard to new threatened or endangered species, i.e. species for which MM did not survey and which are not discussed in paragraph 11 above, MM agrees that should a new threatened or endangered species be discovered at Ocean Acres it will undertake any studies, surveys, or investigations necessary to demonstrate t whether or not the development will have irreversible adverse impacts on the survival of any local population of such threatened or

endangered species or habitat that is critical to the survival of any local population of that threatened or endangered species.

34. In connection with the development of single family homes in the RH District, the Township and MM have independently, without the participation of the Pinelands Commission, reached the following agreements. The Pinelands Commission is not a party to these independent agreements and reserves its rights under the Pinelands CMP to review any actions taken in accordance with these independent agreements:

a. MM agrees to pay the Township the sum of $200,000.00 on or before 90 days after the adoption of the Revised Ordinance. Such funds shall be utilized by the Township in connection with the design and construction of public recreational facilities to be located in Barnegat Township. MM shall receive zero credit for such payment against recreational assessments it may otherwise owe under applicable law in connection with the development of the Ocean Acres section of Barnegat Township.

b. The Township recognizes and acknowledges that until a public water system is available for residential development in the Ocean Acres section of Barnegat Township MM will continue to obtain well permits in accordance with all applicable local, county, state and federal laws, rules, regulations and ordinances. MM shall promptly and at its sole cost and expense, connect all of the single family homes it has constructed in the Barnegat Township section of Ocean Acres to such public water system. Thereafter, so long as such public water system is available, MM shall connect all future single family homes in the Ocean Acres section of Barnegat Township to such public water system.

c. The Township and MM recognize that due to the limitations imposed by the creation of the Conservation Area, various public streets originally intended to interconnected with other public streets will terminate in "dead end" streets. At the terminus of such public streets, outside of the Conservation Area, MM shall construct cul de sacs, subject to the following terms and conditions. Whenever feasible there shall be a 40 foot cartway radius and a 48 foot right of way radius for each cul de sac. To the extent that MM owns any lots adjoining the cul de sac, an easement shall be granted to the Township, at no cost, to accommodate such specifications. To the extent that MM does not own the residential lots adjoining the cul de sac, then Barnegat Township, may at its option, condemn such land as may be necessary for an easement to meet the specifications set forth above. In the event that the Township proceeds by the way of eminent domain, then MM shall reimburse the Township for all costs associated with such condemnation action; however, such amounts shall be considered reimbursable development costs in connection with the Reimbursement Agreement executed by Barnegat Township and Walters Development Co., LLC on March 23, 2003. In the event that the Township chooses not to proceed by eminent domain, then the cul de sacs shall be designed and constructed within the available right of way and easements granted by Walters that would otherwise have been necessary to construct the improvements described above as if all necessary easements had been granted or condemned.

35. This Agreement is binding upon and intended for the exclusive benefit of the Parties hereto and their respective successors hereunder, and shall not be deemed to give, either express or implied, any legal or equitable right, remedy, or claim to any other entity or person whatsoever.

36. This Agreement may be executed by each of the parties hereto in any number of counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original and all such counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by a duly authorized officer or official as of the day and year first written above.

NEW JERSEY PINELANDS COMMISSION

By: _____
JOHN C. STOKES, Executive Director

Dated: 9/13/04

TOWNSHIP OF BARNEGAT

By: _____

Dated: _____

MARK MADISON, LLC

By: _____
EDWARD M. WALTERS, JR.

Dated: _____

Commission Staff Determination
Northern Pine Snake Survey for 38 Acre Overlay Area in Ocean Acres, Barnegat Township
October 5, 2009

BACKGROUND

2003 Survey

In 2003, an applicant conducted a survey for northern pine snakes on an approximately 800 acre parcel in Barnegat Township, commonly known as Ocean Acres. The survey was performed to help determine whether Northern pine snakes, a threatened animal species afforded protection by the Pinelands Comprehensive Management Plan, frequented the area.

Five Northern pine snakes were captured during the survey. Four individual snakes were radio-tracked by the applicant across Ocean Acres and two pine snake winter den sites were identified. Two of the radio-tracked Northern pine snakes were tracked within a 38 acre area now known as the "Overlay Area." The survey also identified one over-wintering (denning) Northern pine snake within the Overlay Area.

Based upon the presence of suitable habitat onsite and the results of the survey, the Commission staff determined that a portion of Ocean Acres, including the Overlay Area, was "critical" habitat for Northern pine snake. The applicant contended that the den found within the Overlay Area was not used for over-wintering and that the Overlay Area itself was not critical habitat.

Conservation Plan

In response to this survey and information from adjacent land development applications, the Commission designated a "Conservation Area" that included critical Northern pine snake habitat and other important natural resources, including wetland systems. This Conservation Area encompassed approximately 714 acres of land, including a portion of Ocean Acres, Barnegat, and adjacent areas. The Conservation Area within Ocean Acres, Barnegat, is approximately 350 acres.

In 2003, the Commission received certain permits and approvals from the applicant to build in Ocean Acres, Barnegat. In accordance with the Commission's regulations, a Commission public hearing was scheduled to determine whether those permits and approvals met the standards of the Barnegat Township land use ordinance and the Pinelands Comprehensive Management Plan (CMP) relative to the protection of critical habitat for threatened and endangered animal species. On May 7, 2004, a Stipulation of Settlement was entered into between the applicant and the

Commission. The "Settlement" protected that portion of Ocean Acres located within the Conservation Area, and allowed the applicant to proceed with development located outside of that area. The "Settlement" also noted that the applicant contended that the 38 acre Overlay Area portion of the Conservation Area was not critical habitat for Northern pine snake and reserved a two year period for the applicant to undertake additional survey work in the Overlay Area. The "Settlement" noted that the survey protocol and necessary conclusions of the survey would be addressed in a separate agreement.

On September 13, 2004, the separate "Agreement" was entered into by the applicant, Barnegat Township and the Commission regarding this matter. The Agreement specifically reserved the right of the applicant to undertake additional Northern pine snake surveys over a two year period in an attempt to demonstrate that the 38 acre Overlay Area no longer constituted critical habitat for the Northern pine snake. The Agreement also provided that the protocols for the survey be approved by the Commission staff. Lastly, the Agreement provided that, if the Commission's staff concluded that the additional survey results demonstrated that the Overlay Area was no longer critical habitat for Northern pine snake, the 38 acre Overlay Area would be rezoned by Barnegat Township to allow for residential development.

2005-2007 SURVEY OF THE OVERLAY AREA

Survey Results

Thereafter, the applicant completed and submitted to the Commission a two year (2005-2007) Northern pine snake survey for the 38 acre Overlay Area. The results of the survey were negative; that is, no Northern pine snakes were found.

Preliminary Review of the Survey

Before completing its review of the survey, the Commission's staff distributed the survey report to six individuals knowledgeable about snake surveys for review. The Commission staff received four substantive comments regarding the survey. The concerns were that:

1. The design of the drift fences erected on the parcel and the snake traps themselves were faulty because snakes could have climbed over the fences or avoided entry into the traps;

2. The residential development that had occurred surrounding the 38 acre Overlay Area, both prior to and during the survey period, probably negatively affected the survey;

3. The fact that snake traps were vandalized in May 2007 negatively affected the survey results; and

4. The design of the snake study did not meet the study objectives for demonstrating that no snakes were in the 38 acres because it was not designed to conclusively trap all individuals exiting or entering the Overlay Area.

Commission Staff Preliminary Review

The Commission staff analyzed the concerns and preliminarily concluded that:

1. The proposed survey protocol (design), which had been approved in advance, adequately addressed drift fence and trap design.

2. The fact that residential development was occurring in a surrounding area (which had not been deemed to be critical habitat) would not render the survey results invalid.

3. The vandalism event impacted approximately two weeks of the two year survey. Since the Commission was notified promptly and the traps were relocated, it was felt that the survey was not materially affected.

4. The methodology for the survey, which exceeded that regularly used by other applicants in the Pinelands Area, was reliable.

Based upon this analysis, the fact that the survey work did not identify any Northern pine snakes within the 38 acre Overlay Area in a two year period and the absence of any other reports or information regarding Northern pine snakes within the Overlay Area, it was the Commission staff's preliminary opinion that the applicant had demonstrated that the 38 acre Overlay Area did not constitute critical habitat for Northern pine snake.

PUBLIC REVIEW OF THE SURVEY

Beginning July 10, 2009, the Commission staff began accepting public comments for a 30 day period regarding the 2005-2007 Northern pine snake survey and the Commission staff's preliminary determination that the survey demonstrated that the Overlay Area could no longer be considered critical habitat for Northern pine snake. The survey and the preliminary staff determination on this matter were posted on the Commission's website and Barnegat Township posted the determination on its' website. Paper copies of the survey and the Commission staff's preliminary determination were made available for review at the Pinelands Commission office and at the Barnegat Township municipal building. Written notification was provided to over one hundred landowners within 200 feet of the Overlay Area and other interested parties, including conservation groups and the applicant. Those postings and mailings invited written comment on the matter to be submitted by August 10, 2009.

The Commission received 13 written comments. Three commenters, who owned property within the Overlay Area and who expressed an interest in developing their properties, supported rezoning the Overlay Area for development. One commenter, who remained neutral, reported that the snake fences remained in place. Other commenters opposed the rezoning on the basis that the area was valuable as open space and habitat. One commenter provided an analysis prepared by Dr. Joanna Burger of Rutgers University and Dr. Emile DeVito of the New Jersey Conservation Foundation which disagreed with the survey report's conclusions that the Overlay Area does not constitute critical habitat.

COMMISSION STAFF ANALYSIS

After the public comment period ended, the Commission staff re-examined the survey in light of the questions and concerns raised during the preliminary review and the public review processes. These related to four primary areas of inquiry.

1. Was the survey methodology flawed because the fencing was insufficient to direct snakes to the traps, the traps were not designed correctly, the traps should have been opened earlier, snakes outside of the Overlay should have been tracked, the two year study period was too short or too few common snakes were captured?

2. Did vandalism invalidate the results of the survey?

3. Did the surrounding development negatively impact the results of the survey?

4. Is the Overlay Area critical habitat because it provides an important buffer to adjacent critical habitat?

The Commission staff analysis of each issue follows.

Survey Methodology

The survey involved the installation of 3700 feet of fencing and 42 traps within this 38 acre area. The fencing was three feet in height with a minimum of four inches buried. In addition to road cruising surveys, snakes were trapped during the Spring (May through mid-July) and Fall (September through October) for a two year period.

The protocol for the survey was pre-approved by Commission staff and involved at least 50 times more fencing per acre than used in other successful surveys throughout the Pinelands and recommended by other researchers.[1] Because of the additional fencing, the number of traps per acre also greatly exceeded the norm. The traps' design was consistent with that typically used in other studies. Although three foot high fencing is also the norm, it is understood that this height will not guarantee that a larger snake is prevented from climbing over the fence.

The Spring and Fall survey periods were also consistent with typical periods used successfully elsewhere in the Pinelands. Although most of a pine snake's typical period of activity was surveyed, it is true that, depending on weather, pine snakes may leave their winter denning areas before May. In order for any such snakes to be missed during this survey, it must be assumed that they emerged from their dens before the end of April, left the 38 acre Overlay Area by the beginning of May and, if they returned in the Fall, did not do so until November. As for the two year duration of the survey, it was twice the length of typical surveys that successfully captured pine snakes elsewhere in the Pinelands.

It has been suggested that the capture of so few common snake species (6 during the 2005-2007 survey) raises questions as to the significance that a pine snake was not captured. It is

[1] Zappalorti and Torocco (2002)

noteworthy that the 2005-2007 survey, except for much more extensive fencing and traps, was designed consistent with the successful 2003 survey. In 2003, 64 snakes were captured, including five pine snakes ranging in length from 4.3 to 5.4 feet in length and 14 other snakes that exceeded 4 feet in length. Although it was suggested that the failure to capture a pine snake in 2005-2007 was not statistically significant, the rationale for such a conclusion is not clear since that assessment appears to combine snakes seen along the fence line with those caught in traps, uses three rather than four trap periods, reflects incorrect mathematical calculations and incorrectly compares probabilities.

Lastly, the survey did not seek to track pine snakes that did not utilize the Overlay Area. However, the survey was designed to capture snakes that may have originated outside the Overlay Area but entered the Overlay Area for nesting, foraging or denning.

Vandalism

The traps were vandalized in May 2007. According to the consultant's report of the incident, it appeared that the soil in front of the traps was treated with a chemical mixture. The Commission staff was promptly notified and the traps were moved. Since the event affected about two weeks of the four season survey, it is not likely that the efficacy of the survey was compromised.

Impact of Surrounding Development on the Overlay Area

The 38 acre Overlay Area extends in a northerly direction from the remainder of the Conservation Area. It is bounded on two sides by areas zoned for residential development.

When the Conservation Area was established, it was intended to incorporate critical habitat for pine snakes, including buffers to nesting and denning sites and foraging areas. The area outside the Conservation Area was and still is zoned for residential development. Some development in that surrounding has since occurred.

The "domino" effect (development within the surrounding area might indirectly impact the Overlay Area) was considered when the boundaries of the Conservation Area were drawn; however, there was no specific method in place at the time to measure the effect. It is, therefore, possible that these domino effects were under-estimated. If that was the case and the habitat value of the Overlay Area has already been compromised, it would be difficult to conclude that it constitutes critical habitat.

Impact of Development Within the Overlay Area on the Remaining Conservation Area

If the Overlay Area is removed from the Conservation Area and allowed to be developed, it too will have some effect on the remaining Conservation Area, which will then total approximately 676 acres. If this effect is significant, it could be concluded that the Overlay Area is critical habitat because of its importance in buffering the Conservation Area.

Commission staff used the Pinelands Commission's 2008 Ecological Integrity Assessment methodology to test this effect. To do so, the entirety of the surrounding areas currently zoned

for residential development was labeled as developed. A composite ecological integrity score (out of a possible score of 100) was then calculated for the entire Conservation Area, including the Overlay Area. The score was re-calculated assuming the Overlay Area was developed. The score for the Conservation Area dropped from 65.7 to 64.6 if the Overlay Area is fully developed. Since the composite ecological integrity score reflects landscape, watershed and wetlands integrity, a separate landscape integrity score, which is more directly related to habitat value for wide-ranging animals, was also calculated. The score for the Conservation Area dropped from 56.1 to 55.0 if the Overlay Area is not protected. Focusing solely on a very small part of the Conservation Area that is immediately adjacent to the Overlay Area, the landscape integrity score for that adjacent area drops from 42.0 to 36.4.

The Ecological Integrity Assessment reported that fifty-one percent of the Pinelands Area fell within the highest ecological-integrity class between 90 and 100. Only 5.2 percent of the Pinelands displayed scores of 60 or less and 2.6 percent had scores of 50 or less. In terms of the correlation of ecological integrity scores to the distribution of threatened and endangered animal species records, 2.4 percent of Northern pine snake records were located in areas with scores of 50 or less.

CONCLUSION

Even though the Overlay Area provides open space benefits and possesses some ecological value, the question before the Commission staff is whether the area represents critical habitat essential for the protection of Northern pine snakes. It is this standard which is set forth in the Agreement and which the Commission staff must seek to address.

Although it is virtually impossible to prove a negative (in this case demonstrating with absolute certainty that no Northern pine snakes would ever make use of the Overlay Area), the survey methodology was based on methodologies successfully used in Ocean Acres and elsewhere throughout the Pinelands. However, because it was felt that this survey needed to be much more rigorous than the norm, the duration, length of fencing and number of traps went well beyond standard practice. In light of the survey's negative findings, it is difficult to conclude that the Overlay Area itself represents critical habitat for Northern pine snakes.

An examination of the Overlay Area in relation to the Conservation Area does not suggest that rezoning the Overly Area for development will have a material effect on the integrity of the remaining Conservation Area. Thus, it is difficult to conclude that the Overlay Area is critical because it provides a buffer that is essential to the protection of other critical habitat for Northern pine snakes.

Therefore, the Commission staff must conclude that, in accord with the terms of the Agreement, the Overlay Area does not constitute critical habitat for Northern pine snakes.

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Executive Director's Report on Barnegat Twp. Reso PB-2011-9 & Ord Nos. 2012-05, -06, -07, -09, -10 *& 2012-22
January 4, 2013
Exhibit #3

Ocean Acres

Barnegat Township Zoning

- RC
- RH
- RH Approved lots
- Overlay area rezoned to RH
- Deed restricted
- Lots

N

0 0.25 0.5

Miles

New Jersey
Pinelands Commission
GIS Office
January 4, 2013

I:\pine5\staff_projects\gis_asst\2012projects\ocean_acres\redoutline

Executive Director's Report on
Barnegat Twp. Reso.
PB-2011-9 & Ord. Nos.
2012-05, -06, -07, -09, -10 &
2012-22
January 4, 2013 Exhbit #4

BARNEGAT TOWNSHIP
OCEAN COUNTY, NEW JERSEY
ZONING MAP

LEGEND

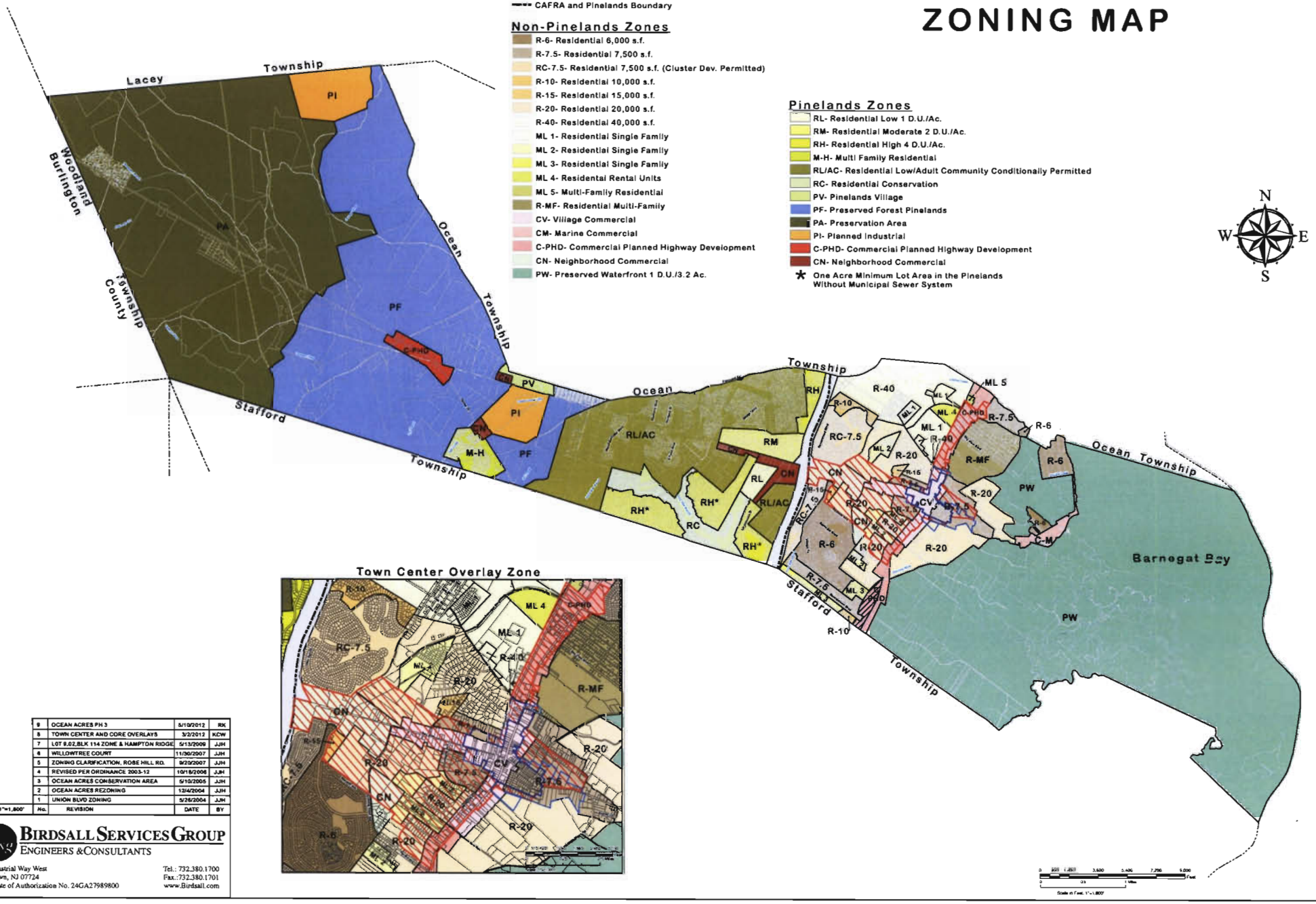
- Historic District
- Historic District Transition Area
- Town Center Overlay Zone
- Commercial Core Overlay Zone
- CAFRA and Pinelands Boundary

Non-Pinelands Zones

- R-6- Residential 6,000 s.f.
- R-7.5- Residential 7,500 s.f.
- RC-7.5- Residential 7,500 s.f. (Cluster Dev. Permitted)
- R-10- Residential 10,000 s.f.
- R-15- Residential 15,000 s.f.
- R-20- Residential 20,000 s.f.
- R-40- Residential 40,000 s.f.
- ML 1- Residential Single Family
- ML 2- Residential Single Family
- ML 3- Residential Single Family
- ML 4- Residental Rental Units
- ML 5- Multi-Family Residential
- R-MF- Residential Multi-Family
- CV- Village Commercial
- CM- Marine Commercial
- C-PHD- Commercial Planned Highway Development
- CN- Neighborhood Commercial
- PW- Preserved Waterfront 1 D.U./3.2 Ac.

Pinelands Zones

- RL- Residential Low 1 D.U./Ac.
- RM- Residential Moderate 2 D.U./Ac.
- RH- Residential High 4 D.U./Ac.
- M-H- Multi Family Residential
- RL/AC- Residential Low/Adult Community Conditionally Permitted
- RC- Residential Conservation
- PV- Pinelands Village
- PF- Preserved Forest Pinelands
- PA- Preservation Area
- PI- Planned Industrial
- C-PHD- Commercial Planned Highway Development
- CN- Neighborhood Commercial
- * One Acre Minimum Lot Area in the Pinelands Without Municipal Sewer System



Town Center Overlay Zone

9	OCEAN ACRES PH 3	5/10/2012	RK
8	TOWN CENTER AND CORE OVERLAYS	3/2/2012	KCW
7	LOT 9.02,BLK 114 ZONE & HAMPTON RIDGE	5/13/2009	JJH
6	WILLOWTREE COURT	11/30/2007	JJH
5	ZONING CLARIFICATION, ROSE HILL RD.	9/20/2007	JJH
4	REVISED PER ORDINANCE 2003-12	10/18/2006	JJH
3	OCEAN ACRES CONSERVATION AREA	5/10/2005	JJH
2	OCEAN ACRES REZONING	12/4/2004	JJH
1	UNION BLVD ZONING	5/26/2004	JJH
Scale: 1"=1,800'	No.	REVISION	DATE	BY

BIRDSALL SERVICES GROUP
ENGINEERS & CONSULTANTS
611 Industrial Way West
Eatontown, NJ 07724
Certificate of Authorization No. 24GA27989800
Tel.: 732.380.1700
Fax.:732.380.1701
www.Birdsall.com

Executive Directors' Report on
Barnegat Twp. Reso.
PB-2011-9 & Ord. Nos.
2012-05, -06, -07, 09, -10 &
2012-22
January 4, 2013 Exhibit #5

Barnegat Township State Planning Area Designations

Executive Director's Report on
Barnegat Twp. Reso.
PB-2011-9 & Ord. Nos.
2012-05, -06, -07, -09, -10 &
2012-22
January 4, 2013 Exhibit #6

Proposed Initial Plan Endorsement Map

Barnegat Township, N.J.

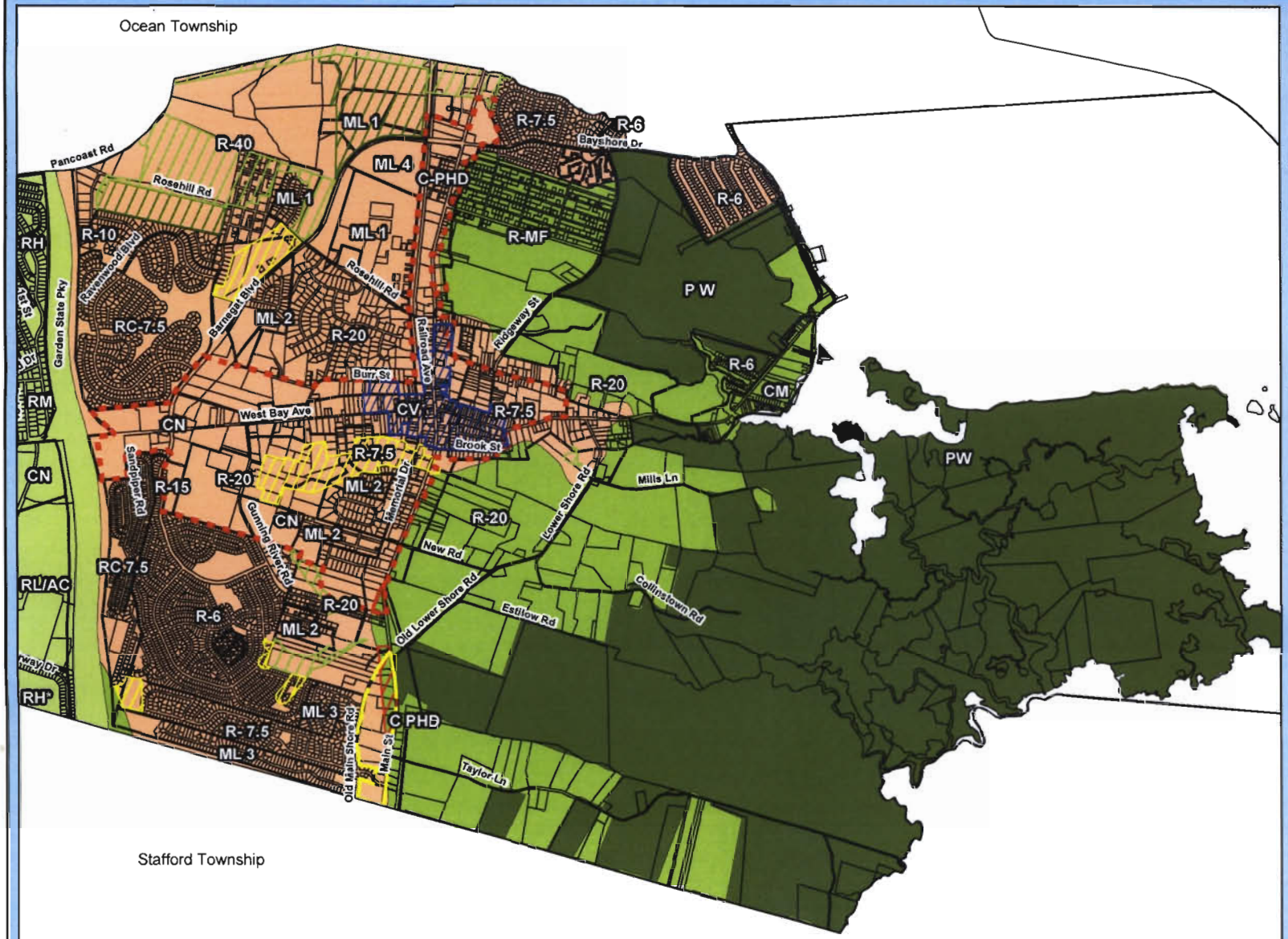


FIGURE 2
PROPOSED INITIAL
PLAN ENDORSEMENT MAP

TOWNSHIP OF BARNEGAT
OCEAN COUNTY, NEW JERSEY

Legend

- Proposed Historic District Boundary
- Municipal Boundary
- Proposed Town Center
- Proposed Commercial Core
- Proposed Critical Environmental Site
- Proposed PA2
- Proposed PA5
- Proposed PA8
- Zones
- Township Parcels

State Planning Areas

- Environmentally Sensitive (PA5)
- Federal Park (PA8)
- Pinelands
- Suburban (PA2)

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Certificate of Authorization No. 24GA27989800
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Fax: 732.380.1701
www.birdsall.com

Sources: NJDEP GIS Data, Municipal Data	DRAWN BY: KCW	SCALE 1"=2,180'
Job No: 206351450005 File Name: Fig 2 Proposed Initial Plan Endorsement Map		DATE 4.8.11

Executive Director's Report on Barnegat Twp. Reso. PB-2011-9 & Ord. Nos. 2012-05, -06, -07, -09, -10 & 2012-22
January 4, 2013, Exhibit #7

PINELANDS PRESERVATION ALLIANCE

Bishop Farmstead, 17 Pemberton Road, Southampton, New Jersey 08088

Phone: 609-859-8860 Fax: 609-859-8804
E-mail: ppa@pinelandsalliance.org Website: www.pinelandsalliance.org

July 3, 2012

Ms. Susan Grogan
Pinelands Commission
P.O. Box 359
New Lisbon, New Jersey 08064

Re: Barnegat Township - Ordinance 2012-12, Rezoning 135 Lots from RC (Residential Conservation) to RH (Residential High) Zone

Dear Ms. Grogan:

Pinelands Preservation Alliance submits these comments on Barnegat Township Ordinance 2012-12, which would rezone the so-called Overlay Area of Ocean Acres for development in violation of the Ocean Acres Conservation Plan adopted by the Pinelands Commission and Barnegat Township in 2004.

The Pinelands Commission should not certify Ordinance 2012-12 for three basic reasons: (a) the rezoning violates the 2004 Conservation Plan by converting a conservation area into a development area, (b) the rezoning purports to be based on the Three-Party Agreement, and that agreement was unlawful under New Jersey law because it constituted contract zoning, and (c) the Ordinance was adopted with the votes of Township Committee members who had a conflict of interest because they work for a real estate firm that represents the developer, Walters Group, which owns most of the Overlay Area.

The history of this issue is an embarrassment for the Pinelands Commission. It is amazing that the Commission would have secretly negotiated, then entered, a contract like the Three-Party Agreement, which was clearly unlawful under New Jersey law and was imprudent on many levels – by undermining the very Conservation Plan adopted at the same time, by ensuring there would be no stability or reliability in the Commission's determinations, and by involving the Commission in the kind of legal tactics that we have seen unfold in this case. The Commission should begin to right this wrong by declining to certify Ordinance 2012-12.

Background

Barnegat Ordinance 2004-23, adopted and certified in 2004, established residential and conservation zones in the Ocean Acres subdivision of Barnegat Township in order to carry out the Ocean Acres Conservation Plan created by the Pinelands Commission. This conservation plan and the conservation zone it created was established to protect critical threatened and

endangered species habitat, to protect wetlands and wetlands buffers, and to create a wildlife corridor. It was not just about protecting a local population of Northern Pine Snakes. The Barnegat Township Master Plan Reexamination Reports, dated July 2005, states "The Township worked closely with the Pinelands Commission to create a conservation zone within the Ocean Acres development in order to protect the wetlands and wetland transition area along the Four Mile Branch stream corridor as well as to create a wildlife corridor."

Ordinance 2004-23 also set up a zoning concept that would assure both the lots inside and the lots outside the conservation zone would retain value. The seven hundred and thirty lot owners within the conservation zoned portion of Ocean Acres were supposed to "realize some economic benefit for their land" because they owned lots that could not be built on. The conservation lots were to be purchased by those lot owners who had undersized lots of 9,000 to 10,000 square feet in size in the RH zone or the buildable area of Ocean Acres. In 2004 the Pinelands Commission determined that there were 567 undersized lot owners who might need to purchase lots to be able to build in the RH Zone. If each of the 567 lots purchased two conservation lots it would provide many opportunities for "economic benefit" for the conservation lot owners. To date only a few lots have been purchased.

Those lots owners in the RH buildable zone received an easier application process. They were no longer required to do threatened and endangered species surveys because the areas determined to be habitat or buffers to habitat were protected. Attached is the list obtained from a 2003 file review listing some 56 lots which surveys would be needed if the lots were to be developed. (Attachment B) During that same file review there was an August 12, 2003 letter that stated to the land owner "If you wish to complete an application for a waiver of strict compliance for the development of a dwelling . . .," meaning not only did the land owner have to complete surveys but the lengthier waiver process would have been needed for some of the lots. The zoning concept put into place by Ordinance 2004-23 did away with surveys, waivers and PDC requirements making the application process easier for those lot owners in the RH zone of Ocean Acres while providing protections for the Pinelands ecology.

But when Barnegat Township passed Ordinance 2004-23 for the RC and RH zoning in 2004, Walters Group objected. The Pinelands Commission secretly negotiated a side-agreement, the Three-Party Agreement between Barnegat Township, Walters Group and the Pinelands Commission to commit Barnegat to rezone a portion of the conservation zone, the Overlay Area, for development if the developer could show this area was no longer critical Pine Snake habitat. Incredibly – given the history of Pine Snake use of this area and the quality of the developer's submission, the Pinelands Commission staff on October 2, 2009, agreed that the Overlay Area was no longer critical habitat for northern pine snakes and accepted public comments on the survey conducted by the applicant. Attached is our August 7, 2009 letter with a report by Dr. Joanna Burger and Dr. Emile DeVito demonstrating that the developer's survey did not provide a basis for concluding this area had miraculously ceased to be critical habitat during the very period right after the Conservation Plan and Three–Party Agreement were adopted.

The Rezoning Violates the 2004 Conservation Plan

By converting a conservation area into a development area, the Ordinance violates the Conservation Plan developed by the Pinelands Commission and implemented by Barnegat Township via a certified ordinance in 2004. There is no reason within the terms of the Conservation Plan to sacrifice this area to development. Even if one accepted the implausible conclusion that Pine Snakes suddenly ceased to use the area once the Conservation Plan was instituted, development of this area will reduce the wildlife corridor and degrade water quality within the Conservation Zone through the pollution which more than 100 new homes will bring to this watershed. The Township recognized these facts when it declined the developer's demand that it rezone just two years ago. It has now reversed itself solely because of the Three-Party Agreement.

The Three-Party Agreement, on which the Rezoning Is Justified, Is Unlawful Contract Zoning

The entire chronology of events surrounding this rezoning effort make clear that it is based upon and would not be taking place but for the Three-Party Agreement – the side-deal made by the Commission and made public only once it was completed. In committing Barnegat Township to rezone the land in the future if the Pinelands Commission accepted the developer's survey report that the area had ceased to be critical habitat of Pine Snakes, that Agreement was clearly illegal because it constituted contract zoning under New Jersey law. *See, e.g.*, East-West Venture v. Fort Lee Planning Board, 286 N.J. Super. 311, 669 A.2d 260 (N.J. Super. 1995). IF not for the illegal Three-Party Agreement, this rezoning Ordnance would not be before the Commission. The Commission should not certify an ordinance based on an unlawful contract in which the Commission itself was a party.

After the Township refused to rezone the Overlay Area in 2010, the developer sued to enforce the zoning provision of the Three-Party Agreement. In the subsequent litigation, the court denied the developer's motion for summary judgment because the zoning terms were unlawful contract zoning. The Township subsequently entered a settlement which saied the Township must choose between reversing its position in the developer's favor, or paying the developer $200,000. This agreement was merely a pretext to reverse the prior Committee's refusal to do the developer's bidding and give it the rezoning, because the Three-Party Agreement never tied the $200,000 payment to the zoning provisions. In fact the two items appear in different sections of the Three-Party Agreement and the payment requirement is in a section that, unlike the zoning section, specifically excludes the involvement of the Pinelands Commission. In any event, the settlement itself relies on the unlawful Three-Party Agreement and cannot provide a legitimate basis to violate the Conservation Plan and develop the Overlay Area.

The Ordinance Is Invalid Because Adopted with the Votes of Council Members with a Conflict of Interest

Barnegat Committee members Albert Bille and Martin Lisella work for a real estate firm, Van Dyke Group. According to the firm's web site, the firm represents the developer, Walters

Group, which owns most of the Overlay Zone. (See attachments). The two companies are even located in the same building.

Neither the Ordinance nor the preceding settlement were lawfully adopted by the Township. The settlement was purportedly adopted by consent via Resolution 2012-172 at the Township's March 5, 2012 meeting. The consent agenda included numerous unrelated items. There was no public hearing, no discussion by Council, and no public notice of the terms of the "settlement." Council members Lisella and Bille improperly failed to recuse themselves and voted on Resolution 172. Mr. Lisella had previously recused himself from votes on this matter because of his business relationship with the developer. His vote invalidates the Resolution and the subsequent ordinance adopted under the injunction of the settlement. The Ordinance at issue here was adopted by Township Council on May 3, 2012. This time, Mr. Bille voted on the ordinance. His vote alone invalidates the Ordinance. (See attachments).

Sincerely,

Carleton Montgomery
Executive Director

VAN DYK GROUP

Albert Bille

Office Phone: 609-789-0707 Cell Phone: 609-661-0363 Fax: 609-597-9179

0 Posts Go back

Send Albert a Message

Your Name (required)

Description

I am a 29 year resident of Barnegat. I love to be with people and it shows. I like my job and you will too.

About Me:

As a Resident of Barnegat for the past 29 years I have seen many changes, especially in real estate. I am the Exclusive Real Estate agent for Walters Homes and proud of it! I am committed to selling homes. I am a graduate of the NJ Real Estate Brokers Course, REO learning the Ropes and Chairman of the Communication Committee for the Ocean County Board Of Realtors. Education is my number one priority, both myself and the consumer need the most up to date information to make good decisions.

Areas of Expertise

I specialize in New Home Sales. I represent a New Home Builder and know of many New Home Developments in my servicing area.

Elections

Township Committee Candidates: Martin Lisella

We're asking the five candidates for Barnegat Township Committee to answer some questions about why they're running for office

By Graelyn Brashear Email the author October 27, 2011

Email Print

49 Comments

Related Topics: Barnegat Township Committee and elections 2011

Township Committee elections are approaching, and Barnegat Patch is turning the focus on the candidates. Below, you'll find our pre-election story on incumbent Republican Marty Lisella, who answered several questions Patch readers wanted to see the candidates address.

You can also look back at our story on Republican **Maxine Blumenthal**, independent **Howard Effron** and incumbent **Democrat Leonard Morano**. Keep reading today for our final profile on Democrat Mike Howard.

- **Candidate name:** Martin Lisella
- **Address:** 4 Dovetree Court
- **Party:** Republican
- **Occupation:** Real estate broker, manager of Van Dyke agency in Barnegat
- **Previous government experience:** Has served one previous term on the Barnegat Township Committee

Marty Lisella is the Republican incumbent in this year's race for two open seats on the committee. Lisella has made what he calls Barnegat's flawed tax assessment process a major issue in recent months, voting down the 2011 budget in protest, he said, of an unfair distribution of the township's tax burden. He said he believes the township is cutting where it can and will continue to do so, with extra focus on savings through shared services.

Obviously, taxes are issue number one for a lot of people. Can you offer up some specific ideas for cutting taxes, including, but not limited to, cuts you would make in municipal spending?

Did you approve of the 2011 municipal budget? If not, what specifically would you have changed?

Lisella said his no vote on the budget was "in protest to the assessment system in our town," a system he said was flawed and led to an inconsistent assessment of property values and thus an unequal distribution of Barnegat's tax burden, on top of costly tax appeals.

"If we could have eliminated those problems that we had over two years that cost us $2 million, we could have worked with a leaner budget," he said. "I don't think anyone in town would balk at paying their fair share of taxes as long as they know their neighbors are paying a fair share as well."

Assessments aside, Lisella said he didn't think the committee did a bad job with the 2011 budget.

"We really cut it down pretty close," Lisella said. "There are other things we're looking at," he said, but current contract negotiations meant he couldn't go into detail.

"There are some areas that could be refined that we're working on," he said. "It's not over yet. More shared services will streamline the budget in the future." But many of the problems that push property taxes higher in New Jersey can't be solved on a municipal level, he said.

"No one can expect a huge decrease in their property taxes as long as all the components in the system of the state of New Jersey that are currently in place stay in place," said Lisella. "Until we change that, we're not going to see a big decrease. All we can do is streamline the municipal budget as close to the bone as we can possibly work it, without taking away from critical services residents expect and deserve."

One issue that readers have been asking everyone to weigh in on is salaries and benefits for elected officials. Do you, or would you, collect and keep a salary and medical benefits? What are your thoughts on those who say elected officials should not do so?

Lisella said he would continue to accept his committeeman's salary and benefits. Serving on the committee is a time-consuming and demanding job, he said.

"My personal income since I've been elected has fluctuated 30 to 35 percent in a downward trend," said Lisella. "Some of that is related to the economy, but a large part is because of the time and effort put into the township."

The compensation offered to committee members is "well deserved and well earned," he said.

Accessibility and transparency are also important topics for a lot of people. Do you, or would you, make a point to personally respond to calls and emails from residents? What do you think can be done to increase the level of communication between residents and officials, and make township matters more transparent?

Lisella said he responds to all personal emails and phone calls in as timely a manner as possible. Most calls get forwarded to his office, he said, and he makes a point to answer or call back.

He said he's had calls from people angry over a problem or struggling to understand an issue. "We try to solve their problems as quickly as we can," he said.

Lisella said he thinks Barnegat does a good job of keeping its government transparent.

"The books in town hall are open," he said. "People OPRA everything under the sun."

He said he supports the idea of getting input from residents knowledgeable on various issues, even if the township can't take their advice on everything. But when it comes to holding open forums to discuss the construction of the budget, he said he's torn.

"It depends who would be sitting down at those meetings," said Lisella. Allowing a budget workshop to turn into a place where people attack committee members wouldn't be productive, he said, "and I don't know how to limit it to the people who would be more constructive."

What else is important to you as a candidate?

"My first term is coming to an end," Lisella said, and he learned a lot about how to run the town in his first three years on the dais. Now, he said, he wants to apply that experience to another term.

"I've accomplished a lot, but there are a couple more projects I want to get involved with. There are more shared services opportunities. There's a little bit more streamlining we could do. I want to make Barnegat a town people want to move to, where they can get a fair share for their dollar."

Martin Lisella

Chief Financial Officer
@vandykgroup.com Emails Available

Email: Free Trial
Phone: 609-698-6900

The Van Dyk
www.vandykgroup.com

LEGAL
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Or why do you need a new one?
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Tell us for a chance to WIN a Chrysler Group vehicle[1].
ENTER TO WIN

Biography via lead411 wiki

edit

Have you been looking for information on Martin Lisella? Lead411 provides data on him which include twitter, linkedin url, and biography. There are also The Van Dyk Group email addresses within the @vandykgroup.com profile so Martin Lisella's email could be included. Martin Lisella is part of the The Van Dyk Group which has its main offices in Barnegat, NJ. He currently holds the post of Chief Financial Officer. You can find the company data on Lead411 under the Insurance industry. You can add a unique bio including links to your social profiles using the edit link above. Description: Martin Lisella is The Van Dyk's Chief Financial Officer. With a Lead411 subscription, The Van Dyk email addresses (**@vandykgroup.com**) of the executives are viewable. Other information includes Martin Lisella's email, phone, biography and extension. We provide information from your LinkedIn network, see company profile, and soon we will be showing twitter, wiki, and facebook profiles as well. Lists are downloadble into your email marketing software or crm software. Typical management titles include VP, Chief, Vice President, Director, manager, & more. Similar names to Martin Lisella can be found in our people directory. If this is you and you would like to be removed, then click this link. Keys: Martin Lisella, The Van Dyk, Chief Financial Officer, @vandykgroup.com , email marketing, long beach island, manahawkin, barnegat, lbi, Van Dyk Group, real estate, insurance, financial servi

About The Van Dyk

In this company employee income amounts to about $58610 with 0 jobs available at this time. They have greater than 100 employees, and gross a yearly revenue of more than ten million.The Van Dyk Group is a company within the Insurance industry. It has its headquarters in Barnegat, NJ. You can get hold of important company details like facebook, linkedin, and cfos, through their Lead411 profile which also include The Van Dyk Group email addresses using @vandykgroup.com....more The Van Dyk info

Other The Van Dyk People

Gerald Thompson Jr - Marketing Director
Gerald Thompson Jr's email address and linkedin account may be included in The Van Dyk Group's Lead411 profile and other The Van Dyk Group email addresses with the @vandykgroup.com. He is part of The Van Dyk Group where he serves as the Marketing Director. The Van Dyk Group's main office is set in Barnegat, NJ. You can check their information on Lead411 under the Insurance category.

Janet Frank - Agent and Realtor, phone - 609-597-1988, updated on 01/21/2012 10:25:00
The Van Dyk Group's Agent and Realtor is Janet Frank. They are based in Barnegat, NJ, and you can find their Lead411 profile filed under the Insurance industry. Janet Frank's profile contains twitter, linkedin urls, and biography information, and you can also find other The Van Dyk Group email addresses on Lead411 with the @vandykgroup.com domain.

Josephine Holloway - Agent and Realtor, phone - 609-597-1988, updated on 01/21/2012 10:31:00
Trying to find Josephine Holloway's email, twitter, biography, and linkedin data? You can check out The Van Dyk Group's profile on Lead411, where you can also get @vandykgroup.com email addresses. The Van Dyk Group is an organization centered in Barnegat, NJ, which you can find on Lead411 under the Insurance category. Josephine Holloway is their Agent and Realtor.

Similar Names to Martin Lisella

Martin Lundie - Chief Financial Officer
A Belmont, CA-based organization, Sezmi Corporation is just one of the many of which you can find essential contact information on at Lead411. Their profile includes @sezmi.com email addresses, as well as details on Martin Lundie's email, the organization's Chief Financial Officer. Their profile can be found in Television/Cable category. If you also need twitter, facebook, linkedin usernames, and biography details for Martin Lundie, you can also find them in Lead411. The company CEO is Buno Pati.

Martin Lavoie - Vice President Purchasing and Communications
Have you been looking for information on Martin Lavoie? Lead411 provides data on him which include twitter, linkedin url, and biography. There are also Canada Pork International email addresses within the @canadapork.com profile so Martin Lavoie's email could be included. Martin Lavoie is part of the Canada Pork International which has its main offices in Ottawa, ON. He currently holds the post of Vice President Purchasing and Communications. You can find the company data on Lead411 under the Other industry.

Martin Leach - Chief Information Officer
Martin Leach is part of the Broad Institute, an organization which has its main offices in Cambridge, MA. Martin serves as the Chief Information Officer at Broad Institute. If you're searching for Broad Institute email addresses, you can also find those on their Lead411 profile with the domain @broadinstitute.com along with Martin Leach's linkedin name, twitter tweets, and biography.The Broad Institute's Lead411 profile is categorized under the Other industry.

Other The Van Dyk Email Addresses

Free Trial - These are @vandykgroup.com emails only - not personal emails such as gmail, hotmail, or @yahoo.com.

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New Jersey » Barnegat

Martin Lisella

Van Dyk Group Inc
500 Barnegat Blvd N Ste 300
Barnegat, NJ 08005-2233
Phone: (609) 698-6900

Agency Rating:

Martin Lisella
Van Dyk Group Inc

Rating:

ORDINANCE NO. 2012 -12

ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN, STATE OF NEW JERSEY, REZONING A CERTAIN OVERLAY ZONE FROM THE RC ZONE TO THE RH ZONE

WHEREAS, the Township of Barnegat, County of Ocean, State of New Jersey (the "Township") has previously entered into a three-party agreement with the New Jersey Pinelands Commission ("Pinelands") and Mark Madison, LLC ("Mark Madison"); and

WHEREAS, the three-party agreement (hereinafter referred to as the "Agreement") is dated on or about September 13, 2004; and

WHEREAS, the Agreement provides, in part, that a substantial portion of property located in the Ocean Acres section of the Township will be forever protected from development by placing said properties in the Residential Conservation Zone ("RC Zone") as set forth in Section 55-48 of the Township Land Use Ordinance; and

WHEREAS, the Agreement also provides in part that certain portions of Ocean Acres shall be designated for reasonable residential development purposes, and other delineated purposes, as set forth in the "RH – High Zone" as set forth in Section 55-47 of the Township Land Use Ordinance ("RH Zone"); and

WHEREAS, the Agreement provided that a portion of the property designated for the RC Zone would be the subject of continued environmental studies in order to determine whether or not that approximate 135 lot area should be in fact protected because of the presence of threatened or endangered plant and animal species in and around that area (hereinafter designated as the buffer ("overlay area"); and

WHEREAS, the Agreement provided in part that Mark Madison would be given an opportunity to provide to Pinelands additional threatened and endangered (both plan

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and animal) species survey work in order to demonstrate that the overlay area did not constitute habitat critical for the survival of the local population of the Northern Pine Snake; and

WHEREAS, the Agreement provided, in part, at paragraph 30:

> Should the Pinelands Commission determine, based upon the submission of new information generated by the additional survey work discussed in paragraph 28 above, that the area described in paragraph 17 above or a designated portion thereof does not constitute habitat critical for the survival of the local population of Northern Pine Snakes found in Ocean Acres, Barnegat agrees to properly amend its zoning ordinances to remove this area or the designated portion thereof from the RC Zone and place it within the RH Zone and to submit such ordinance to the Pinelands Commission for certification pursuant to N.J.A.C. 7:50-3.4 (emphasis underscored).

WHEREAS, the Township has received numerous letters from representatives of the Pinelands, including a letter dated December 11, 2009 from John Stokes, Executive Director of the Pinelands, which provides, after reviewing the survey work prepared by Mark Madison in conformance with the Agreement, that the Pinelands' "staff concluded that the overlay area did not constitute critical habitat for Northern Pine Snakes"; and

WHEREAS, in addition Mr. Stokes indicated in a letter dated December 11th that:

> The Commission staff reviewed the survey results, which were negative, i.e., no Northern Pine Snakes were found. In a written determination dated October 2, 2009, developed based upon staffs' analysis of the survey results, comments regarding such results submitted by six individuals knowledgeable about snake surveys and comments submitted by the public, staff concluded that the overlay area did not constitute critical habitat for Northern Pine Snakes.

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WHEREAS, the Township has considered suggestions and arguments raised by various interested parties as to whether the Township should comply with its contractual and zoning obligation and re-zone the overlay area from the RC Zone to the RH Zone; and

WHEREAS, despite said Agreement the Township failed to rezone the subject property resulting in the Township being named as a defendant in certain litigation filed in the Superior Court of New Jersey entitled Mark Madison, LLC, *et als.*, vs. Township of Barnegat, *et als.*, bearing Docket No. OCN-L-1962-10; and

WHEREAS, the Township has determined that even if it prevails with respect to said litigation, the Township would be obligated to return the sum of $200,000.00, which it previously received in accordance with said Agreement; and

WHEREAS, in addition to refunding said monies, if the Township prevails in this litigation, there is no rational basis for the rezoning which occurred in 2004, based upon the findings and opinion of the New Jersey Pinelands Commission that the subject property does not constitute critical habitat for Northern Pine Snakes, and as a result, the zoning of same would revert to its prior classification permitting the same development in any event; and

WHEREAS, if that occurs, the Township would lose the benefits of the 2004 ordinance which provides small, individual property owners, the benefits of Pinelands Transfer Credits'; and

WHEREAS, the Township believes that the adoption of an amended zoning ordinance reclassifying the area in the overlay zone to the RH Zone is necessary and appropriate, not only to meet its contractual obligations with Pinelands and Mark Madison, but also to ensure that the Township ordinances remain in compliance with the certification

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required from the Pinelands Commission, so as to not risk decertification by Pinelands of the Township zoning ordinances:

NOW THEREFORE, BE IT ORDAINED this 19th day of March, 2012, by the Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey, as follows:

SECTION I. In accordance with the aforementioned Agreement and recommendation and direction from the Pinelands Commission the Township re-zones the overlay area, a specific detailed list of the lot and blocks within the overlay area is attached hereto and made a part hereof and labeled "Schedule A", from the RC Zone (Section 55-48) to the RH Zone (Section 55-47) of the Township Land Use Ordinance.

SECTION II. Severability. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

SECTION III. Repealer. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION IV. Effective Date. This Ordinance shall take effect upon publication in an official newspaper of the Township, as required by and in conformance with law.

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NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed by the Township Committee of Barnegat on first reading at meeting held on the

19th day of **March, 2012** at **6:30 p.m.** The Ordinance will be considered for second and final reading at a meeting of the Township Committee which is scheduled for the **7th** day of **May, 2012**, at **6:30 p.m.**, or as soon thereafter as the matter may be reached, at the Municipal Building located at 900 West Bay Avenue, Barnegat, New Jersey, at which time the public is invited to ask questions, raise objections, or provide public comment with regard to the proposed adoption of this Ordinance.

SHARON L. AUER,
Acting Municipal Clerk

Prepared by:

DASTI, MURPHY, McGUCKIN, ULAKY, CHERKOS & CONNORS
Forked River, New Jersey 08731

DASTI, MURPHY McGUCKIN, ULAKY, CHERKOS & CONNORS

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BARNEGAT TOWNSHIP COMMITTEE
OCEAN COUNTY
900 WEST BAY AVENUE
BARNEGAT, NJ 08005

TOWNSHIP COMMITTEE MEETING MINUTES
MARCH 19, 2012, 6:30 PM

1. Call to Order

2. Provisions of the Open Public Meetings Law:
   Pursuant to the requirements of the OPEN PUBLIC MEETINGS LAW, adequate Public Notice of this meeting has been given:
   a. By publication in the required newspapers of the date, time and location of this meeting more than 48 hours in advance.
   b. By posting advance written notice on the official Bulletin Board in the Municipal Building.
   c. By filing advance written notice with the Township Clerk for the purpose of Public inspection.

ANNOUNCEMENT: At this time we ask everyone to please turn all cell phones or pages to either **OFF** or **VIBRATE**.

3. Roll Call of Officials Present:
   Committeeman Lisella - Present
   Committeeman Morano – Present
   Committeeman Melchiondo - Present
   Deputy Mayor Bille - Present
   Mayor Cirulli – Present

   Invocation by Pastor Dave Ridder, Pastor at Bayside Chapel

4. **Salute to the flag led by Mayor Cirulli**

Resolution 2012-200
Resolution appointing Michele Rivers as Deputy Municipal Clerk

Motion to adopt resolution: L. Morano Second: M. Lisella
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

Resolution 2012-201
Resolution appointing Donna Manno as Confidential Secretary

Motion to adopt resolution: M. Lisella Second: A. Bille
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

Resolution 2012-173
Resolution authorizing the Township Committee to retire into closed session for the purpose of discussing personnel, public safety, contractual and litigation matters.

Motion to adopt resolution: J. Melchiondo Second: A. Bille
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

Mayor's Report read and made a part of these minutes

5. **Committee Reports**
M. Lisella – Invited to Trenton to go over plan with the Acting Commissioner to address an easier and more cost effective plan for tax assessments for each year to save the Township money.

L. Morano – We are getting close to budget time, please no tax increase. Committee and Zoning Board should get together to resolve the sidewalk issue, due to safety issues at the Laurel Oaks development.

J. Melchiondo – Amendment to sign ordinance on tonight's agenda, this will apply to all political signage and eliminate the large signs. Barnegat Historic District Ordinance will eliminate the $50 permit fee required for renovations. Chamber of Commerce; sign on Lighthouse Drive is a continued target for vandalism.

A. Bille – I am honored to have attended Eagle Scout Court of Honor for James Priestly IV.

6. **Administrator's Report**
Discussed items on this agenda; affordable housing now in round 2, round 3 (future obligations) will be coming in the near future. Laurel Oaks is the current developing project. Affordable Housing is a State mandate, not a local requirement. NJDOT construction at Route 72 and W. Bay Ave is due to the widening project underway. Town Center status will enable Township to secure commercial development. Further explained were resolutions and ordinances to be voted on from this agenda. Steve Cotton is here to answer questions on the artificial turf issues.

Presentation: Steve Cotton – President Jr. Bengal Football League: Installing artificial turf is part of what I do. Asked contact at Annapolis for donation of turf for Barnegat Township. Annapolis was replacing a field that had not been very much used. This was from a Stadium Field, which is thicker, and not used as much, about two years of playing. If Barnegat would pay shipping, they would donate the stadium field turf they were replacing. Steve will volunteer his time for installation process, including men and equipment. Everything I do for this town is volunteered, I have

not profited from this town. Temperature of turf does increase with weather, but that varies by area. Some fields are now made from coconut, which is cooler. Sprinklers will cool, but then rebound with heat to produce increased humidity on field. Every synthetic field is put through tests, as far as impact safety. It only had two years of use; it has years of useful life left. Annapolis wanted the next generation of turf available that is why they wanted to get rid of it. Grooming machine costs about $1800 to maintain turf. Grading and sweeping moves the crumb rubber often to prevent dry rot, the key is to keep high traffic areas groomed often. I will do it or I will teach personnel to maintain it takes about a half hour.

Motion to open Public Comment: J. Melchiondo Second: L. Morano All are in favor

Frank Pecci – 11 Hemlock Dr: In reference to Ocean Acres Conservation zone; the developer has to remediate DEP study. Who developed bid for fire truck? Bring Township up to speed on the turf longevity issue. Spoke about PBA contract and percentages and longevity amounts.

Jake Taylor – 106 Newark Road: Spoke about Zoning Board member appointment, Ocean Acres conservation zone and turf. Engineer representing Laurel Oaks. Amount in Trust Fund account from developers?

John Hess: responds: Route 9 improvements previously done near the COAH housing project created a five year moratorium on improvements, which is why we had them put the driveway apron in for the housing. Sidewalks would require curbing; we did initially show sidewalks we asked for waiver due to moratorium. Curbing requires drainage, would fall under moratorium as per DOT, no approval. Project manager advised us we can amend our submittal before the Board, based on representation received from the DOT as to how their moratorium is enforced. Moratorium is for major utility road openings. I work for the Township, and represent only the Township; I have never represented Walters Development.

Vince Green – Heritage Bay: Fair contract for PBA.

Linda Kropf – 38 Bridgewaters Passage: In reference to ordinance regarding political signs, wants to restrict the number of signs on a property.

Raphael Adorno – 22 Beacon Drive: Apologized for outburst during presentation of turf. Navy Marine Corp. Memorial Stadium is the website for the information on the turf. Look into the entire turf process for complete information on costs associated with it. Who will be covering the costs associated with the completion and maintenance of this project? Contaminants break down on natural turf, artificial turf breeds

contamination; cleaning chemicals needed to remove. Please consider not doing anything to the existing fields, because if we can not play on it for any circumstance, hold onto the other field.

Motion to close Public Comment: J. Melchiondo Second: A. Bille

7. ***New Business:***

Ordinance 2012-10 (First Reading)
An Ordinance amending Chapter 55, Land Use, of the Code of the Township of Barnegat

Motion to introduce Ordinance: J. Melchiondo Second: M. Lisella
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

Explanation: Wellhead Protection Overlay District Ordinance, for the protection of water resources

Ordinance 2012-11 (First Reading)
An Ordinance amending Chapter 55, Land Use, of the Code of the Township of Barnegat

Motion to introduce Ordinance: M. Lisella Second: A. Bille
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

Explanation: To revise requirements for Political Signs

Ordinance 2012-12 (First Reading)
An Ordinance amending the Codified Ordinances of the Township of Barnegat in particular redesignating certain lots from the Residential Conservation Zone to the Residential High Zone and amending the Township Zoning Map to reflect that modification

Motion to introduce Ordinance: J. Melchiondo Second: A. Bille
Roll Call: Lisella: Abstain Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

Explanation: To change designation of certain lots in the Ocean Acres Section 3

Approval of Minutes for the Regular Township Committee Meeting of March 5, 2012

Motion to approve Minutes: A. Bille Second: M. Lisella
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes

Bille: Yes *Cirulli: Yes*

8. **Formal Action Agenda**

Resolution 2012-174
Resolution authorizing payment of Bill List in the amount of $4,333,697.49

Motion to adopt resolution: A. Bille ***Second: M. Lisella***
Roll Call: ***Lisella: Yes*** ***Morano: Abstain*** ***Melchiondo: Yes***
Bille: Yes ***Cirulli: Yes***

Resolution 2012-175
Resolution authorizing Emergency Temporary Appropriations for the Current Fund

Motion to adopt resolution: J. Melchiondo **Second: A. Bille**
Roll Call: ***Lisella: Yes*** ***Morano: Yes*** ***Melchiondo: Yes***
Bille: Yes ***Cirulli: Yes***

Resolution 2012-176
Resolution authorizing Water/Sewer Budget Transfers

Motion to adopt resolution: M. Lisella **Second: A. Bille**
Roll Call: ***Lisella: Yes*** ***Morano: Yes*** ***Melchiondo: Yes***
Bille: Yes ***Cirulli: Yes***

Resolution 2012-177
Resolution authorizing the purchase of servers for Barnegat Township Town Hall and Barnegat Township Police Department under State Contract

Motion to adopt resolution: M. Lisella **Second: A. Bille**
Roll Call: ***Lisella: Yes*** ***Morano: Yes*** ***Melchiondo: Yes***
Bille: Yes ***Cirulli: Yes***

9. **Consent Agenda:**

The below listed items are considered to be routine by the Township of Barnegat and will be enacted by one motion. There will be no formal discussion of these items. If discussion is desired, this item will be removed from the Consent Agenda and will be considered separately.

Approval of Brian S. Herczeg and Christopher Nicosia as volunteers for the Barnegat First Aid Squad

Approval of David R. Siecinski as a volunteer for the Barnegat Fire Company

Approval of the use of the Municipal Dock on Sunday, May 6, 2012 for a charity motorcycle event "David's Dream & Believe Foundation" from 8:30 AM until 11:00 AM

Approval of the use of the Municipal Dock on Saturday, April 28, 2012 for the "Jog with Jake" to have refreshments, a D.J. and face painting from 9:00 AM until 2:00 PM. The event "Jog with Jake" was previously approved by the Township Committee

Approval of the use of the Municipal Dock on Friday, June 8, 2012 from 5:30 PM until 7:30 PM for the Meridian Hospice Memorial Service

Approval of a Coin Toss for Pinewood Estates Fire Department on Route 72 and Route 539 on May 26, 27, 28, June 22, 23, 29, 30, July 1, 6, 7, 8, August 17, 18, 19, 31 September 1, 2, 7, 8, 9, 2012

Resolution 2012-178
Resolution authorizing Tax Collector to cancel charges on a Water/Sewer Account on Block 159, Lot 3, also known as 465 North Main Street

Resolution 2012-179
Resolution authorizing Tax Collector to cancel charges on a Water/Sewer Account on Block 164, Lot 3, also known as 866 West Bay Avenue

Resolution 2012-180
Resolution appointing Fred Bost to the Open Space Committee for the year 2012

Resolution 2012-181
Resolution authorizing the release of the Reforestation Bond for Advance Auto Parts

Resolution 2012-182
Resolution authorizing the release of a Performance Guarantee for Gunning River Mall for Sanitary Sewer System Improvements contingent upon the posting of a Maintenance Bond in the Amount of $7,944.00

Resolution 2012-183
Resolution authorizing the release of a Maintenance Bond for Heritage Point South, Section 2

Resolution 2012-184
Resolution authorizing a close out of the Horizon's Retention Basin Project and release of all reaming bonds associated therewith

Resolution 2012-185

Resolution authorizing the release of a Reforestation Bond for Meyer's Buy Rite Liquors

Resolution 2012-186
Resolution denying the release of Performance Guarantee for Site Improvements for Meyer's Buy-Rite Liquors

Resolution 2012-187
Resolution authorizing the refund of escrow deposits to Andwin Realty Investors, LLC due to application being withdrawn for a Self Storage Facility

Resolution 2012-188
Resolution authorizing the refund of escrow deposits to Andwin Realty Investors, LLC due to application being withdrawn for a Dunkin Donuts

Resolution 2012-189
Resolution authorizing the refund of escrow deposits to David Cavalier for Green Thumb Day Care Planning Board review escrow due to project being constructed

Resolution 2012-190
Resolution authorizing the refund of Planning Board Review Escrow deposits to Gary Tucker for Dunkin Donuts due to application being approved

Resolution 2012-191
Resolution authorizing the refund of Zoning Board Review Escrow deposits to Gary Tucker for Dunkin Donuts due to application being approved

Resolution 2012-192
Resolution authorizing the refund of escrow accounts with a zero balance

Resolution 2012-193
Resolution opposing the mandatory fluoridation in New Jersey Drinking Water as required by A-1811 and S-959

Resolution 2012-194
Resolution appointing Michael Baker to the Barnegat Township Zoning Board

Resolution 2012-195
Resolution for the Municipal Clerk to advertise for the receipt of Request for Proposal for Management and Full Service Maintenance for Water Storage Vessels

Resolution 2012-196
Resolution rescinding the additional fifty dollar charge for inspection of properties in the Barnegat Township Historic District

Resolution 2012-197
Resolution awarding the contract for the supply of a 105 Foot Aerial Ladder Fire Truck to Pierce Manufacturing, Inc. in the amount of $784,308.00

Resolution 2012-198
Resolution appointing two (2) Part Time Dock Masters and one (1) Part Time Adult Aerobics Instructor

Resolution 2012-199
Resolution authorizing the Township of Barnegat to participate in a Gasoline Contract with the Stafford Township Purchasing Department

Resolution 2012-200 - Removed from Consent and placed on Page 1 after salute to the flag
Resolution appointing Michele Rivers as Deputy Municipal Clerk

Resolution 2012-201 - Removed from Consent and placed on Page 1 after salute to the flag
Resolution appointing Donna Manno as Confidential Secretary

Motion to Adopt Consent Agenda: M. Lisella Second: J. Melchiondo
Roll Call: Lisella: Yes Morano: Yes
Melchiondo: Yes (abstain 2012-196)
Bille:Yes (abstain 2012-183) Cirulli: Yes

Resolutions added to the agenda:

Resolution 2012-202
Resolution approving Teamsters Contract for a period of three (3) years

Motion to adopt resolution: J. Melchiondo Second: A. Bille
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

Resolution 2012-203
Resolution approving PBA Contract for a period of three (3) years

Motion to adopt resolution: J. Melchiondo Second: A. Bille
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille:Yes Cirulli: Yes

Resolution 2012-204

Resolution appointing Richard Tallman to the ADA Committee

Motion to adopt resolution: L. Morano Second: J. Melchiondo
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

10. **Motion to Adjourn: L. Morano Second: A. Bille**
All are in favor

Township of Barnegat, New Jersey
Mayor's Report – March 19, 2012

Tonight's agenda is a reflection of how this Township Committee continues to work diligently on behalf of the residents of Barnegat. Whether it is resolving ongoing litigation or purchasing equipment for our public safety volunteers, this governing body is committed to making sure Barnegat remains a safe, clean and affordable place to live.

There are a few agenda items that I would like to comment on this evening. Ordinance 2012-10 amends the Land Use Code regarding well head protection. This is one of many ordinances related to land use that the Township must adopt in order to maintain the Town Center status. Having Town Center status will allow Barnegat to be more competitive in attracting commercial development along with receiving favorable treatment with state grant opportunities.

Ordinance 2012-12 will resolve ongoing litigation involving Ocean Acres, section 3. Back in 2004, the Township entered into an agreement with Pinelands Commission and Mark Madison that would NOT permit development of this section of Ocean Acres until the completion of a multilayer snake study. The study was performed and the findings resulted in "a completely negative finding with no Northern Pine Snakes being trapped, captured or seen during the study period." While the Township initially denied the zoning, the judge has indicated that we must sit down and acknowledge the facts and recognize our obligation to honoring the agreement. This ordinance strikes a delicate balance between smart growth and preservation of sensitive environmental areas through the creation of conservation zones. Simply calling for the Township to deny this zoning change or propose a building moratorium is not a practical approach to solving this matter and in the long run, would result in most likely costly and unsuccessful litigation.

Resolution 2012-97 authorizes the Township to acquire a fire aerial truck needed to replace an existing ladder truck that is unable to be certified as it is approaching 25 years old. One of the most important functions of this Committee is to make sure our public safety volunteers have the necessary resources to properly and safely respond to the needs of the community.

Finally, at the last Township Committee meeting, certain representations are made regarding the artificial turf field planned for Lower Shore Road Recreation Complex. Mr. Steve Cotton is here tonight to clarify some statements made at the last meeting. I am confident that Mr. Cotton will enlighten all of us on how having a turf field in Barnegat will benefit all who participate in recreational activities. As stated many times, this will be a multipurpose field to be used by many different Township related organizations.

It is safe to say not all will agree with some of the statement and decisions being made this evening. Regardless of how one feels about some of the decisions rendered by this Committee, all decisions are made with the best interest of Barnegat at heart. Thank you.

I, hereby certify that the foregoing minutes
were formally approved by the
Barnegat Township Committee

_____
Municipal Clerk

DASTI, MURPHY, McGUCKIN, ULAKY, CHERKOS & CONNORS

GEORGE F. MURPHY, JR. † B
JERRY J. DASTI
GREGORY P. McGUCKIN
ROBERT E. ULAKY ‡ >
RUSSELL P. CHERKOS
CHRISTOPHER J. CONNORS
O. NICHOLAS MONACO ‡ ◊
CHRISTOPHER K. KOUTSOURIS T

† CERTIFIED CIVIL TRIAL ATTY
‡ MEMBER, NATIONAL ACADEMY OF ELDER LAW ATTORNEYS, INC

B MEMBER NJ AND FLA BAR
> MEMBER NJ AND PA BAR
T MEMBER NJ AND NY BAR
◊ RULE 1:40 QUALIFIED MEDIATOR

A Professional Corporation
COUNSELLORS AT LAW
THE CLOCK TOWER BUILDING
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(732) 295-3000
(609) 918-1292

FACSIMILE NUMBERS
(609) 971-7093
(732) 349-1590
Real Estate: (609) 971-6176

WRITER'S E-MAIL:

March 27, 2012

PLEASE REFER TO:
Barnegat Twp. ads. Mark Madison, LLC et al - Docket No. OCN-L-1962-10 P.W.

Mr. Paul H. Schneider, Esq.
Giordano, Halleran & Ciesla
125 Half Mile Road, Suite 300
Red Bank, New Jersey, 07701-6777

Dear Mr. Schneider:

Enclosed please find a fully executed, filed Consent Order with regards to the above captioned matter.

Thank you.

Very truly yours,

Gregory P. McGuckin
Gregory P. McGuckin

GPM/du
cc: David Breeden, Barnegat Township Administrator

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GPM/du-GL-

Attorneys for Defendant, Township of Barnegat

FILED: 3-16-12
IN CHAMBERS
VINCENT J. GRASSO, A.J.S.C.

MARK MADISON, LLC, and WALTERS DEVELOPMENT CO., LLC Plaintiff vs. TOWNSHIP OF BARNEGAT and the TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BARNEGAT Defendant	SUPERIOR COURT OF NEW JERSEY LAW DIVISION OCEAN COUNTY DOCKET #L-1962-10 CIVIL ACTION CONSENT ORDER

This matter having been opened to the Court by Gregory P. McGuckin, Esq., Dasti, Murphy, McGuckin, Ulaky, Cherkos & Connors, attorneys for defendant, Township of Barnegat and in the presence of and with the consent of Paul H. Schneider, Esq., Giordano, Halloran and Ciesla, attorneys for the plaintiff, Mark Madison, LLC and for other good cause shown:

IT IS HEREBY ORDERED AND ADJUDGED on this 16 day of March, 2012, as follows:

DASTI, MURPHY
cGUCKIN, ULAKY,
ERKOS & CONNORS
OUNSELLORS AT LAW
0 WEST LACEY ROAD
P.O. BOX 1057
KED RIVER, N.J. 08731

1. The Township of Barnegat shall have sixty (60) days from the date of the entry of this Order to introduce, adopt and pass an Ordinance substantially consistent with Ordinance No. 2010-05.

2. Should the Township of Barnegat fail to adopt an Ordinance substantially consistent with the provisions of Ordinance 2010-05 within 60 days hereof, then and in that event, Ordinance 2004-23 shall be declared invalid upon the request of the plaintiff to enter such an Order on five days notice to the defendant.

3. In the event such an order is entered declaring Ordinance 2004-23 as set forth in the preceding paragraph, then and in that event, the Township will be required to pay to the plaintiff the sum of $200,000.00 in accordance with the agreement previously entered into by the municipality.

4. The entry of such an Order and the requirement for repayment of said $200,000.00 shall place the parties in the same position they were in prior to the execution of the tri party agreement.

5. Thereafter, the Township of Barnegat will promptly process for approval all applications necessary to permit development of the affected single family lots consistent with the previously developed lots in Ocean Acres, including but not necessarily limited to any necessary modifications to the existing Development and Reimbursement Agreement affecting Ocean Acres, roadway improvements, sanitary sewer improvements, potable water improvements (up to but not exceeding 29 lots) and stormwater.

DASTI, MURPHY
McGUCKIN, ULAKY,
CHERKOS & CONNORS
COUNSELLORS AT LAW
620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

BE IT FURTHER ORDERED that a copy of this Order be served upon all counsel of record within 5 days of the date hereof.

Vincent J. Grasso

Vincent J. Grasso, A.J.S.C.

I HEREBY CONSENT TO THE FORM AND ENTRY OF THE WITHIN ORDER

BY: _____
GREGORY P. McGUCKIN
Attorney for Defendant

I HEREBY CONSENT TO THE FORM AND ENTRY OF THE WITHIN ORDER

BY: _____
PAUL H. SCHNEIDER
Attorney for Plaintiff

DASTI, MURPHY
McGUCKIN, ULAKY,
CHERKOS & CONNORS
COUNSELLORS AT LAW
620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

RESOLUTION NO. 2012-172

RESOLUTION OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN, STATE OF NEW JERSEY, AUTHORIZING ACCEPTANCE AND EXECUTION OF CONSENT ORDER IN LITIGATION INITIATED BY MARK MADISON, LLC, *ET AL*

WHEREAS, the Township of Barnegat, Ocean of County, State of New Jersey (hereinafter referred to as the "Township"), has been involved in litigation initiated by Mark Madison, LLC, *et al*, which litigation is venued in the Superior Court of New Jersey, Law Division, Ocean County, Docket No. OCN-L-1962-10 (the "Litigation"); and

WHEREAS, the Township, after consultation with the Township Solicitor, has reviewed a proposed Consent Order which will resolve the pending litigation; and

WHEREAS, the Township finds that the proposed Consent Order under all circumstances is fair, appropriate, and in the best interests of the Township, its taxpayers and ratepayers.

NOW, THEREFORE, BE IT RESOLVED, this 5th day of March, 2012, by the Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey, as follows:

1. The Township accepts and approves the proposed Consent Order negotiated by and between the attorneys for all parties, a true copy of which is on file at the Office of the Township Clerk and can be reviewed during normal business hours.

2. The Township authorizes and directs the Mayor, Township Clerk, and Township Administrator to execute any and all necessary documents in order to implement the intent of this Resolution.

3. A certified copy of this Resolution shall be forwarded by the Township Clerk to the following:

DASTI, MURPHY
McGUCKIN, ULAKY,
CHERKOS & CONNORS

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

(a) Honorable Alfonse Cirulli, Mayor;

(b) David Breeden, Administrator;

(c) Gregory P. McGuckin, Esq.;

CERTIFICATION

I certify that the foregoing Resolution was duly adopted by the Township of Barnegat at a meeting held on March 5, 2012, a quorum being present and voting in the majority.

_____

SHARON L. AUER, Acting Township Clerk

Prepared by:

DASTI, MURPHY, McGUCKIN, ULAKY, CHERKOS & CONNORS
Forked River, New Jersey 08731

JJD/gj/Barnegat Resolutions 2012[GL-20148
Mark Madison, LLC., ads.[GL-19148]

DASTI, MURPHY McGUCKIN, ULAKY, CHERKOS & CONNORS

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

BARNEGAT TOWNSHIP COMMITTEE
OCEAN COUNTY
900 WEST BAY AVENUE
BARNEGAT, NJ 08005

TOWNSHIP COMMITTEE MEETING MINUTES
MARCH 5, 2012 @ 6:30 PM

1. **Call to Order**

2. **Provisions of the Open Public Meetings Law:**
   Pursuant to the requirements of the OPEN PUBLIC MEETINGS LAW, adequate Public Notice of this meeting has been given:
   a. By publication in the required newspapers of the date, time and location of this meeting more than 48 hours in advance.
   b. By posting advance written notice on the official Bulletin Board in the Municipal Building.
   c. By filing advance written notice with the Township Clerk for the purpose of Public inspection.

ANNOUNCEMENT: At this time we ask everyone to please turn all cell phones or pages to either **OFF** or **VIBRATE**.

3. **Roll Call of Officials Present:**
   Committeeman Lisella - Present
   Committeeman Morano – Present
   Committeeman Melchiondo - Present
   Deputy Mayor Bille - Present
   Mayor Cirulli – Present

   Invocation by Reverend Erik C. Hall, Pastor Barnegat Anew United Methodist Church

4. **Salute to the flag**

   Presentation of Team New Jersey Elite on Developing a Youth Baseball/Athletic Complex in Barnegat

   Presentation to Township Committee by Jersey Outlaws Boat Racing Association

   Presentation of certificates to the Barnegat High School Cheerleaders

5. **Mayor's Report**
   Read and made a part of these minutes

Motion to create resolution opposing Senate Bill 959 and Assembly Bill 1811 which mandates fluoridation of public water systems

Motion: J. Melchiondo **Second: A. Bille**
All are in favor

6. Committee Reports

M. Lisella: Tax situation is state wide, not just Barnegat problem. Meeting with Commissioner was fruitful, should have another meeting in about three weeks. Township has the right, not the County or the Tax Assessor, to ask for any assessments when we think they are deemed needed.

L. Morano: Shared services are working very well, working closely with Recreation department. Concerts scheduled, we are $6,000 under budget with concert bookings.

J. Melchiondo: Recycling efforts are paying off, received $25,175.96 from County for tonnage picked up. Chamber of Commerce Town Wide yard sale set for April 28, 2012. EDC building permit issued to Big Lots for the former A&P site. Genuardi's will stay open until they find a new buyer. Meadowedge Park classes have been set, check website.

Al Bille: Spoke at the Dunfee School last week for read across America Day, the second graders are wonderful. Planning Board unanimously rejected the Fifth Avenue project, which was a conversion from a 55+ community to a non-adult community.

7. Administrator's report

Meeting with Commissioner of Department of Community Relations was very productive. Town can bond for tax assessment loss. Recommended extend the re-inspection time for tax assessment inspections. Highlighted the inconsistencies throughout the state with respect to tax assessments. Discussed this agendas ordinances and resolutions.

J. Dasti: Received reimbursement of a portion of legal expenses for Menk paying for Wells and Fourth Street Pump Station benefitting both east and west of the parkway, town will be receiving 1.4 million in connection fees.

Motion to open Public Comment: M. Lisella ***Second: A. Bille***
All are in favor

Phil Checcia – 12 Windward Drive: asking for clarification on the budget process and the 2% CAP.

Jake Taylor – 106 Newark Road: asking committee to look into Historic Preservation Ordinance and associated fees. Stated information he

researched on the turf received from field in Annapolis. Why did we pay so much to ship free turf for Lower Shore Road field? Wants Mr. Cotton brought in to explain the turf used and longevity.

Joseph Inserra – 20 Stillwaters Court: Will present homeowners be grandfathered in to eliminate fees for Historic District?

Frank Pecci – 11 Hemlock Drive: Fluoridation in our water should not be allowed. Required clarification on a few resolutions on this agenda. Commented on prior turf health issues, the newer type is safer than previous made turf.

Attorney explained energy provider resolution on agenda.

Rafael Adorno – 22 Beacon Drive: Highly suggests the Committee looks into the donated turf issue as it relates to product longevity, health and injury issues that have been reported on for turf usage. Check the Navy Marine Academy website who donated this turf to Barnegat.

Marianne Clemente – 565 E. Bay Avenue: Wanted clarification on the expansion of the Historical area as relates to the resolution on this agenda. Asked committee for clarification of holiday pay to Public Works employees for collecting recycling on a holiday.

Motion to close Public Comment: J. Melchiondo Second: A. Bille
All are in favor

8. ***New Business:***

Ordinance 2012-05 (First Reading)
An Ordinance amending Chapter 55, Land Use, of the Code of the Township of Barnegat

Explanation: To create a new Town Center area along Route 9 from the intersection of Route 9 and Barnegat Boulevard North to just before the intersection of Route 9 and Gunning River Road

Motion to introduce Ordinance: J. Melchiondo Second: M. Lisella
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

Ordinance 2012-06 (First Reading)
An Ordinance amending Chapter 55, Land Use, of the Code of the Township of Barnegat

Explanation: To create a new Commercial Core Planned Highway Development Commercial (CC-CPHD) Overlay Zone along the Route 9 Corridor

Motion to introduce Ordinance: M. Lisella Second: A. Bille
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

Ordinance 2012-07 (First Reading)
An Ordinance amending Chapter 55, Land Use, of the Code of the Township of Barnegat

Explanation: This Ordinance amends Section 55-31, Schedule of Area, Yard and Building Requirements and Schedule A to include the bulk, yard and other requirements for the TC_CPHD, TC-CN, TC-CV and CC-CPHD Overlay Zones.

Motion to introduce Ordinance: A. Bille Second: M. Lisella
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

Ordinance 2012-08 (First Reading)
An Ordinance amending Chapter 55, Land Use, of the Code of the Township of Barnegat

Explanation: This Ordinance will amend Chapter 55 in accordance with the Township of Barnegat's Initial Plan Endorsement amending Section 55-7 Zoning Map to reflect changes that have occurred since the adoption of the last Zoning Map, dated May 10, 2005

Motion to introduce Ordinance: M. Lisella Second: A. Bille
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

Ordinance 2012-09 (First Reading)
An Ordinance amending Chapter 55, Land Use, of the Code of the Township of Barnegat

Explanation: This Ordinance will establish parking standards for the uses permitted within the TC-CPHD, TC-CN, TC-CV and CC-CPHD

Motion to introduce Ordinance: A. Bille Second: M. Lisella
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

Approval of Minutes for the Regular Township Committee Meeting of February 21, 2012

Motion to approve Minutes: J. Melchiondo Second: M. Lisella
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

9. Formal Action Agenda

Resolution 2012-154
Resolution authorizing payment of Bill List in the amount of $919,785.75

Motion to adopt resolution: M. Lisella Second: A. Bille
Roll Call: Lisella: Yes Morano: Yes Melchiondo: Yes
Bille: Yes Cirulli: Yes

Resolution 2012-155
Resolution authorizing Emergency Temporary Appropriations for the Current Fund

Motion to adopt resolution: J. Melchiondo Second: A. Bille
Roll Call: *Lisella: Yes Morano: Yes Melchiondo: Yes*
Bille: Yes Cirulli: Yes

10. Consent Agenda:

The below listed items are considered to be routine by the Township of Barnegat and will be enacted by one motion. There will be no formal discussion of these items. If discussion is desired, this item will be removed from the Consent Agenda and will be considered separately.

Approval of an On-Premise 50/50 on April 21, 26, 27, 28, 29 and May 23, 2012 for the PTO Barnegat High School

Resolution 2012-156
Resolution canceling taxes and authorizing a refund pursuant to N.J.S.A. 54:4-3.32 on Block 95.44, Lot 96, also known as 28 Edgewater Path

Resolution 2012-157
Resolution authorizing a refund of premium paid at Tax Sale on Block 114.39, Lot 35, also known as 8 Seaview Court

Resolution 2012-158
Resolution authorizing Tax Collector to cancel charges on a Water/Sewer Account on Block 164, Lot 3, also known as 866 West Bay Avenue

Resolution 2012-159
Resolution authorizing a refund of overpayment on lots no longer assessed on Block 92.16, Lot 3

Resolution 2012-160
Resolution authorizing Kammie Verdolina to issue Tax Searches for the calendar year 2012

Resolution 2012-161
Resolution authorizing the closing of Escrow Accounts which have a zero balance

Resolution 2012-162
Resolution authorizing the reduction of a Performance Guarantee for Site Improvements to Gunning Hill Estates

Resolution 2012-163
Resolution supporting Bills S243 and A327 Volunteer Protection Legislation

Resolution 2012-164
Resolution authorizing the Township Administrator to endorse a contract with Stewart Business Systems for the supply of laser printer toner for 2012

Resolution 2012-165
Resolution authorizing the Township Administrator to endorse a contract with Schaefer Pyrotechnics for July 4, 2012 Fireworks Display

Resolution 2012-166
Resolution authorizing the Township Administrator to endorse a contract with Mitchell Humphrey & Co. for Zoning Manager and Land Use Manager Software

Resolution 2012-167
Resolution of need of the Township of Barnegat approving the Application and the Financial Agreement with Laurel Oaks Family Apartments 2 LLC for a Tax-Exempt pursuant to the New Jersey Housing and Mortgage Finance Agency Law

Resolution 2012-168
Resolution approving the Application and the Financial Agreement with Laurel Oaks Family Apartments 2 LLC

Resolution 2012-169
Resolution authorizing the Township of Barnegat to seek the qualifications of Energy Agents and Energy Consultants for the purpose of investigating the feasibility of developing a "Government-Private Energy Aggregation Program

Resolution 2012-170
Resolution authorizing the Township Administrator to execute a contract under New Jersey State Contract Number A76370 for the purchase of various Firefighter Protective Clothing and Equipment for the Barnegat Volunteer Fire Company

Resolution 2012-171
Resolution authorizing settlement of litigation with the County of Ocean for Barnegat Township v. Menk Corporation

Resolution 2012-172
Resolution authorizing acceptance and execution of consent order in litigation initiated by Mark Madison

Motion to Adopt Consent Agenda: L. Morano Second: A. Bille
Roll Call: Lisella: Yes (abstain from #167 & 168) Morano: Yes
Melchiondo: Yes Bille: Yes Cirulli: Yes

11. **Motion to Adjourn: L. Morano Second: J. Melchiondo**
All are in favor

ITEMIZED RECEIPTS (Other than Loans)	SCHEDULE A	Page No 5 of 6

PLEASE TYPE OR PRINT. PHOTOCOPIES MAY BE USED IF ADDITIONAL FORMS ARE NEEDED.

RECEIPT TYPE (USE A SEPERATE "SCHEDULE A" FOR EACH TYPE AND FOR EACH SEPARATE ACCOUNT)

☐ CURRENCY ☒ ALL OTHER MONETARY CONTRIBUTIONS ☐ IN-KIND CONTRIBUTIONS-EXPENDITURES MADE BY OTHERS ☐ REIMBURSEMENTS/ REFUNDS OF DISBURSEMENTS ☐ DIVIDENDS/ INTEREST

FULL COMMITTEE NAME:

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Frank Sadeghi		PO Box 25332		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
Engineer		Toms River, NJ 08754		
EMPLOYER NAME: Morgan Engineering, LLC			12/09/2010	600.00
EMPLOYER ADDRESS (NUMBER AND STREET): 230 Main Street				
(CITY, STATE, AND ZIP CODE): Toms River, NJ 08753				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE: 600 00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Berry Sahradnik Kotzas Riordan Benson PC		212 Hooper Avenue PO Box 757		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
		Toms River, NJ 08754		
EMPLOYER NAME			11/03/2010	1200 00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE: 4200.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Michael Turner		PO Box 350		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
Principal		Trenton, NJ 08603		
EMPLOYER NAME: Burton Trent Public Affairs, L			12/09/2010	1200 00
EMPLOYER ADDRESS (NUMBER AND STREET): PO Box 350				
(CITY, STATE, AND ZIP CODE): Trenton, NJ 08603				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE: 1200.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Edward Walters		500 Barnegat Boulevard North, Bld 100		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
Owner		Barnegat, NJ 08005		
EMPLOYER NAME: Walters Management Co			10/02/2010	600 00
EMPLOYER ADDRESS (NUMBER AND STREET): 500 Barnegat Boulevard North				
(CITY, STATE, AND ZIP CODE): Barnegat, NJ 08005				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE: 1200 00		

1. SUBTOTAL (Add all receipts listed on this page.)	3800 00
2. TOTAL RECEIPTS, THIS PERIOD (Complete this line on the last page used for each receipt type. Carry forward to applicable line on Page 2, Column A.)	

ITEMIZED RECEIPTS (Other than Loans)

SCHEDULE A | Page No. 1 of 6

PLEASE TYPE OR PRINT. PHOTOCOPIES MAY BE USED IF ADDITIONAL FORMS ARE NEEDED.

RECEIPT TYPE (USE A SEPERATE "SCHEDULE A" FOR EACH TYPE AND FOR EACH SEPARATE ACCOUNT)

- [ ] CURRENCY
- [X] ALL OTHER MONETARY CONTRIBUTIONS
- [ ] IN-KIND CONTRIBUTIONS-EXPENDITURES MADE BY OTHERS
- [ ] REIMBURSEMENTS/REFUNDS OF DISBURSEMENTS
- [ ] DIVIDENDS/INTEREST

FULL COMMITTEE NAME:

ACCOUNT NAME AND NUMBER: OC CTY FIN 36-972274

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Joseph Del Duca		190 Upland Way		
OCCUPATION: Partner	STATE USE ONLY	(CITY, STATE AND ZIP CODE): Haddonfield, NJ 08033		
EMPLOYER NAME: Walters Management Co			09/04/2011	600.00
EMPLOYER ADDRESS (NUMBER AND STREET): 500 Barnegat Boulevard North Bldg 100				
(CITY, STATE, AND ZIP CODE): Barnegat, NJ 08005				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE: 600 00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Sean Gertner		PO Box 499		
OCCUPATION: Attorney	STATE USE ONLY	(CITY, STATE AND ZIP CODE): Lakewood, NJ 08701		
EMPLOYER NAME: Gertner Mandel & Peslak			09/14/2011	300 00
EMPLOYER ADDRESS (NUMBER AND STREET): PO Box 499				
(CITY, STATE, AND ZIP CODE): Lakewood, NJ 08701				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE: 525 00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
James Gluck		217 Washington Street		
OCCUPATION: Attorney	STATE USE ONLY	(CITY, STATE AND ZIP CODE): Toms River, NJ 08753		
EMPLOYER NAME: Gluck & Allen, LLC			07/05/2011	300 00
EMPLOYER ADDRESS (NUMBER AND STREET): 217 Washington Street				
(CITY, STATE, AND ZIP CODE): Toms River, NJ 08753				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE: 600.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Hiering Dupignac Stanzione Dunn&Beck PC		64 Washington Street CN 2015		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE): Toms River, NJ 08754		
EMPLOYER NAME			09/09/2011	1800 00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE: 1800 00		

1. SUBTOTAL (Add all receipts listed on this page.)	3000 00
2. TOTAL RECEIPTS, THIS PERIOD (Complete this line on the last page used for each receipt type. Carry forward to applicable line on Page 2, Column A.)	

ITEMIZED RECEIPTS (Other than Loans)

SCHEDULE A | Page No. 6 of 6

PLEASE TYPE OR PRINT. PHOTOCOPIES MAY BE USED IF ADDITIONAL FORMS ARE NEEDED.

RECEIPT TYPE (USE A SEPERATE "SCHEDULE A" FOR EACH TYPE AND FOR EACH SEPARATE ACCOUNT)

- [ ] CURRENCY
- [X] ALL OTHER MONETARY CONTRIBUTIONS
- [ ] IN-KIND CONTRIBUTIONS- EXPENDITURES MADE BY OTHERS
- [ ] REIMBURSEMENTS/ REFUNDS OF DISBURSEMENTS
- [ ] DIVIDENDS/ INTEREST

FULL COMMITTEE NAME:

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Edward Walters		500 Barnegat Boulevard North, Blg 100		
OCCUPATION: Owner	STATE USE ONLY	(CITY, STATE AND ZIP CODE): Barnegat, NJ 08005		
EMPLOYER NAME: Walters Management Co			09/04/2011	600.00
EMPLOYER ADDRESS (NUMBER AND STREET): 500 Barnegat Boulevard North				
(CITY, STATE, AND ZIP CODE): Barnegat, NJ 08005				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE: 600 00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Gregory Walters		407 N Third Street		
OCCUPATION: Partner	STATE USE ONLY	(CITY, STATE AND ZIP CODE): Surf City, NJ 08008		
EMPLOYER NAME: Walters Management Co			09/04/2011	600.00
EMPLOYER ADDRESS (NUMBER AND STREET): 500 Barnegar Boulevard North, Bldg 100				
(CITY, STATE, AND ZIP CODE): Barnegat, NJ 08005				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE: 600.00		

1. SUBTOTAL (Add all receipts listed on this page.)	1200 00
2. TOTAL RECEIPTS, THIS PERIOD (Complete this line on the last page used for each receipt type. Carry forward to applicable line on Page 2, Column A.)	19100 00

GIORDANO, HALLERAN & CIESLA, P.C.
125 Half Mile Road, Suite 300
Red Bank, N.J. 07701-6777
(732) 741-3900

Attorneys for Plaintiffs

MARK MADISON, LLC, and WALTERS DEVELOPMENT CO., LLC Plaintiff, v. TOWNSHIP OF BARNEGAT AND THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BARNEGAT Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION OCEAN COUNTY DOCKET NO. L1962-10 P.W. Civil Action **SUMMONS**

From: The State of New Jersey

To: The Defendant(s) Named Above: **Township Committee of the Township of Barnegat**

The Plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The Complaint (and amendments, if any) attached to this Summons states the basis for this lawsuit. If you dispute this Complaint, you or your attorney must file a written Answer or Motion and Proof of Service with the Deputy Clerk of the Superior Court in the county listed above within 35 days from the date you received this Summons, not counting the date you received it. (The address of each Deputy Clerk of the Superior Court is provided.) If the Complaint is one in foreclosure, then you must file your written Answer or Motion and Proof of Service with the Clerk of the Superior Court, Hughes Justice Complex, CN-971, Trenton, NJ 08625. A $135 filing fee payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the Deputy Clerk of the Superior Court) must accompany your Answer or Motion when it is filed. You must also send a copy of your Answer or Motion to Plaintiff's attorney whose name and address appear above, or to Plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written Answer or Motion (with fee and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief Plaintiff demands, plus interest and costs of suit. If

judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

Jennifer M Perez PH

JENNIFER M. PEREZ,
Acting Clerk of the Superior Court

Dated: May 27, 2010

Name of Defendant to be Served: **Township Committee of the Township of Barnegat**

Address of Defendant to be Served: **c/o Ms. Kathleen T. West, Township Clerk**
Township of Barnegat
900 West Bay Avenue
Barnegat, NJ 08005-1298

GIORDANO, HALLERAN & CIESLA, P.C.
125 Half Mile Road, Suite 300
Red Bank, N.J. 07701-6777
(732) 741-3900

Attorneys for Plaintiffs

MARK MADISON, LLC, and WALTERS DEVELOPMENT CO., LLC

Plaintiffs,

v.

TOWNSHIP OF BARNEGAT and the TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BARNEGAT

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
OCEAN COUNTY

DOCKET NO. (P.W.) L 1962.10

Civil Action

COMPLAINT IN LIEU OF PREROGATIVE WRITS, FOR SPECIFIC PERFORMANCE OF CONTRACT, FOR DAMAGES AND FOR OTHER RELIEF

Plaintiffs Mark Madison, LLC ("Mark Madison") and Walters Development Co., LLC ("Walters" and jointly with Mark Madison, "Plaintiffs"), with offices located at 500 Barnegat Boulevard North, Barnegat, New Jersey 08005, by way of Complaint against Defendants Township of Barnegat ("Barnegat") and the Township Committee of the Township of Barnegat ("Committee" and jointly with Barnegat, "Defendants"), say:

COUNT ONE

1. Plaintiff Mark Madison is a limited liability company of the State of New Jersey and an affiliate of Walters.

2. Plaintiff Walters is a limited liability company of the State of New Jersey and an affiliate of Mark Madison.

3. Defendant Barnegat is a municipal corporation of the State of New Jersey located in Ocean County.

4. Defendant Committee is the governing body of Barnegat.

5. Portions of Barnegat are located in the "Pinelands Area" and subject to the jurisdiction of the Pinelands Commission pursuant to the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq. ("Pinelands Protection Act").

6. "Ocean Acres" is an approximately 2,000 lot subdivision located in the "Pinelands Area" of Barnegat. All of the lots in Ocean Acres were created prior to the enactment of the Pinelands Protection Act, N.J.S.A. 13:18A-11, and the promulgation of the Pinelands Comprehensive Management Plan ("CMP"), N.J.A.C. 7:50.

7. The Pinelands CMP designates certain lands in the Pinelands Area as Regional Growth Areas. These are "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..." N.J.A.C. 7:50-5.13(g).

8. Mark Madison and its affiliates own several hundred lots ("Plaintiffs' Lots") in Ocean Acres, situated in a Pinelands Regional Growth Area as designated in the Pinelands CMP

9. The Legislature has designated Pinelands Regional Growth Areas as "smart growth areas". N.J.S.A. 52:14F-14; N.J.S.A. 52:27D-10.2; N.J.S.A. 13:1D-144.

10. Consistent with the Pinelands Regional Growth Area designation, Barnegat's Zoning Ordinance as certified by the Pinelands Commission on April 8, 1983 includes a "RH-Residential High Zone" ("RH Zone"). The RH Zone allows development of single family dwellings on lots 10,000 square feet or larger without the use of Pinelands Development Credits ("PDCs"), and development of single family dwellings on lots between 6,000 square feet to

10,000 square feet in size with the purchase of 0.25 PDC for each such "undersized lot." Barnegat's RH Zone included Plaintiffs' Lots.

11. Many other lots in Ocean Acres remain under the individual ownership of third parties. Many of the Plaintiffs' Lots are non-contiguous and are interspersed with lots that have been previously developed as well with undeveloped lots owned by such third-parties.

12. Mark Madison also has an ownership interest in additional land that is not subdivided (the "Remaining Land"), also located in the Ocean Acres section of Barnegat and also situated in the in the Pinelands Regional Growth Area of Barnegat in the RH Zone.

13. In or about 2004, Mark Madison sought to develop some of Plaintiffs' Lots as well as related road and utility infrastructure and requested construction permits from Barnegat. In February, 2004, Barnegat issued notices of intent to issue construction permits for the construction of single family homes on 35 of Plaintiffs' Lots and related infrastructure.

14. Also in or about 2004, the Pinelands Commission determined that portions of Ocean Acres constitute habitat that is critical to the survival of one or more local populations of threatened or endangered animal species and plant species, including Northern Pine Snake.

15. Accordingly, in response to Barnegat's notices of intent to issue construction permits, the Executive Director of the Pinelands Commission issued written notice that the issuance of construction permits for the 35 Plaintiffs' Lots and the related infrastructure raised substantial issues with respect to the conformance of the proposed development with the minimum standards of the Pinelands CMP (commonly known as "Call-up Letters"), in particular the standards of the Pinelands CMP regarding threatened and endangered species.

16. As provided in the Pinelands CMP, Mark Madison requested adjudicatory hearings before the Office of Administrative Law to contest the Call-up Letters.

17. The Pinelands Commission determined that the local population of threatened or endangered species found within Ocean Acres would be protected by establishing a "Conservation Area" comprised of contiguous areas of land that constitutes critical habitat.

18. Accordingly, the Pinelands Commission encouraged Barnegat to amend its Zoning Ordinance to establish a "Conservation Area" of approximately 730 lots as a new zoning district in which residential development would be prohibited, while continuing to permit development of the lots within the RH Zone located outside of the Conservation Area. In response, Barnegat established a "Residential Conservation RC Zone" ("RC Zone") consisting of this Conservation Area.

19. Mark Madison conducted surveys of threatened and endangered plant and animal species in Ocean Acres in accordance with survey protocols developed by Mark Madison's consultant, EcolSciences, Inc., which survey protocols were accepted by the Pinelands Commission. Based on these studies, Mark Madison acknowledged the presence of threatened and endangered species and their habitat, including Northern Pine Snake, in portions of the Conservation Area of Ocean Acres, and concluded that other portions of the Conservation Area are not critical habitat for threatened or endangered species.

20. Specifically, within the Conservation Area of Ocean Acres is a sub-area comprised of approximately 135 lots, referred to as "Overlay Area", which is generally defined as the area between Nautilus Drive, Avalon Avenue, Mutineer Avenue and Viking Drive, that the Pinelands Commission contended constituted habitat critical for the survival of the local population of Northern Pine Snake and hence should be included in the Conservation Area. Mark Madison concluded that the Overlay Area does not constitute critical habitat for the

Northern Pine Snake and should not be included in the Conservation Area and Barnegat's new RC Zone.

21. The Overlay Area is located in a sewer service area as designated in a water quality management plan approved by the Department of Environmental Pprotection.

22. Had it not been for the Pinelands Commission's determination that the Overlay Area is critical habitat for Northern Pine Snake and thus should be included in the Conservation Area, Barnegat would not have rezoned the Overlay Area. Rather, the Overlay Area would have retained its zoning for residential development as part of Barnegat's RH Zone in the Pinelands Regional Growth Area.

23. Barnegat, the Pinelands Commission and Mark Madison engaged in good faith negotiations concerning these disputes concerning inclusion of the Overlay Area in the Conservation Area and Barnegat's RC Zone. These negotiations resulted in two agreements.: (1) a May 7, 2004 Stipulation of Settlement and Dismissal of Administrative Hearing Request ("Settlement Agreement") between the Pinelands Commission and Mark Madison and (2) a September 13, 2004 agreement between Barnegat, the Pinelands Commission and Mark Madison ("Tri-Party Agreement").

24. These Agreements acknowledge that the Pinelands Commission designated a portion of Ocean Acres as a "Conservation Area" in which development would be prohibited due to habitat the Pinelands Commission deemed critical to the survival of one or more local populations of threatened or endangered species, and that included within this Conservation Area is a smaller area, designated as the "Overlay Area".

25. In the Tri-Party Agreement, Barnegat and the Pinelands Commission acknowledged Mark Madison's contention that the Overlay Area is not critical habitat for

Northern Pine Snake should not be included in the Conservation Area and Barnegat's RC Zone. Barnegat and the Pinelands Commission further agreed that Mark Madison could perform an extensive survey of the Overlay Area "in order to demonstrate this contention to the Pinelands Commission."

26. In the Tri-Party Agreement, Barnegat and the Pinelands Commission agreed that the protocol for the Northern Pine Snake survey and the conclusions required to show that the Overlay Area does not have critical habitat would be developed by Mark Madison's consultant, EcolSciences, Inc. ("EcolSciences"), and that the protocol must be approved by the Pinelands Commission staff prior to commencement of the survey work.

27. In the Tri-Party Agreement Barnegat and the Pinelands Commission further agreed that if, following this survey, the Pinelands Commission determined that the Overlay Area is not habitat critical for the Northern Pine Snakes, then the land within the Overlay Area would be removed from the Conservation Area and Barnegat would restore the status quo ante by promptly amend its zoning ordinance so that the Overlay Area reverts to its prior zoning permitting residential development under the standards of Barnegat's RH Zone.

28. Specifically the Tri-Party Agreement states:

> Should the Pinelands Commission determine, based on the submission of new information generated by the additional survey work discussed in Paragraph 28 above, that the area described in Paragraph 17 above or a designated portion thereof does not constitute habitat critical for the survival of the local population of Northern Pine Snake found in Ocean Acres, ***Barnegat agrees to promptly amend its Zoning Ordinance to remove this area or the designated portion thereof from the RC Zone and place it within the RH Zone*** and to submit such ordinance to the Pinelands Commission for certification pursuant to N.J.A.C. 7:50-3.45. (Emphasis supplied).

29. Barnegat, the Pinelands Commission, and Mark Madison all agreed that the Tri-Party Agreement is "binding upon an intended for the exclusive benefit of the Parties hereto . . . "

30. Mark Madison made significant compromises and concessions in consideration of these promises made by Barnegat in the Tri-Party Agreement. By way of example, Mark Madison agreed to forego its rights to challenge Barnegat's zoning ordinance amendment establishing the RC Zone and including the Overlay Area in that zone, notwithstanding that this limited Mark Madison's ability to develop its property and notwithstanding that Mark Madison had scientific data to support its conclusion that it was unreasonable to include the Overlay Area in the RC Zone.

31. By way of further example, in consideration of the promises made by Barnegat in the Tri-Party Agreement, Mark Madison agreed to place deed restrictions on certain of its lots and has restricted its lots as it agreed.

32. By way of further example, in consideration of the promises made by Barnegat in the Tri-Party Agreement, Mark Madison agreed to pay Barnegat $200,000.00 in connection with the design and construction of public recreational facilities in Barnegat, and Mark Madison has paid that sum to Barnegat.

33. Pursuant to the Tri-Party Agreement and the Settlement Agreement, Ecolsciences prepared a Northern Pine Snake survey protocol, and, on May 20, 2005, the Pinelands Commission approved the protocol to be used for the survey. In its approval, the Pinelands Commission specify that "[t]he survey, including radio tracking, must be at least two years in duration, or four total seasons."

34. Thereafter, Ecolsciences performed the survey in accordance with the protocol approved by the Pinelands Commission and, in November 2007, issued a report titled "Northern Pine Snake Survey Results for Ocean Acres Overlay Area, Township of Barnegat, Ocean County, New Jersey, 2005-2007" (the "Report"). The Report documented a "completely negative finding".

35. Mark Madison submitted the Report to the Pinelands Commission on November 20, 2007.

36. Over a period of almost two years the Pinelands Commission considered the Report. Among other things, the Pinelands Commission solicited public comment on the Report both through a notice posted on the Pinelands Commission website, and by mailing notice directly to interested conservation groups and to owners of land within 200 feet of the Overlay Area.

37. On October 2, 2009, the Pinelands Commission issued its determination that "the Overlay Area does not constitute critical habitat for Northern pine snakes."

38. Thereafter, Plaintiffs requested that the Committee promptly amend Barnegat's zoning ordinance to restore the Overlay Area to the RH Zone.

39. Notwithstanding its promises in the Tri-Party Agreement, the Committee failed to promptly restore the Overlay Area to the RH Zone. Hence, by letter of December 29, 2009 to the Township Attorney from Plaintiff's counsel, Plaintiffs formally requested that Barnegat promptly restore the Overlay Area to the RH Zone.

40. Notwithstanding that it agreed in the Tri-Party Agreement to "promptly rezone" the Overlay Area if the Pinelands Commission found it was not critical habitat, it was not until

March 15, 2010 that the Committee introduced on first reading the corrective ordinance, No 2010-05, which would re-designate the Overlay Area from the RC Zone to the RH Zone.

41. Thereafter, the Committee referred proposed Ordinance No. 2010-05 to the Township's Planning Board pursuant to N.J.S.A. 40:55D-64 and 40:55D-26. The Planning Board determined that Ordinance No. 2010-05 is consistent with Barnegat's Master Plan.

42. On May 3, 2010 the Committee considered Ordinance No. 2010-05 at second reading and conducted a public hearing on the this corrective ordinance pursuant to N.J.S.A. 40:49-2.

43. At its meeting on May 3, 2010, the Committee voted down corrective Ordinance No. 2010-05, with three members of the Committee voting "no", one member voting "yes", and one member abstaining.

44. By virtue of the aforesaid, Defendants' failure to adopt Ordinance No. 2010-05 is arbitrary, capricious and unreasonable.

45. By virtue of the aforesaid, Defendants' failure to adopt Ordinance No. 2010-05 is contrary to the Municipal Land Use Law, is contrary of sound principles of planning, and is otherwise *ultra vires* and unlawful.

WHEREFORE, Plaintiffs Mark Madison, LLC and Walters Development Co., LLC demand judgment against Defendants Township of Barnegat and the Township Committee of the Township of Barnegat:

a. For affirmative injunctive relief compelling the adoption of an ordinance returning the Overlay Area to Barnegat Township's RH-Residential High Zone;

b. For a declaration that the Overlay Area shall be deemed part of Barnegat Township's RH-Residential High Zone;

d. For attorneys fees and costs of suit; and

e. For such other relief as may be just and equitable.

COUNT TWO
(Equitable and Promissory Estoppel)

46. Plaintiffs repeat all prior allegations.

47. In the Tri-Party Agreement, Barnegat acknowledged that the only basis for rezoning the Overlay Area from the RH Zone to the RC Zone was the Pinelands Commission's determination that the Overlay Area was critical habitat for the Northern Pine Snake; Barnegat further agreed that Mark Madison could conduct a Northern pine snake survey over a period of two years in accordance with a protocol approved by the Pinelands Commission's staff; Barnegat further agreed that if, following that survey, the Pinelands Commission determined that the Overlay Area is not habitat critical for the survival of the local population of Northern Pine Snake within Ocean Acres, then Barnegat would adopt a corrective amendment to its zoning ordinance to restore the Overlay Area to the development standards of Barnegat's RH Zone.

48. By entering into the Tri-Party Agreement Barnegat acknowledged that the Tri-Party Agreement is "binding upon an intended for the exclusive benefit of the Parties hereto and their respective successors hereunder."

49. In entering into the Tri-Party Agreement, Defendants knew or should have known that Plaintiffs would rely upon the representations and promises made by Barnegat and the Committee.

50. Plaintiffs have relied, to their detriment, upon Defendants' representations and promises. Among other things, Plaintiffs have incurred costs in conducting the Northern pine snake survey; Plaintiffs have foregone their rights to challenge decisions of the Pinelands Commission and Barnegat concerning establishment of the Conservation Zone and including the

Overlay Area in the RC High Zone; Plaintiffs have deed restricted their property, and Plaintiffs have paid Barnegat $200,000.

51. Plaintiffs acted reasonably in relying upon Defendants promises and representations.

52. The Northern pine snake survey has been completed in accordance with the protocol approved by the Pinelands Commission staff and the Pinelands Commission has determined that the Overlay Area "does not constitute critical habitat for Northern pine snakes."

53. By virtue of the aforesaid, Barnegat and the Committee are estopped from contending that there is any reasonable or legitimate basis for maintaining the Overlay Area in the RC Zone.

54. By virtue of the aforesaid, Barnegat and the Committee are estopped from contending that there is any reasonable or legitimate basis for failing to amend Barnegat's Zoning Ordinance to permit development in the Overlay Area in accordance with the standards of Barnegat's RH Zone.

WHEREFORE, Plaintiffs Mark Madison, LLC and Walters Development Co., LLC demand judgment against Defendants Township of Barnegat and the Township Committee of the Township of Barnegat:

a. For affirmative injunctive relief compelling the adoption of an ordinance returning the Overlay Area to Barnegat Township's RH-Residential High Zone;

b. For a declaration that the Overlay Area shall be deemed part of Barnegat Township's RH-Residential High Zone;

c. For a declaration that Defendants are estopped from contending that there is any reasonable or legitimate basis for maintaining the Overlay Area in the RC Zone;

d. For a declaration that Defendants are estopped from contending that there is any reasonable or legitimate basis for failing to amend Barnegat's Zoning Ordinance to permit development in the Overlay Area in accordance with the standards of Barnegat's RH Zone.

e. For a declaration that Defendants are estopped from asserting any defense to the injunctive and declaratory relief sought by Plaintiffs in this case.

f. For attorneys fees and costs of suit; and

g. For such other relief as may be just and equitable.

COUNT THREE
(Judicial Estoppel)

55. Plaintiffs repeat all prior allegations.

56. In 2009, a dispute arose among Plaintiffs and the Pinelands Commission resulting in litigation involving Plaintiffs, the Pinelands Commission and Barnegat known as Mark Madison, LLC et al v. New Jersey Pinelands Commission, et al, Docket No. C-144-09 (the "Pinelands Litigation").

57. In the Pinelands Litigation, Barnegat filed pleadings in which it admitted that the parties to the Tri-Party Agreement negotiated said agreement in good faith.

58. In the Pinelands Litigation, Barnegat admitted that the only basis for its decision to include the Overlay Area in the RC Zone was the Pinelands Commission's initial opinion that the Overlay Area constituted habitat critical for the survival of the local population of Northern Pine Snake.

59. In the Pinelands Litigation, Barnegat admitted that it agreed with the Pinelands Commission that Plaintiff Mark Madison should be allowed an opportunity to demonstrate, in

accordance with a protocol approved by the Pinelands Commission, that the Overlay Area is not critical habitat for the Northern Pine Snake.

60. In the Pinelands Litigation, Barnegat admitted that it had agreed to abide by the Pinelands Commission's determination of critical habitat based upon the two year study authorized by the Tri-Party Agreement.

61. In the Pinelands Litigation, Barnegat admitted that it had agreed to promptly amend its zoning ordinance to return the Overlay Area to the RH zone if the Pinelands Commission determined that the Overlay Area is not critical habitat for the Northern Pine Snake.

62. In the Pinelands litigation Barnegat admitted that it is bound by the Tri-Party Agreement.

63. By virtue of the aforesaid, Barnegat and the Committee are judicially estopped from denying that the Committee's action in voting down Ordinance No. 2010-05 is arbitrary, capricious and unreasonable.

64. By virtue of the aforesaid, Barnegat and the Committee are judicially estopped from disputing that they are legally bound to amend the zoning ordinance such that the Overlay Area reverts to the RH Zone.

65. By virtue of the aforesaid Barnegat and the Committee are judicially estopped from contending that there is any reasonable or legitimate basis to decline to amend the Zoning Ordinance to permit development in the Overlay Area in accordance with the standards of the RH Zone.

66. By virtue of the aforesaid, Barnegat is judicially estopped form contending that there is any reasonable or legitimate basis for maintaining the Overlay Area within the RC zone.

WHEREFORE, Plaintiffs Mark Madison, LLC and Walters Development Co., LLC demand judgment against Defendants Township of Barnegat and the Township Committee of the Township of Barnegat:

a. For affirmative injunctive relief compelling the adoption of an ordinance returning the Overlay Area to Barnegat Township's RH-Residential High Zone;

b. For a declaration that the Overlay Area shall be deemed part of Barnegat Township's RH-Residential High Zone;

c. For a declaration that Defendants are judicially estopped from asserting any defense to the injunctive and declaratory relief sought by Plaintiffs in this case.

d. For a declaration that Defendants are judicially estopped from contending that there is any reasonable or legitimate basis for maintaining the Overlay Area in the RC Zone.

e. For a declaration that Defendants are judicially estopped from contending that there is any reasonable or legitimate basis for failing to amend Barnegat's Zoning Ordinance to permit development in the Overlay Area in accordance with the standards of Barnegat's RH Zone.

f. For attorneys fees and costs of suit; and

g. For such other relief as may be just and equitable.

COUNT FOUR
(Breach of Contract)

67. Plaintiffs repeat all prior allegations.

68. By virtue of the aforesaid, Barnegat is in breach of the Tri-Party Agreement.

69. Due to Barnegat's breach of the Tri-Party Agreement Mark Madison has been damaged as it cannot develop its lots within the Overlay Area.

70. Plaintiffs have been damaged by Barnegat's breach of the Tri-Party Agreement in other ways as well.

71. The damage to Plaintiffs caused by Barnegat's breach of the Tri-Party Agreement is continuing and will continue.

72. Plaintiffs have suffered damages due to Barnegat's breach, although money damages alone would not adequately compensate Plaintiffs for their injuries and Plaintiffs are also entitled to specific performance under the terms of the Agreement.

WHEREFORE, Plaintiffs Mark Madison, LLC and Walters Development Co., LLC demand judgment against Defendants Township of Barnegat and the Township Committee of the Township of Barnegat:

a. For affirmative injunctive relief compelling the adoption of an ordinance returning the Overlay Area to Barnegat Township's RH-Residential High Zone;

b. For a declaration that the Overlay Area shall be deemed part of Barnegat Township's RH-Residential High Zone;

c. For an award compensatory and consequential damages;

d. For attorneys fees and costs of suit; and

e. For such other relief as may be just and equitable.

COUNT FIVE
(Breach of Covenant of Good Faith & Fair Dealing)

73. Plaintiffs repeat all prior allegations.

74. Implicit in the Tri-Party Agreement is a covenant of good faith and fair dealing.

75. Jeffrey Malchiondo is a member of the Committee and also serves as Barnegat's Mayor.

76. Alphonso Cirulli is a member of the Committee and also serves as Barnegat's Deputy Mayor.

77. Leonard Morano is a member of the Committee.

78. Mr. Malchiondo failed to consider ordinance No. 2010-05 in good faith but, rather, prior to May 3, 2010 public hearing on Ordinance No. 2010-05 Mr. Malchiondo issued a written statement stating that he would vote against adoption of the ordinance.

79. Messers. Malchiondo, Cirulli and Morano are all aware of the Tri-Party Agreement and the terms and conditions thereof, including but not limited to the fact that Barnegat agreed to accept a determination by the Pinelands Commission's that the Overlay Area is not critical habitat for the Northern Pine Snake, and to amend the Barnegat Township Zoning Ordinance so that the Overlay Area reverts to the RH Zone.

80. Messrs. Malchiondo, Cirulli and Morano know that Plaintiffs relied to their detriment on the promises Barnegat made in the Tri-Party Agreement.

81. Messrs. Malchiondo, Cirulli and Morano are all aware that Defendants paid Barnegat $200,000.00 in consideration for and in reliance on the promises Barnegat made in the Tri-Party Agreement.

82. Messrs. Malchiondo, Cirulli and Morano know that Plaintiffs gave up their rights to challenge Barnegat's earlier action in establishing the RC Zone and placing both the Overlay Area and other lands owned by Plaintiffs in the RC Zone in consideration for and in reliance on the promises made by Barnegat in the Tri-Party Agreement.

83. Messrs. Malchiondo, Cirulli and Morano know that in consideration for and in reliance on the promises made by Barnegat in the Tri-Party Agreement, Plaintiffs have placed conservation restrictions on their property.

84. Messrs. Malchiondo, Cirulli and Morano all voted against adoption of Ordinance No. 2010-05.

85. Messrs. Malchiondo, Cirulli and Morano all acted in bad faith.

86. Messrs. Malchiondo, Cirulli and Morano acted within the scope of their positions as employees and officials of Barnegat.

87. Messrs. Malchiondo, Cirulli and Morano all acted as agents of Barnegat.

88. By virtue of the aforesaid, Barnegat has breached the covenant of good faith and fair dealing inherent in the Tri-Party Agreement, and Plaintiffs have been damaged thereby.

89. In addition, Messrs. Malchiondo, Cirulli and Morano all acted in with malice.

90. By virtue of the aforesaid, Defendants have otherwise breached their duty to act in good faith and with fair dealing in connection with the Tri-Party Agreement, and Plaintiffs have been damaged thereby.

WHEREFORE, Plaintiffs Mark Madison, LLC and Walters Development Co., LLC demand judgment against Defendants Township of Barnegat and the Township Committee of the Township of Barnegat:

a. Ordering Defendants to return the $200,000.00 Plaintiffs paid pursuant to the Tri-Party Agreement, plus interest;

b. For an award compensatory and consequential damages;

c. For an award of punitive damages;

d. For affirmative injunctive relief compelling the adopting of an ordinance returning the Overlay Area to Barnegat Township's RH-Residential High Zone;

e. For a declaration that the Overlay Area shall be deemed part of Barnegat Township's RH-Residential High Zone;

f. For attorneys fees and costs of suit; and

g. For such other relief as may be just and equitable.

COUNT SIX
(Takings Claim)

91. Plaintiffs repeat all prior allegations.

92. By virtue of the aforesaid, Defendants have denied Plaintiffs economically viable use of their property.

93. The foregoing acts and omissions of the Defendants amount to the taking of property without just compensation in violation of the Constitution of the United States and the Constitution of the State of New Jersey.

WHEREFORE, Plaintiffs Mark Madison, LLC and Walters Development Co., LLC demand judgment against Defendants Township of Barnegat and the Township Committee of the Township of Barnegat:

a. Awarding Plaintiffs just compensation;

b. For affirmative injunctive relief compelling the adopting of an ordinance returning the Overlay Area to Barnegat Township's RH-Residential High Zone;

c. For a declaration that the Overlay Area shall be deemed part of Barnegat Township's RH-Residential High Zone;

d. For an award compensatory and consequential damages;

e. For attorneys fees and costs of suit; and

f. For such other relief as may be just and equitable.

COUNT SEVEN
(Declaratory Judgment)

94. Plaintiff repeats all prior allegations.

95. By virtue of the foregoing there is a dispute among the parties for which this Court may grant declaratory relief pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq.

WHEREFORE, Plaintiffs Mark Madison, LLC and Walters Development Co., LLC demand judgment against Defendants Township of Barnegat and the Township Committee of the Township of Barnegat:

a. Declaring that Barnegat must return to Plaintiffs the $200,000.00 paid pursuant to the Tri-Party Agreement plus interest;

b. Declaring the Township of Barnegat must rezone the Overlay Area to Barnegat Townships RH-Residential High Zone;

c. Declaring that the Overlay Area shall be deemed part of Barnegat Township's RH-Residential High Zone;

d. Declaring that the Committee has acted in an arbitrary, capricious and unreasonable manner;

e. Declaring that Barnegat has breached the Tri-Party Agreement and that Plaintiffs have been damaged thereby;

f. Declaring that Barnegat has breached the duty of good faith and fair dealing;

g. Declaring that Defendants' acts and omissions have resulted in a compensable taking of Plaintiffs' property;

h.. Awarding compensatory and consequential damages;

i. Awarding attorneys fees and costs of suit; and

j. For such other relief as may be just and equitable.

CERTIFICATIONS PURSUANT TO R. 4:5-1

I hereby certify that the subject matter that is in controversy is not the subject of any action pending in any court or pending arbitration proceeding. I further certify that no other action or arbitration proceeding is contemplated other than a potential action pursuant to 42 USC §1983 against Jeffrey Malchiondo, Alphonso Cirulli and Leonard Morano and others following further investigation and discovery and Plaintiffs reserve the right to seek such relief either in an amendment to this complaint or in a separate action. In addition, I hereby certify that I know of no other parties subject to joinder in this action pursuant to R. 4:28-1, and that I know of no other parties subject to joinder pursuant to R. 4:29 except other owners of land within the Overlay Area.

CERTIFICATION PURSUANT TO R. 4:69-4

I hereby certify that all necessary transcripts of local agency proceedings in this cause of action have been ordered.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1(c), Paul H. Schneider, Esq. is hereby designated as trial counsel in the within matter.

GIORDANO, HALLERAN & CIESLA
A Professional Corporation
Attorneys for Plaintiff, Mark Madison, LLC and Walters Development Co., LLC

By: _____
PAUL H. SCHNEIDER, ESQ.

Dated: May 20, 2010

Appendix XII-B1

CIVIL CASE INFORMATION STATEMENT
(CIS)

Use for initial Law Division
Civil Part pleadings (not motions) under Rule 4:5-1
Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY
PAYMENT TYPE: ☐CK ☐CG ☐CA
CHG/CK NO.
AMOUNT:
OVERPAYMENT:
BATCH NUMBER:

ATTORNEY/PRO SE NAME: Paul H. Schneider, Esq.	TELEPHONE NUMBER: (732) 741-3900
FIRM NAME (if applicable): Giordano, Halleran & Ciesla, P.C.	COUNTY OF VENUE: Ocean
OFFICE ADDRESS: 125 Half Mile Road, Middletown, NJ 07748	DOCKET NUMBER (When available): P.W.L 21962.10
	DOCUMENT TYPE: Complaint
	JURY DEMAND: ☐ YES ☒ NO
NAME OF PARTY (e.g., John Doe, Plaintiff): Mark Madison, LLC and Walters Development Co., LLC, Plaintiffs	CAPTION: Mark Madison, LLC, LLC and Waterse Development CO., LLC v Township of Barnegat and the Township Committee of the Townshi of Barnegat
CASE TYPE NUMBER (See reverse side for listing): 701	IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☒ NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.
RELATED CASES PENDING? ☐ YES ☒ NO	IF YES, LIST DOCKET NUMBERS
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☐ YES ☒ NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN ☐ NONE ☒ UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? ☐ YES ☒ NO	IF YES, IS THAT RELATIONSHIP ☐ EMPLOYER-EMPLOYEE ☐ FRIEND/NEIGHBOR ☐ OTHER (explain) ☐ FAMILIAL ☐ BUSINESS
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? ☐ YES ☒ NO	

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:
In addition to the prerogative writ relief, the complaint also seeks other equitable, monetary and declaratory relief.

RECEIVED & FILED
MAY 21 2010
SUPERIOR CT., OCEAN CO.

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? ☐ YES ☒ NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:
WILL AN INTERPRETER BE NEEDED? ☐ YES ☒ NO	IF YES, FOR WHAT LANGUAGE:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

ATTORNEY SIGNATURE:

Revised Effective 9/2009, CN 10517

SIDE 2

CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule* 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I — 150 days' discovery

151 NAME CHANGE
175 FORFEITURE
302 TENANCY
399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
502 BOOK ACCOUNT (debt collection matters only)
505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
506 PIP COVERAGE
510 UM or UIM CLAIM
511 ACTION ON NEGOTIABLE INSTRUMENT
512 LEMON LAW
801 SUMMARY ACTION
802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
999 OTHER (Briefly describe nature of action)

Track II — 300 days' discovery

305 CONSTRUCTION
509 EMPLOYMENT (other than CEPA or LAD)
599 CONTRACT/COMMERCIAL TRANSACTION
603 AUTO NEGLIGENCE – PERSONAL INJURY
605 PERSONAL INJURY
610 AUTO NEGLIGENCE – PROPERTY DAMAGE
699 TORT – OTHER

Track III — 450 days' discovery

005 CIVIL RIGHTS
301 CONDEMNATION
602 ASSAULT AND BATTERY
604 MEDICAL MALPRACTICE
606 PRODUCT LIABILITY
607 PROFESSIONAL MALPRACTICE
608 TOXIC TORT
609 DEFAMATION
616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
617 INVERSE CONDEMNATION
618 LAW AGAINST DISCRIMINATION (LAD) CASES
620 FALSE CLAIMS ACT

Track IV — Active Case Management by Individual Judge / 450 days' discovery

156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
303 MT. LAUREL
508 COMPLEX COMMERCIAL
513 COMPLEX CONSTRUCTION
514 INSURANCE FRAUD
701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Centrally Managed Litigation (Track IV)

280 Zelnorm
285 Stryker Trident Hip Implants

Mass Tort (Track IV)

248 CIBA GEIGY
266 HORMONE REPLACEMENT THERAPY (HRT)
271 ACCUTANE
272 BEXTRA/CELEBREX
274 RISPERDAL/SEROQUEL/ZYPREXA
275 ORTHO EVRA
277 MAHWAH TOXIC DUMP SITE
278 ZOMETA/AREDIA
279 GADOLINIUM
281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL
282 FOSAMAX
283 DIGITEK
284 NUVARING
286 LEVAQUIN
601 ASBESTOS
619 VIOXX

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

☐ Verbal Threshold ☐ Putative Class Action ☐ Title 59

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May 9, 2011

By Lawyers Service

Superior Court of New Jersey
Law Division - Ocean County Superior Court
118 Washington Street
Toms River, NJ 08754

Re: Mark Madison, LLC, and Walters Development Co., LLC v. Township of Barnegat and the Township Committee of the Township of Barnegat – Dkt. No. L-1962-10

Dear Clerk of the Court:

I enclose the following documents for filing in the above-referenced matter:

- Reply Brief in Support of Motion to Intervene
- Certification of Service

I also enclose an extra copy of the Reply Brief and ask that you stamp them with the date and time of receipt and return them to me in the self-addressed stamped envelope provided.

Thank you for your attention to this matter.

Respectfully submitted,

Kevin J. Pflug

cc: Hon. Vincent J. Grasso
Gregory P. McGuckin, Esq.
Paul H. Schneider, Esq

KEVIN J. PFLUG, ESQ.
Eastern Environmental Law Center
744 Broad Street - Suite 1525
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Attorneys for Proposed Defendant-Intervenor

Mark Madison, LLC and Walters Development Co., LLC Plaintiff, v. Township of Barnegat and the Township Committee of the Township of Barnegat Defendant.	Superior Court of New Jersey Law Division Ocean County Docket No. L1962-10 P.W. Civil Action

REPLY BRIEF IN SUPPORT OF MOTION OF THE PINELANDS PRESERVATION ALLIANCE TO INTERVENE

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U.S. Constitution

New Jersey Constitution

I. STANDING IS NOT REQUIRED FOR PURPOSES OF INTERVENTION UNDER RULE 4:33-1.

Standing is not required for intervention under Rule 4:33-1. See, Warner v. Sutton, 270 N.J. Super. 658, 662 (App. Div. 1994). In outlining the requirements for intervention as of right, New Jersey courts have not included standing as a prerequisite, deciding instead to require only "an interest relating to the property or transaction which is the subject of the action." Id. Chesterbrooke Limited Partnership v. Planning Board of Township of Chester, 237 N.J. Super. 118, 124 (App. Div. 1989), certif. denied 118 N.J. 234, 570 A.2d 984 (1989); American Civil Liberties Union of New Jersey v. County of Hudson, 352 N.J. Super. 44, 67, 799 A.2d 629 (App. Div.), certif. denied, 174 N.J. 190, 803 A.2d 1182 (2002). Courts have consistently stated that Rule 4:33-1 is to be construed liberally. Allstate New Jersey Ins. Co. v. Neurology Pain Associates, 418 N.J.Super. 246, 254, 13 A.2d 390 (App. Div. 2011); Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568, 722 A.2d 938 (App. Div. 1998). In Allstate New Jersey Ins. Co., the court stated: "Consistent with this liberal construction, our courts take a practical approach in determining whether a moving party has a cognizable interest in litigation that it is entitled to protect by intervention." 418 N.J. Super. at 254-55. Although there is a split in the federal circuits, courts have held that an intervenor need not establish standing, so long as another party on the same side has standing. See San Juan County, Utah v. United States, 503 F.3d 1163, 1171-72 (10th Cir. 2007).

The cases cited by plaintiffs in support of its standing argument are not intervention cases under Rule 4:33-1 and not applicable to the instant case. See Plaintiffs' Brief, at 7-9. In fact, the plaintiffs fail to cite to a single case that holds that standing is required for intervention. Id. In addition, district courts in the Third Circuit interpreting Federal Rule 24(a)(2), the identical federal counterpart to Rule 4:33-1, have stated that "[a]n intervenor need not have standing

necessary to have initiated the lawsuit." Indian River Recovery Co. v. The China, 108 F.R.D. 383, 386-87 (D.Del. 1985). See Evans v. Buchanan, 130 F.R.D. 306, 310n.5 (D.Del. 1990). The Supreme Court and the Third Circuit have never directly decided the issue of whether a party seeking to intervene must meet standing requirements, Diamond v. Charles, 476 U.S. 54, 68, 106 S.Ct. 1697, 1706, 90 L.Ed.2d 48 (1986)(intervenor must have standing to appeal if party on whose behalf it had intervened drops out), McLaughlin v. Pernsley, 876 F.2d 308, 314 (3d Cir. 1989), but the Supreme Court has recognized that certain public concerns may constitute an adequate "interest" for purposes of intervention. Id.

The PPA has fulfilled the interest prong of the intervention test, and should be allowed to intervene in this case.

II. PROPOSED INTERVENOR PINELANDS PRESERVATION ALLIANCE DOES SATISFY THE STANDING REQUIREMENTS IN THIS CASE.

Although the PPA need not demonstrate that it has standing in this matter for the Court to grant its motion to intervene, PPA clearly would have standing in the matter under New Jersey's "broad and liberal approach to standing." N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super 402, 415 (1997); citing Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 101 (1971). Dome Realty, Inc. v. City of Paterson, 150 N.J. Super. 448, 452 (App. Div. 1977). The New Jersey Supreme Court observed that "New Jersey cases have historically taken a much more liberal approach on the issue of standing than have the federal cases." People for Open Government v. Roberts, 397 N.J. Super 502, 509 (App. Div. 2008); citing Crescent Park, 58 N.J. at 101. The New Jersey Supreme Court went on to observe that:

> Unlike the Federal Constitution, there is no express language in New Jersey's Constitution which confines the exercise of our judicial power to actual cases and controversies.

Id. at 107 (citing U.S. Const. Art III, Sec. 2; N.J. Const. Art VI, Sec. 1).

Under New Jersey's broad and liberal approach to standing, "the plaintiff must have a sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and there must be a substantial likelihood that the plaintiff will suffer harm in the event of an unfavorable decision." N.J. Citizen Action, 296 N.J. Super at 409-410; citing N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm'n, 82 N.J. 57, 67 (1980); Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107 (1971); In re Tp. of Howell, 254 N.J. Super 411, 416 (App. Div.), certif. denied, 127 N.J. 548 (App. Div. 1991). Where there is a public interest at stake, courts have held that any slight additional private interest will be sufficient to establish standing. People for Open Government, 397 N.J. Super. at 510. That interest may be accorded proportionately less significance where it coincides with a strong public interest Id. That harm need not be economic harm but can be harm to environmental, aesthetic or recreational interests. See Public Interest Research Group of New Jersey, Inc. v. Rice, 774 F. Supp. 317, 322 (D.N.J. 1991).

With a strong public interest implicated in this case—the maintenance of the zoning ordinance, protection of the environment and the preservation of the Pinelands—only a slight additional interest is necessary for standing. The PPA's interest in preserving the Pinelands and its habitat is sufficient to confer standing in this case. New Jersey courts have widely recognized that nonprofit organizations may have standing to pursue an action on behalf of the public, even where there is no property or pecuniary interest involved. Hoboken Environmental Committee v. German Seaman's Mission, 161 N.J. Super. 256, 266-67 (App. Div. 1978). In Hoboken Environmental Committee, the court found that the citizen's group had standing, even though the harm to its interests were aesthetic. Id, at 265-66.

The proposed intervenors have standing to intervene in this case.

III. THE PPA'S INTERESTS ARE NOT ADEQUATELY REPRESENTED BY THE TOWNSHIP DFENDANTS.

The proposed intervenors have established the adequate representation prong of the intervention test. First, it should be noted that the burden of making a showing to satisfy this prong is "minimal." Trbovich v. United Mine Workers, 404 U.S. 528, 538, 92 S.Ct. 630, 30 L.Ed.2d 686 (1972). Second, the interests of the Town are different from the PPA in this case. The plaintiffs ignore the fact that the Town in deciding whether or not to maintain or change its zoning ordinance has not only environmental concerns, but fiscal ones as well. Third, this case is not about the enforcement of the zoning ordinance, as plaintiffs claim. Plaintiffs' Brief, at 12. The issue in this litigation is not whether the Town will adequately enforce its laws, but whether the Town should be required to *change* them. Finally, the PPA has made no allegations of bad faith on the part of the Township or the Township Committee, nor has it alleged any kind of conspiracy theory. See Plaintiffs' Brief at 10. Rather, what the PPA asserts is that the interests of the Town and the Township Council are divergent enough from PPA's interest to warrant intervention to protect those interests.

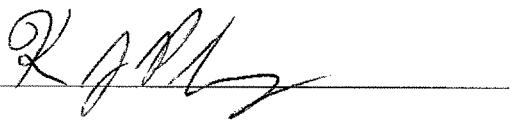
The plaintiffs' reliance on Kleissler v. U.S. Forest Service, 157 F.3d 964, 972 (3d Cir. 1998), is misplaced. First, the court in Kleissler made it clear that a governmental agency's representation may be presumed adequate only where the concerns of the agency are "closely parallel" to the concerns of the public interest intervenor. That is not the case here. The Township of Barnegat is not an environmental agency or a governmental entity charged with protection of the Pinelands. It is only under those circumstances—e.g., if the defendant was the Pinelands Commission rather than the Town of Barnegat—that the proposed intervenor must make a strong showing of inadequate representation. However, where the governmental entity

has a broader agenda compared to the "more parochial" view of the intervenor, the burden is "relatively light." Id.

The PPA has met that burden in this case. The Township of Barnegat has to consider a full range of obligations in making decisions about this litigation. It has not only zoning concerns, but it has to consider the interests of its residents, and its relationship with the people and corporations that conduct business within the town. More significant, the Town has strong financial interests in the zoning provision at issue in this case as it is tied to money paid to the Town by the plaintiffs pursuant to the Tri-Party Agreement, in which the plaintiffs claim the Town agreed to rezone. Complaint, ¶27 and 32. These factors may play a large role in how the current defendants choose to litigate this case. The Town's interests are sufficiently different from the PPA's interests, and the adequate representation prong is satisfied.

CONCLUSION.

For the foregoing reasons, the Proposed Intervenors, the Pineland Preservation Alliance, respectfully request that its motion to intervene be granted.

By: 

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Date: May 9, 2011

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Attorney for Proposed Defendant-Intervenor

Mark Madison, LLC and Walters Development Co., LLC Plaintiff, v. Township of Barnegat and the Township Committee of the Township of Barnegat Defendant.	Superior Court of New Jersey Law Division Ocean County Docket No. L1962-10 P.W. Civil Action

CERTIFICATION OF SERVICE

I, Karen Hughes, of full age, certify as follows:

1. I am a paralegal at Eastern Environmental Law Center, attorneys for Pinelands Preservation Alliance, the proposed Defendant-Intervenor in the above-captioned matter.

2. On May 9, 2011, I caused one copy of the Reply Brief in Support of Motion and this Certification of Service to be served via U.S. Mail on the persons listed below:

Gregory P. McGuckin, Esq.
Dasti, Murphy, McGuckin, Ulaky, Cherkos & Connors
620 West Lacey Road
P.O. Box 1057
Forked River, NJ 08731

Paul H. Schneider, Esq.
Giorano, Halleran & Ciesla, P.C.

125 Half Mile Road, Suite 300
Red Bank, NJ 07701-6777

I certify that the foregoing statements made by me are true to the best of my knowledge. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Karen Hughes
Paralegal

Dated: May 9, 2011

BARNEGAT TOWNSHIP COMMITTEE
OCEAN COUNTY
900 WEST BAY AVENUE
BARNEGAT, NJ 08005

TOWNSHIP COMMITTEE MEETING MINUTES
MAY 3, 2010, 6:30 PM

1. **Called to Order** by Mayor Melchiondo

2. **Provisions of the Open Public Meetings Law** were read into record

3. **Roll Call of Officials Present**:
   Committeeman Lisella - present
   Committeewoman Ryan - present
   Committeeman Morano - present
   Deputy Mayor Cirulli - present
   Mayor Melchiondo - present

   Invocation by Reverend Glenn Swank, Pastor of Barnegat Bay Assembly of God

4. **Salute to the flag** was led by Mayor Melchiondo

5. **Mayor's Report** was read into record and is attached and becomes part of these minutes. A moment of silence was observed in memory of Herb Feldhune.

6. **Committee Reports:**
   Committeeman Lisella: Town-wide yard sale was a huge success. Chamber of Commerce had over 250 participants. Bring your pet down to Pet Day at Meadowedge on May 15th.
   We also will have a fund-raiser at the Barnegat Fire House on the evening of May 15th to benefit the Barnegat Employees Scholarship Fund. Come out and see Diva and the Italian Guy Show and support the scholarship fund.
   Police Appreciation and Community Day is scheduled for June 19th.

   Committeewoman Ryan: As I am the Township Committee Liaison to the Planning Board, I attended the meeting at which the Change in Zoning Ordinance was presented before the Board for their vote. The Board Attorney cautioned the members that they were responsible to vote only on the fact that the Ordinance was consistent with the Master Plan. They did vote yes on that issue but with recommendations that the Township Committee vote no.

   Committeeman Morano: I attended the Arbor Day festivities and the students and teachers were great. It was a beautiful day and they each planted a tree in honor of Arbor Day.

   Deputy Mayor Cirulli: We have had extensive meetings with the Board of Education members to work out what cuts can be made while keeping important educational programs intact. We have also spent many hours in discussion regarding the property in Ocean Acres. We are determined to do the right thing for our residents.

7. Administrator's Report

Mr. Breeden announced that the water main project on Memorial Drive is 80% complete. 2500 feet of water main has been installed by our Water/Sewer Department. Five fire hydrants will be installed within the next two weeks. The second deck pour on the Parkway Bridge has been completed. We will see substantial completion in the rest of the project by the July 4th holiday. Project cost is 17.8 million dollars. Paving on West Bay Avenue will take place between 7:00PM and 6:00AM. We will have six weeks to complete work on Township sidewalks. Menk crawlspace repair issues have been addressed by the Township Attorney in an agreement authorized in Resolution 2010-220. A contract has been awarded for paving in Settler's Landing to the second bidder. First place bidder had subbed out too much of the work and therefore bid was not accepted.

8. Public Portion:

Motion to Open Public Comment on items other than the Ordinances that have a public comment portion: L. Morano **Second:** D. Ryan

Phil Checchia – 12 Windward Drive: Suggested a resolution be adopted and sent to Senator Adler regarding 28th Amendment.

Jake Taylor – 206 Rahway Road: Hope the paving contractor that received award tonight is not the same one that did the intersection of Route 9 and Bayshore Drive.

Frank Citino – 12 Old Mill Drive: Herb Feldhune died while on a cruise in French Waters so there may be a delay in bringing him back for funeral services.

Marianne Clemente – 565 East Bay Avenue: Our sidewalk issue should have been dealt with years ago. That is what caused the over-adequacy issue and now the schools are being penalized for it.

Ed Holiday – 114 Spruce Lane: Do we have a lawyer on the Committee? The Rent Leveling Board Attorney did not do her job. Mayor asked Mr. Holiday to come in next week and we can talk about it.

Motion to Close Public Comment: L. Morano **Second:** A. Cirulli

9. Old Business:

Ordinance 2010-05 (Second Reading) NOT ADOPTED

Ordinance amending the Codified Ordinances redesignating certain lots from the Residential Conservation Zone to the Residential High Zone and amending the Township Zoning Map to reflect that modification

Motion to Open Public Comment: *L. Morano* ***Second:*** *D. Ryan*

Kathy Hill *– 28 Avalon Drive: We already have too much development and the builder is wrecking this town.*

Theresa Lettman *– Pinelands Preservation Alliance Representative: Ms. Lettman read correspondence to Township Committee with her comments regarding the proposed rezoning of the 135 acre tract.*

***Andrew Muran**: (?) I have owned this lot and paid taxes on it for 30 years. You are confiscating my land.*

***Frank Pecci** – 11 Hemlock: Previously, people were given an opportunity to sell their property for Pinelands credits.*

***Susan Puder** – 2 Newport Street: I attended the Pinelands meeting and got copies of their report. How can snakes appear and then disappear. Walters paid for the study and stands to gain from the conclusion of it.*

***Margit Meissner-Jackson** – Sierra Club: Explained the impact new housing has on water quality and that it increases traffic and school taxes.*

***Joe Vincent** – 160 Pinewood Drive: I own property in Ocean Acres and I would like to be able to build on it*

***Joe DelDuca** – Walters Attorney: In the 2004 contract, a decision was reached that if the Pinelands ever approved the fact that the pine snake endangered species area was un-inhabited, that the ordinance would be approved and the conservation overlay would be lifted.*

***Motion to Close Public Comment:** D. Ryan* ***Second:** L. Morano*

***Motion to bring ordinance to vote:** A. Cirulli* ***Second:** D. Ryan*
Roll Call: ***Lisella:** Abstain* ***Ryan:** I have read the entire contract and in my opinion, we are bound by the agreement, so I vote, Yes* ***Morano:** I asked for a moratorium on building years ago because there is too much development in this town. I vote No* ***Cirulli:** I agreed to the contract in 2004 to protect landowners. I saw some serious flaws in the current study and ethically, the reverse of the Pinelands decision did not sit well with me, so I vote No* ***Melchiondo:** I did not sit on the Township Committee in 2004 but I believe we have reached a point in Barnegat Township when we need to reduce development, my vote is No*

Ordinance 2010-06 (Second Reading)
Ordinance amending and supplementing Chapter 44A-3 of the General Code entitled "Fees Miscellaneous"

***Motion to Open Public Comment**: A. Cirulli* ***Second:** D. Ryan*
Seeing no comments
***Motion to Close Public Comment:** L. Morano* ***Second:** D. Ryan*

***Motion to adopt ordinance:** A. Cirulli* ***Second:** L. Morano*
Roll Call: ***Lisella: Yes*** ***Ryan: Yes*** ***Morano: Yes***
Cirulli: Yes ***Melchiondo: Yes***

Ordinance 2010-07 (Second Reading)
An Ordinance of the Township of Barnegat, in the County of Ocean, New Jersey, providing for a special emergency appropriation of $250,000 for engagement of special consultants for the preparation of a Master Plan

Motion to Open Public Comment: *L. Morano* ***Second:*** *A. Cirulli*

Frank Pecci - *11 Hemlock Ct.: Why are we reexamining the Master Plan again. We have already paid $200,000? Mr. Hess: Mellio & Bauer performed a study years ago, however on only one element of the Master Plan.* ***Mayor Melchiondo****: The State of New Jersey mandated the update of the Master Plan and the CAFRA amendment. Mr. Pecci also thanked the Committee for their vote tonight against changing the Zoning in Ocean Acres and allowing future development in the conservation area*

Motion to Close Public Comment: *A. Cirulli* ***Second****: D. Ryan*

Motion to adopt ordinance: *D. Ryan* ***Second:*** *A. Cirulli*
Roll Call: ***Lisella: Yes*** ***Ryan: Yes*** ***Morano: Yes***
Cirulli: Yes ***Melchiondo: Yes***

Ordinance 2010-08 (Second Reading)
Ordinance amending and supplementing Chapter 38 Entitled "Buildings, Unfit" of the Codified Ordinances of the Township of Barnegat

Motion to Open Public Comment*: A. Cirulli* ***Second:*** *L. Morano*
Seeing no comments
Motion to Close Public Comment: *L. Morano* ***Second:*** *A. Cirulli*

Motion to adopt ordinance: *D. Ryan* ***Second:*** *M. Lisella*
Roll Call: ***Lisella: Yes*** ***Ryan: Yes*** ***Morano: Yes***
Cirulli: Yes ***Melchiondo: Yes***

Ordinance 2010-09 (Second Reading)
An Ordinance of the Township of Barnegat, in the County of Ocean, New Jersey providing for the construction of sidewalks and related expenses in and for the Township of Barnegat and appropriating $500,000 therefore, and providing for the issuance of $475,000 in general improvement bonds or notes of the Township of Barnegat, to finance the same

Motion to Open Public Comment*: D. Ryan* ***Second:*** *M. Lisella*
Jake Taylor – 206 Newark Road: Will any properties be assessed? Mr. Hess said there are approximately 25 properties for which rights-of-way or easements will need to be acquired, i.e. Burr Street
Motion to Close Public Comment: *L. Morano* ***Second:*** *A. Cirulli*

Motion to adopt ordinance: *L. Morano* ***Second:*** *A. Cirulli*
Roll Call: ***Lisella: Yes*** ***Ryan: Yes*** ***Morano: Yes***
Cirulli: Yes ***Melchiondo: Yes***

10. New Business:

Approval of minutes for April 5, 2010, Workshop Meeting, Closed Session and Regular Committee Meeting

Approval of minutes for Joint Meeting between the Township Committee and the Planning Board Committee for April 22, 2010

Motion to approve minutes with correction and hold closed session minutes until any litigation is resolved: ***Second:***
Roll Call: ***Lisella: Yes*** ***Ryan: Yes*** ***Morano: Yes***
Cirulli: Yes ***Melchiondo: Yes***

11. Formal Action Agenda:

Resolution 2010-204
Resolution authorizing payment of Reserve Year Bill List in the amount of $50.00
Motion to adopt resolution: *D. Ryan* ***Second:*** *A. Cirulli*
Roll Call: ***Lisella: Yes*** ***Ryan: Yes*** ***Morano: Yes***
Cirulli: Yes ***Melchiondo: Yes***

Resolution 2010-205
Resolution authorizing payment of Current Year Bill List in the amount of $3,545,583.38

Motion to adopt resolution: *A. Cirulli* ***Second:*** *D. Ryan*
Roll Call: ***Lisella: Yes*** ***Ryan: Yes*** ***Morano: Yes***
Cirulli: Yes ***Melchiondo: Yes***

Resolution 2010-206
Resolution authorizing payment of Payroll Bill List for Pay #8 in the amount of $662,112.00

Motion to adopt resolution: *A. Cirulli* ***Second:*** *L. Morano*
Roll Call: ***Lisella: Yes*** ***Ryan: Yes*** ***Morano: Yes***
Cirulli: Yes ***Melchiondo: Yes***

Resolution 2010-207
Resolution authorizing emergency temporary appropriations for the Current Fund

Motion to adopt resolution: *A. Cirulli* ***Second:*** *M. Lisella*
Roll Call: ***Lisella: Yes*** ***Ryan: Yes*** ***Morano: Yes***
Cirulli: Yes ***Melchiondo: Yes***

Resolution 2010-208
Resolution providing for the financing of a special emergency appropriation by the issuance of special emergency notes of the Township

Motion to adopt resolution: *A. Cirulli* ***Second:*** *M. Lisella*
Roll Call: ***Lisella: Yes*** ***Ryan: Yes*** ***Morano: Yes***
Cirulli: Yes ***Melchiondo: Yes***

12. Consent Agenda:

The below listed items are considered to be routine by the Township of Barnegat and will be enacted by one motion. There will be no formal discussion of these items. If discussion is desired, this item will be removed from the Consent Agenda and will be considered separately.

Approval of Kyle Deisler and Diane Vanderhorn for Barnegat Volunteer Fire Company

Approval of Jeffrey Kraft for Pinewood Estates Volunteer Fire Company

Approval of Mark Tillson for the Barnegat Volunteer First Aid Squad

Approval of a calendar raffle for Mariners Lodge for the first Monday of each month in 2011

Approval of an Off-Premise Raffle for Barnegat Little League on September 9, 2010

Approval of the use of the Project Playground Park for a Birthday Party on May 30, 2010 between the hours of 1:00 PM and 3:30 PM

Approval of a Social Affair Permit for Pinewood Estates Volunteer Fire Company on July 25, 2010

Resolution 2010-209
Resolution authorizing a refund of premium paid at Tax Sale on Block 114.11, Lot 10, also known as 5 Buoy Court

Resolution 2010-210
Resolution authorizing a refund of premium paid at Tax Sale on Block 116.07, Lot 27, also known as 7 Deer Run Drive, South

Resolution 2010-211
Resolution authorizing cancellation and refund of taxes for 2009 for the Totally Disabled Veterans Property Tax Exemption on Block 172, Lot 3, also known as 56 Hillside Avenue

Resolution 2010-212
Resolution authorizing cancellation and refund of taxes for 2009 for the Totally Disabled Veterans Property Tax Exemption on Block 262, Lot 3, also known as 180 Lower Shore Road

Resolution 2010-213
Resolution authorizing Tax Collector to refund an overpayment on Block 51, Lot 4.02, also known as 210 Old Cedar Bridge Road

Resolution 2010-214
Resolution authorizing Tax Collection to refund an overpayment on Block 114.54, Lot 22.07, also known as 9 Southwind Court

Resolution 2010-215
Resolution authorizing a refund of premium paid at Tax Sale on Block 114.56, Lot 29, also known as 27 Tara Lane, Block 114.10, Lot 11, also known as 97 Gunning River Road and Block 96, Lot 12, also known as 23 Highland Drive

Resolution 2010-216

Resolution authorizing a refund of premium paid at Tax Sale on Block 208, Lot 37.01, also known as 85 Water Street

Resolution 2010-217
Resolution authorizing Tax Collector to refund a payment made in error on Block 97, Lot 4, also known as 1092 West Bay Avenue

Resolution 2010-218
Resolution authorizing Tax Collector to transfer funds from Water/Sewer to Tax Account on Block 93.03, Lot 81, also known as 15 Willow Drive

Resolution 2010-219
Resolution authorizing reduction of performance guarantees for Site Improvements for Ocean Acres, Phase 8

Resolution 2010-220
Resolution approving amendment and supplementing Agreement dated May 1, 2009 by and between the Township of Barnegat and the Menk Corporation concerning repair of crawlspaces in Mirage

Resolution 2010-221
Resolution authorizing the refund of escrow deposits to Mignatti Companies for Heritage Point Affordable Housing

Resolution 2010-222
Resolution authorizing the refund of Planning Board Review escrow deposits to Mary DiGaetano

Resolution 2010-223
Resolution appointing members to the Environmental Commission

Resolution 2010-224
Resolution awarding the contract for uniform rental and laundering of uniforms bid to American Wear Uniforms

Resolution 2010-225
Resolution awarding the contract for the Admiral Court, Ensign Avenue, Helm Street and Mizzen Drive repaving project to Johnson Baran Corp.

Resolution 2010-226
Resolution awarding the contract for the Lease of a Trailer Mounted Sewer Inspection Camera to Optical Robotics

Resolution 2010-227
Resolution approving a waiver request for a Road Opening Permit for Block 114.28, Lot 3, also known as 151 Village Drive

Resolution 2010-228
Resolution authorizing an increase in the 2010 funding from $25,000 to $26,500 for Municipal Alliance Grant

Resolution 2010-229
Resolution authorizing a refund for the cancellation of a Recreation Program

Resolution 2010-230
Resolution appointing Terry Brady, Esq., as a Alternate Conflict Public Defender

Motion to adopt Consent Agenda: *M. Lisella* ***Second:*** *A. Cirulli*
Roll Call: ***Lisella: Yes*** ***Ryan: Yes*** ***Morano: Yes***
Cirulli: Yes ***Melchiondo: Yes on all except 223 - Abstain***

13. **Motion to Adjourn:** L. Morano **Second:** A. Cirulli

ORDINANCE NO. 2010-05

ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN, STATE OF NEW JERSEY, IN PARTICULAR REDESIGNATING CERTAIN LOTS FROM THE RESIDENTIAL CONSERVATION ZONE TO THE RESIDENTIAL HIGH ZONE, AND AMENDING THE TOWNSHIP ZONING MAP TO REFLECT THAT MODIFICATION

WHEREAS, the Township of Barnegat, County of Ocean, State of New Jersey (hereinafter referred to as the "Township") entered into an agreement with the New Jersey Pinelands Commission (the "Pinelands Commission") and Mark Madison LLC ("Mark Madison"), which agreement was dated September 13, 2004 (hereinafter referred to as the "Agreement"); and

WHEREAS, the three party Agreement provided, in part, that the Township would be paid $200,000.00 in consideration for transfer of properties and other duties and responsibilities, and the Township would enact amended zoning ordinances to place certain properties located within Ocean Acres in the Residential Conservation Zone ("RC Zone") and certain other properties in the Ocean Acres section of Barnegat Township in the Residential High Zone ("RH Zone"); and

WHEREAS, the Agreement also memorialized an agreement reached between the Pinelands Commission and Mark Madison that certain portions of the property which would as a result of the zoning ordinances enacted in 2004 be located in the RC Zone, but could, after finalization of

DASTI, MURPHY
McGUCKIN, ULAKY,
CHERKOS & CONNORS

COUNSELLORS AT LAW

620 WEST LACEY ROAD
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environmental studies be transferred, with the consent of the Pinelands Commission, from the RC to the RH Zone; and

WHEREAS, the Township has been advised by the Pinelands Commission that an exhaustive study was completed by and at the expense of Mark Madison detailing whether any environmental restrictions exist in the properties which could be transferred from the RC to the RH Zone (hereinafter referred to as the "Overlay Zone"), and as a result of the study the Pinelands Commission has determined, by Commission Staff Report dated October 2, 2009, that the Overlay Zone does not constitute critical habitat for the Northern pine snake; and

WHEREAS, as a result of the aforementioned study and analysis of the Pinelands Commission, the Township has been advised by the Pinelands Commission to undertake a zoning ordinance amendment, in accordance with Paragraph 30 of the Agreement which provides in part as follows:

> Should the Pinelands Commission determine . . . that the area described in Paragraph 17 above or a designated portion thereof does not constitute habitat critical for the survival of the local population of Northern Pine Snake NPS found in Ocean Acres, Barnegat agrees to promptly amend its Zoning Ordinance (ZO) to remove this area or the designated portion thereof from the RC Zone and place it within the RH Zone and to submit such ordinance to the Pinelands Commission for certification pursuant to N.J.A.C. 7:50-3.45.

DASTI, MURPHY McGUCKIN, ULAKY, CHERKOS & CONNORS

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

WHEREAS, the lots comprising the area designated as the Overlay Zone are listed and attached hereto and made a part hereof and labeled "Ocean Acres Phase 3"; and

WHEREAS, the Township has been advised that it must comply with the Agreement, in particular Paragraph 30, so as to not risk decertification of its zoning ordinances by the Pinelands Commission; and

WHEREAS, the Township Engineer, Birdsall Corporation, has prepared an amended zoning map which provides that the Overlay Area is located in the RH Zone, rather than the RC Zone; and

WHEREAS, the Township finds that this zoning ordinance amendment is required as a result of the aforementioned Agreement and as a result of direction from the Pinelands Commission.

NOW THEREFORE, BE IT ORDAINED, this 15th day of March, 2010 by the Township Committee of the Township of Barnegat County of Ocean, State of New Jersey, as follows:

SECTION 1. The Township hereby amends the zoning ordinances and the Township Zoning Map to include the Overlay Area, the lot and blocks of which are detailed on the attachment which is made a part hereof into the RH Zone, and removing same from the RC Zone.

SECTION 2. The Township hereby approves the Zoning Map prepared by the Birdsall Corporation, last revised on January 20, 2010.

SECTION 3. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

DASTI, MURPHY McGUCKIN, ULAKY, CHERKOS & CONNORS

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 5. This ordinance shall take effect after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed on the first reading by the Township Committee of Barnegat, County of Ocean, State of New Jersey on **March 15, 2010.** The Ordinance will be considered for second and final reading at a meeting of the Township Committee on **April 19, 2010**, **at 6:30 p.m.**, or as soon thereafter as the matter may be reached and considered, at the Municipal Building located at 900 West Bay Avenue, Barnegat, New Jersey. At that time the public is invited to ask questions, raise objections or provide public comment with regard to the proposed adoption of this Ordinance.

KATHLEEN T. WEST, Municipal Clerk

Prepared by:

DASTI, MURPHY, McGUCKIN, ULAKY,
CHERKOS & CONNORS
Forked River, New Jersey 08731

DASTI, MURPHY McGUCKIN, ULAKY, CHERKOS & CONNORS

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

JJD:caf[Barnegat Ordinances 2010]

ORDINANCE NO. 2010-05

ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN, STATE OF NEW JERSEY, IN PARTICULAR REDESIGNATING CERTAIN LOTS FROM THE RESIDENTIAL CONSERVATION ZONE TO THE RESIDENTIAL HIGH ZONE, AND AMENDING THE TOWNSHIP ZONING MAP TO REFLECT THAT MODIFICATION

The Township of Barnegat introduced the above ordinance at its **March 15, 2010** meeting. The Ordinance amends the codified ordinances of the Township of Barnegat, in particular redesignating certain lots from the Residential Conservation Zone to the Residential High Zone, and amending the Township Zoning Map to reflect that modification. The ordinance will be considered on second and final reading at the **April 19, 2010** meeting of the Township Committee. All meetings are held at the Municipal Building located at 900 West Bay Avenue, Barnegat, New Jersey, commencing at 6:30 p.m. Copies of all Ordinances are available at no cost at the Municipal Clerk's Office located at 900 West Bay Avenue, Barnegat, New Jersey, Monday through Friday from 8:30 a.m. to 4:30 p.m.

KATHLEEN T. WEST
Municipal Clerk
Township of Barnegat

DASTI, MURPHY McGUCKIN, ULAKY, CHERKOS & CONNORS

COUNSELLORS AT LAW

620 WEST LACEY ROAD
P.O. BOX 1057
FORKED RIVER, N.J. 08731

ITEMIZED RECEIPTS (Other than Loans) | SCHEDULE A | Page No. 3 of 3

PLEASE TYPE OR PRINT. PHOTOCOPIES MAY BE USED IF ADDITIONAL FORMS ARE NEEDED.

RECEIPT TYPE (USE A SEPERATE "SCHEDULE A" FOR EACH TYPE AND FOR EACH SEPARATE ACCOUNT)

[ ] CURRENCY [X] ALL OTHER MONETARY CONTRIBUTIONS [ ] IN-KIND CONTRIBUTIONS-EXPENDITURES MADE BY OTHERS [ ] REIMBURSEMENTS/REFUNDS OF DISBURSEMENTS [ ] DIVIDENDS/INTEREST

FULL COMMITTEE NAME:

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Walters Management Co , Inc		500 Barnegat Boulevard North Bldg 400, Suite 402		
OCCUPATION	STATE USE ONLY	(CITY STATE AND ZIP CODE)		
		Barnegat, NJ 08005		
EMPLOYER NAME			01/26/2009	9250 00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 9250.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Steve Zabarsky		248 Washington Street		
OCCUPATION	STATE USE ONLY	(CITY STATE AND ZIP CODE)		
Attorney		Toms River, NJ 08753		
EMPLOYER NAME Citta Holzapfel Zabarsky et al			02/20/2009	600.00
EMPLOYER ADDRESS (NUMBER AND STREET) 248 Washington Street				
(CITY, STATE, AND ZIP CODE) Toms River, NJ 08754				
RECEIPT DESCRIPTION (If In Kind)		AGGREGATE YEAR-TO-DATE 600 00		

1. **SUBTOTAL (Add all receipts listed on this page.)**	9850.00
2. **TOTAL RECEIPTS, THIS PERIOD (Complete this line on the last page used for each receipt type. Carry forward to applicable line on Page 2, Column A.)**	18950 00

POLITICAL PARTY COMMITTEE -
DESIGNATION OF ORGANIZATIONAL TREASURER AND DEPOSITORY
New Jersey Election Law Enforcement Commission
P O Box 185, Trenton, NJ 08625-0185
(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)
Website http //www elec state nj us/

FORM D-3

PLEASE TYPE OR PRINT

COMMITTEE NAME
Ocean County Regular Republican Organization

FOR STATE USE ONLY

ELEC RECEIVED
JUN 19 2009

[ ] STATE COMMITTEE [X] COUNTY COMMITTEE [ ] MUNICIPAL COMMITTEE

ADDRESS (NUMBER AND STREET, CITY, STATE, ZIP CODE)
10 Allen STreet Suite 2B Toms River, N.J. 08753

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
732 797-1333	
COUNTY: Ocean	MUNICIPALITY: Toms River
IDENTIFICATION NUMBER: 1500 0002 22 Q2009	POLITICAL PARTY: Republican

TYPE OF FILING

[X] Annual Designation for July 1, ~~2009~~ to June 30, ~~2010~~
[ ] Amendment (please specify below)
[ ] Additional Depository
[ ] Deputy Treasurer

1 CHAIRPERSON

NAME: Jerry J. Dasti
MAILING ADDRESS: ~~620~~ W. Lacey Road
CITY: Forked River, | STATE: N.J. | ZIP CODE: 08731
*(AREA) DAY TELEPHONE: 609 971_ 1010 | *(AREA) EVENING TELEPHONE:

2 TREASURER

NAME: Frank B. Holman, III
MAILING ADDRESS: 10 Allen Street Suite 2B
CITY: Toms River, | STATE: N.J. | ZIP CODE: 08753
*(AREA) DAY TELEPHONE: 732 797-1333 | *(AREA) EVENING TELEPHONE:
RESIDENT ADDRESS, IF DIFFERENT FROM MAILING ADDRESS:
CITY: | STATE: | ZIP CODE:

3. DEPOSITORY INFORMATION

NAME OF BANK OR DEPOSITORY: Wachovia Bank
MAILING ADDRESS: Main Street
CITY: Toms River, | STATE: N.J. | ZIP CODE: 08753
(AREA) DAY TELEPHONE: 800 275-3862
ACCOUNT NAME: Ocean Cnty. Regular Republican Org. | ACCOUNT NUMBER: 2000016281439

*Leave this field blank if your telephone number is unlisted Pursuant to N.J.S.A. 47 1A-1 1 an unlisted telephone number is not a public record and must not be provided on this form

3. DEPOSITORY INFORMATION (Continued)

NAME OF BANK OR DEPOSITORY		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
(AREA) DAY TELEPHONE		
ACCOUNT NAME	ACCOUNT NUMBER	

4 LIST THE NAME(S), MAILING ADDRESS(ES) AND TELEPHONE NUMBER(S) OF ANY PERSON(S) AUTHORIZED TO SIGN CHECKS OR OTHERWISE MAKE TRANSACTIONS

NAME		
April Yezzi		
MAILING ADDRESS		
10 Allen Street Suite 2B		
CITY	STATE	ZIP CODE
Toms River,	N.J.	08753
*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE	
732 797-1333		

NAME		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE	

NAME		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE	

TREASURER/CHAIRPERSON CERTIFICATION

I certify that the statements on this document are true I am aware that if any of the statements are willfully false, I may be subject to punishment

6-16-09	Frank B. Holman, III	
Date	Print Full Name (Treasurer)	Signature (Treasurer)
6-16-09	Jerry J. Dasti	
Date	Print Full Name (Chairperson)	Signature (Chairperson)

Treasurers for the State Political Party Committees are required to receive training with the New Jersey Election Law Enforcement Commission

Check here ☐ if you have completed the training and enter your Treasurer Training ID # _____

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1 an unlisted telephone number is not a public record and must not be provided on this form

Commission Staff Determination
Northern Pine Snake Survey for 38 Acre Overlay Area in Ocean Acres, Barnegat Township
October 2, 2009

BACKGROUND

2003 Survey

In 2003, an applicant conducted a survey for northern pine snakes on an approximately 800 acre parcel in Barnegat Township, commonly known as Ocean Acres. The survey was performed to help determine whether Northern pine snakes, a threatened animal species afforded protection by the Pinelands Comprehensive Management Plan, frequented the area.

Five Northern pine snakes were captured during the survey. Four individual snakes were radio-tracked by the applicant across Ocean Acres and two pine snake winter den sites were identified. Two of the radio-tracked Northern pine snakes were tracked within a 38 acre area now known as the "Overlay Area." The survey also identified one over-wintering (denning) Northern pine snake within the Overlay Area.

Based upon the presence of suitable habitat onsite and the results of the survey, the Commission staff determined that a portion of Ocean Acres, including the Overlay Area, was "critical" habitat for Northern pine snake. The applicant contended that the den found within the Overlay Area was not used for over-wintering and that the Overlay Area itself was not critical habitat.

Conservation Plan

In response to this survey and information from adjacent land development applications, the Commission designated a "Conservation Area" that included critical Northern pine snake habitat and other important natural resources, including wetland systems. This Conservation Area encompassed approximately 714 acres of land, including a portion of Ocean Acres, Barnegat, and adjacent areas. The Conservation Area within Ocean Acres, Barnegat, is approximately 350 acres.

In 2003, the Commission received certain permits and approvals from the applicant to build in Ocean Acres, Barnegat. In accordance with the Commission's regulations, a Commission public hearing was scheduled to determine whether those permits and approvals met the standards of the Barnegat Township land use ordinance and the Pinelands Comprehensive Management Plan (CMP) relative to the protection of critical habitat for threatened and endangered animal species. On May 7, 2004, a Stipulation of Settlement was entered into between the applicant and the Commission. The "Settlement" protected that portion of Ocean Acres located within the Conservation Area, and allowed the applicant to proceed with development located outside of that area. The "Settlement" also noted that the applicant contended that the 38 acre Overlay Area portion of the

Conservation Area was not critical habitat for Northern pine snake and reserved a two year period for the applicant to undertake additional survey work in the Overlay Area. The "Settlement" noted that the survey protocol and necessary conclusions of the survey would be addressed in a separate agreement.

On September 13, 2004, the separate "Agreement" was entered into by the applicant, Barnegat Township and the Commission regarding this matter. The Agreement specifically reserved the right of the applicant to undertake additional Northern pine snake surveys over a two year period in an attempt to demonstrate that the 38 acre Overlay Area no longer constituted critical habitat for the Northern pine snake. The Agreement also provided that the protocols for the survey be approved by the Commission staff. Lastly, the Agreement provided that, if the Commission's staff concluded that the additional survey results demonstrated that the Overlay Area was no longer critical habitat for Northern pine snake, the 38 acre Overlay Area would be rezoned by Barnegat Township to allow for residential development.

2005-2007 SURVEY OF THE OVERLAY AREA

Survey Results

Thereafter, the applicant completed and submitted to the Commission a two year (2005-2007) Northern pine snake survey for the 38 acre Overlay Area. The results of the survey were negative; that is, no Northern pine snakes were found.

Preliminary Review of the Survey

Before completing its review of the survey, the Commission's staff distributed the survey report to six individuals knowledgeable about snake surveys for review. The Commission staff received four substantive comments regarding the survey. The concerns were that:

1. The design of the drift fences erected on the parcel and the snake traps themselves were faulty because snakes could have climbed over the fences or avoided entry into the traps;

2. The residential development that had occurred surrounding the 38 acre Overlay Area, both prior to and during the survey period, probably negatively affected the survey;

3. The fact that snake traps were vandalized in May 2007 negatively affected the survey results; and

4. The design of the snake study did not meet the study objectives for demonstrating that no snakes were in the 38 acres because it was not designed to conclusively trap all individuals exiting or entering the Overlay Area.

Commission Staff Preliminary Review

The Commission staff analyzed the concerns and preliminarily concluded that:

1. The proposed survey protocol (design), which had been approved in advance, adequately addressed drift fence and trap design.

2. The fact that residential development was occurring in a surrounding area (which had not been deemed to be critical habitat) would not render the survey results invalid.

3. The vandalism event impacted approximately two weeks of the two year survey. Since the Commission was notified promptly and the traps were relocated, it was felt that the survey was not materially affected.

4. The methodology for the survey, which exceeded that regularly used by other applicants in the Pinelands Area, was reliable.

Based upon this analysis, the fact that the survey work did not identify any Northern pine snakes within the 38 acre Overlay Area in a two year period and the absence of any other reports or information regarding Northern pine snakes within the Overlay Area, it was the Commission staff's preliminary opinion that the applicant had demonstrated that the 38 acre Overlay Area did not constitute critical habitat for Northern pine snake.

PUBLIC REVIEW OF THE SURVEY

Beginning July 10, 2009, the Commission staff began accepting public comments for a 30 day period regarding the 2005-2007 Northern pine snake survey and the Commission staff's preliminary determination that the survey demonstrated that the Overlay Area could no longer be considered critical habitat for Northern pine snake. The survey and the preliminary staff determination on this matter were posted on the Commission's website and Barnegat Township posted the determination on its' website. Paper copies of the survey and the Commission staff's preliminary determination were made available for review at the Pinelands Commission office and at the Barnegat Township municipal building. Written notification was provided to over one hundred landowners within 200 feet of the Overlay Area and other interested parties, including conservation groups and the applicant. Those postings and mailings invited written comment on the matter to be submitted by August 10, 2009.

The Commission received 13 written comments. Three commenters, who owned property within the Overlay Area and who expressed an interest in developing their properties, supported rezoning the Overlay Area for development. One commenter, who remained neutral, reported that the snake fences remained in place. Other commenters opposed the rezoning on the basis that the area was valuable as open space and habitat. One commenter provided an analysis prepared by Dr. Joanna Burger of Rutgers University and Dr. Emile DeVito of the New Jersey Conservation Foundation which disagreed with the survey report's conclusions that the Overlay Area does not constitute critical habitat.

COMMISSION STAFF ANALYSIS

After the public comment period ended, the Commission staff re-examined the survey in light of the questions and concerns raised during the preliminary review and the public review processes. These related to four primary areas of inquiry.

1. Was the survey methodology flawed because the fencing was insufficient to direct snakes to the traps, the traps were not designed correctly, the traps should have been opened earlier, snakes outside of the Overlay should have been tracked, the two year study period was too short or too few common snakes were captured?

2. Did vandalism invalidate the results of the survey?

3. Did the surrounding development negatively impact the results of the survey?

4. Is the Overlay Area critical habitat because it provides an important buffer to adjacent critical habitat?

The Commission staff analysis of each issue follows.

Survey Methodology

The survey involved the installation of 3700 feet of fencing and 42 traps within this 38 acre area. The fencing was three feet in height with a minimum of four inches buried. In addition to road cruising surveys, snakes were trapped during the Spring (May through mid-July) and Fall (September through October) for a two year period.

The protocol for the survey was pre-approved by Commission staff and involved at least 50 times more fencing per acre than used in other successful surveys throughout the Pinelands and recommended by other researchers.[1] Because of the additional fencing, the number of traps per acre also greatly exceeded the norm. The traps' design was consistent with that typically used in other studies. Although three foot high fencing is also the norm, it is understood that this height will not guarantee that a larger snake is prevented from climbing over the fence.

The Spring and Fall survey periods were also consistent with typical periods used successfully elsewhere in the Pinelands. Although most of a pine snake's typical period of activity was surveyed, it is true that, depending on weather, pine snakes may leave their winter denning areas before May. In order for any such snakes to be missed during this survey, it must be assumed that they emerged from their dens before the end of April, left the 38 acre Overlay Area by the beginning of May and, if they returned in the Fall, did not do so until November. As for the two year duration of the survey, it was twice the length of typical surveys that successfully captured pine snakes elsewhere in the Pinelands.

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[1] Zappalorti and Torocco (2002)

It has been suggested that the capture of so few common snake species (__ during the 2005-2007 survey) raises questions as to the significance that a pine snake was not captured. It is noteworthy that the 2005-2007 survey, except for much more extensive fencing and traps, was designed consistent with the successful 2003 survey. In 2003, 64 snakes were captured, including five pine snakes ranging in length from 4.3 to 5.4 feet in length and 14 other snakes that exceeded 4 feet in length. Although it was suggested that the failure to capture a pine snake in 2005-2007 was not statistically significant, the rationale for such a conclusion is not clear since that assessment appears to combine snakes seen along the fence line with those caught in traps, uses three rather than four trap periods, reflects incorrect mathematical calculations and incorrectly compares probabilities.

Lastly, the survey did not seek to track pine snakes that did not utilize the Overlay Area. However, the survey was designed to capture snakes that may have originated outside the Overlay Area but entered the Overlay Area for nesting, foraging or denning.

Vandalism

The traps were vandalized in May 2007. According to the consultant's report of the incident, it appeared that the soil in front of the traps was treated with a chemical mixture. The Commission staff was promptly notified and the traps were moved. Since the event affected about two weeks of the four season survey, it is not likely that the efficacy of the survey was compromised.

Impact of Surrounding Development on the Overlay Area

The 38 acre Overlay Area extends in a northerly direction from the remainder of the Conservation Area. It is bounded on two sides by areas zoned for residential development.

When the Conservation Area was established, it was intended to incorporate critical habitat for pine snakes, including buffers to nesting and denning sites and foraging areas. The area outside the Conservation Area was and still is zoned for residential development. Some development in that surrounding has since occurred.

The "domino" effect (development within the surrounding area might indirectly impact the Overlay Area) was considered when the boundaries of the Conservation Area were drawn; however, there was no specific method in place at the time to measure the effect. It is, therefore, possible that these domino effects were under-estimated. If that was the case and the habitat value of the Overlay Area has already been compromised, it would be difficult to conclude that it constitutes critical habitat.

Impact of Development Within the Overlay Area on the Remaining Conservation Area

If the Overlay Area is removed from the Conservation Area and allowed to be developed, it too will have some effect on the remaining Conservation Area, which will then total approximately 676 acres. If this effect is significant, it could be concluded that the Overlay Area is critical habitat because of its importance in buffering the Conservation Area.

Commission staff used the Pinelands Commission's 2008 Ecological Integrity Assessment methodology to test this effect. To do so, the entirety of the surrounding areas currently zoned for residential development was labeled as developed. A composite ecological integrity score (out of a possible score of 100) was then calculated for the entire Conservation Area, including the Overlay Area. The score was re-calculated assuming the Overlay Area was developed. The score for the Conservation Area dropped from 65.7 to 64.6 if the Overlay Area is fully developed. Since the composite ecological integrity score reflects landscape, watershed and wetlands integrity, a separate landscape integrity score, which is more directly related to habitat value for wide-ranging animals, was also calculated. The score for the Conservation Area dropped from 56.1 to 55.0 if the Overlay Area is not protected. Focusing solely on a very small part of the Conservation Area that is immediately adjacent to the Overlay Area, the landscape integrity score for that adjacent area drops from 42.0 to 36.4.

The Ecological Integrity Assessment reported that fifty-one percent of the Pinelands Area fell within the highest ecological-integrity class between 90 and 100. Only 5.2 percent of the Pinelands displayed scores of 60 or less and 2.6 percent had scores of 50 or less. In terms of the correlation of ecological integrity scores to the distribution of threatened and endangered animal species records, 2.4 percent of Northern pine snake records were located in areas with scores of 50 or less.

CONCLUSION

Even though the Overlay Area provides open space benefits and possesses some ecological value, the question before the Commission staff is whether the area represents critical habitat essential for the protection of Northern pine snakes. It is this standard which is set forth in the Agreement and which the Commission staff must seek to address.

Although it is virtually impossible to prove a negative (in this case demonstrating with absolute certainty that no Northern pine snakes would ever make use of the Overlay Area), the survey methodology was based on methodologies successfully used in Ocean Acres and elsewhere throughout the Pinelands. However, because it was felt that this survey needed to be much more rigorous than the norm, the duration, length of fencing and number of traps went well beyond standard practice. In light of the survey's negative findings, it is difficult to conclude that the Overlay Area itself represents critical habitat for Northern pine snakes.

An examination of the Overlay Area in relation to the Conservation Area does not suggest that rezoning the Overly Area for development will have a material effect on the integrity of the remaining Conservation Area. Thus, it is difficult to conclude that the Overlay Area is critical because it provides a buffer that is essential to the protection of other critical habitat for Northern pine snakes.

Therefore, the Commission staff must conclude that, in accord with the terms of the Agreement, the Overlay Area does not constitute critical habitat for Northern pine snakes.

ITEMIZED RECEIPTS (Other than Loans)

SCHEDULE A | Page No. 14 of 14

PLEASE TYPE OR PRINT. PHOTOCOPIES MAY BE USED IF ADDITIONAL FORMS ARE NEEDED.

RECEIPT TYPE (USE A SEPERATE "SCHEDULE A" FOR EACH TYPE AND FOR EACH SEPARATE ACCOUNT)

- [ ] CURRENCY
- [X] ALL OTHER MONETARY CONTRIBUTIONS
- [ ] IN-KIND CONTRIBUTIONS EXPENDITURES MADE BY OTHERS
- [ ] REIMBURSEMENTS/ REFUNDS OF DISBURSEMENTS
- [ ] DIVIDENDS/ INTEREST

FULL COMMITTEE NAME:

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Walters Management Co , Inc		500 Barnegat Boulevard North Bldg 400, Suite 402		
OCCUPATION	STATE USE ONLY	(CITY STATE AND ZIP CODE)		
		Barnegat, NJ 08005		
EMPLOYER NAME			09/26/2008	9250 00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 9250 00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
David Wintrode		1484 Silverton Road		
OCCUPATION	STATE USE ONLY	(CITY STATE AND ZIP CODE)		
Partner		Toms River, NJ 08755		
EMPLOYER NAME Andwin Realty Investors, LLC			09/09/2008	600 00
EMPLOYER ADDRESS (NUMBER AND STREET) 306 Oak Avenue				
(CITY STATE, AND ZIP CODE) Cedar Run, NJ 08092				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR TO-DATE 900 00		

1. **SUBTOTAL (Add all receipts listed on this page.)**	9850 00
2. **TOTAL RECEIPTS, THIS PERIOD (Complete this line on the last page used for each receipt type Carry forward to applicable line on Page 2, Column A.)**	93200 00

POLITICAL PARTY COMMITTEE -
DESIGNATION OF ORGANIZATIONAL TREASURER AND DEPOSITORY

FORM D-3

New Jersey Election Law Enforcement Commission
P O Box 185, Trenton, NJ 08625-0185
(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)
Website http //www elec state nj us/

PLEASE TYPE OR PRINT

COMMITTEE NAME
Ocean County Republican Finance Committee, Inc.

FOR STATE USE ONLY

ELEC RECEIVED
JUL 10 2008

☐ STATE COMMITTEE ☒ COUNTY COMMITTEE ☐ MUNICIPAL COMMITTEE

ADDRESS (NUMBER AND STREET, CITY, STATE, ZIP CODE)
10 Allen Street, Suite 2B Toms River, N.J. 08753

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
732 797-1333	
COUNTY: Ocean	MUNICIPALITY: Toms River
IDENTIFICATION NUMBER: 1500 0002 22 02008	POLITICAL PARTY: Republican

TYPE OF FILING

☒ Annual Designation for July 1 2008 to June 30, 2009
☐ Amendment (please specify below)
☐ Additional Depository
☐ Deputy Treasurer

1. CHAIRPERSON

NAME: Jerry J. Dasti
MAILING ADDRESS: 621 W. Lacey Road

CITY	STATE	ZIP CODE
Forked River,	N.J.	08731

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
609 971-1010	

2. TREASURER

NAME: Frank B. Holman, III
MAILING ADDRESS: 10 Allen Street Suite 2B

CITY	STATE	ZIP CODE
Toms River,	N.J.	08753

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
732 797-1333	

RESIDENT ADDRESS, IF DIFFERENT FROM MAILING ADDRESS

CITY	STATE	ZIP CODE

3 DEPOSITORY INFORMATION

NAME OF BANK OR DEPOSITORY: Commerce Bank/Shore NA
MAILING ADDRESS: Hooper and Caudina Avenue

CITY	STATE	ZIP CODE
Toms River,	N.J.	08754

(AREA) DAY TELEPHONE: 732 505-3000

ACCOUNT NAME	ACCOUNT NUMBER
Ocean County Republican Finance Comm., Inc	36-972274

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47 1A 1 1, an unlisted telephone number is not a public record and must not be provided on this form

3. DEPOSITORY INFORMATION (Continued)

NAME OF BANK OR DEPOSITORY		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
(AREA) DAY TELEPHONE		
ACCOUNT NAME	ACCOUNT NUMBER	

4 LIST THE NAME(S), MAILING ADDRESS(ES) AND TELEPHONE NUMBER(S) OF ANY PERSON(S) AUTHORIZED TO SIGN CHECKS OR OTHERWISE MAKE TRANSACTIONS.

NAME Frank B. Holman, III		
MAILING ADDRESS 10 Allen Street, Suite 2B		
CITY Toms River,	STATE N.J.	ZIP CODE 08753
*(AREA) DAY TELEPHONE 732 797-1333	*(AREA) EVENING TELEPHONE	
NAME Robert J. Cressen		
MAILING ADDRESS 21 Route 37 East		
CITY Toms River,	STATE N.J.	ZIP CODE 08753
*(AREA) DAY TELEPHONE 732 244-5400	*(AREA) EVENING TELEPHONE	
NAME		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE	

TREASURER/CHAIRPERSON CERTIFICATION

I certify that the statements on this document are true I am aware that if any of the statements are willfully false, I may be subject to punishment

7/9/08	Frank B. Holman, III	
Date	Print Full Name (Treasurer)	Signature (Treasurer)
7/8/08	Jerry J. Dasti	
Date	Print Full Name (Chairperson)	Signature (Chairperson)

Treasurers for the State Political Party Committees are required to receive training with the New Jersey Election Law Enforcement Commission

Check here ☐ if you have completed the training and enter your Treasurer Training ID # _____

*Leave this field blank if your telephone number is unlisted Pursuant to N.J.S.A. 47:1A-1.1 an unlisted telephone number is not a public record and must not be provided on this form.

SUPPLEMENTAL CONTRIBUTOR INFORMATION

FORM C-3

FOR STATE USE ONLY

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
P O Box 185, Trenton NJ 08625-0185
(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)
Web site http //www elec state nj us/

ELEC RECEIVED
NOV 0 2 2007

CONTRIBUTIONS REPORT TYPE (CHECK ONE)

- ☐ Committee filing 'Sworn Statement,' Form A-3, and receiving a contribution in excess of $300 in the aggregate from one source, or currency (cash) contributions in any amount
- ☒ Committee receiving a contribution in excess of $1,000 in the aggregate from one source between the closing date of the last quarterly report through the date of an election in which the committee is contributing or otherwise participating (48-Hour Notice)

REPORT QUARTER

☐ APRIL 15 ☐ JULY 15 ☐ OCTOBER 15 ☒ JANUARY 15

ELEC Identification Number
1500 0002 22 02007

SECTION I PLEASE TYPE OR PRINT ☐ "X" if address is different from address previously reported

Full Committee Name, Address (Number and Street, City State Zip Code)

Ocean County Republican Finance Committee, Inc.
10 Allen Street Suite 2B
Toms River, N.J. 08753

RECEIVED
VIA FAX

SECTION II CONTRIBUTION INFORMATION (Receipt Types A = Cash or Check, B = In-Kind, C = Loan)

Full Name, Address (Number and Street, City, State Zip Code)	Date(s) Received	Amount(s) Received This Period
Walters Management Co., Inc. 500 Barnegat Blvd. Bldg. #100 Barnegat, N.J. 08005	11-2-07	9,250.00

Receipt Type	Description, if In-Kind Contribution	Aggregate Year to Date
A		37,000.00

Occupation (If Individual)	Employer Name, Address (If Individual)

Full Name, Address (Number and Street, City State Zip Code)	Date(s) Received	Amount(s) Received This Period

Receipt Type	Description, if In-Kind Contribution	Aggregate Year to Date

Occupation (If Individual)	Employer Name, Address (If Individual)

Full Name, Address (Number and Street, City, State, Zip Code)	Date(s) Received	Amount(s) Received This Period

Receipt Type	Description, if In-Kind Contribution	Aggregate Year to Date

Occupation (If Individual)	Employer Name, Address (If Individual)

(COMPLETE THIS LINE FOR EVERY PAGE USED) TOTAL, THIS PAGE $ 9,250.00

(COMPLETE THIS LINE FOR LAST PAGE USED) GRAND TOTAL $ 9,250.00

Treasurer Signature

Date 11-2-07

POLITICAL PARTY COMMITTEE - DESIGNATION OF ORGANIZATIONAL TREASURER AND DEPOSITORY

FORM D-3

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
P O BOX 185, TRENTON NJ 08625-0185 (609) 292-8700

PLEASE TYPE OR PRINT

COMMITTEE NAME
Ocean County Republican Finance Committee, Inc.

☐ STATE COMMITTEE ☒ COUNTY COMMITTEE ☐ MUNICIPAL COMMITTEE

ADDRESS (NUMBER AND STREET, CITY, STATE, ZIP CODE)
10 Allen Street Suite 2B, Toms River, N.J. 08753

FOR STATE USE ONLY

ELEC RECEIVED
JUL 09 2007

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
732 797-1333	
COUNTY: Ocean	MUNICIPALITY: Toms River
IDENTIFICATION NUMBER: 1500 0002 22 Q2007	POLITICAL PARTY: Republican

TYPE OF FILING

☒ Annual Designation for July 1, ~~2007~~ to June 30 ~~2008~~
☐ Amendment (please specify below)
☐ Additional Depository
☐ Deputy Treasurer

1 CHAIRPERSON

NAME: Jerry J. Dasti
MAILING ADDRESS: 621 W. Lacey Road

CITY	STATE	ZIP CODE
Forked River,	N.J.	08731

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
609 971-1010	

2 TREASURER

NAME: Frank B. Holman, III
MAILING ADDRESS: 10 Allen Street Suite 2B

CITY	STATE	ZIP CODE
Toms River,	N.J.	08753

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
732 797-1333	

RESIDENT ADDRESS, IF DIFFERENT FROM MAILING ADDRESS

CITY	STATE	ZIP CODE

3 DEPOSITORY INFORMATION

NAME OF BANK OR DEPOSITORY: Commerce Bank/ Shore N.A.
MAILING ADDRESS: Hooper and Caudina Avenue

CITY	STATE	ZIP CODE
Toms River,	N.J.	08754

(AREA) DAY TELEPHONE: ~~732 505 3000~~

ACCOUNT NAME	ACCOUNT NUMBER
Ocean County Republican Fin. Comm., Inc.	36-972274

*Leave this field blank if your telephone number is unlisted Pursuant to N J S A 47 1A 1 1 an unlisted telephone number is not a public record and must not be provided on this form

3. DEPOSITORY INFORMATION (Continued)

NAME OF BANK OR DEPOSITORY		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
(AREA) DAY TELEPHONE		
ACCOUNT NAME	ACCOUNT NUMBER	

4. LIST THE NAME(S), MAILING ADDRESS(ES) AND TELEPHONE NUMBER(S) OF ANY PERSON(S) AUTHORIZED TO SIGN CHECKS OR OTHERWISE MAKE TRANSACTIONS.

NAME Frank B. Holman, III		
MAILING ADDRESS 10 Allen Street Suite 2B		
CITY Toms River,	STATE N.J.	ZIP CODE 08753
*(AREA) DAY TELEPHONE 732 797-1333	*(AREA) EVENING TELEPHONE	
NAME Robert J. Cressen		
MAILING ADDRESS 21 Route 37 East		
CITY Toms River, .	STATE N.J.	ZIP CODE 08753
*(AREA) DAY TELEPHONE 732 244-5400	*(AREA) EVENING TELEPHONE	
NAME		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE	

TREASURER/CHAIRPERSON CERTIFICATION

I certify that the statements on this document are true and correct I am aware that if any of the statements are willfully false, I am subject to punishment

7/5/07 Date	Frank B. Holman, III Print Full Name (Treasurer)	Signature (Treasurer)
7-5-07 Date	Jerry J. Dasti Print Full Name (Chairperson)	Signature (Chairperson)

*Leave this field blank if your telephone number is unlisted Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form

SUPPLEMENTAL CONTRIBUTOR INFORMATION

FORM C-3

FOR STATE USE ONLY

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
P O Box 185 Trenton, NJ 08625-0185
(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)
Web site http //www elec state nj us/

ELEC RECEIVED
NOV 02 2006

CONTRIBUTIONS REPORT TYPE (CHECK ONE)

- ☐ Committee filing "Sworn Statement." Form A-3 and receiving a contribution in excess of $300 in the aggregate from one source, or currency (cash) contributions in any amount
- ☒ Committee receiving a contribution in excess of $1 000 in the aggregate from one source between the closing date of the last quarterly report through the date of an election in which the committee is contributing or otherwise participating (48-Hour Notice)

REPORT QUARTER

☐ APRIL 15 ☐ JULY 15 ☐ OCTOBER 15 ☒ JANUARY 15

ELEC Identification Number

1500 0002 22 Q2006

SECTION I PLEASE TYPE OR PRINT ☐ "X" If address is different from address previously reported

Full Committee Name, Address (Number and Street, City, State, Zip Code)

Ocean County Republican Finance Committee, Inc.
10 Allen Street Suite 2B
Toms River, N.J. 08753

RECEIVED VIA FAX

SECTION II CONTRIBUTION INFORMATION (Receipt Types. A = Cash or Check, B = In-Kind, C = Loan)

Full Name, Address (Number and Street, City, State, Zip Code)	Date(s) Received	Amount(s) Received This Period
Walters Management Co., Inc. 500 Barnegat Blvd. Barnegat, N.J. 08005	11-2-06	$9,250.00

Receipt Type	Description, If In-Kind Contribution	Aggregate Year to Date
A		~~$27,750.00~~

Occupation (If Individual)	Employer Name, Address (If Individual)

Full Name Address (Number and Street, City, State, Zip Code)	Date(s) Received	Amount(s) Received This Period

Receipt Type	Description, If In-Kind Contribution	Aggregate Year to Date

Occupation (If Individual)	Employer Name, Address (If Individual)

Full Name, Address (Number and Street, City, State, Zip Code)	Date(s) Received	Amount(s) Received This Period

Receipt Type	Description, If In-Kind Contribution	Aggregate Year to Date

Occupation (If Individual)	Employer Name, Address (If Individual)

(COMPLETE THIS LINE FOR EVERY PAGE USED) TOTAL, THIS PAGE $ 9,250.00

(COMPLETE THIS LINE FOR LAST PAGE USED) GRAND TOTAL $ 9,250.00

Treasurer Signature

Date 11-2-06

POLITICAL PARTY COMMITTEE -
DESIGNATION OF ORGANIZATIONAL TREASURER AND DEPOSITORY
New Jersey Election Law Enforcement Commission
P O Box 185, Trenton, NJ 08625-0185
(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)
Web site http://www elec state nj us/

FORM D-3

PLEASE TYPE OR PRINT

COMMITTEE NAME
Ocean County Republican Finance Committee, Inc.

FOR STATE USE ONLY
ELEC RECEIVED
JUL 10 2006

☐ STATE COMMITTEE ☒ COUNTY COMMITTEE ☐ MUNICIPAL COMMITTEE

ADDRESS (NUMBER AND STREET, CITY, STATE, ZIP CODE)
10 Allen Street Suite 2B Toms River, N.J. 08753

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
732 797-1333	
COUNTY: Ocean	MUNICIPALITY: Dover
IDENTIFICATION NUMBER: 1500 0002 22 Q2006	POLITICAL PARTY: Republican

TYPE OF FILING

☒ Annual Designation for July 1, 2006 to June 30, 2007
☐ Amendment (please specify below)
☐ Additional Depository
☐ Deputy Treasurer

1 CHAIRPERSON

NAME: Jerry J. Dasti
MAILING ADDRESS: 620 W. Lacey Road

CITY	STATE	ZIP CODE
Forked River,	N.J.	08731

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
609 971-1010	

2. TREASURER

NAME: Frank B. Holman, III
MAILING ADDRESS: 10 Allen Street Suite 2B

CITY	STATE	ZIP CODE
Toms River,	N.J.	08753

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
732 797-1333	

RESIDENT ADDRESS, IF DIFFERENT FROM MAILING ADDRESS

CITY	STATE	ZIP CODE

3. DEPOSITORY INFORMATION

NAME OF BANK OR DEPOSITORY: Commerce Bank/Shore N.A.
MAILING ADDRESS: Hooper & Caudina Ave.

CITY	STATE	ZIP CODE
Toms River,	N.J.	08754

(AREA) DAY TELEPHONE: 732 505-3000

ACCOUNT NAME	ACCOUNT NUMBER
Ocean Cnty Republican Fin. Comm., Inc.	36-972274

*Leave this field blank if your telephone number is unlisted Pursuant to N J S A 47 1A-1 1, an unlisted telephone number is not a public record and must not be provided on this form

3. DEPOSITORY INFORMATION (Continued)

NAME OF BANK OR DEPOSITORY		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
(AREA) DAY TELEPHONE		
ACCOUNT NAME	ACCOUNT NUMBER	

4. LIST THE NAME(S), MAILING ADDRESS(ES) AND TELEPHONE NUMBER(S) OF ANY PERSON(S) AUTHORIZED TO SIGN CHECKS OR OTHERWISE MAKE TRANSACTIONS.

NAME Frank B. Holman, III		
MAILING ADDRESS 10 Allen Street Suite 2B		
CITY Toms River,	STATE N.J.	ZIP CODE 08753
*(AREA) DAY TELEPHONE 732 797-1333	*(AREA) EVENING TELEPHONE	
NAME Robert J. Cressen		
MAILING ADDRESS 21 Route 37 East		
CITY Toms River,	STATE N.J.	ZIP CODE 08753
*(AREA) DAY TELEPHONE 732 244-5400	*(AREA) EVENING TELEPHONE	
NAME		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE	

TREASURER/CHAIRPERSON CERTIFICATION

I certify that the statements on this document are true and correct I am aware that if any of the statements are willfully false, I am subject to punishment

6/26/06
Date

Frank B. Holman, III
Print Full Name (Treasurer)

Signature (Treasurer)

6/26/06
Date

Jerry J. Dasti
Print Full Name (Chairperson)

Signature (Chairperson)

easurers for the **State Political Party Committees** are required to receive training with the New Jersey Election Law Enforcement Commission

ck here ☐ if you have completed the training and enter your Treasurer Training ID # _____

e this field blank if your telephone number is unlisted Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form

SUPPLEMENTAL CONTRIBUTOR INFORMATION

FORM C-3

FOR STATE USE ONLY

ELEC RECEIVED

NOV 0 3 2005

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

P O Box 185, Trenton, NJ 08625-0185
(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)
Web site http //www elec state nj us/

CONTRIBUTIONS REPORT TYPE (CHECK ONE)

- ☐ Committee filing "Sworn Statement," Form A-3, and receiving a contribution in excess of $300 in the aggregate from one source, or currency (cash) contributions in any amount
- ☒ Committee receiving a contribution in excess of $1,000 in the aggregate from one source between the closing date of the last quarterly report through the date of an election in which the committee is contributing or otherwise participating (48-Hour Notice)

REPORT QUARTER

☐ APRIL 15 ☐ JULY 15 ☐ OCTOBER 15 ☒ JANUARY 15

ELEC Identification Number

1500 0002 22 Q2005

SECTION I. PLEASE TYPE OR PRINT ☐ "X" If address is different from address previously reported

Full Committee Name, Address (Number and Street, City, State, Zip Code)

Ocean County Republican Finance Committee, Inc.
10 Allen Street Suite 2B
Toms River, N.J. 08753

SECTION II CONTRIBUTION INFORMATION (Receipt Types: A = Cash or Check; B = In-Kind, C = Loan)

Full Name, Address (Number and Street, City, State, Zip Code)	Date(s) Received	Amount(s) Received This Period
Holman & Frenia P.C. 10 Allen Street Suite 2B Toms River, N.J. 08753	10-06-05	1,200.00

Receipt Type	Description, if In-Kind Contribution	Aggregate Year to Date
A		1,200.00

Occupation (If Individual)	Employer Name, Address (If Individual)

Full Name, Address (Number and Street, City, State, Zip Code)	Date(s) Received	Amount(s) Received This Period
Walters Management Co., Inc. 300 Barnegat Blvd. North Barnegat, N.J. 08005	10-18-05	10,000.00

Receipt Type	Description, if In-Kind Contribution	Aggregate Year to Date
A		32,700.00

Occupation (If Individual)	Employer Name, Address (If Individual)

Full Name, Address (Number and Street, City, State, Zip Code)	Date(s) Received	Amount(s) Received This Period
Berry, Sahradnik, Kotzas, Riordan & Benson, PC 212 Hooper Avenue Toms River, N.J. 08754	10- 26-05	1,500.00

Receipt Type	Description, if In-Kind Contribution	Aggregate Year to Date
A		4,800.00

Occupation (If Individual)	Employer Name, Address (If Individual)

(COMPLETE THIS LINE FOR EVERY PAGE USED) TOTAL, THIS PAGE $ 12,700.00

(COMPLETE THIS LINE FOR LAST PAGE USED) GRAND TOTAL $

Treasurer Signature Robert D Holman

Date 10-26-05

POLITICAL PARTY COMMITTEE -
DESIGNATION OF ORGANIZATIONAL TREASURER AND DEPOSITORY
New Jersey Election Law Enforcement Commission

FORM D-3

P.O Box 185, Trenton, NJ 08625-0185
(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)
Web site http //www elec state nj us/

PLEASE TYPE OR PRINT

COMMITTEE NAME
Ocean County Republican Finance Committee, Inc.

☐ STATE COMMITTEE ☒ COUNTY COMMITTEE ☐ MUNICIPAL COMMITTEE

ADDRESS (NUMBER AND STREET, CITY, STATE, ZIP CODE)
10 Allen Street Suite 1A Toms River, N.J. 08753

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
732 797-1333	
COUNTY	MUNICIPALITY
Ocean	Dover
IDENTIFICATION NUMBER	POLITICAL PARTY
1500 0002 22 Q2005	Republican

TYPE OF FILING

☒ Annual Designation for July 1, 2005 to June 30, 2006
☐ Amendment (please specify below)
☐ Additional Depository
☐ Deputy Treasurer

FOR STATE USE ONLY

ELEC RECEIVED
JUL 21 2005

1. CHAIRPERSON

NAME
Jerry J. Dasti

MAILING ADDRESS
620 W. Lacey Road

CITY	STATE	ZIP CODE
Forked River,	N.J.	08731

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
609- 971-1010	

2. TREASURER

NAME
Frank B. Holman, III

MAILING ADDRESS
10 Allen Street Suite 1A

CITY	STATE	ZIP CODE
Toms River,	N.J.	08753

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
732 797-1333	

RESIDENT ADDRESS, IF DIFFERENT FROM MAILING ADDRESS

CITY	STATE	ZIP CODE

3. DEPOSITORY INFORMATION

NAME OF BANK OR DEPOSITORY
Commerce Bank/Shore N.A.

MAILING ADDRESS
Hooper & Caudina Avenue

CITY	STATE	ZIP CODE
Toms River,	N.J.	08754

(AREA) DAY TELEPHONE
732 505-3000

ACCOUNT NAME	ACCOUNT NUMBER
Ocean Cnty. Republican Finance Comm. Inc.	36-972274

*Leave this field blank if your telephone number is unlisted Pursuant to N.J.S.A. 47:1A-1.1 an unlisted telephone number is not a public record and must not be provided on this form

3. DEPOSITORY INFORMATION (Continued)

NAME OF BANK OR DEPOSITORY		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
(AREA) DAY TELEPHONE		
ACCOUNT NAME	ACCOUNT NUMBER	

4 LIST THE NAME(S), MAILING ADDRESS(ES) AND TELEPHONE NUMBER(S) OF ANY PERSON(S) AUTHORIZED TO SIGN CHECKS OR OTHERWISE MAKE TRANSACTIONS.

NAME		
Frank B. Holman, III		
MAILING ADDRESS		
10 Allen Street Suite 1A		
CITY	STATE	ZIP CODE
Toms River	N.J.	08753
*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE	
732 797-1333		

NAME		
Robert J. Cressen		
MAILING ADDRESS		
52 McLaren Street		
CITY	STATE	ZIP CODE
Red Bank	N.J.	07701
*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE	
732 244-5400		

NAME		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE	

TREASURER/CHAIRPERSON CERTIFICATION

I certify that the statements on this document are true and correct I am aware that if any of the statements are willfully false, I am subject to punishment

6/24/05	Frank B. Holman, III	
Date	Print Full Name (Treasurer)	Signature (Treasurer)
6-24-05	Jerry J. Desti	
Date	Print Full Name (Chairperson)	Signature (Chairperson)

Treasurers for the **State Political Party Committees** are required to receive training with the New Jersey Election Law Enforcement Commission

Check here ☐ if you have completed the training and enter your Treasurer Training ID # _____

*Leave this field blank if your telephone number is unlisted Pursuant to N.J.S.A 47 1A-1 1, an unlisted telephone number is not a public record and must not be provided on this form

DASTI, MURPHY, McGUCKIN, ULAKY,
CHERKOS & CONNORS

A Professional Corporation
COUNSELLORS AT LAW
THE CLOCK TOWER BUILDING
620 WEST LACEY ROAD
POST OFFICE BOX 1057
FORKED RIVER, NEW JERSEY 08731

TELEPHONE NUMBERS
(609) 971-1010
(732) 349-2446
(609) 693-4100

FACSIMILE NUMBERS
(609) 971-7093
Real Estate:(609) 971-6176

GEORGE F. MURPHY, JR.
CERTIFIED CIVIL TRIAL ATTY
MEMBER NJ AND FLA BAR
JERRY J. DASTI
GREGORY P. McGUCKIN
ROBERT E. ULAKY †
MEMBER NJ AND PA BAR
RUSSELL P. CHERKOS
CHRISTOPHER J. CONNORS
O. NICHOLAS MONACO†
CHRISTOPHER K. KOUTSOURIS
MEMBER NJ AND NY BAR

† Member, National Academy of Elder Law Attorneys, Inc.

Fed I.D. #22-3450668

MANAHAWKIN OFFICE
102 EAST BAY AVENUE
SUITE A - P.O. BOX 580
MANAHAWKIN, NJ 08050

TELEPHONE
(609) 489-0101
FACSIMILE
(609) 489-0102

Reply to Forked River

SEP 9 - 2004

PLEASE REFER TO:

September 7, 2004

Barnegat Twp. – Pinelands Commission
(GL-14775)

John C. Stokes, Executive Director
Pinelands Commission
P.O. Box 7
New Lisbon, New Jersey 08064

Dear Mr. Stokes:

As you are aware, this office represents the Township of Barnegat. We enclose four (4) copies of the three-party Agreement which has been fully executed by the Township and a representative of Mark Madison, LLC. Please sign where indicated and distribute the Agreement to Mr. Del Duca and my office.

If you have any other questions, or we can be of additional assistance, please do not hesitate to contact our office.

Very truly yours,

JERRY J. DASTI

JJD/caf
Enclosures
cc: Joseph Del Duca, Esq. (w/o enc.)

AGREEMENT

The New Jersey Pinelands Commission, the Township of Barnegat and Mark Madison, LLC ("MM") hereby stipulate and agree as follows:

1. The Township of Barnegat ("Barnegat") is a municipal corporation of the State of New Jersey located in Ocean County.

2. MM is a limited liability company of the state of New Jersey.

3. The Pinelands Commission is an independent political subdivision of the State of New Jersey created pursuant to Section 4 of the Pinelands Protection Act, N.J.S.A. 13:18A-1, et seq., and charged with implementing the requirements of the Act. The Pinelands Commission is also the planning entity authorized in Section 502 of the "National Parks and Recreation Act of 1978" (PL-95-625).

4. Portions of Barnegat are located in the "Pinelands Area" as defined by the Pinelands Protection Act at N.J.S.A. 13:18A-11.

5. Barnegat's Zoning Ordinance, which was certified by the Pinelands Commission on April 8, 1983, includes a "RH-Residential High District". The RH District allows development of single family dwellings on lots 10,000 square feet or larger without the use of Pinelands Development Credits ("PDCs").

6. Barnegat's zoning ordinance also allows development of single family dwellings in the RH District on lots between 6,000 square feet and 10,000 square feet in size ("undersized lots") with the purchase of 0.25 PDC for each "undersized lot".

7. MM, through various affiliates, is the owner of approximately 537 existing lots (the "Subject Lots"), in the Ocean Acres section of Barnegat Township and situated in the

Pinelands Regional Growth Area of Barnegat Township in the RH District. The Subject Lots are listed on Exhibit "A".

8. MM also has an ownership interest in additional land that is not subdivided (the "Remaining Land"), also located in the section of Barnegat known as "Ocean Acres" and situated in the Pinelands Regional Growth Area of Barnegat Township in the RH District. The Remaining Land is shown on Exhibit "B".

9. "Ocean Acres" in Barnegat Township (hereinafter "Ocean Acres") is an existing subdivision consisting of approximately 2,000 lots that was subdivided prior to the enactment of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and the promulgation of the Pinelands Comprehensive Management Plan ("CMP"), N.J.A.C. 7:50.

10. Many of the Subject Lots owned by MM within Ocean Acres are non-contiguous and are interspersed with lots that have previously been developed as well as with undeveloped lots owned by others.

11. MM has conducted surveys of threatened or endangered plant and animal species in the Barnegat Township portion of Ocean Acres in accordance with survey protocols developed by MM's consultant, Ecolsciences, Inc., to identify species of concern. These surveys were accepted by the Pinelands Commission staff. These studies pertained to the Northern Pine Snake, swamp pink, Knieskern's beaked rush, pine barrens tree frog, barred owl, Cooper's hawk, and broom crowberry. The surveys also documented sightings of southern gray treefrog. The results of these surveys are set forth in reports entitled *Endangered and Threatened Species Study Results for Ocean Acres Phase I Study Area, Township of Barnegat, Ocean Acres, Township of Barnegat, Ocean County, New Jersey,* dated October 2002 and *Threatened and Endangered Species 2003 Study Results for Ocean Acres, Township of Barnegat, Ocean County,*

New Jersey, dated March 8, 2004. These studies document the presence of threatened and endangered species and their habitat, including Northern Pine Snake, swamp pink, Knieskern's beaked rush, and Pine Barrens tree frog, within portions of Ocean Acres located in Barnegat Township.

12. The Pinelands Commission has determined that portions of Ocean Acres constitute habitat which is critical to the survival of one or more local populations of threatened or endangered animal species and contains local populations of threatened or endangered plant species. The animal species include the Northern Pine Snake and Pine Barrens tree frog. The plant species include swamp pink and Knieskern's beaked rush. Both swamp pink and Knieskern's beaked rush are federally listed endangered species and, therefore, may be subject to additional federal regulation. The Pinelands Commission has determined that the protection of habitat critical to the survival of the local populations of threatened or endangered species found within Ocean Acres, as required pursuant to N.J.A.C. 7:50-6, Parts II and III, can be accomplished by establishing a "Conservation Area" comprised of a contiguous area of land that consists of habitat critical for the survival of the local populations of such threatened or endangered species.

13. In order to preserve and protect the threatened or endangered species located in the Barnegat Township portion of Ocean Acres and their critical habitat, as required pursuant to N.J.A.C. 7:50-6, Parts II and III of the Pinelands CMP, the Pinelands Commission, in conjunction with Barnegat Township is pursuing the establishment of such a "Conservation Area" in Ocean Acres. The anticipated Conservation Area is depicted on the map attached hereto as Exhibit "C". Barnegat Township is finalizing amendments to its zoning ordinance

(hereinafter the "Revised Ordinance") that are expected to establish this "Conservation Area" as a new zoning district within which residential development would be prohibited.

14. Additionally, certain areas within the Barnegat Township portion of Ocean Acres contain wetlands and required buffers to wetlands.

15. Barnegat Township and the Pinelands Commission have determined that amendments to Barnegat's zoning ordinance are required in order to (i) afford adequate protection to habitat critical for the survival of the threatened and endangered species delineated in paragraph 12 above as required pursuant to N.J.A.C. 7:50-6, Parts II and III of the CMP and Sections 55-295E and 55-299B of Barnegat's zoning ordinance through the establishment of a Conservation Area of approximately 730 lots, within which development would be prohibited; (ii) permit development to proceed where appropriate; and, (iii) allow the owners of land in the "Conservation Area" to realize some reasonable economic benefit for their land.

16. The Revised Ordinance is expected to permit development of the lots within the RH District located outside of the Conservation Area.

17. There is an area within the Conservation Area of Ocean Acres comprised of approximately 135-lots, which is generally defined as the area between Nautilus Drive, Avalon Avenue, Mutineer Avenue and Viking Drive, that the Pinelands Commission has determined constitutes habitat critical for the survival of the local population of Northern Pine Snakes that have been found within the Barnegat Township portion of Ocean Acres.

18. Were it not for the determination by the Pinelands Commission discussed in Paragraph 12 above, this 135-lot area would, given its location in a Pinelands Regional Growth Area, be available for residential development in accordance with the standards of the RH District.

19. MM contends that the area described in Paragraph 17 does not constitute critical habitat for Northern Pine Snake and has requested a period of two years from the date of the last signatory to this Agreement to undertake additional survey work in order to demonstrate this contention to the Pinelands Commission. The Northern Pinesnake Survey protocol and the necessary conclusions of the Northern Pine Snake Survey required for this demonstration will be developed by MM's consultant Ecolsciences, Inc. These protocols shall be approved by the Pinelands Commission staff prior to implementation of any additional survey work.

20. Given the unique and particular circumstances surrounding the development of Ocean Acres in Barnegat Township, namely the fact that this area was subdivided prior to the enactment of the Pinelands Protection Act and the promulgation of the Pinelands CMP, and that many of these lots remain under individual ownership, the Pinelands Commission has determined that, with the permanent protection of land located within the Conservation Area, in accordance with the anticipated provisions of the Revised Ordinance establishing the Conservation Area to protect habitat critical to the survival of the threatened or endangered species delineated in Paragraph 12 and located within the Barnegat Township portion of Ocean Acres, the development of the lots located outside of the Conservation Area, based upon currently available information, would be consistent with the standards regarding threatened and endangered species in N.J.A.C. 7:50-6, Part II and III.

21. MM has agreed to waive any and all rights it may have to challenge a Revised Ordinance, and agrees that the Subject Lots and Remaining Land shall be subject to a Revised Ordinance, so long as the Revised Ordinance adheres in all respects to the terms of this Agreement.

22. The Pinelands Commission, Barnegat and MM wish to set forth their agreement in writing and, therefore, mutually and voluntarily enter into this agreement.

NOW THEREFORE, the parties hereby stipulate and agree to the following:

23. The Parties' decision to enter into this Agreement is based solely on the considerations listed above.

24. As discussed in Paragraph 20 above, the Pinelands Commission has determined that, with the permanent protection of land located within the Conservation Area, in accordance with the anticipated provisions of the Revised Ordinance establishing the Conservation Area to protect habitat critical to the survival of the threatened or endangered species delineated in Paragraph 12 and located within the Barnegat Township portion of Ocean Acres, based upon currently available information, the development of the lots located outside of the Conservation Area would be consistent with the standards regarding threatened and endangered species in N.J.A.C. 7:50-6, Part II and III.

25. The Revised Ordinance is expected to include the following provisions:

a. All land located in the "Conservation Area" will be included in a new residential zoning district to be known as the RC - Residential Conservation ("RC") Zone. No development will be permitted in the RC Zone except for low intensity recreational uses and fish and wildlife management.

b. Subject to the terms and conditions set forth herein, detached single-family dwellings for residential purposes, together with accessory structures shall be permitted in the portions of Ocean Acres in Barnegat Township located outside of the Conservation Area in the RH-Residential High ("RH") Zone . This area is delineated in Exhibit "D" attached hereto.

c. Detached single-family dwellings for residential purposes, together with accessory structures may be constructed on all lots in the RH Zone that are 10,000 square feet or greater without the purchase and redemption of PDCs or the deed restriction of lots or vacant remaining land located in the RC Zone.

d. Detached single-family dwellings for residential purposes, together with accessory structures may be constructed on all lots in the RH Zone consisting of at least 9,000 square feet but less than 10,000 square feet provided that the owner of the lot proposed for development (i) purchases and redeems .25 PDCs ; (ii) permanently protects two existing lots in the RC Zone by dedicating them as open space through the recordation of a deed restriction with the Ocean County Clerk's Office, in a form approved by the Township Solicitor and the Pinelands Commission, prohibiting development with the exception of low intensity recreational uses and fish and wildlife management; (iii) permanently protects two thirds of an acre of vacant remaining land in the RC Zone, which is not defined as wetlands and is located outside of existing residentially subdivided lots, through the recordation of a deed restriction with the Ocean County Clerk's Office, in a form approved by the Township Solicitor and the Pinelands Commission, prohibiting development with the exception of low intensity recreational uses and fish and wildlife management; or (iv) permanently protects two (2.0) acres of vacant remaining land, which is defined as wetlands and is located outside of existing residentially subdivided lots, through the recordation of a deed restriction with the Ocean County Clerk's Office, in a form approved by the Township Solicitor and the Pinelands Commission, prohibiting development with the exception of low intensity recreational uses and fish and wildlife management.

e. All lots smaller than 9,000 square feet located within the RH Zone may not be developed for any purpose without dimensional variance relief.

f. Any person proposing to develop an undersized lot in the RH Zone, who, as of the effective date of the Revised Ordinance described herein, also owns one or more lots located in the RC Zone will be required to deed restrict the lot within the RC Zone (or two lots within the RC Zone for each undersized lot proposed for development within the RH Zone, if such person owns more than one lot within the RC Zone) prior to availing him or herself of the option to purchase PDCs.

g. Any person proposing to develop an undersized lot in the RH Zone, who, as of the effective date of the Revised Ordinance described herein, does not own a lot or remaining vacant land in the RC Zone, may either deed restrict land in the RC Zone or purchase and redeem .25 PDCs.

26. Barnegat agrees to take all steps necessary to revise its Zoning Ordinance in accordance with the terms of this Agreement and in compliance with the notice requirements of N.J.S.A. 40:55D-62.1.

27. As discussed in Paragraph 17 above, there is an area within the Conservation Area of Ocean Acres comprised of approximately 135-lots, which is generally defined as the area between Nautilus Drive, Avalon Avenue, Mutineer Avenue and Viking Drive, that the Pinelands Commission staff has determined constitutes habitat critical for the survival of the local population of Northern Pine Snakes found in the Barnegat Township portion of Ocean Acres.

28. MM contends that the area described in Paragraph 17 does not constitute critical habitat for Northern Pine Snake and has requested a period of two years to undertake additional survey work in order to demonstrate this contention to the Pinelands Commission staff.

29. During the two years that MM is undertaking the additional survey work discussed in Paragraph 28 above, and notwithstanding the requirements of Paragraph 25.f. above, a property owner proposing to develop an undersized lot in the RH Zone shall not be required to deed restrict any land that he or she may own in the area described in Paragraph 17 above. Rather, such individual, if he or she does not own additional lots located within the RC Zone located outside of the area described in Paragraph 17 above, may purchase and redeem .25 PDCs in exchange for developing an undersized lot in the RH zone. Any person who owns lots within the RC Zone both inside and outside of the area described by Paragraph 17, shall comply with the requirements of paragraph 25.f. above and shall deed restrict the lots that he or she owns within the RC Zone located outside of the area described by Paragraph 17, prior to availing him or herself of the option of purchasing and redeeming PDCs.

30. Should the Pinelands Commission determine, based on the submission of new information generated by the additional survey work discussed in Paragraph 28 above, that the area described in Paragraph 17 above or a designated portion thereof does not constitute habitat critical for the survival of the local population of Northern Pine Snake found in Ocean Acres, Barnegat agrees to promptly amend its Zoning Ordinance to remove this area or the designated portion thereof from the RC Zone and place it within the RH Zone and to submit such ordinance to the Pinelands Commission for certification pursuant to N.J.A.C. 7:50-3.45.

31. The parties agree that all development within Ocean Acres shall adhere to the requirements of Barnegat Township's certified Land Use Ordinance and the Pinelands CMP.

32. MM is not required to undertake additional studies, surveys, or investigations regarding the threatened or endangered species located in Ocean Areas and delineated in Paragraph 11 above in order to develop the areas of Ocean Acres located outside of the

Conservation Area for 5 years from the execution of this Agreement by all parties thereto unless, based on new information that differs from the information available to the Pinelands Commission at the time that it executes this Agreement, the Pinelands Commission determines habitat critical to the survival of the local population of such threatened or endangered species is being subjected to irreversible adverse impacts. At the expiration of this 5 year period, MM will only need to undertake additional studies, surveys or investigations regarding the threatened or endangered species located in Ocean Areas and delineated in Paragraph 11 above, if the Pinelands Commission determines that because of changes in the environmental conditions in Ocean Acres additional studies, surveys or investigations for such species are needed. The Pinelands Commission, in its review of development applications submitted for Ocean Acres, will consider the threatened or endangered species information regarding such species available to it at the time it reviews such applications for development, to determine that the development is consistent with the Pinelands CMP, including the standards regarding threatened and endangered species in N.J.A.C. 7:50-6, Parts II and III of the Pinelands CMP. Notwithstanding the foregoing, MM acknowledges that it is required to conduct the additional survey work for Northern Pine Snake that is discussed in Paragraph 28 above in order for MM to demonstrate its contention that the area described in Paragraph 17 above does not constitute critical habitat for the survival of the local population of Northern Pine Snakes.

33. With regard to new threatened or endangered species, i.e. species for which MM did not survey and which are not discussed in paragraph 11 above, MM agrees that should a new threatened or endangered species be discovered at Ocean Acres it will undertake any studies, surveys, or investigations necessary to demonstrate t whether or not the development will have irreversible adverse impacts on the survival of any local population of such threatened or

endangered species or habitat that is critical to the survival of any local population of that threatened or endangered species.

34. In connection with the development of single family homes in the RH District, the Township and MM have independently, without the participation of the Pinelands Commission, reached the following agreements. The Pinelands Commission is not a party to these independent agreements and reserves its rights under the Pinelands CMP to review any actions taken in accordance with these independent agreements:

a. MM agrees to pay the Township the sum of $200,000.00 on or before 90 days after the adoption of the Revised Ordinance. Such funds shall be utilized by the Township in connection with the design and construction of public recreational facilities to be located in Barnegat Township. MM shall receive zero credit for such payment against recreational assessments it may otherwise owe under applicable law in connection with the development of the Ocean Acres section of Barnegat Township.

b. The Township recognizes and acknowledges that until a public water system is available for residential development in the Ocean Acres section of Barnegat Township MM will continue to obtain well permits in accordance with all applicable local, county, state and federal laws, rules, regulations and ordinances. MM shall promptly and at its sole cost and expense, connect all of the single family homes it has constructed in the Barnegat Township section of Ocean Acres to such public water system. Thereafter, so long as such public water system is available, MM shall connect all future single family homes in the Ocean Acres section of Barnegat Township to such public water system.

c. The Township and MM recognize that due to the limitations imposed by the creation of the Conservation Area, various public streets originally intended to interconnected with other public streets will terminate in "dead end" streets. At the terminus of such public streets, outside of the Conservation Area, MM shall construct cul de sacs, subject to the following terms and conditions. Whenever feasible there shall be a 40 foot cartway radius and a 48 foot right of way radius for each cul de sac. To the extent that MM owns any lots adjoining the cul de sac, an easement shall be granted to the Township, at no cost, to accommodate such specifications. To the extent that MM does not own the residential lots adjoining the cul de sac, then Barnegat Township, may at its option, condemn such land as may be necessary for an easement to meet the specifications set forth above. In the event that the Township proceeds by the way of eminent domain, then MM shall reimburse the Township for all costs associated with such condemnation action; however, such amounts shall be considered reimbursable development costs in connection with the Reimbursement Agreement executed by Barnegat Township and Walters Development Co., LLC on March 23, 2003. In the event that the Township chooses not to proceed by eminent domain, then the cul de sacs shall be designed and constructed within the available right of way and easements granted by Walters that would otherwise have been necessary to construct the improvements described above as if all necessary easements had been granted or condemned.

35. This Agreement is binding upon and intended for the exclusive benefit of the Parties hereto and their respective successors hereunder, and shall not be deemed to give, either express or implied, any legal or equitable right, remedy, or claim to any other entity or person whatsoever.

36. This Agreement may be executed by each of the parties hereto in any number of counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original and all such counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by a duly authorized officer or official as of the day and year first written above.

NEW JERSEY PINELANDS COMMISSION

By: _____
JOHN C. STOKES, Executive Director

Dated: 9/13/04

TOWNSHIP OF BARNEGAT

By: _____

Dated: _____

MARK MADISON, LLC

By: _____
EDWARD M. WALTERS, JR.

Dated: _____

EXHIBIT A

	BLOCK	LOT
1	92.01	10
2	92.03	5
3	92.03	6
4	92.03	7
5	92.03	13
6	92.04	1
7	92.04	2
8	92.04	6
9	92.04	8
10	92.04	9
11	92.05	2
12	92.05	15
13	92.05	16
14	92.05	17
15	92.05	18
16	92.05	24
17	92.05	25
18	92.05	32
19	92.06	1
20	92.06	2
21	92.07	1
22	92.07	8
23	92.07	9
24	92.07	10
25	92.07	11
26	92.07	12
27	92.07	13
28	92.07	15
29	92.08	4
30	92.08	5
31	92.08	8
32	92.09	8
33	92.09	10
34	92.09	20
35	92.09	21
36	92.09	22
37	92.09	23
38	92.09	24
39	92.09	28
40	92.09	29
41	92.09	30
42	92.09	31
43	92.09	32

	BLOCK	LOT
44	92.10	5
45	92.10	8
46	92.10	9
47	92.10	10
48	92.10	11
49	92.10	19
50	92.10	23
51	92.11	3
52	92.11	7
53	92.11	8
54	92.11	9
55	92.11	10
56	92.11	14
57	92.11	15
58	92.11	16
59	92.11	17
60	92.11	18
61	92.11	19
62	92.11	20
63	92.11	21
64	92.11	29
65	92.11	30
66	92.11	31
67	92.11	32
68	92.12	1
69	92.12	2
70	92.12	3
71	92.12	5
72	92.12	8
73	92.12	9
74	92.12	10
75	92.12	14
76	92.12	15
77	92.12	16
78	92.12	17
79	92.12	26
80	92.15	4
81	92.15	5
82	92.15	36
83	92.15	40
84	92.15	50
85	92.15	52
86	92.15	53

	BLOCK	LOT
87	92.15	54
88	92.16	3
89	92.16	4
90	92.16	5
91	92.16	10
92	92.16	18
93	92.16	22
94	92.16	23
95	92.16	24
96	92.16	25
97	92.16	30
98	92.16	33
99	92.16	34
100	92.16	35
101	92.16	36
102	92.16	38
103	92.16	39
104	92.16	40
105	92.16	43
106	92.16	46
107	92.16	47
108	92.16	48
109	92.16	49
110	92.17	25
111	92.17	26
112	92.19	11
113	92.19	12
114	92.19	14
115	92.19	15
116	92.19	16
117	92.19	19
118	92.19	21
119	92.19	23
120	92.19	24
121	92.20	2
122	92.20	3
123	92.20	4
124	92.20	5
125	92.20	9
126	92.20	10
127	92.20	11
128	92.20	12
129	92.20	13

	BLOCK	LOT
130	92.20	14
131	92.20	15
132	92.22	8
133	92.22	9
134	92.22	12
135	92.22	13
136	92.22	14
137	92.22	15
138	92.22	16
139	92.22	17
140	92.23	3
141	92.23	6
142	92.23	7
143	92.23	8
144	92.23	10
145	92.23	11
146	92.23	15
147	92.23	16
148	92.23	24
149	92.23	25
150	92.23	29
151	92.23	30
152	92.24	1
153	92.24	14
154	92.24	15
155	92.24	16
156	92.24	21
157	92.24	29
158	92.25	1
159	92.25	2
160	92.25	27
161	92.25	28
162	92.25	29
163	92.25	30
164	92.25	33
165	92.26	2
166	92.26	3
167	92.26	4
168	92.26	5
169	92.26	7
170	92.26	8
171	92.26	10
172	92.26	11
173	92.26	12

	BLOCK	LOT
174	92.26	13
175	92.26	14
176	92.27	5
177	92.27	6
178	92.27	9
179	92.27	11
180	92.27	15
181	92.28	8
182	92.28	9
183	92.28	10
184	92.28	18
185	92.29	10
186	92.29	11
187	92.29	12
188	92.29	13
189	92.30	7
190	92.30	8
191	92.30	9
192	92.31	2
193	92.31	4
194	92.31	5
195	92.31	7
196	92.31	8
197	92.31	11
198	92.32	10
199	92.32	12
200	92.32	13
201	92.32	14
202	92.33	11
203	92.33	12
204	92.33	13
205	92.35	1
206	92.35	2
207	92.35	3
208	92.35	4
209	92.35	5
210	92.35	6
211	92.35	10
212	92.35	11
213	92.35	18
214	92.35	19
215	92.35	20
216	92.36	3
217	92.36	4

	BLOCK	LOT
218	92.36	5
219	92.36	9
220	92.36	10
221	92.36	11
222	92.36	14
223	92.36	19
224	92.36	20
225	92.36	21
226	92.36	22
227	92.36	24
228	92.36	28
229	92.36	29
230	92.36	30
231	92.36	31
232	92.37	2
233	92.37	3
234	92.37	4
235	92.37	6
236	92.37	7
237	92.37	8
238	92.37	9
239	92.37	10
240	92.38	1
241	92.38	2
242	92.38	3
243	92.38	4
244	92.38	5
245	92.38	7
246	92.38	8
247	92.38	9
248	92.38	13
249	92.39	5
250	92.39	7
251	92.39	8
252	92.39	10
253	92.39	11
254	92.39	17
255	92.40	6
256	92.40	7
257	92.40	8
258	92.41	23
259	92.41	30
260	92.41	31
261	92.41	32

	BLOCK	LOT
262	92.43	6
263	92.43	11
264	92.43	12
265	92.43	13
266	92.43	15
267	92.43	16
268	92.44	12
269	92.44	13
270	92.44	14
271	92.44	15
272	92.45	5
273	92.45	18
274	92.45	19
275	92.45	20
276	92.45	23
277	92.45	24
278	92.45	45
279	92.47	3
280	92.47	4
281	92.47	5
282	92.47	11
283	92.47	12
284	92.47	13
285	92.47	14
286	92.47	23
287	92.47	26
288	92.47	27
289	92.48	9
290	92.48	33
291	92.50	1
292	92.50	2
293	92.50	12
294	92.51	2
295	92.51	13
296	92.51	14
297	92.52	17
298	92.53	1
299	92.53	2
300	92.53	3
301	92.53	7
302	92.53	12
303	92.53	13
304	92.53	14
305	92.53	23

	BLOCK	LOT
306	92.53	28
307	92.53	31
308	92.53	32
309	92.53	33
310	92.53	34
311	92.53	35
312	92.54	7
313	92.54	8
314	92.55	3
315	92.55	7
316	92.55	8
317	92.55	9
318	92.55	10
319	92.55	11
320	92.56	6
321	92.56	9
322	92.57	4
323	92.57	5
324	92.57	6
325	92.57	12
326	92.57	13
327	92.57	14
328	92.57	15
329	92.57	23
330	92.58	1
331	92.58	4
332	92.58	5
333	92.58	10
334	92.59	1
335	92.59	3
336	92.59	4
337	92.59	5
338	92.59	11
339	92.59	12
340	92.59	13
341	92.59	14
342	92.59	15
343	92.59	16
344	92.59	17
345	92.60	4
346	92.60	5
347	92.60	8
348	92.60	9
349	92.60	10

	BLOCK	LOT
350	92.60	11
351	92.60	12
352	92.60	13
353	92.61	2
354	92.61	5
355	92.61	6
356	92.61	7
357	92.61	8
358	92.61	11
359	92.61	16
360	92.61	17
361	92.62	1
362	92.62	2
363	92.62	3
364	92.62	4
365	92.62	5
366	92.63	6
367	92.63	10
368	92.64	5
369	92.64	7
370	92.64	8
371	92.64	11
372	92.64	13
373	92.64	16
374	92.64	17
375	92.64	28
376	92.64	29
377	92.64	30
378	92.64	43
379	92.65	8
380	92.65	10
381	92.65	11
382	92.65	12
383	92.66	1
384	92.66	2
385	92.66	3
386	92.66	4
387	92.66	5
388	92.66	7
389	92.66	10
390	92.66	11
391	92.66	12
392	92.66	21
393	92.66	22

	BLOCK	LOT
394	92.66	23
395	92.66	26
396	92.66	27
397	92.66	28
398	92.66	29
399	92.66	30
400	92.67	1
401	92.67	3
402	92.67	4
403	92.67	5
404	92.67	7
405	92.67	8
406	92.67	9
407	92.67	10
408	92.67	11
409	92.67	12
410	92.67	13
411	92.67	14
412	92.67	15
413	92.68	17
414	92.68	18
415	92.71	7
416	92.71	20
417	92.71	25
418	92.71	29
419	92.71	30
420	92.72	5
421	92.72	18
422	92.72	23
423	92.73	5
424	92.73	6
425	92.73	20
426	92.73	21
427	92.73	22
428	92.73	23
429	92.74	1
430	92.74	6
431	92.74	7
432	92.74	16
433	92.74	17
434	92.74	18
435	92.74	19
436	92.74	20
437	92.74	21

	BLOCK	LOT
438	92.74	22
439	92.76	4
440	92.79	10
441	92.79	11
442	92.79	12
443	92.79	13
444	92.79	14
445	92.80	2
446	92.80	21
447	92.81	2
448	92.82	7
449	92.82	11
450	92.82	16
451	92.82	17
452	92.82	21
453	92.82	22
454	92.82	23
455	92.83	1
456	92.83	7
457	92.83	8
458	92.83	9
459	92.83	12
460	92.83	13
461	92.83	15
462	92.83	16
463	92.83	19
464	92.83	20
465	92.83	22
466	92.83	23
467	92.83	29
468	92.83	31
469	92.83	32
470	92.84	3
471	92.84	15
472	92.84	16
473	92.84	17
474	92.84	18
475	92.84	19
476	92.84	20
477	92.84	21
478	92.84	22
479	92.84	23
480	92.85	6
481	92.86	1

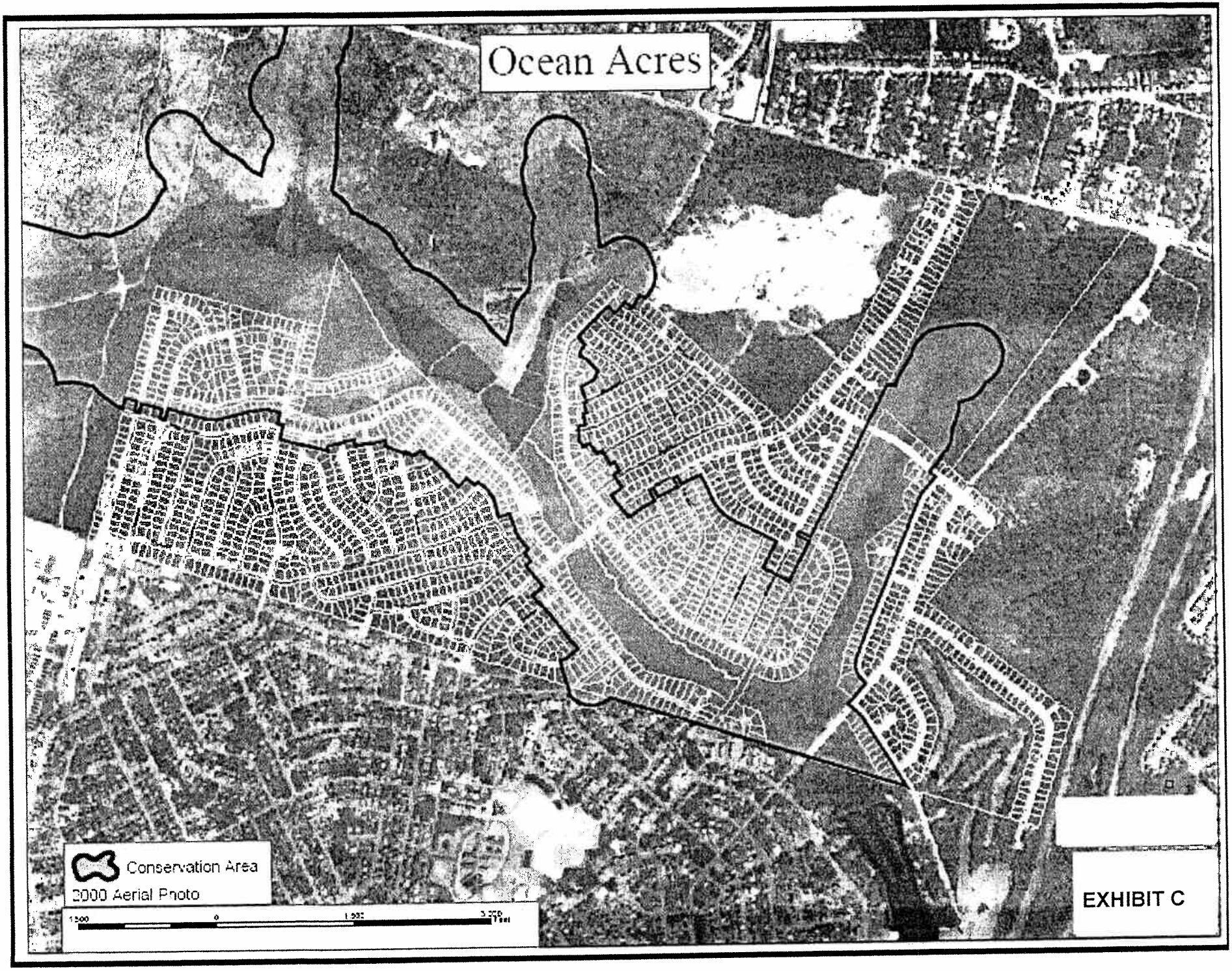
	BLOCK	LOT
482	92.86	6
483	92.86	7
484	92.86	8
485	92.86	9
486	92.86	10
487	92.86	11
488	92.86	12
489	92.86	23
490	92.87	4
491	92.87	10
492	92.87	15
493	92.87	19
494	92.87	20
495	92.87	26
496	92.87	30
497	92.87	31
498	92.87	32
499	92.87	40
500	92.87	41
501	92.87	45
502	92.88	8
503	92.88	9
504	92.88	10
505	92.88	11
506	92.88	13
507	92.88	18
508	92.89	3
509	113.02	7
510	113.02	9
511	113.02	14
512	113.02	15
513	113.02	23
514	113.02	27
515	113.03	21
516	113.03	22
517	113.03	34
518	113.03	36
519	113.03	38
520	113.03	40
521	113.03	43
522	113.03	44
523	113.03	45
524	113.03	46
525	113.03	47

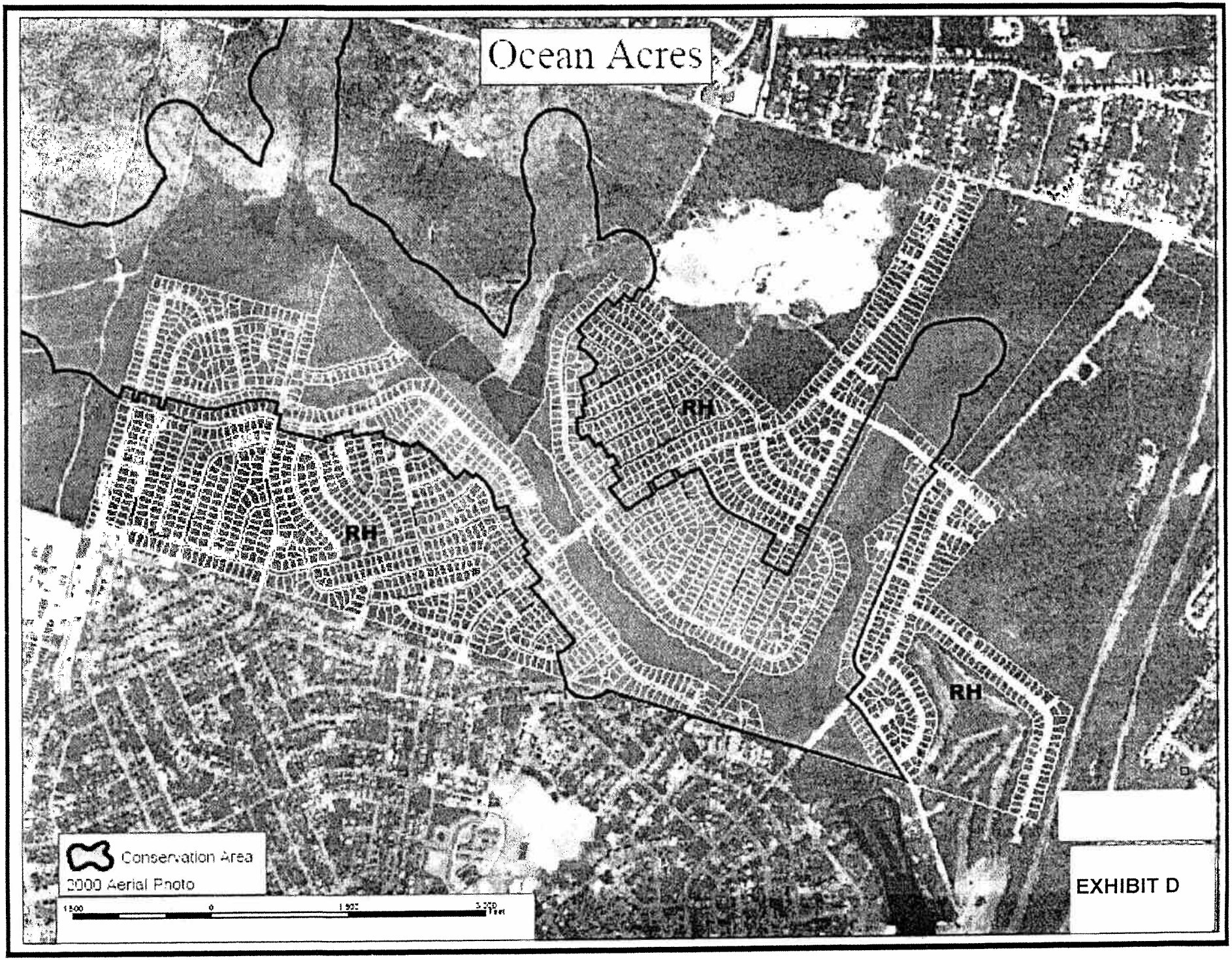
	BLOCK	LOT
526	113.03	48
527	113.03	50
528	113.03	51
529	113.03	52
530	113.03	53
531	113.03	54
532	113.03	57
533	113.04	6
534	113.04	7
535	113.04	8
536	113.04	9
537	113.05	13

Exhibit B

The Remaining Land

	BLOCK	LOT
1	92.14	8
2	92.15	69
3	92.15	70
4	92.41	33
5	92.41	34
6	92.45	46
7	92.47	30
8	92.48	40
9	92.70	2
10	92.78	2


Ocean Acres
Conservation Area
2000 Aerial Photo
EXHIBIT C


Ocean Acres
RH
RH
RH
Conservation Area
2000 Aerial Photo
EXHIBIT D

RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-04-_____

TITLE: Issuing an Order to Certify Ordinances 2004-23, 2004-34 and 2004-42, Amending Chapter 55 (Land Use) of the Code of Barnegat Township

Commissioner _____ moves and Commissioner_____ seconds the motion that:

WHEREAS, on April 8, 1983, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Barnegat Township; and

WHEREAS, Resolution #PC4-83-29 of the Pinelands Commission specified that any amendment to the Township's certified Master Plan and codified Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, Resolution #PC4-83-29 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

WHEREAS, on June 7, 2004, Barnegat Township adopted Ordinance 2004-23, amending Chapter 55 (Land Use) of the Township's Code by creating a new zoning district within the Pinelands Regional Growth Area, the RC (Residential Conservation) Zone, modifying the standards for development of undersized lots in the RH (Residential High) Zone and revising the Township's Zoning Map to reflect the location of the RC Zone within the Ocean Acres subdivision; and

WHEREAS, the Pinelands Commission received an adopted copy of Ordinance 2004-23 on June 10, 2004; and

WHEREAS, by letter dated July 13, 2004, the Executive Director notified the Township that Ordinance 2004-23 would require formal review and approval by the Pinelands Commission; and

WHEREAS, the Executive Director also informed the Township that, in accordance with the Township's intention to adopt minor revisions to Ordinance 2004-23, an extension of the Commission's review period for Ordinance 2004-23 was granted until August 6, 2004; and

WHEREAS, on August 3, 2004, Barnegat Township adopted Ordinance 2004-34, amending Chapter 55 (Land Use) of the Township's Code by revising permitted uses in the RH Zone and clarifying that bulk variances are not required for certain undersized lots within the RH Zone; and

WHEREAS, the Pinelands Commission received an adopted copy of Ordinance 2004-34 on August 4, 2004; and

WHEREAS, a public hearing to receive testimony on Ordinances 2004-23, 2004-34 and 2004-42 was duly advertised, noticed and held on September 21, 2004 at the Barnegat Township Municipal Building, 900 West Bay Avenue, Barnegat, New Jersey at 7:00 p.m.; and

WHEREAS, the Executive Director has found that Ordinances 2004-23, 2004-34 and 2004-42 are consistent with the standards and provisions of the Pinelands Comprehensive Management Plan; and

WHEREAS, the Executive Director has submitted a report to the Commission recommending the issuance of an order to certify that Ordinances 2004-23, 2004-34 and 2004-42, amending Chapter 55 (Land Use) of the Code of Barnegat Township, are in conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that Ordinances 2004-23, 2004-34 and 2004-42 be certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony concerning Ordinances 2004-23, 2004-34 and 2004-42 and has reviewed the Executive Director's report; and

WHEREAS, the Pinelands Commission accepts the recommendation of the Executive Director; 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

1. An Order is hereby issued to certify that Ordinances 2004-23, 2004-34 and 2004-42, amending Chapter 55 (Land Use) of the Code of Barnegat Township, are in conformance with the Pinelands Comprehensive Management Plan.

2. Any additional amendments to the Township's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

Record of Commission Votes

	AYE	NAY	NP	ABS		AYE	NAY	NP	ABS		AYE	NAY	NP	ABS
Ashmun					Haaaman					Tomasello				

REPORT ON ORDINANCES 2004-23, 2004-34 AND 2004-42, AMENDING CHAPTER 55 (LAND USE) OF THE CODE OF BARNEGAT TOWNSHIP

October 29, 2004

Barnegat Township
900 West Bay Avenue
Barnegat, NJ 08005-1298

FINDINGS OF FACT

I. Background

The Township of Barnegat is located in southern Ocean County, in the eastern portion of the Pinelands Area. Pinelands municipalities that abut Barnegat Township include the Townships of Lacey, Ocean, Stafford and Little Egg Harbor in Ocean County, and Bass River and Woodland Townships in Burlington County.

On April 8, 1983, the Pinelands Commission fully certified the Master Plan and codified Land Use Ordinances of Barnegat Township.

On June 7, 2004, Barnegat Township adopted Ordinance 2004-23, amending Chapter 55 (Land Use) of the Township's Code by creating a new zoning district within the Pinelands Regional Growth Area, the RC (Residential Conservation) Zone, modifying the standards for development of undersized lots in the RH (Residential High) Zone and revising the Township's Zoning Map to reflect the location of the RC Zone within the Ocean Acres subdivision. The Pinelands Commission received an adopted copy of Ordinance 2004-23 on June 10, 2004.

By letter dated July 13, 2004, the Executive Director notified the Township that Ordinance 2004-23 would require formal review and approval by the Pinelands Commission. The

Executive Director also informed the Township that, in accordance with the Township's intention to adopt minor revisions to Ordinance 2004-23, an extension of the Commission's review period for Ordinance 2004-23 was granted until August 6, 2004.

On August 3, 2004, Barnegat Township adopted Ordinance 2004-34, amending Chapter 55 (Land Use) of the Township's Code by revising permitted uses in the RH Zone and clarifying that bulk variances are not required for certain undersized lots within the RH Zone. The Pinelands Commission received an adopted copy of Ordinance 2004-34 on August 4, 2004.

On September 7, 2004, Barnegat Township adopted Ordinance 2004-42, amending Chapter 55 (Land Use) of the Township's Code by revising permitted uses in the RC Zone to include existing single family dwellings. The Pinelands Commission received an adopted copy of Ordinance 2004-42 on September 8, 2004.

By letter dated September 8, 2004, the Executive Director notified the Township that Ordinances 2004-34 and 2004-42 would require formal review and approval by the Pinelands Commission.

II. Master Plans and Land Use Ordinances

The following ordinances have been submitted to the Pinelands Commission for certification:

* Ordinance 2004-23, amending Chapter 55 (Land Use) of the Code of Barnegat Township, introduced on May 17, 2004 and adopted on June 7, 2004;

* Ordinance 2004-34, amending Chapter 55 (Land Use) of the Code of Barnegat Township, introduced on July 6, 2004 and adopted on August 3, 2004; and

* Ordinance 2004-42, amending Chapter 55 (Land Use) of the Code of Barnegat Township, introduced on August 2, 2004 and adopted on September 7, 2004.

These ordinances have been reviewed to determine whether they conform with the standards for certification of municipal master plans and land use ordinances as set out in N.J.A.C. 7:50-3.39 of the Pinelands Comprehensive Management Plan. The findings from this review are presented below. The numbers used to designate the respective items correspond to the numbers used to identify the standards in N.J.A.C. 7:50-3.39.

1. Natural Resource Inventory

Not applicable.

2. Required Provisions of Land Use Ordinances Relating to Development Standards

Ordinance 2004-23 amends Chapter 55 (Land Use) of the Code of Barnegat Township by adopting a revised zoning plan for that portion of the Township's Pinelands Regional Growth Area which contains the existing 810-acre Ocean Acres subdivision. This revised zoning plan both creates a new zone within the Regional Growth Area, the RC (Residential Conservation) Zone, and modifies the provisions of an existing zone within the Regional Growth Area, the RH (Residential High) Zone.

The new RC Zone created by Ordinance 2004-23 comprises approximately 350 acres and 730 existing, subdivided lots within Ocean Acres as is indicated on the attached map (see Exhibit #1). The boundaries of the RC Zone were drawn to encompass both wetlands and wetlands buffer areas, as well as areas which constitute habitat critical to the survival of one or more local populations of threatened and endangered species. An attempt was also made to link the RC Zone with surrounding areas in public or non-profit ownership, as well as with adjacent lands already set aside or proposed to be set aside as open space in other adjacent development projects due to the existence of critical habitat. In recognition of the environmental sensitivity of lands in the zone, permitted uses in the RC Zone are limited by Ordinance 2004-23 to the following: fish and wildlife management; low intensity recreation; maintenance of existing underground distribution and collection systems; existing and/or approved pump stations, roads and other public service infrastructure; and the installation of water lines under one existing paved road (Harpoon Drive), provided no widening in the paved surface of the road occurs. Residential development is not permitted in the RC Zone, although Ordinance 2004-42 does include "detached single family dwellings existing as of the effective date of the ordinance" as a permitted use, in recognition of the fact that there is one existing house in the RC Zone.

The remaining portions of the Ocean Acres subdivision, including approximately 460 acres and 1,237 vacant lots, continue to be located in the RH (Residential High) Zone. Permitted uses in this zone remain largely unchanged: detached single-family dwellings on 10,000 square foot lots, parks and preserves, pump stations, and public utility, commercial and private uses (water towers, electric substations, radio towers) which must be provided above ground. The reference to private tower facilities was added by Ordinance 2004-34 in recognition of an existing tower facility in the zone.

The amendments adopted by Ordinance 2004-23 relate to the development of lots within the RH Zone which are not large enough to meet the current 10,000 square foot lot size requirement. Previously, Barnegat's land use ordinance merely required

the purchase of 0.25 PDCs for any "undersized" lot (those between 6,000 and 10,000 square feet in size), similar to any other Regional Growth Area zone in the Pinelands Area except that a municipal variance was not required. Under the amendments adopted by Ordinance 2004-23, single-family dwellings will be permitted on lots of at least 9,000 square feet but less than 10,000 square feet in size, provided that the owner of such a lot (1) purchases and redeems 0.25 Pinelands Development Credits; (2) permanently protects two existing lots in the RC Zone by dedicating them as open space through recordation of a deed restriction; (3) permanently protects 2/3rds of an acre of vacant land in the RC Zone which is not defined as wetlands and is located outside the existing residentially subdivided lots; or (4) permanently protects two acres of vacant land in the RC Zone which is defined as wetlands and is located outside the existing residentially subdivided lots. Ordinance 2004-34 clarifies that a municipal variance remains unnecessary for the development of "undersized" lots between 9,000 and 10,000 square feet in size in the RH Zone.

The chart below illustrates the distribution of vacant lots within the Ocean Acres subdivision:

	Total # of Vacant Lots	# of Vacant Lots 9,000-10,000 sq.ft.[1]
RH Zone	1,237	567
RC Zone	730	277
Total	1,967	844

In order to develop their properties, each owner of one of the 567 "undersized" lots in the RH Zone will be required to purchase one-quarter of a Pinelands Development Credit, permanently protect two lots in the RC Zone or permanently protect acreage in the undeveloped, unsubdivided portions of the RC Zone. Ordinance 2004-23 provides each such property owner with the ability to choose which option he or she prefers, with one exception. Any person who owns both an undersized lot in the RH Zone and a lot or lots in the RC Zone, as of the effective date of Ordinance 2004-23, is required to permanently protect the lot(s) in the RC Zone before the purchase of Pinelands Development Credits or permanent protection of vacant upland or wetland in the unsubdivided, common areas of the RC Zone is allowed. This provision was

[1]There are no existing lots in the RH or RC Zones under 9,000 square feet in size.

incorporated in the ordinance in recognition of the importance of protecting lots in the RC Zone which contain critical habitat and, consequently, cannot be developed.

Because Ordinance 2004-23 provides the owners of undersized lots in the RH Zone with a number of options, it is impossible to predict the exact impacts of the ordinance in terms of the number of Pinelands Development Credits which will be purchased or the number of lots in the RC Zone which will ultimately be protected. It is important to note, however, that Ordinance 2004-23 does provide an *opportunity* for every vacant lot in the RC Zone to be purchased and permanently protected by someone seeking to develop an undersized lot in the RH Zone. A maximum of 365 undersized lots in the RH Zone could be developed through the purchase and protection of the 730 lots in the RC Zone. The vacant, unsubdivided portions of the RC Zone would facilitate the development of a maximum of 179 undersized lots in the RH Zone. If the 730 lots and all the unsubdivided, common lands in the RC Zone were to be protected, the purchase of Pinelands Development Credits would be required for the remaining 23 undersized lots in the RH Zone. The purchase of significantly more Pinelands Development Credits is also possible, given the likelihood that not all lot owners in the RC Zone will be willing or interested in selling their lots to developers of undersized lots in the RH Zone. One additional complicating factor is that resubdivision will continue to permitted in the RH Zone, just as it was under the Township's previous zoning plan. This means that the owner of several contiguous undersized lots in the RH Zone could decide to consolidate and resubdivide those lots into fewer conforming lots (of 10,000 square feet each), thereby negating the need to purchase any Pinelands Development Credits or protect any lands in the RC Zone. Assuming such resubdivision is feasible given lot ownership patterns and that it makes financial sense to a property owner, it is likely to occur to some extent. Although not expected to be a widespread practice, the potential for resubdivision may have implications in terms of the number of lots in the RC Zone which are ultimately protected, as well as for the number of Pinelands Development Credits which are ultimately purchased and used in the RH Zone. All things considered, it seems reasonable to expect that some combination of Pinelands Development Credit purchase and permanent land protection in the RC Zone will occur as a result of the amendments adopted by Ordinance 2004-23. Commission staff will monitor development activity in the RH Zone to determine how well the new zoning plan is "working" in terms of the number of lots in the RC Zone which are being protected.

The revised zoning plan adopted by Ordinance 2004-23 allows for continued residential development in appropriate portions of the Ocean Acres subdivision and prohibits such development in those portions of the subdivision which contain wetlands and wetlands buffer areas or which constitute critical habitat for threatened or endangered species. In so doing, Ordinance 2004-23 effectively recognizes that

development could not be approved on a significant number of lots within Ocean Acres in a manner which would be consistent with the standards for protection of wetlands and threatened and endangered species habitat contained in N.J.A.C. 7:50-6, Parts I, II and III of the Comprehensive Management Plan, and Chapter 55 (Land Use) of Barnegat Township's Code. These lots constitute the RC (Residential Conservation) Zone where future residential development is now precluded. The result is a reduction in theoretical residential development potential within the Ocean Acres subdivision of 730 units or approximately 37 percent. In terms of land area, 43 percent of the Ocean Acres subdivision is now precluded from future residential development.

While perhaps not a perfect solution to what is an extremely complicated matter, the revised zoning plan adopted by Ordinance 2004-23 does successfully strike a balance between two seemingly divergent objectives: continued residential development, as well as Pinelands Development Credit use, within a Regional Growth Area and the permanent protection of environmentally sensitive lands within that same Regional Growth Area. Successful implementation of the revised zoning plan will depend, in large part, on the willingness and ability of the Township to facilitate the purchase and protection of lots in the new RC Zone. Ordinance 2004-23 requires that the Township maintain a registry of property owners in the RC Zone. Such a registry has already been posted on the municipal web site. Other measures which would be helpful include the compilation of lists of interested buyers and sellers so that those lot owners who wish to buy or sell properties within Ocean Acres will be able to contact one another readily and efficiently. The Township will need to be proactive in ensuring that its property owners are aware of what the revised zoning plan requires, as well as how to meet those requirements. Commission staff will assist with this effort as much as possible.

One final issue which must be mentioned involves a sizeable portion of the new RC Zone within which the presence of habitat critical to the survival of local populations of threatened and endangered species has been questioned by the owner of a significant number of lots contained therein. The preamble to Ordinance 2004-23 specifically refers to this area as a 135-lot portion of the RC Zone, generally between Nautilus, Avalon, Mutineer and Viking Drive. The confirmed presence of threatened and endangered species led to a conclusion on the part of Commission staff that the area constitutes critical habitat. Therefore, this area was included in the RC Zone and precluded from future residential development. Ordinance 2004-23 indicates that a current developer within the Ocean Acres subdivision disagrees with the inclusion of this area in the RC Zone and has requested a period of time to demonstrate that the area does not constitute critical habitat. Ordinance 2004-23 further indicates that if the Commission subsequently determines, based on the submission of new information, that this portion of the RC Zone does not constitute critical habitat, its

inclusion in the RC Zone would no longer be appropriate or necessary. It is important to note that Ordinance 2004-23 does not require the Commission or the Township to take any particular action with respect to the boundaries of the RC Zone. Rather, the ordinance acknowledges that new information may be gathered and submitted to the Commission for review and that such information may lead to a conclusion that a portion of the RC Zone more appropriately belongs in the RH Zone where residential development would be permitted. This is true not only for the area specifically identified in Ordinance 2004-23 but for any lot or lots in the RC Zone. Although not stated in the ordinance, it is also possible that new information may lead the Commission to determine that there are additional areas within the Ocean Acres subdivision which constitute critical habitat and warrant inclusion in the RC Zone. In either case, the result would be a recommendation by the Commission for the Township to consider revising the boundary between its RH and RC Zones. In the meantime, however, the area in question appropriately remains in the RC Zone where it will be treated in the same fashion as all other portions of the "conservation" area.

Ordinances 2004-23, 2004-34 and 2004-42 are consistent with the land use and development standards of the Comprehensive Management Plan. Therefore, this standard for certification is met.

3. Requirement for Certificate of Filing and Content of Development Applications

Not applicable.

4. Requirement for Municipal Review and Action on All Development

Not applicable.

5. Review and Action on Forestry Applications

Not applicable.

6. Review of Local Permits

Not applicable.

7. Requirement for Capital Improvement Program

Not applicable.

8. Accommodation of Pinelands Development Credits

The revised zoning plan adopted by Ordinance 2004-23, more fully described in section 2, provides a continued opportunity for the use of Pinelands Development Credits within Barnegat Township's RH (Residential High) Zone. The purchase of Pinelands Development Credits is one of the options provided to those owners of undersized lots in the RH Zone who wish to develop homes on their properties. Because other options are also provided (e.g., the protection of lots in the RC - Residential Conservation- Zone) and the potential for consolidation and resubdivision into conforming lots exists, it is difficult, if not impossible, to estimate the number of Pinelands Development Credits which will ultimately be used. It is certainly true that the number of Pinelands Development Credits which could *theoretically* have been used in the RH Zone under the previous zoning plan has been reduced by Ordinance 2004-23. There are 844 lots of less than 10,000 square feet in size within Ocean Acres which would have required the purchase of Pinelands Development Credits under the previous zoning plan. The revised zoning plan incorporates 277 of these undersized lots in the new RC Zone where residential development is not permitted. However, the presence of wetlands and habitat for threatened and endangered species on these lots would have made their development problematic at best and most likely impossible. A significant number of the 567 undersized lots remaining in the RH Zone may still be developed through the use of Pinelands Development Credits. Ordinance 2004-23 provides a realistic opportunity for the use of between 23 and several hundred rights, with the exact number to be determined based on how the owners of undersized lots in the RH Zone choose to meet the requirements of the ordinance. This standard for certification is met.

9. Referral of Development Applications to Environmental Commission

Not applicable.

10. General Conformance Requirements

Ordinances 2004-23, 2004-34 and 2004-42, amending Chapter 55 (Land Use) of the Code of Barnegat Township, comply with the standards and provisions of the Pinelands Comprehensive Management Plan. Therefore, this standard for certification is met.

11. Conformance with Energy Conservation

Not applicable.

12. Conformance with the Federal Act

Ordinances 2004-23, 2004-34 and 2004-42, amending Chapter 55 (Land Use) of the Code of Barnegat Township, comply with the standards and provisions of the Pinelands Comprehensive Management Plan. No special issues exist relative to the Federal Act.

Therefore, this standard for certification is met.

13. Procedure to Resolve Intermunicipal Conflicts

The Ocean Acres subdivision in Barnegat Township's Regional Growth Area continues across the Township's border with Stafford Township. Adjacent lands in Stafford are also located in the Regional Growth Area, in that municipality's R-90 Zone which permits single family detached units on lots of at least 9,000 square feet in size. Contiguous lands in Stafford's portion of the Ocean Acres subdivision are already residentially developed. A small portion of Barnegat's new RC (Residential Conservation) Zone is adjacent to these developed lands in Stafford. This portion of the RC Zone is largely comprised of wetlands and required wetlands buffer areas. With the exception of one existing home, the RC Zone is and will remain vacant based on the standards adopted by Ordinance 2004-23. Intermunicipal conflicts are not anticipated; therefore, this standard for certification is met.

PUBLIC HEARING

A public hearing to receive testimony concerning Barnegat Township's application for certification of Ordinances 2004-23, 2004-34 and 2004-42 was duly advertised, noticed and held on September 21, 2004 at the Barnegat Township Municipal Building, 900 West Bay Avenue, Barnegat, New Jersey at 7:00 p.m. Mr. Liggett conducted the hearing, at which the following testimony was received:

Ms. Donna Headley, Ocean Acres property owner, challenged the notification process of the hearing and indicated that an obscure notice in a newspaper without state wide circulation was inappropriate. She said that she and her mother had made investments that are not being addressed. She said that her option to develop was being denied because, as a property owner, she was not provided the option of surveying her own property for endangered species as the developer had been allowed to do; she was having her lot assigned to a conservation zone arbitrarily. She said that she appreciated the clarification that landowners in the conservation zone would not be forced to sell their properties to those in the development zone. She said that the proposed conservation area is full of abandoned vehicles and debris and a great many off-road vehicles are destroying the area. She also expressed concern that bicycle paths would be permitted through private lands in the conservation zone. She said that she had no confidence that the habitat would be maintained. She said that at the time she purchased her property, it was a buildable lot had she installed a "dry septic system". She questioned the term *undersized* lot since a 9,000 sq-ft lot was buildable previously. Also she asked how nearby development had occurred, why no critical habitat had been found there and why the creatures weren't using other adjacent lands. She said that Barnegat Township was taking advantage of non-resident property owners. The rezoning was taking away landowners' opportunities. She suggested that PDCs could be assigned to those lots that could not be developed in order to increase their value. She asked that the ordinance include a paragraph allowing for future development of the property if no endangered species are found. She said that those properties on the border between development and conservation zones should have closer scrutiny and asked that those parcels that are split between wetlands and uplands be allowed to develop on the upland portion. She suggested that a mitigation program to relocate and/or create new and better habitat elsewhere for the snakes, similar to a NJ Turnpike wetlands project in a brownfields area, might be an alternative. She asked that another meeting be held at which the landowners could bring in their legal and environmental consultants to develop an alternative plan.

Mr. Jerry Tolomeo said that development elsewhere had pushed all the animals onto the properties now in the proposed conservation zone. He said that if he has an undevelopable property, then he should be paying lower taxes. He said that he felt the ordinance was the means by which a developer was trying to render the property less valuable so that it could be purchased cheaply now and then developed later when no species were found. He said that he

questioned the value of the survey and that the Commission was taking the word of the builder

Mr. Thomas Natale said that this was a "kangaroo" meeting because of the poor notification procedure and it was inappropriate for the Commission to rely on their legally mandated process to meet this notice obligation for such a controversial proposal. He said that every property owner in Ocean Acres should have been notified though the tax office. He said that the recently paved Nautilus Drive runs right through the conservation area and asked why no snakes had been found when the road was being developed. He stated that only people with money could do threatened and endangered species surveys, that the map provided by the Township to the property owners was illegible, and that he wanted an opportunity to get together with the individual lot owners to chip in for another environmental study. He said that the boundary of the conservation area was created so that the developer had very few lots in the conservation zone. He also asked about the deed restrictions on the lands in the conservation zone (e.g., could they be lifted if no snakes are found? Who would own the deed restricted properties?).

Ms. Sherry Cichy, owner of 51 lots in Ocean Acres, objected to the format of the meeting and asked for a group discussion and stated that she was unable to get the records she sought from the Commission. She said that the rights of the landowners were being denied and that she had been told that the determinations made on the T&E surveys were subject to interpretation. She said that municipal officials should have been present at tonight's hearing, that the landowners feel that the snakes are a nuisance and that the landowners were not interested in the Commission's processes for certification for municipal ordinances or threatened and endangered species surveys. She said that the property owners waited for sewer to be put in before developing their land but now they were being punished because the developer is requiring a $37,000 hook-up fee for developable lots. She said that the Commission staff is determining the lot lines of the conservation area to accommodate the builder. She said that local residents were fearful to speak up and that a radio personality had been told by the Governor, on the air, that there is a plan to address the property values of the lots in the conservation zone, but she has not seen it. Furthermore, the developer is pressing landowners to sell, older people are being deceived, the T&E surveys had not been done properly and that she wanted a meeting that included a representative of the Department of Interior. She stated that the Commission should not certify the Township's ordinances.

Mr. Pat Landolfi, asked for confirmation that the map being presented this evening was the same map that had been presented previously and that it was the one that the Commission would certify. He said that Nautilus Drive should not have been permitted and that the developer should not be putting in the sewer; that should be done by the Township and financed through a bond referendum.

Mr. Lee Kundrat said that he had done exhaustive research in locating a buildable property for his parents' retirement home, selected this area, and was concerned for all the long-time property owners whose properties were being devalued.

Mr. John Verona said that this hearing had been arranged inappropriately and as a means to prevent controversy. He said that the snakes would be killed by the traffic on Nautilus Drive and that surely there were better places in the Pinelands to set aside snake habitat. He requested another hearing at which all property owners were noticed and provided with an opportunity to be heard.

The hearing was concluded at 9:40 p.m.

Written comments on Ordinances 2004-23, 2004-34 and 2004-42 were accepted through September 24, 2004 and were submitted by the following parties:

June 10, 2004 letter from Carol Hannum (see Exhibit #2)

June 21, 2004 letter from Tammy Spiliotis (see Exhibit #3)

July 10, 2004 letter from Tammy Spiliotis (see Exhibit #4)

September 23, 2004 email from Douglas Steffy (see Exhibit #5)

September 24, 2004 email from Pat Elsey (see Exhibit #6)

EXECUTIVE DIRECTOR'S RESPONSE

The September 21, 2004 public hearing was duly advertised, noticed and held in accordance with Comprehensive Management Plan requirements. Beyond the minimum requirements set forth at N.J.A.C. 7:50-4.3(b)2i(3), the Commission also posted notice of the hearing on its web page and mailed copies of the public notice to a list of interested parties which was compiled based on phone calls and letters received by the Commission over the past several months on the Ocean Acres matter. The Comprehensive Management Plan does not require that the Commission provide notice to individual property owners who might be affected by an ordinance; rather, municipalities are charged by the Municipal Land Use Law with that responsibility when considering certain ordinance amendments. Because it was clear at the hearing that questions and concerns about the Township's ordinances remained, Commission staff held an informational meeting at the municipal building on October 27, 2004. This meeting was not a formal hearing but merely a forum at which answers to various questions from the public could be provided.

Another issue raised at the public hearing concerns sewer fees and the arrangements in place between the Township and a developer for the construction and provision of infrastructure within Ocean Acres. This is a matter beyond the Commission's purview and therefore the concerned property owners will need to address their questions and objections to the Township.

The remaining issues raised at the hearing have been addressed in the body of this report.

CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that Ordinances 2004-23, 2004-34 and 2004-42 comply with Comprehensive Management Plan standards for the certification of municipal master plans and land use ordinances. Accordingly, the Executive Director recommends that the Commission issue an order to certify Ordinances 2004-23, 2004-34 and 2004-42 of Barnegat Township.

SRG/CBA
Attachments

Revised
5/10/04

ORDINANCE 2004- 23

AN ORDINANCE OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 55 ENTITLED "LAND USE" OF THE CODE OF THE TOWNSHIP OF BARNEGAT

WHEREAS, there is an existing subdivision within the Pinelands Regional Growth Area of Barnegat Township known as "Ocean Acres" consisting of approximately 2,000 lots; and

WHEREAS, the Ocean Acres subdivision is located in the Township's RH (Residential High) Zone which calls for residential development on lots of at least 10,000 square feet, or smaller lots through the use of Pinelands Development Credits; and

WHEREAS, the Pinelands Commission has determined that portions of the Ocean Acres subdivision constitute habitat which is critical to the survival of one or more local populations of threatened and endangered plant and animal species; and

WHEREAS, in order to afford adequate protection to said critical habitat as required pursuant to N.J.A.C. 7:50-6, Parts II and III, of the Comprehensive Management Plan and Sections 55-295E and 55-299B of this ordinance, the current RH (Residential High) Zone designation for the Ocean Acres subdivision must be amended to provide for the establishment of a conservation area of approximately 730 lots, within which residential development would be prohibited; and

WHEREAS, residential development will continue to be permitted in those portions of the Ocean Acres subdivision located outside the conservation area in accordance with the standards for the RH (Residential High) Zone, except that existing lots of less than 10,000 square feet in size may be developed only through the use of Pinelands Development Credits or permanent protection of land within the conservation area; and

WHEREAS, there is within the conservation area an area of 135 lots, generally defined as the area between Nautilus Drive, Avalon Avenue, Mutineer Avenue and Viking Drive, in which the presence of threatened and endangered species has led the Pinelands Commission to determine that the area constitutes habitat critical to the survival of the local population of such species pursuant to N.J.A.C. 7:50-6, Part III, of the Comprehensive Management Plan; and

WHEREAS, were it not for the above-described determination by the Pinelands Commission, this 135-lot area would, given its location in a Pinelands Regional Growth Area, be available for residential development in accordance with the standards of the RH (Residential High Zone); and

WHEREAS, a current developer within the Ocean Acres subdivision contends that this area does not constitute critical habitat and has requested a period of two years to demonstrate its contention to the Pinelands Commission; and

WHEREAS, should the Pinelands Commission subsequently determine, based on the submission of new information, that this portion of the conservation area does not constitute critical habitat, its incorporation in the conservation area would no longer be appropriate or necessary; and

WHEREAS, the Township Committee of the Township of Barnegat desires to amend Chapter 55 entitled "Land Use" of the Code of the Township of Barnegat in order to implement the above-described amendments to the zoning plan for the Ocean Acres subdivision.

BE IT ORDAINED by the Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey, that Chapter 55 entitled "Land Use" of the Code of the Township of Barnegat is hereby amended and supplemented as follows:

Section 1. Section 55-6.B., Designation of Zoning Districts, Pinelands: Districts West of the Parkway, is hereby amended and supplemented by adding the following to the list of zoning districts:

RC Residential Conservation

Section 2. Section 55-7.B, Zoning Map, Pinelands - West of Parkway, is hereby amended and supplemented to read as follows:

B. Pinelands - West of Parkway. The boundaries of all zoning districts set forth in this article are shown on a map entitled "Zoning Map, Barnegat Township, New Jersey" dated ____ 2004 and subsequent revisions adopted pursuant to statute, which map is hereby made part of this article.

Section 3. Section 55-47 is hereby amended and supplemented to read as follows:

55-47. RH - HIGH ZONE

The following regulations apply in the RH Zone:

A. Permitted Uses.

(1) Detached single-family dwellings for residential purposes, together with accessory structures.

(2) Parks and preserves.

(3) The erection, construction, alteration or maintenance by a public utility or municipal agency of underground distribution or collection systems necessary for the furnishing of adequate service by such utility or agency to the use on the same lot and/or surrounding neighborhood or for the public health, safety or general welfare.

(4) Pump stations.

B. Accessory and Temporary Uses.

(1) Same as those permitted in the PF Zone, except agricultural commercial establishments.

C. Conditional Uses.

(1) Public utility uses, such as water towers, electric substations, radio towers and transmission lines, which must be provided above ground.

D. Lot and Building Requirements. These shall be as prescribed in the Schedule of Area, Yard and Building Requirements in this chapter, except as provided in Section 55-300 for unsewered lots in the Pinelands Area.

E. Development of Lots Under 10,000 Square Feet

Within the RH Zone, detached single family dwellings may be permitted on existing lots between 9,000 and 10,000 square feet in size, provided that:

(a) The owner of the lot proposed for development:

i. Purchases and redeems 0.25 Pinelands Development Credits; or

ii. Permanently protects two existing lots in the RC Zone by dedicating them as open space through recordation of a restriction on the deed to the lots, with no further development permitted except fish and wildlife management and low intensity recreational uses. Any such deed restriction shall be in a form to be approved by the Township Solicitor and the Pinelands Commission; or

iii. Permanently protects two-thirds of an acre of vacant land in the RC Zone which is not defined as wetlands and is located outside of existing residentially subdivided lots through recordation of a restriction on the deed to said parcel, with no further development permitted except fish and wildlife management and low intensity recreational uses. Any such deed restriction shall be in a form to be approved by the Township Solicitor and the Pinelands Commission; or

iv. Permanently protects two (2.0) acres of vacant land in the RC Zone which is defined as wetlands and is located outside of existing residentially subdivided lots through recordation of a restriction on the deed to said parcel, with no further development permitted except fish and wildlife management and low intensity recreational uses. Any such deed restriction shall be in a form to be approved by the Township Solicitor and the Pinelands Commission.

(b) The Township shall maintain and make available an inventory of vacant lots in the RC Zone. Said inventory shall include the names and mailing addresses of the owners of all vacant lots in the RC Zone.

(c) Any person proposing to develop a lot in the RH Zone between 9,000 and 10,000 square feet in size who, as of the effective date of this ordinance, also owns a lot or lots in the RC Zone shall be required to permanently protect said lot or lots in the RC Zone in accordance with (a)ii above, prior to purchasing and redeeming Pinelands Development Credits in accordance with (a)i above. If said lot or lots in the RC Zone were sold or transferred subsequent to the effective date of this ordinance, another lot or lots in the RC Zone must be permanently protected in accordance with (a)ii above, prior to the purchase and redemption of Pinelands Development Credits in accordance with (a)i above.

(d) No development in the RH Zone involving the permanent protection of lots or other lands in the RC Zone in accordance with (a)ii, iii and iv above shall be approved until the developer has provided the Pinelands Commission and the Township with evidence of his ownership of the requisite lots or other lands. A deed restriction on the requisite lots or other lands shall be duly recorded prior to the issuance of any building or construction permits.

(e) No development involving the use of Pinelands Development Credits in the RH Zone shall be approved until the developer has provided the Pinelands Commission and the Township with evidence of his ownership and redemption of the requisite Pinelands Development

Credits. Notification of any such approval shall be made to the Commission pursuant to Section 55-277 and to the New Jersey Pinelands Development Credit Bank in accordance with N.J.A.C. 3:42-3. Redemption of the requisite Pinelands Development Credits shall thereafter be accomplished in accordance with N.J.A.C. 3:42-3.6, prior to the issuance of any building or construction permits.

Section 4. There is hereby added to Chapter 55, Article II, Zoning District Regulations, a new Section 55-48 as follows:

55-48. RC - RESIDENTIAL CONSERVATION ZONE

The following regulations apply in the RC Zone:

A. Purpose. The RC Residential Conservation Zone constitutes a portion of an existing subdivision within the Pinelands Regional Growth Area which contains habitat critical to the survival of one or more local populations of threatened and endangered plant and animal species. In order to afford adequate protection to said critical habitat as required pursuant to N.J.A.C. 7:50-6, Parts II and III, of the Comprehensive Management Plan and Sections 55-295E and 55-299B of this ordinance, residential development is not permitted; however, land in the RC Zone may be used to facilitate the development of detached single family dwellings on certain lots in the RH Residential High Zone in accordance with Section 55-47E.

B. Permitted Uses.

(1) Fish and wildlife management.

(2) Low intensity recreational uses.

(3) Maintenance by a public utility or municipal agency of those underground distribution or collection systems existing as of the effective date of this ordinance as necessary for the furnishing of adequate service by such utility or agency to the use on the same lot and/or surrounding neighborhood or for the public health, safety or general welfare.

(4) The installation of water lines, provided that any such line will be located under the existing paved road known as Harpoon Drive and no widening in the paved surface of said road occurs.

(5) Pump stations, roads and other public service infrastructure, provided same:

(a) Was in existence as of the effective date of this ordinance: or

(b) Received all necessary local permitting agency approvals and a letter of no further review from the Pinelands Commission issued pursuant to N.J.A.C. 7:50-4, Part III, prior to the effective date of this ordinance; or

(c) Received approval from the Pinelands Commission pursuant to N.J.A.C. 7:50-4, Part IV, prior to the effective date of this ordinance.

Section 5. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

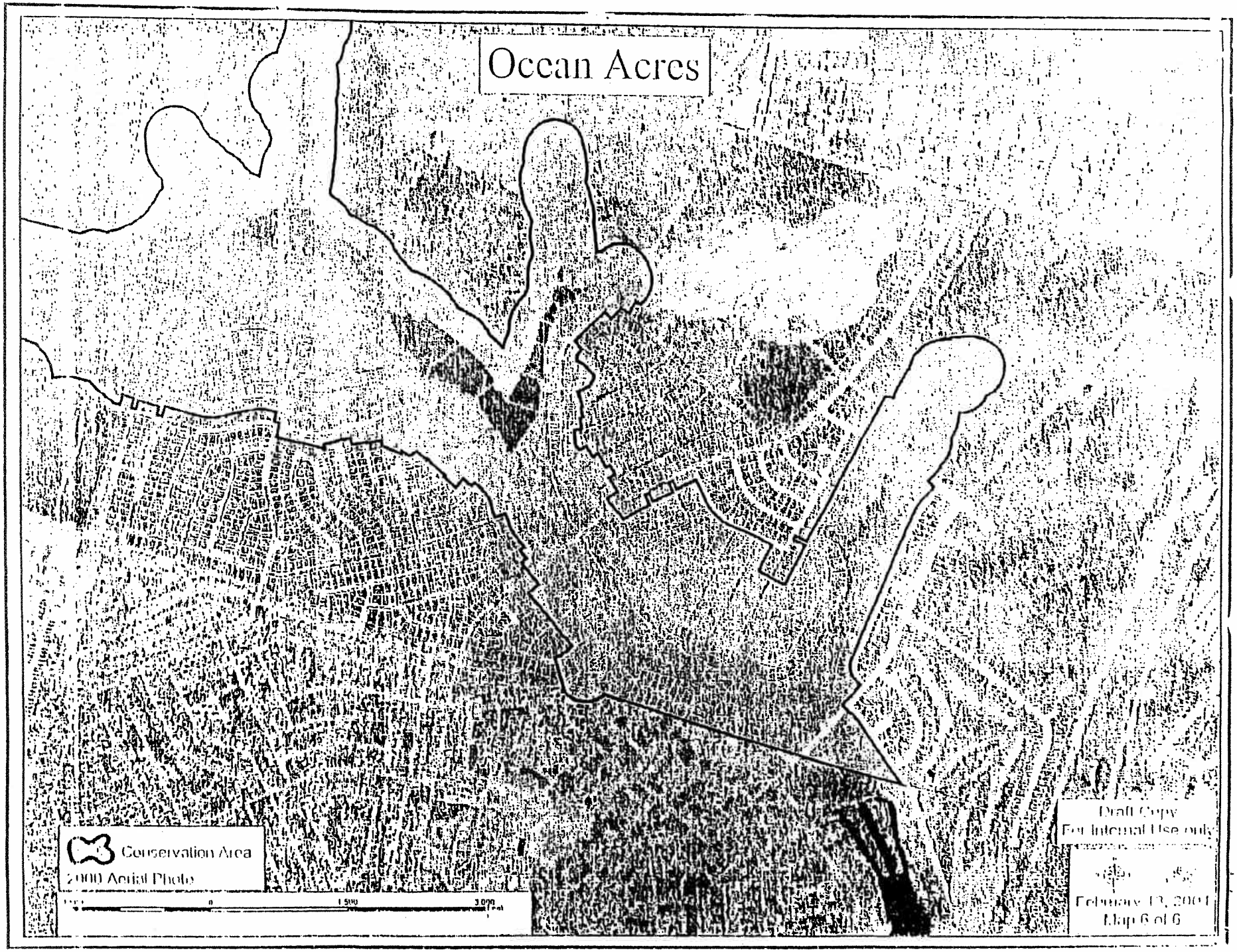
Section 6. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 7. This ordinance shall take effect immediately upon due passage, publication according to law, and approval by the Pinelands Commission.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced at a regular meeting of the Barnegat Township Committee held on the 17th day of May, 2004, and will be considered for second reading and final adoption at a regular meeting of the Township Committee, to be held on the 7th day of June, 2004, 900 West Bay Avenue, Barnegat, New Jersey, at 7:00 PM, at which time and place any person wishing to speak on the subject ordinance shall be given an opportunity to be so heard.

Veronica E. Jasina, RMC
Municipal Clerk


Ocean Acres
Conservation Area
2000 Aerial Photo
0
1,500
3,000
Draft Copy
For Internal Use only
February 13, 2004
Map 6 of 6

ITEMIZED RECEIPTS (Other than Loans)

SCHEDULE A | Page No. 42 of 53

PLEASE TYPE OR PRINT. PHOTOCOPIES MAY BE USED IF ADDITIONAL FORMS ARE NEEDED.

RECEIPT TYPE (USE A SEPARATE "SCHEDULE A" FOR EACH TYPE AND FOR EACH SEPARATE ACCOUNT)

[X] MONETARY CONTRIBUTIONS [ ] IN-KIND CONTRIBUTIONS-EXPENDITURES MADE BY OTHERS [ ] REIMBURSEMENTS/REFUNDS OF DISBURSEMENTS [ ] DIVIDENDS/INTEREST

COMMITTEE NAME: Ocean County Republican Finance Committee, Inc.

ACCOUNT NAME and NUMBER: Ocean County Republican Finance Comm., Inc. 36-972274

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Southwinds Marina Lacey, Inc.		362 East Lacey Road	9-09-03	600.00
OCCUPATION	**STATE USE ONLY**	**(CITY, STATE AND ZIP CODE)**		
Marina		Forked River, N.J. 08731		
EMPLOYER NAME				
Same				
EMPLOYER ADDRESS (NUMBER AND STREET)				
Same				
(CITY, STATE AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-kind)		**AGGREGATE YEAR-TO-DATE**		
		600.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Toner Concepts Inc.		302 Hooper Avenue	9-09-03	600.00
OCCUPATION	**STATE USE ONLY**	**(CITY, STATE AND ZIP CODE)**		
Computer Supplies		Toms River, N.J. 08753		
EMPLOYER NAME				
Same				
EMPLOYER ADDRESS (NUMBER AND STREET)				
Same				
(CITY, STATE AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-kind)		**AGGREGATE YEAR-TO-DATE**		
		1,000.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Walters Management Co.,Inc.		500 Barnegat Blvd. North	9-09-03 9-24-03	1,200.00 500.00
OCCUPATION	**STATE USE ONLY**	**(CITY, STATE AND ZIP CODE)**		
Management Consultants		Barnegat, N.J. 08005		
EMPLOYER NAME				
Same				
EMPLOYER ADDRESS (NUMBER AND STREET)				
Same				
(CITY, STATE AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-kind))		**AGGREGATE YEAR-TO-DATE**		
		2,700.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Vital Computer Resources, Inc.		900 S. Broad Street	9-09-03	1.200.00
OCCUPATION	**STATE USE ONLY**	**(CITY, STATE AND ZIP CODE)**		
Computers		Trenton, N.J. 08611		
EMPLOYER NAME				
Same				
EMPLOYER ADDRESS (NUMBER AND STREET)				
Same				
(CITY, STATE AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-kind)		**AGGREGATE YEAR-TO-DATE**		
		1,200.00		

1. SUBTOTAL (Add all receipts listed on this page.)	4,100.00
2. TOTAL RECEIPTS, THIS PERIOD (Complete this line on the last page used for each receipt type. Carry forward to applicable line on Page 2, Column A.)	

ITEMIZED RECEIPTS (Other than Loans)

SCHEDULE A | Page No. 23

PLEASE TYPE OR PRINT. PHOTOCOPIES MAY BE USED IF ADDITIONAL FORMS ARE NEEDED.

RECEIPT TYPE (USE A SEPERATE "SCHEDULE A" FOR EACH TYPE AND FOR EACH SEPARATE ACCOUNT.)

[X] MONETARY CONTRIBUTIONS [ ] IN-KIND CONTRIBUTIONS-EXPENDITURES MADE BY OTHERS [ ] REIMBURSEMENTS/REFUNDS OF DISBURSEMENTS [ ] DIVIDENDS/INTEREST

FULL COMMITTEE NAME:

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Walters Management Co., Inc.		500 Barnegat Boulevard North Bldg. 400, Suite 402		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
		Barnegat, NJ 08005		
EMPLOYER NAME			10/11/2004	1800.00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 13550.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Walters Management Co., Inc.		500 Barnegat Boulevard North Bldg. 400, Suite 402		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
		Barnegat, NJ 08005		
EMPLOYER NAME			12/01/2004	750.00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 13550.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Flannery, Webb & Hansen, PA		1658 Route 9		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
		Toms River, NJ 08755		
EMPLOYER NAME			10/11/2004	900.00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 2950.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Barry Weshnak		PO Box 496		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
Real Estate Developer		Allenwood, NJ 08720		
EMPLOYER NAME W & S Realty Investments, LLC			10/11/2004	300.00
EMPLOYER ADDRESS (NUMBER AND STREET) PO Box 496				
(CITY, STATE, AND ZIP CODE) Allenwood, NJ 08720				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 550.00		

1. SUBTOTAL (Add all receipts listed on this page.)	3750.00
2. TOTAL RECEIPTS, THIS PERIOD (Complete this line on the last page used for each receipt type. Carry forward to applicable line on Page 2, Column A.)	

SUPPLEMENTAL CONTRIBUTOR INFORMATION — FORM C-3

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
P.O. BOX 185, TRENTON, NJ 08625-0185

FOR STATE USE ONLY

ELEC RECEIVED
OCT 18 2004

CONTRIBUTIONS REPORT TYPE ("X" ONE)

____ Committee filing "Sworn Statement," Form A-3, receiving contributions in excess of $400.

__X__ Committee receiving contributions in excess of $800 between the closing date of the last quarterly report and the date of an election in which the committee has made, or intends to make, a contribution.

REPORT QUARTER

____ APRIL 15 ____ JULY 15 ____ OCT. 15 __X__ JAN. 15

ELEC IDENTIFICATION NUMBER

1500 0002 22 Q2004

SECTION I. PLEASE PRINT OR TYPE

____ "X" If address is different from address previously reported

FULL COMMITTEE NAME, ADDRESS (NUMBER AND STREET, CITY, STATE, ZIP CODE)

Ocean County Republican Finance Committee, Inc.
10 Allen Street Suite 1A
Toms River, N.J. 08753

SECTION II. CONTRIBUTION INFORMATION (Receipt Types: A = Cash or Check; B = In-Kind; C = Loan)

FULL NAME, ADDRESS (NUMBER AND STREET, CITY, STATE, ZIP CODE)	RECEIPT TYPE	DESCRIPTION, IF IN-KIND CONTRIBUTION	AGGREGATE YEAR TO DATE	DATE(S) RECEIVED	AMOUNT(S) RECEIVED THIS PERIOD
Joanne Karen Baron 19 Lake Drive Freehold, N.J. 07728	A		3,300.00	10-8-04	300.00
OCCUPATION (IF INDIVIDUAL)	EMPLOYER NAME, ADDRESS (IF INDIVIDUAL)				
	Monmouth County 5 Hailcrest Ct. Freehold, N.J.				
FULL NAME, ADDRESS (NUMBER AND STREET, CITY, STATE, ZIP CODE)	RECEIPT TYPE	DESCRIPTION, IF IN-KIND CONTRIBUTION	AGGREGATE YEAR TO DATE	DATE(S) RECEIVED	AMOUNT(S) RECEIVED THIS PERIOD
Walters Management Co., Inc. 100 Barnegat Blvd. North Barnegat, N.J. 08005	A	100 Barnegat Blvd. North	12,800.00	10-8-04	1,800.00
OCCUPATION (IF INDIVIDUAL)	EMPLOYER NAME, ADDRESS (IF INDIVIDUAL)				
FULL NAME, ADDRESS (NUMBER AND STREET, CITY, STATE, ZIP CODE)	RECEIPT TYPE	DESCRIPTION, IF IN-KIND CONTRIBUTION	AGGREGATE YEAR TO DATE	DATE(S) RECEIVED	AMOUNT(S) RECEIVED THIS PERIOD
Robert G. Schroeder P.O. Box 370 Park Ridge, N.J. 07656	A		10,000.00	10-8-04	10,000.00
OCCUPATION (IF INDIVIDUAL)	EMPLOYER NAME, ADDRESS (IF INDIVIDUAL)				
President	API Corp. P.O. Box 370 Park Ridge, N.J.07656				

(COMPLETE THIS LINE FOR EVERY PAGE USED) TOTAL, THIS PAGE $ 12,100.00

(COMPLETE THIS LINE FOR LAST PAGE USED) GRAND TOTAL $ _____

TREASURER SIGNATURE [signature] DATE 10-14-04

ITEMIZED RECEIPTS (Other than Loans)

SCHEDULE A | Page No. 79

PLEASE TYPE OR PRINT. PHOTOCOPIES MAY BE USED IF ADDITIONAL FORMS ARE NEEDED.

RECEIPT TYPE (USE A SEPERATE "SCHEDULE A" FOR EACH TYPE AND FOR EACH SEPARATE ACCOUNT)

[X] MONETARY CONTRIBUTIONS | [ ] IN-KIND CONTRIBUTIONS- EXPENDITURES MADE BY OTHERS | [ ] REIMBURSEMENTS/ REFUNDS OF DISBURSEMENTS | [ ] DIVIDENDS/ INTEREST

FULL COMMITTEE NAME:

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Walters Management Co., Inc.		500 Barnegat Boulevard North Bldg. 400, Suite 402		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
		Barnegat, NJ 08005		
EMPLOYER NAME			09/07/2004	1000.00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 11000.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Walters Management Co., Inc.		500 Barnegat Boulevard North Bldg. 400, Suite 402		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
		Barnegat, NJ 08005		
EMPLOYER NAME			09/13/2004	3600.00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 11000.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Flannery, Webb & Hansen, PA		1658 Route 9		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
		Toms River, NJ 08755		
EMPLOYER NAME			08/19/2004	500.00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 2050.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Stafford Township Republican Club		PO Box 129		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
		Manahawkin, NJ 08050		
EMPLOYER NAME			08/17/2004	1000.00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 1070.00		

1. **SUBTOTAL (Add all receipts listed on this page.)**	6100.00
2. **TOTAL RECEIPTS, THIS PERIOD (Complete this line on the last page used for each receipt type. Carry forward to applicable line on Page 2, Column A.)**	

ITEMIZED RECEIPTS (Other than Loans) | SCHEDULE A | Page No. 78

PLEASE TYPE OR PRINT. PHOTOCOPIES MAY BE USED IF ADDITIONAL FORMS ARE NEEDED.

RECEIPT TYPE (USE A SEPERATE "SCHEDULE A" FOR EACH TYPE AND FOR EACH SEPARATE ACCOUNT.)

[X] MONETARY CONTRIBUTIONS [ ] IN-KIND CONTRIBUTIONS- EXPENDITURES MADE BY OTHERS [ ] REIMBURSEMENTS/ REFUNDS OF DISBURSEMENTS [ ] DIVIDENDS/ INTEREST

FULL COMMITTEE NAME:

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Schoor DePalma, Inc.		200 Route 9 PO Box 900		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
		Manalapan, NJ 07726		
EMPLOYER NAME			09/15/2004	4500.00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 27500.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Schoor DePalma, Inc.		200 Route 9 PO Box 900		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
		Manalapan, NJ 07726		
EMPLOYER NAME			09/15/2004	9000.00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 27500.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Schoor DePalma, Inc.		200 Route 9 PO Box 900		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
		Manalapan, NJ 07726		
EMPLOYER NAME			09/15/2004	1000.00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 27500.00		

CONTRIBUTOR NAME	STATE USE ONLY	CONTRIBUTOR ADDRESS (NUMBER AND STREET)	DATE(S) RECEIVED THIS PERIOD	AMOUNT(S) RECEIVED THIS PERIOD
Walters Management Co., Inc.		500 Barnegat Boulevard North Bldg. 400, Suite 402		
OCCUPATION	STATE USE ONLY	(CITY, STATE AND ZIP CODE)		
		Barnegat, NJ 08005		
EMPLOYER NAME			09/07/2004	2400.00
EMPLOYER ADDRESS (NUMBER AND STREET)				
(CITY, STATE, AND ZIP CODE)				
RECEIPT DESCRIPTION (If In-Kind)		AGGREGATE YEAR-TO-DATE 11000.00		

1. **SUBTOTAL (Add all receipts listed on this page.)**	16900.00
2. **TOTAL RECEIPTS, THIS PERIOD (Complete this line on the last page used for each receipt type. Carry forward to applicable line on Page 2, Column A.)**	

POLITICAL PARTY COMMITTEE - DESIGNATION OF ORGANIZATIONAL TREASURER AND DEPOSITORY

FORM D-3

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
P.O. BOX 185, TRENTON NJ 08625-0185 (609) 292-8700

PLEASE TYPE OR PRINT

COMMITTEE NAME: Ocean County Regular Republican Organization

FOR STATE USE ONLY

ELEC RECEIVED
JUL - 2 2004

☐ STATE COMMITTEE ☐ COUNTY COMMITTEE ☐ MUNICIPAL COMMITTEE

ADDRESS (NUMBER AND STREET, CITY, STATE, ZIP CODE): 10 Allen Street Suite 1A Toms River, N.J. 08753

*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE
732 797-1333	
COUNTY: Ocean	MUNICIPALITY: Dover
IDENTIFICATION NUMBER: 1500 0002 22 Q2004	POLITICAL PARTY: Republican

TYPE OF FILING

- [XX] Annual Designation for July 1, 2004 to June 30, 2005.
- [ ] Amendment (please specify below)
- [XX] Additional Depository
- [ ] Deputy Treasurer

1. CHAIRPERSON

NAME		
Jerry J. Dasti		
MAILING ADDRESS		
620 W. Lacey Road		
CITY: Forked River,	STATE: N.J.	ZIP CODE: 08731
*(AREA) DAY TELEPHONE: 609 971-1010	*(AREA) EVENING TELEPHONE	

2. TREASURER

NAME		
Frank B. Holman, III		
MAILING ADDRESS		
10 Allen Street Suite 1A		
CITY: Toms River,	STATE: N.J.	ZIP CODE: 08753
*(AREA) DAY TELEPHONE: 732 797-1333	*(AREA) EVENING TELEPHONE	
RESIDENT ADDRESS, IF DIFFERENT FROM MAILING ADDRESS		
CITY	STATE	ZIP CODE

3. DEPOSITORY INFORMATION

NAME OF BANK OR DEPOSITORY		
Wachovia Bank		
MAILING ADDRESS		
Main Street		
CITY: Toms River,	STATE: N.J.	ZIP CODE: 08753
(AREA) DAY TELEPHONE: 800 275-3862		
ACCOUNT NAME: Ocean County Regular Republican Org.	ACCOUNT NUMBER: 2000016281439	

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form.

3. DEPOSITORY INFORMATION (Continued)

NAME OF BANK OR DEPOSITORY		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
(AREA) DAY TELEPHONE		
ACCOUNT NAME	ACCOUNT NUMBER	

4. LIST THE NAME(S), MAILING ADDRESS(ES) AND TELEPHONE NUMBER(S) OF ANY PERSON(S) AUTHORIZED TO SIGN CHECKS OR OTHERWISE MAKE TRANSACTIONS.

NAME		
April Yezzi		
MAILING ADDRESS		
10 Allen Street Suite 1A		
CITY	STATE	ZIP CODE
Toms River,	N.J.	08753
*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE	
732 797-1333		

NAME		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE	

NAME		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
*(AREA) DAY TELEPHONE	*(AREA) EVENING TELEPHONE	

TREASURER/CHAIRPERSON CERTIFICATION

I certify that the statements on this document are true and correct. I am aware that if any of the statements are willfully false, I am subject to punishment

Date	Print Full Name	Signature
6-30-04	Frank B. Holman, III	
6-30-04	Jerry J. Dasti	

Date — Print Full Name (Chairperson) — Signature (Chairperson)

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form.

Recd 6/25/03

P - Pawa

Need PDCs

K - Kneiskerns

SP Swamp pink

S - Snake

Barnegat Ocean Acres

Lots owned by Lighthouse Development Company and its affiliates

44.74	10	622 Lighthouse	
92.01	9	69 Barracuda Rd	.23 lot size (L) K, S, WB
92.05	1	88 Barracuda Road	.24 K, S, WB
92.05	9	104 Barracuda	.21 K, S, WB, L
92.06	3	225 Barracuda	
92.06	4	227 Barracuda	
92.06	5	229 Barracuda	.24 (L), WB, K, S
92.06	6	231 Barracuda	
92.06	7	233 Barracuda	
92.06	8	542 Mermaid	
92.06	9	540 Mermaid	
92.06	10	538 Mermaid	
92.06	11	536 Mermaid	
92.06	12	534 Mermaid	
92.06	13	25 Mermaid Drive	
92.06	14	27 Mermaid Drive	
92.09	11	30 Mermaid	
92.09	12	28 Mermaid	.24 WB, K, S
92.09	13	539 Mermaid	
92.09	14	541 Mermaid	
92.09	15	543 Mermaid	
92.09	16	125 Windjammer	
92.09	17	123 Windjammer	
92.09	18	29 Northing	
92.09	19	27 Northing	
92.15	6	12 Windjammer	.28 WB, SP, S,
92.15	7	14 Windjammer	
92.15	10	20 Windjammer	.29 WB, SP, S
92.15	11	22 Windjammer	
92.15	13	26 Windjammer	.30 WB, SP, S
92.15	15	30 Windjammer Dr	WB, SP, S
92.15	16	32 Windjammer Dr	.31
92.15	17	34 Windjammer	
92.15	18	36 Windjammer	
92.15	19	38 Windjammer	
92.15	21	42 Windjammer Dr	.33 WB, SP, S
92.15	24	48 Windjammer Dr	WB, SP, S
92.15	25	50 Windjammer Dr	
92.15	44	88 Windjammer	.34 WB, SP, S, K
92.15	46	92 Windjammer	.35 WB, S, K
92.16	11	26 Breakers Drive	.36 S, L
92.16	44	6 Pilot	.37 S
92.17	1	WINDWARD/NORTHING	.5
92.17	2	NORTHING	
92.17	3	NORTHING	
92.17	4	NORTHING	
92.17	5	NORTHING	
92.17	6	NORTHING	
92.17	7	NORTHING	
92.17	8	NORTHING	.24
92.17	9	NORTHING	
92.17	10	NORTHING	
92.17	11	NORTHING	
92.17	12	NORTHING	
92.17	13	NORTHING	
92.17	14	NORTHING	
92.17	15	NORTHING/WINDJAMMER	
92.17	16	WINDJAMMER	
92.17	17	WINDJAMMER	
92.17	18	WINDJAMMER	
92.17	19	WINDJAMMER	
92.17	20	WINDJAMMER	
92.17	21	WINDJAMMER	
92.17	22	WINDJAMMER	
92.17	23	WINDJAMMER	

Barnegat Ocean Acres
Lots owned by Lighthouse Development Company and its affiliates

92.17	24	WINDJAMMER			
92.17	27	LONGBOAT			
92.17	28	LONGBOAT			
92.17	29	LONGBOAT			
92.17	30	LONGBOAT			
92.17	31	LONGBOAT			
92.17	32	LONGBOAT			
92.17	33	LONGBOAT			
92.17	35	LONGBOAT			
92.17	36	LONGBOAT			
92.17	37	LONGBOAT			
92.17	38	LONGBOAT			
92.17	39	LONGBOAT			
92.17	40	LONGBOAT			
92.17	41	LONGBOAT			
92.17	42	LONGBOAT			
92.17	43	113 Longboat			
92.17	44	LONGBOAT			
92.17	45	LONGBOAT			
92.17	46	LONGBOAT/WINDWARD			
92.18	1	LONGBOAT			
92.18	2	LONGBOAT			
92.18	3	LONGBOAT			
92.18	4	LONGBOAT			
92.18	5	LONGBOAT			
92.18	7	LONGBOAT			
92.18	8	LONGBOAT			
92.18	9	LONGBOAT			
92.18	10	LONGBOAT			
92.18	11	LONGBOAT			
92.18	12	LONGBOAT			
92.18	13	LONGBOAT/HALFHITCH			
92.18	14	LONGBOAT			
92.18	15	LONGBOAT			
92.18	16	LONGBOAT			
92.18	17	LONGBOAT			
92.18	18	LONGBOAT			
92.18	19	LONGBOAT			
92.18	21	LONGBOAT			
92.18	22	LONGBOAT			
92.18	23	LONGBOAT			
92.18	24	LONGBOAT			
92.18	25	LONGBOAT/WINDWARD			
92.22	7	61 Pilot	.38	S	
92.24	23	16 WhiteSpray	.39	S	
92.26	1	21 Fornast	.40	S, WB, K	
92.26	17	36 Outsail			
92.27	4	69 Windjammer Dr	.41	WB, S, K	
92.27	12	33 shipmate ave			
92.32	1	35 Windjammer	.31	WB, SP, S	
92.32	2	33 Windjammer			
92.32	3	31 Windjammer			
92.33	1	2 Minnow Ave	.42	S	
92.34	2	11 Windjammer	.28	WB, SP, S	
92.35	13	5 Whaler Ave	.43	S	
92.35	14	3 Whaler Ave			
92.36	8	25 Pilot	.45	S	
92.36	12	17 Pilot	.44	S	
92.36	13	15 Pilot			
92.41	10	19 Spyglass	.46	WB, SP, S, L	
92.44	5	43 Capsize Ave	.47	S	
92.51	3	15 Cape Cod			
92.51	4	13 Cape Cod	.48	S, L	27392
92.51	5	11 Cape Cod			
92.52	14	2 Ray	.49	WB, SP, S	~~14432~~ 14481

.24

24

6/25/2003

Barnegat Ocean Acres
Lots owned by Lighthouse Development Company and its affiliates

92.52	15	*4 Ray*	.49		13120
92.52	18	*1 Ray Court*			14075
92.53	8	23 Catalina	.50	S, L	10 700
92.53	9	21 Catalina			9180
92.53	10	19 Catalina			9000
92.53	11	17 Catalina			9000
92.53	18	*3 Catalina Ave*	.51	WB, SP, S, L	12,000
92.53	19	*2 Shipshape Ave*			12,000
92.53	24	12 Shipshape Avenue	.50	S, L	360,180
92.53	25	14 Shishape Avenue			
92.53	26	16 Shipshape Avenue			
92.53	27	18 Shipshape Avenue			
92.57	22	18 Catalina	52	S, L	9,000
92.58	15	10 Green Cove	.53	S, L	18739
92.58	16	12 Green Cove			
92.58	19	18 Green Cove Ave	.54	L, S	9000
92.64	9	15 avalon	.55	S, P	13,500
92.64	33	16 Farragut	.56	S, L	9688
92.64	36	22Farragut Ave	.57	S	14259
92.64	42	34 Farraguts	.58	S, L	9000
92.64	45	40 Farragut Avenue	.59	S	11040
92.65	2	29 Seabreeze	.60	S, L	18000
92.65	3	27 Seaspray			
92.66	25	20 Seabreeze	.61	S, L	9000
92.77	4	*33 Harpoon Drive*	1.62	P, WB, SP, S, L, No Sewer	9750
92.80	9	8 Harpoon Drive			
92.80	10	65 Mutineer Ave	.63	P, S	32 470
92.80	11	2 Gulf Ct.			
92.80	15	1 Gulf Ct.	.64	P, S	12672
92.80	16	55 Mutineer Ave			
92.81	14	16 Caribbean Avenue	.65	P, S	10747
92.81	16	20 Caribbean	.666	P, S	12797
92.84	4	94 Nautilus	.67	P, S, L	18,600#
92.84	5	96 Nautilus			
92.85	9	2 Adrift Ave	.68	S	24,417
92.85	10	4 Adrift Ave			
92.86	13	84 Nautilus	.69	P, S	37,091
92.86	14	86 Nautilus			
92.86	15	24 Caribbean			
92.89	4	16 Nautilus	.70	P, S, L	9,000
113.02	11	14 Fairoaks Dr.	.71	No Sewer, S, P waiver	21,531
113.02	24	8 Seven Pines Ct.			
113.03	18	1 Fair Oaks Drive	.72	"	13,334
		173			

PINELANDS PRESERVATION ALLIANCE

Bishop Farmstead, 17 Pemberton Road, Southampton, New Jersey 08088

Phone: 609-859-8860 Fax: 609-859-8804
E-mail: ppa@pinelandsalliance.org Website: www.pinelandsalliance.org

August 7, 2009

Jean Montgomerie
Pinelands Commission
15 Springfield Road
PO Box 7
New Lisbon, NJ 08064

Re: Ocean Acres Conservation Overlay Zone – Threatened and Endangered Species Habitat

Dear Ms Montgomerie,

I am writing on behalf of the Pinelands Preservation Alliance in response to the Commission's invitation for public comment, to express our very strong opposition to the proposed redesignation of the Ocean Acres Overlay Zone for development based on the Ecolsciences snake survey submitted by Walters Group, and to submit the attached expert report of Dr. Joanna Burger and Dr. Emile DeVito demonstrating that the Ecolsciences survey does not provide a basis for concluding the subject land is no longer protected habitat under the Pinelands Comprehensive Management Plan. Ecolsciences argues that this area no longer qualifies as protected habitat because it failed to find any pine snakes during its survey conducted between September 2005 and July 2007. We wish to highlight the following considerations that negate the basis for this conclusion:

First, as the Burger/DeVito report verifies, the Ecolsciences survey results demonstrate that one cannot draw any statistically significant conclusion from its failure to trap pine snakes in the recent survey, even if one assumed that the survey was conducted properly. Ecolsciences managed to catch so few snakes, even of more common species, that its failure to catch any pine snakes provides no legitimate scientific basis for concluding that pine snakes are not currently using the area. At a minimum, the Commission should seek an opinion from its science staff on the statistical significance of the Ecolsciences trapping results.

The Burger/Devito report also notes deficiencies in the implementation of the survey that vitiate its conclusions. Given Ecolscience's failure to use reliable methods, its report cannot provide a basis for redesignating the Overlay Area.

Second, there is no dispute that the subject land was critical habitat within the definition of the CMP in 2003. Indeed, that was the reason this area was included in the protected area in the first place. It is well-known that some pine snakes shift their nesting and hibernation locations from time to time, leaving and returning to favored sites, or using new holes near but not identical to prior sites. It is also noteworthy that in another Walters Group development, Stafford Business Park, pine snakes have lately returned to the Business Park area despite extremely intensive efforts to attract them to new nearby

home ranges. If in fact a subject area or specific den was not used by pine snakes during the survey period, it does not follow that this area is not part of the local population's critical habitat. Because of these habits of pine snakes, even if one accepts the Ecolsciences survey findings, it would be illogical for the Commission to conclude that the Overlay Area is ceased to be critical habitat just because no pine snakes were found using it during the survey period. It would also undermine the protection of pine snake populations, since developers could simply do repetitive surveys, as Walters Group has done, in the hopes of not finding snakes in a given location they had previously used, thereby eating away at habitat as snakes shifted their foraging, nesting or hibernation sites around their critical habitat range.

Third, Ecolsciences and Walters Group need to explain why land that was denning and foraging habitat in the prior year has ceased to be such starting when they began their survey. Ecolsciences presents the only possible explanation for its conclusion that the land is no longer habitat for pine snakes – that the increased development authorized by the 2004 conservation plan on adjoining lots has so diminished the value of the land in question that pine snakes have abandoned the area.

Its consultant's argument creates a dilemma for Walters Group: if the Pinelands Commission accepts this argument, then allowing construction of the Overlay Area will have a similar effect on the adjoining lands still within the Conservation Zone. If the Commission rejects this argument, then the Commission cannot rationally accept the conclusion that the Overlay Zone has randomly and spontaneously ceased to be part of the local population's critical habitat just because no snake was found during the recent survey period.

The Ecolsciences survey fails to demonstrate that the Overlay Area is no longer pine snake habitat, or that the impact of the adjacent development has been so severe as to render the Overlay Area no longer suitable as critical habitat. The premise that adjoining development has a negative impact on most wildlife species native to an undeveloped area like the Ocean Acres Conservation Zone is, however, well-founded. It is the premise of the Pinelands Commission's own Ecological Integrity Assessment (EIA), which gives a lower Pinelands habitat value to forest that has more development in its 1000-meter vicinity than to forest that does not. Indeed, the EIA report includes an extensive literature review on the habitat significance of buffers and the edge effects of development. [See Zampella, R. et al., *An Ecological-Integrity Assessment of the New Jersey Pinelands*, NJ Pinelands Commission, April 2008, esp. pp. 7-11 & 50-56.] The importance of buffers as part of critical habitat is also embedded in the Commission's wetlands delineation model, which requires greater wetlands buffers when threatened or endangered species are present.

It would be arbitrary and capricious for the Commission to base its ruling on the Walters Group petition on the assumption that the Overlay Area has not been adversely affected by the adjoining development, or that development of the Overlay Area will not have an irreversible adverse impact on the remaining critical habitats of the Conservation Zone.

Fourth, the argument that the Overlay Zone can now be developed under the CMP because adjacent development has caused pine snakes to cease to using the area also rests on a fundamental misreading of the CMP's threatened and endangered wildlife protection rule. The CMP states:

> No development shall be carried out unless it is designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local

> populations of those threatened or endangered animal species designated by the Department of Environmental Protection pursuant to N.J,.S.A. 23:2A-1 et seq. N.J.A.C. 7:50-6.33.

This provision protects habitats "*that are critical* to the survival of any local populations" from irreversible adverse impacts of development. To extent buffer habitat between development and active range is critical to the habitat value of the active range, it is critical to the local population's survival, whether or not the area is itself actively used by individuals of the species in any given time period. This understanding is mandated not only by the plain language of the rule, but also by simple logic: If one requires that every piece of land be actively in use to constitute protected habitat, then development would be permitted to encroach one small chunk of land at a time for any species that does not actively and safely use the ecotone zone right up to a road or homeowners' lawns.

The illogic of permitting Walters Group to develop the Overlay Zone on the premise that its development of adjoining land has driven pine snakes from the Overlay Area has been highlighted by David Jenkins, chief of the Endangered and Nongame Species Program, in his letter to the Commission dated April 13, 2009.

For all the reasons stated above, we submit that the CMP and sound policy mandate that the Overlay Zone remain within the Conservation Zone of the Ocean Acres development.

Respectfully submitted,

Carleton Montgomery
Executive Director

TO: Carleton Montgomery and Theresa Lettman, Pinelands Preservation Alliance

FROM: Dr. Joanna Burger, Professor, Division of Life Sciences, Ecology, Evolution and Natural Resources, Rutgers University

Dr. Emile DeVito, Director of Science and Conservation, New Jersey Conservation Foundation

Date: August 6, 2009

Re: Review of Ocean Acres 38-Acre Overlay Area/ 2005-2007 Pine Snake Survey Report from EcolSciences, Inc.

The following represents the results of our expert review of the Ocean Acres Overlay Area/2005-2007 Pine Snake Survey Report from EcolSciences, Inc. We have prepared this report in the expectation that the Pinelands Preservation Alliance will submit it to the Pinelands Commission as part of the Commission's deliberations on whether to continue or withdraw existing development restrictions on the Overlay Area.

We respectfully disagree with the finding of the Ecolsciences, Inc. report that the Ocean Acres Overlay Area is not critical habitat for the Northern Pine Snake. Here we discuss our four main concerns, which we believe nullify the finding in the report, that development of the Overlay Area will avoid irreversible adverse impacts on habitats that are critical to the survival of a local population of Northern Pine Snake.

1. **The report admits that a mechanism for habitat value being degraded in the Overlay Area is the fragmentation impact or "domino effect" of nearby development that was previously permitted. If one accepts the finding (which we do not) that the Overlay Area is no longer habitat and the developer is rewarded for the habitat degradation that its consultant claims it has already caused, then the development of the Overlay Area, by extension of Ecolscience's own argument, will cause irreversible adverse impact on the remainder of the conservation zone.**

The report concludes that, based on Ecolscience's sampling, there is no longer evidence that the 38-acre Overlay Area is utilized by Northern Pine Snakes. We do not agree with this conclusion, but if one were to tentatively accept this hypothesis, the reported mechanism as to why the habitat has become degraded since the earlier study is the recent "nearby" development approved under the original Pinelands Commission conservation plan. Specifically, the Overlay Area habitat itself has not changed in any significant way, so there has been no activity or alteration within the Overlay Area to cause Pine Snakes to cease using it as they had in the recent past. The only habitat change has been the increased development of adjacent land – in particular the construction of Nautilus Drive and additional nearby housing. According to Ecolsciences, this habitat change has impacted the Overlay Area via forest fragmentation impacts – road traffic, off-road vehicle incursions, and removal of adjacent habitat areas which acted as buffers to fragmentation impacts. If one accepts the report's premise that off-site development has degraded the Overlay Area habitat value for Northern Pine Snake, then it is also an inescapable conclusion that by the exact same mechanism, the habitat value for Northern Pine Snake on the remainder of the Conservation Zone will be degraded by

development of the Overlay Area. The developer will not only be receiving a benefit from degrading rare species habitat by having developed the adjacent land, but by its own admission and application of their proposed mechanism via a fragmentation domino effect, will further degrade the remainder of the Conservation Zone by developing the Overlay Area.

2. **The Overlay Area can be habitat critical to the survival of the local Northern Pine Snake populations because it buffers the remainder of the Conservation Zone from the impacts of the development, whether or not snakes are denning or hibernating in the Overlay Zone in any given year.**

The Pinelands CMP provides that "No development shall be carried out unless it is designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations" of listed threatened or endangered species. (N.J.A.C. 7:50-6.33) This provision wisely does not apply only to parcels that are themselves, at any given point in time, being use by a protected species for breeding, foraging or other activities. This provision regulates any habitat critical to the survival of a local population. If a buffer zone between development and a population's active range is critical to the survival of the population, then that buffer zone may not be development in a manner that create any irreversible adverse impacts. The Ecolsciences report appears to assume that the Overlay Zone can only represent habitat critical to the local population's survival if it is currently in use for foraging, nesting or hibernating. This assumption – that habitat buffers are unnecessary to the survival of local wildlife populations – has no scientific basis. Indeed, the Ecolsiences argues that the local population has been eliminated from the Overlay Zone because of the adjacent development. If the Pinelands Commission accepted the erroneous premise that buffer habitat is never critical to the survival of a local population, the CMP could not protect any rare species that is adversely affected by habitat fragmentation, roads and other forms of development at the edge of its range, as developers could simply encroach upon and eliminate habitats through sequential development of the habitat's diminishing edges.

3. **The consultants' sampling methodology does not support the conclusion that the Overlay Area is no longer utilized by Northern Pine Snakes.**

The time period of the study may not be appropriate, both in terms of 1) the sampling (it would have been better to continue to the end of July, and to mid-November, and 2) the number of years. In our experience with hibernation sites, for example, there is movement between them in different years. One hibernation site may not be used for several years, and then the Pine Snakes return to use it. Thus encircling a hibernation site in one year does not insure that it is not used the following year, or two or three years later.

The May through July period is appropriate for counting nesting Pine Snakes, although in some years, Pine Snakes can nest later in July. The September through October is appropriate for snakes searching for hibernation sites. We would have conducted the survey from mid-April through July, since this would have also included movement from hibernation sites in the spring. Similarly, depending upon the year, some Pine Snakes do not enter hibernation sites until November, and even when they do, they sometimes come up to bask near hibernation sites in early November when it is warm.

In addition, Ecolsciences made no attempt to track Pine Snakes from outside the Overlay Area to once again determine whether such snakes came onto the Overlay Area now and then to hunt or hibernate. Because the drift fence methodology used in this case was not, by itself, reliable in determining whether Pine Snakes are still using the Overlay Zone, the tracking approach would have provided data that is essential to verifying the consultant's conclusions. Given that the local population is known to use the adjoining Conservation Area, and the study is ostensibly aimed at determining whether any members of this local population are using the Overlay Zone, the failure to consider the Overlay Zone as a part of the overall range of this local population is a serious deficiency.

It is also unclear whether Ecolsciences used one-way doors at the opening of the traps, which is essential to obtain adequate data. At the least, this point needs to be discussed.

Finally, it is not apparent that Ecolsciences checked the previously used winter den during the 2005-2007 study. Since a den could be used in one year, and then not used again until two to several years later, any known sites should have been checked during the study. Regarding the EcolSciences letter of 30 November 2004, apparently the traps around the hibernation site were set from April 19 in 2004. In some warm years, snakes would already have left by this date. To ensure that no Pine Snakes are missed, the traps should have been opened in late March. In the years that we (Burger & Zappalorti) checked our hibernation sites in very early April, we lost some snakes (that is, the hibernation site did not contain the number it had the previous year or the next year). Therefore, checking hibernation sites after 19 April would not be persuasive that no snakes used this site.

4. Zeroes in the data set and the inability to capture common and observable snake species negate the conclusions reached in the Ecolsciences report

The results of the sampling reported by Ecolsciences are highly variable and show that the failure to catch a snake in the trap system used by Ecolsciences gives virtually no indication of the species' presence or absence on the site. Key points about the data recorded in the report are:

- No snake species was recorded every year; 2 species were recorded in two years and 4 species were recorded in only one year.

- For the 6 snake species recorded on the Overlay Area, all of which occur at higher densities than Northern Pine Snake, 11 of the 18 of the trap-years they were <u>not</u> detected at all. In other words, <u>61% of the time, snakes known to be present were not caught using the sampling method</u>.

Thus, based on the three year success rate of the Ecolsciences trap system, one would predict that the chance of <u>not</u> capturing a common but present species would be 23% (.61 x .61 x .61). <u>Thus, the failure to capture a Northern Pine Snake is is not statistically significant, and the study does not support the conclusion that Pine Snakes are no longer present on the site</u>.

Three species were recorded that are common and typically occur at densities far greater than Northern Pine Snake, yet for each of these only one individual was caught in the entire 3 years. This is statistically indistinguishable from catching zero Northern Pine Snakes, and it is not possible to conclude that Pine Snakes are not present. There is no biological theory that can allow one to make

inferences about critical habitat value using this protocol, which is barely able to detect common species.

JOANNA BURGER PhD
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PINE SNAKE LITERATURE

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Burger, J. and R.T. Zappalorti. 1988. Effects of incubation temperature on Pine Snake development: Differential vulnerability of males and females. American Naturalist, 132:492-505.

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PINELANDS PRESERVATION ALLIANCE

Bishop Farmstead, 17 Pemberton Road, Southampton, New Jersey 08088

Phone: 609-859-8860 Fax: 609-859-8804
E-mail: ppa@pinelandsalliance.org Website: www.pinelandsalliance.org

Public Hearing – Ordinance 2012-12
Theresa Lettman, Pinelands Preservation Alliance

Ordinance 2004-23, which established the residential and conservation zones in the Ocean Acres subdivision, was not just about protecting critical threatened and endangered species habitat. It was not just about protecting a local population of Northern Pine Snakes. In fact the Executive Director Report dated October 29, 2004 states *"The boundaries of the RC Zone were drawn to encompass both wetlands and wetlands buffer areas, as well as areas which constitute habitat critical to the survival of one or more local populations of threatened and endangered species."*

The wetlands of the Ocean Acres conservation zone are habitat for a federally protected plant species the Helonias Bulata or Swamp pink. This conservation zone will keep development and its impacts away from the stream and its associated wetlands.

Lastly Ordinance 2004-23 was to set up a zoning concept that would assure both the lots inside and the lots outside of the conservation zone would retain value. The three party agreement on page 4, item 15 states there are approximately 730 lots which development would be prohibited and goes on to say "*allow the owners of the land in the "Conservation Area" to realize some reasonable economic benefit for their land*."

How were the seven hundred and thirty lot owners supposed to "realize some economic benefit for their land"? They were to have their lots purchased by those lot owners who had undersized lots of 9,000 to 10,000 square feet in size in the RH zone or the buildable area of Ocean Acres. In 2004 the Pinelands Commission determined that there were 567 undersized lot owners who might need to purchase lots to be able to build in the RH Zone. If each of the 567 lots purchased two conservation lots it would mean many opportunities for "economic benefit" for the conservation lot owners.

To date how many have been purchased? One and it has been seven years. Why? I would say it's because there were road easements and large lots that resulted in 82 rights for homes that went to one developer. I would also say that resubdivisions have negated the need for the purchase of any lots in the conservation zone. But making a long list of reasons will not get the property owners in the conservation area any "economic benefit" for their land. The planning concept that was put into place is NOT working for all the parties involved.

The developers (mostly just one to date) in the RH buildable zone, got an easier application process because **he is no longer required to do threatened and endangered species surveys.**

In October of 2009, the Pinelands Commission staff issued a determination that the 38 acres 135 lot site, which is the subject of Ordinance 2012-12, did not constitute critical habitat for the Northern Pine Snake. This action was done under a September 2004 Three Party Agreement. I am not sure how the "three party agreement" became a part of protecting the threatened and endangered species habitat but I believe that the studies that were done were flawed and PPA's experts believe the area is in fact critical habitat. But most importantly the public believes that those involved have failed to protect important habitat in Barnegat Township.

Some of the "public" are those who were told that their lots which were placed in the conservation zone would remain in the conservation zone and that their lots would have value. These members of the public may not care as much as I do about the ecological resource value of the Pinelands in the conservation zone, but they do care about their land value.

Again, Barnegat Township's Ordinance which separated lots into the residential and conservation zones, was not just about protecting critical threatened and endangered species habitat – it was to set up a zoning concept that would assure both the lots inside and the lots outside the conservation area would retain value. It was a way to save the ecological resources and the value of **all** the lots in Ocean Acres.

I think somehow when things got behind closed doors, and the three party agreement was signed, these issues where forgotten.

The environmental community that has been watching the Pinelands Commission – believes that the Commission has failed to protect important pinelands species habitat. But if I were a lot owner in the Ocean Acres conservation zone that was told during the ordinance process that their lots would "remain in the conservation zone" - ***I would be outraged right now***. I would be thinking – how come this one powerful property owner gets out and I don't? Or perhaps they might be thinking that they should not have sold their conservation lot. Or perhaps they are thinking that they should not sell their lots because someday they may be removed from the conservation area.

All this things undermine the zoning concept that was put into place in 2004 and it is now up to you- the **Barnegat Township governing body** to take or not take the next step.

I urge you to think about all these things as you move forward. If we the lot owners and the environmental community have lost the 38 acres, then I urge you to do all you can protect the "zoning concept" and the remaining threatened and endangered species habitat in Barnegat Township.

Developers in the RH Zone have gotten everything they wanted (and more). The Pinelands wetlands, wetland buffers, threatened and endangered species and the owners of lots in the conservation zone and the Pinelands are still waiting.

Executive Director's Report on
Barnegat Twp. Reso.
PB-2011-9 & Ord. Nos.
2012-05, -06, -07, -09, -10 &
2012-22
January 4, 2013 Exhibit #8

DAVID JENKINS JR.
CHIEF ENDANGERED&NONEGAME SPECIES

DEAR DAVID:

TRULY ENJOYED SPEAKING WITH YOU AND LOVE THAT GUY, WHO WITH YOUR DIRECTION PUT THE LETTER OFAPRIL 13, 2009.TOGETHER LETTING JOHN STOKES KNOW THEY BETTER RE- TRAIN THERE PEOPLE. DAVID, I AM ASKING YOU, IF YOU'RE STANDING BY THE STATEMENTS I HAVE CIRCLED? I HAVE ALSO ADDED MY PROFESSIONAL ADDITIONS, I'AM SURE YOU NOTICED. I AM A CONCERND CITIZEN AND FEEL YOU MADE VALID POINTS THAT SHOULD NOT BE SWEPTED INTO A TAINTED SNAKE PIT. I AM ASKING YOU TO RESPOUND TO MY LETTER SO THE BEST INTERESTS OF THE PEOPLE AND NEW JERSEY ARE SERVED.
THAT N.J.D.E.P AND YOU ARE NOT LOOKED AT AS A NONE ENTITY.I NEED A RESPOUNCE BEFORE DEC 15,09

THANK YOU IN ADVANCE.

INTER-STATE COMMISSIONER

FRANK A. PECCI
11 HEMLOCK DR.
BARNEGAT N.J. 08005
SEND RESPOUNCE TO THIS ADDRESS

NEW JERSEY PINELANDS COMMISSION July 18, 2009

COMMISSIONERS:

THE LEGISLATURE JUNE 28, 1979 ADOPED THE PINELANDS PROTECTION ACT.THE LEGISLATURE WANTED TO STOP AN IMMEDIATE THREAT OF RARE, THREATENED AND ENDANGERED PLANT AND ANIMAL SPECIES AND HABITAT THEREOF.NATIONALPARKS AND RECREATION ACT OF 1978 ALSO WANTED THE SAME PROTECTION FOR THE PINELANDS.
GOVERNER CORIZNE REMARKS WARNING OF POLITICS ON YOUR DECISIONS.EDITIORALS: ASBURY PARK PRESS, PHILADELPHIA INQUIRER, PRESS OF ATLANTIC CITY AND BURLINGTON COUNTY TIMES ALL HAVE LOST RESPECT FORYOU AND THE PINELANDS COMMISSION. YOU CAN TRY TO DISMISS THE NEGETIVE ARTICLES ,BUT IT'S TO LATE, DON"T ADD.
A MATTER WILL COME BEFORE YOU,THAT NEVER SHOULD HAVE, "OCEAN ACRES-WALTERS-MARK MADISION" BARNEGAT N.J. DIRECTOR JOHN STOKES CAME TO CITY HALL THAT WAS OVER- FLOWING WITH HUNDREDS OF PRORERTY OWNERS WERE TOLD ,YOU CAN'T BUILD ON YOUR LAND THAT YOU PAYED TAXES ON FOR 60 YEARS.
QUESTIONED WOULD IT BE EVER CHANGED BACK, JOHNS ANSWER HIGHLEY UNLIKELY. I PERSONALLY ASKED JOHN THE SAME QUESTION AT A PUBLIC MEETING AT YOUR OFFICIES.IN- FACT YOUR FORMER CHAIRPERSON MRS WILSON WAS APPOSED TO ALLOW ANY REVIEW AS STATED IN THE AGREEMENT SHE REALIZED PEOPLE WHO OWNED THESE LOTS COULD BE DUPED DOWN THE ROAD. THAT IS EXACTELY WHAT WILL HAPPEN IF YOU PERMIT ANY CHANGE.
YOUR STAFF NEEDS BETTER TRAINING IF THEY DID NOT NOTICE WHAT N.J. D.E.P DID IN THEIR REPORT BY C.DAVID JENKINS JR. CHIEF Endangered&NONGAME SPECIES THAT CHEMICALS WERE PUT IN AND AROUND SNAKES TRAPS .WHAT WAS DONE IS A VIOLATION AND SHOULD NOT RESULT IN FUTURE BENEFITS TO THIS APPLICANT.
IN FAIRNESS JOHN DID TELL ALL THOSE FOLKS THAT NOT TO HURT THEM TO BAD,THEY COULD SELL THEIR LOTS FOR CRIDITS.WONDER WHO BOUGHT THESE CRIDITS AND UNDER WHAT NAME?
I CAN ONLY HOPE YOU VOTE NOT TO ALLOW BUILDING IN THIS AREA. THERE ARE ALSO OTHER QUESTIONABLE PRACTICES THAT MAY COME TO LIGHT. REMEMBER THE ROLE OF PINELANDS AND YOUR OATH.

THANK YOU
INTER-STATE ENVIROMNENTAL COMMISSIONER

FRANK A. PECCI
11 HEMLOCK DR.
BARNEGAT, N.J.
609-607-0601

CC PINELANDS PRESERVATION ALLIANCE
FILE N.J D.E.P

Pecci Named Head of New Board to Study Water Need

A new committee, named by Gov. Richard Hughes, and given the assignment to pin-point desirable locations in North Jersey for future water storage use, held its initial meeting at the offices of the Morris County Planning Board in Morristown.

Frank A. Pecci, former Clifton member of the Passaic Valley Water Commission, was elected chairman of the new committee, which cincludes prominent state and county planners. Pecci was chosen to head the committee because of his special knowledge and outstanding work in curbing pollution in North Jersey streams, particularly those in the Passaic River watershed.

The new committee discussed plans for a study of lands on regional streams which could be developed for water use to ensure an ample and dependable supply of potable water.

"The committee realizes that good planning should include provisions for adequate water supplies for an expanding population and to attract new industry." Pecci said.

When the committee completes its survey it will submit its findings to the governor, Pecci said.

Other members of the committee are Budd Chavossian, director, Division of State and Regional Planning; Louis H. Budd, Passaic County planning director; Dudley Woodbridge, Morris County planning director; Lester McNamara, New Jersey Fish and Game Commission director.

FRANK PECCI

Also Donald Stansfield, Division of State and Regional Planning; William Roach, Somerset County planning director; Grace Harris, Passaic Valley Citizens Planning Association; Frank De Hooge, superintendent of purification and filtration for Passaic Valley Water Commission, and Arthur Bray, Essex County planning officer.

PATERSON NEWS 1977

Sept 12 2008 Meeting Packet

upland excavation area and associated offsite soil removal and resolve the upland excavation violation. That letter also requested that the property owner confirm, in writing, that the two wetlands excavation areas would be allowed to revegetate naturally to resolve the violations. Information was received on April 4, 2008 from the property owner regarding the violations. By letter of May 8, 2008, Commission staff requested that the applicant address Items #2 and 3 of the Commission's April 1, 2008 letter to complete an application for the concerned 6,100 cubic yard upland excavation area and associated offsite soil removal or submit a restoration plan to the Commission for the concerned area. On May 28, 2008, Commission staff received additional information from the property owner regarding the matter. By letter of July 14, 2008, the staff advised the property owner how to resolve the violation.

E. MISCELLANEOUS DEVELOPMENT REVIEW ITEMS

a. Ocean Acres Overlay Area: On February 14, 2008, the Commission received a letter from the applicant questioning the Commission's prior written determination that the results of the two year Northern pine snake survey in the Ocean Acres Overlay Area could not be considered under the terms of "Three Party Agreement" that required that all survey work be completed by September of 2006 because the survey work had been completed after that date. By letter dated June 30, 2008, the staff responded by indicating that the Agreement appeared to specify the timeframe the survey work must be completed and that it was the staff's continuing opinion that the survey work was not in accordance with the timeframe. On July 14, 2008, the staff met with the applicant to discuss the matter. Based upon new information, the staff reconsidered its preliminary determination. *On August 22, 2008, staff sent a letter to the Barnegat Township Administrator advising him of its determination that the additional survey work was completed in accordance with the requirements of the Three Party Agreement and providing the Township an opportunity to raise any concerns.*

III. INTERGOVERNMENTAL MEMORANDA OF AGREEMENT

A. MOAs UNDER REVIEW

1. Garden State Parkway: The Commission staff met on May 17, 2006 with all State and Federal agencies involved with the widening of the Parkway to coordinate permitting for the project. On July 26, 2006, the staff met with the applicant and some of the permitting agencies to discuss the status of the project. During August 2006, the applicant made several submissions of extensive information regarding stormwater and threatened and endangered species. The staff will be reviewing this information for a meeting in early October 2006. On August 22, 2006, staff met with Parkway representatives regarding secondary impacts. A coordination meeting was convened on October 12 with representatives of the Parkway and NJDEP in part to confirm agreement regarding a scope for the analysis of secondary impacts that would be sufficient for both the Commission and NJDEP. Additional data was received at the end of August. Staff met with representatives of the Department of Environmental Protection, Land Use Regulation Program and State Historic Preservation Office, on October 12, 2006 in order to coordinate each agency's review of the regulatory issues raised by this project. Two meetings were subsequently held with representatives of the New Jersey Turnpike Authority on October 18, 2006 to discuss the elements of the secondary impacts analysis report and threatened and endangered species

Recd

State of New Jersey
Department of Environmental Protection

JON S. CORZINE
Governor

MARK N. MAURIELLO
Acting Commissioner

Division of Fish and Wildlife
Endangered and Nongame Species Program
PO Box 400
Trenton, NJ 08625

RECEIVED
APR 1 - 2009

April 13, 2009

John Stokes
The Pinelands Commission
P.O. Box 7
New Lisbon, NJ 08064

Dear Mr. Stokes:

My staff and I have reviewed the report entitled, "Northern Pine Snake Survey Results for Ocean Acres Overlay Area, Township of Barnegat, Ocean County, New Jersey: 2005-2007", which was prepared by Ecolsciences and submitted to the Pinelands Commission by Walter's Homes, Inc.. The report provides general results and conclusions of the pine snake survey conducted by Ecolsciences on the Ocean Acres property, as well some brief background on the permitting and survey history of this site.

The Endangered and Nongame Species Program was not involved in the process that resulted in the pine snake habitat conservation at the Ocean Acres site, but was briefed by Commission staff on the final Agreement that the Commission reached with Mark Madison, LLC. Currently, the question at hand seems to be if the two-year survey (2005-2007) conducted by Ecolsciences was adequate to demonstrate that the "Conservation Area" within Ocean Acres no longer serves as critical habitat for northern pine snakes. The conclusion reached by Ecolsciences is that the "Conservation Area" is no longer habitat for this species as a result of the permitted development of Nautilus Drive and the surrounding Ocean Acres residential community.

It appears that Ecolsciences did use an appropriate survey methodology to assess pine snake presence on the site, however there was some vandalism to their drift fences and box traps that raises important questions about the results reported during 2007. The placement of the chemicals Napthalene and Chlorine in around the snake traps in 2007 may have deterred pine snakes from entering the traps and led to a false determination of pine snake absence on the site.

The thoroughness of the two-year study aside, it seems that Walter's Homes, Inc. is hoping to benefit from the detrimental effects that their development may have had on the suitability of habitats adjacent to their development. In 2004, the Conservation Area was determined to contain an active pine snake den. If, as Ecolsciences has suggested, the construction of Nautilus Drive and the residential development directly contributed to the

failure of this pine snake den it should be considered a violation of the Comprehensive Management Plan and the Endangered and Nongame Species Act and should not result in future benefits to this applicant.

Please feel free to contact me at (609) 292-9400 if you, or your staff, have any questions regarding ENSP's position on this issue.

Sincerely,

C. David Jenkins, Jr., Chief
Endangered & Nongame Species Program

Executive Director's Report on Barnegat Twp. Reso. PB-2011-9 & Ord. Nos. 2012-05, -06, -07, -09, -10 & 2012-22
January 4, 2013 Exhibit #9

DASTI, MURPHY, McGUCKIN, ULAKY, CHERKOS & CONNORS

GEORGE F. MURPHY, JR. † B
JERRY J. DASTI
GREGORY P. McGUCKIN
ROBERT E. ULAKY ‡ >
RUSSELL P. CHERKOS
CHRISTOPHER J. CONNORS
O. NICHOLAS MONACO ‡ ◊
CHRISTOPHER K. KOUTSOURIS T

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November 13, 2012

PLEASE REFER TO:

Barnegat Township Ordinance 2012-12

*Barnegat Twp. Ads. Mark Madison, LLC (GL-19148)

Via email and regular mail susan.grogan@njpines.state.nj.us
Ms. Susan Grogan
Pinelands Commission
P.O. Box 359
New Lisbon, New Jersey 08064

Dear Ms. Grogan:

This office represents the Township of Barnegat, Ocean County, New Jersey with reference to the above noted Ordinance currently pending before the Pinelands Commission. We are in receipt of a July 3, 2012 objection submitted to the Pinelands Commission by the "Pinelands Preservation Alliance" (hereinafter, "PPA"), making baseless, inappropriate and false accusations surrounding the adoption of this Ordinance. For the reasons set forth below, the Township vigorously disputes the allegations of the PPA, and requests the Commission certify Ordinance 2012-12.

First, PPA asserts that the rezoning is somehow illegal because it represents "contract zoning". Initially, it must be pointed out that the settlement agreement has been authorized by the Superior Court of New Jersey and, in particular, the Honorable Vincent J. Grasso, A.J.S.C. Respectfully, it is not appropriate for the Pinelands Commission to somehow overturn a decision of the Superior Court.

Secondly, and perhaps more importantly, what the PPA fails to recognize is the fact that the litigation which existed between the developer and the municipality also included meritorious challenge asserting that Ordinance

2004-23 was illegal, and was an arbitrary, capricious and unreasonable exercise of the Township's zoning power. Specifically, during the litigation, the trial court raised the issue of whether Ordinance 2004-23 could even be upheld now that the Pinelands Commission itself had determined that the property does not meet the requirements for preservation and conservation purposes, as it is not a pine snake habitat. Specifically, the Court recognized that whether the agreement is valid or not, the developer had waived its rights to challenge the Ordinance in question based upon that agreement. Therefore, the Court specifically permitted the developer to reinstitute that challenge to Ordinance 2004-23, based upon the Pinelands Commission's own determination that the property did not meet the standards for preservation and conservation. The PPA's objection to this Ordinance completely fails to mention this in their opposition. We believe this omission was intentional, and designed to divert the Pinelands Commission from the real issue, which resulted in the adoption of Ordinance 2012-12.

Even assuming the Township prevailed on the issue of contract zoning, nevertheless, the Court would clearly have declared Ordinance 2004-23 invalid since its very purpose has been categorically rebutted by the findings of the Pinelands Commission that the property in question is not pine snake habitat. If that were to occur, the prior zoning which permitted the exact same density, would be resuscitated and valid, while the benefits of the 2004-23 Ordinance, which provided current property owners with a mechanism to receive compensation for the regulatory takings of their land, would also have been thrown out. Ordinance 2012-12 balances these issues and represents an appropriate determination by a local governing body specifically founded upon the determination of the Pinelands Commission, that the property in question is not pine snake habitat. Nowhere in the objection filed by the PPA does the PPA even acknowledge this fundamental fact that the litigation also included a challenge to Ordinance 2004-23. The Township clearly believes that if the matter was tried to conclusion that Ordinance would be declared invalid as arbitrary, capricious and unreasonable when faced with the determinations and findings of the New Jersey Pinelands Commission that the property was appropriate for development, not preservation.

Finally, the PPA makes a baseless accusation that members of the Township's Governing Body had a disqualifying "conflict of interest" in resolving the litigation and/or the adoption of the Ordinance. Such an argument is categorically incorrect as a matter of law. First, the settlement agreement was entered into between the Township of Barnegat and Mark Madison, LLC. The Van Dyke Group, which includes a real estate agency, insurance agency and

financial planning entities, was not a party to this litigation. However, and perhaps more importantly, local public officials are subject to the New Jersey Local Government Ethics Law, N.J.S.A. 40A:9-22.1 *et seq.* The statute clearly lays out when an individual may be in a conflict based upon their "interest" in a business or other entity. N.J.S.A. 40A:9-22.3 defines a disqualifying "interest" as the following:

> "interest, means the ownership or control of more than ten percent of the profits, assets or stock of a business organization which shall not include the control of assets in a non-profit entity or labor union".

Neither Committeeman Lisella nor Committeeman Bille own or control more than ten percent of the profits, assets or stock of any entity of The Van Dyke Group. Once again, this "red herring" is thrown out by opponents to this Ordinance without any basis in law or fact. This slanderous accusation is designed to imply that there was something improper about the adoption of this Ordinance when, in fact, no such impropriety exists. Committeeman Bille is a retired postal worker and an independent contractor who works part-time as a real estate agent and who receives a 1099. He has no contractual relationship with Mark Madison, LLC, Walters Development Company or any other entity associated with them. He does not represent them and has never been involved with a real estate transaction as a realtor or otherwise with this developer. Marty Lisella is an office manager for The Van Dyke Group and, likewise, does not hold an interest of ten percent or greater in the profits, assets or stock of that business organization. Specifically, the prohibition upon which the PPA relies, although not specifically stated in their objection, is set forth in N.J.S.A. 40A:9-22.5(d), "no local government officer or employee shall act in its official capacity in any manner where he, a member of his immediate family or business organization in which he has an interest has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment".

As noted above, neither of these elected officials have a disqualifying interest in The Van Dyke Group, and perhaps most importantly, The Van Dyke Group was not a party to the litigation. If these Committee Members had an interest in Mark Madison, LLC or Walters Development Company, i.e., they were employed thereby, or had control of ten percent or more of their ownership or profits, clearly that interest would disqualify them from participating in the ultimate resolution of this case, and the ultimate resolution of this litigation. Unfortunately for the PPA, that is not what occurred. The fact is, neither Committeeman has a disqualifying conflict of interest in resolving litigation

between the municipality and the developer, Mark Madison, LLC, nor do they have a disqualifying interest in the adoption of the Ordinance itself. Out of an abundance of caution, Committeeman Lisella chose not to participate in the Ordinance adoption. Clearly, there is no fault in that. Committeeman Bille, on the other hand, was not even an office manager, but rather an independent contractor and part-time real estate agent who sells single-family homes in another municipality and who has no connection to Walters or Mark Madison.

As a matter of law, there is no disqualifying conflict of interest, and the reckless allegations of the PPA should be rejected. The Township of Barnegat respectfully submits that Ordinance 2012-12 should receive certification from the Pinelands Commission as it is based completely upon the prior determinations of the Pinelands Commission as to the status of the subject property. The PPA's attempts to impugn the integrity and motivations of local elected officials represents another desperate attempt to restate the PPA's objections to the ultimate determination of the Pinelands Commission that this property should never have been designated as a conservation zone in the first place. The Township is simply complying with the determinations of the Pinelands Commission, and in an effort to achieve the goals and objectives of the Pinelands Commission, has adopted an Ordinance which compensates property owners for the regulatory effects on their properties, provisions which did not exist in the Ordinance which was in effect prior to 2004, and which would be applicable if the Court invalidated Ordinance 2004-23.

Respectfully submitted,

Jerry J. Dasti

JERRY J. DASTI

JJD:faw
cc: Paul Schneider, Esq.
David Breeden, Administrator
John J. Hess, P.E., P.P., C.M.E.
Township of Barnegat Committee Members

WALTERS GROUP

100 Centre Boulevard, Suite E | Marlton, New Jersey 08053 | 856.983.1220, Ext. 102 | Fax 856.983.1219

November 13, 2012

VIA ELECTRONIC MAIL AND
OVERNIGHT COURIER

Susan Grogan
PINELANDS COMMISSION
15 Springfield Road
New Lisbon, NJ 08064

NOV 14

Re: Certification of Barnegat Township Ordinance 2012-12

Dear Ms. Grogan:

Please accept this letter as support for the certification of Barnegat Township Ordinance 2012-12 (the "Ordinance"). For the reasons that follow we believe that the Ordinance should be certified without further delay.

The Pinelands Preservation Alliance ("PPA") has expressed its objection to the certification of the Ordinance. Its objections are summarized in a letter dated July 2, 2012 from Carleton Montgomery and an undated statement from Teresa Lettman entitled "Public Hearing-Ordinance 2012-12, Teresa Lettman, Pinelands Preservation Alliance". PPA asserts four reasons that the Ordinance should not be certified: the area in question is critical habitat under the CMP; the conservation plan created under the Three Party Agreement signed September 13, 2004 does not protect the owners of lots in the Conservation Zone; the Three Party Agreement was an illegal "contract zoning"; and, Barnegat Township officials voting for Ordinance 2012-12 had a conflict of interest.

It has been conclusively determined that the area in question, known generally as the "overlay area" or "phase 3" of the Ocean Acres development, is not critical habitat. The Three Party Agreement clearly entitled the developer to complete further studies to attempt to establish that Phase 3 was not critical habitat. The Three Party Agreement specifies the steps necessary for the developer to succeed. The Pinelands Commission staff approved a protocol for the work (over the objection of the developer on the grounds that it was unnecessarily difficult to establish the absence of critical habitat). The studies were completed and submitted on November 20, 2007. The staff determined many years ago that the study was consistent with the protocol. After an extraordinary and arduous process, and after nearly two more years, the Pinelands staff finally concluded that Phase 3 is not critical habitat under the CMP. PPA was integrally involved in that process and argued unsuccessfully in 2009 that Phase 3 is critical habitat. PPA did not appeal that decision nor did anyone else. The time to do so is long

Email jdelduca@walters-group.com

past. The findings of the staff are therefore final and binding on all. As a matter of law, Phase 3 is not critical habitat. It is an issue that the Commission should not even consider.

The argument that the TDR program created by the Three Party Agreement is in failure is simply inaccurate. Perhaps PPA's lack of experience in its effort to protect property owner's rights has led to inaccuracies in its stated position. There are 1,353 buildable lots in Ocean Acres, including Phase 3. There are 600 "conservation lots". There are a total of 468 "transfer of development rights" or "TDR's" in Ocean Acres (600 lots divided by 2 equals 300 plus 168 right of way and wetland rights equals 468). After all of the subdivisions that have occurred at Ocean Acres to date and including all of the subdivisions that appear possible today there will still be approximately 570 undersized lots available to receive TDRs. The fact is that the supply of conservation lots or lands is not large enough to meet the demand for them. This will result eventually in purchases of Pinelands Development Credits.

Ms. Lettman's claim that "only 1" conservation lot has been purchased to date is false. The Walters Group has purchased 241 individual lots. Eighty-one (81) lots have been permanently deed restricted as has much of the open space and rights of way in Ocean Acres. Many other individuals have purchased conservation lots during that time as well. Like all real estate, the purchase of conservation lots has decreased and the values have similarly decreased over recent years. The decrease in value is consistent with the decrease in value to Pinelands Development Credits over that time. The program is working, albeit slowly and subject to the caprices of the economy. In addition, whether or not the program has been successful is irrelevant to whether the Ordinance should be certified. There is an indisputable finding by Commission staff that Phase 3 is not critical habitat. The Three Party Agreement signed by the Commission acknowledges that if Phase 3 is not critical habitat then Phase 3 should be zoned for development. Whether the conservation program has worked according to plan is not relevant to the rezoning.

PPA's arguments concerning "contract zoning" is both incorrect and irrelevant to the Pinelands Commission. After all, the Commission signed the Agreement. It would be difficult in 2012 to refuse certification of the Ordinance on the grounds that the Commission now believes the Three Party Agreement is illegal. Further, in the litigation that followed Barnegat's failure to adopt the rezoning in 2009 the Township made this same argument. PPA attempted to intervene in that litigation but its request was denied. It was quite clear from the litigation that Judge Grasso was not impressed with this argument, nor was there any reason substantively for Phase 3 to remain as conservation area. Ultimately Barnegat was forced to settle the litigation or face damages in addition to the rezoning. It seems unlikely that Judge Grasso would sign a consent order if he believed that the Three Party Agreement was illegal. Finally, it is not for the Commission to determine whether or not the Three Party Agreement is invalid. That is for a

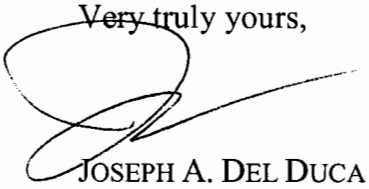
court of law to decide and should be entirely irrelevant to the Commission's determination to certify the Ordinance in this case.

Finally, PPA argues that there was an illegal conflict of interest when Barnegat approved the rezoning in May. The claim that Committee Person Bille has a conflict is not supported by any facts. In reality, the Walters Group has had no business connection to Mr. Bille of any kind. Again, it is not for the Commission to adjudicate such an issue. PPA did not appeal the approval of the Ordinance. PPA did not file an ethics complaint against any Committee member. The courts and the ethics boards are the appropriate forum to air such a claim. The Pinelands Commission is not equipped or legally authorized to consider such a matter.

The rezoning of Phase 3 has been monumentally difficult and over the past eight years we have encountered every imaginable obstacle to enforcing the clear agreement that the parties reached in 2004. The protocol required for the studies was onerous and essentially forced on the developer. After the studies were completed Pinelands staff claimed they were not timely. After a lengthy dispute staff finally was forced to agree that the studies were indeed timely. It took two years from submission of the studies until Pinelands staff finally, if reluctantly, concluded on October 2, 2009 that Phase 3 is not critical habitat. Barnegat then voted not to adopt the rezoning in 2010 sparking litigation that finally ended with the Order dated March 16, 2012. The Ordinance was adopted in May and we have been waiting since that time for the Commission to certify the Ordinance. The process has taken over eight years. The time and cost involved have been unjustifiable at best considering the facts. I can assure the Commission and PPA that we do not feel that we have been even remotely the object of favorable treatment by either the Commission or Barnegat Township. When we signed the Three Party Agreement we made many concessions to both the Commission and the Township. The agreement unequivocally requires that Phase 3 be rezoned. It should not have taken eight years. We hope that at long last the process will conclude.

Thank you for your consideration.

Very truly yours,



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Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

REPORT ON THE APRIL 2011 MASTER PLAN AND ORDINANCES 2012-05, 2012-06, 2012-07, 2012-08, 2012-09, 2012-10, 2012-12 AND 2012-22, AMENDING CHAPTER 55 (LAND USE) OF THE CODE OF OF BARNEGAT TOWNSHIP

January 4, 2013

Barnegat Township
900 West Bay Avenue
Barnegat, NJ 08005

FINDINGS OF FACT

I. Background

The Township of Barnegat is located in southern Ocean County, in the eastern portion of the Pinelands Area. Pinelands municipalities that abut Barnegat Township include the Townships of Lacey, Ocean, Stafford and Little Egg Harbor in Ocean County, and Bass River and Woodland Townships in Burlington County.

On April 8, 1983, the Pinelands Commission fully certified the Master Plan and codified Land Use Ordinances of Barnegat Township.

Ocean Acres

On June 7, 2004, Barnegat Township adopted Ordinance 2004-23, amending Chapter 55 (Land Use) of the Township's Code by adopting a revised zoning plan for that portion of the Township's Pinelands Regional Growth Area which contains an existing 810-acre subdivision known as Ocean Acres. The revised zoning plan created a new zone within the Regional Growth Area, the RC (Residential Conservation) Zone, and modified the provisions of an existing zone within the Regional Growth Area, the RH (Residential High) Zone.

The boundaries of the RC Zone were drawn to encompass wetlands and welands buffer areas, as well as areas which were determined to constitute critical habitat for one or more local populations of threatened or endangered species. An attempt was also made to link the RC Zone with surrounding areas in public or non-profit ownership, as well as with adjacent lands already set aside or proposed to be set aside as open space in other adjacent development projects due to the existence of critical habitat. At the time Ordinance 2004-23 was adopted, it was estimated that the new RC Zone comprised approximately 350 acres and 730 existing, subdivided lots within Ocean Acres.

In recognition of the environmental sensitivity of lands in the zone, permitted uses in the RC Zone were limited by Ordinance 2004-23 to the following: fish and wildlife management; low intensity recreation; maintenance of existing underground distribution and collection systems; existing and/or approved pump stations, roads and other public service infrastructure; and the installation of water lines under one existing paved road (Harpoon Drive), provided no widening in the paved surface of the road occurs. No new residential development is permitted.

Within the RH Zone, a 10,000 square foot minimum lot size requirement for residential development applies. Ordinance 2004-23 allowed for the development of single-family dwellings on lots as small as 9,000 square feet in size, provided that the owner of such an "undersized" lot (1) purchased and redeemed 0.25 Pinelands Development Credits; (2) permanently protected two existing lots in the RC Zone by dedicating them as open space through recordation of a deed restriction; (3) permanently protected 2/3rds of an acre of vacant land in the RC Zone which is not defined as wetlands and is located outside the existing residentially subdivided lots; or (4) permanently protected two acres of vacant land in the RC Zone which is defined as wetlands and is located outside the existing residentially subdivided lots. At the time Ordinance 2004-23 was adopted, it was estimated that there were 567 "undersized" lots in the RH Zone that would be subject to these new requirements.

The Executive Director's analysis of Ordinance 2004-23 indicated that the Township's revised zoning plan for Ocean Acres would provide an *opportunity* for every vacant lot in the RC Zone to be purchased and permanently protected by someone seeking to develop an undersized lot in the RH Zone. This was an important component of the ordinance, as it was unlikely that development on the lots in the RC Zone could have been approved as being consistent with CMP wetlands or threatened and endangered species protection standards. The Executive Director estimated that a maximum of 365 undersized lots in the RH Zone could be developed through the purchase and protection of the 730 lots in the RC Zone. The vacant, unsubdivided portions of the RC Zone would facilitate the development of a maximum of 179 undersized lots in the RH Zone. If the 730 lots and all the unsubdivided, vacant lands in the RC Zone were to be protected, the purchase of Pinelands Development Credits would be required for the remaining 23 undersized lots in the RH Zone. However, because Ordinance 2004-23 provided the owners of undersized lots in the RH Zone with a number of options, it was impossible to predict the exact impacts of the ordinance in terms of the number of Pinelands Development Credits which would be purchased or the number of lots in the RC Zone which would ultimately be protected.

Based on the recommendations of the Executive Director, the Pinelands Commission certified Barnegat Township Ordinance 2004-23 on November 12, 2004.

Around the same time, the Commission entered into an agreement with Barnegat Township and Mark Madison, LLC, the owner of approximately 537 lots and much of the unsubdivided, vacant land within Ocean Acres. The purpose of this agreement (see Exhibit #1) was to address a particular area within Ocean Acres consisting of 135 lots (approximately 38 acres). Commission staff had determined that this area (now known as the "overlay area") constituted habitat critical for the survival of a local population of Northern pine snakes. Based on that determination, the overlay area was included in the RC (Residential Conservation) Zone by Ordinance 2004-23 so that residential development would not be permitted. Mark Madison, LLC, contended that the overlay area did not constitute critical habitat. Under the terms of the 2004 agreement, Mark Madison, LLC, was given two years to undertake additional survey work to make this demonstration. The agreement further provided that should the Commission determine, based on the new information submitted by Mark Madison, LLC, as part of the additional survey work, that the overlay area or any portion thereof did not constitute critical habitat, Barnegat

Township would amend its zoning ordinance to rezone the area to the RH Zone and make it eligible for residential development.

Subsequently, the applicant completed the survey work and submitted the results to the Commission for review. The Commission staff went through a preliminary and final review process for the applicant's survey results, solicited comments from individuals with expertise in snake surveys and provided notice to over 200 property owners in the immediate vicinity of the overlay area. A detailed accounting of the staff's review process is provided in Exhibit #2. Ultimately, the Commission staff concluded that, in accordance with the terms of the above-described 2004 agreement, the overlay area did not constitute critical habitat for Northern pine snakes. The staff's determination, dated October 5, 2009, was provided to all interested parties.

On May 7, 2012, Barnegat Township adopted Ordinance 2012-12, amending the municipality's Zoning Map by rezoning the "overlay area" within the Ocean Acres subdivision from the RC (Residential Conservation) Zone to the RH (Residential High) Zone. The Pinelands Commission received a certified copy of Ordinance 2012-12 on May 9, 2012.

By letter dated May 29, 2012, the Executive Director notified the Township that Ordinance 2012-12 would require formal review and approval by the Pinelands Commission.

Plan Endorsement Petition

On December 7, 2011, Barnegat Township received Initial Plan Endorsement from the State Planning Commission. Central to the Township's approved plan endorsement petition is the designation of a town center and changes in State Planning Area designations for areas outside the delineated center, the environs. The areas affected by the December 7, 2011 plan endorsement and center designation are located within the Pinelands National Reserve but outside the state-designated Pinelands Area.

N.J.A.C. 7:7E-5B.3 (Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; Coastal centers) specifies that whenever the State Planning Commission formally approves any new or changed Planning Area boundary, the Department of Environmental Protection shall evaluate the new or changed boundary to determine whether it is consistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq. For those new or changed boundaries which are located within the Pinelands National Reserve, the Department is also required to determine whether the boundaries are consistent with the Federal and State Pinelands Protection Acts. In order to make such a determination, the Department is required to consult with the Pinelands Commission. The Department thereafter is required to publish in the New Jersey Register a notice of its determination to accept, reject, or reject and revise the new or changed planning area boundary.

The Department of Environmental Protection has requested that the Pinelands Commission review the changes in State Planning Area boundaries approved as part of Barnegat Township's petition for plan endorsement and provide comment as to whether the boundary changes are consistent with the Federal and State Pinelands Protection Acts. Commission staff advised the Department that a formal determination of consistency could only be made upon the Township's submission to the Commission of adopted master plan and ordinance amendments which implement the planning area boundary changes. N.J.A.C. 7:50-3.39(b) of the Comprehensive Management Plan specifies that municipalities with areas outside the Pinelands Area but within the Pinelands National Reserve may request review by the Commission of their land use ordinances and master plans for these areas to determine substantial compliance with the provisions of N.J.A.C. 7:50-5 and 6. N.J.A.C. 7:50-3.39(b) further provides that

upon determining that a municipality's master plan and land use ordinances are in substantial compliance with the provisions of N.J.A.C. 7:50-5 and 6, the Commission will rely upon the complying master plan and ordinances, rather than a strict interpretation of the Comprehensive Management Plan, to provide comment to relevant state and federal regulatory agencies in its role as the planning entity for the Pinelands National Reserve.

On April 26, 2011, the Barnegat Township Planning Board adopted Resolution P-2011-9, approving the Township's April 2011 Master Plan. This Master Plan consists of updated Land Use Plan, Circulation Plan and Historic Preservation Plan Elements. Included in these revised Elements are recommendations for zoning changes designed to implement revised center boundaries and planning area changes in the Pinelands National Reserve portion of the Township, consistent with Township's petition for Initial Plan Endorsement by the State Planning Commission.

On May 7, 2012, Barnegat Township adopted Ordinances 2012-05, 2012-06, 2012-07, 2012-08, 2012-09 and 2012-10, amending Chapter 55 (Land Use) of the Township's Code for purposes of implementing the recommendations of the April 2011 Master Plan and the Township's Initial Plan Endorsement Petition.

The Pinelands Commission received certified copies of the above-referenced ordinances on May 9, 2012. The Pinelands Commission received an adopted copy of the April 2011 Master Plan and Planning Board Resolution P-2011-9 on June 8, 2012. A copy of the Zoning Map adopted by Ordinance 2012-08 was also received by the Commission on June 8, 2012.

By email dated June 12, 2012, Barnegat Township requested that the Pinelands Commission review and approve its master plan and land use ordinances for that portion of the municipality located east of the Garden State Parkway, within the Pinelands National Reserve but outside the state-designated Pinelands Area.

By letter dated July 2, 2012, the Executive Director notified the Township that pursuant to the municipality's request, Resolution P-2011-9 and Ordinances 2012-05, 2012-06, 2012-07, 2012-08, 2012-09 and 2012-10 would be formally reviewed by the Pinelands Commission.

Subsequently, a number of errors were identified with the Ocean Acres subdivision zoning boundaries depicted on the Zoning Map adopted by Ordinance 2012-08. Commission staff provided the Township with corrected zoning boundaries and advised that a revised zoning map would need to be adopted before the Commission could proceed with its certification action.

On October 15, 2012, Barnegat Township adopted Ordinance 2012-22, adopting a revised Zoning Map, dated May 10, 2012. The Zoning Map adopted by Ordinance 2012-22 supersedes the map previously adopted by Ordinance 2012-08. The Pinelands Commission received a certified copy of Ordinance 2012-22 on October 17, 2012 and a copy of the adopted Zoning Map on October 19, 2012.

By letter dated October 23, 2012, the Executive Director notified the Township that Ordinance 2012-22 would require formal review and approval by the Pinelands Commission; and

II. Master Plans and Land Use Ordinances

The following documents have been submitted to the Pinelands Commission for certification:

* Resolution P-2011-9, approving the April 2011 Master Plan of Barnegat Township, adopted by the Planning Board on April 26, 2012;

* Ordinance 2012-05, amending Chapter 55 (Land Use) of the Code of Barnegat Township, introduced on March 5, 2012 and adopted on May 7, 2012;

* Ordinance 2012-06, amending Chapter 55 (Land Use) of the Code of Barnegat Township, introduced on March 5, 2012 and adopted on May 7, 2012;

* Ordinance 2012-07, amending Chapter 55 (Land Use) of the Code of Barnegat Township, introduced on March 5, 2012 and adopted on May 7, 2012;

* Ordinance 2012-08, amending Chapter 55 (Land Use) of the Code of Barnegat Township by adopting a revised Zoning Map, dated February 24, 2012, introduced on March 5, 2012 and adopted on May 7, 2012;

* Ordinance 2012-09, amending Chapter 55 (Land Use) of the Code of Barnegat Township, introduced on March 5, 2012 and adopted on May 7, 2012;

* Ordinance 2012-10, amending Chapter 55 (Land Use) of the Code of Barnegat Township, introduced on March 5, 2012 and adopted on May 7, 2012;

* Ordinance 2012-12, amending the Zoning Map of Barnegat Township, introduced on March 5, 2012 and adopted on May 7, 2012; and

* Ordinance 2012-22, amending Chapter 55 (Land Use) of the Code of Barnegat Township, adopting a revised Zoning Map dated May 10, 2012, adopted on October 15, 2012. The May 10, 2012 Zoning Map adopted by Ordinance 2012-22 supersedes the revised Zoning Map previously adopted by Ordinance 2012-08.

These amendments has been reviewed to determine whether they conform with the standards for certification of municipal master plans and land use ordinances as set out in N.J.A.C. 7:50 3.39 of the Pinelands Comprehensive Management Plan. The findings from this review are presented below. The numbers used to designate the respective items correspond to the numbers used to identify the standards in N.J.A.C. 7:50 3.39.

1. Natural Resource Inventory

Not applicable.

2. Required Provisions of Land Use Ordinance Relating to Development Standards

Ocean Acres

Ordinance 2012-12 amends the Zoning Map of Barnegat Township by rezoning approximately 135 lots (38 vacant acres) from the RC (Residential Conservation) Zone to the RH (Residential High) Zone. The revised RH Zone boundaries are also depicted on the zoning map subsequently adopted by Ordinance 2012-22. The affected area is located in a Pinelands Regional Growth Area and is commonly referred to as the "overlay area" within the Ocean Acres subdivision. The map attached as Exhibit #3 depicts the boundaries of the overlay area, as well as the existing RH and RC Zones.

The adopted zoning change will allow for residential development within the overlay area on lots of at least 10,000 square feet in size. An opportunity to develop on existing lots between 9,000 and 10,000 square feet in size will also be provided by virtue of the RH Zone designation, provided that the owner of any such lot (1) purchases 0.25 Pinelands Development Credits; (2) permanently protects two lots in the RC Zone; (3) permanently protects 2/3rds of an acre of vacant upland in the RC Zone outside of existing subdivided lots; or (4) permanently protects 2 acres of vacant wetland in the RC Zone outside of existing subdivided lots. Had the lots in question remained in the RC Zone, no residential development would have been permitted.

The zoning change adopted by Ordinance 2012-12 is based on the terms of the 2004 agreement between the Commission, Barnegat Township and Mark Madison, LLC. It relies on the determination made in 2009 by Commission staff that the overlay area does not constitute critical habitat for pine snakes. As such, incorporation of the overlay area in the RH Zone is appropriate.

Expansion of the RH Zone changes the number of lots in Ocean Acres on which residential development may occur, as well as the number of lots in the RC Zone which remain to be permanently protected. Whereas previously there were 1,237 lots in the RH Zone and 730 lots in the RC Zone, there are now 1,372 lots in the RH Zone and only 595 lots in the RC Zone. The number of undersized lots in the RH Zone has also increased, from 567 to 663. This last figure is important because it is the development of these undersized lots which will ultimately lead to the protection of lots in the RC Zone.

As is evident on the map attached as Exhibit #3, a significant number of units or lots (approximately 370) have been approved in the RH Zone since the Commission's certification of Ordinance 2004-23. Likewise, a significant amount of land in the RC Zone, largely comprised of the unsubdivided, vacant areas outside individual lots, has been permanently preserved through deed restriction. It is estimated that approximately 155 acres of land in unsubdivided areas and rights of way have been protected, as well as 80-85 individual lots in the RC Zone. Several hundred individual lots in the RC Zone remain to be protected, and over 500 lots in the RH Zone remain available for residential development.

Over the next year, Commission staff will work closely with Barnegat Township in an effort to develop an accurate and efficient means of jointly monitoring, tracking and recording development and deed restrictions in Ocean Acres. This effort will enhance the Commission's ability to determine whether implementation of the Ocean Acres zoning plan has been successful or whether changes are necessary to ensure that all lots in the RC Zone continue to have a realistic opportunity of being purchased and preserved.

Ordinance 2012-12 is consistent with the land use and development standards of the Comprehensive Management Plan and meets this standard for certification.

Plan Endorsement Petition

As discussed above in the background section of this report, Barnegat Township has adopted a revised master plan and series of land use ordinance amendments (Ordinances 2012-05, 2012-06, 2012-07, 2012-08, 2012-09 and 2012-10) to implement the Town Center designation and initial plan endorsement it received from the State Planning Commission in December of 2011. Specifically, Ordinance 2012-05 creates three new overlay districts: the TC-CPHD (Town Center Planned Highway Development Commercial); TC-CN (Town Center Neighborhood Commercial); and TC-CV (Town Center Village Commercial) Zones. Ordinance 2012-06 creates another new overlay district, the CC-CPHD (Commercial Core Planned Highway Development Development) Zone. Ordinance 2012-07 revises the Schedule of Area, Yard and Building Requirements to include bulk, yard and other requirements for the new overlay districts. Ordinance 2012-08 amends Chapter 55 by adopting a revised Zoning Map, dated February 24, 2012, to reflect the location of the new overlay districts, as well as the Historic District and Transition Area. Ordinance 2012-09 amends Chapter 55 by establishing parking standards for development within the new overlay districts. Ordinance 2012-10 amends Chapter 55 by adopting standards for wellhead protection, together with a map identifying the location of Wellhead Protection Areas throughout the municipality. One final ordinance (2012-22) was later adopted to depict the new zoning plan within the Pinelands National Reserve as well as the correct zoning boundaries within the Ocean Acres subdivision in the Pinelands Area, as revised by Ordinance 2012-12. The resulting zoning map, dated May 10, 2012, is attached as Exhibit #4.

Of most importance to the Commission's review of the above-described master plan and ordinances are the changes in State Plan Policy Map planning area designations which have been implemented. These planning area changes are depicted on Exhibits #5 and 6.

As part of the plan endorsement petition, a commercial Core has been designated along Route 9. One center is also designated within the Pinelands National Reserve, the Barnegat Town Center. This Town Center is adjacent to and serves as an extension of the Regional Growth Area within the Pinelands Area. The boundaries of the Town Center in the Pinelands National Reserve have been appropriately drawn such that it incorporates developed areas, including the Township's Historic District, and vacant lands which are appropriate for new compact development. Approximately 2,000 acres (3.08 square miles) have been included. The vast majority of this acreage was previously located in Planning Area 2 (Suburban Planning Area) on the State Plan Policy Map and in a Pinelands Regional Growth Area according to the Land Capability Map adopted as part of the Comprehensive Management Plan. Several very small areas which were previously in Planning Area 5 (Environmentally Sensitive Planning Area) on the State Plan Policy Map have been added to the new center in recognition of existing development and sewer service area designations. Planning Area 5 corresponds with a Pinelands Forest Area designation; therefore, including these lands within the new Town Center represents a change in Pinelands management areas. Likewise, other changes outside the new center affect Pinelands management area designations. Most notably, approximately 300 acres at the Township's northeastern boundary with Ocean Township have been removed from Planning Area 2 (Regional Growth Area) and added to Planning Area 5 (Forest Area). This area is comprised of

contiguous forest habitat and is constrained by wetlands. Upon the Commission's certification of the Township's zoning plan in the Pinelands National Reserve, the Regional Growth Area will be revised to correspond with the Town Center and remaining Suburban Planning Area boundaries and the Forest Area will be expanded to include all lands being added to Planning Area 5.

In terms of zoning, lands within the new Commercial Core and Town Center have been included in a variety of overlay zones designed to facilitate mixed use development, with permitted uses and intensities appropriate for a Regional Growth Area. Outside the designated center and within Planning Area 5, Barnegat Township's zoning plan for the Pinelands National Reserve provides for a PW (Preserved Wetlands) Zone and an R-40 Zone, within which low density residential development and a variety of nonresidential uses are permitted. While generally consistent with Comprehensive Management Plan standards for the corresponding Pinelands management areas, it should be noted that the Township's zoning plan for those areas designated as Planning Area 5 is not as restrictive as would be required were the areas to be located in a Pinelands Forest Area within the state-designated Pinelands Area.

The zoning plan and standards adopted by Ordinances 2012-05, 2012-06, 2012-07, 2012-09, 2012-10 and 2012-22 are in substantial compliance with those for the relevant Pinelands management areas as set forth in N.J.A.C. 7:50-5 of the Comprehensive Management Plan.

3. Requirement for Certificate of Filing and Content of Development Applications

Not applicable.

4. Requirement for Municipal Review and Action on All Development

Not applicable.

5. Review and Action on Forestry Applications

Not applicable.

6. Review of Local Permits

Not applicable.

7. Requirement for Capital Improvement Program

Not applicable.

8. Accommodation of Pinelands Development Credits

Under the Ocean Acres zoning plan previously adopted by Ordinance 2004-23, Pinelands Development Credits may be used to facilitate residential development in the RH Zone. The purchase of Pinelands Development Credits is one of the options provided to the owners of undersized lots (between 9,000 and 10,000 square feet in size) in the RH Zone. In 2004, there were 567 such undersized lots. With the rezoning implemented by Ordinance 2012-12, there will be an additional 96 undersized lots in the RH Zone and, thus, more opportunities for the use of Pinelands Development Credits. Because other options are also provided (e.g., the protection of lots in the RC – Residential Conservation- Zone), and the potential for consolidation and resubdivision into conforming lots also exists, it continues to be difficult, if not impossible, to estimate the number of Pinelands Development Credits which will ultimately be used in the RH Zone. For purposes of this report, it is sufficient to state that opportunities for the use of Pinelands Development Credits in Barnegat's Regional Growth Area have been increased through the zoning change adopted by Ordinance 2012-12.

This standard for certification is met.

9. Referral of Development Applications to Environmental Commission

Not applicable**.**

10. General Conformance Requirements

Ordinance 2012-12, amending the Zoning Map of Barnegat Township, is consistent with standards and provisions of the Pinelands Comprehensive Management Plan.

Resolution P-2011-09, adopting the April 2011 Master Plan of Barnegat Township, and Ordinances 2012-05, 2012-06, 2012-07, 2012-09, 2012-10 and 2012-22, amending Chapter 55 (Land Use) of the Code of Barnegat Township, as they relate to that portion of the municipality located within the Pinelands National Reserve but outside the state-designated Pinelands Area, are in substantial compliance with N.J.A.C. 7:50-5 and 6 of the Comprehensive Management Plan.

This standard for certification is met.

11. Conformance with Energy Conservation

Not applicable.

12. Conformance with the Federal Act

Ordinance 2012-12, amending the Zoning Map of Barnegat Township, is consistent with standards and provisions of the Pinelands Comprehensive Management Plan.

Resolution P-2011-09, adopting the April 2011 Master Plan of Barnegat Township, and Ordinances 2012-05, 2012-06, 2012-07, 2012-09, 2012-10 and 2012-22, amending Chapter 55 (Land Use) of the Code of Barnegat Township, as they relate to that portion of the municipality located within the Pinelands National Reserve but outside the state-designated Pinelands Area, are in substantial compliance with N.J.A.C. 7:50-5 and 6 of the Comprehensive Management Plan.

No special issues exist relative to the Federal Act.

This standard for certification is met.

13. Procedure to Resolve Intermunicipal Conflicts

Not applicable.

PUBLIC HEARING ON ORDINANCE 2012-12

A public hearing to receive testimony concerning Barnegat Township's application for certification of Ordinance 2012-12 was duly advertised, noticed and held on June 27, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which the following testimony was received:

Theresa Lettman, representing the Pinelands Preservation Alliance (PPA), stated that PPA would be submitting written comments and then summarized the main points included in those comments (see Exhibit #7). She stated that PPA has both environmental and economic concerns with Ordinance 2012-12. She stated that the environmental community believes the Commission has once again failed to protect threatened and endangered species and that the Ocean Acres zoning plan is not working.

Frank Pecci, a resident of Barnegat Township, stated that he had attended a meeting at the municipal building many years ago, at which Commission staff informed the owners of lots in the RC Zone that they would not be able to build and the zoning plan would not be "reopened". He referred to a 2009 letter he had written to the Commission and then Chairperson Wilson's comments that the Ocean Acres matter should be over and done with. Mr. Pecci then read a letter from the Department of Environmental Protection concerning critical habitat and vandalism of snake traps during the survey work completed by the developer. He referred to a Commission staff report to the Commission in which the staff indicated it had reconsidered its preliminary determination concerning the results of the survey. He indicated that it appeared the staff had changed its mind after meeting with the developer, and he could not understand how the

Commission's experts came to such a conclusion. The survey results were late and the DEP has said that the snake traps were "spiked".

Mr. Pecci noted a concern that $52,000 must be paid to build a house, even in an infill situation. He stated that density and population growth in New Jersey are continuing issues. The Commission continues to make exceptions. The Legislature adopted the Pinelands Protection Act in 1979 to stop the immediate threat to rare plants, animals and habitat. Mr. Pecci warned of the politics behind decisions being made in the Pinelands. He believes that pine snakes are in the Ocean Acres overlay area, as are the turtles and plants the Commission is supposed to be protecting. He stated that it appears the Commission is giving up on the area entirely. This leads to the development of poor ratables (homes), which increases the tax burden on Township residents.

Mr. Pecci submitted copies of a number of the documents referred to in his comments (see Exhibit #8).

Jake Taylor, a resident of Barnegat Township, stated that Ordinance 2012-12 is a direct response to the Commission's ruling on habitat. It was the Commission's determination that led to the Township Committee's decision to adopt the ordinance. He stated that there should have been a hearing before the Commission made its determination. He stated that pine snakes were left in the traps to die, the traps were spiked and chemicals were placed in the traps as a means of keeping the snakes away. Mr. Taylor noted that he had attended a 2009 Commission meeting at which it was stated that the Ocean Acres zoning plan would not be reopened. People believed the zoning plan was permanent. Mr. Taylor stated that the conservation area is very important to him and all Township residents. It should be kept as natural, open land forever.

David Breeden, Barnegat Township Administrator, stated that the Township would be submitting written comments.

Written comments on Ordinance 2012-12 were accepted through July 3, 2012 and were received from the following individuals:

July 3, 2012 letter from Carleton Montgomery, Executive Director, Pinelands Preservation Alliance, with attachments (see Exhibit #7)

PUBLIC HEARING ON RESOLUTION P-2011-9 AND ORDINANCES 2012-05, 2012-06, 2012-07, 2012-08, 2012-09 AND 2012-10

A public hearing to receive testimony concerning Barnegat Township's application for certification of Planning Board Resolution P-2011-9 and Ordinances 2012-05, 2012-06, 2012-07, 2012-08, 2012-09 and 2012-10 was duly advertised, noticed and held on July 25, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which no testimony was received.

Written comments were accepted through July 30, 2012; however, none were received.

PUBLIC HEARING ON ORDINANCE 2012-22

A public hearing to receive testimony concerning Barnegat Township's application for certification of Ordinance 2012-22 was duly advertised, noticed and held on November 7, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which no testimony was received.

Written comments were accepted through November 13, 2012 and were received from the following individuals:

> Carleton Montgomery, Executive Director, Pinelands Preservation Alliance, with attachments (see Exhibit #7; because PPA submitted identical comments on Ordinance 2012-12, they are only being included once in this report)
>
> Jerry J. Dasti, Esq., Dasti, Murphy, McGuckin, Ulaky, Cherkos & Connors, Barnegat Township Solicitors (see Exhibit #9)
>
> Joseph A. Del Duca, General Counsel, Walters Group (see Exhibit #10)

EXECUTIVE DIRECTOR'S RESPONSE

The Pinelands Preservation Alliance (PPA) has suggested that the Commission should not certify Barnegat Township Ordinance 2012-12, the Ocean Acres rezoning, for three reasons: (1) the zoning change violates the 2004 Conservation Plan; (2) the zoning change is based on an unlawful 2004 agreement; and (3) one or more Barnegat Township Committee members had conflicts of interest and should not have been allowed to vote to adopt Ordinance 2012-12.

With respect to PPA's first point, it is true that Barnegat Township established a conservation zone (RC) in 2004. It is further true that the Commission certified the boundaries of this conservation zone that same year. It was widely known, at that time, that there was a sizeable portion of the RC Zone within which the presence of critical habitat had been questioned by the property owner. Ordinance 2004-23 not only identified the area in question but also noted that the property owner had requested a period of time to demonstrate that the area does not constitute critical habitat. Ordinance 2004-23 further indicated that if the Commission subsequently determined, based on the submission of new information, that this portion of the RC Zone did not constitute critical habitat, its inclusion in the RC Zone would no longer be appropriate or necessary. The Executive Director's report on Ordinance 2004-23 also contained a discussion of the area, noting that new information may be gathered and submitted to the Commission for review and that such information may lead to a conclusion that a portion of the RC Zone more appropriately belongs in the RH Zone where residential development would be permitted. This would be true not only for the overlay area but for any lots in the RC Zone. It is also possible that new information could lead the Commission to determine that there are additional areas within the Ocean Acres subdivision which constitute critical habitat and warrant inclusion in the RC Zone. The point is that zoning boundaries, including, in this case, the Residential Conservation Zone boundary, are not permanent, nor do they provide permanent protection to properties. The zoning change now being adopted revises the boundaries of the RC Zone based on survey work that was done after the 2004 establishment of the zone, and a detailed review of that survey work by Commission staff.

PPA also submits that the 2004 agreement described previously in this report, among the Commission, Barnegat Township and Mark Madison, LLC, is unlawful. The Executive Director does not agree. The 2004 agreement was reviewed by the Attorney General's office prior to signature and provided a valid basis for the survey and rezoning processes which followed.

Finally, PPA submits that the Commission should decline to certify Ordinance 2012-12 because of improper participation in the ordinance adoption process by Barnegat Township Committee members. As this is a matter well beyond the Commission's purview, any response is best left to the Township (see Exhibit #8).

CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that Barnegat Township's April 2011 Master Plan and Ordinances 2012-05, 2012-06, 2012-07, 2012-09, 2012-10 and 2012-22, as they affect that portion of the municipality located within the Pinelands National Reserve but outside the state-designated Pinelands Area, are in substantial compliance with N.J.A.C. 7:50-5 and 6 of the Pinelands Comprehensive Management Plan. The Executive Director has further concluded that Ordinance 2012-12 is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan. Accordingly, the Executive Director recommends that the Commission issue an order to certify Resolution P-2011-9 and Ordinances 2012-05, 2012-06, 2012-07, 2012-09, 2012-10, 2012-12 and 2012-22 of Barnegat Township.

SRG/CBA
Attachments

RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-13- 04

TITLE: Issuing an Order to Certify the 2012 Amendment to the Housing Element and Fair Share Plan of Egg Harbor Township and Ordinance 37-2012, Amending Chapter 225 (Zoning) of the Code of Egg Harbor Township

Commissioner Galletta **moves and Commissioner** McGlinchey **seconds the motion that:**

WHEREAS, on October 1, 1993, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Egg Harbor Township; and

WHEREAS, Resolution #PC4-93-139 of the Pinelands Commission specified that any amendment to the Township's certified Master Plan and codified Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, Resolution #PC4-93-139 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

WHEREAS, on August 21, 2012, the Egg Harbor Township Planning Board adopted an amendment to the municipality's Master Plan in the form of a 2012 Amendment to the Housing Element and Fair Share Plan; and

WHEREAS, this master plan amendment reflects the terms of a 2012 settlement agreement between Egg Harbor Township and English Creek Manor, LTD, stemming from a builder's remedy lawsuit; and

WHEREAS, the Pinelands Commission received an adopted copy of the 2012 Amendment to the Housing Element and Fair Share Plan, together with a copy of the Planning Board's resolution of adoption, on August 23, 2012; and

WHEREAS, on September 12, 2012, Egg Harbor Township adopted Ordinance 37-2012, amending Chapter 225 (Zoning) of the Township's Code for purposes of implementing the above-referenced 2012 settlement agreement; and

WHEREAS, Ordinance 37-2012 creates and establishes regulations for a new zoning district, the AH-RG-4 (Affordable Housing) Zone, within the Pinelands Regional Growth Area; and

WHEREAS, the Pinelands Commission received a certified copy of Ordinance 37-2012 on September 19, 2012; and

WHEREAS, by letter dated September 26, 2012, the Executive Director notified the Township that the 2012 Amendment to the Housing Element and Fair Share Plan and Ordinance 37-2012 would require formal review and approval by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony on the 2012 Amendment to the Housing Element and Fair Share Plan and Ordinance 37-2012 was duly advertised, noticed and held on November 7, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

WHEREAS, the Executive Director has further found that the 2012 Amendment to the Housing Element and Fair Share Plan and Ordinance 37-2012 are consistent with the standards and provisions of the Pinelands Comprehensive Management Plan; and

WHEREAS, the Executive Director has submitted a report to the Commission recommending issuance of an order to certify that the 2012 Amendment to the Housing Element and Fair Share Plan and

Ordinance 37-2012, amending Chapter 225 (Zoning) of the Code of Egg Harbor, are in conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that the 2012 Amendment to the Housing Element and Fair Share Plan and Ordinance 37-2012 be certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning the 2012 Amendment to the Housing Element and Fair Share Plan and Ordinance 37-2012 and has reviewed the Executive Director's report; and

WHEREAS, the Pinelands Commission accepts the recommendation of the Executive Director; 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

1. An Order is hereby issued to certify that the 2012 Amendment to the Housing Element and Fair Share Plan of Egg Harbor Township and Ordinance 37-2012, amending Chapter 225 (Zoning) of the Code of Egg Harbor, are in conformance with the Pinelands Comprehensive Management Plan.

2. Any additional amendments to Egg Harbor Township's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

Record of Commission Votes

	AYE	NAY	NP	ABS		AYE	NAY	NP	ABS		AYE	NAY	NP	ABS
Ashmun	X				Galletta	X				Prickett	X			
Brown	X				Haas	X				Quinn	X			
DiBello	X				Jackson	X				Rohan Green			X	
Earlen	X				Lloyd			X		Witt			X	
Ficcaglia	X				McGlinchey	X				Lohbauer	X			

Adopted at a meeting of the Pinelands Commission

Date: Jan. 11, 2013

Nancy Wittenberg
Executive Director

Mark S. Lohbauer
Chairman

State of New Jersey
THE PINELANDS COMMISSION
PO BOX 359
NEW LISBON, NJ 08064
(609) 894-7300
www.nj.gov/pinelands

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

REPORT ON THE 2012 AMENDMENT TO THE HOUSING ELEMENT AND FAIR SHARE PLAN OF EGG HARBOR TOWNSHIP AND ORDINANCE 37-2012, AMENDING CHAPTER 225 (ZONING) OF THE CODE OF EGG HARBOR TOWNSHIP

January 4, 2013

Egg Harbor Township
3515 Bargaintown Road
Egg Harbor Township, NJ 08234

FINDINGS OF FACT

I. Background

The Township of Egg Harbor is located in the southeastern Pinelands in Atlantic County. Pinelands municipalities adjacent to Egg Harbor Township include the Townships of Galloway and Hamilton and Estell Manor City in Atlantic County, as well as Upper Township in Cape May County.

On October 1, 1993, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Egg Harbor Township.

In 2006, English Creek Manor, LTD, filed exclusionary zoning litigation against Egg Harbor Township and the Egg Harbor Township Planning Board in Superior Court, seeking a "builders remedy" to facilitate production of affordable housing on approximately 120 acres of land located in the Township's Regional Growth Area. At the time the litigation was filed, the property in question was located in the Township's RG-1 zoning district where residential development was permitted at a relatively low density. In November of 2006, the Court appointed a Special Master to facilitate settlement discussions between English Creek Manor, LTD, and the Township. The Township and the plaintiff thereafter engaged in extensive discussions with the goal of developing a mutually agreeable plan for inclusionary development on the property. At the request of the Special Master, Commission staff participated in these discussions and reviewed numerous versions of the draft settlement agreement as a means of ensuring that any resulting zoning plan would be consistent with the Comprehensive Management Plan.

On August 21, 2012, the Egg Harbor Township Planning Board adopted an amendment to the municipality's Master Plan in the form of a 2012 Amendment to the Housing Element and Fair Share Plan. This master plan amendment reflects the terms of a 2012 settlement agreement between Egg Harbor Township and English Creek Manor, LTD, stemming from the above-discussed builder's

remedy lawsuit. The Pinelands Commission received an adopted copy of the 2012 Amendment to the Housing Element and Fair Share Plan, together with a copy of the Planning Board's resolution of adoption, on August 23, 2012.

On September 12, 2012, Egg Harbor Township adopted Ordinance 37-2012, amending Chapter 225 (Zoning) of the Township's Code for purposes of implementing the above-referenced 2012 settlement agreement. Ordinance 37-2012 creates and establishes regulations for a new zoning district, the AH-RG-4 (Affordable Housing) Zone, within the Pinelands Regional Growth Area. The Pinelands Commission received a certified copy of Ordinance 37-2012 on September 19, 2012.

By letter dated September 26, 2012, the Executive Director notified the Township that the 2012 Amendment to the Housing Element and Fair Share Plan and Ordinance 37-2012 would require formal review and approval by the Pinelands Commission

II. Master Plans and Land Use Ordinances

The following documents have been submitted to the Pinelands Commission for certification:

* The 2012 Amendment to the Housing Element and Fair Share Plan of Egg Harbor Township, adopted by the Planning Board on August 21, 2012; and

* Ordinance 37-2012, amending Chapter 225 (Zoning) of the Code of Egg Harbor Township, introduced on July 25, 2012 and adopted on September 12, 2012.

These amendments have been reviewed to determine whether they conform with the standards for certification of municipal master plans and land use ordinances as set out in N.J.A.C. 7:50 3.39 of the Pinelands Comprehensive Management Plan. The findings from this review are presented below. The numbers used to designate the respective items correspond to the numbers used to identify the standards in N.J.A.C. 7:50 3.39.

1. Natural Resource Inventory

Not applicable.

2. Required Provisions of Land Use Ordinance Relating to Development Standards

Egg Harbor Township's Housing Element and Fair Share Plan was amended by the Planning Board in August of 2012 to reflect a settlement agreement stemming from a builder's remedy lawsuit. The settlement agreement involves the development of a certain number of units on what is referred to as the English Creek Manor site, a property which is located in the Pinelands Regional Growth Area. The Township's 2008 Fair Share Plan anticipated a maximum of 552 units on the site, including 110 affordable units, although the municipal zoning plan was never amended to permit such a total. Based on the terms of the settlement agreement, the 2012 Amendment calls for a maximum of 223 units, of which 45 will be affordable units.

Ordinance 37-2012 amends Chapter 225 (Zoning) of the Township's Code for purposes of implementing the above-discussed 2012 settlement agreement. Specifically, Ordinance 37-2012 creates and establishes regulations for a new zoning district, the AH-RG-4 (Affordable Housing) Zone within the Township's Regional Growth Area. According to Ordinance 37-2012, the purpose of the new AH-RG-4 Zone is to "provide for the development of an inclusionary affordable housing development when said uses can be adequately serviced by the sanitary sewer system". Permitted uses the AH-RG-4 Zone are limited to single-family detached dwellings, single-family attached dwellings, flats and public parks, playgrounds and passive recreation. Ordinance 37-2012 specifies that the minimum number of single-family detached units required to be constructed in the new zone is 28, and the maximum number of flats (single-story multi-family units) may not exceed 25% of the total number of units constructed. Permitted residential density is 4.0 units per acre, and the maximum number of permitted units is 223. Finally, 20% of all new units in the AH-RG-4 Zone must be affordable to low and moderate income households.

Amendments to the Township's zoning map are also adopted by Ordinance 37-2012 to reflect the location of the new AH-RG-4 Zone (see Exhibits #1 and 2). Approximately 120 acres have been included in the new zone, all of which were previously located in the RG-1 Zone, within the Regional Growth Area. Of the 120 acres incorporated in the new zone, 22 are already developed as a mobile home park and 40 have been or will be purchased by the Township under the terms of the 2012 settlement agreement for use as open space and recreation. According to Ordinance 37-2012, 55.783 acres in the new zone are available for new residential development at the permitted density of 4.0 units per acre. The existing mobile home park, future municipal open space and possible layout of the new residential units are depicted on Exhibit #3.

The development intensities, permitted uses and zoning changes adopted by Ordinance 37-2012 are consistent with the standards for Regional Growth Areas set forth in the Comprehensive Management Plan. It should be noted that the zoning changes adopted by Ordinance 37-2012 result in an increase in the residential zoning capacity of Egg Harbor Township's Regional Growth Area of approximately 80 units. This increase is due to the higher density permitted in the new AH-RG-4 District (4.0 units per acre) as compared to the prior RG-1 zoning (a maximum of 1.5 units per acre), although the overall impact is reduced due to the Township's acquisition of 40 vacant acres.

The amendments adopted by the 2012 Amendment to the Housing Element and Fair Share Plan and Ordinance 20-7-2012 and are consistent with the land use and development standards of the Comprehensive Management Plan. Therefore, this standard for certification is met.

3. Requirement for Certificate of Filing and Content of Development Applications

Not applicable.

4. Requirement for Municipal Review and Action on All Development

Not applicable.

5. Review and Action on Forestry Applications

Not applicable.

6. Review of Local Permits

Not applicable.

7. Requirement for Capital Improvement Program

Not applicable.

8. Accommodation of Pinelands Development Credits

Ordinance 37-2012 amends Chapter 225 (Zoning) of the Township's Code by creating a new residential zoning district, the AH-RG-4 Zone, within which the use of Pinelands Development Credits (PDC) is required. Specifically, PDCs must be acquired and redeemed for 25 percent of the market rate residential units developed in the new AH-RG-4 Zone. This 25% obligation applies regardless of the density at which any particular project is proposed or constructed. The use of PDCs is not required for those units in the AH-RG-4 Zone which are developed as affordable units, nor are PDCs required to facilitate subdivision of the existing mobile home park from the larger parcel.

Ordinance 37-2012 accommodates PDC use in a different manner than has traditionally been the case, in order to allow the Township to meet both its PDC and affordable housing obligations. Instead of providing a base density and providing developers with the opportunity to use PDCs to increase that density if they so choose, the Township has elected to make PDC use a mandatory component of all new residential development in the AH-RG-4 Zone.

N.J.A.C. 7:50-3.39(a)8 specifies that in order to be certified by the Commission, municipal land use ordinances must provide for sufficiently residentially zoned property in the Regional Growth Area to be eligible for an increase in density to accommodate PDCs as provided for in N.J.A.C. 7:50-5.28(a)3. N.J.A.C. 7:50-5.28(a)7i then authorizes Pinelands municipalities to employ additional density bonus or incentive programs, provided such programs do not interfere with or otherwise impair in any way the required municipal program for use of PDCs. Additional flexibility is provided in more general terms in the introduction to subchapter 5 of the CMP which states that CMP standards may be refined by local agencies, provided that the objectives and goals the minimum standards represent will be achieved. In this context, the PDC requirements implemented by Ordinance 37-2012 are consistent with the Comprehensive Management Plan. While the 25 percent requirement applied to the new AH-RG-4 Zone is not as high a number as would be provided through the more traditional zoning approach (where PDCs would account for 33 percent of the total number of permitted units), it is important to remember that the traditional base density/bonus density approach utilized throughout the Pinelands Area only provides an *opportunity* for the use of PDCs. There is no requirement under the traditional approach that any PDCs be used in any particular development project. Ordinance 37-2012 *guarantees* a certain level of PDC use in association with any residential development in the AH-

RG-4 Zone, regardless of project density or number of units which are ultimately built. Given the greater certainty provided by this approach, the Executive Director believes that the PDC requirements adopted by Ordinance 37-2012 should be viewed as being consistent with Comprehensive Management Plan standards.

9. Referral of Development Applications to Environmental Commission

Not applicable**.**

10. General Conformance Requirements

The 2012 Amendment to the Housing Element and Fair Share Plan of Egg Harbor Township and Ordinance 37-2012, amending Chapter 225 (Zoning) of the Code of Egg Harbor Township, are consistent with the standards and provisions of the Pinelands Comprehensive Management Plan.

This standard for certification is met.

11. Conformance with Energy Conservation

Not applicable.

12. Conformance with the Federal Act

The 2012 Amendment to the Housing Element and Fair Share Plan of Egg Harbor Township and Ordinance 37-2012, amending Chapter 225 (Zoning) of the Code of Egg Harbor Township, are consistent with the standards and provisions of the Pinelands Comprehensive Management Plan. No special issues exist relative to the Federal Act.

This standard for certification is met.

13. Procedure to Resolve Intermunicipal Conflicts

The lands rezoned by Ordinance 37-2012 are not adjacent to any other municipalities. Therefore, this standard is not applicable.

PUBLIC HEARING

A public hearing to receive testimony concerning Egg Harbor Township's application for certification of the 2012 Amendment to its Housing Element and Fair Share Plan and Ordinance 37-2012 was duly advertised, noticed and held on November 7, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which no testimony was received.

Written comments were accepted through November 13, 2012; however, none were received.

CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that the 2012 Amendment to the Housing Element and Fair Share Plan and Ordinance 37-2012 comply with Comprehensive Management Plan standards for the certification of municipal master plans and land use ordinances. Accordingly, the Executive Director recommends that the Commission issue an order to certify the 2012 Amendment to the Housing Element and Fair Share Plan and Ordinance 37-2012 of Egg Harbor Township.

SRG/CEH
Attachments

RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-13- 05

TITLE: Issuing an Order to Conditionally Certify Resolution 2012-09, Adopting the August 2012 Master Plan Reexamination Report and Update, and Ordinance 620, Amending the Land Development Regulations Ordinance of Maurice River Township

Commissioner Pickett **moves and Commissioner** Ficcaglia **seconds the motion that:**

WHEREAS, on December 3, 1982, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Maurice River Township; and

WHEREAS, Resolution #PC4-82-93 of the Pinelands Commission specified that any amendment to Maurice River Township's certified Master Plan and Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, Resolution #PC4-82-93 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

WHEREAS, on January 16, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to mandatory residential cluster development in the Pinelands Forest and Rural Development Areas; and

WHERAS, on October 9, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to wetlands management; and

WHEREAS, on November 13, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to forestry; and

WHEREAS, these three sets of amendments took effect on April 6, 2009, December 21, 2009 and March 1, 2010, respectively; and

WHEREAS, municipalities located within the Pinelands Area are required to adopt ordinance amendments necessary for conformance with any Comprehensive Management Plan amendments within one year of the effective date of any such amendments; and

WHEREAS, on June 11, 2010, the Pinelands Commission adopted Resolution PC4-10-27, extending the time period for response to the clustering and wetlands management amendments to March 1, 2011 in order to provide municipalities with sufficient time for consideration, preparation and adoption of master plan and ordinance amendments to address the three sets of Comprehensive Management Plan amendments simultaneously; and

WHEREAS, Commission staff subsequently provided a model ordinance and other guidance to Maurice River Township to assist the municipality in completing its response to the three sets of Comprehensive Management Plan amendments; and

WHEREAS, by letter dated August 19, 2011, Maurice River Township notified the Commission of the need for an extension of the March 1, 2011 deadline for adoption and submission of the necessary ordinance amendments; and

WHEREAS, the Township requested a lengthy extension in order to accommodate its plans to conduct a comprehensive review of the municipal master plan while at the same time addressing

concerns with potential changes in development patterns that might result from the clustering amendments; and

WHEREAS, by letter dated September 2, 2011, the Executive Director notified the Township that an extension was granted until September 28, 2012; and

WHEREAS, on September 5, 2012, the Maurice River Township Land Use Board adopted Resolution 2012-09, approving a Master Plan Reexamination Report and Update, dated August 2012, which contains a review of existing conditions, a discussion of recent amendments to the CMP related to cluster development in the Pinelands Forest and Rural Development Areas and a detailed analysis of the potential impacts these amendments might have on specific parcels and areas within the municipality; and

WHEREAS, by email dated September 24, 2012, Maurice River Township notified the Commission that although the Land Use Board had adopted the necessary Master Plan Reexamination Report, a further extension was needed to complete the ordinance adoption process; and

WHEREAS, by letter dated September 25, 2012, the Executive Director notified the Township that an extension was granted until October 10, 2012; and

WHEREAS, on October 3, 2012, Maurice River Township adopted Ordinance 620, amending the Township's Land Development Regulations Ordinance in response to the forestry, wetlands management and residential clustering amendments to the Pinelands Comprehensive Management Plan; and

WHEREAS, the Pinelands Commission received a certified copy of Ordinance 620 on October 10, 2012; and

WHEREAS, on October 10, 2012, the Pinelands Commission also received an adopted copy of Resolution 2012-09, approving the August 2012 Master Plan Reexamination Report and Update; and

WHEREAS, by letter dated October 23, 2012, the Executive Director notified the Township that Resolution 2012-09 and Ordinance 620 would require formal review and approval by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony on Resolution 2012-09 and Ordinance 620 was duly advertised, noticed and held on December 5, 2012 at the Richard J. Sullivan Center, 203C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

WHEREAS, the Executive Director has found that Resolution 2012-09 and Ordinance 620 sufficiently implement the forestry and wetlands management amendments to the Comprehensive Management Plan; and

WHEREAS, the Executive Director has further found that Resolution 2012-09 and Ordinance 620 do not sufficiently implement the cluster development amendments to the Comprehensive Management Plan; and

WHEREAS, the Executive Director has submitted a report to the Commission recommending issuance of an order to certify with conditions that Resolution 2012-09, adopting the August 2012 Master Plan Reexamination Report and Update, and Ordinance 620, amending the Land Development Regulations Ordinance of Maurice River Township, are in conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that Resolution 2012-09 and Ordinance 620 be conditionally certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning Resolution 2012-09 and Ordinance 620 and has reviewed the Executive Director's report; and

WHEREAS, the Pinelands Commission accepts the recommendation of the Executive Director; 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

1. An Order is hereby issued to certify with conditions that Resolution 2012-09, adopting the August 2012 Master Plan Reexamination Report and Update, and Ordinance 620, amending the Land Development Regulations Ordinance of Maurice river Township, are in conformance with the Pinelands Comprehensive Management Plan. To obtain full certification of Resolution 2012-09 and Ordinance 620 by the Pinelands Commission, Maurice River Township must amend its Land Development Regulations Ordinance in accordance with Attachment A of this Order. The Township need not adopt the conditions in Attachment A verbatim; revisions comparable thereto or consistent therewith in intent may also be acceptable.

2. Maurice River Township shall have until May 11, 2013 to adopt and submit the revisions to its Land Development Regulations Ordinance to the Pinelands Commission for approval pursuant to N.J.A.C. 7:50-3.45 and Attachment A hereto.

3. If the Township fails to submit the revisions to its Land Development Regulations Ordinance pursuant to N.J.A.C. 7:50-3.45 and Attachment A hereto by May 11, 2013, or if such a submission is not fully certified by the Pinelands Commission, Resolution 2012-09 and Ordinance 620 shall be disapproved.

4. In the event that Resolution 2012-09 and Ordinance 620 are disapproved, the certified status of the Master Plan and Land Use Ordinances of Maurice River Township shall be suspended until such time as the Township submits amendments which adequately address the April 2009 amendments to the Pinelands Comprehensive Management Plan. During such period of suspension, the Commission shall review all development applications in accordance with the procedures and standards which govern development in areas without certified local plans and ordinances (N.J.A.C. 7:50-4, Part II).

5. Any additional amendments to Maurice River Township's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

Record of Commission Votes

	AYE	NAY	NP	ABS		AYE	NAY	NP	ABS		AYE	NAY	NP	ABS
Ashmun	X				Galletta	X				Prickett	X			
Brown	X				Haas	X				Quinn	X			
DiBello	X				Jackson	X				Rohan Green			X	
Earlen	X				Lloyd			X		Witt			X	
Ficcaglia	X				McGlinchey	X				Lohbauer	X			

Adopted at a meeting of the Pinelands Commission

Date: Jan. 11, 2013

Nancy Wittenberg
Executive Director

Mark S. Lohbauer
Chairman

ATTACHMENT A TO EXECUTIVE DIRECTOR'S JANUARY 4, 2013 REPORT ON MAURICE RIVER TOWNSHIP RESOLUTION 2012-09 AND ORDINANCE 620

Adoption of the following amendments, or comparable revisions, to the Land Development Regulations Ordinance of Maurice River Township will make Ordinance 620 consistent with the Pinelands Comprehensive Management Plan and complete the Township's response to the April 2009 amendments to the Pinelands Comprehensive Management Plan:

1. Article 35-9, Specific Use Standards and Regulations, is hereby amended by revising Section 9-24A.2.b to read as follows:

   b. A density bonus is permitted on lots greater than 50 acres in accordance with the table below. The bonus density shall be calculated based on the gross acreage of the parcel of land and the density permitted in Subsection A.1 above. The density bonus shall be applied in accordance with the following table:

Parcel Size	PR, PRDA-R Districts	PRDA-C District	PC District
<50 acres	0	0	0
50-99.99 acres	15%	20%	25%
100-149.99 acres	20%	25%	30%
≥150 acres	25%	30%	40%

Executive Director's Report
on Maurice River Twp.
Reso. 2012-09 and
Ordinance 620
January 4, 2013
Exhibit #1

PINELANDS PRESERVATION ALLIANCE

Bishop Farmstead ◆ 17 Pemberton Road ◆ Southampton, NJ 08088
Phone: 609-859-8860 ◆ ppa@pinelandsalliance.org ◆ www.pinelandsalliance.org

December 10, 2012

Pinelands Commission
PO Box 7
New Lisbon, NJ 08064

Re: Maurice River Cluster Development Ordinance #620

Dear Ms. Grogan:

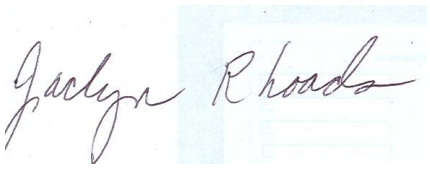
PPA is writing to support the cluster development ordinance you are considering for Maurice River Township.

The cluster ordinance for Maurice River Township includes provisions to limit the application of bonus densities by restricting the calculation of bonuses to only upland acres and not wetlands. This variation of the bonus density provision is necessary to protect the ecological integrity of the region while still providing incentives to property owners that aggregate lots.

As noted by PPA on several occasions, there is nothing in the Pinelands Comprehensive Management Plan regulations that prohibit a municipality from excluding wetlands in this situation. In fact, the clustering provisions in the CMP allow for municipal flexibility assuming that the intent and goals of the clustering requirements are still met.

Based upon the clustering language in Maurice River's ordinance, PPA believes all the provisions are met and should be approved by the Pinelands Commission.

Sincerely,



Jaclyn Rhoads, Ph.D.
Director for Conservation Policy

State of New Jersey
THE PINELANDS COMMISSION
PO BOX 359
NEW LISBON, NJ 08064
(609) 894-7300
www.nj.gov/pinelands

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Chris Christie
Governor
Kim Guadagno
Lt. Governor

Mark S. Lohbauer
Chairman
Nancy Wittenberg
Executive Director

REPORT ON RESOLUTION 2012-9, ADOPTING MAURICE RIVER TOWNSHIP'S AUGUST 2012 MASTER PLAN REEXAMINATION REPORT AND UPDATE, AND ORDINANCE 620, AMENDING THE LAND DEVELOPMENT REGULATIONS ORDINANCE OF MAURICE RIVER TOWNSHIP

January 4, 2013

Maurice River Township
P.O. Box 218
Leesburg, NJ 08327

FINDINGS OF FACT

I. Background

The Township of Maurice River is located in eastern Cumberland County, in the southern portion of the Pinelands Area. Pinelands municipalities that abut Maurice River Township include the City of Vineland in Cumberland County, the Townships of Buena Vista and Weymouth and the City of Estell Manor in Atlantic County and the Townships of Dennis and Upper in Cape May County.

On December 3, 1982, the Pinelands Commission fully certified the Master Plan and Development Regulations Ordinance of Maurice River Township.

On January 16, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to mandatory residential cluster development in the Pinelands Forest and Rural Development Areas. On October 9, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to wetlands management. On November 13, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to forestry. These three sets of amendments took effect on April 6, 2009, December 21, 2009 and March 1, 2010, respectively.

Municipalities located within the Pinelands Area are required to adopt ordinance amendments necessary for conformance with any Comprehensive Management Plan amendments within one year of the effective date of any such amendments. On June 11, 2010, the Pinelands Commission adopted Resolution PC4-10-27, extending the time period for response to the clustering and wetlands management amendments to March 1, 2011 in order to provide municipalities with sufficient time for consideration, preparation and adoption of master plan and ordinance amendments to address the three sets of Comprehensive Management Plan amendments simultaneously. Commission staff subsequently

provided a model ordinance and other guidance to the Township to assist the municipality in completing its response to the three sets of Comprehensive Management Plan amendments.

By letter dated August 19, 2011, Maurice River Township notified the Commission of the need for an extension of the March 1, 2011 deadline for adoption and submission of the necessary ordinance amendments. The Township requested a lengthy extension in order to accommodate its plans to conduct a comprehensive review of the municipal master plan while at the same time addressing concerns with potential changes in development patterns that might result from the clustering amendments. By letter dated September 2, 2011, the Executive Director notified the Township that an extension was granted until September 28, 2012.

On September 5, 2012, the Maurice River Township Land Use Board adopted Resolution 2012-09, approving a Master Plan Reexamination Report and Update, dated August 2012. This Report contains a review of existing conditions, a discussion of recent amendments to the CMP related to cluster development in the Pinelands Forest and Rural Development Areas and a detailed analysis of the potential impacts these amendments might have on specific parcels and areas within the municipality.

By email dated September 24, 2012, Maurice River Township notified the Commission that although the Land Use Board had adopted the necessary Master Plan Reexamination Report, a further extension was needed to complete the ordinance adoption process. By letter dated September 25, 2012, the Executive Director notified the Township that an extension was granted until October 10, 2012.

On October 3, 2012, Maurice River Township adopted Ordinance 620, amending the Township's Land Development Regulations Ordinance in response to the forestry, wetlands management and residential clustering amendments to the Pinelands Comprehensive Management Plan. The Pinelands Commission received a certified copy of Ordinance 620 on October 10, 2012.

On October 10, 2012, the Pinelands Commission also received an adopted copy of Resolution 2012-09, approving the August 2012 Master Plan Reexamination Report and Update.

By letter dated October 23, 2012, the Executive Director notified the Township that Resolution 2012-09 and Ordinance 620 would require formal review and approval by the Pinelands Commission.

II. Master Plans and Land Use Ordinances

The following documents have been submitted to the Pinelands Commission for certification:

* Resolution 2012-09, approving the August 2012 Master Plan Reexamination Report and Update, adopted by the Maurice River Township Land Use Board on September 5, 2012; and

* Ordinance 620, amending the Land Development Regulations Ordinance of Maurice River Township, introduced on September 20, 2012 and adopted on October 3, 2012.

These amendments has been reviewed to determine whether they conform with the standards for certification of municipal master plans and land use ordinances as set out in N.J.A.C. 7:50 3.39 of the Pinelands Comprehensive Management Plan. The findings from this review are presented below. The

numbers used to designate the respective items correspond to the numbers used to identify the standards in N.J.A.C. 7:50 3.39.

1. Natural Resource Inventory

Not applicable.

2. Required Provisions of Land Use Ordinance Relating to Development Standards

Forestry

Ordinance 620 amends the Township's Land Development Regulations Ordinance by revising and adding definitions related to forestry. Specifically, terms for such forestry activities as "artificial regeneration," "clearcutting" and "disking" are added and the existing definition of "forestry" is revised to make clear that it includes these and other silvicultural practices. Ordinance 620 further amends the Land Development Regulations Ordinance by replacing Section 35-8.5.D, in its entirety, with an amended set of standards applicable to forestry activities in the Pinelands Area. Included in this revised section are detailed standards for a wide variety of silvicultural practices, as well as limitations on amount of land that may be subject to these practices and the Pinelands Native Forest Types in which such practices may or may not be conducted.

The amended forestry standards adopted by Ordinance 620 are consistent with the March 2010 amendments to the Pinelands Comprehensive Management Plan.

Wetlands Management

Ordinance 620 amends the Township's Land Development Regulations Ordinance by adding a definition of "wetlands management". Ordinance 620 also revises Section 35-11.4.AF.5 to indicate that wetlands management may be permitted in wetlands, subject to the standards of the Comprehensive Management Plan. In so doing, Ordinance 620 sufficiently responds to the December 2009 Comprehensive Management Plan amendments relative to wetlands management.

Development Transfer Program

Ordinance 620 amends the Land Development Regulations Ordinance by revising the provisions of the Township's development transfer program to clarify the types of uses which may be permitted on noncontiguous lands used to meet density requirements. Specifically, Ordinance 620 states that all noncontiguous lands utilized in the development transfer program must be permanently protected through recordation of a deed of restriction, with only the following uses permitted: low intensity recreation, ecological management and forestry. Limits on clearing and impervious surface then also apply to these uses. In addition, in cases where agricultural uses exist on the lands to be protected, Ordinance 620 provides that such agricultural uses may be permitted to continue and, in some cases, expand, if certain conditions related to impervious surface and the preparation of Resource Management System Plans are met.

The amended development transfer program standards adopted by Ordinance 620 are consistent with the April 2009 amendments to the Pinelands Comprehensive Management Plan.

As discussed below, the Township's Master Plan Report recommends that the use of noncontiguous lands through density transfer be considered as a means of encouraging residential cluster development around ponds created by mining operations. Such an amendment to the Township's development transfer program is not necessary for purposes of conformance with the Comprehensive Management Plan, but it would be useful in the Township's efforts to focus residential development in appropriate locations and provide for the long-term future of various mining sites. Ordinance 620 does not implement this Master Plan recommendation, which means that the Township's development transfer program remains available only to facilitate the development of existing undersized lots. The Executive Director hopes to work with the municipality on an additional ordinance amendment in the future.

Cluster Development

Maurice River Township's August 2012 Master Plan Reexamination Report and Update contains a review of existing conditions, a discussion of recent amendments to the CMP and a detailed analysis of the potential impacts the clustering amendments might have on specific parcels and areas within the municipality's Forest and Rural Development Areas. Of the 36,000 acres in the Township's Forest and Rural Development Areas, approximately 55% is in public ownership. After eliminating developed lands and undersized lots, the Master Plan Report estimates that there are approximately 12,000 acres in these two management areas that would qualify for cluster development. The Master Plan Report divides this acreage into 11 distinct areas and examines each area on a parcel by parcel basis, taking into consideration size, ownership, road frontage and environmental constraints. Estimates of residential development potential and cluster development bonus units are then provided for each area. As a result of this analysis, the Master Plan Report estimates that approximately 530 units could be developed on the 12,000 available acres through clustering. An additional 175 units would be permitted through application of the bonus density provisions of the CMP's clustering rules.

The analysis completed as part of the Master Plan Report provided the Land Use Board with the information it needed to make a number of conclusions and recommendations. Importantly, the Board concluded that, overall, mandatory clustering would not result in significant negative impacts. In order to ensure that this would be the case, the Board identified areas where cluster development should be required to focus on existing road frontages, rather than resulting in new streets. In these areas, the Board further determined that minimum lot width requirements would be essential to maintaining the existing character of development. A lot width of 200 feet was therefore recommended where new cluster development occurs on existing street frontages. In cases where new roads were necessary, the recommended lot width was reduced to 150 feet so that infrastructure improvements would be minimized.

The Master Plan Report also identifies a number of open water ponds created through mining operations and recommends that cluster developments take advantage of these ponds as unique amenities. The Report further recommends that the open water areas be included in density calculations and bonus unit calculations for clustering. In addition, the Report recommends that density transfer be used as an additional means of encouraging "Lakefront Development", with

the use of noncontiguous lands in common ownership permitted to increase the number of units within a clustered lakefront development.

Finally, the Master Plan Report concludes that bonus units should be provided to larger cluster developments. In an effort to encourage the acquisition and preservation of uplands, however, the Report recommends that bonus density be applied only to the upland portion of a parcel. All wetlands would be excluded.

Ordinance 620 amends the Township's Land Development Regulations Ordinance for purposes of implementing the CMP's clustering amendments, as modified by the recommendations of the Master Plan Report. Specifically, Ordinance 620 adds residential cluster development as a permitted use in the Township's Pinelands Forest Area (PR and PC) and Pinelands Rural Development Area zoning districts (PRDA-R and PRDA-C). Furthermore, Ordinance 620 indicates that whenever two or more residential units are proposed in these zoning districts, cluster development will be required. The ordinance then sets forth the standards which all such cluster developments must meet, including a one acre lot size requirement, the location of the development area itself on a parcel and the provision of accessory recreational amenities. In addition to these general standards, Ordinance 620 also minimum lot width requirements that vary depending on the location of a cluster development. A minimum lot width of 200 feet is required for cluster developments located on existing street frontages, in keeping with the existing character of development. In those cluster developments where new roads prove to be necessary, the required minimum lot width is reduced to 150 feet in an effort to minimize infrastructure improvements and intrusion into forested areas.

According to Ordinance 620, the balance of the parcel located outside the residential cluster development area must be permanently protected through recordation of a deed of conservation restriction. This open space area must be owned and managed by a homeowners association, or it may be incorporated as part of one of the lots within the cluster development area. Permitted uses in the open space area are limited to low intensity recreation, ecological management and forestry, subject to specific limitations on clearing and impervious surface. In addition, in cases where agricultural uses exist on the lands to be protected, Ordinance 620 provides that such agricultural uses may be permitted to continue and, in some cases, expand, if certain conditions related to impervious surface and the preparation of Resource Management System Plans are met. Should a cluster development applicant elect to continue or expand an existing agricultural use on the parcel, Ordinance 620 requires that all of the new dwelling units to be constructed in the cluster development utilize on-site septic waste water treatment systems designed to reduce the level of nitrate/nitrogen in the waste water in accordance with N.J.A.C. 7:50-6.84(a)5 or the standards set forth in the Commission's Alternate Design Treatment Systems Pilot Program.

Ordinance 620 specifies that the number of residential lots permitted within a cluster development will be calculated based on the size of the parcel of land and the permitted density allowed in the Land Development Regulations Ordinance for the zoning district(s) in which the project will be located. For example, eight units would be permitted on a 200 acre parcel located in the Township's PC (Pinelands Conservation) District, where the permitted density is one unit per 25 acres. Ordinance 620 also provides bonus density to parcels of 50 or more acres in size. This bonus density ranges from 10 to 40%, depending on the size of the parcel and the permitted density of the zone in which the parcel is located. The larger the parcel and the lower the permitted density, the larger the percentage of bonus density provided.

The bonus density percentages and acreage thresholds adopted by Ordinance 620 are identical to those contained in N.J.A.C. 7:50-5.19(d)1 of the Comprehensive Management Plan. However, the Township has elected to make a significant change involving applicability of the bonus provisions. Ordinance 620 specifies that bonus density shall be provided only to the area of uplands on a parcel. Wetlands may not be included when calculating the number of bonus units to which a parcel is entitled. The Comprehensive Management Plan makes no such distinction and instead requires the allocation of bonus units on a gross acreage basis.

Ordinance 620 also makes two other changes of note to the clustering standards of the Comprehensive Management Plan. First, the range of open space ownership options provided by the Comprehensive Management Plan has been narrowed to two: the open space may be owned by a homeowners association or incorporated in one of the residential lots in the cluster development. Second, Ordinance 620 specifies that in one of the Township's Rural Development Area zoning districts, the PRDA-R Zone, new residential lots must be located along existing street frontages. The development of new roads in association with a cluster development is not permitted in the PRDA-R Zone.

Pinelands municipalities have always had the general ability to refine the various standards and provisions of the Comprehensive Management Plan and tailor them to local conditions, provided Comprehensive Management Plan goals and objectives continue to be achieved. In addition, Subchapter 6 (Management Programs and Minimum Standards) of the Comprehensive Management Plan expressly recognizes that municipalities may adopt more restrictive regulations, provided such regulations are compatible with the goals and objectives of the Plan. Moreover, when the Commission adopted its clustering amendments, a new certification standard was incorporated in order to make clear that this practice extends to the Forest and Rural Development Area residential clustering program. N.J.A.C. 7:50-3.39(a)2ix provides that municipalities may propose and the Commission may approve clustering ordinances that contain different standards than those set forth at N.J.A.C. 7:50-5.19(c) and (d), provided such standards are supported through the application of sound land use planning principles, are based upon local conditions or circumstances and do not undermine the overall objectives of the Forest and Rural Development clustering program.

In this case, Maurice River Township has chosen to incorporate several provisions which differ from those in the Comprehensive Management Plan. The first of these provisions, open space ownership, does not raise any issues. Municipalities are not required to provide for the full range of ownership options listed in the Comprehensive Management Plan. In cases where the open space is not incorporated in one of the residential lots in the cluster development, Maurice River has elected to rely on homeowners associations for open space ownership, preferring that option to taking ownership of the open space itself or allowing it to be transferred to a non-profit conservation organization. The second provision, restricting cluster developments to existing road frontages in the PRDA-R Zone, also does not raise any issues. This requirement was based on a detailed analysis (set forth in the Master Plan Report) of vacant parcels large enough to accommodate cluster development in the PRDA-R Zone, existing roads in the zone and existing development patterns. Based on that analysis, the requirement to use existing roads should not present any problems for proposed cluster developments.

More significantly, Maurice River Township has chosen to modify the bonus density provisions now contained in the Comprehensive Management Plan. These provisions were included in the clustering amendments for two reasons: to provide a measure of equity to property owners who

will now be required to develop homes on one acre lots rather than on the large estate lots they may have originally anticipated; and, to encourage and reward lot consolidation in the Forest and Rural Development Areas in the hope that this would result in larger contiguous areas of protected open space and, consequently, reduced forest fragmentation. Ordinance 620 limits the applicability of bonus units to the upland portions of a parcel. As a result, although gross acreage may be used when calculating the number of units to which a parcel is entitled based on permitted density, only the uplands may be used to generate bonus units. Wetlands may not be included in the bonus unit calculation. According to the Township's Master Plan Report, the incorporation of this provision in the cluster ordinance was recommended as a means of encouraging the acquisition and protection of uplands, as the large areas of wetlands in the municipality are already protected by virtue of their environmental limitations.

There are indeed large areas of wetlands and other environmentally sensitive lands in Maurice River Township's Forest and Rural Development Areas. The Commission was aware of the existence of wetlands, habitat and other environmental limitations in these management areas when it adopted the clustering amendments to the Comprehensive Management Plan. It was precisely those environmental conditions and the need to prevent further fragmentation of the forest which led to a requirement for mandatory clustering and the incorporation of incentives for aggregation of additional lands. Any revisions to these requirements need to be based on local conditions or circumstances. In other words, there must be something specific to Maurice River Township which warrants a change to the clustering provisions adopted by the Commission for the entire Pinelands region. Although the clustering analysis reflected in the Township's Master Plan Report was both detailed and thorough, it does not provide a basis for the exclusion of wetlands from bonus density calculations that is specific to Maurice River. The Report suggests that it is more important to encourage assemblage and preservation of upland areas than wetlands areas. While that may be true, it does not support the elimination of any incentive to acquire and preserve wetlands, nor does it reflect a condition unique to Maurice River.

In addition, revisions to the Comprehensive Management Plan's standards must not undermine the overall objectives of the Forest and Rural Development clustering program. By excluding wetlands from the bonus density calculations, Maurice River has adopted a provision which could significantly reduce the bonus units to which a parcel is entitled. Although there would still be an incentive to acquire additional lands, this incentive has been reduced by the Township's ordinance. Equally important is the reduction in the number of lots which could result in any particular cluster development, an outcome which is contrary to one of the Commission's purposes in incorporating the bonus unit provisions in the Comprehensive Management Plan.

Section 9-24A.2.b will need to be revised to indicate that bonus density is to be applied to the gross acreage of a parcel, including both uplands and wetlands. A special provision for "Lakefront Developments", where the units will be clustered around open water areas created by resource extraction operations, may continue to apply. This provision allows for the open water areas to be used in calculating bonus density only if the development is designed as a lakefront community, with the water area incorporated as a recreational element of the development plan. If the water area is not utilized in this fashion, it may not be included in bonus density calculations. Because it is based on any analysis of specific properties and the Township's desire to encourage a specific form of development, while providing a continued opportunity for a property owner or developer to attain the full bonus density, this "Lakefront Development" provision is not inconsistent with the Comprehensive Management Plan.

The amendments adopted by the April 2012 Master Plan Reexamination Report and Ordinance 620 do not sufficiently respond to the April 2009 Comprehensive Management Plan amendments relative to cluster development and are not fully consistent with the land use and development standards of the Comprehensive Management Plan.

With the adoption of the amendments set forth in Attachment A, this standard for certification will be met.

3. Requirement for Certificate of Filing and Content of Development Applications

Ordinance 620 amends the Land Development Regulations Ordinance by replacing Section 35-8.5.C, in its entirety, with an amended set of application requirements for municipal forestry permits. For forestry activities on parcels of land enrolled in the New Jersey Forest Stewardship Program, an applicant needs only to submit to the municipality a copy of his or her approved Stewardship Plans. For all other forestry applications, the list of submission requirements includes a forestry management plan, information concerning threatened and endangered plants and animals, cultural resources and the use of herbicides, written comments from the New Jersey State Forester and a Certificate of Filing issued by the Pinelands Commission.

The amended forestry application requirements adopted by Ordinance 620 are consistent with the March 2010 amendments to the Pinelands Comprehensive Management Plan. Therefore, this standard for certification is met.

4. Requirement for Municipal Review and Action on All Development

Not applicable.

5. Review and Action on Forestry Applications

Not applicable.

6. Review of Local Permits

Not applicable.

7. Requirement for Capital Improvement Program

Not applicable.

8. Accommodation of Pinelands Development Credits

Not applicable.

9. Referral of Development Applications to Environmental Commission

Not applicable**.**

10. General Conformance Requirements

Resolution 2012-09, adopting the August 2012 Master Plan Reexamination Report and Update, and Ordinance 620, amending the Land Development Regulations Ordinance of Maurice River Township, are not fully consistent with the standards and provisions of the Pinelands Comprehensive Management Plan.

With the adoption of the amendments set forth in Attachment A, this standard for certification will be met.

11. Conformance with Energy Conservation

Not applicable.

12. Conformance with the Federal Act

No special issues exist relative to the Federal Act. However, Resolution 2012-09, adopting the August 2012 Master Plan Reexamination Report and Update, and Ordinance 620, amending the Land Development Regulations Ordinance of Maurice River Township are not fully consistent with the standards and provisions of the Pinelands Comprehensive Management Plan.

With the adoption of the amendments set forth in Attachment A, this standard for certification will be met.

13. Procedure to Resolve Intermunicipal Conflicts

Not applicable.

PUBLIC HEARING

A public hearing to receive testimony concerning Maurice River Township's application for certification of Resolution 2012-09 and Ordinance 620 was duly advertised, noticed and held on December 5, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which no testimony was received.

Written comments were accepted through December 10, 2012 and were received from the following individuals:

December 10, 2012 letter from Jaclyn Rhoads, Ph.D., Pinelands Preservation Alliance (see Exhibit #1)

CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that Resolution 2012-09 and Ordinance 620 sufficiently implement the December 2009 and March 2010 amendments to the Pinelands Comprehensive Management Plan related to wetlands management and forestry. The Executive Director has further concluded that the Resolution 2012-09 and Ordinance 620 do not fully implement the April 2009 amendments to the Comprehensive Management Plan related to residential cluster development and therefore do not fully comply with Comprehensive Management Plan standards for the certification of municipal master plans and land use ordinances. Accordingly, the Executive Director recommends that the Commission issue an order to conditionally certify Resolution 2012-09 and Ordinance 620 of Maurice River Township.

SRG/CMA
Attachments

ATTACHMENT A TO EXECUTIVE DIRECTOR'S JANUARY 4, 2013 REPORT ON MAURICE RIVER TOWNSHIP RESOLUTION 2012-09 AND ORDINANCE 620

Adoption of the following amendments, or comparable revisions, to the Land Development Regulations Ordinance of Maurice River Township will make Ordinance 620 consistent with the Pinelands Comprehensive Management Plan and complete the Township's response to the April 2009 amendments to the Pinelands Comprehensive Management Plan:

1. Article 35-9, Specific Use Standards and Regulations, is hereby amended by revising Section 9-24A.2.b to read as follows:

   b. A density bonus is permitted on lots greater than 50 acres in accordance with the table below. The bonus density shall be calculated based on the gross acreage of the parcel of land and the density permitted in Subsection A.1 above. The density bonus shall be applied in accordance with the following table:

Parcel Size	**PR, PRDA-R Districts**	**PRDA-C District**	**PC District**
<50 acres	0	0	0
50-99.99 acres	15%	20%	25%
100-149.99 acres	20%	25%	30%
≥150 acres	25%	30%	40%

RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-13- 66

TITLE: Issuing an Order to Certify Waterford Township's December 2010 Master Plan and Ordinance 2012-15, Amending Chapter 176 (Land Use, Development and Zoning) of the codified Land Use Ordinances of Waterford Township, and to Conditionally Certify Ordinance 2012-13, Amending Chapter 176 (Land Use, Development and Zoning) of the codified Land Use Ordinances of Waterford Township and Ordinance 2012-14, Amending the Zoning Map for Waterford Township

Commissioner Mc Glinchey **moves and Commissioner** Jackson **seconds the motion that:**

WHEREAS, on July 8, 1983, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Waterford Township; and

WHEREAS, Resolution #PC4-83-56 of the Pinelands Commission specified that any amendment to Waterford Township's certified Master Plan and Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, Resolution #PC4-83-56 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

WHEREAS, on January 16, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to mandatory residential cluster development in the Pinelands Forest and Rural Development Areas; and

WHERAS, on October 9, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to wetlands management; and

WHEREAS, on November 13, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to forestry; and

WHEREAS, these three sets of amendments took effect on April 6, 2009, December 21, 2009 and March 1, 2010, respectively; and

WHEREAS, municipalities located within the Pinelands Area are required to adopt ordinance amendments necessary for conformance with any Comprehensive Management Plan amendments within one year of the effective date of any such amendments; and

WHEREAS, on June 11, 2010, the Pinelands Commission adopted Resolution PC4-10-27, extending the time period for response to the clustering and wetlands management amendments to March 1, 2011 in order to provide municipalities with sufficient time for consideration, preparation and adoption of master plan and ordinance amendments to address the three sets of Comprehensive Management Plan amendments simultaneously; and

WHEREAS, Commission staff subsequently provided a model ordinance and other guidance to Waterford Township to assist the municipality in completing its response to the three sets of Comprehensive Management Plan amendments; and

WHEREAS, on December 28, 2010, the Waterford Township Planning Board adopted Resolution 10-26, approving the municipality's December 2010 Master Plan; and

WHEREAS, the Township's 2010 Master Plan contains a discussion of the manner in which Waterford Township should respond to recent amendments to the CMP related to cluster development in the Pinelands Forest and Rural Development Areas, as well as recommendations for changes in zoning and Pinelands management area boundaries; and

WHEREAS, the Pinelands Commission received adopted copies of Resolution 10-26 and the December 2010 Master Plan on January 21, 2011; and

WHEREAS, by email dated July 6, 2011, Waterford Township notified the Commission of the need for an extension of the March 1, 2011 deadline for adoption and submission of the necessary ordinance amendments; and

WHEREAS, by letter dated July 7, 2011, the Executive Director notified the Township that an extension was granted until January 31, 2012 to accommodate the Township's anticipated adoption schedule for master plan and ordinance amendments; and

WHEREAS, by email dated January 30, 2012, Waterford Township notified the Commission of its revised adoption schedule and the need for a further extension of the March 1, 2011 deadline; and

WHEREAS, by letter dated January 30, 2012, the Executive Director notified the Township that a second extension was granted until May 1, 2012; and

WHEREAS, by letter dated May 14, 2012, the Township requested additional time to complete its adoption process; and

WHEREAS, by letter dated June 11, 2012, the Executive Director notified the Township that a final extension was granted until September 30, 2012; and

WHEREAS, on September 12, 2012, Waterford Township adopted Ordinances 2012-13, 2012-14 and 2012-15; and

WHEREAS, Ordinance 2012-13 amends Chapter 176 (Land Use, Development and Zoning) of the Township's codified Land Use Ordinances by, among other things, establishing standards for accessory solar and wind energy systems and by establishing standards for commercial-scale solar energy facilities; and

WHEREAS, Ordinance 2012-14 adopts the Township's revised Zoning Map; and

WHEREAS, Ordinance 2012-15 amends Chapter 176 in response to the forestry, wetlands management and residential cluster development amendments to the Pinelands Comprehensive Management Plan; and

WHEREAS, the Pinelands Commission received certified copies of Ordinances 2012-13, 2012-14 and 2012-15 on September 17, 2012; and

WHEREAS, the Pinelands Commission received a copy of the amended Zoning Map adopted by Ordinance 2012-14 on September 19, 2012; and

WHEREAS, by letter dated October 24, 2012, the Executive Director notified the Township that the December 2010 Master Plan and Ordinances 2012-13, 2012-14 and 2012-15 would require formal review and approval by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony on the December 2010 Master Plan and Ordinances 2012-13, 2012-14 and 2012-15 was duly advertised, noticed and held on November 7, 2012 at the Richard J. Sullivan Center, 203C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

WHEREAS, the Executive Director has found that the December 2010 Master Plan and Ordinance 2012-15 sufficiently implement the cluster development, forestry and wetlands management amendments to the Comprehensive Management Plan and are otherwise consistent with Comprehensive Management Plan standards; and

WHEREAS, the Executive Director has further found that Ordinances 2012-13 and 2012-14 are not fully consistent with the standards and provisions of the Pinelands Comprehensive Management Plan; and

WHEREAS, the Executive Director has submitted a report to the Commission recommending issuance of an order to certify that the December 2010 Master Plan and Ordinance 2012-15, amending Chapter 176 (Land Use, Development and Zoning) of the Code of Waterford Township, are in conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Executive Director's report also recommends issuance of an order to certify with conditions that Ordinance 2012-13, amending Chapter 176 (Land Use, Development and Zoning) of the codified Land Use Ordinances of Waterford Township, and Ordinance 2012-14, adopting a revised Zoning Map, are in conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that the December 2010 Master Plan and Ordinance 2012-15 be certified and that Ordinances 2012-13 and 2012-14 be conditionally certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning the December 2010 Master Plan and Ordinances 2012-13, 2012-14 and 2012-15 and has reviewed the Executive Director's report; and

WHEREAS, the Pinelands Commission accepts the recommendation of the Executive Director; 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

1. An Order is hereby issued to certify that the December 2010 Master Plan and Ordinance 2012-15, amending Chapter 176 (Land Use, Development and Zoning) of the Code of Waterford Township, are in conformance with the Pinelands Comprehensive Management Plan.

2. An Order is hereby issued to conditionally certify that Ordinance 2012-13, amending Chapter 176 (Land Use, Development and Zoning) of the codified Land Use Ordinances of Waterford Township, is in conformance with the Pinelands Comprehensive Management Plan.

3. An Order is hereby issued to conditionally certify that Ordinance 2012-14, amending the Zoning Map for Waterford Township, is in conformance with the Pinelands Comprehensive Management Plan.

4. To obtain full certification of Ordinances 2012-13 and 2012-14 by the Pinelands Commission, Waterford Township must amend Chapter 176 (Land Use, Development and Zoning) of its codified Land Use Ordinances and its Zoning Map in accordance with Attachments A and B, respectively, of this Order. The Township need not amend its Zoning Map precisely as indicated on Attachment B; nor need it adopt the conditions in Attachment A verbatim; revisions comparable thereto or consistent therewith in intent may also be acceptable.

5. Waterford Township shall have until May 11, 2013 to adopt and submit the revisions to its Zoning Map and to Chapter 176 (Land Use, Development and Zoning) of its codified Land Use Ordinances to the Pinelands Commission for approval pursuant to N.J.A.C. 7:50-3.45 and Attachment A and B hereto.

6. If the Township fails to submit the revisions to Chapter 176 (Land Use, Development and Zoning) of its codified Land Use Ordinances and to its Zoning Map pursuant to N.J.A.C. 7:50-3.45 and Attachments A and B hereto, respectively, by May 11, 2013, or if said submissions are not fully certified by the Pinelands Commission, Ordinances 2012-13 and 2012-14 shall be disapproved.

7. Any additional amendments to Waterford Township's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

Record of Commission Votes

	AYE	NAY	NP	ABS		AYE	NAY	NP	ABS		AYE	NAY	NP	ABS
Ashmun	X				Galletta	X				Prickett	X			
Brown	X				Haas	X				Quinn	X			
DiBello	X				Jackson	X				Rohan Green			X	
Earlen	X				Lloyd			X		Witt			X	
Ficcaglia	X				McGlinchey	X				Lohbauer	X			

Adopted at a meeting of the Pinelands Commission

Date: Jan. 11, 2013

Nancy Wittenberg
Executive Director

Mark S. Lohbauer
Chairman

ATTACHMENT A TO EXECUTIVE DIRECTOR'S REPORT DATED JANUARY 4, 2013
ON WATERFORD TOWNSHIP'S 2010 MASTER PLAN AND
ORDINANCES 2012-13, 2012-14 AND 2012-15

Adoption of the following amendments, or comparable revisions thereto, will make Ordinance 2012-13 consistent with the standards and provisions of the Pinelands Comprehensive Management Plan:

1. Section 176-44.5 – Add a Paragraph F to read:

F – Limitations for Principal Solar Energy Systems/Facilities

1. Solar energy systems or facilities shall be permitted in accordance with the provisions of this Ordinance provided that public service infrastructure necessary to support the solar energy facility is available, or can be provided without any off-site development in the Preservation Area District or a Forest Area.

2. Should the development of new or expansion of existing on-site or off-site infrastructure be necessary to accommodate the a principal solar energy system or facility, clearing shall be limited to that which is necessary to accommodate the use in accordance with N.J.A.C. 7:50-6.23. New rights-of-way shall be limited to a maximum width of 20 feet, unless additional width is necessary to address specific safety or reliability concerns.

2. Section 176-127.2 – Delete Paragraph I in its entirety and replace it with the following:

I – Commercial Scale Solar Generating Facilities subject to the following conditions:

1. Facilities may occupy any previously disturbed portions of a parcel that have not subsequently been restored. The clearing of additional lands to accommodate a proposed solar energy facility may also be permitted, provided the percentage of cleared land on any parcel does not exceed 30 percent, taking into consideration both existing and proposed clearing.

2 Facilities should be sited to avoid lands with high ecological values, such as undisturbed woodlands, wetlands, rare or critical floral/faunal species habitats.

<u>Additional</u> Approval Conditions required include:

1. A minimum setback of three hundred feet (300') from any public right-of-way to the facility.

2. A minimum setback of five hundred feet (500') from any wild and scenic river to the facility.

3. A minimum setback of five hundred feet (500') to any occupied residential use or residentially-zoned parcel.

4. A minimum setback of five hundred feet (500') to any low-intensity recreational facilities and campgrounds.

5. A Visual Impact Analysis depicting the proposed array from a series of perspectives, including all wild and scenic rivers, public rights-of-way, low-intensity recreational facilities and campgrounds, and residential properties within 0.5 miles of the subject parcel emphasizing how glare is to be minimized and to indicate buffering provisions.

6. Description of natural and/or installed buffers designed to shield the array from wild and scenic rivers, public rights-of way, low-intensity recreational facilities and campgrounds, and residential uses within close proximity.

7. A tree survey which provides an inventory of all mature (6" of greater dbh) trees being removed to accommodate the array, along with a Compensatory Planning and Maintenance Plan indicating how and where these specimens are to be replaced.

8. A description of how the project would be accessed for maintenance, as well as by fire, police and EMS personnel.

9. A description and details of perimeter security measures.

3. Section 176-126.2.H – Subsection 6 shall be deleted in its entirety and replaced with the following:

6. Commercial Solar Generating Facilities shall be located and screened in accordance with N.J.A.C. 7:50-5.36(a)2.

4. The following language shall be deleted from Ordinance 2012-13 in its entirety:

"Section 176-139.3 – A new Section to be captioned "Conditional Uses" to read:

"Commercial Scale Solar Generating Facilities in compliance with Section 176-129.2"

ATTACHMENT B TO EXECUTIVE DIRECTOR'S REPORT DATED JANUARY 4, 2013
ON WATERFORD TOWNSHIP'S 2010 MASTER PLAN AND
ORDINANCES 2012-13, 2012-14 AND 2012-15

Adoption of the following amendments to the Township's Zoning Map, or comparable revisions thereto, will make Ordinance 2012-14 consistent with the standards and provisions of the Pinelands Comprehensive Management Plan:

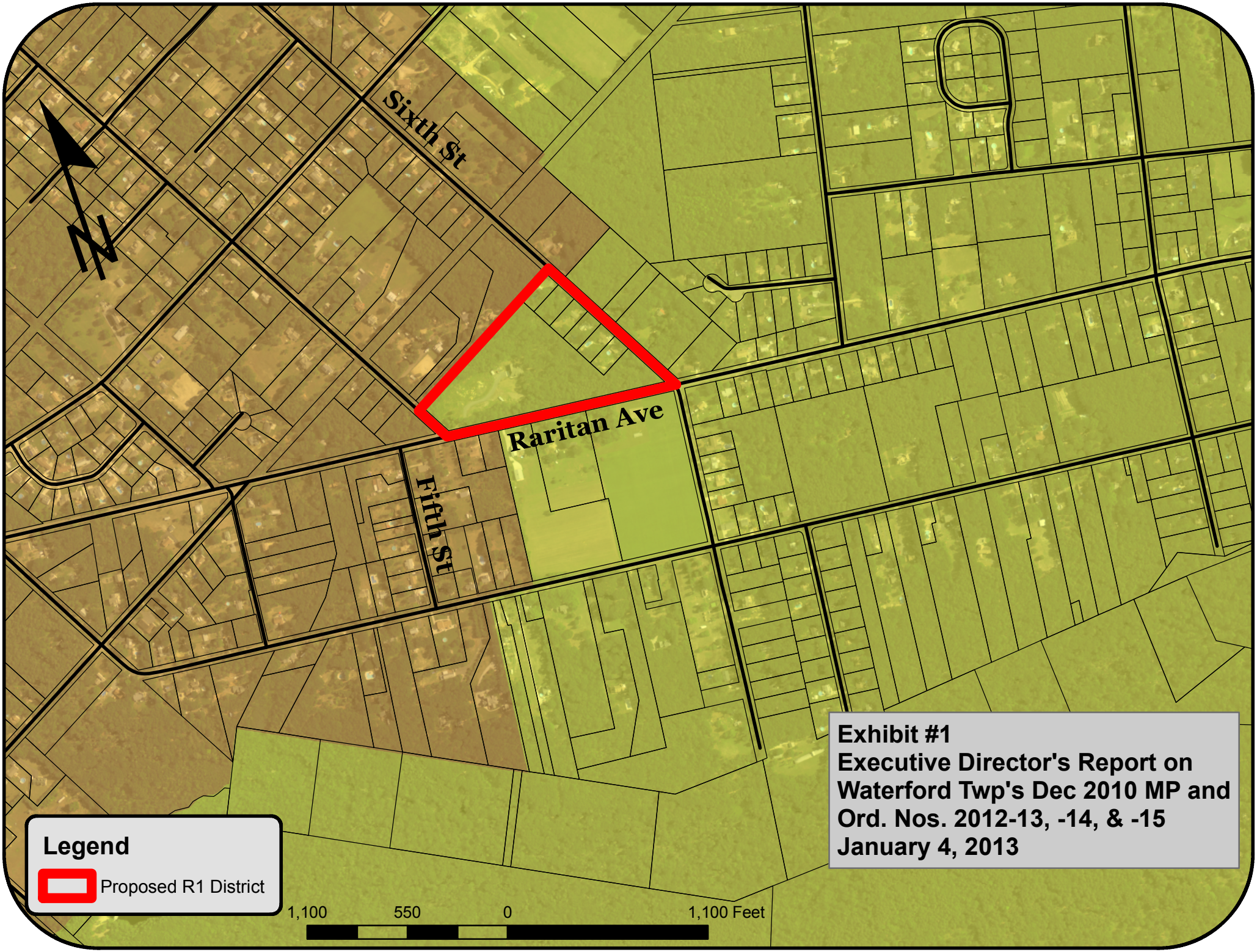
1. The following parcels are hereby rezoned:

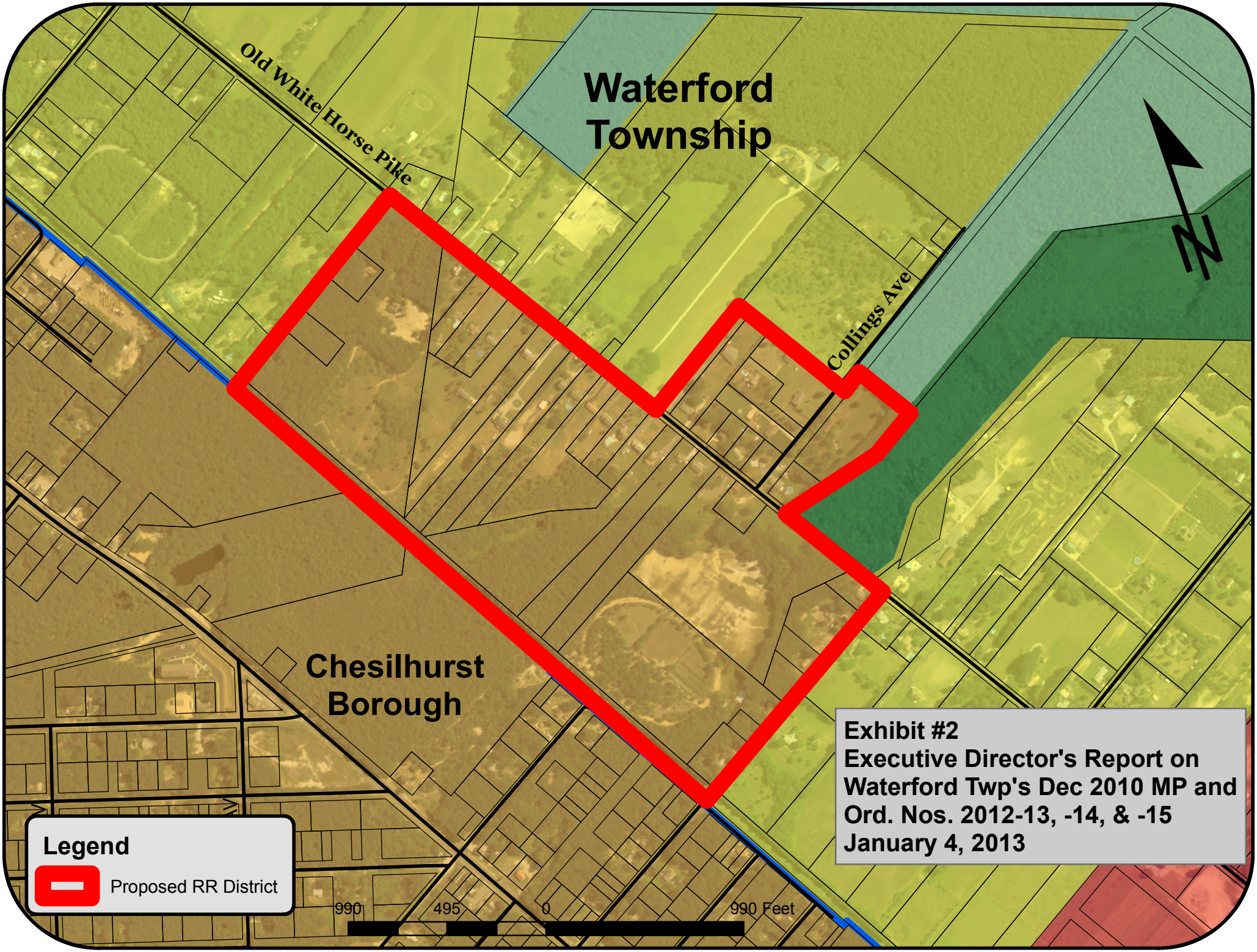
   Block 45, Lots 3, 6, and 6.01 shall be included within the Township's PF District.

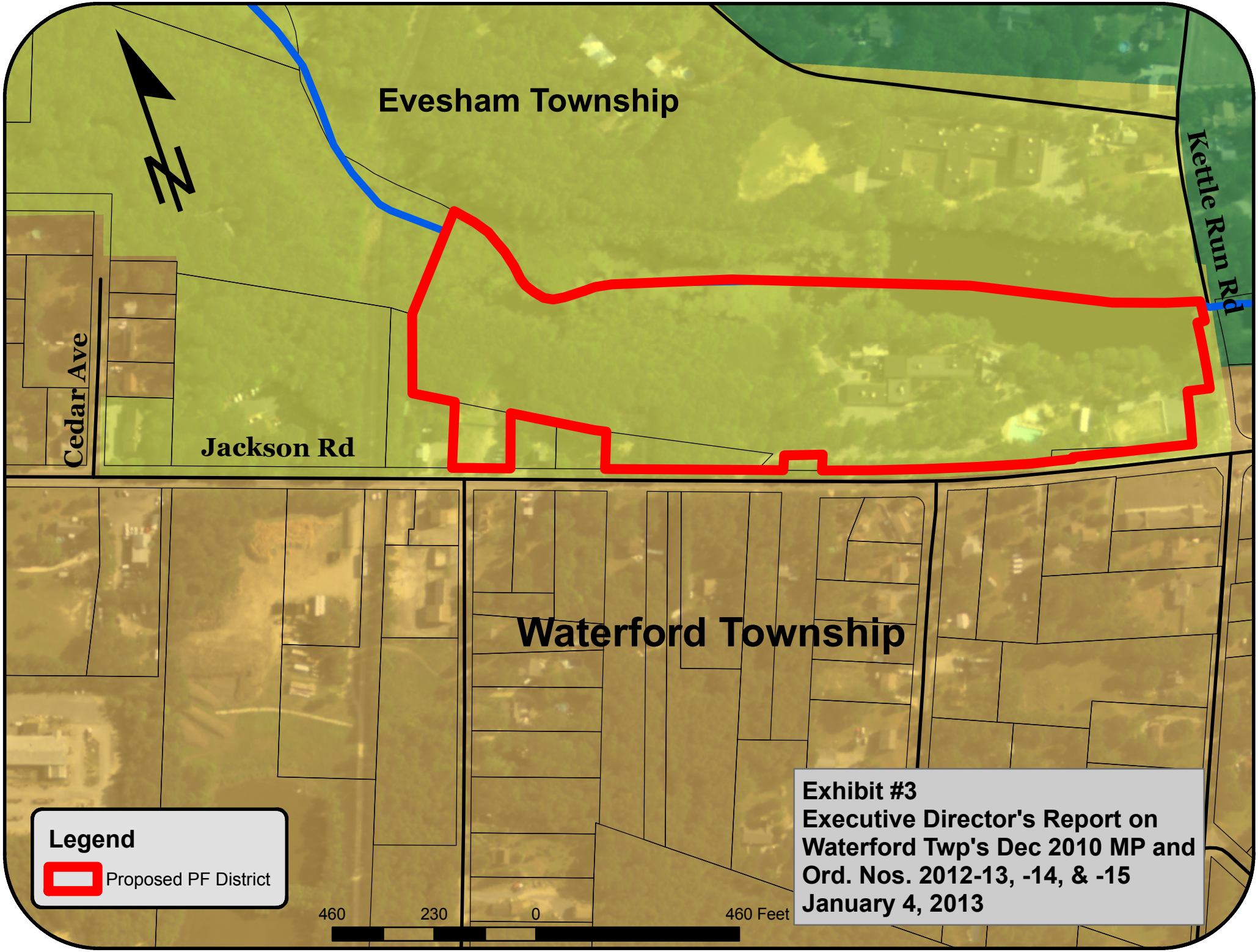
   Block 45.01, Lot 9 shall be included within the Township's PF District.

   Block 45, Lot 8 shall be included within the Township's PHB District.

   Block 45.01, Lot 11.02 shall be included within the Township's PHB District.


Sixth St
N
Raritan Ave
Fifth St
Legend
Proposed R1 District
1,100
550
0
1,100 Feet
Exhibit #1
Executive Director's Report on
Waterford Twp's Dec 2010 MP and
Ord. Nos. 2012-13, -14, & -15
January 4, 2013


Waterford Township
Old White Horse Pike
Collings Ave
N
Chesilhurst Borough
Legend
Proposed RR District
990
495
0
990 Feet
Exhibit #2
Executive Director's Report on
Waterford Twp's Dec 2010 MP and
Ord. Nos. 2012-13, -14, & -15
January 4, 2013


Evesham Township
Kettle Run Rd
Cedar Ave
Jackson Rd
Waterford Township
Legend
Proposed PF District
460
230
0
460 Feet
Exhibit #3
Executive Director's Report on
Waterford Twp's Dec 2010 MP and
Ord. Nos. 2012-13, -14, & -15
January 4, 2013

State of New Jersey
THE PINELANDS COMMISSION
PO BOX 359
NEW LISBON, NJ 08064
(609) 894-7300
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General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

REPORT ON RESOLUTION 10-26, ADOPTING WATERFORD TOWNSHIP'S DECEMBER 2010 MASTER PLAN, AND ORDINANCES 2012-13, 2012-14 AND 2012-15, AMENDING CHAPTER 176 (LAND USE, DEVELOPMENT AND ZONING) OF THE CODE OF WATERFORD TOWNSHIP

January 4, 2013

Waterford Township
2131 Auburn Avenue
Atco, NJ 08004-1900

FINDINGS OF FACT

I. Background

The Township of Waterford is located in the western portion of the Pinelands Area, in eastern Camden County. Pinelands municipalities that abut Waterford Township include the Boroughs of Berlin and Chesilhurst and the Townships of Berlin and Winslow in Camden County, the Townships of Evesham, Medford and Shamong in Burlington County and the Town of Hammonton in Atlantic County.

On July 8, 1983, the Pinelands Commission fully certified the Master Plan and codified Land Use Ordinances of Waterford Township.

On January 16, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to mandatory residential cluster development in the Pinelands Forest and Rural Development Areas. On October 9, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to wetlands management. On November 13, 2009, the Pinelands Commission adopted amendments to the Comprehensive Management Plan related to forestry. These three sets of amendments took effect on April 6, 2009, December 21, 2009 and March 1, 2010, respectively.

Municipalities located within the Pinelands Area are required to adopt ordinance amendments necessary for conformance with any Comprehensive Management Plan amendments within one year of the effective date of any such amendments. On June 11, 2010, the Pinelands Commission adopted Resolution PC4-10-27, extending the time period for response to the clustering and wetlands management amendments to March 1, 2011 in order to provide municipalities with sufficient time for consideration, preparation and adoption of master plan and ordinance amendments to address the three sets of

Comprehensive Management Plan amendments simultaneously. Commission staff subsequently provided a model ordinance and other guidance to the Township to assist the municipality in completing its response to the three sets of Comprehensive Management Plan amendments.

On December 28, 2010, the Waterford Township Planning Board adopted Resolution 10-26, approving the municipality's December 2010 Master Plan. The 2010 Master Plan contains a discussion of the manner in which Evesham Township should respond to recent amendments to the CMP related to cluster development in the Pinelands Forest and Rural Development Areas. The Pinelands Commission received adopted copies of Resolution 10-26 and the December 2010 Master Plan on January 21, 2011.

By email dated July 6, 2011, Waterford Township notified the Commission of the need for an extension of the March 1, 2011 deadline for adoption and submission of the necessary ordinance amendments. By letter dated July 7, 2011, the Executive Director notified the Township that an extension was granted until January 31, 2012 to accommodate the Township's anticipated adoption schedule for master plan and ordinance amendments.

By email dated January 30, 2012, Waterford Township notified the Commission of its revised adoption schedule and the need for a further extension of the March 1, 2011 deadline. By letter dated January 30, 2012, the Executive Director notified the Township that a second extension was granted until May 1, 2012.

By letter dated May 14, 2012, the Township requested additional time to complete its adoption process. By letter dated June 11, 2012, the Executive Director notified the Township that a final extension was granted until September 30, 2012.

On September 12, 2012, Waterford Township adopted Ordinances 2012-13, 2012-14 and 2012-15. Ordinance 2012-13 amends various sections of Chapter 176 (Land Use, Development and Zoning) of the Code of the Township of Waterford. In addition to other changes, Ordinance 2012-13 amends Chapter 176 by establishing standards for accessory solar and wind energy systems, which are applicable throughout the Township, and by establishing standards for commercial scale solar power arrays, which are permitted only within certain zoning districts. Ordinance 2012-14 adopts a revised Official Zoning Map for the Township, dated May 15, 2012, which adjusts the boundaries of existing zoning districts in several places. Some of the zoning changes implemented by Ordinance 2012-14 include corresponding changes in Pinelands Management Areas. Ordinance 2012-15 amends Chapter 176 in response to the forestry, wetlands management and residential cluster development amendments to the Pinelands Comprehensive Management Plan.

The Pinelands Commission received certified copies of Ordinances 2012-13, 2012-14 and 2012-15 on September 17, 2012. The Pinelands Commission received a copy of the amended Zoning Map adopted by Ordinance 2012-14 on September 19, 2012.

By letter dated October 24, 2012, the Executive Director notified the Township that the December 2010 Master Plan and Ordinances 2012-13, 2012-14 and 2012-15 would require formal review and approval by the Pinelands Commission.

II. Master Plans and Land Use Ordinances

The following documents have been submitted to the Pinelands Commission for certification:

* Resolution 10-26, approving the December 2010 Master Plan of Waterford Township, adopted by the Planning Board on December 28, 2010;

* Ordinance 2012-13, amending Chapter 176 (Land Use, Development and Zoning) of the Code of Waterford Township, introduced on August 8, 2012 and adopted on September 12, 2012;

* Ordinance 2012-14, adopting a revised Official Zoning Map for Waterford Township, dated May 15, 2012, introduced on August 8, 2012 and adopted on September 12, 2012; and

* Ordinance 2012-15, amending Chapter 176 (Land Use, Development and Zoning) of the Code of Waterford Township, introduced on August 8, 2012 and adopted on September 12, 2012.

These amendments have been reviewed to determine whether they conform with the standards for certification of municipal master plans and land use ordinances as set out in N.J.A.C. 7:50 3.39 of the Pinelands Comprehensive Management Plan. The findings from this review are presented below. The numbers used to designate the respective items correspond to the numbers used to identify the standards in N.J.A.C. 7:50 3.39.

1. Natural Resource Inventory

Not applicable.

2. Required Provisions of Land Use Ordinance Relating to Development Standards

Forestry

Ordinance 2012-15 amends Chapter 176 of the Township's Code by revising and adding definitions related to forestry. Specifically, terms for such forestry activities as "artificial regeneration," "clearcutting" and "disking" are added and the existing definition of "forestry" is revised to make clear that it includes these and other silvicultural practices. Ordinance 2012-15 further amends Chapter 176 by replacing Section 17-12.6.B, in its entirety, with an amended set of standards applicable to forestry activities in the Pinelands Area. Included in this revised section are detailed standards for a wide variety of silvicultural practices, as well as limitations on amount of land that may be subject to these practices and the Pinelands Native Forest Types in which such practices may or may not be conducted.

The amended forestry standards adopted by Ordinance 2012-15 are consistent with the March 2010 amendments to the Pinelands Comprehensive Management Plan.

Wetlands Management

Ordinance 2012-15 amends Chapter 176 of the Township's Code by adding a definition of "wetlands management." Ordinance 2012-15 also revises Section 176-103.F to indicate that wetlands management may be permitted in wetlands, subject to the standards of the

Comprehensive Management Plan. In so doing, Ordinance 2012-15 sufficiently responds to the December 2009 Comprehensive Management Plan amendments relative to wetlands management.

Development Transfer Program

Ordinance 2012-15 amends Chapter 176 by revising the provisions of the Township's development transfer program to clarify the types of uses which may be permitted on noncontiguous lands used to meet density requirements. Specifically, Ordinance 2012-15 states that all noncontiguous lands utilized in the development transfer program must be permanently protected through recordation of a deed of restriction, with only the following uses permitted: low intensity recreation, ecological management and forestry. Limits on clearing and impervious surface then also apply to these uses. In addition, in cases where agricultural uses exist on the lands to be protected, Ordinance 2012-15 provides that such agricultural uses may be permitted to continue and, in some cases, expand, if certain conditions related to impervious surface and the preparation of Resource Management System Plans are met.

The amended development transfer program standards adopted by Ordinance 2012-15 are consistent with the April 2009 amendments to the Pinelands Comprehensive Management Plan.

Cluster Development

Ordinance 2012-15 amends Chapter 176 by adding residential cluster development as a permitted use in the Township's Pinelands Forest and Rural Development Area zoning districts (the RC and RR Zones). Furthermore, Ordinance 2012-15 indicates that whenever two or more residential units are proposed in these zoning districts, cluster development will be required. The ordinance then sets forth the standards which all such cluster developments must meet, including a one acre lot size requirement, the location of the development area itself on a parcel and the provision of accessory recreational amenities. Ordinance 2012-15 also specifies that the number of residential lots permitted within a cluster development will be calculated based on the size of the parcel of land and the permitted density allowed in Chapter 176 for the zoning district(s) in which the project will be located. For example, 17 units would be permitted on a 100 acre parcel located in the Township's RR District, where the permitted density is one unit per 5.7 acres.

Ordinance 2012-15 also provides bonus density to parcels of 50 or more acres in size. This bonus density ranges from 10 to 30%, depending on the size of the parcel and the permitted density of the zone in which the parcel is located. The larger the parcel and the lower the permitted density, the larger the percentage of bonus density provided.

According to Ordinance 2012-15, the balance of the parcel located outside the residential cluster development area must be permanently protected through recordation of a deed of conservation restriction. Permitted uses in the open space area are limited to low intensity recreation, ecological management and forestry, subject to specific limitations on clearing and impervious surface. In addition, in cases where agricultural uses exist on the lands to be protected, Ordinance 2012-15 provides that such agricultural uses may be permitted to continue and, in some cases, expand, if certain conditions related to impervious surface and the preparation of Resource Management System Plans are met. Should a cluster development applicant elect to continue or expand an existing agricultural use on the parcel, Ordinance 2012-15 requires that all of the new

dwelling units to be constructed in the cluster development utilize on-site septic waste water treatment systems designed to reduce the level of nitrate/nitrogen in the waste water.

Ordinance 2012-15 makes one change to the Comprehensive Management Plan clustering provisions. The Comprehensive Management Plan provides that the open space area created through clustering must be owned and managed by a homeowners association, a non-profit conservation organization or the Township, or incorporated as part of one of the lots within the cluster development area. Ordinance 2012-15 provides this same list of options for major subdivisions (developments of five or more units). For minor subdivisions, however, Ordinance 2012-15 requires that the open space resulting from clustering be contained within a separate deed restricted lot, under the ownership of one of the homeowners in the cluster development.

Pinelands municipalities have always had the general ability to refine the various standards and provisions of the Comprehensive Management Plan and tailor them to local conditions, provided Comprehensive Management Plan goals and objectives continue to be achieved. Subchapter 5 (Minimum Standards for Land Uses and Intensities) of the Comprehensive Management Plan expressly recognizes this general ability. Moreover, when the Commission adopted its clustering amendments, a new certification standard was incorporated in order to make clear that this practice extends to the Forest and Rural Development Area residential clustering program. N.J.A.C. 7:50-3.39(a)2ix provides that municipalities may propose and the Commission may approve clustering ordinances that contain different standards than those set forth at N.J.A.C. 7:50-5.19(c) and (d), provided such standards are supported through the application of sound land use planning principles, are based upon local conditions or circumstances and do not undermine the overall objectives of the Forest and Rural Development clustering program.

In this case, Waterford Township has modified Comprehensive Management Plan clustering standards in order to address the differing circumstances of major and minor subdivisions when it comes to ownership and management of open space. The Township has elected to mandate one form of ownership for minor subdivisions, while allowing the full range of Comprehensive Management Plan ownership options for major subdivisions. The Township believes there is a benefit to making the ownership (and management) of open space the responsibility of one of the homeowners within a small (two- to four-unit) cluster development, rather than allowing for the formation of homeowners associations for such small projects. The Township further believes that requiring the open space to be contained on a separate lot, rather than incorporated in one of the residential lots, will allow for simpler taxation and assessment calculations. As the end result is the same (permanent deed restriction of the open space), the Township's approach raises no significant concerns.

The amendments adopted by Ordinance 2012-15 sufficiently respond to the April 2009 Comprehensive Management Plan amendments relative to cluster development and are consistent with the land use and development standards of the Comprehensive Management Plan. Therefore, Ordinance 2012-15 meets this standard for certification.

Zoning Changes

Ordinance 2012-14 adopts Waterford Township's revised Zoning Map. Waterford's revised Zoning Map proposes a number of changes, including some which constitute changes in Pinelands management areas. A number of the zoning changes depicted on the Township's new Zoning Map are intended only to recognize public ownership of the underlying properties. These

changes all consist of additions to the Township's Recreation/Conservation (RC) District, including a 49-acre portion of the Residential (R4) District; a 27-acre portion of the Rural Neighborhood Business (RNB) District; a 26-acre portion of the RR District; a 10-acre portion of the Office Campus (OC) District; another nine-acre portion of the Rural Development (RR) District; and, a two-acre portion of the Residential (R1) District. Other zoning changes depicted on Waterford's revised Zoning Map are intended solely to recognize the Township's ownership of the underlying properties. These changes consist of the rezoning of two parcels within the Residential (R2) District to the Public Facility (PF) District, including a three-acre parcel where the Township's municipal building is located; and, a 1.5-acre parcel on which the Township's senior center is located. The affected parcels are located in the Regional Growth Area. Ordinance 2012-14 also rezones two portions of the Township's Planned Highway Business (PHB) District. An eight-acre portion, consisting of six developed lots, is being rezoned to the Town Commercial (TC) District and a three-acre portion, consisting of seven developed lots, is being rezoned to the Residential (R3) District. These parcels are also located in the Regional Growth Area. None of the foregoing zoning changes proposed to be accomplished by Ordinance 2012-14 constitutes a management area change; nor would any have any effect on residential development potential, or on opportunities for the use of Pinelands Development Credits.

Pinelands Management Area changes

Ordinance 2012-14 also proposes the rezoning of 14 acres from the RR District to the R1 District, the rezoning of 110 acres from the R1 District to the RR District, and, the rezoning of 16 acres from the Rural Public Facilities (RPF) District to the PF District. All of these proposed rezonings constitute a change in Pinelands management area designations. The net effect is a reduction in the size of the Regional Growth Area of 80 acres. The map attached as Exhibit #1 depicts the proposed 14-acre management area change; the map attached as Exhibit #2 depicts the 110-acre management area change; and, the map attached as Exhibit #3 depicts the 16-acre management area change.

The first management area change implemented by Ordinance 2012-14 involves the redesignation of 14 acres from the Rural Development Area to the Regional Growth Area. These 14 acres consist of seven lots, six of which front along Sixth Street between Raritan Avenue and Gennessee Avenue and one of which fronts along Raritan Avenue between Fifth and Sixth Streets (see Exhibit 1). The six lots fronting along Sixth Street are each approximately 20,000 square feet in area and are fully developed with single-family residences on each lot. The Raritan Avenue lot is approximately 9.5 acres in area with a single-family residence located there as well. Under the existing RR zoning, the Raritan Avenue lot is fully developed. However, under the proposed R1 zoning, with maximum use of PDCs, the Raritan Avenue lot could be redeveloped with as many as 21 dwelling units. Thus, the proposed rezoning represents a modest increase in this area of the Township's residential development potential, which could produce as many as 20 additional dwelling units within the Township as well as the opportunity for the use of as many as 9 rights (2.25 Pinelands Development Credits). The 14-acre expansion of the Township's Regional Growth Area would not create a free-standing management area; nor would it include land with known environmental limitations or any known natural or cultural resources. Nor, would the proposed expansion substantially alter the character of the Township's overall zoning plan given the other management area changes implemented by Ordinance 2012-14 discussed below.

To offset the increased development potential created by the redesignation of 14 acres from the Rural Development Area to the Regional Growth Area, Ordinance 2012-14 implements a second, corresponding management area change. Approximately 110 acres of the Township's Regional Growth Area are redesignated to the Rural Development Area by Ordinance 2012-14. Approximately 95 of these acres are located on the western side of the Old White Horse Pike between Hendricks Avenue and Walker Road while the remaining 15 acres are located on the eastern side of the Old White Horse Pike mostly between Deblaese Avenue and Collings Avenue (see Exhibit 2). The 15-acre portion on the eastern side of the Old White Horse Pike consists of 11 lots, which have been developed with single-family residences. The 95-acre portion on the western side of the Old White Horse Pike consists of 28 lots, many of which have been developed with single-family residences. Under both the current zoning and the Township's proposed zoning, some development potential exists on the western side of the Pike. Within the western 95 acres, a few relatively large, mostly undeveloped lots could be redeveloped at higher densities. Under the current R1 zoning, redevelopment of these lots could result in 60 to 90 additional dwelling units and the use of approximately 30 rights (7.5 Pinelands Development Credits). Under the proposed RR zoning, redevelopment of these lots would likely result in as few as seven dwelling units. Thus, the Township's proposed rezoning of this 110-acre portion of the R1 District could result in the loss of approximately 50 to 80 dwelling units in the Township and the loss of the opportunity for the use of up to 30 rights. The 110-acre expansion of the Township's Rural Development Area would not create a free-standing management area. On the contrary, it would eliminate a free-standing Regional Growth Area within the Township. Given the land use and land tenure patterns in the surrounding area, the proposed decrease in development potential for these 110 acres is appropriate. Furthermore, the proposed decrease in development potential more than adequately offsets the increased development potential created by Ordinance 2012-14 thereby ensuring that the character of the Township's overall zoning plan is not substantially altered.

The third management area change implemented by Ordinance 2012-14 involves the redesignation of approximately 16 acres from the Township's Rural Development Area to the Regional Growth Area. On these 16 acres fronting along the eastern side of Jackson Road between Kettle Run Road and Anderson Avenue is most of the campus for the Archway School, a school providing a variety of individualized programs for special-needs students. The modest increase in development potential the proposed expansion may afford the Archway School is adequately offset by the 110-acre expansion of the Township's Rural Development Area discussed above, and the expansion itself is not inconsistent with the land use and development standards of the Comprehensive Management Plan as it largely recognizes an existing use. However, the boundaries of the rezoned area are problematic. The rezoning creates two extremely small, free-standing Rural Development Areas and does not treat similarly situated lands equally, as is required by N.J.A.C. 7:50-3.39(a)2vi. Accordingly, the Township will need to rezone additional lands to include all of the lots which front along the eastern side of Jackson Road between Kettle Run Road and Cedar Avenue in its proposed expansion of its Regional Growth Area (i.e., Block 45, Lots 3, 6, 6.01, and 8; and Block 45.01, Lots 9 and 11.02). More specifically, Block 45, Lots 3, 6, and 6.01 of and Block 45.01, Lot 9 should be included within the Township's PF District while Block 45, Lot 8 and Block 45.01, Lot 11.02 should be included within the Township's PHB District. Attachment B contains the recommended conditions for certification of Ordinance 2012-14.

Principal Uses

Ordinance 2012-13 includes "High Technology and Light Manufacturing Uses" among the principal uses permitted within the OC District. In order for such uses to be permitted, they must be associated with applied research in the areas of medicine and pharmaceuticals, communications, energy, transportation, and similar fields; and, they must not generate adverse impacts to the physical environment and/or adjacent uses. The Township's OC District is a nonresidential zoning district entirely within the Regional Growth Area and, as such, the inclusion of "High Technology and Light Manufacturing Uses" among the principal uses permitted within the District is entirely consistent with the Pinelands Comprehensive Management Plan.

Conditional Uses

Ordinance 2012-13 includes accessory residential uses among those conditional uses permitted within the TC District. Such uses are permitted provided that only one such unit exists at a given structure; the accessory residential use occupies no more than 40% of the total floor area of said structure; both the accessory residential use and the principal commercial use are served by public sanitary sewer; and, both uses have adequate off-street parking. The Township's TC District is entirely within the Regional Growth Area and, as such, the inclusion of accessory residential uses among the conditional uses permitted within the District is entirely consistent with the Pinelands Comprehensive Management Plan. While it is difficult to calculate with any degree of certainty, it is estimated that, at build-out, no more than 25 accessory residential uses could be permitted within the TC Zone pursuant to this provision of Ordinance 2012-13. This very modest increase in development potential is consistent with Comprehensive Management Plan standards.

Ordinance 2012-13 also includes professional offices within single-family homes among those conditional uses permitted within the Office Professional (OP) District. Such professional offices are permitted provided that they are located on lots of at least one acre in area that front along Atco Avenue; that the home is the primary residence of the professional; the professional office occupies no more than 40% of the total floor area of the home; both the accessory residential use and the principal commercial use are served by public sanitary sewer; and, both uses have adequate off-street parking. In addition, it must be demonstrated that the proposed hours of operation, traffic, lighting and noise impacts will not have an adverse impact on the surrounding neighborhood. The Township's OP District is entirely within the Regional Growth Area and, as such, the inclusion of professional offices within single family homes among the conditional uses permitted within the District is entirely consistent with the Pinelands Comprehensive Management Plan.

Solar Energy Facilities

Ordinance 2012-13 implements, within certain portions of the Township, the Comprehensive Management Plan's recently adopted rules for solar energy facilities. Within the Township's PHB, Planned Light Industrial (PLI), and Agricultural (AG) Districts, Ordinance 2012-13 includes commercial-scale solar arrays among the list of permitted conditional uses. While Ordinance 2012-13's provisions concerning solar energy facilities within the AG District are consistent with the CMP's standards, Ordinance 2012-13 fails to adequately implement the buffering and visual impact safeguards contained within the CMP as they pertain to the Township's PHB and PLI Districts. Commercial-scale solar arrays are permitted as a conditional use within the Township's PLI District subject to the same conditions as are applicable within

the Township's AG District. While the Township's standards for permitting solar energy facilities within the AG District are adequate for that zone, they are not adequate for the PLI District. The PLI District is adjacent to a wild and scenic river yet Ordinance 2012-13 makes no reference to the CMP's visual impact standards concerning wild and scenic rivers. The PLI District is contiguous with the Preservation Area District and Wharton State Forest; but, Ordinance 2012-13 makes no reference to the CMP's visual impact standards concerning low-intensity recreational facilities and campgrounds. In addition, the PLI District is located in a Pinelands Rural Development Area; therefore, the CMP's standards for solar energy facilities in this management area (see N.J.A.C. 7:50-5.36(d) must be reflected in the Township's Ordinance.

Ordinance 2012-13 is similarly deficient with respect to its implementation of CMP standards within the PHB District, a nonresidential zone within the Regional Growth Area. As it pertains to the PHB District, Ordinance 2012-13 simply provides that solar energy facilities shall have adequate buffering provisions from adjacent uses. Such language is not a sufficient implementation of the CMP's buffering and visual impact safeguards for principal solar energy facilities. In order for Ordinance 2012-13 to be consistent with the land use and development standards of the Comprehensive Management Plan, it must be amended to adequately implement the standards of N.J.A.C. 7:50-5.36(a)2. In addition to the language contained in Attachment A, the Township should adopt buffering and screening standards specifically for the PHB District similar to those standards it adopted for the AG and PLI Districts.

Furthermore, Ordinance 2012-13 also fails to implement the CMP's clearing limitations associated with the development of new or expansion of existing on-site or off-site infrastructure to solar energy facilities. In order for Ordinance 2012-13 to be consistent with the land use and development standards of the Comprehensive Management Plan, it must be amended to adequately implement the standards of N.J.A.C. 7:50-5.36(a)3. Finally, Ordinance 2012-13 references section 139.3 in an apparent attempt to permit commercial-scale solar arrays within a district subject to the same standards by which they are permitted within the AG District. Because the Commission has no record of ever having certified section 139.3 of the Township's Land Use, Development and Zoning Ordinance, the reference is unclear and must be eliminated or corrected. Conditions for certification of Ordinance 2012-13 are contained in Attachment A.

Ordinances 2012-13 and 2012-14 are not fully consistent with the land use and development standards of the Comprehensive Management Plan. However, with the adoption of the amendments contained in Attachments A and B hereto, or comparable revisions, this standard for certification will be met.

3. Requirement for Certificate of Filing and Content of Development Applications

Ordinance 2012-15 amends Chapter 176 by replacing Section 17-12.6.A, in its entirety, with an amended set of application requirements for municipal forestry permits. For forestry activities on parcels of land enrolled in the New Jersey Forest Stewardship Program, an applicant needs only to submit to the municipality a copy of his or her approved Stewardship Plans. For all other forestry applications, the list of submission requirements includes a forestry management plan, information concerning threatened and endangered plants and animals, cultural resources and the use of herbicides, written comments from the New Jersey State Forester and a Certificate of Filing issued by the Pinelands Commission.

The amended forestry application requirements adopted by Ordinance 2012-15 are consistent with the March 2010 amendments to the Pinelands Comprehensive Management Plan. Therefore, this standard for certification is met.

4. Requirement for Municipal Review and Action on All Development

Not applicable.

5. Review and Action on Forestry Applications

Not applicable.

6. Review of Local Permits

Not applicable.

7. Requirement for Capital Improvement Program

Not applicable.

8. Accommodation of Pinelands Development Credits

As discussed above, Ordinance 2012-14 revises the boundaries of the Township's Regional Growth Area so as to add a total of 30 acres in two locations and remove approximately 110 acres. Of the two areas being added to the Regional Growth Area, one (14 acres along Sixth Street, see Exhibit #1) represents a modest increase in the Township's residential development potential, which could produce as many as 20 additional dwelling units within the Township as well as the opportunity for the use of as many as 2.25 Pinelands Development Credits (PDC's). The second area added to the Regional Growth Area (16 acres along Jackson Road, see Exhibit #3) involves almost exclusively nonresidentially developed properties and will be located in a nonresidential zoning district. Therefore, no increase in residential development potential is anticipated as a result of this expansion of the Township's Regional Growth Area; nor, is the Jackson Road expansion anticipated to affect opportunities for the use of PDC's.
The rezoning of 110acres from the Regional Growth Area to the Rural Development Area is estimated to reduce residential development potential within the Township anywhere from 50 to 80 dwelling units. At the same time, it is estimated that opportunities for the use of as many as 7.5 PDC's will be eliminated as well. It is, however, unlikely that had development occurred within the 110 acres changed from Regional Growth Area to Rural Development Area, it would have used the maximum possible number of PDC's. Based on historical development patterns within the Township, the likely PDC use would have been much lower. In any case, once the lands have been rezoned to the Rural Development Area, PDCs cannot be used and the Township is not obligated to replace the "lost" PDC opportunities within its remaining Regional Growth Area.

Opportunities for the use of PDCs in Waterford Township are reduced by Ordinances 2012-13 and 2012014. However, this reduction is due to the reduction in size of the Regional Growth Area and not to any zoning or ordinance changes within the Regional Growth Area. Waterford's Regional Growth Area, as amended, will continue to provide opportunities for PDC use in sufficient number to be consistent with the Comprehensive Management Plan. When one takes into account existing densities throughout the Township's Regional Growth Area, the changes in the overall zoning plan implemented by Ordinances 2012-13 and 2012-14 are not expected to negatively impact the Township's responsibility, pursuant to the Comprehensive Management Plan, to provide the required number of opportunities for the use of PDCs. Accordingly, this standard for certification is met.

9. Referral of Development Applications to Environmental Commission

Not applicable**.**

10. General Conformance Requirements

Waterford Township's December 2010 Master Plan and Ordinance 2012-15, amending Chapter 176 (Land Use, Development and Zoning) of the Code of Waterford Township, are consistent with the standards and provisions of the Pinelands Comprehensive Management Plan.

However, Ordinances 2012-13 and 2012-14 are not fully consistent with the standards and provisions of the Comprehensive Management Plan. With the adoption of the amendments contained in Attachments A and B hereto, or comparable revisions, this standard for certification will be met.

11. Conformance with Energy Conservation

Not applicable.

12. Conformance with the Federal Act

Waterford Township's December 2010 Master Plan and Ordinance 2012-15, amending Chapter 176 (Land Use, Development and Zoning) of the Code of Waterford Township, are consistent with the standards and provisions of the Pinelands Comprehensive Management Plan.

No special issues exist relative to the Federal Act. However, Ordinances 2012-13 and 2012-14 are not fully consistent with the standards and provisions of the Comprehensive Management Plan. With the adoption of the amendments contained in Attachments A and B hereto, or comparable revisions, this standard for certification will be met.

13. Procedure to Resolve Intermunicipal Conflicts

The revised Zoning Map adopted by Ordinance 2012-14 changes zoning district boundaries, which are contiguous with adjacent municipalities. The 110-acre change from Regional Growth Area to Rural Development Area is adjacent to the Borough of Chesilhurst's Regional Growth Area (see Exhibit #2). However, no intermunicipal conflict is anticipated as a result of the proposed change. The proposed change does not represent a barrier to existing or proposed infrastructure nor is it inconsistent with the land tenure and land use patterns within the adjacent portion of Chesilhurst.

The redesignation of 16 acres of Rural Development Area to Regional Growth Area is adjacent to the Township of Evesham's Rural Development Area (see Exhibit #3). However, no intermunicipal conflict is anticipated as a result of the proposed change. Nor, does the proposed change represent a barrier to existing or proposed infrastructure. And, since the contiguous lands within Evesham also form a portion of the Archway School's campus, the rezoning is also consistent with the land use and land tenure patterns there. In fact, under the circumstances, it may be prudent for Evesham to consider a similar rezoning of those portions of the Archway School's campus within its jurisdiction.

This standard for certification is met.

PUBLIC HEARING

A public hearing to receive testimony concerning Waterford Township's application for certification of its December 2010 Master Plan and Ordinances 2012-13, 2012-14 and 2012-15 was duly advertised, noticed and held on November 7, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which no testimony was received.

Written comments were accepted through November 13, 2012; however, none were received.

CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that the December 2010 Master Plan and Ordinance 2012-15 sufficiently implement the April 2009, December 2009 and March 2010 amendments to the Pinelands Comprehensive Management Plan and comply with Comprehensive Management Plan standards for the certification of municipal master plans and land use ordinances. The Executive Director has further concluded that Ordinances 2012-13 and 14 are not fully consistent with Comprehensive Management Plan standards. Accordingly, the Executive Director recommends that the Commission issue an order to certify the December 2010 Master Plan and Ordinance 2012-15 of Waterford Township and to conditionally certify Ordinances 2012-13 and 2012-14 of Waterford Township.

PT/SRG/WT
Attachments

ATTACHMENT A TO EXECUTIVE DIRECTOR'S REPORT DATED JANUARY 4, 2013
ON WATERFORD TOWNSHIP'S 2010 MASTER PLAN AND
ORDINANCES 2012-13, 2012-14 AND 2012-15

Adoption of the following amendments, or comparable revisions thereto, will make Ordinance 2012-13 consistent with the standards and provisions of the Pinelands Comprehensive Management Plan:

1. Section 176-44.5 – Add a Paragraph F to read:

F – Limitations for Principal Solar Energy Systems/Facilities

1. Solar energy systems or facilities shall be permitted in accordance with the provisions of this Ordinance provided that public service infrastructure necessary to support the solar energy facility is available, or can be provided without any off-site development in the Preservation Area District or a Forest Area.

2. Should the development of new or expansion of existing on-site or off-site infrastructure be necessary to accommodate the a principal solar energy system or facility, clearing shall be limited to that which is necessary to accommodate the use in accordance with N.J.A.C. 7:50-6.23. New rights-of-way shall be limited to a maximum width of 20 feet, unless additional width is necessary to address specific safety or reliability concerns.

2. Section 176-127.2 – Delete Paragraph I in its entirety and replace it with the following:

I – Commercial Scale Solar Generating Facilities subject to the following conditions:

1. Facilities may occupy any previously disturbed portions of a parcel that have not subsequently been restored. The clearing of additional lands to accommodate a proposed solar energy facility may also be permitted, provided the percentage of cleared land on any parcel does not exceed 30 percent, taking into consideration both existing and proposed clearing.

2 Facilities should be sited to avoid lands with high ecological values, such as undisturbed woodlands, wetlands, rare or critical floral/faunal species habitats.

<u>Additional</u> Approval Conditions required include:

1. A minimum setback of three hundred feet (300') from any public right-of-way to the facility.

2. A minimum setback of five hundred feet (500') from any wild and scenic river to the facility.

3. A minimum setback of five hundred feet (500') to any occupied residential use or residentially-zoned parcel.

4. A minimum setback of five hundred feet (500') to any low-intensity recreational facilities and campgrounds.

5. A Visual Impact Analysis depicting the proposed array from a series of perspectives, including all wild and scenic rivers, public rights-of-way, low-intensity recreational facilities and campgrounds, and residential properties within 0.5 miles of the subject parcel emphasizing how glare is to be minimized and to indicate buffering provisions.

6. Description of natural and/or installed buffers designed to shield the array from wild and scenic rivers, public rights-of way, low-intensity recreational facilities and campgrounds, and residential uses within close proximity.

7. A tree survey which provides an inventory of all mature (6" of greater dbh) trees being removed to accommodate the array, along with a Compensatory Planning and Maintenance Plan indicating how and where these specimens are to be replaced.

8. A description of how the project would be accessed for maintenance, as well as by fire, police and EMS personnel.

9. A description and details of perimeter security measures.

3. Section 176-126.2.H – Subsection 6 shall be deleted in its entirety and replaced with the following:

6. Commercial Solar Generating Facilities shall be located and screened in accordance with N.J.A.C. 7:50-5.36(a)2.

4. The following language shall be deleted from Ordinance 2012-13 in its entirety:

"Section 176-139.3 – A new Section to be captioned "Conditional Uses" to read:

"Commercial Scale Solar Generating Facilities in compliance with Section 176-129.2"

ATTACHMENT B TO EXECUTIVE DIRECTOR'S REPORT DATED JANUARY 4, 2013
ON WATERFORD TOWNSHIP'S 2010 MASTER PLAN AND
ORDINANCES 2012-13, 2012-14 AND 2012-15

Adoption of the following amendments to the Township's Zoning Map, or comparable revisions thereto, will make Ordinance 2012-14 consistent with the standards and provisions of the Pinelands Comprehensive Management Plan:

1. The following parcels are hereby rezoned:

   Block 45, Lots 3, 6, and 6.01 shall be included within the Township's PF District.

   Block 45.01, Lot 9 shall be included within the Township's PF District.

   Block 45, Lot 8 shall be included within the Township's PHB District.

   Block 45.01, Lot 11.02 shall be included within the Township's PHB District.