



PINELANDS PRESERVATION ALLIANCE

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October 21, 2010

Mr. Jim Moran, Administrator
Stafford Municipal Building
260 E. Bay Avenue
Stafford Township, New Jersey 08050

DEP, Green Acres Program
Bureau of Legal Services and Stewardship
Mail Code 501-01, Box 420
Trenton, New Jersey 08625-0420

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

Dear Sirs:

These comments are submitted by the Pinelands Preservation Alliance (PPA) and New Jersey Conservation Foundation (NJCF) in response to the October 14, 2010 New Jersey Green Acres Program final hearing to divert 57.67 acres of municipally-owned parkland known as Block 25, lot 39 in Stafford Township. We submit these comments under protest, because the applicant has violated numerous procedural and substantive requirements of the Green Acres regulations that govern the diversion process. These violations have fatally confused and undermined the legitimacy of the current proceedings and the public's ability to comment as guaranteed by the Green Acres diversion rules.

This land was preserved through a conservation deed restriction, as required by the Memorandum of Agreement entered between the New Jersey Pinelands Commission, Stafford Township and the Ocean County Board of Chosen Freeholders, dated June 2006. Stafford Township recorded the conservation deed restriction on December 11, 2006. Moreover, the area in question has been grassland and threatened and endangered species habitat for 30 years or more. Prior to the proper closure of the landfill, this site had been maintained with grasses since Stafford Township stopped accepting solid waste at the landfill in 1982. The public was not actively prevented from using the site, which is adjacent to state owned land.

The Department has already correctly determined that the land cannot be developed as proposed by the Township's chosen contractor, Walters Group or one of its affiliates, unless the development meets the legal requirements for a major diversion under Green Acres rules, as

explained in the letter dated August 20, 2010, from Amy Cradic to James Moran. Because the Department has informed Stafford Township that a diversion would be required, and the Township has initiated the process by submitting a pre-application for diversion, Stafford Township has conceded that the proposed solar development cannot take place unless the legal requirements for a diversion are satisfied.

Our objective is to defend the integrity of public conservation lands through the application of the Green Acres diversion rules, which are well-designed to ensure conservation lands are respected, and the various ways in which local governments acquire conservation lands retain the public's confidence. The Stafford Park diversion, as currently proposed, would violate the Green Acres regulations, compromise the integrity of public conservation lands, and undermine public's confidence in government's will to protect publicly-owned open spaces where business or other interests not related to conservation, recreation, and natural resource protection seek to exploit those lands.

We submit that the application does not meet the Green Acres requirements in several critical respects:

1. The disregard of clear procedural requirements makes it impossible for the Department to approve the proposal for a final diversion application, or for the Commissioner to recommend the diversion to the State House Commission for final action, consistent with the Department's regulations.
2. The stated objectives to be achieved by the proposed development do not meet the threshold requirements for a diversion.
3. The applicant's proposed compensation does not address, much less satisfy, the legal standards.
4. The applicant's "alternatives analysis" is not sufficient to demonstrate the lack of alternatives to the diversion.
5. The applicant has failed to provide information required by the Green Acres rules, including, among others, the lease agreement terms and appraisals of the land to be diverted and replacement lands to be provided.

1. The applicant has disregarded the procedures required by the Green Acres diversion rules

We have explained in our comments for the scoping hearing phase (attached hereto) that the applicant has violated procedural requirements, including the timing and notice of hearings. We incorporate those comments by reference.

The Green Acres rules lay out a clear, unambiguous procedure for major diversion applications. Of particular importance at this stage, the rules require that the following sequence be followed:

1. applicant attends a pre-application conference with the Department,
2. applicant conducts a scoping hearing,
3. “*After* the pre-application conference and scoping hearing have been conducted, the applicant shall submit a pre-application for the proposed diversion”
4. “*After* the review of the pre-application by the Department ... and *if* authorized by the Department to proceed, the applicant shall submit to Green Acres a final application”
5. “*Once the Department has determined* that the application is complete for public hearing purposes ..., the applicant shall hold a public hearing on the complete application”

N.J.A.C. 7:26.7(a)1 through 5 (emphases added); *see also* N.J.A.C. 7:26.8, .9(d), .9(f) through (h) & .11.

In this case, the applicant purported to hold the final public hearing on October 14, 2010, two days after the close of public comment on the scoping hearing and prior to (a) any review by the Department of the scoping hearing record and pre-application, (b) any determination by the Department that the applicant may proceed with a full application, and (c) any response by the applicant to the clear deficiencies in the pre-application document made available a week prior to the scoping hearing. Moreover, as noted in detail below, the applicant has not provided required information, including, among other items, a compensation plan, the actual lease agreement with financial terms filled in, and appraisals.

This failure to adhere to the procedures required by the rules has prejudiced all public comment by ensuring that the public cannot comment on the pre-application as approved for public hearing by the Department – since no such approval or pre-application exists as of today.

2. The stated objectives to be achieved by the proposed development do not meet the threshold requirements for a diversion

The Green Acres regulations provide that a diversion may only be approved if the proposed development (a) fulfill a compelling public need by mitigating a hazard to the public health, safety or welfare; (b) yield a significant public benefit by improving the delivery of essential services to the public; or (c) provide an exceptional recreational and/or conservation benefit. N.J.A.C. 7:36-26.1(d).1.

According to the draft pre-application document, the applicant appears to assert that the solar facility fulfills standards (a) and (b) above. (See Pre-Application pp. 2-3.) Its brief and conclusory statements on this essential element show it has not come close to meeting either of these threshold standards. While the text is not particularly clear, it points to two good things about the project: That solar energy is cleaner than other sources of electricity, and that the Township and County will receive some financial benefit by obtaining electricity for their facilities “at a reduced cost.” Neither of these points meet the legal standards, and similar

benefits could be said to apply to literally *any* development of public conservation land so long as the applicant put solar panels into the development.

Initially, it is critical to recognize that the proposed diversion is for a private, for profit use of public conservation land. The Walters Group will lease the land, but it will own the solar facility and sell the electricity for its own financial benefit. The private developer is proposing to make long-term lease payments to a public agency in order to exploit public conservation land for its own purposes, simply because the land is conveniently located within an area to which the local government appears to have given it exclusive commercial rights. If this model for the use of public conservation land is approved for diversion, then the diversion rules will become meaningless as a guarantee of public open space protections.

To meet the standard for “compelling public need,” the project must “mitigate[e] a hazard to the public health, safety or welfare.” N.J.A.C. 7:36-26.1(d)1.i. The application does not identify any such hazard. The application makes a generalized reference to global warming, but there is nothing about this specific project that suggests it is necessary to reducing global warming (nor that it will have any measurable impact on global warming). It is not the intent of this standard to invite diversion projects to address generalized, global concerns, but instead to provide a means to allow actions needed to solve a particular hazard that can only be met by the specific diversion.

To meet the “significant public benefit” standard, the project must “improve[e] the delivery by the local government unit ... of essential services to the public or to a segment of the public having a special need” N.J.A.C. 7:36-26.1(d)1.ii. Again, *it is not enough to simply be a good thing, or something we would like to see for other policy reasons.*

The applicant does not claim that there is any essential service that it does not currently provide, or that it will not provide, unless this solar facility is constructed. The applicant’s only claim is that there will be some – wholly un-quantified – financial benefit to the Township government by leasing the land for the proposed development. The applicant has made no case whatsoever that the diversion is necessary to improving any service it provides – nor could it. Once again, it would completely negate the protections of the diversion process if any transfer of funds to a local government can be the justification to divert preserved conservation lands.

The diversion proposal appears to be based on a fundamental misunderstanding of the Green Acres regulations and the policies of the State with respect to parklands. The diversion process is not designed to permit or encourage diversions just so that a local government can garner monetary profits by developing parkland.

3. The applicant’s proposed compensation does not begin to meet the legal standards

The Green Acres rules provide that “An applicant shall provide compensation for a major disposal or diversion of funded or unfunded parkland.” N.J.A.C. 7:36-26.10(a). A local government may provide compensation in the form of replacement land or money, but “In no case shall the acreage of the replacement land be less than the acreage of parkland to be ... diverted,” and the total compensation must meet the requirements set out in Table 1. N.J.A.C.

7:36-26.10(c), (d)3 & 4. Where an applicant proposes to put the lease payments towards its compensation plan, those funds must be used by the applicant solely for recreation and conservation activities. N.J.A.C. 7:36-26.10(c)2.ii. In order to permit the standards for compensation to be applied, the applicant must provide a valuation of the land to be diverted, which provides its market value based on “the highest and best use or the use intended for the land subsequent to its ... diversion, whichever would result in a higher market value.” N.J.A.C. 7:36-26.10(f)1.

It is important to note that there is no exemption in the rules for diversion of parkland that happens to be on the cap of a closed landfill.

Furthermore, this land is deed-restricted in perpetuity and set aside as parkland because the technical committee consulted by the Pinelands Commission determined it would be valuable habitat for rare species and, therefore, would help the Commission meet the legal requirement that the Stafford Park Memorandum of Agreement, while waiving protections for rare species, would provide at least equivalent protection of Pinelands resources when compared to enforcing those protections. This fact cannot be ignored in reviewing the diversion request. The land used to be a landfill; then it was capped; and *now* it is permanently preserved parkland containing important habitat, including habitat for rare (e.g., special concern) and threatened species. The lease must include a compensatory mitigation plan for its impact on natural resource values. 7:36-25.14 (e)6. For more detail on the land’s natural resource values and the impact of the proposed development, *see* PPA and NJCF Letter to Commissioner Martin re proposed release of deed restriction, dated October 12, 2010 (attached and incorporated herein, pp. 3-4).

The applicant has wholly failed to meet these compensation requirements. Stafford Township, both at the scoping hearing and in its pre-application asserts that the lease payments it will receive – whatever they may turn out to be – constitute the compensation to the public for the diversion. This response, suggested by the pre-application document (question 5 on p. 14), indicates that the Township does not propose to provide the public at large any compensation for the loss of parkland or its conservation values. Such financial benefits to the local government’s budget do not meet the required Green Acres diversion compensation to the people of New Jersey for the loss of conservation land.

The Table 1 requirements make clear that, if the applicant wishes to rely on replacement land, it must provide 4 acres of replacement for each 1 acre diverted. N.J.A.C. 7:36-26.10(g) Table 1. The proposed solar project is a private development. The Township will not construct, direct or own the facility, nor will it own the electricity it generates. The private firm will own, direct and sell the electricity from the solar installation. According to an estimate by the Township’s engineer, given at the Council meeting on October 19, 2010, Walters Group will reap a net profit of \$9.5 million over the first 15 years of the 30-year lease. This is clearly a “private” development, for which the public agency is simply leasing the land.

Since the applicant has wholly failed to address this critical element of the diversion rules, the Department cannot approve this proposal to proceed to final application and hearing, much less to the State House Commission, until the applicant has presented a proposed compensation plan that meets the regulatory requirements.

4. The applicant’s “alternatives analysis” is not sufficient to demonstrate the lack of alternatives to the diversion

The applicant has not demonstrated a lack of alternative sites for a renewable energy facility. Most fundamentally, there is no inherent need to build the solar facility on this particular site, since it will be connected to the electrical grid and simply feed into the regional generation and distribution system. The only appeal of this site is that it happens to be owned by the Township, which would like to generate some revenue from a commercial agreement with a particular developer. Indeed, there are dozens, if not hundreds, of proposals for solar arrays in southern New Jersey alone approved or pending before local boards – proposals that, for the most part, will not raise legal concerns over open space protections and the need for a Green Acres diversion.

The applicant, moreover, asserts there is no other open space in Stafford where a solar facility can be built, but does not explain why the facility must be on “open space,” or why it must be built in Stafford.

In addition, the applicant dismisses one particular alternative – building solar arrays above some or all of the Stafford Park’s parking areas – with conclusory, unsupported claims regarding logistical concerns, costs, and potential impacts on site lines. None of these claims are supported by any actual analysis, figures, or drawings. The dismissive treatment of this alternative set forth in the pre-application cannot meet the rigorous, detailed requirements of the diversion regulations at N.J.A.C. 7:36-26.9(d)2. There are numerous examples of such solar facilities, including the nearby facility at Richard Stockton College. (See attached photograph and description at <http://intraweb.stockton.edu/eyos/page.cfm?siteID=106&pageID=26>.)

5. The applicant has failed to provide key pieces of information required by the Green Acres rules

The application as provided to the public for the public hearing does not provide essential information. Without such information, a meaningful public hearing is impossible.

First, the applicant has not provided an actual lease, or essential terms of the lease, which the Department requires in order to fulfill its mandates. The draft of the lease provided to date specifically leaves the value of the lease payments blank. The Department is required to assess these lease payments to determine whether they are “fair and appropriate.” N.J.A.C. 7:36-26.10(c)2ii. Neither the public nor the Department can comment on this legal criterion without a definitive statement of the anticipated lease payments.

Second, the application fails to provide the required appraisals of the diverted land or of the replacement land. N.J.A.C. 7:36-26.9(d)4 and 26.11(b)1. The applicant suggests the closed landfill has little or no economic value. This position is absurd on its face, since the applicant also proposes to lease this land to a private firm to develop a profit-making energy generation facility at a stated cost of \$24 million, with many millions more in anticipated profits for the

developer, and the Township claims there is no alternative land on which to build the facility. If this site really is uniquely qualified, then it must have very significant economic value.

The applicant appears to have granted exclusive rights to develop the site to one particular developer, through a municipal resolution dated June 16, 2009, and to have granted this right over a public asset without receiving compensation or consideration. *See* Stafford Township Resolution 2009-182. Since there was no competitive bidding process, the lease in question will not provide a valid basis for calculating the economic value of the land.

Third, the application fails to provide an identification of documented occurrences of rare species or habitat that will be affected, as required by N.J.A.C. 7:36-26.4(d)2.ii.(3).

Fourth, the application fails to provide the environmental assessment report prepared in accordance with an outline provided by Green Acres, as required by N.J.A.C. 7:36-26.9(d)3. This report must describe existing environmental features of both the land proposed for diversion and the proposed replacement land, and how those features will be affected by the diversion.

Since we have not had the benefit of a completed pre-application or application, reflecting the results of the scoping hearing process, it is impossible to determine whether there are other required materials that have not been included, or do not meet the regulatory standards.

Thank you for the opportunity to comment on this proposal.

Respectfully submitted:



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Attachment 1



PINELANDS PRESERVATION ALLIANCE

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October 12, 2010

Bob Martin
Commissioner
Department of Environmental Protection
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PO Box 402
Trenton, New Jersey 08625-0402

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

Dear Commissioner Martin:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted:



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Attachment 2



PINELANDS PRESERVATION ALLIANCE

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October 12, 2010

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

Dear Sirs:

These comments are submitted by Pinelands Preservation Alliance and the New Jersey Conservation Foundation in response to the September 27, 2010 New Jersey Green Acres Program scoping hearing held in Stafford Township to divert 57.67 acres of municipally-owned parkland known as Block 25, lot 39 in Stafford Township.

This land has been preserved through a conservation deed restriction, as required by the Memorandum of Agreement between the New Jersey Pinelands Commission, Stafford Township and the Ocean County Board of Chosen Freeholders, dated June 2006. Stafford Township recorded the conservation deed restriction on December 11, 2006. Moreover, the area in question has been grassland and threatened and endangered species habitat for 30 years or more. Prior to the proper closure of the landfill, this site had been maintained with grasses since Stafford Township stopped accepting solid waste at the landfill in 1982. The public was not actively prevented from using the site, which is adjacent to state owned land.

We agree with the Department's conclusion that the land cannot be developed as proposed by the township's chosen contractor, Walters Group or one of its affiliates, unless the development meets the legal requirements for a diversion under Green Acres rules. The proposed solar facility clearly conflicts with the stringent terms of the conservation deed restriction, and Stafford Township has received Green Acres funds since recording this

restriction. Because the Department has informed Stafford Township that a diversion would be required, and the Township has initiated the process by submitting a pre-application for diversion, Stafford Township has conceded that the proposed solar development cannot take place unless the legal requirements for a diversion are satisfied.

The diversion application is currently at the scoping hearing phase, meaning the process is at the threshold stage of determining whether the proposed development can qualify for a diversion under the legal standards; if the project can qualify, specify what information the applicant should be required to provide in its final application; and verify that public notice and comment requirements have been met.

We submit that the application does not meet the Green Acres requirements in three critical respects:

1. The stated objectives to be achieved by the proposed development do not meet the threshold requirements for a diversion;
2. The applicant's proposed compensation does not address the legal standards; and
3. Procedural requirements for public notice have not been met.

For each of these reasons, the diversion process should be halted at this stage and not be approved for a public hearing.

1. The stated objectives to be achieved by the proposed development do not meet the threshold requirements for a diversion

The Green Acres regulations provide that a diversion may only be carried out if it will (a) fulfill a compelling public need by mitigating a hazard to the public health, safety or welfare; (b) yield a significant public benefit by improving the delivery of essential services to the public; or (c) provide an exceptional recreational and/or conservation benefit. N.J.A.C. 7:36-26.1(d).1.

According to the draft Pre-Application document, the applicant appears to assert that the solar facility fulfills standards (a) and (b) above. (See Pre-Application pp. 2-3.) Its brief and conclusory statements on this essential element show it has not come close to meeting either of these threshold standards. While the text is not particularly clear, it points to two good things about the project: That solar energy is cleaner than other sources of electricity, and that the Township and County will receive some financial benefit by obtaining electricity for their facilities "at a reduced cost." Neither of these points meet the legal standards, and similar benefits could be said to apply to literally *any* development of public conservation land so long as the applicant put solar panels into the development.

First, it is critical to recognize that the proposed diversion is for a private, for profit use of public conservation land. The Walters Group will lease the land, but it will own the solar facility and sell the electricity for its own financial benefit. The private developer is

proposing to make long-term lease payments to a public agency in order to exploit public conservation land for its own purposes, simply because the land is conveniently located within an area to which the local government appears to give it exclusive commercial rights. Once again, if this model for the use of public conservation land is approved for diversion, then the diversion rules will become meaningless as a guarantee of public open space protections.

To meet the standard for “compelling public need,” the project must “mitigate[e] a hazard to the public health, safety or welfare.” N.J.A.C. 7:36-26.1(d)1.i. The application does not identify any such hazard. The application makes a generalized reference to global warming, but there is nothing about this specific project that suggests it is necessary to reducing global warming (nor that it will have any measurable impact on global warming). It is not the intent of this standard to invite diversion projects to address generalized, global concerns, but instead to provide a means to allow actions needed to solve a particular hazard that can only be met by the specific diversion.

To meet the “significant public benefit” standard, the project must “improve[e] the delivery by the local government unit . . . of essential services to the public or to a segment of the public having a special need . . .” N.J.A.C. 7:36-26.1(d)1.ii. The applicant does not claim that there is any essential service that it does not currently provide, or that it will not provide, unless this solar facility is constructed. The applicant’s only claim is that there will be some – wholly un-quantified – financial benefit to the Township government by leasing the land for the proposed development. The applicant has made no case whatsoever that the diversion is necessary to improving any service it provides – nor could it. Once again, it would completely negate the protections of the diversion process if any transfer of funds to a local government can be the justification to divert preserved conservation lands.

In fact, the Ocean County Recycling Facility currently uses solar energy at the recycling facility that is located within the Stafford Business Park. One hundred and twenty panels were installed shortly after the Pinelands Commission public development application approval in November 2008 (copy attached). There is no claim here that essential services provided by Ocean County depend on construction of the solar facility as proposed.

2. The applicant’s proposed compensation does not begin to meet the legal standards

The Green Acres rules, N.J.A.C. 7:36 – 26.10(a), state “an applicant shall provide compensation for a major diversion . . . ensure that the public is adequately compensated for the market value of the parkland.” The Township, both at the scoping hearing and in its Pre-Application has simply failed to provide any preliminary compensation proposal. Its response to this part of the Pre-Application Form (question 5 on p. 14) points the reader to the explanation of what compensation the Township will receive for the lease agreement – a completely distinct question. The Township appears to be unaware of this provision of the regulations, or to have misinterpreted the requirement to refer to the funds the Township will receive for the benefit of its municipal budget in the form of lease payments. The Township has repeatedly stated that it will direct the funds to benefit its budget – not to purchase new

conservation lands. Such financial benefits to the local government are unrelated to the required Green Acres diversion compensation to the people of New Jersey for the loss of conservation land. Nor has the Township even quantified the financial benefit it will receive from Walters Group.

Since this provision requires the applicant, in this case Stafford Township, to compensate the public for the loss of conserved open space, the Township has wholly failed to address a critical element of the scoping process and diversion rules. The Department cannot approve this proposal to proceed to final application and hearing until the applicant has presented a proposed compensation plan that meets the regulatory requirements.

3. Procedural requirements for public notice and comment have not been met

The Green Acres rules, Section 7:36-26.8(c)1 v. state that the applicant must provide notice of the scoping hearing to include the following:

Post and maintain in a legible condition until the public comment period is concluded a sign on the parkland that is the subject of the proposed diversion or disposal. Such sign shall advise the public of the proposed diversion or disposal, the public hearing on the proposed disposal or diversion and the opportunity for public comment on the proposed disposal or diversion. Such sign shall be located at each public entrance to the parkland proposed for diversion or disposal and/or in other prominent location(s) approved by the Department. Such sign shall be of sufficient size and visibility and contain sufficient detail as to inform the general public of the proposed diversion or disposal of parkland and the method by which the public may obtain information about such proposed diversion or disposal, and shall be subject to the Department's approval (emphasis added)

PPA staff visited the site on two occasions and found that there has been no posting of a sign at any public entrance to the area. The land in question is adjacent to publicly owned open space, yet no sign was posted anywhere along this area. Those using the State owned land should have had an opportunity to know that the Stafford Landfill grassland park property was the subject of a proposed diversion. On September 19, 2010, PPA staff walked the entire length of the Stafford Landfill Grassland property, adjacent to the public land, and there was no posted sign to meet 7:36-26.8(c)1v.

On October 6, 2010, after PPA's third request to review the NJ Green Acres application file, Stafford Township called to set up an appointment. In the file, the applicant indicates that a sign was posted but gives no information where it was placed. It appears that at some point, the applicant placed a sign inside the county recycling/composting facility area. This is not a public entrance, since it is only accessible after one passes over the county scale, beyond the public area. In fact, when PPA staff visited the area on September 19, 2010, the facility was gated at the roadway (see pictures attached). A walk around the commercial and residential sides of the property did not reveal any posted signage to meet the Green Acres requirements.

Finally, the second and final public hearing on the diversion has already been improperly scheduled for October 14, 2010. N.J.A.C. 7:36-26.11(a) states that the applicant must file a final application *after* the Department gives its approval, based on the scoping hearing, to proceed with the application, and that the final application must be filed “*prior to* scheduling the public hearing on the application.” (Emphases added.) It is improper, therefore, for the applicant to have scheduled the public hearing. In order to provide the necessary information, moreover, the applicant must provide the 30-day public comment period after the Department determines whether the diversion can proceed to hearing and what information the applicant must provide. See N.J.A.C. 7:36-26.11(h).

The township, however, has noticed the hearing for a mere two weeks after the scoping hearing, one day after the final day for public comment on the scoping issues, and before the Department can have ruled on the scoping hearing and responded to public comment from the scoping hearing. On the applicant’s schedule, the Department has not even determined that the application can proceed, and the applicant cannot provide the public the actual application information it will have to submit if and when the Department determines a public hearing is appropriate under the diversion regulations. The applicant’s objective appears to be rushing the process and depriving the public of the full time required to review and comment on the final application.

On September 20, 2010, PPA staff went to Stafford Town Hall and asked the Township Clerk if an appointment could be made to review the Stafford Business Park Landfill/Grassland diversion file, which was the subject of the September 27th scoping hearing. The Township Clerk indicated that she did not have a file. PPA staff then walked to the Business Administrator’s office and left a written request and business card requesting an opportunity to review the file. When PPA did not receive a call back from Stafford Township after two days, PPA then faxed a written request to the mayor and again copied the Township Clerk. A copy of the fax receipt is attached. This inability to produce information to the public even about the pre-application and scoping hearing further demonstrates that the applicant has not met the requirement to provide public access to the information necessary for the public hearing currently scheduled for October 14th in the time required by the regulations.

Respectfully submitted:



Carleton Montgomery
Executive Director
Pinelands Preservation Alliance
17 Pemberton Road
Southampton, NJ 08088
(609) 859-8860



Alison Mitchell
Policy Director
New Jersey Conservation Foundation
Bamboo Brook
170 Longview Rd
Far Hills, NJ 07931
(908) 234-1225

**REPORT ON AN APPLICATION FOR
PUBLIC DEVELOPMENT**

October 1, 2008

Alan Avery, Jr.
Ocean County
101 Hooper Avenue
Toms River, NJ 08754

Please Always Refer To
This Application Number

Re: Application #: 1987-1159.044
Block 25, Lot 37
Stafford Township

Dear Mr. Avery:

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 am recommending that the Pinelands Commission approve the application with conditions at its November 14, 2008 meeting.

FINDINGS OF FACT

This application is for the construction of twenty-five 120 square foot solar photovoltaic panels mounted on twenty-five 8 foot high 6 inch diameter poles on the above referenced 28.01 acre lot. There is an Ocean County office building and several other County facilities located on the lot. The lot is located within the Stafford Township Business Park. The lot is located in a Pinelands Regional Growth Area.

At its July 14, 2006 meeting, the Pinelands Commission approved a Memorandum of Agreement (MOA) between the Commission and Stafford Township for the redevelopment of the Stafford Township Business Park (App. No. 1987-1159.001). It was previously determined that the resubdivision of Block 13, Lots 22.01, 60 & 65-68; Block 25, Lots 27.01, 61 & 63-93; Block 25.01, Lots 1-8 & 59; Block 25.02, Lots 1-8, 9.01, 9.02, 9.03, 10 & 11 and Block 25.03, Lot 1 in Stafford Township was consistent with the terms of the MOA and the requirements of the Pinelands Comprehensive Management Plan (CMP) and that a formal application to the



Commission for that resubdivision was not required (App. No. 1987-1159.026). That subdivision created the lot subject of the current application.

The purpose of the proposed development is to provide energy to the Ocean County office building and the other County facilities.

With the conditions recommended below, the proposed development will be consistent with all the management standards contained in Subchapter 6 of the CMP.

The Pinelands Commission has not received any public comments concerning the application.

CONCLUSION

The proposed solar photovoltaic panels are a permitted use in a Pinelands Regional Growth Area (N.J.A.C. 7:50-5.28(a)). If the following conditions are imposed, the proposed development will be consistent with the management standards contained in Subchapter 6 of the CMP.

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 with the following conditions:

1. Except as modified by the below conditions, the proposed development shall adhere to the plan prepared by Birdsall Engineering and dated September 3, 2008.
2. Except as modified by the below conditions, the proposed development shall adhere to the plans, consisting of four sheets, prepared by Birdsall Engineering, all sheets dated August 28, 2008.
3. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.
4. Landscaping shall adhere to the requirements of the CMP.
5. Prior to any development, the applicant shall obtain any other necessary permits and approvals.

APPEAL

Any interested person may appeal the Executive Director's determination on this application to the Commission. The appeal must be made within 18 days of the date of this letter by giving notice, by Certified mail, of the appeal to the Pinelands Commission. Said notice shall include:

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:
 - a. the applicant (unless the applicant is requesting the appeal);
 - b. Secretary, Stafford Township Planning Board;
 - c. Stafford Township Environmental Commission; and
 - d. Ocean County Planning Board.

Any appeal will be referred to the Office of Administrative Law for a hearing. If no appeal is received within 18 days of this letter, the Pinelands Commission will act on this application at its meeting on November 14, 2008. At this meeting, the Commission may either approve the determination of the Executive Director or refer the application to the Office of Administrative Law for a Hearing.

Recommended for Approval by: _____
Charles M. Horner, P.P., Director of Regulatory Programs

- c: Secretary, Stafford Township Planning Board
Stafford Township Environmental Commission
Ocean County Planning Board
Peter Van den Kooy
Ernest Deman



Gated entrance to the Ocean County Road Department and Recycling Facility area. This gate is before the scale house.

This area is after you get into the gated County Facilities and then beyond the scale and recycling drop off building.





This gate is after the scale house. After you pass through the scale and go beyond the recycling dump off building.

This is looking from the parking lot and towards the scale house. The Road Department building and gate is beyond the second building.



*** TX REPORT ***

TRANSMISSION OK

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DESTINATION TEL # 16095974911
DESTINATION ID
ST. TIME 09/22 11:41
TIME USE 00'17
PAGES SENT 1
RESULT OK



PINELANDS PRESERVATION ALLIANCE

17 PEMBERTON ROAD
SOUTHAMPTON, NJ 08088
PHONE 609.859.8860 FAX 609.859.8804
ppa@pinelandsalliance.org

To: John McMenamin, Mayor
Bernadette Park, Township Clerk

From: Theresa Lettman

Date: September 22, 2010

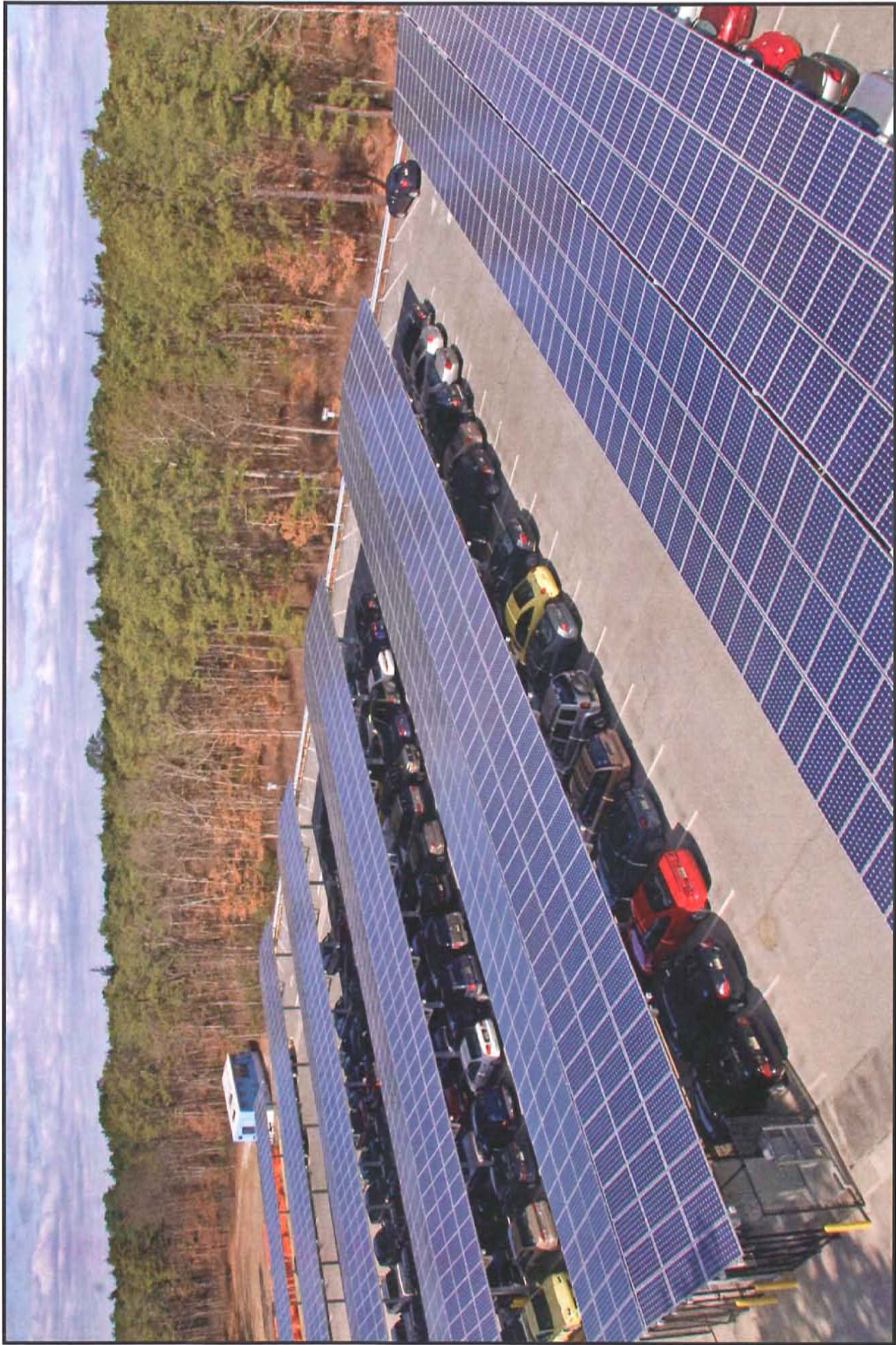
I attended the September 21, 2010 Stafford Township Council meeting and heard that the Township Administrator is and will be out of the office due to a illness in his family.

I went to Town Hall on Monday, September 20th and put in a request to review the Stafford Business Park/Landfill Green Acres diversion file. This request was left with the Business Administers office for his return.

Now hearing that he may be back in the office this week, I am again making my request to you to review the file. I would like an opportunity to review the file prior to the September 27, 2010 public hearing.

Please let me know if this can be arranged. I can be reached at 609-859-8860. Ext. 22.

Attachment 3



STOCKTON COLLEGE
THE RICHARD STOCKTON COLLEGE OF NEW JERSEY

The Richard Stockton College of New Jersey
Solar Photovoltaic Array, Parking Lot 7 - 383 KW - March 2009

**NEW JERSEY'S
GREEN COLLEGE**