

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-005025-14-T2  
A-003417-15-T2  
A-3670-16T2

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IN RE THE PINELANDS :  
COMMISSION'S CONSISTENCY : On Appeal from a Decision of  
DETERMINATIONS APPROVING : the Pinelands Commission on  
TUCKAHOE TURF FARM INC.'S : App. No. 1984-0389.009  
APPLICATION NO. 1984- :  
0389.009 :  
X

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REPLY LETTER BRIEF AND APPENDIX OF  
PINELANDS PRESERVATION ALLIANCE AND N.J. CONSERVATION FOUNDATION

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Dated: January 15, 2018



January 16, 2018

Clerk, Appellate Division  
Richard Hughes Justice Complex  
P.O. Box 006  
25 Market Street  
Trenton, New Jersey 08625-0006

Re: In re The Pinelands Commission's Consistency  
Determinations, Docket Nos. A-005025-14T2,  
A-003417-15T2, and A-3670-16T2

Dear Appellate Panel:

On behalf of Appellants Pinelands Preservation Alliance ("PPA") and the New Jersey Conservation Foundation ("NJCF") ("Appellants") in the above-consolidated appeals, please accept this Letter Reply Brief in response to the Pinelands Commission's ("PC" or "Commission") brief and appendix, dated December 13, 2017, and Tuckahoe Turf Farm, Inc.'s ("TTF") brief and appendix, dated February 22, 2017. Since PPA and NJCF filed their initial papers, dated November 23, 2016, the Commission approved TTF's development application to permit soccer use on certain deed-restricted parcels located within the jurisdiction of the Commission for a third time (Ra26-27); and the

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Commission's Motion to Dismiss the Consolidated Appeals, dated April 24, 2017, was denied. (Ra1) Appellants' Cross-Motion to Consolidate Appeals with a New Appeal, File the New Appeal as Within Time and Maintain the Current Briefing Schedule was granted on June 5, 2017 (Ra2). Appellants now submit the record supporting their Cross-Motion in their Reply Appendix. (ARa1-44)

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### PRELIMINARY STATEMENT

This matter has now been pending in the courts since July 2015, with no resolution of any of the legal issues Appellants have raised with the three Pinelands Commission "No Call Up" letters approving massive, active recreational activities on preserved farmland. All three Commission approvals raise the same significant legal question of whether such decisions violate the Comprehensive Management Plan's (CMP") procedural and land-use standards, and/or the conservation deed restrictions on the relevant lots. These actions undermine the integrity of the CMP, the PC's decision-making processes, and the integrity of all conservation restrictions across the State.

Throughout the process the Commission and TTF have raised issues of mootness, lack of ripeness or failure to file their appeals on a timely basis. None of these claims has merit. Both Respondents point to the authority of the Executive Director ("Ex. Dir.") to terminate review of a local municipal approval when that approval does not raise any "substantial issues" with respect to the conformity of the project with the CMP to justify what happened here. Both fail to counter Appellants' argument that TTF's development application, with or without the terms imposed by the Commission's 2015 Settlement Agreement or the 2016 Legislative Amendment, still raise "substantial issues" of

conformance with the CMP requiring fact-finding, hearing and a decision by the Commission.

The Commission for the first time relies upon the incredible argument that TTF's large-scale soccer tournaments qualify as "low intensity recreation" under the long-standing definition of the CMP. The Commission then insists that the statutory amendment to the Pinelands Protection Act (the "Pinelands Act") represents merely a confirmation of its decision that commercial soccer fields fall within the CMP's definition of low-intensity recreation and is not a substantive change requiring a reworking of that definition in the CMP. This argument is contradicted by a simple reading of the CMP's express definition of low-intensity recreation, and is belied by the legislative history of the statutory amendment. Nor is this incredible position shared by TTF, who lobbied for such legislation. Rather than argue that its actions meet the CMP definition, TTF continues to insist that its activities are not "recreational" but are "direct farm marketing activities" that are merely "accessory uses" under the CMP -- a position that was rejected by the Commission, and has never been adopted by the State Agricultural Development Committee ("SADC").

This Court must thus reverse all three PC decisions. The PC must amend the CMP before applying the statutory change to any given development application, let alone prior to approving

TTF's development application yet again. Independently, the PC must respect the deed restrictions -- to which the PC is a party and for which TTF was paid a great deal of money -- and reject the intensive recreation business on the restricted parcels as directly barred by those deed restrictions.

### LEGAL ARGUMENT

**I. THE JANUARY 2017 NO CALL-UP LETTER APPROVING MUNICIPAL APPROVALS DOES NOT RENDER THE HAMMONTON (2015) AND WATERFORD (2016) APPEALS MOOT SINCE ALL THE LEGAL ISSUES IN THE APPEALS ARE THE SAME AND REVERSAL OF THE TWO WOULD REQUIRE THE COMMISSION TO REDO ITS 2017 DECISION.**

In its response brief, the Commission repeats the arguments it made in its Motion to Dismiss, which were rejected by this Court when it denied the PC's Motion. PC Br. at 22-24. See Ral. The PC was wrong then for the same reasons that it is wrong now.

Appellants acknowledge that the Commission's January 26, 2017 No Call-Up Letter constitutes a final agency decision that was required due to changes in the frequency of events and acreage restrictions to which TTF had previously agreed. See In re CAFRA Permit No.87-0959-5, 290 N.J. Super. 250 (App. Div.) certif. den. 107 N.J. 656 (1987). However, Appellants deny that this No Call-Up Letter "supersedes" the Commission's previous two decisions regarding TTF's properties rendering Appellants' challenge to those decisions moot.

Appellants challenge the Commission's decision-making in

those appeals on both procedural and substantive grounds that are unchanged by the alteration of the detailed number and time restrictions. Appellants' challenge does not rest on the specific restrictions on the timing and frequency of events and acreage used nor the annual permitting requirement that the Commission has now eliminated; instead, their challenge raises substantial legal issues that remain applicable to the Commission's most recent decision. The Consolidated Appeals raise three legal issues with slight variations due to factual circumstances leading up to the two No Call-Up Letters, including the question of whether the Commission's actions violate the Pinelands Act, as supplemented by P.L. 2015, c.285 (2016). See (ARa1-2, Aa411-412, 422-423). In contrast to the Commission's position, Appellants believe that a favorable decision on these Consolidated Appeals would also require the Commission to redo its most recent determination. For this reason, the pending appeals are not moot at all. See Greenfield v. New Jersey Dept. of Corrections, 382 N.J. Super. 254, 257-258 (App. Div. 2006) (finding that criminal defendant's appeal was not moot despite order of temporary commitment, because a favorable decision might require relief sought).

The Commission correctly notes that an issue on appeal is moot when the "decision sought in a matter, when rendered, can have no practical effect on the existing controversy." Deutsche

Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 221-222 (App. Div. 2011) (quoting Greenfield, supra. N.J. Super. at 257-258). PC Br. at 23. The Commission is wrong, however, when it claims that resolution of the issues raised in Appellants' respective Case Information Statements, and more fully briefed in its November 22, 2016 Memorandum of Law, would leave the PC's January 26, 2017 determination intact. For example, Appellants have asserted in A-003417-15 that the 2016 Legislation is not self-executing, and requires the PC to amend the CMP to implement its provisions before approving a particular application. As a result of the Commission's failure to do so, Appellants assert that its decision in that appeal constitutes invalid rulemaking rendering its approval void. A resolution of this issue in Appellants' favor would render the Commission's January 2017 approval similarly void. See Point IV *infra*.

Appellants further argue in both appeals that the 2016 statutory provision supplementing the Pinelands Act is not retroactive and does not alter the meaning of conservation deed restrictions recorded years earlier, leading to the conclusion that the Commission's decisions in both appeals violated the Pineland Development Credit ("PDC") restrictions and SADC deed of easements tied to all of TTF's parcels. This argument applies equally to the Commission's 2017 review of the amended local approvals as well. Again, this Court's resolution of this

issue in Appellants' favor would invalidate the Commission's January 2017 decision as well as its earlier actions, and, in this way, have a very real effect on the existing controversy. See Point V *infra*.

Appellants' third major argument is that the Commission's decision (in both 2015 and 2016) to decline hearing the matters despite "substantial issues" of nonconformity with the CMP and the deed restrictions, and to delegate such decisions, under the circumstances, to the Ex. Dir. without public fact-finding and a record explaining its decision violates its statute and regulations. This objection applies equally to the Commission's recent No Call-Up Letter. The Commission's attempt to limit the import of the Appellate Division's decision in Matter of Petition of South Jersey Gas Co., 447 N.J. Super. 459 (App. Div. 2016), and to argue that the Ex. Dir.'s three decisions to terminate review of the Hammonton and Waterford land use approvals at issue herein are authorized and in effect not reviewable, cannot be sustained. See PC Br. at 42-44.

As the Court stated in South Jersey Gas Co., "the CMP states, 'the Commission bears the ultimate responsibility for implementing and enforcing the provisions' of the Pinelands Act and the CMP." Id., supra, 447 N.J. Super. at 476. There is simply no language in either the Pinelands Act or the CMP that permits the Commission to abdicate its obligation to engage in

fact-finding and render a decision when a local approval raises a "substantial" issue of compliance with the CMP, as was the case herein.<sup>1</sup>

The authority given to the Ex. Dir. to terminate review of a local approval emerging from a certified municipality is a very narrow one, intended to apply only to run-of-the-mill development applications where there is no meaningful or sizable question of compliance with CMP. In this matter, neither the Ex. Dir., the Commission nor even TTF doubted that athletic fields did not fall within the scope of low-intensity recreation as defined by the CMP, (which to date has not been amended). The PC issued multiple letters stating that such active recreation events violated the CMP and the deed restrictions, (Aa194-196; 209-213; 314-318; 324-327), and TTF sought to simply avoid the problem through its "marketing activity" argument. Given this history, it is simply incredible for either party to claim the local approvals do not raise what is at least a "substantial issue" of compliance with the CMP.

It is thus apparent that the 2015 and 2016 appeals in this matter are not moot. Appellants continue to suffer harm from the "adverse consequences" caused by the Commission's decisions

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<sup>1</sup> According to the Oxford English Dictionary, the common sense meaning of the word "substantial" is: of considerable importance, size or worth; concerning the essentials of something; and real rather than imaginary. <http://en.oxforddictionaries.com>.

underlying those appeals, and nothing in the legal framework governing the PC's January No Call-Up Letter is "new" nor renders that harm non-actionable. See In re Jersey Dept. of Environmental Protection Conditional Highlands Applicability Determination, No. 435434, 433 N.J. Super. 223, 234 (App. Div. 2013) (holding that an appeal is not moot when a party "still suffers the adverse consequences" caused by the prior proceeding).

**II. THE HAMMONTON APPEAL RAISES A SUBSTANTIAL LEGAL ISSUE REGARDING THE ROLE OF SETTLEMENT AGREEMENTS IN AGENCY DECISION-MAKING THAT IS OF PUBLIC IMPORTANCE AND IS LIKELY TO RECUR.**

To the extent that the Court finds that any of the issues raised in the Hammonton (2015) and Waterford (2016) appeals are moot, Appellants contend that each of Appellants' claims raises a substantial legal issue of public importance that is capable of repetition, and, for this reason alone, the Court should retain review. See e.g., Tumpson v. Farina, 431 N.J. Super. 164 (2013) (deciding appeal raised matters of particular public interest regarding the right of referendum although the matter had already gone to the ballot), certif. granted, 216 N.J. 4 (2013), aff'd in part, reversed in part on other grounds, 218 N.J. 450 (2014); Caput Mortuum, L.L.C. v. S & S Crown Services, Ltd., 366 N.J. Super. 323, 331 (App. Div. 2004) (deciding moot appeal because the issue raised in the appeal was of "such

compelling public importance to the lending and title abstract communities, municipalities, and others.")

In this case, the PC clearly failed to protect the integrity of the CMP and existing conservation restrictions on the land when faced with political pressure on behalf of a particular applicant, TTF; and it subsequently avoided the rulemaking process required by federal and state law when the State Legislature sought to alter the terms of the CMP for the benefit of this one landowner. The Commission's decision to decline hearing the matter in both appeals despite "substantial issues" of nonconformity with the CMP and the deed restrictions, employ an undefined "settlement" process to avoid strict compliance with the CMP (in A-005025-14), and avoid the rulemaking process appropriate to implementing significant policy changes (in A-003417-15) -- all decisions designed to circumvent its own responsibility to protect the integrity of the CMP -- violate its governing statute and regulations. As such, the present controversy provides a vehicle through which the Court may provide guidance to the Commission, its Ex. Dir. and members, applicants, and members of the public concerned about development within the Pinelands.

This is the case especially with respect to the Commission's use of the "settlement" process in its 2015 decision to avoid strict compliance with the CMP and deed

restrictions in its initial decision concerning TTF's Hammonton properties. The question of whether the Pinelands Commission's use of a settlement agreement to circumvent CMP requirements violates the principles set forth in Dragon v. NJDEP, 405 N.J. Super. 478 (App. Div.), certif. denied, 199 N.J. 517 (2009) (concerning the use of a settlement agreement to avoid substantive requirements to allow development otherwise prohibited) and Whispering Woods at Bamm Hollow, Inc. v. Twp. of Middleton Planning Board, 220 N.J. Super. 161 (Law Div. 1987) (requiring the terms of the settlement to be subject to public presentation, hearing and vote by the relevant authority), however, "is an issue of substantial importance, likely to reoccur but capable of evading review." Board of Educ. of City of Sea Isle City v. Kennedy, 196 N.J. 1, 18 (2008). It must be addressed by this Court.

The record indicates that the Commission relied on a settlement agreement executed by the Ex. Dir. to support its No Call-Up Letter (in A-005025-14); most recently, it relied on the January 16, 2016 Legislation to justify modifications of the terms agreed to in that settlement agreement. (Ra26-27) The PC's use of a settlement agreement to approve development, which it had already determined on multiple occasions to violate the CMP, is a very important legal issue with strong public policy implications for the conduct of the PC and other executive

branch agencies. The Commission's attempt to diminish the import of its actions by distinguishing both Dragon v. NJDEP and Whispering Woods nonetheless fails.

First and foremost, there is no doubt that the application proposed a use that did not satisfy the CMP's definition of "low-intensity recreational use." Given that the tournaments are not "low-intensity recreational uses," it is irrelevant whether the additional requirements of N.C.A.C. 7:50-5.24(a)(6) were satisfied. PC Br. at 48. As a result, the conditions imposed by the settlement agreement did nothing to change the legal conclusion that the approved activities were inconsistent with the CMP. The settlement process and agreement, therefore, violated the holding of Dragon v. NJDEP.

Furthermore, the PC's attempt to distinguish the facts in Whispering Woods and to claim that its holding is not binding on a state agency like the Commission are to no avail. PC Br. at 48. The fact that a public hearing involving the terms imposed in the settlement agreement was held by the Hammonton Planning Board does not excuse the Commission's failure to hold its own hearing, let alone review and hold a public vote on that agreement. As noted in Appellants' initial brief, and neither acknowledged nor denied by the PC, there is no evidence that the members of the Commission actually saw the final agreement, let alone approved it, before it was executed; to the contrary, the

record indicates that TTF urged the Ex. Dir. not to present the agreement to the Commission. (Aa199) There is also little doubt that if the settlement agreement had gotten a full hearing before the Commission, the sufficiency of that agreement in actually dealing with the applications' inconsistency with the CMP would have been discussed, and perhaps these appeals would have been averted. In any case, the issue is certainly too important to be dismissed as moot.

### **III. THE CMP DEFINITION OF LOW-INTENSITY RECREATION DOES NOT INCLUDE SOCCER TOURNAMENTS.**

The Commission rests its substantive defense of its actions on the incredible claim that TTF's soccer tournaments actually meet the long-standing definition of "low intensity" recreation and recreational facilities in the CMP. It is sufficient to quote the CMP to show how absurd this new, but critical, claim is. The CMP defines "Recreational facility, low intensive" as

"a facility or area which ... utilizes and depends on the natural environment of the Pinelands and requires no significant modifications of that environment other than to provide access, and which has an insignificant impact on surrounding uses or on the environmental integrity of the area. It permits such low intensity uses as hiking, fishing, trapping, fishing, canoeing, nature study, orienteering, horseback riding and bicycling."

N.J.A.C. 7:50-2.11 (emphases added). The turf fields required for TTF's soccer tournaments are clearly not a "natural environment of the Pinelands," but a highly altered and

artificial modification of the Pinelands' natural forest environment. Soccer tournaments on non-native turf grass fields are not in any way comparable to hiking, hunting, trapping and the other listed activities, which do rely on natural Pinelands habitats and scenery. For this reason, the PC has consistently deemed field sports as high-intensity recreation not permitted in the Agricultural Production Area or on deed restricted farmland, as it quite rightly did in the first years of its review of the TTF tournaments. The PDC-based conservation deed restrictions also permit only "low intensity recreational uses." (Aa345; Aa349) (The SADC restrictions do not permit even low-intensity recreational uses. Aa353; Aa453) Only by trying to shoehorn large-scale sporting events into this CMP definition can the PC justify its actions in approving the tournaments as consistent with the CMP and, importantly, the PDC-based conservation deed restrictions.

**IV. THE 2016 LEGISLATIVE AMENDMENT "SUPPLEMENTING" THE PINELANDS PROTECTION ACT IS NOT A CONFIRMATION OF THE CMP'S DEFINITION OF "LOW INTENSITY RECREATONAL USE" BUT A CHANGE THERETO REQUIRING AMENDMENT OF THE CMP.**

In his July 2014 letter to the PC Ex. Dir., the Nat'l Park Serv. Regional Dir. stated, with respect to then pending legislation seeking to amend the Pinelands Act, "[W]e think that the [CMP] would need to be amended in order to bring organized sporting events within the definition of low intensive

recreation." (Aa448) The PC now takes the position that the CMP does not have to be amended to permit the soccer tournaments because (i) the 2016 Legislation did not change the definition of "low intensity recreational use," but simply "affirmed" the "Ex. Dir.'s determination that soccer activities conformed with the CMP," PC Br. at 31, and (ii) the Legislature did not "place within the 2016 legislation any provision that required promulgation of regulations." PC Br. at 33. Both arguments are specious.

No one is denying that the 2016 Legislative amendment supplementing the Pinelands Act was enacted in order to enable the PC to ultimately find the soccer tournaments comply with the Pinelands Act and CMP. It was an alleged legislative "fix" for which TTF lobbied, even if the Governor's conditional veto did not give TTF all it had asked for and needed. See Aa470-474. The statute as adopted simply says that "field sports, including but not limited to soccer and soccer tournaments . . . shall constitute a low intensity recreational use under the [CMP]." (Aa474) The provision directly contradicts the definition of "low intensity recreational use" employed in the CMP, discussed above, which on its face does not accommodate field sports and athletic fields of any sort. The Legislature clearly intended to effect a change to the CMP, not merely express its approval of a PC decision not even mentioned in the legislative

history. On this point, the Commission stands alone; not even TTF agrees with this "new found" interpretation of the 2016 Legislation.

In order to make the CMP consistent with the Pinelands Act, as amended, the PC cannot avoid the difficult task of reworking the definition of a "low intensity recreational use or facility" or establishing new land-use standards that would minimize the negative impact of such significant change. Athletic fields of all kinds, whether football, soccer, or rugby fields or even golf courses and drives, do not "utilize and depend upon the existing natural environment" of the Pinelands, despite the Commission's declaration otherwise, PC Br. at 27; they all require fundamental human alteration of the natural Pinelands environment and cultivation of a different, non-native land cover. The Commission's argument that the legislative amendment did not include a separate authorization for regulations is somewhat silly given that the 2016 supplementary legislation was codified as part of N.J.S.A. 13:18A-8, which sets forth the preparation, adoption and content of the CMP. The need and authority of the Commission to create and amend the CMP through regulations is central to the structure of the Pinelands Act. See N.J.S.A. 13:18A-27; N.J.S.A. 13:18A-53. A separate authorization to issue regulations was (and is) not necessary.

Finally, the PC's argument regarding the alleged "uniqueness" of TTF's properties does not absolve the Commission of its obligation to engage in rulemaking. The PC must decide whether athletic fields of all sorts will be permitted on all Agricultural Production Area lands in the Pinelands, not just turf farms or those farms currently in turf; as well as the extent of use, location and other terms needed to mesh the new definition with the other requirements of the Pinelands Act and CMP. The Commission imposed several such requirements on TTF's properties first in Hammonton and then in Waterford. The PC cannot avoid the discipline of rulemaking by stating to this Court that its approvals herein will, in effect, have no precedential value, as the U.S. Supreme Court said in Gore v. Bush, 531 U.S. 98 (2000).

**V. THE PINELANDS COMMISSION HAS AN OBLIGATION TO ENFORCE BOTH PDC AND SADC CONSERVATION DEED RESTRICTIONS.**

Neither the PC nor TTF address the serious legal problems generated by the Commission's failure to respect and enforce the PDC and SADC conservation deed restrictions in its approvals, as these restrictions were understood by the parties to the deeds at the time they were recorded. They both try to wish the problem away: The Commission by declaring that the CMP always permitted commercial soccer activity in Agricultural Production Areas; and TTF by asserting that its business venture

constitutes nothing more than farm marketing activities, not a recreational use. Both arguments do not withstand scrutiny.

In its response, the PC admits that its post-2016 legislative amendment decision could not lawfully involve retroactive application of that statutory provision to either the PDC or the SADC deed restrictions. PC Br. at 50. With respect to the former, it argues (at noted *supra*, 17) that the legislation did not so much redefine everyone's understanding of low intensity recreation in the CMP as clarify it. Based on the record in this case and the terms of the CMP, however, such position is untenable and cannot justify the Commission's failure in all three appeals to enforce the PDC restrictions imposed on TTF's property.

The Commission then goes on to admit that the Ex. Dir. did not concern herself with the SADC deeds, but neither acknowledges nor denies its obligation to do so. PC Br. at 51. The SADC restriction does not permit even low-intensity recreational uses (unless, perhaps, they were in place at the time the restriction was entered). It is exactly the PC's failure to respect and enforce such SADC restrictions in its permit actions that Appellants claim was unreasonable and contrary to the law. The SADC deed of easement clearly states that the Commission was a party to the transaction and has the

authority to enforce its restrictions.<sup>2</sup> The fact that the SADC has not taken any enforcement action itself, nor is a party to this action, is irrelevant. The Commission's additional assertion that Appellants must appeal an SADC decision "relative to [SADCs'] own deeds" that "SADC has not made" is frankly ludicrous. PC Br. at 51.

In its brief, TTF picks up where it left off with respect to its advocacy before the Commission, the Legislature and perhaps the SADC (though as noted above the SADC has not taken any action on TTF's soccer activities). That is, it continues to argue that its proposed commercial tournaments constitute "on-farm direct marketing activity" and thus fall within the CMP's definition of "accessory use" and are permitted under N.J.A.C. 2:76-2A.13(b). TTF Br. at 34-40. The problem with these arguments, however, is that they have failed before the Commission and the Legislature (post the Governor's conditional veto of S.2125) (Aa472-473), have never been adopted by the PC as a basis for its approvals, cannot override the easements' specific restrictions, and have no merit.

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<sup>2</sup> See Aa 353-358; Memorandum of Agreement between the SADC and PC, dated October 9, 2001 (Aa451) ("[T]he easement to be placed upon the property from which PDCs are purchased by the SADC shall be in favor of the SADC and State of New Jersey, Pinelands Commission and shall be expressly enforceable by both entities") and Deed of Easement, dated June 15, 2004 (Aa353) (noting that the Commission has "certain rights and obligations in this Deed of Easement" where SADC purchased PDCs

The Commission clearly states that the resolutions TTF submitted from the Atlantic and Camden County Agricultural Boards urging the PC to approve TTF's development application were "irrelevant to Commission review under the CMP," and its interpretation of the relevant PDC restrictions. PC Br. at 12. Furthermore, the fact that these County Agricultural Boards passed resolutions, at TTF's behest, stating their collective opinion that "TTF's soccer activities qualify as agritourism necessary to promote TTF's products," (id.), does not render such activity lawful under the SADC deed restrictions. No one has argued that such resolutions constitute final agency decisions that were appealable by TTF let alone Appellants; and as noted above, the SADC has not taken any action on such matter. The SADC has neither modified nor amended its Agricultural Management Practice for On-Farm Direct Marketing Facilities, Activities and Events, which specifically excludes athletic fields from permitted farm-based recreational activities, N.J.A.C. 2:76-2A.13(b), and has not taken any action to modify the explicit prohibition of athletic fields found in its easement deeds. (Aa466) see also App. Br. at 37-39.

As a result, all the policy arguments presented by TTF, which are tied to the fact that it operates a sod farm, do not extricate it from the legal principles governing deed  

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on the premises).

restrictions. If TTF wants out of these restrictions neither the PC, the Legislature nor this court have the authority to retroactively interpret such deeds so as to permit commercial athletic fields. Instead, TTF must go to the Chancery Division to seek release from the strictures of the deeds. Only such a court is authorized to weigh the equities and ensure that the public gets proper compensation if it determines that there is a basis for lifting or modifying the deeds in any way.

#### CONCLUSION

For all, the reasons stated in PPA's and NJCF's initial and reply briefs, this Court should hear each of the appeals in this consolidated matter, reverse all three No Call-Up Letters, and compel the Commission to amend the CMP and enforce the PCD and SADC deed restrictions as understood at the time imposed.

Respectfully submitted,



Renée Steinhagen, Esq.

Cc: Bruce Velzy, DAG  
William F. Harrison, Esq.

## APPELLANTS' REPLY APPENDIX

Appellants' Case Information Statement, dated July 6, 2015..	1a
Notice of Appeal, dated April 28, 2017. . . . .	3a
Appellants' Case Information Statement, dated April 28, 2017	5a
Certification of Sean Moriarty, DAG, dated March 22, 2017...	9a
Appellants' Memorandum of Law In Support of Their Consolidated Appeals, dated, November 22, 2016, Pages 39-45 . . . . .	11a
Letter from Carleton Montgomery to Nancy Wittenberg, dated February 28, 2015 . . . . .	19a
Letter from Nancy Wittenberg to Carleton Montgomery, Dated March 6, 2015 . . . . .	21a
Call-Up Letter from Charles Horner to Tuckahoe Turf Farm, Inc., dated March 27, 2015 . . . . .	23a
Notice of Cross-Motion To Deem Appellants' Notice of Appeal Timely and to Consolidate it with Previous Appeals and Retain Briefing Schedule . . . . .	26a
Certification of Counsel, dated May 3, 2017 . . . . .	29a
Certification of Carleton Montgomery, dated May 2, 2017 . .	38a



**New Jersey Judiciary  
Superior Court - Appellate Division  
CIVIL CASE INFORMATION STATEMENT**

Please type or clearly print all information.

**TITLE IN FULL (1)**

In re The Pinelands Commission's Consistency Determination Approving  
Tuckahoe Turf Farm, Inc's Application No. 1984-0389.009

**TRIAL COURT OR AGENCY DOCKET NUMBER (2)**

App. No. 1984-0389.009

■ Attach additional sheets as necessary for any information below.

(3) **APPELLANT'S ATTORNEY** EMAIL ADDRESS: steinhagen\_pilc@yahoo.com

☐ PLAINTIFF ☐ DEFENDANT ☒ OTHER (SPECIFY) Objectors (Interested Nonprofit Organizations)

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609-292-4925

\* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

(5) **GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:**

In a letter dated May 26, 2015, The Pinelands Commission ("PC") issued a consistency determination (otherwise known as a "No Call Up" letter) approving Tuckahoe Turf Farm, Inc.'s ("TTF") application to permit establishment of a private commercial soccer use in a deed restricted Agricultural Production Area (the "Action").

(6) Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? ☐ YES ☒ NO

If so, has the order been properly certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4, 2:5-6) ☒ YES ☐ NO

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Were any claims dismissed without prejudice? ☐ YES ☒ NO

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

(7) Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h)) ☐ YES ☒ NO

(8) **GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:**

In Oct. 2013, PC became aware that certain deed restricted parcels owned by TTF were being used for organized soccer activities. On 4/21/14 PC issued a Violation Letter to TTF with respect to those parcels located in Hammonton. On 7/17/14, PC issued a second letter to TTF stating that all soccer practices and events must cease by 8/31/14. This was subsequently extended to 11/30/14. After receiving a full application by TTF seeking permission to hold soccer events, PC, on 12/17/14, issued an "Inconsistent Certificate of Filing" ("ICF") for TTF's Hammonton parcels. Nonetheless, on 2/4/15, the Hammonton Planning Bd. (HPB) passed Res.10-14 approving such activities. On 3/26/15, PC stated in a letter to TTF that it believed that soccer activities were not consistent with the standards of the Pinelands Comprehensive Management Plan ("CMP"). On 4/24/15, PC issued an amended ICF for TTF's restricted parcels in Hammonton, Winslow and Waterford. On 5/6/15, the HPM issued an amended approval of TTF's activities; and on 5/26/15, PC issued a No Call Up letter approving TTF's application as approved by the HPB.

1a

- (9) TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.):
1. Whether PC's Action violates the Pinelands Protection Act, NJSA 13:18A-1 et seq. and the Pinelands CMP regulations applicable to commercial uses in the Agricultural Production Area, NJAC 7:50-5.24(a), because the use in question is not among the permitted uses set forth in the CMP for TTF's Hammononton parcels;
  2. Whether PC's Action violates the terms of the conservation deed restrictions recorded on TTF's Hammononton properties because the use in question is not a permitted use; and
  3. Whether PC acted arbitrarily and capriciously in taking the Action without holding a hearing pursuant to its regulations and/or making findings of fact and law justifying the Action in a public record.

(10) IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? \_\_\_\_\_ ☐ YES ☐ NO
2. Did the trial judge issue written findings or an opinion? If so, on what date? \_\_\_\_\_ ☐ YES ☐ NO
3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? ☐ YES ☐ NO

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

DATE OF YOUR INQUIRY: \_\_\_\_\_

1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

- (11) (A) Arises from substantially the same case or controversy as this appeal? ☐ YES ☒ NO
- (12) (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? ☐ YES ☒ NO
- (13) 2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? ☐ YES ☒ NO

(14) IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name: \_\_\_\_\_

Appellate Division Docket Number: \_\_\_\_\_

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

- (15) State whether you think this case may benefit from a CASP conference. ☒ YES ☐ NO

Explain your answer:

PPA and NJCF are open to discussing this matter with both the PC and TTF to see if there is a viable resolution that respects the CMP and the deed restriction.

- (16) 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).

(17) Pinelands Preservation Alliance; ~~PC~~

Name of Appellant or Respondent

(18) Renee Steinhagen

Name of Counsel of Record  
(or your name if not represented by counsel)

(19) July 6, 2015

Date

(20) 

Signature of Counsel of Record  
(or your signature if not represented by counsel)



**New Jersey Judiciary**  
**Superior Court - Appellate Division**  
**NOTICE OF APPEAL**

<small>Type or clearly print all information. Attach additional sheets if necessary.</small>		<b>ATTORNEY / LAW FIRM / PRO SE LITIGANT</b>			
<b>TITLE IN FULL (AS CAPTIONED BELOW):</b> In re The Pinelands Commission's Consistency Determination Approving Tuckahoe Turf Farm Inc.'s Application No. 1984-0389.009		<b>NAME</b> Renee Steinhagen/NJ Appleseed PILC			
		<b>STREET ADDRESS</b> 50 Park Place, Rm. 1025			
		<b>CITY</b> Newark	<b>STATE</b> NJ	<b>ZIP</b> 07102	<b>PHONE NUMBER</b> 973-735-0523
		<b>EMAIL ADDRESS</b> steinhagen_pilc@yahoo.com			
<b>ON APPEAL FROM</b>					
<b>TRIAL COURT JUDGE</b>		<b>TRIAL COURT OR STATE AGENCY</b> The Pinelands Commission			
		<b>TRIAL COURT OR AGENCY NUMBER</b> App. No. 1984-0389.009			
<p>Notice is hereby given that <u>Pinelands Preservation Alliance; NJ Conservation F.</u> appeals to the Appellate Division from a <input type="checkbox"/> Judgment or <input type="checkbox"/> Order entered on _____ in the <input type="checkbox"/> Civil <input type="checkbox"/> Criminal or <input type="checkbox"/> Family Part of the Superior Court or from a <input checked="" type="checkbox"/> State Agency decision entered on <u>January 26, 2017</u>.</p> <p>If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.</p> <p>Have all issues, as to all parties in this action, before the trial court or agency been disposed of? (In consolidated actions, all issues as to all parties in all actions must have been disposed of.) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If not, has the order been properly certified as final pursuant to R. 4:42-2? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>For criminal, quasi-criminal and juvenile actions only:</p> <p>Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:</p> <p>This appeal is from a <input type="checkbox"/> conviction <input type="checkbox"/> post judgment motion <input type="checkbox"/> post-conviction relief.</p> <p>If post-conviction relief, is it the <input type="checkbox"/> 1st <input type="checkbox"/> 2nd <input type="checkbox"/> other _____ <span style="display: block; text-align: right; font-size: small;">specify</span></p> <p>Is defendant incarcerated? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Was bail granted or the sentence or disposition stayed? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If in custody, name the place of confinement:</p> <p>Defendant was represented below by:</p> <p><input type="checkbox"/> Public Defender <input type="checkbox"/> self <input type="checkbox"/> private counsel _____ <span style="display: block; text-align: right; font-size: small;">specify</span></p>					

Notice of appeal and attached case information statement have been served where applicable on the following:

Name	Date of Service
Trial Court Judge	
Trial Court Division Manager	
Tax Court Administrator	
State Agency	Pinelands Commission-Bruce Velzy, DAG. April 28, 2017
Attorney General or Attorney for other Governmental body pursuant to R. 2:5-1(a), (e) or (h)	

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
Tuckahoe Turfarm, Inc.	William Harrison, Esq. Genova Burns 494 Broad St., Newark, NJ 07102	April 28, 2017
Waterford Twp. Planning Board	Edward Brennan, Florio, Perrucci, Steinhardt & Fader 235 Broubalow Way, Phillipsburg, NJ 08865	April 28, 2017
Hammonton Planning Board	Fitzgerald, McGrarty & Malinsky 747 Shore Road, Linwood, NJ 08221	April 28, 2017

Attached transcript request form has been served where applicable on the following:

Name	Date of Service	Amount of Deposit
Trial Court Transcript Office		
Court Reporter (if applicable)		
Supervisor of Court Reporters		
Clerk of the Tax Court		
State Agency		

Exempt from submitting the transcript request form due to the following:

- ☐ No verbatim record.
- ☐ Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).
- List the date(s) of the trial or hearing:

- ☐ Motion for abbreviation of transcript filed with the court or agency below. Attach copy.
- ☐ Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

April 28, 2017  
DATE

  
SIGNATURE OF ATTORNEY OR PRO SE LITIGANT



**New Jersey Judiciary  
Superior Court - Appellate Division  
CIVIL CASE INFORMATION STATEMENT**

Please type or clearly print all information.

**TITLE IN FULL (1)**

In re The Pinelands Commission's Consistency Determination Approving  
Tuckahoe Turf Farm, Inc's Application No. 1984-0389.009

**TRIAL COURT OR AGENCY DOCKET NUMBER (2)**

App. No. 1984-0389.009

■ Attach additional sheets as necessary for any information below.

(3) **APPELLANT'S ATTORNEY** EMAIL ADDRESS: steinhagen\_pilc@yahoo.com

☐ PLAINTIFF ☐ DEFENDANT ☒ OTHER (SPECIFY) Objectors (Interested Nonprofit Organizations)

**NAME**

Renee Steinhagen, NJ Appleseed PILC (Att. No. 038691989)

**CLIENT**

Pinelands Preservation Alliance; NJCF

**STREET ADDRESS**

**CITY**

Newark

**STATE**

NJ

**ZIP**

07102

**TELEPHONE NUMBER**

973-735-0523

(4) **RESPONDENT'S ATTORNEY \*** EMAIL ADDRESS:

**NAME**

Bruce Velzy, DAG

**CLIENT**

The Pinelands Commission

**STREET ADDRESS**

P.O. Box 093, 25 W. Market St.

**CITY**

Trenton

**STATE**

NJ

**ZIP**

08625

**TELEPHONE NUMBER**

609-292-4925

\* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

(5) **GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:**

In a letter dated January 26, 2017, the Pinelands Commission ("PC") issued a consistency determination (otherwise known as a "No Call Up" letter) approving Tuckahoe Turf Farm, Inc.'s ("TTF") application to permit establishment of a private commercial soccer use in a deed restricted Agricultural Production Area (the "Action") in both Hammonton and Waterford Township. Counsel for the PC served this decision on Appellants on April 25, 2017. Appellants were unaware of the decision until that date.

(6) Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? ☐ YES ☒ NO

If so, has the order been properly certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4, 2:5-6) ☒ YES ☐ NO

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Were any claims dismissed without prejudice? ☐ YES ☒ NO

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

(7) Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h)) ☐ YES ☒ NO

(8) **GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:**

In Oct. 2013, PC became aware that certain deed restricted parcels owned by TTF were being used for organized soccer activities. On 1/16/14 PC issued a Letter to TTF calling all soccer activities "intensive recreational" activity. On 4/24/15, PC issued an amended Inconsistent Certificate of Filing for TTF's restricted parcels in Hammonton, Winslow, and Waterford Twp. On 5/6/15, the Hammonton Planning Board issued an amended approval of TTF's activities; and on 5/16/15, PC issued a No Call Up letter approving TTF's application as approved by the HPM. On 2/1/15 the Waterford Planning Board amended its Resolution, and on 3/10/16, PC issued a No Call Up letter approving TTF's application as approved by the WPB in Res. 16-04. Appellants appealed this matters and they were consolidated in one action. On 12/22/16 and 12/19/16, the HPB and WPB amended their final site approvals in Res. No. 10-14 and res. 16-19 and 15-12, respectively. On 1/26/17 the PC issued a No Call Up Letter approving such amended local approvals.

- (9) TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.):
1. Whether PC's Action violates the Pinelands Protection Act, NJSA 13:18A-1 et seq., as supplemented by P.L.2015, c.285 (2016), the Pinelands CMP regulations applicable to commercial uses in the Agricultural Production Area, and Sec. 502 of the National Parks and Recreation Act of 1978;
  2. Whether PC's action violates the terms of the conservation deed restrictions recorded on TTF's Waterford/Hammonton lots;
  3. Whether PC acted arbitrarily and capriciously in taking the Action without holding a hearing and/or making findings of fact justifying the Action in a public record and by invalidly delegating to its Executive Director the decision as to whether the proposed development conformed with the minimum standards of the CMP without review by the PC.

(10) IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? \_\_\_\_\_ ☐ YES ☐ NO
2. Did the trial judge issue written findings or an opinion? If so, on what date? \_\_\_\_\_ ☐ YES ☐ NO
3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? ☐ YES ☐ NO

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

DATE OF YOUR INQUIRY: \_\_\_\_\_

1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

- (11) (A) Arises from substantially the same case or controversy as this appeal? ☒ YES ☐ NO
- (12) (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? ☒ YES ☐ NO

- (13) 2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? ☐ YES ☒ NO

(14) IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name:

Appellate Division Docket Number:

In re The Pinelands Consistency Determination Approving Tuckahoe

Farm Inc.'s Application No. 1984-0389.009

A-5025-14T2 and A-3417-15T2

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

- (15) State whether you think this case may benefit from a CASP conference. ☐ YES ☒ NO
- Explain your answer:

- (16) 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).

(17) Pinelands Preservation Alliance;NJCF  
Name of Appellant or Respondent

(18) Renee Steinhagen/NJ Appellate PILC  
Name of Counsel of Record  
(or your name if not represented by counsel)

(19) April 28, 2017

Date

(20) Renee Steinhagen  
Signature of Counsel of Record  
(or your signature if not represented by counsel)



Chris Christie  
Governor

Kim Guadagno  
Lt. Governor

State of New Jersey  
THE PINELANDS COMMISSION  
PO Box 359  
New Lisbon, NJ 08064  
(609) 894-7300  
www.nj.gov/pinelands



Sean W. Earlen  
Chairman

Nancy Wittenberg  
Executive Director

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

January 26, 2017

Tuckahoe Turf Farm, Inc.  
P.O. Box 148  
801 N. Myrtle Street  
Hammonton, NJ 08037

NOTIFICATION OF REVIEW OF LOCAL AGENCY APPROVAL(S)

DETERMINATION: CONSISTENT - APPROVAL(S) MAY TAKE EFFECT

APPLICATION #	1984-0389.009
Agency Approval(s) Reviewed	<ul style="list-style-type: none"> <li>Amended Final Site Plan Approval issued by the Hammonton Planning Board (Resolution Nos. 10-14).</li> <li>Amended Preliminary and Final Site Plan Approval issued by the Waterford Township Planning Board (Resolution Nos. 16-19 and 15-12)</li> </ul>
Applicant	Tuckahoe Turf Farm, Inc.
Parcel	Block 5001, Lots 5 - 7 Block 5002, Lot 11 Block 5601, Lots 1 - 9 Block 5602, Lots 3 - 7 Town of Hammonton  Block 7502, Lots 2 - 3 Block 7503, Lots 1, 3 - 5, & 10 - 12 Block 7504, Lots 1 - 4, & 10 - 12 Block 7505, Lot 1 Block 7506, Lot 1 Block 7602, Lots 10 - 13 Waterford Township  Block 6602, Lot 7 Block 7101, Lots 5 & 15 Block 7104, Lots 1 & 3 Winslow Township Agricultural Production Area, AG Zoning District: 369.05 acres Agricultural Production Area, PA Zoning District: 31.6 acres Agricultural Production Area, AP Zoning District: 310 acres
Proposed Development	Establishment of a private commercial soccer use with no site improvements
Plans reviewed	Not Applicable

On January 19, 2016, State legislation took effect that defines field sports, including but not limited to soccer and soccer tournaments, that meet certain conditions and are conducted in a Pinelands Agricultural Production Area as a low intensity recreational use. This means that soccer activities meeting the conditions specified in the legislation are now a permitted land use in a Pinelands Agricultural Production Area. The parcel upon which the soccer events and activities are proposed in this application is located in a Pinelands Agricultural Production Area.

**CONDITIONS FOR DEVELOPMENT:**

1. The proposed soccer use shall not be located in wetlands.
2. This application is for the establishment of the proposed soccer use only. Any other future development of the parcel, including any proposed site improvements, requires application to the Commission and shall be governed by Hammonton's land use ordinances and the Pinelands Comprehensive Management Plan.

If you have any questions, please contact Branwen Ellis of our staff.

Sincerely,



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

- c: Secretary, Town of Hammonton Planning Board (via email)  
Town of Hammonton Construction Code Official (via email)  
Town of Hammonton Environmental Commission (via email)  
Secretary, Waterford Township Planning Board (via email)  
Waterford Township Construction Code Official (via email)  
Waterford Township Environmental Commission (via email)  
Secretary, Winslow Township Planning Board (via email)  
Winslow Township Construction Code Official (via email)  
Winslow Township Environmental Commission (via email)  
Atlantic County Department of Regional Planning and Development (via email)  
Secretary, Camden County Planning Board (via email)  
Mr. Robert Buehler  
William F. Harrison, Esq.

CHRISTOPHER S. PORRINO  
ATTORNEY GENERAL OF NEW JERSEY  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 093  
Trenton, New Jersey 08625  
Attorney for Respondent, New Jersey Pinelands Commission

By: Sean D. Moriarty (004872010)  
Deputy Attorney General  
(609) 984-5065  
sean.moriarty@dol.lps.state.nj.us

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-005025-14  
A-003417-15

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IN RE THE PINELANDS	:	
COMMISSION'S CONSISTENCY	:	CERTIFICATION OF COUNSEL IN
DETERMINATIONS APPROVING	:	SUPPORT OF MOTION TO EXTEND
TUCKAHOE TURF FARM INC.'S	:	TIME TO FILE RESPONDENT'S
APPLICATION NO. 1984-	:	BRIEF
0389.009	:	

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I, Sean D. Moriarty, DAG, hereby certifies:

1. I am a Deputy Attorney General of the State of New Jersey and am duly admitted to practice law before the courts of this State. I submit this Certification in support of Respondent, New Jersey Pinelands Commission's motion for a 30-day extension of time to file its brief in this matter.

2. Currently, Respondent's brief is due March 24, 2017 after an initial 30-day clerk's extension.

3. Due to other pressing matters involving my representation of Respondent including representation related to several other

pending appeals and development applications as well as my ongoing duties representing the New Jersey Department of Environmental Protection, I have been unable to complete Respondent's brief by the current due date.

5. For these reasons, I request a 30-day extension of the time in which to respond to file Respondent's brief in this matter, making the new due date April 24, 2017.

6. Counsel for Appellants have consented to Respondent's request.

7. This is my first motion for an extension of time to file Respondent's brief.

I certify that the foregoing statements made by me are true.

I am aware that if any of the foregoing statements are false, I am subject to punishment.

  
Sean Moriarty  
Deputy Attorney General

Dated: 3/22/17

466) Accordingly, the establishment of commercial soccer events on parcels restricted by SADC cannot be defended, even when the current use of the farm is sod production.<sup>7</sup>

The Pineland Commission is obligated to enforce these SADC restrictions on lands within the Pinelands.<sup>8</sup> Its failure to do so here violates the law.

**C. THE PROCEDURE EMPLOYED BY THE PINELANDS COMMISSION VIOLATES ITS OWN REGULATIONS AND THE PRINCIPLES SET FORTH IN DRAGON AND WHISPERING WOODS.**

In a Stipulation of Settlement, entered into between the Commission, TTF and the Mid-Atlantic Soccer Showcase League, the parties expressed their intent to "amicably resolve all issues pertaining to the Commission staff's review of the [HPB]'s February 5, 2015 Decision and Resolution without the need for an adjudicatory hearing concerning that approval." (Aa226) They therefore agreed that "within fifteen (15) days of receipt of an

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<sup>7</sup>It should be noted that the Applicant has characterized the proposed activities as On-Farm Direct Marketing activities permitted under the Right to Farm Act. (Aa52,55). Indeed, at the TTF's behest, Atlantic County and Camden County Agricultural Development Boards passed identical resolutions, dated February 18, 2014 and May 13, 2014, respectively, urging the SADC "to consider the unique nature of a turf grass/sod farm and the limited opportunities that are available to directly market this specialized product." (Aa45;48) Nonetheless, the SADC has not modified or amended its Agricultural Management Practice for On-Farm Direct Marketing Facilities, Activities and Events, which specifically excludes athletic fields from permitted farm-based recreational activities. N.J.A.C. 2:76-2A.13(b).

<sup>8</sup>See Memorandum of Agreement between the SADC and PC, dated October 9, 2001 (Aa449-452) and Deed of Easement, dated June 15, 2004. (Aa353)

amended Decision and Resolution . . . incorporating the conditions set forth in Paragraph 3," the "Commission staff [would] issue a letter of 'No Further Review'. . ." (Aa228) Paragraph 3 simply required TTF to submit to the Hammonton Zoning Officer (1) a copy of the schedule of soccer events to be conducted at TTF; (ii) a copy of the practice schedule for the soccer practices to be conducted at TTF; and (iii) a copy of the schedule of any other soccer activities, such as "camps, games, try-outs, scrimmages, etc.," to be conducted at TTF, which, in turn, would be reviewed by the PC for compliance with the CMP "prior to the Zoning Office issuing the permit." (Aa227) This condition sets forth a procedural requirement that did not impact the central substantive issue raised by the issue of whether the proposed activity constituted a permitted use under the CMP.

As noted in Point IA2, supra, the Commission bears the ultimate responsibility for enforcing the provisions of the Pinelands Protection Act and the CMP, N.J.A.C. 7:50-1.11; and ensuring that no development application in the Pinelands is approved unless "such approval or grant" conforms to the CMP or a waiver of strict compliance is granted. N.J.S.A. 13:18A-10. To achieve this statutory mandate, once the Commission decides to review a development application (and, in particular, a private development application that raises a "substantial issue" of

compliance with the CMP), the Pinelands Protection Act evinces a legislative intent that hearings be held (N.J.S.A. 13:18A-15), and that the Commission will vote on the application. See Application of John Madin v. Pinelands Comm'n, supra, 201 N.J. Super. at 134; N.J.A.C. 7:50-4.37(a)-(c):.

In this case, however, a public hearing did not occur. Pursuant to the Stipulation of Settlement, the Executive Director declined to present this matter to the Commission for a hearing despite the fact that the record indicates that the Commission neither adopted a resolution accepting the final settlement agreement (in either a closed or open session) nor noticed the subject of a settlement agreement for public comment.

In Dragon v. NJDEP, 405 N.J. Super. 478 (App. Div.), certif. denied, 199 N.J. 517 (2009), Judge Parrillo made clear that an administrative agency, such as the PC, cannot use the settlement process to avoid substantive requirements to allow development otherwise prohibited unless authorized to do so by its governing statute or regulations. In Dragon, the court specifically held that the Coastal Area Review Act ("CAFRA") did not grant DEP the authority, either express or implied, to use the settlement process "to circumvent CAFRA's substantive permitting requirements and to allow regulated development in a coastal

region governed exclusively by CAFRA." 405 N.J. Super. at 492.

Pursuant to the Pinelands Protection Act,

[T]he commission is . . . authorized to waive strict compliance with [the CMP] or with any element or standard contained therein, upon finding that such waiver is necessary to alleviate extraordinary hardship or to satisfy a compelling public need, is consistent with the purposes and provisions of this act and the Federal Act, and would not result in substantial impairment of the resources of the pinelands area.

N.J.S.A. 13:18A-10(c).

Part V of the CMP establishes procedures and standards pursuant to which the Commission may waive strict compliance with the Plan, N.J.A.C. 7:50-4.61 et seq., and the use of settlement agreements is not one of such procedures. In this way, the Executive Director's decision to terminate review of TTF's application in the face of substantial issues of conformity with the CMP not only violated CMP procedural rules, but also unlawfully circumvented application of its substantive requirements. Cf. Warner Co. v. Sutton, 274 N.J. Super. 464 (App. Div. 1994) (vacating consent order where trial judge approved the settlement of land use litigation without the municipality adopting amendments to the zoning ordinance implementing the settlement terms).

Furthermore, the record provides no evidence that the Commission actually reviewed, much less adopted a resolution to approve, the final settlement agreement. Although the April 10,

2015 minutes of the Commission indicate a closed-session resolution authorizing the Executive Director "to continue to negotiate and settle the [TTF] matter consistent with the terms discussed in closed session" (Aa207), no such resolution appears to have been formalized or placed in the record. Nor is there any evidence at all that the Commission ever saw or approved the document actually signed by the Executive Director on May 11, 2015. See May PC Minutes (Aa214-223); June PC Minutes (Aa231-238); see also (Aa199) (Letter from TTF Counsel to Executive Director urging her not to "present the Agreement to the Commission").

Similarly, and equally flawed, is the Commission's failure to give the public any opportunity to be heard on the settlement agreement. The terms of the settlement were not "subject to public presentation, a public hearing thereon and a public vote," as required by the court in Whispering Woods at Bamm Hollow, Inc. v. Twp. of Middletown Planning Board, 220 N.J. Super. 161 (Law. Div. 1987) ("Whispering Woods"). William M. Cox, Zoning and Land Use Administration, §33-7 (2009). The procedures employed in Whispering Woods, involving the settlement of a dispute between a municipal board and a land use applicant while the matter was pending in the Law Division, have

since been approved in several other land use cases.<sup>9</sup> And since the Commission's role in considering development applications is "generally akin to land use regulation and, specifically, to the exercise of the variance power" Application of John Madin v. Pinelands Comm'n, supra, 201 N.J. Super. at 134, the requirements of Whispering Woods pertain to TTF's application before the PC as well.

Silence, closed-session discussions, lack of presentation of the settlement agreement at a Commission meeting or on the Commission's website, and no opportunity to comment are the exact opposition of due notice, public hearings, presentation of extensive evidence and testimony that is open to public comment, public vote and written resolution that since 1987 are the hallmarks of a valid Whispering Woods hearing prior to a public vote on a settlement agreement. The Executive Director's use of a settlement agreement to circumvent substantive requirements of the CMP and its failure to hold a hearing on that agreement are

---

<sup>9</sup>See, e.g., Friends of Peapack-Gladstone v. Borough of Peapack-Gladstone Land Use Bd., 407 N.J. Super. 404, 424, (App. Div. 2009) (noting that "the process utilized by the Board here, as in Whispering Woods, fulfilled" all of the statutory conditions necessary to vindicate the public interest, including notice, a public hearing, a public vote, and a written resolution); Gandolfi v. Town of Hammontown, 367 N.J. Super. 527 (App. Div. 2004) (upholding a land use settlement after a hearing that comported with Whispering Woods); Warner Co. v. Sutton, supra. 274 N.J. Super. at 464 (remanding a land use settlement where record did not substantiate that the terms of a proposed settlement were ever discussed at a public meeting prior to the entry of a consent order containing such terms).

yet another reason to deem the Commission's No-Call-Up Letter invalid.

**D. THE STATUTORY PROVISION SUPPLEMENTING THE PINELANDS PROTECTION ACT IS NOT RETROACTIVE.**

Eight months after the Commission declined review of HPB's May 6, 2015 land use approval, and issued the No Call-Up Letter at issue here, the New Jersey Legislature approved an act on January 19, 2016, "supplementing" the Pinelands Protection Act. The new act declared that certain field sports, "conducted or occurring in an agricultural production area" within the Pinelands, were now considered "low intensity recreational" uses under the CMP, without regard to the strictures of the English language or the definition set out in the CMP. (Aa474)

The act, codified as N.J.S.A. 13:18A-8.1, dictates a specific substantive requirement to be included in the CMP, and follows an otherwise more general provision that governs the Commission's preparation and adoption of the CMP and the CMP's content. N.J.S.A. 13:18A-8. By micromanaging the definition of low-intensive recreational use only in the agricultural production area of the Pinelands, the act intends to alter the current CMP regulations and effect a significant change in PC regulatory policy. The one-line act does not address any statute or regulation governing SADC deed restrictions, and does not attempt to change the meaning and requirements of existing





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## Pinelands Preservation Alliance

Bishop Farmstead • 17 Pemberton Road • Southampton NJ • 08088  
Phone: 609-859-8860 • ppa@pinelandsalliance.org • www.pinelandsalliance.org

Protecting the Pinelands  
since 1989

### Via Email and First Class Mail

February 18, 2015

Mark Lohbauer, Chair  
Nancy Wittenberg, Executive Director  
New Jersey Pinelands Commission  
15 Springfield Road  
P.O. Box 359  
New Lisbon, NJ 08064

**Re: Tuckahoe Turf Farm Commercial Soccer Events, Application No. 1984-0289.009 and Letter to Senator Lesniak Dated February 11, 2015**

Dear Mr. Lohbauer and Ms. Wittenberg,

We are writing to express our concern and request information regarding statements made in a letter from Ms. Wittenberg to Senator Lesniak dated February 11, 2015 regarding a proposed bill to alter the Pinelands CMP at the request of Tuckahoe Turf Farm.

Ms. Wittenberg's letter clearly and correctly states that the commercial soccer activities on the site are unlawful under the CMP and are in violation of deed restrictions on the land in question. This finding is also reflected in the Inconsistent Certificate of Filing dated December 17, 2014. The letter also later states, however, that the Commission staff have made a deal – or thought they had made a deal – with the owner of the farm to permit “the continued use of the farm for commercial soccer events for two years.”

Commission staff have given us a document headed “Betts and Betts LLC” that sets out a set of “conditions” but has no letterhead or author. It is impossible to know who created it, or what its status is supposed to be within the CMP's standards and procedures.

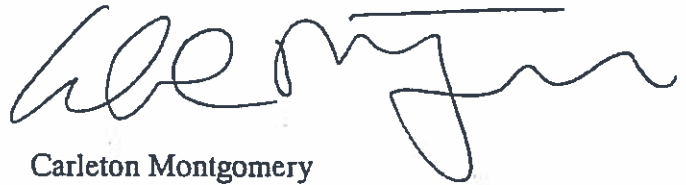
Perhaps you can see our confusion. We take it that this agreement is not proposed to be an intergovernmental Memorandum of Agreement or a waiver of strict compliance, but instead some other kind of waiver agreement between the Commission staff and the landowner. The information we have received to date raises several question which we hope you will answer, including:

- What is the legal authority for the Pinelands Commission to make an *ad hoc* agreement with a landowner to permit violations of the CMP and conservation deed restrictions in this case?
- Is this to be an official agency finding or action?
- What CMP provision or procedure is the agreement based on, and in what form has it been, or will it be, formalized?
- Will there be a public hearing on the agreement?
- Has the Commission been put under any political pressure to make a deal in this matter?

Finally, we ask to be sent notices of any future actions the Commission proposes to take with respect to this application and topic, including action on any local approvals, so that we may comment before the Commission takes action.

We look forward to hearing from you on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carleton Montgomery', with a stylized, cursive script.

Carleton Montgomery



Chris Christie  
Governor

Kim Guadagno  
Lt. Governor

State of New Jersey  
THE PINELANDS COMMISSION  
PO Box 359  
New Lisbon, NJ 08064  
(609) 894-7300  
[www.nj.gov/pinelands](http://www.nj.gov/pinelands)

General Information: [Info@njpines.state.nj.us](mailto:Info@njpines.state.nj.us)  
Application Specific Information: [AppInfo@njpines.state.nj.us](mailto:AppInfo@njpines.state.nj.us)



Mark S. Lohbauer  
Chairman

Nancy Wittenberg  
Executive Director

March 6, 2015

Carleton Montgomery, Executive Director  
Pinelands Preservation Alliance  
17 Pemberton Road  
Southampton, NJ 08088

Dear Mr. Montgomery:

This is in response to your letter of February 18, 2015 regarding Application No. 1984-0389.009 for commercial soccer events at the Tuckahoe Turf Farm. Please note that this is a private application. As such the review process, as established by the Pinelands Comprehensive Management Plan (CMP), provides for public input at the local level, in this case before the Hammonton Planning Board. It also provides the opportunity for the Commission to work with the applicant to achieve consistency with the CMP, both during the application review process and as part of the local approval review process.

As noted in your letter, and in accordance with the applicable provisions of the Pinelands CMP, the Commission issued an Inconsistent Certificate of Filing on December 17, 2014. The issuance of this Inconsistent Certificate of Filing enabled the applicant to pursue a local approval from the Planning Board for the Town of Hammonton. The Planning Board considered this matter (App. No. 10-14) at its December 17, 2014 meeting during which it accepted public testimony concerning the proposed soccer activities. The Planning Board subsequently issued its Decision and Resolution for App. No. 10-14 on February 4, 2015 and forwarded a copy of that approval to the Commission. In accordance with N.J.A.C. 7:50-4.40, the Commission staff is reviewing that local approval to determine whether it raises substantial issues with respect to the conformance of the proposed development with the minimum standards of the Pinelands CMP and the provisions of Hammonton's certified ordinance. Should it be determined that the local approval raises substantial issues, it will then be reviewed either through a hearing conducted by the Executive Director or before the Office of Administrative Law. N.J.A.C. 7:50-4.41.

You have also raised questions concerning an agreement between the Pinelands Commission and the property owner. No formal agreement with the property owner has been drafted, signed or provided to the Commission for its consideration. The Commission staff worked with the applicant and the Town to attempt to resolve the inconsistencies with the CMP. Your letter also criticizes a document that we provided to you based on your specific request. This document was a three page list of conditions that were discussed with the applicant and the Town. While you may not feel the document was useful, it is what you asked for. Further, your dissatisfaction is even more confounding in light of the fact that you were trying to get this document from the original source and we provided it to be helpful.

This issue has raised the potential risk of litigation and resulted in the introduction of two bills that are pending in the Legislature, S2125/A3257. The Commission is greatly concerned about both the scope of activities that would be permitted by the proposed legislation and its potential far-reaching and long-term impacts, which in our view would authorize unlimited use of deed restricted agricultural lands for soccer and other active recreational uses in perpetuity. The Commission was made aware of these issues and supported and directed its staff to engage in discussions with the property owner, representatives of the soccer organizations and the Town of Hammonton. As noted above such discussions are a normal part of the private development application process.

Finally, you have requested that you be sent notices of any future action that the Commission proposes to take with respect to this application. All activity on private applications is noted on the Summary of Activity Report on the Commission website. Please note that the application number is 1984-0289.009. You should of course also keep track of activity at the municipal level.

Sincerely,



Nancy Wittenberg  
Executive Director

C: Mark Lohbauer, Chairman



State of New Jersey  
THE PINELANDS COMMISSION  
PO Box 359  
NEW LISBON, NJ 08064  
(609) 894-7300  
www.nj.gov/pinelands



Chris Christie  
Governor

Kim Guadagno  
Lt. Governor

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

Mark S. Lohbauer  
Chairman

Nancy Witzenberg  
Executive Director

March 27, 2015

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Tuckahoe Turf Farm, Inc.  
P.O. Box 148  
801 N. Myrtle Street  
Hammonton, NJ 08037

Re: Application # 1984-0389.009  
Block 5001, Lots 5 - 7  
Block 5002, Lot 11  
Block 5601, Lots 2 - 8  
Block 5602, Lots 4 - 7  
Town of Hammonton

Dear Sir or Madam:

A Commission public hearing is necessary to review the issues raised by the preliminary and final major site plan approval issued by the Hammonton Planning Board for the establishment of a commercial soccer use on the above-referenced parcel.

The Public Hearing has been scheduled for:

Thursday, April 30, 2015  
2:00PM  
New Jersey Pinelands Commission  
Springfield Road  
New Lisbon, New Jersey 08064

The issues to be reviewed at the public hearing are:

1. Whether the establishment of a commercial soccer use is a permitted use in an Agricultural Production Area pursuant to Hammonton's certified land use ordinances and N.J.A.C. 7:50-5.24(a).
2. Whether the establishment of a commercial soccer use is a permitted use on a parcel subject of a Pinelands Development Credits deed restriction pursuant to N.J.A.C. 7:50-5.47(b)3.
3. Whether the proposed development is consistent with the wetlands protection requirements contained in Hammonton's certified land use ordinances or N.J.A.C. 7:50-6.1 - 6.14.

23a



Specifically, this issue is raised because some proposed soccer fields, parking and associated activities of the existing sod fields are located in wetlands.

4. Whether the proposed development is consistent with the stormwater management requirements contained in Hammonton's certified land use ordinances or N.J.A.C. 7:50-6.84.

Specifically, this issue is raised because the concerned municipal approval requires surfacing (resurfacing) of Myrtle Street with road millings. Based upon available aerial photography, Myrtle Street was a sand road that was surfaced after 1995 without obtaining Pinelands Commission approval.

Copies of the cited regulations can be viewed on the Commission's website ([www.nj.gov/pinelands](http://www.nj.gov/pinelands)).

If you wish to resolve the issue(s) necessitating the public hearing so that the scheduled hearing will not be necessary, please submit a written request to adjourn the hearing prior to the hearing date. The hearing will then be rescheduled. If the issue(s) is resolved before the hearing date, the public hearing will be canceled. If the issue(s) is not resolved and a written request to adjourn the hearing is not submitted, the application can be recommended for denial based on the information contained in the file.

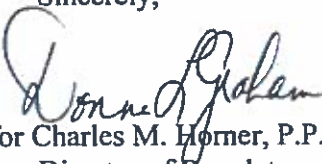
If you wish to attend the public hearing, please follow the instructions contained in the attached "Public Hearing Procedures". This attachment includes specific instructions for completing the required public notice if you want the Pinelands Commission to conduct a public hearing on the application.

You may request a hearing at the New Jersey Office of Administrative Law instead of the Commission's public hearing. Such a request would waive the time period in which the Commission must act on the application. If you wish to have a hearing at the New Jersey Office of Administrative Law, you must inform the Commission in writing by April 23, 2015.

**NO DEVELOPMENT MAY BE CARRIED OUT ON THE ABOVE-REFERENCED LOT UNTIL SUCH TIME AS THE PINELANDS COMMISSION HAS ACTED ON THE PROPOSED DEVELOPMENT.**

If you have any questions, please contact Rhonda Ward of our staff.

Sincerely,

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

enc: Public Hearing Procedures

c: Secretary, Town of Hammonton Planning Board (via email)  
Town of Hammonton Construction Code Official (via email)  
Town of Hammonton Environmental Commission (via email)  
Atlantic County Department of Regional Planning and Development (via email)  
William F. Harrison, Esq.

## PUBLIC HEARING PROCEDURES

In order to attend the public hearing, legal notice of the public hearing must be provided. The notice shall be published, posted or mailed, as relevant, by April 20, 2015.

The legal notice must include the following information:

- a. the time and place of the hearing;
- b. that the hearing is being conducted pursuant to the provisions of the Comprehensive Management Plan;
- c. the name and address of the applicant;
- d. a statement that the hearing concerns whether the proposed development is consistent with the permitted use, deed restriction, wetlands protection and stormwater management requirements contained in Hammonton's certified land use ordinances and the Pinelands Comprehensive Management Plan;
- e. a statement that the application and supporting materials are available for public inspection and copying at the principal offices of the Pinelands Commission; and
- f. a statement that any person may at such public hearing speak or submit a written statement.

The notice shall be provided to the following agencies and persons:

1. Secretary, Hammonton Planning Board;
2. Hammonton Environmental Commission;
3. Atlantic County Department of Regional Planning and Development;
4. All landowners within 200 feet of any border of the above-referenced lot;
5. By publication of notice of the hearing at least once in a newspaper having general circulation in Hammonton; and
6. By conspicuously posting on the above-referenced lot a notice of the public hearing.

An affidavit must be filed with the Pinelands Commission by April 23, 2015 that all of the notice requirements have been fulfilled. If the required public notice is completed but the required affidavit is not filed with the Commission by April 23, 2015, the Pinelands Commission staff reserves the right to adjourn the public hearing to another date.



Renée Steinhagen  
Attorney No. 038691989  
NEW JERSEY APPLESEED PILC  
50 Park Place, Room 1025  
Newark, N.J. 07102  
(973) 735-0523

Attorney for Pinelands  
Preservation Alliance and New  
Jersey Conservation Foundation

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-005025-14-T2  
A-003417-15-T2  
M-

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X

IN RE THE PINELANDS	:	
COMMISSION'S CONSISTENCY	:	<u>Civil Action</u>
DETERMINATIONS APPROVING	:	
TUCKAHOE TURF FARM INC.'S	:	
APPLICATION NO. 1984-	:	
0389.009	:	
	:	NOTICE OF CROSS-MOTION TO
	:	DEEM APPELLANTS' NOTICE OF
	:	APPEAL TIMELY AND TO
	:	CONSOLIDATE IT WITH PREVIOUS
	:	APPEALS AND RETAIN
	:	PREVIOUS BRIEFING SCHEDULE

---

X

TO: Bruce Velzy, DAG  
Attorney General of New Jersey  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 093  
Trenton, New Jersey 08625

William F. Harrison, Esq.  
Genova Burns, LLC  
494 Broad Street  
Newark, N. J. 07102

PLEASE TAKE NOTICE that the undersigned attorney for  
Appellants, Pinelands Preservation Alliance ("PPA") and New Jersey

Conservation Foundation ("NJCF"), hereby makes a cross-motion to deem their third Notice of Appeal, dated April 28, 2017, timely pursuant to N.J.R. 2:4-1 and N.J.R. 2:4-4. This third appeal involves approval by the Pinelands Commission of minor amendments to restrictions it had previously approved and which Appellants challenged in A-005025-14 and A-003417-15. Appellants filing is timely because Appellants were just notified of the Pineland Commission's January 26, 2017 No Call- Up Letter via the State's Motion to Dismiss.

Furthermore, because the January 26, 2017 No Call-Up Letter approval raises the same legal issues as the previous two appeals concerning the process employed by the Pinelands Commission (i.e., rendering a decision without public fact-finding, hearing and record) and whether its substantive decisions violate the Comprehensive Management Plan ("CMP") and the deed restrictions applicable to the lots involved, A-005025-14 and A-003417 are not moot; and to the extent that mere modification of a final order renders those orders moot, such appeals raise legal and policy issues of substantial importance that must be reviewed by this court. Accordingly, Appellants request that their most recent appeal be consolidated with the previous appeals and that the same briefing schedule be retained. Appellants and Respondent Intervenor Tuckahoe Turf Farm Inc. ("TTF") have briefed all the legal issues involved, including the impact, if any of the January

2016 legislation, on TTF's application before the Commission, and thus such event cannot render the pending appeals moot. Respondent Pinelands Commission has yet to submit its response brief to which Appellants will then have the opportunity to reply. The Pinelands Commission and TTF cannot evade judicial review of its decision to permit soccer tournaments on deed restricted properties simply by modifying certain restrictions before the court has had time to hear and render a decision on whether such activity is lawful in the first place. Among other reasons, such an outcome would permit the Commission to avoid any judicial review of the legality of its approvals by simply redoing them every year.

PLEASE TAKE FURTHER NOTICE that Appellants will rely upon the attached Letter Brief and Appendix, Certification of Counsel and Certification of Carleton Montgomery, Ex. Director of PPA in support of its Cross-Motion and in opposition to Respondent's Motion to Dismiss the Consolidated Appeals as moot.

Respectfully, submitted,



Renée Steinhagen  
New Jersey Appleséed  
Public Interest Law Center

Dated: May 3, 2016

Renée Steinhagen  
Attorney No. 038691989  
NEW JERSEY APPLESEED PILC  
50 Park Place, Room 1025  
Newark, N.J. 07102  
(973) 735-0523

Attorney for Pinelands  
Preservation Alliance and New  
Jersey Conservation Foundation

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-005025-14-T2  
A-003417-15-T2  
M-

\_\_\_\_\_  
IN RE THE PINELANDS  
COMMISSION'S CONSISTENCY  
DETERMINATIONS APPROVING  
TUCKAHOE TURF FARM INC.'S  
APPLICATION NO. 1984-  
0389.009

X

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Civil Action

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CERTIFICATION OF COUNSEL

:

X

I, RENÉE STEINHAGEN, of full age, does hereby certify as follows:

1. I am an attorney at New Jersey Appleseed, which represents the Pinelands Preservation Alliance ("PPA") and New Jersey Conservation Foundation ("NJCF") (collectively, "Appellants") in the above-captioned matter.

2. I make this certification in support of Appellants' Cross-Motion to Deem their Third Notice of Appeal Timely and Consolidate it with the Pending Appeals, I make this certification further in opposition to Respondent Pinelands Commission's ("PC") Motion to Dismiss this matter as moot. The legal issues raised in

these consolidated appeals, which already have been briefed by Appellants and Intervenor Tuckahoe Turf Farm, Inc. ("TTF") raise issues of significant public importance regarding Pineland Commission procedural and substantive decision-making that are equally applicable to the recent No Call Letter. Such letter implicitly approved minor amendments to two municipal approvals that have little, if any, bearing on the legal issues raised in this appeal.

3. To start, this matter involves consolidated appeals taken from two No Call-Up letters, effectively amended by a single No Call-Up letter dated January 26, 2017, issued by the Pinelands Commission with respect to a single development application filed by Tuckahoe Turf Farm to permit soccer use on certain deed-restricted parcels located within the jurisdiction of the Commission.

4. PPA filed a Notice of Appeal and Case Information Statement, involving property located in Hammonton, on July 6, 2015, which were amended to add the NJCA as a party, on August 5, 2015 (Ra71-74)

5. After Appellants filed their appeal, the Appellate Division requested briefing on whether the Commission's No Call-Up Letter identified in the appeal constituted a final agency decision. Appellants, the PC and TTF each submitted letter briefs

to the court, and on September 29, 2015, the court decided to process the appeal.

6. The State, on behalf of the PC, filed its first Statement of Items Comprising the Record ("SICR") on November 25, 2015, and after numerous discussions between the parties, the First Amended SICR was filed on March 28, 2016.

7. On January 19, 2016, the New Jersey Legislature enacted Chapter 285 "supplementing" the Pinelands Protection Act. In accord with this act, which emerged after a conditional veto, certain field sports, including but not limited to soccer activities, "conducted or occurring in an agricultural production area" within the Pinelands, were declared to be "low intensity recreational" uses under the Pinelands Comprehensive Management Plan ("CMP"). N.J.S.A. 13:18A-8.1.

8. Sometime thereafter, the Deputy Attorney General informally asked Appellants to withdraw their appeal. Appellants declined, stating that they believed that the amendment was not retroactive, was not self-executing insofar as it required formal rule-making to amend the CMP, and did not impact the deed restrictions existing on the property. Appellants have briefed these three issues in their opening briefs in this consolidated appeal; only the question of legislative retroactivity with respect to the CMP requirements on the Hammonton lots at issue in A-005025-14-T2 has been mooted as a result of the PC's recent No

Call-Up Letter. The remaining questions are unaffected and are ripe for decision.

9. On April 9, 2016, Appellants filed a second Notice of Appeal and Case Information Statement regarding the TTF parcels located in Waterford. (Ra75-78)

10. Appellants simultaneously filed a Motion to Consolidate the two matters, which was granted by Order dated May 25, 2016. (Ra79)

11. On or about July 25, 2016, the State filed a Second Amended SICR reflecting the consolidation of the two appeals, and on September 9, 2016 filed a Third Amended SICR (which Appellants did not receive). Upon review, additional documents that had been submitted to or generated by the Pinelands Commission were identified, and accordingly the State filed a Fourth Amended SICR on or about September 2016.

12. On October 21, 2016, Appellants made a motion requesting a 30-day extension to file their initial appendix and brief on November 25, 2016, with the consent of all parties. The Order was granted and Appellants submitted their Initial Brief and Appendix on November 23, 2016.

13. A new scheduling Order was issued and Respondent's and Intervenor's Response Brief was due on February 22, 2017. The PC received an "initial 30-day clerk's extension," and then made a Motion to Extend Time to File Respondent's Brief, placing its brief

due on April 24, 2017. Intervenor filed its response brief on February 22, 2017.

14. At the time the State asked for Appellants' consent to its extension requests, it stated that its sole reason for such extension was the difficulty in completing its brief "[d]ue to other pressing matters." See Certification of Counsel, dated March 22, 2017. (AMa9-10) The State did not mention to counsel the fact that the PC had issued yet a third No Call-Up Letter regarding the Hammonton and Waterford properties on January 26, 2017, and did not state its position that Appellants needed to amend its Appeals or file a new Notice of Appeal.

15. On April 25, 2017, I received the State's Motion to Dismiss and for the first time became aware of the fact that the PC had acted anew on amended municipal approvals.

16. While preparing this Certification, I again reviewed Intervenor TTF's February 22, 2017 brief, which was received by my office on February 24, 2017. Although I had briefly glanced at the brief at the time of receipt (due to the fact that Appellants were not expected to submit a reply brief until it received the State's response), I had not noticed that tucked toward the end of TTF's appendix, it had included the January 26, 2017 No Call-Up Letter, and cited that Letter on p. 24 of its brief. That citation was in the context of TTF's position that the 2016 Legislation rendered both consolidated appeals moot. TTF did not argue that

the filing of the January 26, 2017 No Call-Up Letter itself rendered the appeals moot. Upon receipt of the brief, I also did not independently check the appendix since I had no reason to expect that Intervenor TTF would rely on a document in its response brief that was not included in the Statement of Items in the Record ("SICR") pertinent to the consolidated appeals.

17. On the face of the No-Call Up letter (Ra103-104), it appears that the Pinelands Commission again delegated the decision to approve the amended local approvals to its Executive Director without a public hearing, the creation of a public record, and a vote by the Commission itself. It also appears from the list of persons copied on the letter that no member of the public who had made comments regarding TTF's application before the Pinelands Commission was given notice that such modifications were approved, including PPA, which had specifically requested that it be kept informed in a letter dated February 18, 2015, and who is a party to this litigation. (AMa19-20)

18. Furthermore, all three Commission approvals raise the same legal question of whether such decisions violate the CMP procedural and land-use standards, and/or the deed restrictions on the relevant lots. In this way, all the legal issues raised with respect to the previous No Call-Up Letters remain applicable to the Pinelands Commission's recent decision regarding TTF's application with respect to both Hammonton and Waterford

properties, including the impact, if any, of the January 2016 legislation seeking to authorize soccer tournaments among other recreational activities as "low intensity" recreation. Compare Appellants' Case Information Statements with the Case Information Statement filed on April 28, 2017. (AMa1-2, Ra73-74 and Ra77-78 with AMa5-6)

19. There is one issue that would not be reviewed if the Court were to find the previous appeal regarding the Hammonton properties moot as a result of the Commission's recent modification of the restrictions imposed by its previous decision: The question of whether the Pinelands Commission's use of a settlement agreement to circumvent CMP requirements violated the principles set forth in Dragon v. NJDEP, 405 N.J. Super. 478 (App. Div.), certif. denied, 199 N.J. 517 (2009) (concerning the use of a settlement agreement to avoid substantive requirements to allow development otherwise prohibited unless authorized to do so by its governing statute or regulations) and Whispering Woods at Bamm Hollow, Inc. v. Twp. of Middleton Planning Board, 220 N.J. Super. 161 (Law Div. 1987) (requiring the terms of the settlement to be subject to public presentation, a public hearing thereon and a public vote by the relevant authority). The record indicates that the Commission relied on a settlement agreement in A-005025-14 to support its No Call-Up Letter; most recently, it relied on the January 16, 2016 legislation to permit modifications of the terms agreed to in that

settlement agreement. The PC's use of a settlement agreement to approve development which it had already determined on multiple occasions to violate the CMP is a very important legal issue with strong public policy implications for the conduct of the PC. See (AM11-17). The Pinelands Commission should not be able to avoid judicial review of its flawed decision-making.

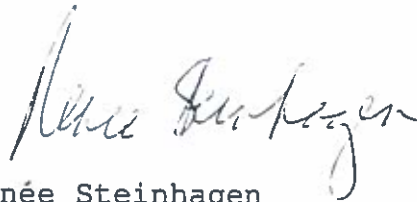
20. Since this matter has been within the jurisdiction of this Court for the past two years, and the State and TTF are aware of the issues that Appellants have raised regarding the PC's actions with respect to TTF's application (indeed, Appellants have already briefed them, including the impact of the 2016 legislative amendment to the Pinelands Protection Act), finding the April 28, 2017 Notice of Appeal timely will not harm either the Commission or TTF.

21. Appellants have asked the Commission to consent to their request to deem their new Notice of Appeal timely. The Commission has responded that it would like to see our papers before it makes a decision. TTF, however, has made clear in a correspondence dated April 28, 2017 that it believes it will be prejudiced by such action.

22. Appellants respectfully request that the Court simultaneously order the consolidation of all three appeals, since the most recent decision raises the same legal issues that Appellants raised with respect to the previous appeals.

Furthermore, because Appellants have already briefed such issues, we respectfully request that the Briefing Schedule remain the same, and the State be ordered to submit its response brief and appendix.

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



Renée Steinhagen  
New Jersey Appleseed  
Public Interest Law Center

Dated: May 3, 2017

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Jersey Conservation Foundation

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-005025-14-T2  
A-003417-15-T2  
M-

_____	X	
IN RE THE PINELANDS	:	
COMMISSION'S CONSISTENCY	:	<u>Civil Action</u>
DETERMINATIONS APPROVING	:	
TUCKAHOE TURF FARM INC.'S	:	
APPLICATION NO. 1984-	:	CERTIFICATION OF CARLETON
0389.009	:	MONTGOMERY
	:	
_____	X	

I, CARLETON MONTGOMERY, of full age, does hereby certify as follows:

1. I am the executive director of Appellant Pinelands Preservation Alliance (PPA). I make this certification in support of Appellants' opposition and cross-motion regarding the Pinelands Commission's motion to dismiss the appeal as moot. I have personal knowledge of all the facts set forth in this certification.

2. PPA was not aware of the Pinelands Commission letter dated January 26, 2017, or that the Pinelands Commission had

received and was reviewing the amended municipal approvals dated December 19 and 22, 2016, on which the state's motion relies, until informed of the state's motion to dismiss for mootness on April 26, 2017.

3. On behalf of PPA, I gave PPA's approval for the filing of Appellants' opening brief in the appeal, which we filed on November 28, 2016. From that point on, we awaited the opposition briefs, and I was informed of the series of extensions given for the filing of the opposition briefs.

4. At no time did the Pinelands Commission inform PPA of the existence of the amended local approvals or that the Pinelands Commission staff was reviewing such amendments to the local approvals at issue in the appeal.

5. The Pinelands Commission did not send PPA a copy of any of these documents or any other form of notice. (In the past, it had been the practice of the Pinelands Commission to mail PPA copies of its actions on development matters on which PPA had submitted comments, thus avoiding any appearance that the Commission was "hiding the ball" on matters of controversy.)

6. PPA staff attended at least four meetings of the Pinelands Commission and/or its Policy Committee after December 2016, and at least three such meetings after the January 26, 2017, letter. In no case did the Pinelands Commission mention

the amended local approvals or the January 26<sup>th</sup> letter in the public portion of the meetings or directly to PPA staff.

7. When I received a copy of TTF's opposition brief in the present appeal, dated February 22, 2017, I did not notice any mention of the amended local approvals or of the Pinelands Commission January 26, 2017 letter. Today, I see that TTF included the Pinelands Commission letter in the appendix to its brief, and note that it mentions it on page 24 of its brief. It certainly does not explicitly raise the argument that the appeal is moot due to the amended local approvals or the Pinelands Commission letter. (TTF's brief did raise a different mootness argument, based on the January 2016 legislation regarding no-impact recreation under the Pinelands CMP, an argument that Appellants' brief anticipated and addressed.)

8. The Pinelands Commission's decision not to inform Appellants of the amended local approvals and its review of them, and then to move to dismiss the appeal without reaching the merits, is reminiscent of its actions during its initial review of the TTF matter in 2015 and 2016.

9. In 2014, PPA learned that the Pinelands Commission staff were in discussions with TTF regarding its soccer tournament activities. In February of 2015, I sent a letter to the Pinelands Commission asking the agency to clarify the status of its private discussions with TTF. I specifically asked that

the Commission identify the legal authority it has "to make an ad hoc agreement with a landowner to permit violations of the [Comprehensive Management Plan]" and what processes the Commission intended to follow. My letter also asked to be notified of any future actions taken by the Commission with respect to TTF's development application in a timely manner that would enable PPA to comment before the Commission makes any final decisions. See Letter from Carleton Montgomery to Nancy Wittenberg, dated February 18, 2015 (AMa19-20)

10. In a letter dated March 6, 2015, the Commission's executive director responded to my letter. The response did not address the questions posed, and stated that "[n]o formal agreement with the property owner has been drafted, signed or provided to the Commission for its consideration." See Letter from Nancy Wittenberg to Carleton Montgomery, dated March 6, 2015. (AMa20-21)

11. On March 27, 2015, The Pinelands Commission issued what is commonly referred to as a "Call-Up Letter," announcing its determination that the TTF activities at issue in this matter raise substantial issues of conformance with the CMP and stating that the agency would schedule a public hearing at which time the Commission would review whether the establishment of a commercial soccer use on TTF's property is permitted under the CMP and the applicable conservation deed restriction. See Letter

from Charles Horner to Tuckahoe Turf farm, Inc., dated March 27, 2015 (AMa23-25)

12. On April 1, 2015, Fran Brooks, a resident of Tabernacle Township and member of PPA filed an Open Public Record Act ("OPRA") request with the Commission seeking all communications, correspondence and other documents relating to TTF for the period January 2014 through March 31, 2015.

13. On April 24, 2015, The Pinelands Commission issued to TTF an "Amended Inconsistent Certificate of Filing" stating that its proposed commercial soccer activities are inconsistent with the CMP and the relevant deed restrictions. During the Pinelands Commission's May 2015 meeting, staff member Charles Horner reported, as recorded in the Commission's meeting minutes, that the "Staff recently issued an amended inconsistent certificate of filing for the soccer activities at Tuckahoe Turf to include both Winslow and Waterford Townships [as well as Hammonton Township]."

11. Unbeknownst to me, my staff or, so far as we know, any member of the public, the Commission's Executive Director signed a Stipulation of Settlement Agreement with TTF on May 11, 2015. The first time PPA learned of the existence of this document was upon our receipt of TTF's Letter Brief on September 10, 2015, arguing that our appeal was untimely because the Commission had signed its secret settlement agreement on May 11. Neither the

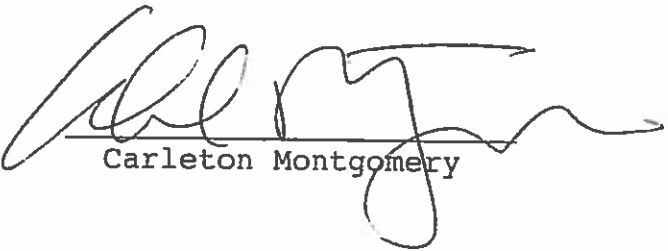
Stipulation of Settlement nor a Resolution by the Pinelands Commission accepting or approving that settlement agreement was posted on the Commission's web site or to PPA or, to the best of my knowledge, to any member of the public at or around the time it was executed. Indeed, it was not even mentioned or noted in the Case Information Sheet filed by TTF in this matter. Indeed, on May 22, 2015, the Pinelands Commission belatedly responded to an OPRA request filed by Fran Brooks seeking documents relating to the TTF matter. Although approximately 355 pages of documents were produced, the package did not include the Settlement Agreement or any draft of such an agreement. While the documents were produced in response to a request for documents through March, 2015, the response did include documents dated as late as April 24, 2015.

14. In September 2015, several months after executing the settlement agreement, and one day after PPA's counsel received TTF's Letter brief arguing that our appeal of filed out of time, the Pinelands Commission e-mailed Fran Brooks with a response to her June 16, 2015 OPRA request. In this response, the Commission included, for the first time, a partially-executed copy of the Stipulation of Settlement as an attachment to one of the responsive communications.

15. Similarly, the Commission did not notify PPA or the public of Waterford Tp.'s March 2016 approval for TTF soccer

activities and the Commission's "No Call-up" letter on that local approval, even though PPA's appeal of the Commission action on the Hammonton local approval, treated under the same TTF development application to the Pinelands Commission, had been pending since the prior July.

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



Carleton Montgomery

Dated: May 2, 2017

