APPENDIX
PINELANDS PRESERVATION ALLIANCE
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FAX COVER SHEET

To:
State House Commission
Ltr Governor Guadagno, Governor's Designee
Robert J. Shaughnessy, Jr., Secretary
Senator Gerald Cardinale
Senator Bob Smith
Assemblyman Joseph Cryan
Assemblyman David P. Rible

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From: Carleton Montgomery 859-8860 x19
Date: November 19, 2010

Re: Proposed Green Acres Diversion – Stafford Township

• Comments:
Via Fax  
November 19, 2010

Lieutenant Governor Kim Guadagno  
Office of the Governor  
P.O. Box 001  
Trenton, NJ 08625

New Jersey State House Commission  
Attn: Robert J. Shaughnessy, Jr., Secretary  
State House 125 West State Street  
Trenton, NJ 08625

Re: Stafford Township Parkland Diversion

Re: Stafford Township Parkland Diversion

Dear Members of the State House Commission:

New Jersey Appleseed, a nonprofit legal advocacy organization dedicated to environmentally sound, just and sustainable development, represents the Pinelands Preservation Alliance (PPA) and New Jersey Conservation Foundation (NJCF) with respect to the proposed diversion of preserved property in Stafford Township, which you are scheduled to consider on Monday, November 22, 2010. We believe the proposed diversion is not only bad public policy for the state of New Jersey, but violates the express requirements of the Green Acres diversion regulations. Given the important policy concerns and substantial legal issues raised in this case, we request that the Commission deny the diversion as proposed, or seek a formal legal opinion of the Attorney General regarding the significant legal deficiencies set forth below before acting on this diversion request.

Stafford Township proposes to divert 57.67 acres of municipal open space parkland, which has been protected via a conservation deed restriction since 2006, in order to enter a long-term lease with a private developer to build a solar energy facility on the site. The lease calls for an initial period of 10 years, with the developer having the right to renew for at least two more 10-year periods, for a total of 30 years. There is no requirement that the property be restored to its prior habitat condition upon the termination of the leasehold. The land is currently deed restricted to prevent any development, so this project cannot proceed unless the Commissioner of the Department of Environmental Protection (DEP) releases the restriction under the Conservation Restriction and

New Jersey Appleseed  
Public Interest Law Center of New Jersey  
744 Broad Street, Suite 1600  
Newark, New Jersey 07102

Phone: 973.735.0523 Fax: 973.735.0524  
Email: rateinhagen@lawsuitcs.net  
Website: www.njappleseed.net
Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq. The Commissioner has yet to take final action, so we cannot exactly know what the release, if granted, will say. But we do know that any release will be permanent, because there is no provision for a temporary release under the Act. In sum, this is a permanent diversion of public parkland for private commercial use.

At this time, the Commissioner of DEP recommends the Commission approve this diversion with no compensatory acquisition of parkland, even though the land is lost to conservation in perpetuity and will be used by a private business to generate private gain. As proposed, the diversion will therefore result in a net loss of parkland, directly contrary to the public trust and the requirements of the Green Acres diversion rules, which state that, "In requiring compensation for major ... diversions of parkland, the Department's primary objectives are to prevent a net loss of parkland." N.J.A.C. 7:36-26.10(b).

No one disagrees with the proposition that solar energy generation is a good thing—something our clients wholeheartedly endorse; however, agreement with that proposition need not dictate that solar panels should replace conserved open space that is dedicated for other public purposes. Our clients' opposition set forth herein is based on their mission to defend the integrity of public conservation lands and to ensure that the public can have confidence in the preservation of land which government conserves in the public's name and for the public's benefit. The Stafford Park diversion, as currently proposed, undermines the public's confidence in government's will to protect publicly-owned open spaces where business or other interests not related to conservation, recreation, and natural resource protection seek to exploit those lands.

The proponents of this project seek to distract you from this central point by presenting you with a false choice between preserving public conservation land and promoting solar energy generation. Indeed, there are dozens, if not hundreds, of proposals for solar arrays in southern New Jersey alone that have been approved or are pending before local boards that do not require a Green Acres diversion. Accordingly, there is no reason to force the residents of Stafford Township to make this choice.

Background

The land the township now seeks to divert was preserved through a conservation deed restriction, required by and set forth in a Memorandum of Agreement entered between the New Jersey Pinelands Commission, Stafford Township, and the Ocean County Board of Chosen Freeholders, dated June 2006. Stafford Township recorded the conservation deed restriction on December 11, 2006. Once used as a landfill, this site had been maintained with grasses prior to its proper closure as a landfill ever since Stafford Township stopped accepting solid waste at the site in 1982. Since that time, the public was not actively prevented from using the site, which is adjacent to state owned land.

This land was deed-restricted in perpetuity and set aside as parkland because the technical committee consulted by the Pinelands Commission determined that it would be valuable habitat for rare species. In this way, the conservation deed restriction would explicitly help meet the legal requirement that the Stafford Park Memorandum of Agreement, while waiving protections for rare species, would provide at least equivalent protection of Pinelands
resources when compared to enforcing those protections, as required by the Pinelands Comprehensive Management Plan. The land used to be a landfill; then it was capped; and now it is permanently preserved parkland open space containing important habitat, including habitat for rare (e.g., special concern) and threatened species.

The DEP recommendation makes many assertions in support of this diversion, but most are legally and logically irrelevant. It points to the environmental benefits of the original landfill closure deal, which included the conservation restriction on this land, as helping justify the diversion – but that deal was completed years ago and has no bearing at all on the wisdom or legality of the current diversion. It suggests that this case involves “just a landfill” – but that consideration is irrelevant to the diversion regulations; and, as shown by this case, a closed landfill cover can become valuable recreation and habitat land, as this one is certainly becoming. DEP also suggests that some species might nonetheless use the landfill cover with solar panels – but that, too, is legally irrelevant and ignores the loss both of public open space and of habitat for specific species, such as birds, that comes with replacing open space with energy generating equipment, such as solar panels.

The Objectives of the Diversion Do Not Meet the Threshold Requirements for a Diversion

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

The DEP recommendation does not actually say which of these criteria justify the proposed diversion. The recommendation points out that solar energy is cleaner than other sources of electricity, which, we can all agree, is a good thing. However, it is the policy of the State of New Jersey that being a good thing is not enough to justify a diversion of public parkland; rather, what constitutes a valid justification is embodied in the regulations enacted that govern the diversion process and it is those regulatory criteria that are not met in this case. (It is clear that this project does not implicate the third prong of the regulation.)

To meet the standard for “compelling public need,” the project must “mitigate[e] a hazard to the public health, safety or welfare.” N.J.A.C. 7:36-26.1(d).1.i. Neither DEP nor Stafford Township has identified any such hazard. Stafford’s application makes a generalized reference to global warming. It is not the intent of this standard, however, to invite diversion projects to address generalized, global concerns; instead, the regulation provides a means to allow actions needed to solve a particular hazard that can only be met by the specific diversion requested.

To meet the “significant public benefit” standard set forth in the second prong of the regulation, the project must “improve[e] the delivery by the local government unit … of essential services to the public or to a segment of the public having a special need ….” N.J.A.C. 7:36-26.1(d).1.ii. Again, it is not enough to simply be a good thing, or something we would like to see for other policy reasons. Neither DEP nor Stafford claim that there is an essential service that
Stafford does not currently provide, or that it will not provide, unless this solar facility is constructed.

Unfortunately, DEP's recommendation accepts Stafford Township's assertion that there is no other open space in Stafford where a solar facility can be built. But even if such assertion was true, DEP does not explain why the facility must be developed on "open space," or why it must be built in Stafford proper. To the best of our knowledge, there has been no analysis of the availability of other sites within and beyond Stafford where rooftops, parking lots, and other "receptors of sunlight" might be adequate alternatives to the diversion of public open space for private commercial development.

In short, neither the regulatory criteria for diversion have been satisfied nor has the Township established that there are no feasible alternative sites on which a solar energy facility could be developed.

The Proposal Includes No Compensatory Land Preservation and Would Result in a Net Loss of Parkland to the Public

The Green Acres rules further provide that, "[a]n applicant shall provide compensation for a major disposal or diversion of funded or unfunded parkland," and that, "[i]n requiring compensation for major ... diversions of parkland, the Department's primary objectives are to prevent a net loss of parkland." N.J.A.C. 7:36-26.10(a) and (b). There is no exemption in these rules for diversion of parkland that happens to be on the cap of a closed landfill, as the DEP implies, nor should there be.

Indeed, the DEP recommendation seems to assume that in the case of a lease of public land to a private party, no compensatory land is required at all, and all that is required of DEP is to allocate lease payments to recreation and open space maintenance expenses fund.

This position seems to be based on a misapplication of the section of the regulations that states that, in the case of a lease of public parkland, the local government must put its lease proceeds into the operation, maintenance or capital expenses of its funded parkland or recreation program. N.J.A.C. 7:36-26.10(c). This provision must be applied only to situations in which a local government leases parkland to a private operator consistent with its dedicated use as recreation or conservation land, not as a loophole to allow the commercial development and permanent loss of parkland without equivalent land compensation so long as proceeds are used in a certain way.

The diversion rules require replacement land in the case of a permanent or indefinite diversion of parkland for the purpose of private commercial development, whether via long-term lease or sale. The diversion of the open space at issue here for up to thirty years without any requirement, assurance or guarantee of restoration is the equivalent of a permanent alienation for which compensation must be required. The requirements for compensation provide that a local government may provide compensation in the form of replacement land, but "[i]n no case shall the acreage of the replacement land be less than the acreage of parkland to be ... diverted," and the total compensation must meet the requirements set out in Table 1. N.J.A.C. 7:36-26.10(c),
(d)3 & 4. Table 1 requires that diversions for private development require a 4:1 ration of replacement to diverted land.

**The Diversion Process Violated Numerous Procedural Rights and Requirements of the Green Acres Rules**

The process managed by Stafford Township also violated the procedures of the diversion rules designed to ensure public comment and a full review by DEP. The Green Acres rules lay out a clear, unambiguous procedure for major diversion applications. Of particular importance at this stage, the rules require that the following sequence be followed:

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

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

In this case, Stafford Township held the final public hearing on October 14, 2010, two days after the close of public comment on the scoping hearing and prior to (a) any review by the Department of the scoping hearing record and pre-application, (b) any determination by the Department that the applicant may proceed with a full application, and (c) any response by the applicant to the clear deficiencies in the pre-application document made available a week prior to the scoping hearing. Moreover, the Township's diversion application did not provide the public with essential information, without which a meaningful public hearing was impossible. First, Stafford did not provide an actual lease, or essential terms of the lease. A draft of the lease provided by the township specifically left the value of the lease payments blank. Second, the township failed to provide the required appraisals of the diverted land (or of the necessary replacement land), N.J.A.C. 7:36-26.9(d)4 and 26.11(b)1. The township instead suggested that the closed landfill has little or no economic value. This position is absurd on its face, since the applicant also proposes to lease this land to a private firm to develop a profit-making energy generation facility at a stated cost of $24 million, with many millions more in anticipated profits for the developer. Stafford Township appears to have granted exclusive rights to develop the site to one particular developer, through a municipal resolution dated June 16, 2009, and to have granted this right of exclusivity over a public asset without receiving compensation or consideration. See Stafford Township Resolution 2009-182. Since there was no competitive bidding process, the lease in question will not provide a valid basis for calculating the economic value of the land. Third, Stafford did not provide an identification of documented occurrences of rare species or habitat that will be affected, as required by N.J.A.C. 7:36-26.4(d)2.ii.(3). And,
fourth, Stafford did not provide the environmental assessment report prepared in accordance with an outline provided by Green Acres, as required by N.J.A.C. 7:36-26.9(d)3. This report must describe existing environmental features of both the land proposed for diversion and the proposed replacement land, and how those features will be affected by the diversion.

For all the foregoing reasons, we request that the Commission deny the application as proposed, or seek a formal legal opinion of the Attorney General regarding the significant legal deficiencies set forth herein before acting on this diversion request.

Thank you for the opportunity to comment on this proposal.

Sincerely,

Renee Steinhagen

Renee Steinhagen, Esq.
Counsel for Pinelands Preservation Alliance and New Jersey Conservation Foundation
FROM: Salvatore J. Sorce
31 Popper Street
Manahawkin, NJ 08050 609.978.7700

November 22, 2010

FAX TO:

ATTENTION:

ROBERT J. SHAUGHNESSY, SECRETARY

THE STATE HOUSE COMMISSION

609.984.8495

To: New Jersey State ... The State House Commission,
Robert J. Shaughnessy, Secretary

Subject Reference: Stafford Township Renewable Energy Facilities

Please distribute my attached letter to the commissioners,
as I have a medical appointment and am not able to attend this session.

Sincerely, and Thank you. Sal Sorce
To: New Jersey State ... The State House Commission, Robert J. Shaughnessy

Subject Reference: Stafford Township Renewable Energy Facilities

Since the original Stafford Business Park Redevelopment project, the landfill and several of the Commercial and Residential components have basically progressed over the last few years. Stafford residents have seen their property taxes impacted in infrastructure and utility costs increases at an amount where many residents have been wondering when this so called ‘regional development’ will ever end. With the loss of revenue in Ratables at the rate of the 50% Abatement approved for up to 35-years, on Commercial property in the Business Park, folks have had it and are planning to leave Stafford, the cost burden has become to much to bear.

Many including myself saw some comfort in seeing the new landfill become the future Parkland, in fact it is a Parkland and certified agreements as such by the state.

■ I followed the recent Age-Restricted housing ordinance passed with only a brief open discussion or explanation of what the lifting would do or impact us on our already high property taxes and school taxes. 5-minutes is the rule in Stafford, hardly a fair amount of time for questions and real substantive answers to our questions?

■ Upon seeing a three worded clause “renewable energy facilities” tagged within the age restriction resolution up for approval, I did some research and found that the developer had already been approved to appear before the New Jersey Pinelands Commission on an application to install a multi-phase Solar Panel installation. Fact there was no prior notice or caucus before the Stafford township residents upon this finding.

■ I witnessed our Planning Board experts and professionals review and at the beginning make no comments on what I felt was a critical part of a recommendation for the health and safety issues. Only after my comments and concerns were expressed, did the township move to include the clause to protect the township for harm or expenses of removal of obsolete panels and damage. A rush to approve was openly apparent.

■ We objectors lost our case as we appeared before the Pinelands Commission, the DEP Green Acres township "scoping" session, and were not allowed more than a mere 5-minutes during several Stafford Township Public Comment sessions.

■ The monetary gain is minimal when placed against our loss of valuable Parkland.

■ Many cannot see who is coming out ahead, as the loss of our Parkland, to development, redevelopment — is this really progress? Is this what Stafford has become? A home to development? The loss of our Parkland to a mass of Solar Panels? Solar panels trump air quality, Solar trumps the environment, is Solar more valued than our own community at large. The developer has been feeding off this Stafford Business Park since the original approval and only now can residents really see what was perpetrated ... ultimately the taking of virtually all of the Stafford Business Park properties and region for personal gain is fundamentally wrong.

■ I respectfully request that you reject this approval on behalf of the people?

Thank you. Sal Sorce
State House Commission Meeting of November 22, 2010

Correspondence Received by State House Commission

Secretary Robert J. Shaughnessy, Jr. relating to

Agenda item #43. DEP Project: Stafford Business Park Open Space Areas, Block 25, Lot 39 (portion of), Stafford Township, Ocean County, NJ
Jim Moran, Twp. Administrator
Township of Stafford
Municipal Building
260 East Bay Avenue
Manahawkin, NJ 08050

Green Acres Program
NJ Dept of Environmental Protection
Bureau of Legal Services and Stewardship
Mail Code 501-01
PO Box 420
Trenton, NJ 08625-0420

Re: Co-generation Facility
   Destruction of Parkland
   Lot 39 in Block 25
   Township of Stafford, County of Ocean

Gentlemen:

I am writing this letter to indicate my displeasure as to the lack of a complete and through disclosure as to the alternatives, compliance criteria and benefits that the loss of parkland will create for the New Jersey Pinelands in Stafford Twp. As you know, this area of Stafford has been destroyed of vegetation and wild life habitat as the result of creating a tax subsidized commercial complex and a Fire Brake along Hay Road.

In addition, the area being utilized for the Stafford Business Park and Industrial co-generation facility causes additional stressors to the Pinelands Eco-systems that were to be protected under the Federal Pinelands National Reserve legislation. This has resulted in the forced migration of wildlife from their homes to seek new homes in the developed areas of the Forest Area District of the New Jersey Pinelands National Reserve. This is adverse off site impacts due to the destructive land management practices of Stafford Township.

The project as I understand it is a public venture that is being advanced by a Developer selected by a non-competitive selection process. The project involves the taking of public parklands without adequate compensation. The process being used by Stafford raises ethical questions that need to be reconciled with the taxpayer and park users. This taking of parklands for a co-generation facility seems to be in defiance of the public desire to have parks rather than development.

However, this process should have been accomplished under the ethical principals of a competitive bidding process. This will protect the tax pay interest in this proposed industrial tax ratable. No further action should be taken until a selection of a vendor by a competitive bidding process similar to that used by the U.S. General Accounting Office. Financial investigations should be part of that process.
Further, the community planning process and the Master Plan’s Utility Sub-element plan should have considered this use as a permitted activity on the referenced parklands. Based upon available information it does not.

As a result of the lack of planning principals being applied to this co-generation facility, we have the confusion and possible compromise of the public right to a quality environment.

The first problem I find with the efforts of Stafford Township is its attempts to fast track a detailed process designed to protect the peoples land or parks from the forces of greed operating to destroy the Eco-systems that support our existence on this planet. The problem is that the fast track being revealed to the public does not provide any vision as to what is expected from this non-competitive selected developer because of the people’s loss of parkland to the forces of Wall Street.

In addition, the information provided publically does not show how this Development meets a public need to destroy an expensive park. The information available does not show the public what is being provided to protect their safety and health from possible adverse impacts from new technology that has not been tested by weathering a long period of time without any adverse results or impacts. The only uncontested fact of this proposal is that it will advance the profits of the Developer while consuming valuable parkland and indigenous wildlife habitat.

Further, questions exist and answers have not been provided as to the health and safety of the residence of the nearby COHA housing, having about 2.5 children per unit, having this co-generation facility near to them. We know about the problems with electrical transmission line and people. Will this facility become an attractive nuisance site resulting in injuries due to children play on the Solar Panels, tripping on the transmission wires of the generated electrical power and other concerns related to nearby human habitat usage?

The fast track efforts of Stafford Township is an aggressive attempt to compromise the publics right to know, the right to free speech, and a suggestion that the newly elected government is beginning to travel down the road of the late Russian Empire and the Germans during World War II.

I request that you provide to the public:
- all information about the proposal being examined,
- provide for at least four alternatives,
- provide for the cost associated with these alternatives,
- expected results if alternatives are implemented,
- make available executive summaries of all documents in plain language so the average person can make good decisions and
- a project alternative schedule showing that the time frames and processes established by law are being followed.
By following these steps and publicly supported alternative will provide the parties with the community’s instructions to its elected leaders. The goal is to develop public support for the selective alternative. Not to take away the peoples park and convert it into an industrial land use. This community decision should be accomplished in an open democratic process that results in serving the interest of the citizens of Stafford Township, not that of an individual or organization.

Sincerely,

Peter Ferwerda 3rd

Copy to Governor Chris Christie
November 16, 2010

Robert J. Shaughnessy, Jr., Secretary  
NJ State House Commission  
PO Box 229  
Trenton, NJ 08625-0029

*transmitted via facsimile to (609 984-8495) and sent by regular mail

RE: Solar Project; Stafford Township Landfill

Dear Mr. Shaughnessy:

Enclosed, please find a copy of correspondence sent to our 9th District Legislative Office by Mr. James Moran, who currently serves as the Administrator for Stafford Township, regarding a proposed solar project planned for the top of the Stafford Township Landfill.

As you are aware, the Commission is scheduled to consider a matter related to the project on the November 22 of this year. In reviewing Mr. Moran’s outreach, you will note that he is respectfully requesting that the Commission give every consideration to the matter and do so in a timely manner so as not to jeopardize the project. In order to qualify for funding, federal guidelines require construction on the project to begin by December 30, 2010.

As you will note, Mr. Moran explains in his correspondence that this project is enormously important to the taxpayers of Stafford Township. According to Mr. Moran, estimates show that, when completed, the project will yield better than a ½ cent reduction, annually, in taxes for at least a 30-year period. For your information, the state Pinelands Commission recently approved changing the memorandum of agreement and lifting the deed restriction that was placed on top of the Landfill.

Thank you, in advance, for your attention to this important communication.

Sincerely,

[Signature]

BRIAN E. RUMPF  
Assemblyman – 9th District  
BER/DCG/js:dd  
w/Enclosure

CC: Honorable Chris Christie, Governor, State of New Jersey  
Mr. James Moran, Administrator, Stafford Township; (via facsimile to (609) 242-1622)
November 8, 2010

Assemblyman Brian Rumpf
Connors, Rumpf & Gove
9th Legislative District
620 West Lacey Road
Forked River, NJ 08731

Dear Assemblyman Rumpf:

As you may be aware Stafford Township has elected to proffer a lease of our recently closed landfill for the purpose of constructing and operating a solar farm. This project is light years ahead of most endeavors within the state and will have a significant positive financial impact on our community.

As you are aware all municipalities continue to struggle with the economic realities of our time. This lease is but one of the many means that we are employing to reduce the ever increasing burden on our taxpayers. Currently, approval for the Green Acres Diversion is scheduled to be heard by the State House Commission on 11/22/10.

At this time we understand and would not ask for your assistance with regard to the final outcome and determination of the State House Commission, however, prompt action by the Commission is essential to the economic viability and ultimate success of the project. The federal guidelines that provide for a 30% reimbursement of the capital costs associated with the project are only guaranteed if a shovel is in the ground by 12/30/10. Stafford Township has been working diligently to insure that all aspects of the project have been thoroughly vetted and all approvals garnered, however as we come down to the wire, any delay beyond 11/22/10 could place the project in serious jeopardy. This project is sound environmentally and economically and will yield better than a 1/2 cent reduction annually in taxes for a least the next 30 years and beyond.

Your assistance in helping this project move through the Commission in a timely manner would be greatly appreciated. Please understand, I would like to reiterate that we are asking for no assistance on the merit of this project, we know the commission will make
the appropriate determination, all we are asking is for a fair and timely hearing on the project to avoid any unnecessary delays.

Thank you for your assistance.

Very truly yours,

James A. Moran
Administrator

JAM/jlg

C: Walters Group
Honorable Senator Chris Connors
Assemblywoman Gove