



PINELANDS
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Memorandum of Agreement by Pinelands Commission is Unlawful and Unnecessary

The Pinelands Commission's executive director has issued a report recommending the Commission disregard its own rules protecting the Pinelands Forest Area. The report recommends the Commission enter a contract called a Memorandum of Agreement that would allow South Jersey Gas to build a pipeline through the Forest Area to the BL England plant on the Great Egg Harbor, even though the Pinelands Comprehensive Management Plan forbids the use of the Forest Area as a transit route for such infrastructure development.

The Pinelands Preservation Alliance expects the Pinelands Commissioners to reject the proposed Memorandum of Agreement when they vote on Friday, January 10th, because the agreement is unlawful, unwise and inconsistent with their commitment to respect the Comprehensive Management Plan. To approve the deal would be to trade an exemption from fundamental protections of the Pinelands for \$8 million – and to bring the Commission into public disrepute.

Though the executive director's report is long and full of conclusions, a careful reading reveals that it concedes critical points showing that the proposed Memorandum of Agreement is unlawful and unnecessary. Specifically, the report concedes that:

- 1. The pipeline is not “public development.”** That should end the matter, but the executive director omits any mention that the Commission's rules only authorize the contractual waiver procedure for “public development.” The report concedes that South Jersey Gas is “a private company” and that it was South Jersey Gas alone which “initiated” this whole development project. Under the rules, private, commercial development like the pipeline has to meet the strict standards for a “waiver of strict compliance,” which expressly requires proof that there is a compelling public need and no alternative means of meeting the need – requirements the staff is apparently loath to impose on South Jersey Gas.
- 2. There are alternative routes for the pipeline, including at least one that does not violate the Pinelands regulations.** The report admits that such routes exist and are technologically and financially feasible. Instead, it argues that they have other

environmental impacts that make them less desirable. The problem is that it's not up to the staff or the Commission to decide on a case-by-case basis whether individual developments are good or bad – that's decided by the regulations which apply to everyone equally and are not subject to *ad hoc* deal-making. The executive director also fails to make a persuasive case that there are real differences in the environmental impacts, since the route proposed for approval impinges on more wetlands and habitats of rare species of plants and wildlife than the alternatives that comply with the rules.

- 3. The Board of Public Utilities has not demanded or required that this pipeline be built, nor that it take this route. It has merely approved it as consistent with the BPU's energy regulations.** Throughout the review process, claims have been made that the BL England power plant *must* be repowered with natural gas to ensure the safety of the region's electricity supply, so this pipeline must be built. This assertion is simply false. The executive director's report goes far in asserting that BL England should be repowered, and it includes much arm-waving to suggest that BPU has actually *mandated* this project. But in the end the report acknowledges that that BPU has merely "approved" the project as consistent with its regulations. (p. 7) In fact, BPU merely responded to an application by South Jersey Gas, which in turn responded to a business opportunity presented by the purchase of the BL England plant by Rockland Energy Investment, a Texas energy investment firm. The executive director's report admits that "The party initiating this construction project, as well as providing all capital expenditures, is SJG [South Jersey Gas]." (p. 39) There is no reason for the Pinelands Commission to distort the Pinelands Plan for this one development.
- 4. The proposed \$7.25 million payment does not ensure any equivalent protection of Pinelands resources as compared with enforcing the rules as they stand.** The executive director's *theory* here is that the money could be used to buy land along the path of the pipeline for conservation, so the pipeline would not fuel more development in the area. But the theory is belied by the actual terms of the proposed deal. In fact, as the executive director concedes, there is no requirement that even a single dollar of the money be used to buy land along the pipeline route. That is merely the first option, and after three years the money could be used to buy any forested land in the Pinelands south of the Atlantic City Expressway – a huge area of more than 76,000 acres in which \$7.25 million would make no measurable difference. (The report also fails to provide any scientific justification for the \$7.25 million figure, merely asserting without support that this *could* be enough to buy unprotected parcels along the pipeline.)

Two wrongs do not make a right. The executive director's report places great reliance on the idea that the Pinelands Commission can do *this* deal because it has done similar deals before – regardless of the plain language of the Pinelands protection regulations. This is a bad legal argument. Our system of laws does not work that way. And its factual premise is wrong as well. In fact, the pipeline proposal represents a fundamental expansion of the Memorandum of Agreement process to authorize a private, for-profit development that will serve a private, for-profit investment firm. The Pinelands Commission has been using these agreements more and more aggressively to circumvent its rules. It is time to stop now before those rules become meaningful only for those without the money to buy exemptions. There is nothing wrong with

private profits, but they are not a good enough reason to violate the Pinelands Comprehensive Management Plan that is supposed to apply equally to all comers.

Where are the documents? Finally, the executive director's report and Memorandum of Agreement rely on documents which the Commission staff have cited as support for the deal, but have failed to produce. This raises the question whether these documents actually say what the staff claims they say – or indeed, whether they exist at all. Advocates have identified several such documents, but the executive director's report says both that the Commission has given up all that the law requires (suggesting they are withholding material) *and* that “the Commission posted the reports that it referenced in the draft MOA on its web site.” These claims are demonstrably inaccurate. The Commission did not answer multiple Open Public Records Act (OPRA) and file review requests for specific documents cited in the draft MOA and staff presentations; the Commission also redacted information from scientific reports, including, in the one case where we obtained an un-redacted copy from a federal agency, information that undermines its assertions that there is no risk to threatened and endangered species. This approach is indicative of the extraordinary measures the Commission staff have taken since they began secret negotiations with South Jersey Gas more than a year ago (in the words of a South Jersey Gas representative) to push this project through no matter what the damage to the Pinelands, and to the Pinelands Commission's public standing.

The Pinelands Preservation Alliance (PPA) was established as a 501(c)(3) charitable organization in 1989 by environmental leaders and Pinelands residents, with the goal of preserving and protecting the more than 1 million acres of the New Jersey Pinelands. PPA remains the only private organization dedicated solely to environmental protection throughout the Pinelands.

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