



## State of New Jersey

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Richard J. Codey  
Acting Governor

October 25, 2005

The Honorable Thomas Borkowski  
Mayor, Clinton Township  
1370 Route 31 North  
Annandale, New Jersey 08801-0036

Dear Mayor Borkowski and Members of the Clinton Township Council:

In response to Resolution No. 221-05, I am pleased to provide you with Department of Environmental Protection's (the "Department") comments on the proposed settlement between the Township of Clinton ("Clinton" or the "Township") and P&H Clinton Partnership ("P&H") regarding the Windy Acres Development (Blocks 7, Lots 18, 18.01 and 31, Clinton Township, Hunterdon County). Thank you for the opportunity to comment.

I have reviewed the proposed settlement agreement, which purports to settle litigation concerning P&H's proposed development of the Windy Acres site. P&H proposes to construct, on approximately 292 acres, a total of 515 residential units, 365 of which will be market price age-restricted housing units and 150 of which will be affordable housing units. As I understand the planned development, this represents the maximum build out that would be authorized by the draft Ordinance attached to the settlement agreement as Exhibit C. Based on my review of the settlement agreement, I continue to have serious reservations, and must once again voice my strong objection.

The Windy Acres site is an environmentally sensitive property through which the South Branch of the Rockaway Creek, a Category One ("C1") stream, flows. Development of this site, with its proposed impacts to the South Branch of the Rockaway Creek, has the potential to affect adversely the water resources in the region. To minimize these impacts, it is imperative that proper stormwater management protection and safeguards be implemented in compliance with applicable environmental laws and regulations. However, the settlement agreement contains absolutely no safeguards to ensure that the Planning Board will have an adequate opportunity to perform a thorough review of stormwater management measures proposed at this site.

The Planning Board must review P&H's application for residential subdivision and site plan approval in accordance with the Municipal Land Use Law at N.J.S.A. 40:55D and the Residential Site Improvement Standards at N.J.A.C. 5:21. With respect to stormwater, the Planning Board is specifically required to ensure that appropriate stormwater management measures, which are based on the Department's stringent stormwater management rules at N.J.A.C. 7:8, are designed and implemented. See N.J.A.C. 5:21-7.1 et seq. I am concerned that the settlement agreement provides the Township's or Planning Board's consultants with an extremely abbreviated time period (thirty days) within which to analyze and comment on this complex piece of the application. See Paragraph 2(f). On top of that, P&H has the right to sue the Township or the Planning Board for not "diligently proceeding" with the application. See Paragraph 1(m). From my perspective, setting up such a limited window for "fast-track" review is tantamount to not allowing a proper stormwater management review.

In addition, I am concerned with Paragraph 1(d), which provides that environmental constraints on the property may affect the layout of the project, but "will not serve as the basis to reduce the total number of units on the [p]roperty ..." This notion is carried through in the development standards in the proposed Ordinance at Section 165-144.4(A), Density. Since P&H has not yet submitted any environmental permit applications to the Department, and since there are many environmentally sensitive features on the property, it appears to be premature to conclude that the number of units that will be allowed is fixed as the maximum build out for the site.

I also have concerns about Paragraph 11, which addresses the Township's desire to retain the Windy Acres site's Planning Area 2 designation under the State Development and Redevelopment Plan (the "State Plan"). As a member of the State Planning Commission (the "Commission"), I directed my staff to develop recommendations for changes to the State Plan Policy Map to recognize critical natural resources through the Commission's cross acceptance process. The recommendations that the Department made regarding State Plan map changes are based on data that has been shared with each county since Spring 2005. Our review of the environmental features of the Windy Acres site prompted the Department and the Hunderdon County freeholders to recommend changing the site from its current State Plan designation of Planning Area 2 to the Environmentally Sensitive Planning Area 5.

In particular, the site's proximity to the Round Valley Reservoir and tributary headwaters of category one waterbodies and the presence of Threatened and Endangered Species Habitat and wetlands present a compelling justification for the site to be redesignated as environmentally sensitive. More than ninety percent of the Windy Acres site is ranked as suitable habitat for state and federal threatened and endangered species. The area provides a nesting buffer for Bald Eagle as well as suitable habitat for other species, including Bobolink, Wood Turtle, Grasshopper Sparrow, Baltimore Oriole, Eastern Box Turtle, Eastern Ribbon Snake, Gray Catbird, Red-Eyed Vireo, Wood Thrush. In addition, the South Branch of the Rockaway Creek, a C1 waterbody, flows throughout the proposed site. The main stream is on the north side of the property. Two

tributary headwater origins are located within the middle of east and west side of the property. A third tributary flows down to the property from the Round Valley Reservoir state property. Additionally, wetlands are on site connected with the C1 waters. Finally, the Windy Acres site is approximately 150 feet from local open space properties that are contiguous to the Round Valley Reservoir state property.

Resolution No. 221-05 invited the Department to express its views concerning the proposed settlement. These views do not imply my view as to whether the project contemplated by the settlement agreement could satisfy applicable permit or other approval requirements that may apply to applications that later may be submitted to the Department. Any permit application related to this project that is submitted to the Department by P&H will be reviewed on the merits, in accordance with all applicable environmental laws and regulations at the time that a decision is rendered on the application.

Again, thank you for the opportunity to comment on the proposed settlement agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "B M Campbell". The signature is written in a cursive, slightly slanted style.

Bradley M. Campbell  
Commissioner